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CITY NATIONAL BANK OF DAYTON *v.* KUSWORM.[1] SUPREME COURT OF WISCONSIN.

A wife may avoid her contract, extorted by a threatened criminal prosecution of her husband, on the ground of duress; and the fact that after she had signed the contract, the plaintiff gave her the notes forged by her husband, together with others given by him as security therefor, to be given to the husband, which she accordingly did, and the notes were thereupon destroyed by him, does not estop her from avoiding her note extorted at the time under threats of prosecuting the husband.

DURESS.

I. "Duress, in its more extended sense, means that degree of constraint or danger, either actually inflicted or threatened and impending, which is sufficient, in severity or in apprehension, to overcome the mind and will of a person of ordinary firmness:" *Brown* v. *Pierce*, 7 Wall. 205. It does not necessarily imply that the means used should be in themselves unlawful, but includes the use of lawful means in an unlawful manner, or for an improper purpose; and, on the other hand, even if the means used should be improper, as for instance the threat of a baseless prosecution, there is no duress, unless the threat so operated on the mind of the person threatened as to deprive him of the free exercise of his will. In some of its manifestations, duress is hardly to be distinguished from undue influence: *Lighthall* v. *Moore*, 2 Colo. App. 554; and it extends not merely to the case of threats, but includes the

[1] Reported in 59 N. W. Rep. 564.

abuse of one's legal position as owner by title of possession, in order to force the real owner to admit or satisfy an unjust claim, of which the unwarranted detention of property by a pledgee or bailee will serve as an example.

II. Duress at common law was divided into duress by imprisonment, and duress *per minas*, or by threats. To these may be added a third, also recognized by the common law, but not accorded the dignity of a separate existence,—duress of goods. This does not seem to belong properly under either of the preceding divisions; and is now admitted to form a distinct branch of the law of duress.

III. Duress by imprisonment consists in the use of imprisonment, lawful or unlawful, to force the party imprisoned into executing a contract. If the imprisonment be unlawful, the circumstances under which the contract is made cannot clothe it with validity. It makes no difference whether the overtures for the agreement come from the one party or the other. The imprisonment being illegal, the contract is equally so, whether formed at the suggestion of the prosecutor, or at the request of the defendant: *Richardson* v. *Duncan*, 3 N. H. 508; *Osborn* v. *Robbins*, 36 N. Y. 365. When, after a person has procured the arrest of another on a criminal charge, which did not justify his arrest, and after his discharge has procured his arrest again on an order in a civil action for fraud, where an arrest was not warranted, he procures from that person, while he is imprisoned, after several months' confinement, and on the promise to obtain bail for him, which is done, a release of himself, and the sureties on the bond given for the order of arrest, the release is given under duress, and will not bar an action on the bond to recover damages for the imprisonment: *Lazzarone* v. *Oishei*, 21 N. Y. Suppl. 267. But an arrest and imprisonment on lawful process, used in a proper manner, and only for a lawful purpose, is valid, and cannot be construed as duress: *Nealley* v. *Greenough*, 25 N. H. 325; *Eddy* v. *Herrin*, 17 Me. 338; even though no cause of action really existed, if the prosecution was instituted *bona fide* and upon probable cause: *Prichard* v. *Sharp*, 51 Mich. 432; *Clark* v. *Turnbull*, 47 N. J. L. 265. A note or other security given

to release the defendant in such a case from prison, may be void as given to compound a felony; but it cannot be awarded on the ground of duress.

If, however, the arrest and imprisonment are merely for the purpose of enforcing a civil liability, such is an improper use of criminal process, and a security obtained under such circumstances cannot stand: *Seiber* v. *Price*, 26 Mich. 518; *Phelps* v. *Zuschlag*, 34 Tex. 371. "A contract obtained by duress of unlawful imprisonment is voidable, and if the imprisonment is under legal process in regular form, it is nevertheless unlawful as against one who procured it improperly, for the purpose of obtaining the execution of a contract, and a contract obtained by means of it is voidable for duress:" *Morse* v. *Woodworth*, 155 Mass. 233; S. C., 29 N. E. Rep. 525.

