McKiel *vs.* Porter.

Where two are sued, as having executed a bond, although a seal is only attached to one name, this is no objection, on demurrer. The other may have adopted the seal.
In covenant, on an instrument payable in current bank notes of the State of Arkansas, it is error, on default, to give judgment for the nominal amount of the note. There must be a writ of inquiry, to ascertain their value. The plaintiff is only entitled to recover their value at the time they were to have been paid.

This was an action of covenant, determined in the Phillips Circuit Court, in November, 1841, before the Hon. Isaac Baker, one of the circuit judges. Porter sued Josiah S. and William B. McKiel, on a bond, for the payment of $1,500, in current bank notes of the State of Arkansas. On oyer, it appeared that a seal was attached to the name of one of the defendants only. Demurrer for variance overruled, and judgment *nil dicit* against the defendants, for $1,560, debt, with interest and costs. The defendants appealed.

The case was argued here by *W. & E. Cummins*, for the appellants.

By the Court, Dickinson, J. The demurrer was correctly overruled; for the defendants may have adopted the seal as the seal of both. If not, under our statute, the party could not deny it, except by plea, supported by affidavit.

The court, however, clearly erred in giving judgment upon the motion of the plaintiff below, for the amount of the bank notes, as specified in the covenant. Nor does it appear that the defendants waived their right to a jury to assess the damages. On the contrary, they specially except to the court so rendering judgment on the demurrer The action of covenant is for the recovery of damages, for a breach of contract; and the extent of such damages must depend upon the evidence introduced. Current bank notes are not money, and the plaintiff was only entitled to recover the value of the notes at the time they were to have been paid. And so this court decided in the case of *Mitchell vs. Walker*, and *Payne and another vs. Rogers and another.*

Judgment reversed.