Present : De Sampayo J.

1916.

PERERA *et al. v.* CRUSZE.

423—C. R. Chilaw, 17,681.

Consideration—Promissory note granted for compromising an alleged theft—No prosecution pending or instituted.

The plaintiff threatened to prosecute defendant's son for an alleged theft of Rs. 25, and the defendant thereupon granted plaintiff a note for Rs. 25. The boy was not actually prosecuted, nor was any information given to the police about the alleged theft.

Held, that the consideration for the note was illegal.

In this class of cases it is not necessary that an offence should have been in fact committed; it is sufficient if the agreement is made on the footing of an alleged offence.

THE facts are set out in the judgment.

The defendant's evidence in this case was as follows:—

I admit giving this note for Rs. 25. I received no money for it. My son Ossie was living in plaintiffs' house. The plaintiffs came and created a disturbance saying my son committed a theft. They threatened to prosecute. Through shame I gave this note. I produce a letter sent to me by first plaintiff after I gave this note (marked D 1).

Cross-examined.—I am not aware of a case against my son. There was no case filed against him. First plaintiff is my nephew. Second plaintiff complained that Ossie stole Rs. 25 from her. I undertook to pay the money through shame.

C. H. Z. Fernando, for defendant, appellant.—The promissory note was given with the object of stifling a threatened prosecution. The consideration was therefore illegal, and an action cannot be maintained on the note. Counsel cited *Ramanathan 1877, p. 266, (1892) 1 Ch. 173; 39 Ch. D. 605, at page 612; 5 Bal. 3; 6 S. C. D. 80; 15 N. L. R. 94.*

Balasingham, for the plaintiffs, respondent—The evidence does not show that the plaintiffs promised not to prosecute if the note was given; nor is that a necessary inference. Counsel cited *1 N. L. R. 143; 6 M. & G. 785; 10 Q. B. D. 572.* This note was given for money due by the defendant's son.

Cur. adv. vult.

1916.

Perera v. Crueze.

December 2, 1916. DE SAMPAYO J.—

This is an action on a promissory note made by the defendant in favour of the plaintiffs for Rs. 25. The defence is that the consideration was illegal, inasmuch as the promissory note was granted because the plaintiff had threatened to prosecute the defendant's son for an alleged theft of Rs. 25. It appears that the boy was not actually prosecuted, nor any information given to the police about the alleged theft. That being so, the Commissioner held that the consideration could not have been the compounding of any criminal charge, and the promissory note was, therefore, not against public policy, and he gave judgment for the plaintiff.

The Commissioner even went further, and thought that the boy's act was not shown to have amounted to theft, and possibly was a mere boy's prank, and that the boy's father, the defendant, had only promised to make good the loss of the money. The Commissioner was, however, not in a position to come to any such conclusion, inasmuch as the plaintiff did not give evidence at all, and there was nothing to contradict the defendant's evidence that the plaintiff had charged the boy with theft and threatened to prosecute him. In this class of cases it is not necessary that an offence should have been in fact committed; it is sufficient if the agreement is made on the footing of an alleged offence. The Commissioner is also mistaken in thinking that, in order to render the consideration for the promissory note illegal, there should have been an actual prosecution which was intended to be compromised. Such cases as *Lound v. Grimwade* [1] and *Jones v. Merionethsire Permanent Benefit Building Society*,[2] which were cited by Mr. Fernando for the defendant, show that a promise made with a view of stifling a threatened prosecution is illegal. The facts of the local case, C. R. Panadure, 21,318,[3] are very similar to those of the present case. There the defendant's child had taken and damaged the plaintiff's watch, and this Court held that a promise by the defendant to pay Rs. 50 in consideration of the plaintiff agreeing to forego taking criminal proceedings against the child was void at law. The decisions in *Ward v. Lloyd* [4] and *Flower v. Sadler*, [5] which were cited by Mr. Balasingham for the plaintiff, makes no material difference. It was there decided that securities given by the defendant who had incurred a debt would not be set aside, merely because they were obtained by a threat of prosecution for felony, unless there was an agreement by the plaintiff, either express or by necessary implication, to abstain from prosecuting upon security being granted. In both those cases emphasis was laid, in regard to the drawing of an inference as to an agreement, upon the fact that the debtor himself granted the securities for an admitted debt, and in the

[1] *(1888) 39 Ch. D. 605.*
[2] *(1892) 1 Ch. 173.*
[3] *Ramanathan's Reports (1877) 266.*
[4] *(1843) 6 M. & G. 785.*
[5] *(1882) 10 Q. B. D. 572.*

absence of sufficient other circumstances the Court refused to attribute the defendant's act to an implied agreement on plaintiff's part to abstain from prosecution rather than to a sense of the defendant's own obligation to pay the debt. It will thus be seen that the question is always one of fact. In the present case the promissory note was granted by one who was not the debtor, and from the evidence given by the defendant it is plain that there was an agreement by the plaintiff, if not express, at least necessarily implied, that on the defendant paying or promising to pay the Rs. 25 alleged to have been stolen by his son, the plaintiff would not prosecute the boy as he threatened. The consideration for the promissory note was therefore illegal. The principle underlying the law on this subject, as pointed out by Stirling J. in *Lound v. Grimwade* (*supra*), quoting from Lord Lyndhurst's judgment in *Egerton v. Lord Brownlow*,[1] is that "any contract or agreement having a tendency, however slight, to affect the administration of justice is illegal and void." The agreement in this case had that tendency, and it is immaterial to this point whether the prosecution, if instituted, would have succeeded or failed.

I think that the judgment of the Commissioner of Requests is erroneous. The appeal is allowed, and the plaintiff's action dismissed with costs in both Courts.

Appeal allowed.