IV. Duress *per minas* is the most fruitful branch of this theme; and its varieties are endless. It has been most excellently defined and explained in a lengthy opinion by Knowlton, J., in *Morse* v. *Woodworth*, 155 Mass. 233; S. C., 29 N. E. Rep. 525, already cited, which is well worth quoting more at length:

"The rule as to duress *per minas* has now a broader application than formerly. It is founded on the principle that a contract rests on the free and voluntary action of the minds of the parties, meeting in an agreement which is to be binding upon them. If an influence is exerted on one of them of such a kind as to overcome his will and compel a formal assent to an undertaking when he does not really agree to it, and so to make that appear to be his act which is not his but another's, imposed on him through fear which deprives him of self-control, there is no contract, unless the other deals with him in good faith, in ignorance of the improper influence, and in the belief that he is acting voluntarily.

"To set aside a contract for duress it must be shown, first, that the will of one of the parties was overcome, and that he was thus subjected to the power of another, and that the means used to induce him to act were of such a kind as would overcome the mind and will of an ordinary person. It has often been held, that threats of civil suits and of ordinary proceed-

ings against property are not enough, because ordinary persons do not cease to act voluntarily on account of such threats. But threats of imprisonment may be so violent and forceful as to have that effect. It must also be shown, that the other party to the contract is not, through ignorance of the duress or for any other reason, in a position which entitles him to take advantage of a contract made under constraint without voluntary assent to it. If he knows that means have been used to overcome the will of him with whom he is dealing, so that he is to obtain a formal agreement to it which is not a real agreement it is against equity and good conscience for him to become a party to the contract, and it is unlawful for him to attempt to gain a benefit from such an influence improperly exerted."

In the first place, then, the threat relied upon to constitute duress must be such as to control the mind and will of the party affected, and prevent his acting as a free agent. Whether or not a given threat is of such a nature depends wholly upon circumstances ; but the general rule is, that the threats must be such as would naturally excite fear in a person of ordinary courage, and that that fear must be grounded on a reasonable belief that the person threatening has at hand the means to carry his threat into present execution ; *Youngs* v. *Simon*, 41 Ill. App. 28. In other words, mere bluster cannot constitute duress ; and the man who permits himself to be frightened by empty words, cannot set up his cowardice as a sufficient excuse to release him from the performance of his promise: See *Bosley* v. *Shannon*, 26 Ark. 280; *Wells* v. *Sluder*, 70 N. C. 55. "To constitute the coercion or duress, which will be regarded as sufficient to make a payment involuntary, . . . there must be some control or threatened exercise of power possessed or believed to be possessed by the party exacting or receiving the payment, over the person or property of another, from which the latter has no other means of immediate relief than by making the payment:" *Radich* v. *Hutchins*, 95 U. S. 210. Therefore, if the person, who makes the threats, is not, and is not represented to be, in a position to carry out his threats, and has no means of

executing them other than such as are possessed by all members of the community; when the liberty of the person threatened is in no wise restrained, and the threatener has made no complaint, has no warrant, and is not represented to have, nor, in fact, has, or appears to have at hand or within control, any means for carrying into execution his announced purpose, mere threats of arrest do not constitute duress: *Youngs* v. *Simon*, 41 Ill. App. 28. Accordingly, threats of loss of life, or bodily injury, made by one who is in a position to execute his threat, will constitute duress: *Brown* v. *Pierce*, 7 Wall. 205; *Baker* v. *Morton*, 12 Wall. 150; and the deed of one who was pulled from his bed at night by a crowd of men, dragged into the street, and compelled to go to the office of a justice of the peace and there execute the instrument in question, may be avoided: *Brown* v. *Peck*, 2 Wis. 261. So, the threat of a husband to separate from his wife, if she have reasonable cause to apprehend that he will put it into execution: *Tapley* v. *Tapley*, 10 Minn. 448; or violent behavior toward and cruel treatment of the wife: *Goodrich* v. *Cushman*, 34 Neb. 460; amount to duress. A security obtained by a threat of immediate arrest and imprisonment is made under duress: *Bush* v. *Brown*, 49 Ind. 573; *Morrison* v. *Faulkner*, 80 Tex. 128; *Obert* v. *Landa*, 5 Tex. Civ. App. 620; S. C., 25 S. W. Rep. 342; and it may still be duress, though the amount for which the note is given is actually due from the maker to the payee: *Taylor* v. *Jaques*, 106 Mass. 291. If one pays an illegal tax to prevent the issuing of a threatened warrant of distress, which must issue of course, unless the tax is paid, he can recover it: *Preston* v. *Boston*, 12 Pick. 7; *Grim* v. *Weissenburg School District*, 57 Pa. 433. But a mere indefinite threat of criminal prosecution, or one made when neither the warrant had issued nor the proceedings had been commenced, is no duress: *Higgins* v. *Brown*, (Me.), 5 Atl. Rep. 267; *Harmon* v. *Harmon*, 61 Me. 227; *Knapp* v. *Hyde*, 60 Barb., (N. Y.), 80; especially if the person threatened knows that the one who makes the threats has no present means of carrying them into execution, by actually taking him into custody, and has, in his knowledge, the power

