DURESS AND THREATS OF LAWFUL ACTION

By W. G. G. A. Young, LL.B.(Hons.) (*Cantuar*); Ph.D. (*Cantab.*),
Barrister and Solicitor.

The purpose of this article is to explore the validity of the oft-expressed view that pressure may only amount to duress in the law of contract or quasi-contract if it consists of action or threats of action of an illegal nature. It has been so often stated that threats of lawful action cannot amount to duress that at first sight the proposition involved appears to be axiomatic; but, as we shall see, the courts have so often granted relief on grounds of duress in circumstances in which it is impossible to point to threatened or actual pressure of an illegal nature that this apparent axiom requires considerable re-examination.

In the course of this article a number of the traditional and some non-traditional heads of duress will be examined with a view to showing that the usual analysis of duress as involving only pressure consisting of threats of illegal action or actual illegal action is inadequate.

Duress of Imprisonment

Most of the cases in which duress of imprisonment has been successfully pleaded have involved imprisonment which was or would have been illegal either as amounting to false imprisonment,[1] or because an action for malicious arrest or, perhaps, abuse of process could have been brought.[2] Nonetheless, the oft-expressed assumption that the legality of an actual or threatened imprisonment is itself fatal to a plea of duress[3] appears to be unfounded. It seems that the use of powers of imprisonment pursuant to civil process for purposes foreign or collateral to the proper resolution of the dispute to which the civil process relates may be duress, apparently independently of any consideration as to whether the imprisonment was or would have been tortious;[4] and courts of equity were, and possibly still are, prepared to set aside transactions made by prisoners where undue advantage has been taken of their position, irrespective of the legality of the imprisonment in question.[5]

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[1] See, for instance, *De Mesnil* v *Dakin* (1867) L.R. 3 Q.B. See also 2 Inst. 482; and 1 Bl. Comm. at 136.

[2] See *post*.

[3] See *Smith* v *Monteith* (1844) 13 M. & W. 427, 153 E.R. 178 at 438-439 *per* Pollock C. B.; and *Biffin* v *Bignell* (1862) 7 H. & N. 877, 158 E.R. 725 at 880, 726 *per* Bramwell. B. See also *Beer* v *McLeod* (1890) 22 N.S.R. 535. Commentators sometimes express the same view, see Anson's *Law & Contract* (25th ed. by Guest) at 259; Treitel *The Law of Contract* (4th ed.) at 270; and Cheshire and Fifoot's, *Law of Contract* (9th ed. by Furmiston).

[4] See *post*.

[5] Such agreements were always closely scrutinised by the courts as to their fairness: see *Roy* v *Duke of Beaufort* (1741) 2 Atk. 190; 26 E.R. 519; *Hinton* v *Hinton* (1755) 2 Ves. Sen. 631; 28 E.R. 402, and *Lawley* v *Hooper* (1745) 3 Atk. 278; 26 E.R. 962.

Duress of Goods

There is a considerable body of authority[6] which indicates that only an illegal interference with property amounts to duress; and this proposition has been accepted by a number of commentators.[7] There are, however, a number of cases where the legality of the action which has been taken or threatened was not regarded as being fatal to an allegation of duress of goods; and the criteria for determining whether this form of pressure amounts to duress therefore appear not to be solely dependent on the law of torts.

There are two broad categories into which the cases involving duress of goods fall. In the first are those cases in which powers or purported powers to seize or detain property (usually relating to rights of distress or lien) have been employed to enforce invalid or excessive but honestly asserted claims. The second category of cases relates to the seizure or detention of property for purposes other than the enforcement of such claims. It is convenient to deal with these two situations independently.

Usually the legality of a seizure or detention of property in order to reinforce a particular claim depends upon the validity of the claim which is asserted; and for this reason it is possible to explain many of the cases in which money paid under duress of goods in response to invalid but honest claims has been recovered on the basis that the pressure applied was illegal because the action taken or threatened was, or would have been, tortious. The difficulty with this approach, however ,is that there are many cases in which the pressure complained of was not, or would not have been tortious, but where findings of duress were, nonetheless, made.

Where property is seized or detained in order to secure the payment of money which is alleged to be owing, the legality of the actions of the person claiming to hold the security in circumstances where some money is owed but there is a dispute as to how much often depends upon whether a tender of the amount actually owed has been made. This is so, for instance, where property has been pledged,[8] a lien has been asserted,[9] or powers of distress have been exercised.[10] The general rule which was established in *Scarfe* v *Morgan*[11] is that the right to the tender of the

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[6] *Atlee* v *Backhouse* (1838) 3 M. & W. 633, 150 E.R. 1298 at 645, 1303 *per* Lord Abinger C. B., and at 650, 1305 *per* Parke B.; *Gulliver* v *Cosens* (1845) 1 C.B. 788, 135 E.R. 753 at 797, 757 *per* Coltman J., at 798, 757 *per* Maule J., and at 799, 757 *per* Cresswell J.; *Phillips* v *Broadly* (1840) 11 Jur. 264 at 266 *per* Erle J. *arguendo*; *Glynn* v *Thomas* (1856) 11 Ex. 870, 156 E.R. 1085 at 879, 1089 *per* Coleridge J.; *Liverpool Marine Credit Co.* v *Hunter* (1868) L.R. 3 Ch.App. 479 at 487 *per* Lord Chelmsford L. C.; and *Kanhaya Lal* v *National Bank of India Ltd.* (1913) 29 T.L.R. 314 at 315 *per* Lord Moulton. See also *Owen v. Taylor* (1876) 39 U.C.Q.B. 358.

[7] Munkman, *The Law of Quasi-Contracts* (1949) at 31; *Chitty on Contracts* Vol 1 (24th ed. by Guest), at para. 438; Treitel, at 270; Anson, at 259-60; and see Beatson [1974] C.L.J. 97 at 112-113.

[8] Halsbury *Laws of England* 3rd ed., vol. 29 at 217.

[9] *Op. cit.*, vol. 24 at 217.

[10] The rather complex position relating to the necessity to tender is fully discussed elsewhere, see Williams (1936) 52 L.Q.R. 106.

