

I see no reason for adopting a different view, and I hold that the defendant, had he so desired, could have obtained specified performance of the terms of the memorandum of conditions.

It follows that as regards delivery of possession of the land at the expiry of ten years, the parties are in the same position as if a lease valid in law had been granted.

Judgment must be entered for the plaintiff.

BADAL v. BHAGOTI PRASAD.

[Civil Jurisdiction (Corrie, C.J.) May, 15, 1941.]

Bills of Sale Ordinance, 1879¹—s. 7—Consideration not truly stated—whether void against all parties—Moneylenders Ordinance, 1938²—s. 2—Allegation that mortgagee an unregistered moneylender—Ragudatt v. Ramautar followed—Mortgage collateral to void Bill of Sale—whether Mortgage ipso facto void—Consideration for Mortgage incorrectly stated—whether Mortgage therefore void.

The plaintiff was in debt to the defendant and, to secure moneys owing, executed various documents—a Mortgage with a collateral Bill of Sale and Promissory Note securing portion of the debt. At the time of the action the Promissory Note had expired. The consideration was not correctly stated in the Bill of Sale and Mortgage.

HELD.—(1) A Bill of Sale in which the consideration is not truly stated is void against all parties by virtue of s. 7 of the Bills of Sale Ordinance, 1879.

(2) A Mortgage collateral to a Bill of Sale is not void because the Bill of Sale is void.

(3) A Mortgage in which the consideration is incorrectly stated is not void.

The case of *Ragudatt v. Ramautar* [1940] 3 Fiji L.R.— was followed as to the meaning of “calendar year” in s. 2 of the Moneylenders Ordinance.²

ACTION FOR CANCELLATION OF SECURITIES and for an account between the parties. The facts are fully set out in the judgment.

S. Hasan for the plaintiff.

R. A. Crompton for the defendant.

CORRIE C.J.—The plaintiff, Badal, son of Sukhai, claims, first, the cancellation of the following documents :—

(a) A Bill of Sale dated 20th January, 1934, executed by the plaintiff in favour of the defendant, Bhagoti Prasad, for the sum of £98 18s. od.; and

(b) A mortgage dated 18th January, 1939, executed by the plaintiff in favour of the defendant for £236 5s. 3d.

Secondly, an account of all transactions between the plaintiff and the defendant during the years 1934 to 1939 inclusive; and payment of such sum, if any, as is found to be due to the plaintiff.

¹ Cap. 179.

² Cap. 185. The section has since been amended.

The plaintiff attacks the Bill of Sale on the ground that the consideration named therein is not truly stated.

The Bill of Sale is stated to be for £98 18s. od. "now owing". From the evidence of Mr. Gibson, who acted as solicitor for both parties when the Bill was drawn up, and from the entry made in his diary on the 18th December, 1933, it is clear that the amount then owing was £73, and that interest for one year, £19 12s. od., and costs, £6 6s. od., were added to make up the total of £98 18s. od.

S. 7 of the Bills of Sale Ordinance 1879 provides that every Bill of Sale "shall set forth the consideration for which such Bill of Sale was given otherwise such Bill of Sale shall be deemed fraudulent and void".

On behalf of the defendant it is argued that these words mean that the Bill is to be deemed void as against third parties, but not as between the parties thereto. This interpretation, however, involves reading into the section the words "as against third parties" and there can be no ground for so doing when the section as it stands is quite unambiguous.

"The consideration" referred to in the section must mean the true consideration: and as the true consideration was not stated in the Bill of Sale, it must be held to be void.

The mortgage is attacked upon several grounds. In the first place it is argued that it is void under the Moneylenders Ordinance 1938.

S. 14 of the Ordinance reads:—

"No contract for the repayment of money lent after the coming into force of this Ordinance by an unlicensed moneylender shall be enforceable".

The Ordinance came into force on the 1st January, 1939. On the 18th January, 1939, when the Mortgage was executed, the defendant had not taken out a licence as a moneylender; and the question to be determined, therefore, is whether he was upon that date a moneylender within the meaning of the Ordinance.

By s. 2 of the Ordinance the term moneylender was defined to exclude "any person who during the course of one "calendar year lends money on interest or for profit on not more than three occasions".

This Court has held in *Ragudatt v. Ramautar*¹ that the term "one calendar year" means a period of one year commencing on the 1st January. On the evidence before it, the Court holds that on the 18th January, 1939, when this transaction took place, the defendant had not made more than two loans in the period commencing on the 1st January, 1939: hence he was not a moneylender, within the meaning of the definition, and the transaction was not void under s. 14 of the Ordinance.

Later in the year 1939 the defendant became registered as a moneylender and entered into further moneylending transactions; but it cannot be held that such registration and further loans had a retrospective effect so as to constitute the defendant a moneylender within the Ordinance as from the beginning of the year; and the Mortgage, therefore, is not to be held void upon this ground.

¹ [1940] 1 Fiji L.R. Q.V.—the relevant section has since been amended.

The validity of the Mortgage is also challenged on the ground that the contents of the deed were not explained to the plaintiff, and that in consequence he signed it in ignorance of its meaning.

The plaintiff, however, has not satisfied me that he did not understand the effect of the Mortgage.

The plaintiff further argues that the Mortgage is void on the ground that the mortgagor thereby covenants with the mortgagee "that this Mortgage is collateral with Crop Lien 38/110 and Bill of Sale 34/111 securing part of the same principal sum as is hereby secured and made between the same parties as are parties hereto". The Crop Lien referred to has expired and the Bill of Sale is, for the reasons which have been given, void; in these circumstances the plaintiff argues that the Mortgage, being a collateral security, must be deemed to be void also.

