1895.

IN THE MATTER OF THE PETITION OF INDARMAN.

against Kuar Suparandhuj Prasad Singh. The appellant wished to put this decree into execution, but, in order to do so, he had to produce before the Court which had to execute the decree a certificate granted under Act No. VII of 1889, and having the judgment-debt specified therein. In order to enable him to comply with the requirements of section 4 of this Act the appellant asked the District Judge of Aligarh to grant him a certificate in respect of the judgment-debt referred to in his application. The learned District Judge passed the following order:—"I cannot grant a certificate for partial collection. The applicant is at liberty to apply for certificate for all debts due to the deceased."

It does not appear that there are any other debts, and, even if there were, I know of no law which compels an applicant under section 6 of Act VII of 1889 to ask for a certificate in respect of more debts than he wishes to collect. There is nothing to prevent a grant of such a certificate as that asked for by the appellant.

I allow the appeal, and, setting aside the Judge's order dated the 28th February 1895, direct him to restore the application to the file of pending applications and dispose of it according to law with reference to the remarks made above. As there is no respondent I make no order as to costs.

Appeal decreed.

1895.
July 23.

Before Knox, Officiating Chief Justice and Mr. Justice Aikman.

RAM NARAIN SINGH (DEFENDANT) v. BABU SINGH (PLAINTIFF).*

Act No. X of 1873 *(Indian Oaths Act) s.* 8—*Oath purporting to affect a third person—Revocation of consent to be bound by a statement made on oath taken in a particular form.*

The plaintiff in a civil suit offered to be bound by the statement which the defendant might make on oath holding the arm of his son. The defendant accepted the proposal, took the required oath, and made a statement which had the effect of defeating the plaintiff's claim. When the defendant came into Court to take the oath the plaintiff attempted to revoke his proposal, but alleged no further reason than that he did not understand what he had intended and did not think the defendant would speak the truth.

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* First Appeal No. 61 of 1895, from an order of Syed Akbar Husain, Officiating District Judge of Jaunpur, dated the 14th May 1895.

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RAM NARAIN SINGH v. BABU SINGH.

Held that the form of oath above indicated ought not, having regard to s. 8 of Act No. X of 1873, to have been administered; but as it had been administered and was a form of oath especially binding upon Hindus, the statement made upon it should be accepted.

Held also that when one party to a suit offers to be bound by the oath of the other party, and such other party accepts the proposal, the party so offering to be bound should not be allowed to revoke his proposal except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. *Lekh Raj Singh* v. *Dulhma Kuar* (1) referred to.

The facts of this case are thus stated in the order of the lower appellate Court:—

"This was a suit for joint possession of certain immovable property. The defendant No. 1 (Ram Narain Singh) is the uncle and the defendant No. 2 (Darshan Singh) is the own brother of the plaintiff. The defendant No. 1 admitted the claim, but the defendant No. 2 contested it on the allegation that the property in suit was his self-acquired property. On the 11th of January 1895 the plaintiff offered to abide by any statement which the defendant No. 2 might make on oath by holding the arm of his son. To this defendant No. 2 consented, and the 14th of January 1895 was fixed for recording the statement of Ram Narain, who said that his boy was not then present in Court. On the 14th of January the plaintiff filed a petition revoking his agreement, on the plea that he had no more faith in Ram Narain Singh's honesty, and praying for adjournment in order to enable him to produce his evidence." * * * "The Court (Munsif of Jaunpur), however, held that the plaintiff was bound by his agreement and should be compelled to examine Ram Narain Singh, and in that view the learned Munsif examined Ram Narain Singh in the manner originally suggested by the plaintiff, and, on Ram Narain Singh's stating that the property was his own separate property, dismissed the suit."

The plaintiff appealed, and the lower appellate Court (Officiating District Judge of Jaunpur), holding that the plaintiff had a right to revoke his offer before the evidence was recorded, remanded the suit under s. 562 of Act No. XIV of 1882.

(1) I. L. R. 4, All. 302.

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From this order of remand the defendant Ram Narain Singh appealed to the High Court.

Babu *Durga Charan Banerji*, for the appellant.

Munshi *Gobind Prasad*, for the respondent.

KNOX, OFFICIATING C. J. and AIKMAN, J.—In the Court of first instance the plaintiff, now respondent, offered to abide by any statement which the appellant might make on oath to be taken in this form, namely, that holding the arm of his son he should state what he could say on the matters asked of him. The appellant consented. The case was adjourned to enable the appellant to bring his son, who was not then in Court. On the day to which the case stood adjourned, the appellant appeared with his son, and the respondent then applied to be released from the proposal he had made. The only reason he could give was that he had made the proposal without understanding what he intended, and adding that he was of opinion that the appellant would not tell the truth. The Court refused to entertain the application, and the defendant made the statement in the form proposed by the respondent. The result was that the Munsif dismissed the respondent's suit, the statement made by the appellant upon the oath proposed being fatal to the claim.

We have no hesitation in saying that the oath proposed should never have been administered. It was an oath understood and purporting to affect a third person, and such an oath under Act No. X of 1873 is not an oath which could under any circumstances be lawfully administered. Since, however, it was administered, and the statement made, we are of opinion that the evidence so given was rightly considered conclusive proof of the matters stated. The peculiar nature of the oath and the effect which is attached to it by Hindus are such that any statement made upon such an oath would not, we are quite sure, be lightly made. It is, however, contended that, as the respondent, before the oath was administered, asked to withdraw from his proposal, he should have been allowed to withdraw, and the evidence not taken in the manner proposed by him. In support of this contention we were referred to the case of *Lekh Raj Singh* v. *Dulhma Kuar*, (1). In that case one of the Judges,

(1) I. L. R. 4, All. 302.

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Oldfield, J., said that he was aware of no rule under which a submission to reference of this kind, *viz.*, a statement made under the peculiar circumstances set out in s. 8 of Act No. X of 1873, might not be revoked before the referee has given his evidence in pursuance of it. It appears to us that this is not the stand-point from which a proposal of the nature set out in s. 8 should be considered. When the proposal has been made by a party to a proceeding and the Court in pursuance of the proposal has asked the party required to take a particular form of oath whether he will do so, and the party so asked has agreed to take the oath, then, under such circumstances, no permission should be accorded to the party who made the proposal to withdraw from it, except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. No such grounds were shown in the present case and the evidence given was, in our opinion, evidence by which the respondent was bound.

The respondent appealed against the order of the Munsif, and the District Judge, allowing the appeal, passed an order of remand under s. 562 of the Court of Civil Procedure, directing the Court of first instance to try the suit on its merits. The present appeal is from that order. For the reasons set out above we are of opinion that the appeal in the Court below should not have succeeded. We set aside the order of remand and restore the decree of the first Court dismissing the suit. The appellant will have his costs in this Court.

Appeal decreed.

Before Mr. Justice Aikman.

1895.
July 26.

RAM NEWAZ AND OTHERS (DECREE-HOLDERS) *v.* RAM CHARAN AND ANOTHER (JUDGMENT-DEBTORS).

Civil Procedure Code, s. 230—Execution of decree—Limitation.

B. N. and others obtained a simple money decree against R. S. and another on the 24th of February 1881. On the 2nd of May 1892, previous applications for execution having been unsucessful, the decree-holders made an application for execution in consequence of which certain property of the judgment-debtors was

* Second Appeal No. 1065 of 1894, from a decree of Kunwar Mohan Lal, Subordinate Judge of Gorakhpur, dated the 2nd June 1894, reversing an order of Maulvi Inamul Haq, Munsif of Basti, dated the 21st September 1893.