## JONES v. WYNDHAM

West African Court of Appeal (Kingdon, C.J. (Nig.), Macquarrie, Ag. C.J. (Sierra Leone) and Berkeley, J. (Nig.)):
October 10th, 1932

[1] **Contract — illegal contracts — agreements regulated by statute — moneylender's contract not illegal or invalidated by omission to describe himself as moneylender:** A moneylender who transacts business under his registered name and address but without describing himself in a document as a moneylender is not describing himself inaccurately and does not therefore make the transaction illegal as in breach of the Money-lenders Ordinance (*cap.* 129), s. 4(1) which requires a money-lender to transact business in his registered name and in no other name, and under no other description (page 317, line 33—page 318, line 21).

[2] **Money — moneylenders — name and description — omission of description from document does not make illegal or transaction invalid:** See [1] above.

The respondent brought an action against the appellant in the Supreme Court to have a sale of land under a mortgage deed set aside.

The appellant, a registered money-lender, paid money to the respondent on a sale under a mortgage deed. The respondent subsequently brought the present proceedings seeking to have the sale set aside on the ground that the appellant had not disclosed the fact that he was a money-lender in the mortgage deed and had by that omission infringed the provisions of the Money-lenders Ordinance (*cap.* 129), s. 4(1). The Supreme Court held that the omission constituted a breach of the section, rendering the transaction illegal, and set aside the sale.

On appeal, the court considered whether, by not describing himself as a money-lender, the appellant had impliedly described himself under some "other description" so as to invalidate the deed. The respondent argued that the inclusion of the description "money-lender" was necessary to serve as a warning to a solicitor subsequently investigating the title as it would cause him to exercise additional vigilance. At the same time, it was conceded that each party was well aware of the identity of the other and no deception took place as a result of the omission of the description.

The appeal was allowed.

**Case referred to:**

(1) *R. v. Tugwell* (1868), L.R. 3 Q.B. 704; 9 B. & S. 367, applied.

**Legislation construed:**

Money-lenders Ordinance (Laws of Sierra Leone, 1925, *cap.* 129), s. 4(1):

"A money-lender as defined by this Ordinance:-

. . .

(b) Shall carry on the money-lending 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; and

(c) Shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name . . . ."

*E.F. Luke* for the appellant;
*Marke* for the respondent.

BERKELEY, J. (Nig.):

This is a case in which the court below set aside a sale, made under a mortgage deed, on the ground that the mortgagee, a registered money-lender, had not disclosed that fact in the mortgage deed and had by that omission infringed the provisions of s. 4 (1) (*b*) and (*c*) of the Money-lenders Ordinance (*cap.* 129). The mortgagee, who is the present appellant, now seeks to have the sale restored.

The relevant provision in the Money-lenders Ordinance (*cap.* 129) is s. 4 (1) (*b*). This section directs that a money-lender shall carry on his money-lending business in his registered name and in no other name, and under no other description. The Ordinance goes on, in s. 4 (2), to provide a penalty of a fine for any first, and imprisonment for any subsequent, breach of this enactment.

The court below held that although the mortgagee had given his correct name and address in the mortgage deed, yet the omission to add the word "money-lender" to his name was sufficient to constitute a breach of this enactment, render the mortgage transaction illegal, and the sale made under it invalid.

There does not seem to have been any deception. The parties knew quite well with whom they were dealing, and the description "money-lender" attached to the mortgagee's name would have made no difference to their attitude towards him. Counsel for the respondent says that the word "money-lender" attached to the mortgagee's name would serve as a warning to any solicitor, employed to investigate the title, and cause him to exercise additional vigilance. But it is the duty of every solicitor, employed to investigate title, to use proper care and diligence in every case

regardless of the occupations pursued by the parties to the transaction. As I have just said, the Ordinance uses the words "and under no other description," and I find it hard to believe that the omission of the word "money-lender" from the mortgagee's name and address can constitute a breach of this provision. He has not described himself incorrectly; he has not described himself at all. In *R. v. Tugwell* (1) it was held that when a statute requires that the name, place of abode, and description of a person be given, and only the name and place of abode are given, there is a total omission of the description and not an inaccurate description.

As I have already said, the Ordinance attaches a penalty of fine and imprisonment which may be inflicted for any breach of the provisions of s. 4 of the Ordinance. This provides us with a useful test in this case. We can ask ourselves the question: would any court convict a man under s. 4 merely because in a mortgage deed he neglected to add the word "money-lender" to his proper name and address? I do not think that the answer can be other than in the negative. If that is so, then the omission was not an illegal one. And if it was not illegal then the sale cannot be invalidated by it.

In my opinion this appeal must be allowed and the sale restored to validity. By consent the order of the court below that the plaintiff pay to the defendant the sum that would have been due to him for principal and interest on November 18th, 1931, if interest had been calculated at the rate of 15% per annum, the amount due to be calculated by the Master, will stand.

The appellant will have his costs in this court and the court below.

**KINGDON, C.J. (Nig.) and MACQUARRIE, Ag. C.J. (Sierra Leone)** concurred.

*Appeal allowed.*