[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

1971
Feb. 9
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ELECTRICITY AUTHORITY OF CYPRUS
v.
PETROLINA COMPANY LTD.

ELECTRICITY AUTHORITY OF CYPRUS,
Appellants-Defendants,

v.

PETROLINA COMPANY LTD.,
Respondents-Plaintiffs.

(*Civil Appeal No.* 4642).

Electricity Authority of Cyprus—Public or national corporation created by the Electricity Development Law, Cap. 171—*Whether it can enter into valid contracts without seal—Cf. sections* 3 *and* 4 *of Cap.* 171, supra—*Whether the Authority is a trading Corporation—Implied authority of the Chairman and General Manager to bind corporation by parol—Scope and extent of such authority—Tender for the supply of fuel oil accepted by the Governing body of the Authority—Acceptance orally communicated to the supplier by the Chairman and General Manager of the Authority—Such communication sufficient in law to bind the Authority—See further immediately herebelow.*

Electricity Authority of Cyprus—Contracts—The question of form and formalities required for the validity of contracts entered into by the Authority is now regulated by the new section 17A *of the Electricity Development Law, Cap.* 171, *introduced by section* 7 *of the Electricity Development (Amendment) Law,* 1963 (*Law No.* 24 *of* 1963) *enacted after the action in these proceedings and therefore not applicable to the present case—See further* infra passim.

Corporate bodies—Contracts—Common law general rule as to the form of contracts by corporations—Namely, to the effect that, apart from insignificant and routine day-to-day transactions, a corporation can only be bound by contracts under the corporate seal—With the exception of trading corporations which may enter into simple or parol agreements relating to the business for which they have been created—Such unsealed contracts being enforceable by and against trading corporations, irrespective of the magnitude or frequency or insignificance of said agreements—Whether this common law rule is applicable in Cyprus in view of the provisions of section 10 *of the Contract Law, Cap.* 149—*And if applicable, whether*

the Electricity Authority of Cyprus (supra) *comes or not within the aforesaid exception to the common law general rule—See further immediately herebelow.*

Electricity Authority of Cyprus—Nature, structure and objects—The Authority is a trading corporation in relation to their main function of the supply of electricity—Notwithstanding that the Authority is directed under the statute (Cap. 171, supra) *not to make profit—Consequently, the Authority is covered by the exception to the common law aforesaid general rule regarding contracts by trading corporations (which contracts are not required to be under seal,* supra)*—It follows that the alleged contract sued on in this case—not being, admittedly, under seal—cannot be held unenforceable against the Authority merely for the reason that the said contract is not under the corporate seal—Cf. The Electricity Development Law, Cap.* 171, *the long title and sections* 3, 4 (2), 5, 8, 11, 12, 17, 23, 25, 27, 35 *and* 36 *; cf. also the Electricity Law, Cap.* 170.

Electricity Authority of Cyprus—It is what would be described in English law as a " national corporation " created by statute for the benefit of the community—But they are nonetheless a " trading corporation " viz. *a " trading national corporation "—And in view of the provisions of Article* 25 *of the Constitution they may aptly be said to constitute " a trading monopoly "—Cf.* supra.

Contract—Corporate bodies—Trading corporations—Formalities required for contracts—See supra passim.

National corporations—See supra.

Public corporations—See supra.

Trading corporations—Trading national corporations—See supra.

Trading monopoly—Article 25, *paragraph* 3 *of the Constitution—See* supra.

National corporations—National statutory corporations—May be trading corporations.

Contract—Agreement " subject to formal contract "—For the supply of 210,000 *tons of fuel oil by consignments spread over a period of two years—The first for* 18,000 *tons to be delivered in January* 1963*—Whether or not there was unqualified acceptance on the part of the appellants of the tender of the suppliers (respondents-plaintiffs)—In the circumstances of this case*

it was held on appeal that, excepting the aforesaid first delivery of oil, the agreement was conditional upon formal contract being executed—And as such formal contract was not signed, the claim of the suppliers (plaintiffs-respondents) for breach of contract fails—With the exception always of the first consignment as stated above.

Contract Law, Cap. 149*—Section* 10*—Common law—Whether, in view of section* 10, *the formalities required by the aforesaid common law general rule regarding agreements by corporate bodies, are applicable in Cyprus—Whether or not said section* 10 *of our Contract Law should be so interpreted as to amplify the common law principle reproduced in that section—See further* infra.

Common law and the Contract Law, Cap. 149*—See* supra.

Statutes—Codes—Construction—Principles applicable—Principle of general application when interpreting statute law of Cyprus and which is " of special relevancy when construing codes such as the Contract Law (Cap. 149) *where an attempt is made to condense* ' multum in parvo ' . . . " (*see* Markou *v. Michael* 19 *C.L.R.* 282, *at p.* 285).

Codes—Principles of construction—See supra.

This is an appeal by the defendant corporation (the Electricity Authority of Cyprus, a public corporation created under the provisions of the Electricity Development Law, Cap. 171) against the judgment of the District Court of Nicosia whereby it was found and adjudged that (*a*) early in October 1962 a valid agreement was entered into between the plaintiff company (now respondents) and the defendant corporation (now appellants) by which the said corporation undertook to buy from the plaintiff company a quantity of 189,000 tons of fuel oil during a period of two years beginning on the 1st January 1963 ; and (*b*) that the defendant corporation committed a breach of this contract by repudiating it on or about October 12, 1962 and refusing to carry it out. The question of damages was, by agreement of the parties, left to be decided later. The approximate value of the required fuel oil was £900,000 and the damages claimed by the company over £40,000.

The facts of the case, as found by the trial Court, are very briefly as follows :

In July 1962 the defendant corporation advertised for the submission of tenders for the supply to them of 210,000 tons

of fuel oil by consignments to be spread over a period of two years as from January 1, 1963, and in the quantities and on the terms specified in the conditions of tenders. The plaintiff company was one of the companies which submitted a tender. On October 3, 1962, the defendant corporation duly passed a resolution to the effect that the tender of the plaintiff company be accepted. Soon after on that evening the Chairman of the defendant corporation, Mr. L. Georghiades, informed by telephone the Managing Director of the plaintiff company, Mr. T. Lefkaritis, of the acceptance of their tender, adding that he was making this communication on behalf of the governing body of the corporation. In answer to a question by Mr. Lefkaritis as to whether this news could be released to the press, the Chairman of the defendant corporation replied in the affirmative. On the following day, October 4, 1962, a relevant news item was published in a number of local newspapers and no denial was ever issued by the other side (*viz*. the defendant corporation).

On that day, October 4, 1962, Mr. Lefkaritis (the Managing Director of the plaintiff company) saw the General Manager of the defendant corporation, Mr. Anastassiades, who confirmed once again the acceptance of the said tender and informed him that in due course a formal contract would be drawn up by the corporation's legal adviser to be signed by the parties ; he (Mr. Anastassiades) promised also to send to the company a letter confirming the acceptance of their tender as stated above ; he also urged him (Mr. Lefkaritis) " to do his utmost " for the delivery in time (*viz*. in January, 1963) of the first consignment of 18,000 tons of fuel oil as the defendant corporation were " running out of stock ".

The case for the plaintiff company was that by this acceptance a perfectly valid agreement was concluded between them and the defendant corporation for the supply of 210,000 tons of fuel oil as above (or at least 189,000 tons, if reduced by the whole of an option margin of 10%).

Now, as by the 9th of October, 1962, the plaintiff company had not received the confirmation in writing referred to above, they sent on that day the following telegram to the General Manager of the defendant corporation :—

" Following your verbal confirmation of the 4th October that the Board of Directors instructed you to notify us

of their acceptance of our tender for the supply of fuel oil to the Authority we have concluded all arrangements and contracted ourselves with our suppliers for the supply of the quantity covered by the tender stop Please forward by return covering letter as promised pending prepare of contract in due time.

Petrolina."

In reply the defendant corporation sent the following letter dated the 12th October, 1962 :—

" Your telegram addressed to the General Manager dated 9th October, 1962, was brought before and considered by the Authority at its meeting of the 12th instant. The Authority cannot accept your contention that there has been any verbal or other confirmation of its acceptance of your tender for the supply of oil to the Authority . . . . The Authority has decided to invite new tenders and your company will no doubt have the opportunity to compete again.

Yours faithfully
Secretary."

Other correspondence followed and eventually the defendant corporation invited other tenders and the result was that the contract was given to another firm ; and the plaintiff company, considering that the corporation had thus wrongfully repudiated a valid agreement, instituted the present proceedings.

The case for the defendant corporation (now appellants) was that there was no valid acceptance by them of the tender in question ; and that, in any case, no valid and binding agreement was concluded between them and the plaintiffs (now respondents). In support of these propositions it was argued, *inter alia*, that neither the Chairman nor the General Manager of the defendant corporation had any authority, express or implied, to communicate to the plaintiffs the decision of the corporation to accept their tender ; and that, consequently, any such communication was of no legal effect whatsoever. It was further argued on behalf of the defendants (appellants) that there was no unqualified acceptance on their part of the plaintiffs' (respondents') said tender, because the alleged agreement was made subject to a formal contract being drawn up and duly signed by the

parties. However, the main contention of the defendant corporation was that for an agreement of this nature and magnitude to be valid and binding on them it must be, as a matter of law, in writing and under the seal of the corporation ; consequently, the argument went on, even if the Court finds that a contract was concluded, again such contract—not being, admittedly, under seal—could not be held to be enforceable against the defendant corporation. This argument was based on the well known common law rule to the effect that, apart from certain insignificant or routine transactions, a corporation could only be bound by contracts made under its corporate seal, with the exception that trading corporations may enter into simple contracts relating to the objects for which they have been created ; the submission being of course that the defendant corporation is not a trading corporation.

With regard to this aspect of the case it would seem pertinent to point out that sections 3 and 4 of the relevant statute *viz.* the Electricity Development Law, Cap. 171 (note : These sections are fully set out *post* in the judgment of Josephides, J.) provide, *inter alia*, that the Electricity Authority of Cyprus (the defendant corporation) shall be a body corporate, with a common seal and with powers to enter into contracts ; and that such seal shall be affixed to all deeds, documents and other instruments requiring the seal of the Authority in the presence of the Chairman and of the Secretary of the Authority. But the statute does not lay down which agreements or other documents are required to be in writing and under the seal of the Authority (this has been provided for subsequently by the amending Law No. 24 of 1963, section 7, but that Law was enacted some time after the agreement in dispute and, admittedly, has no application to the present case). In the circumstances, the trial Court were of opinion that one should look into the common law to see whether or not the agreement sued on should have been in writing and made under the corporate seal of the defendant corporation. Having done so, the trial Court finally held that a simple, parol contract would be perfectly valid, on the ground that the defendant corporation comes within the aforesaid exception of the common law rule (*supra*) as being a trading corporation on the footing that it is an undertaking empowered to buy fuel and sell electricity. It is significant to observe at this stage that one of the learned Judges of the Supreme Court (Triantafyllides, J.) reached the conclusion that a simple or

parol contract would do in the present case, primarily, for the reason that the matter is outside the purview of the common law, as being exhaustively dealt with by section 10 of the Contract Law, Cap. 149 ; and which reads as follows :

> "10 (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void, and may, subject to the provisions of this Law, be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
>
> (2) Nothing herein contained shall affect any Law in force in Cyprus, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any Law relating to the registration of documents."

On the other hand, it is quite clear that what is meant by the word " Law " in the above sub-section (2) is a statutory provision in Cyprus (see also in this respect the relevant definition in section 2 of the Interpretation Law, Cap. 1).

The appellants failed (*Josephides, J. dissenting*) on two of their main submissions ; but they succeeded almost entirely on their third submission to the effect that the agreement in question, if any, was conditional upon a formal contract being duly executed, such contract admittedly having never been executed. The Supreme Court accepted this submission with the exception of the first consignment of 18,000 tons of fuel oil due to be delivered in January, 1963 (*supra*) in respect of which it held (*Josephides, J. dissenting*) that a definite and binding agreement was reached.

Before closing this note, here is the common law general rule regarding contracts made by corporations, to which frequent reference is made hereafter (see also *supra*). Here it is : Apart from certain insignificant and routine transactions, an unsealed contract is enforceable neither by nor against a corporation, with the exception that trading corporations have a general power to contract without a seal *viz.* by simple or parol contracts in matters relating to their trade, irrespective of the magnitude or insignificance of the subject matter and of the frequency with which such contracts are entered into. It may appear useful to note that the afore-

said general rule of common law was finally abolished in England by the Corporate Bodies Contracts Act, 1960 ; there is now a similar provision in our law, namely, section 7 of the Electricity Development (Amendment) Law 1963 (Law No. 24 of 1963) concerning the appellant Authority ; but this Law has no application to the present case as it was enacted after the institution of this action.

The Supreme Court left undisturbed the basic findings of fact made by the trial Court, some of which, based on the credibility of witnesses, have been challenged by the appellants. The Supreme Court making the usual distinction between primary findings of fact and inferences to be drawn therefrom, and applying well settled principles did not intervene with such findings, holding (*Josephides, J. dubitante*) that the appellants failed to discharge the onus cast upon them to show that there was a case justifying the intervention of the Appellate Court.

Allowing partly the appeal (*Josephides, J.* being of the opinion that it should be allowed in *toto*), the Court :—

Held, (I). *With regard to certain findings of fact made by the trial Court and based on the credibility of witnesses, which were challenged by the appellants :*

(1) *Per* VASSILIADES, P. : The facts of this case are practically uncontestable excepting for a few points where the trial Court have made findings challenged by the appellants. I do not think they can be disturbed ; they are in substance well supported by the evidence and they have not been shown to be erroneous or unsatisfactory ; and I think they are quite correct. (See *Imam* v. *Papacostas* (1968) 1 C.L.R. 207 ; *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172).

(2) *Per* TRIANTAFYLLIDES, J. :

(*a*) It is a basic principle of law that where the decision to be reached depends upon a conflict of oral evidence an Appellate Court should generally defer to the opinion of the trial Court.

(*b*) Of course, as an appeal is by way of rehearing the parties are entitled to expect from an Appellate Court a decision on questions of facts as well as questions of law ; and the Appellate Court cannot, merely because the question is one of fact and because it has been decided in one way

by the trial Judges, fail to carry out its duty to review their decision and to reverse it if found to be wrong (see, *inter alia*, *Caldeira* v. *Gray* [1936] 1 All E.R. 540 ; *Gregoriadou* v. *Kyriakides* (1970) 1 C.L.R 84).

(*c*) But it is up to the party complaining about the decision of a trial Judge as to which conflicting versions before him to accept, to persuade this Court, on appeal, that the trial Judge was wrong (see *Imam* v. *Papacostas* (1968) 1 C.L.R. 207).

(*d*) In the present case I do not feel satisfied that I should reverse the decision of the Court below to accept as correct the version of L. in preference to that of A.

(*e*) Different principles, of course, apply to the question of inferences to be drawn from primary facts as found by trial Courts. Which is the proper inference to be drawn from evidence found to be truthful by the trial Court, an Appellate Court is in as good a position to decide as the Court of trial (see, *inter alia*, *Powell* v. *Streatham Manor Nursing Home* [1935] A.C. 243 ; *Dominion Trust Company* v. *New York Life Insurance Co.* [1919] A.C. 254 ; *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370 ; *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Cyprus Wine Association Ltd.* v. *Georghiou* (1970) 1 C.L.R. 246) :

Held, II. With regard to the argument advanced on behalf of the Electricity Authority (defendants-appellants) that they could only be bound by contracts in writing and under the corporate seal (Josephides, J. dissenting) :

(1) It is wrong to say that the contract sued on in this case (and alleged to have been concluded early in October 1962 *viz.* prior to the enactment of Law No. 24 of 1963, *supra*) is not a valid contract binding on the appellant Authority merely because it was not executed under the corporate seal.

(2) Consequently, the appellant could be perfectly bound by a simple (or parol) contract like the one alleged to have been entered into between the parties in the present case.

(A) *Held, per* VASSILIADES, P. :

(1) The nature of the corporation and the nature of its functions and activities are, obviously, very important matters in determining this question.

(2) Learned counsel for the appellants (defendants) submitted that his clients (*viz.* the Electricity Authority of Cyprus) are not a trading corporation. In support of his submission in this connection, learned counsel referred to the case *Aviation and Shipping Co., Ltd.* v. *Murray* (*Inspector of Taxes*) [1961] 2 All E.R. 805. On the facts and in the circumstances of the present case, and in view of the relevant statutory provisions (see *post* in the judgment of the learned President) I find no merit in this point. Having taken up practically all the electric power undertakings operating in the Island under the Electricity Law, Cap. 170 and having continued the expensive business of such undertakings for so many years, together with a great deal more of similar business as part of their functions under the Electricity Development Law, Cap. 171, the appellants (the defendant corporation) cannot, I think, say that trading is not part of their activities. The taxation case referred to on their behalf cannot, in my opinion, be of help in the instant case.

(3) It follows that the defendant corporation (the appellants), being thus within the exception of the common law rule (*supra*), may as a trading corporation bind itself by simple or parol contracts.

