The payment was made by the clerk of the solicitor who acted for both defendants, and he and the plaintiff have given evidence. There is a conflict of testimony as to whether or not the plaintiff was told that the rent was being tendered on behalf of the transferee. The plaintiff gave a receipt and swears that he wrote on it " On behalf of rent due by Bulli for 1938 "; and it is significant that this receipt is not produced by the defendant.

It is, moreover, not denied by the defence that when, at a later date, rent for 1939 was tendered to the defendant by Karim Buksh, the plaintiff refused to accept it from him.

On the evidence I am not satisfied that the plaintiff was told that the rent for 1938 was tendered on behalf of Karim Buksh or that when he accepted such rent he was aware that the land had been transferred.

It follows that this acceptance could not operate as a waiver, and the Court need not consider the plaintiff's further contention that as the rent for 1938 was payable in advance acceptance of it would not operate as a waiver, even if he had accepted it with knowledge of the transfer.

Finally the defendant, Bulli Din Mahomed, asks for relief from forfeiture on such terms as the Court shall think fit.

There is, however, in this Colony no enactment corresponding to s. 146 sub-s. (8) of the Law of Property Act 1925,[1] and the rule here with regard to relief from forfeiture remains as it was in England before the 1st January, 1926.

That rule was laid down in *Barrow v. Isaacs* [1891] 1 Q.B. 417, in which it was held that equity would not grant relief against forfeiture for breach of a covenant not to assign without licence.

Judgment will be entered for the plaintiff for possession of the land in claim, with costs.

RAGUDATT *v.* RAMAUTAR.

[Civil Jurisdiction (Corrie, C.J.) July 31, 1940.]

Moneylenders Ordinance, 1938[2]—*s.* 2—*defiinititon of moneylender—s.* 14 *pleaded as defence to an action on a Promissory Note—burden of proof that claimant is a moneylender—s.* 3—*whether burden is on defendant where it is not alleged that money lent in consideration of repayment of a larger sum—s.* 2—*definition of " Calendar year ".*

Plaintiff who was not a registered moneylender claimed to recover principal and interest due under a promissory note. It was admitted by the plaintiff that on five occasions between 10th January, 1939 and 1st April, 1940 he had lent money on interest or for profit but not more than three of these transactions took place in any one year reckoned between 1st January and 31st December.

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[1] 15 *Geo.* 5, *c.* 20.
[2] 55 & 56 *Vict. c.* 13.

HELD.—(1) In an action for moneys due under a promissory note a defendant pleading that the contract is void because the plaintiff is an unregistered moneylender bears the onus of proving that plaintiff is a moneylender where it is not shown that the money was lent in consideration of a larger sum being repaid.

(2) In any case the burden of disproving the exceptions (*a*) (*b*) (*c*) and (*d*) in the definition of "moneylender" in the Moneylenders Ordinance, 1938 s. 2[1] rests with the defendant who pleads s. 14 of the Ordinance in an action for moneys due.

(3) "Calendar year" in the Moneylenders Ordinance, 1938 s. 2[1] means the year which begins on 1st January and ends at midnight on 31st December.

Cases referred to :—
Migotti v. Colville [1879] 4 C.P.D. 233 ; 48 L.J.M.C. 190 ; 40 L.T. 747 ; 14 Cox. 305 ; 42 Dig. 934.

[**EDITORIAL NOTE.**—This decision as to point (3) above was followed in *Badal v. Bhagoti Prasad* [1940] 3 Fiji L.R. The point is of no further interest (as regards this Ordinance) as s. 2 was amended in 1940 by the repeal of the clause in question. As to point (2) above, see also *Kantali v. Ibrahim* [1946] 3 Fiji L.R.]

ACTION for moneys due under a promissory note.

N. S. Chalmers, for the plaintiff.

P. Rice, for the defendant.

The plaintiff is claiming the sum of £135 and interest thereon under a promissory note, dated the 3rd April, 1939, made by the defendant and payable to the plaintiff on demand.

The defence set up is that the planitiff is a moneylender within the meaning of s. 2 of the Moneylenders Ordinance 1938, who has not taken out a licence under s. 5 of the Ordinance ; and hence that under s. 14 of the Ordinance, the promissory note, being a contract for the repayment of money lent after the coming into force of the Ordinance, is unenforceable.

The material part of the definition of a moneylender in s. 2 of the Ordinance, is as follows :—

> "A moneylender means any person who lends money on interest "or for profit . . . whether or not that person also possesses "or earns property or money derived from sources other than the "lending of money . . but shall not include . . . (*d*) any "person who during the course of one calendar year lends money "on interest or for profit on not more than three occasions".

The defendant maintains that the plaintiff has, during the course of a calendar year, lent money for interest on more than three occasions.

