

13675

No. _____

Supreme Court of Illinois

Herring

vs.

Woodhull

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 253

Herring 62
vs

Woodhull

Replaced

13675

United States of America
State of Illinois Winnebago County.

Heas before the Hon Benjamin R. Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois began and held at the Court House in the City of Rockford July 4th 1861. for hearing & deciding Chancery Causes:-

Present Benj R. Sheldon Judge.

Bill.

Winnebago Co Circuit Court.

In Chancery.

To the Hon Benjamin R. Sheldon Judge of the 14th Judicial Circuit of the State of Illinois & Judge of the Circuit Court of Winnebago County in Chancery sitting:-

Your Orator Francis M. Woodhull of the County of Orange in the State of New York respectfully shows unto your Honor that on or about the 18th day of January in the year one thousand eight hundred and fifty four, one Granville Herring of the County of Winnebago in the State of Illinois became and was indebted unto Benjamin Moffatt then of the same County but now deceased in the sum of Twelve hundred dollars, and being so indebted, in consideration thereof, the said Granville Herring on the day and year aforesaid, made and executed under his hand a certain Promissory note to the said Benjamin Moffatt for the sum of Twelve hundred dollars payable with interest annually at the rate of ten per cent per annum to the said Benjamin Moffatt or bearer in five years from the date thereof a copy of which note is herunto annexed as schedule A. which your Orator prays may be a part of this bill of Complaint. And your Orator would further show unto your Honor that the said Granville Herring and Barbara A. Herring his wife on the

eighteenth day of January in the year of our Lord one thousand eight hundred and fifty four to secure the payment of the principal and interest mentioned in said Promissory note made and executed under their hands and seals, and delivered to the said Benjamin Moffat, a mortgage, conditioned for the payment of the said sum of Twelve hundred dollars, and interest mentioned in the said note according to the Conditions of the said Promissory note, by which said mortgage, the said Mortgagor mortgaged to the said Benjamin Moffat the Mortgages therein named in fee, certain lands and real estate, situated in the County of Winnebago in the State of Illinois and described in the said Mortgage as follows to wit: The south half of the north west quarter of section No (21) Twenty one in Township twenty eight north of range ten east of the fourth principal meridian in the town of Howard in said County of Winnebago and containing eighty acres, which said mortgage was and is subject to a condition therein contained that if the said Mortgagor the said Keering should pay the aforesaid sum of Twelve hundred dollars with interest according to the Conditions of said Promissory note the said mortgage should become null and void, which said mortgage was duly acknowledged, and afterwards recorded as a mortgage, in the Office of the Recorder of Deeds, of the County of Winnebago in the State of Illinois on the sixth day of May in the year one thousand eight hundred and fifty four at 11/2 O' Clock in the fore noon, in book S. of Mortgages, on pages 24 & 25, as by said mortgage and the Certificates of acknowledgment and recording inclosed thereon and ready to be produced in Court, and to which your Orator prays leave to refer will more fully appear, a copy of which mortgage is hereto annexed as Schedule B which your Orator prays may be taken as a part of this bill of Complaint and your Orator further shews that some time after the making the said Mortgage son or about the 15 of April a.d.

2. 368
3
1856. the said Granville Herring executed & delivered to the
Racine & Mississippi Rail Road Company a mortgage of the
east-half of the premises conveyed by the aforesaid mortgage to
the said Moffatt to secure to said Rail Road Company pay-
ment of the sum of one thousand dollars and that said Rail
Road Company have since assigned the said mortgage to some
person or persons unknown to your Orator and that such persons
unknown ought to be parties defendants to this bill of complaint.
And your Orator believes and states that the sum of twelve
hundred dollars with interest from the eighteenth day of
January one thousand eight hundred and fifty eight remains
due and unpaid to your Orator on the said note and mort-
gage and that no proceedings at law have been had to re-
cover the debt secured by the said note and mortgage, or any
part thereof. And your Orator further states and believes that
the said premises described in the said mortgage are meager
and scant security for the said sum of twelve hundred dol-
lars and interest mentioned in the said note and mortgage
and now due your Orator. And your Orator further shews
that on or about the sixth day of May of the year aforesaid
the said Benjamin Moffatt for a valuable consideration to
them said assigned the said note & mortgage to Daniel
L. Moffatt & Hezekiah H. Moffatt then of the County of Orange
& State of New York by a written guaranty on the said note
and by an instrument in writing under seal which instru-
ment in writing with the said note and mortgage were
then and there delivered by the said Benjamin Moffatt to
the said Hezekiah H. Moffatt & Daniel L. Moffatt and that af-
wards & on or about the 25th day of April A.D. 1857 the said
Daniel L. Moffatt then having said note and mortgage in
his possession & being the said Hezekiah H. Moffatt authorized
so to do for and in behalf of himself and the said Hezekiah
H. Moffatt assigned the said note & mortgage to your Orator

in writing & delivered the same to your Orator, & your Orator avers that the said Hezekiah N. Moffatt authorized the delivery of said note and mortgage by the said Daniel to your Orator for the purpose of assigning the same, & thereby assigned his interest therein to your Orator, a copy of the aforesaid written assignment are hereto annexed as schedule B. which your orator prays may be taken as a part of this bill of complaint.

30 line.

And your Orator further shew unto your Honor, and state upon information and belief that Julius P. Thorne the Racine & Mississippi Rail Road Company and persons unknown to your Orator to whom the said Rail Road Company have assigned a certain mortgage ^{trust} the said premises as aforesaid have or claim to have some interest in the said mortgaged premises, or some part thereof, as purchaser, mortgage or otherwise which interests, if any, have accrued subsequent to the lien of the said mortgage of your Orator and are subject thereto:

35 line

Your Orator therefore asks the aid of this Court in the premises, and that the above named Granville Herring Barbara J. Herring Julius P. Thorne, The Racine & Mississippi Rail Road Company the persons unknown defendants assignees as aforesaid Hezekiah N. Moffatt, the defendants in this suit may appear before the judge of the Circuit Court of the County of Winnebago in the Court of Chancery, and answer this your Orator Bill, according to the rules and practice of said Court, without oath, their answer on oath being here by waived, and that the usual decree may be made for the sale of mortgaged premises aforesaid, and for the payment of the amount due your Orator for principal and interest in the said note and mortgage and costs of suit and that the said defendants and all persons claiming under them subsequent to the commencement of this suit

5th

Printed by
John C. Case & Son,
220 North Main,
Chicago, Ill.

and all other persons although not parties to this suit who have any liens by judgment or decree upon the mortgaged premises subsequent to the said Mortgage of your Orator or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all equity of redemption in said premises, and that your Orator may have such other and further relief as the nature of case may require and as to this Court shall seem agreeable to equity and good Conscience: And may it please your Honor to grant unto your Orator, the People's writ of Summons issuing out of and under the seal of this Honorable Court to be directed to the said defendants above named therein and thereby commanding them and each of them on a certain day and under a certain penalty to be therein inserted that they personally be and appear before the judge of said Circuit Court of Hennepago at the Court Room in Rockford then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as shall seem agreeable to equity and good Conscience:

And your Orator will ever pray. &c.

Might & Sauger Sol for Amp^r

Francis W. Nordhull by
S^r W. Night his Atty.

Copy note above referred to as Schedule A.

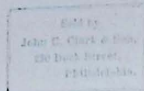
Two years from date I promise to pay Benjamin Moffatt or bearer, Twelve hundred dollars with interest at the rate of ten per ~~per~~ cent per annum, yearly for value received according to the conditions of a Certain Mortgage Deed bearing even date herewith: witness my hand at Howard Sany 15th 1854. (Signed) Granville Herring: (Securities attached to bonds)

I Guarantee the payment of the above note.

Signed Benjⁿ Moffatt.

Schedule B referred to in the foregoing bill.

This Indenture, made this eighteenth day of January A.D. eighteen hundred and fifty four Between Granville Herring party of the first part and Benjamin Moffatt party of the second part. Witnesseth, that the said party of the first part, for and in consideration of the sum of Twelve hundred dollars to him paid by the said party of the second part does hereby give grant bargain sell and Convey unto the said party of the second part his heirs and assigns forever, all the the following described real estate to wit the south half of the north west quarter of section No (21) twenty one in township twenty eight Range ten in the town of Howard County of the State of Illinois Containing eighty acres more or less. Together with all and singular the appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the same unto the said party of the second part, and to his heirs and assigns forever, and the said party of the second part for himself his heirs executor and administrator does covenant and agree with the said party of the second part his heirs and assigns that he is well seized of the premises above granted, that he will warrant and forever defend the same against all lawful claims and demands whatsoever. Provided always, that if the said party of the first part shall well and truly at any time within five years from the date hereof pay or cause to be paid to the said party of the second part his heirs or assigns the said sum of twelve hundred dollars with interest yearly at the rate of ten per cent according to the conditions of a promissory note of hand bearing even date herewith, then shall the above indenture be null and void, the



said party of the first part enjoying the ^{right} use of the premises comprising of the said premises from the day of the date hereof.

In witness whereof the said party of the first part hereunto set his hand and seal on the day and year above written Executed in presence of

J. M. Clark

George B. Cannon } signed

Granville Herring

Barbara J. Herring

(seal)

(seal)

State of Illinois

County of Winnebago }
I James M. Clark a Justice

of the Peace in and for the said County do hereby certify that Granville Herring & Barbara J. his wife personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed, for the uses and purposes therein set forth. And the said Barbara J. Herring personally known to me to be the wife of the said Granville Herring and as the person who subscribed said deed as such having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separately and apart from her husband, acknowledged that she had executed the same, and relinquished her dower and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract. Given under my hand and seal at this eighteenth day of January A.D. 1854.

