

manager 'I claim compensation,' . . . but the appellant did not at any time specify the amount of his claim." The question is whether such a claim comes within the meaning of section 2, sub-section 1, of the Act, which provides that proceedings for the recovery of compensation shall not be maintainable unless "the claim for compensation" has been made within six months of the happening of the accident. The fault which the respondents find with the claim is that it does not name the sum of money for which it is made; and it is said that this fault is fatal. My short answer to this contention is that the Act contains no words which require the workman to mention a sum of money. But then it is said that the Act of Parliament cannot be administered properly unless such words be read into it; for that it contemplates an opportunity being afforded to the master of settling the claim, and so avoiding arbitration proceedings, and that such opportunity is not afforded unless the workman says how much he wants. This reasoning does not satisfy me. It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do. Here I see no necessity at all for introducing the words. The absence from a claim for compensation of a named sum does not prevent the workman from saying how much he will accept, nor does it prevent the master from saying how much he will give. Preferring a claim for compensation is by no means a necessary preliminary to arriving at an agreement as to the amount to be paid. What the workman is willing to take, or the master willing to pay, may be something quite different from the measure of compensation. Many considerations may induce a man to take less or a master to give more than "compensation." If the parties fail to agree, or do not try to agree, then it is that compensation has to be fixed; and the tribunal to fix it is the County Court. Why should the workman undertake the task? Why may he not tell what is probably the truth, and say, "I cannot fix any sum, for I am not skilled enough to form an opinion as to the nature of my injuries, or clever enough to measure them in money"? There is in fact no good reason why he should not take up this position. It is said, however, that the case is settled by authority, and reference is made to a number of cases, among which is the Scotch case of *Kilpatrick v. Wemyss Coal Company* (44 S.L.R. 255, 1907 S.C. 320). In that case it was undoubtedly held that the claim for compensation to be good must mention the sum claimed. But it will be noticed that the decision is largely based on dicta to be found in *Powell v. Main Colliery Company*, decided in this House and reported in [1900] A.C. 366. Those dicta, however, were *obiter*, and I do not think that they bind your Lordships' House, even if they go to the length suggested. For these reasons, I come to the conclusion that there is nothing in the Act of Parliament, and nothing in the

authorities, which constrains your Lordships to arrive at a decision which, if arrived at, would deprive the appellant of the remedy to which otherwise he is undoubtedly entitled. I wish further to add that in my opinion the respondents by their conduct, as appearing from the evidence of their own witnesses dispensed with the naming of any sum by the appellant, and thereby estopped themselves from objecting to the form of the claim.

The LORD CHANCELLOR said that the EARL OF HALSBURY, who was present during the argument, concurred in the judgment.

Judgment appealed from reversed.

Counsel for Appellant—Cavanagh—E. E. Humphrys. Agents—Botterell & Roche, Solicitors.

Counsel for Respondents—Sanderson, K. C.—W. Shakespeare. Agents—Thomas Cooper & Co., Solicitors.

HOUSE OF LORDS.

Friday, June 10, 1910.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, Shaw, and Mersey.)

KIRKWOOD v. GADD.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Loan—Moneylender—Registered Address—Carrying on Business—Moneylenders Act 1900 (63 and 64 Vict. c. 51), sec. 2 (1) (b).

In a moneylending contract a bill of sale was executed at the borrower's house over his furniture, and the loan itself was advanced and a receipt granted there. The preliminary arrangements had been made by correspondence to and from the moneylender at his registered address—no other address was employed. The Moneylenders Act 1900, sec. 2 (1) (b), enacts—"a moneylender . . . shall carry on the moneylending business . . . at his registered address or addresses, and at no other address." The borrower raised legal proceedings in which he maintained that the moneylending contract was void as in breach of this prohibition.

Held that the prohibition against carrying on business at an address other than the registered address raised a question of fact to be determined by the whole circumstances of each case, and that the carrying out of incidents of the transaction away from the registered address did not in itself constitute a breach of the Act.

The appellant, who was a registered moneylender, was the holder of a bill of sale over certain furniture, executed by the respon-

dent in the circumstances stated fully in *rubric supra*, and in their Lordships' opinions. The Court of Appeal (MOULTON and FARWELL, L.JJ.) granted against the appellant an interim injunction from putting the bill of sale into force.

