

and the repayment of the \$100 paid by her therefor, and the cancellation of the application for 10 shares of said stock, signed by the plaintiff Samuel McCallam, and the repayment of \$80 paid by him on account thereof, and by amendment, to set aside an agreement of settlement made after the commencement of the action.

C. D. Scott, for plaintiffs.

H. H. Dewart, K.C., for defendants.

MACMAHON, J.—Dealing first with the question of the alleged settlement of this action. Without imputing to Mr. Henderson anything else than forgetfulness of what took place on that occasion, he, no doubt with the desire to bring about what he says he considered a fair settlement, then told S. McCallam that unless a settlement was effected that night it could not be settled at all, and if not settled that night he (Henderson) would bring an action to recover \$5,000 damage for slander alleged to have been uttered by McCallam on his examination for discovery, and that defendants would keep it in litigation for years. When McCallam urged that the case should be submitted to his solicitor, Henderson made the above threat. This threat was the inducing cause of McCallam's signing the offer of settlement, and he says he signed under fear of the prosecution. Under the circumstances it is a settlement amounting to coercion not persuasion: *Ellis v. Barker*, 25 L. T. N. S. 7; *Jackson v. G. T. R. Co.*, 25 O. R. 64-66. The agreement, however, is only an offer, and did not become an agreement until assented to by defendants, and plaintiffs' solicitors repudiated the settlement and withdrew the offer the same day. The manager of the defendants agreed to the settlement on the day after it was made, the 7th January, 1902, the president on the 8th January, and the board on the 20th January. The assent of the board was too late, but it does not matter owing to the coercion adopted. . . . I find that Mr. Henderson stated that the Imperial Trust Company was behind defendants, and had guaranteed a dividend of six per cent. upon the stock subscribed for, and that through the trust company the plaintiffs could get the amount of their principal at any time. These statements were untrue. The plaintiff S. McCallam is, therefore, entitled to have his application for 10 shares of defendants' stock cancelled and to a refund of the \$100 he has paid thereon, and his wife, the co-plaintiff, though she has received dividends on her 1 share, for which she paid in full, is, as she is in a position to return the stock, entitled to do so and receive back her money: *Clarke v. Dickson*, E. B. & E. 148.