North Dakota Law Review

Volume 54 | Number 2 Article 7

1977

Contracts - Sales - Buy-in Notice Invalidates Right to Demand Shipment of Grain So That Alleged Facts May Constitute a Defense of Economic Duress

Richard Geiger

that defendant after *Heitner*.[48]

The Supreme Court has made the law of in rem jurisdiction comport with fairness and substantial justice rather than the mere happenstance of a res within a forum. Now that the idea of searching for a res upon which to base jurisdiction seems no longer needed the courts can evaluate the real factors upon which jurisdiction should be asserted, *i.e.*, minimum contacts.

LAWRENCE D. DUBOIS

CONTRACTS—SALES—BUY-IN NOTICE INVALIDATES RIGHT TO DEMAND SHIPMENT OF GRAIN SO THAT ALLEGED FACTS MAY CONSTITUTE A DEFENSE OF ECONOMIC DURESS

Appellant contracted on February 1, 1973, to sell 30,000 bushels of barley to the appellee at $1.22 per bushel. Shipment was to be made during March and April. Appellant shipped only 3,734 bushels during that time, contending that appellee had not fulfilled its part of the bargain.[1] The parties attempted to negotiate their differences over the next few months. Finally, after giving appellant a thirty day notice, appellee, on November 8, 1973, wrote to appellant informing him that appellee had found it necessary to buy in from the open market the remaining balance of barley that appellant failed to ship and that it was charging appellant for the difference between the market price at that time and the contract price.[2] On November 16, 1973, appellant replied by repudiating the contract, disagreeing with appellee's version of the contract, and denying any liability. Appellee continued its demand for shipment and finally, on February 18, 1974, during a phone conversation with appellant, appellee convinced appellant to ship the remaining balance of barley. During the next seven weeks the barley was shipped. Appellant then brought suit,[3] alleging that appellant had shipped the barley under economic

48. But it also appears that the Supreme Court sanctions long-arm statutes which treat the acceptance of a position as an officer or director of a domestic corporation as consent to the jurisdiction of that state's courts. *Id.*

1. Appellant claimed that appellee had agreed to supply twenty to twenty-five trucks to ship the grain. The written confirmation of the agreement reached by phone and sent by appellee indicated that shipment was to be by rail. Appellant did not acknowledge or return the confirmation form. Jamestown Farmers Elevator, Inc. v. General Mills, Inc., 552 F.2d 1285, 1287-88 (8th Cir. 1977).

2. *Id.* at 1288.

3. Appellant contended that appellee had breached the contract by not supplying the trucks to haul the grain and that it was therefore not entitled to delivery at the price set by the February 1973 contract of $1.22 per bushel which appellee actually paid to appellant. Instead, appellant sought to recover the excess of market price at the time of the deliveries (which was in excess of $3.00 per bushel) over the contract price of $1.22 per bushel. *Id.* at 1289.

duress due to threats allegedly made by appellee during the February 18 telephone conversation.[4] The jury returned a dismissal verdict for appellee after the court refused to instruct the jury on the issue of economic duress.[5] On appeal, the Eighth Circuit Court of Appeals reversed and remanded for a new trial, *holding* that appellee's buy-in notice invalidated its right to demand shipment of the grain so that if the threats alleged were in fact made, they may be sufficiently wrongful to constitute a defense of economic duress.[6] *Jamestown Farmers Elevator, Inc. v. General Mills, Inc.*, 552 F.2d 1285 (8th Cir. 1977).

The doctrine of economic duress or business compulsion could be described as a hybrid developing from the common law doctrine of duress and from equity.[7] At common law, duress made void a contract where a party was induced to enter into the contract by threats to his life or person, or of confinement.[8]

From this limited approach to duress equity acted as a tool to expand common law duress to allow the courts to protect against coercion in contracts brought on by economic pressure.[9] Duress of goods, which occurs when one party is compelled to submit to an exaction as a result of another's taking or retention of that party's goods or money, was one area of expansion,[10] and eventually led to the development of the doctrine of economic duress or business compulsion.[11] It is not unusual to see an overlap of the doctrines of duress of goods and economic duress in a single case.[12]

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4. Appellant alleged that the appellee made the following statement during the Feb. 18, 1974 telephone conversation:

> We're General Mills; and if you don't deliver this grain to us, why we'll have a battery of lawyers in there tomorrow morning to visit you and, and then we are going to the North Dakota Public Service [Commission]; we're going to the Minneapolis Grain Exchange and we're going to the people in Montana and there will be no more Mutschler Grain Company. We're going to take your license[.]

