

State of Tennessee &c.

At a Court of Chancery begun and held at the Court house in the
Town of Franklin on the 3rd Monday being the 28th day of October
A.D. 1845 for the District composed of the Counties of Davidson and
Williamson in said State. Present the Honorable Terry H. Rusk
Chancellor for the Middle Division of the State aforesaid.

Jesse Isler Adams

Compt^r

v.

William H. Turner

Deft

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Be it remembered that on the 2nd day of December 1842 a Bill of Complaint
was filed in this Honorable Court which is in the words following to wit
To the Honorable Court in said Chancery holding the Court of
Chancery at Franklin in the State of Tennessee,

The Bill of Complaint of Jesse Isler Adams with the bill annexed of
Joseph H. Bryan Dec. a citizen of Fayette County, Tennessee against
Wm. H. Turner a citizen of Davidson County in said State.

Verily complaining sheweth unto Your Honor Your Orator aforesaid, that
at the September Term 1840 of Montgomery Circuit Court the said Wm. H.
Turner recovered against Your Orator in his capacity of Adams with the bill
annexed of Joseph H. Bryan Dec. a Judgment for \$140.00 beside Costs.
Said Judgment was recovered by motion, without notice to Your Orator, with-
out the service upon him of any kind of process, and without any opportunity for
his part to defend himself against said motion. The Judgment was a joint
one against Henry H. Bryan, Jesse H. Bryan and Your Orator as Adams aforesaid.
From the record of said judgment it appears that on the 2nd day of July 1838 a
note was executed by H. H. Bryan & Co. to Wm. H. Turner for a thousand
dollars, payable to Wm. H. Turner one day after date. That when said note
the said Wm. H. Turner had at May Term 1840 of said Circuit Court of
Montgomery County recovered Judgment against Henry H. Bryan and the
said Wm. H. Turner and that at the said September Term 1840 of said Court
the said Wm. H. Turner upon the allegation that he was the Secy of said H. H.
Bryan & Co. in said note, and that the holder of it had recovered against him a
judgment thereon, founded his motion against the said Henry H. Bryan

Jesse A. Bryan and Law Orator as Advers. with the bill annexed of the said Joseph Mc Bryan & Co. obtained judgment against them all as aforesaid. The fact of the said Wm H. Turner being the surety of the said Mc Bryan & Co. did not appear upon the face of said note; and therefore when said motion was made a jury was empanelled to try that fact. The motion is entered thus - Wm H. Turner vs. Henry Mc Bryan, Jesse A. Bryan and Jesse Isler Advers. with the bill annexed of Joseph Mc Bryan & Co. It is not alleged in said record that the said Joseph Mc Bryan & Co. was on the 24th of July 1838, the date of the execution of said note, a partner in the firm of Mc Bryan & Co. or that this proposition in so many words was submitted to the jury to be tried, but the jury was simply sworn to try the fact of the suretyship of the plaintiff in said motion for the defendants; and the verdict was rendered in the same general terms to wit, that the plaintiff was the surety of the defendants. Now as the name of the said Joseph Mc Bryan does not appear on said note, he could not be considered a principal in it, and liable to the motion of the said Wm H. Turner upon any other supposition than that of his being at the time of the execution of said note, a member of said firm of Mc Bryan & Co. And although that proposition was therefore involved in the issue that was tried by the jury, yet whether there was any evidence adduced to the jury of the said Joseph Mc Bryan's being a partner of said firm or not, Your Orator does not know, but he strongly suspects there was not, inasmuch as the said Joseph Mc Bryan certainly was not a member of that firm, and no such evidence that he was such member could have been brought forward upon the trial of said issue. Your Orator does not deny that the said Wm H. Turner was the surety in said note, not for the persons then composing the firm of Mc Bryan & Co. and not for the said Joseph Mc Bryan, who was no member of said firm, nor any party to said note. Your Orator is therefore warranted in believing that the said proceeding by motion the same being ex parte, it was merely proved to the jury that Mc Bryan & Co. were the principals in said note, and that it was taken for granted without any proof of the fact, or upon very insufficient proof, that as the motion was against Mc Bryan, Jesse A. Bryan and Law Orator as the representative of Joseph Mc Bryan & Co. that those were the persons that composed the said firm of Mc Bryan & Co. but

without any express finding by the jury of that fact, or even any inquiry as to it. Your Orator further states to Your Honor that the said Joseph M. Bryan was once a partner of the said Henry M. Bryan, but never of the said Jesse A. Bryan; which partnership between the said Henry M. Bryan and Joseph M. Bryan was formed on the 25th day of March, 1835 and dissolved by mutual consent in August, 1837. The said partnership was carried on under the style of M. M. Bryan & Co. and after the dissolution of said partnership as Your Orator is informed the said Henry M. Bryan formed a new partnership with the said Jesse A. Bryan the partnership style of which was also M. M. Bryan & Co. And Your Orator is further informed that after the formation of the partnership aforesaid between Henry M. Bryan and Jesse A. Bryan they formed a new partnership with one James C. Johnson, and carried on business for a short time, under the denomination of Bryan, Johnson & Co. after which the said Johnson retired from said firm, having dissolved partnership with the said Henry M. & Jesse A. Bryan, and then the said Henry M. Bryan & Jesse A. Bryan continued business as they did before the admission of Johnson under the denomination of M. M. Bryan & Co. It was this last mentioned firm of M. M. Bryan & Co. as Your Orator charges, that executed the said note in which the said W. H. Turner was surety, a firm consisting of the said Henry M. Bryan and Jesse A. Bryan alone; a firm which was the third in number that had been formed by the said Henry M. Bryan after his dissolution with the said Joseph M. Bryan, and two of which used the same partnership style and denomination of M. M. Bryan & Co. It was some firm of M. M. Bryan & Co. of which Jesse A. Bryan was a member, that the said W. H. Turner became the surety of in the execution of said note; as is established, beyond all doubt, by the fact of the said W. H. Turner's making the said Jesse A. Bryan a joint defendant in his said motion. The signature of M. M. Bryan & Co. said note is in the handwriting of Your Orator is informed, of the said Henry M. Bryan, it is not in the handwriting of the said Joseph M. Bryan; the said W. H. Turner must have been present at the execution of said note and must have known, as Your Orator charges, did know that the signature of M. M. Bryan & Co. was affixed thereto by the said Henry M. Bryan, and that the said Joseph M. Bryan was absent at the time and had nothing to do with the execution of said note. Your Orator also

states that the purpose for which said note was executed had no relation to the business of the said Joseph Mc Bryan; and that in point of fact the note was executed not for his benefit, but for the benefit of the then existing firm of Mc Bryan & Co. consisting as aforesaid of the said Henry Mc Bryan & Jesse Mc Bryan. And if the said Wm. K. Turner knows for what consideration the said note was given Your Orator prays that he may set it forth and shew it specifically.

Your Orator also charges that the said Wm. K. Turner at the time of the execution of said note, knew or had been informed of the dissolution of partnership between the said Joseph Mc Bryan & Henry Mc Bryan; that he also knew or had been informed that that partnership consisted of the said Joseph Mc Bryan & Henry Mc Bryan alone; that he also knew or had been informed that subsequent to said dissolution Henry Mc Bryan & Jesse Mc Bryan had formed a partnership; and that he knew or had been informed when he executed said note that Jesse Mc Bryan was a member of the firm of Mc Bryan & Co. of which he then understood himself to be becoming the surety.

Your Orator further states to Your Honor that at the time of the execution of said note the said Joseph Mc Bryan was of unsound mind and incapable by reason of mental incapacity of doing any valid act; and had been in that condition for a considerable time before the execution of said note. That in August 1838, the next month after the execution of said note an Inquisition was held under the authority of the County Court of Tazewell as to the state of the said Joseph Mc Bryan's mind; who was found by said Inquisition to be then and to have been for several months previously of unsound mind, and incapable of managing his business or taking care of his property; and pursuant to said finding the said Joseph Mc Bryan was put by said Court under the protection of a Guardian, in which situation he remained from that time till his death, which took place about December 1839.

Your Orator states that the said Wm. K. Turner is a nephew of the said Joseph Mc Bryan, and knew or had been informed of the state of his mind as described before the execution of said note; that he is also a cousin of the said Henry Mc Bryan & Jesse Mc Bryan; that he lived in Clarksville at the time when the first firm of Mc Bryan & Co. of which the said Joseph Mc Bryan was a member,

went into operation; and knew or had been informed of its dissolution on account of the state of the said Joseph Mc Bryan's health and mind, before the execution of said note; and that he was very intimate with both the said Henry Mc and Jesse A. Bryan, and knew of the formation of a partnership between them prior to the execution of said note. Your Orator says that the said Wm. H. Turner may state when it was that he last seen his uncle the said Joseph Mc Bryan, and whether it was not after the dissolution of partnership between him and Henry Mc Bryan, brought about as aforesaid in consequence of the bad state of his health and the enfeebled state of his mind.

Your Orator states that said Judgment having been recovered against him by motion he had no opportunity to defend himself against it, which he fully believes he could have done successfully, but for the want of notice of said motion. After the said Judgment was obtained the said Wm. H. Turner came to see Your Orator at his residence at La Grange, to know if he would not pay said Judgment, which Your Orator expressly refused to do, knowing as he did the injustice of the demand, and that the said Joseph Mc Bryan could not have been legally bound for it. The said Wm. H. Turner then stated to Your Orator that he should issue Execution upon said Judgment. Your Orator cannot help thinking that it would have been quite as civil on the part of the said Wm. H. Turner, if he had notified him of his intention to make the motion and obtain judgment. But to fortify himself with a Judgment secretly obtained and then to come to negotiate for terms seemed rather like compelling Your Orator to submit to his exactions without the power of resistance. After an Execution had been issued or was about to issue upon said Judgment, Your Orator applied to the late Wm. A. Cook to institute some proceeding whereby to prevent the enforcement of said judgment, who exhibited a Petition to the Hon. Thomas Maney for a Supereedeas and writ of Error to the same Court which rendered said Judgment. A fiat for a Supereedeas was granted, but not a writ of Error, and a motion has been made, but not disposed of, in the Circuit Court of Montgomery County to dismiss the Supereedeas and prevent the issuing of a writ of Error. The death of the said Wm. A. Cook, which happened not long after the said Supereedeas was granted is the reason as Your Orator supposes why said application was not prosecuted to some result. Since the death of the said

Wm. Corp. Your Orator has been under the necessity of employing new Counsel, who after looking into the case, has come to the conclusion that a writ of Error would not perhaps lie in said case; and at all events that Your Orator's remedy in Equity would be more effectual, and that the application for a writ of Error ought to be abandoned.

The said Wm. H. Turner having obtained an undue advantage at Law over Your Orator by effectually depriving him of any opportunity to have his rights investigated in the matter, which advantage it would be unconscionable to enforce; Your Orator is advised that the said Wm. H. Turner ought to be restrained in such iniquity and injustice, and which actings & doings on the part of the said Wm. H. Turner are contrary to Equity and good conscience and tend to the injury and oppression of Your Orator. In tender consideration whereof Your Orator prays that the said Wm. H. Turner may be made a defendant in this Bill, and that he may fully and explicitly answer the same; he also prays that the said Wm. H. Turner may be enjoined from issuing any execution against Your Orator upon his said judgment until the hearing of this cause; and that by a final decree therein to be made Your Orator may be allowed a trial at Law with liberty to make his defence against the said demand of the said Wm. H. Turner for which he recovered judgment as aforesaid; or that Your Orator will take cognizance of the whole matter and decide without awarding a trial at Law, as to whether the said Wm. H. Turner is entitled to any judgment against Your Orator upon said pretended cause of action upon which his said motion was founded; and in the event of a decision against him that his said judgment be perpetually enjoined. And Your Orator prays for such other further decree in the premises, as to Equity may seem meet and the nature of this case requires. No other disposition has been ever applied for or obtained in this case by Your Orator.

Thos Washington Solbyr Counsel

State of Tennessee } This day personally appeared before me Jonathan A.
Montgomery County } Martin Judge of the 7th Judicial Circuit, Jesse Selser the
abovesigned Complainant and made oath that the mat-
ters and things stated in this Bill as of his own knowledge are true; and that

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Those herein stated as of information he believes to be true

June 10th Nov 1842

M. A. Martin Judge } 3

Jesse Isler Admr of
Joseph Mc Bryan Esqr.

