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such legislation are overwhelmingly forceful. "Here we are dealing simply with the power of the Legislature to meet a growing danger and peril to a large number of our fellow citizens, and we find nothing in the act itself which is so arbitrary or unreasonable as to show that it deprives any employer of his property without due process of law or denies him the equal protection of the laws."³⁴

C. M. IVEY, JR.

Contracts—Duress—Business Compulsion

Plaintiff's policy of life insurance, with defendant company, included the customary total and permanent disability clause, with waiver of premiums after proof of disability. Plaintiff, alleging total and permanent disability, claimed the installments due him under the contract. Defendant, denying the disability, insisted on the continued payment of premiums by plaintiff in order to keep the policy in force. Plaintiff paid the premiums under protest and brought this action to recover the installments and premiums paid. A verdict in the trial court allowed plaintiff to recover the disability installments and the premiums paid under protest, with interest. The appellate court in reversing stated that money paid voluntarily under protest cannot be recovered in the absence of fraud, duress, or mistake.¹

In determining the case the court apparently disregarded an important though comparatively recent innovation in the law—the doctrine of economic compulsion² as a species of duress.

Anciently, duress in law could exist only where there were such threats as would put one in fear of injury to life, limb, or liberty—duress of person.³ Changing economic conditions brought about an expansion of the concept of duress. The doctrine of duress of goods evolved. This meant that a payment made to release one's property from an unlawful seizure or retention was made under duress.⁴ Further

³⁴ *W. H. H. Chamberlin, Inc. v. Andrews*; *E. C. Stearns and Co. v. Same*; *Associated Industries of N. Y. State, Inc. v. Department of Labor of N. Y.*, 271 N. Y. 1, 2 N. E. (2d) 22, 26 (1936).

¹ *Ignatovig v. Prudential Ins. Co. of America*, 16 F. Supp. 764 (M. D. Pa. 1935).

² The terms "economic compulsion," "business compulsion," and "moral duress" are used interchangeably by the courts.

³ ". . . it is to be known, that a man shall avoid his deed for manuas (menaces) of imprisonment, albeit he were never imprisoned: for a man shall avoid his own act for manuas in four cases, viz., 1. for fear of loose of member, 2. loose of life, 3. of mayhem, and 4. imprisonment; otherwise it is for fear of battery, which may be very slight, or for burning of his house, or taking away or destroying his goods, or the like, for there he may have satisfaction by recovery in damages." 2 Co. Inst. 483; *Baily v. Devine*, 123 Ga. 653, 51 S. E. 603 (1905).

⁴ *Lonergan v. Buford*, 148 U. S. 581, 13 Sup. Ct. 684, 37 L. ed. 569 (1893) (oppressive refusal to deliver cattle under contract); *Cobb v. Charter*, 32 Conn. 358 (1865) (mechanic's tools were withheld depriving him of a means of support); *Du Vall v. Norris*, 119 Ga. 947, 47 S. E. 212 (1904) (money paid to police

relaxation of the law has led to the modern doctrine of business compulsion.

The typical fact situations to which this doctrine applies may be described roughly as follows: to protect himself against serious economic loss, a party is coerced into paying a sum of money which he does not owe.⁵ The payment may be of a sum greater than is due,⁶ or payment may be made where nothing is owed to the party exercising the coercion.⁷ This doctrine of economic or business compulsion clearly expands the older category of duress of goods in that here no property is withheld by the coercing party. Rather does one in a position of power merely take undue advantage of the economic plight of his adversary to extort a payment which is not only involuntary, but is not legally owed. This pressure exerted by the strong against the weak is felt to destroy the free volition which is a prerequisite to the existence of a valid contract.⁸

The doctrine, in terms of duress or of economic compulsion,⁹ has attained judicial recognition in a substantial number of states.¹⁰

