

Me. 482, 7 Atl. 272; Higgins v. Brown, 78 Me. 473, 5 Atl. 269; Harmon v. Harmon, 61 Me. 227; Davis v. Luster, 64 Mo. 43; Sanford v. Sornborger (Neb.) 41 N. W. 1102; Landa v. Obert, 45 Tex. 539; Eddy v. Herrin, 17 Me. 338; Richardson v. Duncan, 3 N. H. 508. We are not unmindful of the fact that there is a line of authorities which maintain that a threat made to a wife to obtain the arrest of her husband on a criminal charge, or to a parent to obtain the arrest of his child, does constitute such duress as will serve to vitiate a contract, if the threat in fact overcomes the will, and occasions a forced assent, without reference to the question whether it was or was not a threat of a lawful arrest for adequate cause. This has sometimes been termed a species of moral duress. Eadie v. Slimmon, 26 N. Y. 9; Adams v. Bank, 116 N. Y. 606, 23 N. E. 7; Taylor v. Jaques, 106 Mass. 291; Lomerson v. Johnson (N. J. Ch.) 13 Atl. 8; and cases there cited. But in the case at bar it is unnecessary to attempt to reconcile conflicting views on this subject, which are perhaps irreconcilable. We entertain the opinion that, under the statutes of South Dakota, the menace complained of in the case at bar did not constitute such duress as will invalidate the deed. If the threat was made as stated by the complainant, it was a threat of a lawful arrest, for, beyond all question upon the state of facts disclosed by the present record, the complainant's son was justly amenable to a criminal prosecution; and the "menace," so termed, amounted to no more than a threat to have the criminal laws of the state executed, which the appellee, under the circumstances, had an undoubted right to demand. Moreover, we do not discover in this record any circumstances of oppression or fraud, accompanying the alleged threat, which would justify us in holding that the appellee took an undue advantage of the appellant, or that his conduct towards him was either harsh or oppressive. Furthermore, after the deed was executed, and his son's debt had been canceled, the appellant rested content with the transaction for nearly three years, before discovering that he had been imposed upon. Under these circumstances, and for the foregoing reasons, we conclude that the bill was properly dismissed, and the decree of the circuit court is therefore affirmed.

DONHAM v. SPRINGFIELD HARDWARE CO.

(Circuit Court of Appeals, Eighth Circuit. May 7, 1894.)

No. 371.

JUDGMENT—JURISDICTION—EQUITABLE RELIEF.

A judgment of a circuit court, rendered upon personal service on the defendant of a summons not delivered to the marshal until after Act March 3, 1887, limiting the jurisdiction of the court to matters exceeding \$2,000, went into force, although the complaint was filed before the act, will not be declared void on bill in equity on the ground that the matter in dispute was less than \$2,000. If erroneous, the remedy is by writ of error.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

This was a suit by W. W. Donham against the Springfield Hardware Company to have a judgment against complainant declared void for want of jurisdiction. A demurrer to the bill was sustained. Complainant appealed.

Henry C. Young and M. C. Cantrell, for appellant.

G. M. Sebree, for appellee.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

CALDWELL, Circuit Judge. On the 23d day of February, 1887, A. C. Phillips, a citizen of the state of Arkansas, filed a complaint at law against W. W. Donham, a citizen of Missouri, in the United States circuit court for the central division of the western district of Missouri, to recover the contents of a promissory note for the sum of \$550. A summons was issued the day the complaint was filed, and delivered to the plaintiff's attorney, who placed it in the hands of the marshal on the 23d day of March, 1887. The summons was thereafter duly served, and, the defendant not appearing to the action, judgment by default was rendered against him on the 12th day of March, 1888, for \$755.14, which was afterwards assigned to the appellee. The appellant filed this bill in equity, praying to have the judgment "declared null and void," upon the ground that the court "had no jurisdiction to render judgment for a sum less than \$2,000." The lower court sustained a demurrer to the bill, and the plaintiff appealed.

