DECISIONS

OF

THE SUPREME COURT

OF THE

STATE OF ILLINOIS.

DECEMBER TERM, 1819, AT KASKASKIA.

Present, THOMAS C. BROWNE, JOHN REYNOLDS, WILLIAM WILSON, *Associate Justices.*
JOSEPH PHILIPS, *Chief Justice, absent.*

JONATHAN TAYLOR, Appellant, *v.* MICHAEL SPRINKLE, Appellee.

APPEAL FROM GALLATIN.

In all special pleas to the consideration of a note, the manner of avoiding the obligation ought to be shown; a failure to do it is error.

*Opinion of the Court.** This was an action of covenant. The fifth plea states, that the consideration failed. This plea was demurred to, and the demurrer sustained by the court. The validity of the fifth plea, is the only point before the court. The plea was filed under the statute,† which introduces a new remedy contrary to the common law, and ought not to be extended too far; and in all special pleas, the manner of avoiding the obligation ought to be shown. As the precise manner is not shown by this plea, it is insufficient, and the demurrer to it was properly sustained. The judgment of the circuit court is affirmed, with five per cent. damages and costs. (1)

Judgment affirmed.

* Justice BROWNE having decided this cause in the court below, gave no opinion.

† Laws of 1819, page 59.

(1) The principle asserted in this case has been repeated in numerous cases since this decision was made. A reference only to them is necessary. *Cornelius* v.

ELIJAH SMITH WHO SUES FOR THE USE OF WILLIAM JOHNSON, Appellant, *v.* WILLIAM BRIDGES, Appellee.

APPEAL FROM MADISON.

Although no particular form is necessary to make a note, yet the writing must show an undertaking or engagement to pay, and to a person named in it, or to bearer or holder of the instrument.

*Opinion of the Court.** The plaintiff below, states in his petition, that he "holds notes on, &c." and the instrument on which suit is brought, has not a single feature of a note, inasmuch as it does not appear there was any undertaking by the defendant to pay any person at all.

Although no particular form is necessary to make a note, yet the writing must show an undertaking or engagement to pay, and to a person named in it, or to bearer or holder of the instrument. The judgment of the court below is reversed, and the cause remanded to the court below. (1)

Judgment reversed.

Vanorsdale, post. *Pool* v. *Vanlandingham, id. Bradshaw* v. *Newman, id. Sims* v. *Klein, id. Swain* v. *Cawood*, 2 Scammon, 505. *Vanlandingham* v. *Ryan*, 17 Illinois Rep., 25.

A plea of failure of consideration to an action upon a note, should state particularly in what the failure consisted. General allegations are not sufficient. *Parks* v. *Holmes*, 22 Illinois Rep., 522.

Under the general issue it is not competent to show a total or partial failure of consideration of a promissory note. *Rose* v. *Mortimer*, 17 Illinois Rep., 475.

Under a plea of a *total* failure of consideration, a *partial* failure can not be given in evidence. *Sims* v. *Klein*, post. *Swain* v. *Cawood*, 2 Scam., 505.

* Justice REYNOLDS having been counsel in this cause, in the court below, gave no opinion.

(1.) A promissory note is defined to be "a promise or agreement in writing to pay a specified sum, at a time therein limited, or on demand, or at sight, *to a person therein named or his order, or to bearer.*" Chitty on Bills, 516. *Walters* v. *Short*, 5 Gilm., 259. All notes must contain the name of the payee, unless payable to bearer. Bailey on Bills, 22.

No action can be maintained on an instrument in writing for the payment of money, unless the instrument shows on its face to whom it is payable. *Mayo* v. *Chenoweth*, post.

Bills of exchange and promissory notes should be made payable to some person specified, but this may be done without inserting the name, if the payee be so certainly specified or referred to, as to be ascertained by allegations and proofs. *Adams et al.* v. *King et al.*, 16 Ills. Rep., 169.

An instrument purporting to be a promissory note, payable to one of two persons in the alternative, can not be sued on as such. *Musselman* v. *Oakes*, 19 Ills. Rep., 81.