

It is settled law that, where the consideration upon which an agreement to give money or property or a security is illegal, e.g., the stifling of a criminal prosecution, the money or property cannot be recovered back or the security be set aside, at the instance of the person who has agreed to give it, on the ground of the illegality of the transaction, if it is no longer executory but has been carried into execution.

Reference to *Wood v. Adams* (1905), 10 O.L.R. 631, 637; *Jones v. Merionethshire Permanent Benefit Building Society*, [1892] 1 Ch. 173, 182.

The appellant could not succeed upon the ground principally relied upon.

If she had established that in the giving of the mortgage she was not a free agent, but gave it because of threats by the respondents that they would prosecute her husband criminally if she did not give it, she was entitled to succeed. The learned trial Judge had found against her on this branch of the case, and the appellant had failed to satisfy the Court that his conclusion was wrong. What was said did not amount to a threat to prosecute if the mortgage was not signed, nor did it warrant a finding in favour of the appellant on the issue as to pressure or duress.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

JULY 15TH, 1918.

*MAHONEY v. CITY OF GUELPH.

Municipal Corporations—Work Directed to be Done by Board of Commissioners of Sewage and Public Works of City—Act respecting the City of Guelph, 1 Geo. V. ch. 90, sec. 4 (7)—Use of Explosives—Negligence of Engineer—Injury to Member of Board—Liability of City Corporation—"Volenti non Fit Injuria," Application of—Common Employment—Volunteer—Absence of Contractual Relation.

Appeal by the plaintiff from the judgment of CLUTE, J., 13 O.W.N. 279, 41 O.L.R. 308, dismissing the action without costs.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.