

Present : Lascelles C.J. and Wood Renton J.

May 19, 1911

MUTTUSAMY v. MUTTUKARPEN.

85—D. C. Badulla, 2,326.

Decisory oath—Party challenging cannot withdraw from his engagement.

A litigant who had challenged his adversary to take the decisory oath, and who has agreed to abide the result of the oath, cannot retract from his undertaking and escape from the obligation to abide by the oath.

THE facts appear sufficiently from the judgment.

Tambyah, for the plaintiff, appellant, referred to *Lekhraj Singh v. Duhlma Kuar*,² *Segu Mohamadu v. Kadiravail Cangany*.³

Cooray, for the defendant (not called upon).

May 19, 1911. LASCELLES C.J.—

I do not think that it is necessary to call on the other side. In this case the only question raised is whether the plaintiff, who has challenged the defendant, and has agreed to abide the result of an oath taken by him with certain formalities, is able to retract from his undertaking and to escape from the obligation to abide by the defendant's oath. Now, it is obvious to me, that, if we concede the argument which has been addressed to us, we open the door wide for avoiding the conditions of the provisions of the Oaths Ordinance, and personally, unless some express authority is cited, I am not prepared to hold that a person who has consented to abide the result of an oath is able to withdraw from his undertaking. I think that the judgment of the District Judge is right, and that the appeal should be dismissed with costs.

¹ 3 *Bal.* 200.

² (1880) *I. L. R.* 4 *All.* 302.

³ (1908) *11 N. L. R.* 277, at page 281.

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WOOD RENTON J.—

I am of the same opinion, and, as the point is an interesting one, I will add a few words. I do not think that, apart from any statutory provisions, it would be open to a litigant in the position of the appellant to withdraw from a solemn undertaking of this kind into which he has entered in a Court of Justice. If that view is correct, then we must turn to the provisions of the Oaths Ordinance and see whether they confer upon him any privilege in the matter. There is nothing in the Oaths Ordinance which deals with the case of a litigant who challenges another to take the oath. There is, however, a provision in section 9, sub-section (4), in favour of the person challenged, and one can easily see why such a provision should have been enacted. It would be practically impossible to compel any person to fulfil an undertaking to take an oath. It does not result from that fact that a litigant, who challenges his adversary to take the oath, should be allowed to withdraw from his engagement, and the introduction in the Oaths Ordinance of a special exception in favour of the party challenged seems to me to tell against the existence of such a privilege. I agree that the appeal should be dismissed with costs.

Appeal dismissed.