

1928.

Present : Fisher C.J. and Garvin J.

DHARMARATNE v. WICKREMESINGHE.

433—D. C. Negombo, 1,274.

Registration of business names—Co-operative Credit Society—Promotion of thrift—Action to recover loan—Ordinance No. 6 of 1918, s. 9.

A Co-operative Credit Society formed for the promotion of thrift and mutual help among villagers need not be registered under the provisions of the Registration of Business Names Ordinance.

A PPEAL from a judgment of the District Judge of Negombo.
Garvin, for plaintiff, appellant.

Fonseka, for defendant, respondent.

March 13, 1928. GARVIN J.—

This action was brought for the purpose of recovering, for the benefit of the members of a voluntary association, referred to in the proceedings as the Co-operative Credit Society of Tudella, two sums of money borrowed from the funds of the Society by the defendant, who was then its president. When the case first came up for trial an objection was taken to the action on the ground that the plaintiff, who is the treasurer, was not authorized to represent the members of the Society. This defect has been remedied by an order under section 16 of the Civil Procedure Code. At the second trial the claim was again successfully resisted on the ground that the Society had not been registered under Ordinance No. 6 of 1918.

It is clear from the evidence on record that this is a Society of villages—one hundred in number—who have formed themselves into an association for the promotion of thrift and for mutual help. Their subscriptions form the fund out of which loans are made to subscribers in pecuniary difficulties. Reference has been made to a rule which contemplated the making of loans to non-subscribers. Such a rule did exist “formerly” but is no longer a rule of the Society and at no time was a loan made to a non-subscriber. The effect of the evidence is that this is a mutual provident association and not an association formed for the purpose of carrying on a business for profit. It is not and never was an unincorporate body of persons who have entered into partnership with each other with a view to carrying on business for profit. The objection founded on section 9 of the Registration of Business Names Ordinance, No. 6 of 1918, cannot be sustained.

The proceedings had in this case up to now are not a credit to the defendant, who as president of this Society, has on his own admission borrowed the funds contributed by the poor villagers and who I should have thought would have embraced the earliest opportunity to establish his defence, if any, on the merits. The case will now go back for the trial of the fourth and fifth issues and for determination in accordance with the finding of the District Judge thereon.

He must in any event pay the costs of the last hearing in the Court below and of this appeal.

FISHER C.J.—I agree.

Appeal allowed.

1923.

GARVIN J.

Dharmaratne
v.
Wickreme-
singhe