The appellants further argue that action upon the promissory notes involves a wrongful division of a cause of action, contrary to Rule 22 of the Summary Procedure Rules 1916[1]; and that as there is only one debt which was for a sum in excess of £50, the Magistrate's Courts had no jurisdiction.

I am unable to acept this contention. While there may be only one debt it may be secured by more than one security, each of which may give rise to a separate cause of action; and the appellants made it clear by Clause 3 of the Clauses for Selection that they intended that the respondent should have separate cause of action in respect of the sums secured by the promissory notes respectively. This objection therefore fails.

There remains only the question of the appellants' counter-claim, as to which the parties agree that, owing to a misunderstanding, the appellants were not afforded an opportunity of calling evidence to establish their counter-claim.

As regards the respondent's claim, therefore, the appeal is dismissed and the record is remitted to the Magistrate's Court for evidence to be heard with regard to the counter-claim and judgment given thereon.

HAKIM KHAN *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) June 24, 1943.]

Arms Ordinance, 1937[2]—jurisdiction of District Commissioner in case of indictable offence—retrospective effect of amendment to procedure—validity of information relating to several distinct weapons—allegation that defendant "refused to produce or point out" arms—duplicity of charges—distinction between "failing" to produce etc. and "refusing" to produce etc—finding that weapon is unserviceable—whether an unserviceable weapon is an arm—meaning of "premises" in certain circumstances.

The appellant was alleged to have been in posession of an assortment of firearms on 3rd August, 1942, the date of execution of a search warrant at his father's premises where he occupied a separate (locked) room. Appellant was convicted on two charges under the Arms Ordinance 1937[2]—one of unlawful possession of arms (s. 4—(1)), the other of unlawfully "refusing to produce or point out" the same arms (s. 30—(3)). The appeal proceeded on a number of grounds, particularly:

(1) A contention that as, at the date of the alleged offences, s. 4 created an indictable offence only the District Commissioner had no jurisdiction.

(2) That a charge of "refusing to produce or point out" is bad for duplicity.

(3) That the information was bad as it related to more than one weapon.

(4) That the search of Defendants room was illegal as the warrant was in respect of Defendant's father's premises.

A further point not taken by the appellant but made part of the judgment on the appeal was that one of the weapons was unserviceable.

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[1] *Rep. Vide Magistrates' Courts Rules, 1945 O. IV r. 12.*
[2] *Vide Arms Ordinance Cap. 197.*

HELD.—(1) An amendment conferring summary jurisdiction is retrospective in effect.

(2) An information under the Arms Ordinance is not bad because it relates to several distinct weapons.

(3) "Failing" to produce etc. is not the offence of "refusing" to produce etc.

(4) An unserviceable weapon is not an "arm" within the meaning of the Arms Ordinance, 1937.[1]

(5) A charge of "refusing to produce or point out" is bad for duplicity.

[**EDITORIAL NOTE.**—The ruling as to unserviceable weapons in this judgment has been dissented from. *Police ats. Shmprasad* (1945) 3 Fiji L.R.]

Cases referred to:—

(1) *R. v. Scott* [1863] 33 L.J.M.C. 15; 8 L.T. 662; 122 E.R. 497; 33 Dig. 323.

(2) *Huggins v. Ward* [1873] 8 Q.B. 521; 29 L.T. 33; 14 Dig. 431.

(3) *R. v. Chandra Dharma* [1905] 2 K.B. 335.

(4) *Rodgers v. Richards* [1892] 1 Q.B. 555.

APPPEAL against Conviction. The facts appear from the judgment.

P. Rice, for the Appellant.

A. G. Forbes, for the Respondent.

CORRIE, C. J.—This is an appeal against a Judgment of the District Commissioner for the District of Nadi whereby the Appellant Hakim Khan was found guilty upon two informations. The first information charged the Appellant with unlawfully having in his possession arms, to wit, one automatic pistol .45, one revolver .38 and one revolver .25, without holding a licence, contrary to s. 4 (1) of Ordinance 8 of 1937[1]. Under the second information the Appellant was charged with unlawfully refusing to produce or point out the same arms upon a search being made under s. 30 of Ordinance 8 of 1937, contrary to sub-s. (3) of that section.

With the accused's consent, the two informations were tried together; and the Appellant was found guilty and sentenced to three month's imprisonment with hard labour for possession of arms and to one month's imprisonment with hard labour " for refusal to admit "; the sentence to be cumulative.