The appellant appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOBURN)—In this case an interim injunction has been granted by the Court of Appeal to prevent a moneylender from taking possession under a bill of sale, upon the ground that the agreement for the loan, the advance of the money, and the taking of the security, were all transacted, not at the moneylender's registered address, but at the borrower's private residence. It was so in fact upon the materials before us, but some letters making the appointment at the borrower's residence with a view to arranging the loan were written to and received from the registered address. Your Lordships are asked to say whether or not the arrangement of the loan in this way was contrary to the Moneylenders Act 1900. I expressly limit my opinion to that point, which alone has been argued before us. The 2nd section of the Act, sec. 2 (1) (b), requires that a moneylender "shall carry on the moneylending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address." Section 2 (2) also provides that "If a moneylender . . . carries on business . . . elsewhere than at his registered address, or fails to comply with any other requirement of this section," he shall be liable to fine, or imprisonment for a second offence, as prescribed. This enactment contains a positive, that the man shall carry on the business at the registered address. It also contains a negative, that he shall not carry on business elsewhere. What is carrying on business? It imports a series or repetition of acts. Each separate piece of business may consist of many stages and incidents, and the business as a whole comprises many separate pieces. This Act of Parliament cannot mean that every stage and every incident of every piece of the moneylending business is to be transacted at the registered office. That would be impossible, for such things as making inventories or taking possession of furniture under a bill of sale are part of the business, and must be done where the goods are situated. Nor can it be intended to prohibit the employment of clerks and agents, or the transaction outside the registered address of every single thing that could by possibility be transacted within it. That would be needlessly oppressive, and would strain the words. We must look at the nature of the mischief disclosed according to the approved canons of statutory construction. The mischief is that this dangerous business may be conducted by persons under false names or a variety of names without the security of an ascertained address, or at places where

men may be taken unawares or off their guard. The words, which are in terms general, must be applied accordingly. I do not propose to define what is meant by carrying on business lest I may facilitate evasion. But I do think that if a moneylender really deals with a borrower at his registered address, whether by interview or correspondence, he may, without infringing the Act, transact negotiations or conclude the actual contract elsewhere. If, however, the moneylender employs an agent to frequent markets, or to call upon individuals in order to procure borrowers, and thereupon a moneylending transaction, even a single transaction, goes through without the borrower being brought into communication with the registered address till after the transaction is completed, it might amount to carrying on business elsewhere than at his registered address. There may be many cases betwixt and between. It is always a question of fact, the answer to which depends on the circumstances of the case. I can see that nice points may arise in applying this section of the Act. It must be so inevitably when general language of this kind is used in the Act. But such points are not matter of law if there is evidence to support the conclusion. They are points of fact and should be so regarded. I do not think that this is a case in which an interim injunction should be granted. So far as I can see on the materials before us this piece of business was directed and controlled at the registered address, and the borrower dealt with the lender at the registered address. I do not prejudge it, however, and it must be decided on actual evidence at the trial. As there are other matters to be disposed of at the hearing which were not argued here, the parties have agreed to an undertaking, and I move your Lordships to dissolve the injunction, all costs here and below to be costs in the cause.

LORD JAMES OF HEREFORD—It is necessary in order to determine the question raised by this appeal that the facts controlling the case should be ascertained and stated. In February 1908 the appellant John Kirkwood was carrying on the business of a moneylender at Ipswich, and for the purpose of doing so had registered an address, "No. 30 Upper Brook Street, Ipswich." On the 2nd February 1908 one Dobson, a commission agent, wrote to the appellant stating that the respondent required a loan of £100, giving a bill of sale on his furniture as security. In this letter, which was sent to the above address, Dobson assumed that the appellant would send an agent to Ilford, where the respondent resided. After some delay the transaction was carried out. What occurred is apparently correctly stated in the appellant's case as follows—"In due course the said Herbert Sandoe" (the appellant's agent) "called upon the respondent at the residence of the respondent, No. 59 Mayfair Avenue, Ilford, in the county of Essex, and the terms of the proposed loan were then arranged between the said Sandoe

