SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Brown Vs. Pierce

Brown Vs. Pierce

SooperKanoon Citation : sooperkanoon.com/81604

Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 205

Appellant : Brown

Respondent : Pierce

Judgement :

Brown v. Pierce - 74 U.S. 205 (1868)
U.S. Supreme Court Brown v. Pierce, 74 U.S. 7 Wall. 205 205 (1868)

Brown v. Pierce

74 U.S. (7 Wall.) 205

ERROR TO THE SUPREME

COURT OF NEBRASKA TERRITORY

SYLLABUS

1. Where a bill alleging a good title to lands in a complainant and setting forth particularly the nature of it sought to have a conveyance made by duress annulled, and the land reconveyed free from the lien of judgments obtained against the

grantee after the conveyance, an answer by the judgment creditor setting up in general terms a good title in the grantee on the representation and faith of which he had lent such grantee money must be taken as referring to the title derived under the deed in controversy. And this though there have been no replication to the answer.

Where, in such a bill, the complainant, by way of affecting the judgment creditor with notice, sets forth that he, the complainant, was never out of possession of the land, an answer averring in general terms that the respondent was informed and believed that the complainant entered as tenant of the grantee, but not specifying any time or circumstances of such entry nor assigning any reason for not specifying them, is insufficient and evasive, there being nothing alleged which tended to show that the grantee ever pretended to have any other title than that derived from the complainant or that there was any title elsewhere.

A deed procured through fear of loss of life produced by threats of the grantee may be avoided for duress.

A judgment being but a general lien and the creditor under it obtaining no encumbrance but on such estate as his debtor really had, the equity of such creditor gives way before the superior right of an owner in the land who had conveyed the land to the debtor only by duress and who had never parted with possession.

Brown filed his bill in September, 1860, in the court below against three persons, Pierce, Morton, and Weston, alleging that in the spring of 1857 he settled upon and improved a tract of land near Omaha; that he erected a house on the tract and continued to occupy it until August 10, 1857, when he entered the tract under the preemption laws of the

United States; that Pierce claimed the land by virtue of the laws of an organization known as the Omaha Claim Club; that this organization, consisting of very numerous armed men, sought to, and did to a great extent, control the disposition

of the public lands in the vicinity of Omaha in 1857, in defiance of the laws of the United States; that it frequently resorted to personal violence in enforcing its decrees; that the fact was notorious in Omaha, and that he, Brown, was fully advised in the premises; that as soon as he had acquired title to the land, Pierce, together with several other members of the club, came to his house and demanded of him a deed of the land, threatening to take his life by hanging him or putting him in the Missouri River if he did not comply with the demand, that the club had posted handbills calling the members together to take action against him, and that knowing all this and in great fear of his life, he did, on the 10th of August, 1857, convey the land by deed to Pierce; that he, Brown, received no consideration whatever for the conveyance; that *from the date of his settlement upon said land until the time of filing the bill, he had continued to keep possession either actually or constructively;* that Morton claimed an interest in the premises by virtue of a judgment lien, and that Weston also made some claim.

The prayer was that the deed might be declared void and Pierce be decreed to reconvey, and for general relief.

The bill was taken *pro confesso* as to all the defendants except Morton, who answered.

This answer, stating that he, Morton, was not a resident of the territory and had no knowledge or information about the facts alleged in the bill, but on the contrary was an utter stranger to them, and therefore could not answer as to any belief concerning them -- set forth that on the 28th August, 1857, Pierce was "the owner and in possession of, and otherwise well seized and entitled to, as of a good and indefeasible estate of inheritance in fee simple," the tract in controversy; that being so, and representing himself to be so, and having need of money in business, he applied to him, Morton, to borrow the same, and that he, Morton, being

induced by reason of the representation, and also by the possession, and believing that he, Pierce, was the owner, he was thereby induced to lend, and did

lend to him $6,000 on the personal security of him, Pierce; that before the filing of this bill by Brown, he, Morton, had obtained judgment against Pierce for $3,400, part of the loan yet unpaid; that this judgment was a lien on the lands; and that as he, Morton, was informed and believed if he could not obtain his money from this land, he would be wholly defrauded out of it.