The first question raised by this defence is as to the burden of proof. The defendant maintains that the burden is upon the plaintiff to satisfy

[1] *Cap.* 185 (*Revised Edition Vol.* III *p.* 2210) *s.* 2 *has since been amended* (*vide Editorial Note.*)

the Court that he has not lent money in execess of the limit allowed by paragraph (*d*) above ; and he relies upon s. 3 of the Ordinance :—

> "Save as excepted in paragraphs (*a*) (*b*) (*c*) and (*d*) of the "definition of "moneylender" in s. 2 any person who lends a "sum of money in consideration of a larger sum being repaid shall "be presumed until the contrary be proved to be a moneylender".

The section, however, applies only to the case of a person who lends a sum of money in consideration of a larger sum being repaid ; and this is not alleged in regard to the plaintiff. Moreover, even in such case it is clear that as regards the exceptions in paragraph (*a*), (*b*), (*c*) and (*d*) of the definition of moneylender in s. 2, the section has no application.

The section, therefore, is of no avail to the defendant ; and under the general rule as to the burden of proof, it clearly rests upon the defendant to prove that the plaintiff is a moneylender.

The transactions upon which the defendant relies are the following :—

(1) A loan of £147 17s. 6d. to Subaya secured by a crop lien dated 19th January, 1939 (exhibit "D").

(2) A loan of £247 10s. 0d. to Keshavan secured by a promissory note dated 31st March, 1939 (exhibit "C").

(3) A loan to the defendant, which is the subject of this action, secured by a promissory note dated the 3rd April, 1939 (exhibit "A").

(4) The relending to Subaya of part of the proceeds of cane monies paid to the plaintiff in part satisfaction of (1) and stated by the plaintiff to be relent "between July and December last year".

(5) A further advance on the 6th January, 1940, of £40 to Subaya secured by a further charge indorsed upon the crop lien.

(6) A further advance of £50 18s. 11d. to Subaya, similarly secured, on the 17th February, 1940.

(7) A loan of £5 to Badal in January 1940.

(8) A transaction between the plaintiff, a storekeeper named Haranam Singh and Subaya which took place on the 1st April, 1940.

Of these transactions, the plaintiff admits the first three and also the fifth and sixth, namely, the further advances to Subaya in January and February of this year. The fourth transaction alleged, the re-lending to Subaya, between July and December, of moneys paid in respect of (1), the plaintiff explains as being in fact the further advance of £40 on the 6th January, 1940, in respect of which an indorsement was made on the crop lien. The only evidence of a loan in the period July to December, 1939, is the plaintiff's own statement in cross-examination : and he then said that 'the crop lien would have an indorsement showing the date'. As there is no indorsement on the crop lien earlier in date than the 6th January 1940, I am satisfied that this explanation is correct ; and that the re-lending "between July and December" 1939 was the transaction in respect of which the indorsement of the 6th January, 1940, was made.

With regard to the alleged loan to Badal, the plaintiff and Badal have given evidence. There is nothing to support Badal's statement, and I am not satisfied that a loan was ever made.

The transaction between the plaintiff, the storekeeper, Haranam Singh and Subaya on the 1st July, 1940, is admitted by the plaintiff, the facts being that on that date the plaintiff and Subaya came to the store and at their request the storekeeper agreed to supply goods to Subaya and charge them to a joint account in the names of Subaya and the plaintiff. There is nothing to support the defendant's suggestion that the goods supplied to Subaya under this arrangement constituted a further loan by the plaintiff. I hold that this transaction was not a loan within the meaning of the Moneylenders Ordinance.

The question, therefore, that has now to be determined is whether the five transactions admitted by the plaintiff constitute him a moneylender within the meaning of the Ordinance.[1] The first four of those loans were made within a period of 365 consecutive days starting from the 10th January, 1939; the last four of the transactions fall within a similar period starting from the 31st March, 1939; and the defendant's contention is that these two series of four loans were each made "during the course of one calendar year".

The defendant is unable to point to a definition of a calendar year, but he relies upon the meaning assigned to the term calendar month in *Negrotti v. Colville* [1879] 48 L.J.K.B., 695, and maintains that a calendar year can start from any day and not only from the 1st of January.

If such, however, were the intention of the section, the use of the word 'calendar' would be unnecessary; and I am satisfied that the term 'calendar year' in the definition of moneylender means a year as determined by the Calendar (New Style) Act, 1750, as amended by the Calendar Act, 1751, which directed that as from the beginning of 1752 the year should begin on the 1st January instead of on the 25th March; that is to say, a calendar year for the purpose of the definition, is a year beginning on the 1st January and ending at midnight on the 31st December.

Of the five loans admitted by the plaintiff, three only were made in the calendar year 1939.

The defendant, therefore, has failed to prove that the plaintiff is a moneylender within the meaning of s. 2 of the Ordinance. No other defence has been set up.

The defendant, when giving evidence, admitted that he owed the whole of the money claimed by the plaintiff.

Judgment will be entered for the plaintiff with costs.

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1 Vide Editorial Note.