

was an unregistered money-lender, but Warrington, J., held that he was entitled to recover because the mortgage was not taken in the usual course of his business but as a private investment, and that the mortgagors who were trustees and had covenanted "as such trustees but not otherwise" were personally liable under their covenant; but the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Buckley, L.J.J.), disagreed with Warrington, J., as to his finding that the transaction was not in the ordinary course of the plaintiff's business; and being a money-lender and not registered as such they held that the mortgage was altogether void and illegal and therefore that the plaintiff could not recover on it, nor could he recover the money, but as money had and received. One of the trustees had omitted to set up the defence of the Act but the Court of Appeal held this to be immaterial and in any case an amendment would be allowed. Buckley, L.J., expresses the opinion that the covenant did not in any case bind the trustees personally, but only to pay out of the assets of the trust; but in view of the decision of the Court on the other point this may be considered *obiter*.

MORTGAGE — PRIORITY — MERGER.

In *Manks v. Whiteley* (1912), 1 Ch. 735, the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Buckley, L.J.J.), have reversed the decision of Parker, J. (1911), 2 Ch. 448 (noted ante vol. 47, p. 762), on the question of priority. It may be remembered that the plaintiff was a second mortgagee and the defendant, Whiteley, having purchased the equity of redemption without notice of the plaintiff's mortgage paid off the first mortgage and then gave a mortgage to one Farrar to secure the amount borrowed from him to pay off the first mortgage. Parker, J., held that in these circumstances there was no intention to pay off the first mortgagee for the benefit of the plaintiff as second mortgagee, and therefore that Farrar was entitled to be subrogated to the rights of the first mortgagee. But the majority of the Court of Appeal (Cozens-Hardy, M.R., and Buckley, L.J.), held that the first mortgage was not kept alive, and that the plaintiff was entitled to priority. Moulton, L.J., however, dissented, and agreed with Parker, J., and it may be noted that the Master of the Rolls confesses that his opinion had varied and it was with hesitation he reached the conclusion he did. With all due respect to him the view of Moulton, L.J., appears to us the preferable one from an equitable standpoint, whereby