and opportunity to make a defence to such threatened prosecution: *Horton* v. *Bloedorn*, 57 Neb. 666; S. C., 56 N. W. Rep. 321. The mere threat of injury to property, without the power to execute the threat, is not duress: *Miller* v. *Miller*, 68 Pa. 486.

The reasonableness of the belief of the party claiming duress in the imminence of the threatened danger, is dependent to a very large extent upon circumstances; and is always a question for the jury. When the defendant had threatened to have the plaintiff imprisoned, and to deprive him of his property, because of certain testimony given by the plaintiff derogatory to defendant, though the testimony was, in fact, privileged, which the plaintiff, who was a weak, ignorant man, did not know; and the defendant was a keen business man, and known to the plaintiff to be a man of determination; a sum of money procured from the plaintiff by such threat was held to have been procured under duress: *Baldwin* v. *Hutchinson*, (Ind.), 35 N. E. Rep. 711. Similarly, when the plaintiff, a man 72 years old, ignorant of the law, was threatened by the defendant with prosecution, imprisonment and a fine of $500 for selling cider without a license, unless he would pay the defendant $150, the defendant claiming to have great knowledge of the law; and the plaintiff was confronted with several men, who claimed that he had sold them cider, and was informed by the defendant that the men would so testify on the prosecution; the payment by the plaintiff, under these circumstances, of the sum demanded, was held to have been made under duress, and void, the jury having so found: *Cribbs* v. *Sowle*, 87 Mich. 340; S. C., 49 N. W. Rep. 587.

It has been claimed that the threat of an illegal prosecution is not duress, because the person threatened has really nothing to fear therefrom, and besides, it is his duty to resist a false accusation: *Buchanan* v. *Sahlein*, 9 Mo. App. 552; see *Horton* v. *Bloedorn*, 57 Neb. 666; S. C., 56 N. W. Rep. 321. It was held, however, in *Bane* v. *Detrick*, 52 Ill. 19, that though the arrest would be illegal, yet if the threats were such as would terrify a man of ordinary and reasonable firmness,

they would constitute duress. It is difficult to treat such decisions seriously. The mere danger of imprisonment is not the thing to be feared in the case of an innocent man; it is the loss of reputation that inevitably follows on a criminal prosecution, no matter how innocent the accused may be, and however triumphant his acquittal; the annoyance and grief caused his friends and relatives; and the expense of defending himself, with the troubles and worry that the very fact of such an accusation, with its results, will cause any but the most depraved to feel. It is safe to say that nine men out of ten who would defy the chance of being sent to jail under such circumstances, would nevertheless, in view of these other consequences, seek to stifle the accuser, and submit to his demands, rather than run the gauntlet of public criticism under such auspices. The contrary rule, that a contract procured by threat of illegal arrest is obtained under duress, is the only true doctrine. See *Lighthall* v. *Moore*, 2 Colo. App. 354; S. C., 31 Pac. Rep. 511.