[11] (1838) 4 M. & W. 270, 150 E.R. 1430.

appropriate amount which is actually owed is not lost by a demand for an excessive sum. This general rule does not apply if the excessive demand in the circumstances amounts to a waiver of the claim for the amount which is owed and the substitution of a claim in respect of which there is no right to seize or detain the property in question,[12] or where is it indicated that a tender of any lesser sum would not be accepted.[13] Moreover, where the sum demanded is unliquidated and no particulars are given which would enable the party who is obliged to make a tender to ascertain the correct amount, the right to a tender is also regarded as being waived.[14]

There are a number of cases in which money paid under duress of goods has been recovered in the absence of tenders of the money actually owed in circumstances where the interference with property involved would only have been illegal if such a tender had been made or the right to a tender had been waived. Some of the cases are explicable, perhaps, on this latter basis;[15] but in other cases it appears to have been recognised that the legality of an interference with property resulting from the absence of a tender is no bar to the restitution of money paid in excess of what was actually owed.[16]

In *Somes* v *British Empire Shipping Co*,[17] the defendant had asserted a lien over the plaintiff's ship in respect of two classes of charges. In respect of the first class the lien was good; but the second set of charges was not payable. The result was that the defendant did not have a lien for the total amount which was claimed. The plaintiff nonetheless paid the full amount which had been demanded in order to obtain possession of its ship; and, although that payment was made under protest, there was no tender in respect of the first set of charges. There appears to have been nothing in the evidence beyond the inferences which might be drawn from the making of any excessive demand that a tender of the correct amount would not have been accepted. The case thus appears to have been on all fours with *Scarfe* v *Morgan*;[18] and the detention of the ship by the defendant was

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[12] *Dirks* v *Richards* (1842) 3 Man. & G. 574, 134 E.R. 236.

[13] *Kerford* v *Mondel* (1859) 28 L. J. Ex. 303; *The Norway* (1864) Br. & L. 377, 167 E.R. 408 at 396, 419 *per* Dr Lushington; and *Albemarle Supply Co. Ltd.* v *Hind & Co. Ltd.* [1928] 1 K.B. 307 at 319 *per* Scrutton L. J.

[14] *The Norway* (1864) Br. & L. 377, 167 E.R. 408 at 396, 419 *per* Dr Lushington; *Huth* v *Lamport* (1886) 16 Q.B.D. 735 at 736 *per* Lord Esher M. R.; and *Albemarle Supply Co. Ltd.* v *Hind & Co. Ltd.* [1928] 1 K.B. 307 at 319 *per* Scrutton L. J. This rule does not apply where there has been a distress for rent or damage feasant, as distrainees are treated as wrongdoers, upon whom is placed the onus to tender the correct amount; see *Glynn* v *Thomas* (1856) 11 Ex. 870, 156 E.R. 1085 at 878, 1088 *per* Coleridge J.; and *Sorrell* v *Paget* [1950] 1 K.B. 252 at 264 *per* Cohen L. J., and at 265 *per* Asquith L. J.

[15] *Ashmole* v *Wainwright* (1842) 2 Q.B. 837, 114 E.R. 325 at 845, 328 *per* Lord Denman C. J., at 845, 328 *per* Patteson J., and at 846, 328 *per* Coleridge J. See also the Canadian decisions on this point, *Campbell* v *Halverson* [1919] 3 W.W.R. 657 at 660 *per* Newlands J. A.; and *McCrae* v *Lyons* [1921] 2 W.W.R. 490 at 495 *per* Lamont J. A.

[16] An early and important case which appears to be inconsistent with this proposition is *Astley* v *Reynolds* (1731) 2 Str. 915, 93 E.R. 939, where it was assumed that a tender was a pre-requisite for restitution.

[17] (1860) 8 H.L.C. 338, 11 E.R. 459.

[18] (1838) 4 M. & W. 270, 150 E.R. 1430.

apparently not tortious. Indeed, it was on this ground, among others, that the defendant resisted the action of the plaintiff seeking restitution of the excess paid; but this defence was rejected. Lord Wensleydale explained why:[19]

> Then it was objected that there was no particular time at which it can be said that Messrs Somes were wrongdoers in refusing to deliver up the vessel . . . The additional sum . . . charge and paid under protest includes the sum of £567, to which Messrs Somes had no right by common law, and no right by contract to demand. They become wrongdoers by that act. Therefore, I am clearly of opinion that in this case they have made a demand, which they had no right to make . . .; they have, by these means, obtained money which they had no right to claim, and consequently an action for money had and received will lie, and the ship-owners are entitled to a verdict.

It appears from this reasoning that demanding money to which there is no legal right and reinforcing that demand with detention, albeit lawful, of property, amounts to a wrongful act for the purposes of the law of duress, notwithstanding the bona fides of the person asserting the claim. Whether this is a particularly satisfactory analysis is open to question;[20] but it now seems to be established that money paid in these circumstances is recoverable.

There are other cases in which the right to recover money paid under duress of goods has been recognised despite the absence of a tender or the waiver of the right to a tender, where the interference with property in question was, or would have been, tortious only if a tender had been made.[21] A similar approach has been adopted in another line of cases. The legality of the seizure, detention, or sale of property by officials as a means of enforcing demands does not always depend on the validity of the demands in question; and the authorities indicate that the right to recover money paid under duress of goods in response to invalid, but honestly asserted, official claims does not depend on the illegality of the action taken or threatened. In the Irish case, *Dolan* v *Neligan*,[22] the plaintiff had paid excessive sums claimed as custom duties in order to obtain the release of the property in respect of which the duties allegedly arose. Kenny J. observed:[23]

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[19] (1860) 8 H.L.C. 338 at 347; 11 E.R. 459, 463.

[20] See *post*.

[21] See, for instance, *Scarfe* v *Hallifax* (1840) 7 M. & W. 288, 151 E.R. 775 at 290, 776, where the suggestion that an action against a sheriff, who, upon the execution of a *fi.fa.*, had demanded excessive fees, should fail because the appropriate fees had not been tendered was rejected out of hand by Park B., (later Lord Wensleydale). In a case concerning the right to recover excessive fees paid to an arbitrator to obtain the release of an award, no tender had been made, and the reporter observed that this would have been a "difficulty" in an action for damages for withholding the award, but was no obstacle to the recovery of the excess paid; see *Dossett* v *Gingell* (1841) 2 Man. & G. 870, 133 E.R. 996 at 872, 997. These remarks were later approved in the Court of Queen's Bench; see *Fernley* v *Branson* (1851) 20 L.J.Q.B. 178 at 184 *per* Erle C.J.

[22] [1967] I.R. 247.

[23] *Id.* at 265.

> In this case the defendant had *legal authority* to refuse to allow the goods consigned to the plaintiff to be delivered unless the customs duty on the spirit content was paid. The plaintiff paid this duty because he wanted to get his goods. There was no legal authority for the demand or for collection of the duty and, were it not for the problem presented by s.30 of the Customs Consolidation Act 1876, I would unhesitatingly hold that plaintiff was entitled to recover the sum claimed as money had and received by the defendant to his use. (Emphasis added).