Id.

5. Jamestown Farmers Elevator, Inc. v. General Mills, Inc., 413 F. Supp. 764 (D.N.D. 1976).

6. Appellee disputed the allegation of threats which appellant claims took place in the Feb. 18 telephone conversation. 552 F.2d at 1291. Except as to the issue of economic duress the court affirmed the rulings made by the district court in denying appellant's motion for new trial. *Id.* at 1294-95.

More importantly, the circuit court affirmed the district court holding that under N.D. CENT. CODE § 41-02-91 (1968), "cover" was not a mandatory remedy and there was no evidence brought out at trial which was sufficient to indicate that General Mills had bought in the grain for Jamestown Farmers (seller's) account. *Id.* at 1293. The court determined that the testimony at trial established only that appellee went into the open market to buy grain to meet its own sale commitments and that there was no evidence to show that appellee bought grain specifically for appellant's account. *Id.*

7. *See* Watts, *Economic Duress, and Its Use in Avoiding a Release Agreement*, 12 S. TEX. L.J. 92 (1970).

8. *See* Dawson, *Economic Duress—An Essay in Perspective*, 45 MICH. L. REV. 253 (1947). As Professor Dawson described it, "common law duress was merely a by-product of legal controls over crime and tort." *Id.* at 254.

9. *See supra* note 7, at 98.

10. Hackley v. Headley, 45 Mich. 569, 8 N.W. 511 (1881).

11. *See supra* note 8.

12. *See, e.g.*, First National Bank of Cincinnatti v. Pepper, 454 F.2d 626 (2d Cir. 1972); Hellenic Lines, Ltd. v. Louis Dreyfus Corp., 249 F. Supp. 526 (S.D.N.Y. 1966);

Under the doctrine of economic duress a contract is voidable by the party claiming duress when that party has entered into the agreement under such circumstances of business necessity or compulsion as will render the agreement or performance involuntary.[13] The rationale behind the doctrine revolves around the necessity of mutual assent for there to be a contract.[14] If the freedom of will necessary to validate the assent is absent,[15] the party under duress may be allowed to avoid the contract.[16] This free will theory has led to the application of a subjective standard to determine whether the party claiming duress gave his assent freely.[17]

To determine whether the circumstances would allow the victim to avoid the contract the courts generally require the party claiming duress to show three things.[18] First, the circumstances must be shown to be the result of wrongful, coercive acts[19] or improper threats[20] of

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Inland Empire Refineries v. Jones, 69 Idaho 335, 206 P.2d 519 (1949); Vine v. Glenn, 41 Mich. 112, 1 N.W. 997 (1879); Scurlock v. Lovvorn, 410 S.W.2d 525 (Tex. 1966).

13. *See* 25 AM. JUR. 2d *Duress and Undue Influence* § 6, at 7 (1966). To establish economic duress the circumstances in each case must be related in such a way as to show not only the existence of duress but also the likelihood of serious harm to the coerced party's business if the demand is not met. The circumstances to consider in each case in determining if there is economic duress are the age and mental ability of the coerced party, the financial condition of that party and his business, the absence of good faith and reasonable belief by the party making the demand that he was acting properly, the adequacy of consideration, and the adequacy of a legal remedy. *Id.*

14. 13 W. JAEGER, WILLISTON ON CONTRACTS § 1604 (3d ed. 1970). A person alleging to have been coerced into a contract while at the same time anticipating the possibility of gain from the transaction is not under duress. The coercion must be to such a degree as to negate the existence at all of the element of voluntariness. *Id.*

Further, a party's allegation of duress as his motive for doing an act will be unsuccessful as a defense if that party was already duty bound to perform that obligation because of a prior proper agreement. *Id.*

15. *Id.* at § 1605.

16. Although the cornerstone of the economic duress doctrine has its basis on the theory of the coerced party lacking freedom of assent, the economic duress doctrine limits its application as a defense to a contract only where the other party to the agreement has imposed the circumstances of duress or knowingly taken advantage of that duress. 25 AM. JUR. 2d *Duress and Undue Influence* § 21 (1966). The RESTATEMENT (SECOND) OF CONTRACTS states the limitation as follows:

> Where the manifestation of assent is induced by one who is not a party to the transaction, the contract is not voidable by the victim if the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.

