SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 11b of 1986

BETWEEN:

WILLIAM EDGECOMBE - Plaintiff/Appellant

and

St. LUCIA COCONUT GROWERS ASSOCIATION LIMITED
THE HON. IRA D'AUVERGNE
JOHANNES LEONCE
HARRY ATKINSON
RENE RAVENEAU
NUGENT DENNEHY - Defendants/Respondents

Before: The Hon. Sir Lascelles Robotham - Chief Justice
The Hon. Mr. Justice Bishop
The Hon. Mr. Justice Moe

Appearances: Dr. F. Ramsahoye, Q.C., and Mr. O.W. Larcher for the Appellant
Mr. V. Cooper for Respondents Nos. 1,2,3,5 and 6
Mr. T. Cozier for Respondent No. 4

1987: Oct. 19,
1988: Jan. 25.

JUDGMENT

BISHOP, J.A.

The St. Lucia Coconut Growers Association Limited was incorporated under the Commercial Code of St. Lucia 1916, on the 23rd May 1939. It is a company limited by guarantee, with objects as set out in clause 3 of its Memorandum of Association. Seventeen sub-clauses comprise clause 3 and they indicate the objects for which the company was established, with the following being material to the case before us:

> "(1) To promote, facilitate and protect the economic production and marketing of coconuts and copra in the Island of St. Lucia, elsewhere in the British West Indies, and in any other part of the world.
>
> (6) To enter into partnership or into any agreement for sharing profits, union of interests, co-operation, joint adventures, reciprocal concessions or otherwise with any Company, body or person carrying on engaged in or about to carry on or engage in any business or transaction which the Company is authorised to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit the Company and to take or otherwise acquire and hold shares or stock in or securities of and to subsidise or otherwise to assist any such Company or person and to sell, hold, re-issue with such shares, stock or securities and to become a director of any such other Company.

/(17) To do.....

> (17) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them."

Copra Manufacturers Limited was incorporated on the 26th February, 1953, also under the Commercial Code of St. Lucia. It is a company limited by shares, and among its objects is the following, at clause 3(1) of its Memorandum of Association:-

> "To purchase from St. Lucia Coconut Growers Association Limited their property at Soufriere comprising the Coconut Oil factory and buildings and the lands on which they are situated and to carry on the business of oil extractors and refiners now carried on by the said St. Lucia Coconut Growers Association Limited."

William Edgecombe, a businessman living at Cap Estate, a coconut grower and a shareholder of the St. Lucia Coconut Growers Association Limited (also called C.G.A.) for about two years prior to November, 1986, had, according to him "a substantial shareholding interest in Copra Manufacturers Limited" (also referred to herein as C.M.L.). He explained that he had shares registered in his name and he purchased other shares from shareholders; however, some of these shares were not registered despite his efforts to have them registered. In his own words, "the directors of C.M.L. are the people to allow the registration. The directors have refused to register the shares". According to the secretary of C.M.L., William Edgecombe was "a substantial minority shareholder" with 25% or 26% shareholding.

Between September, 1982 and May, 1983, William Edgecombe was a director of C.M.L. In that capacity he signed at least one of a number of share certificates when shares were transferred to a number of persons including Rene Raveneau. He knew and appreciated what he signed. He made no protest whatever against the transfer.

At the material time, Neil Edmunds was Manager/Secretary of C.G.A. and secretary of C.M.L. He explained that before the formation of the latter company, C.G.A. alone marketed all the copra produced in St. Lucia. Then,

> "about 1952 the directors of C.G.A. felt that rather than selling copra, they should do something about processing the copra. As a result they formed the company C.M.L. ..... At the time C.M.L. was formed the majority of the directors were coconut growers, but as time went by those directors while disposing of their cultivation retained their shares in C.M.L. to the extent that by the late 1970s the C.G.A. had no representation on the Board of C.M.L."

Harold Atkinson, (also called Harry) an owner of coconut plantations and a director of C.G.A. for more than 24 years, supported the explanation of Neil Edmunds and pointed out that when there was no representation on the

/Board.....

