The section reads as follows:—

"For the purposes of this Ordinance the forms and ceremonies "used in administering an oath are immaterial if the Court or person "before whom the oath is taken has power to administer "an oath for the purpose of verifying the statement in question and "if the oath has been administered in a form and with ceremonies "which the person taking the oath has accepted without objection "or has declared to be binding upon him".

This section is identical in terms with s. 15 (1) of the Perjury Act 1911[2]; and the view put forward by the prosecution has the support of a passage in *Archbold's Criminal Pleading, Evidence and Practice,* 30th Edition page 1220, in which it is stated that "An oath in this sub-section includes affirmation and it appears to over-ride *R. v. Moore*".

No other authority for this view has been cited to the Court: and there does not appear to have been any decision upon the point.

If, however, the prosecution's contention is correct, an affirmation must be regarded as a form of oath for the purposes of the section, and I can see no ground for so regarding it. As it was said in *R. v. White,* Leach 430 "An Oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth". That is not the position of a person who gives evidence upon affirmation: he invokes no penalty other than that which may be inflicted upon him by a Court.

I hold, therefore that an affirmation is not to be regarded as a form of oath within the meaning of s. 13 of the Perjury Ordinance[3].

As the evidence in respect of which the accused now stands charged was given upon affirmation, without the Court having satisfied itself that he was a member of one of the three classes of persons to whom s. 2 of the Oaths Ordinance applies, it follows that he was not within the scope of s. 3 (1) of the Perjury Ordinance[4].

---

re DUKHAN.

[Civil Jurisdiction (Corrie, C.J.) February 17, 1942.]

Marriage Ordinance, 1918—s. 12— Notice of Marriage—intended bridegroom already married according to Hindu law—refusal of Registrar-General to issue marriage certificate—whether prior mariage valid—whether the Court is bound to follow a judgment given in its Criminal Jurisdiction.

In October 1939 Dukhan an Indian female filed with the Registrar General a Notice of Marriage and Declaration in accordance with s.12 of the Marriage Ordinance. The form stated that the applicant was "Married according to Hindu law about 14 years ago to one Sautu F/N Samjhawan, but no longer living with him for the last three or four

---

2 *1 and 2 Geo. 5 c. 6.*
3 *Rep. Vide Penal Code Cap. 5 s. 113 (Revised Edition Vol. I page 156).*
4 *Rep. Vide Penal Code Cap. 5 s. 102 (Revised Edition Vol. I page 153).*

years''. Dukhan applied to the Registrar-General for the issue of a certificate for marriage on 17th November 1939. The Registrar-General refused and Dukhan applied for and obtained a rule *nisi* for a mandamus.

HELD.—The Court in its civil jurisdiction is bound by the rule of *stare decisis* to follow the judgment in *R. v. Surajpal* [1934] 3 Fiji L.R. —(according to which decision the prior marriage was valid.)

[**EDITORIAL NOTE.**—This judgment follows the line of cases on the validity of Indian customary marriages:—

In re Sudman [1932] 3 Fiji L.R.—
R. v. Surajpal [1934] 3 Fiji L.R.—
R. v. Sarjudei [1937] 3 Fiji L.R.

The point taken by the applicant as to the view to be taken in cases where the personal law of the parties allows polygamy is no longer answered by sub-s. (2) of s. 63 of the Marriage Ordinance as the sub-section was repealed in the 1945 revision. See now the Marriage Ordinance Cap. 118 s. 58 and the Penal Code Cap. 5 s. 171. *R. v. Rama* [1946] 3 Fiji L.R. appears to overrule this decision.]

Cases referred to :—

(1) *Newton v. Cowie* [1827] 4 Bing 234, 130 E.R. 759; 13 Dig. 179.
(2) *R. v. Surarjpal* [1934] 3 Fiji L.R.
(3) *R. v. Sarjudei* [1937] 3 Fiji L.R.