RESTATEMENT (SECOND) OF CONTRACTS § 317(2) (Tent. Draft No. 12, 1977).

17. The subjective and majority test is described in Wise v. Midtown Motors, Inc., 231 Minn. 46, 42 N.W.2d 404 (1950). The Minnesota Supreme Court stated as follows:

> The standards of resisting power of the victim are personal and subjective rather than objective—that is, the existence of duress is to be determined by whether the coercion was of such a character as to overcome the free will of the victim rather than that of a person of ordinary courage and firmness. . . . The test is not the nature of the threats but rather the state of mind induced thereby in the victim. . . .

Id. at ——, 42 N.W.2d at 407. The minority test is objective in nature and requires the duress to be sufficient to overcome the will of a person of ordinary firmness. It appears that all jurisdictions who have accepted the economic duress doctrine apply a subjective test. Pennsylvania applied the objective test as late as 1967. Carrier v. William Penn Broadcasting Co., 426 Pa. 427, 233 A.2d 519 (1967). The subjective test has now apparently been adopted by Pennsylvania. *See* Litten v. Jonathan Logan, Inc., 220 Pa. Super Ct. 274, 286 A.2d 913 (1971).

18. Oskey Gasoline & Oil Co. v. Continental Oil Co., 534 F.2d 1281, 1286 (8th Cir. 1976).

19. Jamestown Farmers Elevator, Inc. v. General Mills, Inc., 552 F.2d 1285, 1290 (8th Cir. 1977).

20. According to RESTATEMENT (SECOND) OF CONTRACTS § 318 (Tent. Draft No. 12,

the other party. Second, the threatened party must show that he had no other alternative available to him.[21] Whether a legal remedy constitutes such an alternative will depend upon the circumstances.[22] Third, the victim must show that he was involuntarily induced into the agreement or performance.[23]

In addition to the three elements of general duress, the party alleging economic duress must also show that the circumstances brought about by the other party's coercive acts are in the nature of financial difficulties which compel the victim to make an assent for the purpose of protecting his business or livelihood.[24] This fourth element reflects the characteristic of the doctrine of economic duress which distinguishes it from other forms of duress; that the other party has, by his acts or threats, placed the victim in a position of financial difficulty and then used that position as a lever for gain.[25] Therefore, a contract cannot be avoided under a claim of economic duress when the coercive acts are done by a third person who is not a party, and the other party to the agreement has entered into the transaction in good faith and without reason to know of the duress.[26]

When all of the above elements have been established, it must then be shown that the threatened party was compelled to make a disproportionate exchange of values[27] or to give up something for nothing[28] in order to prove economic duress.

It is commonly held that one who threatens to do that which

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(1) A threat is improper if
(a) what is threatened is a crime or a tort or the threat itself would be a crime or a tort if it resulted in the obtaining of property, or
(b) what is threatened is the instigation of criminal prosecution, or
(c) what is threatened is the commencement of civil process and the threat is made in bad faith, or
(d) the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient.

(2) A threat is improper if the resulting exchange is not on fair terms, and
(a) the threatened act would harm the recipient and would not significantly benefit the party making the threat, or
(b) the effectiveness of the threat in inducing the manifestation of assent is significantly increased by prior unfair dealing by the party making the threat, or
(c) what is threatened is otherwise a use of power for illegitimate ends.

21. Friedman v. Bache & Co., 321 F. Supp. 347, 350 (S.D. Fla. 1970), *aff'd*, 439 F.2d 349 (5th Cir. 1971).

22. RESTATEMENT (SECOND) OF CONTRACTS § 317, Comment b (Tent. Draft No. 12, 1977) states as follows: "The standard is a practical one, in which account must be taken of the exigencies in which the victim finds himself, and the mere availability of a legal remedy is not controlling if it will not afford effective relief." *See also* Wou v. Galbreath-Ruffin Realty Co., 22 Misc. 2d 463, 195 N.Y.S.2d 886 (1959).

23. The subjective test of inducement is applied here. *See supra* note 17.

24. *See* 13 W. JAEGER, WILLISTON ON CONTRACTS § 1617 (3rd ed. 1970).

