

WILBURN vs. GREER.

Debt will lie on a note payable in *Arkansas money*.
A note payable in *Arkansas money*, is payable in the current coin of the United States.

Appeal from the circuit court of Carroll county.

THIS was an action of debt, by petition, brought by the appellant against the appellee, and determined in the circuit court of Carroll county, at the May term, 1845, before the Hon. S. G. SNEED, judge.

The petition set out the following instrument as the foundation of the action :

“One day after date I promise to pay J. J. Wilburn, or order, the sum of one hundred and thirty-four dollars and eighty-one cents, which shall be paid in *Arkansas money*, for value received, to draw ten per cent. interest until paid: this 12th Dec’r, 1844.

G. GREER.”

The defendant demurred to the petition on the following grounds: “1st, the petition is for a demand requiring the intervention of a jury to assess damages, and not for a sum certain: 2d, it discloses no cause of action on which debt, by petition, would lie: 3d, it contains no averment of the value of Arkansas money.”

The court sustained the demurrer, and gave judgment for defendant. The plaintiff appealed.

E. H. ENGLISH, for appellant. If the note sued on was payable in specie, debt was the proper action, and the demurrer was improperly sustained.

“Which shall be paid in *Arkansas money*,” is the language of the note. What *money* has Arkansas? She has none other than the *constitutional* coin of the Union. There is none other known to her constitution or laws. True, she has chartered banks, and authorized them to issue their notes for the *payment* of money; but their notes are not *money* in its legal sense, and in the construction of this contract, the meaning of the word *money*, as known to the law, must be regarded, and not what may or may not be the popular meaning of the word. If the parties did not intend the note to be payable in specie, they should have used the language—*Arkansas bank paper, notes, bills*, or other words of similar import.

A note for “*good current money of this State*” is payable in specie. *Graham vs. Adams*, 5 *Ark. Rep.* 261.

The Supreme Court of Tennessee have decided that debt will lie on a note payable in “*Tennessee money*.” *Searcy vs. Vance, Martin & Yerg.*, *Rep.* 225. In that case the court say: “A note payable in *Tennessee money*, is, to all legal intents, a note payable in gold or silver; for nothing but gold or silver constitutes *Tennessee money*.”

The Supreme Court of Alabama have decided that a note for *Alabama currency*, is payable in specie.

The case of *Hawkins vs. Watkins*, 5 *Ark. Rep.* 482, does not contradict this position: the language there used was—"four hundred dollars in *Arkansas money of the Fayetteville Branch*." The words "*of the Fayetteville Branch*" determined what the parties meant by *Arkansas money*—that they intended the notes of the *Branch* of the *State Bank* at Fayetteville. In this case no such qualifying words are used.

D. WALKER, for the appellee. The only question presented for the consideration of this court, is this: Is the contract declared on for the payment of cash, or the currency of the country? This question has been decided by most of the courts in the western States where depreciated paper circulates, as well as by our own.

1st, It has been settled that debt will only lie on a contract for the direct payment of money, *in numero, in nomine*, 2 *Com. Dig.* 137. 4 *Ark. Rep.* 145. 2d, That petition will only lie in cases where debt will lie. *Mitchell vs. Walker*, 4 *Ark. Rep.* 145. It only lies for the direct payment of money. *Blevins vs. Blevins*, 4 *Ark. Rep.* 441.

A note payable in current bank notes is unliquidated, and damages must be assessed by a jury. 5 *Ark. Rep.* 181. A note payable in *good* current money of the State is payable in cash. *Graham vs. Adams*, 5 *Ark. Rep.* 261. But on examination of this case it will be seen that the opinion of the court turned on the word *good*, and but for this word the decision would have been the reverse.

In a still later case this court decided that a draft payable in "*Arkansas money of the Fayetteville branch*," was not an order or draft for money. *Hawkins vs. Watkins*, 5 *Ark. Rep.* 482.

Courts will *ex-officio* take notice of the kind of currency circulating, and they will endeavor to ascertain from the language of the contract, the intention of the parties. *Dillard vs. Evans*, 4 *Ark. Rep.* 175. 3 *Monroe* 166.

This note was never designed to be paid in gold and silver, or

why have contracted that it should be paid in Arkansas money? What did they, what this whole community understood by Arkansas money? Not specie. That is the currency of the whole Union; and if that had been the case, a note for so many dollars would have expressed aptly the intention of the parties. The very fact that they describe it as Arkansas money shows that they designed to contract for the peculiar currency of the State.

OLDHAM, J., delivered the opinion of the court.

The question raised by the record in this case, we conceive to be determined by *Graham vs. Adams*, 5 Ark. Rep. 261, in which it was held that a bond payable "in good current money of this State," was payable in the current coin of the United States. The terms "*currency of this State*," "*current bank paper of this State*," and all other such terms, which clearly mean bank notes, are distinguishable from, and cannot be confounded with the term employed in the note sued upon in this case. This note is payable in Arkansas money, which cannot and does not mean Arkansas bank paper, for such bank paper is not money; but means current coin of the United States. In *Hawkins vs. Watkins*, 5 Ark. Rep. 481, the term Arkansas money was limited, qualified, and defined by the words "of the Fayetteville branch" and was construed to mean Arkansas paper of the Fayetteville branch. This note is clearly an instrument for the payment of money, and it has been so decided in Tennessee upon a note payable in "Tennessee money," *Searcy vs. Vance*, Mar. & Yer. Rep. 225. The judgment of the circuit court in sustaining the demurrer to the petition, was therefore erroneous and must be reversed.