CROP CONTRACTS

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Wilbur W. Diehl

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THE USE OF CROP CONTRACTS BY PRODUCERS COOPERATIVE ASSOCIATIONS.

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THESIS

Submitted to the faculty of the Michigan State College in partial fulfillment of the requirements for the degree of Master of Science.

by

Wilbur W. Diehl Jr.

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Foreword.

There are several precepts that apply to all contracts, certain rules and general principles that hold for all types of contractual relationships; hence a very brief summary on the nature of contracts is here presented.* It is well to keep in mind when studying contracts that they not only vary in form but that they vary in meaning from time to time as interpretations reflecting the prevailing mores of the people replace the interpretations of a previous time.

Contracts have been developed in answer to man's desire for surety, for order, for stability. Anson, writing on Contract, says, "As the law relating to property had its origin in the attempt to insure that what a man has lawfully acquired, he shall retain; so the law of contract is intended to insure that what a man has been led to expect shall come to pass; that what has been promised to him shall be performed." (1)

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*The major authority consulted for this material was Sir Wm. R. Anson, Bart. D.V.L. as presented by Arthur L. Corbin, Hotchkiss Professor of Law, Yale University. (Principles of the Law of Contract with a chapter on the Law of Agency: Fourth Edition, 1924.)

(1) "Principles of Law of Contract" by W.R. Anson, Page 2.

Definitions of contract vary from those that are simple to those that are very complex. The definition given by Anson is admirable for its clarity, brevity and completeness. "A contract is an agreement, enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others." (1)

A contract is a definite type of agreement, namely, an agreement coupled with obligation where obligation is defined as a legal bond compelling or constraining certain acts on the part of a person or group of persons.

It should be clearly understood that all agreements are not contracts; neither are these classes unrelated. Contracts constitute a class within the larger class--agreements; agreement is a wider, inclusive term.

A contract must include the following factors in order to be valid:

1. "A distinct communication by the parties to one another of their intention; in other words, offer and acceptance.

2. "The presence of certain evidence, required by law of the intention of the parties to affect their

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(1) Ibid., Page 13.

legal relations.

3. "The capacity of the parties to make a valid contract.

4. "The genuineness of the consent expressed in offer and acceptance.

5. "The legality of the objects which the contract proposes to effect." (1)

If any of these factors are absent the contract may be unenforceable.

A valid contract is characterized by at least four factors:

1. An accepted offer, i.e., an offer is made and accepted; a promise results.

2. The offer must be definite. Mere statement of intention does not constitute an offer. (Not "I mean," but, "I will if---")

3. A promise is created only upon acceptance of the offer. A valid offer once accepted is irrevocable.

4. The agreement must be legal, i.e., creating an obligation before the law.

"To make that sort of agreement which results in contract there must be an offer, acceptance of the offer and the law must attach a binding force to the

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(1)Ibid., Page 14.

promise so as to invest it with the character of an obligation." (1)

The contractual relationship may be terminated in one of five ways:

1. "It may be discharged by the same process which created it -- mutual agreement.

2. "It may be performed; the duties undertaken by either party may be thereby fulfilled and the rights satisfied.

3. "It may be broken; upon this a new obligation connects the parties, a right of action possessed by the one against the other.

4. "It may become impossible by reason of certain circumstances to exonerate the parties from their respective obligations.

5. "It may be discharged by the operation of certain rules of law upon certain sets of circumstances."(2)

In view of the fact that cooperatives have had a considerable amount of trouble with broken (or breached) contracts the following precepts are set forth as holding generally:

A contract may be broken,

1. By renunciation, i.e., by renouncing the duties

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(1) Ibid., Page 7
(2) Ibid., Page 502

set forth as contractual obligations.

2. By action rendering impossible the fulfillment of the contract.

3. By simply failing or refusing to live up to contractual obligation.

In case of breach of contract, "the plaintiff may ask for one of five things:

"Damages, or compensation for the non-performance of a contract,

"Specific performance, or an order that a contract should be carried into effect by the defendant according to its terms,

"Injunction, or the restraint of an actual or contemplated breach of contract,

"Cancellation, or the setting aside of a contract,

"Rectification, or the alteration of the terms of a contract so as to express the true intention of the parties." (1)

That contractual obligations are of primary importance is emphasized by Section ten, Article 1, of the United States' Constitution: "No state shall--pass any--law impairing the obligation of contracts." (2)

The court interpretation upon this clause that

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(1) Ibid., Page 15.
(2) Constitution of U.S.A., 1924, Senate Document 154, 68th Congress, 1st session, page 269.

has attained almost universal recognition is here cited:

"The obligation of a contract includes everything within its obligatory scope. Among these elements, nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it the contract as such in the view of the law ceases to be and falls into the class of those imperfect obligations --which depend for their fulfillment upon the will and conscience of those upon whom they rest." (1)

A brief summary of the historical development of contract will lead up to the motive of the present study.

In early English and Roman law the form of the contract was stressed. "The formal contract of English law is the contract under seal. Only by the use of this form could a promise, as such, be made binding. The idea of enforcing an informal promise simply because a benefit was accruing or was about to accrue to the promissor by the act or forbearance of the promise, does not appear to have been entertained before the middle or end of the fifteenth century." (2)

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(1) 96 U.S., 600, Edwards V. Kearsey.

(2) "Principles of Law of Contract - by W.R. Anson, page 74.

"The logical completeness of our law of contract as it stands at present is apt to make us think that its rules are inevitable and must have existed from all time. However, the causes and considerations that will induce courts to enforce a promise are no more certain now than in the days of Lord Mansfield (1765)." (1)

Decisions are being made continually that reflect changed conceptions in regard to contract law and it is with this thought in mind that an effort is made to translate present-day court decisions on a given type of contract (the crop contract existing between member and cooperative association), without bias, into a definite modern trend.

THE NEED FOR CROP CONTRACTS.

For a permanent, stable cooperative having business obligations and expenses to meet, that depends upon a definite minimum volume of business in order to meet these current liabilities, contract is an absolute essential. Dealers, distributors and manufacturers are buying large quantities of products from cooperative associations and

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(1) Ibid., Page 78.

as the association is dependent upon the membership for its life and existence so the other agencies of trade depend upon the cooperative. Such agencies must have the assurance that the association can be held responsible for contractual obligations; that its finances may be subject to legal division in case of dissolution and that it can give clear title to the product that is sold. In short, these dealers want the assurance that the association has a sound financial foundation and is a safe business organization with which to trade.

Likewise, when the association attempts to borrow money to finance its operations, the bank or banking institution must know by what right the association can borrow, how binding are the contracts behind the security of the association and what is the legal strength that supports the organization. Loyalty is the very foundation of cooperation; however, when coupled with an ironclad, binding contract this loyalty acquires far greater significance in the realm of business; it indicates that the membership of the association stands legally bound to support it in periods of depression as well as in times of flush optimism. The long-time contract that may be cancelled at definitely stated periods, if

the members become disheartened gives evidence to the business world that the association has a sound, economic, legal foundation upon which to build with stability.

From the standpoint of the association itself, in relation to its membership, contracts are likewise of importance. The claim has been made that a cooperative cannot succeed unless its members are loyal and if members are loyal, then contracts are not necessary. The human element, vascillating at best and particularly so where new financial ventures are concerned, enters into this statement revealing its half truth. The finest, most successful and most efficient cooperatives in the country have faced times when a loyal membership through misunderstanding, hard financial straits, or other kindred disturbances, became partially disloyal and unless bound by contract would have deserted. H.L. Barnum described this tendency graphically when he said, "Like the children of Israel, on the way to the promised Land, members are prone to look backward.(1) The new way of doing business, with its comparatively unknown and uncertain results, is often less attractive than the old, if inferior, way with its certain results."