25. The mere showing of hard bargaining when the party claiming duress is under the stress of business conditions will not allow the avoidance of the contract by a claim of duress. Johnson, Drake, & Piper, Inc. v. United States, 531 F.2d 1037, 1042 (Ct. Cl. 1976).

26. *See supra* note 16.

27. First National Bank of Cincinnati v. Pepper, 547 F.2d 708, 714-15 (2d Cir. 1976).

28. 13 W. JAEGER, WILLISTON ON CONTRACTS § 1617 (3d ed. 1970). *See* RESTATEMENT (SECOND) OF CONTRACTS § 318 (Tent. Draft No. 12, 1977).

he has a legal right to do cannot be exposed to a claim of duress.[29] The general trend, however, is to hold that any threat becomes wrongful or improper, notwithstanding the legality of the threatened act, if it is used as an extortive measure or in bad faith to make an improper demand.[30] So, a threat to bring criminal prosecution,[31] to bring a civil action,[32] to breach a contract,[33] to strike,[34] or to terminate another's employment[35] may all be sufficiently wrongful to constitute economic duress even though at the time they are per se lawful.[36]

The decision by the court in *Jamestown Farmers Elevator, Inc. v. General Mills, Inc.*[37] helped to clarify the limitations placed on the rights of parties upon the termination of a contract by holding that when a buyer of grain has given a buy-in notice to the seller after the seller has failed to meet its delivery obligations and the seller then repudiates the contract, both parties have acted to terminate their obligations to deliver or to accept the grain and thereafter the buyer cannot validly claim the right to receive the remaining shipments.[38] The district court in denying appellant's post-trial motion for a new trial did not recognize such a limitation and saw the demands made by the appellee as valid, and so held that there was no duress as a matter of law because duress could not be predicated on a lawful demand.[39]

The court of appeals, however, by holding that appellee's demand was not a valid one in light of its buy-in notice and appellant's repudiation of the original contract, felt that appellant had established

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29. In regard to this, Professor Dawson states as follows:

> It is indeed this concentration on distinctions between legal and illegal means which has chiefly arrested the modern development of the law of duress. No single formula has achieved so wide a circulation in the duress cases as the statement that "it is not duress to threaten to do what there is a legal right to do." Certainly no other formula is anything like so misleading. Its vice lies in the half truth it contains. For an enormous range of conduct is included in the class of acts that there is a "right" to do (and therefore, under this formula, to threaten).

See Dawson, *supra* note 8, at 287.

30. 552 F.2d at 1290-91.

31. Grasso v. Dean, 171 Neb. 648, 107 N.W.2d 421 (1961).

32. Lundvall v. Hughes, 49 Ariz. 264, 268, 65 P.2d 1377, 1378 (1937). Duress in this area will generally not be found where the party threatening the civil action had a good faith belief that he had a valid claim or legal right, 13 W. JAEGER, WILLISTON ON CONTRACTS § 1607 (3d ed. 1970).

33. Equity Funding Corp. v. Carol Management Corp., 66 Misc. 2d 1020, 322 N.Y.S.2d 965 (1971), *citing* Austin Instrument, Inc. v. Loral Corp., 35 App. Div. 2d 387, 316 N.Y.S.2d 528 (1970), *modified* 29 N.Y.2d 124, 324 N.Y.S.2d 22, 272 N.E.2d 533 (1971).

34. *See* Glicman v. Barker Painting Co., 227 App. Div. 585, 238 N.Y.S. 419 (1930).

35. Laemar v. J. Walter Thompson Co., 435 F.2d 680, 682 (7th Cir. 1970).

36. Link v. Link, 278 N.C. 181, 179 S.E.2d 697 (1971).

37. 552 F.2d 1285 (8th Cir. 1977).

38. *Id.* at 1290.