To Benj Lillon Esqr Ch. Master of the Court of Chancery held at Franklin
in the State of Tennessee,

Let a writ of Exclusion issue according to the prayer of the Bill upon
the Complaint giving Security for costs of the cause.

M. A. Martin Judge R.

Whereupon Process issued and returned duly executed.

And on the 1st day of May 1843 the following Answer was filed, to wit:

The Answer of W. H. Turner to the Bill of Jesse Isler filed against him in the
Chancery Court at Franklin

This Respondent having and reserving to himself the usual exceptions to said
Bill for answer thereto, or so much thereof as he is advised is material for him
to answer, answers and says, That it is true as alleged in said Bill that he recov-
ered a Judgment against Complainant in the character of Administrator
with the will annexed of Joseph Mc Bryan Esqr for \$1140. besides Costs. It is
also true that said Judgment was recovered by motion, and that no process issued
to notify Complainant, said Judgment and proceedings were had under, by virtue of
Legislative enactment, and were in strict accordance therewith, and Respon-
dent did not then believe nor does he now admit, that he was bound either
legally or morally to give Complainant notice of his motion to obtain a Judg-
ment against - and that the omission so to do constitutes to Complainant no
defense either at Law or in Equity.

Respondent states that upon the trial of the motion at Law upon proof satis-
-factory to the Jury that they found that Respondent was the security of the debt,
that is that Respondent was the security upon the note then exhibited for Henry
Mc Bryan, Jesse Mc Bryan, Joseph Mc Bryan, Complainant's nile state, the
finding of the Jury necessarily involved the issue who executed the form of
of Henry Mc Bryan &c. and Respondent avers that proof to this point upon the
trial of the cause was submitted to the Jury, and therefore all the issues was
found in favor of Respondent, and Respondent had no ground for the award.

for which he was liable as security, and which he has since paid.
As to the allegation that Joseph Mc Bryan was not a member of the firm of Mc
Mc Bryan & Co., Respondent says that the same is untrue, and that Complainant
must have known it. Respondent charges that Joseph Mc Bryan before
he engaged in business at Clarksville had been a successful merchant
in the State of N. Carolina and that he had become very wealthy, moved
from Carolina to Tennessee, settled in Clarksville,
Henry & Jesse A Bryan the latter of whom he brought with him from
the State of N. Carolina, having taken him when he was small from his
father, reared him and educated him, he then set up, he Joseph Mc
Bryan furnishing the capital invested in the business, the style of the
firm being Mc Mc Bryan & Co., both of the young Bryans that is Jesse & Henry
being nephews of Joseph Mc Bryan, were on that account as Respondent
understood, established in the business of merchandizing in conjunc-
-tion with himself.

Respondent does not believe that he can be mistaken as to who constitu-
ted the firm of Mc Mc Bryan & Co., and he charges the fact to the fact that Joseph Mc
Bryan was of said firm, and that said note was executed for the benefit
of said firm, as Respondent understood from Mc Mc Bryan a member of
said firm. Respondent does not know at what time said partnership
was entered into, nor does he admit that it was dissolved as alleged in Complain-
ant's Bill. Respondent does not believe, if any dissolution took place as
alleged in Complainant's Bill, that any public notice was given thereof, nor
has he any recollection that he was informed of the dissolution previous to the
execution of the note for which Respondent had become the surety of Mc Mc
Bryan & Co. Respondent further charges that at the time that he executed
said note he believed that Joseph Mc Bryan was bound thereon as a member
of the firm of Mc Mc Bryan & Co. Respondent states that said firm may have
been dissolved as alleged in Complainant's Bill, but if the same was so done
that no public notice was given of it as Respondent recollects or believes.
Respondent further states that on the 13th day of Aug. 1838 some five months after
Complainant alleges a dissolution of the partnership Respondent loaned
to Mc Mc Bryan & Co. \$750. and took the note of the firm for the same.

Respondent states that it is also true as alleged in Comptd Bill, that after he obtained the judgment against Complainant, that he did visit him at La Grange for the purpose of procuring payment thereof, and Respondent here charges that so far from Complainant at that time denying the justice of the demand, that he expressly promised Respondent to pay him the amount of the judgment against him as soon as he could go to Alexandria in the State of Louisiana, where his interest had been engaged in merchandizing. Complainant stated that he wanted to go there in a few days, and that so soon as he could collect, he would remit to Respondent a draft for the amount due to him. Respondent left under the belief that the money would be paid according to promise.

In relation to the allegation in the Bill requiring Respondent to state if he knew what the consideration of said Note was, Respondent can only answer from the information he recd. from Henry Mc Bryan, who informed this Respondent that said Note was given for the purpose of procuring money to pay a debt due from Mc Bryan & Co. to some Eastern Merchant for Goods before that time purchased by the firm of Mc Bryan & Co.

Respondent charges that the money obtained upon said Note was appropriated to the payment of a debt for which Joseph Mc Bryan, Complainant's father, was liable, and that the charge in the Bill that it was not for the benefit of Joseph Mc Bryan is false and untrue, for the Note of Complainant's intestate for the sum of One Thousand Dollars was taken up and paid off with the money procured on the Note for which Respondent became security, and Respondent insists that he be substituted in the place of said Creditor.

As to the charge in the Bill that Complainant knew or had been informed as he now recollects that the firm of Mc Bryan & Co. was constituted of Mc Bryan and Joseph Mc Bryan, and that again he recollects that a firm was formed under the style of Mc Bryan & Co. composed of Henry Mc Bryan and Jesse A. Bryan, Respondent states that he does not admit said allegation to be true, nor does he believe in fact that it was true. Respondent has stated in a former part of his answer that as he understood the firm of Mc Bryan & Co. was constituted of Mc Bryan, Jesse A. Bryan and Joseph Mc Bryan, Complainant's intestate.

Respondent further answering states that he understood that some time previous to the death of Joseph Mc Pryaw he was afflicted by indisposition, but Respondent does not admit that he was incapable of doing any act at the time of the execution of said will or shortly before that time. Respondent states that he has been informed that inquisition was sued out some time previous to his death, at what time Respondent does not know, and upon the verdict of that inquisition that a Guardian was appointed for him, but Respondent does not admit that the appointment of said Guardianship to him was proper or that the state of his mind was such as to require it. Respondent would state that he saw Joseph Mc Pryaw after his alleged illness, and that so far as he observed he saw nothing to induce a belief of Lunacy, or such unsoundness of mind as rendered him incapable of attending to ordinary business. It is true that he seemed so far as Respondent observed to have lost a large portion of his animal spirits, and to be in a lethargic condition, but when aroused and his attention called to any particular thing his mind so far as Respondent regarded it was sound and discriminating as usual.

Respondent tho saw him but once and then only for a short time after his alleged illness, and consequently cannot state the precise condition of his mind, nor did Respondent learn from him or know that the partnership of Mc Pryaw & Co had been or was dissolved in consequence of the unsoundness of the mind of Joseph Mc Pryaw.

Respondent denies that he has taken any undue advantage of Complainant on the trial at Law, and states that every thing and every step taken in said cause has been taken under the sanction and authority of a Court of competent jurisdiction, and in pursuance of Law, and Respondent here insists upon the plea of plea or demurrer to Complainant's Bill that he has an unenforced and adequate remedy at Law, and Respondent insists upon the benefit thereof in as full and ample a manner as if the same was here specially pleaded or maintained as demurrer to Complainant's Bill.

Respondent denies all fraud and having fully answered pray hence be dismissed
Wm. L. Turner.

This 29th day of April 1843 appeared before me as acting Justice of the Peace for

County of Davidson Wm H Turner and made oath that the matters & things set
forth in the foregoing answer as stated of his own knowledge are true and those
stated from information of others he believes to be true
Attest W H Turner

J D Hillmer J. P. Clerk

And at the April Term 1823 the following Order was entered, "to wit"
on reading the Bill & Answer in this case it is ordered, adjudged and decreed by
the Court that the injunction be dissolved, and that the defendant recover
Judgment against the Complainant for the sum of 1140 dollars & 8 Cents
with interest from the 25th of September 1820 the date of the Judgment at
law, and be levied of the good & chattels which were of the estate of his intestate
at the time of his death in said defendants hands to be administered, and
that the defendant recover Judgment against the Complainant and
Thomas Washington his surety for the injunction for the costs.

And at the Rules holden at the Office of the Clerk & Master for May 1823 the
following Replication was filed, "to wit"

The Replication of Jesse Siler Adversely Complainant to the Answer of
William H Turner Defendant.

This replicant saving and reserving to himself all and all manner of advantage
of exception which may be had and taken to the manifold errors, inaccura-
cies and insufficiencies of the answer of the said defendant for replication
thereto says that he does and will aver, maintain and prove his said bill to be true,
certain and sufficient in law to be answered unto by the said defendant and
that the answer is very uncertain, evasive and insufficient in law to be
replied unto by this replicant without that, that any other matter or thing
in said answer contained, material or effectual in the law to be replied un-
to and herein and hereby well and sufficiently replied unto, confessed or avor-
ded, traversed or denied is true; all which matters and things this replicant is
ready to aver, maintain and prove as this honorable Court shall direct, and
humbly prays in and by his said bill he has already prayed.

Thos Washington Sol^r

And at the Rules holden at the Office of the Clerk & Master for October

1844 the cause was set for hearing by the Defendants Solicitor.
And at the October Term 1844 the following Order was entered, "to wit"
By consent of the parties this cause is remanded to the Rules.
And at the Rules holden at the Office of the Clerk & Header for October
1845 the cause was again set for hearing by the Complainants Solicitor.
And now to wit on the 12th day of November 1845 being the day as far
first above written the following decree was entered, "to wit"

This Cause came on to be finally heard on the 12th day of November 1845 before
the Hon^{ble} Terry the Canal Chancellor upon the Bill, Answer, Replication
& proofs in the cause: (except the deposition of Henry B. Bryan
which was rejected, he being decided to be an incompetent witness)
and the Court being of opinion that the case as stated in the Bill is not
one properly cognizable in a Court of Equity and that this Court has no
jurisdiction of the same: doth therefore order, adjudge and decree that the
Bill be dismissed. And because the Defendants did not demur to the
Bill for want of jurisdiction, instead of answering and suffering the
cause to be brought to hearing upon the evidence, the Court doth
order and adjudge that he pay half the cost subsequent to the filing of his
Answer including the cost of the answer itself and that the Complainant
pay all the other cost out of the assets of his Testator which came to his
hands to be administered: and that Execution as at Law issue for the
collection of said costs accordingly.

From which decree Complainant prays an Appeal to the Supreme
Court of Missouri Appeals at Nashville, which is granted he having given
bond & security for the prosecution of the same.

Complainant's Testimony

The deposition of Jesse H. Cobb taken before the B. Smith Esq. in La Grange.

Question 1st By Complainant. Were you acquainted with Genl Joseph H. Bryan previous to his removal from N. Carolina to this State?

Answer. I was at least ten years.

Question 2^d By same. Did you consider him during that time a man of strong intellect and sound mind?

Answer. I did.

Question 3^d By same. State your opinion of the condition and soundness of his mental faculties from the time of his removal to this Country in 1837 until his death and give reasons & facts for such opinion?

Answer. I believe his mind was so entirely destroyed that at his most lucid intervals he did not possess a capacity above a boy of ten years old. My reasons for my opinion is first, that although I visited him soon after his removal to this Country, and frequently afterwards until his death except the few months during his absence to North Carolina, and never could at any time keep up a connected conversation with him on any subject for five minutes together.

The 2nd is that I have frequently seen him sit for a considerable time in company with social friends, at his own house and mine, in display insensibility as to the subjects of conversation which he was never the case before his mind was destroyed.

The 3^d reason is, that while sitting with him at his table at his own house and mine I have seen his wife frequently apply a portion off to him his quantum of diet, with which he appeared generally satisfied while it lasted, but then he would attempt to help himself, but was generally disappointed by the interference of Mrs. Bryan but on one occasion I saw him snatch up a piece of bacon from on his fork and then dragged about it with child-like simplicity.

The 4th reason is the kind, quantity and amount of purchases which he made of town property here and at a time when evidently to every discerning person here such property was rapidly declining.

