

Pleas and proceedings had before the Hon. John S. Brien Chancellor for the Middle division of the State of Tennessee, at the December term 1851 of the Chancery Court at Clarksville, Montgomery County Tennessee, in the cause of W^m C. Jones and Thomas B. Powell Executors of Nathan Skinner, Complainants and W^m Etheridge defendant.

Bills filed Oct 28, 1848 at Dover, 20 April 1850 at Clarksville.

To the Honorable Jerry H. Cahal the Chancellor sitting at Clarksville. Dover.

Your Orators Thos. B. Powell & W. C. Jones executors of Nathan Skinner deceased and citizens of the County of Stewart, Humbly complaining sheweth to Your Honor William Etheridge a citizen of the County of Stewart commenced an action at law against them on a bond purporting to have been executed by their testator to him on the 9 day of October (1838) eighteen hundred and thirty eight and payable at the death of the said testator out of his estate, which bond was under seal and was for the sum of one thousand dollars at the July Term 1848 of the Stewart Circuit Court a judgment was rendered against them on said bond for eleven hundred and eighteen dollars & 33 cents debt & damages together with the cost of suit. Your Orators further shew on 25 day of August 1841, the said William Etheridge executed his promissory note to their testator for the sum of one thousand dollars ninety seven dollars and 35 cts which promissory note was found among the valuable papers of the deceased upon the trial they relied upon the statutes of set off and plead this note in bar of the action to which the statutes of limitation was plead and they were unable to prove a promise of the same within six years and from the bond being under seal they were unable to make a defence at law. Your Orators now state that the said bond was without consideration upon which a judgment was obtained and they believe said bond was obtained by fraud and misrepresentation. They shew to Your Honor that the said Etheridge was wholly insolvent for some years previous to the death of the testator and at the time of the execution of said bond. They further shew that the said Etheridge at the time of the execution of said bond and after the same was executed was indebted to their testator in a large amount and actually made a deed of trust upon his property to secure him and Your Orators are satisfied of the fact and charge the same to be that not one dollar of property or money was advanced by said Etheridge for the said bond of one thousand dollars and they believe and charge the fact to be that it was obtained by false & fraudulent representations. Your Orators further insist that said paper is in its character a testamentary paper and that their testator if this view of it should be taken by the Court revoked the same by a subsequent will duly made and proved. They shew ample provision was made by the testator for the family of the said Etheridge and also by giving to him a legacy. A copy of said will will be filed on the hearing of the cause. Your Orators further state that the subsequent note given by Etheridge to their testator for \$1097.33 was for the actual indebtedness of the said Etheridge to their testator and their testator they believe from his acts and declarations was not indebted and did not believe himself indebted one dollar to the said Etheridge. But upon the record that he was largely indebted to him and they can prove and shew that the said Etheridge has since the trial admitted he was largely indebted to said estate. Your Orators were unable to prove on the trial the promise of said Etheridge to pay the note executed by him to their testator but have since learned the fact can be abundantly proved. Your Orators charge the said Etheridge is hopelessly insolvent and if he should be permitted to collect this amount they would be without remedy. Your Orators further shew that the said Etheridge in 1842 in the life time of their testator filed his petition in the Bankrupt Court at Nashville in which this bond was not mentioned so well satisfied was he of the fact that it was without consideration and that

their testator would take the necessary steps to have it cancelled this was done under the solemn sanction of an oath yet the said bond was not exhibited. It is true his petition was dismissed by the Court as the same was resisted by his creditors as your orators are informed. Your Orators shew an execution has issued from said judgment and the same is now in the hands of the Sheriff of Stewart County and will be levied without the interference of Your Honor. To the end therefore that justice may be done and as Your Orators are only relievable in your Hon Court they pray Your Hon. that William Etheridge be made a defendant to this Bill that he answer the same upon his corporal oath and the charges and specifications as though they were again repeated and set forth and they pray Your Honor to grant them the State's most gracious writ of subpoena and injunction that the said Etheridge the Sheriff and all others be enjoined and restrained from collecting the said judgment until the further order of Your Honor and upon a final hearing they pray a perpetual injunction of the same and that Your Honor will grant them all other and further relief the equity of their case may require. They further state to Your Honor they presented this Bill for an injunction in this case which was allowed but upon advice they have abandoned it and file this in its stead and this is the only application for an injunction in this case. Goodrich Henry & Shackelford Sol.

State of Tennessee

Montgomery County 3 This day personally appeared before me Philander Priestley a justice of the peace for Montgomery County Thos. B. Powell one of the complainants in the foregoing bill who made oath the facts stated in the foregoing bill of his own knowledge are true and those as information he believes to be true.

Thos B. Powell

Subscribed and sworn to before me the 2d Sept 1848 P. Priestley J. P.

The Clerk & Master of the Chancery Court at Dover will issue writs of injunction according to the prayer of the foregoing bill upon the complainants giving bond and security according to Law. Sept. 4th 1848.

(M. A. Martin Judge &c)

Answer of William Etheridge to the foregoing bill, filed Feb. 26th 1849

The answer of William Etheridge to the bill exhibited against him in Equity at Dover by Powell Jones Esq of W. Skinner. This respondent saving & reserving all benefit arising from exception to the errors misstatements & insufficiencies of the Bill of Complaints in as full a manner as this he had demurred thereto for answer thereto he says he admits he has recovered judgment in the Circuit Court of Stewart County against the complainants on a bond executed to him by the testator of complainants, the sum for which this judgment was rendered is correctly set forth but the complainants fail in their bill to state at what term of said court this judgment was rendered. The bond upon which respondent sued & recovered judgment was executed as now remembered at the time set forth in the bill, but was not as Respondent is advised a testamentary paper by any means, the bond was made payable on the happening of an event which must truly occur, namely the death of the maker and was as completely a bond payable at a future time as tho' a fixed period had been named therein for the money on it to be due, and Respondent submits this branch of the case with confidence to Your Honor. Respondent also admits that the complainants at the trial at law in the suit above named had in their possession a promissory note made payable to their testator by respondent for the sum stated in the bill, but the history attempted in the Bill of the pleadings is very inaccurate. The debts in the suit at law plead not only set off but among the pleas they relied upon the Statute of limitations - as Respondent supposes upon the ground that the bond he sued upon commencing as follows "Due William Etheridge one thousand dollars to be paid" &c was barred by the Statute of limitations - & this respondent did reply the Statute of limitations to their plea of set off and was successful in his action. The claim arising on this promissory note has been already adjudicated by a Court of competent jurisdiction & Respondent is advised this renders it unnecessary to say any thing about how it happened to be executed, and he is advised that it is only necessary to answer the charges of his

