

Of the 9 Errors assigned on these
Records only the 1st and 7th
which amount to the same thing ^{and} the
8th and 9th are the only ones that
in fact arise in these cases —
The 1st and 7th assigning the decision
on the Demurrer to the Special Pleas
^{for error -} is argued further along —

As to the 8th Error assigned
It cannot arise on this Record —
for the Reason that the Affidavit
which was the basis of the motion
is not brought to the notice of this
Court by Bill of Exceptions as is nec-
essary — 24 Ill 598

Also in the cases of *Halderman* and
and *Baker vs Williams* there is no
Affidavit for continuance in the
Record at all —

As to the 9th Error assigned the
Abstract will & does show that
there was no evidence offered in
this cause but that judgment was
rendered on the Demurrer to the Pleas

The Abstract does not show the
construction of the Pleas very fully
but the Court will see by an in-

spectum of the Record that the pleas
only profess to plead to the special
count leaving the common count
unanswered. It is true there is a
stipulation that the note is the
only cause of action but I think that
does not do away with the necessity
of pleading to the common count.

I also desire to call the attention
of the court to the fact that there
are about \$50,000 of notes of this
some kind and character in Rock
Island County all drawn in precisely
the same language and payable to the
same company and that these notes
~~and upon in these suits~~ will in
a great measure determine the
character of all of such notes.

I therefore bespeak for these cases
a careful review on the part of the
court.

Argument for Appellees

Calvin Goodrich

vs

Reynolds Wilder

for the use of

Ward of Adams

Amos Halden

vs

Charles M. Hovey

Rudolphus J. H. Baker

vs

Charles Williams

In the Supreme
Court at Hottam
April Term
AD 1868

The only question in these cases
arises on the validity of the Appellants
Pleas filed in the Court below.

The Pleas are the same in all the
cases - A Demurrer was sustained
to all the Pleas in that Court and
that decision is assigned pre-
sented.

On the part of the Appellees it is
claimed that the Pleas were all bad
and that the Demurrer was sustained
properly - because they all profess
to answer the whole Declaration
or the whole cause of action while
in fact they only answer a part of it
being Pleas to the parts mentioned in

the first count leaving the common
counts wholly unanswered
No principle of Pleading is better
established than that a Plea which
professes to answer the whole charge
& in fact only answers a part of
it is bad on demurrer—

4 Hilman 532—

22 Ill 40 & 813—

The 2nd Plea is bad for the reasons
already stated and because it only
amounts to the General Issue— The
demurrer was therefore properly sus-
tained—

25 Ill 321

As to its merits it does not
allege fraud nor does it impeach
the consideration of the note but
simply ~~asserts~~ simply says that the
making of the note is contrary to
the laws of the land and of the
Rail Road charter and is fraudulent
& void in law. There certainly is no
law that is violated by the making
of the note in question— It seems
the Plea only amounts to the General
Issue— It is probably however the
intention to raise the question of
the power of the Company to take
notes and security for subscriptions
for stock— This Court has already

said. "That a Rail Road Company
can take a promissory note and
negotiate it in the ordinary course
of ^{their} business cannot be questioned. It
is a power inherent to all such
"corporations" 24 All 187

There certainly can be no good
reason why they cannot take a
promissory note & security in payment
for Subscriptions for Stock as well
as for other purposes. By the
General R R Law under which this
Co was first organized the Stock
Subscriptions are payable in cash or
at the call of the Co - What objection
can there be to calling for the
entire amount at the end of five
years and taking a note therefore

Also this Co by its amended
charter passed in 1859 have ten
years within which to build and
equip the road. What objection
therefore can there be to the Co's
giving a credit of 5 years on Stock
Subscriptions.

Will not this Court also examine
into the nature & character of
the defenses here set up - The
appellants are seeking to take ad-
vantage of the indulgence extended

to them by the Co in giving them
a credit of Five Years upon their
Subscriptions to enable them to
repudiate their obligations. in the
hands of third parties - In the case
of the Ell River N H Co vs Zimmer
1922657 where the question was
whether the Stock Subscribers were
not released from their subscrip-
tions because they were not required
to pay a certain 10 percent installment
at ^{the time} the Subscriptions were made
but were allowed a credit therefor
this Court has said -

"If the company violated its strict
" duty in giving them time on the
" first payments they could not be
" allowed to take advantage of that
" wrong and refuse the subscribers the
" benefit of the Stock when they should
" offer to pay for it - So on the other
" hand the defendant cannot be allowed
" to take advantage of the indulgence
" extended to them when they made their
" subscriptions for the purpose of repudiat-
" ing them - This indulgence is a most
" ungenerous defense which should
" not be allowed unless it is strictly
" required by some inflexible rule of
" law" x x x 1922657 reversed

The case above cited was a direct suit by the co on the Stock Subscriptions while this is between a third party and the Subscribers and on a note admitted in the plea to be given in payment for the stocks.

