

initials were in doubt. It is therefore recommended that statutory authority be given to co-operative dairy companies to forfeit such shares for the benefit of the company should the shareholders continue to be untraceable after approved steps have been taken to locate them. There is already precedent for this recommendation in the case of mining companies and Table A of the Companies Act, 1933.

This now brings us to the second phase of our report :—

ARTICLES OF ASSOCIATION

60. The Articles are the internal regulations of a company and generally may be varied or added to by special resolution—that is to say, by the authority of not less than three-fourths of the valid votes cast at any meeting of which proper notice specifying the intention to propose that resolution has been given.

61. Articles of co-operative dairy companies, in addition to providing for the internal management of the company, frequently set out in part or full the contractual relationship of the shareholder with the company in respect of his supply of milk or cream. There are thus as between such companies and their shareholding suppliers two distinct relationships :—

- (1) The general relationship between the company and its shareholders as such.
- (2) The contractual relationship between the company and each individual supplier in respect of his supply.

Where an Article creates a contractual relationship, unless every member voluntarily consents to a variation thereto, a valid alteration to that Article becomes impossible.

62. There have been many decisions of the Court of Appeal, the Full Court, and the Supreme Court emphasizing these two distinct relationships, and we can do no better than quote from a summary appearing in that excellent work, “The New Zealand Dairy Industry,” by Geo. A. Duncan, published in 1933 :—

(1) Articles of Association which are not regulations but are in the nature of contractual obligations cannot be altered to bind shareholders who have not definitely agreed to the alteration. Any alteration binds only those shareholders who agree to it, either specifically or by conduct or by acquiescence, and those new shareholders who join the company after the alteration.

(2) A shareholder coming into a company on a certain share basis, and agreeing to supply upon certain conditions as provided in Articles of Association, can hold the company to those conditions and arrangements. The contract entered into cannot be altered by amendment to Articles of Association unless with his consent, which in certain cases may be given by acquiescence.

(3) Articles which are in the nature of regulations and over which the company has legislative authority may be amended by special resolution as provided in the Companies Act, 1908, and all shareholders are bound by such amendments.

The legal decisions referred to, and the summary of the legal position which has been given, reveal the difficulty which Co-operative Dairy Companies meet when alterations of Articles of Association of a contractual nature are attempted. Co-operative Dairy Companies have been recommended to have completed with the suppliers forms of contract covering the terms and conditions of the supply, but practical difficulties are met in any endeavour to secure these contracts, and many suppliers refuse to sign. Such contracts are unsatisfactory unless all the suppliers are parties to them. Furthermore, after the contracts have been completed the circumstances and requirements of the company may make necessary an alteration of the terms and conditions of supply, in which case new individual contracts would have to be completed.

The suggestion has been made that Co-operative Dairy Companies are justified in asking for special legislation which would meet their peculiar requirements in regard to the provision of capital and of adequate milk or cream supply. This legislation, it is considered, should enable Co-operative Dairy Companies to alter the terms of Articles of Association, upon the passing of a special resolution, notwithstanding that such Articles are of a contractual nature. It is further suggested in this regard that the rights and interests of any dissenting minority of the supplier-shareholders could be safeguarded by a provision requiring the sanction of the Supreme Court to the alteration. The Court would have to be satisfied that the proposed alterations were in the interests of the Company as a whole and not for the benefit of a particular section of the shareholders.