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THE WESTERN BANK OF CANADA } APPELLANTS;  
 (PLAINTIFFS) ..... }

1902

AND

\*May 27.

\*Oct. 7.

DORA STUART LESLIE MCGILL, }  
 ADMINISTRATRIX OF THE ESTATE OF } RESPONDENT.  
 THE LATE WILLIAM MCGILL, }  
 (DEFENDANT)..... }

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Promissory note—Duress—Verdict of jury.*

In an action against the maker of a promissory note, the local manager of the plaintiff bank, the defence was that he had been coerced by the head manager, under threats of dismissal and criminal prosecution, into signing the note to cover up deficits in customers' accounts in which he had no personal interest. His evidence at the trial to the same effect was denied by the head manager.

*Held*, that the jury having believed the defendant's account and given him a verdict which the evidence justified, such verdict ought to stand.

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\*PRESENT:—Sir Henry Strong C. J. and Taschereau, Sedgewick, Davies and Mills JJ.

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APPEAL from a decision of the Court of Appeal for Ontario reversing the judgment of the Divisional Court, which ordered a new trial, and restoring the original verdict for the defendant.

The facts of the case are fully stated in the judgment of His Lordship Mr. Justice Mills, and sufficiently appear from the above head-note.

*W. Cassels K.C.* and *C. A. Jones* for the appellants.

*Holman K.C.* and *Drayton* for the respondent.

The CHIEF JUSTICE concurred in the judgment dismissing the appeal with costs.

TASCHEREAU, SEDGEWICK and DAVIES JJ. concurred in the result of the judgment dismissing the appeal with costs for the reasons given in the court below.

MILLS J.—In this case Mr. McGill had been local manager of the Western Bank, in Port Perry, for a period of several years. His difficulties began very shortly after his appointment. After he had entered upon his duties, application was made by Paxton Tait & Co. for credit at the bank. They had been previously customers of the Bank of Ontario, and were, at the time that they made application to the Western Bank, indebted to the Bank of Ontario for the sum of \$20,000. McGill informed McMillan, who was the general manager of the Western Bank, that he did not think that Paxton Tait & Co. were likely to prove desirable customers on account of their seriously embarrassed circumstances. But Mr. McMillan, who knew the circumstances of Paxton Tait & Co., nevertheless instructed McGill to give them credit to the extent of \$5,000, and if their account proved satisfactory it might be increased to \$10,000. McMillan received a

fortnightly report of the business done at this branch, so that he knew exactly what the state of the various accounts were, as well as the financial standing of the parties. There were no specific instructions written by him to McGill, forbidding further advances or further accommodation of this company. High rates of interest were charged by the bank on these unsatisfied accounts and the indebtedness grew very rapidly, not because of further advances having been made to them, but by reason of the high rate of interest charged. McMillan seems to have been a man violent in his language and imperious in his disposition, and he constantly addressed Mr. McGill as though he were in some way a very serious offender against the bank. His communications to McGill were based upon this assumption, and so he succeeded in making McGill assume the responsibility of the indebtedness of Paxton Tait & Co., and of Laing & Meharry, although McGill had no responsibility for these accounts, nor had he in any way profited by the advances which the bank made to the parties.

McGill swears that McMillan had instructed him to credit Paxton Tait & Co. with advances to the amount of \$15,000 or \$20,000 when he well knew what the financial standing and circumstances of this company were. McGill testified that in April, 1888, this company were largely indebted to the Bank of Ontario and he did not know how their indebtedness of \$20,000 to that bank could be satisfied out of advances amounting to \$5,000 or \$10,000 made by the Western Bank. McMillan terrorized McGill into giving his own note for \$9,200 for the indebtedness of Paxton Tait & Co., with good indorsers, to whom he was instructed by McMillan to represent the note as a private loan, for a private venture of his own, and upon this representation he succeeded in getting Curts, Carnegie &

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Ross to become his indorsers. In December, 1893, he was intimidated into giving the bank another note for \$4,000 for a debt of Laing & Meharry who were customers of the bank, and in 1897 he became liable for \$7,200 more. In none of these transactions had he any interest whatever; so that McMillan had intimidated him into making himself liable to the bank for upwards of \$21,000. In fact this seems to have been done by McMillan solely for the purpose of escaping any criticism by the directors in reference to these accounts.

Mr. McGill was an officer of the bank at a salary which, for some time, was but \$800 a year, and which at no time ever exceeded \$1,000 a year, and it was a most unusual proceeding that he should have been pressed by a superior officer into making himself a surety for customers to whom large advances had been made. He was dependent for his continuance in the service of the bank upon Mr. McMillan, and it would seem that this officer did not hesitate to use his power over McGill to force him to become surety for the accounts of customers of questionable financial soundness. McGill's testimony was that he had been charged by McMillan with having grossly violated his duties, that he was accused of having made himself criminally liable by what he had done. His own testimony was that he had discharged his duties to the best of his ability, and that he was not aware of any failure of duty on his part, as an officer of the bank, but he had no experience in the business of banking, and he seemed not to have been well informed in respect to what he might or might not do in the discharge of the duty of local manager. He was quite ignorant as to whether he had incurred legal liabilities as manager of this branch, and so he was frightened by his superior officer into assuming

large responsibilities by reason of the threat and intimidation to which he was subjected.

The jury heard the statements made by Mr. McGill and by Mr. McMillan, and they credited Mr. McGill's testimony and disbelieved the testimony of Mr. McMillan. The evidence leaves upon my mind the impression that they were not wrong in their verdict, and if so McGill was not liable, because this was a promise without any consideration, not freely and voluntarily made, to answer for the debts of others. *Williams v. Bayley* (1).

I concur in the conclusion reached by a majority of the Court of Appeal. The case was fairly submitted to the jury and in my opinion their verdict ought to stand. It was one to which reasonable men might come. The jury found that the liability of Mr. McGill was not based upon his free and voluntary action, but was procured through fear and undue influence of McMillan. The majority of the Court of Appeal thought the verdict right, and I do not dissent from their conclusion. I think the appeal should be dismissed.

*Appeal dismissed with costs.*

Solicitor for the appellants: *C. A. Jones.*

Solicitors for the respondent: *Holman, Drayton & Slaght.*

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(1) L. R. 1 H. L. 200, at pp. 218, 219.