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ULLAH.

have just disposed of, and the other was the question of the amount of the sale consideration which has not been decided by that court. We accordingly allow this appeal and set aside the decree of the lower appellate court, but before passing a final decree we call for a finding on the question of the consideration under order XLI, rule 25, of the Code of Civil Procedure.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Lindsay.

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Decem-
ber, 3.

SALIK RAM (PLAINTIFF) v. WALI AHMAD (DEFENDANT).*

*Act No. X of 1873 (Indian Oaths Act), sections 9 to 11—
Party agreeing to be bound by the statement of a particular witness—Circumstances in which party may be allowed to resile from agreement.*

A party who has agreed, in accordance with the provisions of the Indian Oaths Act, 1873, to be bound by the statement on oath of a particular person is not in all circumstances irrevocably bound by such agreement. If such party satisfies the court that there is good ground for retracting, the court would probably exercise a wise discretion in refusing to administer the oath, but when a party puts forward frivolous reasons for retracting, the court is justified in administering the oath notwithstanding the retraction. *Thoyi Ammal v. Subbaroya Mudali* (1), followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Munshi *Bhagwati Shankar*, for the applicant.

The opposite party was not represented.

* Civil Revision No. 141 of 1926
(1) (1899) I.L.R., 22 Mad., 284.

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LINDSAY, J. :—This is an application in revision against an order of a Judge of the Small Cause Court. It appears that the plaintiff applicant brought a suit on a bond against the defendant opposite party. On the 16th of April, 1926, both parties joined in making a petition to the Judge in which they stated that they were willing to be bound by the oath of one Nazir-ud-din. It was stated in the petition that Nazir-ud-din was present in court but for some reason or other, which does not appear, Nazir-ud-din was not examined on that day. The court ordered the 30th of April to be fixed for taking the evidence of Nazir-ud-din. The witness was not served for that date and was summoned again for the 14th of May. On that date Nazir-ud-din was examined. He deposed against the plaintiff and the suit was dismissed.

In this application for revision it is stated that prior to the date on which Nazir-ud-din was examined the plaintiff had expressed his desire to resile from the petition of the 16th of April, 1926. I find that on the 20th of April the plaintiff put in an application saying that he was no longer willing to be bound by the oath of Nazir-ud-din, as he had come to know that Nazir-ud-din was a close friend of the defendant. On this the Judge recorded an order saying that the plaintiff was not entitled to resile from the agreement to refer. Another application was presented by the plaintiff on the 8th of May in which he reiterated the same prayer. This too was refused by the court for the same reason.

I do not think it was correct for the court below to hold that the plaintiff could not resile from the agreement to refer. The law on the subject has been explained in a judgement of the Madras High Court

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to be found in *Thoyi Ammal v. Subbaroya Mudali* (1).
At pages 236 and 237 of the report their Lordships
observe:—

“ There is nothing in sections 9 to 11 of the Act (Indian Oaths Act) which allows a party to retract after the opponent has accepted the proposal. The Act gives the court a discretion to administer the oath or not, and if a party, after agreeing to an oath, satisfies the court that there is good ground for retracting, the court would probably exercise a wise discretion in refusing to administer the oath, but when a party puts forward frivolous reasons for retracting, we think the court is justified in administering the oath notwithstanding the retraction. This has been expressly decided in *Ram Narain Singh v. Babu Singh* (2) and *Abaji v. Bala* (3), and there is nothing in the case of *Vasudeva Shambog v. Naraina Pai* (4), to support the contrary view.”

Having regard to what is stated in the case just cited and also to what is stated in the report of the case of *Ram Narain Singh v. Babu Singh* (2), I think the proper course for the court below was to examine the grounds upon which the plaintiff desired to withdraw from the reference and to satisfy itself whether the reasons given for the desire to withdraw were satisfactory or not.

I accept this application, set aside the decree of the court below and send the case back for investigation on the lines indicated. If the Judge is satisfied that the plaintiff has good reasons for withdrawing from the reference he will refuse to administer the oath to the referee. On the other hand, if he is satisfied that the grounds set out by the plaintiff for withdrawal are not good grounds he will re-examine the referee and decide the case in accordance with his statement.

As the application is not opposed here I make no order as to costs.

Application allowed.

(1) (1895) I.L.R., 22 Mad., 234.

(2) (1895) I.L.R., 18 All., 46.

(3) (1896) I.L.R., 22 Bom., 281.

(4) (1879) I.L.R., 2 Mad., 356.