indebtedness to the estate of said Skimmer by stating that there is another court of competent jurisdiction to try this matter & the Compts have not established his indebtedness at law, & have shown no grounds upon which branches of the case for the interference of a court of equity. Respondent thinks if they had any other "set-off" complainants might have presented them at the trial at law - for they contested every inch of ground in the cause, & Respondent has actually sued the executors for money due on account to him from their testator, the testator being actually in his debt. It is charged in the Bill that in 1843, this Respondent made a deed of trust to the testator of the Complainants and had been for some time insolvent: it is admitted a deed of trust was made - and that Respondent about this time was insolvent or nearly so, or at least did not have available means to pay his debts. This insolvency was however in a main degree attributable to the testator of the Complainants, who was a keen, shrewd, and vigilant trader, and who had in a series of transactions managed whether fraudulently or not to get what this Respondent had, and greatly to embarrass him. It is charged in the bill that the bond upon which Respondent recovered judgment complained of was without consideration, & obtained by fraudulent representations &c. This allegation is promptly met with a flat denial. Why the very ground upon which the bond was given was one of the modes with others by which Respondent's little means were sacrificed and he embarrassed in his pecuniary affairs. Respondent is called upon to state whether a single dollar of property or money was advanced by him for this bond. Respondent will answer fully. In 1838 Respondent was administrator on an estate, he had assumed this trust at the strong solicitation of the testator of Complainants there was a sale of the property and the said testator became the paymaster for a portion of the property and executed his note or bond for the amount - payable to the Respondent as above, this note was for between \$500.00 & \$1000.00, the figures are not remembered: the time for distribution of the estate was fast approaching. The testator had put Respondent off from time to time, & Respondent was notified by the distributees of the estate that as soon as the law compelled him to distribute unless he did so they would sue, and Respondent went again to the testator of Complainants to try to get the money & be ready. Respondent was as usual put off by the testator of Complainants without any money - Respondent hated to sue, as the claim was on his father-in-law and it was proposed by the testator of Complainants to execute a bond for one thousand dollars payable at his death, and take up the bond (or note) Respondent held on him as aforesaid and Respondent very foolishly consented to do so. This is the history of the bond, and Respondent had to go to work to satisfy the heirs. He was not as fortunate in regard to his other as he had hoped to be, was pressed for money due from him & became as charged insolvent - helped along all the time to ruin by being overreached in trades with his father-in-law the testator of Complainants - as to Respondent having filed a petition in Bankruptcy, he admits it, he was embarrassed as stated and greatly harassed and was advised to file a petition to be released, this petition was filed as before stated - but was never pressed at all, and voluntarily dismissed by Respondent, & if his creditors ever did resist it this Respondent never knew it. Respondent remembers very vaguely to have heard something about somebody saying it would be resisted, but even this recollection is very vague & this matter had no influence upon Respondent. He dismissed his petition voluntarily, and tried to the best he could toward making his way out of debt. And the charges in the bill of either fraud practices upon the testator in obtaining this bond aforesaid, or of its having been given without consideration are utterly false. If in the schedule furnished at the time of filing the petition in Bankruptcy this bond was left out or any other or any debts overlooked it was not done as charged that the testator might cancel the bond, the charge is false. There are all the allegations in the Bill material to be answered. The bond was made on a good consideration. And as to all other matters Respondent insists the parties have shown no earthly ground for the interference of this court. And now having fully answered the prayer to be dismissed with his costs, that said injunction be dissolved &c.

State of Tennessee }
 Stewart County } This day personally appeared before me Robert T. Adams an acting justice
 of the peace in and for the County aforesaid duly qualified according to law, William Etheridge

Mumford & Valentine Solicitors

the Respondent in the foregoing answer & made oath that the matters therein stated are true to the best of his knowledge information & belief

Wm Etheridge

Summons & exhibited before on the date above written R. P. Adams J. P. for Stewart County.

Replication

The complainants in replying to the answer say that they will prove and show that the facts and statements in their said Bill are true and that the statements in the answer of defendants are not true. Henry & Shuckelford. These repliants will say that the matters and statements in the answer of the defendants are not true and that they are and say that the statements and charges in said Bill are true as they will prove and show.

Henry & Shuckelford S.C.

Injunction issued October 28. 1848

State of Tennessee. To the Sheriff of Stewart County, Lemmellers, attorneys, Solicitors and agents, and each and every one of them. Greeting. Whereas, it has been represented us in our Court of Chancery at Dover in a certain suit in Chancery between Thomas B. Powell & William G. Jones, complainants and William Etheridge defendant; on the part of said complainants, that the said William Etheridge at the July Term of the Circuit Court for Stewart County 1848, recovered a judgment against them as executors of the last will and testament of Nathan Skinner dec'd for the sum of eleven hundred and eighteen dollars and 33p on a bond under seal which bond complainants alleged was obtained from their testator by fraud and misrepresentation and without consideration and complainants further say that on the 30th day of August 1841 the said defendant executed his promissory note not under seal to their testator for the sum of one thousand dollars and 35p which note was produced as a set off on the trial in the Circuit Court and the defendant relied on the Statute of limitations, and complainants were unable to prove as promised of the same within six years and from the bond being under seal they were unable to make a defence at law: the complainants further say that they are now well able to prove that the defendant promised to pay said note which was executed to their testator within the period of six years which will take it out of the Statute of limitations &c. We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you the said William Etheridge and Elisha Dawson Sheriff of Stewart County and all and every the persons before mentioned, under the penalty prescribed by law, of your and every of your goods, to be levied to our use, that you and every of you, do absolutely abstain from any further proceedings on said judgment or execution to collect the same or any part thereof under the penalty of the law until the hearing of this cause in our said Court of Chancery. Witness J. W. Wall, Clerk and Master of our said Court, at office, in the town of Dover the first Monday of October in the year of our Lord, one thousand eight hundred and forty eight and in the 13 year of the independence of the United States. J. W. Wall C. M. of the Chancery Court at Dover. Came to hand the same day issued, executed by reading and making known the contents of this injunction to William Etheridge the same day came to hand.

E. Dawson Shff.

agreement filed 20. April 1850. at Clarksville.

Gones & Powell Exrs } In this cause it is agreed by both parties to transfer the papers to the Chancery
William Etheridge } Court at Clarksville & that the cause be tried there - instead of Dover.

Henry & Shuckelford for Complts. Ed. W. Mumford for defendants.

Deposition of Thomas B. Powell & Decrees Mr. N. G. Morris Complainants Proof

Question 1st by the complainants. Mr. N. G. Morris was or was not William Etheridge the administrator of Polly Etheridge dec'd and if so was you his security.

Ans. Some time in the year 1838 or 1839 Wm. Etheridge administered upon the estate of Polly Etheridge dec'd with myself and Thos B. Powell as his security in a bond of some fifteen hundred dollars

Question 2. Was or was you not likely to suffer as the security of said William Etheridge and if so how did you get released.

Ans. I became alarmed as the security of Etheridge and notified him and gave him up to the County Court and was afterwards cured and by giving a larger fifty dollars we were released from any liability

Question 3. Was or was you not acquainted with Nathan Skinner in his lifetime and if so was he or was he not the guardian of Polly Etheridge.

Ans. I was acquainted with Nathan Skinner and understood he was guardian for Polly Etheridge.

Question 1. Was or was you not acquainted with the circumstances of Nathan Skinner, if so state what it was.

Ans. I was acquainted with Nathan Skinner and always thought him in very good circumstances.

Question 3. From your knowledge of said Nathan's circumstances was it possible for William Etheridge to of look by him.

Ans. From my knowledge of Nathan Skinner, I do not think that Etheridge or any other person could have lost anything by him.

Question 1st by the defendant: Please state if you now knowed whether William Etheridge ever lost anything by Nathan Skinner or not?

Ans. I have no knowledge that William Etheridge ever lost anything by Nathan Skinner, and further this deponent saith not.

N. H. Morris.

Deposition of E. Dawson.

Question 1st by the Plaintiff. Did or did not William Etheridge state to Thomas B. Powell one the executors of Nathan Skinner's will, in your presence, that Powell & Jones as the executors of Nathan Skinner held a note due said estate for the sum of one thousand dollars against the said Etheridge and he held a note against Skinner for the sum of one thousand dollars for poor and he was willing to exchange notes.

Ans. See the said Etheridge told Thos B. Powell in my presence that he held a note against the estate of Nathan Skinner for the amount above stated the said Powell, said that the executor held one against him and the said Etheridge said I know that.

Question 2 by same. You will please state at what time a conversation took place between you and Wm Etheridge in relation to a note held by Powell & Jones the executors of said Skinner

Ans. Some time in June 1847.