The 5th reason is the Copartnership he entered into with the (Mr.) Hedges here with whom he was not sufficiently acquainted in my opinion taken in connection with the amount which he proposed to put in which was about Twenty thousand Dollars. The 6th reason is that during his residence here until after his return from N^o Carolina, he frequently evinced a disposition to purchase property of almost any kind, if he could be induced to believe he was getting it at a moderate rate. And further his statement sageth not. Jesse H. Cobb.

The deposition of William B. Taylor taken before Wm. Ragaw Esq. in Keokuk Springs. Mississippi

Question 1st By Counsel. Were you acquainted with the late Joseph M. Bryan of Hazlett County, Tennessee?

Answer. I was.

Question 2^d By same. Were you his family Physician in North Carolina and at La Grange, Tennessee, if yes, describe the condition of his mind & body in the former State, and the same general condition in Tennessee in the years 1837 & 1838?

Answer. I was his family Physician for several years in North Carolina, and also during the years mentioned and afterward until his death in La Grange, Tennessee. I was intimately acquainted as a friend for many years while he lived in North Carolina, and in common with his fellow citizens generally admired his fine understanding. Before leaving that State he had suffered several attacks of violent vertigo, approaching to apoplexy. It was feared by his friends that the frequent recurrence of these attacks would injure his mind. I believed that such injury had already been done in some degree before his removal to Tennessee in the fall of 1836. After his removal he was seized with apoplexy at Jackson on his way from Nashville to La Grange. Living in the latter place I was requested to visit him but was prevented by an accident.

About the beginning of 1837 he was brought to La Grange by his wife
 in a wretched state of health, & I was called to visit him. I found the
 whole man changed, his general health was very much impair-
 ed, his bodily functions materially deranged. His mind ap-
 proaching to Idiocy, he was dull, stupid & taciturn, seldom
 attempting to sustain any part in general conversation, he
 was inattentive to the ordinary observances of politeness,
 often did not remember his old friends & acquaintances &
 frequently could not call their names, he was remiss in per-
 -sonal decency, often obeying the calls of nature in exposed & un-
 public situations, though when in good health a man of modes-
 -ty & a polished gentleman, his memory was greatly impaired
 & all his intellectual faculties prostrated & confused, & al-
 -though when his general health improved his intellect did
 certainly to a limited degree improve along with it, yet he never
 was in a situation when I thought him competent to understand
 his own interest in any important matter, or to transact business
 at all complicated, in short he was in that state of sterility of mind
 nearly approaching idiocy, that he could not tell what it
 was best for him to do in relation to the management of his estate,
 he suffered two other attacks of partial apoplexy while at La Grange
 & at his plantation a few miles distant, in all of which I saw
 him. These attacks left his mind in a still more clouded & in-
 -intelligible state; in short he was constantly predisposed to that
 fearful & fatal disease, apoplexy, as was evinced by an unusual
 determination of blood to his head, frequent vertigo & a hob-
 -bling, staggering walk. I never regarded him as a lunatic
 in strict medical language, I considered him as more nearly
 approaching to Idiocy, his faculties brightening up a little
 when there was improvement in his bodily health, but clear
 lucid intervals he never had, when matters of business were
 pressed upon his consideration, he would converse on them &
 sometimes make astute & sensible remarks. About the time

he removed from his plantation to La Grange in the beginning of 1838. I think he was seized with an uncontrollable desire to purchase property in that place, he bought the house of M. P. Foster, one from Joel M. Hledge, one from John Gordon, one from Samuel Smith, one from Dorcas Neamaham & one from Dr Walker besides a lot of Land from Col. Lickens. I understand he was also in trade for several others as Dr Davis, Hugh Robertson, Tavern &c &c. For more of this property, save a house to live in as I suppose he had not the smallest use, in addition to this he formed an extensive mercantile concern with the M^r Hedges of La Grange; from all these facts connected with the known & palpable imbecility of his mind his friends became alarmed, & fearing he would become the dupe of designing men or the victim of fraud & imposition several of his oldest friends, M^r Stephen H. Sneed, Elisha B. Smith & myself conferred together as to the best course to be pursued, & we resolved to advise him & M^r Bryan to have a Guardian appointed for him.

Question 3^d By same. Did you propose the Guardianship to Genl. Bryan of your own accord or was it suggested by any member of his family?

Answer. We done it without any concert with any member of his family & without suggestions of any kind from any person interested in his Estate, when we made known our views & wishes to Genl. Bryan he very readily consented, & he himself proposed that M^r Bryan should be appointed. I again repeat that we did this of our own accord, without the suggestions or procurement of any person whatever, & solely to protect him & his family against the consequences of his strange infatuation for trading for I verily believe he might have been easily induced to purchase a very large portion of the Town of La Grange, & at a time when it was evidently declining rapidly.

Question 4th By same. Do you believe that Genl. Bryan during the years 1837 & 1838 was in such a state of mind as fitted him for the transaction

of any important business, or the judicious management of his Estate?

Answer. To sum up my opinion as a medical man in a few words, who had daily opportunities of judging of his conduct & qualifications I regarded Genl Bryan during all the time above adverted to, to have been in a state of partial & idiocy totally disqualifying him for the transaction of any important business or the control of property.

Question 5th & same. If you believe Genl Bryan was not in a condition of mind qualifying him to manage or control property, please state your reasons for such belief?

Answer. I do believe for the reasons generally set forth in the first part of this deposition, particularly from the fact that he had lost his memory, often did not know his friends or remember the names of those most familiar with him, was childish in his desires & conversations, rash in purchasing property, contrary to the advice of his friends & an amount nearly \$15,000. (Fifteen thousand) and for which property he had no use, and that too in a small village rapidly declining. There was a want of congruity of thought & action in all he did; childish in his remarks altogether unlike what he had been in health, and in his actions and deportment absurd and ridiculous, on one occasion I saw him standing in Mr. Sneed's front door deliberately making water, and the parlour in a few yards of him containing females & other company. I believe finally that he was unfit to transact business for himself, and take care of his property, because he consented readily to have a Guardian appointed for him, which no man of his character would ever have consented to if in the enjoyment of his senses & reasons.

And further this Deponent sageth not.

Wm. B. Taylor

The deposition of Jesse Mc Caba taken before J. B. Smith Esq. in Fayette County, Tenn.

Question 1st of Complainant. Were you acquainted with General Joseph Mc Bryan?

Answer. I was,

Question 2^d By Lane, State your opinion of the condition & soundness of Genl Bryan's mental faculties from the first of the year 1837 until his death in December 1839, & give your reasons & facts for your opinion?

Answer. I believe his mind so entirely destroyed during that period at his most lucid intervals that he did not possess a capacity above a boy of ten years old, & my reason for this opinion is first, that altho I visited him soon after his arrival in La Trange & frequently afterwards until his death except when he went to St. Carolina in 1839 he never could at any time when I saw him keep up a connected conversation with me on any subject for five minutes together. The 2^d reason is that I have frequently seen him sit for a considerable time in company with social friends at his own house & at mine in a state of stupid insensibility as to the subjects of conversation going on about him which was never the case before his attack of apoplexy at Jackson. He had before that time always enjoyed the society & conversation of his friends, was polite & affable, & was a well bred gentleman at his own house & elsewhere. These qualifications he never manifested after he came to La Trange.

The 3^d reason is, that while sitting at his own table & at mine I have seen his wife frequently apportion off to him his quantum of food as if he had been a child, with which he appeared to be generally satisfied while it lasted, but then he would attempt to help himself which Mrs Bryan prevented when she could do so. Sometimes however he would succeed & on one occasion I saw him snatch up a piece of ham ~~off~~ on his fork & then bragged of his success with child like simplicity.

The 4th reason is that he purchased a large amount of property in La Trange for which he had no use at exorbitant prices & when too it was evidently declining in value. He purchased three dwellings

houses, three or four Store houses, a Lot of Land adjoining the Store,
 stood security for A. B. Hill, who was known to be utterly insol-
 vent by everybody, for I believe about \$800,000 formed a large Co-
 partnership as I understood with the Messrs Sledges amounting
 on his part to \$20,000,000, with whom in my opinion he was not
 sufficiently acquainted, so to connect himself, evinced con-
 stantly a disposition to trade and speculate for almost any and
 every kind of property, if he could be made to believe he was
 purchasing it at an under sale, especially I regarded him as
 a man of gross and mean mind because he consented to have a
 Guardian appointed over him and to be thus divested of his property
 a thing I am well convinced no man in his senses would ever
 have consented to, and no man or set of men in their senses would
 ever have proposed to Genl Bryan if he had been in his right state
 of mind.

And further this Dependent says the Not.

Jesse H. Cobb.

The Deposition of John W. Burton Taken as above.

Question of Complainant. Were you acquainted with Genl. Jas H. Bryan?

Answer. I became acquainted with Genl. Bryan in N. Carolina in 1816. I
 lived near him and saw him frequently until the year 1834, when I
 removed to Tennessee. We traded a great deal in Land, Merchandise
 &c and was a shrewd calculator and realized a large estate.
 In 1836 he came to my house in this place not recovered from an
 attack of Paralysis he had at Jackson, from that time until his
 death I saw him frequently and he was entirely a different man
 from what he was in N. Carolina, and from his general conduct and
 from some of his transactions I do not believe he was capable of
 transacting business.

And further this Dependent says the Not.

John W. Burton.

The Deposition of Sarah Davis Taken as above:

Question 1st By Complainant. Were you acquainted with the late Joseph H. Bryan of Hazlett County, Tennessee?

Answer. I was.

Question 2^d By Same. State the Time of your acquaintance & your opinion of the condition of his mental qualifications & your reasons for them?

Answer. I first became acquainted with him in 1835, at which time I regarded him as an intelligent, well informed man on all subjects & a polished gentleman in his manner & deportment.

Question 3^d By Same. Were you acquainted with him at his residence in Hazlett County & in La Grange, & if so describe the condition of his body & mind until his death?

Answer. I knew him intimately from the time of his first arrival in La Grange early in 1837 until his death except a few months in 1839 when he went to N. Carolina; soon after I first saw him in 1837 he settled in five or six miles of La Grange & remained there nearly the entire year. I was frequently at his house as often as twice a month & often remained all night, his health was very bad. I understood he suffered then occasional attacks of his head such as he had suffered in Jackson, & from seeing him often I knew his health was bad & he walked with difficulty, he moved with a sort of shuffling & irregular gait, & I have often observed him when he would attempt to rise from his chair & fall back & obliged to be assisted to get up in an awkward position. This was often the case, so often indeed that every one about him was in the habit of aiding him when he attempted it to prevent him from falling backward, as to the condition of his mind there was an entire alteration, in truth he was as unlike what he had been when I first knew him in 1835 as he well could be, I was painfully struck with this alteration; on my first acquaintance with him he was a polite,

well bred gentleman: enjoyed the company & conversation of his friends & acquaintances & seemed fond of inter course with them. He had high conversational powers, was a man of solid information & I think I really never knew a man of superior good sense & sound discriminating judgment. After his settlement near La Trappe I never found him the least attentive to any person about him. He never attempted to hold a connected conversation or argument with any person in my presence, seemed not to know or care for his friends, would even forget their names & never on any occasion exercise toward them the forms of politeness common in good society, at his table he never helped or noticed any one, never occupied the head of it, was always seated by the side of his wife & received from her hand such food as it was proper for him to use, was in fine treated as a rich child, & appeared satisfied with it. Sometimes he would attempt to help himself to improper food as Mr Bryan would object to it, he would generally yield passively. I understood Genl. Bryan had connected himself with the Presbyterian Church & had been a warm & devoted Christian. Strictly observant of his religious duties, that he had always been in the habit of family prayer. During my acquaintance with him I never knew him to attempt it. I have often been at his table when he was desired to ask a blessing. Sometimes he would say a few words which could not be understood look around the table at the company & break out into a silly laugh. I have seen him on other occasions perfectly silent as if he was endeavoring to collect his ideas & finding himself unable to frame a sentence he would gaze about vacantly & laugh again. I have known him turn the whole matter into ridicule & say Lord make us able to eat on the table, & then laugh as if he supposed he had been witty. In December 1837 he removed to La Trappe soon afterward he appeared absolutely deranged upon the subject of speculation, when there was a general disposition to remove from the place, a great deal of property was thrown into market, &

I believe Genl Bryan might have been induced to purchase nearly the whole Town (at least as much as was offered for sale) if he had possessed the means. He purchased a dwelling house from A. R. Foster one from Joel M. Sledge, a store house from Dr. Gordon, one from Lamiere & Irish, and one from Bowen & Neamehan, and a third dwelling house from Mr. Walker, and he was at one time in treaty with my father for his dwelling, with Parson Cobb for his, with Dr. W. Burton for his dwelling and Tabern, and with Hugh Robertson for his Tabern. I was present when he purchased Bowen & Neamehan's store house, and saw him on the day he purchased Lamiere & Irish's store house, or on the day their deed to him bears date, viz. the 29th day of June 1838, at which time Genl Bryan's mind was in the condition it was generally, and I believe totally disqualified for transacting business.

