

Jackson Vs. Ashton

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Court : US Supreme Court

Decided On : 1837

Appeal No. : 36 U.S. 229

Appellant : Jackson

Respondent : Ashton

Judgement :

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Jackson v. Ashton

36 U.S. (11 Pet.) 229

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE PENNSYLVANIA DISTRICT

SYLLABUS

The appellants filed a bill in the Circuit Court of Pennsylvania, claiming to have a bond and mortgage cancelled and delivered up to them. They alleged that the same was given without consideration, was induced by threats of a prosecution for

a criminal offense against the husband of the mortgagor, and that the instruments were therefore void, and that they were obtained by the influence the mortgagee exercised over the mortgagor, he being a clergyman and her religious visitor, and her mind being weak or impaired. The circuit Court of Pennsylvania dismissed the bill, and on appeal to this Court the decree of the circuit court was affirmed.

A court of chancery will often refuse to enforce a contract when it would also refuse to annul it. In such a case, the parties are left to their remedy at law.

No admissions in an answer to a bill in chancery can under any circumstances lay the foundation for relief under any specific head of equity unless it be substantially set forth in the bill.

The principal facts of the case, as stated in the opinion of the court, were as follows:

The appellants, who were the devisees of Maria Goodwin, brought their bill to set aside a bond and mortgage executed by Maria Goodwin, and her trustee, Kenneth Jewell, to the defendant, on 5 January 1829, to secure the payment of \$3,000. The bill represented that the mortgage was given without consideration; that shortly after the decease of Thomas Goodwin, the husband of Mrs. Goodwin, which took place in February, 1828, the defendant stated to her that he had a demand against her husband, to whom she had been much attached and who had treated him extremely ill; that he had it in his power to render his memory odious by exposing his conduct; but that he would conceal the transaction if she would execute a mortgage to him on her own property to secure the debt; that she refused to execute the mortgage or give any other security by the advice of her counsel, and afterwards avoided his visits to get clear of his importunities; that shortly after this, Mrs. Goodwin was

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taken ill, and being executrix, her husband's affairs pressed much upon her and she fell into a low nervous state of spirits which impaired her memory and affected her mind; that whilst she was in this state, the defendant renewed his visits and,

professing great kindness for her, took upon himself the management of her business, and having gained her confidence, prevailed upon her, in the absence of any friend and legal adviser, to execute the mortgage, and a corresponding bond, and to direct that her trustee should join in the execution; the defendant, as a clergyman, saying she ought to do so; that these representations had great influence on Mrs. Goodwin, who was a woman of devout religious feelings. The complainants further represented that at the time the bond and mortgage were executed, Mrs. Goodwin was utterly incapable of understanding or comprehending their meaning and effect; that after the death of Mrs. Goodwin, the defendant stated to the complainants that the mortgage was executed as collateral security for any sum that might be due to him from the estate of Thomas Goodwin, deceased.

In his answer, the defendant admitted the execution of the bond and mortgage and stated that in 1822, being about to receive a sum of money, he consulted Thomas Goodwin, who was then a broker in Philadelphia, in what way he could most advantageously invest it. That Goodwin advised him to leave the money in his hands and that he would loan it out on good security. That the defendant, in pursuance of this advice, placed \$3,400 in his hands, and also loaned him \$275, and took his notes by way of acknowledgment. That Goodwin received a bond and mortgage for \$2,600 in favor of defendant from Samuel Jones, covering an estate which was under prior mortgages for \$2,500, which, with the money of the defendant, Goodwin was to satisfy, but that he paid but \$1,000 of the amount, and fraudulently withheld the balance. And to cover this fraud, that he obtained from the recorder of deeds copies of the prior mortgages on the estate of Jones, and at the foot of the certificate of the recorder wrote himself "paid and satisfied," and then exhibited the papers to Jones and the defendant to show that he had discharged the mortgages. And as there also remained on the estate a prior lien of a

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judgment for \$700, that Goodwin took a bond of indemnity from Jones against it. That defendant often solicited Goodwin to deliver up to him the mortgage, which,

under various pretexts, he declined doing, but assured the defendant that he had discharged the prior mortgages; at length, the defendant becoming uneasy, he called at the recorder's office, and there found that the mortgage for \$1,500 had not been discharged and that the endorsement upon it of "paid and satisfied" must have been made by Goodwin. On the same day that the defendant made this discovery, Goodwin informed him that he was about to stop payment, but he assured the defendant that he should not lose a cent.

