

MERCEDES MARTINEZ Y FERNANDEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. THE HONGKONG & SHANGHAI BANKING CORPORATION ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 5496. February 19, 1910*

Ponente: MORELAND, J.

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This is an action to set aside a contract on the ground that plaintiff's consent thereto was given under duress and undue influence. Alejandro S. Macleod is joined as plain tiff only for the reason that he is the husband of Mercedes Martinez and he takes no part in the action personally.

In the statement of facts and some of the legal propositions involved, we have made free use of the forms contained in the briefs of both parties.

Alejandro S. Macleod was for many years the managing partner of the house of Aldecoa & Co. in the city of Manila. He withdrew from the management on the 31st day of December, 1906, when Aldecoa & Co. went into liquidation. At the time that Aldecoa & Co. ceased active business the Hongkong & Shanghai Banking Corporation was a creditor of that firm to the extent of several hundred thousand pesos and claimed to have a creditor's lien in the nature of a pledge over certain properties of the debtor. In April, 1907, the bank began a civil action against Alejandro S. Macleod, his wife, Mercedes Martinez, Aldecoa & Co., and the firm known as Viuda 6 Hijos de Escano. In the bank's complaint it was alleged that a certain undertaking in favor of Aldecoa & Co. had been hypothecated to the bank to secure the indebtedness of Aldecoa & Co., but that this obligation had been wrongfully transferred by Alejandro S. Macleod into an obligation in favor of his wife, Mercedes Martinez, to the prejudice of the bank. In May, 1907, Aldecoa & Co. began a civil action against Alejandro S. Macleod and others for the recovery of certain shares of stock of the par value of P161,000 and for damages in the sum of P150,000, basing its right to recover upon alleged criminal misconduct of Mr. Macleod in his management of the firm's affairs.

When the two causes of action above referred to were discovered and the suits there mentioned commenced, Alejandro S. Macleod and Mercedes Martinez, his wife, engaged the services of Messrs. Del-Pan, Ortigas and Fisher, attorneys at law, to represent and defend them in the matter. Soon thereafter these attorneys made overtures to the liquidator of Aldecoa & Co. for the settlement of the latter's claims. While these negotiations were pending Aldecoa & Co. claimed that they had made discoveries of many frauds which Macleod had perpetrated against the company during the period of his management, whereby the company had been defrauded of many thousands of pesos.

On the 13th day of July, 1907, it becoming apparent that criminal proceedings would be instituted against him, Macleod went from Manila to the Portuguese colony of Macao, a territory not covered, it appears, by extradition treaty between the United States and the Portuguese Government. Four days thereafter, on the 17th day of July, Aldecoa & Co. filed a complaint against Mr. Macleod, charging him with the falsification of a commercial

document, and a warrant for his arrest was issued by the Court of First Instance of Manila, and the executive department of the Philippine Government issued a formal request to the Portuguese authorities for the extradition of the accused. This request was denied. In the meantime the attorneys for the respective parties were engaged in negotiations for the settlement and compromise of the differences then pending and a clearance of Mr. Macleod from all claims and demands of his creditors. Aldecoa & Co. and the bank, as a consideration for such settlement, insisted upon the conveyance not only of all the property of Alejandro S. Macleod but also of at least a portion of the property claimed by his wife, the plaintiff herein. The settlement offered at that time was the same which was subsequently accepted and consummated on the 14th of August as shown by Exhibit A. There appears to have been little resistance to this demand on the part of the representatives of Mr. Macleod, but his wife, the plaintiff herein, stoutly objected to the conveyance required of her, maintaining that the property which she was asked to transfer was her separate and exclusive property and not liable for the debts of her husband. Her position was fully stated by her to her attorney, Mr. Fisher, and to her attorney-in-fact, Mr. William Macleod. An interview between her attorney and the attorney for Aldecoa & Co. followed this declaration on her part. Thereafter and on the night of August 4 another interview was had between the plaintiff and her counsel, Mr. Fisher, and others, at which a long list of claims against Mr. Macleod, prepared by Aldecoa & Co., was exhibited to the plaintiff and its contents explained to her by Mr. Fisher and her attorney-in-fact. Some of these claims involved criminal as well as civil liability. Mr. Fisher at that time favored a settlement in accordance with the terms proposed by Aldecoa & Co. The plaintiff, however, refused to accept such settlement.