Board of C.M.L. "coconut producers felt that C.M.L. was being run mainly for the benefit of non-coconut producers"; and according to Atkinson:

> "The interest of coconut growers on the Board of C.M.L. was represented only by the Chairman of C.G.A. whoever he might be at the time. C.G.A. never had more than one person on the Board who was obliged to vote on behalf of C.G.A. The effect of this one person voting was, I would say, disastrous in certain respects. About 1980 and 1981 the directors of C.M.L. found it more profitable to import soya oil and corn oil from extra-regional sources, to be processed and bottled and sold on the local market to the extent that they could not buy copra from coconut producers ..... Copra piled up in the hands of coconut growers. So by 1981 a company set up to promote the interest of coconut growers was no longer doing so. The Board representing the C.G.A. took the matter to the growers in General Meeting..... March 1981."

The importance of this explanation will become clear when I come to refer to the accusations that were levelled at C.G.A. So too will the significance of the evidence of Harold Atkinson about what occurred at and after the above mentioned general meeting.

The directors of C.G.A. were given a directive by the coconut growers to take action; or as Harold Atkinson put it:-

> "to take whatever steps were necessary to get more directors or to get some directors who would represent the interest of coconut growers on the Board of C.M.L."

In 1983, at an annual general meeting of C.G.A. the directive was expressed in the form of a resolution because the growers held the view that the directors had not gone far enough to achieve that directive

What did the Board of Directors do? Atkinson and Edmunds explained that in pursuance of the resolution the Board decided to transfer shares it held in C.M.L. to certain of the members of C.G.A. who, it was felt, would be competent "to direct the affairs of C.M.L. more in the interest of coconut producers" (the testimony of Atkinson). One hundred shares was the requisite qualification for membership of the C.M.L. Board of Directors, and so, that number of shares was transferred to each of the following directors of C.G.A.: Ira d'Auvergne, Harold Atkinson, Johannes Leonce, Rene Raveneau and Nugent Dennehy. Appropriate share certificates were prepared and signed; and as I pointed out earlier William Edgecombe signed at least one such certificate willingly or without objection.

The initiative of the Board of Directors did not end there. The transfers were accompanied by blank transfers signed by each of the

/above.....

named directors. As the secretary Edmunds pointed out, that meant in effect,

> "that whenever these directors of the Association ceased to be on the Association's Board, the shares would automatically revert to the Association. That was the whole object of the transfer."

Harold Atkinson signed a blank transfer and he was in no doubt that he was holding those 100 shares, not in his own right, but in trust for C.G.A. He knew also that

> ".....when it came to the question of voting on those shares I had no personal control as to how I would exercise my vote. This is so because when the shares were transferred to us it was made quite clear by the Board that the shares were issued on the condition that holders would vote in line of the decision taken by the Board of Directors of C.G.A."

The Board of Directors of C.G. A. numbered nine of whom five were the persons to whom shares were transferred. The C.M.L. Board of Directors numbered seven, including the five transferees.

Thus the position of C.M.L. was what it used to be at the time that C.M.L. was formed; that is to say, the majority of its directors were coconut growers and copra producers.

I come now to "incentive payments" as explained by Harold Atkinson and Neil Edmunds.

Around August, 1980, hurricane Allen hit St. Lucia and did immense damage to coconut plantations. Edmunds referred to it as a national disaster and he estimated that 60% to 70% of copra production was ravaged. Many farmers abandoned their cultivations. Fearing its demise, C.M.L.

> "in the short term agreed to pay to the growers an amount of about half a million dollars in each of the years 1983 and 1984 towards the rehabilitation of the industry as that would be in the best interest of C.M.L. itself since the company could not survive on the low production of copra which had dropped from 6,700 tons in 1980 to 2400 tons in 1981....." (the secretary's words).

The agreement to pay in each of two years in order to rehabilitate the coconut industry and in turn boost the copra production, was taken by C.M.L. for the benefit of C.M.L.