and the respondent, and the said Sandoe, the appellant's agent, drew up the said bill of sale which was executed by the respondent, and the said Sandoe advanced and paid to the respondent the sum of £100, being the consideration for the said bill of sale." The circumstances thus narrated occurred at Ilford, and the respondent's wife also signed a declaration there that she had no interest in the furniture assigned by the bill of sale. In relation to payments under the bill of sale and other matters a very voluminous correspondence took place. Throughout it the only address affecting the appellant was the registered Ipswich address. Default was made in fulfilling the terms of the bill of sale, whereupon the appellant took possession of the goods assigned by it. Application was then made by the respondent to Hamilton, J., to restrain the appellant's proceedings, on the grounds that he had carried on business at an address other than the registered address, and that therefore the bill of sale was void. The learned Judge refused the application, but on appeal Moulton and Farwell, L.J.J., held that the respondent's contention was correct, and granted the application. The basis of the judgment so arrived at seems to be that the proceedings at Ilford in February 1908 amounted to a carrying on of business by the appellant at an address other than No. 30 Upper Brook Street, Ipswich, and also that such carrying on of business constituted a penal offence within the provisions of section 2 of the Moneylenders Act 1900, which enacts that "A moneylender as defined by this Act shall register himself as a moneylender . . . under his own or usual trade name and in no other name, and with the address, or all the addresses, if more than one, at which he carries on his business of moneylender, and shall carry on the moneylending business in his registered name and no other name, and under no other description, and at his registered address or addresses, and at no other address, and shall not enter into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or take security for money in the course of his business as a moneylender with respect to the advance or repayment of money, or take security for money in the course of his business as a moneylender otherwise than in his registered name." Now, in order to apply the above provisions it is advisable to consider what was the object of them. Guided by the words of the Act, I would surmise that the object of the Legislature was to preserve the identity of the moneylender so that borrowers might always know with whom they were dealing. To secure that the moneylender should trade in only one name and carry on business at only one address would do much, and has done much, to establish the desired personal identity of the persons with whom borrowers are dealing. It must, however, be noted that by the concluding words of the section certain transactions necessary to the carrying out of a loan are dealt with,

and they are specifically required to be effected in the registered name, but not at the registered address, of the moneylender. If these transactions are included in the words "carrying on of business," these last provisions would be unnecessary. But in whatever spirit the words of the statute are to be read, a construction must be put upon them, and they must be applied to the facts established in this case. What, then, is the meaning that should be attached to the words "carrying on business"? I decline to formulate any definition of those words. Dangerous consequences might result from doing so, but I accept the responsibility of saying whether it has been shown that the appellant has carried on business at an address other than his registered address. In my opinion such proof has not been given. The visits to the respondent's house in February 1908, and the acts that took place there, were for the purpose of carrying out a particular transaction, and some of the acts were necessarily or more conveniently transacted there. In relation to a moneylender's business I presume that some portions of it cannot or would not be transacted at the lender's registered place of business. For instance, when a bill of sale is given as security for a loan the goods assigned must be inspected, and a value estimated, and an inventory made. For carrying out such objects the lender or his agents must visit the tenement where the goods are. Can it be said that such a visit constitutes a carrying on of business within the meaning of the statute at any tenement to which such visits are so made? If such were the case, a moneylender would be prohibited from calling upon a proposed borrower, from testing his position in his home, or from taking the steps mentioned above. Then, again, it may be very advisable that the borrower should be identified, and that the money lent should be paid over to him personally. Can the Legislature have intended to say that every act connected with the carrying out of a moneylending transaction, as distinguished from the general carrying on of the business, must compulsorily take place within the four walls of the registered address? If such had been said, in many instances business could not be carried on. Any person unable to travel, from sickness or age or any other incapacity, would be prevented from borrowing from a moneylender. It is true that in this case the bill of sale was executed, and the money lent was advanced, at Ilford. But surely when the lender's agent and the borrower met at Ilford it would have been somewhat absurd if they were prevented from completing the transaction, and a forced journey to Ipswich undertaken by the borrower. As I have said, I decline to give a definition of the meaning of the words "carrying on business" used in the statute. I repeat that it would be dangerous to do so. Evasion might follow. I can understand an ingenious method of evading or breaking the statute being resorted to, as by a system of canvassing for business from house to house,

and a definition may tend to protect such proceedings. But instead of giving a definition I suggest that each case should be determined as it arises, and thus I decide this case upon the facts presented to your Lordships. In my opinion, as I have said, there is no proof that the appellant has carried on business at any address other than the Ipswich registered address. Certain portions of one transaction were carried out at Ilford, but these could not possibly result in giving to the appellant any right to use the respondent's house as his address. The strict words of the statute, common sense, and the necessities of commercial transactions, combine to cause me to come to the conclusion that the Legislature could not have intended moneylenders who have acted under the conditions of this case to be subjected to the results contended for by the respondent. I therefore am of opinion that this appeal must prevail.

