

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 34 of 1957

Between :

DHELLA, (d/o PHUNI)

Plaintiff

AND

ARTHUR DIGNAN LEYS

personally and as attorney for Joan

Phillipa French-Mullen

First Defendant

AND

ARMUGAM, (s/o MUNSAMY)

Second Defendant

The plaintiff mortgaged her "native" leasehold land to the mortgagee and made default in payment of interest and insurance premiums due under the mortgage and a collateral bill of sale. The mortgagee exercised her power of sale and the land was purchased by the second defendant who became the registered proprietor of the lease. There were buildings on the land and they were described in the lease as being removable. The collateral bill of sale was executed by the plaintiff over the buildings *inter alia*. The mortgagee had funds in the hands of her solicitors and these funds were, from time to time, invested on the security of various mortgages of real property, the interest payable varying between 5% and 8%. The mortgagee is not resident in the Colony and the mortgages were arranged by the first defendant. The plaintiff claimed that the mortgage and bill of sale executed by her were unenforceable as certain requirements of the Moneylenders Ordinance had not been complied with and asked that they, as well as the assignment of the lease to the second defendant, be declared to be null and void and that they be set aside. No fraud was pleaded against either defendant. The second defendant counterclaimed for possession of the land and buildings.

Held.—(1) The mortgagee was not an unlicensed moneylender ;

(2) The fact of the mortgagee's solicitors investing money on her behalf from time to time at a reasonable rate of interest, even although there were various such transactions each year did not bring her within the provisions of the Moneylenders Ordinance ;

(3) The lending was not a "business" but was merely "incidental" ;

(4) As the mortgagee lived outside the Colony and was thus precluded from becoming licensed as a moneylender; had she so desired, she could not be an "unlicensed moneylender" which describes a person who must register in order to avoid the disabilities created by the Ordinance but who fails to do so ;

(5) The solicitors were not "carrying on a business of moneylending" as agent for the mortgagee nor was her attorney ;

(6) The buildings, although described in the deed of title as being "removable", formed part of the land and such a description could not alter in law the factual position as to fixtures;

(7) The title of the *bona fide* purchaser for value was unimpeachable upon registration;

(8) The words "professed exercise of the power of sale" in section 63 (3) of the Land (Transfer and Registration) Ordinance mean "purported exercise of the power of sale";

(9) Section 3 of the Moneylenders Ordinance does not appear to intend that any person who lends money at interest is presumed to be a moneylender until the contrary is proved.

Judgment for the defendants on the claim and for the second defendant on the counterclaim with costs in each case.

Cases Cited:—

Kisan Singh v. Naurang Singh Civil Action No. 111 of 1957; *Kasumu and Others v. Gbadamosi Baba-Egbe*, 1956, L.R. (A.C.), 539; *Gibbs v. Messer, McIntyres and Cresswell*, 1891 L.R. (A.C.), 248; *Assets Co. v. Mere Roihi* 1905, A.C., 176; *Waimihar Sawmilling Coy. v. Waiome Timber Coy.* 1926, A.C., 101; *Austin Distributors Ltd., v. A. H. Paterson Car Sales Pty., Ltd.*, (1941) High Court of Australia Cases, 118; *Sama v. Sharif Mohammed and Others*, Civil Action No. 1 of 1955; *Litchfield v. Dreyfus* (1906) 1 K.B., 584; *Edgelow v. MacElwee*, (1918) 1 K.B., 205; *Kirkwood v. Gadd*, 1910, A.C. (H.L.) 422; *Hyde v. Sullivan and Others*, 1956 State Reports (N.S.W.) 113; *Scottish etc. Mining Coy. v. The Commissioner of Taxes*, (1950) H.C. Cases, 188; *Raebone v. Deane* (1915) Commonwealth L.R., 636; *Lapin v. Abigail* (1930-31) 44 Commonwealth L.R., 166.

References:—

Baalman's Commentary on the Torrens System in New South Wales, 133; 23 Halsbury (2nd Edn.), 181; Kerr, Australian Land Titles (Torrens) System, 430.

A. D. Patel Esq., for the plaintiff.

R. L. Munro Esq., for the first defendant as attorney for the mortgagee;

D. M. N. McFarlane Esq., for the first defendant in his personal capacity and for the second defendant.

LOWE, C.J. [26th August, 1958]—

In this case some issues have been raised which are now, in the main, of merely academic interest to solicitors, and others who deal in the investment of trust funds on behalf of their respective clients, as the Moneylenders (Amendment) Ordinance, 1957, has put the main issue beyond doubt. However, as a considerable amount of research has been carried out by Counsel for the defendants, with consequent assistance to the Court, and as that research covers a wide field and might be of future assistance, I will deal with this matter in greater detail than I would find necessary in other circumstances.

The plaintiff was the owner of a certain piece of land, at Nadi, comprised in a native lease. Upon the land there was a shed of wood and iron construction, a building of wood and iron construction, a store building of the same materials with an attached room, and also a kitchen of similar construction and an attached bathroom. In her statement of claim the plaintiff describes all of these buildings as being removable. She says that in or about October, 1951 a mortgage and a bill of sale were executed by her in favour of one Mrs. French-Mullen. Both the mortgage and the Bill of Sale were registered as securities for the sum of £350 which had been loaned to the plaintiff by Mrs. French-Mullen, through her solicitors. There is no dispute that the documents were properly executed on behalf of Mrs. French-Mullen by her attorney.

The plaintiff claims that no memorandum or note in writing, of the contract, was signed by the plaintiff or by Mrs. French-Mullen or by their respective agents, nor was a copy thereof authenticated by Mrs. French-Mullen or her agent and delivered to the plaintiff or her agents in respect of the said loan. It is clear that this latter portion is a reference to a requirement under the Moneylenders Ordinance.