The first ground of appeal in relation to both charges is that the District Commisssioner acted without jurisdiction.

On 3rd August, 1942, when the offence is alleged to have been committed, s. 4 (2) of Ordinance 8 of 1937 read as follows:—

> " Any person who shall have in his possession or custody any arms without such licence or " permit or otherwise than in accordance with such conditions or who while holding such " permit shall have in his possession or cutody any arms in respect of which no licence is in " force shall be liable to imprisonment with or without hard labour for a term not exceeding " two years or to a fine not exceeding fifty pounds in respect of every such arm or to both."

By Ordinance 9 of 1942 this subsection was amended so as to render a person found guilty thereunder—" liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £50 in respect of every such arm or to both."

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[1] *Vide Arms Ordinance Cap.* 197.

[1] *Vide Arms Ordinance Cap.* 196 (*Revised Edition Vol. III page* 2272).

The amending Ordinance came into force on 31st August 1942. The Appellant was brought before the District Commissioner on 4th August and was formally remanded.. There were further remands, and it was not until 7th September that the Appellant was called upon to plead. At that date the District Commissioner clearly had jurisdiction by virtue of the amending Ordinance in respect of an offence committed since the date of that Ordinance, but the Appellant argues that he had no jurisdiction in relation to an offence alleged to have been committed before that date.

The reply by the prosecution is twofold. In the first place it is argued that even before the passing of the amending Ordinance a District Commissioner had jurisdiction under s. 4 of the Summary Jurisdiction Procedure Ordinance 1876[1], which reads as follows:—

> "Wherever in any Ordinance regulation or rule heretofore passed or made or hereafter to be passed or made it is enacted that any conviction or order may be made or enforced or any fine penalty forfeiture or term of imprisonment imposed or inflicted the proceedings shall unless it be otherwise specially provided or except in the case of an indictable offence be taken and had in a summary manner under this Ordinance."

In that Section, however, the case of an indictable offence is expressly excepted; and as the question here is whether or not the offence is indictable, it is clear that the section affords no guide.

I am not prepared to hold that before the passing of the amending Ordinance the District Commissioner had jurisdiction under s.4 (2) of Ordinance 8 of 1937.

The second reply made by the prosecution is that the amendment to s. 4 (2) of Ordinance 8 of 1937 affected by the Ordinance of 1942 was purely an alteration in procedure. Whereas, before the passing of the amending Ordinance such an offence was only triable upon Information, it became by virtue of the amending Ordinance, triable summarily: and that the rule is that where an amending Ordinance affects only procedure, it is immaterial whether the offence charged was committed before or after the amending Ordinance was enacted. In support of this argument the prosecution rely upon the Judgment of the Court for Crown Cases Reserved in *R. v. Chandra Dharma* (1905) 2 K.B. 335. In that case Lord Alverstone C.J. said—"The rule is clearly established that, apart from any special circumstances appearing on the face of the Statute in question, Statutes which make alterations in procedure are retrospective." Later in his Judgment he said—"This Statute does not alter the character of the offence, or take away any defence which was formerly open to the prisoner. It is a mere matter of procedure, and according to all the authorities it is therefore retrospective." Clearly this principle applies to the Appeal now before this Court and I hold that the District Commissioner had jurisdiction.

The Appellant further argues that the search of his room was illegal on the ground that the Search Warrant was addressed to his father Ramzam Khan; and that although the Appellant lived in his father's house, he had a room which was under his separate control and therefore did not form part of the dwelling house and premises of Ramzam Khan.

It is in evidence, however, that when Inspector Tucker carried out the search, the room occupied by the Appellant was locked, and the key was in the possession neither of the Appellant nor of his wife, but of the appellant's mother, the wife of Ramzam Khan. It follows that the District Commissioner was entitled to hold that the room is question formed part of Ramzam Khan's premises.

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[1] *Rep.*

The Appellant further argues that the search was illegal on the ground that the Search Warrant was signed "J. Judd, District Commissioner, Central," while the premises searched are not in the Central but in the Western District.

It is, however, not disputed that on the date when he signed the Warrant, Mr. Judd was District Commissioner in the Western District, and the fact that he is mis-described cannot affect the validity of the Warrant.

The Appellant further argues that the conviction is bad on the ground that each arm should have been made the subject of a separate charge in respect of which a separate Information was filed. The offence charged however is a single offence—"unlawfully having possession of arms" and the fact that the possession at the same time of more than one arm is alleged and proved affects only the penalty to be imposed.

