BINGHAM ET AL. *vs.* CALVERT, USE, &C.

The declaration alleged that the note sued on, was for the payment of a specified sum of money, "for *value received,* to wit: for the hire of the negro Jim." The note granted on oyer, is for the hire of the negro, but does not contain the words "for value received:" HELD, No variance—that so much of the instrument as was necessary to show a cause of action, was set out according to its legal effect, and that the words "for value received," did not, in the connection in which they were used, show a different consideration than that expressed upon the face of the note.

The note sued on was payable to Robert Calvert, "guardian of Martha E. Mims," and the action was brought by Calvert in his own right: HELD, That the words "guardian of," &c., were properly treated as mere words of personal description.

The note was given for a specific sum of money for the hire of a slave, and for the clothing and return of the slave. The plaintiff having declared for the money only, which he had a right to do, it was not necessary for him to negative the furnishing of the clothes, and the return of the slave.

As to suits by one for the use of another.

Writ of Error to Pulaski Circuit Court.

FOWLER, for the plaintiffs. Where a plaintiff undertakes to set out a note specially in his declaration, and misdescribes it,—as to allege that it was expressed "for value received," and the instrument contains no such or different words, the variance is fatal. *Chit. on Bills* (9 *Am. from* 8 *Lond. Ed.*) 583.

Upon the same principle, the allegation that the note was made payable to *Robert Calvert,* is wholly unsustained by a note payable to *Calvert, guardian of Martha E. Mims.* 1 *Chit. Pl.,* 304. 2 *Cond. R.* 478, *Sheely vs. Mandeville.*

JORDAN, contra. The declaration does not attempt to set out the instrument sued on in *haec verba,* but to describe it according to its legal effect: and therefore there is no material variance.

Hemphill vs. Hamilton, 6 *Eng.* 425. 5 *Ark.* 316. *Rector vs. Taylor et al.,* 7 *Eng.* 1 *Eng.* 33. 5 *Eng.* 465.

It is sufficient to state those parts of a contract whereof a breach is complained. 1 *Chit. Pl.* (8 *Am. Ed.*) 304, 307, 315.

Mr. Justice WALKER delivered the opinion of the Court.

This suit was instituted in the name of Robert Calvert, for the use of Solomon Lance, as guardian, &c., upon a note executed by the defendants, to Calvert, for one hundred and eighty dollars, (as expressed in the note,) for the hire of a negro boy Jim. The defendant, Bingham, craved oyer of the note, which was granted: whereupon, he filed his demurrer for an alleged variance between the note as described in the declaration and that given on oyer.

It is alleged, for variance, that the note is described in the declaration as being for value received, whilst that given on oyer is simply for the hire of a slave. The pleader very properly only set forth so much of the contract as showed a legal cause of action against the defendant, and did not attempt to give literally the language used by the contracting parties. The contract is set forth thus: "Defendants promised to pay Robert Calvert one hundred and eighty dollars, on or by the first day of January, 1851, for value received, to wit: for the hire of the negro Jim." The words, "value received," do not, in this connection, nor were then intended, to vary the contract or show a different or other consideration than the hire of the slave.

The suit was properly brought by Robert Calvert in his own right. The words, "guardian of Martha E. Mims," were, in this action, treated as words of personal description. *Hemphill vs. Hamilton ad.,* 6 *Eng.* 425.

The plaintiff did not declare for a breach of so much of the contract as related to the clothing and the returning of the slave, and therefore was not compelled to negative the furnishing of clothes and the return of the slave. He had a distinct and independent cause of action against the defendants for the $180, the hire of the slave, and had a right to sue upon it, and did sue upon

it, irrespective of the agreement to clothe and return the slave at the end of the year.

Fourth assignment of cause of demurrer is founded on a misapprehension of the averments in the plaintiff's declaration. The plaintiff sues in his own name for the use, &c.; he sets forth a promise to himself, and avers a legal liability of the defendants to pay the plaintiff for the use, &c. Literally, by the terms of the contract, the defendants were bound to pay the plaintiff; and whether others claimed the use and benefit of the recovery or not, is a question more properly between the plaintiff and those who claim the mere use and benefit than with the defendants. Their undertaking is complete, and they are called upon by one having the legal right of action in himself to answer. These were objections properly disregarded by the court below; they are of that technical class calculated and are sometimes intended to prolong litigation and multiply costs and expense. They are not issues of law upon grounds affecting the substance or merits of a defence, but objections to the technical form of presenting the cause of action, and should not be encouraged.

The judgment of the circuit court must be affirmed, with costs.