

**Erwln Vs. Blake**

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**SooperKanoon Citation :** [sooperkanoon.com/79423](http://sooperkanoon.com/79423)

**Court :** US Supreme Court

**Decided On :** 1834

**Appeal No. :** 33 U.S. 18

**Appellant :** Erwin

**Respondent :** Blake

**Judgement :**

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**Erwin v. Blake**

**33 U.S. (8 Pet.) 18**

*APPEAL FROM THE CIRCUIT COURT OF*

*THE UNITED STATES FOR WEST TENNESSEE*

## **SYLLABUS**

An attorney at law, in virtue of his general authority as such, is entitled to take out execution upon a judgment recovered by him for his client, and to procure a satisfaction thereof by a levy on lands or otherwise, and to receive the money due

on the execution, and thus to discharge the execution. And if the judgment debtor has a right to redeem the property sold under the execution within a particular period of time by payment of the amount to the judgment creditor, who has become the purchaser of the property, there is certainly strong reason to contend that the attorney is implicitly authorized to receive the amount and thus indirectly to discharge the lien on the land. At least if (as is asserted at the bar) this be the common course of practice in the State of Tennessee, it will furnish an unequivocal sanction for such an act.

In the circuit Court of West Tennessee, Hugh M. Blake, the appellee, filed a bill on the equity side of the court against James Erwin, now the appellee, to enjoin further proceedings in an ejectment brought in that court by Erwin and to compel him to convey the legal title of the property described in the ejectment, according to the provisions of an act of the Assembly of Tennessee passed in 1820 which provides that

"It shall and may be lawful for any debtor whose interest in any real estate may be sold under execution at any time within two years after such sale, on payment or tender thereof to the purchaser or purchasers or on payment or tender thereof to anyone claiming under such purchase, the principal money bid at such sale, with ten percent interest per annum thereon, together with all such other lawful charges, if any there be, to redeem the interest that may have been sold, and upon payment or tender thereof as aforesaid in such bank notes as are receivable on executions, it shall be the duty of the then claimant to reconvey said interest to said debtor, but at the cost and charge of such debtor."

The substance of the bill, answer, and proofs is stated in the decree of the circuit court as follows:

"The complainant set forth in the bill that he was a citizen of the State of Tennessee and that on 3 September,

1824, he was seized and possessed in his own right of a tract of land situate in Lincoln County in said state containing about three hundred and fifty acres, bounded on the south by the land of Robert Case, on the north by that of Robert Wilson, on the east by the land of Joel Cummins, and the west by the land of John Marr and John W. Blake; that on the said 3 September, 1824, the same was sold by the proper officer under an execution founded on a decree of the chancery court, held at Columbia, rendered in favor of James Brittain, executor of the last will, &c.; of Joseph Brittain deceased against complainant and others; that said James Brittain became the purchaser of said tract of land at said sale for the price of \$162 and received the sheriff's deed therefor; that James Erwin, a citizen of the State of Louisiana, in the month of September, 1823, obtained a judgment against complainant and others, securities of one Brice M. Garner, for the sum of upwards of \$1,200; that on 21 August, 1826, one John P. McConnell, having acquired an interest in said last mentioned judgment in pursuance of an arrangement with said James Erwin and for the benefit of himself and said Erwin, redeemed said tract of land from said James Brittain by advancing the purchase money paid for the same by said Brittain, together with ten percent interest thereon, and offered to credit said judgment of said Erwin, against complainant, the sum of \$1,000 under the provisions of an Act of Assembly of the State of Tennessee passed in the year 1820, and therefore said James Brittain conveyed said tract of land to said Erwin."

"Said bill further set forth that the complainant, with a view to avail himself of the privilege of redeeming said tract of land from said Erwin, did, before the expiration of the term of two years from the date of said sheriff's sale, pay to James Fulton, the attorney and agent of said Erwin, \$1,276.70, including the amount advanced by said Erwin and McConnell to said Brittain, and also \$1,094.70 of the said judgment of said Erwin against complainant, leaving a balance due on said judgment of \$223.55, which one Robert Dickson assumed to pay to said McConnell, who was interested in said judgment of said Erwin to the amount, as

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complainant was informed and believed, and said McConnell accepted said assumpsit in satisfaction of so much of said judgment. Said bill further charges

that said James Fulton was fully authorized to receive said money by said Erwin on the application of complainant to redeem said land, and that McConnell was authorized, and had a right to relieve complainant from the payment of so much of said judgment as said Dickson assumed to pay; that nevertheless he, said Erwin, had refused to reconvey said tract of land to complainant, although he had received said sum of money, paid to the said James Fulton, his agent, as said agent had informed complainant; but had commenced an action of ejectment in this honorable court to recover possession of the same. The bill prayed that complainant might be permitted to redeem said land and that the legal title to the same might, by decree of the court, be divested out of the said James Erwin, and be vested in the complainant, and his heirs, and for personal relief."

