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

April, 1946, making a total of £282 10s. 2d. Alternatively, the plaintiff claims the same sum under a covenant contained in an earlier bill of sale dated 10th March, 1937, whereby the defendant agreed to pay to the plaintiff the sum of £100 together with interest thereon at the rate of 25 per cent per annum. On or about 1st July, 1940, according to the plaintiff's allegation, the parties made accounts and the defendant admitted being indebted to the palintiff in the sum of £166 and agreed to pay the same together with interest thereon at the rate of 12 per cent per annum until repayment.

The defendant contends as to the first mentioned bill of sale that it is not enforceable by virtue of the provisions of s. 14 of the Moneylenders Ordinance, 1938, because the plaintiff was a moneylender at the time of the transaction and was not licensed as such, and as to the alternative claim he contends that the bill of sale of 1937 was satisfied and merged in the bill of sale of 1940 and upon such satisfaction and merger became null and void. A further contention made by the defendant is that if the bills of sale or either of them are valid and subsisting the interest charged at the rate of 25 per cent per annum is excessive and harsh and unconscionable.

The plaintiff in reply agrees that he was a moneylender in the year 1937 but denies that he was one in the year 1940. He says further that if he were a moneylender in the year 1940 s. 14 of the Ordinance would nevertheless not apply since the money was lent before the coming into force of the Ordinance and not after. Reference in this judgment to the Moneylenders Ordinance are in each case to the original Ordinance of the year 1938 and not to that contained in the Revised Edition of the Laws of 1945.

The facts are not in dispute. The defendant in the year 1937 executed a bill of sale in favour of the plaintiff to secure the sum of £100 and interest at the rate of 25 per cent per annum. Some payments were made by the defendant in reduction of the debt and in the year 1940 accounts were made between the parties which resulted in the defendant admitting a debt of £166 and executing a fresh bill of sale for that amount, upon which interest was to be paid at the rate of 12 per cent per annum in lieu of the rate of 25 per cent per annum secured under the previous bill of sale.

I do not find it necessary to decide the question as to whether or not the plaintiff was a moneylender in the year 1940 because in my view, having regard to the facts of the case, it is immaterial, but I will nevertheless proceed on the supposition that he was a moneylender in that year and that he was not licensed as such.

S. 14 of the Moneylenders Ordinance is as follows :—

> " 14. No contract for the repayment of money lent after the coming into force of this Ordinance by an unlicensed moneylender shall be enforceable."

It is not disputed that the original loan was made before the coming into force of the Ordinance and it is not alleged that any fresh money has been lent since. The £166 secured by the second bill of sale of 1940 represented the balance due under the provious bill of sale to which had been added other sums for interest and costs.

Mr. S. B. Patel for the defendant contends that, notwithstanding that no fresh money was lent after the Moneylenders Ordinance came into force, the renewal of the old loan in 1940 was " money lent " after the

coming into force of the Ordinance, within the meaning of s. 14, and he has cited in support of his contention the following cases:—

Eldrige and Morris v. Taylor [1931] 2 K.B. 418 ; *B. S. Lyle, Ltd. v. Chapell,* [1938] 1 K.B. 691 ; *Temperance Loan Fund Ltd. v. Rose and or.,* [1932] 2 K.B. 522.

These cases were all decided under s. 6 of the English Moneylenders Act, 1927, the terms of which are similar to s. 15 of the Fiji Ordinance. There is no section in the English Moneylendrs Acts which corresponds to s. 14 of the Fiji Ordinance and, in consequence, the meaning of the words " money lent after the coming into force of this Ordinance " or their equivalent have not come before the English Courts for interpretation nor, so far as I am aware, has the question been raised before in Fiji.

Reference to the cases which Mr. Patel has cited shows that the Courts, in construing the provisions of s. 6 of the Moneylenders Act, 1927, have been concerned not only to see that the Regulations which are designed for the protection of borrowers are strictly observed by moneylenders but also to prevent borrowers from defrauding moneylenders on some quibble arising out of the Regulations when these Regulations have been complied with in substance, if not precisely in form. It is in this spirit, I think, that s. 14 of the Ordinance should be construed, that is to say, the interpretation of its provisions is not to be strained either in favour of lenders or of borrowers. Looking at s. 14 in this way, I come to the conclusion that it only applies, as it says, to cases where money has been lent after the coming into force of the Ordinance and the fact that the security sued upon was taken after that date is immaterial so far as this section is concerned.

In point of fact, there are express provisions in s. 20 and 21 of the Ordinance for cases, such as the present, where money has been lent by a moneylender before the commencement of the Ordinance but the agreement for security in respect of the same has been made or taken after that date.

Accordingly, I am of opinion that the plaintiff is entitled to succeed in these proceedings subject, however, to the provisions of s. 20 and 21 just mentioned. For this is a case where proceedings have been taken by a moneylender to enforce a security after the commencement of the Ordinance in respect of money lent before such a commencement. In acordance with the requirements of s. 20 (1) the plaintiff has produced a statement of his account with the defendant which has been agreed by Mr. Patel on the latter's behalf.

The defendant, having alleged that the interest charged was excessive, has produced no evidence in support of his allegation. There is, however, a presumption by reason of the provisions of s. 21 (1) of the Ordinance—a presumption which has not been rebutted—that if it is found that the interest exceeds the rate of 12 per cent per annum the Court shall presume that the interest charged is excessive, and since it is admitted that the interest on the amount secured by the first bill of sale was charged at the rate of 25 per cent per annum, the account taken in 1940 when the second bill of sale was executed must be re-opened in accordance with the provisions of s. 20 (2) of the Ordinance.

In fixing the rate of interest to be paid in lieu of the 25 per cent per annum, there is no evidence before the Court either as to the risk or the circumstances attending the loan and I shall therefore be guided by the

statutory presumption and allow interest at the rate of 12 per cent per annum. With regard to the sum of £1 1s. 0d. paid by the plaintiff in 1937 for costs and the two sums of £2 2s. 0d. and £3 10s. 0d. also paid by the plaintiff for costs in the year 1940 when the second bill of sale was executed, the defendant must pay these, but I shall allow no interest upon them. Taking the account in this way from the 10th of March, 1937, until the 6th of April, 1946, and giving the defendant credit for all sums paid on account, there is a balance due to the plaintiff for principal and interest of £155 18s. 0d., to which must be added £6 13s. 0d. being the total of the three sums mentioned above. These two sums when added together come to £162 11s. 0d. and judgment will be entered in favour of the plaintiff for this amount together with the costs of the action.