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Mr. Justice Breese delivered the opinion of the Court:

~~Breese J.~~ It is a rule in pleading, universally recognized, that a plea must answer all that it professes to answer. If it purports to answer the whole declaration, and answers but a part, it is obnoxious to a demurrer. That is the case with all the special pleas ~~given~~ in this record. The action was brought with a special Count on a promissory note, and the Common Count. The pleaders ^{are} to the whole declaration, whilst they answer only the special Count. 1 Ch. Pleading 555; Fryer v. Garth et al. 3 Scam. 92.

The fact that the plaintiff admitted ^{was filed} after ~~filing~~ the pleas, that the note was the sole cause of action, cannot dispense with the rule of correct pleading.

But the pleas are substantially defective in other particulars.

The first special plea questions the right of the Rail Road Company, to take a promissory note in payment of Capital Stock subscribed in it. In the case of Fryer v. Facker et al., ~~Vol~~ 24 M. 180 which was an action on a note executed to the Florida and Ocala Rail Road Co. and signed by the President of the Company, this Court said that a rail road company has ~~an~~ an inherent authority to take and negotiate a promissory note in the ordinary course of

their business. By the general rail road
law, stock subscriptions are payable by calls
made, periodically, by the company on the
subscribers. Should a subscriber wish to avoid
these calls, by giving a note ~~paying~~ ^{paying} ~~through~~
for the gross amount of the calls in a certain
time, we see no reason why he should not be
so indulged. It is a matter of contract with
the company, and they may know in what
manner they can make the note available
in the prosecution of the work or to run
money. They cannot, as a branch of their
business, deal in notes and bills of exchange
but can make such paper subservient to
the great design. It is an indulgence to a
subscriber thus to extend the term of pay-
ment to him, of which he should not, how-
ever much, ¹ other paying subscribers might
complain. The charter of the Illinois River
Rail road company required each subscriber
to pay ten per cent at the time of his subscription.
As a first brought on a subscription to its stock,
the defendant set up as a defence the fact
that the company had not required the pay-
ment of this ten per cent. This court said
the defendant cannot be allowed to take
advantage of the indulgence extended to
them when they made their subscriptions, for
the purpose of repudiating them. This indulgence

is a most ungracious defense, which should
not be allowed unless it is strictly required
by some inflexible rule of law. M. River
R. R. Co. vs. Limner, 20 Me. 657.

With much greater force can these views
be urged in this case, where the plaintiff
bears an apique, claiming the note by assign-
ment, and where the plea admits was given
for the stock subscribed.

3. The second, third, fourth and fifth special
pleas, attack the organization of the company
and call in question its legality. We have
said in the case of Rice vs. The Rock Island
and Alton Rail R. Co., 21 Me. 95, that a
party cannot be permitted in this collat-
eral way to question the organization of
the company, and this in an action brought
directly by the company. A bona fide
assignee, should be in as good a position
The fifth special plea questions the
power of the President of the company
to assign the note. In the case of Fry vs.
Traker et al. before cited, this Court held
that the assignment was prima facie the
act of the company by their authorized
~~agent~~ officer, and if it was not their
act, it should have been denied by affi-
davit. M. Foster vs. Preston, 5 Ely. 60.
There is no plea, ^{except by affidavit} putting this assignment in issue.

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The eighth and ninth pleas aver that the note was given for certain shares of stock in the Rail Road Company, which were subscribed for ^{at a time} long anterior to the execution of the note, and which was in payment for the stock. The stock being subscribed, it must be paid for notwithstanding any false representations made at the time of the execution of the note. Besides, the pleas do not allege that those who made the false representations were authorized by the company to make them, or that they knew they were false when made. White vs. Watkins, 23 Ill. 482.

The fraud and circumvention, by which the defendant was induced to give the note are not stated in the ninth plea, and is defective on that account. The plea should state distinctly, in what the fraud and circumvention consisted, and the same objection lies to the tenth plea. The eleventh plea avers a want of consideration for the note. This plea being brought by an assignee of the note, to avail of this defence, the plea must aver that the note was assigned after it became due. There is no such averment, and consequently the assignee cannot be affected by it. It is no defence as to him, for ~~the~~ the declaration shows the note was assigned before due.

The defense, under the ~~thirteenth~~ twelfth
plea of no test corporation was with-
drawn as appears by the record and
also the plea of the ground issue.

5- The thirteenth plea avers that the Directors
of the Company never demanded of the
defendant the amount of stock he subsci-
bed. He was not aware of any obligation
resting upon the Company to make such
demand. It was the defendants' duty to
pay the note which being done, he could
demand certificates of stock.

The remaining plea sets up usury
in this that the interest was never
payable semi-annually. It has long
been settled, but ~~the~~ reservation is not
unusual. Mc Gill et al. vs. Ware,
14 Cal. 21. The whole interest may be
lawfully secured in advance. Marshall vs. Good
vs. G. F. Co. et al. 15 Johns.
102, 2 Green 678.

As to all the pleas questioning the
legality of the organization of the Company
reference is made to the case of Grand
Bank Rail Way Co. vs. Cook, 29 Ill. 237.
or decision of these.
Attorneys at the trial being no error in the
record, the proposed verdict be affirmed.

Judgment affirmed.

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Goodrich

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Reynolds, Wilder &

Opinion by

Wm. J.

O. K.

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