The plaintiff, whose claim was thus defeated by s.30 of the Customs Consolidation Act 1876, but not by the legality of the detention of his property, appealed to the Irish Supreme Court, where his claim for the restitution of the excessive duties which he had paid was allowed on another ground.[24] There are a number of case in which the view adopted by Kenny J. prevailed in analogous circumstances where there was no question of illegality as to the recoverability of money paid under pressure of official powers of seizure or detention of property.

Against these cases must be put the two leading decisions where restitution of money paid to obtain the release of goods which had been lawfully distrained on was refused. In *Gulliver* v *Consens* [25] and *Glynn* v *Thomas*,[26] the defendants had distrained on goods belonging to the respective plaintiffs and had demanded payment of excessive sums for their release. Because appropriate tenders had not been made the detention of the property had been lawful in each case; and on this ground restitution of the excess which had been paid was denied.[27] The courts appear to have subsequently retreated from the position adopted in these cases. It is certainly now clear that the legality of a particular distraint of property is no objection to an allegation of duress, if the claim which was asserted was known to have been excessive at the time it was made.[28] Neither *Gulliver* v *Cosens* nor *Glynn* v *Thomas* has ever been expressly repudiated; but both decisions appear to be inconsistent with *Somes* v *British Empire Shipping Co.*

The conflict between *Gulliver* v *Cosens* and *Glynn* v *Thomas* on the one hand and *Somes* v *British Empire Shipping Co* on the other has arisen because the courts have generally not considered it to be necessary to go into the rationale for regarding bona fide threats as duress. In *Astley* v *Reynolds*,[29] the first and leading case on the recovery of money put under duress of goods, the money which was recovered had been paid after a tender of the amount actually due had been made, and the defendant could clearly have been sued in trover. Because the making of a tender does not materially affect the coerciveness of the pressure applied in this

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[24] See *Sargood Bros.* v *The Commonwealth* (1910) 11 C.L.R. 258 at 276 *per* O'Connor J.; and *Blakey & Co. Ltd.* v *R.* [1935] Ex. C.R. 223 at 230 *per* Angers J. In *R. & W. Paul Ltd.* v *Wheat Commission* [1935] A.C. 139, the plaintiff recovered payments which had been made in response to unwarranted demands in order to obtain the release of property held by customs officials, in circumstances where the illegality of the detention of the property was, at best, an open question.

[25] (1845) 1 C.B. 788, 135 E.R. 753.

[26] (1856) 11 Ex. 870, 156 E.R. 1085.

[27] *Lindon* v *Hooper* (1776) 1 Cowp. 414, 98 E.R. 1260 was also relied on. That case raises problems which are outside the ambit of this article.

[28] See *Green* v *Duckett* (1883) 11 Q.B.D. 275.

[29] (1731) 2 Str. 915, 93 E.R. 939.

situation, the courts readily granted relief on grounds of duress where tenders had not been made. This step, however, appears to have been taken without any real consideration of its significance; for, if the lawful detention of property may amount to duress, the obvious rationale which was previously available for regarding bona fide threats as being improper, namely the illegality of the pressure, is no longer applicable. In *Gulliver* v *Cosens* and *Glynn* v *Thomas,* this problem was apparently appreciated, and it seems to have been decided in those cases that the lawful detention of property in support of a bona fide but excessive claim is not improper.

The difficulty with that analysis is simply that the more recent cases in which relief on grounds of duress has been granted clearly indicate that the courts no longer consider it to be fair to uphold as conclusive settlements of invalid but honest claims which have been induced by the lawful seizure or detention of property. Why such settlements are not regarded as being conclusive has not been clearly articulated by the courts. Possibly the lawful interference with property in these circumstances might be seen as being improper on the grounds that powers to seize or detain goods are conferred solely to enable valid claims to be enforced. If this is so the application of such powers in order to enforce invalid claims is a use collateral to their proper purpose and thus improper.[30]

That analysis is not entirely satisfactory. The courts have never been prepared to accept the assertion of powers of distress or lien or similar powers as analogous to issuing proceedings to recover a disputed debt.[31] In the latter case compromises resulting are usually upheld irrespective of the invalidity of the asserted claim. That is not so with compromises entered into under duress of goods. It is suggested hat this distinction does not rest upon the legality or illegality of the actions of the person applying the pressure, but rather on the ground that it is far more difficult to resist a claim where property is likely to be seized or detained than where the only means of enforcement consist of the use of civil process.[32] In the writer's view, therefore, the basis, yet to be fully articulated by the courts, upon which settlements of claims which have been submitted to under duress of goods are liable to be re-opened rests not so much on the impropriety of the pressure which is applied, but rather on the impracticality of resistance to it.

The second category of cases involving duress of goods relates to situations where the pressure consists of the seizure, actual or threatened, of property for the purpose of enforcing a claim or demand other than the claim for which the power to seize or detain property was created; in other words, where there is no bona fide claim to what is demanded.

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[30] This may have been the ground upon which Lord Wensleydale acted in *Somes* v *British Empire Shipping Co.* (1860) 8 H.L.C. 338, 11 E.R. 459;

[31] An attempt to draw an analogy between the threatened exercise and actual exercise of a purported power of distress and the commencement of procedings was made by counsel in *Maskell* v *Horner* [1915] 3 K.B. 106 at 115-116. This analogy was rejected by Lord Reading C. J. at 122. There is other authority to the same effect: see *Shaw* v *Woodcock* (1827) 7 B. & C. 73, 108 E.R. 652; and *Campbell* v *Halverson* [1919] 3 W.W.R. 657 at 665-666 *per* Lamont J. A.

[32] This is the basis upon which the courts rejected the analogy between interference with property and resort to civil process as means of enforcing honest claims in the cases referred to in fn. 31.

The exercise of a power of seizure, detention, or sale of property which exists for the purpose of enforcing a particular type of demand for a collateral purpose will usually amount to duress. Thus the exercise of a power of distrain damage feasant for the purpose of obtaining a sum of money which bears no resemblance to the damage suffered is duress; and money paid as a result, in excess of the actual damages to which the distrainor is entitled, is recoverable irrespective of the legality of the distress.[33] Similarly, in *Hills* v *Street*,[34] a threat to sell property which had been distrained on in circumstances in which the threatened sale would have been lawful was held to be duress because the threat was employed not to obtain payment of rent which was alleged to be due but rather to coerce the payment by the distrainee of the expenses of the distress.[35]

Duress by Threatened Criminal Prosecution

There is no doubt that threats of criminal prosecution can amount to duress.[36] It is of course obvious that there is nothing illegal about putting a criminal prosecution in train and the cases on this head of duress illustrate clearly that pressure can amount to duress even though what is threatened is not unlawful.