(B) *Held, Per* TRIANTAFYLLIDES, J. :

(1) Regarding the form of the creation of a contractual relationship in Cyprus we have to look at section 10 of the Contract Law, Cap. 149 (*supra*). But nowhere in the statute providing about the creation and functioning of the defendant corporation (appellants), that is to say in the Electricity Development Law, Cap. 171 (*supra*), was there to be found, at the time when the transaction in question took place (October 1962), any provision requiring that a contract of this nature should be in writing and under seal. (It was only after the said transaction that provision was actually made, for the first time, regarding which contracts or other documents of the appellants have to be made in writing and under their seal; see new section 17A of Cap. 171 introduced by section 7 of the Electricity Development (Amendment) Law, 1963 (Law No. 24 of 1963).

(2) (*a*) Assuming—without holding to that effect—that in view of, *inter alia*, the case *Queen* v. *Erodotou*, 19 C.L.R. 144, at the material time, in October 1962, the well known common law rule (*supra*) applied to contracts entered into

by the appellants, in the sense that such rule had to be read as supplementing either section 4 of Cap. 171 (*supra*) or section 10 of the Contract Law, Cap. 149 (*supra*), or both, I would still not be prepared to hold that this rule prevented the formation of a binding agreement—not being, admittedly, under seal—between the appellants and the respondents for the supply of fuel oil as alleged to have been agreed upon in this case.

(*b*) I have reached this view because it was recognized, as an exception to the common law rule in question (which rule in England was abolished by the Corporate Bodies' Contracts Act, 1960) that a trading corporation had power to contract without a seal "in matters relating to its trade, irrespective of the magnitude or insignificance of the subject-matter of the contract and of the frequency with which such contracts are entered into, so long as the contract was incidental to the business for which the corporation was created" (see Chitty on Contracts 22nd ed. Vol. 1, p. 457, para. 457, and the case law referred to therein) ; and I am of the opinion that the appellants are a trading corporation and that a contract for the purchase of fuel oil is incidental to the business for which they were created, namely the supply of electricity.

(*c*) Bearing in mind the object, and looking as a whole at the provisions of the said Law, Cap. 171 (*supra*), I am of opinion that the Electricity Authority of Cyprus (appellants) are a trading corporation in relation to their main function of the supply of electricity ; and notwithstanding that such function is within the realm of public law, the appellants are still to a certain extent a commercial undertaking (see *Sevastides and The Electricity Authority of Cyprus* (1963) 2 C.L.R. 497, at p. 502 ; also *Markoullides and The Republic*, 3 R.S.C.C. 30, at p. 34).

(*d*) The appellants are what would be described in English law as a national corporation created by statute for the benefit of the community and not owned by private individuals. It is quite clear that, depending on the provisions of the particular legislation and other relevant factors, a national corporation may be a trading or a non-trading corporation (see Halsbury's Laws of England, 3rd edn., Vol. 9, pp. 5–7, paras. 5, 6 and 7) ; and it is significant to note that the previous British Transport Commission is described in para. 5 *ibid.* as a trading national corporation and it was placed in para. 7 *ibid.*, together with the then British Electricity

Authority and the Electricity Area Boards etc. etc. in the category of such corporations "*which have industrial or transport or trading undertakings, although the object of the corporation itself may be to provide a service rather than to make a profit*".

(*e*) Therefore, the fact that under the provisions of our Law Cap. 171 (*supra*) section 23 the appellant Authority is not expected or rather is being directed not, to make a profit, is not in itself sufficient to lead me to the conclusion that, notwithstanding the object, and the provisions as a whole of Cap. 171, the appellants are not a trading corporation. It is useful in this respect to point out that sections 3 (4) and 85 of the English Transport Act, 1947, made analogous provisions in relation to the British Transport Commission; and yet this did not prevent, in view of the true nature of things, the said commission from being treated as a trading national corporation. (See also *In the matter of the duty on the estate of the Incorporated Council of Law Reporting for England and Wales*, 22 Q.B.D. 279, at 293, *per* Lord Coleridge, C.J.).

(*f*) Moreover, the exact nature of the appellants may be considered as against the constitutional background of the State and, in particular, in the light of Article 25 of the Constitution, whereby it is laid down that, as an exception to the right to practise any profession or to carry on any business trade or occupation, it is rendered permissible, if it is in the public interest, to provide by legislation that an enterprise in the nature of an essential public service shall be carried out by a public corporate body created for the purpose by such legislation; thus, in actual fact, a trading monopoly is created and this is the position in relation to the appellants, in view of the nature of the services carried out by them under the provisions of the said Law Cap. 171 (*supra*).

(C) *Held, per* JOSEPHIDES, J. *in his dissenting judgment:*

(1) (*a*) In my opinion the common law rule with regard to the requirement of the seal in the case of contracts by corporations is applicable by the Courts of Cyprus.

(*b*) It is true that in section 10 (1) of the Contract Law, Cap. 149 (*supra*) it is provided that a contract may be made in writing or by word of mouth, but this must be read in conjunction with, and subject to the provisions of sections

3 and 4 of the Electricity Development Law, Cap. 171 (see the full text *post* in the judgment of the learned Justice); and, also, subject to the provisions of section 33 of the Companies Law, Cap. 113, and section 74 of the Municipal Corporations Law, Cap. 240 (now re-enacted in section 22 (1) of Law 64 of 1964), as well as other similar statutory provisions, which lay down specifically how a contract should be made in order to be effectual in law and binding on the aforesaid corporations.

(*c*) Consequently, reading section 10 of the Contract Law, Cap. 149 (*supra*), in conjunction with the abovementioned sections 3 and 4 of Cap. 171 (*supra*), it is obviously the intention of the legislative authority to enact a certain part of the common law, but the enactment is not complete in so far as contracts by aggregate corporations are concerned, other than corporate bodies which are governed by express statutory provisions (as in the case of the companies under Cap. 113, *supra*, and municipal corporations as stated earlier).

(*d*) In such circumstances the common law, which is reproduced in the above mentioned sections of the Contract Law and Cap. 171, should be amplified and interpreted according to the decided cases which have formulated that law in England. This is in accordance with the principle enunciated by the Supreme Court of Cyprus in the case of the *Queen* v. *Erodotou*, 19 C.L.R. 144; and *Markou* v. *Michael*, 19 C.L.R. 282, where it was laid down that the principle is of general application when interpreting the statute law of Cyprus and is "of especial relevancy when construing codes such as the Contract Law where an attempt is made to condense *multum in parvo*. Codes usually aim at a concise statement of legal principles; they are not intended to be a complete and exhaustive statement of the law" (*Markou's* case, *supra*, at p. 285).

(2) (*a*) The question which falls now to be decided is whether or not the appellants (the Electricity Authority of Cyprus) is a trading corporation. If it is, then and only then, it comes within the exception to the general common law rule that an unsealed contract is enforceable neither by nor against a corporation; the said exception being that a trading corporation has a general power to contract without a seal and by simple contracts in matters relating to its trade, irrespective of the magnitude or insignificance of the subject

matter of the contract and of the frequency with which such contracts are entered into, so long as the contract is incidental to the business for which the corporation was created.

(*b*) *After referring in some detail to certain provisions of the Electricity Development Law, Cap.* 171, viz. *to the title of the statute as well as to sections* 3, 4 (2), 5, 8, 11, 12, 17, 23, 25, 27, 35 *and* 36, *thereof the learned Justice went on :*

From all these provisions it appears that the appellant-defendant corporation *i.e.* The Electricity Authority of Cyprus is a national corporation for the benefit or the service of the whole community at large and not of any section or class of persons or members of the corporation only. It is a public corporation which carries on its undertaking as a responsible independent organisation, and not as part of any department of State. The object of the corporation is to provide a service and not to make a profit.

(*c*) In the circumstances, considering the objects and structure of the appellant-defendant corporation, as laid down in the statute creating it, I would be inclined to the view that it is not a trading corporation and, therefore, not exempt from the requirement of the common law rule as to the necessity of a seal to bind it. If the contention be right that this contract—which is a contract in the region of one million pounds and not a matter of very frequent occurrence—need not be under seal, then a seal would become merely a museum piece and section 4 of Cap. 171 (*supra*) which provides how the seal should be kept and used, useless.

(3) It follows that as the contract sued on is not under seal, the action cannot be maintained and the appeal should be allowed.

Held, III. With regard to the argument put forward by counsel for the appellants-defendants that there was no valid or effective acceptance of the plaintiffs' offer as neither the Chairman nor the General Manager of the appellants had any authority, express or implied, to communicate to the plaintiffs the decision of the Electricity Authority (defendants-appellants) to accept their tender in question (Josephides, J. dissenting) :

In effecting, as they did, the communication to the plaintiffs-respondents of the decision taken, on the 4th of October,

1962, by the Governing Board to accept their tender in question, the Chairman and the General Manager of the appellants-defendants acted within the scope of their authority as high officers of the corporation ; such communication was something ordinarily within their powers.

(A) *Held, per* VASSILIADES, P. :

To say that the decision taken by the Board constituting the Authority, at the meeting of the 3rd October, 1962, to accept the plaintiffs' offer, could not be communicated to the party concerned by the Chairman of the Authority and its General Manager, is a submission which I find unacceptable. I find it impossible to accept that such was the intention of the legislator in making the relevant provision in Cap. 171 (*supra*) ; or that such is the proper construction to be put upon them.

(B) *Held, per* TRIANTAFYLLIDES, J. :

(1) A distinction should be drawn between the legal situation at present under examination in these proceedings, and the different kind of situation in which an obligation is undertaken on behalf of a company by one of its officers purporting to bind the company as was the legal position considered, *inter alia*, in *British Thomson-Houston Company, Ltd.* [1932] 2 K.B. 176 and *Rama Corporation, Ltd.* v. *Proved Tin and General Investments, Ltd.* [1952] 1 All E.R. 554. In the present case there had been duly taken a decision of the governing body of the appellants to accept the tender of the respondents ; thus neither the Chairman nor the General Manager of the appellants acted without authority in relation to this matter ; they, in fact, acted in the course of implementing the said decision and, in my view, it was unnecessary to state expressly in the said decision that they were authorized to communicate it to the plaintiffs-respondents ; it followed as an inevitable and inescapable consequence of that decision, that these two high officers of the appellants had the implied authority to effect such communication by virtue of their office.

(2) Moreover, the General Manager of the appellants stated in his evidence that it was part of his duties to implement a decision of the governing body, such as the decision to accept the tender of the respondents, by writing to the prospective suppliers " a letter of intent "; surely, if he could

write such letter he could communicate orally to the respondents the acceptance of their tender, as he did on the 4th October, 1962.

(3) In any case, I would say that what these two officers of the appellants have done, by communicating to the respondents the acceptance of the tender, was something ordinarily within their powers (see *Freeman and Lockyer* v. *Buckhurst Park Properties (Mangal), Ltd. and Another* [1964] 1 All E.R. 630).

(C) *Held, per* JOSEPHIDES, J. *in his dissenting judgment :*

(1) Where a corporation is constituted by a public statute, as is the defendant corporation in the present case, all persons are presumed to know the nature and extent of its powers (see Halsbury's Laws of England 3rd edn. Vol. 9, p. 66 paragraphs 133 and 134). Those contracting with the defendant corporation (the appellants) are, therefore, bound to know the constitution of the corporation and its powers as given by statute—in this case Cap. 171 (*supra*). No rules or regulations regarding these matters appear to have been made under Cap. 171, and there is no memorandum or articles.

(2) Neither the Chairman nor the General Manager of the defendant corporation had express authority to enter into the contract in question on behalf of the corporation. Nor had either of them any such authority from the nature of their respective offices. Did, then, either of them have authority implied from the conduct of the parties or the circumstances of the case? The answer to this is, in my judgment, in the negative. There is no evidence in support of the affirmative. On the contrary, there is ample evidence the other way. Moreover, this was not an ordinary day-to-day transaction, and the plaintiffs (respondents) were, therefore, put upon inquiry as to whether the necessary power had been delegated to the Chairman or the General Manager of the appellant-defendant corporation for this particular contract. This they have failed to do. To sum up : There is no evidence that either of the two said officers of the appellants had implied or express authority to make such a contract by parol, and the plaintiffs had failed to prove any ostensible authority for the particular act for which it is sought to make the defendant (appellant) corporation liable.

Held, IV. With regard to the submission made on behalf of the appellants that no contract binding on them was concluded, because there was no unqualified acceptance on their part of the tender in question, as the alleged agreement, if any, was in any case subject to the execution of a formal contract, which, admittedly, was never done (Josephides, J. partly dissenting) :

(1) On the evidence, this submission on behalf of the appellants, is quite correct, with the exception of the first consignment of 18,000 tons of fuel oil due to be delivered in January, 1963 (*Editor's note :* Mr. Justice Josephides does not accept this exception). Regarding this consignment, and this consignment only, a definite agreement was reached for the supply of 18,000 tons of fuel oil in January, 1963, on the terms of the tender.

(2) By repudiating the contract for the whole quantity, the appellants have, thus, committed a breach of contract in so far as the said first delivery is concerned ; and for which breach they are liable.

(A) *Held, per* VASSILIADES, P. :

(1) (*a*) The trial Court held that the statement of the appellants' General Manager made on the 4th of October, 1962, to the Managing Director of the respondents that in due course a formal contract would be drawn up by the formers' legal adviser, did not, in the circumstances it was made, qualify the acceptance by the appellants of the tender in question by anything to be done thereafter. Having so held, the trial Court reached the conclusion that a binding contract for the whole quantity of fuel oil was entered ; but in any case that, in so far as the first delivery of 18,000 tons in January, 1963, is concerned, such definite contract was *undoubtedly* formed.

(*b*) I find myself in agreement with the latter part of the trial Court's conclusion. But I am in doubt as to the former. If that conclusion of the trial Court were correct, it would lead to the inevitable result that the formal contract which the parties intended that it should be prepared and signed, would be entirely unnecessary duplication. I cannot take that view ; and, therefore, I cannot go the full length of the trial Court's conclusion.

(2) I find myself forced to the result that the effect of the appellant's acceptance was to enter into a formal contract for the supply of the whole quantity of fuel oil specified in the tender, in periodic deliveries during the two years 1963 and 1964, the first delivery of 18,000 tons to be effected in January, 1963. For this delivery there was a definite agreement, *beyond all doubt*, as found by the trial Court. For the rest of the supply the appellants-buyers repudiated their engagement before the making of the intended formal contract. This repudiation covered also the aforesaid first delivery for which a binding agreement was reached as above. To this extent the appellants committed a breach of their contract.

(3) I would, therefore, allow the appeal and hold that the plaintiffs-respondents have proved a binding agreement between the parties but only for the supply of 18,000 tons fuel oil in January, 1963, on the terms of the tender, which agreement the appellants-defendants have wrongfully repudiated.

(4) As to costs, I am inclined to the view that in the circumstances of this case, there should be no order for costs, up to this stage of the proceedings, either in the trial Court or in the appeal.

(B) *Held, per* TRIANTAFYLLIDES, J. :

(1) In weighing the totality of the relevant circumstances, I have reached the conclusion that the acceptance of the respondents' tender for the whole of the two years' period (1963 and 1964) could not be regarded as being unqualified and that, by necessary implication due to the nature of such transaction, it was (with the exception of the first consignment of 18,000 tons in January, 1963, which, in view of matters specially related thereto, ought to be treated on a different footing, *infra*) subject to the execution of a formal contract containing a number of quite usual subsidiary, but nevertheless material, terms which were not set out in the conditions of tender or in the tender.

(2) I, therefore, cannot sustain the finding of the trial Court that a binding contract was entered into between the parties for the supply to the appellants of the whole quantity of fuel oil ; and not only of a quantity of 18,000 tons being the first consignment to be delivered in January 1963. I agree that

in respect of this consignment a binding agreement was concluded beyond doubt as found by the trial Court.

(C) *Held, per* JOSEPHIDES, J. *in his partly dissenting judgment :*

(1) On the evidence adduced I would hold that the alleged agreement was subject to formal contract and that, as this was not signed by the parties, no valid contract was concluded.

(2) I find myself unable to agree that a valid contract was concluded orally in respect of the first delivery of 18,000 tons of fuel oil to be effected in January, 1963. The supply of this quantity was part and parcel of the whole transaction for the supply of 210,000 tons (10% more or less) and it was never the intention of the parties to conclude a separate and distinct agreement in respect of said 18,000 tons only. Such agreement was neither pleaded by the plaintiffs nor was it part of their case either before the trial Court or before us on appeal and, consequently, this issue was not properly before either Court for determination.

(3) In conclusion, I would allow the appeal, set aside the judgment of the trial Court and dismiss the claim of the plaintiffs with costs here and the Court below in favour of the defendant corporation (appellants).

Appeal allowed (partly). No order as to costs.

