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.

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[1] *Repealed. See Editorial Note.*

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.