

1950

## Harold Fox v. J. K. Piercey : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Rawlings, Wallace, Black; Roberts & Black; Dwight L. King; Attorneys for Respondent;

---

### Recommended Citation

Brief of Respondent, *Fox v. Piercey*, No. 7533 (Utah Supreme Court, 1950).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/1302](https://digitalcommons.law.byu.edu/uofu_sc1/1302)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

---

HAROLD FOX,

*Plaintiff and Respondent,*

— vs. —

J. K. PIERCEY, Chief of the Fire  
Department of Salt Lake City;  
SALT LAKE CITY, a municipal  
corporation,

*Defendants and Appellants.*

---

**BRIEF OF RESPONDENT**

---

Appeal from the District Court of Salt Lake County,  
State of Utah,  
Honorable David T. Lewis, Judge

---

**FILED** RAWLINGS, WALLACE, BLACK,  
ROBERTS & BLACK  
AUG 19 1950 DWIGHT L. KING,  
*Attorneys for Respondent,*  
Clerk, Supreme Court, Utah 530 Judge Building  
Salt Lake City, Utah

---

---

## TABLE OF CONTENTS

	Page
STATEMENT OF POINTS .....	1
ARGUMENT .....	2
POINT I. THE EVIDENCE FULLY SUPPORTS EACH AND EVERY ONE OF THE COURT'S FINDINGS OF FACT....	2
POINT II. THE LAW APPLICABLE REQUIRES THE CONCLU- SIONS OF LAW MADE BY THE COURT.....	13
CONCLUSION .....	22

### AUTHORITIES CITED

Barnette v. Wells Fargo Nevada Nat. Bank of San Francisco et al., 270 U. S. 438, 46 S. Ct. 326.....	19
Board of Education v. Rose, ....Ky....., 147 S. W. 2d 83, 132 A. L. R. 569 .....	19
Kidd v. State Civil Service Commission (Cal. App.) 55 P. 2d 245.....	19
Kramer v. Police Comr's., 39 Cal. App. 396, 179 P. 216.....	19
McCarthy v. Steinkellner et al., 223 Wis. 605, 270 N. W. 551.....	16
Ogle v. Freeman et al., 150 Kan. 864, 96 P. 2d 670.....	14
People ex rel. O'Connor v. Harding, 224 Ill. App. 198, 132 A. L. R. 976 .....	18
State ex rel. Young v. Ladeen, 104 Minn. 252, 116 N. W. 486.....	19
Thompson v. Civil Service Commission, 103 Utah 162, 134 P. 2d 188 .....	9

### TEXTS CITED

American Law Institute, Restatement of the Law of Contracts, Sec- tion 492 of Vol. 2 .....	13
Restatement of the Law of Contracts, subsection g. Sec. 492, page 941 .....	22

**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

---

HAROLD FOX,

*Plaintiff and Respondent,*

— vs. —

J. K. PIERCEY, Chief of the Fire  
Department of Salt Lake City;  
SALT LAKE CITY, a municipal  
corporation,

*Defendants and Appellants.*

Case No.  
7533

---

**BRIEF OF RESPONDENT**

---

**STATEMENT OF POINTS**

**I.**

**THE EVIDENCE FULLY SUPPORTS EACH AND  
EVERY ONE OF THE COURT'S FINDINGS OF FACT.**

**II.**

**THE LAW APPLICABLE REQUIRES THE CONCLU-  
SIONS OF LAW MADE BY THE COURT.**

## ARGUMENT

## POINT I.

THE EVIDENCE FULLY SUPPORTS EACH AND EVERY ONE OF THE COURT'S FINDINGS OF FACT.

The appellants have stated their version of the facts at great length, quoting in full many parts of the Complaint and Findings and Conclusions. However, the statement does not fully reveal all of the evidence, but only such portions as support appellant's contentions.

It will be noted at the outset that respondent in paragraph II of his Amended Complaint sets forth the basic coercive forces upon which he relied throughout the trial. There were three in number.

(1) That unless plaintiff resigned his position as a fireman first grade J. K. Piercey would blast and smear respondent in every newspaper in Salt Lake City. This the court did not find was substantiated by the evidence, and respondent in his testimony did not testify that that was what Piercey had said to him. Respondent stated that the following occurred (R. 37):

“Q. Then what did he say to you?

“A. He told me I had to work somewhere; that I wasn't going to work there no more, and if I didn't resign I was going to be discharged, and I told him I wouldn't resign.