Goodwin admitted to the defendant that he had used the money for his own purposes instead of paying off the mortgage, and that he had deceived both the defendant and Jones. And at the same time Goodwin placed a mortgage in the hands of the defendant for \$2,575 to secure him against the mortgage on the property of Jones which should have been discharged. That Goodwin assured him the property mortgaged was unencumbered, which was untrue, and the defendant reproached Goodwin with having again deceived him and threatened him with an exposure unless he should make payment or give security. Goodwin replied, "what can you do? if you push me, I will take the benefit of the insolvent law;" the defendant rejoined,

"Have you forgotten the certificate which you forged? My attorney informs me that if Mr. Jones or myself shall come into court with that certificate, that you would be sentenced to hard labor."

Goodwin became alarmed and stated that he would sell the property and make good the deficiency if the defendant would not expose him. This conversation took place in the presence of Mrs. Goodwin, who, when the defendant was leaving the house, accompanied him to the door, appealed to his friendship for her, entreated him not to expose the transaction, declared that she would not have it known, especially in the church and among the congregation at Blockley for any consideration whatever. She added that Mr. Goodwin would sell the property and make provision for the payment, and that she would make up the deficiency out of her separate estate, and that neither the defendant nor his child, whose deceased mother she greatly esteemed, should lose anything.

A few days after this, Mrs. Goodwin saw the certificate and

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acknowledged that it was in the handwriting of her husband, and she again entreated the defendant not to expose him and said she would pay him if her husband did not. This assurance was frequently repeated on various occasions up to the death of Goodwin, which took place suddenly in February 1828. At the moment of his death, Mrs. Goodwin sent for the defendant, desired him to superintend the interment, and she threw herself upon his kindness for consolation. After the interment, the defendant spent the evening with Mrs. Goodwin engaged in religious conversation, and being about to leave, she said

"Mr. Ashton, I hope you will not forsake me. If you cannot come in the day time, come in the evening and pray with me. I will be pleased to see you at any time, and as soon as I get a little over my trouble, I will fulfill my promise and settle with you."

The defendant replied that he hoped she would not let his concern trouble her at that time; that it gave him not a moment's uneasiness. This promise was repeated by Mrs. Goodwin again and again, and on one occasion, when the defendant was ill, she expressed uneasiness lest he might die before the matter was arranged. On consulting counsel, she was advised to do nothing with her property for a year, and he refused to draw a deed. But she said the advice was unjust, that she would pay the defendant, and felt herself bound to do so as a Christian. And she delivered a covenant to the defendant binding herself to make good the deficiency, should there be one, on the sale of her husband's estate. Up to this time, the defendant had not expressed a desire to Mrs. Goodwin that she should pay any part of her husband's debt.

In December, 1828, the defendant stated to Mrs. Goodwin that she had acted voluntarily in the matter, and not through his persuasion. That if he might be permitted for the first time to become active in the business, he would suggest that as her property was held in trust, the covenant which she had executed to him was

not valid. She expressed surprise and a willingness to secure him, and the bond and mortgage in controversy were prepared and executed at the office of Thomas Mitchell, a scrivener. An agreement was executed by the defendant declaring that the bond and mortgage were given as collateral security, &c.;

With the exception of the execution of the bond and mortgage, the defendant denied all the material allegations of the bill.

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The other facts are stated in the opinion of the Court and by the counsel in the argument.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The appellants, who are the devisees of Maria Goodwin, brought their bill to set aside a bond and mortgage executed by Maria Goodwin and her trustee, Kenneth Jewell, to the defendant on 5

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January 1829, to secure the payment of \$3,000. The bill represents that the mortgage was given without consideration; that shortly after the decease of Thomas Goodwin, the husband of Mrs. Goodwin, which took place in February, 1828, the defendant stated to her that he had a demand against her husband, to whom she had been much attached and who had treated him extremely ill; that he had it in his power to render his memory odious by exposing his conduct; but that he would conceal the transaction if she would execute a mortgage to him on her own property to secure the debt; that she refused to execute the mortgage or give any other security, by the advice of her counsel, and afterwards avoided his visits to get clear of his importunities; that shortly after this, Mrs. Goodwin was taken ill, and being executrix, her husband's affairs pressed much upon her, and she fell into a low nervous state of spirits which impaired her memory and affected her

