The Magistrate has relied upon the acceptance report (Exhibit " E ") and when this exhibit is compared with the invoice (Exhibit " B ") it is clear that the appellant had in his possession information showing that the item appearing as hair oil in the invoice was in fact Eau de Cologne.

I do not, however, find evidence to show that in failing to inform his agent of this fact the appellant acted deliberately and not merely negligently.

The penalty imposed by the judgment of the Magistrate is therefore set aside.

The appellant will pay a fine of £25 or in default serve a term of six weeks imprisonment.

POLICE *ats.* CHARLIE RATTAN.

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

Liquor Ordinance 1932—*S.* 65—(1)[1]—*Possession of liqour—Native in possession of brown paper parcel of liquor containing liquor for delivery to a European—no knowledge of contents—duty to deliver unopened—whether facts constitute " possession ".*

A native was handed a brown paper parcel by a hotel barman for delivery to another person. He was unaware of the contents.

HELD.—For an offence to be committed under the Liquor Ordinance, 1932, s. 65 (1)[1] the accused must have access to the liquor.

APPEAL BY CASE STATED against acquittal. The facts appear from the judgment.

The Attorney-General, *R. S. Thacker,* for the appellant.

H. M. Scott, K.C. for the respondent.

CORRIE, C.J.—This is an appeal by the Attorney-General by way of case stated against the judgment of the Acting Chief Police Magistrate whereby the respondent was acquitted of the charge that he did unlawfully have in his possession " liquor " to wit, one bottle of whisky, he being a native, " contrary to s. 65 sub-s. (1) of Ordinance 25 of 1932."

The bottle of whisky was " made up in a brown paper parcel and addressed J. J. Costello, Suva Point ", and the respondent was handed the parcel by an Indian barman at the Pier Hotel and asked to deliver it to Mr. J. J. Costello.

The learned Magistrate found as a fact " that the respondent was unaware what the parcel contained, merely that it was for Mr. J. J. Costello, whom he knew well, having often taken parcels to him before." The learned Magistrate further found as a fact that the respondent was an innocent conveyer of the liquor " and formed the opinion that " he was not unlawfully in possession of liquor as charged within the meaning of s. 65 (1)[1] of the Liquor Ordinance No. 25 of 1932 " and consequently dismissed the charge.

---

[1] *Rep. Vide Liquor Ordinance,* 1946, s. 69—(1).

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 *Ammai ats. Govind Pillay* [1937] 3 Fiji L.R. and *Giwar Singh & or. ats. Birbal* [1943] 3 Fiji L.R.—].