James M. Clark seal

Justice of the Peace.

Endorsed: State of Illinois Winnebago County Recorder

Office: Filed for record on the 6 of May A.D. 1854 at 11 1/2
O'clock A.M. Recorded in Book of Mortgages, pages 24 & 25
and examined:

CH. Spafford Recorder.

Assignment.

Know all men by these presents that I Benjamin
Moffatt of Rockford Winnebago County Illinois the party of
the second part to the annexed mortgage deed for and
in consideration of Twelve hundred dollars to me in
hand paid by Hezekiah H. Moffatt & Daniel C. Moffatt
both of the County of Orange and State of New York the
receipt whereof is hereby acknowledged do hereby sell as
sign transfer convey and set over unto the said Hezekiah
H. Moffatt and Daniel C. Moffatt the annexed mort-
gage or mortgage deed and the promissory note therein
mentioned and all monies secured thereby, and all my
right title and interest in and to said Mortgage deed
and in said to the real estate and premises therein
mentioned and described, and in and to the monies
secured or intended to be secured thereby: And I do hereby
authorize the said Hezekiah H. Moffatt and Daniel
C. Moffatt in my name or otherwise to collect and ob-
tain payment of the same in the same manner as I
could had not these presents been executed: To have &
to hold the said promissory note mortgage deed and
the premises mentioned therein and the monies secured
thereby to the said Hezekiah H. Moffatt & Daniel C. Mof-
fatt their heirs executors administrators and assigns forever
And I the said Benjamin Moffatt do hereby for myself my
heirs executors and administrators covenant to & with the
said Hezekiah H. Moffatt and Daniel C. Moffatt that they

Schedule C. refers to in the foregoing bill
being the two assignments 1st Assignment of Benj. Moffatt to H. H. & D. C. Moffatt

9th

Sold by
John C. Clark & Son,
100 North Second St.,
Philadelphia.

is now unpaid and owing upon the said promissory note Mortgage Deed the sum of two hundred dollars that I have good right to sell transfer & assign the same: And I do hereby in consideration of the said sum of money so received by me as aforesaid give unto the said party of the said promissory note and the money secured thereby and by said mortgage deed, at the time the same ^{shall} become due with the interest according to the terms of the said note & mortgage deed and in case the same shall not be so paid I hereby agree to pay the same and interest to the said Nehemiah H. Moffatt & Daniel C. Moffatt their Executors, Administrators & assigns - Witness my hand & seal this sixth day of May 1834: (

Signed Benjⁿ Moffatt L. S.

In presence of
William Kulini (This Assignment was duly acknowledged & recorded.)

2^d Assignment.

2^d Assignment from Daniel C. Moffatt to Francis M. Woodhull referred to in said bill.

Know all men by these presents that I Daniel C. Moffatt of the town of Goshen in the County of Orange and State of New York for and in Consideration of the sum of one thousand three hundred and fifty two dollars and fifty cents lawful money of the United States to me in hand paid by Francis M. Woodhull of the town of Chester County and State aforesaid of the second part at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged have granted bargained sold assigned transferred and set over and by these presents do grant bargain sell assign transfer and set over unto the said party of the second part a certain indentured of mortgage deed bearing date

the eighteenth day of January in the year one thousand eight hundred and fifty four made and executed by Granville Herring Barbera I his wife of the first part to Benjamin Moffatt of the second part and filed and recorded in the Office of the Recorder of the County of Winnebago and State of Illinois on the sixth day of May in the year 1854. (and which said mortgage deed was afterwards by the said Benjamin Moffatt duly assigned to Hzekiah H. Moffatt and Daniel C. Moffatt party hereto of the first part by deed of Assignment bearing date the 6th day of May 1854) together with the note accompanying the said mortgage deed and all the monies due or to grow due thereon with the interest. To have and to hold the same unto the said party of the second part his executor administrator and assigns for their use and benefit subject only to the provisions in said mortgage deed contained and I do hereby make Constitutio and appoint the said party of the second part my true and lawful Attorney irrevocable in my name or jointly with the name of the said Hzekiah H. Moffatt or otherwise but at his own proper Costs and Charges to have use and take all lawful ways and means for the recovery of the said money and interest and in case of payment to discharge the same as fully as I or the said Hzekiah H. Moffatt might or could do if these presents were not made. and I do hereby Covenant promise and agree to and with the said party of the second that there is now due and owing upon said note and mortgage deed the sum of money firstly herein mentioned and that I have good right to sell transfer and assign the same as aforesaid. In witness whereof I have hereunto set my hand this twenty fifth day of April in the year one thousand eight hundred and fifty four.

Sealed & delivered in presence of C. H. Canfield & Agnia
 Dan C. Moffatt (S.S.)

13th

Printed by
John C. Clark & Son,
220 Dear Street,
Philadelphia.

That you summon Granville Herring Barbara J. Herring
Julius P. Thorne Hzekiah H. Moffatt, The Racine & Missis-
sippi Raie Road Company & Persons unknown if they shall be
found in your County, personally to be and appear before the
Circuit Court of said Winnebago County, on the first day of
the next Chancery term thereof, to be holden at the Court House
in the City of Rockford in said Winnebago County, on the
first Monday of February A D 1861, to answer unto Francis
W. Woodhull in his certain bill of Complaint filed in the
said Court, on the Chancery side thereof. And have you then
and then this writ, with an endorsement thereon in what man-
ner you shall have executed the same.

S. S. Morris B. Derrick, Clerk of said Court, and
the seal thereof, at his Office in the City of Rock-
ford, in said Winnebago County, this 22nd day of
November A D 1860.

W B Derrick Clerk

By Ot Penney Dep Clerk.

Endorsed State of Illinois 186.

Winnebago County I duly served the within by
delivering true Copies of thereof to the within named Defendants
Granville Herring: Also served the within named Racine &
Mississippi Raie Road Company by delivering a copy hereof to
Stiles a Station Agent of said Company residing
in my County the President of said Company not residing
in my County and not being found therein. Barbara Her-
ring & Julius P. Thorne Hzekiah H. Moffatt not found in
my County this 10 day of January A D 1861.

W. J. Wight Sheriff

Night & Sawyer, Attorney:

Summons.

State of Illinois
 Mennebag County } The People of the State of Illinois to
 the Sheriff of Stephenson County- Greeting: We Command
 you that you summon Julius P. Thome, ^{Implicated with Benjamin Herring} Barbara A. Herring
 Hezekiah H. Moffatt the Racine & Mississippi Race Road
 Company & Persons Unknown if he shall be found in your coun-
 ty, personally to be and appear before the Circuit Court of said
 Mennebag County, on the first day of the next Chancery term
 thereof, to be holden at the Court House in the City of Rock-
 ford in said Mennebag County on the first Monday of
 February A.D. 1861, to answer unto Francis W. Woodhull in
 his certain bill of Complaint filed in the said Court on the
 Chancery side thereof: And have you then and there this
 writ with an endorsement thereon in what manner you shall
 have executed the same.

L. S. } Minip Olvir A. Penmyer Clerk of said Court
 and the seal thereof at his Office in the city
 of Rockford in said Mennebag County. this
 21st day of January A.D. 1861.
 Olvir A. Penmyer Clerk

Enclosed

State of Illinois
 Stephenson County } January 1861.
 I duly served the within summons by reading it and de-
 livering a true copy of the same to the within named Ju-
 lius P. Thome this 25th day of January A.D. 1861.
 M. A. Youngman Sheriff.

Stephenson County Illinois
 Night & Sawyer Attorney.

Answers

In the Mennebag County Circuit Court: In Chancery

15th

The Answer of Granville Herring a defendant to the bill of Complaint of Francis W. Woodhull Complainant against the said Granville Herring Barbara J. Herring Julius P. Thome Hezekiah H. Moffatt. The Racine & Mississippi Race Road Company.