mind; that whilst she was in this state, the defendant renewed his visits and, professing great kindness for her, took upon himself the management of her business, and having gained her confidence, prevailed upon her in the absence of any friend or legal adviser to execute the mortgage and a corresponding bond and to direct that her trustee should join in the execution, the defendant, as a clergyman, saying she ought to do so; that these representations had great influence on Mrs. Goodwin, who was a woman of devout religious feelings. The complainants further represent that at the time the bond and mortgage were executed, Mrs. Goodwin was utterly incapable of understanding or comprehending their meaning and effect; that after the death of Mrs. Goodwin, the defendant stated to the complainants that the mortgage was executed as collateral security for any sum that might be due to him from the estate of Thomas Goodwin, deceased.

In his answer, the defendant admits the execution of the bond and mortgage and states that in 1822, being about to receive a sum of money, he consulted Thomas Goodwin, who was then a broker in Philadelphia, in what way he could most advantageously invest it; that Goodwin advised him to leave the money in his hands and that he would loan it out on good security. That the defendant, in pursuance of this advice, placed \$3,400 in his hands and also loaned him \$275 and took his notes by way of acknowledgment. That Goodwin received a bond and mortgage for \$2,600, in

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favor of defendant from Samuel Jones covering an estate which was under prior mortgages for \$2,500, which, with the money of the defendant, Goodwin was to satisfy, but that he paid but \$1,000 of the amount, and fraudulently withheld the balance. And to cover this fraud, that he obtained from the recorder of deeds copies of the prior mortgages on the estate of Jones, and at the foot of the certificate of the recorder wrote himself, "paid and satisfied," and then exhibited the papers to Jones and the defendant to show that he had discharged the mortgages. And as there also remained on the estate a prior lien of a judgment for \$700, that Goodwin took a bond of indemnity from Jones against it.

That defendant often solicited Goodwin to deliver up to him the mortgage, which, under various pretexts, he declined doing, but assured the defendant that he had discharged the prior mortgages; at length, the defendant becoming uneasy, he called at the recorder's office and there found that the mortgage for \$1,500 had not been discharged and that the endorsement upon it of "paid and satisfied" must have been made by Goodwin. On the same day that the defendant made this discovery, Goodwin informed him that he was about to stop payment, but he assured the defendant that he should not lose a cent.

Goodwin admitted to the defendant that he had used the money for his own purposes instead of paying off the mortgage and that he had deceived both the defendant and Jones. And at the same time Goodwin placed a mortgage in the hands of the defendant for \$2,575 to secure him against the mortgage on the property of Jones which should have been discharged. That Goodwin assured him the property mortgaged was unencumbered, which was untrue, and the defendant reproached Goodwin with having again deceived him and threatened with an exposure unless he should make payment or give security. Goodwin replied, "What can you do? If you push me, I will take the benefit of the insolvent law." The defendant rejoined

"Have you forgotten the certificate which you forged? My attorney informs me that if Mr. Jones or myself shall come into court with that certificate, that you would be in danger of being sentenced to hard labor."

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This conversation took place in the presence of Mrs. Goodwin, who, when the defendant was leaving the house, accompanied him to the door, appealed to his friendship for her,

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entreated him not to expose the transaction, declared that would not have it known, especially in the church and among the congregation at Blockley, for any

consideration whatever. She added that Mr. Goodwin would sell the property and make provision for the payment, and that she would make up the deficiency out of her separate estate, and neither the defendant nor his child, whose deceased mother she greatly esteemed, should lose anything.

A few days after this, Mrs. Goodwin saw the certificate and acknowledged that it was in the handwriting of her husband, and she again entreated the defendant not to expose him and said she would pay him if her husband did not. This assurance was frequently repeated on various occasions up to the death of Goodwin, which took place suddenly in February, 1828. At the moment of his death, Mrs. Goodwin sent for the defendant, desired him to superintend the interment, and she threw herself upon his kindness for consolation. After the interment, the defendant spent the evening with Mrs. Goodwin, engaged in religious conversation, and being about to leave, she said

"Mr. Ashton, I hope you will not forsake me. If you cannot come in the daytime, come in the evening and pray with me. I will be pleased to see you at any time, and as soon as I get a little over my trouble, I will fulfill my promise and settle with you. The defendant replied that he hoped she would not let his concern trouble her at that time; that it gave him not a moment's uneasiness. This promise was repeated by Mrs. Goodwin again and again, and on one occasion, when the defendant was ill, she expressed uneasiness lest he might die before the matter was arranged. On consulting counsel, she was advised to do nothing with her property for a year, and he refused to draw a deed. But she said the advice was unjust, that she would pay the defendant, and felt herself bound to do so as a Christian. And she delivered a covenant to the defendant, binding herself to make good the deficiency, should there be one, on the sale of her husband's estate. Up to this time, the defendant had not expressed a desire to Mrs. Goodwin that she should pay any part of her husband's debt."