The 3rd plea sets up that the amount of capital stock required with \$600,000 has not been subscribed and that that was the amount required for the work.

In the case of Rice in the Rock Island and Altam Rail Road Company 21 Ill 95 and in the case above cited 18 Ill 657 Pleas of this same character were held bad on demurrer by this Court.

In the 21 Ill The Court say "The party sought not to be ~~compelled~~ permitted in this collateral way to question the regularity of the organization of the Company" And both of the above cases are between the Company & the Subscribers.

The 4th plea corresponds with ~~with~~ the 3rd except as to the amount of Capital Stock supposed to be required and is bad for the same reasons.

The 5th plea is the same as the 3rd & 4th but owns that the Amendment

* The Amendment was
not made till long
after the reading of
the notes in conformity

to the Charter requires a Capital Stock
to be subscribed of \$100,000. Such
does not appear to be the nature of
the Amendment. See Lewis 1857/572.
The Plea is bad for the same rea-
sons above stated.

* The 6th Plea is in substance the
same as the ~~5th~~ ^{4th} and is bad for
the same reasons.

The 7th Plea alleges that the said
Miles & Henry had no authority to
take and negotiate the note under
the Charter of the Co or from the Direc-
tors - In 24 Ill 181 where the
note in suit is assigned in pre-
cisely the same way as in this
case This Court has said - "The
assignment by the company was
" prima facie their act through their
" authorized officers. If it was not
" their act it should have been
" denied by affidavit."

See also 5 Gilb 25-26 Ill 212
26 Ill 44.

The 8th Plea appears to be a Plea of
Traverse - It is bad as purporting to
answer the whole issue and in fact
~~is~~ only answering a part of it - It is
also bad in that it contains
no Scienter without which a Plea of

Sum is not good — 282ll 482 —
In substance also it is bad as
not showing fraud — It sets up the
the consideration of the note was
two or more shares of stock in the
H A Co. which were subscribed for
long before the note was executed
which were in payment for the stock.
The representations about the time
within which the road was to be built
& equipt, were merely matters of opinion
& not of warranty, which could be
judged of as well by one party as an-
other — and could only relate to the
value of the stock and as the Plea
admits that the stock was long before
subscribed for, the Affellants were
bound to pay for it. What does it
matter therefore what representations
were made after the subscriptions
were made — And as above stated
there is no overment that the County
authorized the making of these repre-
sentations or that they were known
to be false &c —

The Plea does not show such fraud
or circumvention in the obtaining of
the execution of the note as would
viciate it —

262ll 494 —

21 " 228 —

The 9th Plea is a Plea of entire failure of consideration - It is bad as purporting to answer the whole issue and only answering a part - the 1st Count - also as setting up an entire failure when it is evident that if there has been any failure it has been only in part, also in substance for the same reasons as the 8th Plea.

The 10th Plea sets up Fraud and circumvention - It is bad as purporting to answer the whole claim and in fact only answering the Special Count - also in failing to allege a Scienter and in that it does not show wherein the note was obtained by fraud & circumvention -

The 11th Plea is bad for the same reasons as the 10th

The 12th Plea is bad for the reasons above stated & because it shows no defense on the merits, it also only amounts to the general issue -

It is by no means necessary that the Appellant should ever receive any valuable consideration for said note - The same defense might be made in every case of a Security Debt.

The 13th Plea was withdrawn -

The 14th Plea is bad for the same

reasons above stated, & because it
shows no defense whatever.
The 15th Plea is bad for the rea-
sons above stated & because it shows
no defense - There can be no question
of the right to make interest payable
at the pleasure of the parties or to
reserve it in advance.

48 Can it and
cases there cited

Attest
Atty for Appellants

Since preparing the foregoing I have
examined the Opinions of this
Court in the case of The Ill Grand
Trunk Railway vs. Leitch County as
reported in Volume 12 of Opinions
at page 26 of the Record of the
Third Division at Ottawa which
in substance determines all of the
important questions in this case
see the Opinions.

Attest

Goodrich 176-6
^{as}
Reynolds Willchase

Argument for the
Appellees

No 176

Filed Apl. 29. 1863.
L. Seland
Clk.