Question 3. You will also state what said Etheridge said to you in relation to a note due from said Etheridge to Skinner's estate for one thousand and ninety seven dollars 35 cts

Ans. Etheridge said they held a note that he had given to Skinner for land and since that the land had been willed away and he did not think he ought to pay it unless he had a title for the land.

Question 4. You will please state the conversation between Wm. Etheridge & W. B. Jones one of the executors of Nathan Skinner's will in relation to said note.

Ans. I saw W. B. Jones present the note to Wm Etheridge for payment and Jones said we have understood you intend to take some advantage of us as it is a note without real. Etheridge said he did not deny giving the note and he did not intend to take any advantage of them.

Question 5. You will please state at what time the above conversation took place

Ans. I think it was between the 20 and 23d of June 1847.

Question 1st by defendant: You will please state whether or not Etheridge acknowledged the payment of the above note

Ans. He did not acknowledge to me that he would pay it.

And further this deponent saith not.

E. Dawson.

Deposition of Wm. Brutow

Question the 1st by the defendant: Please state if you did not marry Nathan Skinner's sister

Ans. I did. And further this deponent saith not. Wm. W. Brutow. (This is the son of what follows below).

Did or did you not hear William Etheridge say going from Dover after he had obtained the judgment against Powell & Jones the executors of Nathan Skinner's will on the note he held against said Skinner for one thousand dollars that the suit was now over and he did not care that Eight Hundred dollars of the note for one thousand ninety seven dollars 35 cts that fell out of date was just

Ans. See said Eight Hundred dollars of that was for the land.

Question 2. You will please state if William Etheridge did not tell you the said note was given to him as a gift from Nathan Skinner.

Ans. He said that Skinner gave him that note to make him safe as administrator of Polly Etheridge's estate.

Question 2d. You will please state whether William Etheridge lost anything in the estate of Polly Etheridge

Answer. I do not know whether or not.

Question 3th. You will please state if N. Skinner was not good for all his debts

Answer. He was.

The defendant objects to Mrs. Bruton's testimony as the account of his being an executor and that was decided by the court that the deposition be taken.

Question the 4th by defendant. Please state if you did not marry Nathan Skinner's daughter

Answer. I did. and further this defendant says that not Mrs. M. Bruton.

Deposition of Benjamin Green

Question 1st by Complainant. You will please state the conversation that took place between you and William Etheridge about the note that Powell & Jones Executors of Nathan Skinner held against him

Ans. I cannot recollect what was said about the note.

And further this deponent says that not Benjamin ^{his} Frank Green.

Deposition of Wm. Branson.

The defendant's object to this deposition being taken on account of his being one of the heirs of N. Skinner's estate. Ordered by the court that the deposition of Wm. Branson be taken.

Question 1st by Complainant. Are you or not acquainted with William Etheridge and if so was he or was he not the administrator of Polly Etheridge's estate.

Ans. I am acquainted with Wm. Etheridge and it was my understanding he was the administrator of Polly Etheridge's.

Question 2. Was you or not at the sale of Polly Etheridge's estate and if so state whether or not you bid off a negro woman Milly & child.

Ans. I was at the sale and bought the negro woman & child.

Question 3 by same. Was or was not a note marked A in the hands of the executors of Nathan Skinner and given for the purchase money of said negro woman & child which note was six hundred and fifty one dollars

Ans. We give a note of that size and believe it to be the same note.

Question 4. Please state who paid said note you or Nathan Skinner

Ans. I do not know who paid the note but settled the amount of the note with said Nathan Skinner.

Question 5. Please state if you recollect in what way Nathan Skinner paid William Etheridge the above note.

Ans. I do not know how Skinner paid Etheridge

Question 6. You will please state what the note that William Etheridge held against N. Skinner for one thousand dollars was given for.

Ans. Etheridge told me that Skinner said if he (Etheridge) would settle with him that he would give him the note of Polly Etheridge to secure him about the estate of Polly Etheridge for Etheridge told Skinner if he made that settlement he would be broke up and his securities suffer.

Question 7. Were you or were you not acquainted with Nathan Skinner's financial concerns and if state whether there was any chance for William Etheridge to lose anything by him or not

Answer. I was acquainted with Nathan Skinner's affairs and I think that it was impossible for any person to have lost anything by him for he the said Skinner was ready at all times to settle up his claims.

Question the 8th by defendant. Please state whether or not Etheridge was lost anything by the said Skinner

Answer. I do not know.

Question 9 by the same. Did or did you not marry N. Skinner's daughter or not

Answer. I did. and further this deponent says that not Wm. Branson.

Deposition of Thomas W. Dennis

Question 1st by Plaintiff. You will please state if you are acquainted with William Etheridge and if so whether or not he was administrator of Polly Etheridge's.

Answer the 1. I am acquainted with him and my understanding has always been that he was the administrator of Polly Etheridge's estate.

Question 2. Was you or was you not acquainted the circumstances of Nathan Skinner and if you will please state if there any chance for William Etheridge to get anything by him.

Answer the 2. I was acquainted in the Nathan Skinner and I always thought him good for his contracts

Question 3. How much do you suppose said Skinner's estate worth at his death.

Answer. I would suppose him to have been worth twenty thousand dollars

And further this defendant says the not. D. M. Dennis

Note marked "A" in Wm. Brandon's deposition

On or before the eighteenth of April (year to come) I or either of us from to pay William Etheridge administrator of Polly Etheridge's debt six hundred and fifty one dollars it being for value rec'd of him as witness my hand and seal this the 18 of April 1838. et cetera decunt

Bills of costs. Six depositions \$6.00, to serving 7 subpoenas \$3.50 Benjamin Brown one day attendance 75 cts. E. Dawson 1 day attendance 75 Wm Brandon 1 day 75 Wm Bouton 1 day 75 N. G. Morris 1 day 75 Thos W Denis 1 day 75

Thos H Stewart J. P.

Defendants Proof
Deposition of Robert Jackson

Question 1st by defendant: State whether or not you heard Nathan Skinner say to John D. Morris that he had given William Etheridge a note payable at his death to secure him William Etheridge as Mary Etheridge's administrator if so state what he said and when it was

Answer the 1st. At Nathan Skinner's house he said he would leave him a instrument of writing as he John D. Mor should not lose anything as if he had any thing to pay out he should get it back at his death I rec'd it was in the year of 1838 or 9.

Question 2d by defendant. State whether or not John D. Morris was William Etheridge's security as administrator of Mary Etheridge's estate, whether or not it is relative to this security that the said J. D. Morris & Nathan Skinner was talking at least at the time you speak of.

Answer the 2d. J. D. Morris in the said conversation said he was William Etheridge's security and was pushed for the money and wanted the old man to help him out

Question the 3. State whether or not the said John D. Morris property was sold by the Sheriff of Stewart County with a execution against William Etheridge & his security for Mary Etheridge's estate

Answer the 3. It was sold by the deputy Shiff and mistake since it was on that execution

Question the 4th by the same. State whether or not the said William Etheridge payed the said John D. Morris the money back that his property lost at the sales you speak of and what was the officer's name that sold the property.

Answer the 4th by the same. John Morris told me he had payed him and John Mockabee was the officer that sold the property.

Question the 5th by the Plaintiff. Please state whether William Etheridge payed any thing to the legattees of Polly Etheridge's estate.

Answer the 5th. I do nothing about it, not as I no.

Question the 6th by defendant. State whether or not Nathan Skinner said in the same conversation he had or would give William Etheridge a note or some other instrument of writing payable at his death to secure him as Mary Etheridge's administrator over and above any thing he might give him in his will

Answer the 6th by the same. Yes, Nathan Skinner, said he would leave a instrument of writing as he should be paid at his death for the estate of Mary Etheridge.

Question the 7th by the Plaintiff. You will please state whether or not that William Etheridge was present when the above conversation between Nathan Skinner and John Morris took place.

