raised at the trial, we do not think we should consider it now, but that our judgment should be confined to the agreed matter in dispute, viz., who is entitled to administer the water and aqueducts.

We do not think that there is anything in the contention that the Defendants have acquired a prescriptive right; the Mosques have never ceased to enjoy the user of the water.

Our judgment is that the appeal should be dismissed and that the judgment of the Court below so far as it dismisses the claim of the Plaintiffs to the exclusive right to the aqueducts and channels and so far as it claims an injunction be affirmed, but as the grounds of the judgment are different and neither party has succeeded in establishing an exclusive right to either the water or channels, that there should be no costs here or in the Court below.

Appeal dismissed.

N.B.—There was a slight difference between the version of the Annex deposited in the Sher' Court by the Turkish Government and the English version. The Court treated these differences as immaterial.

The Turkish version was as follows:—

" And an official shall be appointed by the Ministry of Evqaf who " with an official to be appointed by the English Government shall " administer the emwal, emlak and arazi belonging to (or attached to ماع) sacred Mosques, etc."

The English version says " *superintend* . . . the administration."

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v.

CHRISTODOULOS FIEROS.

LAND TRANSFER AMENDMENT LAW, 1890—MORTGAGE OF PREMISES CONTAINING MILL—SUBSEQUENT LEASE BY MORTGAGOR—MACHINERY FOR MILL PLACED ON PREMISES AFTER MORTGAGE—SALE OF MORTGAGED PROPERTY LAW, 1890—LAW CONCERNING THE SALE OF IMMOVEABLE PROPERTY FOR DEBT, 15 SHEVAL, 1288, ART. 13.

C.S. was the registered owner of certain mulk property including a building used as a mill and containing some machinery for the purposes of the mill. In 1909 *he mortgaged the whole of the property to the Defendant under the Land Transfer Amendment Law,* 1890. *In* 1912 *he entered into a partnership with the first Plaintiff and C.H.N. to work a mill in the said building and purported to lease the building to the partnership firm for a term of* 20 *years. After the formation of the partnership, C.S., in accordance with the partnership agreement, purchased and put in new machin-*

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ery to be used for the purposes of the partnership, as did the first Plaintiff and C.H.N., the Defendant, according to the evidence, assisting the latter to do so knowing the purpose for which the machinery was to be purchased and used. Subsequently C.H.N.'s share in the machinery was put up for sale under a writ of sale of his moveable property and the second Plaintiff purchased it at that sale. The Defendant was an unsuccessful bidder. After the sale the second Plaintiff was accepted as a member of partnership in the place of C.H.N. C.S. fell into arrear in paying the interest on the mortgage debt and the whole of the property comprised in the mortgage was put up for sale under the Sale of Mortgaged Property Law, 1890, at the instance of the Defendant, and purchased by him. The Plaintiffs were present at the sale, but took no steps under Art. 13 of the Law concerning the Sale of Immoveable Property for Debt, 15 Sheval, 1288. After the sale the Defendant took steps to exclude the Plaintiffs from going on the premises and from making use of the machinery, and the Plaintiffs thereupon brought an action claiming inter alia *to be entitled* (1) *to make use of the premises as lessees, and* (2) *to two-thirds of the machinery which was on the premises in question.*

HELD: (1) *That the lease by C.S. to the partnership was void as against the Defendant.*

(2) *That each of the Plaintiffs was entitled to an undivided third share in the machinery put into the premises subsequently to the mortgage.*

(3) *That Art. 13 of the Law concerning the Sale of Immoveable Property for Debt, 15 Sheval, 1288, has no application to a sale under the Sale of Mortgaged Property Law,* 1890

This was an appeal by the Plaintiffs from a judgment of the District Court of Kyrenia, dismissing the action. The facts sufficiently appear from the head-note and the judgments.

Theodotou (*Artemis* and *Seceres* with him) for the Appellants.

The lease is good as against the Defendant, at all events for the period allowed by Law, nine years. The Court found that the articles claimed were "fixtures," and decided the case on English Law. I contend that English Law is inapplicable. There was never any intention on the part of any of those concerned to treat the new machinery as subject to the mortgage.