There is a close relationship between the principles upon which bargains entered into under pressure of threatened prosecution can be challenged on grounds of duress and the analogous principles upon which such bargains can be challenged on grounds of illegality as being agreements to stifle criminal prosecutions. It has indeed been suggested that relief is only available on grounds of duress where the transaction which is challenged is illegal.[37] The cases do indicate, however, that this in fact is not so because it does seem to be established that relief on grounds of duress is available even though there has been no promise express or implied to stifle a prosecution.[38] In addition there are said to be certain offences

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[33] *Green* v *Duckett* (1883) 11 Q.B.D. 275 at 279 *per* Denman J.

[34] (1828) 5 Bing. 37, 130 E.R. 973.

[35] *Cf. Close* v *Phipps* (1844) 7 Man. & G. 586, 135 E.R. 263, where a threat to exercise a power of sale contained in a mortgage which had become absolute at law was held to be duress when used to extract payment of money other than what was owed under the mortgage. See also *Fraser* v *Pendlebury* (1861) 31 L.J.C.P. 1.

[36] *Dewar* v *Elliott* (1824) 2 L.J. Ch. (O.S.) 178; *Williams* v *Bayley* (1861) L.R. 1 H.L. 200; *Davies* v *London & Provincial Marine Insurance Co* (1878) 8 Ch. D. 469; *Seear* v *Cohen* (1881) 45 L.T. 589; *Mutual Finance Ltd* v *John Welton & Sons Ltd.* [1937] 2 K.B. 389; and *Banks* v *Cheltenham Co-operative Dairy Co. Ltd.* (1910) 29 N.Z.L.R. 979.

[37] Cp. the difference in opinion in *William* v *Bayley* (1866) L.R. 1 H.C. 200 between Lord Cranworth who considered that relief was available there only if both illegality and duress could be established and Lord Westbury who saw duress and illegality as being separate and distinct grounds for the decision. See also *Rourke* v *Mealy* (1878) 4 L.R. Ir. 166 and *Seear* v *Cohen* (1881) 45 L.T. 589.

[38] See *McLatchie* v *Haslam* (1894) 65 L.T. 691 at 693 *per* Lindley L.J.; and *Unwin* v *Leaper* (1840) 1 Man. R.G. 747; 133 E.R. 533 at 752, 535 *per* Coltman J. *arguendo.*

which may be the subject of lawful compromises;[39] yet even with respect to such offences threats of prosecution may amount to duress if employed to obtain payment of money to which there is no claim of right.[40]

The use of threats of criminal proceedings for the purposes of general bargaining would be regarded by most as extortionate and that is so not because of the illegality of what is threatened but because of the impropriety of using a power created for one purpose for a quite separate and collateral purpose.

Duress by use of Civil Process

The general rule is that the threatened or actual use of civil process is not duress.[41] The reason which is usually advanced in support of this general rule is the now familiar proposition that it is not duress to threaten to do what may lawfully be done.[42] Another justification for the reluctance of the courts to find that the use of civil process amounts to duress must be sought, however, for there are, as we shall see, many cases in which finding of duress have been made with respect to the use of civil process despite the apparent legality of the pressure involved. This further justification is threefold. First, litigation is usually seen as being a proper method of resolving disputes. Secondly, it is generally practicable for a person who wishes to resist a demand which is reinforced only by threats of civil process to defend the proceedings which are threatened.[43] Finally, a general recognition that the use of civil process may amount to duress would have an extremely unsettling effect on the security of transactions, and would render the settlement of disputes difficult or impossible.[44] In situations where that three-fold justification is not applicable, findings of duress by use of civil process can in fact be expected.

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[39] These "private offences" are assault (see *Elworthy* v *Bird* (1825) 2 Sm. & Stu. 372, 57 E.R. 388; *Keir* v *Leeman* (1846) 9 Q.B. 371, 115 E.R. 1315 at 395, 1324 *per* Tindal C. J.; and *McGregor* v *McGregor* (1888) 21 Q.B. D. 424), defamation (see *Fisher* v *Appollinaris* (1875) L.R. 10 Ch. App. 297 and *R.* v *Ingrams* The Times, 17 May 1977), and infringement of trade mark (*Fisher* v *Appollinaris*, supra). For a general discussion of this matter see Howard, [1959] Crim.L.R. 822.

[40] *Fisher* v *Appollinaris* (1875) L.R. 10 Ch. App. 297 at 303 *per* Mellish L. J.; and see *Pasco* v *Wegg* (1857) 6 U.C.C.P. 375.

[41] *Liverpool Marine Credit Co.* v *Hunter* (1868) L.R. 3 Ch. App. 479; *Clydesdale Bank Ltd.* v *Shroder* [1913] 2 K.B. 1. *Smith* v *Monteith* (1844) 13 M. & W. 427, 153 E.R. 178; *Avery* v *Langford* (1854) 23 L.T.(O.S.) 227; *Sawyer* v *Window Brace Ltd.* [1943] 1 K.B. 32; *Headfort* v *Brockett* [1966] I.R. 227.

[42] *Liverpool Marine Credit Co.* v *Hunter* (1868) L.R. 3 Ch.App. 479 at 487 *per* Lord Chelmsford L. C.; *Headfort* v *Brockett* [1966] I.R. 227 at 263 *per* Budd J.; and *Beer* v *McLeod* (1890) 22 N.S.R. 535 at 541 *per* McDonald C. J. See also Dawson (1947) 45 Mich.L.R. 571 at 579, where a large number of American decisions which were decided on this ground are collected.

[43] The courts certainly expect a person who is confronted with a demand, the validity of which he disputes, to defend any proceedings which are taken to enforce it, see *William Whitely Ltd.* v *R.* (1909) 101 L.T. 741 at 745 *per* Walton J.; and *Maskell* v *Horner* [1915] 3 K.B. 106 at 121-122 *per* Lord Reading C. J.

[44] In this context, the somewhat extravagant example of an endless chain of litigation which might result if threats of civil process amounted to duress is sometimes employed. A sues B and the claim is settled. B then sues A to have the settlement set aside on grounds of duress. Those proceedings ar compromised, and the compromise is then subsequently challenged on the same ground. See Keener, *Law of Quasi-Contracts* (1893) at 441.