Neil Edmunds also explained, under cross-examination, that (a) the only profits made by C.M.L. "went towards rehabilitating the coconut industry which would allow C.M.l. to make money"; and (b) from about 1981 or 1982

/to November.....

to November, 1986, C.M.L. had not declared dividends for its shareholders.

Harold Atkinson told the Court this:

> "The Board of Directors of C.G.A. dealt with the issue of dividends in 1983 and 1984 when certain sums of profits were to be used as incentives to coconut growers and the manufacturers. These incentive payments.....were made for the years 1983 and 1984.
>
> The C.M.L. authorised the payments to C.G.A. for distribution to its members. The rationale behind the incentive payments was because the copra production had decreased, due to 3 main reasons; (i) ravages of hurricane Allen in 1980 (ii) ravages of disease called coconut mite, still in existence, and (iii) considerable reduction in production from ageing cultivation on large estates.
>
> The directors of C.M.L. required a production of 5500 tons annually to break even on its operations. Production fell to as low as 2400 tons in 1981 and so it was felt for Copra Manufacturers to survive it was vital to get coconut producers to do all that was possible to revise the tonnage of production upwards. It was short, middle and long term."

The short term was described as giving spectacular results and it was explained in these words:-

> ".....to induce producers to take measures that were necessary to bring into production all the nuts possible, that the trees carried annually. It was well known that rodent destruction was responsible for a loss of about 30% and in some cases up to 40% of the total number of nuts the tree carried and that an incentive given to destroy rodents would, within the course of the first year show a significant increase in the production. Production rose in the following year from 2400 by 50% back to 3600 tons."

As for the middle or medium term Harold Atkinson said,

> "it was also felt that if growers were given an incentive to apply the best agronomic practices to their coconut cultivations i.e. clearing bush and fertilising.....a further increase in production would become possible within the next 2 to 3 years. The success of that was shown in the fact that production reached 4000 tons in 1985 and is expected to exceed that amount by 100 to 200 tons in 1986."

In Atkinson's view (which was not challenged or criticised) the C.M.L. policy of incentive payments was successful and was in the interest of the members of C.M.L. He emphasised that it was never opposed by any member of

/C.M.L.....

C.M.L. including William Edgecombe, who was, for part of the period of its operation, Chairman of the Board of Directors of C.M.L. of which at least 4 of the transferees of shares were also members. Harold Atkinson said that at no time did Edgecombe raise the point that the directors were sitting illegally; and, "in particular, I have never heard Mr. Edgecombe, while Chairman or shareholder make a complaint."

Under cross-examination, it was explained that the money for the incentive payments came from income derived from two companies one of which was wholly owned by C.M.L. and the other owned equally with Lever Brothers, Trinidad. The former company - Carib Marketing - produced packaging material, packaged the products and marketed them; the latter company - Carib Processors Limited - produced margarine, lard and shortening. Harold Atkinson denied that C.G.A. was "bleeding" C.M.L. of its funds.

It was also explained, under cross-examination, that there was a coconut industry fund, controlled by C.G.A. it was made up of money put aside by coconut growers for use in the event of a disaster.

On the 22nd May, 1986, William Edgecombe, through his solicitor, filed a Writ of Summons and Statement of Claim against St. Lucia Coconut Growers Association Limited, Ira d'Auvergne, Johannes Leonce, Harry Atkinson, Rene Raveneau and Nugent Dennehy seeking, among other things (a) a declaration that the transfer by C.G.A. of its shares to the other named defendants, was ultra vires, null, void and of no effect (b) further and/or in the alternative an order that the shares be re-transferred to C.G.A. and that in default the Registrar of Companies be authorised to do all acts and things necessary to effect the re-transfer of the shares (c) an injunction restraining C.G.A. by itself, its servants and/or agents from transferring its shares to any person save in accordance with the Memorandum and Articles of C.G.A.

