

by the Supreme Court; consequently, on the principle of the cases cited, the reversal could not operate to their disparagement, or of any party holding a valid deed executed on the sale under such judgment.

The judgment of the circuit court is affirmed.

Judgment affirmed.

DAVID D. LANTERMAN *et al.*, Administrators,

v.

GEORGE A. ABERNATHY *et al.*

1. EXPRESS TRUSTS—*evidence in support of.* A bill setting up an express trust in the proceeds of a promissory note, is not supported by proof of an intention to create a trust, which was never executed.

APPEAL from the Circuit Court of Lawrence county; the Hon. AARON SHAW, Judge, presiding.

The facts of the case fully appear in the opinion of the court.

Mr. J. G. BOWMAN, for the appellants.

Mr. D. B. ABERNATHY, for the appellees.

Mr. JUSTICE LAWRENCE delivered the opinion of the Court :

This was a bill in chancery, brought by George A. Abernathy, and the other heirs of Martha Abernathy, deceased, against the administrators of James Lanterman, deceased, to compel the surrender of a note made by the complainant,

Syllabus.

George A. Abernathy, and held by Lanterman at the date of his death. It appears that one Martha Abernathy, the mother of the complainant, and owning certain lands in her own right, on the 25th of December, 1853, intermarried with said James Lanterman, and soon afterwards she and her said husband sold these lands to her son, the complainant, and subsequently, at the request of complainant, conveyed them to one Harlan. The complainant executed his note to Lanterman for three hundred and fifty dollars. At the death of Lanterman the note passed to his administrators, the defendants, and it is insisted that when the note was given, it was agreed between the complainant, his mother and James Lanterman, that the latter should hold the note for the use and benefit of his wife's children. We think such an agreement cannot be fairly inferred from the evidence. It is proven that Lanterman said, not long before his death, that he "calculated the Abernathy heirs to have this money," and when the witness was asked what he said about the other property, the witness replied, Lanterman said his children were to have his property and her children her property, at their death. This is the whole of the evidence, and it only shows an intention held at that time, but never executed, to leave this note to the children of his wife. This is not satisfactory evidence of the agreement alleged in the bill. The decree must be reversed.

Decree reversed.

47	438
25a	76
47	438
129	355
47	438
178	172

WILLIAM KASTING

v.

G. F. KASTING.

1. APPEALS—*from justices of the peace.* The party who recovers a judgment before a justice of the peace may take an appeal from such judgment.