This being the state of affairs, one of the attorneys for the bank, on the 7th day of August, 1907, was called upon by counsel for both Aldecoa & Co. and the plaintiff in this action, who requested him to act as intermediary between the parties and to suggest means by which a settlement could be obtained. At that interview it was agreed that a full explanation of the condition of affairs should be made to Mr. Kingcome, a son-in-law of the plaintiff and a business man. This explanation was made by Mr. Stephen, manager of the Hongkong & Shanghai Banking Corporation, one of the friends of Mr. Kingcome, at an interview arranged between them pursuant to the arrangements made by the attorneys for the parties. Whether or not Mr. Kingcome communicated the substance of that interview with Mr. Stephen to his mother-in-law, the plaintiff, before she signed the document in question is in dispute in this case. There is some doubt from the record as to the exact language used in this conversation between Kingcome and Stephen, but it appears that some reference was made to the interest which the British colony in Manila, of which Messrs. Stephen, Kingcome, and Macleod were prominent members, would have in avoiding the scandal and disgrace to the latter which might be expected to ensue unless the differences between the parties to this action were amicably arranged. It seems at that interview that Mr. Stephen suggested to Mr. Kingcome that he advise his mother-in-law to act reasonably in negotiating the proposed settlement. It appears that Mr. Kingcome got the impression from that interview that Mr. Stephen thought unless the settlement were consummated additional and mortifying misfortunes would fall upon Mr. Macleod's family.

About the time that the interview between Kingcome and Stephen was celebrated Mr. Fisher was enlisting the services of Mr. William Macleod, a nephew and close friend of plaintiff and her husband, and plaintiff's attorney-in-fact, for a mission to plaintiff of a similar character to that of Mr. Kingcome. Mr. William Macleod, as well as Mr. Kingcome, seems to have been persuaded by what he was told that the consequences of plaintiff's continued refusal to make the settlement would be disastrous to Alejandro S. Macleod and his family and would be an exhibition of very bad judgment in every way.

On August 9, 1907, the prosecuting attorney filed a second complaint against Alejandro S. Macleod and his associate, Osorio, charging them with embezzlement and causing warrants of extradition to issue. The complaint was made at the instance of the prosecuting attorney because he had heard that Macleod and Osorio were about to leave for Europe and he wanted to intercept them in territory from which they could be extradited.

On the 11th of August a long conference was held between plaintiff, her attorney, Mr. Kingcome, her son-in-law, and William Macleod, her attorney-in-fact, at which she was informed in substance that if she assented to the requirements of Aldecoa & Co. and the bank the civil suits against herself and her husband would be dismissed and the criminal charges against him withdrawn, while if she refused her husband must either spend the rest of his life in Macao or be criminally prosecuted on the charges already filed and to be filed. At that interview plaintiff refused to accede to the terms of settlement and that interview was terminated by a statement on the part of Mr. Fisher, which was "Gentlemen, it is evident that there can be no compromise or settlement, and the only thing left us to do is to defend Mr. Macleod in the best possible manner."

On the 12th of August, at an interview had between the plaintiff and her attorney-in-fact, Mr. William Macleod, the plaintiff acceded to the terms proposed by the defendants and authorized Mr. William Macleod to execute the contract of settlement on her behalf. The document of settlement was prepared and after certain corrections upon the part of the plaintiff's attorneys, making the same entirely satisfactory to them, it was signed by the plaintiff's attorney-in-fact on her behalf on the 14th of August. It was thereafter and on the same day ratified by the plaintiff, who executed the same in person.

After Aldecoa & Co. and the bank had taken possession of the property of plaintiff and her husband, conveyed to them by Exhibit A, the civil suits were dismissed, the criminal charges withdrawn, and Mr. Macleod returned from Macao to Manila. The plaintiff had a surveyor divide the property in Malate, of which she had conveyed a half interest, into two equal parts. She negotiated for a partition of the land on the basis of this survey. She joined in the motion for the dismissal of the civil action to which she had been a party and in the motion in the Court of Land Registration for the recording in the name of the grantees of a half interest in the Malate land. All of these acts were in pursuance of Exhibit A.

