

1930

DEORAJO
KUBER
v.
JADUNANDAN
RAI.

tion and therefore the requirements of section 73 had not in that case been complied with. The application before us is of an entirely different nature as discussed above. Even if there were any slight defect or irregularity in the form of the application, that would not necessarily in every case make the application a void one.

We are also convinced that substantial justice has been done in this case and even if we had not taken the view that the court below was right we would have been very loath to interfere in revision.

The next ground urged is that the decree obtained by the respondent was a collusive decree and the court below should have gone into that question. We are of opinion that it would not have been within the power of the executing court to inquire into this allegation. The respondent holds a decree which has not been set aside, and in trying to see whether he is entitled to a rateable distribution the court could not have started an inquiry into the alleged collusion between the parties to it. The respondent is a holder of the decree the execution of which has been transferred to the court below and that court would not be competent to inquire into the validity of the decree on any such ground.

The application is accordingly dismissed with costs.

Before Mr. Justice Banerji.

NABIDAD KHAN (PLAINTIFF) v. ABDUL RAHMAN (DEFENDANT)*

1930
July, 4.

Contract Act (IX of 1872), section 23—Public Policy—Stifling a prosecution—Bond executed for the consideration of the withdrawal of a prosecution—Promisor having no personal interest in the matter—Agreement void.

An agreement, the object and consideration of which is the withdrawal of the prosecution of a third party, the pro-

misor not being personally liable or personally interested in the matter, is void under section 23 of the Contract Act. Where a bond was executed for the sole consideration that a prosecution against the promisor's brother's son-in-law for misappropriation should be withdrawn, it was *held* accordingly that the bond was void.

Mr. *B. Malik*, for the applicant.

Mr. *Shah Zamir Alam*, for the opposite party.

BANERJI, J. :—This is a plaintiff's application in revision against the judgment and decree of the Judge of the Small Cause Court at Benares dismissing his suit against the opposite party.

The plaintiff claims Rs. 83-14-0, due on a bond of the 29th of June, 1927, executed by the opposite party in favour of the plaintiff. The bond recites payment of cash as consideration. The real facts are that not a penny was paid by the plaintiff to the defendant. What happened was as follows: One Muhammad Bakhsh *alias* Mahngo, who is the defendant's brother's son-in-law, took some gold to make some ornaments for the plaintiff. Muhammad Bakhsh prepared the ornaments but they were not satisfactory and he took back the ornaments to prepare others. The gold of which the plaintiff was the owner thus remained with Muhammad Bakhsh, until he was traced by the plaintiff to have come to attend a wedding at the defendant's house. The plaintiff then instituted a criminal complaint against Muhammad Bakhsh and obtained a warrant for his apprehension. It is also proved that the complaint was sent to the police for investigation. It appears what the plaintiff intended to do was to arrest Muhammad Bakhsh at the house of the defendant while the wedding party was there. It appears that the defendant executed the bond and undertook the liability of Muhammad Bakhsh and the plaintiff got his complaint dismissed.

1930

 NABIDAD
 KHAN
 P.
 ABDUL
 RAHMAN.

1930
 NARIDAD
 KHAN
 v.
 ABDUL
 RAHMAN.

The defendant pleaded that there was no consideration for the contract and that the bond was executed under undue influence. It is difficult to say that there was no consideration for the bond and it is difficult to bring the case as one in which the contract was entered into by undue influence, bearing in mind the definition of "undue influence" as defined by the Indian Contract Act.

That, however, does not dispose of the case. The plaintiff's difficulty is section 23 of the Indian Contract Act.

I am of opinion that the plaintiff's suit must fail as the object and consideration of the agreement was the withdrawal of the prosecution. The defendant was not interested in any way in the original liability of Muhammad Bakhsh and although that point was not pleaded in the court below, the evidence of the plaintiff taken with the circumstances of the case to my mind makes it clear that the case comes within the purview of *Henry Williams v. James Bayley* (1). Mr. Malik has referred me to the case of *Onkar Mal v. Ashiq Ali* (2), and similar cases. All these are cases where the agreement had been entered into by the party who was personally liable or who was personally interested in the matter. In the present case the defendant must be considered to be a third party. See also *Kaminikumar Basu v. Birendranath Basu* (3).

I am therefore of opinion that this revision must fail and I dismiss it with costs.

(1) (1866) L.R., 1 H.L., 200.

(2) (1927) I.L.R., 49 All., 540.

(3) (1930) I.L.R., 57 Cal., 1302.