The statement of claim goes on to state that Mrs. French-Mullen was at all material times and still is an unlicensed moneylender and that the mortgage and bill of sale are securities and contracts for the repayment of monies lent to the plaintiff by her, through her agents, and she claims that the mortgage and bill of sale, in view of lack of the fulfilment of the requirement in the Moneylenders Ordinance, are unenforceable and asks for a declaration that the transfer of the native lease executed by Mr. Leys as attorney for Mrs. French-Mullen, transferring the lease to one Armugam of Qeleloa, Nadi, and registered on the 29th October, 1956, is null and void and the plaintiff asks that the transfer be set aside. There is a prayer also for a declaration that the deed of assignment dated 29th October, 1956, purporting to have been made between Mrs. French-Mullen and Armugam and executed by Mr. Leys as attorney for Mrs. French-Mullen, is also null and void, and a request that it be set aside.

The pleadings show that Mrs. French-Mullen is a client of Messrs. Ellis, Munro, Warren & Leys, Solicitors, Suva, (to whom I will refer as "the Solicitors"), and that she left this Colony some years ago. Prior to her leaving, she executed a power of attorney in which she appointed three of the partners of the firm, including Mr. Leys, to be her attorneys, jointly and severally. She left the Colony soon after the execution of that power of attorney and has not returned. In their trust fund the Solicitors had some funds belonging to Mrs. French-Mullen and in her absence and, no doubt, with her entire approval, they have been in the habit of investing such funds on her behalf. There is no dispute that the investments were made in legal form unless it can be shown that Mrs. French-Mullen was in fact an unlicensed moneylender within the provisions of the Moneylenders Ordinance. Mr. A. D. Patel for the plaintiff agreed that his client's case must stand or fall on the proof as to that fact. It was agreed also by Mr. Patel and other Counsel engaged, that that issue would be tried first and thereafter the question of the counterclaim which had been lodged by the third defendant, Armugam, could also be tried.

Mr. Patel called the plaintiff who told of the borrowing by her of this money in 1951. She said the loan was arranged by Mr. Kermode, a partner of the law firm of the Solicitors, and that, after an inspection of the property, documents were prepared to secure the debt and the plaintiff executed those documents.

A loan of £350 was paid over to her. The plaintiff never knew Mrs French-Mullen and has never seen her. The only dealing she had which connected her with that lady was the borrowing of the £350. An insurance policy was taken out to protect the mortgagee in connexion with the buildings on the property and it is common ground that the Solicitors paid the premiums and charged them to the plaintiff. The plaintiff did not know whether Mrs. French-Mullen had an office or any such business attachment in Suva nor did she know whether or not Mrs. French-Mullen ever advertised herself as a moneylender or whether she announced herself to be such or held herself out to be a moneylender. In fact she has no knowledge of Mrs. French-Mullen or of her affairs. Payments in connexion with the loan were made to the Solicitors. The plaintiff never received any receipt direct from Mrs. French-Mullen. She received a notice calling up the mortgage but this was not signed by Mrs. French-Mullen. She was not sure who had signed it but she received it from the offices of the Solicitors. She claimed that no one ever explained the documents to her and she did not know anything about them, but in this respect I do not believe her, nor do I believe her statement that she did not know that her lease had been sold by the mortgagee and transferred to the third defendant. She claims to have made arrangements for the repayment of the principal sum borrowed by her when she received the notice to repay the total. She says also that she told the Solicitors that if they would wait she would make arrangements to repay but she was served with a notice to quit the land.

She admitted that the solicitor at Nadi then acting for her had received a letter on the 16th November, 1956, but she denied any knowledge of its contents. This I am unable to believe as that solicitor must have informed her that the letter gave information as to the exercise of the power of sale under the documents concerned, because of default having been made by the plaintiff. In fact she professed such complete ignorance as to her own business as to make her evidence in that respect ludicrous. She said that the buildings on the land in question consisted of her store, her house, which was her permanent residence, and a rice mill. All of the buildings she agreed, were good and substantial and they were affixed to the soil. It would appear that she originally paid £550 for the land and the buildings then upon the land but she claimed that she had built a rice mill on the property subsequently and that the rice mill was there and properly erected when she signed the bill of sale. She had given a power of attorney to one Ram Kumar and it would appear that he looked after most of the business affairs of the plaintiff, although she did not have the temerity to say that he kept her in complete ignorance. Evidence was given to show that the sale of the land to Armugam and the exercise by the mortgagee of her powers of sale contained in the mortgage and the bill of sale, was carried out in conformity with the Land (Transfer and Registration) Ordinance and the applicable law relating to bills of sale. The relevant documents were registered under the Land (Transfer and Registration) Ordinance, which is the equivalent of a local "Torrens" system, and Armugam became the registered proprietor of the lease-hold interest in the land comprised in Lease No. 5626. Evidence also showed that the Registrar of Titles was not bound to inquire into any factors which gave rise to the sale and that up to the time of the registration of the transfer, no prior notice of fraud having been received by the Registrar, Armugam's title became complete upon registration. free from all encumbrances.

There is a letter, dated the 31st of October, 1956, which has been placed in the Register of Title Deeds which has no statutory authority for it being so placed. The document of transfer registering the lease-hold interest in the land in the name of Armugam was registered on the 29th of October, 1956. After having had a copy of that letter compared with the original which was on the register and in order not to disrupt the business of the Land Transfer and Registration Office, I allowed the copy to be put in as an exhibit; Mr. Munro objecting that it was inadmissible. I am satisfied that it was admissible. Mr. Munro's objection was not strictly as to the admissibility of the letter or a copy, but rather that he contended that, there being no statutory authority for the letter being placed on the register, it should not be allowed to come into Court. The letter is signed by one D. S. Sharma saying that the lease in question was held by the plaintiff and was subject to the mortgage to Mrs. French-Mullen. The writer understood that the mortgagee had exercised her power of sale and that a transfer of the lease would soon be lodged for registration. He goes on to say that he has been advised that Mrs. French-Mullen was at that time an unlicensed money-lender and that, consequently, the mortgage would be void under the Moneylenders Ordinance. He then states: "The fact of Mrs. Mullen being an unlicensed moneylender can easily be verified." His reason for such a statement appears to be that he had had information from his agents that Mrs. French-Mullen had taken out no licence. The writer requested the Registrar of Titles to enter a caveat under section 125 of the Land (Transfer and Registration) Ordinance pending the issue of an action in the Supreme Court to have the mortgage set aside. He finishes by saying: "I shall be grateful for your advice at the earliest date."