On December 3, 1907, the plaintiff filed her complaint in the present action, and, after the joining of issue and the hearing of evidence, judgment was rendered in favor of defendants on the 29th day of May, 1909. From this judgment, after the usual motion for a new trial, its denial and exception to such denial, plaintiff appealed to this court. The Civil Code in relation to the subject-matter in hand contains the following provisions:

"Art. 1265. Consent given under error, violence, intimidation, or deceit shall be null.

"Art. 1267. There is violence when, in order to obtain the consent, irresistible force is used.

"There is intimidation when one of the contracting parties gives his consent on account of a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of his spouse, descendants, or ascendants.

"In determining whether or not there is intimidation, the age, sex, and status of the person intimidated must be considered.

"Fear of displeasing the persons to whom obedience and respect are due shall not annul the contract.

"Art. 1268. Violence or intimidation shall annul the obligation, even though such violence or intimidation shall have been used by a third person who did not take part in the contract."

In order that this contract be annulled it must be shown that the plaintiff never gave her consent to the execution thereof. If a competent person has once assented to a contract freely and fairly, he is bound. Contracts which are declared void and of no force upon the ground that they were obtained by fraud, duress, or undue influence are so declared for the reason that the complaining party never really gave his consent thereto. The consent in such case is not in the eye of the law a consent at all. The person has not acted. He has done nothing. He was in vinculis.

It is necessary to distinguish between real duress and the motive which is present when one gives his consent reluctantly. A contract is valid even though one of the parties entered into it against his wishes and desires or even against his better judgment. Contracts are also valid even though they are entered into by one of the parties without hope of advantage or profit. A contract whereby reparation is made by one party for injuries which he has willfully inflicted upon another is one which from its inherent nature is entered into reluctantly and against the strong desires of the party making the reparation. He is confronted with a situation in which he finds the necessity either of making reparation or of taking the consequences, civil or criminal, of his unlawful acts. He makes the contract of reparation with extreme reluctance and only by the compelling force of the punishment threatened. Nevertheless such contract is binding and enforceable. Such a contract differs entirely in its incidents from a contract entered into by a party for the purpose of gain. The latter contract is made with pleasure and its terms complied with gladly. The former is a contract the execution of which the party is very apt to repent and the terms of which he is very likely to evade if he can. It is not conclusive against them that Aldecoa & Co. demanded that the plaintiff do something upon pain of punishing her husband for his crimes. It is not conclusive that the plaintiff disliked exceedingly to do what they demanded. Neither is it conclusive that the plaintiff now regrets having performed at their demand instead of compelling a resort to judicial proceedings. It is not for these reasons that this contract may be declared null and void. If such a contract were illegal, then, for the same reason, every contract would be illegal whereby pending litigation is settled by agreement of the parties rather than by decision of the court. If such a contract were null and void, then would be null and void every contract whereby a wrongdoer and he who assisted him made reparation for that which he had misappropriated or misapplied. In legal effect there is no difference between a contract wherein one of the contracting parties exchanges one condition for another because he looks for greater gain or profit by reason of such change and an agreement wherein one of the contracting parties agrees to accept the lesser of two disadvantages. In either case he makes a choice free and untrammelled and must accordingly abide by it. These are evidences of duress, facts from which duress may be inferred, but they are not duress of themselves. In the absence of other proof and circumstances, they might very well be held to establish duress. But there is other proof and we do not believe that under all the facts of this case as disclosed by the record we can say that the court below erred when he refused to find that the plaintiff entered into the contract in question by reason of duress and undue influence. We find lacking in this case many of the essential elements usually found in cases of duress. The most that the facts disclose is that the plaintiff was loath to relinquish certain rights which she claimed to have in certain property to the end that she might be relieved from litigation then pending against her and that her husband might escape prosecution for crimes alleged to have been committed; and that she persisted for a considerable time in her refusal to relinquish such claimed rights. The fact that she did relinquish them upon such consideration and under such condition does not of itself constitute duress or intimidation, nor does it destroy the obligatory effect and force of her consent. In order to do so something more is needed. Such influence must have been exercised over her that she was deprived of her free will and choice. She must have acted from fear and not from judgment.