LORD ATKINSON—The appellant in this case is a moneylender. He is duly registered under the Moneylenders Act. His registered address at Ipswich at the date of the loan hereinafter referred to made by him to the respondent was No. 30 Upper Brook Street. It is now No. 64 St. Matthew's Street. His registered name is "The Provincial Union Bank." The appellant has other registered addresses, but this is the only one of which it is material to take note for the purposes of this appeal. The respondent, who is a retired bank manager, residing at No. 59 Mayfair Avenue, Ilford, carrying on the business of an insurance broker in the city of London, in the month of February 1908 put himself into communication with one Dobson, who is described as a "commission agent" by the appellant's counsel, and as a "moneylenders' tout" by the respondents, to obtain for him a loan of £100, secured by a bill of sale of his furniture. It does not appear whether the respondent directed Dobson to deal with the appellant in particular, or whether he was Dobson's selection. The respondent must, however, have furnished Dobson with an inventory of the furniture which was to be included in the bill of sale and disclosed to him some particulars of his financial position. The negotiation which culminated in the loan and the bill of sale which has been impeached as illegal and void was initiated by the receipt by the appellant at his registered office at Ipswich of a letter from Dobson inclosing the inventory, setting forth the particulars above mentioned, and applying on the respondent's behalf for the desired loan. On the 15th February 1908 one Herbert Sandoe, the appellant's manager, wrote to the respondent the following letter—"Provincial Union Bank, 30 Upper Brook Street, Ipswich.—Feb. 15, 1908.—Mr A. E. Gadd.—Dear Sir,—With reference to your application for an advance *per* Mr Dobson, we have instructed one of our officials to call upon you on Monday morning about 11:30, when kindly arrange to be at home, and if you have not already ascertained

the exact amount which the Metropolitan Company will accept in settlement of your bill of sale, please get this information before our official arrives.—Yours truly, Herbert Sandoe, Manager." A reply to this letter in the terms following was received by the appellant at his registered address, No. 30 Upper Brook Street, Ipswich—"59 Mayfair Avenue, Ilford, Essex.—Feb. 15, 1908.—The Manager, Provincial Union Bank, Ipswich.—Dear Sir,—I beg leave to acknowledge the receipt of your favour of yesterday's date, and to say that I will be at home to-morrow (Monday) at 11:30 a.m. to meet your representative as desired.—I am, yours faithfully, A. E. Gadd." It appears that Sandoe was not able to keep this appointment. He accordingly sent to the respondent a letter dated the 17th February 1908, and addressed as the previous letter had been from the appellant's registered address, to which the respondent replied by telegraph—"Will be at home.—Gadd, Ilford." This telegram was addressed "Advance, Ipswich," the telegraphic address of the appellant, and was received at No. 30 Upper Brook Street. Sandoe accordingly attended at the respondent's residence on the 20th February, and brought with him the bill of sale and the money to be lent. He got the former executed and handed over the latter, obtaining therefor a receipt, and presumably checked the inventory. In the bill of sale the grantee is described as "The Provincial Union Bank, 30 Upper Brook Street, Ipswich, of which bank John Kirkwood, of the same place, is sole proprietor." In view of these facts there is not and there cannot be a pretence for suggesting that the identity of the appellant was in any way concealed. The respondent knew his registered name, his registered address, and the nature of the business which he purported to carry on there. These are the very things which it was in my view the design and purpose of the Moneylenders Act to have brought home to the knowledge of those who borrow from moneylenders. The special mischief against which that statute was directed does not exist in this case. The borrower, therefore, had all the information which was necessary to enable him to ascertain with certainty who the person was with whom he dealt, and the place where that person purported to exercise his calling. It is quite true that the final stage of the transaction, the handing over of the money, and the perfecting of the security, was completed at the borrower's address, and not at the moneylender's registered address; but all the earlier stages of the transaction were carried out by a correspondence addressed to and written from the borrower's address and the lender's registered address respectively; the whole dealing was brought into touch with the registered address at every stage, and indeed it was, as I understood, admitted by the respondent's counsel in argument that had the money been paid to his client by the appellant's cheque sent by post, and had the draft bill of sale also been sent by post to his client, executed by