The answer to this argument is to be found in the clause itself which says that the Crop Lien and Bill of Sale secured "part of the same principal sum as is hereby secured"; and the fact that these two instruments which are collateral security for part only of the same principal sum are now void, is no reason for holding the Mortgage for the whole sum to be void also.

The plaintiff further alleges that the consideration is not truly stated in the Mortgage and that in consequence it is invalid.

The consideration stated is "the sum of £236 5s. 3d. (being the sum of £161 5s. 3d. now owing, the sum of £66 10s. od. this day advanced and the sum of £8 8s. od. solicitor's costs making in all the sum of £236 5s. 3d.)". The Mortgage does not contain the usual clause acknowledging receipt of the sum of £66 10s. od., and the plaintiff alleges that such sum in fact never was paid. There is a conflict of evidence on this point and, in the absence of any receipt for the sum in question, I hold that it was not in fact paid. It does not follow, however, that the Mortgage was invalid as regards the amount actually due from the plaintiff to the defendant at the date when it was executed, and the claim for cancellation must be rejected.

The plaintiff is also claiming an account. An account has in fact been furnished to the plaintiff of transactions from the 20th January, 1934, to the 19th November, 1939. This account was prepared by Mr. Gibson on the basis of earlier accounts drawn up by him and approved by the parties. From the evidence that has been given, however, it is clear that Mr. Gibson had not before him the full facts as to the transactions between the parties and that the account is inaccurate in certain particulars. This, for example, the first item:—

"1934 Jan. 20 To Principal as per C/L given this day lent "without interest £98 18s. od.", is, as has been seen, inaccurate as it included a sum of £19 12s. od. for interest.

Again, the plaintiff has admitted a number of payments made to his creditors on his behalf by the defendant, the amount being as follows :—

Hamraj	...	...	...	...	...	£50	0	0
Bali	...	...	...	...	...	40	0	0
Gibson—Costs of Summons	10	0	0
Jabulal	46	0	0
Kortar Singh—Store Debt	5	12	0
One instalment of rent	6	0	0
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						£157	12	0
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These payments do not appear as items in the account furnished : and on the evidence before the Court it cannot be determined whether, and if so, to what extent, they are represented by items in the account.

There will be an order, therefore, that an account be taken between the parties by a Commissioner of the Court as at the date of commencement of action.

Certain specific questions of account have been raised and a considerable amount of evidence heard thereon by this Court : and it is proper that the Commissioner of the Court should have the directions of the Court thereon.

(a) The plaintiff has alleged that the sum of £98 18s. od., with which the account rendered to him commences, in fact represented a sum of £94 previously due from him to the defendant's wife, the balance being made up of costs ; that on the 20th January, 1934, no such sum was due from him to the defendant ; and that when he gave the defendant a Crop Lien for £98 18s. od., it was upon the faith of the defendant's undertaking that he would discharge the debt due to his wife from the plaintiff.

The Court holds that the plaintiff has failed to establish this claim.

(b) The next question relates to the cane moneys paid by the Colonial Sugar Refining Company Ltd. in respect of cane grown on the plaintiff's land for the years 1934, 1935 and 1936.

The evidence of Mr. Carew, who was present when the moneys were paid, was that on each occasion the moneys were paid to the defendant, the amounts being,

for 1934	...	...	...	...	19	9
1935	...	...	...	...	£48	14 8
1936	...	...	...	...	£95	13 10

The only reference to these cane moneys in the account furnished (Exhibit " S ") is an item of £40 under date 1936 September 14.

" By amount paid by Badal to Bhagoti out of 1936 cane sale
" proceeds received by Badal ".

For this sum of £40, a receipt was given by the defendant to the plaintiff (Exhibit " F ").

As regards the balance the defendant maintains that part was applied in payment of the plaintiff's debts and the remainder handed over to the plaintiff ; but he holds no receipts from the plaintiff for sums alleged to have been thus paid.

In these circumstances, while the amounts paid to the plaintiff's creditors by the defendant, as admitted by the plaintiff or as evidenced by receipts, are to be credited to the defendant, the balance of the cane moneys for the three years in question must be charged against him.

(c) In the absence of a receipt for the sum of £66 10s. od. included as part of the consideration in the Mortgage of the 18th January, 1939, that sum must be held not to have been paid.

(d) The plaintiff has urged that the rate of interest is excessive. The Usurious Loans Ordinance 1932, however, was repealed by the Moneylenders Ordinance 1938, and the Court has therefore no authority to reduce the rate of interest.

The costs of all proceedings to the date of this judgment will be paid by the defendant.

R. v. PARBHU.

[Criminal Jurisdiction (Corrie, C.J.) September 11, 1941.]

Attempting to set fire to a building—handing tins of petrol over a fence to a confederate—tins of petrol and petrol soaked hessian placed under floor of house by confederate—whether evidence of attempted arson.

Parbhu was on bad terms with the occupier of a house in Margaret Street, Suva. He conceived the plan of burning down the house and drew up a plan of the building showing where tins half full of petrol and connected by strips of petrol soaked hessian were to be placed under the floor. He showed this plan to a friend named Tamaru and asked for his assistance. Tamaru informed the police of the plan, but pretended to assist Parbhu. On the night when the house was to be burned down a police party was concealed in various vantage points in the vicinity. Parbhu was seen to hand two petrol tins over the fence to someone inside and was then arrested. Under the building were found two petrol tins half full of petrol and a third tin containing petrol soaked hessian.

Tamaru in evidence gave a detailed account of the plot and described receiving the tins from Parbhu on the other side of the fence and placing them in position. There was evidence that about a week before the incident Parbhu had purchased a quantity of petrol in cases.

HELD.—The evidence was evidence on which the accused might be found guilty of attempting to set fire to a building.