WHAT CONSTITUTES PERSONAL DURESS?

Although it is a generally accepted doctrine that contracts executed under duress are void, it is sometimes very perplexing to decide what constitutes duress sufficient for the purpose of rescinding a contract. It is conceded by able lawyers that the question where the border line of duress is to be drawn, is one of the mooted topics of the law. The doubt and interest on the subject are increased by the absence of recognized decisions of the courts as to the proper limitations of the term "duress," to say nothing of the constant tendency of the courts to extend and expand the meaning of the term. This is well illustrated by the thorough and valuable opinion of Judge Marshall in *Galusha vs. Sherman,* 105 *Wis.* 263, a recent case, in which he says: "It (duress) is a branch of the law that, in the process of development from the rigorous and harsh rules of the ancient common law, has been so softened by the more humane principles of the civil law and of equity, that the teachings of the older writers on the subject, standing alone, are not proper guides. The change from the ancient doctrine has been much greater in some jurisdictions than in others. There are many adjudications based on citations of authorities not in themselves harmonious, and many statements in legal opinions based on the ancient theory of duress, which together create much confusion on the subject, not only as it is treated by text writers, but by judges in legal opinions."

It is also stated in the same opinion that "Anciently, duress in fear could exist only where there was such a threat of danger to the object of it as was deemed sufficient to deprive a constant or courageous man of his free will." The many cases cited in 9 Cyc. 445-450 show that the standard of a "constant and courageous man" was not fair to persons of less strength and will-power. As explained in Lawson on Contracts, §261, the harshness of this rule has been altered until the modern cases have declared duress to exist where the party has been deprived of the exercise of his free will.

Brown v. Pierce, 7 *Wallace* (*U. S.*) 205;
Hartford Fire Ins. Co. v. Kirkpatrick, 111 *Ala.* 456;
Radich v. Hutchins, 95 *U. S.* 210.

Duress in the United States is divided into two main divisions—duress of goods, where a party is coerced by being deprived of his property, and personal duress, where he is overcome by fear for the safety of his person. In this note, only personal duress will be considered.

Along with the above mentioned extension of duress came the doctrine that it might be pleaded by a relative of the party who is the

subject of the threat. In *Sollinger v. Earle*, 82 *N. Y.* 393, the Court said: "It (duress) can only be asserted in favor of the debtor himself, and the wife, husband or near relative of the blood of the debtor."

We now come to the phase of the subject which is in an unsettled state and is open for discussion. It is stated in Clark on Contracts, Page 245, that: "Though the law does not regard a person as under duress who enters into a contract to relieve a stranger, it is otherwise where the person relieved is a near relative, as a husband, wife, parent or child. These are the only relationships generally mentioned in the books, but the rule has been extended to other relationships, as of brother, sister or grandchild."

City Natl. Bank v. Kusworm, 88 *Wis.* 188;
Bradley v. Irish, 42 *Ill. App.* 85.

While in the New York case above cited, a brother-in-law of the threatened party was not allowed to plead duress, the tendency of the courts to extend the doctrine is further evidenced by the case of *Wood v. Kansas City Home Telephone Company*, 223 Mo. 537, where the court uses the following language:

> "In 8 Cyc., at page 523, it is said: 'Duress if proved is sufficient to relieve a party from the effect of a compromise which is procured by such means. To establish duress, however, the evidence must show facts reasonably adequate to overcome the will of the party making the compromise.'
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> 'But what is duress? Some states have statutes giving definitions, but not so in Missouri. With us we must go to the common law, and such modifications thereof as have been made by the courts, if any such have been made. By the common law duress was divided into two classes (1) duress by imprisonment and (2) duress per minas. (9 Cyc., p. 444.) Of the latter class are such Missouri cases as Lacks v. Bank, 204 Mo. 455, and Hensinger v. Dyer, 147 Mo. l. c. 226. The class is thus defined by the same authority at page 445: 'Duress per minas arises when a person (1) is threatened with loss of life, (2) is threatened with loss of limb, (3) is threatened with mayhem, or (4) is threatened with imprisonment, and only in these cases at common law.'
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> "* * * But in modern practice the courts have gone further and this later doctrine is thus stated by the same authority, 9 Cyc., P. 450: 'The modern doctrine holds that there is no legal standard of resistance which a person acted upon must come up to at his peril of being remediless for a wrong done to

him, and no general rule as to the sufficiency of facts to produce duress. The question in each case is, Was the person so acted upon by threats of the person claiming the benefit of the contract, for the purposes of obtaining such contract, as to be bereft of the quality of mind essential to the making of a contract, and was the contract thereby obtained? Duress then, according to this class of cases, includes that condition of mind produced by the wrongful conduct of another, rendering a person incompetent to contract with the exercise of his free will power, whether formerly relievable at law on the ground of duress or in equity on the ground of wrongful compulsion.'