The threats used must also be such as, if executed, would work a substantial injury to the person threatened; and not be a mere declaration of an intention to assert a legal right. A threat of a civil suit, therefore, is in general no ground for a claim of duress: *Mascolo* v. *Montesanto*, 61 Conn. 50; S. C., 23 Atl. Rep. 714; *Peckham* v. *Hendren*, 76 Ill. 47; *Dausch* v. *Crane*, 109 Mo. 323; *Pryor* v. *Hunter*, 31 Neb. 678; *McCormick* v. *Volsack*, (S. Dak.), 55 N. W. Rep. 145; nor is a threat to levy a lawful execution: *Wilcox* v. *Howland*, 23 Pick. 167. It is not unlawfnl for a creditor to demand and obtain from his debtor a security for a *bona fide* debt, under a threat of suit if the security be not given; and the debtor cannot avoid payment of the security merely on the ground that it was obtained by means of such a threat: *McClair* v. *Wilson*, 18 Colo. 82; S. C., 31 Pac. Rep. 502. But a threat to use oppressive civil process may be equivalent to duress; as, for instance, where a materialman threatened to file a mechanics' lien on a house, unless the owner, who had overpaid the contractor, would pay an indebtedness of the contractor to the materialman for material, alleged to have been used in the house,

representing at the same time to the owner that the filing of the lien would, in the then condition of his affairs, seriously embarrass him, and thereupon furnished a fraudulent statement of the alleged indebtedness, including items furnished to the contractor for use on other buildings: *Gates* v. *Dundore*, 18 N. Y. Suppl. 149. See *Foerster* v. *Squier*, 19 N. Y. Suppl. 367.

There is some difference of opinion as to whether a threat of lawful imprisonment, made to a person who has violated the criminal laws, can be called duress: *Bodine* v. *Morgan*, 37 N. J. Eq. 426. It has been held that a promissory note, taken in payment of money embezzled, is not necessarily voidable because obtained on threats of criminal prosecution, as there is a good consideration for it, viz., the money embezzled: *Hilborn* v. *Buckman*, 78 Me. 482; S. C., 7 Atl. Rep. 272; *Thorn* v. *Pinkham*, (Me.), 24 Atl. Rep. 718. But it has also been held that written securities extorted by threats of prosecution for a criminal offence of which the party is, in fact, guilty, but which are in no manner connected with the demand for which compensation is sought, may be avoided by the persons executing them: *Thompson* v. *Niggley*, (Kan.), 35 Pac. Rep. 290. The true rule seems to be, that when the threat is made merely to enforce the execution of the contract, and to compel the person accused to a settlement, it will be duress; otherwise not. To quote again from Judge Knowlton: "The question is, whether the threat is of imprisonment, which will be unlawful in reference to the conduct of the threatener, who is seeking to obtain a contract by his threat. Imprisonment that is sufficient through the execution of a threat, which was made for the purpose of forcing a guilty person to enter into a contract, may be lawful as against the authorities and the public, but unlawful as against the threatener, when considered in reference to his effort to use for his private benefit processes provided for the protection of the public and the punishment of crime. One who has overcome the mind and will of another for his own advantage, under such circumstances, is guilty of a perversion and abuse of laws, which were made for another purpose, and he is in no position to claim the advantage of a

formal contract obtained in that way, on the ground that the rights of the parties are to be determined by their language and their overt acts, without reference to the influences which moved them. In such a case, there is no reason why one should be bound by a contract obtained by force, which in reality is not his, but another's. . . . We do not intimate that a note given in consideration of money embezzled from the payee can be avoided on the ground of duress, merely because the fear of arrest and imprisonment, if he failed to pay, was one of the inducements to the embezzler to make the note. But, if the fact that he is liable to arrest and imprisonment, is used as a threat to overcome his will and compel a settlement, which he would not have made voluntarily, the case is different. The question in every such case is, whether his liability to imprisonment was used against him, by way of a threat, to force a settlement. If so, the use was improper and unlawful, and, if the threats were such as would naturally overcome the mind and will of an ordinary man, and if they overcame his, he may avoid the settlement:" *Morse* v. *Woodworth*, 155 Mass. 233; S. C., 29 N. E. Rep. 525.

