No. 14372

Supreme Court of Illinois

Baker

vs.

Williams.

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 178

Baker

vs

Williams

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Rudolphus J. R. Baker,

v.

Charles Williams.

Appeal from the Circuit Court of the County of Rock Island; the Hon. Ira O. Wilkinson, Judge, presiding.

Messrs. Samuel Shawder and Samuel R. Allen for the appellant:

Mr. A. Webster for the appellee.

Mr. Justice Breese: This case is similar in all respects to the two last preceding, and the judgment is therefore affirmed.

Judgment affirmed.

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Baker
vs
Williams.

Opinion by
Pierce J.

Recorder Book 13
p 62,

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Pleas before the Honorable Ira O. Wilkinson Judge of the sixth District of the State of Illinois at a term of the Circuit Court begun and held at the Court House within and for the County of Rock Island on the second Monday the twelfth day of January in the year of our Lord one thousand eight hundred and sixty three

Present Honble Ira O Wilkinson = Judge
Chs. A M Laughlin Sheriff
Edward H Bowman Clerk

Be it Remembered that on the 4th day of December 1862 there issued forth of the Office of the Clerk of the Circuit Court in the City of Rock Island and State of Illinois a writ of Summons which is in the words and figures following to wit:

State of Illinois } The People of the State
Rock Island County } ss. of Illinois to the Sheriff
of Rock Island County Greeting

We command you to summons Rodolphus J R Baker if to be found in your County personally to be and appear before the Circuit Court of said County of Rock Island on the first day of the next term thereof to be holden at the Court House in Rock Island on the second Monday of January next then and there to answer unto Charles Williams of a plea of trespass on the case upon promises to his damages in the sum of Four hundred Dollars as he says; And have you then and there

this writ and make due return thereon in what manner you execute the same

Witness Edward H Bowman Clerk of our Circuit Court and the seal thereof affixed at Rock Island this fourth day of December in the year of our Lord one thousand eight hundred and sixty two Edward H Bowman Clerk

On the back of the foregoing writ the following endorsment & returns appear to have been made in words & figures following to wit: I have served the within writ by reading the same to the within named defendant Rodolphus J R Baker this 26th day of December A D 1862

C A McLaughlin
Sheriff of Rock Island County
By David Cowles Dept Sheriff

Be it further Remembered that on the 4th day of December A D 1862 there was filed in the office of the Clerk of the Circuit Court in the City of Rock Island and State of Illinois a narration or declaration which is in the words and figures with a note attached following to wit

(Copy of note attatched)

$200.00 Cordova Augast 25th 1857

For value received I promise to pay to the Sterling & Rock Island Rail Road Company or Order the

Sum of Two Hundred Dollars at the ex
piration of Five years from the first
day of September A.D 1857 with interest
thereon at the rate of Ten per cent
per annum payable Semi annually in
Each year on the first day of March
and September. Principal and interest
payable at the Office of said Company
at Sterling in the County of Whiteside
and State of Illinois

Rodolphus L. R. Baker"

Be it further Remembered that on the
back of said note appears the following
endorsement in words and figures following
to wit—

"Interest cancelled to September
1st 1858"

"Pay Reynolds Gilder & Co or order
"Sterling & Rock Island Rail Road"
By Wm. S. Henry
President"

"Without Recourse"
Reynolds Gilder & Co

"Filed 2d January 1863
C. H. Bowman Clerk

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State of Illinois } Of the January Term
Rock Island County } A.D. 1863 of the Circuit
Court of said County

Charles Williams Plaintiff in this suit by A. Webster his Attorney Complains of Rodolphus J. R. Baker Defendant in this suit Commenced &c of a plea of Trespass on the case on promises: For that the defendant on the 25th day of August A.D. 1857 at Cordova to wit at the County of Rock Island & State of Illinois by his promissory note of that date for value received promised to pay at the expiration of Five years from the first day of September A.D. 1857 to the Sterling and Rock Island Rail Road Company under the style of Sterling & Rock Island Rail Road Co or order the sum of Two Hundred Dollars with interest thereon at the rate of Ten per cent per annum payable semi annually in each year on the first day of March & September. Principal & Interest payable at the Office of said Company at Sterling in the County of Whiteside and State of Illinois — And that the said Company afterwards to wit on the day & year last aforesaid to wit the 25th day of August A.D. 1857 at the County aforesaid