Answer the 2d. was not.

Question the 3. Did you or did you not state on this day that it out to be wrong that William Etheridge could collect that debt of Skinner's estate

Answer the 3d by the same. I did tell Esqr Powell so.

Further this deponent suith not

Robert ^{the} Jackson

Deposition of John Etheridge

Question the 1 by the defendant. Please state whether or not Nathan Skinner became the purchaser of some negroes at the sale of Polly Etheridge's property, and if so whether or not he gave William Etheridge his note for the same has omitted he give for them.

Answer the 1. William Brandon became the purchaser of the two negroes and Nathan Skinner gave his note for the money with William Brandon as his security. The negroes broke in hundred and fifty-one dollars

Question the 2d by the same. State whether or not Nathan Skinner was Mary Etheridge's guardian previous to his death and whether or not there was other moneys due and I owe the negroes

Answer the 2d by same. As was his guardian there was moneys due and I owe the negroes

Question 3d by same. Please state if there was as omitted coming Mary Etheridge as there was to any of the rest of the heirs of David S. Etheridge decd

Answer the 3d by the same. There was.

Question the 1 by the Plaintiff, Please state whether William Etheridge as administrator of Polly Etheridge decd paid over any of the money come into his hands to any of the legattees or not and if so to whom

Answer 1 by the same. Jonathan Skinner told me that he had settled with him. I do not know in what way.

Question the 2d. Please state if Nathan Skinner did not pay of some of the legattees himself from William Etheridge Administrator of Polly Etheridge decd.

Answer the 2. I do not know any thing about it.

Further this deponent suith not

John Etheridge

Deposition of Abram Phillips

Question 1st by defendant. You will please state whether or not you had a conversation with Nathan Skinner about the estate of Mary Etheridge and has Nathan Skinner's settlement with William Etheridge as administrators of Mary Etheridge if so state what Nathan Skinner said relative to said settlement and whether or not Nathan Skinner said anything about giving William Etheridge his note if so state all Nathan Skinner said and when it was

Answer the 1. I heard a conversation with him Nathan Skinner told me that William Etheridge out to pay that to the heirs for he had settled with him by note or notes I am not positive which. I ask him if he had ever paid Etheridge any money; he said he had not. I do not recollect the time but it was after the suit was decided against William Etheridge that the heirs of Mary Etheridge brot against him William Etheridge for the distributive shares of said estate.

Question the 1 by the Plaintiff, Abram Phillips Please state if your wife was not a legatee of P Etheridge decd

Answer the 1. She was

Question the 2d. by the same. Please state who paid you what was coming to your wife from the estate of Polly Etheridge decd.

Answer the 2d. I got a horse and mule at Nathan Skinner and he told me to resit William Etheridge. Wm Etheridge & him were both present

Question the 3d by the same. Please state if Nathan Skinner did not tell you he would not pay of any of the legacies for William Etheridge

Answer the 3d by the same. If he had any such conversation to me I do not recollect.

Question the 4th by the same. Please state if Nathan Skinner did not give William Etheridge his note and William Brandon as security for the sale of a negro woman and child that was sold belonging to Polly Etheridge dead.

Answer the 4th by the same. I saw nothing about it. I was not at the same.

Question the 5th by the same. State whether or not at the time Nathan Skinner told you that William Etheridge was to pay the sum whether or not he said he had settled the estate of Mary Etheridge with William Etheridge whether or not he told you ~~that~~ that was due answer He said he had settled with William Etheridge the estate of Mary Etheridge but did not say where the note was due.

Question the 6th by the defendant. State whether or not at the time you got the note and horse you spoke of above if you understood from the parties present that it was William Etheridge paying you and not Nathan Skinner.

Answer the 6th by the same. I do not know anything about these men.

Question the 7th by the same. State whether or not on that day you and William Etheridge made the settlement and whether or not the payment was after you had obtained a judgment against William Etheridge and his security for part of said estate.

Answer the 7th by the same. There was no settlement about it. It was after I had obtained judgment against him. And further this deponent saith not. Abram Phillips.

Transcript from Stewart Circuit Court

Be it remembered that heretofore (to wit) on the 28th day of September 1847, the Clerk of Stewart Circuit Court issued a writ which is in the words and figures following to wit.

State of Tennessee To the sheriff of Stewart County Greeting: You are hereby commanded to summon William C. Jones and Thomas B. Powell executors of the last will and testament of Nathan Skinner dec'd. If to be found in your County to be and appear before the Judge of our seventh Circuit at the next Circuit Court to be held for the County of Stewart at the Court Room in the Town of Dover on the 4th Monday in October next then and there to answer William Etheridge a plea that they render unto him the sum of one thousand dollars which from him the said Powell & Jones executors as aforesaid unjustly detains to his damage five hundred dollars. Heured fail not and have then and there this writ. Witness J. S. Shumway Clerk our said Court at office the 4th Monday in June A.D. 1847 and the 7th year of American Independence
J. S. Shumway Clerk by J. W. Wall S. Clerk.

Attached to said writ is the following bond to wit I acknowledge myself the above Plaintiff security in the sum of five hundred dollars for prosecuting the above writ with effect & payment of all costs and damages to the defendant on failure thereof. Witness my hand and seal this 28th day of Sept 1847. Wm Etheridge (Sd) John Etheridge (Sd)

On the back of said writ is the following endorsement.

Wm Etheridge 3 Issued 28th Sept 1847, came to hand the 4th day of Oct. 1847. Executed on 10th or 11th of October 1847. Jones & Powell the 12th Oct 1847. E. Dawson Shff.

afterwards to wit on the 26th day of October 1847 the Plff by attorney filed the following declaration to wit.

State of Tennessee 3 Circuit Court October Term 1847.

Stewart County 3 William Etheridge by attorney complains of William C. Jones and Thomas B. Powell executors of the last will and testament of Nathan Skinner dec'd of a plea that

they render unto him the sum of one thousand dollars which they unjustly detain to his damage five hundred dollars. For that whereas the said defendants testator in his lifetime on the ninth day of October in the year 1838 at the County and State aforesaid made his certain writing obligatory or bill single in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid and then and there delivered the said bill single or writing obligatory to the said Plaintiff by which said writing obligatory the said defendants testator Nathan Skinner then and there executed and delivered to the said Plaintiff his said bill single or writing obligatory in the words and figures following to wit: Due William Ethridge one thousand dollars at my death to be paid out of my estate for value rec'd of him as intrup my hand and seal this the 9th of October 1838. Nathan Skinner *(S)* which said writing obligatory or bill single is now held to the Court presented and shown and the said Plaintiff avers that that the said Nathan Skinner the defendants testator departed this life on or about the latter part of the month of October 1846, by means of which the said defendants then and there became liable to pay to the said Plaintiff the said sum of money in the said bill single or writing obligatory specified according to the tenor and effect thereof, and the death of the said Nathan Skinner died and although the said sum of money in the said writing obligatory hath been long since due and payable, yet the said Plaintiff in fact saith that the said defendants testator in his lifetime nor the said defendants as the executors of the last will and testament of the said Nathan Skinner died although often requested to do so did not or would not pay the said sum of one thousand dollars in the said bill single specified or any part thereof out of the estate of the said Nathan Skinner or otherwise to the said Plaintiff but hath hitherto wholly neglected and refused so to do. Whereby an action hath accrued to the said Plaintiff to demand and have off and from the said defendants the said sum of one thousand dollars in the said bill single or writing obligatory specified which the said defendants unjustly detain to his damage five hundred dollars and therefore recover. And the said Plaintiff brings into Court the letters testamentary of the said Nathan Skinner died whereby it appears that the said William Jones and Thomas B. Powell are executors of the last will and testament of the said Nathan Skinner and which letters testamentary was granted at the Term 1846, of the Stewart County Court. Valentin Atty. Plea. Payment & set off. At Law & Bankruptcy of Plff at begins this suit. Goodrich & Wall Plff replies to plea of payment thus defendant never did pay &c and specially to plea of set off Stat Law &c, & that debt has no set off. That the note plead as a set off has no consideration to support it. Rep. as to Stat Law and issue. *Mumford Val & Foster for Plff;*

Plaintiff demurs to defendant plea of Bankruptcy of Plff *Mumford Val & Foster atty*
Issue as to replication & Joinder in demurrer *G. K. W.*

(Bankruptcy) & copy due of Trust.