The answer further stated that the defendant was informed and believed that Brown, the complainant, entered upon the lands as the tenant of Pierce, and that the suit by the complainant was being prosecuted in violation of the just rights of Pierce as well as of him, Morton.

There was no replication. Proofs were taken by the complainant, and they showed to the entire satisfaction of the court that all the matters alleged in the bill and not denied by the answers were true. [Footnote 1] There thus seemed no doubt as to the truth of all the facts set out in the bill.

The court below declared Brown's deed void and decreed a reconveyance from Pierce to him, and that neither Morton nor Weston had any lien on the premises. Morton now brought the case here for review.

Page 74 U. S. 209

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Representations of the complainant were that on the tenth of August, 1857, he acquired a complete title to the premises described in the bill of complaint under the preemption laws of the United States, and that thereafter on the same day he was compelled, through threats of personal violence and fear of his life, to convey the same without any consideration to the principal respondent. Framed on that theory, the bill of complaint alleged that the first-named respondent was at that time a member of an unlawful association in that territory called the Omaha Claim Club, and that he, accompanied by three or four other persons belonging to that association, came to his house a few days before he perfected his right of preemption to the land in question

and told the complainant that if he entered the land under his preemption claim, he must agree to deed the same to him, and added that unless he did so, he, the said respondent and his associates, would take his life; and the complainant further alleged, that the same respondent, accompanied as before by certain other members of that association, came again to his house on the day he perfected his preemption claim and repeated those threats of personal violence, and did other acts to intimidate him and induce him to believe that they would carry out their threats if he refused to execute the deed as required.

Based upon those allegations, the charge is that the complainant was put in duress by those threats and acts of intimidation, and that he signed and executed the deed and conveyed the land by means of those threats and certain acts of intimidation and through fear of his life and without any consideration, and he prayed the court that the conveyance might be decreed to be inoperative and void and that the grantee might be required to reconvey the same to the complainant.

Two other persons were made respondents as claiming some interest in the land in controversy. Pierce, the principal respondent, and Weston, one of the other respondents, were nonresidents and were served by publication pursuant to the rules of the court and the law of the jurisdiction. They never appeared, and failing to plead, answer, or demur, and due proof of publication in the manner prescribed by law having been filed in court, a decree was rendered as to them that the bill of complaint be taken as confessed. [Footnote 2]

Morton, the other respondent, appeared and filed an answer in which he alleged that the principal respondent, on the twenty-eighth of August, 1857, and for a long time before, was the owner in fee of the premises; that he was informed and believed that the complainant entered upon the land as the tenant of the principal respondent, and that he was prosecuting this suit in violation of the just rights

of all the respondents; that the principal respondent wanting to borrow money, he, the respondent before the court, loaned him a large sum and accepted bills of exchange for the payment of the same, drawn to the order of the borrower of the money, and which were endorsed by the drawer; that the bills of exchange not having been paid when they became due, he brought suit against the drawer and endorser, and recovered judgment against him for three thousand one hundred dollars; that the judgment so recovered is in full force and unsatisfied, and that the same is a lien on the premises described in the bill of complaint.

No answer, from any knowledge possessed by the respondent, is made to the allegation that the complainant acquired a complete title to the land under the preemption laws of the United States, nor to the charge contained in the bill of complaint, that the deed was procured by threats of personal violence amounting to actual duress. On the contrary, the answer alleged that the respondent before the court was an utter stranger to all those matters and things, and that he could not answer concerning the same because he had no information or belief upon the subject.

Authorities are not wanting to the effect that all matters well alleged in the bill of complaint which the answer neither denies nor avoids are admitted, but the better opinion is the other way, as the sixty-first rule adopted by this Court provides that if no exception thereto shall be filed within the period therein prescribed, the answer shall be deemed and taken to be sufficient. [Footnote 3]

Material allegations in the bill of complaint ought to be answered and admitted or denied if the facts are within the knowledge of the respondent, and if not, he ought to state what his belief is upon the subject, if he has any, and if he has none and cannot form any, he ought to say so and call on the complainant for proof of the alleged facts or waive that branch of the controversy; but the clear weight of authority is that a mere statement by the respondent

in his answer, as in this case, that he has no knowledge that the fact is as stated, without any answer as to his belief concerning it, is not such an admission as is to be received as full evidence of the fact. [Footnote 4]

