On behalf of the defendant Filimone it is argued that as the lease is a protected lease under the Crown Lands Ordinance and the Commissioner of Lands has not consented to the proceedings in which the judgment in favour of Thakur Singh and Jaimal were given nor to the entry in the register of notice of those judgments against the land comprised in the lease ; and hence that they are not entitled to have entries made which have the effect of caveats against alienation of the land. Against this it is argued that under s. 113 notice of a judgment is entered by the Registrar of Titles in virtue of that section alone and without the necesity for an order of the Court ; that in consequence such entry is not " the process of any Court of Law "; and hence is not affected by s. 9 of the Crown Lands Ordinance.

This argument is undoubtedly well founded, but it does not, in my view, provide an answer to the case put forward by the defendant Filimone. If Thakur Singh and Jaimal are not entitled without the consent of the lessor to execution of their judgments against the land included in the lease—and under s. 9 of the Crowns Lands Ordinance such consent is required—they clearly are not entitled to have entered in the register, without such consent, a notice which operates as a caveat against alienation of the land. It follows that the defendant Filimone is entitled to have the entries removed by cancellation of the memorials indorsed upon the lease.

Accordingly it is ordered that the Registrar of Titles do cancel the indorsements relating to the eight judgments in favour of Thakur Singh and Jaimal.

R. *v.* SARJUDEI.

[Criminal Jurisdiction (Corrie, C.J.) July 19, 1937.]

Bigamy—Marriage Ordinance 1928—*Validity of marriages solemnised according to Indian custom.*

Sarjudei was married according to Indian custom on 4th February 1915. On 25th June, 1935 during the life of her husband by the marriage of 1915, she went through a form of marriage in accordance with the law of Fiji with another person. On 2nd January 1935 the husband by the marriage of 1915 obtained a rule *nisi* for dissolution of the marriage, citing as co-respondent the second " husband ".

HELD.—(1) (Following *R. v. Surajpal* [1934] 3 Fiji L.R.—) that a marriage according to Indian custom before 1st April, 1929 (the date of coming into effect of the Marriage (Amendment) Ordinance 1928) is a valid marriage.

NOTE.—It was pointed out in this judgment that s. 3 of Marriage Amendment Ordinance 1928 applied to persons married by Indian custom before the 1st day of September, 1929, (and not the 1st day of April, 1929 as was apparently thought in *R. v. Surajpal*).

(2) A marriage according to Indian custom is valid notwithstanding that it took place before and not after the enactment of the Marriage Ordinance, 1918.

[**EDITORIAL NOTE.**—The comment in this judgment on a passage in *R. v. Surajpal* referring to s. 3 of the Marriage Amendment Ordinance, 1928 seems to require explanation.

In *R. v. Surajpal* the validity of Indian customary marriages performed prior to 1st April, 1929 was upheld, 1st April, 1929 being the date on which the proviso to s. 63 of the Marriage Ordinance, 1918, (which was in favour of the validity of such marriages) was repealed.

By the amending Ordinance (1928) which repealed the proviso in favour of such marriages it was enacted by s. 3 (amending s. 41 of the principal Ordinance) that :—

> " It shall be lawful at any time on or before the 1st day of " April, 1930 for any persons married according to Indian custom " prior to the 1st day of September, 1929 to sign and subscribe a ' notice of their desire to have their marriage registered ".

Vide Marriage Ordinance Cap. 118 s. 42 which declares marriages so registered to be valid.

According to these decisions it would seem that :—

(*a*) An Indian customary marriage prior to 1st April, 1929 is valid irrespective of whether it is registered under s. 3 of the Marriage (Amendment) Ordinance 1928.

(*b*) An Indian customary marriage between 1st April, 1929 and 1st September, 1929 is invalid (since the proviso was repealed on 1st April, 1929) unless it was registered under s. 3 of the amending Ordinance of 1928 before 1st April, 1930.

(*c*) An Indian customary marriage after 1st September, 1929 is invalid.

Vide however *R. v. Rama* [1946] 3 Fiji L.R.— where it is held that though a customary marriage is in some cases valid it is not monogamous.]

Cases referred to :—

(1) *R. v. Surajpal* [1934] 3 Fiji L.R.—.

(2) *Papworth v. Battersby Borough Council* [1915] 84 L.J.K.B. 1881 ; *on appeal* [1916] 1 K.B. 583 ; 30 Dig. 198.

PROSECUTION on a charge of bigamy. The facts fully appear from the judgment.

The Acting Attorney-General, *T. T. Russell* for the Crown.

L. Davidson for the accused.

CORRIE, C.J.—The accused is charged with having committed bigamy. The facts found by the Court are as follows :—

(1) That on the 4th February, 1915, a marriage between the accused Sarjudei and the witness Budhai was solemnised in accordance with the rites of Sanathan Dharm ; and that such marriage was lawful in accordance with the personal law of the parties.

(2) That on the 25th June, 1935, a marriage between the accused Sarjudei and the witness Labbu was solemnised in accordance with the law of Fiji by the District Commissioner, Ba.

