On the question of compulsion or duress, the court says the case turns upon whether municipal competition, actual or threatened, under authority of the state, was justified by law. If it were, then the deed to the city was not given under lawful compulsion or duress, but was voluntary in fact and in law. On the other hand, it may be said that, if it had been unlawful for the state to authorize municipal competition, then the threat so to do might have been held to have amounted to duress not justified by law, and, consequently, the deed of the plaintiff's property to have been in effect a taking without just compensation under the authority of the state. In the case at bar there was no moral duress not justified by law, because it was lawful for the state to authorize, or threaten to authorize, municipal competition.

The compensation to be paid for the plaintiff's property has nothing to do with the subject of duress. It was not the want of just compensation, but the threat of municipal competition, which was the cause of the alleged duress.

If there was a taking of the plaintiff's property under the acts of 1893 and 1894, the court holds that it would be a taking without due process of law, because the legislature has not the power to fix the compensation for a taking of property, or determine in what it shall consist, or prescribe the rules and principles upon which it shall be computed, as in the act of 1894. But after an elaborate review of judicial authorities the court holds that there was no taking of the franchise rights of the plaintiff under the 1893 act, because the franchise granted by the legislature to the plaintiff by its charter was not an exclusive franchise, and the subsequent grant by the legislature, in 1893, giving the city authority to construct independent and competing water works, was not in violation of the plaintiff's charter, or of any constitutional right. The court says, as regards the 1894 act, that it does not in terms compel the company to sell its property to the city, but expressly declares that the company may do so if it desires.

The court holds that the grant of a competing franchise to the city in this case was a lawful exercise of legislative power, and that the threatened grant of such a franchise under the act of 1894 (admitting this to be the effect of the act) was a lawful exercise of legislative power and that, being lawful, it could not in either case have the legal effect of making a voluntary conveyance of the plaintiff's property compulsory and void, and that, consequently, the plaintiff has failed to establish a taking of its property without just compensation under the authority of the state.

The opinion, which is by Judge Colt, says: "The great injury which at this time threatened the company's property was municipal competition, under the act of 1893, and the act of 1894 was passed as a protection against such impending disaster. But if competition be lawful, threatened competition is lawful. And there was a greater degree of compulsion on the part of the state if we assume the act of 1893 was operative than if we assume it was void. In the former case municipal competition had actually been authorized, while in the latter case it was only threatened. If a person apprehensive of competition sells his property for less than its fair value, it cannot be said that in law the sale was voluntary in form only, and in fact compulsory."

R. M. Morse and L. L. Scaife for plaintiff, A. E. Pillsbury and H. I. Bartlett for defendant.

Friday, Aug 10th.

DAILY TIMES FISH BUREAU.

To-day's Arrivals and Receipts.

Sch. Indiana, Georges, 212 bbls. salt mackerel.

Sch. Eliza B. Campbell, Bacalieu Bank, 40,000 lbs. halibut.

Sch. Grace Darling, Cape Shore, 40,000 lbs. cod.

Sch. Mary Cabral, via Boston, 15,000 lbs. fresh fish.

Steamer Hurricane, Middle Bank, 2000 fresh mackerel.

Vessels Sailed.

Sch. Braganza, shacking.
Sch. Tidal Wave, Georges.
Sch. Mary Emerson, seining.

To-day's Market.

Board of Trade prices, large handline Georges cod, $3.50; medium do., $2.50; large trawl Georges, $3.25; medium, $2.37 1-2; large trawl bank cod, $2.00; medium do., $1.50; large dory handline cod, $2.25; medium do., $1.75 ; handline cod caught from deck, east of Cape Sable, $3.25 for large and $2.37 1-2 for medium.

Splitting prices, large cod, $1.60; medium do., $1.15; snapper do., 40 cts.; cusk, $1.15; snapper do., 40 cts.; haddock, 65 cts.; hake, 90 cts.; pollock, 60 cts.

Western Bank and Banquereau cod, $1.50 for large, $1.00 for mediums.

Rips cod, $3.50 per cwt. for large, $2.50 for medium and $1.50 for snappers.

Outside sales Bank cod, $2.05 per cwt. for large and $1.60 for medium.

Georges halibut, 11 cents per lb. for white and 6 1-2 cents for gray.

Bank halibut, 9 cents per pound for white, 5 1-2 and 3 cents for small and large gray.

Salt mackerel, $11.75 per bbl. for large rimmed, $7.75 per bbl. for medium rimmed and $7 per bbl. for medium plain.

Fresh mackerel, 3 1-2 cents apiece.

Boston.

Aug. 10.—Ar., sch. Mertis H. Perry, 105 bbls. fresh medium mackerel.

Sch. Minerva, 150 bbls. fresh medium mackerel.

Sch. Mertie and Delmar, 125 bbls. fresh medium mackerel.

Sch. Elsie F. Rowe, 200 bbls. fresh medium mackerel.

