not in their power to do so. In general the nature of the duress must suggest the necessity, if such exist, for protesting. Was the duress of so questionable a character that the payer was bound in good conscience to speak out? If the compulsion is clearly illegal in itself, or if the peculiar circumstances of the payment will of themselves create a necessary presumption of extortion, no protest is required. But where the compulsion is legal itself and only employed for an illegal purpose, the illegality being hidden from the payee's view, a protest must usually be made. Especially will this be so where the payer receives a consideration for his money. In such cases, the payee's act of taking not being wrongful in itself, he is not subsequently bound *ex æquo et bono* to refund the amount of the exaction. If the payee receives the money only as an agent for a third party the duty to protest may be more evident. Where the agent himself is not responsible for the duress, where he is only a mere conduit for the transfer of the money to his principal, it is clear that the payer, in order to fasten a liability upon the agent, must give the latter notice before he has paid the money over to his principal. If the case either at common law or by statute requires a protest, the protest should be adequate and complete.

Finally, the legal adviser should remember that, though a protest is necessary only in a very small number of cases, it may be desirable in a great many. Its effect with the jury in the action for a recovery should not be disregarded.

FRANCIS FISHER KANE.

THE AUSTRALIAN BALLOT LAW.

The Australian Ballot Law of Connecticut has lately come before the Supreme Court of Errors in that State, and a decision rendered on two important points. (*Field's* v. *Osborne*, decided June 1, 1891).

The Pub. Acts. Conn. 1889, C. 247, No. 11, requires all ballots to contain the name of the party issuing them. The petitioner contended that the "Citizens' Party," which was the name printed on the ballots cast against him never had existed, and therefore the ballots were illegal and void. Seymour, J., states the facts on which the contention was based as follows:

Pursuant to public notice a Republican caucas was held October 4, 1891, for the purpose of nominating candidates for the town offices to be filled at the town meeting aforesaid. Immediately after the caucus was

organized, a plan for making up a Citizens' ticket from candidates of all political parties, was advocated. After discussion, it was voted that the Republican caucas adjourn, and that a Citizens' caucas be organized. Thereupon, some ten or fifteen Democrats who were present, but had not participated in the proceedings, came forward and acted with about fifty Republicans who were present, in nominating the Citizens' ticket. The candidates nominated were Republicans, except those for town clerk, treasurer, and one grand juror, who were Democrats. A general collection was taked to defray the expenses of printing the ticket. No committees were appointed at said caucus to carry out its purposes, nor were any steps taken to effect a permanent organization of a Citizens' party, or to provide for its further existence. The chairman of the Republican town committee procured the printing of said Citizens' ticket, and caused them to be placed in the booths on election day. The Republican party issued no tickets, and no ballots were used at the election except those headed "Democratic" and those headed "Citizens' Ticket." Previous to the caucus in question, there had been no call issued for a Citizens' caucus, nor any organized political party in the town of Branford, known as the "Citizens' Party," but there had been some talk among a few Republicans and the Democrats about the possibility of having a Citizens' caucus, and of turning the Republican caucus, that had been called, into a Citizens' caucus. Occasionally in previous years, town officers have been elected in said town on tickets denominated "Citizens' Ticket."

The Court held that the Citizens' party was a party within the meaning of the Act. J. Seymour uses the following language: "We are abundantly satisfied from the facts stated in the finding, that for the time being, and for the purpose of the election under consideration, and within the meaning of the law, requiring the ballots to contain the name of the party issuing them, there was a "Citizens' Party" in Branford. The element of time is not essential to the formation of a legal party. It may spring into existence from the exigencies of a particular election, and with no intention of continuing after the exigency has passed. To hold the contrary, would be to strike a blow at that independence in political action, upon which the good government of a locality may depend. Nor can the number of voters that must unite in order to form a legal party prescribed by law without violating one of the fundamental theories of popular government. If it is shown, as it is in this case, that an independent political party was formed, that it assumed a distinctive name, and that the ballots which it issued sought the suffrages of the people under no false title, but bore the name of the political party issuing them, it is enough, so far as the point now being considered is concerned. To hold otherwise would be to abridge rights which are not only generally held to be sacred, but which it is of the utmost importance to preserve.

