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.*

(3) *Goss v. Lord Nugent* [1833] 2 L.J.K.B. 127 ; 110 E.R. 713 ; 12 Dig. 354.
(4) *re Hoyle, Hoyle v. Hoyle* [1893] 1 Ch. 84 ; 62 L.J.Ch. 182 ; 67 L.T. 674 ; 12 Dig. 130.
(5) *Leman v. Whitley* [1828] 12 Dig. 168 ; 38 E.R. 864.
(6) *Loke Yew v. Port Swettenham Rubber Co., Ltd.* [1913] A.C. 491.

ACTION for a declaration that land held in trust.

P. Rice for the plaintiff.

N. S. Chalmers for the defendant.

P. Rice, for the plaintiff in opening his case submitted that there was an allegation of fraud taking the case outside s. 59 (*d*) of the Indemnity Guarantee and Bailment Ordinance (Cap. 186).

He also referred to *District Administrator, Lautoka v. Bakhtawali* and *Loke Yew v. Port Swettenham Rubber Co. Ltd.,* as authority for the proposition that registration is not effective when fraud is proved.

N. S. Chalmers, for the defendant : If defendant was to do anything it was too ambiguous to be regarded as a trust *Halsbury* Vol. 13 (p. 813). If there was a contract it is unenforceable because there was no consideration and also it was inchoate. Furthermore the Statute of Frauds applies. (He referred to *Goss v. Lord Nugent ; in re Hoyle, Hoyle v. Hoyle ; Leman v. Whitley*).

There is nothing in writing to support the claim. The plaintiff is guilty of laches (*Halsbury* Vol. 13 p. 211).

P. Rice, for the plaintiff, in reply: Laches has not been pleaded. We say there was a trust—not a contract. *Rochefoucauld v. Bowstead* is on all fours with the present case.

SETON, C.J.—In the year 1933 the plaintiff bought from a Mr. Mackie a piece of land of about 456 acres in the district of Nadroga for £700 and mortgaged it to Vatu Investments Ltd. Later it appears that 25 acres were sold leaving the plaintiff with 431 acres odd. In 1942 he had difficulty in keeping up the payments under the mortgage deed and the mortgagees called in the mortgage. In these circumstances the plaintiff who lived on the land in question had resort to the defendant who resided in the Tavua District some 60 miles or so distant and an agreement was come to between them as a result of which the land was transferred for a nominal consideration to the defendant subject to the mortgage. The plaintiff says that the defendant is a man of substance whom he regarded as his son-in-law and whom he trusted to help him out of his difficulties. Actually, the defendant is not the son-in-law of the plaintiff but in 1938 when the defendant's first wife died, the plaintiff's daughter went to live with the defendant to look after his children and although the defendant married again in 1940, the plaintiff's daughter continued to live in the defendant's house until the year 1943 when the plaintiff took her away in consequence of the present dispute.

The agreement according to the plaintiff was that the defendant should pay off the mortgage and that when the plaintiff should be in a position to reimburse him, the defendant was to re-transfer the land to the plaintiff.

The defendant on the other hand says that the plaintiff came to him for a loan which was refused whereupon the plaintiff asked the defendant to buy the land outright ; the defendant offered to purchase it for the sum due on the mortgage and the plaintiff accepted his offer.

After the transfer was completed, the plaintiff continued to reside on the land and to cultivate a small portion of it ; the rents of such part of the land as was leased to tenants were paid to the agent of the mortgagees to the credit of the mortgage account as they had been before the transfer was made.

In the year 1943, according to the plaintiff, he was approached by Father Claudius of the Roman Catholic Mission with an offer to purchase a portion of the land and the plaintiff agreed to sell all that part comprising approximately 267 acres which lay on the land side of the main road as distinct from that portion which was on the sea side of the said road, for £1,000. When the area and price had been agreed, he took Father Claudius to Mr. Rice's office in Lautoka where Mr. Stuart who practises in conjunction with Mr. Rice, on their joint instructions drafted an agreement for the sale and purchase of the land agreed to be sold. The plaintiff and Father Claudius then took this document to Ba and sent for the defendant who came and agreed to the sale and passed the agreement on to his Solicitor, Mr. Chalmers, to approve on his behalf. Mr. Chalmers made some alterations in the document after which the defendant signed it and it was taken back by the plaintiff and Father Claudius to Mr. Stuart in Lautoka, who in addition to acting for the plaintiff and the mortgagees, was also acting for the Mission ; the purchase was finally completed in February or March, 1944, some delay having been caused by a survey being required.

