out at his own address. It is also to be remembered that the statute is penal, and that if the injunction stands the moneylender becomes liable to a conviction and a fine. Nothing but plain and unambiguous language in the statute ought to be allowed to lead to such a result. I can find no such language. In my opinion the acts done by the moneylender in this case neither violated the spirit of the Act nor contravened its terms.

Judgment appealed from reversed.

Counsel for Appellant—Sir R. B. Finlay, K.C.—M. Lush, K.C.—M. Shearman, K.C. —W. de B. Herbert—J. B. Matthews. Agents—Windybank, Samuel, & Lawrence, Solicitors.

Counsel for Respondent—F. Ritter—G. W. H. Jones—Allan Ramsay. Agent—John K. Torkington, Solicitor.

HOUSE OF LORDS.

Tuesday, June 14, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Ashbourne, Collins, and Shaw.)

FAMATINA DEVELOPMENT CORPORATION *v.* BURY.

(On Appeal from the Court of Appeal in England.)

Company—Bonds Carrying Bonus on Repayment—Bonus Payable from Profits—No Profits—Issue of Paid-up Shares in Payment of Bonds—Ultra vires.

A company raised capital upon £10 bonds which were declared to be repayable, together with £25 bonus, out of future net profits of the company. No profits were obtained. It was afterwards agreed with the bondholders that the claim to the bonus should be extinguished by the allotment of twenty £1 shares, considered to be fully paid up, in respect of each bond.

Held that, the charge being exclusively upon income, the issue of shares was *ultra vires* as being an issue of capital without payment in money's worth.

An issue of shares resolved upon by the appellant company was declared to be *ultra vires* by the Court of Appeal (Cozens-Hardy, M.R., and Farwell, L.J.).

The circumstances are fully stated in the considered judgment of their Lordships, which was delivered by

Lord Macnaghten—The Famatina Development Corporation, Limited, was incorporated in January 1903 under the Companies Acts 1862-1900 as a company limited by shares with a capital of £400,000, divided into 400,000 shares of £1 each, and with power to increase its capital by the issue of new shares. The principal object of the company was to develop a copper mine in the Argentine Republic, from which large returns were expected, and it is admitted to be a very valuable property. In October 1904, the company being in want of money for the purposes of its undertaking, borrowed £50,000 by the issue of a series of 5000 bonds of £10 each. The bonds of that series were issued on the terms that the company would, when and so far as there were net profits available for the purpose, pay to the registered holder for the time being the principal money of £10, together with a sum of £25 by way of bonus. It was declared on the face of each bond that the principal money and bonus thereby secured should be payable exclusively out of net profits, and would, so far as possible, be paid in equal instalments of £5 per annum extending over seven years; but the registered holder for the time being of any ten bonds of the series was to have the option of converting the principal money thereof into a first mortgage debenture of the company for £100, without prejudice to his right to the bonus. One of the conditions endorsed on each bond (condition 13) was to the effect that the company might, at any time after the 31st December 1906, give notice in writing to the registered holder of its intention to pay off the bond, and that upon the expiration of six calendar months from such notice being given, the principal money, if not converted, and the bonus thereby secured, should become payable. All the bonds of the 1904 series, with the exception of a small number which, for the purpose of the question now in debate, may be disregarded, were converted into first mortgage debentures. The company so far has not made any profits. Nothing has been paid or is as yet payable in respect of the bonus secured by the bonds. In November 1908 the company was desirous of increasing its capital. It was found that the existence of the charge of £125,000 on future profits in respect of the bonus attached to the bonds of the 1904 series created a great difficulty in the way of raising further capital, and so, with the consent of all parties interested, it was arranged that 300,000 new shares of £1 each should be issued, and that the bonus of £25 in respect of each bond should be satisfied or extinguished by the allotment of twenty new shares of £1 each, considered as fully paid, leaving the balance of the proposed new issue available to provide further capital. It was suggested, however, that the proposed arrangement would be *ultra vires*. The present suit was brought to test the question, and a motion was made for an injunction before Parker, J., who held that the scheme was not *ultra vires*, and made no order on the motion. On appeal Cozens-Hardy, M.R., and Farwell, L.J., held that the proposed transaction would be *ultra vires*, and granted an injunction which by consent was made perpetual. I am of opinion that the decision of the Court of Appeal is right. Parker, J., held that under condition 13 it was competent for

the company to make the charge on future net profits a charge on capital and a present debt, and to issue shares fully paid in satisfaction of the debt so created. The Court of Appeal held, and I think rightly, that the charge was a charge exclusively on income, and that condition 13 merely provided that the company might, if it had funds in hand available for the purpose, pay off the charge in a lump instead of discharging it by instalments. If the construction which Parker, J., placed on condition 13 was the true construction, I should still doubt whether the scheme could be carried out safely. Is it possible for directors to create a debt against their company and to saddle their company with it for the purpose of enabling them to issue shares without payment in cash, however advantageous they may consider the transaction to be? But as the question does not arise, I abstain from expressing any final opinion upon it. It seems to me that the proposed transaction is *ultra vires*, and that the directors, if they were to carry it out, would be guilty of a breach of trust which would involve personal liability on their part. They would be issuing shares without payment either in money or in money's worth. The charge is a charge on net profits only; that is, it is a charge on money which the company earns, but by the declaration of a general meeting on the recommendation of the directors it is, or would be but for the charge upon it, the property of the shareholders as individuals and not the property of the company. The company as a corporation would be receiving nothing whatever in return for the extinction of the charge. Nor would the position of the company's creditors be improved in any respect. If the directors were to make a return, as they are bound to do under the Act of 1908, they would have to state explicitly that the consideration for the issue of the shares was the release or relinquishment of a charge upon money which did not belong to the company as a corporation, but to the shareholders as individuals and the incumbrancers to whom it was hypothecated. I am therefore of opinion that the judgment under appeal is right and must be affirmed.

Appeal dismissed.

Counsel for Appellants—Romer, K.C.—Ward Coldridge. Agents—Allen, Edwards, & Oldfield, Solicitors.

Counsel for Respondent—Martelli, K.C.—Whitmore Richards. Agents—Cox & Lafone, Solicitors.

HOUSE OF LORDS.

Thursday, June 16, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, and Collins.)

VICKERS, SON, & MAXIM *v.* EVANS.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. I, sec.* 16—*Review—Minor Workman—Weekly Earnings—Probable Earnings in Other Employment.*

The Workmen's Compensation Act 1906, by Sched. I, sec. 16, provides that in a review of a weekly payment "where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound."

Held that the amount of the probable earnings must be estimated by the arbiter in the exercise of his discretion, and need not be restricted to earnings which the workman would have obtained had he continued under the same employer.

A workman, aged twenty, was injured while in the service of the appellants as a labourer. He was qualified as a skilled artisan in another trade to which he meant to return when trade improved. In an application for review of the weekly payment more than a year after the injury, the County Court Judge found that his probable earnings had he remained uninjured would have been 30s. He would not have earned so much in the appellants' employment. The weekly payment fixed by the County Court Judge upon this basis was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Fletcher-Moulton, L.J., Buckley, L.J., dissenting).

The employers appealed.

Their Lordships gave considered judgment as follows:—

Lord Chancellor (Loreburn)—This appeal may serve to remind us of a truth which is sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here, not what the Act ought to have said, but what it does say, and I agree with the conclusion which has been arrived at by the Court of Appeal. The standard by which the weekly payments are to be measured in the Act