him at his residence and returned by post to the appellant's registered address, the appellant ought to be held to have carried on his business of moneylending in this instance at his registered address, and the security which he obtained would have been valid and unimpeachable. But it is argued by the same counsel that, because the bill of sale and the money were carried to his client by the appellant's manager, the money handed over and the security executed at the client's residence, the whole transaction is impeachable, the security invalid, and the respondent is guilty of the criminal offence of carrying on business elsewhere than at his registered address, for which offence a fine of £100 might be imposed upon him if it were his first offence, and he might be imprisoned for three months if it were his second offence. It appears to me that in this argument the main purpose of the Legislature is lost sight of, and if it were to prevail the statute would be reduced to an absurdity. Your Lordships have not now to decide whether the bill of sale, which the appellant has been restrained by the Court of Appeal from putting into force by seizure of the furniture mentioned in it, has been rendered void. The sole question for decision is whether, by reason of what took place at the respondent's residence on the 20th February 1908, the appellant should be held to have "carried on business" elsewhere than at his registered address, and thereby committed the criminal offence mentioned in sec. 2, sub-sec. 2, of the Moneylenders Act. The word "business" is used, I think, to designate the business mentioned in the previous sub-section. 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 that it is obvious that in the phrase "carries on his business" employed in this section, as in the phrase "carrying on business" employed in sec. 4 of the Companies Act 1862, the words "carries on" must be held to imply a repetition of acts the sum of which constitutes the "business" (see the judgment of Brett, L.J. in *Smith v. Anderson* (15 Ch. Div. 247). The moneylenders' trade is in itself a lawful trade, and it is, I think, no more essential in this than in any other trade or business that every act necessary to complete a contract of the class into which it is the purpose and object of the trader to enter and to carry out should be performed at the address of the latter, in order that his trade may be correctly described as being "carried on" at that address. If one takes by way of example the case of a house decorator, or of an ordinary retail dealer who delivers at the houses of his customers the goods which he sells, it could scarcely be seriously contended that the former carried on his business at the houses belonging to his customers which he decorates, or the latter at the houses of his customers where he delivers his goods, and I fail to see on what principle the words applied to a moneylender should

be used in a sense and meaning narrower than that which they bear when applied in the ordinary use of language to other traders, unless, indeed, it is to be assumed that it was the paramount object of this statute to prohibit all communication between a moneylender and his customer on business matters by post or telegraph, and to oblige the borrower to frequent the registered house or office of the lender, and to carry out there every detail of each transaction, an assumption for which there is, in my opinion, no warrant to be found in its provisions. I think that the contention of Sir R. Finlay that if the obtaining on behalf of a moneylender of the execution of a bill of sale in the house of a borrower be the "carrying on" by the former of his business in that house, then sub-sec. (c) is mere surplusage, because by the previous sub-section it is already provided that the lender can only carry on his business in his registered name. Sub-sec. (c) obviously applies to an isolated transaction of the kind described, and can only have been introduced because the doing of the thing mentioned in it does not amount to a "carrying on of business" within the meaning of the section. It is impossible to define with fulness of 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. Little assistance can be gained from the authorities. But this much, I think, is clear, that "carrying on business" does not necessarily include carrying out the contracts into which it is the business of the merchant, retailer, dealer, or moneylender to enter. In every moneylending transaction in which land, houses, or furniture is mortgaged or pledged as a security, the important step of inspecting, and so verifying the existence of, the property must be carried out elsewhere than at the moneylender's address (see *Erichsen v. Last*, L.R., 8 Q.B.D. 414; approved in *Grainger v. Gough* [1896], A.C. 325). Neither can it require that those contracts should necessarily be entered into at the address where the business is "carried on," else the acceptance of a tender or offer which completed the contract could not be communicated by post or telegraph. And, without attempting to define fully the meaning of the phrase, I may say that I think that the place at which a merchant or trader must be understood to "carry on" his business is the headquarters, as it were, of the business, or the headquarters of a particular branch of it, at which the conduct of the business, or of the branch, is regulated, directed, and controlled, and where the transactions which constitute it are recorded. In the case of a moneylender it is not, in my view, necessary, as I have said, that every important step in the dealing between him and his customer should be carried out at the registered address of the moneylender. It will, I think, suffice if such important portions, or such an important portion, of the dealing are