The use of civil process which involves the imprisonment of the defendant or the seizure of his property may be tortious where either there has been interference with the defendant's person or property pursuant to void process (where an action lies in trespass)[45] or there has been a malicious use of or abuse of process.[46] Because the use of civil process is only tortious if it involves interference with person or property[47] and because of the now restricted circumstances in which a plaintiff in civil proceedings is entitled to obtain the arrest of the defendant or the detention of his property there is little scope for such torts. There is no doubt, however, that the tortious use of process can amount to duress.[48] Duress has been successfully pleaded where either the arrest of the defendant[49] or the detention of his property[50] has been procured maliciously or there has been an actionable abuse of process.[51] Likewise relief on grounds of duress has been granted with respect to process which was irregular,[52] obtained by fraud,[53] directed against the wrong person or property,[54] made for an excessive amount,[55] or void[56].

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[45] See *Clerk and Lindsell on Torts* (14th ed., by Armitage and Dias) at para. 1997 *et seq.*; and *Salmond on Torts* (16th ed., by Heuston) at 429 *et seq.*

[46] See Clerk and Lindsell, *op. cit.* at para. 1881 *et seq.*

[47] This is certainly the position with respect to the malicious use of process, see Fleming, *The Law of Torts* (5th ed.,) at 599-600. Whether it is so with respect to abuse of process has never been decided; but the only cases in which a liability in tort for abuse of process has been established have related to proceedings involving the imprisonment of the defendant or the seizure or detention of his property, see *Grainger* v *Hill* (1838) 4 Bing. N.C. 212, 132 E.R. 769; *Heywood* v *Collings* (1838) 9 Ad. & E. 268, 112 E.R. 1213; and *Guildford Industries Ltd.* v *Hankinson Management Services Ltd.* [1974] 1 W.W.R. 141. See also the unsuccessful attempts to rely on this tort with respect to the commencement of bankruptcy proceedings in *Bayne* v *Blake* (1909) 9 C.L.R. 347; and *Varawa* v *Howard Smith Ltd.* (1911) 13 C.L.R. 35.

[48] This was not always seen as being the position; see 2 Inst. 482; *Waterer* v *Freeman* (1620) Hob. 205 and 266, 80 E.R. 352 and 412 at 266, 413 *per* Hobart C. J.; and Sheppard, *Touchstone* (8th ed., 1826) at 61. In *Anon.* (166) 1 Lev. 68, 83 E.R. 301, it was held that an arrest procured maliciously and in circumstances in which an action on the case for damages lay was not duress. That case was, however disapproved in *Cumming* v *Ince* (1847) 11 Q.B. 112, 116 E.R. 418 at 117, 420 *per* Coleridge J.

[49] *De Cadaval* v *Collins* (1836) 4 Ad. & E. 858, 111 E.R. 1006.

[50] *Streimer* v *Nagel* (1909) 11 West. L.R. 325 at 328 *per* Mathers J.

[51] *Grainger* v *Hill* (1838) 4 Bing. N.C. 212, 132 E.R. 769; and, possibly, *Cumming* v *Ince* (1847) 11 Q.B. 122, 116 E.R. 418.

[52] *Pitt* v *Coomes* (1835) 2 Ad. & E. 459, 111 E.R. 178; and *Payne* v *Chapman* (1835) 4 Ad. & E. 364, 111 E.R. 824.

[53] *Dooli Chand* v *Ram Kishen Singh* (1881) L.R. 8 Ind.App. 93.

[54] *De Mesnil* v *Dakin* (1867) L.R. 3 Q.B. 18; *Kanhaya Lal* v *National Bank of India Ltd.* (1913) 29 T.L.R. 314; and *Valpy* v *Manly* (1845) 1 C.B. 594, 135 E.R. 673.

[55] *Snowdon* v *Davis* (1808) 1 Taunt. 359, 127 E.R. 872.

[56] *O'Connor* v *Isaacs* [1956] 2 Q.B. 288 (where the claim failed upon other grounds). In *Sowell* v *Champion* (1838) 6 Ad. & E. 407, 112 E.R. 156; *Clark* v *Woods* (1848) 2 Ex. 394, 154 E.R. 545; and *Norton* v *Monckton* (1895) 43 W.R. 350, money paid as a result of illegal arrests on void process was recovered as special damages in tort.

The use of process to enforce or to give effect to a claim or a defence which is known to be invalid is, in the sense that it is an unconscientious use of power, liable to be regarded as being fraudulent[57] where or not there is any element of deceit. Settlements in respect of claims or defences which have been fraudulently asserted may often be challenged on grounds other than duress. Thus, if the person against whom such a claim or defence has been asserted did not appreciate that it was invalid, any resulting settlement may, presumably, be challenged on grounds of deceit;[58] and, because forbearance to pursue a fraudulent claim or to raise a fraudulent defence does not amount to consideration, such a settlement might also be ineffective for want of consideration provided it is not under seal. The reason why such forbearance does not amount to consideration is not the absence of a benefit to the other party,[59] but rather public policy and the prevention of extortion;[60] and there is much to be said for the view that if the use of civil process to enforce a fraudulent claim or to give effect to a fraudulent defence is contrary to public policy it should also amount to duress.

In *De Cadaval* v *Collins*,[61] the plaintiff had been arrested upon a *capias* in proceedings maliciously commenced by the defendant. To secure his release he had entered into a deed with the defendant, pursuant to which he later paid £500. In the circumstances, an action for malicious arrest no doubt lay, but the plaintiff sued successfully in *assumpsit* for the restitution of the money paid. The liability of the defendant to an action for malicious arrest was not treated as the basis for recovery; indeed it was, if anything, seen as an objection,[62] and the *ratio* of the case appears to be that the commencement of an action to recover money which is known not to be payable is extortion and amounts to duress.[63]

Notwithstanding the tenor of the judgments, *De Cadaval* v *Collins* is explicable on the ground that there had been an illegal arrest. It is not generally tortious to take legal proceedings to enforce fraudulent claims, at least in the absence of deceit;[64] but the absence of a liability in tort has not prevented the courts from holding that the use of civil process for this

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[57] See the definition of "fraud" given by Lord Selborne L. C. in *Earl of Aylesford* v *Morris* (1873) L.R. 8 Ch.App. 484 at 490-491.

[58] See Goff and Jones, at 70-71.