Not every contract made by a wife to relieve her husband from the consequences of his crimes is voidable. Subject to certain restrictions a wife may legally dispose of her property as she pleases; she may squander it; she may give it away; she may pledge or transfer it to keep her husband out of state prison. The question in each case is exactly the same as in all such relations, was she acting according to the dictates of her own judgment, whether good or bad, or from fear, force, or undue influence? If there are time and opportunity for judgment to take the place of fear, and if apart from the threat there are reasons disclosed which might lead one in the exercise of good judgment to perform the acts complained of, then the evidence as to duress and undue influence must be very clear in order that such acts may be recalled.

The appellant cites many cases in support of her contention that the contract of the 14th of August should be

abrogated.

We have carefully examined not only all of the cases cited by the appellant but also substantially all of the cases within our reach relating to the question before us. Among them are the following; *Adams vs Irving National Bank* (116 N. Y., 606); *Allen vs. Laflore County* (76 Miss., 671); *Bentley vs. Robson* (117 Mich., 691); *Burton vs. McMillan* (8 L. R. A., N. S., 991) ; *Bell vs. Campbell* (123 Mo., 1); *Galusha vs. Sherman* (47 L. R. A., 417); *McMahon vs. Smith* (47 Conn., 221, 36 Am. Rep., 67) ; *Gorringe vs. Reed* (23 Utah, 120, 90 Am. St. Rep., 692) ; *Bank vs. Bryan* (62 Ia., 42) ; *Rau vs. Zedlitz* (132 Mass., 164) ; *Lomerson vs. Johnston* (47 N. J. Eq., 312) ; *McGrory vs. Reilly* (14 Phila., Ill); *Foley vs. Greene* (14 R. I., 618); *Coffman vs. Lookout Bank* (5 Lea, 232); *Haynes vs. Rudd* (102 N. Y., 372) ; *Cribbs vs. Sowle* (87 Mich., 340); *Osborne vs. Robbins* (36 N. Y., 365); *Rail vs. Raguet* (4 Ohio, 400) ; *Bank vs. Kirk* (90 Pa. St., 49) ; *Eadie vs. Slimmon* (26 N. Y., 9) ; "*Harris vs. Carmody* (131 Mass., 51) ; *Taylor vs. Jacques* (106 Mass., 291) ; *Bryant vs. Peck & W. Co.* (154 Mass., 460) ; *Hensinger vs. Dyer* (147 Mo., 219); *Mack vs. Praug* (104 Wis., 1); *Benedict vs. Broome* (106 Mich., 378) ; *Williams vs. Bayley* (1 Eng. & Ir. App. Cas., 200) ; *Central Bank vs. Copeland* (18 Md., 305, 81 Am. Dec, 597); *Bradley vs. Irish* (42 111. App., 85) ; *Snyder vs. Willey* (33 Mich., 483).

All of the above cases, except *Harris vs. Carmody*, *Hensinger vs. Dyer*, and *Williams vs. Bayley*, are distinguishable from the case at bar in the following particulars;

- In those cases there was no time within which to deliberate the matter as it should have been deliberated.
- There was no time or opportunity to take the advice of friends or of disinterested persons.
- There was no time or opportunity to take the advice of counsel.
- The threats made to secure the performance of the act complained of were made directly to the complaining party by the person directly interested or by some one in his behalf who was working in his interest and who had no interest whatever in the welfare of the complaining party.
- There was no consideration for the performance of the act complained of except immunity from the prosecution threatened.
- The property transferred or incumbered by the act complained of was the separate property of the person performing the act in which the person for whom the act was performed claimed no interest whatever.
- There was no dispute as to the title of the property transferred or incumbered, no claim made to it by anybody, no suits pending to recover it or any portion of it, and no pretension that it could be taken for the debts of the husband or of any other person.