This defendant saving to himself the benefit of all exceptions to the said bill of Complaint maketh answer to such parts thereof as he is advised is necessary and material for him to make answer unto, answering say that at the time of the making of the promissory note and mortgage in the said bill of Complaint mentioned, the said defendant purchased of Benjamin Moffatt in the said bill named the tract of land in the said mortgage described and for a part of the purchase price thereof made to the said Benjamin Moffatt the said promissory note and mortgage, that the said note and mortgage were not made to secure the payment of money loaned and that the consideration therefor was none other than the purchase money for the said land, and that the said purchase of the said land was made at Howard in the County of Winnebago and State of Illinois at the time when the said note and mortgage were executed and not elsewhere, or at any time other time, and that the said note and mortgage were executed at the time when the same bear date, and this defendant therefore insists that the said note and mortgage are usurious as to all the interest thereof which exceeds the rate of six per cent, and as to the said usurious interest. And this defendant further answering says that he is informed and believes it to be true that the said Complainant at the time he purchased and received the said note and mortgage and took the assignment of the same, had notice that the

defendant insists that the said note shall be produced to
 show the dates at which those payments were made and that
 the said payments shall be applied towards the discharge
 of the principal of said note & mortgage and such interest if
 any as may be lawfully charged upon the same. And this
 defendant further answering says that on or about the twenty
 second day of June in the year of our Lord one thousand
 eight hundred and fifty seven this defendant was in pressing
 need of money and was unable to obtain the same by loan
 at legal interest: he therefore applied to the said Complainant
 Francis W. Woodhull to loan him eleven hundred dollars and
 after considerable negotiation the said Complainant concluded
 to loan to this defendant at Rockford in said County the
 said sum of eleven hundred dollars at twenty per cent inter-
 est for one year but said Complainant refused to loan the
 same upon any less rate of interest - this defendant therefor
 consented to and did borrow of the said Complainant
 the said sum of eleven hundred dollars and it was then
 and then agreed by and between the defendant and said
 Complainant that this defendant should pay to the said
 Complainant two hundred and twenty dollars interest upon
 the said eleven hundred dollars for the loan and forbear-
 ance thereof for one year and it was also then & then agreed
 by and between this defendant and said Complainant for
 securing the repayment of the said sum of Eleven hundred
 dollars so to be lent and advanced as aforesaid with one
 hundred and ten dollars part and parcel of the said two
 hundred and twenty dollars this Complainant should make
 and execute to one John L. Boyd and deliver to said
 Complainant a promissory note whereby said defendant should
 promise to pay said Boyd or order Eleven hundred dollars
 with ten per cent interest in one year after the date thereof
 the same being dated on the said 22^d day of June 1857.

and that for securing the payment of the remainder of the said sum of two hundred and twenty dollars of said interest this defendant should make execute and deliver to the said Complainant a promissory note whereby this defendant should promise to pay to the order of the said Complainant one hundred and ten dollars one year after the date thereof being the said 22^d day of June A D 1857: And this defendant says that he accordingly made executed and delivered said notes as agreed upon and received of and from the said Complainant the said loan of Eleven hundred dollars for the said term of one year: And this defendant insists that the said sum of two hundred and twenty dollars for the loan and forbearance of the said Eleven hundred dollars for one year exceeded the lawful interest of this note & was usurious: This defendant further says that at or about the expiration of one year from the said 22^d day of June 1857, this defendant paid the said sum of Eleven hundred dollars together with the said sum of two hundred and twenty dollars the interest thereon to the said Complainant. And this defendant insists that he is entitled to recover the said one hundred and ten dollars, the excess of the legal interest on the said Eleven hundred dollars, of and from the said Complainant with interest thereon, and this defendant asks that he may be allowed the said sum of one hundred and ten dollars and interest thereon from the time of his paying the same until the time of the decree in this cause and that the same be set off towards whatever sum the said Complainant might otherwise be entitled to upon said mortgage according to the statute in such case made and provided:

all which matters and things this defendant submits to the Court and prays to be hence dismissed with his costs.

Granville Keeney by

Barnap Haway his Solicitor.

19
Endorsed

Filed July 11. 1861

O. Penneyer Clerk

Replication.

Francis M Woodhull

vs.

Granville Herringtooth

State of Illinois

In the Mennebago County Circuit

Court:

The replication of Francis M Woodhull Complainant to the answer of Granville Herring one of the defendants in the above entitled Cause. This replicant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication hereunto says that he will now maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto and that the said answer of the said defendant is uncertain and insufficient to be replied to unto by this replicant; and that this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto Confessed and avowed, traversed or denied is true; all which matters and things this replicant is and will be ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by his said bill he has already prayed:

Right Lawyer

Solicitor for Complainant.

Endorsed

Filed for record July 12. 1861

O. Penneyer Clerk

And afterwards to wit on the 24th day of September 1861. it being one of the days of the aforesaid September term 1861 of the Minnebago County Circuit Court the following entry was made as appears of Court record To wit:

Francis M. Woodhull

vs. } Now Come the parties by their
Granville Herring et al } solicitors and by their agree-
ment it is ordered that this
Cause be continued.

Affidavits.

Minnebago Co Circuit Court:

Francis M. Woodhull

vs. } In Chancery:
Granville Herring et al }

Minnebago County J. James M. Wright Solicitor of the Complainant in the above entitled Cause. says that he commenced the above entitled Cause suit and that the same has been under his sole charge and control from the Commencement. That since the last term of this Court and within the last few days this defendant has been informed and has no doubt of the fact that Barbara J. Herring one of the parties defendants named in Complainant's bill died long before the Commencement of this suit. That this defendant was so informed by the Sheriff of this County who was charged with a summons in this suit to serve upon the said Barbara J. and this defendant further says that while he was so informed by said Sheriff he was entirely unaware of the decease of said Barbara and supposed that she was still alive that at the last term of this Court this deponent ^{defendant} ~~defendant~~ discovered that the said

Barbara I Herring had not been served with summons and supposed that such ^{omission} ~~summons~~ was owing to the negligence of the Sheriff to whom the original process of summons in this cause had been delivered for service and so believing caused the said cause to be continued for such service.

Sworn before me this 3rd day of February A.D. 1862 }
 At Penneyer Clerk } Jas M Wright.

Francis W Woodhull

Granville Herring & others } In Chancery.
 } Winnebago County vs Morris J.

Winght Sheriff of the County of Winnebago being duly sworn deposes and says that shortly after the close of the last term of this Court a summons in the above entitled cause was delivered to this deponent requiring him to summon as a defendant therein said Barbara I. Herring who was told to this deponent was the wife of the defendant Granville Herring, that for the purpose of making such service this deponent called at the dwelling house of said Granville Herring in said County of Winnebago and on enquiring for her was informed by Mariett Herring present wife of said Granville Herring that the said Barbara I. Herring was dead and had died several years before and more than two years before that time.

Sworn before me this 5th day of February A.D. 1862 }
 At Penneyer } W J Winght Sheriff
 Clerk }

Endorsed

Filed July 3. 1862

At Penneyer Clerk

And afterwards to wit on the 3^d day of February 1862
it being one of the days of the February term of the Minne-
sota County Circuit Court the following entry was made as
appears of Court record to wit:

Francis M. Woodhull

vs.
 Granville Herring et al } And now Comes the Complainant
 } By Right his solicitor and moves
 the Court for leave to amend bill herein.

Amendments to Bill.

Minneapolis Co Circuit Court

Francis M. Woodhull

vs.
 Granville Herring et al } In Chancery.

others } Amendments to Complainant's
 } Bill of Complaint.

First Amendment: After the Printed word that on the
30th line of the 3^d page insert "He has been informed ob-
lives that after the making of said mortgage and several
years ago the precise time of which is unknown to your
Orator this said Barbara J. Herring the wife of the said
Granville Herring died and departed this life: that

Second Amendment in 35th 186th lines of said 3^d page
Strike out the words Barbara J. Herring
Set in. Right. Sol.
for Compl.

Endorsed

Filed July 3^d 1862

Of Penneyer Clerk

And afterwards to wit on the 5th day of February 1862 it being one of the days of the February Term of the Hennepin County Circuit Court the 1862 the following entry was made as appears of Court record to wit:

Francis W. Woodhull

Granville Herring et al } And now Comes the Complain-
ant by Wright Sawyer his so-
licitor and on their motion:

It is ordered that the defendants answer amended bill herein by Saturday morning next.

And afterwards to wit on the 8th February 1862, it being one of the days of the aforesaid February Term of the Hennepin County Circuit Court the following entry was made as appears of Court record to wit:

Francis W. Woodhull

Granville Herring et al } And now Come the parties com-
plainant & defendants by their
solitors and by Consent of par-

ties It is ordered that the answer & Replications to the original bill shall stand as such to amended bill filed herein.

And afterwards to wit on the 10th day of February 1862 it being one of the days of the aforesaid February Term of Hennepin County Circuit Court 1862 the following entry was made as appears of Court record to wit:

Francis W. Woodhull

Granville Herring et al } On motion It is ordered that this cause
be referred to Mr. Holland as Special
Master to take & report proof herein.

State of Illinois

Mennebag County Circuit Court

Francis M Woodhull

Granville Herring

Barbara J Herring

Julius P. Home

Hezekiah H Moffatt

The Racine & Mississippi

Rail Road Company and

Persons Unknown

In Chancery.

Affidavit having been filed
in the above entitled Cause
that Hezekiah H Moffatt

defendant above named, is not a resident of the State of Illinois and that there are persons interested in the subject matter of this suit, whose names are unknown, who should be defendants herein. Notice is hereby given the said Hezekiah H Moffatt and the said Persons unknown defendants herein that Francis M Woodhull has filed in the Circuit Court of Mennebag County, in the State of Illinois, on the Chancery side of said Court, his bill of Complaint against them and the other defendants above named, that the said suit is now pending in said Court and that a summons has been issued in said Cause returnable to the next term of said Court to be holden at the Court House in Rockford, in said County of Mennebag on the first Monday of February next requiring the said defendants then and there to appear now unless you the said defendants then and there appear above named and each of you shall be and appear before our said Circuit Court, on the return day of said summons, and shall then & there plead, answer or demur to said bill of Complaint, the same will be taken for confessed against you, and the matters and things therein prayed decided

2544
2010 C. Clark & Son,
229 East Street,
Philadelphia.

Accordingly:

Rockford, November 23^d 1860.

W B Derrick Clerk 301. W 4

Wight Sawyer

Compts Solr.