It was asserted in the pleading that William Edgecombe instituted the action as a shareholder for the benefit of C.G.A. because neither that Company nor its Board of Directors was willing to take any action to recover the shares that had been transferred; and that between 1981 and 1983 without any power or authority to do so, C.G.A. transferred a substantial portion of its shares in C.M.L. to enable the transferees to qualify for election as directors of C.M.L. Paragraphs 3 and 4 of the Statement of Claim stated further:

> "3. The plaintiff has repeatedly requested the Board of Directors of the first defendant to take action to recover the shares but to no avail and the said Board and the members..... have no intention of taking any step or doing any act to recover the shares.....unless compelled or ordered by the Court to do so.
>
> /4. The plaintiff.....

> 4. The plaintiff will rely upon the Memorandum and Articles of the first defendant in support of the plea that the transfer was unlawful and made without any power or authority to do so."

There was no indication in his testimony on the record that William Edgecombe either requested or repeatedly requested the Board of Directors of C.G.A. to take action to recover the shares or that he failed to have his request or requests granted.

It is also noteworthy that the plaintiff asserted unequivocally that he was relying on the Memorandum in its entirety or without excluding any of its clauses that might be relevant to the real issue.

The learned Judge dismissed the action stating in his judgment of 17th December, 1986:-

> ".....the shares have not left the beneficial ownership of the Company and the directors may correctly be said to be trustees of the shares of the Company as stated in the Minutes of the Board of Directors dated June 11, 1981 by a mechanism which is for the benefit of all the members of C.G.A. including the plaintiff. I find that the directors of C.G.A. have not acted in contravention of their fiduciary duty .....
>
> The directors are acting all along in the interest of the C.G.A."

Matthew J. also referred to sub-clause 17 of clause 3 of the Memorandum of Association of C.G.A. and he held that the impugned transaction could also be intra vires the Company as being "incidental or conducive to the attainment of the objects of C.G.A.". It was true to say, as Counsel for the appellant said, that the Judge did not state specifically which object or objects he had in mind when he so held; but what must be certain, nevertheless, is that he intended a lawful object or objects. The learned Judge also stated that he was in no doubt that the impugned transaction facilitated the business of the C.G.A. I think that this must go a long way in showing what the Judge had in mind, having acquainted himself with the provisions of clause 3 of the Memorandum of Association. In the view of Matthew J. the actions of the Board of Directors "far from being an abuse of their powers were authorised by the members".

The final quotation which I wish to mention is the following observation of the Judges:-

> "It seems to me that to bring the present action is a colourable disguise and I agree with Counsel that the plaintiff should get after the proper party to appease his grievance if any for in my judgment the actions of C.G.A. and its directors in seeking more effective

/representation.....

> representation in C.M.L. was at all times to safeguard the interest of all coconut growers in the country including the plaintiff."

William Edgecombe was dissatisfied with the decision of the Judge and filed a notice of appeal on the 23rd December, 1986 in which he sought the following relief: that the Judgment against the plaintiff/appellant be set aside and the Court declare that the transfer by C.G.A. of its shares to the other defendants/respondents was ultra vires, null, void and of no effect.

On the 11th February, 1987 five grounds of appeal were filed. They were argued together and no purpose will be served by stating them separately.

Counsel for the appellant pointed out that the essential facts were undisputed and that the appellant had no quarrel with any of the findings of fact of the learned Judge; however, he submitted, the Judge failed to appreciate the importance of the facts revealed to him.

Counsel argued that to certain persons in C.G.A. it was not enough for C.G.A. to be a director in C.M.L. as provided for and so those persons devised a scheme to control C.M.L. The scheme was, to transfer 100 shares in C.M.L. to each of 5 directors so that they would qualify for a seat on the Board of Directors of C.M.L. In Counsel's words "control was needed so that C.M.L. funds could be diverted in the form of incentive payments to C.G.A."; and he was firm in the view that in law C.G.A. could not plunder the funds of C.M.L.".

In my view, the control of C.M.L. funds, and any prevention or avoidance of the diversion or plundering of funds were and indeeed still are, matters within the power and competence of its shareholders. In any event the evidence on oath did not show or suggest that C.M.L. funds were plundered or were likely to be plundered at any time. Reasons for incentive payments from C.M.L.'s income were given; and in my opinion they were genuine and aimed at benefiting the coconut growers, the production of copra and the attendant advantages of processing and marketing the products from the copra. In addition, there was no evidence that the use of C.M.L. funds as was done, met with any disapproval or objection. To the contrary.

