

recognized a marriage settlement as an exception to the rule against a stranger to the contract enforcing it. The defendant's argument on this point must therefore fail.

The result therefore is that the appellant has failed to make out any ground for interference with the decision of the lower appellate Court. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1936

NAWAB  
SAIYED  
SAJJAD ALI  
KHAN  
v.  
MUSAMMAT  
BADSHAH  
BEGAM  
*alias*  
ABIDA  
BEGAM

### APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge  
and Mr. Justice Ziaul Hasan*

1936  
August 18

BABU BISHUNATH SINGH (DEFENDANT-APPELLANT) v.  
LALA JAMUNA DAS (PLAINTIFF-RESPONDENT)\*

*Indian Oaths Act (X of 1873), sections 8 and 11—Parties to suit  
agreeing to abide by statement of a witness also party to suit  
—Agreement, whether binding.*

If the parties to a suit agree that they will abide by the statement of a witness, including one who is a party to the suit, and leave the decision of all points including costs arising in the case to be according to his statement, the agreement, even apart from the Indian Oaths Act, is binding upon the parties and they cannot be allowed to resile from it.

Mr. B. K. Dhaon, for the appellant.

Messrs. Hyder Husain, S. C. Das, and P. N. Chaudhry,  
for the respondent.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is a defendant's appeal against the decree of the learned Subordinate Judge of Sultanpur decreeing the plaintiff's claim. It arises out of a suit for recovery of money due on foot of a promissory note, exhibit 1, dated the 16th of January, 1931, executed by the defendant in favour of the plaintiff.

The plaintiff's case was that the entire consideration of the promissory note had been paid by him in cash

\*First Civil Appeal No. 119 of 1934, against the decree of Pandit Kishan Lal Kaul, Subordinate Judge of Sultanpur, dated the 3rd of September, 1934.

1936

BABU  
BISHUNATH  
SINGH  
v.  
LALA  
JAMUNA  
DAS

to the defendant. The defendant denied this and pleaded that the promissory note was altogether without consideration. It was also pleaded that 2 per cent. per mensem, the rate of interest provided for in the promissory note, was excessive. On these pleadings the Subordinate Judge framed the following issues:

*Srivastava,  
C. J. and  
Ziaul Hasan,  
J.*

1. Is the pronote sued upon without consideration as alleged by the defendant?

2. Is interest claimed excessive. If so, at what rate is the plaintiff entitled to get interest?

The defendant had summoned the plaintiff as a witness on his behalf and had required him to produce his account books. On the date fixed for final disposal after the issues had been framed the learned Subordinate Judge recorded a proceeding, which might be reproduced verbatim, as follows:

"The defendant proposes to abide by the plaintiff's statement in the witness box.

(Sd.) K. KAUL,  
3-9-1934.

JAMUNA DASS, *plaintiff, on S. A.*—

I myself paid Rs.5,500 in cash to the defendant as consideration of the pronote sued upon at the time of its execution.

(Sd.) K. KAUL,  
3-9-1934.

Defendant closes his evidence.

(Sd.) K. KAUL,  
3-9-1934.

Defendant now requests that payment by instalments may be ordered.

(Sd.) K. KAUL,  
3-9-1934.

Arguments heard.

(Sd.) K. KAUL,  
3-9-1934.

Judgment pronounced.

(Sd.) K. KAUL,  
3-9-1934,"

1936

BABU  
BISHUNATH  
SINGH  
v.  
LALA  
JAMUNA  
DAS

Relying on the sworn testimony of the plaintiff he decided the first issue against the defendant. On the second issue he found that the interest was not excessive. As a result of these findings he decreed the plaintiff's claim in full.

*Srinivas'amu,  
C. J. and  
Ziaul Haq,  
J.*

It is contended on behalf of the appellant that the defendant did not voluntarily agree to abide by the plaintiff's statement and that in any case the said statement did not fall within the provisions of section 11 of the Indian Oaths Act and was not otherwise binding on the defendant. In support of the contention that the statement was not a voluntary one an affidavit has been filed by the defendant in which it is stated that after the issues had been framed the learned Subordinate Judge asked the appellant not to prolong the case and to abide by the statement of the plaintiff in the witness box to which the defendant replied "*jo hukum huzur ka ho*". Even if this statement is to be accepted at its face value it does not prove that the defendant was not a free agent in agreeing to abide by the statement of the plaintiff. The defendant was represented by a Counsel from Lucknow and no protest was made either by the Counsel or by his client in the lower Court. Further it is to be noted that after the statement of the plaintiff had been recorded in pursuance of the defendant's statement the defendant closed his evidence and made no attempt to examine any other witness. This conduct of the defendant and his Counsel shows that the contention now put forward is only an afterthought. In the circumstances we can see no reason to question the correctness of the proceeding as recorded by the learned Subordinate Judge or to hold that the statement made by the defendant was not voluntary.