State of Illinois
Mennebago County ss. I, Elias C. Daugherty, Printer and
Publisher of the "Rockford Register" a weekly public news-
paper, printed and published in the City of Rockford
in said County, do hereby certify that the advertisement
or notice hereunto annexed, relating to the matter of
Francis W Woodhull v. Granville Herring & others in Men-
nebago County Circuit Court February Term A.D. 1861, has
been published in said paper, and in every copy and impres-
sion thereof, for weeks successively, of the issues commencing
Saturday November 24th A.D. 1860 and ending Saturday, December
15th A.D. 1860 which are the dates of the first and last papers
containing the same:

Given under my hand this 5th day of March A.D.
1862:

E. C. Daugherty

Printers fees \$ 3.75 Received payment
E. C. Daugherty

Enclosed

"Filed Mar 5 1862"

At Penoyer Clerk's

Testimony

This Indenture made this eighteenth day January
A.D. eighteen hundred and fifty four Between Granville
Herring party of the first part and Benjamin Moffatt
party of the second part It is covenanted, that the said party of

the first part for and in consideration of the sum of Twelve hundred dollars to him paid by the said party of the second part does hereby give grant bargain sell and convey unto the said party of the second part his heirs and assigns forever the following described real estate to wit: The south half of the north west quarter of section No (21) Twenty one in Township twenty eight range ten in the Town of Howard County of Minnebago and State of Illinois Containing eighty acres more or less. To have and to hold the same unto the said party of the second part and to his heirs and assigns forever. And the said party of the second part for himself his heirs executors and administrators does covenant and agree with the said party of the second part his heirs and assigns that he is well seized of the premises above granted and that he will warrant and defend the same against all lawful claims and demands whatsoever. Provided always that if the said party of the first part shall well and truly at any time within five years from the date hereof pay or cause to be paid to the said party of the second part his heirs and assigns the said sum of twelve hundred dollars with interest yearly at the rate of ten per cent according to the conditions of a promissory note of hand bearing even date herewith. Then shall the above indenture be null and void. The said party of the first part having and enjoying the right of possession of the said premises from the day of the date hereof. In witness whereof the said party of the first part hereunto sets his hand and seal on the day and year first above written.

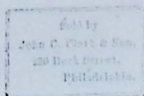
Executed in presence
of J. M. Clark
George B. Canon

Granville Hering (seal)
Barbara J. Hering (seal)

State of Illinois

County of Minnebago

J. James M. Clark a justice



of the peace in and for the said County do hereby certify that Granville Herring and Barbara J. his wife personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the same as their free and voluntary act and deed for the uses and purposes therein set forth: And the said Barbara J. Herring personally known to me to be the wife of the said Granville Herring and as the person who subscribed said deed as such having been by me made acquainted with the contents and meaning of said instrument of writing and examined separate and apart from her husband acknowledged that she had executed the same and relinquished her dower and all rights which or of dower or otherwise in or to the lands and tenements therein mentioned voluntarily freely and without compulsion of her said husband and does not wish to retract. Given under my hand and seal this eighteenth day of January A.D. 1854.

James M. Clark (seal)
Justice of the Peace.

Endorsed

"State of Illinois
Winnebago County p 3
Recorders Office Filed for
Record on the 6th day of May A.D. 1854. at 11 1/2 AM. Recorded
in Book L of Mortgages pages 24. and 25 and examined
C. N. Spafford Recorder.

Endorsed

"Filed Mar 5. 1862

O. Penneyer Clerk"

Note.

Five years from date I promise to pay Benj Moffatt or bears Twelve hundred dollars with interest at the rate of ten per cent per Annum yearly, for value received according to the Conditions of a certain mortgage Deed bearing even date herewith:

Witness my hand at Howard Jan'y 18th 1854
Granville Herring

I guaranteed the payment of the above note
Benj Moffatt.

Endorsed

"Received March 1855. One years interest on the within note and gave a receipt for the same"
Danl C Moffatt.

Received April 1856 One years interest on the within note and gave a receipt for the same.
Danl C. Moffatt.

Recd one hundred and twenty dollars in full for interest to Jan'y 18. 1857. Since June 22^d 1857

Received on the within note one year interest due Jan'y 18th 1858.

Assignment.

Know all men by these presents that J. Benjamin Moffatt of Rockford Winnebago County Illinois party of the second part to the annexed mortgage Deed for and in Consideration of twelve hundred dollars to me in hand paid by Hezekiah H Moffatt & Daniel C. Moffatt both of the County of Orange and State of New York, the receipt whereof is hereby acknowledged, do hereby sell assign, transfer Convey and set over unto the said Hezekiah H Moffatt and Daniel C. Moffatt, the annexed mortgage or mortgage Deed and the promissory note therein mentioned and

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all monies secured thereby and all my right, title and interest in and to said mortgage Deed and in and to the real estate and premises therein mentioned and described and in and to the money secured or intended to be secured thereby and I do hereby authorize the said Hezekiah H. Moffatt & Daniel C. Moffatt in my name or otherwise to collect and obtain payment of the same in the same manner as I could had not their presents been executed. To have and to hold said promissory note, mortgage Deed, and the premises mentioned therein & the monies secured thereby to the said Hezekiah H. Moffatt & Daniel C. Moffatt, their heirs, executors, administrators & assigns forever. And I the said Benjamin Moffatt do hereby for myself my heirs, executors & administrators covenant to & with the said Hezekiah H. Moffatt and Daniel C. Moffatt that there is now due and unpaid and owing upon said promissory note & mortgage deed the sum of twelve hundred dollars & that I have good right to sell transfer & assign the same. And I do hereby in consideration of the said sum of money so received by me as afore said guaranty the payment of the said promissory note and the monies secured thereby and by said mortgage Deed at the time the same shall become due with the interest according to the terms of said note & mortgage deed and in case the same shall not be so paid I hereby agree to pay the same and interest to the said Hezekiah H. Moffatt & Daniel C. Moffatt their executors, administrators & assigns. Witness my hand & seal this sixth day of May 1854

In presence of.

Benjⁿ Moffatt S.S.

William Hulin

State of Illinois

County of Winnebago

I William Hulin Clerk of the County Court for said County, do certify that Benjamin Moffatt who is personally known to me to be the same person

whose name is subscribed to the within foregoing assignment of the annexed mortgage, and to be the same person who is the party of the second part in said mortgage, appeared before me, this day in person and acknowledged that he signed sealed and delivered said assignment as his free & voluntary act and deed for the uses and purposes therein set forth: Given under my hand and the seal of said Court
 S. S. at my Office in the City of Rockford, this sixth day of May A.D. 1854.
 Melcom Hulin Clerk

Assignment.

Know all men by these presents that I Daniel C. Moffatt of the town of Gorham in the County of Orange and State of New York for and in consideration of the sum of One thousand three hundred fifty two dollars fifty cents law full money of the United States to me in hand paid by Francis M. Woodhull of the town of Chester, County and State aforesaid of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted bargained sold assigned transferred and set over and by these presents do grant bargain sell assign transfer and set over unto the said party of the second part, a certain Indenture of mortgage deed bearing date the eighteenth day of January in the year one thousand eight hundred and fifty four made and executed by Granville Herring & Barbara J. his wife of the first part to Benjamin Moffatt of the second part and filed and recorded in the office of the recorder of the County of Winnebago and State of Illinois on the sixth day of May in the year 1854 (and which said mortgage deed was afterwards by the said Benjamin

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Moffatt duly assigned to Hzekiah H. Moffatt and Daniel C. Moffatt party thereto of the first part by deed of assignment bearing date the 6 day of May 1854) together with the note accompanying the said mortgage deed. And all the monies due or to grow due thereon with the interest to have and to hold the same unto the said party of the second part his executor administrator and assigns for their use and benefit subject only to the provisions in said mortgage deed contained: And I do hereby make constitute and appoint the said party of the second part my true and lawful attorney irrevocable in my name jointly with the name of the said Hzekiah H. Moffatt or otherwise but at his own proper costs and charges to have use and take all lawful ways and means for the recovery of the said money and interest in case of payment to discharge the same as fully as I or the said Hzekiah H. Moffatt might or could do if these presents were not made and I do hereby covenant promise and agree to and with the said party of the second part that there is now due and owing upon the said note and mortgage deed the sum of money firstly herein mentioned: And that I have good right to sell transfer and assign the same as aforesaid: In witness whereof I have hereunto set my hand this twenty fifth day of April in the year one thousand eight hundred and fifty seven:

Sealed and delivered in presence of CH. Winfield

Daniel C. Moffatt S.S.

State of New York } On the twenty fifth day of April
Orange County } in the year 1857 personally appeared
before me Daniel C. Moffatt to me well known to be the
person described in and who executed the foregoing as-
signment of mortgage Deed and acknowledged that he ex-
ecuted the same B. F. Dwyer:

County Judge of Orange County.

State of New York

Orange County Clerk's Office }
 J. D. C. Winfield Clerk of Orange
 County, and also Clerk of the County Court of said County, and one
 of the Clerks of the Supreme Court of said State, (Clerks of Record)
 do hereby certify that B. J. Dwyer whose name is subscribed to
 the Certificate of this proof or acknowledgment of the annexed instru-
 ment, and whose name was at the time of taking such cer-
 tificate of proof or acknowledgment County Judge in & for said County
 dwelling in said County, Commissioned and sworn, and duly au-
 thorized to take the same, and further that I am well acquainted
 with the handwriting of the said County Judge and truly
 believe that the signature to the said Certificate of proof or ack-
 nowledgment is genuine; and that the annexed instrument is
 executed and acknowledged in conformity to the laws of said
 State: In testimony whereof I have hereunto subscribed my
 name and affixed the seal of the said Court and County,
 at Gorham, this 29. day of February 1860
 L. S. D. C. Winfield Clerk

Enclosed

"State of Illinois
 Mennebag County }
 Recorder's Office: Filed for record
 March 12 1860 at 11³/₄ O'clock A.M. Recorded in Book 30
 of Mortgages page 120 & 121. Examined.
 W. B. Derrick Recorder."