Russell, K.A. (*Neoptolemos Paschalis* and *M. Chacalli* with him) was stopped on the question of the validity of the lease. The question is what was sold to the Defendant? Clearly it was the property in the state in which it was at the time of the sale. Moreover Article 13 of the Law as to Forced Sales, 15 Sheval, 1288 (see Ongley's Ottoman Land Code, p. 221) precludes the Plaintiffs from succeeding. There is nothing in the Defendant's conduct to create an estoppel.

Theodotou in reply.

The following enactments and cases were referred to during the arguments:—Mejellé, Articles 128, 129, 230, 231, 232, 268, 531, 590, and 906; *Colwick v. Swindell*, L.R. 3, Equity, 249; *Sanders v. Davies*, L.R. 15, Q.B.D., 218; *Koumi v. Christofi*, C.L.R. III, 59; *Haji Nicola*

v. Mozera, C.L.R. V, 35; *Damdelen v. Zaim*, C.L.R. VI, 49; *Macario v. Christodoulo*, C.L.R. VII, 9; *Lefkaridi v. Georgiou*, C.L.R. VIII, 69.

Judgment: THE CHIEF JUSTICE: This is an action to assert a claim by the Plaintiffs to a building and machinery erected in it by Costi Haji Nicola and Yorghi Haji Nicola and one Costi Sava. The building, described as an oil-carob mill, had, previously to the erection of the machinery, been made a security for debt to the Defendant by Costi Sava, and had subsequently to the erection of the machinery been sold at the Defendant's instance under the Sale of Mortgaged Property Law, 1890, and bought by the Defendant.

It appears that the machinery was erected under the following circumstances:—

On the 23rd January, 1912, between the time of the mortgage and the time of the sale, an agreement was made between Costi Sava, Christodoulo Haji Nicola and Yeorghios Haji Nicola to establish in partnership an oil press and a flour mill, in which it was, among other things, agreed that Costi Sava was to concede the buildings of his oil press for 18 years, on payment of a yearly rent by the partners Christodoulo and Yorghi Haji Nicola.

The first question is whether the Plaintiffs, one of whom is Christodoulo Haji Nicola above-mentioned and the other the purchaser of the rights of Yorghi Haji Nicola, are entitled to go on using the building after the sale at the instance of the mortgagee.

The Defendant in making his claim to take the house free from the lease relies in part on Sec. 10 of the Sale of Mortgaged Property Law, 1890. That Section is in the following terms:—

" Where any property is sold on application under this Law, the " registration thereof in the name of the purchaser shall indefeasibly " transfer to him *all the estate and title of the person by whom the property* " *was mortgaged* for the payment of the debt in satisfaction whereof " the property is sold, notwithstanding any false statement made " without the knowledge of the purchaser or any informality contained " in an affidavit or affirmation presented to the Land Registry Office " in conformity with the provisions of this Law; and if the person " whose estate and title in the property is transferred as aforesaid " shall be in any way prejudiced by any such false statement or infor- " mality as aforesaid his remedy shall be in damages only against " the person on whose application the property was sold."

It will be seen that under that Section the purchaser takes " all the " estate and title of the person by whom the property was mortgaged."

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The question arises whether the purchaser in a sale under this Law takes the interest of the debtor at the time of the sale or the interest which the mortgagor had when the mortgage was effected.

If the purchaser takes " the interest of the mortgagor at the time " when the mortgage was effected " then he takes the property free from the agreement, if he takes the interest which the mortgagee had at the time of the sale, then he takes the property subject to the agreement.

There is an ambiguity in the wording of the Section. There is a similar ambiguity in Sec. 15 of 23 and 24 *Vic.* c. 145 as is pointed out in Fisher on Mortgages (5th Edition) p. 501.

On the meaning of that Section there has been a decision according to which the purchaser takes the interest of the mortgagor free from all incumbrances created subsequent to the mortgage in virtue of which the sale was made (In *re* Richardson L.R. 12 Eq., 398, 13 Eq., 142).

