

*ing fear* which annuls the contract. The existence of fear can only be established by proof of violence ; and although it may be theoretically true that a consent obtained through fear is not a good consent, the statement of the principle in a practical code is useless. The first three articles of Section III. are as follows :

" 13. Violence or fear is a cause of nullity, whether practised or produced by the party for whose benefit the contract is made, or by any other person."

" 14. The fear, whether produced by violence or otherwise, must be a reasonable and present fear of serious injury. The age, sex, character, and condition of the party are to be taken into consideration."

" 15. The fear suffered by a contracting party is a cause of nullity, whether it be a fear of injury to himself, or to his wife, children, or other near kindred, and sometimes when it is a fear of injury to strangers, according to the discretion of the Court."

These articles, leaving out of course the revival "*fear*," might be rendered in two, thus :

" 13. Violence is a cause of nullity, whether practised by the party for whose benefit the contract is made, or by any other person."

" 14. The violence must be such as to produce, in the party influenced by it, a reasonable and present fear of serious injury to himself, his wife, child, or other near kindred ; or sometimes (in the discretion of the Court), to any other person. The age, sex, and condition of the party are to be taken into consideration."

In the following article the words italicized may be omitted.

" 16. The mere reverential fear of the father or mother, or other ascendant, without any violence *having been* exercised, or *threats made*, will not invalidate the Contract."

" 18. A contract for the purpose of delivering the party making it, or the husband, wife, or near kinsman of such party, from violence or threats of injury, is not invalidated by reason of such violence or threats : provided the person in whose favour it is made be in good faith, and not in collusion with the offending party."

To this should be added : " But if the obligation be manifestly excessive, the Court may in its discretion reduce it." (Poth. Oblg. No. 24.)

Marcadé characterizes this doctrine of Pothier as not to be thought of, at the present day ; but his reasoning is more subtle than just, and he admits that if the obligation be "*vraiment excessive*," the Judge may hold that the party had been deprived of his reason by the effect of fear, and consequently that the obligation was null for want of consent, and

---

\* Since these notes were written, I am indebted to a friend, a member of the New York bar, for a copy of the Draft of a Civil Code for the State of New York, a work of much interest. The division of Obligations, as there reported, contains only 135 sections or articles. The article most nearly parallel to the one under consideration is in the following terms:—" An apparent consent is not real or free when obtained through 1. Duress ; 2. Menace ; 3. Fraud ; 4. Undue influence ; 5. Mistake ; or, 6. Accident." These are, of course, resolvable into three : error, fraud, and violence.