

Per GRAHAM, E.J., dissenting.

Held, That the money having been clearly and unequivocally paid for L., and both parties having acted on that basis and with full knowledge, the fact that the company was relieved from pressure did not make it a payment by the company as principal.

Held also, that the subsequent ratification of the payment by L. was as effectual as if there had been a previous request.

Held also, that the act of payment was not ratified as a satisfaction of the claim of the city, but as an advance conditionally made to remove the pressure, and with a view to recovering the money; that the case was practically the same as if L. had been present when the money was paid, and had authorized the payment for him under protest.

Held also, that the city having received the money as coming from L. there was privity which enabled the action to be maintained.

Held also, that the mere threat to employ colourable legal authority to enforce payment of an unfounded claim is such duress as will support an action to recover the money paid under it.

Appeal allowed with costs.

C. S. Harrington, Q.C., and C. P. Fullerton, for plaintiff. W. F. MacCoy, Q.C., for defendant.

Full Court.]

JENKINS v. MURRAY.

[Jan. 15.]

Vendor and purchaser—Responsibility of vendor for mistake or negligence of agent—Damages.

Defendant placed a number of lots of land in the hands of N., with instructions to sell. The correspondence in relation to the transaction was conducted through defendant's son-in-law, F., with whom she lived, and who acted under her instructions.

The lots in the hands of N. consisted of five lots known as "the swamp lots," five lots on Plover street, and sixteen lots on Brussels and Acadia streets.

On the 7th June N. wrote to F. asking what he would take for the lots, naming them, and on the 19th of the same month telegraphed F. as follows: "Offered \$1,000 for lots mentioned in my letter 7th instant. Wire." After some further correspondence F. telegraphed "Accept offer." Whereupon N. closed the sale and received a payment of \$100 on account of the purchase money. Defendant refused to complete the sale on the ground that she had been misled by F., and thought she was only authorizing the sale of the lots known as "the swamp lots."

Held, reversing the judgment of HENRY, J., for defendant, that defendant was responsible for the mistake or negligence of her agent, and for damage caused by the breach of a contract which she had authorized him to make, the terms of the contract being clear, and plaintiff's conduct in the whole transaction unimpeachable.

W. B. A. Ritchie, Q.C., for appellant. A. Drysdale, Q.C., for respondent.