

Present : Shaw J.

1917.

ELIZA v. JOKINO.

319—P.-C. Negombo, 26,640.

Maintenance proceedings—Oaths Ordinance applicable—Right of party to withdraw from undertaking to be bound by oath.

Maintenance proceedings are in the nature of civil proceedings, and therefore the provisions of section 9 of the Oaths Ordinance applies to such proceedings.

A person who has challenged his opponent to take an oath under the section cannot withdraw from his undertaking if the opponent consents to take the oath.

THE facts are set out in the judgment.

Ascrappa, for the appellant.

May 9, 1917. SHAW J.—

This is an appeal from a maintenance order made by the Magistrate, directing the appellant to pay Rs. 3 a month for the maintenance of an illegitimate child. During the course of the proceedings the applicant challenged the present appellant to take the oath at a temple. The Magistrate appointed the oath to be taken at the Kussela temple at a certain time, the oath to be administered by the Court Mudaliyar, with a further direction that if the oath was taken the application should be dismissed, and that if not taken it should be allowed. The parties went to the temple, but in consequence of the absence of the priest the oath could not be administered at the time appointed, and the Magistrate altered his order by directing that the oath should be taken at another temple. Before the oath was taken by the present appellant, the applicant sought to withdraw the consent that she had given and the challenge which the appellant was prepared to accept. The Magistrate permitted her to do so, and resumed the hearing of the case, with the result that an order was made. Maintenance

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proceedings are in the nature of civil proceedings, and, therefore, section 9 of the Act of 1895 applies, and the provisions therein contained as to the effect of the challenge to take an oath applied in this case. It has been held in several cases, of which I will refer to *Muttusamy s. Muttukarpen*¹ and *Palaniappa v. Sinnathamby*,² that a person who has challenged his opponent to take an oath under the section cannot withdraw from his undertaking if the opponent consents to take the oath.

Under those circumstances I set aside the order of the Magistrate, and remit the case to him for the purpose of the oath, which the appellant had agreed to take, being administered to him at the temple directed by the Magistrate.

Set aside.