The late G. Harold Powell, who for over a decade served as manager of the California Fruit Growers' Exchange,

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(1) Representative of the Michigan Potato Growers' Exchange at the first School of Cooperation held at M.S.C., Feb.2, 1926.

made the statement that, "Voluntary membership is suicidal to a cooperative business organization. Experience has shown that those associations are likely to fail that depend on the honor of the members alone to hold them together. It is fundamental that the members of a farmer's cooperative organization be held together by a contract or agreement." (1)

Knowing that he is embarking upon an enterprise whose success depends upon the loyalty of the members, each intelligent grower feels the need for legal security that his neighbors will stand with him to the end. The withdrawal of a minority, though small, at the early stages of development of the new organization may so weaken it that the association is forced to give up its business practice and the majority lose through the infelicity of a disloyal minority. With a well-informed membership bound together by legal ties the chances for success are strengthened and were the legal tie removed the status of the association would be impaired to a great or small extent, according to the large or minimum size of its fixed investment.

The foregoing remarks are directly concerned

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(1) "Cooperation in Agriculture"--G.H. Powell, Page 31.

with the conditions faced by a young association. When once established, an association will necessarily change its policies, one of these changes being to allow members to withdraw if they so desire, at a given time, having given sufficient time-notice to the association of their intention to do so. A disloyal grower on the inside of the organization can do more harm than if he is on the outside of the organization. Under such circumstances the good inherent in his volume of crop is more than offset by his disloyalty propaganda.

II.

THE PRINCIPAL FEATURES OF COOPERATIVE CROP CONTRACTS.

A particular set of conditions cannot be served by a general agreement; each peculiarity must be met in a particular and definite manner. Hence, among over ten thousand cooperative associations in this country there are many different types of contracts in general use. A clear division is at once apparent, splitting all crop contracts into two classes: those giving absolute ownership of the product to the association, and those giving to the association only the right to act as agent, title to the produce remaining in the hands of the grower.

The ownership type contract puts a larger degree of power and responsibility into the hands of the association. Inasmuch as it has clear title to the produce, dealers have the assurance that in case of non-delivery the association can be held liable, whereas if acting only as agent, it may or may not be held liable according to the explicit terms of the contract.

Where capital is needed to enable an association to hold over the crop from one year to another; where capital must be secured with which to build warehouses, elevators, processing plants, or other equipment; in short, where funds must be obtained before doing business extensively, an association frequently uses its crop

contracts or the actual crop as collateral to secure the loan. If the association does not acquire title to the crop, such loans are difficult to secure for they must be made on the basis of loans to individual growers and not to the association or agent. Where the agency type contract is used, the grower may sue and be sued as principal; embarassments may arise out of the incomplete title; the association can rarely be compelled to take delivery and the member likewise can hardly be compelled to make delivery. The agency relationship is one placing a minimum of power and liability upon the association. Hence, where a loose organization is desired not requiring permanent investments and long-time expenditures, the agency contract has served satisfactorily. Where these factors are not present the tighter bond is much to be desired.

The duration of time element further divides crop contracts into four classes:

1. Those continuing for a stated number of years (2,3,4,5,10,15 etc.) terminating definitely at the end of that period with no withdrawal privilege.

2. Those that continue from year to year, self-renewing, and having annual withdrawal privilege.

3. Those that continue for a stated number of years, are self-renewing from year to year and have annual withdrawal privilege, and

4. Those continuing for a stated number of years, self-renewing with no withdrawal privilege. In 1924, among ninety-four of the largest cooperative associations in the United States, there were forty-nine using the first type of contract, thirty-one using the second, eight using the third, and six using the fourth. (1)

Discussion as to which type of contract is best is rife among prominent cooperative representatives today. Where the growers have not demanded the withdrawal privilege, the ironclad contract legally binding perpetually or for a definite period of years is serving satisfactorily. The large tobacco and cotton cooperatives, with few exceptions, use a contract that is binding for a period of five or more years with no privilege of withdrawing before expiration of the contract. J.C. Stone, President and General Manager of the Burley Tobacco Growers' Association, in speaking of this contract, says, "This is the only contract that we have

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(1) North Carolina Cotton Grower, Nov. 15, 1925.

ever used and found it to be entirely satisfactory in the handling of our product." (1)

There are several instances where the stronger contract serves a need that could not be met by the weaker. First, when an association is young, has no assets, and needs funds with which to build fixed equipment that will not pay for itself in one year but over a period of years, the credit for this transaction can be based only upon contracts that are absolutely binding for a period of years. An illustration given by Walton Peteet, Secretary of the National Council of Farmers' Cooperative Marketing Associations will help to make the statement more clear:

"The Burley Tobacco Association bought over $5,000,000 worth of warehouse and other plants before it began to receive tobacco. It was utterly impossible for those farmers to provide that much money at one time. Instead, they bought these properties on credit and are paying for them with small annual deductions from these crops. The credit for these purchases was based upon the binding character of their marketing contract. If that contract had contained a provision for

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(1) Letter to the Author, Jan. 22, 1926.

the withdrawal of members at will, their joint credit would have been nil and the organization would not have been formed. Certainly, no sane man would sell $5,000,000 worth of property to a group of farmers, if any or all of them can cancel their obligations before they are discharged and it is equally certain that no farmers would enter such an engagement if his associates might withdraw and leave him to hold the bag. The same logic applies to all cooperatives that must buy (on credit) physical properties before they can operate efficiently." (1)

Second, when an association is dependent upon a definite minimum volume of business in order to meet its obligations and these obligations cannot be shifted yearly, a binding contract is indispensable. With many cooperatives the principle of decreasing cost holds good. Items of fixed expense such as salaries paid to officers, managers and clerks, and funds for advertising campaigns, statistical surveys and the like fall heavily on the shoulders of the few but are borne lightly by the many.

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(1) North Carolina Cotton Grower, Nov. 15, 1925.

Third, when it becomes necessary for an association to use long-time credit in order to carry over the crop from one year to another so that the crops may be marketed efficiently, unless financially in excellent condition it will find banks hesitant to lend large sums to such association composed of members who can cancel their obligations yearly.

Fourth, in the early stages of development, temporary misunderstandings cause bitterness; slow and intangible results cause discontent and strenuous opposition from competitive forces coupled with other difficulties inherent in new and untried enterprises, lead to disaster if the member is free to leave the association on short trial. It takes organization and years of time to clear up some of the tangles that threaten the life of the young association and if a binding contract is present to hold the members until the early difficulties are overcome the organization may thereby gain strength and lay a foundation upon which to build successfully.

In spite of these arguments, it is becoming increasingly evident that a contract alone cannot hold members to an association and even the cotton and

tobacco cooperatives are showing a tendency to adopt the more lenient contract.