Cases referred to :

The Queen v. *Erodotou*, 19 C.L.R. 144 ;

Markou v. *Michael*, 19 C.L.R. 282 ;

Imam v. *Papacostas* (1968) 1 C.L.R. 207 ;

Kyriacou v. *Aristotelous* (1970) 1 C.L.R. 172 ;

Alexandrou v. *Komodromou* (1970) 1 C.L.R. 69 ;

Ponou v. *Ibrahim* (1970) 1 C.L.R. 78 ;

Gregoriades v. *Kyriakides* (1970) 1 C.L.R. 120 ;

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134 ;

Cyprus Wine Association Ltd. v. *Georghiou* (1970) 1 C.L.R. 246 ;

Sevastides v. *The Electricity Authority of Cyprus* (1963) 2 C.L.R. 497, at p. 502 ;

Markoullides and The Republic, 3 R.S.C.C. 30, at p. 34 ;

Bourne and Hollingsworth v. *The Mayor, &C., of St. Marylebone* 24 T.L.R. 322 and 613 ;

Wilson v. *Belfast Corporation*, 55 Irish Law Times 205 ;

Luxor (Eastbourne), Ltd. and Others v. *Cooper* [1941] 1 All E.R. 33 ;

Trollope and Sons v. *Martyn Bros.* [1934] 2 K.B. 436 ;

Trollope and Sons v. *Caplan* [1936] 2 K.B. 382 ;

Aviation and Shipping Co., Ltd. v. *Murray (Inspector of Taxes)* [1961] 2 All E.R. 805 ;

The Glannibanta [1876] 1 P.D. 283 ;

Powell v. *Streatham Manor Nursing Home* [1935] A.C. 243 ;

Watt or Thomas v. *Thomas* [1947] A.C. 484 ;

Caldeira v. *Gray* [1936] 1 All E.R. 540 ;

S. S. Hontestroom v. *S. S. Sagaporack* [1927] A.C. 37, at p. 47 *per* Lord Sumner ;

Dominion Trust Company v. *New York Life Insurance Co.* [1919] A.C. 254 ;

Benmax v. *Austin Motor Co. Ltd.* [1955] A.C. 370 ;

Branca v. *Cobarro* [1947] K.B. 854 ;

Winn v. *Bull* [1877] 7 Ch. D. 29, at p. 32 ;

Rama Corporation, Ltd. v. *Proved Tin and General Investments, Ltd.* [1952] 1 All E.R. 554 ;

Freeman and Lockyer v. *Buckhurst Park Properties (Mangal), Ltd. and Another* [1964] 1 All E.R. 630 ; *ibid.* at page 640 ;

Hely-Hutchinson v. *Brayhead, Ltd. and Another* [1967] 3 All E.R. 98 ;

In the matter of the duty on the estate of the Incorporated Council of Law Reporting for England and Wales, 22 Q.B.D. 279, at p. 293, *per* Lord Coleridge, C.J. ;

British Thomson-Houston Co., Ltd. v. *Federated European Bank, Ltd.* [1932] 2 K.B. 176 ;

Church v. *Imperial Gas Light and Coke Co.* [1838] 6 Ad. and El. 846, at p. 861 *per* Lord Denman, C.J. ; [1838] 7 L.J.Q.B. 118 ;

Wright and Son Ltd. v. *Romford Borough Council* [1957] 1 Q.B. 431, at p. 437 ; [1956] 3 All E.R. 785 ;

Wells v. *Mayor etc. of Kingston-upon-Hull* [1875] L.R. 10 C.P. 402 ;

Lawford v. *Billericay Rural District Council* [1903] 1 K.B. 772 ;

Clarke v. *Cuckfield Union Guardians* [1852] 21 L.J.Q.B. 349 ;

South of Ireland Colliery Co. v. *Waddle* [1869] L.R. 3 C.P. 463 ; affirmed in 4 C.P. 617 ;

Mayor of Ludlow v. *Charlton* 6 M. and W. 815 ;

Houghton and Co. v. *Nothard, Lowe and Wills, Ltd.* [1927] 1 K.B. 246 ; [1928] A.C. 1 ;

Kreditbank Cassel G.M.B.H. v. *Schenkers, Ltd.* [1927] 1 K.B. 826;

Clay Hill Brick and Tile Co., Ltd. v. *Rawlings* [1938] 4 All E.R. 100 ;

Mahony v. *East Holyford Mining Co.* [1875] L.R. 7 H.L. 869.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Evangelides, Ag. D.J., and Demetriades, D.J.) dated the 26th June, 1967 (Action No. 4868/62) whereby it was declared that there was a valid agreement between the plaintiffs and the defendants by which the defendants undertook to buy from the plaintiffs a quantity of 189,000 tons of fuel oil during the period 1st January, 1963 to 31st December, 1964, and that the defendants committed a breach by refusing to carry out the said agreement.

P. Cacoyiannis with *C. Glykys*, for the appellants.

G. Achilles with *A. Triantafyllides*, for the respondents.

Cur. ad. vult.

The following judgments were read :

VASSILIADES, P. : Electricity, the discovery of which as applied energy, has made such a great difference to human life in our time, found its way to Cyprus, same as it did to most known countries, sooner or later. I do not propose going into the historic part of its development, in this judgment. We are only concerned here with the legislation enacted in this country to govern its production (or generation) and supply, when such step appeared to the then Colonial government to have become necessary, in view of the way in which electricity was being used and supplied at the time.

Taking a fairly big step in years, I shall come to May, 1941, when the Electricity Law of that year was enacted under the heading : "A Law to Regulate the Supply of Electricity for Lighting and other Purposes ". It went

on the statute book as Cap. 82 in the 1949 edition of the Statute Laws ; and it is now, in practically the same form, Cap. 170 in the 1959 edition. At the time of its enactment in 1941, the Nicosia Electric Company, a private enterprise, were supplying the Municipality of the town, as sole undertakers and exclusive suppliers, under a contract for a considerable number of years, for the supply of electric current for street lighting and for household use on regulated terms ; other municipalities were generating electricity in owned power stations, for lighting their streets and for encouraging the use of electricity for home and industrial purposes ; cinemas generated their own current ; factories started doing so when they found it cheaper to produce their own power ; and generally the position had developed to the state of things that legislation became necessary to regulate and control the supply of electric current.

The Electricity Law covered the field as it looked at that time, with provisions contained in 72 sections. After an ample definition-section, it specified its scope in section 3 as follows :

> " 3. The provisions of this law shall apply to the generation, transmission, distribution, sale, supply and use of energy throughout the Colony."

(with a saving proviso to cover those already engaged in the above activities).

The law gave power to the Governor (head of the executive and legislator at that time) to grant Orders authorising the supply of electricity ; it provided for a government-controlled authority to license engineers and skilled personel ; it provided for undertakers and contractors ; for the making of regulations ; for the approval of maps, plans, accounts etc. ; for method of charging and maximum prices ; for compensation for damage in the exercice of powers ; for arbitration ; and generally for all such matters as they appeared connected with the generation, supply and use of elecricity, which was thus placed under government control.

About eleven years later, in October, 1952, conditions apparently became ripe for the government of the Colony to deem it expedient to put the generation and supply of electricity under a central authority with island-wide powers and activity ; so it enacted Law 23 of 1952,—

> " To provide for the establishment of a Corporate Body to be called the Electricity Authority of Cyprus,

and for the exercise and performance of such Body of functions relating to the generation and supply of electricity and certain other matters ; to authorise the acquisition by the said Body of electricity undertakings and to regulate the payment of compensation therefor ; to provide for the regulation of the supply of electricity ; and for purposes connected with the matters aforesaid."

This is the enactment, with certain provisions of which, we are mainly concerned in this case. It went on the statute book as the Electricity Development Law and after certain amendments in 1953 and 1957, it is Cap. 171 in the 1959 edition of the Cyprus Statute Laws, subsequently amended further, by Laws 10 of 1960 ; 16 of 1960 ; and 24 of 1963. The defendants (appellants) are the corporate body established under section 3 of the statute " with perpetual succession and a common seal and with power to acquire, hold and dispose of property, to enter into contracts, to sue and be sued in its said name and to do all things necessary for the purposes of this Law ". (There follows a proviso which is immaterial for the purposes of this case).

Section 4 now, is very material in this case as it provides for the common seal of the Authority, on the absence of which, in connection with the contract alleged by the plaintiffs, the defendants contend that there is no binding contract between the parties. Subsection (2) of section 4 reads :

"(2) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed ....in the presence of the Chairman or Deputy Chairman of the Authority and of the Secretary of the Authority......................who shall both sign every such deed, document or other instrument to which such seal is affixed, and such signing shall be sufficient evidence that such seal was duly and properly affixed and that the same is the lawful seal of the Authority."

The composition of the Authority as provided in subsection (1) and (2) of section 5 in its original form, was :—

" 5(1) The Authority shall consist of not more than four persons appointed by the Governor (hereinafter referred to as ' the appointed members ') one of whom shall be designated by the Governor as Chairman,

and of the person for the time being holding the office of the Chief Engineer and Manager, as *ex officio* member, who shall be the Deputy Chairman." There follows a proviso immaterial to this case.

"(2) The appointed members shall hold office for a period of not more than five years subject to such conditions as the Governor may determine : Provided that the Governor may, at any time, remove any such member from office without assigning any reason therefor."

In its form at the material time (after the publication of the Electricity Development (Amendment) Law No. 10 of 1960, on July 21, 1960) subsection (1) of section 5 reads :

" 5 (1) The Authority shall consist of not more than seven members appointed by the Governor (hereinafter referred to as 'the members') one of whom shall be designated by the Governor as Chairman and another as Vice-Chairman :

Provided that the members need not be persons whose full time services shall be required."

Section 8 provides for the quorum required to make a resolution ; it reads :–

" 8 (1) The quorum at all meetings of the Authority shall be two (four after the amendment in 1960) members present in addition to the Chairman or Deputy Chairman.

(2) The Chairman, and in his absence the Deputy Chairman shall preside at such meetings :

Provided that when the votes of the members present with regard to any question shall be equally divided, the presiding member shall have a casting vote in addition to his own."

So here we have a quasi-public authority, established as a body corporate under a special statute, constituted by government appointments, operating as provided in the statute, with very wide powers regarding the generation and sale of electricity, with authority to acquire all existing undertakings of a similar nature and to do all things incidental to the activities of the Authority, including the carrying on of " any business usually associated with an electricity undertaking " (Section 12 (1) (c)).

In fact the defendants have gradually acquired and brought under their control, all such activity in the Island, so that they are now practically the exclusive suppliers under the Electricity Law, Cap. 170, of electricity for all kinds of use, with a supply-net continuously expanding so as to cover almost the whole country and with a central power station and branches generating millions of units of electicity. They are admittedly one of the big organizations in the island, steadily extending to meet growing requirements and demand. They have now been operating for the last eighteen years. After independence the Governor's powers of appointment under section 5, passed to the President of the Republic of Cyprus ; and the Authority is now composed of seven members including the Chairman.

We can now come to the facts which gave rise to the dispute before the Court. They are practically uncontestable, excepting for a few points where the trial Court have made findings which I do not think that they can be disturbed ; they are in substance well supported by the evidence ; have not been shown to be erroneous or unsatisfactory ; and I think that they are quite correct. (See *Imam* v. *Papacostas* (1968) 1 C.L.R. 207) *Solomos Kyriacou* v. *Nicos Aristotelous* (1970) 1 C.L.R. 172).

In December, 1962, the Authority's contract for the supply of fuel oil was due to expire. It was a five-year contract, worth a great deal of money ; it was in the hands of one of the big American oil companies who had been the fuel suppliers of the defendants for considerable time. The defendants did not deal with their suppliers directly for the new contract ; they published in July, 1962, an invitation for tenders. Those interested could apply for specifications to the General Manager of the defendants at their central offices in Nicosia. Tenders would not be accepted after 12 noon of Friday, 31st August, 1962. A newspaper cutting containing the Authority's invitation for tenders, is on the record as *exhibit* 1.

The plaintiffs who are a local company engaged in the business of importation, supply and distribution of petroleum products, comparatively new in the market (registered in 1960) applied for and were duly issued with detailed specifications and conditions for the purposes of a tender. These were a technically prepared document of several pages, with appendices etc., copy of which is *exhibit* 2.

On the 31st August, the plaintiffs handed in their tender (dated 30.8.62) in due course. It was received by the defendants for consideration ; and undoubtedly it constituted an invited legal offer. Made on the basis of defendants' specifications, it was an offer for the periodical supply over a period of two years of 210 thousand tons of fuel oil (with 10% margin at buyers' option, over or below the specified quantity) of the type described in the specification papers, with delivery as required in the specified terms. It was certainly a matter of a big contract (described at the hearing as a million-pound-contract) involving a great deal of collateral arrangements, mostly abroad ; of financing etc., and apparently of prestige both for the people in the field and for the newcomers into the market.

As advertised, the invitation for tenders closed at noon of the 31st August, 1962. Seven tenders in all were actually received, which were opened according to the evidence of defendants' General Manager, in the presence of three other senior officials of the Authority, at 12.25 hrs. of the same day. They were all given to the accountant to make the calculations and other preparation for the consideration of the tenders ; to use the expression of the General Manager : " They were given to the chief accountant of the Authority to adjudicate them."

According to defendants' specifications (*exhibit* 2, para. 10) payment of the price of goods supplied by the contractor, would be "made promptly within 30 days" of the completion of the discharge of the cargo. The plaintiffs made their tender on this basis, agreeing to the 30 days period. The tender of the nearest competing supplier—the one who had the expiring contract in hand—offered 60 days time for payments. Apparently considering this as an advantage to the Authority beyond the specification-terms, the Chairman enquired by telephone whether the plaintiffs were prepared to make the same concession. The plaintiffs agreed to do so, confirming the matter in writing by *exhibit* 4, addressed to the Chairman of the Authority in these terms :

> " Referring to the telephone conversation we have had with you this morning regarding the above tender, we confirm that we have no objection if payment is made 60 (sixty) days after the delivery of each consignment."

In fact, at the resumed meeting of defendants' Board in the evening of the same day (7.9.62) the Chairman

informed the Board accordingly. The minutes of the meeting, a photostat copy of which is before us as *exhibit C* in the appeal, speak clearly on the point. The material part reads :

> " The Chairman opened the resumed meeting by saying that the main business of the day was to consider tenders for fuel oil. He said that the best offers which could ıeally be taken into consideration were the closely competing offers of Petrolina and of Mobil, but on the basis of extended time for payment Petrolina's offer was definitely the best, although there was no provision in their offer for extended term of payment as offered by Mobil. He explained that Mobil's offer allowed 60 days for payment whereas in Petrolinas's offer there was no specific stipulation as to time of payment. However, the Chairman said, he had telephoned Petrolina and asked them if payment was not effected within a month whether theıe would be any objection on the part of the company, to which they had replied in the negative. With that aspect in view there was no doubt that Petrolina had made the best offer and he suggested that their offer be accepted. Members agreed. Subsequently, however, Mr. Glykys who was not present when the tenders were considered, decided to withdraw his vote on the ground that the Petrolina's tender was not cheapest."

Four members of the Board were present on that occasion (including the Chairman); the General Manager, the Assistant Secretary and the Confidential Assistant were in attendance ; and the Authority's Secretary kept and witnessed the minutes, as usual.

A technical slip in the figure describing the calorific value of the " DRY oil (I.P. 12/53T) " in plaintiffs' tender, pointed out to the Chairman by the General Manager of the Authority was corrected by plaintiffs' letter of the 8th Septembeı (*exhibit* 15) after an inquiry by the Chairman. The Authority's specifications (*exhibit* 2) gave the calorific value of "(I.P. 12/53 DRY oil" at 18,500–18,900 "B. Th U/lb ; " while plaintiffs' tender (*exhibit* 3) gave these figures as " 18,300–18,900 BTU/lb. " Answering the enquiry by *exhibit* 15, the plaintiffs " regretted the misprint ; " and made certain other clarification of the price in their tender.

Three days later, on September 11th, there was another communication. The defendants' General Manager noticing that plaintiffs' tender (*exhibit* 3) called for a reply by September 4th, suggested an extension of time which according to his evidence " was imperative because the tenders were not adjudicated within the validity of the offers ". He spoke about it to the Chairman ; and the plaintiffs in reply to a communication wrote *exhibit* 16 agreeing to an extension of their offer until the 10th October, 1962. The evidence on these points shows positively that the trial Court correctly assessed the evidence before them. Their findings of fact are undoubtedly correct.

On October 3rd the Authority's Board had an " emergency meeting " convened, according to the minutes, " in view of the request of Mr. Glykys by cable sent to the Members of the Authority on the 8th September, that the tenders of Petrolina and Mobil be further considered with a view to finding out which one of the two is actually the lowest, taking into consideration all the circumstances in these tenders ". A photostat copy of the minutes is before us as *exhibit* B in the appeal. The evidence does not disclose what happened between September 11th and this meeting on October 3rd ; but the minutes—running into several pages—show that the matter was thoroughly discussed. All seven Members of the Authority were present ; and five officials besides the Secretary, were in attendance. The meeting took about three hours. The accountant had prepared a comparative table to help the discussion. The matter turned between the tender of the plaintiffs and that of the contractor who had the expiring contract in hand. According to the evidence of defendants' General Manager, this contractor had been the supplier " on and off " for many years. This competitor was now offering lower prices for the new contract with effect from September, 1962, thus covering the last four months of his expiring contract in a way which, according to the minutes, might result to " a saving of £15,000–£16,000 " for the Authority on the old contract.