Question 4. By same. How do you recollect so particularly the date of that deed?

Answer. I was in the habit of keeping a diary, and I find from examining it and other paper transactions which refreshed my memory, as to that purchase or deed, I was in company with Genl Bryan on that day. I also saw him I believe every day or night during the Spring and Summer of 1838 either at Bowen & Neamehan's Store, where I was employed as Clerk, and which was across the Street and near his residence, or at his own house where there was usually a good deal of company and mostly young Ladies whose society I was fond of and visited nearly every evening after supper. My intimacy with him and his family was constant and uninterrupted all the time he lived in La Trappe, and particularly so at that time, and although when his general health improved, his mind would brighten up a little, yet he never appeared to me to be in possession of sound good sense and judgement.

Question 5. By same. Can you describe the particular situation of Genl Bryan's mind when he purchased Sledge's property and Gordon's property?

Answer. He purchased of Sledge in November when he lived in the Country in

1837, when I did not see him so often, but in June 1838 when he purchased of Gordon he lived in La Grange at which time I was in the daily habit of seeing him either at the store of Bowen & Neamehan, or at his own house, and I know that the condition of his mind was such as to render him wholly incompetent to understand his own interest or judge correctly of the value of property. Indeed he hardly ever knew what he was doing, for I have often known him to come to the store and pick up a news paper old or new and seat himself and read for 3 or 4 hours, and I have enquired what it was that interested him so much and he was unable to inform me what he had been reading.

Question By same. Did you see and converse with him on the day of the sale of Lot: Slipkin's Land adjoining La Grange in 1838?

Answer. I did, I saw him on his return from the sale and anxious to learn who had been purchasers, and the prices it sold for, I made enquiries of him and he was unable to inform me who had purchased, or what price the Land brought. I then enquired of him if he had purchased any Lots and he told me he had not. I afterward learned he had purchased Land and his Administrator has since told me he had been sued for the money and had it to pay. Indeed he had almost lost his memory.

Question By same. Did you ever witness any unusual or indecorous conduct in Gent. Pryor in Church?

Answer. I have often been at Church with him and I have observed him frequently affected to weep, during a pathetic part of the discourse and immediately afterward I have seen him gazing listlessly about the house and then laugh as if he were much amused. I saw him on one occasion walk down the aisle bareheaded deliberately unbuttoning his pants as he walked and turning around at the door, make water not one yard from it, and that while the Congregation was every moment coming in the house. Afterward he stood fronting the door in full view of the Assembly and buttoned up his pantaloons. And further his Deposition saith not. Sarah Davis.

The deposition of James C. Johnson taken before J. G. Keiter Esq. in Clarksville,
Tennessee on the 16th September 1845

Question 1st By Complainant's Counsel. Are you acquainted with Henry K.
Bryan and Jesse A. Bryan.

Answer. I am.

Question 2^d By same. Did you once become a partner of theirs in merchand-
-izing at Clarksville, and if so, at what time?

Answer. I became a copartner in merchandize with them in Clarksville
on the 5th Feb 1838, when we carried on business in the style and under
the firm of Bryan, Johnson & Co.

3^d At the time when you became a partner of theirs, were they carrying
on business in Clarksville as partners of each other: and if so, under
what denomination?

Answer. They were doing business as partners, and I think under the
firm of K. K. Bryan & Co.

4th When you became a partner of said Henry K. Bryan & Jesse A. Bryan
with whom did you contract in becoming such partner?

Answer. With the said Henry K. & Jesse A. Bryan.

5th In becoming a member of said firm of Bryan, Johnson & Co. did you
contract with Joseph K. Bryan, or have any treaty or correspondence
with him on the subject? or did you consider him a member of the
firm of Bryan, Johnson & Co.?

Answer. I did not contract with Joseph K. Bryan, and neither did I ever
see or know him, and consequently did not consider him a mem-
ber of said firm.

6th State the general terms of the partnership which you formed with Henry
K. Bryan and Jesse A. Bryan: that is whether you in consideration
of your furnishing a certain amount of capital became equally
interested with each of those two, in all the stock which they had
on hand, and also whether you became interested, and to what ex-
tent in the debt then due them?

Answer. I become equally interested with them in the Stock then on hand by furnishing a certain amount of capital, but never had any interest in the debts due them, that is each was one third interested in the firm of Bryan Johnson &c.

7th How long did you continue a partner of theirs or in other words how long did the firm of Bryan Johnson &c. exist? and when and how did you dissolve with them or get out of said firm?

Answer. The firm of Bryan Johnson &c. continued three months, and on the 5th day of May I sold out my interest to them, to Messrs Jesse A Bryan.

8th Had Joseph H Bryan any thing to do directly or indirectly with the contract of dissolution between James Henry H Bryan and Jesse A Bryan, was he consulted or did he know any thing of it?

Answer. Joseph H Bryan had nothing to do either directly or indirectly in the contract of dissolution and was not consulted and could not have known any thing of it.

9th Did any persons carry on business in Clarksville under the denomination of H H Bryan &c. after the formation of the firm of Bryan Johnson &c. until the firm of Bryan Johnson &c. was dissolved? and after said dissolution did not James H Bryan and Jesse A Bryan go on with business and resume their former partnership denomination of H H Bryan &c.?

Answer. No persons carried on business in Clarksville under the style of H H Bryan &c. after the formation of the firm Bryan Johnson &c. until after the firm of Bryan Johnson &c. was dissolved when H H & Jesse A Bryan resumed business under the firm and style of H H Bryan &c.

10th When the firm of Bryan Johnson &c. was formed, was it advertised in the newspapers of Clarksville, that such firm had been formed of whom it consisted, and that they would carry on business at the old stand of H H Bryan &c.; and was it advertised in the same newspaper again that said firm of Bryan Johnson &c. had been dissolved after the dissolution took place?

Answer. When the firm of Bryan Johnson &c. was formed it was published

in the Clarksville Chronicle that they would carry on business under the firm of Bryan, Johnson & Co. at the old stand of Mc Ke Bryan & Co. and it was also published after the dissolution of the firm of Bryan, Johnson & Co. in the same paper that the firm had dissolved.
Jas. H. Johnson

The Deposition of Heavold: P. Carney taken as above:

Question 1st By Complainant's Counsel. Are you acquainted with Henry Mc Bryan? and were you also acquainted with Joseph Mc Bryan and Jesse A Bryan in their lifetime? and how long have you been acquainted with each?

Answer. I am acquainted with Henry Mc Bryan, and have known him for some ten or twelve years. I had an acquaintance of five or six months with Genl. Joseph Mc Bryan in the latter part of the year 1835, and knew Jesse A Bryan from about the middle of 1835 until about the 10th of August 1838, since which I have not seen Jesse A Bryan.

2nd Are you acquainted with W^m H Turner the defendant in this suit, and how long have you been acquainted with him?

Answer. I am acquainted with W^m H Turner and have known him upwards of ten years.

3rd What individuals composed the first firm of Mc Ke Bryan & Co. that did business in Clarksville?

Answer. The first firm of Mc Ke Bryan & Co. was composed of Henry Mc Bryan and Joseph Mc Bryan.

4th When was said partnership formed, and when did it go into operation?

Answer. I do not know exactly when it was formed, but their first importation of goods were brought in the Spring of 1835, and opened late in the Spring or about the first of the Summer.

5th Where did said firm do business, and who was the active member of said firm?

Answer. The firm of Mc Ke Bryan & Co. done business at Clarksville, and Henry Mc Bryan was the active partner.

6th Did Joseph Mc Bryan live at Clarksville when said firm com-

commenced business, and if so, how long did he continue to live there afterward and where did he remove to?

Answer. Joseph H. Bryan did not live at Clarksville when the firm of H. H. Bryan & Co. commenced doing business but arrived at Clarksville from North Carolina a few weeks afterward and remained there until the last of December 1835, making about 6 months residence at Clarksville, and from Clarksville he removed to the vicinity of Nashville and subsequently removed to the Western District of Tennessee.

Q. After Genl. Bryan's removal from Clarksville in December 1835, was he ever afterward in Clarksville, as far as you know or believe?

Answer. He never was in Clarksville after 1835. I believe, except in the Spring of 1836, he passed down the River on a Steam Boat and I do not believe he got off of the Boat, for he sent some friend to H. H. Bryan by Majr. C. Bailey from the Boat.

Q. Were you in the employment of said firm of H. H. Bryan & Co. as a Clerk from the time at which it commenced business, or from near that time until it was dissolved?

Answer. I commenced as Clerk with H. H. Bryan & Co. in December 1835, and lived with them in that capacity during the whole of the time they done business in Clarksville.

Q. When was the said firm of H. H. Bryan & Co. dissolved: and state the circumstances of the dissolution?

Answer. About the month of August 1837 H. H. Bryan left Clarksville for the purpose of going to the Western District to see his uncle Joseph H. Bryan for the purpose of effecting a dissolution with his uncle, and taking his brother Jesse H. Bryan into partnership, and when he returned he said he had done so, and on the 5th of September 1837 we took an inventory of the Stock of Goods on hand, in order that H. H. Bryan could make out a balance sheet, which showed how the firm, of which Joseph H. Bryan was a member, stood, and also the amount the new firm owed said Joseph H. Bryan for his interest in said firm.

Q. At what time was the said inventory taken and balance sheet made out?

Answer. The Inventory was commenced the 5th of September 1837 & accomplished as well as I recollect in a week or 10 days. The balance sheet was made out about the last of that year (1837) but at what time I do not know.

11th As soon as the Inventory was taken did not Henry & Jesse A. Bryan enter into partnership, & carry on business upon the old stock of Good which was on hand at the time of taking said Inventory?

Answer. They did.

12th Was Joseph H. Bryan a member of said last mentioned partnership?

Answer. No.

13th Was Joseph H. Bryan ever a member of any firm of which Jesse A. Bryan was a member?

Answer. No.

14th What partnership denomination did H. H. Bryan & Jesse A. Bryan assume after the dissolution with Joseph H. Bryan as aforesaid?

Answer. The business was done under the same sign in the same Books of the old firm, all the Accts. were made out in the name of H. H. Bryan & Co. & in fact there was no distinction in the accounts, notes &c. but all made out as though there never had been a change of any sort.

15th Was the said balance sheet of which you have spoken above made out with reference to the good & bad debts; & at the time of making it out did you consider the first firm of H. H. Bryan & Co. solvent?

Answer. Henry H. Bryan made out the balance sheet & the amount of the bad debts was not taken into consideration as a available means, but the stock of good & the good debts were accounted for to Genl. Bryan. As far as I could ascertain the firm was solvent, at least Henry H. Bryan must have thought so for he accounted to Genl. Bryan for a profit on the fund he put into the concern.

16th After the taking of said Inventory did all the stock & effects of the first firm of H. H. Bryan & Co. consisting of Henry H. Bryan & Joseph H. Bryan: pass into the hands of the second firm of the same name; & was that the capital upon which the second firm of H. H. Bryan & Co. consisting of

Henry K Bryan and Jesse K Bryan, commenced business and did business during its existence?

Answer. The Good effects of the firm of K K Bryan & Co. composed of Henry K Bryan and Joseph K Bryan passed into the hands of the second firm of the same name composed of Henry K Bryan and Jesse K Bryan, and the said good and effects were the only capital upon which the said firm last named done business except borrowed money.

17th. How long did the second firm of K K Bryan & Co. continue in existence and what transformation did it undergo when it terminated?

Answer. The firm of K K Bryan & Co. last alluded to continued in existence from the 5th September 1837 until the 5th of February 1838 when they took into copartnership one James C Johnson, who became a partner of the firm of Bryan, Johnson & Co. composed of said Johnson and Henry K Bryan and Jesse K Bryan.