The Miami Valley Tobacco Growers' Association has an ironclad, five-year contract, but is no longer attempting to enforce it. Mr. R.H. Brundett, Secretary-Treasurer, in explaining this situation says, "Our experience teaches us that in order to operate successfully, the relationship between the members and the association must be voluntary at least annually on the members' part." (1)

The Colorado Wheat Growers recently adopted a new ten-year contract, inserting an annual withdrawal clause. Bruce Lampson, General Manager, says, "The cause for this change in the contract is that we have found by experience that the human element enters into cooperative marketing more strongly in some cases than does the economic theory. The theory of having a binding contract and the control of a given percent of the commodity is right from a strictly economic standpoint, but when you have to take into consideration the social standard of the growers we find that too many of them have not the necessary economic background to understand our business operations. For this reason, we have put in a provision whereby a member, if it is

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(1) Letter to Author, Feb. 8, 1926

proven that he cannot or will not understand the business operations of the pool, that he can cancel his membership or the association can cancel it. Such a member, who is unable to comprehend the operations and benefits of cooperative marketing is a liability to the association and not an asset and should be eliminated from membership and only that class of farmers who can and will understand the movement should be members of any cooperative." (1)

This brief extract sounds a note that is becoming clearer and stronger as the testing years of experience show the strong and weak points of cooperative organization. The ironclad, legally binding, unbreakable contract was used to a very large extent when cooperatives first began to use this instrument. The trend is now very definitely away from this sort of contract toward the long-time (often perpetual) contract that may be terminated by either member or association at a certain time annually.

The fact that members may withdraw annually compels the management to operate efficiently and keep the membership well informed in order to prevent dissolution. It also prevents the wholesale withdrawal at the time of expiration that may face an association having a term contract.

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(1) Letter to Author, January 23, 1926.

Each association in the final analysis will decide in accordance with the situation confronting it at that time. The fact that a member may withdraw annually makes a contract much more lenient and to many prospective members is thus rendered more attractive. It should be easier to get growers to sign this less exacting agreement. However, when the membership has been signed up, the management faces a harder task in holding the more mobile constituency thereby secured and while thus compelled to face the task of keeping its membership loyal it may be severely handicapped in some of its operations. All things considered, the placing of a withdrawal clause in a long-term contract seems wise and advisable.

There is an inherent danger in having an organization that is easy to join and easy to desert. Profit-seeking individuals with eyes centered wholly on personal gain at the sacrifice of the community are quick to share in the profits and nimble in avoiding their share of losses. These community-parasites cannot be allowed to join and leave at will if the association is to ultimately render equal service to all and justify its name, cooperative.

Akin to the differences in regard to the withdrawal privilege are those arising from conditional and unconditional contracts. While many become binding upon their signature,

a decided number become binding only upon a condition that a certain minimum acreage or a given volume of the product is signed up. For example, the Wenatchee District Cooperative Association used a contract containing the following provision, "If on or before March 1, 1921, thirty-five percent of the total apple crop of the district, based on an estimated tonnage of 12,000 cars for the 1921 season shall not have been procured in these contracts, then all contracts signed by the owners shall be inoperative. But if such per cent is obtained by said date, all contracts shall thereby become fixed and binding on all parties." (1)

This conditional contract has been widely used by tobacco, fruit and cotton exchanges. It has aided in signing up growers who viewed the venture as a good thing if it could get the sufficient volume of business but doubted the latter proviso. The courts have been called upon repeatedly to interpret the validity of such clauses as growers sought loopholes whereby they could avoid their contractual obligation.

As remedy in case of breach practically all of the cooperatives (with few exceptions) provide for liquidated damages to be paid by the contract-breaker. In many contracts further provision is made for the use

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(1) From contracts used in signing up members in 1920-1921.

of injunction to restrain the member from selling outside of the association. Still another remedy employed in case of breach or contemplated breach is an order compelling specific performance. Some contracts contain a clause stating that in case of legal procedure against a member, he shall bear all of the cost of suing him in addition to the payment of liquidated damages.

In addition to the foregoing clauses, the cooperative crop contract usually sets forth the purposes and character of the association, its rights, powers and obligations covering in detail the contemplated operations such as conditions of pooling by grade and quality, right to borrow and disburse funds, power to erect buildings and get equipment, hire managers, obligation to buy and resell and distribute equally the net proceeds, etc. The rights and obligations of the members are likewise stipulated including such details as to where to ship and under what conditions, obligation to sell all of the product grown to the association, conditions on which the contract will be set aside, who may join, etc.

THE LEGAL STATUS OF CROP CONTRACTS

Special Statutatory Provision for Crop Contracts: Constitutionality As Determined By The Courts.

Provisions of crop contracts and questions involving their validity and enforceability can no longer be interpreted and decided solely according to rules in equity, for in addition to the Federal Actoof 1922 legalizing the organization of cooperative marketing associations, with the exception of the District of Columbia, every state in the Union has passed legislation of some sort, dealing either directly or indirectly with producers' cooperative associations and the contracts that they use. This legislation has materially changed the status of crop contracts as used by farmers' cooperatives wherever enacted not only in regard to public policy and status under anti-trust laws but concerning right to pool, right to injunction, specific performance, damages, interference by third parties, etc.

These laws are subject to continual change and amendment; they are not static. The following extracts give, however, a conception of this type of legislation:

On February 18, 1922, Congress passed the Capper-

Volstead Act, legalizing the formation of cooperative associations of producers. The act provides among other things that, "Such Associations and their members may make the necessary contracts and agreements to effect their purposes provided, however, that such associations are operated for the mutual benefit of the members thereof--and conform to one or both of the following requirements:

1. No member--is allowed more than one vote.

2. The Association does not pay dividends--in excess of eight per cent per annum.

And in any case the following:

3. That the Association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members." (1)

This act has not yet been authoritatively construed by the United States Supreme Court.

The State Acts vary quite widely. More than half of them, however, include the following clauses relative to contract in substantially the same language.

"The Association and its members may make and execute marketing contracts, requiring the members to sell for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities exclusively through or to the association or any facilities to be created by the

(1) Public Act #146, 67th Congress, Chapter 57

Association. The contract may provide that the Association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the average resale price based on grade and quantity after deducting all necessary selling, overhead, and other costs and expenses including interest on preferred stock not exceeding eight per cent per annum upon the common stock.

"The by-laws and marketing contract may fix as liquidated damages, specific sums to be paid by the members or stockholders to the Association upon the breaches by him of any provision of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the Association and any such provision shall be valid and enforceable in the courts of this state.

"In the event of any such breach or threatened breach of such marketing contract by a member, the Association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified

complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

"Any person--who knowingly induces or attempts to induce any member or stockholder of an Association organized hereunder to breach his marketing contract--shall be guilty of misdemeanor--and shall be liable to the Association aggrieved in a civil suit in the penal sum of $500 for each such offense.

"No Association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the Association and its members or any agreements authorized in this Act be considered illegal or in restraint of trade." (1)

A rather unusual provision, by means of which a member may cancel his contract and withdraw from the Association, is made by the statute passed by the legislature of New Mexico. It provides that "in the event of mismanagement or wrong, whereby a producer or member has been inequitably subjected to loss or damage or unequal treatment, he may apply to the district court by a bill in equity for the

(1) Public Acts of Arizona, Chapter 156, Pg. 373, March 22, 1921.

nullification of his contract and membership, which shall be decreed upon the establishment of the substantial allegations of his complaint and thereby he shall be released from his marketing contract with the Association and from his membership therein."