In December, 1828, defendant stated to Mrs. Goodwin that she had acted voluntarily in the matter, and not through his persuasion. That if he might be permitted for the first time to become active in the business, he would suggest that as her property was held in trust,

the covenant which she had executed to him was not valid. She expressed surprise and a willingness to secure him, and the bond and mortgage in controversy were prepared and executed at the office of Thomas Mitchell, a scrivener. An agreement was executed by the defendant declaring that the bond and mortgage were given as collateral security, &c.; With the exception of the execution of the bond and mortgage, the defendant denies all the material allegations of the bill.

The counsel for the complainants contend that the proof sustains the charges in the bill and that they are entitled to the relief prayed for on the following grounds:

1. That there was no consideration for the bond and mortgage.
2. That they were executed by a weak woman who at the time was incapable of making such a contract.
3. That they were extorted by a threat to prosecute her husband.
4. That the relation in which the defendant stood to her as her pastor and religious visitor and as agent and adviser in her affairs prohibited any contract with her, especially when made in the absence of her counsel and with his known disapprobation.

As to the want of consideration alleged in the first position, it must be observed that this is not an application to the court for the specific execution of a contract, but to set one aside which is clothed with the highest solemnities known to the law -- a contract under the hand and seal of the party, duly acknowledged and placed upon the public records. This deed purports upon its face a consideration, whether it be considered at law or equity.

A court of chancery will often refuse to enforce a contract specifically when it would also refuse to annul it. In such a case the parties are left to their remedy at law.

In the present case, as the deed purports a consideration, it is unnecessary for the defendant to prove one, and the deed is not vitiated if the complainants show that it was given without a valuable consideration, unless there be connected with the transaction mistake, deception, incapacity, or fraud. The mortgage deed is impeached by the counsel on several of these grounds, all of which will be considered under the appropriate heads.

The second position assumed is a want of capacity in Mrs. Goodwin to make a contract at the time the deed was executed. This is the principal ground stated in the bill, and it covers a great portion of the evidence in the case. It is intimately connected with

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the third position assumed, that the deed was extorted from Mrs. Goodwin by threats to prosecute her husband, and they will both be considered as one proposition.

Was Mrs. Goodwin of sound and disposing mind at the time the mortgage deed was executed? Did she act freely and voluntarily? The answer of the defendant is broader than the allegations in the bill, and although such parts of the answer as are not responsive to the bill are not evidence for the defendant, yet the counsel on both sides have considered the facts disclosed as belonging to the case. And if the facts in the answer, not responsive to the bill, are relied on by the complainant's counsel as admissions by the defendant, he is entitled thus far to their full benefit. It may be proper also to observe that no admissions in an answer can under any circumstances lay the foundation for relief under any specific head of equity unless it be substantially set forth in the bill.

Several years ago, it seems, the defendant, being a clergyman of the Baptist denomination, had the charge of a congregation at Blockley, in or near to Philadelphia, and Mr. and Mrs. Goodwin were members of that church. But some time before the deed was executed they removed from the limits of that congregation and resided in another. From the business of Goodwin, he being a

broker, and the connection which existed between him and the defendant, it was natural that the defendant should consult him as to the investment he was desirous of making in 1822. And it is not extraordinary that the defendant should have confided in the integrity of Goodwin. It seems that this confidence was not easily shaken, for although the money was placed in his hands for investment in March 1822, yet the defendant did not discover the fraud of Goodwin until the last of January, 1823, and then another fraud was practiced by Goodwin by giving another security of little or no value. It was under such circumstances and with a knowledge that Goodwin was about to stop payment that the defendant called at his house, charged him with another deception, and insisted on security or immediate payment. Goodwin threatened him with taking the benefit of the insolvent act, and then the defendant asked him if he had forgotten the certificate he had forged, and said if it were brought into court he would be in danger of "going to hard labor." That these were words of heat and passion is evident. That there was strong provocation is equally clear; still it had been better had

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he not uttered them. The high and holy calling of the defendant should have guarded him against the influence of passion. He should have remembered that those who are most skeptical not unfrequently make the highest exaction of purity in the station he occupied. But he was a man of like passions with others, and liable to err.

