SETON, C.J.—The respondents in this case were charged before a Magistrate upon two counts, viz.—(1) selling goods at an excessive price and (2) furnishing false evidence. The Magistrate began a preliminary inquiry with a view to committing the respondents for trial in the Supreme Court should a prima facie case be made out against them. In the course of the preliminary inquiry, the appellants, who were conducting the prosecution, sought to produce secondary evidence of certain documents but the Magistrate declined to admit such evidence ; thereupon the appellants took out a summons in the Supreme Court asking for leave to appeal from the Magistrate's decision.

On the summons being heard, *S. B. Patel,* on behalf of the respondents, submitted that this was merely an interlocutory decision by the Magistrate in the course of the preliminary inquiry and that no appeal lay from it. The expression " decision " in s. 3 (2) of the Appeals Ordinance, 1934, he contended, means a final decision. The appellants, on the other hand, say that the admission or rejection of the evidence in question is vital to their case and there appears to be no other way by which the Magistrate's decision can be reviewed.

I dare say that this may be so and no doubt it would be convenient if the point at issue could be disposed of by an appeal, but equally I have no doubt that the Legislature never intended by its enactment of s. 3 (2) (*d*) of the Appeals Ordinance to confer power upon the Supreme Court to review interlocutory decisions made by Magistrates in the course of preliminary inquiries, for it is entirely contrary to the English practice (see the remarks of Cockburn C.J. in the *Queen v. Sir Robert Carden,* 5 Q.B.D. 1 at p. 5).

I am told that such a course was taken in the case of the *Police v. Patel* (No. 52 of 1943), but I understand that no objection was taken by either side, and from the report of the judgment, which is all I have before me, it is difficult to know exactly what the facts were. In my view the Court has no power to grant leave to appeal in this case and the application must be dismissed.

POLICE *ats.* SHIUPRASAD.

[Appellate Jurisdiction (Seton, C.J.] October 6, 1945.]

Arms Ordinance, 1937, *s.* 2[1]*—Definition of " arm "—Includes unserviceable weapons—words of Ordinance should be followed in framing charges.*

An appeal against the summary dismissal of a charge laid under s. 4 (1) of the Arms Ordinance 1937. At the trial before the Acting Chief Magistrate, Suva, evidence was led by the prosecution to the effect that the revolver which was the subject of the charge could not be fired in its present condition. Counsel for the respondent at once submitted that as this was not an " arm " within the definition of the Arms Ordinance s. 2 no conviction was possible. On this submission the Acting Chief Magistrate dismissed the charge.

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[1] *Now Cap.* 196.

HELD.—(Dissenting from *Hakim Khan ats. Police* [1943] 3 Fiji L.R.—) the revolver though unserviceable was an " arm " within the meaning of the Arms Ordinance 1937.

Cases referred to:—

(1) *R. v. Johnson* [1945] 173 L.T. 47.
(2) *Hakim Khan ats. Police* [1943] 3 Fiji L.R.
(3) *Cafferata v. Wilson* ; *Reeve v. Wilson* [1936] 3 A.E.R. 149.

APPEAL by the prosecution from the judgment of the Acting Chief Magistrate, Suva dismissing a charge. The facts are fully set out in the judgment.

E. M. Prichard for the appellant.

R. Crompton for the respondent.

SETON, C.J.—The respondent was charged before the Magistrate with unlawfully having in his possession " certain firearms, to wit one .38 calibre revolver without a licence or permit " contrary to s. 4 (1) of the Arms Ordinance (No. 8 of 1937). " Certain arms " or " a certain arm " would have been a better way in which to express the charge since " arms " and " arm " are the words used in s. 4 and not " firearms " ; for a recent case on the desirability of following the words used in the Statute, see *R. v. Johnson*, 173 L.T. 49.