In accord with this Missouri case is *Galusha v. Sherman, supra,* where the Court stated: "As said in *Wolff v. Bluhm* (95 Wis. 257) the condition of mind of a person produced by threats of some kind, rendering him incapable of exercising his free will, is what constitutes duress. The means used to produce that condition, the age, sex, and mental characteristics of the alleged injured party, are all evidentiary merely of the ultimate fact in issue, of whether such person was bereft of the free exercise of his will power."

In the same case (*Galusha v. Sherman*), it is also stated that "There is no legal standard of resistance which a party so circumstanced must exercise at his peril to protect himself. The question in each case is, Was the alleged injured person, by being put in fear by the other party to the transaction for the purpose of obtaining an advantage over him, deprived of the free exercise of his will power, and was such advantage thereby obtained?"

From the above cases it may readily be seen that there is a disposition on the part of the courts at the present time to extend the application of the doctrine to cases where no near blood relationship exists.

It would be no difficult matter to conceive of a case where near and dear friends, allied by inter-dependent social and business matters, were so intimately and closely related as to warrant the plea of duress as a defense under certain circumstances. It is often a fact that the existing relatons between true friends are closer than those of blood relatives. The modern tendency to depart from a hard and fast rule for all cases might easily be justified under these conditions, and allowing duress to be invoked as a defense would meet with the approval of all fair-minded persons.

On the other hand, however, it is extremely dangerous for the judiciary to become too lenient in permitting parties to set aside their contracts. Should this tendency be extended, the contract would lose much of its sanctity as a modern instrument, and many contracts

which, at the time of their formation, were perfectly valid and legitimate would become the subjects of malicious litigation. Parties to agreements, finding their obligations becoming burdensome and detrimental as a result of changing conditions, would take them before judicial bodies and resort to nefarious means, seeking to avoid them on a plea of duress. Since many rules of law, by necessity, work hardships upon litigants, it is only just and desirable that a party to a contract, except under exceptional conditions, should be obliged to perform it. Laxity in the law is a condition always to be avoided, and it is therefore only reasonable and necessary that the standard of resistance and will-power be not too far reduced.

Although duress is ordinarily a question of fact for the jury, it seems necessary, as a general rule of modern law, that the validity of a plea of duress should only be upheld where the relationship is a near one, no further remote than that of parent and child, grandparent and grandchild, husband and wife, uncle or aunt and nephew or niece, and that of first cousins.

In *Davis v. Luster,* 64 Mo. 43, the Court said:

> "It has long been the habit of courts of equity to relieve parties from contracts made under the influence of threats, or of apprehensions not amounting to legal duress. Where a fraudulent advantage has been taken of the fears, the affections or the sensibilities of a party, equity will grant relief. Judge Story says that circumstances of extreme necessity and distress of a party, though not accompanied by any direct restraint or duress, may so entirely overcome his free agency as to justify the Court in setting aside a contract made by him on account of some oppression or fraudulent advantage or imposition attendant upon it. In such case he has no free will, but stands *in vinculis.*"

By the application of this principle, it would be possible for everyone to secure justice without that detrimental leniency which lessens the force of the law. This doctrine, which was approved in *Turley v. Edwards,* 18 *Mo. App* 676, *Dausch v. Crane,* 109 *Mo.* 323, *Real Estate Co. v. Spelbrink,* 211 *Mo.* 671, seems broad enough to meet the demands of justice in all cases not measuring up to technical duress.

It would seem, therefore, that in the present state of the law, a party to a contract made in consequence of an undue or fraudulent advantage taken of his affections, sensibilities, weakness or emotion, may be relieved therefrom; but, unless he can prove technical duress, he must seek relief in equity, or when sued upon the contract by the other party, set up his right to equitable relief by way of answer and crossbill.

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