Following that decision as a guide, and also taking into consideration the whole object of the Law, in my opinion the purchaser, under the law, takes all the interest in the property sold, which the mortgagor had when he effected the mortgage; and consequently that the Defendant in this case takes the property mortgaged free from the right of user under the agreement; and the Plaintiffs cannot support their claim to the use of the house or room in which the oil-carob mill, which existed at the time the mortgage was made, was situated.

The next question is whether the Defendant is entitled to the machinery erected on the property mortgaged, between the dates of the mortgage and sale, or rather to two-thirds of the machinery, one-third being by the agreement the property of Costi Sava. The facts are as follows:—

At the time when the mortgage was effected there was in the room in dispute a couple of wooden pillars, an olive mill, a carob mill and a boiler not fixed in any way. These things together with the room in which they were placed constituted the oil-carob mill described in the qochan on which the mortgage was based. The room is said to have been worth about £50, and the things in it to have been worth another £50. This mill was worked by an animal.

After the mortgage was made Costi Sava removed the things constituting the mill in the room, and with his partners put in their place other and very much more expensive machinery to form an oil press and flour mill.

The Defendant claims all the new machinery as part of his oil-carob mill. The Plaintiffs claim that they are entitled to a two-thirds share.

It was suggested that all the machinery of the mill new and old was to be regarded as moveables and that the building was all that was intended to be denoted by the term oil-carob mill. It is a question of the intention of the parties. What is mortgaged is a mill, not a building with a mill in it. There is no doubt that at the time of the mortgage being effected part of the machinery was attached to and formed part of the mill mortgaged. If part was not attached, as, for instance, the boiler, it was still part of the mill as much as the door key is part of the house. In my opinion the whole mill existing at the time of the mortgage was intended to be included in the immoveable property mortgaged, whether fixed or not fixed, and the Defendant who purchased under the Sale of Mortgaged Property Law, 1890, would be entitled to the whole mill, if it existed as it was at the time when the mortgage was effected. Whether the Defendant is entitled to the machinery as it now is depends on facts which I will consider.

First, however, I will point out that in this action there is no question or claim in connection with the old mill, nor is it sought in any way to make the person who destroyed it liable for the destruction.

It is said that the Defendant is entitled to the mill as it now is, because the registered title on which the mortgage is based is sufficient to embrace it all.

The case of *Macario v. Haji Christodoulou* 7 C.L.R., 9 is relied on in support of this argument. In that case the mortgagor, prior to the mortgage, made an addition to his house, which would be covered by the registration existing before the addition was made, if it had remained in his own hands. There was no separate registration or any other evidence that the mortgagor had intended to regard the addition as a separate property. It was held that the addition was included in the existing registration, and that the mortgage effected on the basis of that registration, after the addition was made, included the addition.

The case does not go nearly far enough to support the Defendant's contention. In this case there is strong evidence that the new machinery was not intended to be covered by the existing registration, it was erected by persons other than the mortgagor, and after the mortgage was effected, and the mortgage was not made on the basis of the new machinery being included in the property mortgaged.

The Defendant knew that the property mortgaged did not, at the time of mortgage, include the machinery, and that it was not intended to include it when the mortgage was made. He cannot claim the machinery as included in the mortgage by virtue of the contract.

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It was then argued that the new machinery was a fixture and English cases were cited to show that by English Law the machinery would be included in the mortgage.

English Law is not applicable to cases about immoveable property in Cyprus. They must be judged solely by Cyprus Law. It is by that Law we must ascertain the rights of the Plaintiffs and the Defendants *inter se*. Is there any ground under Cyprus Law why the Plaintiffs should not enforce their rights under their contract with Costi Sava ? There is no contract between Plaintiffs and Defendants. There is a contract between the Defendant and Costi Sava and there was a contract between Costi Sava and the Plaintiffs, by virtue of which the Plaintiffs are entitled to two-third shares in the machinery if Costi Sava could confer on them that right. Costi Sava could have done so if he had not mortgaged the property. Does the mortgage deprive him of that power ? Is it an implied term of the contract of mortgage that all additions made are to become the subject of the mortgage ? Does the contract of mortgage prevent the Plaintiffs from enforcing their rights under the contract with Costi Sava ?

