1960 *Present :* **Basnayake, C.J., and T. S. Fernando, J.**

DAVID DE SILVA, Appellant, *and* RAMANATHAN CHETTIAR and another, Respondents

*S. C. 150—D. C. (Inty.) Kandy, 1602/MB*

*Registration of business name—Change in particulars caused by registration of other business occupations—Default in registration of such change—Relief on ground that it is just and equitable—Business Names Ordinance (Cap 120), ss. 4, 7, 8, 9—Citizenship—British Nationality Act of 1948.*

*Civil Procedure Code—Section 143—Impropriety of frequent adjournments of trials.*

The plaintiffs were two professional money-lenders carrying on business in partnership under a business name which was registered on 17th July 1943. They instituted the present action on 24th November 1950 to recover a sum of money due on a bond dated 17th November 1947. In the course of a second trial, it was admitted by the 1st plaintiff in cross-examination that the plaintiffs commenced other business occupations of Pawn Brokers and Radio Service on 5th July 1946 and 13 October 1948 respectively, at other separate places. In view of this evidence, Counsel for the defendant (appellant) suggested the following issues :—

" (13) Have the plaintiffs—

(*a*) failed to furnish the Registrar of Business Names with a statement of changes in the particulars required under the Ordinance, with respect to the change of business to Radio Service and Pawn Brokers carried on under this business name ; and

(*b*) did they notify the Registrar of the change of their nationality ?

(14) If the plaintiffs are in default, can they enforce any claim in relation to this business ? "

Consequently, the plaintiffs lodged an application for relief under the proviso to section 9 of the Business Names Ordinance.

Counsel for the appellant did not press the contention that the plaintiffs were required by law to notify a change of nationality.

*Held*, that even if, in contravention of section 7 of the Business Names Ordinance, the plaintiffs defaulted in respect of notifying the change in the particulars of the registration which related to the nature of their other business occupations, the defendant knew the members of the firm with whom he was dealing and no prejudice was caused to him. In the circumstances it would be just and equitable to grant relief in terms of the proviso to section 9 of the Business Names Ordinance.

*Per* BASNAYAKE, C.J.—" The disability imposed by the section (section 9 of the Business Names Ordinance) is only in respect of any contract made or entered into by the defaulter at any time while he is in default . . . I am unable to find any provision of the Ordinance which they (the plaintiffs) had failed to comply with at that time. "

Observations by Basnayake, C.J., on the proneness of Judges of first instance to grant adjournments of trials without due regard to the provisions of section 143 of the Civil Procedure Code.



2——R 15182—1,855 (1/64)

APPEAL from an order of the District Court, Kandy.

*H. W. Jayewardene, Q.C.*, with *C. G. Weeramantry* and *L. C. Seneviratne*, for Defendant-Appellant.

*C. Ranganathan*, for Plaintiffs-Respondents.

*Cur. adv. vult.*

June 23, 1960. BASNAYAKE, C.J.—

The plaintiffs S. P. R. M. M. Ramanathan Chettiar and S. P. R. M. M. Nadarajan Chettiar are two professional money-lenders carrying on business in partnership under the business name of S. P. R. M. M. R. M. Ramanathan Chettiar & Brother. They instituted this action as far back as November 1950 to recover a sum of Rs. 10,000 and accrued interest thereon due on a Bond No. 1405 dated 17th November 1947 attested by M. A. M. Naheem, Notary.

On 3rd December 1952 judgment was given for the plaintiffs. The defendant appealed against that judgment and a trial *de novo* was ordered. At the second trial on 22nd October 1956 while the 1st plaintiff was still being cross-examined counsel for the defendant suggested the following issues :—

" (13) Have the plaintiffs—

(*a*) failed to furnish the Registrar of Business Names with a statement of changes in the particulars required under the Ordinance, with respect to the change of business to Radio Service and Pawn Brokers carried on under this business name ; and

(*b*) did they notify the Registrar of the change of their nationality ?

" (14) If the plaintiffs are in default, can they enforce any claim in relation to this business ? "

Counsel for the plaintiffs objected to issue 13 (*a*) on the ground that section 8 of the Business Names Ordinance imposes no obligation on the plaintiffs to inform the Registrar of Business Names of the commencement of the business of radio repairers etc. and to issue 13 (*b*) on the grounds that the question whether there has been a change in the nationality of the plaintiffs had to be considered and that he was not prepared to meet that issue that day. He asked for time to " meet " it, and time was granted till 7th December. On that day the trial was adjourned once more to 20th December on the following ground minuted in the journal as " Counsel states that they have not been able to get dates suitable to senior counsel ". It was further adjourned to 21st January 1957 on

which date it was once more adjourned to 22nd March 1957. On 7th March 1957 the plaintiffs lodged an application for relief under the proviso to section 9 of the Business Names Ordinance.