In the cases of *Harris vs. Carmody*, *Hensinger vs. Dyer*, and *Williams vs. Bayley*, above excepted, the complainant had the benefit of legal advice and the advice of some friend but in none of those cases were there present any of the other circumstances just enumerated.

In the case of *Hensinger and another vs. Dyer* (147 Mo., 219) it appeared that the plaintiffs were the tenants of the defendant on defendant's farm. During the last year that they had occupied this farm they raised some 500 bushels of corn upon which the defendant claimed to have a lien under the statute. The plaintiff *Hensinger* sold the corn and applied the proceeds to his own use. *Dyer* threatened to institute criminal proceedings against *Hensinger* for embezzling the corn if he and his wife did not execute to him their note for its value, secured by a deed of trust upon the land of Mrs. *Hensinger*. They testified that because of this threat and in fear of said prosecution they executed the note and deed of trust as required. Shortly before the papers were executed the

defendant went to plaintiffs' residence, some 7 miles from defendant's home, taking with him a notary public to take the acknowledgement of the deed of trust in the event that he succeeded in getting the plaintiffs to execute it. This was one of the occasions upon which the defendant threatened to prosecute Hensinger if he and his wife did not execute the deed of trust as required. Mrs. Hensinger had all the time refused and still refused to execute the deed; but upon the afternoon of that day plaintiffs went to Sedalia to consult with their son and with their attorney and thereafter went to J. M. Bailer's office and there executed the papers in question. The court held that the note and deed of trust were voidable as having been executed under duress.

It is at once apparent, however, that the facts differ materially from those in the case at bar. In that case the plaintiffs contended against the personal presence of the defendant and all of the influence which that presence implies. In that case there was absolutely no consideration moving to Mrs. Hensinger inducing the execution of the papers in question except the release of her husband from prosecution. There was lacking in that case everything, every consideration which would appeal to the judgment or reason of the complaining party.

The same may be said of the other two cases, *Harris vs. Carmody* and *Williams vs. Bayley*.

The plaintiff cites also the case of *Jalbuena vs. Ledesma et al.* (8 Phil. Rep., 601). In that case it appeared, as stated by the court, that -

"Ildefonso Doronila, having been the tutor of the Ledesma minor children, was cited in August, 1900, before the provost court of Iloilo on the petition of the defendant Lopez, to show cause why he should not surrender the papers, securities, and money in his charge, and he was in the course of the proceeding ordered to render his accounts as tutor, and it is to be inferred from the testimony of the defendant Ledesma that the accounts were in fact rendered. On December 3 he came to an agreement with the defendant Lopez, as representative of the children, whereby his accounts were allowed and accepted and the value of the missing papers, claimed to have been lost in the bombardment of Iloilo, was fixed at P12,000, and a certain obligation of the estate to Juan Casells to the amount of P4,000 was assumed by him. Subsequently this agreement was ratified by the family council, which imposed, however, an additional condition that security should be given by Doronila for the payment of P16,000 in case the missing papers should not be produced within six months and the novation of the debt of Juan Casells accepted by the debtor. Thereafter he was brought before the provost judge in the pending proceeding and was ordered to give additional security, and failing to do so was committed to jail, where he had already been once confined on the institution of the proceeding. As all of his property was already bound to the estate for the performance of his duty as guardian, it became expedient to find a surety for him, and the plaintiff (wife of Doronila), who had accompanied him to the court, was thereupon induced to join with him in this undertaking. As to the proceedings in court, the testimony of the plaintiff, reduced to narrative form, is as follows:

"I remember having been in the office of the provost judge of Iloilo in December, 1900. I went there to visit my husband, who was in jail. While there I was summoned before the provost judge by a soldier, and I went up before the provost and requested him to set my husband free, he not being guilty of anything. I asked him, crying, to put my husband at liberty, but the provost did not listen to me; on the contrary, he asked me to file security for what was lost in my house during the bombardment, and he told me that he was going to put my husband in jail if I did not obligate my property as security. Fearing that he was going to be put in jail again, I was compelled to sign, it being a time when we and others were under fear and I was afraid that he would be punished and that they would deport him. In the fear that I was then under I did not know any other remedy but to sign. He told me that my husband would be sent again to jail if I did not sign."