Such an answer does not make it necessary for the complainant to introduce more than one witness to overcome the defense, and the well known omissions and defects of such an answer may have some tendency to prove the allegations of the bill of complaint, but they are not such an admission of the same as will constitute a sufficient foundation for a decree upon the merits. [Footnote 5]

Proper remedy for a complainant in such a case is to except to the answer for insufficiency within the period prescribed by the sixty-first rule; but if he does not avail himself of that right, the answer is deemed sufficient to prevent the bill from being taken *pro confesso,* as it may be if no answer is filed. [Footnote 6]

Attention is called to the fact that no replication was filed to the answer; but the suggestion comes too late, as the respondent proceeded to final hearing in the court below without interposing any such objection.

Mere formal defects in the proceedings, not objected to in the court of original jurisdiction, cannot be assigned in an appellate tribunal as error to reverse either a judgment at law or decree in equity.

Legal effect of a replication is that it puts in issue all the matters well alleged in the answer, and the rule is that if none be filed, the answer will be taken as true and no evidence can be given by the complainant to contradict anything which is therein well alleged. [Footnote 7]

Undenied as the answer is by any replication, it must

have its fair scope as an admission; but the court is not authorized to supply anything not expressed in it beyond what is reasonably implied from the language employed. Proofs were taken by the complainant, and they show to the entire satisfaction of the Court that all the matters alleged in the bill of complaint and not

denied in the answer are true, and the conclusion of the court below was that the complainant acquired a complete title to the land under his preemption claim, and that the deed from him to the principal respondent was procured in the manner and by the means alleged in the bill of complaint.

Nothing is exhibited in the record to support any different conclusion or to warrant any different decree unless it be found in one or the other of the first two defenses set up in the answer.

First defense is that the principal respondent, on the twenty-eighth of August, 1857, and long before that time, was the owner in fee of the premises, but neither that part of the answer nor any other denied that the complainant acquired a complete title to the land as alleged in the bill of complaint, nor set up any defense in avoidance of those allegations, nor made any attempt to present any defense against the direct charge that the deed under which the respondent claimed title was procured from the complainant through threats of personal violence and by means of duress. Indefinite as the allegation of title is, the answer must be construed as referring to the title under the deed in controversy, as it is not pretended that the respondent ever had any other, and, if viewed in that light, it is in no respect inconsistent with the conclusion adopted by the supreme court of the territory.

Such an indefinite allegation cannot be considered as presenting any sufficient answer either to the alleged title of the complainant or to the charge made in the bill of complaint.

Briefly stated, the second defense set up in the answer is that the respondent was informed and believed that the complainant

entered upon the land as a tenant, but the time when the supposed entry was made is not alleged, nor are the circumstances attending the entry set forth, nor is any reason assigned why the allegations were not made more definite, nor is there any fact or circumstance alleged which shows or tends to show that there was any

prior owner to the land except the United States, nor that the respondent ever pretended to have any other title to the same than that derived from the complainant.

Viewed in any light, those allegations must be regarded as evasive and insufficient, and they are not helped by the omission of the complainant to file the general replication. Those parts of the answer being laid out of the case as insufficient to constitute a defense, the conclusion is inevitable that the title to the land was in the complainant as alleged, and that he parted with it through threats of personal violence and by duress, and without any consideration.

Argument to show that a deed or other written obligation or contract procured by means of duress is inoperative and void, is hardly required as the proposition is not denied by the respondent. Actual violence is not necessary to constitute duress, even at common law as understood in the parent country, because consent is the very essence of a contract, and if there be compulsion, there is no actual consent, and moral compulsion, such as that produced by threats to take life or to inflict great bodily harm as well as that produced by imprisonment, is everywhere regarded as sufficient in law to destroy free agency without which there can be no contract, because, in that state of the case, there is no consent.