Still in its infancy, the doctrine of economic compulsion already

officer to secure stolen ring); *Fenwick Shipping Co. v. Clark*, 133 Ga. 43, 65 S. E. 140 (1909) (payment to prevent seizure of baggage); *Berger v. Bonnell Motor Co.*, 4 N. J. Misc. 589, 133 Atl. 778 (1926) (wrongful withholding of automobile by garage after repairing it); *Ferguson v. Associated Oil Co.*, 173 Wash. 672, 24 P.(2d) 82 (1933) (refusal to deliver gasoline under contract whereby plaintiff was forced to pay excessive amount or suffer loss of his lease); *Astley v. Reynolds*, 2 Strange 915 (K. B. 1732) (withholding of plaintiff's plate by pawnbroker); *WOODWARD, THE LAW OF QUASI-CONTRACTS* (1913) §216; (1934) 8 WASH. L. REV. 140. *Contra*: *Karschner v. Latimer*, 108 Neb. 32, 187 N. W. 83 (1922) (where proof of damage and great hardship was required before the payments could be recovered).

⁵ *Rowland v. Watson*, 4 Cal. App. 476, 88 Pac. 495 (1906); *City of Chicago v. Northwestern Mutual Life Ins. Co.*, 218 Ill. 40, 75 N. E. 803 (1905); *Pittsburgh Steel Co. v. Hollingshead*, 202 Ill. App. 177 (1916); *Bates v. New York Ins. Co.*, 3 John's Cas. 238 (N. Y. 1802); *Kilpatric v. Germania Life Ins. Co.*, 183 N. Y. 163, 75 N. E. 1124 (1905); *Homecrest Bldg. Co. v. Weinstein's Estate*, 165 N. Y. Supp. 176 (1917); *Harris v. Carey*, 112 Va. 362, 71 S. E. 55 (1911); *York v. Hinkle*, 80 Wis. 642, 50 N. W. 895 (1891); *Guetzkow Bros. v. Breese*, 96 Wis. 592, 72 N. W. 45 (1897); (1932) 20 VA. L. REV. 474. *Contra*: *Smithwick v. Whitley*, 152 N. C. 369, 67 S. E. 913 (1910). Where plaintiff was in possession of real property under a land contract and had paid an excessive amount to defendant in fear of losing improvements, *held* recovery denied.

⁶ *Kilpatric v. Germania Life Ins. Co.*, 183 N. Y. 163, 75 N. E. 1124 (1905).

⁷ *Ramp Bldgs. Corp. v. Northwest Bldg. Co.*, 164 Wash. 603, 4 P.(2d) 507 (1931).

⁸ "This kind of duress consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or the extreme necessities or weakness of another, whereby his free agency is overcome." *Pittsburgh Steel Co. v. Hollingshead*, 202 Ill. App. 177, 178 (1916).

⁹ Earlier cases read in terms of duress—*Harris v. Carey*, 112 Va. 362, 71 S. E. 551 (1911). More recent cases adopt the term "economic compulsion". *Criterion Holding Co. v. Cerussi*, 250 N. Y. Supp. 735 (1931). Contrast also majority and concurring opinions in *Ramp Bldgs. Corp. v. Northwest Bldg. Co.*, 164 Wash. 603, 4 P.(2d) 507 (1931).

¹⁰ See cases cited *supra* note 5 and also cases collected (1931) 79 A. L. R. 655.

involves difficult problems as to when a payment is, or is not, voluntary. Payment under protest alone is not considered involuntary.¹¹ This is to prevent the rule from operating as a boomerang, inviting proof that a payment was under protest when it in fact was not.¹² The courts will not consider the mere demand for payment sufficient compulsion to constitute duress; another element must be present—proof that advantage was taken of the economic stress of the payor. This later element is essential to the existence of undue coercion.¹³

What is, or is not, improper coercion was a fundamental and paramount problem in cases involving the traditional concept of duress; it remains a problem as to economic compulsion. For example, the earlier cases held that there was no duress unless the threatened acts, if actually committed, would be either illegal or tortious.¹⁴ Modern decisions generally hold that a threat to do that which one has a legal right to do may still constitute improper pressure if the free-will of the other party is overcome.¹⁵ Thus a mere threat to breach a contract, in the absence of other circumstances, has never been treated as a basis of duress;¹⁶ but under the doctrine of economic compulsion where such a threat is accompanied by an injury to the business of the threatened party, for which his legal remedies are inadequate, such a threat may constitute improper pressure.¹⁷

¹¹ *Detroit v. Martin*, 34 Mich. 170 (1830); *Congdon v. Preston*, 49 Mich. 204, 13 N. W. 516 (1882); *Warren v. Federal Life Ins. Co.*, 198 Mich. 342, 164 N. E. 449 (1917); *Stanford v. U. S. Investment Corp.*, 272 S. W. 568 (Tex. Civ. App. 1925).