Before I proceed to discuss the petition of the plaintiffs and the questions arising thereon I cannot help observing that the learned Judge has been too ready to grant adjournments of the trial in this case. He granted the first adjournment when an issue was raised by the defendant's counsel. There is no need to grant an adjournment when a fresh issue is raised in the course of a trial if it is one that arises on the pleadings. In the instant case counsel for the plaintiff did not contend that the issue did not arise on the pleadings and object to it on that ground. It is not clear what was meant by "to meet this issue". The learned Judge was wrong in allowing the issue if it did not arise on the pleadings without their being amended. If it did arise on the pleadings there was no ground for an adjournment. Once he adopted the issue and recorded it he should have proceeded with the trial. Having adjourned the trial for nearly two months he continued to adjourn it for nearly three more months on various grounds which do not appear to me to be sufficient. I cannot help remarking that, judging by the appeals that have come up for hearing, judges of first instance are too prone to grant adjournments of trials without due regard to the provisions of section 143 of the Civil Procedure Code. The proviso to that section requires that once the hearing of evidence has begun, the hearing of the action shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing to be necessary for reasons to be recorded and signed by the Judge. This requirement appears to be observed more in the breach by Judges of first instance. It is important that legal proceedings should be conducted by judges with due regard to the provisions of the Civil Procedure Code. The appellate court attaches to findings of fact of a judge of first instance considerable weight on the ground that he has had the advantage of seeing and hearing the witnesses and of being in the atmosphere of the trial—an advantage which judges of appeal do not enjoy. If a trial is not conducted in accordance with the provisions of the Code and is subject to long adjournments, and the evidence of the witnesses is not recorded without interruption but only at intervals, then the appellate court cannot attach the same weight to findings of fact of the trial judge as it would attach to findings arrived at at a hearing where he has heard the evidence from day to day and without interruption, because the adjournments, be they long or frequent, will have robbed him of that advantage on which the appellate court places reliance.

It is inevitable that where witnesses have given evidence not one after the other but at intervals spread over a long period the impression created on the judge's mind by those who gave evidence at the early part of the trial is not so vivid as the impression created by those who gave evidence at the late stages and nearer the time at which he comes to write his judgment. This would place one party or the other at

a disadvantage which might have been avoided if the trial proceeded from day to day. Both counsel and judges of first instance should therefore in the interest of the parties strive to avoid adjournments of trials once begun.

I shall now revert to the petition. In that petition the plaintiffs stated—

(*a*) that they have been carrying on the business of money lending at No. 50 Brownrigg Street, Kandy, since 12th July 1943 under the business name of "S. P. R. M. M. R. M. Ramanathan Chettiar & Bro." and that the business name was registered on 17th July 1943. In that certificate of registration the following particulars are given :—

| | |
|---|---|
| Business Name : | SP. RM. M. RM. Ramanathan Chettiar & Bro. |
| The General Nature of Business : | Money Lending, Financiers and Landed Proprietors. |
| The Principal Place of Business : | No. 20A, Brownrigg Street, Kandy. |
| Names of Individuals who are Partners in the Firm | SP. RM. M. Ramanathan Chettiar<br>SP. RM. M. Nadarajan Chettiar alias Meiyappa Chettiar. |
| Nationality : | British |
| Usual Residence of every Individual : | No. 20A, Brownrigg Street Kandy |
| The other Business Occupation (if any) of every Individual Partner in the Firm | Nil. |

(*b*) that they are Indian citizens ;

(*c*) that they commenced another business of Bankers and Pawn Brokers at No. 58 Main Street, Trincomalee, on 5th July 1946 under the same business name which was later transferred to No. 129 Central Road, Trincomalee, and registered the particulars of that business as follows :—

| | |
|---|---|
| General Nature of Business : | Bankers and Pawn Brokers. |
| Principal Place of Business : | No. 58 Main Street, Division No. 6, Trincomalee. |
| Partners : | S. P. R. M. M. Ramanathan Chettiar<br>S. P. R. M. M. Natarajan Chettiar. |
| Nationality : | British |
| Usual Residence of Partner : | Natharasankottai, Sivagange Talug, Ramnad District, South India. |
| The other Business Occupation (if any) of every Individual Partner in the Firm | Nil. |

(*d*) that on 18th July 1956 they ceased to carry on the said business at Trincomalee and gave notice of cessation to the Registrar of Business Names of the Eastern Province.