Following the passage of these Acts, the question at once arose, "Do these Acts supercede rules in equity that have been formulated with the passage of the years by our courts?" Court opinions have given affirmative answers in every case. In a Texas case decided in 1923, the court gave the following terse and typical opinion: "The contract before us was authorized by the statute which gives the Association the remedy of specific performance and injunction. The statute, having authorized these remedies, whatever may have been the rule in equity, the statute will control." (1)

These acts have been held constitutional and valid in the face of varied and violent charges launched against them by opposing interests, with almost complete

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(1) 253 S.W. 1101, (1923) 212 P. 811, (1923)
96 S.O. 849, (1923) 117 S.E. 174, (1923)
216 P. 311, (1923) 246 S.W. 1068 (1922)

unanimity. (1) In two cases, however, certain sections of the law have been invalidated. For example, in a case testing the validity of the Louisiana Marketing Act, the court interpreted a clause of the Act as binding a tenant to market his crop through the Association of which his landlord was a member, though he, himself, had signed no contract. The court in holding the provision unconstitutional said that the legislature had in passing it, "made an indirect but clear attempt to deprive tenants of their property in cotton raised under the share system of contract and without due process of law of any kind. Such provision is, therefore, unconstitutional, null and void as being in contravention of the Fourteenth Amendment to the Fed-

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(1) 204 N.W. 798, (1925)
126 S.E. 531 (1925)
203 N.W. 420 (1925)
270 S.W. 784 (1925)
271 S.W. 695 (1925)
270 S.W. 946, 1119 (1925)
104 S.O. 264 (1925)
240 P. 937 (1925)
236 P. 657 (1925)
234 P. 963 (1925)
234 P. 962 (1925)
266 S.W. 308 (1924)
226 P. 496 (1924)
197 N.W. 936, (1924)
121 S.E. 636 (1924)
117 S.E. 174 (1923)
257 S.W. 33 (1923)
215 P. 352 (1923)
96 S.O. 849 (1923)
253 S.W. 1101 (1923)
212 P. 811 (1923)
201 P. 773 (1921)
178 N.Y.S.612 (1919)
179 N.Y.S.131 (1919)
83 S.O. 69 (1919)
143 S.W. 1040 (1912)
107 S.W. 710 (1908)

eral Constitution. The tenants of the defendant are third persons as to this marketing contract entered into by the Association and the record is barren of evidence to show that these tenants had any knowledge of the marketing agreement of their landlord with said Association."(1)

Again in June, 1925, a section of the Colorado Marketing Act of 1923 was held invalid by the State Supreme Court. The court in speaking of the specially legalized crop contracts said, "The Act of 1923 not only in terms makes such contracts lawful but purports to legalize all previous contracts of that sort; that portion of it, however, is retrospective and retroactive and cannot be sustained." (2)

Four months later the constitutionality of the Act was fully upheld; and the legality and validity of crop contracts in general use by cooperative associations formed under the Act was conclusively upheld by the same court rendering the former decision. (3)

In holding this type of legislation valid and constitutional, the following court opinion of Judge C.J. Russell, concurring specially in regard to the legality of

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(1) La. Farm Bureau Cotton Association v. Clark, 107 S.C.115,(1925)
(2) Atkinson et al v. Colorado Wheat Assn., 238 P. 1117, (1925)
(3) Rifle Potato Growers' Coop. Assn. v. Smith, 240 P. 937, (1925)

of the Georgia Marketing Act is typical, "It is well to consider the condition of affairs that led to the evolution not only of the Georgia Cooperative Marketing Act, but of a mass of practically similar legislation on the part of other commonwealths. The legislatures of thirty and more of the principal agricultural states of this Union have enacted enabling acts practically,if not precisely, identical with the act in question. The validity of this new character of legislation has been upheld in all of its phases by the Supreme Courts of a majority of the states and the principles underlying it have been affirmed by the United States Supreme Court in rulings made where the provisions of the Sherman and Clayton Anti-Trust Acts were involved." (1)

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(1) Harrell v. Cane Growers' Coop. Assn. 126 S.E. 531, (1925)

PUBLIC POLICY

The public policy of the state in regard to ironclad marketing contracts has undergone a very definite change within the last decade. Four paramount decisions rendered in the years 1913, 1914, 1915, and 1918 condemned these contracts as illegal, and void, as in restraint of competition and trade, because of price-fixing and monopolistic tendencies. The contracts were rendered unenforceable and officers of the Association were enjoined in one case from carrying on activities as set forth in the agreement. (1)

These cases were not exceptional. They reflected the general tenor of public opinion in regard to this type of contract as it then existed. In rendering the decision so strongly opposed to binding crop contracts in the case of Reeves v. Decorah cited above, the court cited some twenty-two cases in proof of the reasonableness of its decision.

The passage of state marketing acts led to a changed public policy as evidenced by the following

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(1) Reeves v. Decorah Farmers' Coop. Society 140 N.W.844,(1913)
Ludowese v. Farmers Coop. Assn. 145 N.W. 475, (1914)
Georgia Fruit Exchange v. Turnipseed 162 S.C.542, (1915)
Burns v. Wray Fruit Growers' Coop. 176 P. 487, (1918)

statement, "In Burns v. Wray and other cases, it has been held that such contracts were against public policy; but the act of 1923 changes the public policy of the state and the contract in this case follows the act." (1)

The new attitude taken by the courts may be characterized by the following opinion taken from a case decided on December 1st, 1924. "In our opinion the classification of farmers into cooperative associations is reasonable and natural and one that should prove beneficial rather than detrimental to the public. Until it is established that the association has committed an act detrimental to the public welfare, it is a lawful organization and its contracts are not subject to attack." (2)

From an attitude of suspicion the courts have changed to an assumption that cooperative organization is beneficial and its contracts fair unless proof is presented to the contrary.

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(1) Rifle Potato Growers v. Smith, 240 P. 937, (1925)

(2) Dark Tobacco Growers' Coop. Assn. v. Dunn, 266 S.W. 308, (1925)

TRUSTS AND MONOPOLIES

The size and internal strength of these cooperative associations has drawn the attention of the courts in numerous cases. Here as in the case of public policy we find that the courts are not inclined to regard cooperatives as trusts or monopolies in restraint of trade. For example, in the case of The Dark Tobacco Growers v. Jones the court held, "until there is allegation and proof that the real object of a growers' cooperative association is to unduly enhance prices beyond the real value of the product, the legality of the organization and the contract will be presumed." (1)

The opinion continues, "The cooperative system is the most helpful movement ever inaugurated to obtain justice--for farmers. The producers are paying practically all of the costs and assuming all of the responsibilities of these cooperative associations. They are associating themselves as authorized by statute--and they have signed mutual and fair agreements among themselves which will be futile unless those who have signed such agreements can be held to abide by the terms of their contracts. There is no analogy between the proceedings to dissolve the great trusts--and these

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(1) 117 S.E. 174, (1923)

associations for the protection of producers."

Another case typical of recent decisions in regard to suits against cooperative associations as monopolies using ironclad contracts, dealing particularly with those contracts, sets forth the following opinion, "contracts between cooperative associations and their members for exclusive dealings over a period of years especially where authorized by statute, have now been upheld by a large number of states as not being an undue restraint of trade. It is recognized that they are part of a system of collective marketing, that the purpose is merely to secure a fair and reasonable price for their products and that such contracts are not to be condemned where they are not in fact hostile to public welfare." (1) *

(1) Brown v. Staple Cotton Assn. 96 S.C. 849, (1923)

100 N.E. 89	203 N.W. 420	179 N.Y.S. 131
197 P. 959	204 N.W. 798	178 N.Y.S. 612
212 P. 811	83 S.C. 69	126 S.E. 531
201 P. 773	104 S.C. 264	197 N.W. 936
201 P. 222	107 S.C. 115	266 S.W. 308
216 P. 311	143 S.W. 1040	179 N.Y.S. 131
240 P. 937	248 S.W. 1109	178 N.Y.S. 612
215 P. 352	253 S.W. 1101	
236 P. 657	149 S.W. 915	
208 P. 93	257 S.W. 33	
117 S.E. 174	263 S.W. 60	

*The thought generally expressed in these court opinions is that the cooperatives are not illegal organizations for they do not seek to fix prices nor are they monopolistic. There is no ground, however, for the assumption that coops.are arbitrarily exempt from anti-trust laws simply because formed by farmers rather than by industrialists. Should cooperative associations become monopolistic and control price movements in contravention of the public welfare, the tone of court opinion indicates that they would at once be subjected to scrutiny and regulation by the courts.

