6-1-1936

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make it apply to executors and administrators of deceased nonresident motorists.14

F. T. DUPREE, JR.

Contracts—Effect of Duress Exerted Against Guilty Person
and Against Third Parties.

To complainant's action for separate maintenance and support of
herself and minor child, defendant claimed that the marriage was void
as being induced by duress. The facts indicate that prior to the mar-
rriage, defendant, about to leave the state, was arrested and jailed upon
a charge of statutory rape, said arrest being caused by complainant's
father. The warrant falsely stated that complainant was below the age
of consent. To avoid prosecution, defendant married complainant, as a
result of advice given to him by friends of complainant's father to the
effect that the criminal prosecution would be "pushed to the fullest
extent." The license was procured by complainant's and defendant's
brother-in-law. There was no subsequent cohabitation. However, a
child, of which the defendant was the admitted father, was born about
a month after the marriage. Held for the plaintiff; the duress, if any,
was insufficient to invalidate the marriage.3

The degree of coercion requisite to constitute duress has undergone
three stages of development: (1) The early common law required such
undue pressure as would intimidate a courageous man.2 (2) A later
group of cases used the test that the will of a man of ordinary firmness
be overcome.9 (3) The modern trend, in words at least, takes the view
that duress exists if the threats overcame the will of the particular
promisor.4 By inference, the court in the principal case would apply
the last named test.

14 Since no statute at present makes such provision, the question of its con-
stitutionality has not come before the courts. It is believed, however, that there
should be no constitutional difficulty. Most statutes provide for service on the non-
resident owner though he was not operating the car at the time of the accident,
and these provisions are held constitutional. It has been suggested that by analogy
a provision for service on the personal representative would be constitutional.

1 Zeigler v. Zeigler, 164 So. 768 (Miss. 1935).
2 1 BL. COMM. 131; 3 WILLISTON, CONTRACTS (1st ed. 1920) §1605.
3 Fonville v. State Bank, 161 Ark. 93, 255 S. W. 561 (1923); Flannagan v.
Minneapolis, 36 Minn. 406, 31 N. W. 359 (1887); Edwards v. Bowden, 107 N. C.
58, 12 S. E. 58 (1890) (adopts the ordinary firmness test, saying further, that a
mere threat of unlawful imprisonment is not enough to constitute duress); Ford
v. Englemen, 118 Va. 89, 86 S. E. 852 (1915); cf. Bond State Bank v. Vaughan,
241 Ky. 524, 44 S. W. (2d) 527 (1931); see United States v. Huckabee, 83 U. S.
414, 21 L. ed. 457 (1873); 1 PAGE, CONTRACTS (2nd ed. 1922) §482; 3 WILLISTON,
loc. cit. supra note 2.
4 Guardian Trust Co. v. Meyer, 19 F. (2d) 186 (C. C. A. 8th, 1927); William-
son-Halzell-Frazier Co. v. Ackerman, 77 Kan. 502, 94 Pac. 807 (1908); Riney v.
The purpose of these tests is to ascertain whether the improper pressure exerted is sufficient to overcome that exercise of free will which is ordinarily deemed a prerequisite of a valid contract. The specific acts or threats, sufficient to constitute duress under the above standards, vary. A threat of criminal prosecution against an innocent party usually is sufficient. But if the threatened party is guilty, and restitution is made, there is good authority refusing to overthrow the contract. The latter courts reason that the promisor has done no more than he was legally bound to do, and that the debt owed constitutes sufficient consideration.

A more difficult problem is presented where the improper pressure induces a third party to enter into a contract to reimburse the promisee for the losses supposedly inflicted upon him by the defaulting party. The hope is that the latter will thereby be saved from criminal prosecution. In such instances, where duress is found, the promisee is usually intimately related to the defaulter by blood or marriage and is therefore himself said to be the target of undue pressure. While there is some indication that such relationship between the promisor and the defaulter is a requisite for duress, the result seems questionable. Regardless of Doll, 116 Kan. 26, 225 Pac. 1059 (1924); Rice v. Victor, 97 Okla. 106, 222 Pac. 979 (1924); see 1 Page, loc. cit. supra note 3; 3 Williston, loc. cit. supra note 2; Note (1924) 3 Wis. L. Rev. 59. This development is characteristic of the changing ideas of the times. In the earlier days, a man who lacked courage was frowned upon by the community. Society gradually began to see the need of protecting the weak.