Did the defendant visit the house of Goodwin with the premeditated design of making this charge in order to extort from Mrs. Goodwin a promise to indemnify him? That he did is most earnestly contended by the counsel for the complainants, and he is charged with the greatest impropriety in making the charge against Goodwin in the presence of his wife. This inference is not authorized by the facts and circumstances of the case. As was very natural, Mrs. Goodwin felt great anxiety when she heard the charge, and was solicitous that her husband should not be exposed. She promised to make up any part of the debt to the defendant which her husband should be unable to pay. This was about six years before Mrs. Goodwin executed the mortgage deed. On various occasions during the lifetime of

her husband, she repeated this promise to the defendant, as appears from the evidence, without his solicitation, and she made similar declarations to other persons.

As might be expected, the intercourse between the defendant and the family of Mr. Goodwin was, perhaps, after this, less frequent than it had been. On one occasion, however, his good offices were requested to prevent the exhibition of the forged words as evidence in an action of slander brought by Goodwin. He interposed, but could not prevent the evidence from being offered.

It does not appear that the defendant threatened to commence a prosecution against Goodwin, but only said what he was informed would be the effect of a prosecution. The facts do not justify the conclusion that the defendant agreed to suppress the prosecution in consideration of the promise of Mrs. Goodwin. That he confided in her promise is extremely probable from the fact that he seems to have made little or no effort, from this time until the death of Goodwin five years afterwards, to obtain his money or additional security. At length, in February, 1828, Goodwin died very suddenly. In her distress, Mrs. Goodwin sent for the defendant to superintend the last offices to her departed husband and to impart to her the

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consolations of religion. This is admitted to afford the highest evidence of the confidence which she reposed in the friendship and piety of the defendant.

Did he abuse that confidence? It is said that he did. That he seized the occasion while the heart of Mrs. Goodwin was broken under the weight of her afflictions to insinuate himself into her confidence and acquire an ascendancy over her; that he might wring from her the debt of her husband. And here the eloquence of the counsel has depicted in strong colors the base, hypocritical, and mercenary spirit of the defendant. If indeed the picture is drawn from the life and is not the work of the imagination, it presents human nature in so odious an aspect as to create loathing and disgust. Called to give consolation to a female overwhelmed by the sudden death of a husband, to whom, with all his imperfections, she was tenderly

attached, and that husband lying a corpse in the house or just deposited in the grave, can it be supposed without the strongest evidence that a wretch exists so lost to all the better feelings of the heart as to use such an occasion to extort from the widow the payment of a debt? Both Mrs. Goodwin and the defendant have gone to their last and solemn account, and are alike beyond the reach of censure or praise; but no one could wish the charge against the defendant, in this respect, to be true. There is nothing in the evidence to justify it. He did not name the subject of the debt to Mrs. Goodwin, and when she mentioned it, as he was about taking leave, he begged her not to give herself any uneasiness on the subject, and it was not until near a year after this that the mortgage deed was executed.

Six witnesses were examined by the complainants to show that at the time Mrs. Goodwin executed the deed, she had not the capacity to make a contract and that she labored under an improper influence exerted by the defendant. Some of these witnesses resided with Mrs. Goodwin, and they all speak of her being ill, more or less, at different periods of time, as well before as after, the decease of her husband. She appears to have been rather of a dejected and melancholy cast of mind, and was often in a state of despondency. Some of the witnesses speak of times when her mind was shattered or impaired while laboring under physical debility, and they state certain acts which they considered as resulting from a mind somewhat unsettled and wandering.

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At one time she refused to attend her granddaughter to church, who was to be received as a communicant; she declined family worship; would sometimes not answer questions; and on returning from a former country residence shortly after the death of her husband, she seemed to be agitated, sat down in a chair, and burst into a flood of tears. She kept a boarding house some time, and involved herself in debt. Miss Jackson, who refers to these circumstances, remarks, that she never knew Mrs. Goodwin to say a foolish thing or do a foolish act, and except on the occasions specified, her conduct and conversation were intelligent and rational.