The note referred to in the above declaration is in the words and figures following to wit Due William Ethridge one thousand dollars at my death to be paid out of my estate for value rec'd of him as intrup my hand and seal this the 9th of October 1838 Nathan Skinner *(S)*

A copy of the letters testamentary which in the words and figures following to wit:

State of Tennessee } To William C. Jones and Thomas B. Powell citizens of Stewart County. It ap-
Stewart County } pearing to the Court that Nathan Skinner has died leaving a written will in
which you are appointed executors which has been duly proved in open Court and you having
given bond and qualified according to law. It having been ordered by said Court that letters testamentary
issue to you, There are therefore to empower you the said William C. Jones and Thomas B. Powell
to enter upon the execution of said will and take into your possession all the property and to
make to the next Court a perfect inventory thereof and make due collection of all debts
and after paying all the just demands against the testator and settling up the business

of said estate according to law you will pay over and deliver the property and effects that may remain in your hands. And do all other things that may be required according to the provisions of said will and the laws of the land. Witness William Cook Clerk at office the 2d day of November 1846 and the 70th year of American Independence. W. Cook Clerk.

State of Tennessee } I do hereby certify the above to be a true copy from the record in my office
Stewart County } Given under my hand at office in the Town of Dover the 20th day of September 1847
Clerk for said text W. Cook Clerk
William Cook of Stewart County Clerk.

The last and testament of Mathew Skinner dec'd is on file which is in the words & figures following to wit:
In the name of God amen, Mathew Skinner of the County of Stewart and State of Tennessee being of sound mind and memory do make this my last will and testament hereby revoking all other wills heretofore by me made. Item, I give and bequeath unto the children of Mary Brandon dec'd that may be alive at my death Two Hundred Dollars each except George Brandon to him I give One Hundred Dollars all to be paid out of my estate. Item, I give and bequeath unto John Fletcher one fourth choice and if Pamina Fletcher should outlive her husband John Fletcher in that case I give her Five Hundred Dollars. I also give and bequeath unto the children of Pamina Fletcher that may be alive at my death One Hundred Dollars each making the child of Lucilla Fielding as one of the children. I give and bequeath unto Jonathan Skinner a negro man named Harry now in his possession also three several tracts of land (to wit) the tract of land he now lives on on Indian Creek also the tract on Hickman Creek called the nice place. The three several tracts of land I have heretofore made him a deed to. I give and bequeath to my daughter Abigail Brandon during her natural life a negro boy Alexander now in their possession also a negro girl named Mary also Two Hundred Dollars and at the death of my daughter Abigail said land and negroes is to be equally divided between her children. I give and bequeath unto the children of Abigail Brandon that may be alive at my death One Hundred Dollars each to be paid out of my estate. I give and bequeath unto Nancy Ethridge during her natural life the upper half of the tract of land purchased of Smiths heirs by Jonathan Skinner for me except a piece I sold Barney Jones. I also loan my said daughter Nancy negro man named Mingo and at the death of said Nancy Ethridge said land and negro to be sold and the money equally divided between her children. I give and bequeath unto William Ethridge One Hundred and Fifty dollars the amount of money I assumed to pay Wall & Williams for him. I give and bequeath to Jincey Powell during her natural life the following named negroes (to wit) Bob Bracy and George and at the death of said Jincey said negroes with their increase be equally divided between all her children. I give and bequeath unto Emeline Bruton during her natural life a negro man named Jordan I also give ~~and~~ her Five Hundred Dollars and also the tract of land they now live on and at the death of Emeline Mother I give said Emeline negro Simon and ~~him~~ and at the death of said Emeline said land and negroes to be sold and the money to go to her children. I give and bequeath unto Mathew Skinner the following part of the tract of land I now live on beginning at Gatties South West corner running North with said line to his North West corner thence east with Gatties line to Perry Williams corner in said line thence north with Perry Williams line to his North West corner thence east to Perry Williams corner on the river thence down the river with the meanders to a dickory which was Wallaces lower corner thence west to Burrets Creek so as to include the Wallaw tract as far as the creek thence up said creek with its several meanders to the fork of said creek called to Parkers fork, thence crossing the south fork at the fork and running up the north fork or Parkers fork of said creek to where the Edgins Road now crosses said creek near the meeting house thence a straight line to John Fletchers north ~~east~~ corner thence South with Fletchers line to my south boundary

line thence east to the Beginning all of the above mentioned tract of land I give as before mentioned except two acres around the meeting house so as to include all the land between a drainage running from the road to the creek and on the east side of the road so as to include all of the high ground. The before mentioned piece of ground I reserved as a place to hold public worship. I give unto said Nathan the following named negroes Eli Pleasant & Will also Fidda and her children 1 set of Blacksmith Tools 1 set of Blacksmiths Complementary, 1 Clock, 1 Rifle Gun, 1 Shotgun, 1 Horse, saddle & Bridle, one bed & furniture and curtains one cow calf - Two cows and pigs, one Book case and desk, 1 trunk, six sheep, Two set gears.

I give and bequeath unto my daughter Malinda Skinner all that tract or parcel of land I now live on that has not been given to my son Nathan and at the death of said Malinda said land to go to her heirs. I also give to said Malinda the following named negroes (To wit) Doll and her children Perry, Moses and Liza, Two cows and calves, 1 Horse, saddle & bridle her chairs 1 clock two beds & furniture and Bedsteads, 1 set of tea and table spoons one cupboard one half of cupboard ware one small bureau, 1 trunk six head of sheep. I give and bequeath unto James Vinson one bed & furniture the one that belonged to his mother and if said James Vinson when he shall arrive at the age of twenty one years shall make unto Orren Vinson a deed of conveyance to a tract of land that belonged to said James Vinson and my wife which land I sold to said Orren Vinson then said James Vinson to receive from my estate One Hundred and fifty dollars. It is my wish and desire that Malinda shall have the benefit of one half of the apples in the young orchard on the land I have given to Nathan for five years. It is also my will and desire that Nathan & Malinda shall jointly have the use of the crushing mill on Nathan's land. It is also my will and desire that all the furniture of every description that may be at my death shall be equally divided between Malinda & my wife Elizabeth. I give and bequeath unto my wife Elizabeth a negro girl named Margaret the balance of the cupboard ware not given to Malinda also 1 Bureau 1 Table 6 chairs two chairs one trunk one spinning wheel each for and cotton her choice 1 Hackle. It is also my will and desire that the balance of my property of every kind whether real or personal that has not been disposed of in this my last will and testament shall be sold by executors hereafter named on such terms as they may deem best for the interest of my estate and after paying all my just debts and legacies contained in this my last will together with my monies and effects of every kind to be equally divided between all of my children or their lawful heirs. It is also my will and desire that my executors hereafter named as soon as they shall qualify as executors shall have built on the Dennis tract of land which I have given to my wife Elizabeth a good and substantial hewed log house two stories high 18 by 24 with a good stone chimney shingled roof and well finished inside in a plain substantial manner house to be built in that way be selected by my wife. I have constituted nominated and appointed Thomas B. Powell and William L. Jones Executors of this my last will testament hereby revoking all other wills heretofore by me made in testimony whereof I have hereunto set my hand and seal this the fourth day of March 1846. Nathan Skinner

Signed sealed and acknowledged before us the date above written W. Williams attest James T. Morris
State of Tennessee } November Term 1846.
Stewart County }

The foregoing instrument of writing purporting to be the last will and testament of Nathan Skinner died was produced in open court and the execution thereof duly proved by the oaths of William Williams and James T. Morris subscribing witnesses thereto and the same is ordered to be recorded. J. W. Look, Clerk.