18th. Were you in the employment of the said second firm of K K Bryan & Co. throughout the whole term of its existence?

Answer. I was.

19th. You have stated in your answer to the 15th Interrogatory above that upon the dissolution of the first firm of K K Bryan & Co. K K Bryan accounted to Joseph K Bryan for a profit upon the fund which he (Joseph K Bryan) had put into the concern. Will you state what sum he accounted to him for, or undertook to account to him for, and how, and when?

Answer. The reason I stated that Genl. Bryan was allowed a profit on his capital was that he had put into the firm Four thousand Dollars, and Henry K Bryan credited Genl. Bryan by Twenty Dollars for a premium paid on a Draft of Two thousand Dollars, which made Four thousand & Twenty Dollars the amount of fund put in by Genl. Bryan, and when Jesse K Bryan returned from the Western District, whether he had met to settle with his uncle on the part of himself and his brother K K Bryan, told Henry K Bryan in my presence he had given his note to his uncle for the Stock of Good and effects, and the note which I hereto copy being for a larger sum than Genl. Bryan put

into the firm. Said note is signed in the hand writing of Jesse A Bryan as follows:

"Twelve months after we promise to pay Joseph H Bryan or order Six thousand, Eight hundred Seventy four ³³/₁₀₀ Dollars value received with interest from date, in due form and seals
5th February 1838

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He He & J A Bryan Secy "

20th " Were you a clerk in the employment of Bryan, Johnson & Co? through-
out the whole term of its existence: and how long did that firm
last, and how was it dissolved?

Answer. I was a clerk for Bryan Johnson & Co? during its entire existence.
The firm of Bryan Johnson & Co? continued from the 5th February 1838
until May of the same year when Johnson withdrew from the firm.

21st " Did Henry H Bryan & Jesse A Bryan after the withdrawal of
Johnson form another firm and go on with business: and if so, what
denomination did they then assume?

Answer. They did. They resumed the same name of He He Bryan & Co?

22nd " Were you a clerk in the employment of said third firm of He He Bryan
& Co? throughout the whole term of its existence: and when, and how did
that firm terminate?

Answer. I was. The said firm terminated on the 10th day of July 1838. I
bought their entire stock of goods.

23rd " Was your purchasing out the third firm of He He Bryan & Co? a sud-
den thing, not thought of until the day on which you concluded the
purchase: or had it been proposed for some time before, mutually talked
about, and the subject of some days reflection upon: and when you
concluded to make the purchase, did you not take an account of
stock, and were you not some days engaged at that?

Answer. Henry H Bryan & myself had been for some time talking about
my joining them in business or my buying their stock of goods as
under the new state of affairs the firm of He He Bryan & Co? could not
without some change sell goods and collect money from their patrons

without losing custom. I also had hopes of being able to procure some Cash to put in with them, but how long we were talking about the contract as it was actually made I do not recollect, but it was not sudden. The Inventory was commenced the 10th of July & occupied several days afterward in taking.

24th. When the firm of Bryan & Johnson & Co. was dissolved, was not the dissolution published in the Clarksville Chronicle, a newspaper published at that place? & also when the said firm of Bryan, Johnson & Co. was formed, was it not published that said firm had been formed in said paper also?

Answer. When the Bryan & Co. took Mr. James C. Johnson into partnership they did publish it in the Clarksville Chronicle, which I find by reference to the files of said paper, & also find the withdrawal of Johnson from the firm of Bryan, Johnson & Co. & the continuation of the business by the Bryan & Co. is also published in the "Chronicle" each publication is made within a few weeks of their separate occurrences, viz, the Partnership of the 5th Feb'y & withdrawal of May 1838.

25th. Was Wm. L. Turner a subscriber to the Clarksville Chronicle at that time, if so, how do you know it? also state any facts or circumstances tending to show that Wm. L. Turner was interested in said Paper, as one of the owners, or as one through whose patronage it had been established?

Answer. Wm. L. Turner was at that time a subscriber to the "Chronicle" for I was at his house every day, had boarded with him for some months prior to that time, & I think I was boarding there about the time of one or both of the publications. Mr. Turner & several others aided Mr. McGinty, the publisher, by their influence & subscriptions of 5, 10, or 20 Copies each, & I know Mr. Turner to have been a warm & devoted friend to Mr. McGinty, & think he endorsed for him when he purchased the Paper of J. Richardson.

26th. Was Wm. L. Turner living in Clarksville when the first firm of the Bryan & Co. was dissolved? also when the second firm of the Bryan & Co.

was dissolved, & also when the third firm of Ke Ke Bryan & Co. was dissolved?

Answer. He was.

27th. Is not W^m T. Turner a nephew of Joseph Ke Bryan & a Cousin of Henry Ke Bryan & Jesse Ke Bryan?

Answer. He was a nephew of Genl Joseph Ke Bryan & Cousin of Henry Ke Bryan & Jesse Ke Bryan.

28th. Was not W^m T. Turner the legal Counsel of all the firms of Ke Ke Bryan & Co. retained as such by Henry Ke Bryan throughout the whole time that any of them did business, & in their Law suits in settling up their business?

Answer. I do not know much about their contracts about Attornies, but I once was doing business for Ke Ke Bryan & Co. brought about in which Mr. Turner was marked as Attorney, & have been told by Henry Ke Bryan that Mr. Turner was his or their Attorney, & it was by his direction I had Mr. Turner marked in the suit referred to. I have seen the deposition of W^m T. Turner in the suit in Chancery at Clarksville, Jesse Selzer Adm^r of the Allen & Grant, in which he states he was the retained Counsel of Ke Ke Bryan & Co. by Ke Ke Bryan & not by Joseph Ke Bryan.

29th. Was W^m T. Turner a regular customer of all the firms of Ke Ke Bryan & Co. & of Bryan, Johnson & Co. during the whole time that either of them did business at Clarksville: & if he was a very special Customer of said firms or either of them such as obtaining all his family supplies of merchandise from them, or such as that where they had not an article which Turner wanted, they undertook to procure it for him elsewhere, state it: & give a full explanation of his relation to said firms as a Customer?

Answer. William T. Turner was a constant customer of the several firms of Ke Ke Bryan & Co. was in the habit of buying almost every thing he needed in their line of business, he gave them the preference provided the article suited, but as he had accounts at various other stores, it was seldom the case an article was bought at any other

Store & charged them in the books of H. H. Bryan & Co., though when necessary to pay the Cash any article of good or marketing if requested (which was very often done) & acting for H. H. Bryan & Co. or either of the Bryans would pay for the same & charge Mr. Turner with the Cash. This was done mostly when Mr. Turner was absent at the solicitation of his Lady. I mean either Henry or Jesse Bryan, & not Leub. Bryan. I have no distinct recollection of this being the case while Mr. Johnson was connected with Henry & Jesse Bryan.

Q. When the first firm of H. H. Bryan & Co. were taking an inventory & account of Stock on the 5th of September 1837 preparatory to a dissolution of that firm as you have before explained, was not the said business done & carried on with closed doors leaving a front window open in order that any person might obtain admission who applied for that purpose? How long was that business in progress? & were there not many persons who were admitted into the Store while it was going on, who had opportunities of seeing what was taking place, & of knowing for what object it was being done?

Answer. When we took the inventory or account of the Stock of Goods referred to (and all the other) the front doors were closed to prevent needless interruption but the front windows, one at least on the side of the Store we were engaged in measuring or handling the Goods were left open for the purpose of the light of the same, and also to attend to any call for Goods or otherwise for we were as ready & willing to sell Goods when taking an account of Stock as at any other time, & if a purchaser wanted any article that was taken down it was considered as sold by the new firm, or if not taken it was sometimes sold & listed with the Goods already taken down at cost & charged as sold by the new firm, or if the article was in a part of the Store we did not wish to interfere with until we reached it by going regularly through the Stock, it was charged as sold by the old firm. As I have already stated I generally took a week or ten days to take an account of goods, but the date (as in evidence the 5th September 1837) referred to the day on which we began the inventory as though it was all done in one day. There was never as I recollect a

refusal to admit persons during the time we were taking an account of stock or any backwardness in telling the object for which the inventory was being taken: or if it was not desired to become known there was not any injunction of secrecy on my part, but how many obtained any particular information I know not

31th. Did not the unmarried Sisters of Henry McPyeau or a portion of them (say how many) reside in the family of William T. Turner at the date of the dissolution of the first firm of McPyeau & Co. or for sometime before or after, say how long? Also state whether there was not the utmost intimacy between Henry McPyeau & W^m T. Turner during the said Henry McPyeau's connection with any or all of said firms: or whether by reason of the intimacy or relationship between him or Turner, he did not, although he himself did not board with Turner, spend much of his time at Turner's house, or eat there almost as often as he did any where else?

Answer: There was one of Henry McPyeau's unmarried Sisters who resided in the family of W^m T. Turner at the time referred to or I think she (Mrs Dickinson now of Nashville) made W^m T. Turner's house her constant home for the last three or four years. W^m Turner lived in Clarksville. Some of the other Sisters of Henry McPyeau were frequently at W^m Turner's house, but I do not think it was altogether their homes. W^m Turner or Henry McPyeau were quite intimate at all times: W^m Henry McPyeau did not board at W^m Turner's after he married (the 2^d January 1838) but during the period of W^m McPyeau's single life he boarded at W^m Turner's, though not without some exceptions, but let him board there or not he was at W^m Turner's frequently.

32nd. Did not a very great degree of intimacy or friendship exist at all times between Jesse A. Pyau and W^m T. Turner: was not the said Jesse A. Pyau as much, or nearly as much, at Turner's house from the time at which the first firm of McPyeau & Co. commenced business in Clarksville until he, Jesse A. Pyau finally left Clarksville as if he had been a member of Turner's family? State when Jesse, A.

Bryan finally left Clarksville?

Answer. Jesse A Bryan & Mr Turner were upon terms of friendship, tho' not very intimate, he was at Mr. Turner's almost constantly during the time he resided in Clarksville after Mr. Turner's return from a residence of some months in the Country about 1836, but did not board at Mr. Turner's. Jesse A Bryan finally left Clarksville about the 10 August 1838.

33^Q. Did or did not Jesse A Bryan for a considerable period of time (specify what period) occupy a back room in Mr. Turner's office in Clarksville as a sleeping apartment?

Answer. He did for a year or so occupy Mr. Turner's back room as a sleeping room & occupied it as such up to the period of his quitting Clarksville. I think Jesse A Bryan occupied the back room of Mr. Turner's office the 5th September 1837.

34^Q. Will you look at the original note here shown you of H. H. Bryan & Co? & Mr. H. Turner payable to H. Bryan, being the same note which Turner solemnly obtained Judgment by Motion against Henry H. Bryan, Jesse A Bryan & Jesse Selser Adams with the will annexed of Joseph H. Bryan & Co., which is the Judgment which is sought to be enforced in this suit; & say whether you are acquainted with the hand writing in which said note is written, both the body & signatures, & also whose hand writing the body of said note is in, & whose hand writing each of the signatures is in? First copy the note in your answer that it may be distinctly seen what note I am answering applies to?

Answer. The note referred to is in words & figures, & is for \$1000. One day after date we promise to pay H. Bryan or order one thousand dollars for value received, in cash our hands this July 2^o 1838. (Signed) H. H. Bryan & Co.

Mr. H. Turner Secy.

The body of the above note & signature of H. H. Bryan & Co. is in the hand writing of Henry H. Bryan; the signature of Mr. H. Turner I think is Mr. H. Turner.

359. Do you know anything of the consideration of said note? if you do state it. Or if you know any facts or circumstances tending to show what the consideration was, state them?

Answer. I know nothing of the consideration unless I hear a rumor that Henry W. Bryan told me he had borrowed of Mr. Bryan about that time, which amount was one thousand dollars.

Question By Defendant. You have spoken of my being a customer of the various firms of Bryan &c. Will you state if the acct. rendered me from the time I commenced dealing with them were not made out in the name of W. W. Bryan &c.?

Answer. The accounts made out against you and others for goods sold by the Bryans at Clarksville were all made out in the name of W. W. Bryan &c.

Question By Same. At the time of the alleged dissolution of the firm of W. W. Bryan &c. was there any publication in the newspapers or otherwise of the dissolution?

Answer. At the dissolution of the 5th September 1838 there was not any publication in any newspaper or any other printed or written publication made.