(*e*) that on 13th October 1948 they commenced another business of radio repairers and dealers in radio and electrical goods under the business name of "Central Radio Service". The particulars relating to that business name are as follows :—

Business Name : Central Radio Service

General Nature of Business : Repairing Radio and Dealers in Radio, Electrical Goods, etc.

Principal Place of Business : No. 112 Trincomalee Street, Kandy.

Names of Partners : Suna Pana Rawenna Mana Mena Ramanathan Chettiar.

Suna Pana Rawenna Mana Mena Nadarajan Chettiar alias Meiyappa Chettiar.

Nationality : British.

| | |
|---|---|
| Usual Residence of Individual Partners | No. 50 Brownrigg Street, Kandy. |
| Other Business Occupation of every Individual Partner | Partner in business of S. P. R. M. M. R. M. Ramanathan Chettiar and Bro. |

(*f*) that on 30th August 1952 they ceased to carry on that business and gave due notice of cessation on 28th November 1952.

(*g*) that they did not notify the Registrar of Business Names of the changes in the particulars of their first registered business name in consequence of their—

(i) carrying on the new business of bankers and pawn brokers at Trincomalee.

(ii) commencing business as radio repairers and dealers in radio and electrical goods.

(*h*) that the reasons for their failure were—

(i) that they were not aware that the particulars of the said two businesses had to be notified to the Registrar of Business Names, Central Province, as a change in respect of their business of money lending.

(ii) that they considered these two subsequent businesses not as the same business as that of money lending.

(iii) inadvertence and ignorance of the provisions of the Business Names Ordinance.

(*i*) that they have since notified the various changes referred to above.

Now the provision of the statute that arises for consideration is section 9 of the Business Names Ordinance which reads :

(1) Where any firm or person required by this Ordinance to furnish a statement of particulars or of any change in particulars in respect of any business shall have made default in so doing, then the right of that defaulter under or arising out of any contract in relation to that business made or entered into by or on behalf of such defaulter at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise :

Provided that—

(*a*) the defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions, if any, as the court may impose ; but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if the provisions of this Ordinance had been complied with, he would not have entered into the contract ;

(*b*) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid ;

(*c*) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim, set-off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section, " court " means the court in which any action or other legal proceeding to enforce a contract is commenced by a defaulter. "

The disability imposed by the section is only in respect of any contract made or entered into by the defaulter at any time while he is in default. That is what the section states and it has been so held in England under the corresponding provision which is identical. (*Re a Debtor*)[1]. The contract which the plaintiffs are seeking to enforce was made on 17th November 1947 before 26th January 1950 when India became a Republic

[1] *(1919) 98 L. J. K. B. 40.*

and before 13th October 1948 when they commenced the business of radio repairers and dealers in radio and electrical goods under the business name of " Central Radio Service ", but after 5th July 1946 when they commenced business at No. 58 Main Street, Division No. 6, Trincomalee as Bankers and Pawn Brokers. The question is whether the plaintiffs had failed to carry out any duty imposed on them by the Ordinance at the time the defendant executed the bond sued on. I am unable to find any provision of the Ordinance which they had failed to comply with at that time. The Trincomalee business was registered as an independent business of " Bankers and Pawn Brokers " carried on at Trincomalee. The particulars which a firm or person is required to notify under the Ordinance are stated in section 4 which reads:

" (1) Every firm or person required under this Ordinance to be registered shall furnish, by sending by post or delivering to the Registrar at the register office in that part of Ceylon in which the principal place of business of the firm or person is situated, a statement in writing in the prescribed form containing the following particulars :—

(*a*) the business name ;

(*b*) the general nature of the business ;

(*c*) the principal place of business ;

(*d*) where the registration to be effected is that of a firm, the present name (in full), any former name (in full), the nationality, and where that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation, if any, of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner ;

(*e*) where the registration to be effected is that of an individual, the present name (in full), any former name (in full), the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation, if any, of such individual ;

(*f*) where the registration to be effected is that of a corporation, its corporate name and registered or principal office and the names and nationalities of its directors ;

(*g*) if the business is commenced after the passing of this Ordinance, the date of the commencement of the business.

