

W. & M." The defendant indorsed and transferred the instrument to one Hugo Hirschmann on March 16th, 1908, for value received.

*Held*, that this instrument was a negotiable promissory note and the money payable under it was not attachable by garnishment proceedings during its currency.

A. B. Hudson, for plaintiff. Burbidge, for defendant.

Mathers, J.]

MONROE v. HEUBACH.

[July 17.

*Contract—Agreement for sale of land—Stipulation for formal contract—Waiver—Interest.*

Action to recover payment of one instalment of purchase money under an agreement of sale of land in the form of a written option signed by the plaintiffs and accepted in writing by the defendant. The option contained all necessary terms of the proposed purchase including a provision that, should the defendant sell any portion of the lands, the plaintiff would execute a transfer or conveyance of the lands sold provided that the amounts had been agreed upon between the plaintiffs and the defendant and, in the event of their being unable to agree, then provided the selling price was at a fair valuation to be determined by the named arbitrators. It contained also a clause providing that upon the exercise of the said option a formal agreement of sale should be entered into between the parties containing such terms and conditions as are suitable and usually contained in the form of agreement of sale in common use by the firm of Tupper, Phippen & Co. The letter of acceptance also contained the defendant's statement; "I shall be pleased to have you arrange for the preparation of the formal agreement of sale." No formal agreement was ever prepared or executed, but the defendant, before the due date of the instalment sued for, entered into an agreement for the sale of a considerable portion of the property and applied for and obtained a conveyance of such portion from the plaintiffs upon payment of an amount agreed upon between the parties.

*Held*, 1. There was a complete contract between the parties enforceable by the plaintiffs notwithstanding the absence of the more formal agreement contemplated. The principles laid