Next as regards the application of section 11 of the Indian Oaths Act. It is no doubt true that the defen-

1936

BABU  
BISHUNATH  
SINGH  
v.  
LALA  
JAMUNA  
DAS

*Srinivasa,  
C. J. and  
Ziaul Hasan,  
J.*

dant did not propose to abide by the plaintiff's statement made in the form of any special oath such as is referred to in section 8 of the Act. We are therefore inclined to agree with the appellant's contention that the case is not one governed by section 11 of the Indian Oaths Act, but even apart from it we are clearly of opinion that the agreement made by the defendant is binding on him and that he cannot be allowed to resile from it. The matter has been considered at great length by a Full Bench of the Allahabad High Court in *Musammatt Akbari v. Rahmat Husain* (1). One of the questions referred to the Full Bench was:

Can the parties to a suit agree apart from the Indian Oaths Act that they will abide by the statement of a witness, including one who is a party to the suit, and can they leave the decision of all points including costs arising in the case to be according to his statement?

All the three learned Judges who formed the Full Bench unanimously answered this question in the affirmative, though their process of reasoning was not the same. We have no hesitation in agreeing with the conclusion of the Full Bench. Whether the provisions of Order XXIII, rule 3 of the Code of Civil Procedure can be made applicable in such a case or not we have no doubt that the parties are bound by their agreement. In *Indar Prasad v. Jagmohan Das* (2), the defendant made a statement that he shall accept as true and correct the list given by the plaintiff written with his own hand of the village collections, etc. The plaintiff agreed to do so, and in pursuance of it filed certain lists in his handwriting. Their Lordships of the Judicial Committee referred to these lists as conclusive "as by the agreement of the defendant they were to be". We are accordingly of opinion that the defendant cannot be allowed to repudiate the agreement made by him to abide by the plaintiff's statement in the witness box.

(1) (1933) A.I.R., All., 861.

(2) (1927) I.L.R., 2 Luck., 316;  
L.R., 54 I.A., 301.

It was also argued that the learned Subordinate Judge had refused the defendant to put any further questions to the plaintiff or to cross-examine him as a hostile witness. There is nothing on the record to show this, but even if it were so, the defendant having agreed to abide by the plaintiff's statement in respect of the question at issue the statement recorded by the learned Subordinate Judge fully covered the matter in controversy. Moreover a party cannot be allowed to cross-examine his own witness and merely because the statement made by the plaintiff on the simple question of fact whether the consideration had been paid or not was against the defendant it could be no ground for his being allowed to cross-examine the plaintiff.

For the above reasons we are of opinion that the statement made by the plaintiff in the circumstances stated above is binding on the defendant and is decisive of the claim. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CIVIL

*Before Mr. Justice Ziaul Hasan*

LALA RAMJI LAL (DEFENDANT-APPELLANT) *v.* THE MUNICIPAL BOARD, LUCKNOW (PLAINTIFF-RESPONDENT)\*

1936  
*August 20*

*United Provinces Municipalities Act (II of 1916), sections 117, 166, 167 and 169—Transfer of Property Act (IV of 1882), sections 100 and 3—Sale in execution of a house liable to Municipal taxes—Municipal taxes in arrears for a period prior to sale—Auction-purchaser, whether can be deemed to have constructive notice of such arrears—Arrears of tax prior to sale, liability of auction-purchaser for.*

A decree-holder when he wants to bring any property to sale in execution of his decree is required by law to make

\*Second Civil Appeal No. 123 of 1935, against the decree of Babu Bhagwati Prasad, Subordinate Judge of Lucknow, dated the 25th of January, 1935, upholding the decree of Pandit Hari Shankar Chaturvedi, Munsif of Lucknow, dated the 10th of October, 1934.

1936  
BABU  
BISHUNATH  
SINGH  
*v.*  
LALA  
JAMUNA  
DAS

*Srivastava,  
C. J. and  
Ziaul Hasan,  
J.*