One of the Members present, took objection to this, but I do not think that for the purposes of this appeal, one need enter further into the discussion of the matter at this meeting which, as far as the minutes go, appears to have been detailed and rather animated at times. It is sufficient to say that in the end, the Authority (consisting of seven able and well qualified persons) decided by majority (four in favour, two against and one abstention) to accept

the tender of the plaintiffs. A proposal after the voting, made by the Chairman (who was the abstension at the voting) to ask for new tenders " strictly in accordance with conditions laid down and another proposal by Mr. Glykys to give the contract to Mobil and then ask for a reduction *ex-gratia*, had no chance of being carried since the four members had already expressed their wish to vote for Petrolina". This is how the "emergency meeting" of the Authority ended on October 3, 1962; and it was after this meeting that the Chairman of the defendants communicated to the plaintiffs on the same evening, the success of their tender; and agreed, at the latter's request, to a news release accordingly.

The following morning, October 4, 1962, the plaintiffs' Managing Director called on the General Manager of the defendants, accompanied by the plaintiffs' Secretary and by their Chief Accountant for the interview at which the trial Court found as a fact that—

> " The General Manager of the defendants informed the Managing Director of the plaintiffs that their tender had been accepted and that a contract would be drawn up by legal adviser of the Authority and that he told him that he was prepared to send a letter confirming the acceptance."

After dealing with a submission that the acceptance was conditional, the trial Court add—

> " We find as a fact that neither the Chairman nor the General Manager told the plaintiffs that the acceptance was conditional upon anything to be agreed later on."

The case of the appellants-defendants is that there was no valid acceptance of plaintiffs' offer as neither the Chairman nor the General Manager of the defendants had any authority to communicate to the plaintiffs the decision of the Authority to accept their tender. I find this submission entirely unacceptable. The Electricity Authority was incorporated by the Electricity Development Law (Cap. 171 to which I referred earlier in this judgment) to deal fully and very extensively with matters connected with the " generation, transmission, distribution, sale, supply and use " of electric energy throughout the Island, under the Electricity Law (Cap. 170). In doing so, the Authority has all the powers and functions specifically described

in section 12 of the Electricity Development Law (Cap. 171) including the carrying on of "any business usually associated with an electricity undertaking".

The brain of this body corporate, whose function is to make the policy and the decisions directing the activities of the corporation, is the collective organ constituted under section 5 of the statute. The lips, hands and other organs voicing or otherwise expressing and executing the decisions made by the corporation's brain, are its principal officers; acting according to specific regulations made for the purpose, or—in the absence of such regulations—acting in the ordinary course of business in such matters.

To say that the decision made by the Board constituting the Authority, at the meeting of the 3rd October, in the matter of the plaintiffs' offer, could not be communicated to the party concerned, by the Chairman of the Authority and its General Manager—the highest officers of this body corporate—in the way in which it was communicated in the evening after the meeting and the following day, is a submission which I find entirely unacceptable. I find it impossible to accept that such was the intention of the legislator in making the relevant provisions in the Electricity Development Law; or that such is the proper construction to be put upon them.

The decision of the Authority to accept plaintiffs' tender, in preference to that of the only other competitor at that stage, was sufficiently, I think, communicated to the plaintiffs, to constitute an acceptance intended to create a binding contract under the relevant provisions of our Contract Law (Cap. 149); the contract which the plaintiffs intended to enter by making the offer contained in their tender; and the defendants intended to conclude by making the decision at the meeting of the 3rd October, to accept the tender of the plaintiffs. It must be added here, however, that it was understood on both sides and it was—as it must have been, in the circumstances of this case—their common intention, that agreement so formed and concluded by the written and oral exchanges between them (described above) was to be put into a formal legal document and to be duly signed and formally executed. This was, apparently, the practice of the defendants for such contracts in the past; and this would, obviously, be the ordinary course of business in such matters. Between, however, the acceptance of the tender as above, and the preparation of the formal document to embody the contract, the defendants, for reasons best

known to them, apparently changed their mind ; and eventually repudiated their engagement by deciding to call for new tenders ; contending that they never concluded a binding contract under the corporation seal.

This brings me to the second part of the case for the defendants : The contention that if the Court finds that a contract was concluded, such a contract is not enforceable against them as it was not made under the corporation seal. The idea of a " common seal ", as I understand it came into the law when bodies corporate, first came into existence as legal entities long time ago, to give a corporeal form to the expressed common will of the persons constituting the corporation (sometimes a big number of them) ; to be, so to speak, their common signature, on all deeds or documents required to be so signed by the corporation as a legal creature. But this does not mean, especially in the present times, that a corporation as a legal entity cannot express itself otherwise than through its common seal. There are certain matters in the different kinds of corporations which require the common seal to complete their validity ; and there is a great deal of other matters which do not. One must look into the statute under which a legal corporation was incorporated (and perhaps into other documents as well) in order to ascertain whether a particular act or a particular document of the corporation, requires its common seal before it can acquire legal validity.

In the instant case, the statute provides for a common seal in section 3 (of Cap. 171 referred to above) ; and specifically provides for the manner in which the common seal is to be used in sealing " all deeds, documents and other instruments requiring the seal of the Authority ", in section 4 (2). So here the question is whether the contract concluded by defendants' acceptance of plaintiffs' offer, is a deed, document or other instrument *requiring* the seal of the Authority, as contended by the defendants ; or it is not, as contended by the plaintiffs. The nature of the corporation and the nature of its functions and activities are, obviously, very important matters in determining this question.

Learned counsel for the defendants submitted that his clients are not a trading corporation ; but even if held to be one—the submission continues—the contract in question, not being a contract the subject of which relates to the business for which the corporation was established,

is invalid because it is not under the corporation's common seal. In support of his submission counsel referred to *Church* v. *Imperial Gas, Light & Coke Co.* (1838) 7 L.J.Q.B. 118; and to *A. R. Wright & Son, Ltd.* v. *Romford Corporation* [1956] 3 All E.R. 785. The former is a case decided one hundred and thirty years ago in England, in the conditions prevailing there at that time. The report is not available here so that one does not know the facts on which it was decided; but it is referred to in the *Romford Corporation* case (*supra*) where Lord Goddard, C.J., deciding a preliminary issue—(arising from the defence of the corporation that the contract was not binding as it was not made under the Corporation seal, and the reply of the plaintiffs that it was made by the borough engineer on the authority of the standing orders of the corporation under section 266 of the Local Government Act, 1933)—referred to a passage from the judgment of Lord Denman, C.J., in the *Church* case (*supra*) and held that the contract was not binding on the corporation.

We do not know the statutory provisions under which the Romford Corporation was established; nor do we know the provisions regarding the use of its seal in connection with its contracts. But taking from the judgment that "from very early times" in the common law of England the rule has developed that "an unsealed contract is enforceable neither by nor against a corporation", one must also take the statement in the same paragraph that "to this general rule of the common law there are and probably always have been certain exceptions", which must have developed in cases where the application of the rule resulted in absurdities; or in such consequences which necessitated the development of the exceptions.

The passage refers to exceptions developed to cover insignificant or routine matters such as "the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal...." How wide a field can such exceptions cover, it is not difficult to imagine. Other cases show that the old rule has been, gradually, carried almost completely away in the case of trading corporations, for obvious reasons. In this very case (the *Romford Corporation*, supra) the learned Chief Justice added to the exceptions, the contracts "made under some authority conferred by statute on the particular corporation". And ended his judgment describing as "distasteful" to

have to give effect " to a technical defence of this description " even when finding it as valid in law. In the circumstances of the case he was dealing with, he felt himself bound to uphold the defence and dismissed the action.

The industry of counsel to whom we are much indebted for their assistance, made available to us the reports of two other cases on corporation contracts : An English case decided in 1908 (*Bourne* & *Hollingsworth* v. *The Mayor*, & C., *of St. Marylebone*, 24, The Times Law Reports pp. 613–5) ; and an Irish case decided in 1921 (*Wilson* v. *Belfast Corporation*, 55 Irish Law Times pp. 205 & 206). Learned counsel for the defendants were good enough to obtain from England and make available to us, photostat copies of the reports for which we are very grateful. In the first case—against the municipal corporation of St. Marylebone who were also the electric light authority of their area—the jury found, in an action for the breach of a contract made partly verbally and partly in writing, under which the corporation undertook to supply the plaintiffs with electric current of a certain voltage, by a certain date, that the contract was of a nature necessary to carry into effect the purposes of the defendants as suppliers of electric light ; and Ridley, J. held (*inter alia*) for the reasons stated in his elaborate judgment, that the contract was binding on the defendants although not made under seal. The Court of Appeal, however, reversed the judgment of Ridley, J. on the ground that there was no evidence to go to the jury of any contract by the defendant corporation with the plaintiffs as to the supply on a particular date of electric light to plaintiff's premises, nor any evidence of any authority in the officers of the corporation to make any such contract. Sir Gorell Barnes, President of the Court of Appeal, after dealing with the matter came to the conclusion that " even if there was evidence to support the finding that the contract was made, there was no evidence of authority or of holding out ". The case was not decided on the presence or the absence of the corporation seal on the alleged contract. The other Lords Justices delivered judgment to the same effect. It is, I think, clear that that case was decided on completely different facts and on different grounds. I cannot derive any assistance from this case other than an indication that if the contract were proved, the decision might well be different.

The Irish case was also decided on facts which bear no similarity to the case in hand. The City Council of Belfast Corporation, who were also the local electricity suppliers, passed a resolution on September 1, 1914, to the

effect that half wages should be paid to employees who joined the Army. Without the Council's authority the resolution was published in the press. A month later, on October 1st, the Council passed a second resolution limiting the offer of half pay to such persons as were in the Council's service on 5th August, 1914. The plaintiff entered the service of the Corporation about three months after the second resolution which had not been published. Some time later he joined the Army and was killed in action. His widow and infant son alleged a contract between the Corporation and the deceased and brought an action to recover £ 89, the amount of half his pay from the date of enlistment to the date of his death. The Judge of Assize gave plaintiffs' judgment for this amount. The judgment was reversed by the King's Bench Division on a new trial motion. On appeal, the Court of Appeal in Southern Ireland held that—

> " there was no contract ; that the Council resolution was not intended as an offer ; that unauthorised publication in the press did not constitute communication ; that furthermore any offer there might have been, had been revoked by the subsequent resolution of 1st October ; that an employee ought to inform himself of the conditions of his employment."

The case is of interest, but of no assistance in the appeal in hand.

Reference was also made by learned counsel for the appellants-defendants to the *Luxor* case (*Luxor* (*Eastbourne*), *Ltd.* (*in Liquidation*) *and Others* v. *Cooper* [1941] 1 All E.R. 33) in support of the proposition that where an agreement is made " subject to contract ", either party can withdraw from the bargain until formal contracts, duly executed, are exchanged. It is contended here by the defendants, that in case the Court finds that an agreement between the parties was reached as a result of the communication to the plaintiffs, of the Authority's decision of the 3rd October (referred to above) such agreement was " subject to contract " ; and therefore the defendants were entitled to withdraw at any time before the formal contract, duly executed, was signed and sealed. In fact it is admitted on behalf of the defendants that after the meeting in question the Authority, taking the view that their Chairman was exhibiting " improper interest " in the matter and had " discriminated " in favour of the plaintiffs against their competitors, decided to upset the negotiations—as counsel for the defendants put it—and invited new tenders.

We are not concerned in this case, with the internal affairs of the Authority ; nor, for that matter, with the conduct of its Chairman in the discharge of his duties. But once reference has been made to the accusations and epithets used against the Chairman (who according to the evidence, at some time held a very responsible post in the Foreign Service of the Republic) it must be added here that there is absolutely nothing in the record before us, to justify such accusations. The fact remains that while he was still the Chairman, the Authority did repudiate their engagement with the plaintiffs; and did give the contract to their competitors, with the result of having this action instituted against the Authority.

Returning now to the *Luxor* case (*supra*) I must observe that that was a case of a different nature, decided on its own facts—peculiar and complicated as they were—presenting a fundamentally different contract to the one we are concerned with, in this case. The expression "subject to contract" in the *Luxor* case (*supra*) was used in connection with the contingency of an eventual contract between the defendants and a *third party*. The claim was for £10,000 agreed fee or commission, added to the sale price of £175,000 for the sale of property for £185,000, to the buyer introduced by the plaintiff. Seller and buyer entered into negotiations which, however, did not result into a contract, the seller eventually withdrawing from the negotiations. The plaintiff sued the seller for the £10,000 agreed commission. The defendants (a company) declined liability on the ground (*inter alia*) that their commitment was "subject to contract" with the buyer. Branson, J. decided in favour of the defendants. But the Court of Appeal reversed that decision and gave judgment in favour of the plaintiff for £8,000 damages for breach of contract, on the authority of *Trollope (George) & Sons* v. *Martyn Bros.* [1934] 2 K.B. 436, followed in *Trollope (George) & Sons* v. *Caplan* [1936] 2 K.B. 382, where in a commission contract the Court found an implied term that the party employing the commission agent "would not, without just cause, so act as to prevent the agent from earning his commission". On appeal to the House of Lords, it was held that the *Trollope* cases (*supra*) were wrongly decided ; and allowing the appeal the Court dismissed the action. I do not think that this case can be of help in deciding the appeal in hand.

Another point taken on behalf of the defendants was that plaintiffs' tender lapsed on the 4th September, 1962, and could not, therefore, be accepted by the Authority on

the 3rd of October. The answer to this can be found in the evidence of the Authority's General Manager and the extension granted as per *exhibit* 16. On the facts in this connection, as stated earlier, I do not think that the defendants who held out all along their principal officers as duly authorised to handle the matter, can now be heard to say that the tenders extended at their instance and discussed at such length at the meeting of the 3rd October, had expired about a month earlier.

The last point taken for the defendants, is that they are not a trading Corporation. In support of his submission in this connection, learned counsel referred to the *Aviation and Shipping Co., Ltd.* v. *Murray* (*Inspector of Taxes*) [1961] 2 All E.R. 805. In the facts and circumstances of the present case, and in view of the relevant statutory provisions to which I have referred earlier, I can find no merit in this point. Having taken up practically all the electric power undertakings operating in the Island under the Electricity Law (Cap. 170) and having continued the extensive business of such undertakings for so many years, together with a great deal more of similar business as part of their functions under the Electricity Development Law (Cap. 171)—to which I have also referred—the defendants cannot, I think, say that trading is not part of their activities. The taxation case referred to on their behalf, cannot, in my opinion, be of help in the instant case.

Learned counsel for the respondents-plaintiffs submitted that the case turns on two questions : First, whether there is a contract ; and second, if yes, whether such contract is unenforceable for lack of form ; not having been embodied in a formal document under the defendants' common seal. Without going into the elaborate argument presented around these two questions, I think that they do cover the case in hand, subject to a limitation regarding the quantity of the goods, with which I shall be dealing in a moment. The trial Court have dealt with both these questions ; and have answered the first in the affirmative and the second in the negative. The findings upon which the trial Court based their judgment are, I think, well justified upon the evidence, as I have already said earlier in this judgment. I also find myself in agreement with the conclusions reached by the trial Court, based upon their findings, (subject to the limitation as to the quantity) for the reasons given in their judgment ; and in view of the statutory provisions under which the defendants exist and operate.

As to the quantity of the goods covered by the concluded contract, the matter is not free of difficulty. The trial Court went into this question early in their judgment. Quoting from paragraph 71 of Chitty on Contracts (22nd Edition) Vol. 1 at p. 35, to which they have been referred by learned counsel of the appellants-defendants, the trial Court's judgment reads :—

> " When a tender is offered in reply to an invitation for a periodic supply of goods up to a specified quantity it must be noted that the so called ' acceptance ' of the tender does not create a contract. A contract arises only when a definite order is made."

After referring to a further statement in the same paragraph in Chitty, regarding the supply of a definite quantity of goods over a certain period, the trial Court deal with the evidence in point, as found in the relative documents and reach the conclusion that—

> " if there was a valid agreement the obligation would be an obligation on the part of the acceptor to buy at least 189,000 metric tons and on the part of the offerer to supply a quantity from 189,000 to 231,000 at the option of the acceptor and under the terms of the tender. That there would be obligation to buy at least 18,000 tons in January, 1963, is, to our mind, beyond any argument ".

With this last part of the trial Court's conclusion, I find myself in agreement. The effect of appellants' acceptance of the tender of the respondent, was that the latter agreed and undertook to supply during the period specified in their tender, the quantity of fuel described therein, in periodic deliveries as required by the buyers (after notice as agreed) the first delivery being a quantity of 18,000 tons, in January, 1963. That it was the intention of the parties, that this first quantity was to be so delivered, on the terms stated in the tender, is, I think, " beyond any argument ", as the trial Court put it. It was equivalent to an order made by the buyers for the first delivery under the arrangement agreed upon, which resulted in a binding contract between the parties for the supply of 18,000 tons.

