

The next ground of appeal is that it should have been proved that the Appellant had guilty knowledge of the fact that the spirits seized were on his premises. Here, however, the exact wording of the section must be noted. The section makes it an offence knowingly to supply the materials for making or working any unlicensed still: but knowledge is not made an essential element in any of the other offences set out in the section. The effect of the section, therefore, is that the law places upon the occupier of any premises the duty of making sure that there are no spirits upon the premises on which the full duty has not been paid, and penalises any failure on his part to discharge that duty.

I am unable to hold that the findings were either unsupported by evidence or against the weight of evidence.

The appeal is dismissed.

DAYAL PARSHOTAM v. SHAHBAZ KHAN.

[Civil Jurisdiction (Corrie, C.J.) October 8, 1943.]

Agreement for sale and purchase—provision for payment of principal and interest by instalments—whether purchaser entitled to pay balance of principal otherwise than as provided in the agreement.

By an agreement for sale and purchase dated November 28, 1934, Parshottam agreed to make weekly payments of £10 to Shahbaz Khan and, in addition, monthly payments of £8 the payments to be applied in payment of interest and rates and the balance in reduction of the principal sum in the manner set out in the agreement, and to continue until the whole of the purchase price had been paid off. There was no provision for payment of the balance of purchase price in any other way. The balance of purchase price at the date of the agreement was £4,964 and it was computed by a chartered accountant for the purposes of this action that the final payment would be on 6th July, 1946. Parshotam offered to pay off the full balance on several occasions but the vendor refused to accept such payment.

HELD.—The purchaser under an agreement for sale and purchase providing only for payment of the purchase price by instalments is not entitled to make payment in any other way.

Cases referred to:—

(1) *Re Davies ; Ex parte the Equitable Investment Company Limited* [1898] 77 L.T. 567.

(2) *Rutherford v. Walker* [1907] 8 W.L.R. 52 ; 40 Dig. 117. (CAN).

ORIGINATING SUMMONS for the determination of the following questions:—

1. Whether the Plaintiff under the terms of a certain Agreement dated the 28th day of November 1934 between him and the Defendant for the purchase of the land and premises known as Section "A" Toorak

(part of) situated in the town of Suva containing 12 perches more or less was, on the 9th day of April 1943, entitled to pay to the Defendant the balance of purchase money, interest and costs then owing by the Plaintiff to the Defendant.

2. Whether the Plaintiff is entitled under the said Agreement to pay the said purchase price in any manner other than by weekly and monthly payments as mentioned in the said Agreement.

R. Crompton K.C. and *R. A. Crompton* for the Plaintiff.

R. L. Munro and *A. D. Leys* for the Defendant.

R. Crompton K.C., for the Plaintiff: No date is fixed for completion by the agreement nor is any such date implied. It cannot even be calculated: the affidavit of the accountant does not take into account the payment of £8 a month which he assumes will cover rates etc. without knowing what the rates will be in the future.

The last clause of the agreement reads "upon full payment of the said purchase price of £5,000 the vendor at the expense of the Purchaser shall execute to the Purchaser a transfer of the land and premises hereby agreed to be sold." That does not restrict the manner of payment: it may be at any time. Time is not of the essence of the contract and the Plaintiff can demand completion within a reasonable time (*Prideaux on Conveyancing* Vol. I p. 127). The Defendant says he regards the agreement as security for an investment; he wants to treat it as a mortgage, but it is not a legal mortgage under the Land (Transfer and Registration) Ordinance. All he has is a charge for the purchase money and tender puts an end to that (33 *Halsbury* 286) I cannot cite any authority.

A. D. Leys, for the Defendant: I do not suggest that this is a mortgage: it is an investment (29 *Halsbury* 394; *Butterworth's Forms and Precedents 2nd Edition* Vol. 40 p. 157). There is no express provision authorising the purchaser to pay off the balance at any time.

(*Coote's Mortgages 8th Edition* p. 247; *Re Davies; Ex Parte Equitable Investment Company Limited; Rutherford v. Walker*). The only authority I have found is *Dart on Vendor and Purchaser* Vol. 2 Page 635. There is no general rule which entitled the purchaser to pay off.

R. Crompton, K.C. for the Plaintiff: I have nothing to add.

CORRIE, C. J.—In the absence of any authority for the view that a purchaser who has agreed to pay the purchase money by instalments is entitled to give notice that he will pay off the balance before the dates fixed in the agreement, and in view of the statement to the contrary in *Dart's "Law of Vendor and Purchaser"*, and in view of the absence of any provision to that effect in the agreement, I hold that the answer to both the questions raised by this summons must be in the negative.