¹² "There would be a danger in holding otherwise in that any man in doubt as to the validity of his payment could pay with a feigned protest and later sue to recover the amount. . . ." *Hicks v. Levett*, 19 La. App. 836, 838, 140 So. 276, 277 (1932).

¹³ Thus, "where an unfounded or illegal demand is made upon a person, and the law furnishes him adequate protection against it or gives him an adequate remedy, and instead of taking the protection the law gives him. . . , he pays what is demanded, such payment is deemed to be voluntary and not compulsory payment." 48 C. J. 753, quoted with approval in *Edwards v. Williams*, 93 S. W. (2d) 452, 454 (Tex. Civ. App. 1936).

¹⁴ *Martin v. New Rochelle Water Co.*, 42 N. Y. Supp. 893 (1896) *aff'd* 162 N. Y. 599, 57 N. E. 1117 (1900); *Charlotte Bank and Trust Co. v. Smith*, 193 N. C. 141, 136 S. E. 358 (1927).

¹⁵ *Bither v. Packard*, 115 Me. 306, 98 Atl. 929 (1916); *Welch v. Beeching*, 193 Mich. 338, 159 N. W. 486 (1916); see also *Durfee, Recovery of Money Paid Under Duress of Legal Proceedings* (1917) 15 MICH. L. REV. 228.

¹⁶ *Mason v. U. S.*, 17 Wall. 67, 21 L. ed. 564 (1872); *U. S. v. Nederlandsch-Amerikaansche Stoomvaart Maatschappij*, 252 U. S. 148, 41 Sup. Ct. 72, 65 L. ed. 193 (1920); *Hartsville Oil Mill v. U. S.*, 271 U. S. 43, 46 Sup. Ct. 389, 70 L. ed. 822 (1926); *Hackley v. Headley*, 45 Mich. 569, 8 N. W. 511 (1881); *Doyle v. Trinity Church*, 133 N. Y. 372, 31 N. E. 221 (1892).

¹⁷ *Hazelhurst Oil Mill and Fertilizer Co. v. U. S.*, 42 F.(2d) 331 (Ct. of Claims, 1930). (The government, by refusing to accept goods for which it contracted with plaintiff, would cause a drastic fall in the price of cotton linters of which the plaintiff had a large quantity. By threat of such refusal the government procured a settlement. If plaintiff had not settled, but had sued for breach of contract, the damages would have been inadequate; therefore the court elimi-

Another problem frequently raised is that of promptness of action after the removal of the duress. The courts have held that even if there is duress, it is necessary that the payor seek his remedy immediately after the pressure under which he acted is removed.¹⁸ Though the courts require "immediate" action, in fact the question of promptness of action seems to be one of reasonable time, varying with the circumstances of the individual case.

There appears to be an important exception to the doctrine. In the case of a tax paid under valid protest there can be no recovery unless there was immediate danger of seizure of person or property.¹⁹ Thus in this instance only, the older concepts of duress of person and of goods seem to have undergone no stage of expansion. Generally however, the law of duress has made marked growth to date, and is even now in a state of great development.

As applied to insurance cases, the doctrine has been generally invoked where the prerequisite facts have been present,²⁰ and there appears to be no authority for the proposition that the doctrine is not applicable to cases of insurance. *Pacific Mutual Life Insurance Co. of California v. McCaskill*²¹ is a case squarely in point. This recent case, involving a fact situation identical with that of the principal case, reaches a directly contrary result, the court allowing the plaintiff to recover his payments to the insurance company on the basis of economic compulsion.