In the second place, the threats must be shown to have emanated from, or at least to have been made with the knowledge of the person who is to be benefited by the transaction: *McClatchie* v. *Haslam*, 63 L. T. N. S. 376. False representations of third parties, not instigated by the creditor, are no ground for proving duress: *Fulton* v. *Hood*, 34 Pa. 365. Representations made to a wife by her brother and husband that the latter is in danger of criminal prosecution by a bank, but made without the knowledge or authority of the bank, are not duress: *Compton* v. *Bunker Hill Bank*, 96 Ill. 301; see *Central Bank of Frederick* v. *Copeland*, 18 Md. 305; nor are such representations, when made by the husband alone: *Mundy* v. *Whittemore*, 15 Neb. 647; S. C., 19 N. W. Rep. 694. But even if the threats emanate from the creditor, the fact that friends advise the debtor in good faith to make a settlement, will not constitute duress, although he knows of the threats: *Phillips* v. *Henry*, 160 Pa. 24; S. C., 28 Atl. Rep. 477.

In the third place, it is not necessary that the threats be of

a prosecution of the party in whose favor duress is claimed. The protection of the doctrine extends to all those who occupy a relation to the person threatened which renders them subject to be so affected by his danger as to be no longer free agents. Thus, a father may be subjected to duress by a threat to imprison his son, and this whether the charge be true or false: *Williams* v. *Bayley*, 1 L. R. H. L. 200; affirming *Bayley* v. *Williams*, 4 Giff. 638; *Small* v. *Williams*, 87 Ga. 681; S. C., 13 S. E. Rep. 589; *Harris* v. *Carmody*, 131 Mass. 51; *Bryant* v. *Peck & Whipple Co.*, 154 Mass. 460; S. C., 28 N. E. Rep. 678; *Western Ave. Bldg. Assn.* v. *Walters*, 7 Ohio Cir. Ct. 202; *Natl. Bk. of Oxford* v. *Kirk*, 90 Pa. 49; *Coffman* v. *Lookout Bank*, 5 Lea, (Tenn.), 232; *Schultz* v. *Culbertson*, 49 Wis. 122; S. C., 4 N. W. Rep. 1070; a mother may be put in duress by a threat against her child: *So. Exp. Co.* v. *Duffy*, 48 Ga. 358; *Meech* v. *Lee*, 82 Mich. 274; S. C., 46 N. W. Rep. 383; *Met. Life Ins. Co. of N. Y.* v. *Meeker*, 85 N. Y. 614; *Schoener* v. *Lissaner*, 107 N. Y. 111; S. C., 13 N. E. Rep. 741; *Jordan* v. *Elliott*, 12 W. N. C. 56; *Foley* v. *Greene*, 14 R. I. 618; or a child, by threats to prosecute his parent: *Adams* v. *Irving Natl. Bk. of N. Y.*, 116 N. Y. 606; S. C., 23 N. E. Rep. 7. So, also, a threat of prosecution of the husband will be duress sufficient, in a proper case, to avoid the contract of the wife made to prevent such prosecution: *McClatchie* v. *Haslam*, 63 L. T. N. S. 376; *First Natl. Bk. of Nevada* v. *Bryan*, 62 Iowa, 42; S. C., 17 N. W. Rep. 165; *Winfield Natl. Bk.* v. *Croco*, 46 Kans. 620; *Central Bk. of Frederick* v. *Copeland*, 18 Md. 305; *Miller* v. *Union Lumber Co.*, 98 Mich. 163; S. C., 57 N. W. Rep. 101; *Eadie* v. *Slimmons*, 26 N. Y. 9; *City Natl. Bk. of Dayton* v. *Kusworm*, (the principal case), (Wis.), 59 N. W. Rep. 564. The same is true of a sister, whose brother is threatened, even though the threats were not made directly to her, if they were intended to be communicated to her, and were in fact so communicated. *Schultz* v. *Catlin*, 78 Wis. 611; of a grandparent, in the case of a grandson, who is also an adopted child, and for whom she has great affection: *Bradley* v. *Irish*, 42 Ill. App. 85; of an aunt, in the case of a nephew, to whom she is

greatly attached: *Sharon* v. *Gager*, 46 Conn. 189; and of a woman, whose betrothed is threatened on the eve of the marriage; *Rau* v. *Von Zedlitz*, 132 Mass. 164. It may be safely affirmed that this rule extends to all the domestic relations.

