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QUASI-CONTRACTS--DURESS--ECONOMIC PRESSURE-ADEQUACY OF LEGAL REMEDIES

QUASI-CONTRACTS—DURESS—ECONOMIC PRESSURE—ADEQUACY OF LEGAL REMEDIES.—The plaintiff deposited funds with the defendant, a stock-broker, as security for his margin account. The defendant without authority sold short on the plaintiff's account a large number of shares of stock and threatened to use the plaintiff's deposits to cover the sale unless the plaintiff would authorize a purchase for that purpose. The plaintiff under protest authorized the defendant to purchase the stock, which in the meanwhile had increased in value. The plaintiff then brought suit to recover the difference between the sale and the re-purchase prices plus the defendant's commissions and transfer taxes. *Held*, on demurrer that the plaintiff had made a voluntary payment with full knowledge of all the facts. *Furman v. Lanahan* (Md. 1930) 149 Atl. 465.

It might readily be inferred from the facts that the plaintiff would not have acted as he did but for the coercion. Furthermore, the defendant's threat to appropriate his deposit was a threat of breach of contract and there-

fore wrongful. The element of duress which is chiefly lacking is the absence of alternative remedies for protection against the defendant's threat. 3 WILLISTON, CONTRACTS, sec. 1620. A threat to tie up the plaintiff's bank deposit has been held to be sufficient economic pressure to authorize rescission. *Adams v. Schiffer,* 11 Colo. 15, 17 Pac. 21. But in the instant case the plaintiff was not shown to be in urgent need of the money deposited with the defendant, and his remedy for breach of contract against the defendant therefore appears to have been adequate. But the result might perhaps have been different if it had appeared that the plaintiff was in urgent need of the money, or that the defendant was insolvent or at least uncollectible for the full amount of the plaintiff's deposit. It has been the increasing tendency of the courts to allow recovery of a payment as made under duress where the financial necessity of the plaintiff is great, and the legal remedy is too slow to provide the necessary immediate relief. *Snyder v. Rosenbaum,* 215 U. S. 261, 30 Sup. Ct. 73; *McMurtrie v. Keenan,* 109 Mass. 185; *Vyne v. Glenn,* 41 Mich. 112, 1 N.W. 997; *Van Dyke v. Wood,* 60 App. Div. 208, 70 N. Y. S. 324; *Lehigh Coal and Navigation Company v. Brown,* 100 Pa. St. 338; *Guetzkow Brothers Co. v. Breese,* 96 Wis. 591, 72 N.W. 45; *Joannin v. Ogilvie,* 49 Minn. 564, 52 N.W. 217. *Contra, Silliman v. United States,* 101 U. S. 465, 25 L. ed. 987. Thus if the plaintiff had to have the money at once it seems that he should be allowed by authorizing the purchase and the resale to get the resale price immediately and then recover the difference in an action for the duress. The delay attendant on a legal action might be perilous in a rapidly changing market. Especially would this be true if the defendant were unable to respond in damages. As to money deposited by a customer with a stock-broker the relationship is presumptively debtor-creditor. *Chase et al. v. City of Boston,* 180 Mass. 458, 62 N.E. 1059; *Furber v. Dane,* 204 Mass. 412, 90 N.E. 859; *Fogg v. Tyler,* 109 Me. 221, 83 Atl. 664. While insolvency alone is not ground for specific performance it would seem to add peculiar weight to a threat of breach of contract. As to the stock purchased with the plaintiff's money his remedy would be more adequate since by the majority rule legal title is in him. *Richardson v. Shaw,* 209 U. S. 365, 28 Sup. Ct. 512; *Duel v. Hollins,* 241 U. S. 523, 36 Sup. Ct. 615; *Markham v. Jaudon.* 41 N. Y. 235; *Sproul v. Sloan.* 241 Pa. St. 284, 88 Atl. 501. It would seem to follow that the legal title to the money with which the stock is bought is likewise in the customer. Even as to the money deposited by the plaintiff as security he might have an adequate remedy in jurisdictions which hold that a trust rather than a debtor-creditor relationship arises on the deposit. *In re Brown and Co.,* 189 Fed. 440; *Bennett v. Hungate,* 291 Fed. 895. But regardless whether the theory adopted is agency or trust the courts have been ready to raise a constructive trust on misappropriation by a broker, and allow the customer to trace the proceeds of either his money or stock. *In re Wettengel et al,* 238 Fed. 798; *Beaver Boards Co. v. Imbrie and Co.,* 282 Fed. 654; *Smith et al. v. Lynch,* 288 Fed. 552. See on the general subject 37 HARV. L. REV. 860. Is this remedy adequate? There is the inherent practical difficulty of tracing, and the burden of proof is on the party doing the tracing. *Schuyler v. Littlefield,* 232 U. S. 707, 34 Sup. Ct. 466; *Lowell et al. v. Brown,* 284 Fed. 936. On the facts it appears that the instant case was decided correctly, but on facts slightly changed a different result might well be reached.