[59] The abandonment of an invalid claim is, of course, to the advantage of the person against whom it is asserted, because of the likely expense and inconvenience involved in defending it, see *Miles* v *New Zealand Alford Estate Co.* (1886) 32 Ch.D. 266 at 291 *per* Bowen L. J. See also Kelly (1964) 27 M.L.R. 540, with reference to fraudulent defences.

[60] *Jones* v *Ashburnham* (1804) 4 East 455, 102 E.R. 905 at 460, 907 *per* Lord Ellenborough C. J. *arguendo; Wade* v *Simeon* (1846) 2 C.B. 548, 135 E.R. 1061 at 564, 1067 *per* Tindal C. J.; and *Ex parte Banner* (1881) 17 Ch.D. 480 at 489 *per* Brett L. J.

[61] (1836) 4 Ad. & E. 858, 111 E.R. 1006.

[62] *Id.* at 864, 1009 *per* Lord Denman C. J., and at 865, 1009 *per* Littledale J.

[63] *Id.* at 863, 1009 *per* Lord Denman C. J., at 865, 1009 *per* Littledale J., at 866, 1009 *per* Patteson J. ,and at 867-868, 1010 *per* Coleridge J.

[64] No action in tort usually lies unless the proceedings either involve the arrest of the defendant or the detention of his property, or relate to bankruptcy, see fn. 47, *supra.*

purpose amounts to duress. In two early cases, money paid in submission to proceedings which had been taken in support of fraudulent claims was recovered;[65] and, more recently, especially with respect to proceedings which are likely to affect reputation or credit, express findings of duress have been made.

In the Canadian case, *Underwood* v *Cox*,[66] the defendant had been the principal beneficiary under the will of her father. Her brother had filed a caveat to prevent probate of the will being granted; and although he had been advised that there were no grounds for challenging the will he nonetheless threatened to take proceedings to have it set aside. In discussions with the defendant he told her that if the matter proceeded to trial the whole family history would be revealed, and the fact that the father of her child was not her husband would become public knowledge. Under pressure of this threat, the defendant compromised the probate proceedings by covenanting to pay the bulk of the estate to her brother and sisters. In these circumstances, however, the court had no hesitation in holding that the compromise had been improperly induced; and an action on the covenant accordingly failed.[67]

It thus appears that the use of civil process to reinforce a fraudulent claim amounts to duress. A rather more common form of unfair pressure applied in the course of civil litigation is where the person against whom a valid claim is asserted refuses to meet it in the hope that the other party, rather than put up with the expense, delay, and inconvenience of litigating the matter, will settle on discounted terms. A case where pressure of this kind had been exercised in a particularly crude manner is *D. & C. Builders Ltd* v *Rees*.[68] The plaintiff company had been owed £480 by the defendant, who did not deny the debt, but simply offered "£300 or nothing". Because of its financial difficulties, the plaintiff was obliged to accept the £300 in full settlement; but it subsequently sued successfully to recover the unpaid balance. Although the settlement was unsupported by consideration, and was thus ineffective anyway, Lord Denning M.R., with whom Dankwerts

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[65] *Cobden* v *Kendrick* (1791) 4 T.R. 431, 100 E.R. 1102; and *Hodgson* v *Williams* (1806) 6 Esp. 29, 170 E.R. 821; but *cf. Russell* v *Tilcock* (1850) 16 L.T. (O.S.) 25.

[66] (1912) 26 O.L.R. 303.

[67] In the only other case where a finding of duress has been made in these circumstances, the plaintiff had honoured, under protest, a bill drawn on him by his father in favour of the defendants, in order to preserve the commercial reputation of himself and his father, even though he disputed his liability on the bill on the ground that he had accepted it under a mistake of fact which had been known to the defendants. He then sued to recover the money which he had paid, and succeeded, one of the grounds being that the payment had been made under "compulsion and pressure". Bowen L.J. put the matter this way: "I think if a man accepts a bill under those circumstances and meets and retires it to save the credit of his father and his own, he is quite as much under compulsion and pressure as where, for example, he pays money under protest for goods detained under a mistaken claim of money due for their carriage. . . ." See *Kendal* v *Wood* (1871) L.R. 6 Ex. 243 at 250. One of the difficulties with this case is that it is not clear that threats to issue proceedings on the bill had been made. See also *Ex p. Banner* (1881) 17 Ch.D. 480; and *Thorne* v *Motor Trade Association* [1937] A.C. 797 at 802 *per* Lord Wright.

[68] [1966] 2 Q.B. 617.

L.J. agreed, appears to have considered that the refusal to pay the money which was admittedly owed amounted to duress.[69]

It is possible to regard cases such as *D. & C. Builders Ltd* v *Rees* as involving the withholding of a legal right, namely the payment of money. Most lawyers, however, would regard any suggestion that non-payment of a debt is an unlawful act with surprise. In usual circumstances action of that sort does not sound in damages and a more realistic approach is to see this case and the others like it as based not on threats of unlawful action but rather on an unconscientious or extortionate use of power.

There is a line of authority which supports the view that proceedings commenced for collateral purposes, that is for a purpose other than the settlement of the dispute to which they appear to relate, can amount to duress.

In *Intercontinental Packers Pty Ltd* v *Harvey*[70] money had been demanded of the plaintiff by the Queensland government pursuant to regulations were were later found to be invalid. The government threatened that if the plaintiff resisted the claim it would take proceedings not only to recover the money which it demanded, but also in respect of an earlier claim which the parties had previously regarded as being closed. Rather than face both sets of litigation, the plaintiff paid the money demanded of it under protest, and then sued to recover what it had paid. The apparent abuse of process involved in threatening to take proceedings in respect of the earlier claim in order to coerce a settlement of the later demands was held to amount to duress:[71]

> . . . unless [the demands were subitted to] there was a threat that closed transactions would be re-opened, and that the [plaintiff] would be subject to the risk of inconvenient and costly litigation. . . . Granted that a threat to enforce a payment of the new fees by the means provided by the Act and Regulations would not constitute compulsion in the relevant sense, it seems to me to be different when the threat is to prosecute or sue for something else. . .

This case is the clearest example of proceedings being commenced for a collateral purpose being regarded as duress. There are also a number of early cases where findings of duress appear to have been made where the proceedings involved imprisonment.[72] It would now be possible to regard these cases as being decided on the basis of a tortious abuse of process, but it is significant that these cases were all decided before the tort of abuse of process developed.[73]

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[69] *Id.* at 625 where Lord Denning stated: "No person can insist on a settlement procured by intimidation". There is also early authority which indicates that a mala fide refusal to ackonwledge a just liability amounts to duress, especially where the claimant's circumstances are such as to prevent him proceeding to trial: see *Taylour* v *Rochfort* (1751) 2 Ves. Sen. 281, 28 E.R. 182; *Pickett* v *Loggon* (1807) 14 Ves. 215, 35 E.R. 503; and, probably, *Baugh* v *Price* (1752) 1 Wils.K.B. 320, 95 E.R. 640.

