Duress

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lost, first, because it was based on his physical incompetency as well as his mental incompetency, and, second, because the same judge who entered that order sat in the lower court in this suit and pronounced the grantor mentally competent to convey the land in question; that it would not disturb the finding of the lower court, "that the deed in controversy was the free and voluntary act of a capable mind," and that, therefore, the deed was good and valid and it conveyed the title of the grantor to the appellee.

JOHN L. WILLIAMS.

DURESS

A. In General. Duress may be defined as an unlawful restraint, intimidation, or compulsion of another to such extent and degree as to induce such person to do or perform some act which he is not legally bound to do, contrary to his will and inclinations.

If a person's hand be taken forcibly and compelled to hold a pen and write, it cannot be said that the writing is his own act since there is no will of his own used, his free agency is destroyed, and this act would be absolutely void. But where an act is forced by threats of violence, it is unsound to contend that the act done is not the act of the person threatened; in fact the person threatened consents to do the act rather than submit to the violence threatened. It is well settled that when the so-called duress consists only of threats, and such threats do not reach the heights of such bodily compulsion as turns the threatened party into a mere tool, the contract is only voidable at the option of the threatened party.

Cases substantiating this modern view of duress are many, some of which are: Foss v. Hildreth, 10 Allen 26; Lewis v. Bannister, 16 Gray 500; Fischer v. Shattuck, 17 Pick. 252; Clark v. Pease, 41 N. H. 414, and Fairbanks v. Snow, 13 N. E. 596.

Formerly the common law rule was very stringent in limiting the class of threats which would constitute duress sufficient for the avoidance of a deed or contract. Duress per minas, for instance, according to Coke, Blackstone and other authorities, was confined to fear of loss of life, of loss of member, of mayhem or imprisonment.

It is obvious that only duress of the gravest kind should
serve as an excuse for a crime, and, where the act done affects third parties it seems fair that the compulsion which would be an excuse for the act must be severe. Nevertheless, as between the original parties themselves there is no basis or reason for such a stringent rule. The American view concerning duress has a much broader application, including less serious personal wrongs, and the exercise of unlawful control of property, courts regarding such pressure as sufficient to overcome the will power of a person of ordinary firmness and constancy of mind.

The theory of this view seems to be, given a threat of improper action and a deed or contract induced by it, there should be in such cases grounds for avoidance, otherwise the person making the threat will profit by his own wrong. Because of this view there is a strong inclination on the part of the courts to disregard the external standard and allow the deed or contract to be avoided if the alternative be so disagreeable because of the nature of the individual that it exerts enough pressure on him sufficient to cause him to submit.

Under all the theories advanced by the courts of every jurisdiction the courts are universal in holding that the threat must be improper or there would be no reason for allowing the defense regardless of the amount of pressure exerted. See Phillips v. Henry (Pa.), 10 Montg. L. R. 9, 11; Boggs v. Slack and Greenbrier Grocery Co., 53 W. Va. 536; Morse v. v. Woodworth, 155 Mass. 233; Williams v. Stewart, 115 Ga. 864; Darling v. Hines, 5 Ind. Appeals 310.

In the case of Wilbur v. Blanchard, 126 Pac. 1069, the court held that the threat of prosecution for a crime in fact committed constitutes such duress as to justify the avoidance of a contract. Some courts have held that since the prosecution is lawful, no wrong is threatened, and hence the so-called duress would not be a defense. However, the weight of authority seems to be with the case just cited, but on the ground that, although the alternative threatened, the prosecution itself is not illegal, still such a use thereof is improper for it would use the machinery of the criminal law for a purpose for which it was never intended.

B. DEEDS BY DURESS OF WHICH PURCHASER HAD NO KNOWLEDGE. It is generally held that duress is of no avail against an innocent obligee. Cases setting forth this principle

In *Clay v. Clay*, a recent case decided by the Kentucky Court of Appeals, and reported in 199 Ky. 49, it was held that a deed was not avoided by duress of which the purchaser had no knowledge, that the duress, if any, under which plaintiff executed the deed to her brother who conveyed the property to defendant, cannot defeat defendant’s rights if he had no knowledge of that duress whereby plaintiff was induced to join in the conveyance by the brother to defendant.

It seems that the Kentucky court is in accord with the great weight of authority on this subject and its decision seems right on principle, for it would seem unjust to say that threats by a stranger, made without knowledge or privity of the party, are good grounds for avoiding a contract induced by such threats.

_Astor Hogg._