

## APPELLATE CIVIL.

1909  
February 13]*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.*

CHEDI LAL (DEFENDANT) v. JWALA PRASAD (PLAINTIFF) \*

*Act No. IX of 1873—(Indian Oaths Act), sections 9, 11—Defendant taking oath proposed by plaintiff—Oath conclusive.*

The plaintiff in a suit stated that he would accept whatever evidence the defendant would give with Ganges water in his hand and on his honour. The defendant swore with Ganges water in his hand that the claim was false inasmuch as the amount due to the plaintiff had been set off against a large sum due to the defendant. *Held* that the suit must be dismissed, the defendant having sworn in the manner prescribed.

THE facts of this case are as follows:—

The plaintiff Jwala Prasad sued Chhedi Lal and others for a sum of money. During the course of the proceedings the plaintiff made a statement that he would accept whatever amount the defendant Chhedi Lal would admit as due by swearing on Ganges water and on his honour (*ba half gangajali wa imanso kah de*). The oath proposed was accepted by the defendant Chhedi Lal and he made a solemn affirmation with Ganges water in his hand and stated that the plaintiff's claim was totally false, that the plaintiff owed a larger sum of money to him than he owed the plaintiff and that the amount due by him had been set off against the amount due to him. The Subordinate Judge decreed the plaintiff's claim holding that the statement amounted to an admission and there was no proof of the set off claimed by the defendant. On appeal the District Judge, while holding that the Subordinate Judge was bound to dismiss the claim on the statement made by Chhedi Lal if the oath was taken as precisely prescribed for him, held that the oath was not taken in the manner proposed as Chhedi Lal took the oath only on Ganges water and not also on his honour. He accordingly dismissed Chhedi Lal's appeal. Chhedi Lal appealed to the High Court.

Munshi Gokul Prasad (for whom Dr. Tej Bahadur Sapru) for the appellant, contended that the oath was in the manner prescribed by the plaintiff, as he took the oath on Ganges water and if there was any irregularity it was cured by section 13 of the Oaths Act. The whole statement of Chhedi Lal should be

\* Second Appeal No. 1447 of 1907 from a decree of H. B. Holme, District Judge of Jhansi, dated the 5th July 1907, modifying a decree of Pramatha Nath Banerji, Subordinate Judge of Jhansi, dated 30th of April 1907.

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considered and not the portion only which detached from the rest is against him.

Babu *Sital Prasad Ghosh*, for the respondent, submitted that the deponent should have taken the oath with Ganges water in his hand and should have said that he made the statement on his honour, only swearing with Ganges water in his hand was not enough.

STANLEY, C. J., and BANERJI, J.—This appeal arises out of a suit brought by the plaintiff to recover money alleged to be due by the defendants 1 and 2 in respect of a contract for sale of intoxicating drugs taken by the defendants 1 and 2 and the plaintiff from the Collector for a term of three years. During the course of the hearing of the suit in the court of first instance the plaintiff stated that he would accept whatever evidence the defendant Chhedi Lal would give on Ganges water and on his honour and that the case might be decided accordingly. Chhedi Lal then took a solemn affirmation and taking Ganges water in his hands swore that nothing was due by him to the plaintiff and that the plaintiff's claim was wholly false. He then said that Rs. 826 has been due by him to the plaintiff, but that debt had been set off with plaintiff's consent against a considerably larger sum due by the plaintiff to him in respect of another contract. The learned Subordinate Judge decreed the plaintiff's claim as against Chhedi Lal holding that his evidence amounted to an admission that Rs. 826 were due by him to the plaintiff and that the alleged set off had not been proved. On appeal the learned District Judge held that upon the statement of the defendant, Chhedi Lal, the court of first instance was bound to dismiss the claim whether it believed Chhedi Lal's statement or not, provided that Chhedi Lal had taken the oath precisely as prescribed for him. Then the court, commenting upon the words by which Chhedi agreed to be bound, observed: "But the oath Chhedi Lal took was only on the Ganges water (*half Ganga jali*) and not also on his honour (*wa imanse*) and held that this was not as prescribed. This appears to us to be mere hair-splitting. Chhedi Lal on being sworn necessarily took an obligation upon him to give evidence on his honour and he gave his evidence having Ganges water in his hands. It was not possible for him

to take his honour in his hands as well as the Ganges water. In taking the oath which he took, he undertook on his honour to swear truthfully and having the Ganges water in his hands it appears to us that he fully satisfied all that his opponent required. He swore that nothing was due inasmuch as the debt had been set off; and in view of this evidence, which under section 11 of the Oaths Act the court was bound to accept as conclusive proof, the claim should have been dismissed. We accordingly allow the appeal, and setting aside the decree of the courts below, we dismiss the plaintiff's suit with costs including fees, in his court, on the higher scale.

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*Appeal decreed.*

## REVISIONAL CRIMINAL.

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February 15.

*Before Mr. Justice Aikman.*

EMPEROR v. UMER-UD-DIN \*

*Criminal Procedure Code (Act No. V of 1898), section 403 (1)—No complaint—  
Order of Acquittal—Whether bar to a new trial.*

A soldier from Burma sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held* that the previous acquittal was no bar to the trial of the present complaint inasmuch as the finding of the Magistrate amounted to this that there was no complaint before him, *Queen Empress v. Balwant*, (1) referred to.

Mr. C. Ross Alston, for the accused.

The Assistant Government Advocate, (for whom Mr. E. Malcomson) for the Crown.

AIKMAN, J.—In my opinion no sufficient ground exists for interfering in this case. Mohammad Farookh, a soldier serving with his regiment in Burma, sent an intimation to the District Magistrate of Bijnor that he had authorised his brother to bring a complaint against the applicant, Umer-ud-din, for enticing away his (Mohammad Farookh's) wife. This charge against the

\*Criminal Revision No. 842 of 1903, against an order of A. B. Florie, District Magistrate of Bijnor, dated the 19th November 1903.