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*Witherell v. Ela.*

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sideration, is a sufficient assignment. The cases cited by the court, *Hawell v. McIvors*, 8 D. & E. 690; *Heath v. Hall*, 4 Taunt. 326; *Titcomb v. Thomas*, 5 Greenl. 282; *Clark v. Rogers*, 2 Greenl. 147; *Jones v. Witter*, 13 Mass. 304; *Prescott v. Hall*, 17 Johns. 284, well sustain the decision. Many others may be added, as *Briggs v. Dorr*, 19 Johns. 95; *Ford v. Stewart*, 19 Johns. 342; *Dunn v. Snell*, 15 Mass. 485; *Porter v. Bullard*, 26 Me. 448; *Grover v. Grover*, 24 Pick. 263; *Ball v. Larkin*, 3 E. D. Smith 555; *Spafford v. Paige*, 15 Vt. 490; *Crain v. Paine*, 4 Cush. 483; See 3 Lead. Cas. in Eq. 307, 357.

*Judgment for the plaintiffs.*

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**WITHERELL v. ELA.**

The indorser of a note in full, or in blank, when it is returned to him, after protest, may strike out his indorsement, and maintain an action on it in his own name.

ASSUMPSIT on a note, dated March 13, 1860, signed by J. K. & S. Merrill, payable to the order of the defendant, George W. Ela, for \$319.75, in two months, at either bank in Boston, and indorsed in blank by the defendant. The plaintiff, Obadiah D. Witherell, being holder of the note, before its maturity, wrote over the defendant's signature, on the back of the note, "Pay to the order of O. D. Witherell," and signed his name below the defendant's, and placed it in a bank in Boston for collection. The note, not being paid at maturity, was protested, and the plaintiff took it from the bank, erased his indorsement, and commenced this suit against the indorser.

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 Hopkinson v. Dumas.
 

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It was objected that the defendant, being an indorser of the note, ought not to be held, because the note was mutilated by the erasure of the plaintiff's name.

*Flint & Bryant*, for the plaintiff.

*S. Dana*, for the defendant.

BY THE COURT. The indorser of a note, when it is returned to him, after protest, may strike out his own indorsement, although it is in full, and maintain an action on it in his own name. *Dugan v. U. S.*, 3 Wheat. 183; *Piquet v. Curtis*, 1 Sum. 480; *Thompson v. Robinson*, 4 Johns. 21; *Emerson v. Cutts*, 12 Mass. 78; *Nevins v. De Grand*, 15 Mass. 438; *Bank of Utica v. Smith*, 18 Johns. 230; *Norris v. Badger*, 6 Cow. 455; *Chat. Co. Bank v. Davis*, 21 Wend. 584; Chit. on Bills, 230, n. a; Edw. on Bills, 271.

*Judgment for the plaintiff.*

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 HOPKINSON v. DUMAS.

Where land is conveyed by deed to one person, and a portion of the purchase money is paid down, and the balance by notes, which are taken in payment, and four other persons furnish each an equal share with the grantee of the money paid down, and all sign the notes with the grantee for the balance of the consideration, with the agreement, at the time of the purchase, that they shall each pay his equal proportion, with the grantee, of each note, a trust will result to each in the land, and each will have an equitable interest in one fifth part of the land, although the party taking the deed sign said notes as principal, and all the others sign the same as sureties, and stand in that relation toward the grantor.

While the legal estate in lands is in one person, and the equitable or trust estate in another, no inchoate right of dower will be acquired by the

42	296
69	135

42	296
70	47

42	296
72	243