“Q. Was there any further conversation between you and Chief Piercey there at his office on this morning?

“A. Yes. He told me if I didn’t resign he was going to blast me and make it miserable for me to find a job. I told him I wouldn’t resign.”

(2) That Piercey further told respondent he would make it so miserable respondent could not secure a job in Salt Lake City. Respondent did not testify that Mr. Piercey would make it impossible for him to find a job, but only that it would be difficult for respondent to find employment (R. 40).

“Q. (By Mr. King) Mr. Fox, I will ask you, what was your primary consideration in the signing of this resignation on that occasion, in your mind? What was uppermost in your mind?

“A. I didn’t want him to carry out his threats on me.

“Q. By ‘threats’ what do you mean, Mr. Fox?

“A. He said he would blast me and swear me all over the newspapers; and if he did, it would be difficult in obtaining employment.

“Q. Did you have any intention at that time, Mr. Fox, of resigning your position with the Fire Department voluntarily?

“A. I did not.”

(3) That if respondent did not resign his position Piercey would discharge him and give him more publicity than he ever wanted in his life. There is no dispute

on the threat of discharge. Concerning the publicity respondent stated as follows (R. 39) :

“A. Rather than have Chief Piercey carry out his threats, the best thing to do was resign, and save face with the family.

“Q. What did you do, Mr. Fox?

“A. I went back and asked him if it was too late to resign.

“Q. Did you have any other conversation with him when you went back?

“A. I asked him, if I resigned if he would retract his stories he was going to put in the newspapers.

“Q. What did he say?

“A. He says it was too late. He said, if it wasn't too late, he would try.”

The court in its Findings of Fact found specifically in Finding No. 1 that Piercey told respondent unless he resigned he would be discharged and the discharge would be accompanied by detrimental publicity and would seriously and detrimentally affect respondent's opportunity for obtaining employment in Salt Lake City and vicinity (R. 24). The court further found that the threat by Piercey to respondent alarmed and frightened him and while he was under the influence of fear, duress and coercion caused and created by the statements of Piercey concerning the detrimental effect that a discharge would have upon the respondent's opportunity for employment and the detrimental publicity

that would probably result from such discharge, acted involuntarily and signed the letter of resignation involved in this action (R. 25).

Respondent's testimony standing alone would be ample support for all of the Findings of Fact made by the Court. But his evidence does not stand alone. It is bolstered and corroborated by all of the testimony of the witnesses for appellants. Piercey and every one of the Assistant Chiefs agreed that prior to his resignation Chief Piercey told the plaintiff that it would be better for him to resign than to be discharged. Of course, there is a variance in the testimony concerning just exactly what Piercey said. Most of the Assistant Chiefs denied that Piercey mentioned newspaper publicity, but it would seem that this omission was an oversight on the part of Piercey for he certainly had newspaper publicity in mind when respondent was before him and his Assistant Chiefs. He had already been contacted by the papers concerning a statement on respondent and had released the following information to them (Exhibit "D"):

#### "PIERCEY OUSTS S. L. FIREMAN

"A Salt Lake fireman was discharged Friday by Fire Chief J. K. Piercey following his arrest Thursday night on a drunkenness charge.

"Discharged was Harold Fox, 37, 227 N. 6th West. He was arrested at his home Thursday at 11:10 p.m. by police officers. He pleaded innocent to a drunkenness charge Friday before Police Judge Frank E. Moss, who set trial for Aug. 26.



“Chief Piercey, in a letter Friday to Public Safety Commissioner L. C. Romney and the board of city commissioners, said he had discharged Fox and recommended the commission concur in in his action.

“While the letter was being submitted to the city commission, Fox voluntarily submitted his resignation to Chief Piercey, who said it would be accepted.

“The chief said he talked to Fox in city jail Thursday night and Fox admitted drinking and striking a woman neighbor. Chief Piercey added Fox had been warned and disciplined previously for similar conduct.”

Assistant Chief White is the only one of the witnesses for appellants who admitted that newspaper publicity was discussed with respondent (R. 146):

“A. The Chief did mention the newspapers had called him, that they had the information about the evening before and they knew—he had told them Mr. Fox had been discharged. I believe Mr. Fox asked him if it could be stopped, if the newspapers couldn’t be called and the story stopped. I know the Chief made a call to the newspapers and attempted to stop the story at that time.”