"The defendant admitted in his answer the purchase of the tract of land by Brittain under execution the day and year set forth in the bill, and for the price therein specified; that he had recovered a judgment against complainant, as set forth in the bill, and that McConnell had redeemed the land from James Brittain, as alleged by complainant, for his, the defendant's, benefit, and that Brittain had conveyed the land to him. The defendant denied that McConnell had any interest in the judgment obtained in the name of the defendant against complainant, but admitted that he had sold the note upon which said payment was founded to McConnell; that he had received about \$200 in part payment for the same, and that he had taken McConnell's note for the balance, upon which he had brought suit and obtained a judgment before September, 1826, but alleged that it was understood between him and McConnell and before that time that he, defendant, should have the benefit of the judgment against Garner and complainants, and when paid was to be in discharge of the judgment which defendant had obtained against McConnell. The defendant denied that James Fulton or any other person for him was authorized to receive anything else than specie or to make any arrangements in regard to the payment of the amount necessary to be paid by complainant within two years from the

date of the sale of said land than were implied in his instructions to the said Fulton, which he alleges were that the whole sum should be paid in specie. Defendant denied that he had received any money from said Blake or anyone else in payment of his claim against said complainant, and insisted that the provisions of the act of assembly had not been complied with in such manner as to entitle complainant to redeem."

"It appeared from the proofs in the cause that some short time before 3 September, 1826, when it appeared the term had expired within which the complainant had a right to redeem the said tract of land, the defendant Erwin was in the County of Lincoln, where all the persons concerned except himself resided, and in the presence of Garner, the principal in the judgment recovered by Erwin against complainant, and who was also clerk of the county court of said county, directed James Fulton, Esq., who had been the attorney employed in prosecuting the suit in which judgment had been obtained against complainant, to receive the money which might be tendered by complainant for the purpose of redeeming said tract of land, and if he thought it a case which was entitled to specie, to require the payment to be made in specie. It further appeared that Fulton, having business in another county, appointed one Francis Porterfield to attend to the business for him in his absence, and instructed him to receive from complainant nothing but specie or bank notes at such a discount as would make them equivalent to specie. It also appeared that Brice M. Garner was insolvent and unprincipled; that a principal object of said Erwin in requesting Fulton to receive the money from complainant was to prevent a fraudulent acknowledgement of payment of the redemption money by Garner, who, as clerk of the county court, had a right to receive it in the absence of the creditor. For this reason, Fulton appeared to have been particular in his instructions to Porterfield to prevent the payment of the money into the hands of Garner and to see that he did not practice any fraud upon Erwin in the county court."

"It further appeared that on 2 September, 1826, the complainant paid into the hands of Porterfield, under the instructions of Fulton, the sum of nine hundred dollars, the principal part thereof in specie and the balance in such bank notes as

made them equivalent to specie;

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that said Porterfield agreed to accept the promise or assumpsit of William Husbands, the sheriff of the county, for the payment of \$300 in satisfaction of so much, and that J. P. McConnell agreed that he would look to one R. Dickson for the \$200, the amount to which he alleged he was entitled out of the judgment against complainant. Porterfield at the same time pledged himself that Fulton, the lawyer and agent of Erwin, would sanction the arrangement and that the complainant should sustain no injury in consequence of it. It appeared that Fulton, the agent, did sanction what had been done by Porterfield in his absence, and, on 7 September, 1826, gave complainant a receipt, in the name of said Erwin, for the sum of \$1,276.76, and at the same time recognized the right of said McConnell to control so much of said judgment as he claimed an interest in."

"It further appeared to the court by the testimony of the witness present that when Erwin requested Fulton to attend to the receipt of the redemption money, he had given him full authority to act for him, and that whatever he might do would be acquiesced in. It also appeared that Erwin, by his letter of 8 September, 1826, to Fulton, written after he had been informed, by a letter from McConnell, of many of the most material particulars of the arrangement of 2 September, admitted the authority of Fulton to bind him by anything done under his, Fulton's, instructions or authority or by anyone appointed by him and acting under his instructions. It further appeared that McConnell continued to have an interest in the judgment obtained against complainant, up to 2 September, 1826, and that he had employed counsel, and had the management of the whole business until the instructions were given to said Fulton by Erwin a short time before the day on which the money was paid. It also appeared that said Erwin had notice of the appointment of said Porterfield by Fulton to act in the matter for him before 2 September, 1826, and that he did not object to his appointment. It did not appear that the complainant had any notice of the instruction of Erwin to his agent that nothing but specie would be received. The money received by Fulton appeared to have been paid over to the agent of Erwin, but it did not appear that Erwin

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had ever received it. The balance of the amount he had a right to demand, and for which Husbands became accountable, Erwin refused to receive. "

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MR. JUSTICE STORY delivered the opinion of the Court.