(2) Where a business is carried on under two or more business names, each of those business names must be stated. "

It is contended that on the registration of the business carried on at Trincomalee the Registrar should have been notified of the change in the particulars registered in the cage which requires " the other business occupation, if any, of each of the individuals who are partners " to be stated. The word " nil " appeared in that cage originally and was not altered at the time the bond was signed. I do not think that the Trincomalee business can be said to be " the other business occupation

of each of the individuals who are partners". That was not the individual business of any of the two partners. It was a partnership business which was separately registered. The information required by section 4 (1) (*d*) of the Business Names Ordinance is in regard to business carried on by the partners separately as individuals. The section does not require a partner to state the names of all partnerships of which he is a partner for the reason that such a partnership is prohibited from carrying on business under a business name without registering it. On the other hand it requires an applicant for registration to state " the corporate name and registered or principal office of every corporation of which he is a partner ". The Trincomalee business was not a corporation at the relevant date. At the time of the execution of the bond sought to be enforced the plaintiffs were therefore not in default and are not prevented by section 9 of the Ordinance from proceeding with their action against the defendant.

Before parting with this judgment I should like to add that even if there had been a failure in respect of notifying a change of the particulars to be entered in cage 10 of the prescribed form (Vol II Subsidiary Legislation, page 11, 1938 Edition), this is eminently a case in which relief should be granted. The fact that the application is made long after the commencement of the action does not prevent the court from granting relief in a suitable case (*Hawkins & another v. Duche* [1]; *In re Shaer* [2]). The section gives the court very wide powers of granting relief to persons in default. Where, as in the instant case, the defendant was not misled by the default and knew the members of the firm with whom he was dealing it would be most unjust and inequitable to deny the plaintiff relief more especially when the defendant's objection is taken so long after the institution of the action and at a second trial, and even then not *in limine* (*Weller v. Denton* [3]).

I would therefore dismiss the appeal with costs.

T. S. FERNANDO, J.—

This appeal seeks to question the correctness of an order made by the Additional District Judge of Kandy granting to the plaintiffs in an action on a mortgage bond relief under the proviso to Section 9 of the Business Names Ordinance of 1918 (Cap. 120). This Ordinance has been modelled on the Registration of Business Names Act, 1916, of England, and Section 9 of the Ordinance as enacted in 1918 provided that where any firm or person required by the Ordinance to furnish a statement of particulars or of any change in particulars in respect of any business shall have made default in so doing, then the rights of that defaulter under or arising out of any contract in relation to that business made or entered into by or on behalf of such defaulter at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise. Commenting on this section as it then was, Bertram C.J., in

[1] *(1921) 3 K. B. 226.* [2] *(1927) 1 Ch. 355.*
[3] *(1921) 3 K. B. 103.*

*Karuppen Chetty v. Harrison & Crosfield Ltd.*,[1] observed that the object of the Ordinance was to prevent foreigners carrying on business in this country and from suing in our courts under a disguise, and that it was clearly intended that, if it came to the notice of the Court in the course of an action that the provisions of the Ordinance had not been complied with, the Court should immediately give effect to the terms of Section 9 which declares that the rights of a defaulter in such a case shall not be enforceable. In 1935, Dalton J., in *Arunachalam Chettiar v. Ramanathan Chettiar*[2] pointed out that, unlike in the case of the English statute, there was no provision in our Ordinance for the Court to grant relief in the case of a default by the plaintiff in complying with the requirements of the Ordinance. Three years later, Ordinance No. 8 of 1938 was passed amending the Business Names Ordinance of 1918 by the addtion of a proviso to Section 9 whereby power was given to the court in which any action or other legal proceeding to enforce a contract has been commenced by a defaulter to grant relief against the disability imposed by the section on the Court being satisfied that the default was accidental or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief. This proviso has been successfully invoked by the plaintiffs in the District Court, and the learned District Judge has granted relief, (1) on the ground of inadvertence and (2) that on the other grounds it is just and equitable to do so.

Learned counsel for the defendant argued before us that the grant of relief on either ground was incorrect in the circumstances of this case. It is therefore necessary to examine those circumstances.