endorsed the said note on the back thereof (as Sterling & Rock Island Rail Road per W.S. Henry President) and assigned the same and ordered it to be paid to Reynolds Milder & Co or order - of all of which the said defendant then and there had notice And afterwards to wit on the day and year last aforesaid at the County last aforesaid the said Reynolds Milder & Co endorsed the said note on the back thereof and assigned the same without recourse to the plaintiff of all of which the said defendant then and there had notice and said Plaintiff avers that said note long since became due and payable. By reason whereof the defendant became liable and then and there in consideration of the premises promised the plaintiff to pay him the amount of the said note according to the tenor and effect thereof and of the said endorsement thereof And also for that whereas the defendant on the 10th day of December in the year of our Lord One thousand Eight Hundred and sixty two at the county of Rock Island aforesaid was indebted to the plaintiff in Four Hundred dollars for goods bargained and sold by the plaintiff to the defendant at his request.

And in Four hundred Dollars for work done and materials for the same provided by the plaintiff for the defendant at his request And in Four Hundred Dollars for money paid by the Plaintiff for the use of the defendant at his request. And in Four Hundred Dollars for money received by defendant for the use of the plaintiff - And in Four Hundred Dollars for money due from the defendant to the plaintiff on an account stated between them: And whereas the Defendant afterwards to wit on the day and year and at the place last aforesaid in consideration of the premises respectively promised to the plaintiff to pay him the said last mentioned several moneys respectively on request. Yet the defendant has disregarded his promises and has not paid to the plaintiff any of the aforesaid moneys or any part thereof to the plaintiffs damages of Four Hundred Dollars and thereupon he brings suit &c

A. Webster

Plaintiffs Atty

The only cause of action in this suit is the promissory note of which the following is a Copy

A. Webster Plff Atty

(Copy of Note sued on)

$200. Cordova August 20th 1857

For Value received I promise to pay to the Sterling & Rock Island Rail Road Company or order the sum of Two Hundred Dollars at the expiration of Five years from the 1st day of September A.D. 1857 with interest thereon at the rate of Ten per cent per annum payable semi annually in each year on the 1st day of March and September Principal and interest payable at the office of said Company at Sterling in the County of Whiteside and State of Illinois &c

Rodolphus J. R. Baker

Endorsed

"Interest cancelled to Sept 1st 1858"

Also "Ray Reynolds Wilder & Co or order"

"Sterling & Rock Island Rail Road"

"Per M S Henry President"

Also "Without Recourse"

"Reynold Wilder & Co"

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And afterwards at the January Term of said Court to wit on the fourteenth day of January A.D. 1863 the following proceedings were had before the said Judge of the said Court and entred of Record in the Common Law Record Book in the Office of the said Circuit Clerk in the County and State aforesaid to wit;

Charles Williams
vs
Rudolphus J.R. Baker } This day came the Plaintiff by A. Webster his attorney on his motion It is ordered by the Court that the defendant be ruled to plead by tomorrow morning

And be it further Remembered that on the 17th day of January A.D. 1863 there was filed in the office of the said Circuit Clerk County and State aforesaid, Pleas in said cause which are in the words & figures following to wit

State of Illinois } In Circuit Court
Rock Island County } S.S.
Rudolphus R. Baker
vs
Charles Williams } Plea

1 And now comes the Defendant Rudolphus R Baker by Samuel Strawder & Samuel R Allen his attorneys and defends the wrong and injury to him &c and says that he did not assume

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and promise to pay and undertake in manner and form as the said Plaintiff hath thereof in his said declaration complained against him and of this the defendant puts himself upon the country.

And the said Plaintiff doth Samuel Strawder the like – By A Webster Pffs atty Samuel R Allen defts atty

9 And for a further plea in this behalf by leave of the Court first had and obtained for that purpose the said defendant says actio non that the said Plaintiff ought not to have or maintain his said action aforesaid against him because he says that heretofore to wit on the sixth day of July AD 1857 the said Sterling and Rock Island Rail Road Company by its officers and agents pretended to be an incorporated Company legally and lawfully organized under and by virtue of the laws of the land under a general statute of the state known as an act to provide for a general system of Rail Road incorporation and the amendatory acts thereto and as such a company under the name and style of Sterling and Rock Island Rail Road Company by its officers and agents requested this defendant to subscribed for and take Two shares of Capital Stock of said Company each share being one hundred dollars the Two shares amounting to the same

