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

shares. After the death of Ellen Emsell Harman the house was occupied by Percy Edward Harman and his family. From July 1922 onwards the plantation was worked by Percy Edward Harman and his wife Ethel E. Harman; the registered proprietors of the land were Ethel E. Harman as to two undivided thirds and Emily May Towson (formerly Harman) as to one third. A third share of the profits was paid to Emily May Towson from 1922 to until 1930 when she alleged that payment of her third share was discontinued. Accordingly in 1939 Emily May Towson brought an action for accounts and for sale and distribution against her brother Percy Edward Harman and his wife Ethel E. Harman. In this action an order was made on 9th February, 1942 for sale of the land and improvements thereon and for distribution of the net proceeds amongst the parties interested. On March 5, 1942 Emily May Towson died and the action was continued by her husband, Nathaniel W. Towson as administrator. The property was duly sold on December 19, 1942 but upon the Registrar proceeding to distribution Percy Edward Harman put a claim to the value of the dwelling house to the exclusion of the other parties. To this claim the Registrar interpleaded.

HELD.—That the dwellinghouse formed part of the realty.

Cases referred to:—

(1) *Holland v. Hodgson* [1872] L.R. 7 C.P. 328; 41 L.J.C.P. 146; 26 L.T. 709 ; 31 Dig. 188.

(2) *Spyer v. Phillipson* [1931] 2 Ch.D. 183;

(3) *Leigh v. Taylor* [1902] A.C. 157 ; 71 L.J.Ch. 272 ; 86 L.T. 239 ; 31 Dig. 197.

INTERPLEADER SUMMONS by Registrar charged with distribution.

The facts and argument fully appear from the judgment.

R. A. Crompton, for the Plaintiff.

D. M. N. MacFarlane, for E. E. Harman.

R. L. Munro, for N. W. Towson.

CORRIE, C. J.—By an Order of this Court made on 9th February, 1942, in proceedings in which Emily May Towson was the Planitiff and Ethel Elizabeth Harman and Percy Edward Harman were the Defendants, it was ordered that the piece of land containing 250 acres known as Lesiaceva in Savu Savu, being the whole of the land comprised in Certificate of Title 2913, and the improvements thereon, be sold and that the net proceeds of sale be distributed among the parties interested.

In pursuance of this Order, the Registrar of this Court on 19th December 1942 sold the property to Frederick Arthur Harman for the sum of £570.

Upon the Registrar proceeding to the distribution of the proceeds of sale, Percy Edward Harman, the pesent Plaintiff, claimed the sum of £150 representing the value of the house included in the sale. In consequence the Registrar issued this Summons by way of interpleader, and upon the hearing before this Court on 27th May, 1943 it was directed that the following issues be tried—

(a) Who was the owner of the dwelling house at the date of the sale?

(b) What was the value of the dwelling house at the date of the sale?

The material facts are as follows:—

The plantation known as Lesiaceva was formerly the property of Arthur Harman, the father of the Plaintiff. Upon his death in 1908 the property passed under his Will to his widow Ellen Emsell Harman and Jaffa Solomon as Trustees upon trust for Ellen Emsell Harman for life and after her death for his three children, the Plaintiff Percy Edward Harman, Frederick Arthur Harman and Emily May Harman as tenants in common in equal shares.

In 1911 the house which stood on the plantation was destroyed by a hurricane and Mrs. Harman then built in its place the house which is the subject of these proceedings.

Evidence as to the erection of the house was given by the Plaintiff and is not contested. He stated that it was built by himself and a carpenter named Harry Hayes; that he himself paid £5 for the posts upon which it was built, and that the whole of the rest of the cost was paid for by his mother without any contribution from the Trustees of Arthur Harman's estate. The house which is of wood is attached to the foundation of buabua posts by screw bolts.

