

1932

LALTA
PRASAD
v.
GAJADHAR
SHUKUL

All the contentions urged on behalf of the defendants appellants fail and accordingly I would dismiss this appeal with costs.

KISCH, J. :—I concur.

REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah

1933
January, 3

SIYA RAM DAS (PLAINTIFF) v. JAGANNATH AND
OTHERS (DEFENDANTS)*

Oaths Act (X of 1873), sections 9, 11—Agreement to abide by the oath of the other party to be taken in a particular form—Cannot resile from agreement—Contract Act (IX of 1872), sections 4, 5—Offer and acceptance—Revocation.

The plaintiff made an offer in court, through his vakil, that if *S*, one of the defendants, made a statement on oath with Ganges water in his hand, the suit might be disposed of in accordance with that statement. The defendants' vakil accepted the offer on behalf of the defendants, including *S*, and stated that the defendants agreed to abide by the statement which *S* would make after taking oath in the proposed manner. The next day was fixed for the appearance of *S* for the purpose, but before any statement had been made the plaintiff applied to withdraw from the offer which he had made. *Held*, that the plaintiff's offer having been accepted by the other party and the acceptance having been communicated to the plaintiff, he could not thereafter revoke the offer; the agreement was a binding one, and the statement made by *S* after taking oath in the proposed manner was conclusive under section 11 of the Oaths Act.

Mr. *L. M. Roy*, for the applicant.

Mr. *I. B. Banerji*, for the opposite parties.

NIAMAT-ULLAH, J. :—This is an application in revision directed against the decree passed by the Judge of small cause court, Cawnpore, dismissing the applicant's suit for recovery of Rs.153 against the three defendants.

* Civil Revision No. 445 of 1932.

The case was fixed for the 31st of March, 1932. It was stated on behalf of the plaintiff by his vakil that if the defendant Sheo Charan stated on oath with "Ganga jali" in his hand, the suit might be disposed of in accordance with his evidence. The defendants' vakil accepted the offer stating that the defendants (including Sheo Charan) agreed to abide by the evidence of Sheo Charan. The defendants' vakil prayed for one day's adjournment to enable him to produce Sheo Charan. Accordingly the case was adjourned to the 1st of April, 1932, when the plaintiff made an application attempting to resile from the offer to abide by the oath of Sheo Charan. The lower court, however, administered the particular kind of oath which the plaintiff had proposed on the previous day; and Sheo Charan's evidence being against the truth of the plaintiff's allegation, his suit was dismissed.

It is argued on behalf of the plaintiff that the learned Judge was in error in administering the special oath to Sheo Charan and deciding the suit in accordance with his evidence, in view of the revocation of his offer by the plaintiff. It is contended that there is nothing in law to prevent a party from revoking an offer to abide by the oath of another before the oath is actually taken. No authority has been quoted in support of this contention, which is not, in my opinion, sound. Section 8 of the Indian Oaths Act (Act X of 1873) empowers a court to administer an oath of a special kind to a person willing to take it. Section 9 provides that if any party offers to be bound by any such oath as is mentioned in section 8, if such oath is made by the other party, the court may ask such party whether or not he will make the oath. Section 10 empowers the court to administer such oath if the party to whom the offer is made signifies his willingness to make the oath. Section 11 declares that the evidence so given shall be conclusive proof of the matter stated. There can be no doubt that the offer of the plaintiff, made on the 31st of March, 1932, was forthwith

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accepted on behalf of the defendants, including the defendant Sheo Charan who was to take an oath with Ganges water in his hand. No question was raised in the court below as regards the authority of the vakils on both sides to bind their respective clients, nor has any such question been raised before me. I have, therefore, to decide the case on the assumption that the plaintiff's wakil had the authority to offer to abide by the evidence of Sheo Charan, in case he made a statement with Ganges water in his hand, and that Sheo Charan's wakil had an authority to accept that offer on his behalf. There was thus a completed agreement on the 31st of March, 1932, under which the controversy in the suit was to be settled in accordance with the evidence of Sheo Charan. It was argued by the learned counsel for the applicant that the suit could not be deemed to have been adjusted till the oath was actually made. The agreement between the parties arrived at on the 31st of March, 1932, has to be considered like any other agreement in which an offer is made on one side and acceptance on the other. Both the parties being represented by duly authorized agents, the offer made on behalf of the plaintiff was accepted there and then on behalf of the defendants, and the acceptance was complete immediately after the offer was made. It was forthwith communicated to the plaintiff's agent. The plaintiff could not, therefore, revoke his offer on the next day. Section 5 of the Indian Contract Act clearly provides that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards. The communication of an acceptance is complete as against the proposer when it is put in a course of transmission to him so as to be out of the power of the acceptor (section 4). In the case before me, communication of the acceptance was complete on the 31st of March, 1932, as already mentioned; and the plaintiff's revocation next day could not affect the binding character of the agreement to have the suit decided in accordance with the evidence of the defendant Sheo

Charan. In this view the learned Judge of the court below was right in holding the plaintiff to his offer to abide by the oath of the defendant Sheo Charan. The latter swore in the manner proposed that the plaintiff's claim was false. Such evidence was rightly treated by the lower court as conclusive.

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This revision fails and is dismissed with costs.

FULL BENCH

*Before Sir Lal Gopal Mukerji, Acting Chief Justice,
Mr. Justice Young, and Mr. Justice King*

KAPOOR CHAND AND ANOTHER v. SURAJ PRASAD*

1933

January, 4

Criminal Procedure Code, sections 145(1), 537—Omission of Magistrate to record the fact of or the grounds for his being satisfied that a dispute likely to cause a breach of peace exists—Subsequent proceedings not vitiated unless it has occasioned a failure of justice—Irregularity—Jurisdiction—Criminal Procedure Code, section 148(3)—Costs awarded by Magistrate by a subsequent order passed ex parte—Validity—Criminal Procedure Code, sections 423(d) and 439—Costs of revision proceedings—Authority to award such costs—“Consequential or incidental order”.

An application to take proceedings under section 145 of the Criminal Procedure Code was made to a Magistrate, who took the applicant's statement and called for a police report. On receipt of the police report he, being occupied with other work, transferred the case for disposal to another Magistrate, with the remark that judging from the police report there appeared to be some basis for the complaint. The Magistrate, to whom the case now came, perused the record and directed notice to issue to the opposite party according to law. Written statements were filed and evidence was recorded in due course, and the Magistrate ultimately passed an order directing the applicant to be put in possession of the disputed property and prohibiting the opposite party from

* Criminal Revision No. 140 of 1932, from an order of Raja Ram, First Additional Sessions Judge of Cawnpore, dated the 16th of December, 1931.