Receipts.

Received March 20 1855, of Granville Herring (by Benjn
 Moffat) One hundred and twenty dollars. One year interest
 on note and mortgage held by us against said Herring.
 Wm H. Moffat

Saml C. Moffatt

Gorham Orange Co New York

June 12th 1856.

Received of Granville Herring by Benj^r Moffatt the sum of
One hundred and twenty dollars. One year interest on note
and mortgage held by us against said Herring

Hery^r H. Moffatt

Saml C. Moffatt.

Depositions.

Wennebago Circuit Court

February Term A.D. 1862.

Francis A. Woodhull

Granville R. Herring et al. In Chancery.

Deposition of John R. Herring a witness of law-
ful age, taken before James P. Holland a Special Commissioner,
ex. for that purpose, in the above entitled Cause in the presence
and with the consent of James M. Wright Attorney appearing
on behalf of the Complainant and of Rufus J. Hawry At-
torney on behalf of defense.

John R. Herring being duly sworn deposes and says
that the 80 Acres of land described in the mortgage in ques-
tion was lot by Granville Herring of Benj^r Moffatt in Jan-
uary 18. 1854 for twelve hundred dollars, on a credit of five
years. and premises were mortgaged back for payment of
purchase price. the note and mortgage in question were
given for said purchase money and interest and for no
thing else: no part of said note and mortgage was for

borrowed money - I drew up the note and mortgage myself and heard the Contract between the parties:

J. R. Herring:

Crop examination:

I think I drew the deed note & mortgage. I think there was no prior contract of sale between the parties. The parties stated to me terms of the Contract - The terms of sale were twelve hundred dollars on five years time. I think the annual interest on deferred payments was ten per cent - the above rate of interest was agreed upon by and between the parties - The terms of the note and mortgage except the true Contract as to time & terms of payment.

Granville Herring wife Barbara J. Herring died fall following making of said mortgage

J. R. Herring

Endorsed

Died July 10, 1862

O. Penoyer, Clerk

And afterwards to wit on the 5 day of March the following entry was made as appears of Court records it being one ~~DECEE~~ of the day of the February term of Minn Co Cir Court 1862

Francis M. Moorhead

^{vs}
Granville Herring and others

} In Chancery
}

This day Came the Complainant by his solicitor and the said defendant Granville Herring by his solicitor and each and all of the other defendants herein having been three times solemnly called Came not nor any one for them but make default herein: it is therefore ordered that Complainant's bill be herein be taken for confessed against them and that this bill as to their stand for a hearing excepted. And this Cause thereupon came on for a hearing on pleading

Filed by
John C. Clark & Son,
220 Bank Street,
Philadelphia.

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and proof between Complainant and Granville Herring and Ex parte as to the other defendants and this Court having heard the evidence as well in behalf of the Complainant as of the said Defendant Granville Herring and having heard the Allegations of said parties and arguments of Counsel thereon and it appearing to the Court that the said Granville Herring did make to the said Benjamin Moffat in said bill mentioned the promissory note therein described and to secure the same with the said Barbara J. Herring his then wife did make and deliver to the said Benjamin Moffat the said mortgage in said Bill mentioned that the said Complainant is now the bona fide holder and endorser of said note and assignee of said mortgage, and that said note and mortgage have been assigned to complainant in the manner in said bill described and that the same are now due and unpaid and that there is now due on said note and mortgage the sum of sixteen hundred ninety five dollars & sixty six Cents: That the said Barbara J. Herring departed this life before the Commencement of this suit, as in said bill stated: That the other defendants herein have pretended to have some claim on the premises described in said mortgage: And that said mortgage ought to be foreclosed in manner and form as prayed in said bill: It is ordered adjudged and decreed that within thirty days from the rising of this Court the said Granville Herring pay or cause to be paid to the said Complainant the said money found to be due him as aforesaid with interest thereon from ^{this day to} the day of payment and also Costs which shall have accrued in this Cause: And that in default of such payment the Master in Chancery of this Court is hereby authorized and required to sell at public auction to the highest bidder for cash the premises described in said mortgage, to wit the south half of the north west quarter.

of Section No twenty one (21) in Township No twenty eight (28) in Range ten (10) in the town of Howard and County of Hennepin and State of Illinois at such time and place as he may appoint he first giving the same notice of the time place and terms of said sale as is required by law in cases of sales by Sheriff on executions at law: and that from the proceeds of said sale he pay all costs which shall then have accrued in this cause including costs of sale then if said proceeds shall be sufficient the sum of money found due the Complainant as aforesaid with interest thereon to the day of sale and if any surplus shall then remain that he bring the same into court for the use of such defendants as may be entitled thereto which sale so made shall forever bar and foreclose the defendants & all persons claiming through or under them from all equity of redemption in said mortgaged premises and from ever thereafter setting up any claim to the same saving however the rights given by this Statute in that behalf to the said Granville Herring his Grantees or assignment Creditors to redeem said land from said sale And it is further ordered that said Master in Chancery report his doings to this Court and that this cause be Continued.

Benj. R. Sweden

Enclosed

Filed March 1862

Attest my Clerk

And afterwards to wit on the 6th day of March 1862 it being one of the days of the February Term of the Hennepin County Circuit Court the 1862 the following entry was made as appears of Court record to wit.

Francis M. Morehouse

v.

Granville Herring et al

And now again come the parties by their solicitors & thereupon the Court

Sold by
John C. Clark & Son,
and Book Store,
Chicago, Ill.

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- defendant Granville Herring prays an Appeal to the Supreme Court which is allowed: Conditioned that he the said Granville Herring file his appeal bond to Complainant with John R Herring as surety in the sum of Two hundred dollars within 30 days.

Appeal Bonds.

Know all men by these presents that we Granville Herring and John R. Herring of the County of Winnebago in the State of Illinois are held and firmly bound unto Francis M. Woodhull in the penal sum of five hundred dollars for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators and assigns jointly and severally firmly by these presents—

Witness our hands and seals this fourth day of March in the year of our Lord one thousand eight hundred & sixty two: The condition of the above obligation is such that whereas the above named Francis M. Woodhull died on the sixth day of March A.D. 1862 in the Circuit Court of said

R. S. H.

Winnebago County recover a decree for one thousand six hundred & ninety five dollars and sixty six cents with Costs of suit against the above named Granville Herring in a certain Cause then pending in said Court wherein said Francis M. Woodhull was Complainant and said Granville Herring Julius P. Thorne Ezekiah H. Moffatt Racine & Mississippi

R. S. H.

Rail Road Company and persons unknown were defendants and from which said judgment the said Granville Herring has taken an appeal to the Supreme Court of the State of Illinois: Now if the said Granville Herring shall pay the said judgment with interest and damages in case the said decree shall be affirmed and shall prosecute his appeal duly and with effect then the above obligation to be void

R. S. H.

otherwise to remain in full force and effect:

The name Nozekiah N.

Moffatt interlined & the

words decre inserted

as above & so to my initials

before the signing of this

bond

R. S. Hawley

Samuel Herring (Seal)

J. R. Herring (Seal)

Endorsed "Filed April 4, 1862

O. Penoyer Clerk

State of Illinois }
Winnebago County } I, O. Penoyer Clerk of the Circuit
Court in & for said County, do hereby
Certify that the foregoing to be true full & correct copies of all
the papers on file, & also copies of the entry of the Court record
in the foregoing entitled Cause, in my office, duly compared
therewith by me:

Witness my hand & the seal of said Court at
the City of Rockford Illinois this 19th day of
April 1862

O. Penoyer Clerk

Fees for record

\$11.50

And now, to wit on the first day of the April term of the Supreme Court of the State of Illinois, before the Honorable the Justices of the said Court, at the Court-house in Ottawa, in the County of La Salle, comes the said Granville Fleming, by Burnap & Harvey his solicitors, and says, that in the record and proceedings aforesaid, and in the making of the decree aforesaid, there is manifest error in this, that the said decree declares the instrument in writing in the said bill called a promissory note, to be a promissory note; whereas in truth and in law the said instrument is not a promissory note according to the custom of merchants, or the statutes of the State of Illinois respecting negotiable instruments. And there is error in this, that the said decree declares the said Woodhull to be the indorsee of the said note; whereas the said note was not capable of being transferred by indorsement, not being a negotiable instrument as aforesaid, and was not in fact indorsed to ^{him}, and there is error in this, that the said decree declares that the said note and mortgage had been assigned to the said Woodhull; whereas the allegations and proofs of the said Woodhull do not show any valid assignment of the whole of the said note and mortgage to the said Woodhull, nor more than a moiety thereof. And also there is error in this, that the said decree finds to be due upon the said note and mortgage, the sum of sixteen hundred and ninety-five dollars and sixty-six cents, the said sum including ten per cent interest from the time when the said note and mortgage became due; whereas interest ought not to have been cast ~~at more than~~ upon the said note and mortgage at more than six per cent to the year, after the same became due. ^{below} And there is error in this, that the said decree was

State of Illinois
Supreme Court
Francis M. Woodhull

— Appellee
vs

Granville Herring ~~State~~
~~imprisoned with Lockers~~
Appellant

} Appeal
from
Winnebago
Circuit Court

And the Said

Appellee above named, by James
M. Wight his Attorney, Comes and
Says that, there is no such Error
in the records and proceedings in
the above Entitled Cause in the
Court below, as is by the appellant
in his above assignment of
Errors thereof Supposed.