Mrs. Harman continued to live in the house until her death in 1917. By her Will (made on 19th September, 1911) Mrs. Harman gave the Plaintiff "the dwelling house on Lesiaceva Plantation together with all furniture contained therein." After her death the Plaintiff lived in the house and worked the plantation, for which he at first paid an annual rent of £50 each to his brother and sister in respect of their shares. His brother, Frederick Arthur Harman, did not live at Lesiaceva. His sister, Emily May Harman, remained there until her marriage to Nathaniel William Towson which took place five or six years later.

After the death of Mrs. Harman, the surviving Trustee, David Jaffa Solomon, transferred the land to her three children in accordance with the terms of Arthur Harman's Will.

In 1922, Frederick Arthur Harman and the Plaintiff registered a transfer of their two undivided one third shares to the Defendant Ethel Elizabeth Harman, who is the Plaintiff's wife.

In 1942, Emily Towson died and her one third share was registered in the name of Nathaniel Willam Towson, as Administrator of her estate.

The Plaintiff's claim is that notwithstanding that the house was attached by screw bolts to posts fixed in the soil, it remained a chattel and passed to him under his mother's will.

The Defendants maintain that the house, having been affixed to the soil, became part of the land included in the Certificate of Title, and that, in consequence, they are entitled to it. In support of this view the Defendants have cited a passage from the judgment of Blackburn J. in *Holland v. Hodgson* L.R. 7 C.P. 328, 334—

> "Perhaps the true rule is, that articles not otherwise attached to the land than by their "own weight are not to be considered as part of the land, unless the circumstances are such "as to shew that they were intended to be part of the land, the onus of shewing that they "were so intended lying on those who assert that they have ceased to be chattels, and that, "on the contrary, an article which is affixed to the land even slightly is to be considered as "part of the land, unless the circumstances are such as to shew that it was intended all along "to continue a chattel, the onus lying on those who contend that it is a chattel."

The Defendants have also cited a series of cases upon the question of whether or not a chattel affixed to land or a house becomes part of the realty.

It is, however, unnecessary for this Court to look back beyond the case of *Spyer v. Phillipson* (1931) 2 Ch.D. 183 in which many of the previously decided cases are reviewed.

The facts in that case were that the Lessee of a flat for a term of twenty-one years installed in some of the rooms, without the consent of the Lessor, some valuable antique panelling, ornamental chimney pieces and period fire-places. No portion of the structure of the rooms was altered in order to affix the panelling, but it was placed in a position by inserting into the walls wooden plugs, to which it was attached by screws. The Lessee having died before the termination of the lease, his Executors claimed the right to remove the panelling, chimney pieces and fire-places. The Lessor contended that they had been fixed and installed in such a way as to become part of the structure of the premises; that their removal would cause damage to the structure; and that they constituted landlord's fixtures ; and he brought an action to restrain the Executors from removing these fixtures. The action was heard by Luxmoore J. who, in the course of his judgment said—

> " In *Holland v. Hodgson* Blackburn J., in delivering the judgment of the Court, referred with " approval to what was said by Parke B. in *Hellawell v. Eastwood*, and adopted it as the " test in cases of this kind. The passage to which I refer is as follows :—' This is a question " ' of fact depending on the circumstances of each case, and principally on two considerations ; " ' first, the mode of annexation to the soil or fabric of the house, and the extent to which " ' it is united to them, whether it can easily be removed *integre salve et commode* or not " ' without injury to itself or the fabric of the building ; secondly, on the object and purpose " ' of the annexation, whether it was for the permanent and substantial improvement of the " ' dwelling, in the language of the civil law, *perpetui usus causa*, or in that of the year book, " ' *pour un profit del inheritance*, or merely for a temporary purpose and the more complete " ' enjoyment and use of it as a chattel.' I think in fact that these are not two considerations, " but really only one consideration ; what was the object and purpose of the annexation ? ; " and that among the matters which have to be considered in coming to a conclusion in " answer to the question, what was the object and purpose of the annexation are, first, the " mode of annexation, and secondly, what would happen if the mode of annexation were " severed, and it is sought to take the particular things away."