The question thus arises what is the contract between the Defendant and Costi Sava. What was the contract made when the property was made a security for the money advanced by the Defendant to Costi Sava ?

The contract of mortgage was made as follows:—

The two parties went to the Land Registry Office and produced a written contract and the Defendant declared that he had agreed to advance a sum of money on the security of the property, and Costi Sava declared that he had agreed to mortgage his property to the Defendant to secure that sum and both requested that the mortgage might be registered.

With the assent of the parties, the Land Registry Office then handed to the Defendant the qochan for the property, which Costi Sava had had before, and gave the Defendant a certificate of mortgage.

The certificate of mortgage and contract are in the following terms:—

LAND REGISTRY DEPARTMENT. (Form N. 37.)

First Copy of Certificate of Mortgage issued: 7 March, 1916.
Registered at Kyrenia, the 5th day of November, 1909.
Mortgagor: Costi Sava Haji Dimitri.
Residing at: Bella Paise.
Mortgagee: Mr. Christodoulos Fieros.
Residing at: Kyrenia.
Properties mortgaged: Registration Nos. 3953 and 4061 both mulk at Bella Paise village.

Particulars of the Contract of Mortgage: Contract dated the 4th day of November, 1909, and marked M.S. 558/1909.

Debt secured: Four hundred and seventy-two pounds with interest thereon at the rate of nine per centum per annum as follows:—

Conditions as to repayment: To be repaid in two instalments as follows: The first instalment of £36 payable on the 14. 9. 1910; the last one of £436 on 14. 3. 1911 with interest on each instalment at 9% per annum from the date when such instalment became due until it is paid.

This is to certify that the above named mortgagor has effected in the Land Registry Office, the date above appearing, a valid mortgage to the above named mortgagee of the properties herein described. Should the mortgagor, his heirs, administrators or assigns fail to comply with the terms of the contract of mortgage, the mortgagee, his heirs, administrators or assigns may proceed according to law to cause the properties herein described (the qochans whereof are herewith deposited with the mortgagee) to be sold in order that the debt and interest thereon, or so much as then remains due and payable, may be paid out of the proceeds of the sale. On payment of the debt and interest hereby secured the mortgagee, his heirs, administrators or assigns shall take the necessary steps to cancel the mortgage and return the qochans of the properties mortgaged to the mortgagor, his heirs, administrators or assigns.

. . . . . .

Good for £472. 0. 0.

I, the undersigned, Costi S. Haji Demetri, of Bella Paise, owe to pay to the order of Mr. Ch. Fieros, of Kyrenia, the above sum of £472. 0. 0 equivalent received in cash. I am bound to make payment of above sum as follows:—

On the 1/14th September, 1910, I am bound to pay £36 and on the 1/14th September, 1911, I am bound to pay £436, namely to make a final payment. After each expiration and up to final payment I am bound to pay interest at 9% p.a. In security of my creditor I mortgage to him my properties described in my title-deeds No. 3953 of 21. 10. 08 and 4061 of 1. 11. 09.

In case I do not pay the above sum at the time aforesaid, my creditor is entitled to sell my said properties and get paid, or bring an action against me, in which case I shall be liable for all costs.

Kyrenia, the 4th November, 1909. (Signed) Costi S. Haji Demetri.
Witness. (Signed) P. Agathangelou.

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Additional term.

Prior to the expiration of the last date for payment my creditor shall not be entitled to sell the mortgaged property.

(Signed) Costi S. Haji Demetri.

(Signed) Ch. Fieros, I consent.

One difficulty in ascertaining the rights of the parties is the difficulty of understanding what meaning they attach to the word " mortgage."

The method of contracting adopted by the parties to the mortgage under consideration has, I believe, been in use since the Law IV. of 1883 came into force.

Did the Law IV. of 1883 introduce a new form of contract in Cyprus ?

What is the mortgage of which the certificate is given ? The term " mortgage " is not a term known to Cyprus Law before the British Occupation.