RETURN TO A RULE NISI FOR A MANDAMUS. The facts and arguments appear from the judgment.

S. Hasan for the Applicant.

The Attorney-General, *E. E. Jenkins,* for the Respondent.

CORRIE C. J.— On the 18th November, 1939, upon the motion of the present applicant, Dukhan, the daughter of Meloo, this Court granted a rule directed to the present respondent, the Registrar-General of Marriages, ordering him to show cause why a mandamus should not issue commanding him to issue a certificate of marriage to the Applicant. The facts which gave rise to this motion were as follows:

On the 26th October, 1939, the Applicant, in accordance wth the provisions of s. 12 of the Marriage Ordinance 1918, had filed with the Respondent a Notice of Marriage and Declaration in the form prescribed in the schedule to the Ordinance. The name of the intended bridegroom was stated in the notice to be ''Saran Singh f/n Maiya Singh'' and the condition of the Applicant was stated to be '' married according to Hindu law about 14 years ago to one Santu f/n Samjhawan, but no longer living with him for the last three or four years.''

On the 17th November, 1939, the Applicant applied to the respondent to issue to her a certificate for marriage under the Ordinance, but the Respondent refused. The grounds of his refusal were stated in a letter dated the 17th November, 1939, in the following terms:—

> ''With reference to your application for Certificates for Marriage ''in pursuance of notice of marriage given by you on the 26th ''October, 1939, I have to advise that, as you were married accord-''ing to Hindu law about 14 years ago to one Santu f/n Samjha-''wan who is still alive, such a marriage is valid and legal accord-''ing to the decision of the Supreme Court in *Rex v. Surajpal.* As ''you are therefore already married, I am unable to issue a Certifi-''cate for Marriage under the Marriage Ordinance 1918 . . . . .''

The Applicant thereupon commenced these proceedings.

On behalf of the Applicant Mr. Hasan has argued that the judgment of this Court in *Rex v. Surajpal* is not binding upon the Court in its civil capacity.

Clearly, however, if the Court were now to grant the applicant's prayer and order the Respondent to issue a certificate for marriage and the Applicant, in virtue of that certificate were to be a party to a marriage ceremony, she would in accordance with the judgment in Surajpal's case be liable to prosecution for bigamy, unless the effect of the judgment of this Court in these proceedings were to overrule the judgment in Surajpal's case. The Court therefore cannnot ignore the judgment in Surajpal's case, and is bound either to follow it, or, if sufficient ground be shown, to give a judgment which in effect must overrule it.

Mr. Hasan further argued that these are grounds which were not placed before the Court when Surajpal's case was argued, and to which in consequence the principle of *stare decisis* cannot apply; and that had they been before it, the Court must have come to a different conclusion.

The Court has had the advantage of hearing from the Attorney-General, who appeared on behalf of the Respondent, an account of the successive steps in the development of the law of this Colony with regard to the marriage of Indians.

It is suggested that had a statement of this nature been made to the Court in Surajpal's case, the decision in that case would have been different.

Upon perusal, however, of the report of Surajpal's case, I find that Mr. Grahame, who appeared for the defence, went fully into the earlier histoy of the law of marriage as regards Indians, and that it was with a full knowledge of that earlier law that the Court framed its judgment.

It was also suggested in argument that in Surajpal's case the Court had assumed, without any ground for so doing, that the law of this Colony would regard a marriage celebrated during the existence of a previous legal marriage as bigamous even when the personal law of the parties allowed of polygamy or polyandry.

That objection however, is answered by the sub-section added to s. 63 of the Ordinance of 1918 by s. 3 of Ordinance 35 of 1929[1],

> "(2) Any person who shall knowingly and wilfully procure his "or her marriage to be solemnized or registered during the exis- "tence of a legal marriage to which he or she is a party shall be "guilty of the felony of bigamy if the spouses in the second "marriage are different to the spouses in the legal marriage". —

I am thus unable to find that any matter has been placed before this Court in the course of these proceedings which was not before the Court when Surajpal's case was decided.

