or imbecility of mind, of course neither he in his lifetime, nor those who succeeded him, are bound by any such pretended contract. Insanity or imbecility of mind destroys the will of the contract, and takes from it its binding efficacy and force. There can be no volition where there is neither judgment nor consent; and him who expects to take advantage of this weakness or aberration of mind, the law wisely restrains from doing so, and holds the contract a mere nulity, or no contract at all. No two things can be more widely separate than fraud and insanity. They cannot exist together; the one deserves the punishment of the law; the other, its sympathy and protection; and so they have ever been treated. If the receipt was given, and the party executing it knew not what he did, the law holds it a nulity *ab initio*. On the other hand, if it was executed in fraud, it is binding between the parties themselves and all who claim under them; and it is absolutely void and of no effect, as to creditors. This principle the defendant has been denied the advantage of.

Judgment reversed and new trial awarded.

Cited: 19-660.

DILLARD v. EVANS.

Words and terms used in agreement between individuals, must be taken in a general sense, and not in a technical signification.

In March, 1840, bank paper continued the common medium of exchange, or ordinary circulation, in Arkansas; and of this fact, the Court is bound judicially to take notice.

Therefore, a note of that date, payable in "*common currency of Arkansas*," is a note payable in Arkansas bank paper, and not in specie.

THIS was an action of debt, tried in Washington Circuit Court, in November, A. D. 1841, before the Hon. *176] Joseph M. Hoge, one of the *Circuit Judges. John Dillard sued Lewis Evans, in debt, on a note, executed March 17, 1840, and payable in "*common currency of Arkansas.*" The defendant demurred, on the ground that the plaintiff had mistaken his remedy, and the demurrer was sustained, and judgment entered against the plaintiff, who appealed to this Court.

Paschal & Evans, for the appellant.

Walker, contra.

By the Court— [177

LACY, J. The instrument bears date on the 11th day of March, A. D. 1840, and, at that period of time, bank paper constituted the common medium of exchange or ordinary circulation for money. Bank issues are not, in the constitutional sense of the term, lawful money or legal coin. Gold and silver alone are a legal tender in payment of debts; and *the only true consti- [178* tutional currency known to the laws. And, had specie or current coin been the common circulating medium at the date of the note sued on, then the terms of the contract would have been restricted exclusively to that circulation. Such was not the fact; and this court is bound judicially to take notice of the kind of circulating medium that was then in general use in the State. And the bond sued on should be construed in reference to the existing state of things at the date of its execution. The parties contracting must be supposed to use the terms in their agreement, in their ordinary and popular acceptation, and not in their strict constitutional sense. Words and terms, when used in agreements between individuals, must be taken in a general sense, and not in a tehnical signification. This is a rule of sound legal construction, founded alike in justice and in public policy; and its application to the case now before the court will readily test and determine the case before us. The terms "common currency in

in Arkansas," at the date of the bond sued on, unquestionably meant bank notes or paper issues, which were then the general and universal currency of the State. Gold and silver, or lawful coin, had, at that time, ceased to circulate as money, and their place was supplied by bank issues or paper money; and, consequently, the parties to the suit are presumed to have contracted, with a full knowledge and understanding of this state of things; and, therefore, it is both right and just that their contract should be governed by the [illegible]e import and meaning of the terms that they themselves have thought proper to attach to them.[1] This point has been expressly decided, in a number of cases, by the Court of Appeals in Kentcky. *McCord v. Ford*, 3 *Mon.*, 166; *Stricker, as adm'r, v. Miller*, 5 *Lit.*, 235. In the case of *Chambers v. George*, 5 *Lit.*, 335, which was an action of petition and summons on a note, "payable in the currency," Chief Justice BOYLE held the terms of the agreement to mean bank notes or paper issues at the date of the contract; paper money then constituting the ordinary circulation in that State. In this opinion we fully concur; and, consequently, the court below decided correctly in sustaining the demurrer. The note sued on not being an obligation for the direct payment of money, of course an action of debt will not lie upon it.

Judgment affirmed.

1—Cited: 4-368; 5-103-106-161; 13-584.

1—A note or bond payable in "good current money of the State," is payable in gold or silver. It is otherwise if merely payable "in the currency of this State," or "current bank paper of this State," or "current notes of the State," while the State has a paper currency. Graham v. Adams, 5-261; payable in "Arkansas money," is payable in United States coin. Wilburn v. Greer, 6-255. In "greenback currency," is payable in United States currency. Burton v. Brooks, 25-215.

TROWBRIDGE & JENNINGS v. SANGER. [179

A writ of error lies to the refusal of the court below to grant a new trial.

It is an inflexible rule of law, that written evidence is of a higher grade than oral testimony; and, when a writing contains no ambiguity, oral testimony is not admissible to explain or prove it.

If the instrument be ambiguous, its defects may be supplied, or its uncertainty explained. It is competent to prove the date of a receipt by oral testimony, or show it by circumstances connected with the transaction.

Dates and amounts of receipts are capable of being proven orally. They are mere defects or omissions, which may properly be supplied by other proof than the instrument itself. The admission of such testimony comports with the rule of written evidence and goes far to uphold it.

In an action against *partners*, on an account, the partnership of the defendants must be proved.

THIS was an action of *assumpsit*, tried in Pulaski Circuit Court, in September, A. D. 1841, before Hon. John J. Clendenin, one of the Circuit Judges.

Sanger sued Trowbridge & Jennings, as partners, in *assumpsit*, on an account for furniture, etc., sold and delivered. The case was tried on the pleas of *non-assumpsit*, and set-off, and Sanger obtained a verdict for $519.12.

The defendants then moved for a new trial, on affidavits and certain papers, and their motion being overruled, they excepted. The bill of exceptions sets out the evidence, in substance, as follows: The plaintiff's only witness proved the presentation by him to Trowbridge of a bill, precisely like the bill of partnership filed. Trowbridge cast up the bill, and said that if Sanger would deduct $100 he would pay it. He claimed no other credits than those allowed in the bill, but a deduction of $100 for mattresses which were too short. The bill was in the handwriting of Sanger. Witness presented two bills, but did not recollect their respective