INTERFERENCE BY THIRD PERSONS

It is obvious that if cooperative associations succeed in taking over the marketing functions, independent dealers and jobbers will lose the business. Knowing this fact, dealers in various sections of the country have sought by devious and sundry means to get members to breach their contracts. The court decisions on the misdemeanors involved by such action are uniform. If a third person maliciously induces another to breach a contract with another party, such person is liable to the latter party for damages resulting from the breach.(1)

Where a third party merely continues to operate as formerly and does not offer inducements to sell, he is not liable. (2)

The decisions in cases concerning the interference of third parties hinge on the evidence of malicious aggressiveness in inducing a breach of contract. For example, in Northern Wisconsin, Tobacco Pool v. Bekkedal,(3) the court held that Bekkedal had been guilty of malicious interference for he had "organized a campaign to scatter seeds of dissatisfaction and discontent among association members; offered more than market price to induce members to breach their contracts and offered to indemnify them from any costs or damages which might result from such breaches."(4)

(1) Liberty Warehouse Co. v. Burley Tobacco Gr.Assn.271 S.W.695 (1925)
(2) Minn. Wheat Gr. Coop. Assn. v. Radke, 204 N.W. 314, (1925)
(3) Northern Wis. Tob. Pool v. Bekkedal, 197 N.W. 956, (1924)
(4) Phez C. v. Salem Fruit Union, 201 P. 222, (1921)
" " " " 205 P. 970, (1921)

FUTURE DELIVERY

The right of an association to make contracts of future delivery has been challenged and the courts have upheld the right of the associations to so contract. In a case decided in 1892, the point involved was that concerning the validity of a contract of sale of cotton not yet grown. (1)

The wording of the contract provision in question was that, "said cotton so sold embraces all that I have or may have, baled and unbaled, gathered and ungathered. The court upheld the contract and cited numerous cases of a similar character to sustain its decision. A somewhat similar case involving a contract of the future delivery of cotton was decided by the Supreme Court of Arkansas in 1925. (2) The decision definitely authorizes the association to make executory contracts for the sale and future delivery of a crop or quantity of a product.

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(1) Briggs, v. U.S., 143 U.S. 346, (1892)

(2) Ark. Cotton Growers' Coop. Assn. v. Brown, 270 S.W. 946--1119, (1925)

COMPLIANCE WITH STATUTE

Legislation detailing the legal contractual rights of associations also details the requirements that such contracts must meet in several states. When contracts and agreements are being formulated the provisions of these acts cannot well be ignored. "Existing statutes and settled law at the time a contract is made become part of and must be read into it; where parties contract by virtue of authority derived from a certain act or acts, their rights must be construed by the provisions of such acts." (1)

Contracts that are drawn without regard to the statutes of the state may easily omit important details that invalidate the entire agreement. The case quoted above is in point. The court here held, "Where an act provides that an association may adopt by-laws, compelling its members to sell all of their products exclusively through such association, but also specifically provides that the conditions upon which such obligations may be enforced must be based upon condition that a member be granted an opportunity to withdraw from membership annually and the articles of incorporation and by-laws of such association contain provisions for

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(1) Oklahoma Cotton Growers Coop. Ass'n. v. Salyer, 243 P. 232, (1925)

enforcing a member to sell exclusively through the association but fail to give such member an opportunity to withdraw from the association. Such obligation is in violation of the statutes and cannot be enforced for lack of mutuality." (1)

The association was denied the right to collect liquidated damages, to a decree of specific performance, to relief in equity and to an injunction.

In Dairymen's League Cooperative v. Holmes, the crop contract used by the association was held invalid for it did not comply with that section of the law stating that an association might sell the product of a non-member but in no case should it charge more for such service than the actual cost thereof. Except for this ultra-vires provision, the contract would have been enforced.(2)

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(1) Oklahoma Cotton Growers Salyer-Supra.

(2) Dairymen's League Coop. v. Holmes, 212 N.Y.S. 663, (1924)

MUTUALITY AND JUSTICE OF CROP CONTRACT

Crop contracts have been attacked on the grounds that they lacked mutuality, were unjust and unreasonable. The courts have not upheld the validity of such claims. The following excerpts give an idea of the present court attitude toward the mutuality of such agreements: "Unquestionably the contract is mutual in its operation and in its benefit since the promise of one party is always a sufficient consideration for the promise of the other." (1)

"An agreement whereby a grower agrees to deliver his crop for four years to a cooperative marketing association or pay liquidated damages in consideration of the agreement of the association to receive, handle, and market the tobacco and in consideration of like agreements of other members is not lacking in mutuality."(2)

"Crop contract by which member agreed to sell all of his potatoes to the association only is supported by consideration where the association was required to buy, resell, and on certain conditions give member something out of the proceeds, it being immaterial that contract is unfair to member and he receives no benefit therefrom." (3)

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(1) Warren v. Alabama F.B. Cotton Assn., 104 S.O. 264, (1925)
(2) Potter v. Dark Tobacco Growers Assn., 257 S.W. 33, (1924)
(3) Rifle Potato Gr. Coop. Assn. v. Smith, 240 P. 937, (1925)

SIGNING THE CONTRACT

In obtaining signatures to contracts where force is used, facts misrepresented or any act committed that is covered by the statute of frauds, such contracts are declared invalid and unenforceable.

In the case of Sun Maid Raisin Growers v. Papazian the evidence was held to show that crop contracts were signed under conditions of duress and menace such as to destroy the element of free and mutual consent essential thereto, hence recission from contractual obligations was authorized. (1) The association was held absolutely responsible for the unlawful acts of some of its members in securing contract signatures inasmuch as it had full knowledge of such acts. (2)

A promise to advance sixty per cent of the graded value of tabacco was held incompetent by the Supreme Court of Tennessee for such representations come within the statute of frauds. (3) In the same case the charge was made that the contract signature was fraudulent for the signatures of both parties did not appear on the same identical paper. However, inasmuch

(1) Sun Maid Raisin Gr. v. Papazian, 240 P. 47, (1925)
(2) Commonwealth v. Riffitt, 148 S.W. 48, (1912)
Wenatchee Coop. Assn. v. Mobler, 287 P. 300, (1925)
(3) Dark Tobacco Growers Coop. Assn. v. Mason, 263 S.W. 60,1924
Kansas Wheat Growers Assn. v. Vague, 234 P. 964, (1925)
Wenatchee Coop. Assn. v. Mobler, 237 P. 300, (1925)

as it was clearly understood by both parties that the contract had valid existence, the minutes of the association showing acceptance and written notice thereof having been sent to the member contract signer, the contract was held valid on this score.