At the trial Assistant Chief White did not recall any discussion of adverse publicity between respondent and Piercey until respondent’s counsel quoted to him part of the record on the Civil Service Commission hear-

ing. The following questions and answers appear (R. 147-149):

“Q. Mr. White, on the hearing before the Civil Service Commission, you stated, did you not, that Chief Piercey did tell Mr. Fox that he would have some troubles, though, if he didn't resign, getting other employment, and those troubles would stem from the Fire Department?

“A. That was his advice to Mr. Fox, that it would be harder for him if on the record of the Department was the fact he had been discharged. If people called, it would look much better if there was just the resignation present.

“Q. In answer to that question did you make the following answer, concerning what Chief Piercey had told Mr. Fox:

‘Well, as far as dismissal was concerned, that it would be pretty much a matter of public knowledge of what went on, especially if Harold wanted to fight a discharge, that there would be a lot of court action. On the other hand, if he would resign, he would be spared all that.

‘He made particular reference to the fact that Harold would have to have work of some kind, and as he was seeking a position somewhere else, these people would call the Chief's office for a recommendation, or his record on the Fire Department, that with the resignation he would have a clearer case—that the Chief would simply tell him then he had resigned from the Fire Department.

‘On the other hand, if he was discharged, then he would probably have to answer the questions as to reason for dismissal.’

“Do you remember the Chief telling Mr. Fox that, Chief White?

“A. Yes, I think that is right.

“Q. In other words, the thing the Chief was impressing upon Mr. Fox was, was it not, if he resigned he would have a good chance of getting employment in Salt Lake City, and if he was discharged, he would not?

“A. Well, he didn’t say he would not.

“Q. He gave him that impression, didn’t he, Chief White?

“MR. HOLGREN: I object to that as calling for a conclusion.

“THE COURT: Objection sustained.

“Q. (By Mr. King) In answer to the following question didn’t you make the following answer, before the Civil Service Commission, on this matter:

‘In other words, Chief Piercey told Mr. Fox if he resigned, his chances for getting employment were much better than if he were discharged as a result of the things Chief Piercey would have to tell people, when they called, regarding Mr. Fox?’

“Didn’t you answer that question:

‘Yes, that is right.’

“A. I did, yes.”

At many other places in the testimony of the Assistant Chiefs, respondent's story is corroborated and confirmed even though it appears throughout their testimony that they were avoiding assiduously any inference that Piercey was using every coercive force which he possessed to obtain a resignation from respondent.

The withdrawal of respondent's resignation occurred within two days of the time that it was given and no harm could possibly have been done to the Fire Department or Salt Lake City by the issuance of a discharge when the resignation was withdrawn, yet Piercey has steadfastly refused to discharge respondent. The only explanation for such a refusal is that admittedly there is no cause for discharge. Since there was no lawful grounds for discharge the threat of discharge by Piercey was wrongful and unlawful.

Respondent's record as a fireman was clear of any violation of his duties. The only criticism of respondent's conduct concerned the family difficulties with which he was afflicted. No one has ever intimated that those personal problems in any way affected respondent's proficiency as a fireman.

This court has held that the fact that a fireman does not live his private personal life in accordance with the view of his superiors is not grounds for discharge or cause for removal. *Thompson v. Civil Service Commission*, 103 Utah 162, 134 P. 2d 188. In the *Thompson* case the Fire Chief was admittedly guilty of a positive violation of law (driving on the wrong side of the street

while drunk). Here respondent was found not guilty of being drunk in his own home.

The law under the modern view of duress and coercion is to the effect that the threat need not be such as would put a brave man or even a man of ordinary firmness in fear. The question for the court to decide is subjective, i.e., did the statements and threats put respondent in fear and preclude him from exercising his free will and judgment? In deciding that question the court should consider the relation of the parties and the attendant circumstances.

His Honor, of course, realized that respondent was an inferior subordinate, with very little prestige or standing in the Fire Department or general community, while Piercey was the Chief of the department and an influential citizen in the community with access to all of the newspapers in Salt Lake City, and with a great many other means of carrying out his will and desires. This feeling on the part of respondent came before the court from the following questions and answers (R. 65):

“Q. Mr. Fox, was there anything other—I think you answered a question of Mr. Holmgren’s about publishing in the newspaper. Was there any other part of what Chief Piercey said to you that you were thinking about when you went back and decided to resign, other than the publishing in the newspaper?”