Counsel for the appellant submitted that the basic issue before this Court was: whether it was ultra vires the C.G.A. to transfer its shares in C.M.L.? He contended that C.G.A. did not have power to do so, as was done. He referred to clause 3(6) of the Memorandum of Association of C.G.A. and submitted (a) C.G.A. could hold and deal with shares in C.M.L. but what was done by the directors did not (as the Judge held) constitute a dealing in shares; thus the transfer was wholly ultra vires clause 3(6); (b) there was nothing in the Memorandum that allowed the creation of 5 directors on the Board of C.M.L., and (c) creating 5 directors on the Board of C.M.L. could

/not be.....

not be incidental or conducive to clause 3(6) or to any of the objects set out in the Memorandum of Association of C.G.A.

Counsel submitted further, that having found that the transaction was not a dealing, it was encumbent on the Judge to find whether or not it was incidental or conducive to the attainment of the objects in the Memorandum; and Counsel added "I cannot find anything in the objects of C.G.A.'s memorandum to which creating 5 directors, as was done, was incidental or conducive".

Counsel urged that when the learned Judge considered BELL HOUSES LTD. v. CITY WALL PROPERTIES LTD. (1966) 2 Q.B. 656, he misled himself in that he did not bear in mind that the provisions of clause 3(c) of the Memorandum of Association of the plaintiff company in that case were not present in the instant case. Also, that in interpreting objects clauses the distinction between the objective and subjective considerations was vital.

Learned Counsel cited passages from AMERICAN HOME ASSURANCE CO. v TJMOND PROPERTIES LTD. (1984) 2 NZLR 452 and ROLLED STEEL PRODUCTS v. BRITISH STEEL CORPORATION and OTHERS (1985) 2 W.L.R. 908 in support of his arguments and submissions.

On the question whether something was done for the benefit of a company as a whole, Counsel referred to two cases: BROWNE v. BRITISH ABRASIVE WHEEL CO. LTD. (1919) 1 Ch. 290 and DAFEN TINPLATE CO. LTD. v. LLANELLY STEEL CO. (1920) 2 Ch. 124.

It was Counsel's opinion that there was a serious matter as to whether a company can contrive to control another company so that the other company is denuded of its funds for the benefit of the first company; and he submitted that it was contrary to all the principles of Equity.

With all due respects to Counsel, it was not accurate, on the facts, to state that the first company (C.G.A.) contrived to control another company so that the other company, that is, C.M.L., was denuded of its funds for the benefit of C.G.A. Rather, as I perceived them, the facts revealed that the shareholders of C.M.l. authorised payments from its funds to C.G.A. in order that both C.G.A. and C.M.L. as well as the subsidiary companies Carib Processors Limited and Carib Marketing, might benefit eventually.

Learned Counsel for Harold Atkinson submitted that (1) the Court was being asked essentially to concern itself with construing the Memorandum of Association of C.G.A. with a view to ascertaining if the transfer of shares could properly and legally be carried out within the terms of the Memorandum; and clause 3(6) therefore called for construction, (2) in modern law, courts have generally construed the objects clauses very liberally; thus clause 3(6) ought to be given a most liberal construction particularly when considering the meaning to be attributed to the word "deal".

/Counsel.....

Counsel contended that by his judgment the Judge showed that he understood the evidence and had grasped fully the relationship between C.G.A. and C.M.L. and the reason for the formation of the latter company. He contended also that there was not a shred of evidence to suggest that C.G.A. had committed any wrong; rather, C.G.A. was seeking to save C.M.L. and put it on a sound footing.

Learned Counsel also submitted that the learned Judge must have contemplated clause 3(1) of the Memorandum of Association of C.G.A. when he concluded that the impugned transaction could be intra vires the company under clause 3(17) of the said Memorandum.