While the principal case might have been decided differently on the theory of unjust enrichment,²² the facts fit more coherently into the scheme of economic compulsion. The jury verdict, which allowed the plaintiff to recover, established the fact that he was permanently and totally disabled at the time he filed his claim for the installments; therefore the company made illegal demands in regard to the continued payment of premiums; the plaintiff in fear of losing his property, viz.,

nated the settlement on the ground of economic compulsion, and allowed the plaintiff to recover on the basis of the original contract.)

¹⁸ *Deibel v. Jefferson Bank*, 200 Mo. App. 506, 207 S. W. 869 (1919); *Oregon Pacific Ry. v. Forrest*, 128 N. Y. 83, 28 N. E. 137 (1891); *White v. Little Co.*, 118 Wash. 582, 204 Pac. 186 (1922).

¹⁹ *City of Morganfield v. Walker*, 202 Ky. 641, 261 S. W. 12 (1924); *Benoline Oil Co. v. State*, 122 Ohio St. 175, 171 N. E. 33 (1930); *Phoebus v. Manhattan Social Club*, 105 Va. 144, 52 S. E. 839 (1906); see *Field, Recovery of Illegal Taxes* (1932) 45 HARV. L. REV. 501. Consideration must be given to the statutory exemptions which provide for refund regardless of whether there is a protest, if there is an overpayment.

²⁰ *Bates v. N. Y. Ins. Co.*, 3 John's Cas. 238 (N. Y. 1802); *City of Chicago v. Northwestern Mutual Life Ins. Co.*, 218 Ill. 40, 75 N. E. 803 (1905); *Rosenfeld v. Boston Mut. Life Ins. Co.*, 222 Mass. 284, 110 N. E. 304 (1915). The doctrine is approved in *Warren v. Federal Life Ins. Co.*, 198 Mich. 342, 164 N. W. 449 (1917); however, recovery was denied on the basis of insufficient protest.

²¹ 170 So. 579 (Fla. 1936).

²² WOODWARD, *THE LAW OF QUASI-CONTRACTS* (1913) §§1, 8, 115-124.

the benefits of the policy, complied with the wrongful demands. The result reached by the court might possibly be justified by treating the threat to cancel the policy as a threat to breach a contract, such a threat having been held not to constitute duress;²³ however, in order to sustain this reasoning it must appear that the plaintiff's action on the contract of insurance would adequately compensate him²⁴ and that he would suffer no loss pending the time of the trial of his cause in the event that he should ultimately lose the case.

At any rate, it seems that the court should have considered the doctrine of economic compulsion; and there is little justification for deciding the case on a rule of law²⁵ which is at most questionably applicable, since the payment of the premiums can scarcely be considered voluntary.²⁶

JOHN TAYLOR SCHILLER.

Insurance—Burial Associations—Definition of Insurance.

Defendant funeral home was enjoined from doing an insurance business without complying with the insurance laws.¹ Thereafter defendant sold contracts for \$50, payable in monthly installments, which provided that the purchaser would be rendered certain funeral services on death, and that the purchaser's representative would be entitled to funeral merchandise at reduced prices. There was a further stipulation that the exercise of the privileges under the contract would render the unpaid balance due and collectible. Contempt proceedings were instituted by the Insurance Commissioner. *Held*: Since no element of risk was involved the agreements were not insurance contracts and defendant did not violate the injunction in making sales subsequently thereto.²

Statutory definitions of insurance are ordinarily couched in such general terms as to be of little value. North Carolina has one of the more widely accepted definitions: "A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity for, the destruction, loss, or injury of something

²³ See note 16 *supra*.

²⁴ See note 17 *supra*.

²⁵ ". . . money *voluntarily* paid with full knowledge of the facts cannot be recovered back except where it was paid under duress, fraud, or mistake." (Italics the writer's). *Ignatovig v. Prudential Ins. Co. of America*, 16 F. Supp. 764 (M. D. Pa. 1935).

²⁶ A settlement of the case was subsequently made. For a recent discussion of this subject see (1937) 3 U. OF PITTSBURGH L. REV. 241.

¹ *South Georgia Funeral Homes v. Harrison*, 182 Ga. 60, 184 S. E. 875 (1936).

² *South Georgia Funeral Homes v. Harrison*, 188 S. E. 529 (Ga. 1936).