39. 413 F. Supp. at 773-74. It is important to point out the distinction between a demand and a threat. The former is what the coercing party seeks to gain whereas the latter is the means used to accomplish that gain. So long as the demand made by a party is one to which he has a right then the coercive threat, if lawful, will not create duress. On the other hand, if that which is demanded is unlawful or something to which the threatening party has not a right, then the threats made may become wrongful or improper notwithstanding their lawful nature. *See* 13 W. JAEGER, WILLISTON ON CONTRACTS §§ 1606-1607 (3d ed. 1970).

a triable claim of duress.[40] Since a question of fact existed as to whether or not the alleged threats actually took place,[41] and the district court had ruled on the issue of duress as a matter of law, the court of appeals was compelled to reverse and remand the case for a new trial.[42] But in so doing, the court of appeals stated that in order to find duress the jury would also have to determine whether the appellant's shipment of grain was involuntary[43] and whether appellant had alternatives available to him other than to ship the grain.[44] The court of appeals felt that if the jury found in favor of the appellant of those three issues, the appellant would be entitled to avoid what the court viewed as a new contract created as a result of the February 18, 1974, telephone conversation for appellant to sell and ship grain to appellee at the old contract price.[45]

Jamestown Farmers Elevator demonstrates how the validity of the demand acts to control the power of the coerced party to avoid a contract under a claim of duress. Duress is a state of mind but if a party was coercively induced to perform an act which it was already under a legal or contractual duty to perform, then that party should not be allowed to rescind the contract.[46] He has, at an earlier time, freely assented to the obligation and unless other circumstances have prevailed to terminate the obligation his consent should bind him.[47] But for the buy-in notice the appellant in *Jamestown Farmers Elevator* could not have claimed that his duty had ended.[48]

Jamestown Farmers Elevator also shows how the validity of the demand can become a determining factor as to whether the threat is considered wrongful or improper.[49] The appellee, regardless of appellant's actions, had a legal right to perform the acts allegedly threatened. When those acts were threatened to accomplish something to which the threatening party had no valid right to demand, however, the threats became extortive in nature. Even though the threats were legal remedies available to the threatening party, their true purpose had been abused.[50]

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40. 552 F.2d at 1291.
41. *Id.* at 1290.
42. *Id.* at 1295.
43. *Id.* at 1291.
44. *Id.*
45. *Id.* at 1291-92.
46. *See* 13 W. JAEGER, WILLISTON ON CONTRACTS § 1604 (3rd ed. 1970).
47. *Id.*
48. 552 F.2d at 1290. The buy-in notice sent to appellant by appellee indicated that appellee was no longer willing to accept the grain but instead demanded money damages for the difference in the price of grain at the time of delivery, $1.22 per bushel, and the market price at the date of the buy-in notice, $1.94 per bushel. *Id.* Had the notice left the option of delivery open to appellant it is quite possible that the district court's ruling on economic duress would have been affirmed. *See supra* note 39.
49. *See supra* notes 20 & 39.
50. Austin v. Wilder, 26 N.C. App. 229, ——, 215 S.E.2d 794, 797 (1975). The judicial danger in this area lies in distinguishing between extortion and hard bargaining in good faith. *See* Black Lake Pipeline Co. v. Union Construction, Inc., 538 S.W.2d 80, 90 (Tex. 1976).

It is from this basis that the court of appeals held the alleged threats improper.[51] Because the appellee's demand for sale and shipment of the grain at the original price was held to be outside the scope of appellee's rights,[52] then the threats in the nature of those allegedly made to put appellant out of business,[53] or to institute criminal or regulatory proceedings[54] for the purpose of securing the other party's consent to an undeserved bargain, were wrongful.[55]

The North Dakota courts, although certainly recognizing the defense of general duress, have not formally adopted the economic duress doctrine.[56] In North Dakota duress has been statutorily defined,[57] but the list of definitions can arguably be considered nonexclusive.[58] The statute has been part of North Dakota law from territorial days with no changes in the wording from that time.[59] The earlier North Dakota cases dealing with duress allowed recovery of taxes paid under protest of their illegality where the alternative was a sale of the victim's property.[60] Recovery has also been allowed for money paid under protest on defective farm equipment for the purpose of releasing a crop lien.[61] The economic duress doctrine is widely accepted in American jurisdictions[62] and it would seem only a matter of time before it is accepted by North Dakota courts.[63]

Upon remand, appellant in *Jamestown Farmers Elevator* will bear a heavy burden in proving its claim of economic duress.[64] The result may be that the appellant's claim will fail for a lack of involuntary inducement, or for the existence of a reasonable alternative,