State of Tennessee } I certify the foregoing to be a true copy from the original which has been
Stewart County } recorded in my office hereunder my hand at office the 13th July 1848. W. Look Clerk of Stewart County Court.

There is a copy of a deed of Trust filed which is in the words and figures following to wit - Jonathan Skinner from William Etheridge. I William Etheridge have this day bargained and

sold and do hereby convey to Jonathan Skinner for the sum of one dollar to me in hand paid the receipt whereof is hereby acknowledged, and for the other considerations hereinafter mentioned all the interest I have in a tract of land in the State of Tennessee County of Stewart in District No. 7 containing by estimation about four hundred and fifty ~~dollars~~ acres and better and bounded as follows. Beginning on the South side of Cumberland River at the mouth of Leano Creek on David C. Jones North East corner of a tract of land said Jones purchased from Nathan Skinner thence with said Jones line to Smith's south boundary line thence with Smith's line so as to divide the out land that is in the creek and his land equal as to quality thence to the Cumberland River so as to divide the River bottom equal as to quality which is a part of the Smith's tract thence up the river with the meanders to the beginning being the same tract which I purchased from Nathan Skinner and for which I hold a bond for title upon the payment of the purchase money. I also sell and convey to the said Jonathan Skinner one sorrel horse six head of stock cattle including milch cows fifty head of hogs eight head of sheep three beds bedsteads and furniture three pots three skillets one bureau one clock one desk one trough, so have and to hold the said property with the interest I have in the real property aforesaid described to the said Jonathan Skinner his heirs and assigns forever. I do covenant and do hereby transfer to him all the interest I have in the said real property vested in me by the bond executed to me for title by the said Nathan Skinner to the said Jonathan his heirs and assigns forever and I will forever defend the same. But this deed is made for the following uses that is to say I am indebted to Nathan Skinner by note under seal dated 25th August 1841 in the sum of one thousand and ninety seven dollars and 35¹⁰⁰ cents and due one day after date including the amount of money due him for the purchase of said tract of land aforesaid; and I am also indebted to Jonathan Skinner in the sum of one hundred and three dollars by note due same date and due one day after date. Now as I am desirous to secure and make sure ^{and certain} the payment of said sums and in consideration that they have given me the further time of six months to pay the same from this date I should now if at the expiration of six months from this date I should pay and satisfy the said debts then this deed is to be void but if I should not then the said trustee Jonathan Skinner is authorized to sell all the interest I have in said land and the personal property first giving twenty days notice at three of the most public places in the County in writing of the time and place of sale one of which shall be at the Court House door and appropriate the proceeds first to the satisfaction of the necessary expenses and cost Secondly to pay eight hundred dollars on the debt of said Nathan Skinner and to divide the balance between the debts due himself and the remaining portion of the debt due Nathan Skinner as aforesaid. And if any then remains to pay it to me this 1st October 1841

Wm. Ethridge (seal)

Attest J. O. Shackelford, E. W. Chambers.

State of Tennessee } Personally came before me Wm. Cook Clerk of Stewart County Court
Stewart County } William Ethridge the above bargainer whose name is signed to the
above deed and with whom I am personally acquainted and acknowledged the same to be his
act and deed for the purposes therein contained This the 1st day of October 1841. Wm. Cook Clerk
Recorded in the Register's office of Stewart County 2d day of October 1841. H. Valentine Register.
State of Tennessee } I Thomas M. Atkins Register of Stewart County do certify that the foregoing
Stewart County } deed of trust from William Ethridge to Jonathan Skinner (trustee) is a
true copy of the record as appears in my office in Book No 14 pages 199 & 200. Given under my
hand at office in the Town of Dover this the 10th day of July 1848

Thomas M. Atkins Register

There is also a note on file amongst the papers of this cause which was offered as a set off

by defendants which is in the words and figures following to wit: Dns Nathan Skinner
 One Thousand and Ninety Seven dollars and 35 cts it being for value rec'd of him as
 witness my hand and seal this the 25 day of August 1841 Wm. Ethridge
 But it remembreth that heretofore to wit at a Circuit Court begun and held for the County of Stewart
 & State of Tennessee at the Court House in the Town of Dover on the 2d Monday in July 1848, Present
 and presiding the Honorable M. A. Martin Judge of the 7th Judicial Circuit for the State aforesaid
 when amongst other things the following proceedings were had in the before mentioned cause (to wit)
 William Ethridge

This day came the parties by their attorneys and
 W. Jones & B. Powell Executors of Nathan Skinner dec'd } thereupon came a jury of good & lawful men to wit
 Allen McCaskie John W. Rainswater Andrew Parrish B. F. Shryer, Jno Malloy, Lemuel Kromberger Henry Wynn
 William Kirkland James Lowmy William Garrison James Michaels and S. L. Roper who being duly elected
 sworn and tried the truth to speak concerning the issues joined between the parties upon their oaths
 say they find the issues in favour of the Plff & find the debt one thousand dollars due from the
 executors of Nathan Skinner dec'd and one hundred and eight dollars and 38 cents
 damages for detention of same. Therefore it is considered by the Court that the Plff recover of the defts
 the said sum of eleven hundred and eighteen 3/4 dollars debt and damages as aforesaid
 and the cost in this behalf expended and that execution issue to be levied of the goods & chattels
 lands and tenements of N. Skinner dec'd in the hands of said Executors to be administered
 Wm Ethridge vs W. L. Jones & B. Powell Executors of the estate of Nathan Skinner dec'd.
 Judgt 19th July 1848 for \$1118.33 Interest till paid. Biv cost

State Tax

3.50

Shewmills Clerk Fees. One cont. order came 62 1/2 - 1 Probate 6 1/4 5 sps 62 1/2

Rend & recording same 50c 1 motion 37c

2.12 1/2

J. W. Wall & L. L. issuing two writs 75c each

1.50

Kelly's fees Judgment 75, motion 37, order 25, Jury 12, 5 Probates 6 1/4 each

Motion for new trial 37, order 25, Biv cost 25, order 25, Jifw 30, Jifw 37 1/2

3.31 1/4

E. Dawson Shff Executing Summons 200c 5 sps 125 Calling cases 41, Jury 12

3.41 1/2

Witnesses Isaac Parker 11 days at 75c per day

8.25

" Joshua Guerin 8 " " " " "

6.00

" J. S. Morris 8 " " " " "

6.00

" Elisha Dawson 8 " " " " "

6.00

" William Brandon 8 " " " " "

6.00

P. S. Clark Coroner executing 1 spa 25c

25

Wm Clark lkt copy will Cop (Paid) Copy Letter Testamentary 50c

1.10

47.45 1/4

Execution issued 28th August 1848 to the Shff of Stewart County
 Execution returned no money made stoped by a bill of injunction from the Chancery Court at Dover
 served upon me this 28th October 1848 E. Dawson Shff.