The second reason on which the petitioner based his petition was because 100 or more citizens' ballots also contained the following illegal words: "For Judge of Probate, Henry A. Steadman." It appears that the Citizens' caucus, in addition to the town officers that could be voted

for at the annual town meeting, also nominated Henry H. Steadman for the office of Judge of Probate, which office could only be filled at the election held for State offieers, etc., on the Tuesday following the first Monday of November thereafter, and that each of the Citizens' tickets had upon it the words, "For Judge of Probate, Henry H. Steadman." It also appears that the Democratic ballots issued and cast at said election contained, after the words "For Town Clerk," the words "and *ex-officio* Registrar of births, marriages and deaths."

The ninth section of the Ballot Act is as follows:

"If any ballot shall contain any mark or device so that the same may be identified in such manner as to indicate who might have cast the same, it shall not be counted," etc. All ballots so cast shall be void and not counted.

The Court held that the addition of the words "For Judge of Probate, Henry H. Steadman," on the Citizens' ballot, and the words "*ex-officio* Registrar of births, marriages and deaths;" on the Democratic ballots mentioned, were both void.

The Court says: "A plain provision of the law is violated in a point concerning which the Act does not authorize us to inquire into the intent or the consequences of the violation. In short, the Legislature has seen fit to say if a ballot contains the addition to the specified contents which these do it shall be void. Unless we are prepared to hold the Act unconstitutional, we cannot disregard its requirements. If it is harsh and unreasonable the remedy is with the Legislature that enacted it, and not with the Courts, which are bound to respect it. In regard to provisions which are plain on their face, which are not dependent upon the question of good faith or the actual or possible result of disregarding them, we can only say again, in the language of the majority opinion in *Talcott* vs. *Philbrick, 59 Conn., 478*, 'we are relieved of any obligation to inquire into the necessity or reason of such requirement; and we are not at liberty to dispense with anything that is required, whatever the reason for it may be, or even without any apparent reason at all. The Legislature has spoken, and obedience is our first and only duty. It is at liberty to throw around the ballot-box such safeguards and regulations as it may deem proper, and it is the duty of the citizen to conform thereto. Some inconvenience is not too great a price to pay for an honest and pure ballot.'"

The defendants further claimed that the Democratic ballots were illegal, because they contained the word "for" before the name of any officer. To this contention the court said: "If it was plain and clear that the Act, in limiting the contents of the ballot to the official indorsement, the names of the candidates, the name of the political party issuing the same, and the 'office voted for,' prohibited the use of the word 'for' before the title to the office, we should be bound, npon the principles which we have herein already recognized as sound, to declare the ballots void for that reason. But that the statute so intended is not plain and clear. On the contrary, the language is ambiguous. There is room for honest and intel-

ligent men to differ as to its meaning. The record in this very case shows that the Secretary of the State, in a notice concerning elections issued in August, 1889, immediately after the Act went into force, and before any discussion had arisen upon the point in hand, inclosed a printed form for a town ballot. This was sent to every postmaster and town clerk and to the respective chairmen of the Democratic and Republican Committees in every town in the State; and the form of ballots so sent contained the word 'for' before the title to every office named therein. It is a matter of public notoriety also that ballots prepared by different persons equally determined to observe the requirements of the law have in some cases contained the word 'for' in juxtaposition with the offices voted for, and sometimes omitted it. The Republican ballots as well as the Democratic ballots in the case before us contained the word. We refer to these instances in confirmation of our position that the language under consideration is in fact ambiguous. If ambiguous it is the proper subject of construction. In discharging the duty of construing it so that the voter shall not be deprived of his vote, except upon a plain and unambiguous provision of the law, we feel bound to hold that the Act does not in terms and expressly, nor by necessary construction, prohibit the use of the word 'for' before the title to the office. It follows, therefore, that neither its use nor the failure to use it necessarily and of itself invalidates a ballot. The question of illegality is remitted to the provisions of the ninth section of the Act. If the regular ballots issued by a political party contain the word 'for' before the title to the offices therein named, then it cannot be held to be a 'mark or device' so that the same may be identified in such manner as to indicate who might have cast the same, and, therefore, is not obnoxious to that provision. If the regular ballots of a political party omit the word 'for' in the connection stated, then the use of the word on some of the ballots cast, inasmuch as it would be a mark or device by which the same might be identified, would be illegal. Each case must be governed by its own circumstances, and be decided as as a question of fact under the principles herein stated. Upon the facts in this case we hold that the ballots in question were not illegal and void because of the use of the word 'for.' They were, however, illegal, as we have already stated, for another reason. Being illegal, there is no foundation for the petitioner's claim that he was elected Selectman, and his petition, which was based upon that claim, must be dismissed. We so advise."