It would seem from the statement of the witnesses that she was as subject to depression of spirits, before the death of Mr. Goodwin as afterwards. Dr. Beatty attended Mrs. Goodwin as a physician; first saw her in Lombard Street in 1827. She labored under great mental torpor, but had no serious organic disease. During the time she kept a boarding house in Twelfth Street, she managed her own concerns, did the principal work of the house, and often went to market. Mr. Dodge states that after the death of Mr. Goodwin, she, having more business to transact, was more active than she had been, but in two or three months she relapsed into her former state of mind and seemed much depressed on the subject of her business. The witness hardly thinks she had sufficient capacity to transact any other than the ordinary business of life. Some of the witnesses did not think her capable of conducting the business of a boarding house, and certain acts of supposed miscalculation or extravagance are named.

It seems that the defendant occasionally called to see Mrs. Goodwin, but less frequently than she desired. In July, after the death of Mr. Goodwin, Miss Long, who lived with Mrs. Goodwin, was called downstairs to witness a written paper, and, after signing it, observed to the defendant that she did not know what she had signed. Mrs. Goodwin was present. The defendant said, it was a piece of writing between Mrs. Goodwin and himself. Mrs. Goodwin once or twice expressed herself uneasy about the business of the defendant, but there is no evidence that at any of his visits he importuned her on the subject of his claim or that he took any active agency in the matter until about the time the mortgage was executed.

The scrivener who drew the bond and mortgage and whose son drew the defeasance states that Mrs. Goodwin, her trustee, and the

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defendant, were present when they were signed. Much conversation was had on the subject of the papers, and Mrs. Goodwin was very attentive to the business. She did not seem to be laboring under any remarkable feebleness of body or mind. The mortgage was intended as collateral security, and the defeasance was drawn on a separate paper. Since the commencement of the present suit, the

defeasance was handed to the scrivener by the defendant, who said he had borrowed it from the office; the paper had not been called for by the trustee. Jewell, the trustee of Mrs. Goodwin, states that the defendant and Mrs. Goodwin called on him, and she observed that she wished to execute a mortgage on her property, to secure the defendant in a claim he had on her late husband, and on being asked if she had consulted Mr. Ingraham, her counsel, she replied that she had not, and that he had treated her with coolness. She said the mortgage was intended as collateral security.

Sometime after this, Mrs. Goodwin, becoming somewhat embarrassed in her circumstances, relinquished her house, and the defendant undertook the settlement of her accounts. Some ten or twelve witnesses, who were well acquainted with Mrs. Goodwin before and after her husband's death and about the time the deed was executed, were examined by the defendant to prove that she was of capacity to contract generally. Some of these witnesses had business with her, and speak of her acuteness and uncommon smartness. Others say that she was a woman of more than ordinary intelligence; that on religious subjects she was very well informed. One of the witnesses speaks of her as a remarkably sensible woman; heard her speak of the defendant as having been injured by her husband, and that it was right he should be made secure. She spoke of the defendant's kindness in not prosecuting her husband, and said, as the witness understood, partly for that and other acts of kindness, the defendant ought to be made secure from loss.

On a careful examination of the whole evidence as to the competency of Mrs. Goodwin to execute the mortgage at the time it was given, we are brought to the conclusion that the ground of incapacity is not sustained. On the day the mortgage was executed, she was at the scrivener's with her trustee and the defendant, and it does not seem to have occurred either to her trustee or the scrivener that she was laboring under any incapacity of mind. She took an

active part in the business, understood perfectly the nature of the writings, and her whole deportment on that occasion showed that she was capable of acting for herself in giving the security on her property. Prior to this period, Mrs. Goodwin had given to the defendant a covenant to indemnify him; this was the paper witnessed by Miss Long in July 1828, and which was supposed not to be valid, the mortgage was given in lieu of this paper.

Was this mortgage deed executed, through any threat by the defendant to render the character of Goodwin infamous? There is not a shadow of proof to sustain this allegation of the bill, and it is denied by the answer. The threat must be carried back to the conversation between the defendant and Goodwin, in the presence of his wife, respecting the forged certificate, and this was about six years before the deed was executed. And this circumstance is relied on to show that this mortgage was extorted from Mrs. Goodwin. The forgery, as it was improperly called, had been fully exposed, in the action of slander brought by Goodwin, so that no apprehension on that score, could have been felt by Mrs. Goodwin. Her husband lived about five years after the threat, and it appears if until the time of his death he did not continue on terms of particular intimacy with the defendant, there seems to have been no hostility between them. And can it be supposed, that the conversation could have so operated on the mind of Mrs. Goodwin, six years afterwards as to extort from her the deed in question? The facts of the case authorize no such conclusion.