James M. Wight
atty for appellee

Supreme Court

Francis M. Woodhull
appellee vs

Granville Herring
Et al appellant
~~~~~

Joinder in Error  
~~~~~

~~~~~  
James M. Wright  
att'y for appellee  
~~~~~


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Winnetago Co. Cir. Court.

Francis M. Northcutt :

^{vs}
Granville Herringshaw

Record.

Filed April 23^d 1862
L. Leland
Clerk

Col. W. Thight, Com. Sec.

Blair & Haring, Sec.

In the Illinois Supreme Court,

APRIL TERM, 1862.

GRANVILLE HERRING,
Impleaded below with
JULIUS P. THOMAS,
HEZEKIAH H. MOFFATT,
RACINE AND MISSISSIPPI
RAILROAD COMPANY,
and unknown persons,
agt.
FRANCIS M. WOODHULL.

} Appeal from Winnebago Co. Circuit Court.

ABSTRACT.

THE BILL OF COMPLAINT.

1. Filed 22 Nov. 1860, by Woodhull, of Otsego County, New-York, states that 18 Jan. 1854, Granville Herring, of Winnebago County, Illinois, was indebted to Benjamin Moffatt, then of the same county, but now deceased, in \$1200, and made his promissory note for that sum, payable with interest annually at ten per cent, to said Benjamin Moffatt or bearer, five years from date.

To secure the payment of the note Granville Herring, on same day, made to

- 2 Benjamin Moffatt a mortgage in fee of eighty acres of land described therein, lying in the county of Winnebago.

- 3 Subsequently, on 15 April, 1856, Herring mortgaged the east half of the land to the Racine and Mississippi Railroad Company, the east half of the premises mortgaged to Benjamin Moffatt, to secure payment of \$1000, and that Company has assigned the mortgage to some person or persons unknown.

There is due on the mortgage to Benjamin Moffatt \$1200 with interest from 18 Jan. 1858.

On 6 May of year aforesaid, Benjamin Moffatt for a valuable consideration, assigned the note and Mortgage to Daniel C. Moffatt and Hezekiah H. Moffatt, then of Orange County, New York, by a written guaranty on the note, and by an instrument in writing under seal, and the instrument, note and mortgage were delivered to them.

- 4 On 25 April, 1857, Daniel C. Moffatt then having the note and mortgage in his possession, and being by Hezekiah H. Moffatt authorized so to do, for and in behalf of himself and the said Hezekiah H. Moffatt, assigned the note and mortgage to complainant Woodhull in writing, and delivered the same to Woodhull; and he avers that Hezekiah H. Moffatt authorized the delivery of the note and mortgage by the said Daniel C. to him Woodhull, for the purpose of assigning the same, and thereby assigned his interest therein to the complainant Woodhull.

Defendant Thorpe, the Rail Road Company and persons unknown, claim some interest in the premises.

- 5 Defendants to answer without oath. Prayer for the usual decree for sale of premises for the mortgage money, and for general relief.

Appended to the bill, for part thereof is a copy of a promissory note, with a guaranty written at the bottom thereof, as follows:

Five years from date, I promise to pay Benjamin Moffatt or bearer twelve hundred dollars with interest at the rate of ten per cent per annum yearly, for value received, according to the conditions of a certain mortgage deed bearing even date herewith. Witness my hand at Howard, Jan'y 18th, 1854.

GRANVILLE HERRING.

- 6 I guarantee the payment of the above note.

BENJAMIN MOFFATT.

A copy of the mortgage is also appended to the bill, as part thereof. It is an indenture in the usual form, conveying s. h. n. w. q. s. 21 t. 28 r. 10, in the town of Howard, Winnebago County, Illinois, with a defeasance, upon the note being paid.

8 There is also appended to the bill as part thereof, an assignment of the note and mortgage, under the hand and seal of Benjamin Moffatt, dated 6 May 1854. It purports to be annexed to the mortgage, and in consideration of \$1200, sells, assigns, transfers and sets over to Hezekiah H. Moffatt and Daniel C. Moffatt, "the annexed mortgage and the promissory note therein described," and all monies secured thereby, and all my right, title and interest in the real estate therein described. "And I do hereby authorize the said Hezekiah Moffatt and Daniel C. Moffatt in my name or otherwise, to collect and obtain payment of the same in the same manner as I could, had not these presents been executed." Habendum of the note, mortgage deed and premises mentioned therein, to Hezekiah and Daniel Moffatt, their heirs, executors, administrators and assigns forever. Also a covenant that the money is unpaid, and of right to assign, and a guaranty that the money shall be paid according to the note and mortgage, and a covenant to pay the money himself in case it shall not be so paid.

9 There is also annexed to the bill an assignment from Daniel C. Moffatt to the complainant. It purports that Daniel C. Moffatt, in consideration of \$1352.50, grants, 10 bargains, sells, assigns, transfers and sets over to Woodhull the mortgage, which was by Benjamin Moffatt duly assigned to Hezekiah H. Moffatt and Daniel C. Moffatt by deed dated 6 May 1854 together with the note accompanying the mortgage, and all the monies and interest, with habendum to Woodhull, his executors, administrators and assigns. "And I do hereby make" Woodhull, "my attorney in my name or jointly with the name of the said Hezekiah H. Moffatt or otherwise to take all lawful means for the recovery of the money, and to discharge the same as fully as I or the said Hezekiah H. Moffatt might do if these presents were not made. Also a covenant that the sum above mentioned is due on the note and mortgage, and that I have the right to sell, transfer and assign the same as aforesaid. Date, 25 April 1857.

PROCESS.

13 Writs of summons were issued and served upon Granville Herring, the Racine
14 and Mississippi Railroad Company and Julius P. Thorne.

ANSWER OF GRANVILLE HERRING.

15 Filed 11 Feb. 1861. At time of the making of the note and mortgage, he purchased of Benjamin Moffatt the land described in the mortgage, and for part of the purchase price made the note and mortgage, and the note and mortgage were not made to secure the payment of money loaned; and the consideration was none other than the purchase money for the land. The purchase of the land was made at Howard, Winnebago County, Illinois, at the time when the note and mortgage was executed, and not elsewhere or at any other time, and he insists that the note is usurious as to all the interest above six per cent.

16 The complainant Woodhull, when he purchased the note and mortgage had notice of the consideration; and he insists that Woodhull is not intitled to recover the usurious interest, whether he had notice or not.

He has no knowledge of the assignments, but presumes they are truly copied.

He never executed any mortgage of the land mentioned in the bill to the Racine and Mississippi Rail Road Company, and that Company do not to his knowledge, claim any interest in the mortgaged premises, or any part thereof; and he insists he is not liable for the costs of making that Company or unknown persons parties.

Defendant Thorne has no interest, but had formerly a judgment, of about \$875, but it was collected by the sheriff on execution, which was not returned.

17 He paid upon the note and mortgage four sums of \$100 each, at the end of one, two, three and four years respectively from date, or thereabouts, and they were indorsed upon the note. And he insists that those payments shall be applied towards the discharge of the principal and such interest, if any, as may be lawfully charged.

The answer then claims a set-off, which was not insisted upon at the hearing.

REPLICATION.

19 Was filed 12 Feb. 1861.

11 An affidavit of the non-residence of defendant Hezekiah H. Moffatt and the unknown persons defendants was filed, and notice to them was published.

HEARING.

EVIDENCE OF COMPLAINANT.

- 25 The mortgage was read in evidence, as above described.
- 26 The note and guaranty at the bottom, and receipts of four years' interest indorsed.
- 28 The first indorsement was dated March 1855, and the second April 1856, each stating one years interest to be received, without expressing the sum, and each stated that a receipt was given. The time was dated the 22 June 1857, and states \$120 to be received in full for interest to 18 Jan. 1857. The fourth is without date, and states the receipt of one years interest due 18 Jan. 1858.
- 26 27 The assignments of the note and mortgage as attached to the bill.

EVIDENCE OF DEFENDANT HERRING.

DEPOSITION OF JOHN R. HERRING.

- 31 Taken in February term in 1862. The 80 acres of land described in the mortgage was got by Granville Herring of Benjamin Moffatt, 18 Jan. 1854, for \$1200 on a credit of five years, and the premises were mortgaged back for the purchase price. The note and mortgage in question were given for said purchase money and interest,
- 32 and for nothing else. No part of the note and mortgage was for borrowed money. I drew up the note and mortgage myself, and heard the contract between the parties.
- Cross examined.* The parties stated to me the terms of the contract. The terms of sale were twelve hundred dollars on five years time. I think the annual interest on deferred payments was ten per centum—the above rate of interest was agreed upon by and between the parties. The terms of the note and mortgage express the true contract as to time and terms of payment.
- 30 Two receipts signed by Hezekiah H. Moffatt and Daniel C. Moffatt, dated 20 March 1855 and 12 April 1856, acknowledging each the receipt of \$120 for interest on the note and mortgage.

DECREE.