In any case, it is not necessary that the threats be contemporaneous with the making of the contract; in fact, in the case of transmitted threats, it is impossible that such should be the case. It is, therefore, sufficient, if the threats be the inducement of the contract; and, the fact that they were made a few days before its execution will not prevent it from being avoided on the ground of duress, if they have not been retracted, (to the knowledge of the person giving the security), during the intervening time: *Taylor* v. *Jaques*, 106 Mass. 291.

V. The rule as to duress of goods, similar to that laid down in the case of duress by imprisonment, is, that any contract, obtained by one in possession of the goods of another, through an illegal retention of the goods until his demands are complied with, may be avoided by the owner of the goods; and the same is true where the goods are lawfully retained, but with an illegal intent. "Duress of goods may exist when one is compelled to submit to an illegal exaction, in order to obtain them from one who has them in possession, but refuses to surrender them, unless the exaction is submitted to:" *Hackley* v. *Headley*, (Mich.), 8 N. W. Rep. 511. The refusal to allow the redemption of a pledge, except upon payment of an illegal claim, falls under this rule: *Astley* v. *Reynolds*, 2 Str. 915; *Stenton* v. *Jerome*, 54 N. Y. 480; as does the refusal of a carrier to deliver property to a consignee, without the payment of an illegal charge: *Ashmole* v. *Wainwright*, 2 Q. B. 837; *Harmony* v. *Bingham*, 12 N. Y. 99: *Baldwin* v. *Liverpool & Gt. West. S. S. Co., Ltd.*, 74 N. Y 125; the detention of a raft of lumber, in order to extort illegal toll: *Chase* v. *Dwinal*, 7 Me. 134; and, in short, any refusal to deliver property to its owner until a disputed claim is paid, if the claim appear afterwards to have been unwarranted: *Shaw* v. *Woodcock*, 7 B. & C., 73; *Scholey* v. *Mumford*, 60 N. Y. 498; *White* v. *Heylman*, 34 Pa. 142. So, a unlawful refusal to clear a vessel until certain claims are paid

will be duress: *McPherson* v. *Cox*, 86 N. Y. 472; *Baldwin* v. *Sullivan Timber Co.*, 20 N. Y. Suppl. 496; and when the plaintiff contracted to buy certain cattle and paid $175,500, leaving a balance of $27,000 due, and discovered, before paying that balance, that property to the value of $14,110, covered by the contract of sale, had been delivered to other parties, but could not get possession of any part of the purchase without completing the stipulated payment; and unless he took possession, the property would be at great risk of loss for want of care during the winter just beginning; it was held that the payment of the balance under protest was extorted by duress, and that the plaintiff could maintain a suit to recover the value of the property wrongfully delivered to others: *Lonergan* v. *Buford*, 148 U. S. 581; S. C., 13 Sup. Ct. Rep. 684; affirming *Buford* v. *Lonergan*, 22 Pac. Rep. 164.

The property, however, must be that in which the owner has an existing right of possession; a mere refusal to pay a debt: *Doyle* v. *Rector*, 133 N. Y. 372; *Miller* v. *Miller*, 68 Pa. 486; or a threat to withhold payment of a debt already due: *Cable* v. *Foley*, (Minn.), 47 N. W. Rep. 1035; is not duress. In *McCormick* v. *Dalton*, (Kans.), 35 Pac. Rep. 1113, D. had a parol contract with M. to grade a mile of roadbed for a railroad at a stated price per cubic yard, and M., desiring to abrogate the verbal contract, demanded of D. the signing of a written contract for half a mile only of the heaviest part of the grading, at the same price per cubic yard, and upon his refusing to sign, because the written contract did not correspond with the verbal one, M. said to the men working for him: "I will stand good for no more work you do for D., and D. can stop at once." D., because of his financial condition, was unable to carry on the work, unless M. paid the men, and after studying over the matter for a few days, signed the contract. On these facts, it was held that the contract could not be said to have been signed by D. under duress. But it comes at least very near the border line.

