

*Before Justice Sir Cecil Walsh and Mr. Justice Banerji.*  
 DEORAJ MISRA (PLAINTIFF) *v.* ABHAI RAJI (DEFENDANT).\*

1927  
 April, 11.

*Act No. X of 1873 (Indian Oaths Act), section 11—Suit against a minor—Agreement by guardian that the suit should be decided according to the statement of a referee.*

In a suit for restitution of conjugal rights brought against a minor under the guardianship of her sister, the parties entered into an agreement that the case should be decided according to the statement made by a certain pleader. The court accepted the agreement and examined the pleader, and decided the suit, on his statement, in favour of the plaintiff.

*Held*, that the decision so arrived at was a perfectly valid decision and binding on the minor defendant. *Parbhu Dayal v. Jamil Ahmad* (1), and *Wasi-uz-zaman Khan v. Faiza Bibi* (2), referred to.

THIS was an appeal by the plaintiff under the following circumstances:—

A suit was instituted by the appellant against Musammât Abhai Raji, a minor, who was represented by her guardian Musammât Umrai in the courts below, for restitution of conjugal rights. The trial court framed four issues. After some evidence had been recorded, the parties presented an application signed by their pleaders to the effect that parties would be bound by the statement of Munshi Balgobind Prasad, pleader. On this application being presented, the court accepted the prayer of the parties, and, on the 21st of December, 1925, Munshi Balgobind Prasad was examined and his statement recorded. The learned Munsif thereupon decided the issues in the case according to the statement of Munshi Balgobind, the result of which was that the

\* First Appeal No. 183 of 1926, from an order of Kali Das Banerji, Additional Subordinate Judge of Jaunpur, dated the 12th of July, 1926.

(1) (1921) I.L.R., 44 All., 117. (2) (1915) I.L.R., 38 All., 131.

plaintiff's suit was decreed. Musammat Abhai Raji went up in appeal before the learned Additional Subordinate Judge of Jaunpur. He set aside the judgement and decree of the lower court and sent the case back to the Munsif for re-trial on the merits, holding that Musammat Abhai Raji was not bound by the agreement entered into by her guardian and sister Musammat Umrai, defendant No. 2. The attention of the learned Judge was called to the case of *Parbhu Dayal v. Jamil Ahmad* (1). He held that the agreement would be a sort of compromise, and, therefore, its validity required sanction of the court, and as no such sanction had been given by the Munsif in this case, it was not binding upon the defendant. The plaintiff appealed.

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Mr. A. Sanyal, for the appellant.

Munshi Girdhari Lal Agarwala, for the respondent.

The judgement of the Court (WALSH and BANERJI, JJ.), after stating the facts as above, thus continued:—

We are of opinion that the learned Judge is clearly wrong and misconstrued the observations of the learned Judges who decided the case of *Parbhu Dayal v. Jamil Ahmad* (1). We are of opinion that the minor was bound by the statement made by Munshi Balgobind Prasad in view of the clear provision of section 11 of the Indian Oaths Act, 1873.

The learned vakil appearing for the respondent has argued that the petition, which was presented to the court, having been signed only by the pleaders and not by the parties, the defendant was not bound by the undertaking, as under the vakalatnama special power was not given to refer the matter. We are of

(1) (1921) I.L.R., 44 All., 117.

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opinion that there is no force in this contention. See the case of *Wasi-uz-zaman Khan v. Faiza Bibi* (1). It was also submitted by the learned vakil for the respondent that the provisions of sections 9 and 10 of the Indian Oaths Act, 1873, could only apply, by reason of section 8, to reference to a party to the case or a witness. We are unable to follow that argument, as in our opinion when Munshi Balgobind Prasad gave his statement before the court he was a witness who had been specially referred to by the parties.

We, therefore, set aside the order of the lower appellate court and restore that of the court of first instance with costs.

*Order set aside*

## REVISIONAL CRIMINAL.

*Before Justice Sir Cecil Walsh and Mr. Justice Banerji.*

EMPEROR v. HIMAYATULLAH.\*

1927  
April, 14.

*Criminal Procedure Code, section 109—Interpretation of—*  
“ Within the local limits of such Magistrate’s jurisdiction ”—“ Satisfactory account of himself.”

*Held*, on a construction of section 109 of the Code of Criminal Procedure, that (1) the words “within the local limits of such Magistrate’s jurisdiction ” as used in section 109 (a) are part of the predicate “to conceal his presence.” *Emperor v. Bhairon* (2), followed.

(2) A person living within the territorial jurisdiction of a Magistrate trying the case, who takes steps to conceal that he is there, by removing himself from one part to another, may be within the section.

\* Criminal Revision No. 718 of 1926, from an order of A. G. P. Pullan, Sessions Judge of Moradabad, dated the 16th of September, 1926.

(1) (1915) I.L.R., 38 All., 181.

(2) (1926) I.L.R., 49 All., 240.