- The cause was heard at February term 1862, and the decree was entered 5 March 1862. It states that the bill was taken for confessed against the defendants other
- 33 er than Granville Herring. It declares that Granville Herring made the promissory note described in the bill; that Woodhull is the bona fide holder and indorsee of that promissory note, and assignee, of the mortgage; that Woodhull is the *bona fide* holder and indorsee of the note and assignee of the mortgage; that the note and mortgage have been assigned to Woodhull in the manner in the bill described, and are now due and unpaid, and that the sum of \$1695.66 is due thereon. It decrees that within thirty days Granville Herring pay to Woodhull the money and interest, and costs, and that on default, the master sell the premises in the manner directed by the decree, subject to redemption.

An appeal was taken and perfected.

ERRORS ASSIGNED.

- 37 1. The decree declares that the writing called in the bill a promissory note to be a promissory note, when it is not by custom of merchants or statute.
2. It declares Woodhull to be the indorsee of the note, when it was not negotiable, and was not indorsed to him.
3. The decree declares that the note and mortgage had been assigned to Woodhull; whereas a valid assignment of the whole, or more than a moiety, is not shown.
4. The decree finds \$1695.66 due on the note and mortgage, including ten per cent. interest after due, instead of six.
5. It allows ten per cent interest on the note and mortgage, when no interest was allowable at any time, or at most not more than six per cent.
6. The decree ought to have been in favor of Granville Herring, and not for Woodhull.

BURNAP & HARVEY,
Solicitors for plaintiff in error.

Supreme Court.

April Term 1862.

Garnett Herring.

impleaded &c.

agt.

Francis M. Woodhull.

Abstract.

Filed April 23. 1862

L. G. Lane
clerk

Burnap & Harvey.

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

*Appeal from Winnebago
Circuit Court.*

THE note and mortgage in question in this cause are not subject to the defence attempted in this cause by the appellant.

The note is properly endorsed, the endorsement being on the face, which is sufficient, it not being necessary that an endorsement shall be on the back of a note.

The endorsement is sufficient in form. Any form may be used which manifests an intent to transfer the note; Story on Prom. Notes, 121; and figures put on a note for that purpose have been held to be an endorsement.

Our endorsement is sufficient in form. It is a guaranty, such as has been held to be good to any holder of the note as a guaranty, and as sufficient to convey and transfer the title in the note to such holder as an endorsement.

3 Seam. 489.
20 Vermont R. 499.

The assignment of the mortgage is sufficient. It is stated in the bill that, by and with the consent and authority of H. H. Moffatt, D. C. Moffatt assigned the mortgage to the appellee. H. H. Moffatt was made a defendant in appellee's bill, and it was taken for confessed against him.

The defence cannot be made against a *bona fide* holder of a note. It is a sort of modified usury, (see 19 Ill. 121,) and subject to the rules that govern the defence of usury; the statute giving it being no broader than the statute allowing the parties to plead usury.

3 Seam 388.

24 Ill. 345, 347.

See also 14 Ill. 51.

Interest was paid on this note twice, (to wit, June, 1857, and January, 1858,) after the act of 1857 went into effect. Was not such payment a legalizing of the note after it became lawful to make such notes? *It must be true that the payment must stand as it was made.* It was a voluntary payment, made on account of interest, and no other application of the payment can now be made.

Although the note in form requires the 10 per cent. to be paid as interest, was not the supposed interest, in point of fact, a part of the purchase price of the land, and, in equity, recoverable as such, though called interest; and will not this Court, for the purposes of justice, look through the form of the transaction to its substance?

The note in question, notwithstanding its reference to the mortgage, is a negotiable promissory note. See

31 Eng. Com. Law R. 180.

18 Ill. 563.

19 Ill. 392.

It was proper to compute interest at the rate of 10 per cent. to the date of the decree. 16 Ill. 108.

JAS. M. WIGHT,
Attorney for Appellee.

253

Supreme Court

Granville ~~Herring~~

Francis Woodman

Apples Brijz

Anthony

Filed May 2, 1862

Leland

Clerk
1862

In the Illinois Supreme Court.

April Term, 1862.

Granville Herring

agt.

Francis M. Woodhull.

} Argument for Plaintiff.

Note not
negotiable.

1. The alleged promissory note, is not a promissory note, according to the law merchant, or statute.

It purports on its face to be subject to conditions contained in a sealed instrument which cannot be identified by the note. It would require hard evidence to identify the sealed instrument referred to; making the note an incomplete instrument, which could not be made operative without the help of oral evidence, and so not negotiable.

The authorities quoted by the defendant on this point, bear no weight. In Beale agt. Bridgood, 7 Barn & Cres. 458, the consideration was explained in the note. In Wise agt. Charlton, 31 Esp. Com. Law 189, the note mentioned

the deposit of collateral security, and the question was about stamp duties.

In 18 Illinois 563, and 19 Illinois 392, the question was whether a bank certificate of deposit was a promissory note.

Not indorsed.

2. If the note were negotiable, still it was not transferred by indorsement.

There is no writing on the back, or on the face of the note, purporting to transfer it. But the defendant in error contends that the guaranty written under the note, by the payee, amounted to an indorsement.

The authorities quoted by defendant from Byles, Story, Whitty, 16 East and 18 Strange, with one exception, finally center in the case of Regt. Biggs, reported at length in 3 Peere Williams 420. This was an indictment under statute 8 and 9 William 3, c. 20 § 36. ~~The offence was~~
~~that~~ ~~that defendant~~ ~~afforded it~~ ~~it~~ ~~was~~ ~~an~~ ~~indorse-~~
~~ment~~ ~~on~~ ~~a~~ ~~credit~~ ~~of~~ ~~payment~~ ~~written~~ ~~in~~ ~~red~~
~~ink~~ ~~across~~ ~~on~~ ~~the~~ ~~face~~ ~~of~~ ~~a~~ ~~bank~~ ~~note~~

~~of the Bank of England. & This act made~~
~~it felony without benefit of clergy.~~ This act
made altering or raising an indorsement on
any bank bill or note, felony without bene-
fit of clergy. The offence was taking out
with licence since a credit of payment of
ninety pounds, written across the face
of a ~~post~~ post-note of the Bank of England,
in red ink. There was a special verdict find-
ing that in the year before the passing of
the act, the practice commenced of ~~make~~
writing all payments on notes upon and
across the writing of the notes, and that such
inscriptions have ever since been called
indorsements. The sufficiency of the evidence
was discussed before the judges, and a ma-
jority was in favor of the conviction. But
the defendant was transported and not exe-
cuted.

This case of *Reg. v. Bigg* and the case of
Gibson v. Powell, 6 Howard Miss. 60, are the
authorities on which the doctrine that the
indorsement of a note may be upon its face.

Story on Bills §121, indeed refers to a
German and a French writer. He quotes in
a note that Keene says, "Id quod vocant

indossamentum (das indossement), quia in dorso inscribi solet." This does not intimate that the indorsement might be on the face, but rather on what the French call an allonge. ~~Pothier~~ ^{Pothier} de Change is quoted, & referred to, but no extract made. 4 Louisiana 303, shows that in Louisiana where the civil law ^{derived from France,} practice, ~~provides, an assignee by a separate~~ ~~his paper~~ assignment by a separate paper will enable the assignee to recover judgment on a note; so that probably in France for most purposes, the mode of assignment is immaterial.

In Gibson v. Powell, 6 Howard Miss. 60, the ~~defendant had agreed~~ for the balance of an account stated. Gibson had ~~agreed~~ ^{made to him,} promised to transfer to Powell a note of one Brown; and the note sued on was produced with the signature of Gibson under that of Brown. The ~~facts~~ ^{the facts} and that Gibson passed the note to Powell as indorser, were confessed by ~~denumer,~~ ^{proved} on the general issue; and Powell recovered.

Justice in this case was doubtless done between the parties. But we hold that it was on doubtful principles, and that as a pre-

cedent, it is unworthy to be followed, to the unsettling of a ~~fixed rule of the commerce~~ and overturning of a fixed rule of the commercial world. There was no necessity for establishing such a precedent; for Powell had a good and plain right of action on the accounts stated. The recovery too was rather upon the oral agreement than the signature.

The other quotations of the defendant on this point are not applicable. Schwartz apt. Herentkind, 26 Illinois 208, was the case of an indorsement on the back of a note. Keaton apt. Knibb, 3 Scammon 489, was the case of a guaranty indorsed on the back of a note; and Partridge apt. Davis, 20 Vermont 499, was the same,

3. The guaranty in question, not naming a guarantee, ~~could not be one~~ could not be negotiable, and therefore could not imply that it was intended to give the note a quality of general negotiability. Story on Promissory Notes, 648 §484.

4. It could not have been the intention of the parties that the guaranty written by Benjamin Maffatt under the note, should operate as a merchantile assignment of the note, for the reason that an equitable assignment was made by him at the same time, by an instrument under seal, and the supposed assignment by the guaranty is ~~only~~ at best only implied. Expressum facit cessare tacitum.

And besides a sealed instrument is of a higher nature, in legal phrases, it ~~imports greater care and deliberation~~ than a bond agreement of any kind. It imports greater care and

guaranty
not negotiable.

Sealed assignment
contradicted by
assignment.

deliberations, and merges all previous and contemporary agreements not under seal, whether written, oral or implied; and it must be taken to be the exclusive expression of the intention of the parties.