or is transacted there, by communications verbal or written, as will necessarily reveal to the borrower the identity of the moneylender, the nature of his business, and the registered address at which he purports to carry it on. Whether one isolated transaction carried out by a moneylender from its inception to its completion at a place other than his registered address amounts or does not amount to the crime of carrying on business elsewhere than at his registered address, within the meaning of the statute, must depend upon the particular circumstances attending the transaction. The carrying out of one such transaction does not necessarily amount to an offence, but circumstances are conceivable in which it might amount to it; for instance, if it were proved that a moneylender, either personally or by his agent, held himself out as ready to do business at a particular place, or particular places, other than his registered address, or canvassed for business to be transacted at such place or places, and, in consequence of that holding out or canvassing, succeeded in getting a borrower to enter there into the isolated transaction impeached, I am inclined to think that he might rightly and justly be held to have carried on his business elsewhere than at his registered address, so as to be guilty of the crime against which the statute is directed. For the reasons already given, I am of opinion that the decision of the Court of Appeal was erroneous and should be reversed. I concur with the Lord Chancellor as to the form of order to be made.

LORD SHAW—I have had considerable doubts in this case. In the judgments to which I have had the pleasure of listening, and have also had the pleasure of reading, I observe that a definition of what is "carrying on business" under this statute is avoided. I observe, further, that certain proceedings will have to be taken in this cause in order that the facts may be more fully investigated. Under those circumstances I most entirely agree with the judgment delivered by Lord James of Hereford. It does appear to me that each case must depend upon its own facts, the elementary principle being kept in mind that the Act is to be enforced in all respects and in no respect evaded.

LORD MERSEY—The facts of this case are as follows:—The appellant Kirkwood is a moneylender. His place of business is at No. 30 Upper Brook Street, Ipswich, and his trade name or description is "The Provincial Union Bank." Both the name and the address are duly registered in accordance with the provisions of the Moneylenders Act 1900. On the 11th February 1908 a man named Dobson wrote a letter to Kirkwood and sent it to his place of business at No. 30 Upper Brook Street, Ipswich. The letter enclosed an inventory of some furniture upon which the owner desired to raise a loan. The name of the proposed borrower was not given in this letter, but it was furnished by Dobson a few days later in a telegram,

which was also sent to Kirkwood's place of business. The telegram reads as follows:—"Alfred Ernest Gadd, 59 Mayfair Avenue, Ilford, Insurance and Mortgage Broker." Having thus received the name and address of the proposed borrower, Kirkwood, by his manager, Herbert Sandoe, wrote to Gadd to say that one of the officials of the so-called bank would call on Gadd with reference to the application for a loan. On this some further correspondence took place between Sandoe and Gadd, of which the outcome was that Sandoe met Gadd at Gadd's house on the 20th February, and there and then arranged the terms on which Kirkwood should make the loan. Having arranged the terms of the loan he proceeded to check the inventory of the furniture, and drew up a bill of sale which Gadd executed. It is sufficient to say of it that it describes the grantee as "The Provincial Union Bank, of 30 Upper Brook Street, Ipswich (of which said bank John Kirkwood, of the same place, is the sole proprietor)," and that the attestation clause describes the document as having been executed by Gadd "in the presence of Mr Herbert Sandoe, of 30 Upper Brook Street, Ipswich, manager of the Ipswich branch of the Provincial Union Bank, 30 Upper Brook Street, Ipswich." Sandoe then paid the amount of the loan to Gadd and took a receipt. The correspondence so far as it consisted of letters written for or by Kirkwood was sent from or bore the address of the Provincial Union Bank, Ipswich, and it was to that place that Gadd sent the letters which he wrote. Dobson was paid a commission by Kirkwood in respect of the introduction of Gadd. This was the only transaction with Gadd, but it appeared that, although it was not usual to do so, the appellant had carried out transactions at the houses of borrowers on several other occasions. The instalments by which the debt was to be paid off fell into arrear, and on the 19th May 1909 Kirkwood threatened to seize the furniture under the power contained in the bill of sale. Thereupon Gadd issued a writ claiming an injunction to restrain Kirkwood from seizing, and also claiming a declaration that the bill of sale was invalid. On the same day Gadd applied *ex parte* to the Judge at Chambers (Hamilton, J.) for an interim injunction, and used an affidavit in support. This affidavit contains the following statement—"The whole of the transaction was carried out and completed at my private address, 59 Mayfair Avenue, Ilford; the alleged bill of sale being executed there and the money paid over." The learned Judge refused to make any order. Next day, the 20th May 1909, the Court of Appeal granted leave to appeal, and on the 21st May the appeal was heard. The facts as I have stated them were either admitted or proved to the satisfaction of the Court, and the Court thereupon found that the transaction was bad on the ground that it amounted to a carrying on of business by the moneylender elsewhere than at his registered address, in contravention of sec. 2 of the Money-