"This communication was carried on through the medium of an interpreter, one Pedro Regalado, who testified:

"The provost judge told Sra. Vicenta * * * in these terms: "You sign a document guaranteeing with your property the obligation contracted by Sr. Doronila, your husband." She answered to these words that her

husband was not guilty of the loss of the documents, as when the bombardment came the documents were in a trunk and were lost during the bombardment. When she said that she could not respond, then the provost said: "You sign this document; you either sign this document or I will send your husband back to jail." More or less I remember that he said: "Interpreter, tell her to either sign this document or I will have her husband sent again to jail." " "

In this case the wife sued to set aside the obligation upon the ground that it was obtained from her by duress and undue influence. She justly succeeded.

A mere reading of the facts in that case discloses that it can not be used as an authority in the case at bar. It is widely different in its facts.

A careful analysis of this case discloses the following peculiarities:

In the first place, the undisputed evidence demonstrates that the first offers of compromise were made by the plaintiff herself through her representatives. It appears that from first to last the effort and anxiety to compromise the claims of the defendants were on the part of the plaintiff through her representatives. The position of Aldecoa & Co. throughout the negotiations, as it appears from the testimony in the case, was that a settlement of their claims against the plaintiffs would not result in any peculiar or especial benefit to them inasmuch as by the actions already commenced against the plaintiff and her husband the defendants would be able, so they contended, to secure exactly the same property that they would obtain by the settlement proposed. The soundness of this contention was admitted by the attorneys for the plaintiff. It was the desire on the part of at least one of the persons especially interested in Aldecoa & Co. that Alejandro S. Macleod should suffer criminally for the acts which he had committed against that company and such person did not hesitate to say so repeatedly. There seems to have been throughout the negotiations a fear on the part of the attorneys for the plaintiff that, partly, at least, by reason of this especial desire of said person, the negotiations would be broken off by Aldecoa & Co. before a settlement could be consummated. The defendants never urged the plaintiff to desist from her pretensions or to accept the ultimatum laid down by the defendants. They simply stated to the attorneys for the plaintiff that they must have all of the Macleod property in satisfaction of their claims, and it appeared from the position assumed that it was immaterial to them whether they obtained those properties through the courts or by means of a settlement. They left Macleod and his wife to choose for themselves, upon their own judgment and upon the advice of their attorneys and relatives, the course to be by them pursued. That the defendants were not especially urging the settlement in question is demonstrated by the fact that Mr. Fisher, the attorney for the plaintiffs, was doubtful about securing the participation of Aldecoa & Co. in the agreement up to the very moment of its execution, and it appears from the evidence of Mr. Cohn that Mr. Fisher, laboring under such apprehension, actually withheld important information from Aldecoa & Co. for fear such information would deter them at the last moment from giving their assent to the arrangement.

In the second place, there were at no time during the course of these negotiations for settlement any direct personal relations or communications between the parties to this action. During the whole course of the negotiations no person communicated with the plaintiffs on behalf of the defendants alone. The offers, propositions, or threats, if any, made by the defendants were filtered to her through the personality, mind, and judgment of her own attorney or relatives, all of them being persons who had her welfare and the welfare of her family deeply at heart and who were acting for her and her husband and not for the defendants. That personal presence of the threatening party and the influence springing therefrom, factors so potent in duress and undue influence, were wholly lacking.