[70] [1969] Qd.R. 159.

[71] *Id.* at 176 *per* Lucas J.; but *cf. Lane* v *Lane* [1935] 2 W.W.R. 592.

[72] *Nicholls* v *Nicholls* (1737) 1 Atk. 409, 26 E.R. 259; and *Jones* v *Booth* (1797) 2 Esp. 600, 170 E.R. 468.

[73] The existence of the tort of abuse of process was not acknowledged until *Grainger* v *Hill* (1838) 4 Bing. N.C. 212, 132 E.R. 769.

In addition there is *Cumming* v *Ince*[74] where plaintiff sought the recovery of title deeds which she had surrendered to the defendants pursuant to a compromise of lunacy proceedings. Those proceedings had been promoted by the defendants and in the course of them the plaintiff had been detained in a lunatic asylum. The defendants argued that the lawfulness of the imprisonment of the plaintiff was an answer to any allegation of duress; but counsel for the plaintiff successfully took the point that as the proper object of the lunacy proceedings was the safety of the plaintiff their use to obtain possession of the title deeds amounted to duress.[75] Here there was no suggestion of actionable abuse of process (presumably because the proceedings had been commenced in good faith) but the plaintiff was able to succeed nonetheless.[76]

Finally there is a very thin line of authority indeed which suggests that in exceptional circumstances threats of proceedings though bona fide made may have such a coercive effect and be so difficult to resist that a compromise which results may be challenged on grounds of duress.

In *Haedicke* v *Friern Barnet U.D.C.*[77] money laid out on repairs of a sewer at the insistence of a local authority on pain of quasi-criminal proceedings being commenced was recovered from the local authority, which as it later transpired was itself responsible for the repairs as a matter of law, on the grounds that the action was simply one to recover "money extorted by duress and paid under protest".[78]

A similar case is *Deacon* v *Transport Regulation Board.*[79] There the defendant had threatened proceedings to induce the plaintiff to pay fees imposed by a statute which the plaintiff alleged was unconstitutional. The validity of similar legislation had been upheld in the High Court of Australia; so unless the plaintiff was prepared to take the point to the Privy Council any defence to the proceedings which were threatened would have been impossible. For this reason the plaintiff paid under protest the fees which were demanded. When it was eventually established in the Privy Council in other litigation that the statute in question was invalid, the plaintiff successfully sought the recovery of the money which he had thus paid. The view adopted by the court appears to have been that the money paid in response to the threats of proceedings was recoverable because[80]

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[74] (1847) 11 Q.B. 112, 116 E.R. 418.

[75] *Id.* at 115-116, 419.

[76] See also *Unwin* v *Leaper* (1840) 1 Man. & G. 747, 133 E.R. 110.

[77] [1904] 2 K.B. 807; rev. on other grounds, [1905] 1 K.B. 110.

[78] [1904] 2 K.B. at 815 *per* Channell J. See also *Hackett* v *Smith* [1917] 2 I.R. 508 at 528 *per* Campbell C. J.; and *Melbourne Tramway & Omnibus Co.* v *Melbourne Corp.* (1903) 28 V.I.R. 647.

[79] [1958] V.R. 458.

[80] *Id.* at 460. See also the Canadian cases, *Sifton* v *City of Toronto* [1924] S.C.R. 484; *A.-G. for Canada* v *Vancouver* [1943] 1 D.L.R. 510 at 518 *per* McDonald C. J.; and *St John* v *Fraser-Bruce Corp.* [1958] S.C.R. 263 at 271-272 *per* Rand J., and at 282 *per* Locke J. In one Indian appeal the Privy Council held that a settlement of proceedings in a jurisdiction where there was no settled system of law so that resistance to the demand would have involved a submission to arbitrary justice might be set aside on grounds of duress, see *Moung Shoay Att* v *Ko Byaw* (1876) L.R. 3 Ind.App. 61.

> . . . the alternative to paying what [was] demanded [was] to engage in ruinous litigation against an opponent with the resources of a government department to support him.

These cases are not entirely easy to reconcile with traditional views as to the sanctity of compromises of disputed claims. What they do suggest, however, is that compromises may sometimes be set aside on the basis that they were entered into under pressure of civil process which was neither illegal nor in any real sense improper.

Threats to inflict Gratuitous Harm

Few would doubt that an agreement extorted by pressure amounting to blackmail may be avoided on grounds of duress or that restitution is available with respect to benefits conferred as a result of blackmail.[81] In each case the basis upon which relief is available appears to be duress.

There are indeed a number of cases in which threats to inflict gratuitous though legal harm have been held to amount to duress; and there is a close relationship between the principles upon which these cases proceed and the law as to blackmail. In the vast majority of the duress cases, however, no reference was made to the law as to blackmail and it would be taking an unduly restrictive view of them to suggest that relief is only available where blackmail has been committed.

There are a number of cases which illustrate clearly that findings of duress where threats to inflict gratuitous harm of an economic nature have been made do not depend upon the unlawfulness of what has been threatened. In *Ellis* v *Barker*[82] a bequest in a will had been made conditional upon the beneficiary being accepted as a tenant by the owner of a certain property. So that pressure could be placed on the beneficiary to make further provision for certain members of his family the landlord was persuaded to refuse to accept the beneficiary as his tenant unless he behaved "rightly and honourably in the matter". Lord Romilly M.R. had no doubt that the deed by which the beneficiary made the further provision for the members of his family as demanded had been executed under coercion and set it aside.[83] In a Canadian case the plaintiff had paid $2,000 to the defendant as remuneration for the collection of insurance monies payable on the death of her husband. The defendant had apparently threatened to tell the insurance company that the husband had committed suicide; and in those circumstances the court held that the amount which had been

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[81] *Hyams* v *Stuart King* [1908] 2 K.B. 696 at 723 *per* Fletcher Moulton L. J., and at 725-726 *per* Farwell L.J.; and *Norreys* v *Zeffert* [1939] 2 All E.R. 187 at 190 *per* Atkinson J. The assumption that contracts to pay blackmail are ineffective underlies the speeches in *Thorne* v *Motor Trade Association* [1937] A.C. 797. See also *Green* v *Duckett* (1883) 11 Q.B.D. 273 at 281 *per* Hawkins J.; and *United Australia Ltd.* v *Barclays Bank Ltd.* [1941] A.C. 1 at 29 *per* Lord Atkin. In *Hardie & Lane Ltd.* v *Chilton* [1928] 2 K.B. 306, an action seeking restitution of money allegedly obtained by blackmail was brought, and it failed principally on the point that the threats made did not amount to blackmail. The opinion of commentators is to the same effect, see Munkman, *Law of Quasi-Contracts* (1949) at 33-34; Goff and Jones, at 143; and Chitty, at para. 439. See also Hooper [1965] Crim.L.R. 532 at 546; and Lanham (1966) 29 M.L.R. 615 at 620-621; but *cf.* Campbell (1939) 55 L.Q.R. 382 at 394n.

