

MASTEN, J., in a written judgment, found that the plaintiff had no independent advice; that it was not established that her husband had been guilty of any criminal offence; that the defendants had not threatened the husband with prosecution; that in applying to his wife to give the security the husband was influenced by two motives: first to avoid prosecution; second, to secure his retention by the defendants in their employment; and that the wife, in giving the security, was influenced by the same motives; that the husband, in applying to the wife to give security and in stating to her the danger in which he stood, was acting on his own behalf and not as the agent of the defendants; that the defendants did not threaten the plaintiff with the arrest of her husband; that the plaintiff, a highly intelligent person and of considerable force of character, thoroughly understood the transaction; and that she did not execute the mortgage as a result of undue influence or pressure.

The plaintiff, when asked to give the security, was taken by surprise and had no opportunity for obtaining independent advice or for deliberation; but the effect of this was substantially modified by the fact that, as far as the evidence shewed, no complaint was made by her in respect to the giving of this security until the present action was launched, some eight months later, after her husband's death; and by the circumstance that—the chattel mortgage having been given in August and the first instalment of interest falling due in October—the plaintiff insisted upon the prompt payment of that interest. This was after she had full opportunity for deliberation and obtaining advice. Even assuming that the husband exercised undue influence—which was not the case—the plaintiff could not succeed unless the defendants were aware at the time that such undue influence had been exercised: *Cobbett v. Brock* (1855), 20 Beav. 524; *Bunbury v. Hibernian Bank*, [1908] 1 I.R. 261. There was no evidence of such knowledge on their part.

In these circumstances, the case came within the law stated by the Court of Appeal in *McClatchie v. Haslam* (1891), 65 L.T.R. 691.

Reference also to *Williams v. Bayley* (1866), L.R. 1 H.L. 200; *Pollock on Contracts*, 8th ed., pp. 640 et seq.

The learned Judge said that there was no presumption of law against the validity of the chattel mortgage, and his conclusions of fact were, that the plaintiff was a free and voluntary agent, and that she failed to shew affirmatively that the defendants procured her to execute the mortgage complained of through pressure or undue influence.

*Action dismissed with costs.*