There is no evidence that any further action was taken to enter a caveat and, of course, the letter was received by the Registrar of Titles after the title had been registered in the name of Armugam. The letter itself is, of course, of no effect. It contains allegations with nothing to support them and in those circumstances the Registrar was quite right to take no further action on the letter, although he was not right in placing the letter in the register. It should be removed.

Ram Kumar gave evidence as to his actions in arranging the loan with the Solicitors. Generally speaking, his evidence in that respect agreed with that of the plaintiff. The evidence of this witness did not carry the case much further.

Mr. Leys found himself in a dual capacity. He is the first defendant as the attorney of Mrs. French-Mullen and he is sued also in his personal capacity. He said that neither he nor any of his co-attorneys had ever carried on any business in Fiji, or elsewhere, for Mrs. French-Mullen as a money-lender. Neither had they nor any of them applied for a licence under the Moneylenders Ordinance for Mrs. French-Mullen. He explained that the transaction in 1951 between the plaintiff and his principal was merely an investment by Mrs. French-Mullen who wished to invest a sum to which she had become entitled under the will of her mother. A sum of money had been received by the Solicitors on behalf of Mrs. French-Mullen in 1950. About that time Mrs. French-Mullen left Fiji and went to British Guiana; she appointed the Solicitors as her Fiji representatives and instructed them to invest her money locally. She had then a certain sum in liquid cash which the Solicitors had in their Trust Fund. In 1951 an investment was made by a small further advance on a mortgage held by Mrs. French-Mullen.

A further mortgage investment of about £150 was also made about the same time. In October, 1951, the investment of £350 bearing interest at 7% per annum was made to the plaintiff. Mr. Leys made it clear that they were the only investments made by him as attorney on behalf of Mrs. French-Mullen during 1951. Subsequently, about three or four investments per year were made for Mrs. French-Mullen.

It was his firm's practice to pay the insurance premiums in order to protect the security concerned and debit the premiums to the mortgagor. This, of course, is a usual and wise practice in all such cases. The rates of interest charged in connexion with mortgages securing principal sums for Mrs. French-Mullen varied between 6% and 7% generally but one case Mr. Leys recalled of a mortgage which was taken over on behalf of Mrs. French-Mullen, and which secured unpaid purchase money, bore interest at 8%, and another at 5%. In no case was an advance made of more than two thirds of Mr. Leys' or a partner's valuation of the property to be mortgaged; generally it was less.

The terms in all securities were the usual terms which trustees would require in such a case but, Mr. Leys said, there was no relationship to any moneylending transaction in any one case. The principal sum in each mortgage is expressed to be due on demand which is a local practice followed by his firm and in line with the practice which is adopted by Banks in Fiji. Mr. Leys went on to say that debit notes for interest and insurance premiums were sent regularly to the plaintiff over the period during which the security ran. The plaintiff had paid only £5 in 1954 and £5 in 1955 towards her indebtedness, which had run into arrears in both years. She was also in arrears regarding the payments for insurance premiums. It was only when such a serious stage was reached that Mr. Leys decided that he must take definite steps to call up the mortgage. In all of the similar cases he had handled, Mr. Leys said, this was the first time he had taken action, on his own decision, to exercise a power of sale under a mortgage. Mr. Leys explained that in Fiji shares were not easy to obtain nor could solicitors obtain advice as to the investment, in shares, of clients' money because of an absence of local sharebrokers. He said also that it was only recently that there had been local body and Government loans available and to the ordinary investor with capital or savings to invest the only practical investment was on real estate in Fiji. He stated categorically that his firm never canvassed for borrowers nor did they look for them in any way. It was the same in the Suva office as in the firm's Lautoka office and Mr. Leys manages both in this respect. No advertisement was ever made that loan funds were available nor had any notice to such an effect ever been sent out to anyone to suggest that money was, in fact, available for investment. There was no display of the names of clients with money to lend either in the offices of his firm or elsewhere. The Solicitors' books of account are kept in much the same way as are Trust accounts elsewhere. Mr. Leys stressed that neither he nor his co-attorneys nor anyone else had ever held out Mrs. French-Mullen as being a lender of money in any way whatever. When Mr. Ker-mode of the Lautoka branch of his firm, made arrangements to lend money to the plaintiff he would have no idea who would be investing the money nor in fact that the investment would be taken up. That matter is for decision in the Suva office.

Mr. Leys agreed that when monies came in to Mrs French-Mullen's Trust account his firm loaned them out again as funds were sufficiently available. He had sent Mrs. French-Mullen money from time to time as she required it and that process of lending out surplus funds and sending money to the principal from time to time has been going on since 1951. He agreed that his firm is a large legal firm and has a number of Trust accounts and estates to administer and that it is likely that the community must know this fact and, he implied, the public in Fiji would be likely to know that there was money sometimes available for lending on security. Mr. Leys made it clear, however, that neither he nor his partners disperse that knowledge to the public.

He denied that there was anything in the nature of a moneylending transaction with any of the business he did for Mrs. French-Mullen and pointed out that the interest rates were low ; she herself is not nor ever has been a banker nor is she a pawnbroker ; she carries on no business whatsoever in Fiji and merely lends money through his firm to earn a reasonable rate of interest. It is not in any way a "business" and the sole type of transaction which is conducted on her behalf is to lend money on the security of real estate. As to the availability of local body securities, Mr. Leys made it clear that they have usually been taken up by one large investor in one large amount. The loans are arranged and debentures issued. In every case they have been large sums which have been available and Mrs. French-Mullen would not have had sufficient money to have taken any such investment.