Steamer Vigilant, 100 bbls. fresh medium mackerel.

Sch. Angielena, 100 bbls. fresh medium mackerel.

Sch. Bonita, 75 bbls. medium cusk.

Steamer A. B. Nickerson, 100 bbls medium cusk.

Sch. Golden Eagle, 500 haddock, 1000 hake.

Sch. Lizzie Griffin, 16,000 haddock, 4000 cod, 6000 hake.

Sch. Lucy Devlin, 5000 haddock, 2000 cod.

Sch. J. W. Bradley, 15,000 cod.

Sch. Georgie Willard, 27,000 cod.

Haddock $2.25 to $2.75, large cod $2, small do. $1.50, mackerel 3 cts.

Mackerel News.

About 1055 barrels of medium fresh mackerel arrived at Boston this morning, taken from Middle Rank, the fares being as follows: Steamer Bonita, 75 bbls.; steamer A. B. Nickerson, 100 bbls.; sch. Mertis H. Perry, 140 bbls.; sch. Minerva, 150 bbls.; sch. Mertie & Delmar, 125 bbls.; sch. Elsie F. Rowe, 200 bbls.; steamer Vigilant, 100 bbls.; sch. Angielena, 100 bbls. The fish sold for 3 cents apiece, with the exception of a few large ones which brought 12 cents.

The fare of sch. Alice S. Hawkes sold to the Andrews Co. at $7.75 per bbl. for medium rimmed.

Sch. Loring B. Haskell is here to fit for seining under command of Capt. Thomas.

The fare of steamer Hurricane sold to W. E. Dennett at 3 1-2 cents apiece.

The fare of sch. Indiana sold to the Gloucester Mackerel Co. at $11 3-4 per bbl. for large rimmed and $7 per bbl. for medium plain.

At Lunenburg, Monday, the traps took 75 bbls. of mackerel.

At Spry Bay mackerel are reported schooling. Mackerel are fair at Liverpool, fair at Georgetown, P. E. I., schooling at Brighton Island, fair at Alberton, scarce at Miminegash.

Big Trips.

Schs. Pauline and Ralph Russell arrived from Western Bank with the largest deck handline trips of the season, 50,000 and 65,000 pounds of cod respectively.

Halibut Sale.

The fare of sch. Dreadnaught sold to the Atlantic Halibut Co. at 9 cents per pound for white, 5 1-2 cents for medium and 3 cents for small grays.

Saturday, Aug 11th.

DAILY TIMES FISH BUREAU.

To-day's Arrivals and Receipts.

Sch. Mattie D. Brundage, Bay of Fundy, 180 bbls. salt mackerel.

Sch. Helen Miller Gould, Bay of Fundy, 80 bbls. salt mackerel.

Sch. Henry W. Longfellow, Middle Bank, 50 bbls. salt mackerel.

Sch. Geneva Mertis, Middle Bank, 50 bbls. fresh mackerel.

Sch. Little Fanny, Middle Bank, 400 fresh mackerel in count.

Sch. M. S. Ayer, Georges, 30,000 lbs. cod.

Sch. Puritan, Georges, 30,000 lbs. cod.

Sch. Grace Darling, via Boston, 50,000 lbs. fresh fish.

Vessels Sailed.

Sch. Alice S. Hawkes, seining.
Sch. Priscilla Smith, seining.
Sch. Fanny S. Orne, seining.
Sch. Annie E. Lane, seining.
Sch. Kentucky, seining.
Sch. Joseph Warren, shacking.
Str. Hurricane, seining.

To-day's Market.

Splitting prices, large cod, $1.60; medium do., $1.15; snapper do., 40 cts.; cusk, $1.15; snapper do., 40 cts.; haddock, 65 cts.; hake, 90 cts.; pollock, 60 cts.

Rips cod, $3.50 per cwt. for large, $2.50 for medium and $1.50 for snappers.

Outside sales Bank cod, $2.05 per cwt. for large and $1.60 for medium.

Georges halibut, 11 cents per lb. for white and 6 1-2 cents for gray.

Bank halibut, 9 cents per pound for white, 5 1-2 and 3 cents for small and large gray.

Fresh mackerel, 2 1-4 cents apiece.

Plain medium salt mackerel, $8.25 per bbl.

Boston.

Aug. 11—Ar., sch. Arrow, 125 bbls. fresh mackerel.

Sch. Flora L. Nickerson, 260 bbls. fresh mackerel.

Sch. Venetian, dragging, 500 fresh mackerel.

Sch. Leander F. Gould, 30 bbls. fresh mackerel.

Sch. Bertha M. Bailey, 42 swordfish.

Sch. Evelyn L. Smith, 71 swordfish.

Sch. Eva and Mildred, 63 swordfish.

Sch. Lizzie B. Foster, 1000 haddock, 400 cod, 500 hake.

Fresh mackerel 2 3-4 cts., swordfish 5 1-2 cts.