- “A. I knew that him being as influential as he was, that he could have a great bearing on me finding employment.
- “Q. Had he said anything about that to you in the morning meeting?
- “A. He told me he was going to blast me and smear me in every newspaper in Salt Lake City.”

A great deal of testimony dealt with an incident which occurred on January 30th, 1946, and primarily concerned a letter which respondent signed and which is marked Exhibit “1”. The testimony concerning that letter, while immaterial on the main question here, illustrates the practice of the Fire Department and of the Assistant Chiefs in obtaining compliance from inferior officers with the Chief’s and Assistant Chiefs’ wishes. In the letter the Assistant Chiefs required respondent to sign there is a statement that no duress or coercion was used against respondent to obtain his signature yet, everyone that testified admitted that they threatened respondent with immediate discharge unless he signed the letter as written.

A worthwhile civil service system requires that the civil servant be free from coercive pressure from his superior officers. The provisions for discharge give ample protection to the City and the Chief of the Fire Department. If the gate is left open for the use of coercive measures by the superior officers every salutary purpose of the Civil Service system can be completely circumscribed.



This court should not deal with this question as one of niceties. The primary purpose of all public authority, including this court, should be to completely eliminate any possibility of the use of coercion and duress by the Chief of the Fire Department on inferior officers to obtain their resignations.

Resignations should be entirely voluntary or they should not be allowed to stand. Every witness that was present at the discussion between respondent and Piercey states that respondent told Piercey he did not wish to resign and would not resign. It was only after his free will had been overcome by fear and the coercive forces brought to bear by Chief Piercey that respondent signed the letter of resignation prepared by Chief Piercey's secretary. Since all agree that respondent signed the letter of resignation against his express wishes and desires, the only question that can remain is, were the threats and coercive forces brought to bear by Piercey sufficient as matter of law to coerce and make involuntary the resignation of respondent from the Fire Department?

The modern view of the law which will be discussed under Point II of this brief is that the measure of the legal sufficiency of the threat or coercive influence is not an objective standard such as a brave man or a man of ordinary firmness, but is a subjective standard measured by the influence that the threats and coercive forces have on the particular person from whom action was being exacted.

## POINT II.

THE LAW APPLICABLE REQUIRES THE CONCLUSIONS OF LAW MADE BY THE COURT.

The *American Law Institute, Restatement of the Law of Contracts*, sets forth a modern definition of duress under *Section 492 of Vol. 2*. The definition reads as follows:

“Duress in the Restatement of this subject means

- “(a) any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition, or
- “(b) any wrongful threat of one person by words or other conduct that induces another to enter into a transaction under the influence of such fear as precludes him from exercising free will and judgment, if the threat was intended or should reasonably have been expected to operate as an inducement.”

Anciently the law was that the duress and coercive force had to be of such a nature as would make a brave or courageous man submit. That rule was modified until it required only that the coercion be such as would cause a person of ordinary firmness to submit. The present American decisions have abandoned both the brave and courageous man and ordinary firmness man standards and make the measure of the legal sufficiency of the duress a subjective standard. It is only necessary that the coercive forces be sufficient to overcome the will of



the person being subjected to such forces. The courts observe that the weaker and more cowardly persons are in greater need of protection than the brave, courageous and strong individuals who are able to withstand the force of coercive pressure. The reasoning behind the modern rule has been set down succinctly in the case of *Ogle v. Freeman et al.*, 150 Kan. 864, 96 P. 2d 670, 674:

“This court and many others have shown a tendency toward liberality of definition—that is, to relax the rigid requirements of the older rule concerning duress. It was said in *Williamson, Halsell, Frazier Co. v. Ackerman*, 77 Kan. 502, 505, 94 P. 807, 808, 20 L. R. A., N. S. 484: ‘Under the modern theory, duress is to be tested, not by the nature of the acts or threats, but rather by the state of mind of the victim induced by such acts and threats.’ See 9 R. C. L. 716, 717. Again, the old rule, frequently stated was that ‘duress is that degree of constraint or danger, either actually inflicted, or threatened and impending, which is sufficient in severity or in apprehension to overcome the mind of a *person of ordinary firmness*.’ In a carefully considered opinion in the case of *Riney v. Doll*, 116 Kan. 26, 225 P. 1059, this court repudiated the proposition that *ordinary firmness* of mind should be included in the standard by which to test the existence of duress. It forcefully argued that if a person imposed upon by use of threats had a mind of less than ‘ordinary firmness’ he was all the more entitled to be protected.

