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Saltmarsh *v.* Tuthill.

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clares all promissory notes, drawn for a sum certain, payable to any person or order, or to any person or his assigns, negotiable by indorsement.

The established doctrine is, that a promise to deliver, or to be accountable for, so much money, is a good bill or note. Here the sum is certain, and the promise direct. Every reason exists <sup>\*229]</sup> why the indorser of this paper should be held responsible to his indorsee, that can prevail in cases where the paper indorsed is in the ordinary form of a promissory note; and as such note, the State courts generally, have treated certificates of deposit payable to order; and the principles adopted by the State courts in coming to this conclusion, are fully sustained by the writers of treatises on bills and notes. Being of opinion that the Circuit Court properly held the paper indorsed, negotiable, it is ordered that the judgment be affirmed.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Ohio, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs and damages, at the rate of six per centum per annum.

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ALANSON SALTMARSH, PLAINTIFF IN ERROR, *v.* JAMES W. TUTHILL.

In a suit by the indorsee against the indorser of a bill, where the defence was usury, the drawer and drawee were incompetent witnesses, when offered to prove certain facts, which, when taken in conjunction with certain other facts, to be proved by other witnesses, would invalidate the instrument.<sup>1</sup> Being incompetent witnesses to establish the whole defence, they are also incompetent to establish a part.

THIS case was brought up, by writ of error, from the District Court of the United States for the Middle District of Alabama.

The only question was one of evidence, which is fully explained in the opinion of the court.

It was argued by *Mr. J. A. Campbell* and *Mr. Seward*, for

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<sup>1</sup> DISTINGUISHED. *Sweeny v. Easter*, 1 Wall., 173.

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the plaintiff in error, and *Mr. Pryor*, for the defendant in error.

Mr. Justice CATRON delivered the opinion of the court.

Hill drew a thirty days' bill, dated at Mobile, on William Bower & Co., for four thousand dollars, payable to Coleman. It was indorsed by Coleman to Saltmarsh, and by him to James W. Tuthill, who sued Saltmarsh. The parties went to trial on the general issue, and the defence relied on was usury. By the laws \*of Alabama, a party to any [\*230] security for the payment of money, who takes more than after the rate of eight per cent. per annum for the money advanced, is prohibited from recovering any interest, and can have judgment only for the original sum loaned. And this abatement, was the matter in controversy. To prove the usury, Hill, the drawer, and William Bower, one of the drawees, were introduced on behalf of the defendant; and objected to by the plaintiff as incompetent, on the ground that a party to negotiable paper who, by the sanction of his name, gave it credit and currency, could not afterwards, upon his own testimony, invalidate the instrument, by showing that the consideration on which it was executed was illegal. The witnesses were rejected.

Both Hill and Bower were offered to prove facts which, when taken in connection with additional facts, that might be proved by others, would invalidate the instrument in part, by abating the interest. The proof was offered, and only material to establish the defence of usury, this being the sole defence. It must be admitted, that if the party to the bill had been introduced to establish the whole defence, then he was incompetent; and to hold, that he could prove a defence in part, without which piece of evidence no successful defence could be made, would be a mere evasion of the rule, which excludes such witness from giving evidence to impeach the consideration.

No other question is presented to us, nor does any other exist in the record, worthy of notice. It is therefore ordered, that the judgment of the Circuit Court be affirmed.

## ORDER.

This cause came on to be heard on the transcript of the record, from the District Court of the United States for the Middle District of Alabama, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged

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Tyler et ux. v. Black.

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by this court, that the judgment of the said District Court in this cause be, and the same is hereby affirmed with costs and damages, at the rate of six per centum per annum.

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CYRIL C. TYLER, AND HIS WIFE, SARAH P. TYLER, APPELLANTS, *v.* GEORGE N. BLACK.

Where a person desired to purchase land from a party who was ignorant that he had any title to it, or where the land was situated; and the purchaser [§ 231] made fraudulent representations as to the quantity and quality of the land, and also, as to a lien which he professed to have for taxes which he had paid; and finally bought the land for a grossly inadequate price, the sale will be set aside.<sup>1</sup>

THIS was an appeal from the Circuit Court of the United States for the District of Maine, sitting as a court of equity.

The facts are all stated in the opinion of the court.

It was argued by *Mr. Fessenden*, for the appellants, and *Mr. Rowe*, for the appellee.

The points made by the counsel for the appellants were the following, viz. :

The complainants claim to have their deed to Black, dated November 30, 1846, cancelled, and a reconveyance of said estate, on the following grounds.

1. For fraud and fraudulent representations.
2. For inadequacy of price, as, of itself, furnishing evidence of fraud.

3. For the two preceding grounds united.

*General Considerations.* The acts and declarations of Black, to show he had formed a design to commit frauds in making this purchase, as opportunity should offer.

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<sup>1</sup> *S. P. Warner v. Daniels*, 1 Woodb. & M., 90; *Mason v. Crosby*, Id., 342; *Adams v. Jones*, 39 Ga., 479; *Hammond v. Pennock*, 5 Lans. (N. Y.), 358; *McClure v. Lewis*, 72 Mo., 314.

Mere inadequacy of price is no ground for setting aside a sale of land, unless so gross as to shock the moral sense, and thus become, *per se*, evidence of fraud. *Hale v. Wilkinson*, 21 Gratt. (Va.), 75; *Booten v. Sheffer*, Id., 474.

A wilful misrepresentation as to the income derived from a patent for an invention,— a half interest

in which was to be the consideration for the land sought to be purchased, —held sufficient evidence of fraud to set aside the sale. *Crosland v. Hall*, 6 Stew. (N. J.), 111. *S. P. Meyers v. Funk*, 56 Iowa, 52.

In *Fackler v. Ford*, McCahon, 21, it was held that representations by the would-be purchaser that, if a contract were to be made, he had capital, and would make improvements which would induce immigration of mechanics, &c., were too indefinite to vitiate the contract.