The principal question in the case is whether the plaintiff, Blake, has entitled himself to a reconveyance of the land in controversy against the judgment creditor, Erwin, the same land having been sold upon execution, and being, by the laws of Tennessee, redeemable by the owner at any time within two years after the sale, and that question turns upon this whether the judgment has been according to those laws duly discharged within the two years by the judgment debtor. It is clear from the evidence, that Fulton, as attorney of Erwin, did give a receipt discharging the whole of the claim under the judgment, amounting, on the last day, when the land was redeemable, to \$1,501.17, and if he either had an original authority so

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to do or his acts have since been confirmed by Erwin, then Blake is entitled to the relief sought by the bill.

It is material, in the first place, to state, that the original demand on which the judgment was rendered was, before the suit was brought, assigned by Erwin to one McConnell, and that the suit was commenced and carried on through all its stages by Fulton for and under the direction of McConnell, although in the name of Erwin, and the latter never interfered in the suit until after the judgment had, by the redemption of Brittain's prior judgment, been levied, and fixed as a lien on the land. Now it cannot be doubted that if the assignment to McConnell was never rescinded, he alone had a right to control the judgment and the levy, and the subsequent proceedings as to the redemption by Blake. And in point of fact, he was not only connusant of, but party to the arrangement made by Fulton with Blake, by which the judgment claim against the land was discharged. Was then

the assignment antecedently rescinded? Erwin in his answer affirms that it was, but the evidence in the cause does not support his averment; on the contrary, it is established by Erwin's own acknowledgement, in his letter of 6 September, 1826, that McConnell continued to have an interest in it until long after all these transactions; and McConnell, in his testimony, asserts his own claim in the most positive manner, so that, at most, the case cannot be judicially treated as one where there had been a total rescission of the assignment, but only subsequent negotiations out of which other equities connected with it arose between the parties.

But assuming that the assignment had been rescinded, still it is clear that Erwin adopted the acts of McConnell in regard to the suit and recognized Fulton as his attorney in the conduct of it. He never repudiated him as his attorney, and never gave any notice to Blake that he had not as complete authority in the premises as any other attorney in the management of a suit at law. Now it is not denied that an attorney at law, in virtue of his general authority as such, is entitled to take out execution upon a judgment recovered by him for his client, and to procure a satisfaction thereof by a levy on lands or otherwise, and to receive the money due on the execution, and thus to discharge the execution. And if the judgment debtor has a

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right to redeem the property sold under the execution within a particular period of time by payment of the amount to the judgment creditor who has become the purchaser of the property, there is certainly strong reason to contend that the attorney is impliedly authorized to receive the amount, and thus indirectly to discharge the lien on the land. At least if (as is asserted at the bar) this be the common course of practice in the State of Tennessee, it will furnish an unequivocal sanction for such an act.

But it is not necessary in the present case to rely on this ground if Erwin did in fact give an express general authority to Fulton to act in the premises, or if he has since ratified the acts of Fulton in discharging the judgment. Some of the judges

are of opinion that the evidence in the case establishes that Erwin expressly delegated to Fulton general authority to act in the premises and to receive the money due under the judgment, according to his own discretion, and that the direction of Erwin to Fulton to demand the payment in specie was not intended to operate as a positive restriction upon that discretion, but was merely a strong expression of the wishes of Erwin on the subject. Fulton, in his deposition, states that Erwin

"called upon Kincannon to bear witness that he had appointed me his attorney in the business, and that I was authorized to receive the money upon the claim, and that whatever I should do upon the subject he would abide by."

Kincannon fully confirms this statement in his deposition, and says

"Mr. Erwin did call on me to bear witness that Mr. Fulton was fully authorized to transact the whole business for him. From all that was said by Mr. Erwin, I did believe that any course taken by Mr. Fulton would be sanctioned by him, and that he would be bound to all intents and purposes by his acts."

And he adds in another place

"It was my understanding, and I thought from all that was said by Mr. Erwin that it was so understood by himself and all others present, that Mr. Fulton was fully authorized to act for Mr. Erwin in relation to the whole matter. Mr. Erwin did say that he would ratify or sanction Mr. Fulton's acts, or words of that import."