Had the appellants not changed their mind so soon after the communication of their acceptance of the tender, a formal contract on the basis of the tender, would most probably have been made and signed by the parties in due course. But owing to the appellants' change of mind, no such contract was so made ; and the respondents were

soon informed by the appellants that the latter now decided to invite new tenders. That was a repudiation of the arrangement reached between the parties, including the first consignment of 18,000 tons for which an agreement had been concluded as already stated.

The dispute between the parties thus boils down to the question : What, if any, was the contract concluded by the acceptance of the tender? The appellants-buyers say that no contract was concluded at all. The respondents-suppliers say that a contract for the whole quantity of 210,000 tons (or at least 189,000 if reduced by the whole of the option—margin of 10%) was concluded. The trial Court reached the decision that a contract for the whole quantity was entered ; but in any case the contract for the first delivery of 18,000 tons was undoubtedly formed.

As I have already said, I find myself in agreement with the latter part of the trial Court's conclusion. But I am in doubt as to the former. If that conclusion of the trial Court were correct, it would lead to the inevitable result that the formal contract which the parties intended that it should be prepared and signed, would be an entirely unnecessary duplication. I cannot take that view ; and, therefore, I cannot go the full length of the trial Court's conclusion. I find myself forced to the result that the effect of the appellants' acceptance was to enter into a formal contract for the supply of approximately 210,000 tons of the fuel specified in the tender, in periodic deliveries during the two years, 1963 and 1964, on the terms specified in the tender. The first delivery of 18,000 tons was to be effected in January, 1963. For this delivery there was a definite agreement, beyond all doubt, as found by the trial Court. For the rest of the supply the appellants-buyers repudiated their engagement before the making of the intended formal contract. This repudiation covered also the quantity of the first delivery for which agreement was reached.

I would, therefore, allow the appeal and hold on the issue of liability, (which was the only issue tried at the request of the parties and determined by the trial Court at this stage) that the respondents-plaintiffs have proved a binding agreement between the parties for the supply of 18,000 tons of fuel in January, 1963, on the terms of the tender, which the appellants-defendants have repudiated.

As to costs, I am inclined to the view that in the circumstances of this case, and as the appellants-defendants

have been partly successful in the appeal, while the respondents-plaintiffs succeed in part of their claim, there should be no order for costs, up to this stage of the proceedings, either in the trial Court or in the appeal.

TRIANTAFYLLIDES, J. : I am in agreement with the learned President of the Court regarding the outcome of this appeal.

Though he has stated in his judgment the history of events in this case, I think that I may—as briefly as possible—refer to it myself, too :

The respondents-plaintiffs are a company in Larnaca carrying on, amongst other things, the business of importing from abroad and supplying to customers in Cyprus petroleum products.

The appellants-defendants are a public authority, established and incorporated by statute (The Electricity Development Law, Cap. 171), one of the main duties of which is the generation and supply of electricity at reasonable prices.

In July, 1962, the appellants invited tenders for the supply to them of approximately 210,000 tons of fuel oil, in order to meet their estimated requirements for the two years' period commencing as from January, 1963 ; it was expressly stated in the relevant specifications and conditions that the first consignment, of " 18,000 metric tons ", would " be required early in January, 1963 " ; and that other deliveries would be made thereafter in 18,000 tons' consignments at not less than a month's notice on the part of the appellants.

The respondents submitted a tender (dated the 30th August, 1962) on the 31st August, 1962 ; it was stated therein that it was valid until the 4th September, 1962, but later its validity was extended up to the 10th October, 1962. Moreover, as a result of communications between the Chairman of the appellants (at that time Mr. L. Georghiades) and the Managing Director of the respondents (Mr. T. Lefkaritis) the said tender was amended so that the respondents agreed to payment being made to them by the appellants sixty days after delivery of each consignment and, also made concessions regarding the prices quoted in their tender.

The extension of the period of the validity of the tender of the respondents up to the 10th October, 1962, was effected by means of a letter addressed, on the 11th September,

1962, to the General Manager of the appellants (Mr. S. Anastassiades) by the Managing Director of the respondents, *after* his aforesaid communications with the Chairman of the appellants, which had resulted in the price concessions and sixty days' credit to which I have already referred.

May I say at this stage, by way of a parenthesis, that from now on I shall refer, for the sake of convenience, to the three persons mainly involved in the history of events of the present case, namely the Chairman and General Manager of the appellants and the Managing Director of the respondents, by their names, which I have already mentioned.

On the 3rd October, 1962, the governing body of the appellants met and formally decided, by majority, to accept the tender of the respondents " on condition that the prices chargeable should be the reduced prices after taking into consideration the concessions made " ; the relevant meeting was presided over by Mr. Georghiades himself and Mr. Anastassiades was in attendance.

On that same day, in the evening, Mr. Georghiades telephoned Mr. Lefkaritis and communicated to him the decision reached as aforesaid ; Mr. Georghiades told Mr. Lefkaritis that he was making this communication on behalf of the governing body of the appellants and, in answer to a question by Mr. Lefkaritis as to whether this news could be given to the press, Mr. Georghiades replied in the affirmative.

On the following day, the 4th October, 1962, a relevant news item was published in a number of newspapers and no denial was issued by the appellants.

On that day, the 4th October, 1962, Mr. Lefkaritis had a meeting with Mr. Anastassiades, in the course of which the acceptance of the tender of the respondents was communicated, once again, by the latter to the former.

When Mr. Lefkaritis and Mr. Anastassiades gave evidence, before the trial Court, regarding what took place at their said meeting, there appeared to exist some differences between their respective versions ; the substantial difference being that Mr. Anastassiades, though not denying the communication of the acceptance of the tender, stated that he had requested Mr. Lefkaritis to furnish him with some further information, on the basis of which a final agreement would be concluded and embodied in a written contract

to be prepared by the legal adviser of the appellants, whereas Mr. Lefkaritis insisted, on the contrary, that, though it was mentioned at the time that in due course a formal written agreement would be prepared by the legal adviser of the appellants, there was nothing said between him and Mr. Anastassiades indicating that a final agreement between the parties had yet to be reached ; he, further, stated in evidence that Mr. Anastassiades promised to write to the respondents a letter confirming in writing, too, the acceptance of their tender.

The trial Court accepted as correct the evidence of Mr. Lefkaritis and did not accept that of Mr. Anastassiades.

The tender of the respondents having been accepted by the appellants, and the first 18,000 tons of fuel oil having to be supplied in January, 1963, Mr. Lefkaritis went abroad, on the 8th October, 1962, in order to make arrangements for securing the quantity of fuel oil to be supplied to the appellants.

On the 9th October, 1962, the respondents cabled the appellants informing them that they—the respondents—had made contractual arrangements with their suppliers in respect of the quantity of fuel oil involved in their tender ; they requested to have from the appellants the letter confirming acceptance of their tender (which had been promised to them as already mentioned in this judgment).

Instead of such a letter being written to the respondents a totally different development followed : On the 12th October, 1962, the Secretary of the appellants wrote to the respondents that the appellants could not accept their contention that there had been " any verbal or other confirmation " of the acceptance of their tender.

This was done after the governing body of the appellants had decided " that the previous tenders should be ignored and fresh tenders invited " and revoked its decision taken on the 3rd October, 1962 ; that decision is the one by means of which it was decided to accept the tender of the respondents.

The respondents were informed accordingly and, after some inconclusive correspondence between the parties, they sued the appellants for damages for breach of contract by means of Civil Action No. 4868/62, in which a Full District Court in Nicosia gave judgment in favour of the respondents.

The trial Court found that the quantity of fuel oil which was involved in the contract broken by the appellants was 189,000 tons of fuel oil, because it had been stated by the respondents in their tender, and accepted by the appellants, that the quantity to be supplied over a period of two years (1963 and 1964) would be 210,000 tons " 10% more or less " at the option of the appellants.

After finding the appellants guilty of breach of contract—as aforesaid—the Court below postponed the assessment of the damages payable, in the circumstances, to the respondents ; such assessment has not yet been made because it was left to await the outcome of the present appeal which has been made against the decision of the trial Court that the appellants are liable in damages to the respondents for breach of contract.

The first problem with which I have been faced in deciding this appeal was whether or not to disturb the findings of fact made by the trial Court ; and, particularly, whether or not to agree with the submission of learned counsel for the appellants that the trial Court erred in accepting as correct the evidence of Mr. Lefkaritis regarding the communication to him of the unqualified acceptance of the tender of respondents by Mr. Georghiades on the 3rd October, 1962, and by Mr. Anastassiades on the 4th of October, 1962.

Mr. Georghiades did not give evidence before the trial Court and, thus, the relevant part of the evidence of Mr. Lefkaritis, whom the said court found to be a reliable witness, stands uncontradicted ; regarding, however, the meeting on the 4th of October between Mr. Lefkaritis and Mr. Anastassiades there has been, as stated, conflict of evidence between them and the trial Court chose to prefer the evidence of Mr. Lefkaritis.

On appeal I cannot proceed to decide *directly* whom of these two witnesses to believe ; all that I have power to do is to deal with this matter *indirectly* on the basis of the record and of the arguments of counsel for the parties.

It is a basic principle of law that where the decision to be reached depends upon conflict of oral evidence an appellate Court should generally defer to the opinion of the trial Judge (see, inter alia, *The Glannibanta*, [1876] 1 P.D. 283, *Powell* v. *Streatham Manor Nursing Home* [1935] A.C. 243, *Watt or Thomas* v. *Thomas* [1947] A.C. 484, *Imam*

v. *Papacostas* [1968] 1 C.L.R. 207, *Alexandrou* v. *Komodromou* (1970) 1 C.L.R. 69, *Ponou* v. *Ibrahim* (1970) 1 C.L.R. 78, *Gregoriades* v. *Kyriakides* (1970) 1 C.L.R. 120, *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172).

Of course, as an appeal, such as the present one, is by way of a rehearing, the parties are entitled to expect from an appellate Court a decision on questions of fact as well as on questions of law ; and, therefore, where the trial Judge has come to a conclusion on a question of fact the appellate tribunal cannot, merely because the question is one of fact and because it has been decided in one way by the trial Judge, fail to carry out its duty to review his decision and to reverse it if found to be wrong (see, inter alia, *Caldeira* v. *Gray* [1936] 1 All E.R. 540 and *Gregoriadou* v. *Kyriakides*, supra).

But, as it has been stressed in the judgment of Lord Sumner in *S. S. Hontestroom* v. *S. S. Sagaporack* [1927] A.C. 37, at p. 47 :—

> " ... not to have seen the witnesses puts appellate judges in a permanent position of disadvantage against the trial Judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely as a result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case. "

It is up to the party complaining about the decision of a trial Judge as to which of conflicting versions before him to accept to persuade this Court, on appeal, that the trial Judge was wrong (see *Imam* v. *Papacostas*, supra).

In the present case having considered all that has been submitted in this respect by both sides, and particularly the points raised by counsel for the appellants, I do not feel satisfied that I should reverse the decision of the Court below to accept as correct the version of Mr. Lefkaritis.

Lord Macmillan in *Watt* or Thomas v. *Thomas* (*supra*, at p. 491) said :—

> " If the case on the printed evidence leaves the facts in balance, as it may be fairly said to do, then the rule enunciated by this House applies and brings the balance down on the side of the trial judge."

As already stated I am of the view that on the issue of credibility the balance should come down on the side of the trial Court.

Having found that the events had taken place as Mr. Lefkaritis stated them in his evidence the trial Court proceeded to conclude, on the basis thereof and other related thereto documentary evidence, that a binding in law contract had been concluded between the parties for the supply of 189,000 tons of fuel oil. I cannot agree *to the whole extent* with this conclusion of the learned trial Judges :

In this connection I have to deal with, in effect, an inference drawn by the said Judges on the basis of the facts as found by them ; and regarding the question as to which is the proper inference to be drawn from evidence found to be truthful an appellate tribunal is in as good a position to decide on the matter as the Court of trial (see, *inter alia*, the cases of *Powell* v. *Streatham Manor Nursing Home*, supra, *Dominion Trust Company* v. *New York Life Insurance Co.* [1919] A.C. 254, *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370, *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134, and *Cyprus Wine Association Ltd.* v. *Georghiou* (1970) 1 C.L.R. 246).

I do agree with the Court below that upon the oral communication by the appellants to the respondents of the acceptance of the tender of the latter there came into existence beyond any argument—the obligation of the former to buy 18,000 tons of fuel oil in January, 1963. Such obligation is to be clearly derived from the conditions of tender and the tender itself ; it was specifically stated in these two documents that the first consignment of 18,000 tons would be delivered in January, 1963.

Also, it is clear from the evidence of Mr. Lefkaritis that when Mr. Anastassiades communicated to him, on the 4th October, 1962, the acceptance of the tender he asked him to do the " utmost for the delivery " as the appellants were " running short of stock ."

Furthermore, it appears that the preparation by the legal adviser of the appellants of a relevant formal written contract, to be eventually signed by the parties, could have taken some time. In the circumstances I cannot accept that it was not clearly intended by *both* parties that they would be bound at once, as soon as the tender of the respondents was accepted, regarding the said 18,000 tons, irrespective of the signing later of a formal contract for the total quantity stated in the respondents' tender in respect of the two years' period 1963—1964.

It is to be derived from the circumstances of each case and often it is "a question of construction whether the parties intended to undertake immediate, if temporary, obligations, or whether they were suspending all liability until the conclusion of formalities. Have they, in other words, made the operation of their contract conditional upon the execution of a further document, in which case their obligations will be suspended, or have they made an immediately binding agreement, though one which is later to be merged into a more formal contract?" (See Cheshire and Fifoot on the Law of Contract, 7th ed. p. 34). Thus, for example, in *Branca* v. *Cobarro* [1947] K.B. 854, it was held that a clause, in an agreement to sell, stating that "This is a provisional agreement until a fully legalized agreement, drawn up by a solicitor and embodying all the conditions herewith stated, is signed" did *not* prevent there being a concluded agreement meanwhile.

On this occasion I have no doubt at all that even only on the basis of the proper construction of the conditions of tender (prepared by the appellants) and of the tender (submitted by the respondents) I am bound to find, as the trial Court was bound to find, that the parties in this case concluded, on acceptance of the tender, an immediately binding contract regarding the consignment of 18,000 tons of fuel oil to be delivered in January, 1963. The fact that this consignment was part of the total quantity to be supplied by the respondents in 1963 and 1964, and it would be included in the quantity to be mentioned in the contract to be prepared and signed for the whole said two years' period, did not, in my opinion, prevent, in the circumstances of this case, the rights and obligations of the parties, in relation to this consignment, from acquiring binding effect on acceptance of the tender and before the signing of the formal contract.

I have not lost sight of the fact that the claim of the respondents has been based on the contention that an agreement came into existence, irrespective of any later formal contract, in relation to the whole quantity of fuel oil to be supplied, on the strength of their tender, during 1963 and 1964; but as the greater includes the less it is possible to hold that the contention of the respondents is correct in so far as only the said 18,000 tons are concerned.

In connection with the remainder of the fuel oil to be supplied in 1963 and 1964, on unspecified, as yet, at the material time, dates, I cannot accept that it was intended

by the parties that a final agreement would come into existence in relation to their course of dealing over the whole period, as from the end of January, 1963, and until the end of 1964, before a formal written contract would be executed between them regulating fully, in every material way, their obligations and rights in respect of a transaction of such magnitude as the one in question.

It is quite true that the tender of the respondents was accepted without there existing any express stipulation that the acceptance was subject to a formal contract being signed by the parties. But, notwithstanding the absence of such an express stipulation, before a Court concludes that there has been entered into, in law, a contract it must be duly satisfied that the relevant proposal has been converted into a binding agreement through an acceptance which is absolute and unqualified ; as envisaged under section 7 (*a*) of our Contract Law (Cap. 149), which is the same as section 7 (1) of the Indian Contract Act, 1872.

It is useful to note that in connection with section 7 of the Indian Contract Act, 1872, Pollock and Mulla (8th ed. p. 55) state, under the heading " Certainty of acceptance ", that :

> " Where there is no precise clause of reservation, but the acceptance is not obviously unqualified, it becomes a question of construction whether the parties intended that the terms agreed on should merely be put into form, or whether they should be subject to a new agreement the terms of which are not expressed in detail . . . .".

This view of the law appears to have been based on a relevant dictum by Jessel, M. R., in *Winn* v. *Bull* [1877] 7 Ch. D. 29 at p. 32, which is still the leading case on the point.

In weighing the totality of the relevant circumstances of the transaction in question I have reached the conclusion that the acceptance of the tender of the respondents for the *whole* of the two years' period (1963 and 1964) could not be regarded as being " obviously unqualified " and that, by necessary implication due to the nature of such transaction, it was (with the *exception* of the first consignment of 18,000 tons in January, 1963, which, in view of matters specially related thereto, it ought to be treated on a different footing) subject to the execution of a formal contract containing a number of quite usual subsidiary, but nevertheless material, terms, which were not set out in the conditions of tender or in the tender.