Similarly, a threat by a lessor to eject a tenant at will, unless he will pay a sum demanded as rent, is not such duress as will entitle the tenant to recover the rent so paid, though

more is demanded than is actually due, and the tenant pays it under protest: *Emmons* v. *Scudder*, 115 Mass. 367; and the demand by a labor union of a certain sum, for supplying journeymen to a baker whose men have deserted him, is not duress, especially when the charge made is a usual one: *Grabooski* v. *Gewerz*, 17 N. Y. Suppl. 528.

VI. A contract extorted by duress is not void, but voidable only; and the right to rescind it, or to recover payments made under it, may be lost by laches, acquiescence or ratification: *Foerster* v. *Squier*, 19 N. Y. Suppl. 367. A delay of seven years in asserting duress will render necessary the presentation of a very strong case, in order to authorize the interference of a court of equity: *Davis* v. *Fore*, 59 N. W. Rep. 125. Acquiescence may be presumed after the lapse of three years: *Gregor* v. *Hyde*, (C. C. A.), 62 Fed. Rep. 107. When a deed is extorted from a grantor, under the pressure of a threat of prosecution for larceny, and possession is given under the deed, but no steps are taken to avoid it until the prosecution is barred, it is a ratification: *Eberstein* v. *Willets*, 134 Ill. 101. And when a deed is executed in consequence of threats of criminal prosecution against the grantor's husband, and the grantor, with full knowledge of its invalidity, and of the fact that her husband has escaped to a foreign country, and is beyond the reach of criminal process, voluntarily executes another deed to the grantees, to induce them to purchase a lot of household furniture on the premises, the former deed is ratified: *Miller* v. *Minor Lumber Co.*, (Mich.), 57 N. W. Rep. 101.

VII. The validity of a contract made under duress may be attacked either directly, by bill in equity for relief, or by way of defense to a suit thereon. In either case, the fact that the contract was executed, or payment made, with full knowledge of all the facts, will not estop the person injured from alleging the duress: *Buford* v. *Lonergan*, 22 Pac. Rep. 164; affirmed in *Lonergan* v. *Buford*, 148 U. S. 581; S. C., 13 Sup. Ct. Rep. 684; nor will he be estopped by the fact that the evidences of the crime were delivered on the execution of the contract, and have since been destroyed by him: *City Natl.*

Bk. of Dayton v. *Kusworm*, (the principal case), (Wis.), 59 N. W. Rep. 564. On a bill for relief, the fact that the consideration was illegal, being to compound a felony, will not prevent the plaintiff from obtaining the relief sought: *Bryant* v. *Peck & Whipple Co.*, (Mass.), 28 N. E. Rep. 678. In a suit on a contract, the fact that the plea or answer does not formally set up the defence of duress will not prevent that defence, if found in the evidence, from availing to defeat recovery: *Morrill* v. *Nightingale*, 93 Cal. 452; S. C., 28 Pac. Rep. 1068; especially if the evidence thereof has been admitted without objection: *First Natl. Bk. of Nevada* v. *Bryan*, 62 Iowa, 42; S. C., 17 N. W. Rep. 165. A contract obtained by duress is void in the hands of a holder with notice: *Thompson* v. *Niggley*, (Kans.), 35 Pac. Rep. 290; *Brown* v. *Peck*, 2 Wis. 261; but when a debtor has assigned a claim to a creditor to pay a just debt, his assignee for the benefit of creditors cannot, without his authority, claim that that assignment was made by duress, probably on the ground that the duress, being a tort, is a personal claim of the debtor, and does not pass by the assignment: *Phillips* v. *Henry*, 160 Pa. 24; S. C., 28 Atl. Rep. 477. X.

[The above does not profess to be an exhaustive collection of the cases on the subject of duress. To collate the authorities upon that subject, would be, as was said by Judge Gray, in *Youngs* v. *Simon*, 41 Ill. App. 28, "an almost endless task." The aim of the writer has been simply to present the outline of the subject, with especial reference to the more recent cases. The older ones will be found collected in 6 Am. & Eng. Encyc. of Law, 64 *et seq.*].