Duress in its more extended sense means 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 and will of a person of ordinary firmness. [Footnote 8]

Text writers usually divide the subject into two classes, namely duress *per minas* and duress of imprisonment, and that classification was uniformly adopted in the early history of the common law and is generally preserved in the decisions of the English courts to the present time. [Footnote 9]

Where there is an arrest for an improper purpose without just cause, or where there is an arrest for a just cause, but without lawful authority, or for a just cause but for an unlawful purpose, even though under proper process, it may be construed as duress of imprisonment, and if the person arrested execute a contract or pay money for his release, he may avoid the contract as one procured by duress or may recover back the money in an action for money had and received. [Footnote 10]

Second class, duress *per minas,* as defined at common law, is where the party enters into a contract (1) for fear of loss of life; (2) for fear of loss of limb; (3) for fear of mayhem; (4) for fear of imprisonment, and many modern decisions of the courts of that country still restrict the operations of the rule within those limits. [Footnote 11]

They deny that contracts procured by menace of a mere battery to the person or of trespass to lands or loss of goods can be avoided on that account, and the reason assigned for this qualification of the rule is that such threats are held not to be of a nature to overcome the mind and will of a firm and prudent man, because it is said that if such an injury is inflicted, sufficient and adequate redress may be obtained in a suit at law.

Cases to the same effect may be found also in the reports of decisions in this country, and some of our text writers have adopted the rule that it is only where the threats uttered excite fear of death or of great bodily harm or unlawful imprisonment that a contract so procured can be avoided, because, as such courts and authors say, the person

Page 74 U. S. 216

threatened with slight injury to the person or with loss of property ought to have sufficient resolution to resist such a threat and to rely upon the law for his remedy. [Footnote 12]

On the other hand, there are many American decisions of high authority which adopt a more liberal rule and hold that contracts procured by threats of battery to

the person or the destruction of property may be avoided on the ground of duress because in such a case there is nothing but the form of a contract, without the substance. [Footnote 13]

But the case under consideration presents no question for decision which requires the Court to determine which class of those cases is correct, as they all agree in the rule that a contract procured through fear of loss of life, produced by the threats of the other party to the contract, wants the essential element of consent, and that it may be avoided for duress, which is sufficient to dispose of the present controversy. [Footnote 14]

Next question which arises in the case is whether the judgment set up by the appellant creates a superior equity in his favor over that alleged and proved by the appellee.

Before proceeding to examine this question, it will be useful to advert briefly to the material facts exhibited in the record.

Title was acquired by the complainant under the preemption laws of the United States, and on the same day the principal respondent, through threats to take his life if he refused, compelled him to convey the same to that respondent, and the record shows that the respondent before the

Page 74 U. S. 217

court, within the same month, loaned the money to the grantee in that deed, for which he recovered judgment although the grantor was then in possession of the land and has remained in possession of the same to the present time.

The judgment is founded upon the bills of exchange received for that loan. Judgments were not liens at common law, but several of the states had passed laws to that effect before the judicial system of the United States was organized, and the decisions of this Court have established the doctrine that Congress, in adopting the processes of the states, also adopted the modes of process prevailing at that date in the courts of the several states, in respect to the lien of

judgments within the limits of their respective jurisdictions. [Footnote 15]

Different regulations, however, prevailed in different states, and in some neither a judgment nor a decree for the payment of money, except in cases of attachment or mesne process, created any preference in favor of the creditor until the execution was issued and had been levied on the land. Where the lien is recognized, it confers a right to levy on the land to the exclusion of other adverse interests acquired subsequently to the judgment; but the lien constitutes no property or right in the land itself. [Footnote 16]

Such judgments and decrees were made liens by the process acts in the federal districts where they have that effect under the state laws, and Congress has since provided that they shall cease to have that operation in the same manner, and at the same periods, in the respective federal districts, as like processes do when issued from the state courts. Federal judgments and decrees are liens, therefore, in all cases, and to the same extent, as similar judgments and decrees are, when rendered in the courts of the state.

Express decision of this Court is that the lien of a judgment

Page 74 U. S. 218

constitutes no property in the land, that it is merely a general lien securing a preference over subsequently acquired interests in the property, but the settled rule in chancery is that a general lien is controlled in such courts so as to protect the rights of those who were previously entitled to an equitable interest in the lands, or in the proceeds thereof.