On the trial an attempt was made to show that the defendants had attempted to influence the plaintiff, Mercedes Martinez, by acting upon her through her son-in-law, Mr. Kingcome. As stated above, Mr. Stephen was asked by

the attorneys for the plaintiff, as well as the attorneys for the defendants, to see Mr. Kingcome and ask him to explain to his mother-in-law the facts and circumstances which were the cause of the attempts at settlement for the purpose of inducing her to act reasonably in the premises. There was some dispute as to whether or not Mr. Kingcome actually communicated the substance of that interview to his mother-in-law prior to her signing the contract in question. Mr. Kingcome in his testimony states that according to his best recollection he communicated the substance of that interview to his mother-in-law on the 11th day of August. In considering this matter it must be remembered that the interview between Mr. Stephen and Mr. Kingcome was not brought about by Aldecoa & Co. or its representatives. It was brought about by Mr. Conn acting as mediator between Mr. Fisher and Mr. Rosado, the one the attorney for the plaintiffs and the other the attorney for the defendant company, upon the request and with the express approval of both of them. The interview which followed between Mr. Stephen and Mr. Kingcome was the direct act of plaintiff in exactly the same manner and in exactly the same degree as it was the act of Aldecoa & Co.

In the third place, the plaintiff by means of the negotiations and settlement in question was engaged partly at least in the settlement of her own suits and controversies. The plaintiff, Mercedes Martinez, together with Aldecoa & Co. and Viuda e Hijos de F. Escano were sued in April, 1907, by the Hongkong & Shanghai Banking Corporation in relation to P45,000 worth of notes claimed to have been fraudulently taken from the assets of Aldecoa & Co. and transferred into the name and possession of the plaintiff, Mercedes Martinez. This was one of the actions settled and terminated by the contract in question. In this property the plaintiff released her rights under the settlement. The only other property to which she released her rights was a half interest in property in Malate. As to the legality of her claim that this property was her own individual property there was a serious question, so serious in fact that she was formally and repeatedly advised by her attorneys that such claim was in their judgment unfounded. These are the only interests which the plaintiff, Mercedes Martinez, released or gave over in the settlement complained of. Both of the claims were substantially in litigation and the legality of both was seriously questioned and strongly doubted by her own attorneys. While it is not necessary to decide and we do not decide whether her claim to either of those properties was valid or invalid, still the fact that the validity of her claims thereto was denied by her own attorneys strongly tends to impeach the claim that she released those properties by reason of duress and undue influence, rather than as a result of her own deliberate judgment.

In the fourth place, it must be remembered that the plaintiff, Mercedes Martinez, never at any time stood alone in the negotiations. There was never a moment when she did not have interposed between her and the defendants the counsel of skilled attorneys and of interested relatives. Whatever came to her from the defendants, their demands or their threats, if any, reached her through the medium of her friends and advisers. She had the assistance of legal learning and business intelligence and experience. She had the careful and thoughtful advice of her family. She was as far as possible relieved from all fear, stress, or influence except such as were inherent in the circumstances themselves. It appears undisputed that she and her relatives and lawyers considered throughout the negotiations and down to and including the time of the execution of the agreement of settlement that her best interests would be subserved by acceding to the terms laid down by the defendants. From the evidence in the case it is difficult to arrive at a conclusion other than that the acts which she performed in making the settlement in question were acts which contributed to her welfare and the welfare of her whole family. While this fact may not be conclusive in the present case, it nevertheless is of very great importance and significance in determining the question whether duress and undue influence were exercised or whether she acted from uncoerced judgment after weighing the reasons pro and con.

In the fifth place, we must not overlook the fact that the plaintiff took advantage of said contract after its execution and required the complete fulfilling of every one of its provisions favorable to herself. She negotiated with Aldecoa & Co. for a partition of the Malate property and to that end caused a survey and a division thereof to

be made. She demanded of Aldecoa & Co. payment of the P2,000 provided for by the contract, which said sum she received. She caused one-half of said Malate property to be assessed against said company. She caused a change to be made in the proceedings to register the title to said Malate lands, previously begun by her, so as to register her title to only one-half thereof. She caused to be dismissed the action pending against her on account of the Escano notes, which dismissal occurred after this present action was commenced.

These acts are mentioned not to show a ratification of the contract in the sense that those acts estopped her from thereafter questioning the same, but rather as confirmatory of the theory that in the execution of the contract complained of she acted according to the dictates of good business judgment rather than from duress and undue influence.