Armugam gave evidence and asked for an order of possession of the land and buildings comprised in Native Lease No. 5626 which he bought from Mrs. French-Mullen who sold through her attorney, as mortgagee. He said that he had had two notices served on the plaintiff, one through Mr Kermod and one through Mr. Jamnadas, informing her that he had bought the land and that she was to quit. He said the plaintiff was still in possession but, actually, her son was living on the property, the plaintiff having left it about three years ago. Armugam owns land adjoining the land in question. He was positive that all of the buildings on the land were affixed to the soil. He knows the property well and has lived next door for some time. He has known the plaintiff for about ten to fifteen years and knew her during the time she lived on this property. In fact, he knew the predecessor of the plaintiff who also lived on the property. He denied having been told at any time that anything on the property was removable. He insisted that all buildings were in fact fixtures and they were fixtures when he bought them.

That is all the evidence in this case. It is common ground that the necessary consent of the Native Land Trust Board was given to the transfer. Mr. Patel for the plaintiff, with more courage than conviction, said that he had proved that Mrs. French-Mullen was an unlicensed moneylender. He agreed that it was clear that she does not reside in Fiji nor has she any business here but merely lends out money to strangers. The loans, however, he claimed, are systematic and continuous each year. Although Mrs. French-Mullen did not advertise or hold herself out as a lender of money she has instructed her solicitors and naturally expects needy persons to go to those solicitors. Her capital is in their hands and this fact, he said, obviates the necessity for advertising. He pointed out that it had been said by Mr Leys that loans were made on leasehold and freehold and only up to two thirds of the value of such properties. Although the interest rates are reasonable, Mr. Patel argued that none of those matters, including the question of interest, altered the nature of the transaction under the Moneylenders Ordinance.

Mr. Patel argued that Mrs. French-Mullen must be deemed to be a money-lender even though she lent out her money by mortgage and at low interest, unless she came within those exceptions within the definition "money-lender" contained in section 2 of the Moneylenders Ordinance, (Cap. 207). The definition is as follows:

" 'Moneylender' includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent but does not include—

(a) any body corporate incorporated or empowered by a special Act of Parliament or by an Ordinance to lend money in accordance with such special act or Ordinance ;

or

(b) any person *bona fide* carrying on the business of banking or insurance or *bona fide* carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money at a rate of interest not exceeding 10% per annum ;

or

(c) any pawnbroker licensed under the provisions of the Licence Ordinance ;

or

(d) any body corporate for the time being exempted by the Governor in Council from the provisions of this Ordinance."

Mr. Patel pointed out that there was an amendment to the Moneylenders Ordinance, by Ordinance No. 22 of 1957, and under this amendment Mrs. French-Mullen as a mortgagee of freehold or leasehold lands would have been exempted from the provisions of the Ordinance had it not been for the fact of section 3 of the amending Ordinance which provides that Ordinance No. 22 of 1957 shall have no application in any proceedings already pending before any Court on the 9th day of July, 1957. The instant case, he said, was in fact pending on the 9th July, 1957, so the present protection which would otherwise have been afforded to Mrs. French-Mullen does not extend to her for that reason. Mr. Patel appeared to consider that as the amending Ordinance did not apply to the instant case, Mrs. French-Mullen must be an unlicensed moneylender under Chapter 207, but that is not necessarily so until she is shown to be embraced by its provisions.

He contended also that although there was evidence that no other avenues of investment were available to Mrs. French-Mullen, that did not assist her because it was no doubt on account of that fact that she had resorted to lending money on interest. In other words she had resorted to moneylending. It was, he argued, a systematic moneylending and all transactions were made for the purposes of gaining interest. He agreed that no licence had been taken out for or on behalf of Mrs. French-Mullen but as she came within the provisions of the Moneylenders Ordinance and no note or memorandum in writing of the contract signed by the parties or their respective agents had been delivered to the borrower or her agent, the mortgage and bill of sale taken out and executed by the plaintiff in favour of Mrs. French-Mullen were both unenforceable. He referred to a case which he claimed to be similar to the instant case, namely Civil Action

No. III of 1957, *Kisan Singh v. Naurang Singh*, but I find that that case was decided on different circumstances and particularly for the reason that the learned Judge found himself unable to believe the party whom he finally found to be a moneylender. Mr. Patel referred also to *Patience Kasumu and Others v. Gbadamosi Baba-Egbe*, 1956, L.R. (A.C.) 539. This is a Nigerian case which went to the Privy Council. The appellants were administrators for a licensed moneylender who had kept no books of account as required by the Nigerian Ordinance. The mortgagee took possession of the land on account of default having been made but because of the wide provisions of the Nigerian Ordinance as to the mortgagee in such circumstances being precluded from recovering money lent by him, it was held that his security was unenforceable and he was required to give possession of the land back to the original borrower. Mr. Patel argued that there were no books kept for Mrs. French-Mullen, merely the accounts within the Solicitors' own office. For the reasons he had given, Mr. Patel claimed that the transfer from Mrs. French-Mullen by her attorney to Armugam was in contravention of the provisions of the Moneylenders Ordinance and so was illegal, null and void. I would draw the distinction that in the Nigerian case the mortgagee was a registered moneylender and so came within the Nigerian Ordinance and in addition the mortgagor had taken early steps to protect his position. Unless Mr Patel shows that Mrs. French-Mullen is an unlicensed moneylender within the Moneylenders Ordinance, the Nigerian case can have no application.

Counsel said that Mrs. French-Mullen had no right to sell at all and Armugam could not assert any rights against the plaintiff. He also argued that the title of the third defendant, Armugam, could not be said to be indefeasible and for that reason unable to be disturbed. He pointed out that under section 14 of the Land (Transfer and Registration) Ordinance there must be a genuine dealing before the title, on registration of that dealing, becomes indefeasible and an unlawful transfer cannot be said to be in any way a genuine dealing. Section 14 is of importance and is as follows:

"The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all Courts of law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he has proved to have been a party or on the ground of adverse possession in another for the prescriptive period. A duplicate or certified copy of any registered instrument signed by the Registrar and sealed with his seal of office shall be received in evidence in the same manner as an original."

Mr. Patel said that the transfer to Armugam could not be said to be a transfer from the registered proprietor and referred the Court to section 29 of the Land (Transfer and Registration) Ordinance which is as follows:

"Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or any part thereof, or shall be effected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding and the knowledge that any such trust or unregistered interest is in existence, shall not of itself be imputed as fraud."

