

1914  
 HANNAH  
 v.  
 JUGGERNATH  
 & Co.

books. Costs may, if necessary, be taxed as between attorney and client.

STEPHEN J. I agree.

*Appeals and Cross-objections dismissed.*

Attorney for G. S. Hannah and C. L. Smallwood:  
*M. M. Chatterjee.*

Attorneys for E. C. H. Cresswell and H. A. Smyth:  
*Leslie & Hinds.*

Attorney for G. Watson: *G. G. Pearse.*

Attorney for Juggernath & Co: *S. C. Mookerjee.*

J. C.

---

## APPELLATE CIVIL.

---

*Before Holmwood and Chapman JJ.*

1914

AMJADENNESSA BIBI

v.

May 28.

RAHIM BUKSH SHIKDAR.

*Undue Influence—Contract—Illegal composition of non-compoundable offence  
 —Stifling prosecution—Suit for refund—Contract Act (IX of 1872)  
 ss. 16, 19.*

No refund of money or return of security, given under agreement not to prosecute a criminal case, will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence.

*Jones v. Merionethshire Building Society* (1) referred to.

\*Appeal from appellate Decree No. 97 of 1912, against the decree of Debendra Mohan Sen, Subordinate Judge of Tipperah, dated May 30, 1911, confirming the decree of Bipin Behari Ghosh, Munsif of Chandpur, dated April 28, 1910.

(1) [1892] 1 Ch. 173, 186.

SECOND Appeal by Amjadennessa Bibi and others, the plaintiffs.

This appeal arises out of a suit for recovery of Rs. 680 alleged to have been paid by the plaintiffs to the defendants as compensation for compromising a criminal case. The learned Munsif who tried the suit dismissed it on the (among other) ground, that the consideration for the contract was unlawful and opposed to public policy.

The plaintiffs, then, appealed to the Subordinate Judge who, agreeing with the Munsif, disallowed the appeal. Hence this second appeal.

*Babu Rajendra Chandra Guha*, for the appellants.

*Babu Satish Chandra Ghose*, for the respondents.

HOLMWOOD AND CHAPMAN JJ. The only point raised, in this second appeal, is that the agreement really having been *in invito*, a refund suit can be maintained in Court. We have only to point out that neither the pleadings nor any issue, nor any finding of the lower Courts, nor apparently any evidence appears in support of the question of fact that there was any pressure upon the plaintiff to pay this money in consideration for not being prosecuted. The so-called admission of the defendants, in their written statement, goes directly to the contrary.

It is urged that in every case the fear of punishment is an undue influence and that if the defendant accepts money to screen the plaintiff from punishment he thereby exerts this undue influence. Of the exceptions given by Pollock, the one on which alone reliance is placed is "unless the agreement was made under such circumstances as between the parties that if otherwise lawful it would be voidable at the option of the party seeking relief". It is obviously not voidable under section 19 inasmuch as there was

1914

AMJADEN-  
NESSA BIBI  
v.  
RAHIM  
BUKSH  
SHIKDAR.

1914  
 AMJADEN-  
 NESSA BIBI  
 v.  
 RAHIM  
 BUKSH  
 SHIKDAR.

no coercion whatever, and we are unwilling to read into section 16 a fictitious use of the dominant position of the defendant. The law says that not only the defendant must have a dominant position but he must use it, and this has been carefully guarded in all the cases in England to a number of which we have been rather unnecessarily referred. The rule derivable from these cases can be thus stated: If money or security be given under an agreement not to prosecute under such circumstances that there has been pressure or undue influence, the transaction will be set aside and the money or security ordered to be returned. There is one rather doubtful passage in the judgment of Lord Justice Bowen in the case of *Jones v. Merionethshire Building Society* (1), which might be taken to extend the principle further; but the learned Judge expressed himself with extreme hesitation and abstained from expressing any opinion on it. Were we to extend the principle in the way we are asked to do by the learned vakil for the appellant, it is perfectly clear that in every case of illegal composition of a non-compoundable criminal offence a refund can be demanded at law. We have no desire and no intention to extend the law to any such result. It has been held that section 65 does not apply to a case of this kind.

The appeal is, therefore, dismissed with costs.

S. K. B.

*Appeal dismissed.*

(1) [1892] 1 Ch. 173, 186.