Specific liens stand upon a different footing, but it is well settled that a judgment creates only a general lien, and that the judgment creditor acquires thereby no higher or better right to the property or assets of the debtor, than the debtor himself had when the judgment was rendered, unless he can show some fraud or collusion to impair his rights. [Footnote 17]

Correct statement of the rule is that the lien of a judgment creates a preference over subsequently acquired rights, but in equity it does not attach to the mere legal title to the land, as existing in the defendant at its rendition, to the exclusion of a prior equitable title in a third person. [Footnote 18]

Guided by these considerations, the Court of Chancery will protect the equitable rights of third persons against the legal lien, and will limit that lien to the actual interest which the judgment debtor had in the estate at the time the judgment was rendered. [Footnote 19]

Objection is also made that the affidavit showing that the defendants were nonresidents was not in due form, and that the order of notice and the publication of the same were insufficient to give the court jurisdiction, but the proposition is not supported by the record, and must be overruled.

Decree affirmed.

[Footnote 1]

See infra, p. <74 U.S. 213|>213.

[Footnote 2]

Nations v. Johnson, 24 How. 201.

[Footnote 3]

Young v. Grundy, 6 Cranch 51; *Brooks v. Byam,* 1 Story 297.

[Footnote 4]

Warfield v. Gambrill, 1 Gill & Johnson 503.

[Footnote 5]

Young v. Grundy, 6 Cranch 51; *Parkman v. Welch,* 19 Pickering 234.

[Footnote 6]

Hardeman v. Harris, 7 How. 726; *Stockton v. Ford,* 11 How. 232; 1 Daniels' Chancery Practice 736; *Langdon v. Goddard,* 3 Story 13.

[Footnote 7]

1 Barbour's Chancery Practice 249; *Mills v. Pitman,* 1 Paige's Chancery 490; *Peirce v. West,* 1 Peters C.C. 351; Story's Equity Pleading 878; Cooper's do., 329.

[Footnote 8]

Chitty on Contracts 217; 2 Greenleaf on Evidence 283.

[Footnote 9]

2 Institutes 482; 2 Rolle's Abridgment 124.

[Footnote 10]

Richardson v. Duncan, 3 N.H. 508; *Watkins v. Baird,* 6 Mass. 511; *Strong v. Grannis,* 26 Barbour 124.

[Footnote 11]

3 Bacon's Abridgment, title "Duress" 252.

[Footnote 12]

Skeate v. Beale, 11 Adolphus & Ellis 983; *Atlee v. Backhouse,* 3 Meeson & Welsby 642; *Smith v. Monteith,* 13 *id.* 438; Shepherd's Touchstone, 6; 1 Parsons on Contracts 393

[Footnote 13]

Foshay v. Ferguson, 5 Hill 158; *Central Bank v. Copeland,* 18 Md. 317; *Eadie v. Slimmon,* 26 N.Y. 12; 1 Story's Equity Jurisprudence (9th ed), 239; *Harmony v. Bingham,* 12 N.Y. 99; *S.C.,* 1 Duer 229; *Fleetwood v. New York,* 2 Sandford 475; *Tutt v. Ide,* 3 Blatchford 250; *Astley v. Reynolds,* 2 Strange 915; *Brown v.*

Peck, 2 Wis. 277; *Oates v. Hudson,* 5 English Law & Equity 469.

[Footnote 14]

2 Greenleaf on Evidence 283; 1 Blackstone's Commentaries 131.

[Footnote 15]

Williams v. Benedict, 8 How. 111; *Ward v. Chamberlain,* 2 Black 438; *Bayard v. Lombard,* 9 How. 530; *Riggs v. Johnson County,* 6 Wall. 166.

[Footnote 16]

Conard v. Atlantic Ins. Co., 1 Pet. 443; *Massingill v. Downs,* 7 How. 767.

[Footnote 17]

Drake on Attachments 223.

[Footnote 18]

Howe, Petitioner, 1 Paige's Chancery 128; *Ells v. Tousley, ib.,* 283; *White v. Carpenter,* 2 Paige 219; *Buchan v. Sumner,* 2 Barbour's Chancery 181; *Lounsbury v. Purdy,* 11 Barbour 494; *Keirsted v. Avery,* 4 Paige's Chancery 15.

[Footnote 19]

Averill v. Loucks, 6 Barbour 27.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com