The case of *R. v. Scott,* 33 L.J.M.C. 15, and *Huggins v. Ward* 8 Q.B. 521, show that it is not necessarily fatal to an Information that it should charge an offence with relation to more than one object. *Huggins v. Ward* is particularly significant as in that case the Information included not only the six sheep in respect of which the accused was found guilty but also eight bullocks in respect of which he was acquitted. Yet it was never suggested in the court of the appeal against that conviction that the Information was bad because it related to more than one object.

In the present case, s. 4 (2) of Ordinance 8 of 1937 provides that a penalty may be imposed "in respect of every such arm" and this indicates that more than one arm may be included in one Information.

Where, however, as in the present case, the charge is laid in respect of distinct weapons, it would appear to be the more convenient course that a separate Information should be filed in respect of each weapon. Had this course been taken in the case now under appeal there would have been less likelihood of the error occurring, to which reference will be made when this Court has to consider the question of sentence.

With regard to the charge under s. 30 of the Ordinance, the Appellant further argues that the conviction is bad on the ground of duplicity. The Information alleges that the Appellant, upon a search being made "refused to produce or point out" arms in his possession; and it is argued that the Court should have required the prosecution to state whether it was refusal to produce or refusal to point out that was alleged; and that, in convicting the accused, the Court should have made it clear which was the offence of which he was found guilty.

For the prosecution it is admitted that this is a good ground of appeal, but it is submitted that, following the procedure adopted in *Rodgers v. Richards* (1892) 1 Q.B. 555, the proper course is for the case to be sent back to the District Commissioner to call upon the prosecution to elect upon which charge they will proceed.

It is open to doubt, however, whether there is on the record evidence upon which the Appellant could be found guilty either of refusing to produce or of refusing to point out the arms in his possession. Clearly, the Appellant failed either to produce the arms or to point them out, but there is a very marked distinction between "failure" and "refusal".

In the circumstances, the Court holds that the proper course is that the conviction and sentence upon this charge be quashed.

The Court has now to consider the sentence imposed in respect of the charge of being in possession of arms. It is to be noted that the District Commissioner, after making a finding of guilty, which apparently related to each of the three weapons mentioned in the Information, observed when passing sentence "the .45 is a modern weapon, the .38 is in poor condition and the .22 not serviceable" and the Appellant was sentenced to three months' imprisonment with hard labour "for possession of arms."

The reference to the .22 weapon is clearly a clerical error and can have no effect upon the judgment, but the finding that the weapon is unserviceable involves a finding that it is not an arm within the definition given in s. 2 of the Ordinance. Hence, in respect of that weapon, the Appellant should have been found "not guilty."

The conviction, however, stands as regards the other two weapons. It has been submitted that the sentence is excessive in the case of a first offence, but this Court is unable to take that view. Having regard to to the terms of s. 4, it would appear that the proper form of sentence should have been three months' imprisonment with hard labour in respect of each of the .45 and .38 weapons, the sentences to run concurrently.

The District Commissioner further ordered the automatic .45 to be returned, the .38 and the .22 destroyed. The Court sees no ground for such an Order, which is therefore quashed. In accordance with s. 39 (1) of the Ordinance, the .45 and .38 weapons are forfeited. The Appellant is entitled to retain the unserviceable .25 weapon.

P. E. HARMAN *v.* N. W. TOWSON & E. E. HARMAN.

[Civil Jurisdiction (Corrie C. J.) July 9, 1943.]

Dwelling house erected on copra plantation by life tenant—dwelling house attached to foundations by screw bolt—bequeathed by life tenant to her son—land sold under Court Order for sale—distribution of assets—whether dwelling house part of realty.

The copra plantation known as Lesiaceva was owned by one Arthur Harman, who died in 1898 leaving the property in trust for his wife Ellen Emsell Harman for her life and after her death to their children Percy Edward Harman, Fredrick Arthur Harman and Emily May Harman as tenants in common in equal shares.

The property was occupied during her lifetime by his widow Ellen Emsell Harman who died in 1917. The dwelling house erected on the plantation was blown down by hurricane in 1911 and in 1912 was replaced by a new one erected at the expense of Ellen Emsell Harman and her son Percy Edward Harman. The new house was bolted to the foundation posts. By her will, dated September 19, 1911, Ellen Emsell Harman bequeathed the dwelling house and furnishings to Percy Edward Harman and other personal property to her sons, Percy Edward Harman and Arthur Harman and her daughter Emily May Harman in equal