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MAUNG CHIT SU v. MAUNG SAN GYAW.

PRATT, J.

to settle a non-compoundable case out of Court by a money payment to defendant can by no manner of means be construed as coercion.

As laid down by a Bench of the Calcutta High Court in *Amjadennessa Bibi* v. *Rahimbuksh Shikdar* (1), mere fear of punishment in a criminal case does not amount to undue influence, much less to coercion.

All the circumstances indicate that the payment was quite voluntary and in all probability on plaintiff's own initiative.

Plaintiff was not entitled to recover money paid under an agreement which was opposed to public policy, nor is there any reason why he should obtain his costs in the previous suit.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Carr.

1928

Feb. 6.

A. SOWDAGAR

v.

B. SHI.*

Surety's liability to produce judgment debtor—Civil Procedure Code (Act V of 1908), O. 38, r. 3—Withdrawal of application by surety to be discharged, effect of—Insolvency of judgment-debtor, effect of on surety's liability.

A surety who had undertaken to produce the defendant whenever required by the Court until the decree was satisfied, applied to be discharged from his liability and produced the judgment-debtor, but ultimately withdrew his application. The decree-holder subsequently applied for execution against the surety who contended that as he had produced the judgment-debtor before and also as the judgment-debtor had been adjudicated insolvent, he was discharged from his obligation under the bond.

Held, that as the surety withdrew his application for discharge his production of the judgment-debtor on that occasion did not discharge him from his liability under the bond, and the judgment-debtor's insolvency did not cancel such liability.

(1) (1915) 42 Cal. 286.

* Civil Revision No. 374 of 1927.

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A. SOWDAGAR v. B. SHI.

N. C. Sen for the applicant.

Respondent in person.

CARR, J.—The petitioner stood surety for the appearance of the defendant in Suit No. 390 of 1925 of the Small Cause Court. He undertook to produce the defendant whenever required until any decree that might be passed against him was satisfied.

A decree was passed and petitioner then applied under O. 38, r. 3, to be discharged from his suretyship. Notices were issued to the decree-holder and the judgment-debtor and the latter appeared on several occasions. The decree-holder never appeared at all. Finally on the 26th July, 1926, the petitioner withdrew his application for discharge.

There the matter rested until August, 1927, when the decree-holder applied for execution of his decree, and notice was served on the petitioner. He objected and claimed that by producing the judgment-debtor before the Court on the 26th July, 1926, he had fulfilled his obligation under the bond. (Incidentally it may be noted that it does not appear that the judgment-debtor was present on that date). A further contention was that the judgment-debtor had been adjudicated insolvent and that thereby the bond had automatically been discharged.

The Judge of the Small Cause Court disallowed the objections and petitioner now asks for revision of his order.

I can see no ground for supposing that the adjudication of the judgment-debtor releases the petitioner from his undertaking to produce the judgment-debtor when required and no authority has been cited to show that it does.

For the rest the argument is that on his application for discharge in 1926 and on the appearance of

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the judgment-debtor in those proceedings the petitioner was entitled under O. 38, r. 3, to the discharge of his bond. I agree that he was. But in fact he did not get a discharge. He withdrew his application and it was thereupon dismissed. That decision was final and it cannot be contended now that petitioner got a discharge merely by producing the judgment-debtor at that time.

In my view the bond remains binding on the petitioner and as he cannot now produce the judgment-debtor he is liable to pay up the decree.

The application is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

C.V.N.C.T. CHEDAMBARAM CHETTYAR v. MA NYEIN ME AND OTHERS.*

1928

Feb. 7.

Mahomedan law—Heirs of convert to Mahomedanism must be Mahomedans—Hindu widow's claim in property of her husband who became Mahomedan—Hindu heir's claim to property acquired by deceased before conversion—Act XXI of 1850—*Burma Laws Act (XIII of* 1898).

A Hindu woman claimed to be the heir of her late husband and to administer his estate. About 30 years ago the husband had left Madras leaving his wife there, migrated to Burma, renounced Hinduism and became a Mahomedan. He married a Mohamedan woman and some Burmese women also claimed to be his widows. He died a Mahomedan.

Held, that the law which governs inheritance or succession to a person's estate is the law to which he himself is subject at the time of his death. Under Mahomedan law, which applied to the deceased, the Hindu widow could not inherit any part of his estate and therefore her suit failed. Act XXI of 1850 had no application in the case as it only applied to converts whose disabilities on account of conversion the Act sought to remove. There is no reliable authority for the proposition stated in Macnaghten's Principles of Hindu Law that a Hindu widow or Hindu heirs of a Hindu converted to Islam will take all the property which the deceased had whilst he was a Hindu

* Civil First Appeal No. 283 of 1926 from the order of the District Court of Thatôn in Civil Suit No. 8 of 1924.