Evidence was given that the revolver in question could not be fired in its then state because two of its springs were broken ; these springs could be repaired or replaced by a person with fair mechanical knowledge and then the revolver could be fired. Counsel for the respondent, upon this evidence being given, submitted that no conviction was possible having regard to the decision of this Court in the case of *Hakim Khan v. Charles Harvey Hunt*[1] which the Magistrate was bound to follow ; but he brought to the notice of the Court the decisions of the English Divisional Court in *Cafferata v. Wilson* and *Reeve v. Wilson* [1936] 3 A.E.R. 149 which were in conflict with the decision in *Hakim Khan v. Charles Harvey Hunt*. The learned Magistrate agreed that he was bound by the decision of the Supreme Court in the last mentioned case notwithstanding the contrary decision in *Cafferata v. Wilson* and *Reeve v. Wilson* and he therefore dismissed the charge. The appellant appeals.

In *Hakim Khan v. Charles Harvey Hunt*,[1] the appellant had been convicted (*inter alia*) of unlawfully having in his possession one automatic pistol and two revolvers without having a licence therefor contrary to the provision of s. 4 (1) of the Arms Ordinance and had appealed from the conviction to the Supreme Court ; one of these three weapons was unserviceable. In the course of the judgment disposing of the appeal, the following statement appears :—

> ". . . 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 (i.e. the Arms Ordinance above mentioned). " Hence, in respect of that weapon, the appellant should have been " found ' not guilty '. The conviction, however, stands as regards " the other two weapons."

[1] *Reported sub nomine Hakim Khan ats. Police.*

So far as is known, there had been no argument in the course of the hearing of the appeal as to whether the fact that one of the weapons was unserviceable had any bearing on the charge in respect of that one weapon nor does it appear from the judgment, a portion of which has been quoted above, that the question had been raised. It must remain a mystery how the learned Chief Justice came to incorporate in his judgment the statement in regard to the unserviceability of the weapon in question because it is clear from s. 2 of the Arms Ordinance, which he mentions, that its serviceability or unserviceability is quite immaterial ; it is sufficient to establish that the weapon named in the charge is a " component part " of an arm as therein defined, for it to come within the provisions of s. 4 (1) of the Ordinance.

It is clear that the decision in *Hakim Khan v. Charles Harvey Hunt* so far as it relates to the serviceability or unserviceability of an arm was given under some kind of misapprehension and cannot be supported.

The appeal will be allowed and the case must go back to the Magistrate for hearing upon its merits.

ACHANNA *v.* YENKANNA.

[Civil Jurisdiction (Seton, C.J.) October 22, 1945.]

Transfer of land for nominal consideration—transferee undertaking to repay existing mortgage—whether land held in trust for transferor.

Achanna owned land at Nadroga which was the subject of a mortgage. Finding himself unable to meet payments under the mortgage he arranged for Yenkanna, a man of substance with whose daughter he was at that time living, to take a transfer of the property subject to the mortgage for a nominal consideration. The mortgage was for a principal sum of £700 and the property was, at the time of the transfer to Yenkanna, valued at £1,500 for stamp duty purposes. After the transfer Achanna resided on a small portion of the land and the balance was leased to tenants whose rent was collected by the mortgagee (which had been the case prior to the transfer). In the year following that of the transfer a sale of part of the land was arranged, both Achanna and Yenkanna taking part in the arrangements but the agreement for sale being signed by Yenkanna the registered proprietor. The sale realised sufficient money to pay off the mortgage and a dispute then arose as to who was entitled to the balance of the purchase money and the rest of the land.

HELD*.—On evidence the land was held by the registered proprietor in trust for the transferor.

Cases referred to :—

(1) *Rochefoucauld v. Bowstead* [1897] 1 Ch. 196 ; 66 L.J.Ch. 74 ; 75 L.T. 502 ; 13 T.L.R. 118 ; 43 Dig. 558.

(2) *District Administrator, Lautoka v. Bakhtawali* [1936] 3 Fiji L.R.

* *See, also, Privy Council Appeal No. 48 of 1946.*