The evidence established that the deceased was a moneylender and there was no proof that he had taken out a licence as such for the year 1939. On the contrary according to the evidence of Ram Persad, who was called by the plaintiff and who used to keep the deceased's accounts, licences had been taken out for the years 1940 and 1941 but he knew of no licence having been obtained in respect of the year 1939. The Magistrate upheld the defence and dismissed the plaintiff's claim.

The plaintiff appeals and Mr. S. B. Patel has contended on his behalf that the evidence was insufficient to justify the Magistrate's finding that the deceased had no licence for the year 1939 and furthermore that the burden of proving that fact lay on the defendant and not on the plaintiff. He referred to two previous decisions of this Court, viz.:—*Ragudatt v. Ramautar* (Civil Action No. 12 of 1940) and *C. M. Patel v. Karpan* (Civil Action No. 106 of 1941).

In *Ragudatt v. Ramautar,* the Court held that the onus of proving that the plaintiff was a moneylender rested on the defendant but it was admitted in that case that the plaintiff had no licence and therefore it was unnecessary for the Court to decide on whom lay the burden of proving that fact, if it had been in issue.

In *C. M. Patel v. Karpan,* the plaintiff was a licensed moneylender and although there were a number of matters in dispute, none had reference to the onus of proof. It appears therefore that neither of the cases cited by Mr. Patel is of any assistance to him.

In this case, the burden of proving that the deceased was a moneylender rested on the defendant and he discharged it. Having done so, the burden of proof shifted and it was for the plaintiff to prove that the deceased had a licence ; this is in accordance with the general rule that the burden of proof lies upon the party who asserts the affirmative of the issue (*Phipson on Evidence,* 8th ed. p. 27).

The Magistrate came to a correct decision and the appeal will be dismissed with costs, without prejudice, however, to the right of the plaintiff to bring a fresh action in respect of the promissory note dated 6th February, 1940, if it be the fact that the deceased had a moneylender's licence for the year 1940.

RAGHUBAR *ats.* POLICE.

[Appellate Jurisdiction, (Thomson, J.) October 25, 1946.]

Distillation Ordinance, Cap. 193—*s.* 22— *illicitly distilled spirits—whether spirits upon which the full duty has not been paid.*

Illicitly distilled spirits were found on the premises of Raghubar who was convicted of the offence defined by s. 22 of the Distillation Ordinance which refers to spirits upon which the full duty has not been paid.

HELD.—Illicitly distilled spirits are spirits upon which the full duty has not been paid.

Bisnath ats. Police [1943] 3 Fiji L.R.

APPEAL by case stated against conviction. The facts and argument fully appear from the judgment.

R. D. Bagnall, for the appellant.

E. M. Prichard, for the respondent.

THOMSON, J.—This is an appeal by way of case stated from a decision of the Magistrate at Ba.

The appellant was charged that he unlawfully had in his possession spirits on which the full duty had not been paid in contravention of s. 22 of the Distillation Ordinance (Cap. 193) and he was convicted of that offence. He now appeals on the ground that as the spirits in question were illegally distilled no duty was payable on them and that therefore the learned Magistrate was wrong in law in proceeding to conviction.

The material portions of s. 22 of the Ordinance read as follows:—

> "22. Every person . . . upon whose premises shall be found spirits upon which the full duty has not been paid except as herein provided shall be liable to a fine . . . or to imprisonment."

Counsel for the appellant in the course of an able and attractive argument referred to the terms of the section and pointed out that non-payment of the full duty was an essential ingredient to constitute an offence against the section. He pointed out that the only provision in the Ordinance imposing any duty on spirits was contained in s. 14 and that that section imposed the duty mentioned in it only upon "spirits distlled in accordance with the provisions of this Ordinance". He went on to argue that no duty was payable (or in fact could be paid) on spirits distilled otherwise than in accordance with the provisions of the Ordinance (as were the spirits in this case) and that accordingly the offence charged could not be committed in respect of such spirits.