The contention of the appellant is that the action at law in which the judgment was rendered was not commenced until the summons was delivered to the marshal on the 23d day of March, 1887, and that at that time the act of March 3, 1887 (24 Stat. 552), was in force, which declares that the circuit courts of the United States shall have original cognizance of suits "when the matter in dispute exceeds, exclusive of interest and costs, the sum of \$2,000," and that, as the matter in dispute in the action was less than \$2,000, the court had no jurisdiction of the cause, and its judgment therein is void.

This contention is untenable. The summons in the case was served personally on the defendant. The court, therefore, had jurisdiction of the person of the defendant. Having unquestioned jurisdiction of the person of the defendant, it had jurisdiction to determine the question whether the suit was commenced before or after the passage of the act of 1887, and whether the complaint stated a cause of action within the jurisdiction of the court. The erroneous decision of any or all of these questions would not affect the jurisdiction of the court over the cause. Its erroneous decision of these or other questions could be corrected by the appropriate appellate procedure in a court which by law could review the decision. Until corrected in this manner, the judgment is as valid and binding as if the record disclosed on its face a cause of action clearly within the jurisdiction of the court. It is well settled that the judgments of the United States courts rendered upon personal

service on the defendant are binding until reversed, though no jurisdiction be shown on the record. *Skirving v. Insurance Co.*, 8 C. C. A. 241, 59 Fed. 742; *Foltz v. Railway Co.*, 8 C. C. A. 635, 60 Fed. 316; *Elder v. Mining Co.*, 7 C. C. A. 354, 58 Fed. 536.

Assuming, but not deciding, that the court erred in rendering a judgment on a complaint in which the plaintiff claimed less than \$2,000, the appellant has mistaken his remedy to correct that error. His remedy was by writ of error, and not by a bill in chancery.

The decree of the lower court is affirmed.

EXCHANGE BANK v. HUBBARD et al.

(Circuit Court of Appeals, Second Circuit. May 29, 1894.)

No. 112.

1. CONFLICT OF LAWS—PROMISE TO ACCEPT DRAFT.

Where a promise is made in one state to accept a draft payable in another state, the law of the state where the draft is made determines the validity of the contract; and it is immaterial that, by the statutes of the state where the draft is payable, a promise to accept must be in writing, to be deemed an actual acceptance, and, if not in writing, can be enforced only by the person who draws or negotiates the bill.

2. NEGOTIABLE INSTRUMENTS—ORAL PROMISE TO ACCEPT DRAFT—ACTION FOR BREACH.

An action for breach of a promise to accept drafts, to be made and negotiated to obtain money for a specified purpose, may be maintained by one who has taken such drafts for money furnished by him for said purpose on the faith of the promise.

3. PRINCIPAL AND AGENT—MONEY LOANED ON AGENT'S DRAFTS ON PRINCIPAL.

Defendants requested H. & Co. to purchase for them certain cotton, and to borrow the money to pay therefor on defendants' credit, promising to remit currency or to accept drafts for the amount loaned, at the lender's option. H. & Co. obtained the money from a bank on the faith of this promise, giving their drafts on defendants therefor, and therewith purchased the cotton, which defendants received, but refused to accept the drafts. *Held*, that defendants were liable to the bank as for a loan made to them, and for their benefit, through their agents.

In Error to the Circuit Court of the United States for the Southern District of New York.

This was an action by the Exchange Bank against Samuel T. Hubbard and others, doing business under the firm name of Hubbard, Price & Co., for the amount of certain bills of exchange. A demurrer to the complaint was overruled (58 Fed. 530), but at the trial the judge directed the jury to find a verdict for defendants, and judgment for defendants was entered thereon. Plaintiff brought error.

John R. Abney (William B. McCam, C. E. Spencer, and J. R. Abney, of counsel), for plaintiff in error.

Sullivan & Cromwell (William J. Curtis and Edward B. Hill, of counsel), for defendants in error.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The plaintiff in the court below brings this writ of error to review a judgment for the defendants