State of Tennessee I S. W. Kelly Clerk of Stewart Circuit Court do certify the foregoing pages (14)
 Stewart County (in remembrance) contain a true copy of all the papers & Records except Spa in the
 case of Wm Ethridge against W. L. Jones & B. Powell Exrs of N. Skinner dec'd in as full and
 ample a manner as they remain in my office and the foregoing judgment - Bill of cost &c is
 also a true copy of the records of my office this given under my hand & private (Having no seal of
 office) at office in the Town of Dover this the 23d day of Jan'y 1851

S. W. Kelly (Seal)

Clerk Stewart Circuit Court

Filed 25 April 1857

James & Jones vs William Etheridge. In this cause the defendant William Etheridge makes oath that he took the depositions of James Thomas, Abraham Philips, Robert Jackson and John Etheridge and had them mailed at the town of Dover that is he caused the depositions to be placed in the hands of W. Brandon by the justice who was as he said coming to Clarksville and who promised to bring the depositions up but who afterwards as he informed affiant mailed them and paid the postage as he informed affiant and affiant paid him the amount. He came to Clarksville this morning when he learned that his cause had been argued and was before the Court for its decision and that but two of the depositions had been received and that but two were read Thomas and Philips. Affiant says the the other two depositions are important and that he could not in safety go into a trial without their benefit. They are important in showing upon what account the note of Mathew Skinner was given to affiant and in establishing the consideration of the note, to wit, that it was given to secure affiant as a loan in the amount he Skinner became bound to the estate of Mary Etheridge for, all this he is advised is material for him. Affiant says he did not know till yesterday evening that Brandon had not come up with the depositions immediately, took a boat at Tobacco Port some fifty miles below this place and asks for a continuance and leave to take his depositions.

Sworn to in open Court 25th April 1857, P. Preistley C. M.

(Wm Etheridge)

Decree entered 25 April 1857

Jones & Powell Exors vs William Etheridge. Be it remembered this day this cause was heard before the Honorable Perry N. Cahal upon the bill, answer & replication filed by consent of parties in this Court and on defendants solicitor it appearing to the satisfaction of the court that the equity of the bill is denied in the answer it is ordered by the court that the injunction heretofore awarded in this cause be dissolved & that William Etheridge recover of William L. Jones & Thomas B. Powell exors of Mathew Skinner deceased the sum of eleven hundred & eighteen $\frac{33}{100}$ dollars the amount unpaid and one hundred & seventeen $\frac{42}{100}$ dollars with as same since the rendition of the judgment at law both making the sum of Twelve hundred and thirty five $\frac{75}{100}$ dollars (\$1235.75) for which execution may issue to be paid to said Etheridge upon bond and security, being given to refund the same if ordered by the Court besides the costs arising on the dissolution of the injunction.

Decree entered 25 April 1857.

James & Jones vs William Etheridge. In this cause the defendant filed his affidavit asking a continuance whereupon and for the reason disclosed it is ordered by the Court that the same be ~~pross~~ continued, and leave is given the defendant to take proof and to the complainants to take rebutting proof for three months.

Decree entered 16th December 1857

James & Jones vs William Etheridge. Be it remembered that on the 15th day of December 1857 this cause came on to be heard before the Hon John L. Brown Chancellor &c, upon the pleadings and proof in the cause and it appearing to the Court that at the July Term 1848 of the Stewart Circuit Court a judgment was rendered against the Complainants as the executors of Mathew Skinner deceased for the sum of \$1118 $\frac{33}{100}$ as a paper purporting to have been executed by the said Skinner in his lifetime for the sum of \$1000.00 to Wm. Etheridge to be paid out of his estate after his death and the Court being of the opinion that said paper is testamentary in its character and that the judgment rendered as aforesaid is void and inoperative and the Court being of the opinion further, from the proof in the cause that said paper was without consideration, doth, therefore, order, adjudge, and decree that the defendant Wm Etheridge be enjoined from further enforcing the collection of said judgment and the injunction originally granted in this cause be made perpetual and that the Complainants pay the costs and have execution over against Wm Etheridge. And the defendant prayed an appeal to the next term of

the Supreme Court at Nashville on his entering into bond and security and the appeal is granted.

Appeal Bond.

Know all men by these presents, that we William Etheridge appellant and Nathan Brandon security are held and firmly bound unto Thomas B. Powell and William C. Jones Executors of Nathan Skinner in the sum of five hundred dollars current money of said State to be paid unto the said T. B. Powell & W. C. Jones or their heirs, executors, administrators, &c., jointly and severally, firmly by these presents, sealed with our seals and dated the 16th day of December 1857. The condition of the above obligation is such that whereas in a cause on an injunction Bill prosecuted in the Chancery Court at Clarksville by Thomas B. Powell and William C. Jones Executors of Nathan Skinner Complainants against William Etheridge defendant a decree was this day rendered by said Court against said William Etheridge enjoining him from further enforcing the collection of the judgment in the bill and pleadings mentioned and for the costs from which decree the said William Etheridge prayed an appeal to the next supreme Court to be held at Nashville. Now if the said William Etheridge shall prosecute said appeal with effect or in case of failure therein shall pay and satisfy all damages and costs which may be awarded against him for wrongfully prosecuting said appeal, and shall further abide by, perform, and discharge the sentence, judgment, or decree, which said Court may make therein, then the above obligation to be void; else to be and remain in full force and effect. Signed, sealed and delivered, the day and date above written

N. Brandon [Seal]

State of Tennessee

I Silas L. Priestley Clerk & Master of the Chancery Court at Clarksville, Montgomery County Tennessee, certify that the foregoing, double pages, from 1. to 16. inclusive contain a full, fair and entire copy of the papers of the cause in said Court and the proceedings thereon, of which they purport to be a transcript, as the same are on file and of record in my Office.

(Seal)

In testimony whereof I have hereunto set my hand & affixed my private Seal, having no Seal of office, at office in the town of Clarksville, the 1st day of January 1852 and 7th year of the Independence of the United States.

S. L. Priestley C. & M.

Decree 16. Dec. 1857. State tax

3.75

Bond 15¢ Security 10¢ Record Bond 15¢ - 1. C. of bill 36¢ 90. 3. 69 - Spa. to Ans. 75¢
 Sij. 1.00 - 3. Affdts. 54¢ - drawing decrees 4. C. S. 72¢ - Emulq. do. 72¢ - 3. dedts.
 1. 12. - Setting 12.¢ - Rule 12.¢ - 2. Continuances 50¢ - 4. Orders 1.00 - Bill
 cost. 25¢ - transcript 12.03 - 12.03 - Certificate 8¢ 1.00 - Order for Appeal 25¢
 Appeal & bond 75¢ - postage 30¢
 Larrison - Spa. to Ans. 62¢ - Sij. 1.00 - W. Brandon - Notice 50¢ - 9. Sij. 2.25
 Larrison. 2. Notices 1.00 - Weston S. P. 3. depon. 3.00 - Stewart C. depon. 6.00
 Etheridge S. P. 1. Spa. 12.¢ - Weston S. P. 7. Sij. 87.¢ -
 Ab. Phillips 1. day 75¢ - mileage 8.04

25.35

15.37

1.79 1.79

Ben. Guerin, N. Jackson, Mrs. Ettridge, E. Dawson
W. Brandon, W. Burton, A. G. Morris & S. W. Dennis as day 27th 6.00
S. W. Kelly, clk. Stewart Circuit Court, transcript fees

7.79
6.38
\$ 58.66

Torrell & Jones Esqs.
of Bathurst & Kingston

Wm. Traudersicht

William Othridge

Filed 23rd Jan'y 1852.

7th Jan'y 1852

Deem served and
will be m'p'd - ~~Quid~~
Each party to pay half
the costs.