Question By Same. When Bryan, Shuworth & I were doing business together, was not the sign over the store door that of W. W. Bryan &c. and did not all the firms you have spoken of continue this sign over the door and do business under it until you purchased all the goods of W. W. Bryan &c.?

Answer. The sign of W. W. Bryan &c. was over the door when I commenced living with them in December 1835. The same sign remained over the door without ever being altered and they all done business in the same house until I bought their stock on the 10th July 1838.

Question By Same. State if you know, if Paul Joseph W. Bryan was not the responsible member of the firm of W. W. Bryan &c. Did he not furnish the capital, and give to the firm all the credit they had?

Answer, Genl Joseph Mc Bryan furnished four thousand & twenty Dollars as before stated, which was all the real capital in the concern as I know of, & Genl Joseph Mc Bryan was the only source of credit, as Mc Bryan had but little means, in fact he did not put any thing into the firm at the commencement, as he was not bound to do it by the Article of Copartnership formed early in 1835 (I believe) between him & Genl Bryan, which Article Mc Bryan showed me in February 1836.

Further this Deponent saith not.

W. R. Carney.

Articles of Copartnership

This Indenture made & entered into on the 25th March 1835, between Joseph Mc Bryan of the County of Transville & State of North Carolina of the one part, & Henry Mc Bryan Jr. of the County of Montgomery & State of Tennessee of the other part, Witnesseth, that the said parties have this day entered into a mercantile Copartnership, the buying & selling of any kind, groceries &c. the business to be conducted under the firm of Henry Mc Bryan & Co. in the Town of Clarksville in Montgomery County, Tennessee, the said Joseph Mc Bryan to advance four thousand Dollars capital, two thousand of which is now advanced & the receipt of it hereby acknowledged by said Henry Mc Bryan as the remaining two thousand within the course of twelve months, & the said Henry Mc Bryan on his part binds & obliges himself to superintend & conduct the said business, & keep a regular set of Books & once in each year make an exhibit of the affairs of said Company, showing the amount of Merchandise on hand, the debts due the said firm by Note or Bond or by account, the liabilities of the firm to their whole extent, when & where payable. And it is further understood between the parties that they are not to purchase articles of produce but confine their business exclusively to what is termed as merchandise the buying & selling of goods, all the necessary expenses of the business to be paid by the firm of which there shall be an exact account kept on the Books, & in the division of the profits arising from the business they shall be divided in the proportion of one third to the said Henry Mc Bryan & two thirds to said Joseph Mc Bryan, & in the event of loss they are to bear their proportion in the same

ration. The Copartnership to continue five years unless sooner dissolved
by mutual consent of the parties. In testimony of all which the parties have
interchangeably set their hand & seals day & date above written

Witness
Jesse Seler

Henry Mc Bryan & Co
Jos Mc Bryan Secy

Endorsed.

"Reby 5" 1838. Settled the within Copartnership in full. Mc Bryan
by J. A. Bryan.

Copy of Note filed by Complainant
Twelve months after date we promise to pay Joseph Mc Bryan or order Six
thousand, eight hundred seventy four dollars ³⁷/₁₀₀ for value received with
Interest from date. Witness our hand & seals 5 February 1839
J 6874.37
J Mc Bryan Secy

Copy of Transcript of Judgment.

State of Tennessee.

Be it remembered that at a Circuit Court begun & held for the County of
Montgomery at the Court house in the Town of Clarksville on the 2nd Monday
in September 1840 It being the 25th day of September 1840 on which the follow-
ing proceedings took place Present the Honorable M. A. Martin Judge
of the 7th Judicial Circuit in said State. That

" Wm H Turner

vs

Motion

Henry Mc Bryan, Jesse A Bryan
& Jesse Seler Advs: with the Writ
assigned of Joseph Mc Bryan Secy } This day came the Plaintiff by Attorney
} and thereupon came a Jury of good and
} lawful men, Wm Peter Peacher, George
Mc Johnson, Wm Barton, James Lagne,
Warren Sykes, Saul Anderson, Wm Watwood, Richard Richard, James
Stewart, Jacob Croft, Hely Barbee & James Jackson, who being duly
elected, did swear well & truly to try the fact of securityship of the plain-
tiff for the defendants, upon their oaths do say that the plaintiff was the
security for the defendants on a note of hand executed to J. A. Bryan

executed on the 2^d July 1838 for One Thousand Dollars & due One day after date
 at appearing to the satisfaction of the Court that at the May Term of this
 Court 1840 Judgment was rendered on said Note against Henry M. Bryan
 & said Turner for the sum of Eleven hundred & Ten Dollars & Seven dollars
 & 90 cents Costs of Suit. It is therefore considered by the Court that the
 Plaintiff recover of the Defendants the sum of Eleven hundred & Ten
 Dollars & Seven dollars & 90 cents Costs, & the further sum of Twenty four dollars
 & 18 cents interest to this date amounting in all to the sum of Eleven hun-
 -dred & forty dollars & 08 cents as also the Costs in this behalf expended, &
 that execution issue be levied of the good & chattels, Lands Tenements of
 Henry M. Bryan & Jesse A. Bryan & of the good & chattels, rights & credits
 which were of the Estate of Joseph M. Bryan decd, & which have come into the hands
 of Jesse A. his Adm^r with the Will annexed to be administered.

The Note on which said Judgment was rendered was filed by the
 Plaintiff as in & to the record & figures following, "to wit"

\$1000 One day after date we promise to pay Mr. Lorrain or order One
 Thousand Dollars for value recd. Witness our hand this July 2^d
 1838. H. M. Bryan & Co.
 Wm. H. Turner Secy

An Execution issued on said Judgment on the 3^d day of October 1840 to
 Fayette County to Plaintiff, which said Execution has not been returned.

State of Tennessee & I Charles Bailey Clerk of the Circuit Court of said County
 Montgomery County do hereby certify that the foregoing is a true & perfect
 Transcript of the Judgment in the case herein mentioned

& the Note on which said Judgment was rendered as the same remains of
 Record & on file in my Office. Witness my hand at Office this 17th day of
 September 1845. Chas Bailey Clk

By his deputy J. H. Tridlow

executed on the 2^d July 1838 for One Thousand Dollars & due One day after date
 it appearing to the satisfaction of the Court that at the May Term of this
 Court 1840 Judgment was rendered on said Note against Henry H. Bryan
 & said Turner for the sum of Eleven hundred & ten Dollars & seven dollars
 & 90 cents Costs of Suit. It is therefore considered by the Court that the
 Plaintiff recover of the Defendants the sum of Eleven hundred & ten
 Dollars & seven dollars & 90 cents Costs, & the further sum of Twenty two dollars
 & 18 cents interest to this date amounting in all to the sum of Eleven hun-
 dred & forty dollars & 08 cents as also the Costs in this behalf expended, and
 that Execution issue be levied of the good & chattels, Lands Tenements of
 Henry H. Bryan & Jesse A. Bryan as of the good & chattels, rights & credits
 which were of the Estate of Joseph H. Bryan dec'd, and which have come to the hand
 of Jesse Siler his Adm'r with the will annexed to be administered.

The Note on which said Judgment was rendered was filed by the
 Plaintiff as in the record & figures following, "to wit"

\$1000 One day after date we promise to pay Mr. certain or order One
 Thousand Dollars for value rec'd. Witness our hand this July 2^d
 1838. H. H. Bryan & Co.
 W. H. Turner Esq

An Execution issued on said Judgment on the 3^d day of October 1840 to
 Fayette County to Plaintiff, which said Execution has not been returned.

State of Tennessee & I Charles Bailey Clerk of the Circuit Court of said County
 Montgomery County do hereby certify that the foregoing is a true and perfect
 transcript of the Judgment in the case therein mentioned
 & the Note on which said Judgment was rendered as the same remains of
 Record & on file in my Office. Witness my hand at Office this 17th day of
 September 1845. Chas Bailey Clerk

By his deputy

Thos. W. Tridone

Copy of Record of Fayette County Court

A County Court began and held for the County of Fayette in the State of Tennessee at the Court house in the Town of Sumnerville on the first Monday being the 5th day of August 1838 present the worshipful William L. Wilkinson, Thomas H. Lester and David Garrett, Justices of the peace presiding
Nathaniel Christian Clerk
Samuel Hoonce Clerk

Upon information made that Joseph Mc Bryan is a Lunatic and of unsound mind and mentally incapable of managing his affairs, and that the said Joseph Mc Bryan is a resident of this County and within the jurisdiction of this Court and it appearing to the satisfaction of the Court that the information in this behalf is in all things true. It is ordered that the Sheriff of this County, Clerk of the County of Fayette in the State of Tennessee do summon a Jury consisting of twelve freeholders to ascertain by inquisition the lunacy and unsoundness of mind of the said Joseph Mc Bryan, and also ascertain what Land and Chattels the said Joseph Mc Bryan shall hold or possess at the time of taking the inquisition hereby ordered, and for good and sufficient reasons to the Court appearing the writ of Inquisition in this case ordered is directed to be returned to the present Term of this Court.

And therefore by order of the Court the Clerk of this Court in open Court issued to the Sheriff of this County the following writ or precept to wit.

State of Tennessee.

Fayette County County Court. August Term, A.D. 1838.

To the Sheriff of said County. Greeting.

Whereas information has been made to said Court at the present Term thereof that Joseph Mc Bryan is a Lunatic and of unsound mind, and that said Bryan is a resident of said County. There are therefore to command you to summon twelve freeholders residents of said County to be a Jury to ascertain by inquisition whether or not said Joseph Mc Bryan be a Lunatic and of unsound mind, and the said Jury if they find the said Joseph Mc Bryan to be a Lunatic should furthermore enquire what Land and Chattels the said

Joseph Mc Bryan is sequestered or holds at the time of taking such inquisition
 and return thereof make forthwith to the said Court now sitting.
 By order of said Court made this 6th day of August being the first Monday of
 August A. D. 1838. Larman Hoonee Clerk

And afterwards on this the said 6th day of August A. D. 1838 Nathaniel Atkinson
 Sheriff of the County of Tazewell returned the foregoing writ of inquisition into
 open Court with his endorsements thereon in words and figures following
 to wit:

I, Nathaniel Atkinson Sheriff of said County, do certify
 to the County of Tazewell that the within process came to my hand on the 6th day
 of August A. D. 1838, that pursuant thereto I forthwith sum-
 moned George Mc Allen, Thomas Kealloway, Nathaniel Champion, Wm J Palmer,
 Wm Allen, Milton Alexander, John P Smith, George T Mainwright, James
 Keamler, Wm McCauley, Joshua Sherborn, Curtis Trifield, all of whom
 are freeholders and residents of said County, and that they were duly sworn to
 enquire of the Limacy of Joseph Mc Bryan, and what Land and Chattels said
 Bryan is sequestered or holds at the time of the inquisition and that the ver-
 dict and return of said Jurors signed with their respective names and
 sealed with their seals is herewith annexed. And that the inquisition
 of said Jury and all the proceedings in this behalf were had and done in my
 presence and under my superintendence. Nathaniel Atkinson
Sheriff of Tazewell County.

And annexed to said writ and return is the verdict and return of the Jury
 of inquisition in words and figures following, to wit:

In the matter of inquiry of the Limacy of Joseph Mc Bryan, be the
 the Jurors summoned to inquire of the Limacy of Joseph Mc Bryan being
 freeholders and residents of Tazewell County in Lemuee, and being duly sworn
 do certify that the said Joseph Mc Bryan is a resident of said Tazewell County,
 that he is now and without intermission has been for seven months past a
 Limatic of unsound mind and mentally incapable of managing his affairs,
 and we do further find that the said Joseph Mc Bryan is now sequestered and
 holds eight or ten thousand acres of Land situated in the Western District of

the State of Tennessee, of which about five thousand one hundred and ninety acres are in Clinch County, about six hundred and forty in Lipton County, about five hundred in Shelby, and also 540 in Shelby County, 540 in Henry County, 540 in Carroll County, 233 in Benton County, some in Lenoir County amount not precisely known, 540 acres in Hardeman County, also about 3000 acre adjoining part in Tennessee, the balance in Mississippi, also about 2000 acres in Realifax County, North Carolina, and some (amount not known) in Bert and Rutherford Counties in North Carolina, a house and lot in Nashville Tennessee, in La Grange four houses and lots besides 2 vacant lots near La Grange purchased of Paul. Dickins, about 20 slaves, bond amounting about one hundred thousand dollars or upward, besides stock and household furniture worth about 2000 dollars, also about 1000 acres of land in Louisiana. Given under our hand and seals this 6th day of August A.D. 1838.