Counsel referred to Bell Houses' case and to part of the judgment of Browne-Wilkinson L.J. in ROLLED STEEL PRODUCTS v. BRITISH STEEL CORPORATION reported at (1986) 1 Ch. 302 and he cited RE NEW FINANCE & MORTGAGE LTD. (1975) 2 W.L.R. 443 in support of his contentions and submissions.

Counsel for the other respondents adopted the arguments and submissions of Counsel for Harold Atkinson and did not add anything.

When Counsel for the appellant replied he said that it was being urged for the first time that "incidental and conducive" meant incidental and conducive to clause 3(1) of the Memorandum.

Certainly the whole memorandum was relied upon in the claim of William Edgecombe and when Counsel for the appellant addressed us clause 3(1) was one of two sub-clauses which he read in full and invited analysis. So it was not for the first time that the sub-clause was mentioned; and subclause 17 referred to each and all of the preceding sixteen sub-clauses.

In the ROLLED STEEL PRODUCTS case, Slade L.J. dealt with the term "ultra vires"; and he said (at page 948 E in the Weekly Law Report):

> "If confusion is to be avoided it seems to me highly desirable that as a matter of terminology the phrase "ultra vires" in the context of company law should for the future be rigidly confined to describing acts which are beyond the corporate capacity of a company."

Browne-Wilkinson L.J., in his judgment in the same case, reported in (1986) 1 Ch. 302 said

> ".....much of the confusion that has crept into the law flows from the use of the phrase "ultra vires" in different senses in different contexts.....the use of the phrase "ultra vires" should be restricted to those cases where the transaction is beyond the capacity of the company and therefore wholly void.
>
> A company, being an artificial person, has no capacity to do anything outside the

/objects....

> objects specified in its memorandum of association. If the transaction is outside the objects, in law it is wholly void."

This meaning of "ultra vires" was followed in this appeal and the real question that fell to be answered was: Whether or not a transfer of the shares by St. Lucia Coconut Growers Association Limited, in all the circumstances, was ultra vires the corporate capacity of that company?

The following facts merit repetition, for emphasis.

1. In 1953, the directors of C.G.A. decided that the company ought not to mainly market the copra produced by the coconut growers but ought also to be concerned in the processing of the copra. C.M.L. was formed.

2. From the start and for some time thereafter, the majority of directors on the Board of C.M.L. were coconut growers with an interest in the success of the coconut industry.

3. Some 20 years or more after the formation and when the majority of directors on the C.M.L. Board were not coconut growers, the interest in the production of copra for marketing and processing became subordinated to the purchase (from extra-regional sources) of soya and corn oils for processing. Copra remained unsold and piled up in the hands of coconut growers, to the detriment of the coconut industry.

4. The shareholders of C.G.A. gave the directors a mandate to take steps that would, in effect, save the production and processing of copra. In other words, to ensure a return to the position when there was a majority of coconut growers on the Board of Directors of C.M.L.

5. In pursuance of the mandate, C.G.A. transferred to each of five of its directors, 100 shares in C.M.L. They were thus made, not directors, but eligible for membership of the Board of Directors of C.M.L. (comprising 7 directors).

6. (William Edgecombe as a director of C.M.L. had signed the share certificates or a share certificate). Each transferee was required to sign a blank transfer to C.G.A. which, in effect, made him a trustee of the said shares, for the C.G.A.

7. The transferees were directed by C.G.A. how to vote on the Board of C.M.L.

8. C.M.L. Board of Directors now had a majority of coconut growers with an interest in the success of the coconut industry, among its members.

/9. In the.....

9. In the early 1980s, as a result of (a) hurricane damage (b) disease and (c) ageing trees, the coconut industry was severely affected. The production of copra dropped significantly. The very existence of C.M.L. was in jeopardy.

10. Fearing the company's demise, the shareholders of C.M.L. authorised incentive payments from its funds, in 1983 and 1984, to coconut growers, with the intention and hope of restoring production of copra to economically worthwhile levels.

11. The policy of incentive payments was never challenged or opposed and indeed there was a period in 1983 where William Edgecombe was Chairman of the Board of Directors of C.M.L. which included four of the five transferees.