As we have already stated, not every contract executed by a wife, even though made solely to save her husband from the consequences of his crimes, is voidable. Solicitation, importunity, argument, and persuasion are not undue influence and a contract is not to be set aside merely because one party used these means to obtain the consent of the other. Influence obtained by persuasion or argument or by appeals to the affections is not prohibited either in law or morals and is not obnoxious even in courts of equity. Such may be termed "due influence." The line between due and undue influence, when drawn, must be with full recognition of the liberty due every true owner to obey the voice of justice, the dictates of friendship, of gratitude and of benevolence, as well as the claims of kindred, and, when not hindered by personal incapacity or particular regulations, to dispose of his own property according to his own free choice. (9 Cyc, 455, and cases there cited,)

On the other hand contracts entered into by a wife whereby she conveys property unquestionably hers, the sole and only consideration for which contract is the obtaining for her husband immunity from criminal prosecution, are always justly the objects of suspicion, and it is a wise jurisprudence which holds that, where she defends upon the ground that she was duressed, the party enforcing such contract must expect the very closest scrutiny of the transaction with the presumptions all against him. Where, however, as in this case, there is a real question as to the validity of claims laid by the wife to the property transferred, some of which claimed rights are involved in actual litigation in which she is a party, while the remainder are alleged by opposing claimants to be subject to seizure and sale under judgments against the husband; and competent and honorable counsel, after careful and extended consideration of the facts and the law, advise her that the rights so claimed by her in the property transferred are fictitious, unreal, and defeasible, having no foundation in law, and she, after abundant opportunity for deliberate consideration, releases such claimed rights and thereby not only secures immunity for her husband, but also quiets litigation against herself, a very different question is presented. It is undisputed that the attorneys for the plaintiff in this case advised her that, from the facts which they had before them, facts of which she was fully informed, her husband had been guilty of embezzlement and misappropriation in the management of the business of Aldecoa & Co. and that, in their judgment, if prosecuted therefor, he would be convicted. They further advised her that the P45,000 worth of notes claimed by her and to recover which was part of the purpose of the action against her and her husband by the Hongkong & Shanghai Banking Corporation were a part of the property of which her husband had criminally deprived the said company. They advised her that she would not be able to hold such notes as her own. They further advised her that from the facts before them Aldecoa & Co. would have no difficulty in getting a judgment for a very large amount against her husband, and, in that event, the interest which she claimed in the Malate property would be liable to seizure and sale under said judgment, said property being in their judgment ganancial They informed her that all that Aldecoa & Co. required of her was the transfer of her claimed rights in said property. They further advised her that if she did not so transfer such property, Aldecoa & Co. would nevertheless obtain it by means of the actions already commenced and to be commenced ; that if she did transfer it she would lose no more than she would lose by means of said actions and she would gain in addition the immunity of her husband from criminal prosecution. In other words, under the advice of her

counsel, the situation was so presented to her that it was evident that in signing the agreement of the 14th of August she had all to gain and nothing to lose, whereas, in refusing to sign said agreement, she had all to lose and nothing to gain. In the one case she would lose her property and save her husband. In the other, she would lose her property and her husband too. The argument thus presented to her by her attorneys addressed itself to judgment and not to fear. It appealed to reason and not to passion. It asked her to be moved by common sense and not by love of family. It spoke to her own interests as much as to those of her husband. The argument went to her financial interests as well as to those of the defendants. It spoke to her business judgment as well as to her wifely affections. From the opinions of her attorneys, as they were presented to her upon facts assumed by all to be true, we do not well see how she could reasonably have reached a conclusion other than that which she did reach. It is of no consequence here whether or not her lawyers advised her wrongly. It is of no importance whether, as matter of law, she would have been deprived of her alleged interests in the properties mentioned in the manner described and advised by her attorneys. The important thing is that she believed and accepted their judgment and acted upon it. The question is not did she make a mistake, but did she consent; not was she wrongly advised, but was she coerced; not was she wise, but was she duressed.

From the whole case we are of the opinion that the finding of the court below that the plaintiff executed the contract in suit of her own free will and choice and not from duress is fully sustained by the evidence.

The judgment of the court below is, therefore, affirmed with costs against the appellant. So ordered.

Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.

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