George McAllen Esq	Thomas McAllaway Esq
A Champion Esq	Wm P Palmer Esq
Wm Allen Esq	William Alexander Esq
John P Smith Esq	George T Hainswright Esq
Joshua Newton Esq	James Beaulieu Esq
Leuris Truifield Esq	Wm McCauley Esq

State of Tennessee
Fayette County. } I John M Parks Justice of the Peace for said County do hereby certify that the above named George McAllen, Thomas McAllaway, A Champion, Wm P Palmer, Wm Allen, William Alexander, John P Smith, George T Hainswright, James Beaulieu, Wm McCauley, Joshua Newton & Leuris Truifield Sworn to inquire of the Lincacy of Joseph McPyszaw subscribed and sealed the foregoing return & verdict in my presence and were by me duly sworn to the truth and justice of the same. Given under my hand this 6th day of August A.D. 1838.

John M. Parks J.P. Seal

State of Tennessee } The foregoing proceedings on the requisition of the Lincacy of Fayette County } Joseph McPyszaw &c were had and done in my presence and under my superintendence this 6th day of August A.D. 1838.
Nathl Atkins Sheriff of Fayette County

Whereupon it appearing to the Court that the proceedings in this behalf are in all things regular, that said Joseph Mc Bryan is a Lunatic, and resident within the Jurisdiction of the Court, and that the schedule of property in the bequest of the said stated is correct & true. It is ordered that the proceeding in this behalf be confirmed & entered of record and by order of Court this matter is continued for further action until tomorrow.

Tuesday Morning, August 7th 1838.

Court met according to adjournment. Present the worshipful W^m H. Johnson David Barnett & Thomas Mc Lester Justices. Nathl. A. Hinson Sheriff J. Horner Clerk.

In the matter of the Lunacy of Joseph Mc Bryan upon application to the Court it was ordered that Sarah Ann Bryan be appointed Guardian of said Joseph Mc Bryan a Lunatic, the said Sarah Ann Bryan first giving bond with approved security for the faithful performance of the guardianship.

Saturday 11th August 1838.

Court met according to adjournment. Present the worshipful William C. Johnson, Thomas Mc Lester & Maurice Smith, Esquires Justices of the Peace in and for said County of Fayette. Nathl. A. Hinson Sheriff J. Horner Clerk.

This day came into Court Sarah Ann Bryan who at a former day of the present Term of this Court made application to be appointed Guardian to Joseph Mc Bryan a Lunatic and who by the order of this Court had been ordered to be appointed Guardian to said Joseph Mc Bryan upon her first entering into Bond in the sum of Four hundred thousand Dollars with good and sufficient sureties.

And thereupon the said Sarah Ann Bryan entered into Bond in the said sum of Four hundred thousand Dollars as principal, and Jesse Selor, John Glasgow, Jesse Mc Cobb and Stephen H. Sneed came into Court and executed the said Bond as Sureties of the said Sarah Ann Bryan for the faithful execution of the said Guardianship. And in open Court the said Sarah Ann, Jesse Selor, John Glasgow, Jesse Mc Cobb and Stephen H. Sneed acknowledged the execution of said Bond which Sureties are approved. And therefore the said Sarah Ann Bryan is appointed and confirmed to be Guardian of the said Joseph Mc Bryan a Lunatic of unsound mind, and the said Sarah Ann was duly qualified as such as the Law directs.

Copy of the Bond:

Know all men by these presents that we Sarah Ann Bryan, Jesse Siler, John Glasgow, Stephen H. Sneed, Jesse Mc Cobb, all of the County of Fayette State of Tennessee are held and firmly bound unto William L. Wilkerson Chairman of the County Court for said County of Fayette in the sum of Four hundred thousand Dollars to be paid to the said Chairman, Successor or Successors of them, their Executors or Administrators in trust for the benefit of the Lunatic hereafter named committed to the care of the said Sarah Ann Bryan, which payment well and truly to be made we bind ourselves our Executors our Administrators jointly and severally firmly by these presents. In witness whereof we have hereunto set our hand and seals this 11th day of August in the year 1838.

The Condition of this obligation is such that whereas the above named Sarah Ann Bryan is this day constituted and appointed Guardian to Joseph Mc Bryan a Lunatic. Now if the said Sarah Ann Bryan shall faithfully execute her Guardianship by receiving and improving all the Estate of said Joseph Mc Bryan until he become of sound mind or be sooner thereto required to render a plain and true account of said Guardianship in writing before the Chairman of our said County Court, and deliver up, pay to or pass to the said Joseph Mc Bryan all such estate or estates as he might be possessed of or to such other person or persons as shall be legally empowered or authorized to receive the same, then this obligation shall be void, otherwise it shall remain in full force and virtue according to the true intent and meaning thereof.

Sally A. Bryan Dep
Jesse Siler Dep
John Glasgow Dep
Stephen H. Sneed Dep
Jesse Mc Cobb Dep

State of Tennessee I, Jarmian Horner Clerk of the County Court of said County do certify that the foregoing proceeding had in and about the County of Fayette County of Joseph Mc Bryan and appointment of Sarah Ann Bryan Guardian, is a true transcript of the same as appears now in my office upon Record.

In witness whereof I have hereunto set my hand and affixed the seal of the County Court of said County of Fayette this 11th day of August 1838.

of said Court at Office in Somerville, February 25th 1823
Jarnow Hooper Clerk

Prosecution Bond

I acknowledge myself the complete security for Costs.
Nashville Decr 2^d 1842.

Thos Washington

Appeal Bond

Know all Men by these presents that we Jesse Siler Admr to and Thomas Washington are held firmly bound unto W^m L. Turner in the penal sum of Two hundred fifty Dollars for the payment whereof well & truly to be made we bind ourselves our heirs &c. Witness our hand &c. This 12th day of Novr A. D. 1845.

The Condition of the above Obligation is such that whereas the above Jesse Siler Admr. filed a Bill in the Chancery Court holden at Franklin against W^m L. Turner, on the hearing of which at the October Term 1845 a decree was entered from which decree the said Siler prayed & obtained an appeal to the Supreme Court of Error & Appeals at Nashville, Now if the said Siler shall prosecute said appeal with effect & pay all such Costs as may be ordered by the Supreme Court, then this obligation shall void else to remain in full force, virtue & effect.

Jesse Siler by
Thos Washington

Thos Washington

Bill of Costs

State Tax

2.50

Benj. Latham Clerk. Bond 33. Dup 100. Lpa 75. Copy 3.00. 2 Orders 50. 2 affs 36. Rules 50.
 5 Commissions 500. Petition for hearing (three) 25. decree 40. Appeal 9. Bond 75.
 Laying Costs 25. 5 Continuances 125. Enrolling Bill 300. Answer 200. Collection
 18. Order & decree 90. Postage 25. Transcript 22.50

43.17

Ans Brown Esq. Examining Deposition 100. Subpoena 62 1/2

Ans Brown " Serving Notice

.50

Ans W. Taylor " " Little

.50

W. Ragan Esq. Taking Deposition (Paid by Compt)

2.00

Thos. B. Firth Esq. Taking Depositions

4.00

J. G. Keller Esq. Taking 2 Depositions

2.00

J. C. Johnson Witness & mileage

} paid by Compt

1.67

Ans P. Carney Little

1.50

Ans P. Carney Serving Lpa

62 1/2
 \$60.09

State of Tennessee

This is to certify that the foregoing is a true & faithful transcript of
 the Record & proceedings had in the said heard & determined in the Court of Chancery
 at Nashville in the State of Tennessee when Isaac B. B. and J. S. Plaintiff and William R.
 Defendant. And that the said parties do the within as produced in said Court
 & determined when J. B. B. and J. S. Plaintiff and William R. Defendant
 of said Court have been set on hand & signed
 the said of said Court at Office the day of
 the 18th/1875

J. L. Little

207

closed after act

107
81

Transcript of
Lard

2

W. H. Turner

Filed 8th Dec. 1845

6th cent

Revised

(Revised in book
no 7 from page 377
to page 387)

No. 0

Jose Luis adm.

no. 3

H^{on} R. Turner. -

1. - In the absence of any stipulation in the Articles of Partnership; all the powers which one partner may ^{lawfully} exercise in the name of the firm, do as to bind the firm, are implied powers, and such as are ordinarily incident to the prosecution of the business in which ^{the firm} they are engaged. The putting of the firm, in the attitude of a principal towards a surety - or the procurement of surety, or the bringing about of the relation referred to, in whatever contracts one partner may make - does not belong to the class of incidental powers. - Story on Part. 150. 157. 166. 167. 168. 169. 170. - Bank of Liverpool v. Saffarans 2 Hum. Blanton v. M^{rs} Lewis 5th Hum.

2. - If a surety has been guilty of negligence, in becoming such; that is, as to whether the firm was dissolved, or as to whether the ^{execution of the} contract to which he became a party, as surety, was competent to be made by the partner who executed it, ~~and at whose instance he signed it as surety~~, the firm is not bound to him as principals, except the particular member at whose instance he signed the contract as surety. Story on Part. 196. Lloyd v. Fairfield 2 Carr. & Payne 325. St. York Fire Insurance Co. v. Pennell 5th Conn. Rep 574. Story on Part 201. 202. -

3. - Where the firm has been dissolved before the date of the contract, and where suspicion attaches to the transaction, or the circumstances under which Turner became a party to this note, were such, as ought to have put a prudent man upon inquiry; it will throw the burden upon him, of proving, that he became the surety; ~~on honest reliance upon the responsibility of the retired partner~~. Story on Part. 202. note 2 to 209. 210. note 1. Story 217. note 1 to 219.

4. th - Turner is not shown to have been a creditor of the ^{1st} firm of H. H. Bryan & Co., in any instance, before the dissolution of that firm. Then, considered as a creditor of that firm in reference to this contract, he is what the law calls a new creditor - that is, a creditor for the first time, after the firm was in fact dissolved - and, as such new creditor, it is not sufficient for him to rely simply, upon the word of publication of notice, in order to bind the first firm. But, he must show affirmatively, that he had a previous knowledge of Joseph H. Bryan's being a member of that firm, or that he still held himself out as a member of that firm, or that it was notorious that he was a member; in order to raise the presumption, that Turner in becoming the surety, did so upon the faith of his responsibility.

ity. If some of these things are shown, he cannot be said to have given credit to Joseph H. Bryan, nor to have been injured by Joseph H. Bryan's failure to give notice of his retirement. Story on Plead 247.8. and note 2 extending to page 250.

^{5th} - In view of the principles established by the preceding propositions, what is the undue advantage gained by Turner, in the course which he adopted? He has avoided entirely, the operation of those principles, which constituted an insuperable barrier to his recovery.

1. He has prevented the complainant from having an opportunity of pleading the plea of non est factum, which would have thrown the burden of proof upon Turner as to all the points involved; without the making of which, he never could have recovered. In other words, he has relieved himself from the indispensable necessity of proving facts which were indispensable to the support of his motion. The making of his motion was his own voluntary act; and, by submitting it under the circumstances stated, he has, in fact, made the court the instrument of injustice.

2. - There can be no doubt, if the proof had stood, upon the trial of the motion, as it stands here, that the result of that trial, would have been in favour of the complainant. - There is not a particle of proof adduced here, by Turner, to support the grounds upon which he obtained his judgment at law. The complainant here, however, whose position, ~~inasmuch~~ as to the burden of proof, is reversed by the course which Turner has pursued towards him; has taken upon himself, to disprove, what Turner should have proved affirmatively, in order to support his motion; and has thus shown clearly, that no judgment at law could have been rendered against him, but for the advantage taken by Turner, in evading the onus of proof which was cast upon him.

Turner, in the aspect of the case most favourable to him, has himself shown, that he did not really know what firm he gave credit to; by including as a member of it, in the motion made by him, a person who never belonged to it. And now, although that fact is indisputably proved, he still insists upon his judgment as against all three of those persons; thus clearly showing, that his object is, to prevent a loss to himself, no matter on whom it falls. -

In another aspect of his case, and most probably the true one, Turner gave credit to a different firm from that against which he made his motion; but which, proving insolvent, he avoided himself of the identity of the name of another firm, in which there was a solvent partner, in order to enforce his demand against a man who never owed it. -

Against that man, there was a gross fraud perpetrated by H.

