VIRASAMY *ats.* THE POLICE.

[Appellate Jurisdiction (Seton C.J.) September 18, 1945.]

Defence (Explosives) Order 1944 *made under Regulation* 84 (1)—*Defence General Regulations,* 1942—*Defence (General) Regulations* 1942—*Regulation* 74 (1) *evidence of possession—hand grenade hidden in wall of house—insufficient evidence of knowledge and consent of appellant.*

Appellant was convicted of the offences of unlawful possession of explosives and possession of U.S. army property both charges being in respect of a hand grenade found in the wall of his house. There was evidence that appellant had left his house unoccupied on the night previous to the execution of the search warrant when the grenade was found and that the house is near a road and accessible.

HELD.—That there was insufficient evidence upon which to base a conviction.

APPEAL against conviction.

A. D. Patel for the appellant : Knowledge is an essential ingredient and must be proved. In this case there was no evidence of *mens rea.*

E. M. Prichard for the respondent : Respondent accepts the proposition that to establish possession in cases where an article has been found on a man's premises it must be established that the article was there with his knowledge and sanction. This is a question of fact and the onus of proving it is of course on the prosecution unless the burden has been shifted by legislation. A case where the onus of proof has been so shifted is the Arms Ordinance 1937 s. 37 ; this has no application to the charge under Defence Regulations. In this case it must be conceded that it was for the learned magistrate to be satisfied affirmatively that the grenade was where it was found with the knowledge and sanction of the appellant. There is no reason to suppose that he did not have this in mind ; he did visit the locus and was in a favourable position to form the opinion which apparently he did as to the question of fact which is the issue now before this Court.

SETON, C.J.—In this case the police, armed with a search warrant, went to the appellant's premises and in the course of their search, discovered a hand grenade in a cardboard box hidden in the thatched wall of the appellant's house. The appellant, who was present, disclaimed all knowledge of it and said that he and his family had been absent from the house the previous night and that probably some enemy of his, of whom he said he had many, had taken advantage of the house being empty to hide the grenade in the wall. His house is near the main C.S.R. road and the spot where the grenade was found was easily accessible from that road ; moreover, it had been concealed in the wall from outside the house.

This is all the evidence in the record of the case although it is agreed by the parties that the learned Magistrate went himself to inspect the spot where the grenade had been found. No mention of this fact appears in the record, as it should have done, and the Magistrate has

given no reasons for his decision—in particular, it does not appear how he satisfied himself that the grenade was where it was found with the knowledge and consent of the appellent.

Judging by the record of the case, which is all the material before the Court, there was not sufficient evidence upon which to base a conviction, and the appeal must therefore be allowed and the conviction quashed.

POLICE *ats.* NARROTTAM & CO.

[Appellate Jurisdiction (Seton, C.J.) September 19, 1945.]

Appeals Ordinance, 1934 *s.* 3 (2)[1]*—no right of appeal against interlocutory decisions of Magistrates in the course of preliminary enquiries.*

Narrottam & Co. the respondent had been charged with offences against the Prices of Goods Ordinance 1940. During the course of a preliminary enquiry conducted by a Third Class Magistrate the Magistrate refused to admit secondary evidence of the existence and contents of certain documents which were essential to the case for the appellant and in respect of which the appellant had first (in error) issued a subpœna *duces tecum* addressed to the respondent and then served on the respondent a notice to produce. The preliminary enquiry was adjourned pending an appeal against the Magistrate's refusal to admit the evidence.

HELD.—The Court has no power to grant leave to appeal against the interlocutory decision of a Magistrate in the course of a preliminary inquiry.

[**EDITORIAL NOTE.**—The Appeals Ordinance, 1934 s. 3 gave a right of appeal in certain circumstances from the " decision " of any District Commissioner. The Criminal Procedure Code s. 339 which replaces the Appeals Ordinance refers to " any judgment, sentence or order ".

It would seem that the decision here given on the interpretation of the Appeals Ordinance is applicable to the Criminal Procedure Code. As to whether there is any remedy by way of mandamus see *Reg. v. Sir Robert Carden* referred to in the judgment.]

Cases referred to :—

(1) *Police ats. Patel* [1943] 3 Fiji L.R.—
(2) *Reg. v. Sir Robert Carden*]1879] 5 Q.B.D. 1.

SUMMONS FOR LEAVE TO APPEAL by the prosecution from the decision of a Third Class Magistrate conducting a preliminary enquiry. The facts are fully set out in the judgment.

E. M. Prichard for the appellant.

S. B. Patel for the respondent.

---

[1] *Repealed. See Editorial Note.*