

1857. negotiated by him with the defendant; that default having been made in payment of the note defendant sued *Jarvis* and the plaintiff at law, and recovered judgment, upon which he issued execution against both, and placed the same in the hands of the sheriff: that after the writ had been in the hands of the sheriff for some time, the maker saw the plaintiff in that suit, and by paying something on account of the interest and costs obtained from him some further time for payment of the balance of the execution; and the attorneys in the action wrote to the sheriff to that effect, with a direction to stay proceedings on the execution in his office. Afterwards, the maker of the note having in the meantime become insolvent, instructions were given by the attorneys to levy the amount out of the goods of the indorser, and the sheriff, having notified him of his intention to proceed to a sale of his goods, the present suit was instituted for the purpose of obtaining an injunction to restrain further proceedings on the writ.

Statement.

A motion was now made for a decree in the terms of the prayer of the bill, pursuant to the orders of 1853.

Mr. *Strong* for the plaintiff, referred to *English v. Darley* (a), *Mayhew v. Crickitt* (b), *Smith v. Knox* (c).

Mr. *Connor*, Q. C., contra, cited *Ex parte Wilson* (d), *Owen v. Homan* (e).

The judgment of the court was delivered by

February 23. *ESTEN*, V. C.—In this case a promissory note was given by Mr. *Jarvis* to defendant *Mills*, indorser by the plaintiff. The plaintiff was an accommodation indorser, but it does not appear that this was known to the defendant; what was patent to him, however, on the face of the note was, that as between themselves, *Jarvis* was

(a) 2 B. & P. 61.
(c) 3 Esp. 46.
(e) 3 McN. & G. 378.

(b) 2 Swans. 185.
(d) 11 Ves. 410.