

principal equally guilty as if he had sold it himself; and we can not see but that the defendant must have been convicted, if the proof had been as he supposed it would be on the part of the State, under all the circumstances of the case.

Judgment affirmed.

NOTE.—For the rules which govern the court in granting new trials in civil cases, see 4 Yerg., 444, 323, 152; 9 Id., 330; 3 Id., 307; Meigs, 417; England v. Burt, 4 Humph. For the rules which govern in felonies, see Daines v. State, 2 Humph.; Kirby v. State, 3 Id.

HOPSON v. FOUNTAIN.

NASHVILLE, DECEMBER, 1844.

MONEY—MEANING OF THE WORD. The word money has not a technical, legal meaning, signifying dollars and cents of constitutional currency, to-wit, gold and silver; but is a generic term, embracing, according to the subject-matter of the discourse or writing, every species of coin or currency, and bank notes as well as dollars. (Acc. Crutchfield v. Robins, 5 Humph., 15; Whitman v. Childress, 6 Humph., 306; McDowell v. Keller, 4 Coldw., 263; Coffin v. Hill, 1 Heisk., 387; Wolfe v. Tyler, 1 Heisk., 317, the four last citing this case.)

BANK-MONEY. A note payable "in current bank money of the State of Mississippi," calls for that species of money known as Mississippi bank-notes, and the measure of damages for its breach is the value of such notes when the note was payable. Acc. Eason v. Abernathy, 1 Baxt., 220, citing this and other cases.)

[Cited in: 1 Bax., 220; 5 Lea, 96.]

This case was tried at the July term of the circuit court, at Clarksville, in the year 1844, by Judge Martin and a jury. A verdict and judgment were rendered in favor of the plaintiffs, from which the defendant appealed.

Boyd, for Hopson, plaintiff in error.

Kimble, for defendant in error.

Reese, J., delivered the opinion of the court.

Fountain sued Hopson, in covenant, upon the following instrument, to wit:

"§273. Ninety days after date I promise to pay Moses A. Fountain, in current bank-money of the State of Mississippi, the sum of two hundred and seventy-three dol-

lars and 73 cents, for services rendered in the year 1838. Witness my hand, the 24th of September, 1839.

“Geo. B. Hopson. [Seal.]”

[141] Upon the trial the defendant proved that when the covenant fell due he resided in the State of Mississippi; and he offered to prove the value of Mississippi bank-money, or bank-notes, when the covenant by its terms fell due. But the court rejected all evidence on that subject, and charged the jury “that the criterion of damages on the covenant was the number of dollars specified in it, with interest thereon; that the word money had a technical, legal meaning, signifying dollars and cents of constitutional currency, to wit, gold and silver.” We can not consent to the correctness of this definition of the word money. It is a generic term, embracing, according to the subject-matter of the discourse or writing, every species of coin or currency—guilders, guineas, napoleons, eagles, and bank-notes, as well as dollars. But if its meaning were, as the circuit court holds, when standing alone, *per se*, still, like all other words, its meaning will be modified by accompanying words or phrases. Here, the accompanying and qualifying words are “current bank-money of the State of Mississippi.” Bank money means that species of money called bank-notes; and of that species the parties in this case meant that sort or variety called Mississippi bank-notes. They may not be the very best, but at all events they are those about which the parties contracted. The meaning and intention of the parties on the face of the instrument it is not difficult to perceive. Whether, on the grounds of policy, it would originally have been better, in the construction of all such instruments, to have held the word dollar to have referred, not to the numerical amount of the bank-notes, but to the standard of value, it is now useless to enquire. The principle, in cases where it can apply, has been long and well established. Society conforms to it, in their contracts, and it must be adhered to.

The measure of damages in this case is the value of current Mississippi bank-notes when the covenant was payable. The judgment will be reversed, and a new trial will be awarded.