

HALLIWELL AD. VS. SPRING EX.

Where a question of variance arises upon the formation of a letter, this court will not overrule the finding, upon inspection, of the court below, upon an attempted *fac simile* by the clerk.

Appeal from Sebastian Circuit Court.

HON. FELIX J. BATSON, Circuit Judge.

S. H. HEMPSTEAD, for the appellant.

Term, 1856.]

Halliwell ad. vs. Spring ex.

Mr. Chief Justice ENGLISH delivered the opinion of the Court.

Spring, as executor of Ailes, brought an action of assumpsit, in the Sebastian Circuit Court, against Halliwell, upon a note alleged to have been executed by him to Ailes, in his life time. The defendant craved oyer of the note sued upon, which was granted by filing the original, and he demurred for an alleged variance between it, and that described in the declaration. The court overruled the demurrer, and the defendant resting, final judgment was rendered against him, and he appealed to this court. Afterwards, his death was suggested here, and his administratrix substituted.

The question of variance grew out of the manner in which the first letter of the sur-name of the payee in the note was formed. The declaration makes it an A—Ailes: and the counsel for the appellant insists, that in the note, it was an H—Hiles. The clerk, in transcribing the note, to send up to this court, has attempted to make a *fac simile* of the original letter. How well he has succeeded, we are not able to determine. The letter which he has made, however, if it may be called a letter, looks as much like an A as an H. The court below had the original before it; and, upon inspection, determined it to be an A, and that there was no variance. It would not be very safe for us to overrule its judgment, upon a copy made by the clerk. The judgment is affirmed.