In other words, said Mr. Patel, if a mortgagee has no right to enforce a security because of the provisions of the Moneylenders Ordinance, he cannot obtain that right from the Land (Transfer and Registration) Ordinance. He said that section 61 of that Ordinance could not operate as a transfer of land. With that I agree and I find no need to quote the section. Mr. Patel said that if there was a right of sale in the instant case the mortgagee must exercise that right in the manner laid down in section 63, sub-sections (2), (3) and (4), and the purchaser, on such a sale by a mortgagee, would be protected from any impropriety or irregularity in the exercise of that power of sale.

However, he said, Mrs. French-Mullen had no power to sell and could not get it from section 63. He referred to subsection (3) of that section which is as follows :

“ Where a transfer is made in professed exercise of the power of sale conferred by this Ordinance the title of the transferee shall not be impeachable on the ground that no cause had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by any unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.”

In other words Mr. Patel was arguing that the words “ professed exercise ” mean, in fact, “ exercise ” and his argument, if I understood him correctly, is to the effect that as Mrs. French-Mullen could not enforce her alleged rights of sale because of the Moneylenders Ordinance and had gained no right or power of sale conferred by the Land (Transfer and Registration) Ordinance, the title of the transferee could be impeached.

Mr. Patel referred the Court to *Gibbs v. Messer, McIntyres and Cresswell* 1891 L.R. (A.C.), 248, at 257, in order to show that Mrs. French-Mullen being an unlicensed moneylender and having had a mortgage executed in her favour, which was invalid, could not be said to have obtained any interest whatsoever in the land. That, generally, was his argument but I find the case cited to be of no assistance to Mr. Patel as it is based on the question of fraud. Nowhere in the pleadings is there any suggestion that Mrs. French-Mullen or her attorney or any one of them was guilty of fraud. Fraud, of course, must be specifically pleaded if it is to be relied upon. I will refer later to *Gibbs v. Messer*, which is how I will cite the case hereafter.

Mr. Patel referred also to Baalman's Commentary on the Torrens System in New South Wales, 133, where the learned author in referring to other authorities, says :

“ Notwithstanding that clear-cut and binding authority, there have been several judicial attempts to create a form of mediate or deferred indefeasibility ; something which depends not only on the act of registration, but also on the existence of a valid instrument of acquisition. At the forefront of these dissenters is *Sir John Salmond*. His view, as expressed in a minority judgment in *Boyd v. Mayor of Wellington* is that ‘ the registered title of A. cannot pass to B. except by the registration against A's title of a valid and operative instrument of transfer. It cannot pass by registration alone without a valid instrument, any more than it can pass by a valid instrument alone without registration.’ He bases this philosophy on the authority of *Gibbs v. Messer*, claiming that that case can be reconciled with the later and apparently conflicting authority of *Assets. Co. v. Mere Roihi*.”

Mr. Patel stressed that minority judgment in favour of his client's case but, with respect, I agree with the further words of the learned author :

" There is a captivating symmetry about the above quotation which seldom fails to command attention. But it is submitted, with the greatest respect, that the occasion was one on which *Salmond, J.*'s undoubted facility for elegant expression was allowed to out-run that distinguished jurist's undoubted faculty for expounding the law."

In the Privy Council case of *Assets. Co. v. Mere Roihi* (1905) A.C., 176, 202, it was stated :

" The sections making registered certificates conclusive evidence of title are too clear to be got over."

and in the *Waimihar Sawmilling Company v. Waiome Timber Company* 1926, A.C., 101, 106, it was also stated that :

" The cardinal principle of the statute is that the register is everything."

The relevant legislation in this Colony is almost exactly on all fours with the similar legislation in New Zealand and Australia and, with respect, I agree with those two *obiter dicta* and consider that they state principles which apply with considerable force in this Colony. Mr. Patel referred again to Baalman and agreed with the learned author that the Register of Titles is all important. However, he said, if Mrs. French-Mullen had no power of sale, Armugam could gain no title because title could be obtained by him only from the registered proprietor and in the instant case he had not done so. He said further that the transfer could not cover the building and the rice mill which were on the land and pointed out that these, in all documents to which he referred, were shown as removable chattels, and, in fact, the bill of sale had been taken over those " chattels ". Mr. Patel argued that the buildings had been shown to be chattels and were sold as chattels, for which reason the provisions of the Land (Transfer and Registration) Ordinance could not possibly apply. He said in conclusion that he sued Mr. Leys personally merely because, Mrs. French-Mullen being a moneylender, was bound to confirm lawful actions of her attorney and any sale which was not a lawful act she would not confirm and she might say that in the instant case the act of her attorney was not binding on her.

In that case a liability might attach to Mr. Leys. In that respect I would point out that Mr. Patel has brought no evidence whatsoever to suggest that Mrs. French-Mullen did not in fact confirm the action of her attorney in exercising the power of sale. In fact all relevant evidence goes to show that Mrs. French-Mullen must have confirmed the action of her attorney in selling up the security she held from the plaintiff.

Mr. Munro who appeared for Mr. Leys in his capacity as an attorney said that Mr. Patel was unsupported by any law. No case quoted by Mr. Patel had any application whatsoever. Mr. Patel had been unable to cite any case to show that a person in the position of Mrs. French-Mullen in any other territory or Dominion was a moneylender, and the plaintiff had relied on presumptions which, in fact, were rebutted by her own evidence and that of Mr. Leys. He said that the basic test is advertising oneself as a moneylender, holding oneself out as a moneylender or oppressive terms in moneylending and such facts which would go to show that the object of the person lending the money was to act as a " moneylender " within the meaning of that word in the Ordinance. In the case of Mrs. French-Mullen her loans

were small and few and were merely investments. She herself could not have been registered under section 5 of the Ordinance, not only because she did not wish to, but because she lived outside of the Colony and no person in such circumstances had a right to register. She has never carried on the business of moneylending and her interest never went beyond 7 per cent although there might have been one isolated case of 8 per cent. He questioned whether Mrs. French-Mullen could possibly be described as an unregistered moneylender within the Ordinance if she lived outside of this Colony but, in any event, her activities in lending money were what must be looked at. He referred to the case of *Austin Distributors Ltd. v. A. H. Paterson Car Sales Pty. Ltd.* (1941) High Court of Australia Cases, 118, 125. The appellant company, dealers in motor vehicles, who also financed a small number of other dealers in motor vehicles who acquired them from third parties, arranged certain hire purchase agreements with the respondent in connexion with motor vehicles and the respondent gave the appellant several promissory notes to cover the instalment payments. When these fell in arrears the appellant sued the respondent to recover the money expressed in the notes. The action did not succeed and the appellant appealed. *Starke, J.* said :