H. Bryan, in the execution of the note in question; if, in fact, it was inter-
-dicted as the note of the 1st firm. And, it was executed under very suspicious cir-
-cumstances, to say the least of them; which ought to have put Turner upon in-
-quiring, as to whether that man was really bound. And, a very little inqui-
-ry would have satisfied him that he was not; and prevented him from incur-
-ring any risk. That inquiry was not made, nor were the circumstances
heeded. —

In the face of all these circumstances, Turner has obtained a judg-
-ment upon a note ^{which} was executed in front of Joseph H. Bryan; and at a time
when he was in a state of insanity — he was in a state of great physical ^{and} ~~deli-~~
-cately mental debility, for nearly two years before the date of the note, and the
general fact of his malady, if not the degree of it, known to Turner when
he became a party to the note.

Turner has obtained all these advantages, and subjected Joseph H. Bryan
to all these disadvantages, by his ex parte motion — by just coming into court,
in the absence of Joseph H. Bryan, and without notice, and merely affirming,
in opposition to the truth, as it now turns out; that Joseph H. Bryan was
a member of the firm which purported to have executed the note. Which
fact was taken for granted, merely because the terms of the motion affu-
-med it; and the only inquiry with the jury was, as to whether Turner was
surety in the note, and not as to the relations between the alleged firm-
-cipals in the note, or the circumstances under which the note was execu-
-ted, or Turner became a party to it. Turner insists in his answer, that the
facts alluded to, were necessarily included in the issue of "suretyship";
and that, in a technical sense, they were submitted to and passed upon by
the jury. This proposition amounts to nothing more, than a reaffirmance of
the conclusiveness of the judgment.

Turner also states in his answer, that proof was adduced upon these
points. The answer is replica to, which is a denial of the statement, and there
is not a particle of evidence to sustain it. Why does he not produce such
evidence on this occasion, or account for its nonproduction?

It is impossible, that any veritable evidence of that kind, could have
been produced. Who, for example, could have proved, that Joseph H. Bryan was a
partner of J. H. Bryan, when the original articles of partnership prove
incontrovertibly that he was not? Who could have proved, that the 1st firm of H.
H. Bryan & Co., was not dissolved before the date of the note, when the contrary
is expressly proved here, and the note of H. H. Bryan, given in settlement,
produced?

Who could have brought in question, on the trial of the motion, the compe-
-tency of Joseph H. Bryan; and who could have proved that he was compos

ment at the date of the note, only one month before an Inquisition was found against him, and he placed under guardianship; and which inquisition finds, that his insanity extended continuously from the previous period of several months; and when the other evidence shows, that his mental capacity was at least doubtful, for about two years before?

Did Turner generously ~~take upon himself~~, to undertake the conducting of Joseph H. Bryan's defence against himself, on that occasion? If so, how do we know, that he was as well acquainted with it, as the complainant; or that he urged it as fully; and with as much zeal and fidelity, as the complainant would have done?

Who proved, upon the trial of the motion, that Joseph H. Bryan was a member of any firm of H. H. Bryan & Co? Probably, H. H. Bryan; and if so, he was an incompetent witness, and then, there was no legal proof of the fact before the jury. Who suggested, upon the trial of the motion, ~~that the burden of proof, upon many of the points involved, lay upon Turner~~ that the execution of the note by H. H. Bryan & Co., at the time, and under the circumstances, if intended to bind Joseph H. Bryan, was an unfair transaction, and an abuse of a former authority; and that the burden of proof, upon many of the points involved, rested upon Turner? And how did Turner make the proof necessary to refute that suggestion? —

Was Turner so scrupulously respectful of the rights of Joseph H. Bryan, that he disinterestedly abstained from demanding judgment, until he had first made out his own case, then his adversary's defence, and shown that his own case triumphantly prevailed over the defence? Such an hypothesis, is wholly inconsistent with the defence which he now sets up; which is, that the judgment is conclusive — or much as to say, in view of what is proved, I have done you a grievous wrong, in obtaining the judgment; and I now avail myself of that wrong, to make you subscribe to it. —

Upon the whole — no other conclusion can be arrived at, but that, upon the trial of the motion, every thing was suffered to pass sub silentio, except the isolated fact, as to whether Turner signed the note as a surety. —

^{the} 6. — It was the 3^d firm of H. H. Bryan & Co. that Turner gave credit to, or became the surety of — or, it was some firm of that denomination, other than the 1st firm. —

As to what firm it really was, that he became the surety of; is a matter of fact, to be proved like any other fact. The pleadings here, make the issue, as to whether it was the 1st firm; and in support of his side of that issue, the complainant defendant adduces no proof whatever. But, it appears from the complainant's proof, that H. H. Bryan

was a member of all three of said firms, and that he signed the note. So far as the signature of H. H. Bryan & Co., and its being affixed by H. H. Bryan, go, it no more proves, or on abstract fact, that it was intended or understood to be the signature of the 1st firm, than it proves, that it was intended or understood, as being the signature of the 3rd, or ^{that} of the 2nd firm. So far, then, the proof is exactly balanced; and the onus lies upon Turner, to make it preponderate in favour of the note being the act of the 1st firm; and he utterly fails in contributing any thing towards that preponderancy. -

In support of his side of this issue, the complainant proves, that the 1st firm was dissolved before the note was executed - that there had been two succeeding firms of the same name, in the mean time - that the 3rd firm only, was in existence at the date of the note - and that the note was executed at the place where the 3rd firm was then carrying on business. -

Now, in the absence of all countervailing proof, tending to show, that the note was intended as the act of the 1st firm, would not the presumption that it was so intended, be extremely rash, when such presumption necessarily involves H. H. Bryan in the commission of a most aggravated fraud? And when, by referring the note to the 3rd firm, as the act of that firm, no such imputation would be cast upon him, for aught that appears in this cause? And when, the circumstances under which the note was executed, as above enumerated, tend strongly to show, that it was meant as the act of the 3rd firm? And when Turner, who ought to be cognizant of the matter here in issue, throws no light upon it, but stands by, with his arms folded - ed, trusting to the inherent obscurity of the transaction, rather than resort to extrinsic proof? -

But, Turner's judgment at law, puts this matter conclusively at rest; by showing, if not, that the note was intended as the act of the 3rd firm, yet, that neither was it intended as the act of the 1st firm. - He made his motion against H. H. Bryan, Joseph H. Bryan, and Jesse A. Bryan, as composing the firm of H. H. Bryan & Co., that executed the note; and his judgment is against those individuals. This is a solemn avowal, of record, that the firm to which he became duly, consisted of those persons; and were the persons ^{who} executed the note as principals. This was a material averment, and the judgment is founded upon it; without which, the judgment could not stand. Turner then, is conclusively bound by his own judgment; and by every allegation of his, made in setting forth his cause of action, which was necessary to give his judgment validity. - Now, the proof here is, and it is beyond all dispute, that Joseph H. Bryan never was a member of any firm, in association with Jesse A. Bryan; and, further, that no firm was formed of H. H. Bryan & Co., composed of Henry H., Joseph H., and Jesse A., ever existed. -

If, to this it should be assumed, that Turner might have had a good cause of action against the 1st firm, and that his including Jesse A. Bryan as a member of that firm, was only a mistake - then, my reply is, that the assumption of such a ground,

would make Turner contradict his own record; which he cannot do. Besides, ~~after~~ the fact of mistake - Is not the presumption equally strong, that Turner's mistake consisted in including Joseph H. Bryan, as a member of the 3^d firm; as that it consisted, in including Joseph H. Bryan, as a member of the 1st firm?

You must take the record of the judgment as it stands; and the allegation there is, not that Joseph H. Bryan, in the making of this note, contracted in his individual capacity, but in his association capacity, as a partner of Henry H. and Joseph A. Bryan, all constituting one party; but not, that two of them constituted that party.

Unless Turner is bound by the allegation in his judgment, as to who constituted the firm that executed the note; then, the said judgment is no bar to a future recovery upon the same note, against any other firm of H. H. Bryan & Co., constituted of different individuals from those stated in said judgment, to have composed the firm that executed the note.

7th - Turner had notice of the dissolution of the 1st firm of H. H. Bryan & Co. - not constructive notice merely, through the medium of publication in a newspaper, it is admitted - but actual notice, derived aliunde. The evidence to prove such notice, is circumstantial; but, it is so strong, and consists of such an array of facts, as to create an irresistible presumption that he had notice. -

As to the question of Jurisdiction. -

1. - A writ of error coram nobis lies, for some error of fact, involved in the record and proceedings, which has been passed upon by the court, and not by the jury. - It never lies for an error of fact, which is extrinsic of the record and proceedings; nor for a fact involved therein, which has been passed upon by the jury. -

2. The judgment, where a writ of error coram nobis is sustained, is a judgment of revocation. The judgment is simply revoked, leaving the other proceedings in the cause, to stand; and the cause to be proceeded in to judgment again. But, ~~if~~ ^{if} facts extrinsic of the record, were allowed to operate in producing the revocation; the revocation would be altogether nugatory, as, without introducing them into the record afterwards, the court would go on and commit the same error over again. *Wynne v. The Governor* 1 Myr. 149. *Goodwin v. Saunders* 1 Read 9th Myr. 91. *Merrill v. Parker* 6th Hum. 332. *White v. Harris* 5th Hum. 425. *Rogers v. Ferrill* 10th Myr. 254.

3. - The head of Equity Jurisdiction to which this case belongs, is, that a judgment at law has been obtained against the complainant, by mistake, accident, or fraud; which is unjust, and which the complainant had no opportunity of defending himself against, and who did not lose that opportunity by any fault or negligence of his own. 2 Story's Eq. Sec. 887. 895. 897. 1 Johnson's Ch. Rep

44. 91. 543. 3 Johnson Ch. Rep. 351. 275. 6th Johnson's Ch. Rep. 90. 7th Johnson's Ch. Rep. 285. 1st Dev. 289. 2 Dev. 154. 2 Am & Mem. 13. 139. 408. 2 Loran 328.

4th The Chancellor could not decide collaterally, in determining the question of his jurisdiction, as to whether the judgment at law was erroneous.

5. - It is not competent in this case, for the defendant to have answered the bill, and to have reserved in that answer, an objection to the jurisdiction, in the same manner as if he had demurred. Such objection, forms matter in statement, and ought to have been taken advantage of, at the proper time, by plea, or by demurrer. - *James v. Edwards*, and *Fisher v. Cummings*, both decided at this term, and not yet reported. - It is admitted, that when the subject matter of a bill is not of equitable cognizance, an objection to the jurisdiction may be taken on the hearing, or at any time. But, the objection made to the jurisdiction in this case, assumes, that the whole object of the present bill is, to have the judgment at law reversed; without regard to what that judgment was founded upon, or the circumstances under which it was obtained. Nothing is more obvious, than that a court of equity will not entertain a bill filed for the purpose of having a judgment at law reversed, or revoked; & that ^{no} court can reverse, or revoke, a judgment, except the court that rendered it. But, the distinction between reversing or revoking a judgment, and perpetually infirming it, is a very broad one; and a bill filed for the latter object, necessarily goes back to the cause of action. -

The statute which authorizes judgment on motion, in behalf of a surety against principal, confers a special and limited jurisdiction; and the only fact which a jury impaneled on such an occasion, can try, is, the solitary fact of "suretyship"; and none of the defenses which the defendant in such motion might have, even although a surety, against the note exhibited against him in support of the motion. If the fact of suretyship appears on the face of the note, no jury can be impaneled, and the court cannot try any fact, but is merely required to pronounce judgment. Even if the defendant should have notice of the motion, or should be in court at the trial; he could not oppose the judgment, where the fact of suretyship appeared on the note; nor contest before the jury, any other fact, than that, as to whether the plaintiff in the motion had signed the note as his surety or not. - Can it be possible, that there is no jurisdiction in the court, to give a defendant in such motions, relief, upon the various other grounds of defence which he might have; or, that all his other defenses are cut off, by the statute in question??

Thos. Washington

Solr. for complt.

John Allen Adams

M. J. Smith's Trust

John H. Sumner

Wm. H. Sumner
for cash