There are various kinds of immoveable property in Cyprus and before the Occupation there were special laws for making each such kind a security for debt, and special certificates were given for each kind, and for each form of security.

There was mulk immoveable which could be made a security for debt by *bei-bil-vefa* or *bei-bil-istiglal* or *rehn*. The procedure for all these was the same namely that prescribed by Article 16, of the Law of 28 Rejeb, 1291.

The rights of the parties to these contracts are set out in the Mejellé. The rights of a party to a *bei-bil-vefa* are set out in the Mejellé, Article 396 *et seq.*

Bei-bil-istiglal is merely a *bei-bil-vefa* with a condition that the seller takes the property on hire. Mejellé, Article 119.

Another class of immoveables is Arazi-Mirié and Arazi-Mevqufé to which the provisions of the Land Code apply. That is to say Arazi-Mirié and Arazi-Mevqufé of which the Government dues only have been made vaqf. (Land Code, Article 4. ii.)

These lands can be made a security for debt by *vefa-an-firagh* (Feragh bil-vefa) and the rights of the parties to such a contract are set out in the Tapou Law, Article 25, *et seq.* and the Land Code, Articles 116, 117, and 188.

Under the contract the creditor or the *vekil*, if an attorney to sell was appointed, might through the official sell the land, if the debt was not paid when due (Land Code, Article 117, Tapou Law, Article 27).

In case the mortgagor died during the currency of the contract there were special provisions. (Land Code, Article 118. Tapou Law, Article 28. Article 2 of Law 23 Ramazan, 1286).

There could be no *rehn* of Arazi-Mirié or Arazi-Mevqufé of this kind. (Land Code, Article 116).

There is no provision for foreclosure.

There is also *Ijareteinlu Musakafat* and *Mustegillat Mevkoufé.* This can be made a security for debt by *feragh bil vefa.* (Law 9 Jemazi-ul-Achir, 1287, Article 15. See also 23 Ramazan, 1286, Article 3).

None of these transactions with regard to any kinds of land has all the consequences of a mortgage in England and the use of the term to denote those transactions or any of them would be giving a meaning to the term different to its signification in English Law. In Legislation after the British Occupation the term " mortgage " first appears in Cyprus. It appeared in the Land Transfer Law (4 of) 1883, it appears in the Civil Procedure Law (10 of) 1885, the Fraudulent Transfer Avoidance Law (7 of) 1886, the Sale of Mortgaged Property Law (13 of) 1890 and the Land Transfer Amendment Law (19 of) 1890.

What did the Legislature mean by the term " mortgage " ?

As I have said there was nothing in Cyprus Law which corresponds to a mortgage in English Law, either equitable or legal, and it does not appear to have been the intention of the Legislature to introduce a new form of contract for making land a security for debt.

The term mortgage as used in these laws would seem to be intended to denote any dealing with immoveable property in use under the Ottoman Law for the purpose of making it a security for debt.

" Property subject to mortgage " is used as equivalent to the term " Immoveable property made a security for debt."

" To mortgage " is used to denote the making of immoveable property a security for debt.

If the words above be read in this sense in the different Laws above mentioned it will be found that those Laws do not create any new mode of making immoveable property a security for debt, but only simplify the procedure with reference to the modes in existence when they were passed.

But since the Law 4 of 1883 there has been no certificate given for a *bei-bil-vefa*, or *feragh bil-befa* or a *rehn*. The only certificate given by the Land Registry Office to secure a debt on any immoveable property of any kind is a certificate of mortgage, such as was given in this case.

It is impossible to say in the case of mulk property such as this is, that the contract is a contract of *rehn*, *bei-bil-vefa*, or *bei-bil-istiglal.*

The practice introduced by Law 4 of 1883, acted on ever since by the parties who wish to make immoveable property a security for debt, has therefore introduced a new form of contract, the incidents of which

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are not to be found in the Law of Cyprus and which the Court must ascertain from the terms expressed in the contract by the parties.