Where there is conclusive evidence of fraud the contract is unquestionably invalid, but such evidence must be conclusive. Where a person signs a contract after reading it and having full knowledge of what is contained therein, the provisions of the contract remaining unchanged, the member cannot evade the obligations imposed by the contract on the grounds of fraud, for ignorance is not a valid plea. (1)

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(1) Kansas Wheat Growers Assn. v. Floyd, 227 P. 336, (1924)
Pittman v. Tobacco Growers Coop. Assn., 121 S.E. 634, (1924)

CONDITIONS PRECEDENT TO COMPLETED CONTRACT

Where a contract contained the provision that unless ten percent of all the wheat growers of the territory covered signed the crop agreement, it was to be invalid, the burden of proof that that condition had been satisfied was upon the association. (1)

In regard to satisfying the requirements of conditions precedent, the courts have given varying decisions. A provision in a contract between a cooperative association of raisin growers and its members to the effect that the contracts were delivered to the members in escrow and were not to become operative until eighty-five per cent of the raisin growing acreage of the state was secured by contract, was waived by the growers' acceptance of the contract, their delivery of raisins and their acceptance of payments under the contract.(2)

In another case, the court placed considerably more emphasis upon the satisfaction of the condition precedent, the provision being that the contract was to be inoperative unless forty-two hundred cars of

(1) Washington Wheat Growers' Assn. v. Leifer, 238 P. 339,(1925)
(2) Cal. Raisin Growers Assn. v. Abbott, 117 P. 767, (1911)

apples were signed, the tonnage to be conclusively ascertained by the association. The court held that the board of trustees of the association had acted in good faith in finding in tonnage ascertainment that forty-two hundred cars had been signed, yet where such finding was actually based on faulty and fraudulent data and the actual tonnage was but half of that declared, the trustees' findings were not conclusive on the member contract-signers and they had the right to withdraw from further participation in the undertaking. (1)

A decision somewhat alien to the one above was decided by the Supreme Court of Washington in 1925. The contract in this case provided that a statement by the organization committee to the effect that the required number of contracts had been signed and hence were valid, was to be accepted as final proof. The court held that the proof that the committee report thereto and the resolution by the board of directors, declaring all agreements in force were mailed to signers was adequate and sufficient to show that the necessary number of signatures had been obtained. (2)

(1) Wenatchee Dist. Coop. Assn. v. Mobler, 237 P. 600, (1925)
(2) Washington Wheat Growers Assn. v. Leifer, 232, P.339 "

Two other decisions have been made similar to the one above, holding that a statement by officials in regard to the fulfillment of condition precedent, in absence of any showing of fraud, is to be regarded as final proof and the contract complete or invalid as such condition is satisfied or unfulfilled. (1)

(1) Rowland v. Burley Tobacco Coop. Assn., 270 S.W. 784, (1925)
Pittman v. Tobacco Growers Coop. Assn., 121 S.E. 634, (1924)

CONTRACT EVASION

As reasons for breaking their contracts, disgruntled members have charged that associations were guilty of ultra vires acts, that they were organized for pecuniary profit, that they were inefficient, poorly managed, unbusinesslike, failed to live up to their promises and were guilty of violating various other obligations created by statute, charter and agreement. In the majority of cases, these charges have been held invalid and the association has been upheld.

The charge that the association was organized for pecuniary profit because the contract required the payment of three per cent of the gross sales in case of breach was held an invalid charge in Baldwin Co. v. Frishkorn. (1)

In Poultry Products Association v. Barlow, it was held that although the provision in the agreement giving the cooperative the right to purchase its own stock was invalid, it did not invalidate the members' contract to sell all of his products to the association, the invalid provision not being a part of the consideration of the contract to make such sale. (2)

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(1) Baldwin Co. v. Frishkorn, 83 S.C. 69, (1919)
(2) Poultry Prod. Assn. v. Barlow, 208 P. 93, (1913)

After breaching his contract, a member of a cooperative sought to justify his action by charging mismanagement, fraud, acts ultra vires, injustice, inequality, and failure to fulfill promises. The charges were sifted and the court held that the evidence showed no justification for members' breach of contract.(1)

In Kansas Wheat Growers Cooperative Association v. Schultz, the court held that a member of a non-profit cooperative association for the marketing of agricultural products raised by its members is not justified in refusing to deliver his wheat to the association because he cannot learn at the time of delivery, the price that he will receive for his wheat. (2)

Where a grower marketed milk for fourteen months through the association without questioning his contract the court held that he could not then assert the invalidity of the contract on the ground that the association had commenced business before three-fourths of the capital stock was subscribed and one-fourth paid in as required by law. (3)

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(1) Washington Coop. Egg & Poultry Assn. v. Taylor, 210 P. 806, (1913)
Pittman v. Tobacco Growers Coop. Assn., 121 S.E. 634,(1924)
(2) Kansas Wheat Growers Assn., 216 P. 311, (1923)
(3) Pierce County Dairymen's Assn. v. Templin 215 P. 352, (1923)

In a recent (1925) case, a member who had signed a crop contract, rented his land on shares and agreed to let the rentor sell all of the crop wherever he chose. The court held that the member was subject to his prior contract with the association and must sell all of the cotton over which he had legal right to exercise control to the association, since title to his share rested primarily in him. (1)

There have been several instances where a member having signed a crop contract sells his land to his wife, son or relative, and thereby secures release or seeks to secure release from his contract. Where the intent of the party is simply to evade contractual obligation, the sale being one of form only and not in reality in fact, the court has held that the association has right to redress in the form of liquidated damages, specific performance, and other remedy. A case that illustrates the point very well is found in Coyle et al v. Dark Tobacco Growers Cooperative Association. (2)

J.W. Coyle signed a contract by which he agreed to deliver to the association all of the tobacco grown by him, beginning with the year of 1922. In March, 1923, he deeded the farm to his wife "for the consideration of

(1) Long v. Texas Farm Bureau Cotton Assn. 270 S.W. 561, (1925)
(2) Coyle et al. v. Dark Tobacco Growers Coop. Assn., 277 S.W. 318, (1925)

$1.00, love and affection." Five months later a deed was executed to the son, Delphus, for a half-interest in the farm. The 1923 crop was marketed outside the association which brought suit for breach of contract. The proof brought forth at the trial showed that:

1. Mrs. Coyle and son knew of the contract made by J.W.

2. The deeds of sale were executed primarily for the purpose of evading contractual obligation.

3. J.W. was guilty of fraudulent intent.

The association was awarded stipulated damages and Coyle ordered to pay $50 plus cost of executing bond.(1)

However, where the sale is bonified and actual the court has ruled that the contract is not breached, but rendered invalid by the changed condition. A 1925 case decided by the Supreme Court of the state of Washington is in point. Where contract with cooperative marketing association by husband in behalf of community (husband and wife) to sell to the association all milk produced by him gave him and community absolute right to withdraw from the dairy business and thereby relieve

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(1) Dark Tobacco Gr. Coop. Assn. v. Alexander, 271 S.W. 677, (1925)

Oregon v. Lentz, 212 P. 811, (1923)

himself from contract liability, an actual transfer of the title of the cows and dairy business and community to the wife, the property to become her separate property free of any trust for the community, the court held that such transfer of title relieved the husband and community from all liability under the contract. The wife in her separate right was as free from the obligations of the contract as though she were an entire stranger to her husband. (1)

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(1) Inland Empire Dairy Prof. Assn. v. Melander, 235 P. 12, (1925)

Inland Empire Dairy Prod. Assn. v. Casberg, 235 P. 13, (1925)

BREACH OF CONTRACT

The court has held that where a grower-member of a cooperative admitted such membership and admitted that he had sold produce in violation of his agreement, a copy of which was in evidence together with proof that conditions precedent had been complied with, the association has conclusive right to recover for breach.(1)

Likewise, the refusal of a member to deliver all of his crop to the association pursuant to the provisions of his contract has been held to constitute a breach. (2)

Where a double breach has occurred, neither party is entitled to redress. In N.J. Poultry Producers Association v. Tradelius the cooperative was held not entitled to equitable relief against one of its members for violating terms of marketing agreement in view of its own breaches of the agreement by failing to properly grade eggs, employing brokers, etc., unless such member was estopped to rely thereon. (3)

A. Damages.

It is a well established point in law that where construed as a penalty, whether called damages or otherwise, a contract provision for such redress is unenforceable. (4)

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(1) Rowland v. Burley Tobacco Gro. Coop. Assn., 270 S.W.784 (1925)

(2) Ark. Cotton Growers Coop. Assn. v. Brown, 270 S.W. 946, (1925)

(3) N.J. Poultry Producers Assn. v. Tradelius, 126 A.T.538,1925

(4) Dairymens League Coop. Assn. v. Holmes, 202 N.Y.S.663, 1924

Regardless of the language used, the court determines whether the amount specified shall be construed as penalty or damages and rules accordingly.