Thorn v. Pinkham, 84 Me. 101, 24 Atl. 718 (1891); American Nat. Bank v. Helling, 161 Minn. 503, 202 N. W. 20 (1925); see 3 Williston, op. cit. supra note 2, §1615; cf. Wilbur v. Blanchard, 22 Idaho 517, 126 Pac. 1069 (1912) (said duress had been practiced, but allowed the plaintiff to recover back only that amount over and above the embezzlement); Beath v. Chapoton, 115 Mich. 506, 73 N. W. 806 (1890) (duress was exerted, but the defendant was held only for the amount actually converted). Contra: Morse v. Woodworth, 155 Mass. 233, 27 N. E. 1010 (1891); cf. Portland Cattle Co. v. Featherly, 74 Mont. 531, 241 Pac. 322 (1925) (rights of relatives additionally involved). Note (1924) 32 A. L. R. 422.

Commercial Credit Co. v. Davis, 103 Fla. 148, 137 So. 688 (1931); Trust Co. v. Begley, 298 Mo. 684, 252 S. W. 76 (1923) (under threat to bring felony to the attention of authorities, the defaulter's father and mother-in-law signed notes); Parmer's State Bank v. Overton, 112 Neb. 262, 199 N. W. 528 (1924).

American Nat. Bank v. Helling, 161 Minn. 504, 202 N. W. 20 (1925), cited note 6, supra (holding that if there is a relationship, it makes no difference whether the claimed defaulter is innocent or guilty; but deliberation and advice from an attorney, before the transfer, prevents the setting up of a claim of duress); Port of Nebalem v. Nicholson, 122 Ore. 523, 259 Pac. 900 (1927) (family relationship is merely an exception to the general rule); Fountain v. Bigham, 235 Pa. 35, 84 Atl. 131 (1912); cf. Travis v. Unkart, 89 N. J. L. 571, 99 Atl. 320 (1916); Note (1927) 12 Minn. L. Rev. 409.

"It is obvious that under the modern definition of duress, there can be no
the relationship, there would seem to be more reason for releasing the third party, who is not liable, legally or morally, for the debt of the defaulter than there would be for releasing the defaulter himself. In both types of cases courts sometime avoid the question of duress by holding the agreement invalid upon the ground that the parties are frustrating the purpose of the criminal law.

In annulment suits, courts rarely find duress, as the problem usually arises where the promisor has been guilty of improper sexual relations. Such decisions are really dictated by the consideration that the marriage, in spite of the coercion, operated to right the wrong inflicted by the promisor.

Whether the courts will say duress has been practiced in a particular case seems to be determined by considerations of policy. If, in the "marriage cases," the promisor was morally bound, it is said that no improper pressure has been exercised. In the "embezzling cases," if the question of the nearness of relationship; the question becomes merely one of whether the party induced to act was coerced by wrongful pressure, and the threat to kill or seriously assault a companion who is in no way related to the actor may evidently operate as such coercion." 3 WILLISTON, op. cit. supra note 2, §1621.

10 Port of Nebalem v. Nicholson, 122 Ore. 523, 259 Pac. 900 (1927), cited note 8, supra; cf. Lewis v. Doyle, 182 Mich. 141, 148 N. W. 407 (1914) (holding that payment by wife of husband's debts, is supported by sufficient consideration, and claim of duress is of no avail).