These, however, are not the only matters which have to be considered. Later in his judgment Luxmoore J. cited a passage from the judgment of Lord Macnaghten in *Leigh v. Taylor*—[1902] A.C. 157, 159—

> " ' The question is still as it always was, has the thing in controversy become parcel of the " ' freehold ? To determine that question you must have regard to all the circumstances of the " ' particular case—to the taste and fashion of the day as well as to the position in regard to " ' the freehold of the person who is supposed to have made that which was once a mere " ' chattel part of the realty. The mode of annexation is only one of the circumstances of the " ' case and not always the most important and its relative importance is probably not what " ' it was in ruder or simpler times.' "

Proceeding to consider the facts in the case before him, Luxmoore J. said—

> " Again I have to consider the interest of the person who puts the particular chattel into " the property and bear that in mind in answering the question, what was the object and " purpose of the annexation ? As I pointed out Mr. Phillipson was a tenant for a term of " years. It would be a little surprising if this gentleman were to spend £5,000 in purchasing " panelling and have it put in on the footing that he would only enjoy it for eleven or " thirteen years, and at the end of that time he would lose all interest in it, and it would " belong to a complete stranger, i.e. the landlord of the premises. It might be quite a different " matter if the question was one which had arisen between a tenant for life and remainder " men, the tenant for life being the parent or near relative of those who were to take after " him."

Luxmoore J. then discussed the method of attachment of the fixtures in question, and held that the Executors of the Lessee were entitled to remove them.

An appeal was dismissed, the three members of the Court of Appeal (Lord Hanworth M. R. Lawrence L. J. and Romer L. J.) all approving of the reasons given by Luxmoore J. in his judgment.

It follows then that the test to be applied is, what was the purpose and object with which this house was erected?

On behalf of the Plaintiff it is urged that the fact that Mrs. Harman left the house to him by her Will makes it clear that she did not intend it to become part of the freehold ; and that a house attached to the soil only by screw bolts was easy to remove and set up elsewhere, and was intended to be removable.

For the Defendants it is pointed out that the house was built to replace one which had passed with the land under Arthur Harman's Will; that Mrs. Harman remained in the house until her death: and that while it is true that she purported to dispose of it by her Will, she gave it to that member of the family who cultivated the estate; and that from that very fact it is to be inferred that the object and purpose for which the house was built was to provide a dwelling house on the estate to be occupied by the person who was cultivating the estate; and that there is nothing in evidence to suggest that Mrs. Harman ever contemplated that the house should be removed elsewhere.

These considerations, in my view, outweigh anything that can be urged on behalf of the Plaintiff, and I hold that he has failed to make good his claim.

On the first issue before the Court, I hold that the owners of the dwelling house at the date of the sale were the Defendants.

The second issue, therefore, does not arise.

BISHNATH *ats.* POLICE.

[Appellate Jurisdiction (Corrie C.J.) July 15, 1943.]

Distillation Ordinance 1877[1]—*s.* 37—*Analyst's Certificate—whether certificate admissible if full statement of ingredients not supplied—whether prosecution obliged to permit defence to make analysis before trial—ss.* 23 *&* 14—*whether illicitly distilled liquor is liquor on which the full duty has not been paid.*

HELD.—(1) The analyst's certificate is admissible notwithstanding that a full statement of ingredients not set out.

(2) There is no obligation upon the prosecution before the hearing to part with any of the liquid in respect of which the prosecution was brought.

(3) The Distillation Ordinance, 1877 s. 23 is not restricted to spirits distilled under the Ordinance and the term "full duty" means "the same duties which are or may be from time to time payable upon spirits of a corresponding description and strength imported into the Colony".

[**EDITORIAL NOTE.**—(i) s. 37 of the Distillation Ordinance was amended in 1945, rendering the first point held of no further interest.

(ii) This judgment was affirmed as to the third point in *Raghubar ats. Police* [1946] 3 Fiji L.R.]

APPEAL AGAINST CONVICTION. The facts and arguments appear from the judgment.

P. Rice for the Appellant.

A. G. Forbes, for the Respondent.

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[1] *Cap.* 193.