Kentucky Law Journal

Volume 12 | Issue 2 Article 6

1924

Deeds--Mental Capacity to Make

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KENTUCKY LAW JOURNAL

VOL. XII. JANUARY, 1924. No. 2.

Published four times a year by the College of Law, University of Kentucky. Issued in November, January, March and May.

SUBSCRIPTION PRICE, $2.00 PER YEAR. 65c PER NUMBER

NOTES

DEEDS—MENTAL CAPACITY TO MAKE

The appellee's uncle being the owner in fee of two tracts of land granted the same by deed to the appellee, his niece. He died a few days after the deed was executed and the appellant, his grandnephew and only other heir, instituted this action immediately to set aside the deed on the ground that the grantor was mentally incapacitated to convey the land. Some time prior to the execution of the deed and while testifying for himself on the hearing of a motion which had for its purpose the appointment of a receiver to take charge of and settle the affairs of a partnership of which he was the only surviving member, the grantor failed to identify the denomination of certain bills or to make simple calculations at the request of the counsel for the plaintiff.

In Davin on Real Estate, volume 1, page 109, the rule for determining the mental capacity of the grantor to execute a deed is stated to be: "A deed may be avoided on the ground of insanity, when the grantor did not possess sufficient strength of mind

and reason to understand the nature and consequences of his act in executing it. And by its execution he does not make it his deed if at the time he was, from weakness of mind, incapable of understanding it if explained to him. But although it may be uncertain that the mind of the grantor was in all respects sound, still, if he has sufficient ability to execute and deliver a deed, understanding the consideration he is to receive, and the nature of the transaction in transferring his title to another, it is considered that his mind is sufficiently sound to render his deed valid. The question to be determined in all these cases is whether the grantor understands what he is doing. If he understands the act, it is immaterial that his faculties are impaired by age, or that he had severe bodily ailments, or that he is both old and physically weak, or that he is old and eccentric." Substantially the same rule is laid down in 13 Cyclopedia of Law and Procedure 576, and 18 Corpus Juris 218.

In *Ex Parte Barnsley,* 26 Chancellor Reports 899, the court said: "Being *non compos,* of unsound mind, are certain terms in law, and import a total deprivation of sense." This was taken to be the rule in the New York case of *Stewart's Executors* v. *Lispenard* 26 Wend. 255. According to these two cases, the grantor must be totally insane before a deed which he executed is void, and the least show of intelligence in any act was sufficient to make his deed valid.

This rule was soon changed, however, and in the case of *Ball* v. *Manning,* 6 H. L. 568, the court of the exchequer instructed the jury that: "To constitute such unsoundness of mind as should avoid a deed at law, the person executing such deed must be incapable of understanding and acting in the ordinary affairs of life." And, "As one test of such incapacity, the jury were at liberty to consider whether he was capable of understanding what he did in executing the deed in question, when its general import was explained to him." This case was appealed to the House of Lords and there the court specifically mentioned these instructions and upheld them. The New York case of *Hoey* v. *Hoey,* 65 N. Y. S. 778, says: "If, at the time of the execution of the instrument sought to he avoided, the mental condition was such that the act was the intelligent act of the individual, based upon his intelligent rational judgment, with suffi-

cient mental power to understand the nature of his property and his relation to those who would be the subject of his bounty, and without prompting, to arrive at a determination as to what disposition he wished to make of it, the court is not justified in declaring such disposition invalid." The test now seems to be, was the grantor's mind of such strength that he could grasp the facts relating to the act he was about to make and that he could realize the natural consequences which were liable to follow its execution. Amongst the cases decided by a rule similar to the one stated above are the following: *Edwards* v. *Davenport,* 20 Fed. 756; *Bowdoin College* v. *Merritt,* 75 Fed. 480; *Mann* v. *Keen,* 86 Fed. 51; *Sawyer* v. *White,* 122 Fed. 223; *Fisher* v. *Fisher,* 9 N. Y. S. 4; *In Re Lawrence,* 62 N. Y. S. 673; *Williams* v. *Williams,* 133 Mich. 21; and *Lane* v. *Lane,* 160 Mich. 492.

The rule in Kentucky is similar to the one in the Ball and Hoey cases above cited. In the case of *Huffaker* v. *Branner* the court said: "Mere mental weakness is not sufficient to invalidate a conveyance if the grantor have sufficient mental capacity to understand the nature, object and purpose of the contract or deed; but if he be so mentally incapacitated as to be unable to understand or appreciate the nature, object and effect of the contract or deed, it is unenforceable, for it does not express his purpose and is not his deed but the purpose and deed of another, he not having sufficient capacity to enter into such contract." The following cases are amongst the Kentucky cases decided on a similar basis: *Lassiter* v. *Lassiter,* 63 S. W. 477; *Speers* v. *Sewell,* 67 Ky. 239; *Richardson* v. *Hunt,* 4 R. 829; *Watkens* v. *Scaggs,* 161 Ky. 600; *Herzogg* v. *Gibson,* 170 Ky. 325; *Lewis* v. *Lewis,* 194 Ky. 172, and *Akers* v. *Akers,* 24 Ky. L. R. 636.

In the case of *Gillock* v. *Williams,* 199 Ky. 169, the court said: "In determining these questions the mental weakness of the grantor is not conclusive, for, as has often been held, mental weakness alone is not sufficient to justify the annulment of a deed, if it does not amount to such infirmity as to destroy the grantor's power to act voluntarily and freely and to appraise the consequences of his acts." The court held that the failure to identify the bills or to make the calculations were not conclusive as to the grantor's mental capacity to make the deed; that the weight of the court's order appointing a receiver was largely

lost, first, because it was based on his physical incompetency as well as his mental incompetency, and, second, because the same judge who entered that order sat in the lower court in this suit and pronounced the grantor mentally competent to convey the land in question; that it would not disturb the finding of the lower court, "that the deed in controversy was the free and voluntary act of a capable mind," and that, therefore, the deed was good and valid and it conveyed the title of the grantor to the appellee. JOHN L. WILLIAMS.

DURESS

A. IN GENERAL. Duress may be defined as an unlawful restraint, intimidation, or compulsion of another to such extent and degree as to induce such person to do or perform some act which he is not legally bound to do, contrary to his will and inclinations.

If a person's hand be taken forcibly and compelled to hold a pen and write, it cannot be said that the writing is his own act since there is no will of his own used, his free agency is destroyed, and this act would be absolutely void. But where an act is forced by threats of violence, it is unsound to contend that the act done is not the act of the person threatened; in fact the person threatened consents to do the act rather than submit to the violence threatened. It is well settled that when the so-called duress consists only of threats, and such threats do not reach the heights of such bodily compulsion as turns the threatened party into a mere tool, the contract is only voidable at the option of the threatened party.

Cases substantiating this modern view of duress are many, some of which are: *Foss* v. *Hildreth,* 10 Allen 26; *Lewis* v. *Bannister,* 16 Gray 500; *Fischer* v. *Shattuck,* 17 Pick. 252; *Clark* v. *Pease,* 41 N. H. 414, and *Fairbanks* v. *Snow,* 13 N. E. 596.

Formerly the common law rule was very stringent in limiting the class of threats which would constitute duress sufficient for the avoidance of a deed or contract. Duress *per minas,* for instance, according to Coke, Blackstone and other authorities, was confined to fear of loss of life, of loss of member, of mayhem or imprisonment.

It is obvious that only duress of the gravest kind should