I, therefore, cannot sustain the finding of the trial Court that a binding contract was entered into between the parties for the supply to the appellants of the whole quantity of 189,000 tons of fuel oil, and not only of a quantity of 18,000 tons of fuel oil in January, 1963.

Before deciding on the outcome of this appeal, I have considered certain issues which were dealt with in the judgment appealed against and were argued before this Court ; if any one of them were to be decided in favour of the appellants this would prevent me from concluding that there came into existence a valid contract even in respect of the aforesaid 18,000 tons :

I cannot accept the contention that the acceptance of the tender of the respondents by the appellants was conditional and that, therefore, no binding contract came into existence at all between the parties, because of the fact that in the relevant decision of the governing body of the appellants, which was reached on the 3rd October, 1962, it was recorded that the tender of the respondents was " accepted on condition that the prices chargeable should be the reduced prices after taking into consideration the concessions made ".

I am in agreement in this respect with the trial Court that the words " on condition " cannot be construed as being actually intended to render the acceptance of the tender conditional, but were clearly intended to express the view of the majority of the members of the governing body of the appellants—who decided to accept the tender—to the effect that the tender was accepted on the basis of the concessions regarding prices which had been made by the respondents, as already stated in this judgment, between the date of the submission of their tender and the date of the decision to accept such tender.

Nor can I accept the argument that on the 3rd October, 1962, there was not validly in force the tender of the respondents *together* with all subsequent concessions. It is, in my view, quite obvious that when by their letter of the 11th September, 1962, the respondents extended the validity of their tender until the 10th October, 1962, it was clearly intended and understood by both sides that the tender was extended subject to all concessions which had *already* been made ; I agree, therefore, in this respect, too, with the trial Court.

The next issue is whether or not there was effected a *valid and binding* communication to the respondents, on behalf of the appellants, of the acceptance of the tender of the respondents :

On the basis of the evidence accepted by the Court below, oral communications of such acceptance were made to Mr. Lefkaritis (the Managing Director of the respondents) by both Mr. Georghiades (the Chairman of the appellants) and by Mr. Anastassiades (the General Manager of the appellants). The question that has arisen is whether these communications, as made, were sufficient in law to bind the appellants as a statutory public corporation.

In this respect I think that a distinction should be drawn between the legal situation at present under examination in these proceedings, and the different kind of situation in which an obligation is undertaken on behalf of a company by an officer of the company, in the course of purporting to act on behalf of the company, but without such officer being authorized, or without the possibility existing of such officer becoming authorized, to act as he did (and regarding which the legal position was examined in, *inter alia*, *British Thomson-Houston Company, Limited* [1932] 2 K.B. 176 and *Rama Corporation, Ltd.* v. *Proved Tin & General Investments, Ltd.* [1952] 1 All E.R. 554). In the present instance there had been duly taken a decision of the governing body of the appellants to accept the tender of the respondents ; thus, neither Mr. Georghiades nor Mr. Anastassiades acted for the appellants without authority in relation to this matter ; they, in fact, acted in the course of implementing the said decision and, in my view, it was unnecessary to state expressly in such decision that they were entitled to communicate it to Mr. Lefkaritis ; it followed, as an inevitable and inescapable consequence of that decision, that these two officers of the appellants had the implied authority to effect such communication by virtue of their officers.

Moreover, in this case, the course of events shows that they possessed authority so to do (see *Hely-Hutchinson* v. *Brayhead Ltd. and Another* [1967] 3 All E.R. 98), as from the invitation for tenders onwards they had been dealing with the respondents in matters such as the arrangement of better credit facilities and the extension of the period of validity of the tender ; and, also, Mr. Anastassiades stated in his evidence that it was part of his duties to implement a decision of the governing body of the appellants, such as the decision to accept the tender of the respondents, by writing to the prospective supplier " a letter of intent " ; surely, if he could write a letter of intent he could communicate orally to the respondents the acceptance of their tender, as he did on the 4th October, 1962.

In any case, I would say that what Mr. Georghiades and Mr. Anastassiades have done, by communicating to Mr. Lefkaritis the acceptance of the tender, was something ordinarily within their powers (see *Freeman and Lockyer (a firm)* v. *Buckhurst Park Properties (Mangal), Ltd. and Another* [1964] 1 All E.R. 630).

The last issue with which I shall deal is whether, through the aforementioned oral communications, there was entered into an agreement binding on the appellants, regarding the 18,000 tons, or whether it was necessary, in order that such an agreement could come into existence, to have it incorporated into a written contract sealed with the seal of the appellants :

Regarding the form of the creation of a contractual relationship in Cyprus we have to look at section 10 of the Contract Law (Cap. 149) which reads as follows :—

> " 10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void, and may, subject to the provisions of this Law, be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
>
> (2) Nothing herein contained shall affect any Law in force in Cyprus, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any Law relating to the registration of documents."

In my opinion, it is clear that what is meant by " Law " in section 10 is a statutory provision in Cyprus (see, also, the relevant definition in section 2 of the Interpretation Law, Cap. 1).

Nowhere in the statute providing about the existence and functioning of the appellants (Cap. 171) was there to be found, at the time when the transaction in question took place, any provision requiring that a contract of this nature should be in writing and under seal.

It is, indeed, provided, in section 3 of Cap. 171, that the appellants are a body corporate with a common seal and it is stated, in section 4, that all " deeds, documents and other instruments requiring the seal " of the appellants shall be sealed with such seal in the joint presence of specified officers of the appellants.

It was, however, only after the said transaction that provision was actually made, for the first time, regarding which contracts or other documents of the appellants are to be under their seal (see section 7 of the Electricity Development (Amendment) Law, 1963—Law 24/63).

An enactment which might be usefully compared in this respect is the Companies Law (Cap. 113) wherein it is laid down, by means of section 33 thereof, when contracts of companies are to be under seal ; this statutory provision which is not applicable, as such, to contracts of the appellants, constitutes an example of a " Law " making specific provision regarding contractual formalities, as envisaged in the already quoted section 10 of Cap. 149 ; in the same way in which section 7 of Law 24/63—just referred to—introduces a statutory provision of an analogous nature.

It has been argued by counsel for the appellants that even before the enactment of Law 24/63 a contract, such as the one with which we are concerned in this case, had to be under seal, in view of the application of the English Common Law rule to the effect that contracts of corporations should, in general, be under seal.

Assuming—without holding to that effect—that (in view of, *inter alia*, *Queen* v. *Erodotou* 19 C.L.R. 144) at the material time, in October 1962, the said Common Law rule applied to contracts entered into by the appellants, in the sense that such rule had to be read as supplementing either section 4 of Cap. 171 or section 10 of Cap. 149, or both, I would still not be prepared to hold that this rule prevented the formation of a binding agreement—not being, admittedly, under seal—between the appellants and the respondents for the supply in January, 1963, of 18,000 tons of fuel oil : I have reached this view because it was recognized, as an exception to the Common Law rule in question (which rule in England was abolished by the Corporate Bodies' Contracts Act, 1960) that a trading corporation had power to contract without a seal " in matters relating to its trade, irrespective of the magnitude or insignificance of the subject-matter of the contract and of the frequency with which such contracts were entered into, so long as the contract was incidental to the business for which the corporation was created " (see Chitty on Contracts, 22nd ed. Vol. 1, p. 457, para. 457 and the case-law referred to therein) ; and I am of the opinion that the appellants are a trading corporation and that a contract for the purchase of fuel oil is incidental to the business for which the appellants were created, namely the supply of electricity.

Bearing in mind the object, and looking as a whole at the provisions, of Cap. 171, I had to hold that the appellants are a trading corporation in relation to their main function of the supply of electricity ; though, indeed, such function is within the realm of public law, the appellants are, also, to a certain extent, a commercial undertaking (see *Sevastides and The Electricity Authority of Cyprus* (1963) 2 C.L.R. 497, at p. 502 ; also, *Markoullides* and *The Republic*, 3 R.S.S.C. 30, at p. 34).

The appellants are what would be described in English law as a national corporation created by statute for the benefit or service of the community and not owned by private individuals.

It is quite clear that, depending on the provisions of the particular legislation and other relevant factors, a national corporation may be a trading or a non-trading corporation—see Halsbury's Laws of England, 3rd ed., Vol. 9, pp. 5-7, paras. 5, 6 and 7 ; and it is significant to note that the previously existing British Transport Commission was described, in para. 5, as a trading national corporation and it was placed, in para. 7, together with the then British Electricity Authority and the Electricity Area Boards, as well as other national corporations, in the category of such corporations " which have industrial or transport or trading undertakings, although the object of the corporation itself may be to provide a service rather than to make a profit ".

The fact that section 23 of Cap. 171 provides that the appellants shall fix the charges, for sales of electricity and for services rendered by them, at such rates and on such scales that the revenue derived in any one year from such sales and services, together with their revenue, if any, in such year from other sources, will be sufficient and only sifficient to meet and make provision for their financial obligations—in other words that they are not expected to make a profit--is not sufficient to lead me to the conclusion that, notwithstanding the object, and the provisions as a whole, of Cap. 171, the appellants are not a trading corporation. It is useful to point out in this connection that sections 3 (4) and 85 of the Transport Act, 1947, in England, made analogous provisions in relation to the British Transport Commission, by imposing on it a general duty to secure that its revenue was not less than sufficient, taking one year with another, for making provision for the meeting of charges properly chargeable to revenue—(this being, in effect, another way, though perhaps a less explicit one, of stating what is set out in section 23 of Cap. 171)—and yet the existence of such provisions did not prevent, in

view of the true nature of things, the British Transport Commission from being treated as a trading national corporation. Anyhow, as pointed out by Lord Coleridge, C.J., *In the matter of the duty on the estate of the Incorporated Council of Law Reporting for England and Wales*, 22 QBD 279, at p. 293 "..... it is not essential to the carrying on of a trade that the persons engaged in it should make, or desire to make, a profit by it. Though it may be true that in the great majority of cases the carrying-on of a trade does, in fact, include the idea of profit, yet the definition of the mere word 'trade' does not necessarily mean something by which a profit is made".

Moreover, the exact nature of the appellants may be examined as against the constitutional background of the State and, in particular, in the light of the provisions of Article 25 of the Constitution, whereby it is laid down that, as an exception to "the right to practise any profession or to carry on any occupation, trade or business", it is rendered permissible, if it is in the public interest, to provide by legislation that an enterprise in the nature of an essential public service shall be carried out by a public corporate body created for the purpose by such legislation; thus, in actual fact, a trading monopoly is created and this is the position in relation to the appellants, in view of the nature of the service carried out by them under the provisions of Cap. 171; of course, Cap. 171 was enacted prior to the coming into operation of the Constitution in 1960, but it has continued in force thereafter (under Article 188 thereof) and its effect may be derived, not only from its object and its provisions when looked upon as a whole, but also from the constitutional framework within which it continues in force.

In the light of all the various reasons, set out in this judgment, I hold that in the circumstances of this case a binding contract, even though without being under seal, was entered into between the parties to these proceedings, for the supply of 18,000 tons of fuel oil by the respondents to the appellants in January, 1963, and that such contract was broken by the appellants; the respondents are entitled to damages to be assessed in the course of the civil action in which the judgment under appeal, regarding liability, was given.

I would, therefore, allow the appeal to the extent of varying the judgment of the Court below so that the appellants are found guilty of breach of contract only to the aforementioned extent, and not in respect of a contract involving

189,000 tons of fuel oil, as found by the Court below; I agree that there should be no order as to costs in the proceedings till now, either before the District Court or on appeal.

JOSEPHIDES, J.: I regret I have not found it possible to agree with the conclusion reached by my learned brothers in this appeal.

The defendant corporation in the present case appeals against the judgment of the Full District Court of Nicosia whereby it was found and adjudged that (*a*) there was a valid agreement between the plaintiff company (respondents) and the defendant corporation (appellants) by which the said corporation undertook to buy from the plaintiff company a quantity of 189,000 tons of fuel oil during a period of two years beginning on the 1st January, 1963; and (*b*) that the defendant corporation committed a breach by refusing to carry out the said agreement.

The question of damages was, by agreement of the parties, left to be decided later.

The approximate value of the required fuel oil was £900,000 (nine hundred thousand pounds) and the damages claimed by the plaintiff company over £40,000 (forty thousand pounds).

The plaintiff company is a company of limited liability registered in Cyprus and carrying on the business of importation, supply, sale and distribution of petroleum products in Cyprus. The defendant corporation is the Electricity Authority of Cyprus, a public corporation created under the provisions of the Electricity Development Law, Cap. 171

The plaintiff company by their action claimed damages which they alleged that they suffered as a result of the repudiation by the defendant corporation of an agreement which was concluded between them in October, 1962, for the supply of 210,000 tons of fuel oil to the defendant corporation.

The facts of this case, so far as material for the purposes of this judgment, were briefly as follows: In July, 1962, the defendant corporation advertised for the submission of tenders for the supply to them of 210,000 tons of fuel oil. The plaintiff company was one of the companies which submitted a tender. On the 3rd October, 1962, the defendant corporation passed a resolution to the effect that the tender of the plaintiff company be accepted. The plaintiff company alleged that on that evening the Chairman of the defendant

corporation, Mr. Lefcos Georghiades, informed the Managing Director of the plaintiff company, Mr. Takis Lefkaritis, of the acceptance, of their tender and that on the following morning Mr. Lefkaritis saw the General Manager of the defendant corporation, Mr. Soterios Anastassiades, who confirmed the acceptance and informed him that a formal contract would be drawn up. The case of the plaintiff company was that by this acceptance a valid agreement was concluded between them and the defendant corporation for the supply of 210,000 tons of fuel oil.

The case for the defendant corporation was that there was no acceptance of the tender by them and that, in any case, no valid agreement was concluded between the defendant corporation and the plaintiff company. One of their main contentions was that, for an agreement of this nature to be valid and binding on the said corporation, it must be in writing and under the seal of the corporation.

The trial Court found in favour of the plaintiff company and the defendant corporation has taken the present appeal on several grounds which are set out in the notice of appeal, with which I shall deal later in this judgment

It is common ground that in July, 1962, the defendant corporation invited tenders for the supply of fuel oil. The last day fixed for the submission of tenders was the 31st August, 1962. The notice in the newspapers did not state the specifications and conditions, but those who wished to submit tenders were asked to obtain a copy from the offices of the corporation. The plaintiff company obtained a copy of such specifications and conditions and submitted their tender on the 30th August, 1962 ; and they allege that their tender was accepted early in October, 1962.

The trial Court made a finding that the obligation on the part of the acceptor to buy was at least 189,000 metric tons and on the part of the offeror to supply a quantity from 189,000 to 231,000 tons at the option of the acceptor and under the terms of the tender, and this over a period of two years. The first delivery would take place in January, 1963, in respect of a quantity of 18,000 tons of fuel oil.

The following are the material facts as from the 30th of August, 1962, when the plaintiff company submitted their tender.

On the 7th September, 1962, the plaintiff company wrote a letter, in consequence of a telephone conversation

which they had with the Chairman of the defendant corporation, Mr. L. Georghiades, whereby they agreed to accept payment within 60 days (instead of 30 days as in the original tender) after delivery of each consignment. On the 8th September, 1962, the Managing Director of the plaintiff company, Mr. T. Lefkaritis, had a telephone conversation with Mr. L. Georghiades who enquired whether there was not a clerical error in their tender with reference to the calorific value of the fuel oil which was to be supplied by the plaintiff company and, at the same time, he asked whether the latter could quote a flat rate for all three grades which they offered to supply. Mr. Lefkaritis wrote a letter correcting the clerical error and giving a flat rate for all three grades. On the 11th September, 1962, the plaintiff company wrote another letter addressed to the General Manager of the defendant corporation extending the validity of their tender to the 10th October, 1962. This was done at the request of the said General Manager, Mr. S. Anastassiades.

At a meeting held on the 3rd October, 1962, it was resolved by the defendant corporation to accept the tender of the plaintiff company. The resolution was passed by a majority of four to two, with one abstension (the Chairman).

In accordance with the evidence of Mr. Lefkaritis, Mr. L. Georghiades, Chairman of the defendant corporation, on the same evening (3.10.1962), at about 6–7 p.m., telephoned to him and informed him that the plaintiffs' tender had been accepted by the defendant corporation. Mr. Lefkaritis asked whether this was final and Mr. Georghiades replied that he spoke on behalf of the corporation's Board of Directors. Mr. Lefkaritis then asked him whether he could give these news to the press and Mr. Georghiades replied in the affirmative. As a result, Mr. Lefkaritis informed the press and on the following day (4.10.1962) all Cyprus newspapers contained this information. On the same day (4.10.1962) Mr. Lefkaritis visited the office of the General Manager of the defendant corporation (Mr. Anastassiades). He was accompanied by the Secretary of the plaintiff company and another member of his staff who is now dead. Mr. Lefkaritis and the Secretary, as well as Mr. Anastassiades, General Manager of the defendant corporation, gave evidence before the trial Court regarding the conversation which they had on that day and on the following day and there is some dispute as to what was actually said during those two meetings.