In Minnesota Wheat Growers Cooperative Association v. Huggins, the court held that, "the provision in the contract that member should pay to the association five cents per pound, as liquidated damages for all tobacco sold outside the association was not unjust nor oppressive, and must be construed as liquidated damages rather than as a penalty." (1)

A large number of cases of this nature have recently come before the courts and with very few exceptions the decisions have been favorable to the associations treating the amounts involved as damages rather than as a penalty. (2)

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(1) Minn. Wheat Gro. Coop. Assn. v. Huggins, 203 N.W. 420, (1925)

(2) Right to liquidate damages:

197 P. 959, (1911)
178 N.Y.S. 612, (1919)
179 N.Y.S. 131, (1919)
83 S.O. 69 (1919)
201 P. 773 (1921)
204 P. 811 (1921)
233 P. 547 (1925)
117 S.E. 174 (1923)
96 S.O. 849, (1923)
257 S.W. 33, (1924)
126 S.E. 531, (1924)
263 S.W. 60 (1925)
203 N.W. 420 (1925)
236 P. 657 (1925)
204 N.W. 798 (1925)
234 P. 962 (1925)
234 P. 963 (1925)

The fact that an association was a non-profit organization has been held not to militate against its right to collect from a member liquidated damages. (1)

B. Injunction and Specific Performance.

Not only do many of the crop contracts used by cooperatives make provision for the use of injunction to secure specific performance of contract, but many of the state acts recently passed also provide for these instruments in case of contract breach. It is generally recognized that where damages are adequate and afford complete remedy an injunction will be refused. A decree for specific performance is issued only at the discretion of the court in view of the evidence presented and will not be awarded unless an actual breach has occurred or is threatened. (2)

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(1) Anapeim Citrus Fruit Assn. v. Yeoman, 197 P. 959, (1911)

(2) Oregon Gr. Coop. Assn. v. Lentz 212, P. 811, (1923)

The right of an association to restrain its members from breach of contract has been generally upheld by the courts. (1)

A typical opinion is here cited, "The liquidated damages provided for in the contract do not afford adequate remedy. Wheat is the only commodity the association can use as a going concern. All that it can do with money is to pay its expenses and disburse the balance among its members. It necessarily follows that there is no adequate remedy at law. The only adequate remedy is injunction preventing the members from selling to others, thus forcing the delivery of wheat to the association. " (2)

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(1) 107 S.W. 710, (1908)
201 P. 773, (1921)
204 P. 811, (1921)
201 P. 222, (1921)
205 P. 970, (1921)
212 P. 811, (1923)
210 P. 806, (1923)
215 P. 352, (1923)
216 P. 311, (1923)
117 S.E. 174, (1923)
96 S.O. 849,1923
226 P. 496, (1924)
246 S.W. 1068, (1924)
257 S.W. 33, (1924)
121 S.E. 631, (1924)
234 P. 963, (1925)
236 P. 657, (1925)
232 P. 339, (1925)
240 P. 937, (1925)
270 S.W. 946, (1925)
271 S.W. 178, (1925)
266 S.W. 308, (1925)
126 S.E. 531, (1925)
104 S.O. 264, (1925)
203 N.W. 420 (1925)
204 N.W. 798, (1925)
270 S.W. 784, (1925)
236 P. 561, (1925)

(2) Nebraska Wheat Growers v. Norquest, 204 N.W.799, (1925)

It has been made a clear ruling point that the presence of a stipulation for payment of liquidated damages and provision for the use of injunction are harmonized in a contract and the presence of one does not invalidate the force of the other.

Where there is no governing statute it has been held that where other remedies at law are inadequate, the association has a right to an injunction. (1)

In an action by a cooperative marketing association for an injunction whose members had agreed to sell all of their produce to it over a period of years, the evidence being in conflict as to membership of the members who not only disavowed any obligation to deliver, but denied membership, the association was held to be entitled to have an injunction restraining them from disposing of their crops outside the association continued until the final hearing. (2)

However, the decisions in regard to the use of injunctions and decrees of specific performance, have not all been in one vein, in favor of the association. In the case of Poultry Producers of Southern California v. Barlow, the court said, "The doctrine is elementary

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(1) Manchester Dairy System v. Hayward, (1926)
Texas Farm Bureau Cotton Assn. v. Storall, 253 S.W. 1101, (1923)

(2) Tobacco Gr. Coop. Assn. v. Spikes, 121 S.E. 638, (1924)

and impregnably fortified by authority that a contract cannot be specifically enforced unless this remedy is available to both parties. Equity will not enforce a specific performance of a contract when the party asking its enforcement cannot, from the nature of the obligation assumed, be compelled to perform on his part."(1)

In a 1924 case, a member after marketing all of his produce through the association in 1922, sold part of his crop outside the association in 1923. He proved conclusively to the court that the association had not paid him $800.00 that was due on his 1922 crop and because he was short of money and needed cash to care for the needs of his wife and family, he sold one-third of his crop outside the association. In spite of statutatory provision for an injunction in case of breach or threatened breach, the court held that the breach was justified under the circumstances and refused to grant an injunction. The court quoting from previous rulings said, "An injunction will not usually be granted--where it will do more mischief and work greater injury than the wrong which it is asked to redress--the damage threatened by an issuance--in this case far surpasses any injury to be expected from a denial of the writ." (2)

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(1) Poultry Producers of S. Cal. v. Barlow, 208 P. 93, (1922)

(2) 121 S.E. 636, (1924)

Injunctions have been issued very rarely in restraining third persons from interfering with the performance of crop contracts; yet here again the rights of the association have been upheld. An interesting case in this connection was decided by the Supreme Court of Tennessee in December, 1924. A bank, with full knowledge that the crop of tobacco was under contract to be delivered for sale to the cooperative association, took a mortgage on the crop. The bank attempted sale of the tobacco under its mortgage and the association asked for an injunction restraining the bank from interfering with the contract in any way inasmuch as payment of liquidated damage would not afford adequate relief. The contentions of the association were upheld and an injunction issued restraining the bank from interference with the contract. (1)

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(1) 266 S.W. 308, (1924)
Kansas Wh. Gro. Assn. v. Floyd, 227 P. 336 (1924)
Redford v. Burley Tobacco Gr. Coop. Assn., 266 S.W. 24, (1925)

LANGUAGE OF THE CONTRACT

The desirability of accuracy before the law is so well known that it scarcely needs to be stressed. Doubtful provisions in a crop contract are to be construed against the party preparing it. (1) The court will not read into a contract anything not written therein, but the terms that are specified are subject to interpretation. For example, a contract by a member of a cooperative marketing association by which he agreed to deliver to the association all of the tobacco produced by or for him or acquired by him as landlord or lessor and to sell the same only to the association, was held to include only tobacco of the member, produced on lands either owned or rented by him. (2)

By their very nature and purposes of operation, cooperative associations are faced by conditions that cannot be foreseen at the time of drawing up the contract. As a consequence, there must be a lack of definiteness in stipulating certain provisions in regard to price returns and deductions for expenses. The courts have recognized this necessary point of distinction. In Louisiana Farm Bureau Cotton Growers Cooperative

