

desirable that there should be a thorough enquiry and that persons of standing in the community should be examined. We reverse the decree of the lower appellate Court and remand the case for a fresh decision. Costs to follow final decision.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

ABAJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* BALA AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1896.
FAKIRGAUDA
v.
GANGL.

1896.

July 8.

Act (X of 1873), Sec. 9—Offer by one party to be bound by oath of other if taken in a certain form—Acceptance of the offer—Subsequent retraction of the offer—Administering of the oath discretionary with the Court.

The plaintiff offered, under section 9 of the Indian Oaths Act (X of 1873), to be bound by the oath or affirmation of the defendant in a prescribed form upon a certain point. The defendant accepted the offer and took the oath.

Held, that the plaintiff could not retract his offer to be bound by the oath.

SECOND appeal from the decision of S. Tagore, District Judge of Sátára, confirming the decree of Ráo Sáheb K. H. Kirkire, Subordinate Judge of Khatáv.

The plaintiff claimed as the adopted son of one Gopal (deceased) to recover certain property which he alleged was in the hands of his adoptive mother (defendant No. 2), who in collusion with her son-in-law (defendant No. 1) had wrongfully taken possession of it.

The defendants denied the plaintiff's adoption.

At the hearing the plaintiff offered, under section 9 of the Indian Oaths Act (X of 1873), to be bound by the oath of the second defendant upon the point of his adoption if she took it before a certain idol in a certain form. She agreed to do so and the Court appointed a commissioner to administer the oath.

The plaintiff subsequently retracted his offer and applied that the case might be disposed of by the Court on its merits. The Judge, however, rejected his application, and the commissioner administered the oath to the second defendant as proposed originally by the plaintiff.

*Second Appeal, No. 891 of 1895.

1896.

ABAJI

v.

BALA.

The Subordinate Judge then decided the suit in defendants' favour and rejected the claim.

On appeal by the plaintiff the Judge confirmed the decree, holding that it was not competent for the plaintiff to revoke his offer under the circumstances of the case, and that the Subordinate Judge was fully justified in holding him bound by it after it had been accepted and acted upon.

The plaintiff preferred a second appeal.

Balaji A. Bhagrat for the appellant (plaintiff):—It is true that the Oaths Act (X of 1873) makes no provision for retracting such a proposal; still section 12 of the Act provides that if a man refuses to make the oath, the Court may presume against him. A similar presumption may be drawn in the case of a man retracting the proposal. But the Act does not lay down that, if a man makes the proposal, he is finally bound by it and cannot afterwards retract. The provisions of the Act are not peremptory; they are merely permissive.

Vasudev B. Joglekar for the respondents (defendants):—The plaintiff could not retract, inasmuch as defendant No. 2 was ready and willing to take the oath proposed by him. The lower Courts were justified in not allowing him to retract, because the reasons assigned by him for doing so were frivolous and vexatious.

FARRAN, C. J.:—The question in this case is, whether the Subordinate Judge rightly decided this suit upon the oath of the second defendant, that she had not adopted the plaintiff. The plaintiff offered, under section 9 of the Indian Oaths Act, 1873, to be bound by the oath or affirmation upon that point of the second defendant, if she took it before a certain idol* in a prescribed form. The second defendant agreed to take the oath before the idol in the prescribed manner, and subsequently did so in the presence of a commissioner appointed by the Court. The Court thereupon treated the oath of the second defendant as conclusive proof of the non-adoption of the plaintiff by the second defendant and dismissed the suit.

The plaintiff appealed on the ground that he had retracted his offer before the oath was taken by the second defendant, though

... she had agreed to take it, and that, therefore, he was not bound by the oath. The Act, however, makes no exception of the case in which a party who makes such an offer which his adversary accepts subsequently retracts it. What it does is to make the administering of the oath or the appointment of a commissioner to administer it discretionary with the Court. If a party after making such an offer satisfies the Court that he has good grounds for retracting it, the Court would probably exercise a wise discretion in refusing to administer the oath; but when (as in this case) the party puts forward frivolous reasons for his retraction, the Court is, we think, justified in administering the oath notwithstanding the retraction. We confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

KASHINATH KESHAV JOSHI (ORIGINAL PLAINTIFF No. 1), APPELLANT,
v. GANGABAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Municipality—District Municipal Acts (Bombay Act II of 1884), Sec. 48 (1), and Bombay Act VI of 1873, Sec. 86(2)—Purchase from mortgagee by Municipality—Suit by mortgagor to recover possession—Ejectment—Limitation—Notice.

A mortgagee (defendant No. 1) refused to give up part of the mortgaged land when the mortgage was paid off in 1881. He remained in possession and in 1888

*Second Appeal, No. 872 of 1896.

(1) Section 48 of the District Municipal Act Amendment Act (Bombay Act II of 1884) :—

48. No action shall be commenced against any Municipality, or against any officer or servant of a Municipality, or any person acting under the orders of a Municipality, for anything done, or purporting to have been done, in pursuance of this Act, or of the principal Act, without giving to such Municipality, officer, servant or person one month's previous notice in writing of the intended action and of the cause thereof, nor after three months from the date of the act complained of;

and in the case of any such action for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender.

(2) Section 86 of Bombay Act VI of 1873 :—

86. No action shall be brought against the Municipality, or any of their officers, or any person acting under their direction, for anything done or intended to be done

1896.

ABAJI

v.

BALAJI.

1896.

July 1.