lenders Act 1900. The appeal was accordingly allowed, and the Court granted an interim injunction until the trial of the action upon the usual undertaking as to damages. It is from this decision that the present appeal is brought to your Lordships' House. It is an appeal which raises a question of very serious importance to the appellant, for if the injunction be made perpetual on the grounds mentioned he will not only lose his remedy for the recovery of the money which he has lent, but he will also be liable to conviction and fine for the offence which he has committed, and in the event of conviction will run the risk of imprisonment if he should be again convicted in respect of another similar offence. The real question in the case is this. Do the facts afford any reasonable evidence that the appellant carried on business elsewhere than at his registered address? Not that he did business elsewhere, but that he carried on business elsewhere. The words of section 2 of the Act are as follows:—"A moneylender (a) . . . shall register himself as a moneylender . . . under his own or usual trade name, and in no other name, and with the address . . . at which he carries on his business of moneylender, and (b) shall carry on the moneylending business in his registered name, and in no other name, . . . and at his registered address, and at no other address, and (c) shall not enter into any agreement in the course of his business as a moneylender, with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender, otherwise than in his registered name." The section further enacts that "if a moneylender fails to register himself . . . or carries on business otherwise than in his registered name . . . or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction . . . to a fine not exceeding one hundred pounds, and, in the case of a second or subsequent conviction, to imprisonment with or without hard labour for a term not exceeding three months." On examining this section of the Act it will be noted that while it prohibits the moneylender from carrying on the moneylending business otherwise than in his registered name, or elsewhere than at his registered address, it contemplates the possibility of the moneylender having to enter into transactions "in the course of his business as a moneylender," and singling out two, namely, entering into an agreement with respect to the advance and repayment of money, and taking a security for money—it enacts that they shall not be entered into otherwise than in the moneylender's registered name. Not a word is said in this part of the section as to the registered address. It is apparently enough to satisfy the requirements of the Act that the transactions mentioned should be in the registered name. This, in my opinion, indicates that the carrying on of the business spoken of in the Act of Parliament is something quite different from the carry-

ing out of the transactions which make up the business. The carrying on must be at the registered address. The carrying out may be wherever convenient. What the moneylender did in the present case was to enter into an agreement "in the course of his business as a moneylender," with respect to the advance and repayment of money, and also to take a security for money "in the course of his business as a moneylender," and he did both in his registered name. He adhered to the spirit and to the very letter of the Act. It is true that he did more. He checked an inventory at the only place at which he could check it, namely, at the borrower's house; and he handed over the amount of the loan there. And why should he not? The only words in the Act which can be invoked to show that he might not are the words which forbid him to carry on his business elsewhere than at his registered address, or otherwise than in his registered name; but if these words are intended to have such an effect as that contended for, it is impossible to understand the necessity of the express provision as to agreements and securities. I think, too, that the interpretation which I give to the statute is the only one which is consistent with business. If "carrying on the business" is to be read as meaning the carrying out of the transactions which go to make up the business, then, unless the borrower can come to the moneylender's registered address, no business can be done. A bedridden man could not have recourse to a moneylender, for he would be physically incapable of going to the moneylender, and the moneylender could not lawfully come to him. This would be a result which the Legislature never intended. But I prefer to put the matter on a broader ground. A man's business is carried on at the shop or office where he keeps his books, his stock, and his cash, and to which his servants or clerks resort either to work or to receive directions as to their work. Some of the work may of necessity or for convenience be done away from the shop or office, but the business is none the less carried on at the office or shop. Take, for instance, the case of a butcher. He has his shop where he keeps the meat which he sells. He sends his servant round in the morning to the houses of his customers to collect orders, and in the afternoon he delivers the meat in fulfilment of the orders. Could it be said that such a man carries on business elsewhere than at his shop? I think not. Then I think that the object with which this statute was passed is to be remembered. It was not passed either to hinder or to prevent moneylending as a business. It was passed merely to defeat the frauds and to correct the abuses which sometimes attend the business, and with that object in view it requires that the moneylender shall not trade under a changing name or at a shifting address. Gadd knew from the first with whom he was doing business and where the moneylender was to be found, and it was for his convenience that the transaction was carried

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