11 Koons v. Vauconsant, 129 Mich. 260, 88 N. W. 630 (1902); Heath v. Cobb, 17 N. C. 187 (1831) (plaintiff was not in a position to be bargained with while under arrest); Meadows v. Smith, 42 N. C. 7 (1850) (plaintiff was innocent); Corbett v. Clute, 137 N. C. 546, 50 S. E. 216 (1906) (the question of duress was not before the court). The weight of authority says that a contract to suppress a felony is void, and the question of whether the party was innocent or guilty is not in issue. Shaulis v. Buxton, 109 Iowa 355, 80 N. W. 397 (1899); Garner v. Qualls, 49 N. C. 223 (1856). Contra: Woodham v. Allen, 130 Cal. 194, 62 Pac. 398 (1900) (there can be no felony compounded, as no felony in fact existed). The New York courts reach the result that any agreement that has a tendency to suppress a crime is illegal. It makes no difference whether duress has been practiced or not, as the parties stand in pari delicto. Thus in all these types of cases the New York Court leaves the parties where it finds them. Such a rule has the unhappy effect of protecting the party exerting duress if he is successful in extorting the money. Union Exchange Bank v. Joseph, 231 N. Y. 250, 131 N. E. 905 (1921).


13 Kelley v. Kelley, 206 Ala. 304, 89 So. 508 (1921); Shepherd v. Shepherd, 174 Ky. 615, 192 S. W. 658 (1917) (holding that equity will not bastardize a child in annulment proceedings, except upon the strongest proof of duress); Rogers v. Rogers, 151 Miss. 644, 118 So. 619 (1928) (cited by the principal case for the result reached); Bryant v. Bryant, 171 N. C. 746, 88 S. E. 147 (1916) (that the best reparation the plaintiff could make was to marry the defendant); see 9 R. C. L. 305 (1915). The majority rule requires that the other contracting party (usually the woman) either caused the duress or knowingly used or availed herself of it. Sherman v. Sherman, 20 N. Y. Supp. 414 (1892). Contra: Lee v. Lee, 176 Ark. 636, 3 S. W. (2d) 672 (1928) (although the defendant had no knowledge that any coercion had been practiced; the marriage was avoided for duress).
promisor was under a duty to pay, regardless of the coercion, it is stated that the pressure exerted is insufficient to constitute duress. Thus, the rationale in terms of duress would seem to be by post facto.

The principal case appears to have been decided upon like considerations and to have been rationalized in a similar manner. Since such considerations of policy seem to be basic, opinions would be clarified if rationalized in terms of such fundamental factors. Discussion of duress would then be rendered unnecessary.

J. William Copeland.


The defendant was disbarred by the Council of the North Carolina State Bar, for collecting and wrongfully retaining funds belonging to an estate for which he was acting as trustee, executor and attorney, under a clause of the State Bar Act, Ch. 210, Public Laws 1933, authorizing disbarment for "detention without a bona fide claim thereto of property received or money converted in the capacity of attorney." Upon appeal, the disbarment was sustained by the Superior Court and a jury. On appeal to the Supreme Court, held, reversed on the grounds (1) that the acts complained of were committed while the defendant was acting in the capacity of an executor and not as an attorney; (2) all the matters complained of took place prior to the enactment of the State Bar Act in 1933; and (3) "It must be conceded that the plea to the jurisdiction presents a grave and serious constitutional question." 1

Unless specified by statute, it is not necessary that an attorney be acting only in his professional capacity when the acts complained of are committed. Any showing of lack of the good moral character necessary for an officer of the court is a sufficient basis for the revocation of an attorney's license. 2 Disbarments have been sustained where the offense complained of was participation in a lynching, 3 participation in an unlawful assembly and jailbreak, 4 conviction of adultery, 5 violation of prohibition laws, 6 receiving stolen goods while acting in the capacity of

1 In re Parker, 209 N. C. 693, 184 S. E. 532 (1936).
2 Bar Assoc. v. Meyerowitz, 278 Ill. 356, 116 N. E. 189 (1917); Bar Assoc. v. Fulton, 284 Ill. 385, 120 N. E. 252 (1918) (where there was a failure to account for moneys entrusted to an attorney as trustee or where there was a misappropriation, the court held that lack of good moral character was sufficient to warrant disbarment).
4 State v. Graves, 73 Ore. 331, 144 Pac. 484 (1914).
5 Grievance Committee v. Borden, 112 Conn. 269, 152 Atl. 292 (1930); Note (1931) 79 U. of P. A. L. Rev. 506.
6 In re Callicate, 57 Mont. 297, 187 Pac. 1019 (1920); State v. Johnson, 174 N. C. 345, 93 S. E. 847 (1916) (where the defendant habitually violated prohibition laws).