5. This must especially be the case, ~~as~~ ^{where} when the sealed instrument, as in the present case, contradicts the assumed implied agreement,

The sealed assignment of the note and mortgage, by Benjamin Moffatt to Hazeckiah H. Moffatt and Daniel C. Moffatt, set out in the record, authorises them "in the name of the assignor or otherwise", to collect the money secured, in the same manner as the assignor could, if the assignment had not been made. Now the note if assigned according to the customs of merchants, or statute, could not be sued in the name of Benjamin Moffatt, the ~~payee~~ original party payee, and after the equitable

Contradicted by
express assignment.

assignment under seal, the mortgage could not be foreclosed in the name of Benjamin Maffatt. Therefore the only way in which the money could be collected in the name of Benjamin Maffatt was to sue the note in his name. This shows that a mercantile assignment of the note could not have been meant by the parties.

6. The record shows an equitable assignment of the mortgage and note from Daniel L. Maffatt to the complainant, but it does not show an equitable assignment ~~of~~ to him of the other half, belonging to Hezekiah H. Maffatt; and the plaintiff insists that the record does not show any legal assignment of the half of Hezekiah H. Maffatt to the complainant; and he insists therefore that the complainant below has not shown himself entitled to foreclose the mortgage for the whole debt, and therefore that his suit must fail.

Equitable assignment
of only half of debt.

- Supposing ~~the assg~~ a legal assignment of the note from Benjamin Moffatt to Hezekiah H. Moffatt and Daniel L. Moffatt, still there is no legal assignment of the note from Daniel L. Moffatt to the complainant below shown. There assignment of Benjamin Moffatt having been made to two persons not partners, the actual possession of the note must have been in one of them and not both, and the possession of the note in the hands of a third person does not raise the presumption that both parties have assigned the note to that third person, so as to enable him to sue on it, at least in equity, however it might be at law.

By his assignment under seal, Daniel L. Moffatt professes to assign the whole of the ~~note and mortgage and note~~ to the complainant, without professing to act as attorney for Hezekiah H. Moffatt, or to act in his name, or shewing any assignment from him. It merely contains a covenant that he Daniel L. Moffatt has good right to sell and assign
"as aforesaid."

So the plaintiff in error insists that the record shows no assignment to the complainant of the interest of Hезekiah H. Moffatt in the note and mortgage; and that consequently his suit must fail.

7. The complainant maintained that making Hезekiah H. Moffatt a defendant, supplied the defect caused by the want of proof that he the complainant had acquired the interest of Hезekiah H. Moffatt in the mortgage and note.

But this could not be so. Even if Hезekiah H. had appeared and put in his answer under oath, that he had parted with his interest to the complainant, that answer could not have been given in evidence against the plaintiff in error.

Hезekiah H. Moffatt was not served with process, and was notified only by advertisement. He may have made an equitable assignment

Making H. H. Moffatt
party will not supply
defect.

of his interest in the note and mortgage to a stranger, and that stranger may, if the decree in this cause stands, be harassing the parties with fresh litigation. Hezekiah H. Moffatt moreover has three years to appear and get the decree set aside as to him.

8. The decree therefore in this case violates the rule in equity, to do complete and final justice to all parties interested in the subject of litigation, and close every opening to future litigation, whether with complainants and defendants. Story's Eq. Pl. p. 85 § 172, latter part. ~~Baldwell apt. Jaggart, 4 Peters 202, 203.~~ Knight apt. Knight, 3 Peere Williams 351. ~~Baldwell apt. Jaggart, 2 Peters 202, 203.~~ West apt. Randall, 2 Mason 190, 191.

Rule to do complete justice violated.

The rate of interest which the note and mortgage bear, is made a question by the assignment of errors. The plaintiff insists

9. That the note and mortgage are absolutely void under all circumstances as to that part of the interest which exceeds six per cent, in whosever hands it might be, and by whatever assignment.

The old interest law, under which the decision in *Banking apt. Underhill, 3 Scammon 388* was made, ^{Gates St. 343} ⁱⁿ ^{made} ^{being} the same as R. S. c. 54 §§ 1, 2, 3, 4, by the ~~third~~ ^{second} section, forbade taking more than ~~six percent~~ the rates of interest expressed in the first ~~and second~~ sections but did not declare the security void for any part. The ~~fourth~~ ^{third} section provided a penalty which could not well apply to an assignee.

But the act of ^{in force when the note was made} interest act of 1849, §2, makes the note void in effect as to the unlawful interest, by authorising a plea going upon the ground that the security is void for the excess of interest, without restricting that plea expressly or impliedly to an action by the original payee.

Plea good to note
in brief at law, for
avoid extra interest.

10. If the position of the plaintiff in error be correct, that no legal assignment of the note was made, then the note if sued at law must be sued in the name of the original payee, and the plea would be admissible.

Assignees took the as-
signed subject to
all objections.

11. There being no other than equitable assignment of the note and mortgage, the assignees took them subject to the same objections to which they were in the hands of the original party ~~lending~~ to whom they were made; and the note and mortgage having been executed while the interest act of 1849 was in force, and the consideration not being money loaned, could not lawfully entitle the assignee to recover more than six per cent interest.

Principal and interest
est price of land.

12. The defendant in error however meets this position by saying that the note and mortgage were for the price of land, and that the principal and interest mentioned in the note were only the expression of the amount of the price of the land, ~~and were to be taken as all principal.~~ Of course they were to be taken as all principal.

He quotes no authority for this doctrine, and we believe none can be found. ~~The parties~~ ~~But of parties else~~ The parties used the term interest, and there is nothing to show that they did not mean interest.

If this position of the defendant be true, no interest exceeding six per cent interest could be charged after the pay day. The defendant seeks to blow hot and cold.

If no interest at all
money due

No contract for interest
after debt due.

13. According to the words used by the parties, they contracted for the payment of ten per cent interest till the money fell due, and no longer. Interest after that time was given by law, and not by contract. All the authorities on this point are quoted in the brief. The leading case is 22 Howard 118, and the arguments and decision in that case fully sustain the doctrine. In *Phinney v. Baldwin*, 16 Illinois 108, the court put its decision upon the intention expressed by the parties.

In case it is not clear what the parties intended by their contract, that construction should be given to it which favors the general policy of the law.

It is understood that this point is involved in a case submitted by Judge Seland, at the present term.

Payments made up to
call to principal and
interest.

14. The defendant in error insists that the four payments of \$120 ~~as~~ for interest, must stand as payments of interest. This matter is settled in favor of the plaintiff, by the doctrine stated by this court in Madden v. Ames, 24 Illinois 384.

So the plaintiff in error insists upon the following positions:

I. The complainant below was not entitled to a decree on his own showing.

II. That he could not have been entitled to more than six per cent interest at any time.

III. If he was ever entitled to more than six per cent interest, he could not be after the time of payment expressed in the securities.

Claims defined.

It is not a little strange, upon examining the authorities upon which rest the doctrine that an indorsement to transfer a note can be made ~~otherwise than~~ on the face, asserted so positively as it ~~is~~ is, ~~next~~ to see what little foundation there is for the doctrine.

The only appearance of a foundation ^{in authority} for the doctrine, is the case of *Per apt. Bigg, Peere Williams 420, and 1 Strange 18*. The case was, that in the year 1696, the Bank of England commenced the practice of inscribing payments on its post-notes in red ink across the face of the writing, instead of on the back in black ink, ~~and~~ as had before that time been practiced, and that these inscriptions still went by the old name of indorsements although not on the back of the note. The next year an act of parliament was passed, making it felony to alter or erase an indorsement on one of these notes. Now unless these words of the act applied to one of those inscriptions in red ink on the face of the notes the enactment could not have had any application, but would have been nugatory. *Bigg* was indicted for ~~proving~~ one of those inscriptions in the year ~~1711~~ 1714, and was convicted. The matter of the legality of the conviction.

*Per apt. Bigg
renewed.*

Payments, small appli-
cable to principal and
interest.

14. The defendant in error insists that the four payments of \$120 ~~as~~ for interest, must stand as payments of interest. This matter is settled in favor of the plaintiff, by the doctrine stated by this court in Madden v. Ames, 24 Illinois 384.

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Claims defined.

tion was argued before the judges on a special verdict, and a majority sustained it. But the defendant was transported, and not executed.

This case surely does not tend to show that a mercantile indorsement to transfer a promissory note or bill of exchange can be made otherwise than on the back. ~~The statute of this state puts both species of~~

The statute of Illinois puts both species of instrument upon the same footing in regard to transfer, and any decision that a note can be transferred by a ~~doubtful~~ writing ~~made~~ otherwise than on the back of it, will extend the same rule to bills of exchange.

The case in 6 Howard Miss. R. 64, stands alone, and must be regarded as a backwoods decision, of doubtful merits. It would probably have been far better for the Supreme Court to have sustained the judgment below, and to have held that a promissory note signed by the payee was an absurdity out of which nothing could be made, and to have turned the plaintiff below round upon his action on the account stated.

Statute of Illinois
on assignment of
notes and bills.

6 How. Miss. R. 64
stands alone.
Reviewed.

But if a transfer of a bill or note may be made by a writing on its face, that writing must doubtless be written across the lines. A separate writing on the same side of the paper, cannot answer the description of a writing on the face.

The certainty and celerity which ought to attend commercial ~~for~~ transactions certainly cannot be promoted by encouraging irregularities in the ~~transfer of commercial~~ indorsements and transfer of commercial instruments.

Francis Burrage.

253-144

Supreme Court.

Granville Herring

apt.

Francis M. Woodhull.

Argument for Plff.

Julia May, 9.1862

J. Leach

C/M

Burnap.