The defendant disputes this account of the sale ; in particular he says that it was he who negotiated the sale with Father Claudius at Lomolomo and that it was only after an agreement had been reached that he referred Father Claudius to the plaintiff as a person who was living on the spot and could assist the Father in the preparation of the necessary documents.

After the agreement for sale to the Mission had been concluded but before the actual completion of the sale, Mr. Stuart, on the plaintiff's instructions, wrote as follows to the defendant's solicitor on 1st December, 1943 :—

N. S. Chalmers, Esq.,
Solicitor,
Ba.

Lautoka, Fiji,
1st December, 1943.

Dear, Sir,

YENKANNA TO R.C. MISSION.

I enclose transfer for perusal, and if in order for execution by your client. Kindly let me know the amount required to settle.

You will be aware that no consideration passed on the transfer of this block from Achanna to Yenkanna, and the former now wants Yenkanna to re-transfer it to him. Of course he will have to repay your client for anything he has spent on it, and if your client agrees, I shall be glad to know what amount he will require on re-transfer.

Yours faithfully,
P. RICE,
Per : K. A. STUART.

to which Mr. Chalmers replied on 6th December as follows :—

P. Rice, Esq.,
Solicitor,
Lautoka.

Ba, Fiji,
6th December, 1943.

Dear Sir,

re YENKANNA AND R.C. MISSION.

I acknowledge your letter herein of the 1st instant. The transfer to the R.C. Mission was presented for execution some time ago and has been executed by my client, Yenkanna, and will be handed over to you as soon as the account with the mortgagees is settled and the mortgage is discharged and the balance purchase price is paid.

With regard to the other transfer my client denies that Achanna has a claim to the balance of the land and is not prepared to sign the transfer. In any case the matter of this transfer never cropped up before the deal with the Mission was completed. The balance title should be issued in the name of Yenkanna as agreed. Achanna, if he has any claim to the land, can take action later as he may be advised.

Yours faithfully,
N. S. CHALMERS,

On 25th June, 1944 the plaintiff took a party of persons collected from the district in which the defendant lives to the defendant's house in an endeavour to settle the dispute by arbitration (*panchayat*) ; the attempt was unsuccessful. On 6th September, 1944 the writ in this action was issued. At the trial the plaintiff and the defendant gave evidence and each called one witness to speak as to what had occurred at the *panchayat*.

It is upon this material, coupled with the documents which were produced at the trial, that the Court has to pronounce, bearing in mind that the onus of proof is upon the plaintiff.

I have come to the conclusion that the plaintiff's account of the transaction between him and the defendant is the true account and the defendant's version should be rejected for the following reasons :—

(*a*) The plaintiff went to the defendant for assistance but, according to the defendant's account he got nothing except that he parted with the only asset of value he had in return for the defendant's undertaking responsibility for the repayment of the mortgage ; it has been suggested that he thereby protected his other assets i.e. his cultivation and his goats but as these appear to have been already included in a bill of sale, they remained in jeopardy. The transaction as represented by the defendant seems to me an improbable one.

(*b*) The defendant says that at that time the land was not worth more than the amount due on the mortgage, say £500 to £600. Why then was there a certificate on the transfer (for purposes of stamp duty) that the value of the land did not exceed £1,500 ? The defendant says that he knows nothing about such a certificate but both parties went to Mr. Stuart to prepare the transfer. Either Mr. Stuart knew the value (as he might have done, being also the solicitor for the mortgagees) or he asked the question of the parties and was told what to put. Moreover, a portion of the land was sold for £1,000 not much more than a year after the transfer and, according to the defendant, the land which re-

mained after the sale is the more valuable. Judging from the slender evidence on the subject before me, I should say that at £1,500 the land was not over-valued.

(*c*) The plaintiff continued in occupation of the property and no attempt was made to terminate his occupation until after the *panchayat* i.e. three years or more after the alleged sale.

(*d*) On the evidence I believe that it was the plaintiff who negotiated the sale to the Mission and I disbelieve the defendant when he says that it was he who did so.