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51. *See* 552 F.2d at 1290.
52. *Id.*
53. Mayerson v. Washington Mfg. Co., 58 F.R.D. 377, 383-84 (E.D. Pa. 1972).
54. Balling v. Finch, 203 Cal. App. 2d 413, ——, 21 Cal. Rptr. 490, 493-94 (1962).
55. 552 F.2d at 1291.
56. *See* Production Credit Association of Minot v. Geving, 218 N.W.2d 185, 195 (N.D. 1974).
57. N.D. CENT. CODE § 9-03-05 (1975). The statute states that duress consists of the following:

> 1. Unlawful confinement of the person of a party to a contract, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
> 2. Unlawful detention of the property of any such person; or
> 3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

58. California's statutory definition of duress is identical to that of North Dakota. *See* CAL. CIV. CODE § 1569 (West 1954). Although by a strict construction of these definitions only a limited version of the economic duress doctrine could be adopted involving detention of property, the California judiciary has adopted a more liberal and complete doctrine of economic duress. *See* Louisville Title Ins. Co. v. Surety Title & Guaranty Co., 60 Cal. App. 3d 781, 132 Cal. Rptr. 63 (1976); Balling v. Finch, 203 Cal. App. 2d 413, 21 Cal. Rptr. 490 (1962). It would therefore seem that a similar liberal interpretation of the statutes is available to the North Dakota courts.
59. *See* DAK. TERR. CIV. CODE § 880 (1877).
60. St. Anthony & Dakota Elevator Co. v. Soucie, 9 N.D. 346, 83 N.W. 212 (1900).
61. Bratberg v. Advance-Rumely Thresher Co., 61 N.D. 452, 238 N.W. 552 (1931).
62. *See* 13 W. JAEGER, WILLISTON ON CONTRACTS § 1603 (3d ed. 1970).
63. In PCA v. Geving, 218 N.W.2d 185, 195-96 (N.D. 1974), the wording of the court and even the manner in which it disposed of duress strongly suggests that the formal adoption of the economic duress doctrine will soon come to pass in North Dakota.
64. 552 F.2d at 1292. Duress must be proved generally by clear and convincing evidence. 25 AM. JUR. 2d *Duress and Undue Influence* § 33 (1966).

or both. These issues and whether the threats actually existed will have to be decided by the jury on re-trial.[65] The court of appeals decision properly gives the appellant the opportunity to make its claim before a jury. In addition, and in all fairness, whether the appellee acted in good faith, though mistaken, in making its demand and to what extent such a good faith but mistaken belief should negate the wrongfulness of the threat, should also be considered.[66] Whatever the result, *Jamestown Farmers Elevator* shows that each case in which economic duress is alleged must be decided on its facts, and no prediction can be made of the result in any particular case.[67]

RICHARD GEIGER

CONSTITUTIONAL LAW—DUE PROCESS—SUSPENSION OR REVOCATION OF A DRIVER'S LICENSE WITHOUT PRIOR HEARING DEEMED CONSTITUTIONALLY ADEQUATE

Plaintiff's driver's license was revoked, without preliminary hearing, under an Illinois statute[1] which provided for such suspension or revocation upon a showing that the driver had been repeatedly convicted of traffic offenses indicating either an inability to exercise ordinary and reasonable care in operating a motor vehicle or disrespect for the traffic laws and safety of other persons upon the highway. Plaintiff[2] made no request for an administrative hearing,

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65. 552 F.2d at 1291.

66. The court stated as follows: "We recognize that good faith insistence upon a legal right which one believes he has usually is not duress, even if it turns out that that party is mistaken and, in fact, has no such right." *Id.* at 1290. It can certainly be argued that the court of appeals did not give enough consideration to appellee's good faith belief that it had a right to demand shipment of the grain.

67. *See* 13 W. JAEGER, WILLISTON ON CONTRACTS § 1613 (3d ed. 1970).

1. ILL. REV. STAT. ch. 95½, § 6-206(a)(3) (1971) provides as follows:

> (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> . . . .
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . .

2. Plaintiff was a resident of Chicago, employed as a truck driver. His license was suspended in November 1969 as a result of his having been convicted of traffic offenses three times within a twelve-month period. He was later convicted for driving while his license was suspended and consequently another suspension was imposed in March 1970. He received no further citations until August 1974, when he was arrested on two separate occasions for speeding. After having been convicted on both charges, he received a third speeding citation in February 1975. On March 27, 1975, he was notified by letter that his driving privileges would cease if he was convicted of a third offense. On March 31, 1975, he was convicted on the third charge. On June 3, 1975, plaintiff received notice of revoca-