It is a new form of contract and not any of those mentioned in the laws existing before the Law 4 of 1883 came into force. It is a contract which does not necessarily include the terms of mortgage in English Law and does not correspond to any contract known at the time in Cyprus Law.

The term " mortgage " as used in the certificate of mortgage and the contract in this case must be taken to denote a contract of this nature, and this is the contract of mortgage entered into by the Defendant and Costi Sava.

The Laws 13 and 19 of 1890 no doubt contemplated these contracts, which had been current some time when those Laws were passed.

Section 2 of the Sale of Mortgaged Property Law, 1890, introduces a statutory term into all mortgages because it enables the mortgagee of any property mortgaged for the payment of debt to sell the property if the debt is not paid when due.

Other terms are introduced by the Securities for Debt (Offences and Protection) Law, 1905. That Law seems to recognise that the mortgagor is not to be considered as the owner of the property (Sec. 4).

There is no express stipulation in the contract except that the property is to be a security for the debt and the creditor may sell in default of payment. I do not see that any terms can be implied, except such as necessarily arise from those stipulations.

It cannot be said that the creditor becomes legal owner of the property, or that he is entitled to the possession. It is impossible to say that it is a *bei-bil-vefa* or a *rehn* or to say that it is any of the recognised forms of contract mentioned in Ottoman Law or has the consequence of any of them. There is no recognised usage as to the rights of the parties and no decision with regard to their rights.

Does this contract of mortgage invalidate the subsequent contract made by Costi Sava with the Plaintiffs as against the mortgagee or purchaser, so that the Plaintiffs cannot assert their right to two-thirds of the machinery ?

In this case the mortgagee and purchaser are the same person, namely the Defendant, but one must consider his rights in both capacities.

I see no reason why as mortgagee he should be entitled to object to the contract.

Costi Sava removed the old mill and contracted with the Plaintiffs to instal the new machinery. The erection of the new machinery

does not damage the mortgagee's security to any appreciable extent, because the uncontradicted evidence is that the damage caused by the removal of the new machinery could all be made good for £3 or £4.

If the execution of the contract between the Plaintiffs and Costi Sava had materially damaged the property which was a security for his debt, and was a breach of the contract of mortgage, the mortgagee could have taken proceedings under the Securities for Debt (Offences and Protection) Law, 1905. He did nothing of the sort but on the contrary tried to acquire the share of Christodoulo Haji Nicola in the machinery as moveable property. The contract was one which Costi Sava was entitled to make and a contract which Plaintiffs can enforce notwithstanding the existence of this mortgage.

Can the Defendant as purchaser object to the Plaintiffs asserting their rights under the contract? If the machinery is the property of the Plaintiffs they are entitled to remove it. The Defendant can only object if the machinery is his as purchaser.

Does the mortgage and sale give the purchaser the right to claim the machinery as an erection on the property mortgaged? As I have already said the purchaser takes all the interest in the property which the mortgagor had at the time of the mortgage.

The question to be considered is whether he takes additions made subsequent to the mortgage, which the mortgagor by contract has agreed that those persons with whom he made the contract shall have. If the purchaser does take them it must be because by virtue of the mortgage they are part of the property mortgaged. If the mortgagee were the owner of the property and a new house were built on the land the mortgagee would not become an owner of that house (Mejellé, Article 906). Reasoning by analogy in my opinion this machinery which the Plaintiffs are willing to remove and which can be removed with little damage would not become the property of the mortgagee even if he were the legal owner. But he is not the owner. The mortgagor is the owner. Therefore *a fortiori* the machinery cannot be considered part of the mortgaged property. The Defendant as purchaser of the mortgaged property cannot object to the removal of the machinery by the Plaintiffs.

Another argument for the Defendant was that the new mill was really the old mill improved and therefore included in the mortgage.

No doubt if this were so, if, for example, it were like a new coat of paint on the house, or a new roof made of improved tiles there would be a good deal in the argument. But the two mills are totally different. One is a flour mill, the other a carob mill. One is a steam mill, the

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other was worked by an animal. One worth between £500 and £600, the other worth £50.