"There is no substantial difference between companies financing pastoral pursuits, or stock and station agents financing stock dealings, or companies financing dealings in used motor vehicles. All were distinct mercantile services. The primary object of these transactions was not moneylending in the popular and ordinary sense but the conduct of well-recognized and useful commercial activities. The moneylending was but incidental to those activities, and in no sense, its primary object."

This, in effect, was the unanimous opinion of the Court. The definition of "moneylender" in the relevant portion of the Australian Act is of the same effect as the definition in the Moneylenders Ordinance. Section 3 of the Ordinance is as follows :

"Save as excepted in paragraphs (a), (b), (c) and (d) of the definition of 'money-lender' in section 2, any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

Mr. Patel argued that the case of *Sama v. Sharif Mohammed and Others*, Civil Action No. 1 of 1955, was his authority to show that Mrs. French-Mullen came within the purview of section 3. I have looked at the judgment in that case and there are portions regarding which, with respect, I find myself in some doubt. In his judgment the learned Judge said :

"It is a well established canon of construction that where a statute is open to more than one construction, the Court may look to the intention of the legislature in an endeavour to construe it correctly. The intention of the legislature as expressed in the headnote of the Moneylenders Ordinance is 'to make provision for the control of moneylending'. This purpose is effected by (a) compelling them to take out a licence under pain of rendering all their contracts unenforceable and (b) placing a limit on the rates of interest which may be charged. In order that the intention of the legislature should not be defeated, the definition of a moneylender has been made particularly wide. Section 3 of the Ordinance would appear to be designed expressly to cover the case of those persons who whilst they may not be considered to be 'carrying on a business as a moneylender' nevertheless do lend money on interest."

The Court often finds it necessary to construe a particular section of an Ordinance. It is not clearly stated, in my view, to say that the intention of the legislature must be looked at in order to construe a section correctly. It is, of course, permissible to look at the headnote of an Ordinance as a possible guide, but the headnote need not necessarily be accepted as an authority from which to construe a particular section of the Ordinance. What the Court is entitled to do and, in fact, often finds it a duty to do, is to look at the intention of the legislature as the legislature has expressed that intention in the section under review. In other words, it is not what the legislature intended but what the legislature has expressed by the words of a section which is all important.

The learned Judge went on to say :

“ In my view the correct interpretation of section 3 is that any person who lends any one sum of money at interest etc. is, in respect of that loan, and in respect of any other loan or loans he may make, whether with or without interest, presumed to be a moneylender until the contrary is proved.”

With respect, I regret that I am unable to agree that that is the true construction of section 3. In my view the section merely means that if a person lends a sum of money, expressed in figures, to another person and in the arrangement he requires that a larger sum of money, also expressed in figures, be repaid, then he is presumed to be a moneylender. In other words, if A says to B : “ I will lend you £200 in consideration of your agreeing to pay me £216 in twelve months time,” then A is presumed to be a moneylender until the contrary is proved, but if A says to B : “ I will lend you £200 in consideration of your agreeing to repay that sum in twelve months time together with interest at the rate of 8 per cent per annum,” then A is not presumed to be a moneylender and in the latter case the onus of proof to the contrary would remain with the plaintiff.

The question of the true construction of section 3 will, no doubt, be resolved by a Court of higher authority in due course.

Mr. Munro said, quite rightly, that section 3 had no application to Mrs. French-Mullen and that it did not in any way widen the definition of moneylender as set out in the Ordinance. After referring to 23 Halsbury (2nd Edn.), 181, where the learned author says that whether or not a person is a moneylender within the definition contained in the English Act is a question of fact and one is entitled to look at the system before that fact can be decided, Counsel went on to refer to *Litchfield v. Dreyfus* (1906) 1 K.B., 584-589, where it was stated by *Farwell, J.* :

“ But not every man who lends money at interest carries on the business of moneylending. Speaking generally, a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible. I do not of course mean that a moneylender can evade the Act by limiting his clientele to those whom he chooses to designate as ‘ friends ’ or otherwise ; it is a question of fact in each case. In the present case, the plaintiff’s business is now that of an art valuer and adviser. He has obtained from Mr. Armor a room in his premises where he has his name up on a plate as an adviser on art matters. He is a well known author of books on artistic matters. So as regards the few persons whom he has assisted since 1903, either by way of discounting bills of other

persons for them or by discounting their own bills, it would be a straining of the language of the Act to hold that a man who so obliges his friends is carrying on the business of a moneylender. The Act was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business or to a few old friends, by way of friendship. This particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term."

The English section is almost equivalent to the relevant section in the Moneylenders Ordinance and, in particular, the definition of moneylender is approximately the same. In *Edgelow v. MacElwee* (1918) 1 K.B., 205-206, *McCardie, J.* said, with reference to *Litchfield v. Dreyfus*—

"With the actual decision in that case I agree, though I think that the *dictum* of the learned Judge, where he says 'speaking generally, a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided they are from his point of view eligible', may require future consideration. . . . The Act of 1900 was a severe but beneficial measure. Its object must always be remembered. On the one hand a legitimate business must not be checked if the lending of money is reasonably and *bona fide* incidental to its successful prosecution. On the other hand the law must not permit an apparently legitimate business to be made a mere cloak and pretext for the unlawful trade of an unregistered moneylender. Evasion of the Moneylenders Act should be repressed, and Judges, I think, should be astute to recognize the possibilities of ingenious subterfuge and subtle device."

