

The Attorney-General is appealing on the ground that the respondent committed an offence under the sub-section, notwithstanding the fact that he did not know that the parcel entrusted to him contained liquor. A number of authorities have been cited by the Attorney-General and by Sir Henry Scott for the respondent on the question whether or not knowledge is an essential ingredient of possession.

The relevant portion of the sub-section under which the accused was charged reads as follows :—

“ It shall be unlawful for any native to have in his possession or to drink any liquor.”

Now, as stated in Vol. 22 of *Halsbury's Laws of England*, page 391, paragraph 790 “ possession is a word of ambiguous meaning and its legal senses do not coincide with the popular sense. In English law it is treated not merely as a physical condition protected by ownership but as a right in itself.”

The position of the respondent was that he took delivery of a brown paper parcel addressed to Mr. J. J. Costello ; and even if he had known, as the learned Magistrate has found he did not, that the parcel contained liquor, the respondent had no right of access to that liquor ; his duty was to deliver the parcel to Mr. Costello unopened. I hold that for an offence to be committed under the sub-section it must be proved that the accused has access to liquor and it is clear that the respondent had no access to the bottle of whisky contained in the parcel. Such being the case, it is, in my view, immaterial whether he knew or did not know what the parcel contained. The appeal must be dismissed.

MANGAL SARDAR *ats.* BAKEWA.

[Appellate Jurisdiction (Corrie, C.J.) January 26, 1937.]

*Native Dealings Ordinance, 1904*¹—s. 5—debts exceeding £20 not actionable against natives unless arising from a registered contract—Original debt in excess of £20—promissory note for £20 in part payment—whether an action lies on the promissory note.

Appellant's claim for an amount not exceeding £20 due by the respondent, a native, under a promissory note was dismissed in a Court of Summary Jurisdiction on the ground that the sum secured by the note was part payment of a debt of £22 18s. 10d., arising otherwise than by contract duly registered under s. 3 of the Native Dealings Ordinance, 1904.

HELD.—A promissory note constitutes and creates a fresh debt and if for an amount not exceeding £20 an action lies on the note notwithstanding s. 5 of the Native Dealings Ordinance 1904.

[EDITORIAL NOTE.]—This decision was followed in *Ammal* *ats. Govind Pillay* [1937] 3 Fiji L.R. and *Giwar Singh & or. ats. Birbal* [1943] 3 Fiji L.R.—].

APPEAL by the plaintiff against judgment for the defendant in an action for moneys due under a promissory note. The facts appear from the judgment.

R. L. Munro for the appellant.

(No appearance of the respondent.)

CORRIE, C.J.—The appellant is suing upon a promissory note for £20 made in his favour by the respondent.

The appellant has stated in evidence that the note was given in part payment of a debt amounting to £22 18s. 10d.

Upon this evidence, the Commissioner has held that no action lies in view of the provisions of s. 5 of the Native Dealings Ordinance, 1904.¹

Under that section:—

“ No action shall lie against a native party at the suit of a non-native party for a debt exceeding twenty pounds unless the obligation to pay shall have been incurred in pursuance of a contract registered under the provisions of s. 3 hereof.”

The promissory note, however, constitutes and creates a fresh debt due from the respondent to the appellant for an amount not exceeding £20 ; and hence, notwithstanding the provisions of the section, action will lie upon the note.

The appeal is allowed ; the judgment of the Commissioner is set aside and the case remitted for completion. The costs of this appeal will be costs in the case.

ex parte REGISTRAR OF TITLES.
re FILIMONE AND JAIMAL.

[Civil Jurisdiction (Corrie, C.J.) July 23, 1937.]

Crown Lands Ordinance 1888¹ protected lease—Land (Transfer and Registration) Ordinance—s. 113²—application by judgment creditors to notice of judgment against a protected lease—consent by Commissioner of Lands to registration not obtained.

Filimone was lessee of a Crown Lease which was a “ protected lease ” under the Crown Lands Ordinance 1888. Two judgment creditors of Filimone applied for entry of notice of eight judgments on the lease without first obtaining the consent of the lessor to such entry.

HELD.—Judgment creditors cannot have notice of judgment entered on leases protected under the Crown Lands Ordinance 1888³ without the consent of the Commissioner of Lands.

¹ Cap. 88.

² Repealed. *Vide now Crown Lands Ordinance, 1945, s. 15.*

³ Cap. 120, s. 113.