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Term, 1869.]

McMurtry v. Ramsey, admr.

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MCMURTRY *v.* RAMSEY, *adm.*

ILLEGAL CONSIDERATION. The fact that the *consideration* for the note sued on was a horse, bought by the maker for the *Confederate service*, with the knowledge of the payee, constitutes a *good defense* to a suit thereon by the administrator of the payee.

Kelly v. Tatum. *Affirmed.*

*Error to Bradley Circuit Court.*

HON. WILLIAM M. HARRISON, Circuit Judge.

CARROLL and GALLAGHER & NEWTON, for plaintiff.

GARLAND, WHITE & NASH, for defendant.

BOWEN, J.

This is an action upon a promissory note executed by plaintiff in error, and J. B. Kestuson (not sued herein) to Thomas M. McCollough, in his lifetime. Ramsey, administrator of McCullough, brought suit upon the note, in the circuit court of Bradley county. The defendant, McMurtry, plead, setting up that the note sued on was given for a horse, to be used in the service of the Confederate States, and that McCollough knew the purpose for which he was purchased. Plaintiff demurred to this plea, and the court sustained the demurrer, and rendered judgment for the amount of the note, damages, costs, &c. The defense set up by McMurtry was a good one, and plaintiff's demurrer should have been overruled. See the case of *Kelly v. Tatum*, decided at the last term of this court.

Judgment reversed.

Judge HARRISON, being disqualified, did not sit in this case.

Hon. JOHN WHYTOCK, Special Supreme Judge.

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