In *Kirkwood v. Gadd* (1910) A.C. (H.L.) 422, 431, *Atkinson, L.J.* to some extent clarifies what is meant by "carrying on business" in these words :

"In one sense every step, every item, in a long or complicated financial or commercial transaction may be said to be 'business', but I think it is obvious that in the phrase 'carries on business' employed in this section, as in the phrase 'carrying on business' employed in the 4th section of the Companies Act of 1862, the words 'carries on' must be held to imply a repetition of acts, the sum of which constitutes the 'business': see *Brett, L.J., Smith v. Anderson*."

Although later he says :

"It is impossible to define with fullness or accuracy what is the precise meaning to be given to the phrase 'carrying on business'. It is to a large extent a question of fact, to be determined in each case by its own special circumstances."

Another persuasive authority referred to by Mr. Munro was *Hyde v. Sullivan and Others* (1956) State Reports (N.S.W.), 113. In the course of the judgment it was stated :

"It will be remembered that section 3 divides moneylenders into two broad categories, the first of which under two sub-heads includes persons carrying on the business of moneylending or advertising, announcing or holding themselves out as carrying on a business. The other category includes those persons who, while not carrying on a business as such, from time to time lend money at a rate of interest exceeding 10 per cent

per annum. A man may therefore, in some circumstances, be a money-lender within the meaning of the Act, even though he does not carry on business as such. Speaking generally, the phrase 'to carry on business' means to conduct some form of commercial enterprise, systematically and regularly, with a view to profit and implicit in this idea are the features of continuity and system."

And later in the judgment :

" This argument also involves, as a necessary corollary, the assumption that the plaintiff would have been entitled to obtain a licence under the act and having failed to comply with the statutory obligation to obtain that licence, section 21 defeated his claim to recover the amount sued for. It is clear that this section only applied to those upon whom an obligation rested to obtain a licence, and it could have no application to persons not entitled to obtain a licence under the Act and who therefore could not become moneylenders. Section 21 cannot be taken to apply to persons whom the law does not permit to obtain a licence or for whom no such provision is made. If the Act did not require the plaintiff to obtain the licence, then section 21 can have no application to him."

The judgment then refers to certain Queensland cases and goes on :

" While these decisions are concerned with the statute in somewhat different terms they provide a close analogy to the present proceedings, and in each case the Court held that a person who occasionally lends money, but not as a part of a business of moneylending, is not required to be registered under the Queensland Act. The reasoning in each of these decisions commends itself to us and affords a strong support of the view which we have formed that under the provisions of the Moneylenders and Infants Loans Act applicable in New South Wales, a person who from time to time lends money, but does not carry on business as a moneylender, is not required to take out a licence under the Act. No requirement having been imposed upon him in that regard, section 21 can have no application to him."

Section 21 of the New South Wales Act is different in terms from sections 15 or 16 of the Fiji Ordinance but I quote it to show the analogy :

" No moneylender shall be entitled to recover in any court any money or any interest in respect thereof, or to enforce any contract made or security taken in respect of any loan made by him unless he satisfies the court by the production of his licence or otherwise that at the date of the loan or the making of the contract or the taking of the security (as the case may be) he was the holder of a licence under this Act, was registered as a moneylender under the Moneylenders and Infants Loans Act 1905."

Much more persuasive authority was produced by Mr. Munro and, in particular, *Scottish etc. Mining Company v. The Commissioner of Taxes* (1950) H.C. Cases 188, in which it was found that although the Company was formed primarily for mining purposes but had made provision in its memorandum of association whereby it was permitted to sell land, and although it had, from time to time sold parcels of land at considerable profit, the Company was not, for the purposes of the Income Tax Act, engaged in the business of selling land. This decision went on appeal to the Full Court of the High Court of Australia and, by consent, the decision was upheld.

In *Raebone v. Deane* (1915) Commonwealth L.R., 636, 640, *Griffith, C.J.*, after dealing with the facts of the case, said :

" I should like, however, to add that, as at present advised, although we have not heard full argument on this point, I see no reason for saying that the investing of money on mortgages of real estate, although carried on systematically and on a large scale, can be regarded as carrying on the business of a moneylender within the meaning of the Act."

Lapin v. Abigail (1930-31) 44, C.L.R., 166, 168, is a case in which a solicitor was shown to have lent large sums of money at interest in the course of his business, but the Court below held that in all the circumstances it was not established that he carried on the business of a moneylender. On appeal four Judges of the Court came to the conclusion that the finding should not be disturbed ; *Isaacs, J.* expressed doubts but did not dissent.

Mr. Munro concluded by saying that in view of the persuasive authorities which he had produced, as well as the other applicable authorities, there could be no doubt that Mrs. French-Mullen could not be deemed to be an unlicensed moneylender and within the disabilities which such persons must suffer under the provisions of the Ordinance.

Mr. McFarlane appeared on behalf of Mr. Leys in his personal capacity and on behalf of Armugam the third defendant. He said that all Mr. Leys had done was to act as attorney and he had done nothing without due authority and, in fact, there was no possible claim against Mr. Leys in either capacity.

Mr. McFarlane argued that the transfer to Armugam was perfectly in order and could not, as claimed by Mr. Patel, be in any way void. It was a genuine transfer from the mortgagee to Armugam under the power of sale which was exercised by the attorney for the mortgagee. He argued that Mr. Patel in order to get over a difficulty in which he found himself by reason of section 14 of the Land (Transfer and Registration) Ordinance, had argued that the transfer to Armugam was not a genuine dealing. Section 14 is as follows :

" The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all courts of law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to have been a party or on the ground of adverse possession in another for the prescriptive period. A duplicate or certified copy of any registered instrument signed by the Registrar and sealed with his seal of office shall be received in evidence in the same manner as an original."

Mr. McFarlane urged that there was no question of Mrs. French-Mullen being a moneylender at the material time ; neither was there any suggestion in the pleadings of any fraud or collusion by her or her attorney. Consideration had been paid by Armugam and a genuine transfer was executed and registered. The title of Armugam was indefeasible, said Mr. McFarlane. Mr. Patel had argued that the registered proprietor, that is the plaintiff, had not transferred to Armugam, so by reason of section 29 of the same Ordinance the transfer was of no effect as it had come from a mortgagee. This, of course, is not so. Section 29 is as follows :

" Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be computed as fraud."