[82] (1871) 40 L.J.Ch. 603; aff. (1871) L.R. 2 Ch.App. 104.

[83] (1871) 40 L.J.Ch. at 607.

paid less a reasonable remuneration for the services actually performed was recoverable by the plaintiff.[84] In an Australian case a plaintiff who had joined a union and paid union fees succeeded in an action to recover the fees on the basis that he had joined the union under duress in that the union secretary had threatened to call out fellow employes unless he joined the union.[85]

There is also authority for the view that threats to make discreditable revelations about others amounts to duress.[86] One interesting line of cases deals with the practise of listing as defaulters at Tattersalls persons who fail to honour gaming debts. The English decisions indicate that such a threat is the ordinary and recognised way of enforcing gaming debts and does not in itself amount to duress.[87] If however, the action threatened goes beyond what is recognised as the ordinary and proper means of enforcing gaming debts, then relief on grounds of duress is available. So, in *Norreys* v *Zeffert*[88] threats to disclose a default to trade protection societies and the defaulter's club were regarded as going beyond what was proper and an agreement so procured was not enforced.

Threats to disrupt family or other close relationships can also amount to duress. In *Mustafa* v *Hudaverdi*[89] a deed executed by the plaintiff as a result of a threat to prevent him seeing his child was set aside. The inter-relationship in this sort of case between duress and undue influence is particularly pronounced. In *Re Craig*[90] gifts made by an elderly man to his secretary were attacked as having been made under undue influence. Ungoed-Thomas J. appears to have considered that the secretary, by threatening to leave her employer unless she got her own way, had indeed applied undue influence on him.

The interplay between duress and blackmail is well illustrated by three cases decided between the wars with respect to the price fixing policy adopted by the Motor Trade Association. Any person breaching the price-fixing policy adopted by that association was liable to be placed on a stop list. The legality of the stop list itself was upheld in *Ware & de Freville Ltd* v *Motor Trade Association.*[91] Persons liable to be placed on the stop list were, however, given the option of paying a fine to the association instead; and in *R.* v *Denyer*[92] the Court of Criminal Appeal was concerned with the conviction for blackmail of the secretary of the association for demanding money with menaces arising out of a demand made by him of the prosecutor of such a fine upon pain of being placed on the stop list.

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[84] *Disher* v *Clarris* (1894) 25 O.R. 493.

[85] *N.S.W. Association of Operative Plasterers* v *Sadler* (1918) A.R. (N.S.W.) 159.

[86] *Collins* v *Hare* (1828) 1 Dow. & Ci. 139, 6 E.R. 476; *Doyle* v *Carroll* (1877) 28 U.C.C.P. 218; *Robertson* v *Robertson* [1930] Q.W.N. 42. See also *Brown* v *Brine* (1875) 1 Ex.D. 5 as to whether forbearance to make such revelations amounts to consideration.

[87] *Hyams* v *Stuart King* [1908] 2 K.B. 696 at 725-726 *per* Farwell L. J.; and *Burden* v *Harris* [1937] 4 All E.R. 559.

[88] [1939] 2 All E.R. 187.

[89] (1972) 223 Estates Gazette 1751.

[90] [1971] Ch. 95.

[91] [1921] 3 K.B. 40.

[92] [1926] 2 K.B. 258.

The Court of Criminal Appeal held that the legality of what had been threatened made no difference and the conviction was upheld. On this point its decision was heavily criticised by the Court of Appeal in *Hardie & Lane Ltd* v *Chilton*[93] where the plaintiff who had paid a fine demanded of him in similar circumstances sought restitution of it on the basis that in light of *Denyer* it had acted under duress. In the latter case, however, the legality of what was threatened was seen as being a complete answer to the allegation of duress[94] and the decision in *Denyer* was heavily criticised.

Lord Hewart who had presided in *Denyer* was not impressed by the criticism of that case in *Hardie & Lane Ltd* v *Chilton* and announced that criminal courts would continue to follow *Denyer*.[95] This led to a friendly action, *Thorne* v *Motor Trade Association*,[96] being taken to the House of Lords to resolve the conflict. There it was affirmed, following *Denyer*, that threats of lawful action could amount to blackmail.[97] Where their Lordships parted company with *Denyer* was that they accepted that the demanding of a fine for the purpose of enforcing a legitimate trade policy was not blackmail. If a person applied pressure "for the mere purpose of putting money in his pocket"[98] or if the amount demanded was so extortionate as to bear no relationship to the trade policy to be protected[99] the crime of blackmail could be committed.

Conclusion

The purpose of this discussion has been to lay to rest the fallacy that threats of lawful action cannot amount to duress. The fundamental test for duress seems to be whether the pressure which is complained of was improper. This test requires a consideration of whether it was proper to reinforce the demand which was made with a threat to carry out a particular action. Any attempt at analysis of the problem purely in terms of the legality of what has been threatened is inadequate. While it is no doubt true that the tests employed by the courts for determining the propriety or otherwise of pressure have tended to come from the law of torts or other areas of the law, they are not solely derivative and it is time that this was recognised.

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[93] [1928] 2 K. B. 306.
[94] *Id.* at 315, 318 *per* Scrutton L. J. and at 331-332 *per* Sankey L. J.
[95] (1928) 44 T.L.R. 479.
[96] [1937] A.C. 797.
[97] *Id.* at 806 *per* Lord Atkin, at 811-812 *per* Lord Russell of Killowen, at 817 *per* Lord Wright, and at 824 *per* Lord Roche.
[98] *Id.* at 807 per Lord Atkin.
[99] *Id.* at 818-819 *per* Lord Wright, and at 824 *per* Lord Roche.