(*e*) As a witness the plaintiff struck me as being honest, albeit somewhat stupid, while the defendant I thought untruthful.

The evidence in regard to the *panchayat* I do not think is decisive. The defendant appears to have signed the submission with his tongue in his cheek ; he was willing that the members should talk since they seemed intent on doing so, but quite determined not to accept their decision unless it was agreeable to him.

There are two matters which seem somewhat to conflict with the plaintiff's account of his transaction with the defendant. The first in his solicitor's letter of 1st December, 1943 which has been set out above. One would have expected that the terms upon which the transfer was alleged to have been made to the defendant would have been expressed with greater precision and, in particular, that instead of an inquiry as to what amount the defendant would require on re-transfer, there would have been a statement that the defendant was about to receive (the sale to the Mission had not then been completed) a sum more than sufficient to repay him for any money he had spent on the property and a demand for the balance. Apparently Mr. Stuart thought it sufficient to draw attention to the nominal consideration for the transfer for the rest to be implied.

The second matter is the statement of the plaintiff himself in his examination-in-chief, viz.:—" The sale was completed by Mr. Stuart. After that I saw defendant at Ba. I told him I wanted money and asked him to re-transfer balance of land to me so that I could raise some money on it ". It is uncertain when it was exactly that this was said. I take it that it must have been after the agreement to sell to the Mission but before the sale had been completed. If so, it is understandable because the plaintiff would know that the defendant had not yet received the purchase money from the Mission and he probably would not appreciate that the defendant could not transfer the balance of the land until the sale to the Mission had been completed.

The questions of law which have been raised by the defence seem to be completely answered in the case of *Rochefoucauld v. Bowstead* [1897] 1 Ch. 196 which was followed in the local case of *Administrator of Lautoka v. Bakhtawali* (Civil Action No. 98 of 1936).

I come to the conclusion that the defendant was a trustee for the plaintiff of the land in question subject to a charge in the defendant's favour for any sums which the defendant might advance in connection with the land whether for the repayment of the mortgage or otherwise.

There will be a declaration that the defendant held the land in question in trust for the plaintiff and an order directing that :—

(*a*) an account be taken of the moneys received and disbursed by the defendant as such trustee as aforesaid ;

(*b*) the balance due upon such account be paid by the defendant to the plaintiff or by the plaintiff to the defendant as the case may be ;

(*c*) the defendant do execute in favour of the plaintiff a transfer of the land comprised in certificate of title, No. 6828.

The defendant will pay the costs of these proceedings.

MORRIS, HEDSTROM, LIMITED & ORS. *ats.* THE POLICE.

[Appellate Jurisdiction (Thomson, J.) January 5, 1946.]

Prices of Goods Ordinance, 1940[1]*—interpretation—sale by wholesale—application of s. 7 in calculating maximum price of quantity lesser than unit specified in Price Order—Appeal against sentence—Principles on which the Court will vary sentences on appeal.*

The appellants had been convicted on six charges of selling kerosene in various quantities at a price in excess of that fixed by Price Order No. 153 (1945 F.R.G. Supp. p. 54).[1] It was shown that in each case the appellants had sold kerosene to retailers at a price of 3s. 5½d. per gallon which was the lawful retail price under the Price Order, allowing for transport and handling charges in accordance with the Order. Appealing against conviction the appellants submitted that since the Price Order fixed the maximum wholesale price of kerosene " per drum of 44 gallons including the drum " the price so fixed was not applicable to sale of quantities less than 44 gallons.

HELD.—(1) The transactions were sales by wholesale and so subject to the wholesale price.

(2) S. 7 of the Prices of Goods Ordinance, 1940[1] is universal in its application and applies to every and any unit of quantity mentioned in a Price Order.

APPEAL by the defendant against conviction and sentence. The facts are fully set out in the judgment.

R. A. Crompton for the appellant.

E. M. Prichard for the respondent.

THOMSON, J.—The appellant Company were convicted in the Court of the First Class Magistrate at Suva on six charges of contravening s. 8 (1) of the Prices of Goods Ordinance, No. 47 of 1940. Originally there was a seventh charge but this disappeared in the course of the proceedings and can be disregarded. It is not necessary here to re-

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1 *Rep. Vide Price Control Ordinance,* 1946 *and subsidiary legislation.*