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."

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[1] *Rep. Vide Editorial Note.*

"3. In all cases where any person shall be brought before a district commissioner charged "with an indictable offence whether committed within the limits of the Colony or outside the "limits thereof as in the seventh section mentioned, or whether such person appear "voluntarily upon summons or have been apprehended with or without warrant or be in "custody for the same or any other offence, such district commissioner before he shall commit "the accused person to prison for trial or before he shall admit him to bail shall in the "presence of such accused person who shall be at liberty to put questions to any witness "produced against him make examination as to the truth of such charge and take the "statement on oath or affirmation of those who shall know the facts and circumstances of "the case and shall cause the same to be put in writing and the depositions so taken shall be "read over to and signed respectively by the witnesses who shall have made the same and "shall also be signed by the district commissioner."

S. 3 of the Appeals Ordinance 1934 (Rep.) was as follows:—

"3. An appeal shall lie to the Court from the decision—
"(1) of any provincial court established under the provisions of the Native Affairs "Ordinance 1876 upon the terms and in the manner which may be from time to time "prescribed by regulation made under the said Ordinance; or
"(2) of any district commissioner where—
"(*a*) the amount adjudged to be paid exceeds the sum of three pounds exclusive "of any costs ordered to be paid; or
"(*b*) a person has been adjudged by a conviction or order made on information or "complaint either as punishment for an offence or for failing to do or "abstain from doing any act or thing required to be done or left undone to "be imprisoned without the option of a fine; or
"(*c*) a charge has been dismissed; or
"(*d*) in any case with leave of the Court where the question involved is one which "in the opnion of the Court is of sufficient importance to justify an appeal; "or
"(*e*) a sentence of corporal punishment has been ordered.
"Provided that no appeal shall lie in the case of any accused person who has pleaded guilty "and has been convicted on such plea except as to the extent and legality of the sentence "and provided also that an appeal from a decision dismissing a charge shall be by way of a "special case stated as hereinafter provided."

The remedy referred to in the last paragraph of the judgment is no longer available; it was decided in the cases referred to that the Attorney-General could file an information without a preliminary enquiry. This authority was derived from the wording of the repealed Indictable Offences Ordinance, 1876. The relevant sections have no counterpart in legislation now in force in the Colony].

Cases referred to :—

(1) *Ex Parte Lewis* [1888] 21 Q.B.D. 191.
(2) *R. v. Smith* (Fiji: unreported)
(3) *R. v. Buchanan* [1934] 3 Fiji L.R.

APPEAL by case stated against magistrate's refusal to conduct preliminary enquiry. The facts fully appear from the judgment.

A. D. Patel for the Appellant.

K. A. Stuart for the Respondent.

CORRIE, C. J.—On the 28th February, 1941, the Appellant, Parvati, swore a "Charge and Complaint" alleging that the Respondents had been guilty of uttering a Criminal Slander against the Appellant.

The words alleged to have been used were set out in the complaint, with the meaning attributed to them by the Appellant, and it was further alleged that the use of such words had in fact provoked a breach of the peace.

After hearing argument and referring to legal text-books, the Commissioner refused to hold a preliminary enquiry, stating, "I consider that no indictable offence has been disclosed in the present charge, and I therefore dismiss the charge."

It is not stated whether, in arriving at this conclusion, the Commissioner took the view that the words alleged to have been used could not bear the meaning attributed to them by the Appellant, or whether he held such meaning was not of a nature that could tend to provoke a

breach of the peace. It is open to question whether he was in a position to come to a decision upon the first of these issues without hearing evidence; and if it should be held that the words alleged were capable of bearing the meaning attributed to them by the Appellant it would seem difficult to support the view that such could not tend to provoke a breach of the peace.

In these circumstances this Appeal has been brought by way of case stated. For the Respondents the objection has been taken that no appeal lies. While it is true that the Commissioner made use of the expresion "and I therefore dismiss the charge," it is argued that actually he did nothing of the kind; that what he did was to decide that there was no charge before him into which a preliminary enquiry could be held ; and this is not a matter which can be the subject of an appeal under s. 3 of the Appeals Ordinance 1934.

I hold that this objection is well founded.

The case of *Ex parte Lewis,* Q.B.D. page 191, has been cited and goes to show that the provisions of the Appeals Ordinance 1934 are in accordance with English Law in this respect.

It may be proper that I should add that the Appellant is not left without a remedy. It is open to her to bring the matter to the notice of the Attorney-General, who, if in his opinion the course is justified, can follow the procedure adopted in *R. v. Smith* (Case 69 of 1908)[1] and *R. v. Buchanan*[2] (Case 18 of 1934) and file an information; and, thereupon, under s. 8 of the Indictable Offences Ordinance 1876, certify the Information to a Commissioner and thus cause a preliminary enquiry to be held.

GOVIND *ats.* RAMSARUP.

[Appellate Jurisdiction (Corrie, C.J.) November 11, 1942.]

Bills of Sale Ordinance, 1879[3]—*s. 7—Consideration for Bill of Sale shown as "cash advanced"—no receipt clause— conflict of evidence between parties to Bill as to consideration—whether oral evidence admissible to condradict statement in Bill of Sale—question of damages for wrongful seizure of chattels.*

Appellant was grantor of a Bill of Sale in which the consideration was expressed as "Cash advanced". There was no receipt clause in the Bill of Sale but Respondent, the grantee, gave evideence that the sum of £61 3s. od. had been paid by him to the grantor. Appellant, who was the defendant in an action on the Bill, denied receiving any money on the day of execution of the Bill. Appellant counter-claimed for damages in respect of chattels wrongfully seized and sold by the Respondent.

HELD.—Evidence may be given to contradict the statement in a Bill of Sale as to the consideration for which it was made.

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[1] *Unreported. See Editorial Note.*
[2] *Not reported as to this point. See Editorial Note.*
[3] *Cap.* 179.