On the other hand, my attention was invited to the decision of Sir O. Corrie, C.J., in the case of *Bisnath v. The Police* (Criminal Appeal No. 22 of 1942). The same point was raised in that case with regard to a prosection under s. 23 of the Ordinance and in the course of his judgment the learned Chief Justice said: "S. 23 is not restricted in terms to spirits distilled under the Ordinance which, in s. 22, provides penalties for illicit distillation, and it is clear that the term "the full duty" in s. 23 means, in the words of s. 14, "the same duties which are or may be from time to time payable upon spirits of a corresponding description and strength imported into the Colony.'"

With respect, I agree. This may be penal enactment, it may be a revenue enactment. But the special rules as to the interpretation of such enactments are only applicable when there is difficulty in the application of the fundamental rule that the grammatical and ordinary sense of the words in the enactment itself is to be adhered to. And in applying that rule here I see no difficulty. The section does not say "spirits upon which the full duty which is payable upon such spirits has not been paid", it says "any spirits upon which the full duty has not been paid", there is only one duty mentioned in the Ordinance, that is the duty described in s. 14, and the only question that has to be decided under the section is whether or not that duty has in fact been paid. Whether duty is or is not payable is beside the point. The

ordinary and grammatical sense of the words of the section is that when the spirits are spirits on which the duty has not been paid an offence is committed, and I fail to see how any possible degree of strictness of construction as against the Crown can avoid that conclusion.

The appeal is dismissed.

LALBEHARI *v.* RAM NIAR.

[Civil Jurisdiction (Seton, C.J.) December 18, 1946.]

Moneylenders Ordinance, 1938 (*Cap.* 185)—*s.* 14—*contract for repayment of money lent after coming into force of Ordinance by an unlicensed moneylender unenforceable—money lent before coming into force of Ordinance—bill of sale given for balance of loan owing after coming into force of Ordinance—whether enforceable—ss.* 20 *and* 21—*allegation that rate of interest excessive—statutory presumption not rebutted—accounts re-opened—comparison with English Moneylenders Act,* 1927, 17 *and* 18 *Geo. V c.* 21.

Ram Niar had borrowed £100 from Lalbehari in March 1937 at 25 per cent per annum interest and had given a bill of sale as security. Lalbehari was at that time a moneylender but the Moneylenders Ordinance of 1938 was not then in force.

On July 1, 1940 Ram Niar executed a bill of sale in replacement of that given in 1937 securing the sum of £166, the balance then owing under the original security together with costs of the two bills of sale, with interest as from June 30, 1940 at 12 per cent per annum. He claimed in the action to recover the sum of £166, together with interest at 12 per cent per annum from the date of the second bill of sale amounting to a further £116 10s. 2d., relying on the second bill of sale for his cause of action or, alternatively, on a covenant in the first bill of sale. The defendant relied on s. 14 of the Moneylenders Ordinance, 1938.

HELD.—Money lent by a moneylender prior to the coming into force of the Moneylenders Ordinance, 1938 (now Cap. 185) is recoverable in an action brought by an unregistered moneylender on a security executed after the coming into effect of that Ordinance.

Cases referred to :—

(1) *Eldridge and Morris v. Taylor* [1931] 2 K.B. 418.
(2) *B. S. Lyle Ltd. v. Chappell* [1938] 1 K.B. 691.
(3) *Temperance Loan Fund Ltd. v. Rose and or.* [1932] 2 K.B. 522.

Action for moneys due under bill of sale. The facts fully appear in the judgment.

P. Rice for the plaintiff.

S. B. Patel for the defendant.

SETON, C.J.—The plaintiff claims from the defendant an amount of £166 being the principal sum due under a bill of sale dated 1st July, 1940, given by the defendant to the plaintiff and duly registered, together with £116 10s. 2d. being interest on the said sum of £166 at the rate of 12 per cent per annum for the period from 1st June, 1940, until 6th