No. 0 177
90

Reed & Jones } This is a bill filed by the
vs } Compts as executors of Minner
Wm Etheridge } in which they ask the court
to enjoin a judgment rendered against them
by Wm Etheridge, which they say was founded
on a note executed by their Testator to said
Etheridge payable at his Testator's death;
Compt in this bill that the note was without
consideration, was obtained by fraud, and that
it is testamentary in its character, and therefore
a judgment ~~could~~ should not be rendered
on it,

For Etheridge we contend that the proof shows
a consideration, see the depositions of Jackson
Philips and Wm Brandon,

There is no proof of any fraud and all fraud
is denied in the answer,

The last and only question is; Is the note
for \$1000 such a paper as a court of law
could pronounce a judgment on, and would
the judgment when declared be void, voida-
ble or valid,

If the judgment is voidable only ~~the court~~
in Court of Equity would not disturb it, but
would require the Plaintiffs to discharge themselves
therefrom by appeal or writ of error from the
Court below to this Court,

Lastly is the judgment void? The Circuit Court
certainly had jurisdiction both of the parties and the
subject matter.

Powell & Jones Ex^r of Skinner

v¹

vs Etheridge

1 The note is under seal, and if prima facie a testamentary paper because payable "on the death of the maker out of his estate" it is competent to show that it is not in fact testamentary. This can be done by showing that it was delivered to the payee and being sealed in part, a consideration, but if this is not so, the note being delivered and proof made that it was based upon a consideration pecuniary, it falls within the case cited in 3 U. S. Digest 679 & Yeats 389. which is as follows.

"By the word give in a deed to take effect after the death of the maker is to be regarded as a will." But an instrument under seal promising to pay money one year after the death of the maker in consideration of services rendered is a bond not a will."

So I take it that any writing under seal promising to pay money, delivered to the payee, though payable at the death is not testamentary, and the death is only the time limited for the payment. Were the instrument to use the word give it were different for the use of this word would import the idea of a consideration and would import a gratuity.

But still should it be regarded prima facie testamentary, as it involves a question of intention of the maker we may

prove the intention, and this we may do by showing that the note was in point of fact given not as a gratuity but to cover an actual indebtedness

2 ~~When a court has jurisdiction~~ It is the general doctrine that where a paper cannot operate as a deed or be used as a promissory note it may be as a testamentary paper. These questions cannot arise upon papers perfect as a deed or promissory note or bill single delivered by the maker, for here they can operate, and is only where the papers have been made and not delivered to the party, but retained by the maker or deposited with another to take effect on his death, then it becomes a question with what intent the papers were made and is the subject of proof. Taylor v Taylor 2 Humph 58

3 It was competent for the ~~court~~ Circuit Court to have heard and determine all the questions raised by the pleadings in the case enjoined, ~~The~~ to wit,

- 1 The Character of the paper send upon its will or no will
- 2 The question of payment
- 3 Of its off & Stat firm
- 4 Fraud

Charles H. Jones Esq

27

Wm. Edwards

Wm. Edwards

Wm. Edwards

Powell & Jones 3
by
William Ethridge 3

Defendant, Witnesses

1540

James Thomas, said he had a conversation with Nathan Skinner as to how he would get his distributive share of Mary Ethridges estate. Skinner told him that he had fixed that, that his debt ~~was~~ should be paid after his death. This was after the settling of the estate of Mary Ethridge. I told Skinner that I intended to sue William Ethridge and his securities for my part of the estate, it seemed to mortify him, he then said he had settled with William Ethridge, and had fixed it so that it would be paid at his death. William Brandon purchased a negro woman & child of Mary Ethridges estate at over \$650. Skinner refused to go security but said he would give his own note.

Abraham Philips, said after suit was brought against Wm Ethridge by the distributees of Mary Ethridge, he heard Nathan Skinner say that Ethridge ought to pay them that he had settled with him by note or note, not positive words. said he asked Skinner if he had ever paid Ethridge any thing said no.

Robert Jackson, ^{Skinner} said to Jno D Morris (security of William Ethridge) that if he had any thing to pay he should get back at his death, this in 1838 or 9 Skinner said he would leave an instrument of writing so that William Ethridge should be paid for Mary Ethridges estate.

John Ethridge Wm Brandon purchased the two negroes, but Skinner gave his note to Wm Ethridge admin^r of Mary Ethridge with Wm Brandon security for \$650. Skinner was Mary Ethridges guardⁿ and owed her other money, Skinner said had settled with Wm Ethridge but did not say in what way.

Elisha Dawson

The complainants call on this witness to state a conversation between Thomas B. Powell one of the Exrs^d and defendant that took place in June 1847 to complainants question

Witness answers, that Ethredge said, they the Exrs^d held a note I gave Skinner for land for about \$1000, that Skinner had willed away the land, and that he did not think he ought to pay it until he could get a title to the land: also to the complainants question Ethredge said he held a note of \$1000 against them. did not promise to pay the note to Skinner

Wm Brandon Complainants Witness

Says he bought the negroes and he and Skinner gave the note for \$651. Says he dont know who paid the note, here produced by the Exrs^d dated 18th April 1838, but says he settled it with Skinner. He ^{Skinner} never paid any money to Ethredge but has the note - says will leave a writing by which Thomas will get his share of Mary Ethredges estate, and to Morris, that he will not loose any thing at his death all will be paid

// To complainants question witness says Ethredge told him that Skinner said to him if you will settle with me I will give the note for \$1000 He said the depo.

To complainants question Wm Brandon, Ethredge said note was given to him by Ethredge as agent of Mary Ethredge

Abraham Philips. Said Skinner told him had settled with Wm Ethredge adm^r of Mary Ethredge by note

James Thomas said Skinner said had settled with Ethredge, and had so fixed it that he Thomas would get his distributive share of Mary Ethredge's estate at his death

Robert Jackson in 1839 heard Skinner in conversation with Morris say he would leave an instrument of writing so that William Ethredge would be paid Mary Ethredge's estate at his death, and that Morris, Secy of Ethredge would lose nothing

John Ethredge. Says W Brandon purchased the negro woman & child at \$650 and Skinner gave his note with Brandon security. That Skinner was guar^t of Mary Ethredge and owed her other monies Skinner said had settled with Wm Ethredge and not say how

W Brandon, said Skinner gave his note for the negroes, that he settled it with Skinner, does not know who paid Ethredge And to complainant's question Brandon says, William Ethredge told him Skinner gave him the note upon settlement, to save Ethredge and his Secy's K

Wm Dummer is asked by complainant for Wm Ethredge's explanation of the \$1000 note and says Skinner gave him the note

P
Hewell & Sons

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Wm H. H. H. H.

Wm H. H. H. H.

Wm H. H. H. H.

Wm H. H. H. H.

Wm H. H. H. H.

Wm H. H. H. H.

Paul & Jones } The paper upon which
is } the debt was brought
Wm Etheridge } in the circuit was to
be paid out of the estate
of Sumner at his death,

This is clearly a testamentary paper
and should have been proved as
such. The case of McLean vs McLean
& Humphreys 453, 454. see also Mag
Deget 3 vol Title well page 1038 and
the authorities.

If the paper sued upon is a testamentary
then the judgment at law is
void. The circuit court could not
take jurisdiction, and being void
a Chancery court has jurisdiction
to enforce the collection. Carnahan
vs Warfield 3 ger 366 Armstrong
vs McCune 1 ger 310, 315
Earl vs 10 ger 310, 315

The consideration of the note or
bond in this case is without
consideration in 1841 Etheridge
executed his note for \$1000
and executed a deed of Trust

to secure the said Phelps
his share of the Estate of
Mary Charge ne Phelps
whereupon we think the
Judgment of the Chancellor
correct

H. W. Thackeray

Pearl & Lewis
 Wm. D. Dwyer
 Wm. Dwyer

1118.33
 67.10
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 201.32
 33.55
 234.88
 1118.33
 1353.18

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 768
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 4608
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 12288