The attention of this Court has been directed to the judgment given by the Court in the case of *Rex v. Surajpal* (21/1934). The material facts in that case were that Surajpal in 1927 was married by Indian custom to one Rampiari, the marriage being performed by two priests, one registered under the Marriage Ordinance 1918 and one unregistered. The marriage was not registered. In 1933, Rampiari being still alive, a marriage ceremony was solemnised between Surujpal and one Piyari. This marriage was celebrated according to the religion and personal law of the parties and in accordance with every requirement of the law of Fiji. Upon these facts the Court held that Surajpal was guilty of bigamy.

For the defence it has been argued that the case of the present accused is distinguishable from that of *Surajpal* on the ground that the first marriage ceremony in the present case was solemnised before and not after the enactment of the Marriage Ordinance 1918.

Having regard, however, to the ground upon which the judgment in *Surajpal's* case is based, this fact affords no defence to the present accused.

In the judgment in that case the Court held as follows :—

> " It has been argued by learned counsel for the accused that the " Marriage Ordinance 1928 shows that marriages by Indian custom " solemnised before April 1st, 1930, are only legal if they have " been registered under that Ordinance. I dissent from that view. " The Ordinance says it shall be lawful etc. and is in fact a " declaratory or enabling Ordinance and in no way renders illegal " or void anything done prior to its enactment. The Marriage " Ordinance 1928 repeals the proviso to s. 63 of the Marriage " Ordinance 1918 and therefore at the present time the certificates " for marriage and registration thereof are necessary for a legal " marriage, but I am satisfied that in 1927 this was not so and " accordingly I hold that marriages solemnised by Indian priests " prior to 1st April, 1929, according to the personal law and " religion of the parties and whether such priest was registered or " not, are legal and valid provided always that the parties so " intended.

It is clear that in so holding the Court based its judgment upon a ground which is equally applicable whether the first marriage ceremony took place before or after the Marriage Ordinance 1918. Actually s. 3 of the Marriage (Amendment) Ordinance 1928 applies to persons married by Indian custom before the first day of September (and not the first day of April) 1929 ; but with this amendment, the decision as to the law governing Indian customary marriages in this Colony must be held to be binding upon this Court in accordance with the principle expressed by Scrutton J., as he then was, in *Papworth v. Battersby Borough Council* [1915] 84 L.J.K.B. page 1881 at page 1885 : " My view of the judges of this division is that they follow and should follow the decision of another judge of the same division on a point of law, leaving it to the Court of Appeal to say whether or not that decision was wrong ".

Apart from authority, however, it would introduce confusion into the administration of the criminal law of this Colony if this Court, having held in 1934 upon the facts then before it, that an accused person was guilty, should now hold, upon a set of facts indistinguishable from the former, that another accused person is innocent.

It follows that it is unnecessary for the Court to express any view upon the learned argument put before it by the Acting Attorney-General as to the effect upon these proceedings of a decree *nisi* issued by this Court in favour of the witness Budhai against the accused Sarjudei decreeing the dissolution of their marriage.

The Court finds the accused guilty of bigamy.

SENTENCE.

It is clear that at the time of the second ceremony the accused was under the honest belief that she was free to marry so that her conviction does not call for more than a nominal penalty. The accused is sentenced to serve a term of 24 hours imprisonment and upon that sentence is entitled to be released forthwith.

AMMAI *ats.* GOVIND PILLAY.

[Appellate Jurisdiction (Corrie, C.J.) August 10, 1937.]

Summary Procedure Rules, 1916—Rule 22[1]*—division of cause of action—two promissory notes given on a settlement of accounts—whether each promissory note constitutes a distinct cause of action—distinction drawn between an action to recover sum due under a promissory note and an action under the Usurious Loans Ordinance.*

The appellant's claim for the sum of £34 14s. 6d. due on a promissory note was dismissed in the Court of Summary Jurisdiction on the ground that the promissory was one of two notes given by the respondent for a total amount exceeding £50 arrived at on a settlement of account between the parties and that appellant's action involved a wrongful division of a cause of action.

HELD.—Each promissory note constitutes a separate and distinct cause of action and the promisee is entitled to bring separate actions upon each of them.

Cases referred to :—

Brunskill v. Powell [1850] 19 L.J. Ex. 362 ; 1 Dig. 18.

Mangal Sardar v. Bakewa [1936] 3 Fiji L.R.—.

[**EDITORIAL NOTE.**—See also *Giwar Singh and or. ats. Birbal* [1943] 3 Fiji L.R.—

APPEAL by the defendant against judgment for the plaintiff in an action for moneys due under a promissory note. The facts are fully set out in the judgment.

R. L. Munro for the appellant.

(No appearance of the respondent).

CORRIE, C.J.—This is an appeal from the judgment delivered on the 20th November, 1936, of the Commissioner of this Court in the district of Nadroga dismissing, on the ground of lack of jurisdiction, an action brought by the appellant against the respondent.

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[1] *Rep. Vide Magistrates Courts Rules O. IV r.* 12.