of Two Hundred Dollars, And the defendant says upon the solicitation of said Company by its officers and Agents he did to wit on the day and year last aforesaid upon the Stock Books of subscription of said Company subscribe for and did agree to take and did take Two Shares of the said Capital Stock of the said Company for said Two Shares of the Capital Stock of said Company the said sum of Two hundred dollars to be paid at such times and in such installments as the Board of Directors of said Company might from time to time direct they the Board of Directors giving the lawful notice of the time and place of paying the same and the defendant says that after he had subscribed for two shares of the Capital Stock of the said Company upon the Stock Book of said Company as aforesaid the said Company by its officers and agents requested this defendant to make execute and deliver to said Company his this defendants promisory note payable at the expiration of five years from the first day of September AD 1857 for said sum of Two hundred dollars with interest thereon at the rate of ten per cent per annum or ten cents on each dollar in said note mentioned for each and every year

that said note is to run before it becomes due and payable which said interest money in said note mentioned is to be paid semi annually in each year that is to say on the first day of March and the first day of September in each year and thereupon and in pursuance said request of of said Company the said defendant did to wit on the twenty fifth day of August in the year of our Lord one thousand eight Hundred & fifty seven to wit at Cordova in said County make execute and deliver to the said Company his this defendants promissory note calling for the sum of Five Hundred Dollars to be paid five years from and after the first day of September in the year of our Lord one thousand eight hundred and fifty seven with interest at the rate of ten per cent per annum or ten cents on each and every dollar mentioned in said note for each and every year that said note was to run before it became due and which interest on said note is to be paid semi annually to wit on the first day of march and on the first day of September in each and every year & which is the same note mentioned in the plaintiffs declaration and the defendant avers and says Company did to wit on the Twenty fifth day of August in the year of our Lord one thousand eight hundred and fifty seven to wit at the said County of Rock

Island demand of and receive of
and from this defendant that said
promissory note mentioned in the
plaintiffs declaration in consideration
of and in full payment of and for
the said Two shares of Capital of the
said Company which this defendant
had subscribed for as aforesaid and
which said Two shares of the Capital
Stock aforesaid was the sole and
only consideration given or received
for said note and that there was no other
or different consideration for said note
and the defendant avers and says that
the requesting and receiving of the
said note by the said note by the
said Company in manner and form
as aforesaid was and is in violation of the
laws of the land and of the articles of
the said Sterling and Rock Island
Rail Road Company Corporation
and that the said note is fraudulent
and void in law all of which the
said Reynolds Milder & Co well knew
at the time they received said note
and all who claim any interest in
said note note well knew at the time
they and each of them and every of them
received said note and this defendant
is ready to verify wherefore he prays Judg
ment &c

Samuel Strawder
Samuel R Allen
defts Attys

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And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non because he says that the note mentioned in the plaintiffs declaration was given in payment of Two shares of the capital stock of said Sterling and Rock Island Rail Road Company and that was the only and all the consideration given or received for said note and that said Two shares of said Capital Stock had been subscribed for by this defendant previous to giving said note and that the amount of Capital stock required to construct and procure the right of way and motive power and every other appurtenance for the completing and running of the said Sterling and Rock Island Rail Road has not been subscribed for nor has it been tolled to ask the sum of Six hundred thousand dollars that amount being the amount required as estimated by competent engineers as appears in the articles of association of said Company which articles of association of said Company are now on file in the office of Secretary of State in Springfield State of Illinois all of which the said Reynolds Wilder & Co and all persons that claim any interest in or to said note well knew at the time they and each of them received said note and that the defendant is ready to

14 verify and therefore he pray Judgment
&c

Samuel Strawder
Samuel R Allen Defts Attys

4 And for a further plea in this
behalf by leave of the Court first
had and obtained the defendant
says actio non, because he says that
the note mentioned in the plaintiffs
declaration given in payment
of Two shares of the Capital Stock
of the said Sterling and Rock Island
Rail Road Company and that was the
only and all the consideration either
given or received for said note
and the defendant avers that he
had subscribed for said Two shares
of the Capital Stock previous to giving
said note and the defendant avers
that the amount of Capital Stock re-
quired to construct and procure
the right of way and motive power
and every other appurtenance for
the completing and running the said
Sterling & Rock Island Rail Road by
its Charter and the amendments to
said Charter of said company has
not been subscribed for nor has it
been taken to wit the sum of
Two hundred and fifty thousand
dollars all of which the said
Reynolds Milder & Co and
all that claim any interest in