Did the defendant exercise any influence over the mind of Mrs. Goodwin, which can affect the contract? That he relied on the repeated assurances given by her to indemnify him is clear. During the lifetime of her husband, he does not appear to have resorted to any means to compel payment, and after the death of Goodwin, he did not obtrude himself into the house of mourning, as a creditor. He was there, but to perform the office of a comforter, and there is no evidence which shows any improper anxiety on his part to secure his debt. Until a short time before the execution of the mortgage deed, so far as the history of the case is known, Mrs. Goodwin was the first to introduce the subject, and on one occasion expressed no small anxiety to give the indemnity. It was not until the covenant was found to be

invalid that he became

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active in the business, and then, it would seem that he introduced the subject in the most delicate manner. On being informed of the invalidity of the covenant, she expressed a perfect willingness to give the mortgage. The mortgage does not cover the entire estate of Mrs. Goodwin, so that, by giving it, she did not strip herself of the means of support.

It seems that sometime after the mortgage was executed, on being told that the defendant would distress her, she expressed a determination to dispute the deed, but on being assured by the defendant that during her life he should not embarrass her by pressing the claim, she became perfectly satisfied. This dissatisfaction seems to have been excited by one of the persons named as complainant. That the defendant should have felt some anxiety to secure the claim was very natural. It was money which came into his hands as the guardian of his child, whose mother was deceased. But there was no part of the defendant's conduct, either before or after the death of Goodwin, which shows a disposition to exercise a fraudulent or improper influence over Mrs. Goodwin in this matter. She acted voluntarily, and so far as appears in the evidence free from any influence that goes to impeach the contract.

In taking the defeasance from the office of the scrivener, the defendant seems to have had no improper design. He borrowed it from the clerk in the office; probably and most likely forgot to return it. He returned it since the commencement of this suit, which he would not have done, had he taken the paper with a dishonest or fraudulent intention.

The motive which led Mrs. Goodwin to give this indemnity was highly honorable to her feelings as a wife, a Christian, and friend. She had property of her own. She saw that her friend had been injured by the fraudulent conduct of her husband, and whilst she threw a mantle over the imperfections of her husband, she endeavored to repair the injury he had done.

We come now to consider the fourth ground taken by the complainants, which is that from the relation which existed between the defendant and Mrs. Goodwin, she could make no valid contract with him. He was her pastor and agent. After her embarrassments commenced, at the request of her trustee, the defendant did undertake the settlement of her affairs, to which service he seems to have been prompted by the kindest feelings towards her. We cannot suppose that this agency, which was

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in fact undertaken after the mortgage was executed, could vitiate any contract. About the time the mortgage was executed and before that time, he seems to have had no special agency in the business of Mrs. Goodwin.

But he is represented to have been her pastor. Some years before the mortgage deed was signed, Mrs. Goodwin did belong to the church under the charge of the defendant, but this relation had ceased long before the death of Goodwin; but if this relation existed in fact, it is not charged in the bill. Does the profession of a clergyman subject him to suspicions which do not attach to other men? Is he presumed to be dishonest? It would indeed exhibit a most singular spectacle if this Court by its decision should fix this stain on the character of a class of men who are generally respected for the purity of their lives and their active agency in the cause of virtue. They are influential, it is true, but their influence depends upon the faithfulness and zeal with which their sacred duties are performed. Acquainted as we are with the imperfections of our nature, we cannot expect to find any class of men exempt from human infirmities. But why should the ministers of the gospel, who, as a class, are more exemplary in their lives than any other, be unable to make a contract with those who know them best and love them most? Their influence, by precept and example, does more to reform the actions of men and restrain their vicious inclinations than all the institutions of society. And yet we are called upon to denounce this whole class and hold them incapable of making a contract with those who are under their pastoral charge and who, like Mrs. Goodwin, are distinguished for their piety. Why not give them the same measure of right which is enjoyed by others? If any minister should become a traitor to his

master and disgrace his high and holy calling by using for fraudulent purposes his influence over the weak or unwary, the laws affords a remedy, and the proceedings in this case show that the disposition will not be wanting to bring him to an account.

Upon a deliberate consideration of the facts and circumstances of this case, we are of the opinion that the decree of the circuit court ought to be affirmed with costs.

Decree affirmed.

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