According to the evidence of Mr. Lefkaritis, Mr. Anastassiades congratulated him for the acceptance of their

tender, expressed the hope that they would cooperate, etc., that he mentioned that a formal contract would be prepared by the legal adviser of the defendant corporation and that he also offered to send a letter confirming the acceptance. Mr. Lefkaritis further stated that he replied that he did not think that this was necessary but that, if Mr. Anastassiades could do it, it would be better. At the interview of the 5th October, 1962, Mr. Lefkaritis said that he informed Mr. Anastassiades that on the 8th October, he would leave for Italy to arrange for the first consignment and that he asked Mr. Anastassiades to give him details of his requirements by that date and the latter promised to do so, but that, in fact, he did not. Mr. Lefkaritis left Cyprus and he returned on the 11th October. As by the 9th October, 1962, the plaintiff company had no confirmation, they sent on that day the following telegram to the General Manager of the defendant corporation :

> " Following your verbal confirmation of the 4th October that the Board of Directors instructed you to notify us of their acceptance of our tender for the supply of fuel oil to the Auhority we have concluded all arrangements and contracted ourselves with our suppliers for the supply of the quantity covered by the tender stop Please forward by return covering letter as promised pending prepare of contract in due time.
>
> Petrolina."

In reply the defendant corporation sent the following letter dated the 12th October, 1962 :

> "Your telegram addressed to the General Manager dated 9th October, 1962, was brought before and considered by the Authority at its meeting of the 12th inst. The Authority cannot accept your contention that there has been any verbal or other confirmation of its acceptance of your tender for the supply of fuel oil to the Authority under Tender No. 36/62. The Authority has decided to invite new tenders and your company will no doubt have the opportunity to compete again.
>
> Yours faithfully,
> Secretary."

Other correspondence followed and eventually the defendant corporation invited other tenders and the result

was that the contract was given to another firm, and the plaintiff company instituted the present proceedings.

Mr. Anastassiades in evidence denied that he communicated the acceptance of the defendant corporation to Mr. Lefkaritis, and he further stated that neither he (Mr. Anastassiades) nor the Chairman of the defendant corporation was authorized by the resolution of the 3rd October, 1962, or otherwise, to communicate to the plaintiff company the decision of the defendant corporation. In the course of his evidence, Mr. Anastassiades further stated as follows (at page 59 of the record) :—

" *Q*. Did you tell Mr. Takis Lefkaritis that you were authorized by the Board to confirm the acceptance of his tender ?

A. No, but this is part of my duties to implement the Authority's resolution.

Q. And what procedure did you follow in this matter ?

A. In this matter is to prepare a letter of intent. It is a letter addressed to the prospective supplier communicating to him the intention of the Authority to place an order with him and inquiring as to various points that are not specifically mentioned in his tender and also of the intention of the Authority when ultimately all these points are cleared to prepare a contract. A contract containing all the details of the specifications and other relevant matters, methods of payment, dates of delivery and so on which after they are approved by the Authority will be submitted for consideration and signature under the seal of the Authority.

Q. You have any other case either before or after this transaction relating to supply of fuel oil of this quantity, was this procedure you mentioned followed ?

A. Yes it was, and always a contract was executed under the seal of the Authority to the best of my knowledge. In any way during my time."

The trial Court accepted the evidence of Mr. Lefkaritis to the effect that on the evening of the 3rd October, 1962, the Chairman of the defendant corporation (Mr. Lefcos Georghiades) informed him that their tender had been accepted and that he spoke on behalf of the Board ; and they made a finding on this point accordingly. They were of the view that his evidence was corroborated by the fact that the news of the acceptance of the tender was published in the newspapers on the following day and that the

defendant corporation did not deny this, and by the fact that on the following day the General Manager of the defendant corporation (Mr. Anastassiades) congratulated the plaintiff company for the acceptance of their tender. It should be added that meantime Mr. Lefcos Georghiades had ceased to be Chairman of the defendant corporation, that at the time of the hearing he was serving as Ambassador in Moscow, and that he was not called as a witness by either side nor was his evidence taken on commission or otherwise.

Furthermore, the trial Court accepted the evidence of Mr. Lefkaritis regarding the conversation of the 4th and 5th October, 1962, between him and Mr. Anastassiades, as stated earlier in this judgment.

The trial Court found that on the 4th October, 1962, Mr. Anastassiades informed orally Mr. Lefkaritis that the plaintiff company's tender had been accepted, that the contract would be drawn up by the legal adviser of the defendant corporation, and that Mr. Anastassiades told Mr. Lefkaritis that he was prepared to send him a letter confirming the acceptance. The Court further found that the acceptance was not made subject to contract, that one of the duties of the General Manager of the defendant corporation was to implement the decisions of the corporation, and that neither the Chairman nor the General Manager of the defendant corporation informed the plaintiff company that the acceptance was conditional upon anything to be agreed later on.

Pausing there, I think I should state that, considering the evidence of the defendant corporation's General Manager (to which I have referred earlier), and having regard to the practice invariably followed by the said corporation when awarding similar contracts for the supply of fuel oil, viz. that a written contract had to be drawn up and signed under the seal of the corporation, with great respect to the trial Court, I am inclined to the view that their findings to the contrary in this case are wrong. Considering, however, the conclusions I have reached on the legal aspect of the case (which I shall state later in this judgment), I need not deal further with this matter.

With regard to the legal aspect, the trial Court were of the view that the defendant corporation was a corporation created by statute ; that by the Electricity Development Law, Cap. 171, section 4 (2), it was provided that all deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the seal of the Authority in

the presence of the Chairman etc.; but that Law did not lay down which agreements of the Authority were required to be in writing and under the seal of the Authority (this has been provided for subsequently by Law 24 of 1963, section 7, which now provides that agreements with the Authority shall be in writing or otherwise and states the form of contracts, but that Law was enacted some time after the agreement now in dispute). The trial Court were further of opinion that in the circumstances one should look to the common law to see whether the agreement of the defendant corporation should have been in writing. The Court then stated the common law on the point with regard to the requirement that a corporation could only be bound by contracts made under its corporate seal, and the exceptions to the rule, including the exception that trading corporations may enter into simple contracts relating to the objects for which they were created. The trial *Court finally held that the defendant corporation* was a trading corporation on the footing that it was an electrical undertaking which was empowered to buy fuel and sell electricity ; that, in the circumstances, it was not necessary that the contract should be under seal and that the corporation could enter into a parol contract as it related to the objects for which it was created ; and that the said agreement was a valid contract between the parties and that the defendant corporation committed a breach by repudiating it.

Learned counsel for the appellant corporation argued the appeal before us on several grounds, but I need only deal fully with the following questions which, I think determine the appeal, that is to say : (*a*) whether the agreement for the supply of 189,000 tons of fuel oil over a period of two years, stated to have been entered into by the Chairman and/or the General Manager of the defendant corporation with the plaintiff company in this case, was valid without seal. As a side issue to this question it will also have to be considered whether the defendant corporation was a trading corporation or not ; and (*b*) whether the Chairman and/or General Manager of the defendant corporation had express or implied authority to bind the corporation by a parol contract. Later in this judgment I shall also deal briefly with the questions whether the agreement was " subject to contract ", and whether a valid agreement was concluded in respect of the first delivery of 18,000 tons to be effected in January, 1963.

As to the *first question*, we have to determine whether the common law rule with regard to the requirement of the

seal in the case of contracts by corporations is applicable by the Courts of Cyprus or not. The relevant statutory provisions are section 10 of the Contract Law, Cap. 149, and sections 3 and 4 of the Electricity Development Law, Cap. 171. These sections read as follows :

Contract Law, Cap. 149, *section* 10 :—

" 10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void, and may, subject to the provisions of this Law, be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

(2) Nothing herein contained shall effect any Law in force in Cyprus, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any Law relating to the registration of documents."

Electricity Development Law, Cap. 171, *section* 3*:*

" 3. There is hereby established a body to be called the Electricity Authority of Cyprus which shall be a body corporate with perpetual succession and a common seal and with power to acquire, hold and dispose of property, to enter into contracts, to sue and be sued in its said name and to do all things necessary for the purposes of this Law :

Provided that, during the subsistence of a guarantee given under section 20, the Authority shall not alienate, mortgage, charge or demise any of its immovable property without the approval of the Governor in Council."

Section 4 (as amended by Law 10 of 1960) :

" 4. (1) The common seal of the Authority may from time to time be broken, changed, altered and made anew as to the Authority seems fit, and until a seal is provided, a stamp bearing the inscription 'Electricity Authority of Cyprus' may be used as the common seal.

(2) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the seal of the Authority in the presence of the

Chairman or Vice-Chairman of the Authority, and of the Secretary of the Authority or some other person authorized by the Authority to act in that behalf, who shall both sign every such deed, document or other instrument to which such seal is affixed, and such signing shall be sufficient evidence that such seal was duly and properly affixed and that the same is the lawful seal of the Authority."

It is true that in section 10 (1) of the Contract Law it is provided that a contract may be made in writing or by word of mouth but this must be read subject to, and in conjunction with, the provisions of sections 3 and 4 of Cap. 171 ; and subject to the provisions of section 33 of the Companies Law, Cap. 113, and section 74 of the Municipal Corporations Law, Cap. 240, (now re-enacted in section 22 (1) of Law 64 of 1964), as well as other similar statutory provisions, which lay down specifically how a contract should be made in order to be effectual in law and binding on the aforesaid corporations. In this connection it should be borne in mind that the seal of the corporation when affixed is equivalent to signature by a natural person, and places the corporation in a similar position (see 9 Halsbury's Laws, 3rd edition page 82, paragraph 168).

It is significant to observe that sections 3 and 4 of Cap. 171 provide, *inter alia*, that the Electricity Authority of Cyprus shall be a body corporate, with a common seal and with power to enter into contracts ; and that such seal shall be affixed to all deeds, documents and other instruments requiring the seal of the Authority in the presence of the Chairman and of the Secretary of the Authority.

Consequently, reading section 10 of the Contract Law, Cap. 149, in conjunction with the abovementioned sections 3 and 4 of Cap. 171, it is obviously the intention of the legislative authority to enact a certain part of the common law, but the enactment is not complete in so far as contracts by corporations aggregate are concerned, other than corporate bodies which are governed by express statutory provisions (as in the case of companies under Cap. 113, and municipal corporations as stated earlier) ; in such circumstances the common law, which is reproduced in the above quoted sections of the Contract Law and of Cap. 171, should be amplified and interpreted according to the decided cases which have formulated that law in England. This is in accordance with the principle enunciated by the Supreme Court of Cyprus in the case of *The Queen* v. *Erodotou*, 19 C.L.R. 144 ; and *Markou* v. *Michael* 19 C.L.R. 282,

where it was laid down that the principle is of general application when interpreting the statute law of Cyprus and is " of especial relevancy when construing codes such as the Contract Law where an attempt is made to condense '*multum in parvo*'. Codes usually aim at a concise statement of legal principles ; they are not intended to be a complete and exhaustive statement of the law " (*Markou's* case, at page 285).

I shall now proceed to consider what is the common law rule with regard to contracts by a corporation aggregate requiring to be under seal. From very early times in the common law the general rule was that an unsealed contract was enforceable neither by nor against a corporation. To this general rule of the common law there were certain exceptions. This rule was, however, finally abolished in England by the Corprorate Bodies Contracts Act, 1960, the effect of which is to enable all corborate bodies to enter into contracts with no more formality than is required in the case of other companies. There is now similar provision in our law, namely, section 7 of Law 24 of 1963 which was enacted after this action.

In *Church* v. *Imperial Gas Light and Coke Co.* (1838) 6 Ad. & El. 846, 861, Lord Denman, C. J., said : " Wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created, the exception has prevailed : Hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions ". The purchase of small quantities of goods needed for the day-to-day service of the offices might come within the words " the doing of acts very frequently recurring " (per Lord Goddard, C.J., in *Wright & Son Ltd.* v. *Romford Borough Council* [1957] 1 Q.B. 431, at page 437).

The exception applies to both trading and non-trading corporations (*Wells* v. *Mayor etc. of Kingston-upon-Hull* (1875) L.R. 10 C.P. 402) and to both excecuted and executory contracts, as was laid down in *Church's* case. Further, in the case of non-trading corporations if it is shown that the subject-matter of the contract was connected with the purposes for which the corporation was established and that the party claiming had performed his part of the contract, the law will imply a promise to pay for the benefit requested and received : *Lawford* v. *Billericay Rural District Council* [1903] 1 K.B. 772 ; and *Clarke* v. *Cuckfield Union Guardians* [1852] 21 L.J.Q.B. 349.

Generally, the scope of this rule had been greatly restricted by numerous statutory, common law and equitable exceptions. Thus, it did not apply to corporations governed by the provisions of the Companies Clauses Consolidation Act, 1845, or the Companies Act, 1948. Briefly, apart from statute, the following exceptions were, *inter alia*, recognised to the old rule that a corporation aggregate could only contract under seal :

(*a*) a seal was not required for trivial matters or those of daily necessity, such as the supply of gas by a gas company (see *Church's* case, supra), or the grant of a licence to use a municipal graving dock (see *Wells'* case supra) ;

(*b*) a trading corporation had a general power to contract without a seal in matters relating to its trade, irrespective, of the magnitude or insignificance of the subject matter of the contract and of the frequency with which such contracts were entered into, so long as the contract was incidental to the business for which the corporation was created ; see *South of Ireland Colliery Company* v. *Waddle* (1869) L.R. 3 C.P. 463 ; affirmed in 4 C.P. 617 ; *Wells'* case, quoted above ; and *Bourne* & *Hollingsworth* v. *The Mayor*, & *C.*, *of St. Marylebone* (1908) 24 T.L.R. 322 and 613.

In *The South of Ireland Colliery Company* case (quoted above), a company incorporated under the Companies Act, 1862, for the working of collieries, contracted, but not under seal, with an engineer for the erection of a pumping-engine and machinery for use in the colliery, and paid him part of the price. In an action by the company against the engineer for a breach of contract in refusing to deliver the engine and machinery, it was held that the action was maintainable though the contract was not under seal.

In the *Wells'* case (quoted above) the defendants, a municipal corporation, were possessed of a graving dock. The plaintiff entered into a parol agreement with the defendants for the use of the dock upon the terms of certain printed regulations. The plaintiff paid £3.10.0*d.* to the borough treasurer, but the defendants did not admit the plaintiff's vessel into the dock in her turn. It was held that the contract need not be under the seal of the corporation as the admission of a ship into the dock was " a matter of frequent ordinary occurrence " (1875) L.R. 10 C.P., at page 410), or an

act of " daily necessity to the corporation " (page 411), or within the principle of " convenience amounting almost to necessity " (page 413), and, therefore, coming within the exception to the rule.

In the *Bourne & Hollingsworth* case (quoted above) Ridley, J., *inter alia*, held that the defendant Borough Council, which had statutory powers to trade, was a trading corporation in the circumstances of the case, and that a contract for *the supply of electricity* to *a consumer* did not require to be made under seal. On appeal, it would appear from the report that this point was not argued, but the judgment of Ridley, J., was reversed, *inter alia*, on the ground that there was no evidence of any authority in the officers concerned to make the contract and that there was no holding out by the defendant corporation.

In a recent case, that of *Wright & Son Ltd.* v. *Romford Borough Council* [1957] 1 Q.B. 431, although there was an agreement in writing, but not under seal, signed by the defendant council's engineer and surveyor, for the demolition of certain buildings of the Council by the plaintiffs, and the council repudiated the contract, it was (*inter alia*) held by Lord Goddard, C.J., that, as the council was a body corporate and the agreement was not under seal, it was not binding on them.

As was said in *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815, " the seal is the only authentic evidence of what the corporation has done, or agreed to do. The resolution of a meeting however numerously attended is, after all, not the act of the whole body. Every member knows he is bound by what is done under the common seal and by nothing else. It is a great mistake, therefore, to speak of the necessity for a seal as a relic of ignorant times. It is no such thing. Either a seal, or some substitute for a seal, which by law shall be taken as conclusively evidencing the sense of the whole body corporate, is a necessity inherent in the very nature of a corporation ".

The next question which falls to be determined is whether the defendant corporation is a trading corporation. In order to decide this it is, I think, necessary to consider in some detail the provisions of the Electricity Development Law, Cap. 171 (as it stood at the material time), under which the defendant corporation, a corporation aggregate, was created.

The long title of the statute (Cap. 171) states that it is a Law to provide for the establishment of a corporate body

and for the exercise and performance by such body of functions relating to the generation and supply of electricity and certain other matters, etc. Section 3 provides that it is thereby established a body corporate with perpetual succession and a common seal, with power, *inter alia*, to enter into contracts. Section 4 (2) provides that all deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the seal of the Authority in the presence of the Chairman or Vice-Chairman and of the Secretary, who shall both sign every such deed etc. to which such seal is affixed. Section 5 of Cap. 171 (as amended by Law 10 of 1960) provides as to the constitution of the Authority which shall consist of not more than seven members, appointed by the then Colonial Governor and now the Council of Ministers ; one of the members shall be designated as Chairman and another as Vice-Chairman. The General Manager is not one of the members of the Authority (see Law 10 of 1960), but one of the officers and servants appointed by the Authority under the provisions of section 10 of the Law ; and there is no provision whatsoever in the Law, or any rules or regulations or standing orders made thereunder, authorizing either the Chairman, or the General Manager, or any other member or officer of the corporation to represent it or make valid contracts on its behalf. It would seem that the only powers conferred on the Chairman are those under the provisions of sections 35 and 36, regarding the entry on land for surveys etc., and under the Second Schedule (and section 27) regarding the signing of the notice of acquisition by the Chairman.