The conversation here detailed is a part of the same conversation between the parties, in which the direction was given by Erwin to Fulton to demand specie in payment, and therefore it

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may properly be taken into consideration as a qualification of that direction.

Others of the judges are of opinion that, taking the fair scope of the language of Erwin in his letters to Fulton after the transaction, it amounts to a ratification of the

acts of Fulton. Thus, in his letter of 8 September, 1826, written after McConnell (as it admits) had given him information of what had been done, he says

"This, of course, is not a compliance with the law, and I am induced to think they cannot now have even a probable right to claim the land, as the deed is now in my name. They cannot claim any indulgence granted by anyone except you and myself, no one else having authority to grant any. Whatever you may [have] authorized others to do in your absence, in accordance with my instructions or yours of course will be adhered to by me, but nothing more."

Now these expressions are very significant as to the extent of the original authority given to Fulton. They show that specie was not absolutely to be insisted upon or payment at the time absolutely required, for it is admitted that indulgence might be granted by Fulton, "no one else having authority to grant any." And as to the point of ratification, the language is still more direct, for it is declared that whatever had been done in Fulton's absence in accordance with his instructions would be adhered to. Now at this time, Fulton had ratified all Porterfield's acts, and indeed, except as to the giving time for a small part of the money, Porterfield had not deviated from his original instructions. On 9 September, Fulton wrote to Erwin, giving him a full account of all the transactions and why he had deviated "from the strict letter of his instructions." And he also sent to Erwin the \$1,305 received by him, and offered to pay him the remaining sum of \$200 then due.

In the reply of Erwin to this letter on 12 September, he declines receiving the money for reasons which (he says) he will explain when he has the pleasure to see Fulton, and adds, "my course, I am sure, on explanation will be satisfactory to you, Major Porterfield, and to McConnell." But he nowhere in that letter expresses any disapprobation of the conduct of Fulton, and he does not attempt to qualify the language of his former letters or to disavow the acts of Fulton as a breach of his

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instructions. His object seems to have been, without returning the money to Fulton or to Blake or doing any positive act, to retain the whole affair in its then state, that

he might make use of any doubts as to the extinguishment of his claim for his own advantage in other business.

"The judgment [says he] is in my name, and I alone can control it. I am fully aware of the hold I now maintain over Garner, or rather over Blake's land, and I am determined to use it towards the security of my other claims."

Under these circumstances, the evidence is deemed fairly to establish the conclusion that the acts of Fulton were ratified by Erwin, and never were intended to be repudiated by him. Upon these grounds and for these reasons, it is the opinion of the Court that the plaintiff is entitled to the relief sought by his bill. But it ought not to be granted except upon the terms that all the money due at the time when the land was redeemed by the plaintiff should be paid over to the debtor. The balance of \$200 does not appear ever to have been paid by Dickson, and the \$1,305.17, for aught that appears in the record, is still in the hands of Talbert, and never has been received by Erwin.

The decree of the circuit court granting relief must therefore be varied so far as to make it dependent upon the payment of the whole \$1,505.17 to Erwin.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of West Tennessee and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that upon the full payment by the said Blake of the sum of \$1,505.17 due on the judgment of the said Erwin against the said Blake, as in the proceedings mentioned, or so much thereof as has not been already received by the said Erwin in satisfaction thereof, the said money to be paid to the said Erwin personally or brought into the circuit court for his use; all the estate, right, title and interest in the said tract of land, in the proceedings mentioned, which was vested in the said Erwin by the deed executed to him by James Brittain, bearing date 21 August,

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1826, in the proceedings mentioned, and under and in virtue of the judgment of the said Erwin, levied on the same as in the same proceedings mentioned, ought

to be and hereby is declared to be restored to and revested in him, the said Blake, and his heirs and assigns in the same manner as if the same tract of land had not been sold to satisfy the judgment of the said Brittain in the proceedings mentioned. And it is further ordered, adjudged, and decreed that the said Erwin, upon the payment of the said money as aforesaid, do forthwith, by a suitable deed and conveyance, convey the same estate, right, title, and interest in and to the same tract of land to the said Blake and his heirs and assigns accordingly. And it is further ordered, adjudged, and decreed that upon the payment of the said money as aforesaid, all further proceedings in the action of ejectment brought for the recovery of the said tract of land in the proceedings mentioned be and the same are hereby perpetually stayed and enjoined, and that in the meantime and until such payment, no further proceedings be had in the said action. And it is further ordered, adjudged, and decreed that the decree of the circuit court, so far as it differs from this decree be, and the same is hereby reversed, and that in all other respects it be and is hereby affirmed, and that this cause be and the same is hereby remanded to the circuit court for further proceedings, to carry the present decree into effect.