As a fact the new mill is a totally new thing and not a mere improvement of the old one. The old mill was done away with.

The argument based on the Law of Forced Sales does not help the Defendant, that Law applies only to sales in execution of a judgment debt.

In the above remarks I have dealt with the machinery as if it were all erected by the Plaintiffs. It makes no difference that the Plaintiffs only claim two-thirds. The reasons are equally good as applied to the two-thirds only.

The Plaintiffs by this contract are entitled to two-thirds of the machinery at the termination of the lease. Costi Sava could not grant the building for the full term, the Plaintiffs are turned out; they are at least entitled to take their shares. The Plaintiffs therefore under their agreement are entitled to a two-thirds undivided share in the machinery. The only question is as to the remedy. So far as appears from the evidence the other third is still vested in Costi Sava, because it did not pass by the sale of the mortgaged property.

Subsequently with the consent of Costi Sava an order was made that the machinery in dispute should be sold; that two-thirds of the price should be paid to the Plaintiffs; and that the remaining one-third should be paid into Court to abide the further order of the Court.

PUISNE JUDGE: In considering the first question raised in this case I will assume that as against the owner, the provision in the partnership agreement of the 20th August, 1912, as to letting the premises which are the subject matter of the action to the partnership constituted a valid lease of those premises.

The question is whether an owner of immoveable property who has mortgaged that property under the provisions of the Land Transfer Amendment Law, 1890, can, subsequently to so mortgaging it, grant a lease of it which will be binding on a purchaser under Sec. 10 of the *Sale of Mortgaged Property Law*, 1890. *No question of the acquiescence* of the mortgagee arises in this case, and the points to consider are (*a*) What right does that Section give him ? and (*b*) How far does that Section affect the normal rights of the mortgagor as the registered owner of the property ?

As to the right given to the mortgagee the effect of Sec. 10 is to vest in him a power, in the event of the security becoming enforceable, to sell, and give the right to the purchaser to be registered for, all the estate and title of the mortgagor in the property.

As to the right of the mortgagor the result of that is, in my opinion, to debar him, so far as the mortgagee is concerned, from dealing with his estate and title, and therefore with the ownership and possession of the property, in a way which would be detrimental to the value of the property to a purchaser under Sec. 10, and from creating any right over or interest in the property which can take precedence of the rights of such a purchaser. In short it puts it out of the power of the mortgagor to depreciate the value of the right which the law has vested in the mortgagee. For these reasons I am of opinion that the claim of the Plaintiffs, in so far as they claim the right to the user of the premises as lessees, fails.

There remains the question of the ownership of the machinery. It is clear that as between Costi Sava and the two plaintiffs that machinery belonged to them, by express agreement, jointly in equal shares. I cannot see, as at present advised, how the Defendant can be in any better position with regard to it, either as mortgagee or purchaser, than Costi Sava was in any case, but under the circumstances of this particular case it seems to me that the Defendant cannot be heard to say that the Plaintiffs have not the two-thirds interest that they claim. The effect of the contention put forward on his behalf is, that on the machinery being installed in the building it became part of the security for the debt due to the Defendant, and therefore passed to him when he purchased the property when it was sold under Sec. 10 of the Sale of Mortgaged Property Law, 1890.

But the evidence shows that the Defendant advanced the money, or assisted the first Plaintiff and his brother Christodoulo to obtain an advance of the money, for purchasing the machinery which they put into the building and that he knew of the purpose for which the purchase was being made. It furthermore shows, and the District Court found as a fact, that when the one-third share of Christodoulo Haji Nicola in the partnership machinery was put up for sale, under a writ for the sale of his moveable property, the Defendant bid for it in competition with the second Plaintiff to whom it was knocked down. Such conduct is inconsistent with the standpoint he now seeks to take up, and precludes him, in my opinion, as against the Plaintiffs from succeeding in his contention.

I do not think Article 13 of the Law as to Forced Sales applies to the sale in question; Sec. 9 of the Sale of Mortgaged Property Law, 1890, in terms merely makes the Rules of Sale applicable, and cannot be read to include the Law referred to.

Appeal allowed.