Section 8 (as amended by Law 10 of 1960) provides that the quorum at all meetings of the Authority shall be four members in addition to the Chairman or Vice-Chairman ; that the Chairman, and in his absence, the Vice-Chairman shall preside at such meetings ; and that the presiding member shall have a casting vote in case of equality of votes. Section 11 provides that all members, officers and servants of the Authority shall be deemed to be employed in the public service of the Republic within the meaning of the Criminal Code.

The general functions of the Authority are laid down in section 12 which provides that it shall be the duty of the Authority, *inter alia*, to generate electricity, to secure the supply of electricity at reasonable prices, to carry on any business usually associated with an electricity undertaking, and to carry on all such activities as may appear to it requisite, advantageous or convenient for or in connection with the discharge of its duties as aforesaid.

Section 17 provides that the Authority may provide, sell etc. electric lines, fittings, apparatus and appliances for lighting, heating, motive power, etc. Section 23, which is one of the more important provisions in the Law, lays down that all charges made by the Authority for electricity sold by them to consumers shall be fixed at such rates that the revenue derived in any year by the Authority will be " sufficient and only sufficient, as nearly as might be, to pay all remunerations, allowances, salaries, gratuities, working expenses and other outgoings of the Authority "; which means that any profit must be ploughed back for the benefit of the consumers by reducing chargeable tariffs for current or power supplied. Section 25 provides that the Authority shall be exempted from taxation and stamp duties ; and section 27 empowers the Authority to make compulsory acquisition of immovable property on payment of a compensation.

From all these provisions it appears that the defendant corporation is a national corporation for the benefit or service of the whole community at large and not of any section or class of persons or members of the corporation only. It is a public service corporation which carries on its undertaking as a responsible independent organization, and not as a part of any department of State. The object of the corporation is to provide a service and not to make a profit.

In the circumstances, considering the objects and structure of the defendant corporation, as laid down in the statute creating it, I would be inclined to the view that it is not a trading corporation and, therefore, not exempt from the requirement of the law as to the necessity of a seal to bind it. The contract in question in the present case is a contract in the region of one million pounds which was not a matter of very frequent occurrence, but of a duration of two years. If the contention be right that this contract by the defendant corporation need not be under seal, then a seal would become merely a museum piece and section 4 of Cap. 171, which provides how the seal is to be kept and used useless. Though the defendant corporation's defence may appear to be a technical one, it is a valid defence in law and the Court is bound to give effect to it. Accordingly, it follows that, as the contract is not under seal, the action cannot be maintained.

It should, perhaps, be added that in the case of the supply of electricity by the defendant corporation to consumers

the contract need not be under seal as this is a matter of very frequent ordinary occurrence and it would, therefore, come within the exception to the general rule (see *Church's* case and *Wells'* case, quoted above). However, as stated earlier, all these matters are now regulated by legislation which was enacted after the present action.

Although this conclusion determines the appeal, I think that I ought to deal also with the *second question* raised, that is to say, assuming that the defendant corporation is a trading corporation, whether—(i) there is any express provision either in the statute or any rules or standing orders, or a resolution made by the defendant corporation, authorizing the Chairman or General Manager to bind the corporation by parol ; or (ii) whether there was an implied authority to do so.

With regard to (i), there is no express provision either in the statute, or in any rules or standing orders, and there is no evidence of any resolution conferring such authority on the Chairman or General Manager of the defendant corporation.

With regard to (ii), did either the Chairman or General Manager have implied authority to make such a contract by parol?

In this connection it is significant to note that in England, under regulations made under the Electricity Act, 1947, in respect of the Central Authority and the Area Boards, contracts which, if entered into by a person not a body corporate would not require to be under seal, may be entered into by a member, officer, or servant of the Council or Board concerned, *if generally or specially authorised by resolution*, but not otherwise (see Halsbury's Statutory Instruments, Volume 7, pages 106–7).

That a municipal or other non-trading corporation must contract by a seal, which authenticates the concurrence of the whole body corporate, is a necessity inherent in the very nature of a corporation. Their agents must, therefore, in general, be appointed under seal. But, as in the case of contracts, with regard to matters of trifling importance, of necessary recurrence, and in matters for the doing of which the corporation was created, these corporations may appoint agents other than by deed and contract by such agents on the ground that to hold to the contrary would occasion inconvenience and tend to defeat the very object for which the corporation had been created (see

1 Halsbury's Laws, third edition, page 155, paragraph 367, and the cases quoted therein in support). There is statutory provision in section 74 (2) of the English Law of Property Act, 1925, that in the case of documents not under seal, the board of directors etc. of a corporation may by resolution or otherwise appoint an agent either generally or in any particular case to execute such documents on behalf of such corporation.

Trading corporations, municipal corporations in the exercise of statutory powers to trade, and joint stock companies may appoint agents by parol to enter into all contracts which are in furtherance of the objects of their incorporation (1 Halsbury's Laws, third edition, page 156, paragraph 369).

In *British Thomson-Houston Company, Ltd.* v. *Federated European Bank, Ltd.* [1932] 2 K.B. 176, by the articles of association of a Company the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the Company, and to determine who should be entitled to sign contracts and documents on the Company's behalf. A document purporting to be a guarantee was given to the plaintiffs executed by the Company in this form : " The F.E.B., Ld. signed N.P." N.P. was a director of the Company. During the negotiations for the giving of the guarantee he had written to the plaintiffs, signing the letter " for and on behalf of " the Company, " N.P., Chairman ". On these facts, in an action on the guarantee, it was held by the Court of Appeal that the plaintiffs were entitled to presume that the directors of the Company had authorized N.P. to sign contracts on behalf of the Company, and that the Company was liable on the guarantee (*Houghton* & *Co.* v. *Nothard, Lowe* & *Wills, Ld.* [1927] 1 K.B. 246 ; [1928] A.C. 1, was considered ; and *Kreditbank Cassel G.B.M.H.* v. *Schenkers*, Ld. [1927] 1 K.B. 826, was followed).

In a note to the report of the *British Thomson-Houston* case, the reporter states that the authorities seem to warrant the propositions quoted below. This note was expressly approved in *Clay Hill Brick and Title Co., Ltd.* v. *Rawlings* [1938] 4 All E.R. 100, and *Freeman and Lockyer* (*a firm*) v. *Buckhurst Park Properties* (*Mangal*), *Ltd. and Another* [1964] 1 All E.R. 630, at page 640. In the note the reporter says :

> " If in an action against a limited company the plaintiff relies upon an act of an officer of the company, then (1) If the company has only a limited power to do the

act, e.g., a power to borrow up to a certain amount, the plaintiff is affected with notice of the limitation: *Fountain* v. *Carmarthen Ry. Co.* (1868) L.R. 5 Eq. 316 ; (2) If the articles of association of the company give the officer authority to do the act provided certain directions are observed, and the officer purports to do the act, the plaintiff is entitled to assume that the directions have been followed : *Royal British Bank* v. *Turquand* (1855) 5 E. & B. 248 ; (1856) 6 E. & B. 327 ; *In re Land Credit Co. of Ireland* (1869) L.R. 4 Ch. 460 ; *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869 ; *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.* (1895) 1 Ch. 629; (3) If the articles merely empower the directors to delegate to an officer authority to do the act, and the officer purports to do the act, then—

(*a*) if the act is one which would ordinarily be beyond the powers of such an officer, the plaintiff cannot assume that the directors have delegated to the officer power to do the act ; and if they have not done so, the plaintiff cannot recover : *Premier Industrial Bank* v. *Carlton Manufacturing Co.* [1909] 1 K.B. 106 (dissented from in *Dey* v. *Pullinger Engineering Co.* [1921] 1 K.B. 77 ; (sed quaere) ; *Houghton & Co.* v. *Nothard Lowe & Wills' Ld.* [1927] 1 K.B. 246 ; in H. L. on another point [1928] A.C. 1. But

(*b*) if the act is one which is ordinarily within the powers of such an officer, then the company cannot dispute the officer's authority to do the act, whether the directors have or have not actually invested him with authority to do it : *Mahony* v. *East Holyford Mining Co.* L.R. 7 H.L. 869 ; *Biggerstaff* v. *Rowatt's Wharf, Ld.* (1896) 2 Ch. 93, 102, 106 ; *Dey* v. *Pullinger Engineering Co.* [1921] 1 K.B. 77 ; *Kreditbank Cassel* v. *Schenkers, Ld.* [1927] 1 K.B. 826, and the principal case."

In *Rama Corporation, Ltd.* v. *Proved Tin & General Investments, Ltd.* [1952] 1 All E.R. 554, by the articles of association of the defendant company the board of directors were empowered to delegate powers to a committee consisting of a member or members of their body. Without the authority of the other members of the board a director of the defendant company purported to enter into an agreement on the company's behalf with an agent of the plaintiff

company who had no knowledge of the contents of the articles of association of the defendant company or of the board's right to delegate powers to a committee. On a claim by the plaintiff company arising out of the purported agreement, it was held by Slade, J., that as at the time of the making of the purported agreement the plaintiff company, through their agent, had no knowledge of the defendant company's articles of association and the powers of delegation contained therein, the plaintiff company could not rely on those articles as conferring ostensible or apparent authority on the director of the defendant company to make the agreement on behalf of the defendant company, and, therefore, the defendant company were not estopped from establishing that there was no authority in the director to enter into the agreement on their behalf and also were not liable under the agreement : *Houghton* & *Co.* v. *Nothard, Lowe* & *Wills, Ltd.* [1927] 1 K.B. 246, and *Kreditbank Cassel G. M.B.H.* v. *Schenkers, Ltd.* [1927] 1 K.B. 826, were followed by Slade, J.; but *British Thomson-Houston Co., Ltd.* v. *Federated European Bank, Ltd.* [1932] 2 K.B. 176), was not followed ; and *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869, was distinguished. The *British Thomson-Houston* case was, however, subsequently, applied by the Court of Appeal in the *Freeman* case (1964), *supra*, which was recently referred to by the same Court in *Hely-Hutchinson* v. *Brayhead, Ltd.* [1967] 3 All E.R. 98. These cases refer to limited companies with powers of delegation contained in the articles of association.

Subject to the provisions of any statute, the ordinary law of agency applies to regulate the authority, delegation and liability for the acts of the agents of a body corporate. Where a corporation is constituted by a public statute, as is the defendant corporation in the present case, all persons and corporations are presumed to know the nature and extent of its powers (see 9 Halsbury's Laws, third edition, page 66, paragraphs 133 and 134). Those contracting with the defendant corporation are, therefore, bound to know the constitution of the corporation and its powers as given by statute—in this case Cap. 171. No rules or regulations (regarding these matters) appear to have been made under Cap. 171, and there is no memorandum or articles. With regard to the powers of the officers of a corporation, it is stated in Halsbury's Laws, *supra*, page 35, paragraph 61, that a corporation aggregate with a head being one body, the head as such can do nothing without the concurrence of the body, for he is only a part of the entire corporation. Where, therefore, on a sale

by auction of lands belonging to a corporation, the head of the corporation signed the contract on its behalf, it was held that he could not sue the purchaser for breach of contract (*Bowen* v. *Morris* (1810), 2 Taunt. 374, Ex. Ch.). Usage and precedent may be taken into consideration. In a case where the head had for a long period given receipts for certain yearly payments payable to the corporation, the corporation was held to be bound by them (*Southampton Corporation* case (1483), Jenk. 162, quoted in 9 Halsbury's Laws, *ubi supra*, page 35, note (s)).

It was recently held by the Court of Appeal in the case of *Hely-Hutchinson* v. *Brayhead, Ltd.* [1967] 3 All E.R. 98 (to which I referred earlier) that the chairman of a limited company did not have implied authority as such to enter into contracts, the subject-matter of the action, as the office of the chairman did not carry with it authority to enter into such contracts without the sanction of the board. The trial Judge in that case found as a fact that the chairman (Mr. Richards) of the defendant company acted as *de facto* managing director of the company ; that he was the chief executive who made the final decision on any matter concerning finance ; that he often committed the defendant company to contracts without the necessity of sanction from the board, and that the board had acquiesced in this. In the course of his judgment, Lord Denning, M.R., said (at page 102G of the report) :

> "It is plain that Mr. Richards had no express authority to enter into these two contracts on behalf of the company : Nor had he any such authority implied from the nature of his office. He had been duly appointed chairman of the company but that office in itself did not carry with it authority to enter into these contracts without the sanction of the board ; but I think that he had authority implied from the conduct of the parties and the circumstances of the case".

Reverting to the present case, neither the Chairman nor the General Manager of the defendant corporation had express authority to enter into the contract in question on behalf of the corporation. Nor had either of them any such authority from the nature of their respective offices. Did, then, either of them have authority implied from the conduct of the parties or the circumstances of the case? The answer to this is, in my judgment, in the negative. There is no evidence that either of them had made any final decision on any similar matter in the past ; nor that either of them ever committed the defendant corporation to contracts with or

without the knowledge or sanction of the board, nor that the defendant corporation had ever acquiesced in such course of conduct by either of them.

On the contrary, this was the first transaction between the parties and there was uncontradicted evidence that neither the Chairman nor the General Manager had been authorized by resolution or otherwise to bind the defendant corporation by parol or otherwise. There was also uncontradicted evidence that in the past all similar contracts with other contractors for the supply of fuel oil had been executed under the seal of the defendant corporation and not by parol. Furthermore, on receipt of the plaintiff company's telegram of the 9th October, 1962, alleging for the first time that the General Manager of the defendant corporation had orally confirmed to them on the 4th October, 1962, that the board of the corporation had instructed him to communicate to them (the plaintiff company) the acceptance of their tender, the defendant corporation promptly denied such contention by their letter of the 12th October, 1962. This was not an ordinary day-to-day transaction, and the plaintiff company was, therefore, put upon inquiry as to whether the necessary power had been delegated to the Chairman or General Manager for this particular contract. This they have failed to do. There is no evidence that either of those two officers of the defendant corporation had implied authority to make such a contract by parol, and the plaintiff company have failed to prove any ostensible authority for the particular act for which it is sought to make the defendant corporation liable.

For these reasons I would allow the appeal, set aside the judgment of the District Court and dismiss the claim of the plaintiff company (respondent).

Before I conclude, however, I think I ought to deal briefly with two further questions, assuming that the contract need not be under seal and that the Chairman and General Manager of the defendant corporation had authority to make such a contract by parol :

(*a*) On the evidence adduced in this case I would hold that the alleged agreement was subject to formal contract and that, as this was not signed by the parties, no valid contract was concluded. In reaching this conclusion I take into consideration that, having regard to the nature of the transaction, the invitation for tenders as well as the tender (together with the three letters of the plaintiff company supplementing the tender), a number of additional terms had yet

to be agreed upon, such as the question of arbitration, demurrage etc.; and for these reasons I am of the view that, on the evidence, it was understood that the agreement was subject to formal contract. As all the terms were not agreed upon by the parties and no formal contract was signed, the finding of the trial Court that a valid contract was concluded for the supply of 189,000 tons of fuel oil cannot, therefore, be sustained ;

(*b*) I find myself unable to agree that a valid contract was concluded orally in respect of the first delivery of 18,000 tons to be effected in January, 1963. The supply of this quantity was part and parcel of the whole transaction for the supply of 210,000 tons (" 10% more or less "), and it was never the intention of the parties to conclude a separate and distinct agreement in respect of the 18,000 tons only. Such an agreement was neither pleaded by the plaintiff company nor was it part of their case either before the trial Court or before us on appeal and, consequently, this issue was not properly before either Court for determination. It should be borne in mind that the plaintiffs' case as pleaded was that an agreement for the whole quantity of 210,000 tons, and not of any part thereof, was concluded by the Chairman over the telephone on the 3rd October, 1962, and that it was orally confirmed by the General Manager on the following day (see paragraphs 4 and 5 of the statement of claim).

In conclusion, I would allow the appeal; set aside the judgment of the District Court and dismiss the claim of the plaintiff company (respondents) with costs here and the Court below in favour of the defendant corporation (appellants).

VASSILIADES, P.: In the result the appeal is partly allowed, by a majority decision of this Court, to the effect that the respondents-plaintiffs have proved a binding agreement for the supply of 18,000 tons of fuel only, to be delivered in January, 1963, which the appellants-defendants repudiated ; the judgment of the trial Court is, therefore, varied accordingly.

As to costs, we make no order up to this stage of the proceedings in the District Court or in the appeal.

Appeal partly allowed.
No order as to costs.