12. By 1985 there was noticeable improvement in the tonnage of copra produced; and further improvement was anticipated for 1986 to a level near to that required for C.M.L. to break even. This improvement prevented the feared demise of the company and allowed it to earn money, pursuing the purpose of its formation.

To answer the question posed earlier, this Court must look at the relevant clause and sub-clauses in which the objects are stated. I have already referred to and quoted 3(1), (6) and (17) of the Memorandum of Association of the St. Lucia Coconut Growers Association Limited; and I have referred to and quoted 3(1) of the Memorandum of Association of Copra Manufacturers Limited.

If the transaction falls within the objects of C.G.A. it will not be ultra vires because C.G.A. has the capacity to enter into that transaction; or if the objects clause contains provisions that bring the transaction impugned within the capacity of C.G.A. then the transaction will not be ultra vires.

As I construe the first sub-clause 3 of the Memorandum of Association of C.G.A. it indicates that objects for which that company was established are:

(a) to promote the economic production of coconuts and of copra in St. Lucia and elsewhere;

(b) to promote the economic marketing of coconuts and of copra in St. Lucia and elsewhere;

(c) to facilitate the economic production of coconuts and of copra in St. Lucia and elsewhere;

(d) to facilitate the economic marketing of coconuts and of copra in St. Lucia and elsewhere;

(e) to protect the economic production of coconuts and of copra in St. Lucia and elsewhere;

/(f) to protect.....

(f) to protect the economic marketing of coconuts and of copra in St. Lucia and elsewhere.

Sub-clause 6 of clause 3 does not require much consideration, since there was no complaint with the finding of the learned Judge that the transaction in question was not a dealing under the sub-clause. However, it seemed that the Judge was, to some extent, influenced by the interpretation given (by Woodhouse J.) in Raine v. Police 1963 NZLR 702, to the definition of "dealer" in section 2(1) of the Motor Vehicles Dealers Act 1958 of New Zealand. I am inclined to think that "deal" or "otherwise deal" should be interpreted bearing in mind that specific trnasactions are isolated in the sub-clause. Put another way, the phrase "otherwise deal" should exclude sell hold and re-issue with or without guarantee, and include other businesss transactions; but I express no firm or final finding.

The other sub-clause quoted earlier and relied upon by the Judge indicates, among the objects, the doing of all such other things as are incidental or conducive to the attainment of the objects set out earlier or any of them. If then, the transfer of shares as was done by C.G.A. can be said to be incidental to the attainment of the objects in (a) to (f) above or to be conducive to their attainment then it would fall within sub-cluse 17 of clause 3.

In my view the transfer of the shares in the circumstances described earlier and for the reasons explained can properly be regarded as conducive to the attainment of each and all of the objects described in (a) to (f) above which are the objects in clause 3(1) of the Memorandum of Association. C.G. A. therefore has the capacity to do what was done; and the transfer of the shares was not ultra vires the corporate capacity of that company. The declaration sought by William Edgecombe in the Court below, and all that flowed from it were correctly denied and the claim properly dismissed.

The appeal must also fail.

On the question of costs Counsel for the appellant asked this Court to take into consideration that the action was a derivative action, and he relied upon SMITH and OTHERS v. CROFT and OTHERS (1986) 1 W.L.R. 580. Counsel argued that William Edgecombe brought the action on behalf of the shareholders of C.G.A. and so he ought to be indemnified on a common fund basis, unless it was felt that the action was not reasonably brought.

Counsel for the respondent submitted that there was no justification for awarding costs on a common fund basis. He contended that this case ought to be treated like any other case in which the claim was dismissed; and the Court should order that costs follow the cause.

/I have.....

I have read the case cited by Counsel for the appellant. I have considered carefully what was urged by Counsel for the parties and I have borne in mind the final observation of the trial Judge which I quoted and with which I am in agreement.

I am satisfied that the appellant ought to pay the respondents' costs and I would so order.

E.H.A. BISHOP,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

G.C.R. MOE,
Justice of appeal.