The court said:

“ ‘The courts now generally recognize that this definition is inaccurate for at least two speci-

fic reasons, viz.: First, experience has furnished no yardstick by which the firmness of the human will can be measured; and, second, even though that could be done, one having a weak will is as much entitled to the protection of the law as though his will were of ordinary firmness or of extraordinary firmness. When one uses the bludgeon of duress to break the will of his adversary and thereby gains a wrongful or unconscionable advantage, a court will relieve the victim of the consequences of the act he was thus forced to perform, whether his will be weak, requiring but one blow to shatter it, or whether it be of ordinary firmness, requiring several, or whether it be as adamant, requiring many.' ”

The wrongful acts in the present instance consisted of threats, both veiled and otherwise of wrongful discharge, persecution and derogatory publicity.

In *subsection g. Sec. 492 of the Restatement of the Law of Contracts, page 941*, the rule is laid down that the coercive acts or threats need not be criminal or tortious or in violation of any contractual duty if the acts coercing a desired affirmation involve an abuse of legal remedies or are wrongful in the moral sense and cause fear, such acts vitiate the transaction entered into because of the fear. There can be no doubt that the salient purposes to be served by the Civil Service Act, under which our municipal government employees work, could be defeated with ease if the discharging authority can through the threat of discharge, persecution or ad-

verse publicity extract a resignation from an unwilling employee.

Coercion and duress practiced on a civil service employee has been before the courts of the United States on many occasions. The case which seems to be most directly in point here is *McCarthy v. Steinkellner et al.*, 223 Wis. 605, 270 N. W. 551, 557. James William McCarthy, the plaintiff, brought his action for a mandatory injunction directing the chief engineer of the fire department of the city of Milwaukee, and the board of fire and police commissioners of that city to permit him to withdraw an application theretofore made by him for retirement on pension upon his completion of the requisite term of service for retirement, and to reinstate him to the position of assistant chief engineer of the fire department of the city, a position which he occupied at the time of the filing of the application. The chief threatened that if he did not so retire he would demote McCarthy from the position he held to the position of captain in the department, without preferring any charges against him, and without giving him opportunity for trial before the board on charges preferred, and thereby coerced him into applying for retirement. The case was before the appellate court on appeal from an order sustaining a demurrer to the plaintiff's complaint. In reversing that order the court set forth the facts and the law applicable in the following language:

“We are also required in passing on the sufficiency of the complaint to determine whether

it states facts sufficient to excuse the plaintiff from the application to retire and receive a pension which the complaint states he made and states was accepted. The plaintiff alleges that the application was made because of a demand of the chief that he have his application for retirement on file by June 1, 1936, and because of the threat of the chief that if he did not the chief would demote him from his position of assistant chief to that of captain. That on retirement as assistant chief his pension would be one-half his salary of \$270 per month, while if he was demoted to the rank of captain his pension on retirement would be based upon a captain's salary of \$210 per month. That the plaintiff desired to remain in his position of assistant chief and that by experience, age, health, strength, habits, character, and ability was competent and qualified so to remain. That on the chief making said threat he requested the chief to discharge him and file charges so that he might have a hearing before the board, but the request was refused. That at the time he filed the application he knew the chief had theretofore exercised the power of demotion and he believed that the chief had such power and believed that the chief would carry out his said threat if he did not retire, and so believing was coerced against his will into filing said application. That he was soon thereafter informed by counsel that the chief did not possess any power of demotion. That on being so informed the plaintiff in writing applied on June 4, 1936, to the chief and to the board for permission to withdraw his application and asked to be reinstated to his position of assistant chief, which application and request was on file and before the board at its regular meeting on said June 4. That the applica-

tion was denied by the board at its meeting on July 2.

“We consider that these allegations bring the complaint within the rule respecting duress of municipal officers protected by tenure of office provisions recently enunciated in the cases of *Schuh v. City of Waukesha*, 220 Wis. 600, 265 N. W. 699; *Van Gilder v. City of Madison* (Wis.) 267 N. W. 25, 105 A. L. R. 244, wherein the court relieved members of the police departments of the defendant cities from their agreements to waive portions of their salaries under threat of discharge if they did not do so. An officer is as much entitled to protection against salary reduction by unlawful demotion by his chief as by unlawful attempts at reduction by other city officials, and as much entitled to restoration of other rights unlawfully attempted to be taken from him as to restoration of salary, even though through duress he for a short time submitted to those attempts.”