This action was instituted so long ago as November 24, 1950, and it relates to a mortgage bond of November 17, 1947, obtained in relation to a business of money-lending carried on by the plaintiffs at 20A, Brownrigg Street, Kandy. After trial the District Court on December 3, 1952 entered judgment in favour of the plaintiffs but, on an appeal being preferred, the Supreme Court on February 14, 1956 set aside the judgment of the District Court and ordered a trial *de novo*. It is admitted that the question of a default by the plaintiffs in complying with the requirements of the Business Names Ordinance did not transpire at the first trial. The new trial commenced in the District Court on October 22, 1956, and, after issues had been framed, while one of the plaintiffs was being cross-examined it was elicited that the plaintiffs had been carrying on at times relevant to Section 9 certain other businesses at certain places other than 20A, Brownrigg Street, Kandy, and that they had not furnished to the Registrar of Business Names particulars of these new businesses as constituting a change of particulars in relation to the business carried on at 20A, Brownrigg Street, Kandy, as required by Section 7 of the Ordinance. Counsel for the defendant thereupon promptly raised the issue of the enforceability of the present action. The plaintiffs obtained time to consider the position, furnished on February 22, 1957 particulars of change in respect of their money-lending

[1] *(1922) 24 N. L. R. at 318.* [2] *(1935) 37 N. L. R. at 265.*

business as required by Section 7 of the Ordinance, and on March 11, 1957 applied for relief under the proviso to Section 9. In their petition for relief they stated that the failure to notify particulars of the changes was due to inadvertence and to ignorance of the provisions of the Ordinance.

The plaintiffs who are brothers had commenced at 20A, Brownrigg Street, Kandy, on July 12, 1943, under the business name of SP.RM. M.R.M. Ramanathan Chettiar & Bro. the business of " moneylending, financiers and landed proprietors ", and had furnished particulars relating to this business as required by Section 4 of the Ordinance—see Certificate A. The contract in respect of which the present action was instituted was, as already indicated, one in relation to this business. On July 5, 1946, they commenced at 58, Main Street, Trincomalee and at 129, Central Road, Trincomalee two other businesses, both described as that of bankers and pawnbrokers, under the same name, and Certificates B and C respectively relate to these two businesses. Then, again, on October 13, 1948, they commenced yet another business, this time the business of " repairing radio and dealers in radio, electrical goods etc. ", under the business name of Central Radio Service at 112, Trincomalee Street, Kandy—vide Certificate E. One of the particulars required to be furnished by Section 4 of the Ordinance is " the other business occupation ", if any, of each individual member of the firm. The statement of particulars in respect of the original registration of the business in relation to which the mortgage bond in suit had been executed is unexceptionable as at the time it was made the plaintiffs had no other business occupation. It is contended, however, that when the plaintiffs commenced other business occupations of " bankers and pawnbrokers " and " repairing radio and dealers in radio, electrical goods etc. " they were required by law (Section 7) to furnish to the Registrar particulars of such new business occupations as being changes in one of the particulars registered in respect of the firm described in Certificate A. It was further contended in the District Court that while the nationality of the plaintiffs who are Indians was correctly set out as British in the statement furnished for the 1943 declaration, that nationality underwent a change in 1950 upon India becoming a Republic, and that the plaintiffs, having failed to furnish to the Registrar in terms of Section 7 particulars of the change of nationality are defaulters within the meaning of Section 9 of the Ordinance. It appears to have been conceded by the plaintiffs in the petition filed at the time they applied for relief that they had made default by their failure to notify the alleged change of nationality. The learned judge himself appears to have taken the view that there was default by reason of this alleged failure, but it seems to me that the question whether the nationality of the plaintiffs underwent a change at all in 1950 is debatable, particularly on account of the existence of the British Nationality Act of 1948. It may be mentioned that learned counsel for the appellant did not seek to press before us the contention that the plaintiffs were required by law to notify a change of nationality. He limited the

objection to the grant of relief to the claim that the plaintiffs had made default in furnishing particulars of the other business occupations of the plaintiffs by way of a change of particulars required in respect of the business carried on at 20A, Brownrigg Street, Kandy.

At the inquiry held in the District Court on the application for relief, both plaintiffs gave evidence that they had been ignorant of the law and that the furnishing of particulars to the Registrar had been attended to at their request by a proctor's clerk of their acquaintance. This clerk was not called as a witness and it may be mentioned also that no evidence was led for the defendant. The learned District Judge has held that the default was due to inadvertence and, further, that as the defendant has not been prejudiced in any way by the default it is just and equitable to grant to the plaintiffs the relief they prayed for.