It follows that the rule *stare decisis* must prevail. That rule is stated in the 8th Edition of *Broom's Legal Maxims,* at page 121 in the following terms:—

> " It is then an established rule to abide by former precedents, *stare decisis,* where the same " points come again litigation, as well to keep the scales of justices steady, and not liable to " waver with every new judge's opinion, as also because, the law in that case being solemnly " declared, what before was uncertain and perhaps indifferent is now become a permanent " rule, which it is not in the breast of any subsequent judge to alter according to his private " sentiments."

1 *Rep. Vide Marriage Ordinance Cap.* 118 *s.* 58 *and Penal Code Cap.* 5 *s.* 171.

The same rule was expressed by Best C.J. in *Newton v. Cowie,* (4 Bingham 241, 130 English Reports, 762) when in dealing with a point raised in that case, he said:—

> "I will first consider this in the authorities which are to be found. If these are consistent "we are bound by them, even although our own minds do not approve the principles on "which they rest. There would otherwise be no certain rule which could be known to those "who are required to conform to the law."

The rule *stare decisis* has indeed already been applied to the judgment in *Rex v. Surajpal* as it was upon that principle that the judgment in *Rex v. Sarjudei* was based.

The rule granted by this Court on the 18th November, 1939, is discharged and the application dismissed.

PARVATI *ats.* SAIDAMMA AND OTHERS.

[Appellate Jurisdiction (Corrie, C.J.) July 4, 1942.]

Charge of criminal slander—Magistrate refusing to hold preliminary enquiry—Appeals Ordinance, 1934—*s.* 3[1]—*whether magistrate's decision can be the subject of an appeal.*

Parvati preferred an information against Saidamma and others in the following terms.

> "For that they, of evil and wicked minds, and wickedly, maliciously and unlawfully "contriving and intending to injure, vilify and prejudice the said Parvati and to bring her "into public contempt, scandal and infamy, disgrace, and to deprive her of her good name, "fame, credit and reputation, on the 23rd day of January in the year of our Lord 1941, at "Nadi, wickedly, maliciously and unlawfully did utter, and publish and cause and procure "to be uttered and published a false, scandalous, malicious, and defamatory slander of and "concerning the said Parvati according to the tenor and effect following, i.e.:—
>
> "'Make love with me, my heart is yours, you are loving this man, how long am I to "wait and see, embrace me, dear'.
>
> "meaning thereby that the said Parvati was a woman of loose character, to the great damage, "scandal and disgrace of the said Parvati and provoking the said Parvati, her mother and "sister immediately upon the utterance of the said slander to commit a breach of the peace "to the evil example of all others in the like case offending and against the peace of Our "King, His Crown and Dignity."

Prior to the preliminary enquiry opening it was submitted for the defendants that no indictable offence was disclosed by the information and that accordingly the magistrate had no jurisdiction to hold a preliminary enquiry. After hearing legal argument for both sides the magistrate stated "I consider that no indictable offence has been disclosed in the present charge and I therefore dismiss the charge"

HELD.—No appeal lies under the Appeals Ordinance, 1934[1] against a magistrate's decision that there is no charge before him into whch a preliminary enquiry could be held.

[**EDITORIAL NOTE.**—The following sections of the Indictable Offences Ordinance 1876 (Rep.) were relevant to the magistrate's decision that he had no jurisdiction:—

> "2. In all cases where a charge or complaint shall be made before a district commissioner "that any person has committed or is suspected to have committed any indictable offence "whatsoever within the limits of the district of such district commissioner, or that any "person guilty or suspected to be guilty of having committed any such offence elsewhere out "of the district of such district commissioner is residing or being or is suspected to reside or to "be within the limits of the district of such district commissoner, such charge or complaint "shall be in writing according to Form A in the Schedule hereto."

---

[1] *Rep. Vide Editorial Note.*