In the case of *People ex rel. O'Connor v. Harding*, 224 Ill. App. 198, 132 A. L. R. 976, 977, the relator had delivered to the comptroller a resignation of his civil service position as chief clerk in the comptroller's office under threat that unless he did so charges would be filed against him, and with the understanding that such resignation would be accepted and become effective only in case of future misconduct, it was held that the relator was entitled to reinstatement where the comptroller accepted the resignation several years later, although there had been no misconduct on the part of the chief clerk,



the court setting forth the principle applicable, to the case at bar in the following language:

“\* \* \* ‘Relator was given the alternative of signing this resignation or having charges filed against him. The filing of such charges, whether sustained or not, would have subjected him to serious embarrassment, inconvenience, and expense. A resignation under such circumstances cannot be said to have been given by the party resigning of his own free will. Such a resignation might have been repudiated at any time.’”

There can be no dissent from the general principle that resignations as well as any contract which has been affirmed in response to threats, coercion or duress is voidable. *Barnette v. Wells Fargo Nevada Nat. Bank of San Francisco et al.*, 270 U. S. 438, 46 S. Ct. 326; *State ex rel. Young v. Ladeen*, 104 Minn. 252, 116 N. W. 486; *Kramer v. Police Comr's.*, 39 Cal. App. 396, 179 P. 216; *Board of Education v. Rose*, ....Ky....., 147 S.W. (2d) 83, 132 A. L. R. 569 (See annotation also).

In *Kidd v. State Civil Service Commission* (Cal. App.), 55 P. 2d 245, 246, the problem presented to the Civil Service Commission was similar to the case at bar. Kidd had resigned and then withdrew his recognition. His immediate superior refused to allow him to resume his duties. The holding of the court was that the resignation was obtained by duress, fraud and coercion was a nullity and that the civil servant should be restored to

his position. The facts in the *Kidd* case are very close to the facts before the court. There the civil servant was called into the office of the superintendent and in the presence of one Titlow, his resignation was demanded. Charges against him were discussed and the servant was informed that he would be charged with inefficiency in his duties. He then expressed his unwillingness to resign. The superintendent then stated that if he resigned he might be reinstated and that he would not stand in his way but would join in the request for the civil servant's reinstatement. The same advice came from Titlow, who was an office manager in the hospital in which the civil servant worked. The appellant asked time in which to think the matter over and was informed that unless he signed a resignation at once he would be dismissed and out of civil service for all time. After further discussion and an assurance that the appellant would have a right to reconsider the resignation before it became effective, the appellant signed a resignation, effective as of October 5, 1933. The court specifically found that the appellant believed the statements of the respondent that he would immediately be discharged and thereby lose his civil service standing unless he signed the resignation at the time he complied with the demand for his resignation. When appellant requested a recommendation from the respondent the recommendation was refused since it would be inconsistent with his former act in removing

the appellant. Appellant thereupon filed notice of his withdrawal of his resignation but this withdrawal was not recognized and a formal termination of his service was made as of October 5th. The court held that the resignation was obtained by coercion and duress and stated its findings in the following language:

“Under all these circumstances we are of the opinion that appellant’s resignation was obtained from him under coercion and duress, and that the same was not his free and voluntary act. State employees holding office under civil service rules and regulations are entitled as of right to have such rules and regulations relative to their removal from office fairly invoked and applied. *Garvin v. Chambers*, 195 Cal. 212, 232 P. 696.”

It seems obvious that the cases herein cited are in substantial agreement with a very salutary public policy. If department heads under civil service may, through wrongful threats and coercive measures, obtain resignations from subordinate civil servants, they can through this simple device establish a spoils system of their own. The power of the head of a department to harass, annoy and produce intolerable working conditions for his subordinates is unlimited. He can by use of his power to coerce resignations arbitrarily and capriciously effect the removal from office of any of his subordinates. He can defeat entirely the fine purposes of the Civil Service Act and deprive all of his sub-



ordinate employees of the protection which that Act is intended to afford.

## CONCLUSION

It is respectfully submitted that the trial court achieved by its decision a substantial measure of justice between the parties; that his decision is amply supported by substantial evidence and his conclusions are sound as matter of law. This Court should, therefore, affirm the judgment of the trial court.

Respectfully submitted,

RAWLINGS, WALLACE, BLACK,  
ROBERTS & BLACK  
DWIGHT L. KING,

*Attorneys for Respondent,*

530 Judge Building  
Salt Lake City, Utah