In regard to the grant of relief on the ground of inadvertence, Mr. Jayewardene contended that the plaintiffs were not ignorant of the requirements of the Ordinance as they had furnished the statements upon which Certificates A, B, C & E were issued. It was also pointed out that in furnishing the particulars in 1948 for Certificate E they had furnished particulars of their other business occupations and must therefore have been aware of the necessity of furnishing such change of particulars. It should, however, be remembered that Certificate E was issued as a result of the furnishing of particulars for a registration of a new business and the plaintiffs may well have been unaware of the necessity of complying with the requirements of Section 7. The District Judge has stated in his order that when the plaintiffs stated they were not aware that they had to notify the registrar that their registration in respect of the business of " money-lending, financiers and landed proprietors " should be changed when they commenced two other business occupations in 1946 and 1948 respectively they were speaking the truth. It is not possible for us to say that the learned Judge was wrong in forming that opinion, and it follows that the granting of relief must be judged on the basis that the plaintiffs were ignorant of the law.

Mr. Jayewardene argued before us that default in complying with the law due to an ignorance of the law does not constitute inadvertence. He referred us to certain decisions of this Court in relation to the Money-Lending Ordinance (Cap. 67), and particularly to the observations of Moseley J. in *Sinnapillai v. Veeragathy* [1] that although the general trend of English decisions seems to be that ignorance of the law may constitute inadvertence, the nature, quality, extent and consequences of the inadvertence must be weighed by the Court in each case. Moseley J. stated further that he found great difficulty in reconciling inadvertence with the notion of ignorance. The word seemed to him to presuppose knowledge. On the other hand, Mr. Ranganathan has relied on certain cases and particularly on the observations of Garvin J. in *Fernando v. Fernando* [2], also a case relating to the Money-Lending Ordinance, that " to hold that the word ' inadvertence ' is used in a sense which completely excludes ignorance of the requirements of Section 10 is to hold that the

[1] *(1937) 39 N. L. R. at 234.* [2] *(1934) 36 N. L. R. at 80.*

legislature, while intending to give relief to a person who with knowledge of the law accepted a promissory note which did not comply with the requirements of that section through oversight, mistake or negligence of thought, did not mean to extend that relief to a person who did so in complete ignorance of that provision of the law and that to do so would be to take too narrow a view of the section". I do not, however, consider it necessary to enter upon an examination of the authorities as to the meaning to be placed on the word 'inadvertence' appearing in Section 9 of the Ordinance, as I am of opinion that the appeal now before us can be disposed of on the second ground on which relief was prayed for, viz. that on other grounds it is just and equitable to grant relief. Our attention has been drawn to the case of *Weller v. Denton*[1] which dealt with the question of relief under the corresponding English Act, the relevant section of which (Section 8) was on all material points similar to Section 9 of our Ordinance. The plaintiffs in that case had not complied with any of the provisions of the Act in respect of registration because they had not been aware of the Act. The Court granted relief on the ground that it was just and equitable to do so, and Lush J. stated :—

> "The Act, however, gives to the Court the widest possible powers of granting relief to persons in default. It provides that the Court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief may grant such relief. The reason why this wide power of granting relief should be given to the Court can well be understood. Where the defendant has not been misled, and knew the members of the firm or other persons with whom he was dealing, it might be most unjust and unequitable to hold that the plaintiff's action should not be maintainable merely because he did not know that he ought to have been registered under the Act. In the present case I think that the facts that the plaintiffs were not aware of the Act or that it was necessary for them to register under it, and that the defendant knew with whom he was dealing, were sufficient to give the county court judge jurisdiction to grant the plaintiff's application for relief."

In the case before us the plaintiffs have complied with the Ordinance in so far as the registration of the firm itself was concerned and the default was in respect of a change in the particulars of the registration which related to the nature of their other business occupations. The defendant was throughout aware of the identity of the parties in whose favour he executed the mortgage bond and no suggestion of any prejudice to him has even been advanced, much less substantiated. I am of opinion that the learned District Judge had the power to grant relief in the circumstances established before him and that that power has here been properly exercised. The appeal should therefore be dismissed with costs.

*Appeal dismissed.*

[1] *(1921) 3 K. B. 103.*