The operative words so far as Mr. Patel's argument is concerned, are " the registered proprietor of any registered estate or interest ". Mrs. French-Mullen was registered as mortgagee with the right of sale granted to her in the event of default being made in the payment of principal or interest monies under the mortgage. She had a registered interest in the land and exercised her power of sale in order to transfer that interest. She was the registered proprietor of the dealing, that is the mortgage, which gave her that interest. Mr. Patel had referred also to section 63 (3) of the Land (Transfer and Registration) Ordinance and had claimed that it could not be said to apply to the position in which his client found herself. The subsection is as follows :

" Where a transfer is made in professed exercise of the power of sale conferred by this Ordinance, the title of the transferee shall not be impeachable on the ground that no cause had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by any unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power."

There is no doubt that the word " professed " merely means " purported " exercise of the power of sale.

Mr. McFarlane referred to Kerr's Australian Land Titles (Torrens) System, 430 at paragraph 961 where the learned author says :

" If a transfer has not been actually registered, the mortgagor's remedy in the case of improper exercise of the power of sale is to set the transaction aside. If, however, the purchaser is a *bona fide* purchaser for value who has become registered, then the mortgagee is liable to account on the basis of wilful default for the full value of the property."

In the instant case, Counsel said, any remedy which the plaintiff might have had would have been merely in damages but she had seen fit not to take any such action and she knew from 1956, when she had been notified of the default she had made in the payments which had become previously due, that the property would be sold. The property was not actually sold until October, 1956, but she took no steps to lodge a caveat or to claim an injunction on the grounds that Mrs. French-Mullen was an unregistered moneylender as the plaintiff now alleged.

Mr. Patel had referred to a Nigerian case of 1956 where the land was returned to the mortgagor under circumstances described within the report. In that case the mortgagor had taken steps to protect his interests before the mortgagee went into possession and before the mortgagee sold to the third party. There was no analogy, Mr. McFarlane said, between that case and the instant case. With that, I agree and I do not find it necessary to refer in any further detail to the facts of that case. In the instant case, Mr. McFarlane claimed, even if the mortgage had been void, the operation of transferring to Armugam who had registered the transfer in his favour created an indefeasible title. There was no notice of fraud and the sale was to a *bona fide* purchaser for value. It is not suggested that Armugam himself had been guilty of fraud. Mr. McFarlane relied on the majority judgment in the case of *Gibbs v. Messer*, which is entirely in his favour. As to the buildings, Mr. McFarlane said, the evidence before the Court showed indisputably that the buildings were fixtures and formed part of the freehold. With that, I also agree. As to the counter-claim, Mr. McFarlane stressed that Armugam was entitled to possession. He had the lease registered in his name, his title was indefeasible and no fraud was imputed to him.

The authorities, although many of them are merely of persuasive value, are overwhelmingly in favour of the three defendants. The fact of the buildings being described in the lease and other documents, particularly the Bill of Sale, as being removable has no bearing whatsoever in this case. No doubt the reason for describing the buildings, in the lease, as being removable was for the reason that several such buildings might in fact form part of the land as do the buildings in the instant case and provision is made in order to enable the lessees to remove such buildings, subject to certain conditions, after the expiry of the lease, which, otherwise, they would have no right to remove. However the parties to a transaction describe the buildings, such description can have no effect on the factual position and, if it is proved that the buildings are affixed to the soil, then they form part of that soil. Of course, if provision is made or something is reduced into writing by the parties to enable one party to remove such buildings, then the covenant or agreement in that connexion would, no doubt, be binding but nevertheless the buildings are fixtures until such removal.

I can find no substance whatsoever in the claim by the plaintiff. If she felt that she had a right of action in damages she should have taken such an action but to ask for the mortgage and the bill of sale to be set aside is something which the law does not permit me to consider. However, the plaintiff has failed entirely to prove that Mrs. French-Mullen was, at the material time, an unlicensed moneylender. There is clear evidence that she never advertised or held herself out as such. She offered no inducement to the plaintiff, her rate of interest was reasonable, in fact at present standards quite a low rate, and the terms of the mortgage are not challenged as being harsh or in any way onerous. Her attorney held out no inducement whatsoever to the plaintiff. Mrs. French-Mullen, in fact, is not and never was a moneylender within the meaning of that word in the Ordinance. Her lending was merely incidental. She had money available in the Trust Account of her Solicitors and she acted, as she was entitled to do, to obtain a reasonable interest by lending on the security of real estate rather than leave her money idle. She does not become a moneylender by so doing. She could not have become registered as such, being ineligible because she does not carry on a business in Fiji. She does not reside in the Colony and the Ordinance cannot have extra-territorial application to her. Being "unregisterable"

she cannot be brought within the provisions of the Ordinance as an unlicensed moneylender. Such a person is one who must register in order to avoid the disabilities created by the Ordinance but who fails to do so. If, however, a person living out of the Colony carries on a business of moneylending through an agent in the Colony and the agent does not register, the latter is an "unlicensed moneylender". The Solicitors were never acting as such an agent; neither was any attorney for Mrs. French-Mullen. The plaintiff, however, has made no claim that Mr. Leys, as agent for Mrs. French-Mullen, is an unlicensed moneylender. To have done so would have been to have based a claim on a complete lack of foundation.

There is no doubt that Mr. Leys in his personal capacity has acted with meticulous care throughout and has acted most properly. He, as attorney, has acted with perfect propriety in fact and in law. Armugam has a registered title which is indefeasible.

I should add that the 1957 Amendment to the Moneylenders Ordinance is not all embracing. Many who do not come within the exceptions therein enacted might still be outside the provisions of the Ordinance and the instant case is one in point.

For the above reasons I gave judgment in favour of all three defendants with costs to each. If she has not already done so, the plaintiff is to give possession of the land in question to the defendant Armugam within fourteen days from the date hereof. Judgment was also entered for the defendant Armugam on the counterclaim, with costs.