(1) Duncan v. P.F. Fruit Gr. Assn., 120 A. 441, (1924)
(2) Tobacco Gr. Coop. Assn. v. Bissett, 121 S.E. 446, (1924)

Association v. Clark the court delivered the following opinion: "We are dealing here with a special form of statutatory contract, whose nature and legal effect are defined and determined by the act under which the contract has been made. --It is clear, therefore, that such agreement need not conform to the essentials of an ordinary contract of sale as to the certainty of the price. Indeed, it would not be possible to fix a definite price in advance as to the resale of cotton in the future by the association, and carry out the object for which the association has been organized. To fix the price beforehand would defeat the very purpose of the association in its efforts to obtain the best price under market conditions as such price might fall below the current price at the date when the association should deem it advisable to sell, thereby entailing a loss upon the grower, or it might prevent the sale entirely if the fixed price should be higher than the market quotation.(1)

In a similar case involving not only the definiteness of terms in regard to price but in regard to provisions for the delivery of "all" of the crop at "the earliest reasonable time after ginning" to be sold by the

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(1) La. F.B. Cotton Gr. Coop. Assn. v. Clark, 107 S.C. 115, (1925)

association "before another crop has been produced", the terms were held sufficiently certain. (1)

However, these decisions do not mean that the contract may be loosely drawn and lack definiteness any more than is necessary to the attainment of their specified purposes. In a New York case, a provision of an exclusive marketing contract with a cooperative association for future loans to be deducted from producers' share of proceeds, which did not prescribe the amount, duration, or interest, but left those elements to be determined by the association was held invalid because there was no meeting of minds. (2)

Two other cases dealing with the accurany of terms are of interest. In the first case, provision was made for a member to terminate his contract yearly if he chose to do so by giving written notice of his action to the association at least thirty days prior to February first, of any year. The court held that a written notice sent late in January was not a compliance with the contract. (3)

In the second case, the Dark Tobacco Growers' Cooperative Association sued Brame et al to compel them as

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(1) Texas Farm Bur. Cotton Assn. v. Stovall, 253 S.W. 1101, 1923.
Oregon Coop. Assn. v. Lentz, 212 P. 811, 1913.
(2) Dairymen's League Coop. Assn. v. Holmes, 202 N.Y.S.663,1924
(3) Grays Harbor Dairymens Assn. v. Engen, 226 P. 496, 1924.
Pierce County Dairymens Assn. v. Templin, 215 P. 352, 1923.
Cranberry Growers Asan. v. Moore, 201 P. 773, 1921.
204 P. 811, 1921.

members to deliver burley tobacco, grown by them to the association. The contract specified "dark tobacco" whenever the class of tobacco was mentioned and the court held that the contract did not cover burley tobacco and the association could not compel delivery of such tobacco. (1)

The terms of the contract impose obligations and also limit liability; they allow certain actions and limit actions beyond those specified. For example, an association is given the right to pool as long as it is done fairly and properly. (2)

An association can make deductions specified in the contract but cannot make unauthorized deductions. (3) A Michigan case in this connection is worthy of note, the court giving the following opinion: "This suit was begun upon certain express contracts and the terms of these contracts must control. The agreement which is attached to these notes provides (a), that the notes should be used only as collateral security; (b), that they might be endorsed to any person or bank making a

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(1) Dark Tobacco Gr. Coop. Assn. v. Brame et al., 278 S.W. 597, (1925)

(2) Wash. Coop. Egg and Poultry Assn. v. Taylor, 210 P. 806, (1923)
Dark Tobacco Gr. Assn. v. Jones, 117 S.E. 174, (1923)

(3) Silveira v. Ass. Milk Producers, 219 P. 461, (1924)

loan to the association; (c), that to be effective, they must be endorsed to creditors of the association; (d), that anyone holding the note as collateral security could enforce the collection thereof. The notes in this case were not used as collateral security and a fair inference is that no recovery could be had unless endorsed to a third party." (1)

The liability of a member bound by an agency contract is decidedly greater than when bound by a contract of absolute sale, for in the case of the former type, the member is held liable for all acts of the association as principal. (2)

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(1) Runciman v. Brown, 193 N.W. 880, (1923)
Phez. Co. v. Salem Fruit Union, 233 P. 547, (1925)
(2) 192 P. 790, (1920)
203 P. 387, (1921)
203 P. 389, (1921)
201 P. 222, (1921)
205 P. 970, (1921)
210 P. 806, (1923

PARTY TO CONSIDERATION

The right of a third party to sue on a contract is based upon consideration according to a decision in the case of Phez Company v. Salem Fruit Union. (1) The courtheld, that in order to enable a person to sue who is not party to the contract, he must be party to consideration or the contract must have been entered into for his benefit; incidental benefit to him through performance not being sufficient grounds to justify his suit.

SET OFF AND COUNTERCLAIM

In a dairyman's action against a dairymen's league, in which he was a stockholder, to recover money collected by it under agreement, the corporation could not counterclaim on the ground that the stockholders had agreed to apportion losses because of refusal of a large consumer to accept shipments, the cause of action set up under the counterclaim not existing at the time suit was commenced. (2)

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(1) Phez. Co. v. Salem Fruit Union, 233 P. 547, (1925)

(2) Heelman v. Or. D. League, 192 P. 790, (1920)

CONTRACT AND BY-LAW

In a case decided by the State Supreme Court of Nebraska in 1923, it was held that, "Where a stockholder contracts to be bound by existing and future by-laws, a cooperative grain company may adopt any reasonable by-law for its government in harmony with its valid existing contracts and legal obligations and its members will be bound thereby. It may not, however, adopt any by-law abrogating its valid existing contracts with its members." (1)

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(1) Whitney v. Farmers' Coop. Grain Co., 193 N.W. 103, (1923)

CONCLUSION

A study of recent decisions rendered by the State Supreme Courts, reveals that there exists a fairly definite and uniform policy in regard to crop contracts as used by farmers' cooperative associations. These contracts are regarded as a definite type, necessary to the success of cooperatives, characterized by certain qualities foreign to other contracts of purchase and sale, requiring special legal recognition, and generally enforceable at law. The special legislation enacted to define and recognize the validity of crop contracts has been upheld with absolute unanimity except in those very rare cases where a phrase or section is contrary to well established legal precedent, thus rendering the position occupied by crop contracts even more impregnable. The number of cases involving these contracts has increased steadily from a few yearly to about ten in 1923, twenty in 1924, and over thirty in 1925. Many of the cases are regarded as test cases and it is gratifying to note that in the great majority of decisions the contracts have been upheld.

The need for a well-knit business unit is becoming more and more apparent as farmers see the conditions that obtain in the realm of finance, for loose organization

lacks that solidarity so fundamental to the success of any large sized undertaking; contract, the legal symbol of a written obligation to abide by a given promise, lends to an organization of producers that needed and important bit of stability. In all justice, a member, who is legally entitled to receive and does receive the benefits obtained by means of a cooperative association, should be bound to bear the responsibilities of that association inasmuch as its nature is mutual.

A contract cannot take the place of good service: it cannot supplant poor management nor can it be relied upon to hold the membership when the success sought by the association obviously cannot be attained. However, it can and does lend legal, economic, and financial strength to an organization that is striving wisely to attain legitimate goals. As long as members refuse to bind themselves to support their own organization, they cannot expect much worthwhile support from outsiders though such support is often inimical to the successful operation of farmers' cooperative associations. In closing, it should be clearly understood that, although crop contracts are not the only instruments necessary to the successful organization and operation of coop-

eratives and although they have very definite limitations as outlined above, they do afford legal and economic strength that cannot be secured in any other way.

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