13 said note well knew at the time they and each of them and every of them received said note. And this the defendant is ready to verify wherefore he prays judgment &c

Samuel Strawder
Samuel R Allen Defts attys

5 And for a further plea in this behalf by leave of the court first had and obtained the said defendant says actio non because he says that the note mentioned in the plaintiffs declaration was given in payment of Two shares of the Capital Stock of said Sterling & Rock Island Rail Road Company and that was the only and all the consideration either given or received for said note and the defendant avers that he had subscribed for said Two shares of the Capital Stock of the said Company previous to giving of said note and the defendant avers that the Capital Stock required to construct and build & procure the right of way and motive power and every other appurtenance for the completing and running the said Sterling & Rock Island Rail Road by its charter and amendments to its charter has not been subscribed for nor has it been taken to wit the sum of Two Hundred and fifty thousand dollars the amount required by

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the amendments to the original Charter of said Sterling & Rock Island Rail Road Company and that the work on said Sterling & Rock Island Rail Road is now & has been for some time suspended and indeed the projects of building said Sterling and Rock Island Rail Road is abandoned all of which the said Reynold Wilder & Co and all who claim any interest in said note well knew at the time they and each of them received said note & this the defendant is ready to verify Wherefore he prays judgment &c if the plaintiff ought to have or maintain his aforesaid action against him

Samuel Strawder
Samuel R Allen Defts Attys

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And for a further plea in this behalf by leave of the Court first had & obtained the defendant says actio non because he says that the note mentioned in the plaintiffs declaration was given in payment of Two shares of the capital stock of the said Sterling & Rock Island Rail Road Company and that was the all and the only consideration either

given or received for said note and the defendant avers that he had subscribed for said Two Shares of the Capital Stock of said Company previous to the giving of said note and he avers that the said Railroad Company had no power or authority under its said Charter and the laws of the land to receive and endorse and transfer said note in manner and form as the said Plaintiff hath in his declaration alleged but the defendant avers and says that the receiving and transfering and endorseing said note in manner and form as aforesaid is in violation of the laws of the land and and of the articles of said Sterling and Rock Island Rail Road Company Corporation and that the transfer and endorsement of said note in manner and form aforesaid is fraudulent and void in law — all of which the said Reynolds Wilder and Company and all claiming any interest in said note well Knew at the time they and each of them received said note and this the defendant is ready to verify to wherefore he prays judgment &c

Samuel Stranahan
Samuel R Allen Defts Atty

7 And for a further plea in this behalf by leave of the Court first had and obtained the said defendant says actio non because he says that the note mentioned in the plaintiffs declaration was given in payment of Two Shares of the Capital

Stock of the Sterling & Rock Island Rail Road Company which the defendant had previous to giving said note subscribed for and that was all and the only Consideration either given or received for said note and the defendant avers that the said Miles S Henry had no power or authority under the Charter of said Company or any amendment to said Charter or by virtue of the laws of the State nor had the said Miles S Henry any authority from said Company or the Board of Directors of said Company as President or otherwise to transfer and endorse said note in manner and form as the said plaintiff has alleged in his said declaration but the defendant avers and says that the said note was transferred and endorsed without any authority whatever from said Company or the Board of Directors of said Company and said transferring and endorsing said note is therefore fraudulent and void in law all of which said Reynolds Milder and Company and all claiming any interest in said note well knew at the time they and each of them received said note and this the defendant is ready to verify

Wherefore he prays judgment &c

Samuel Strawder

Samuel R Allen

Defts Attys

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And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non Because he says that the note in the plaintiffs declaration mentioned was given in payment of Five Shares of the Capital Stock of the said Sterling and Rock Island Rail Road Company which the Defendant had previous to the giving of his said note subscribed for the Capital Stock of the said Sterling and Rock Island Rail Road Company and that was all and the only consideration either given or received for said note and the defendant avers and says that he was induced to make execute and deliver the said note in the plaintiffs declaration mentioned by the said Sterling and Rock Island Rail Road Company by means of false and fraudulent representations of the Sterling and Rock Island Rail Road Company the said Company and its officers and agents in this to wit. The defendant avers that at the time and before he executed and delivered said note to the Sterling and Rock Island Rail Road Company the said Company

And its officers and agents falsely and fraudulently represented to this defendant that all the Capital Stock required to build Construct and procure the right of way and procure and buy the motive power and every other equipment necessary to build and run said Rail-road had been subscribed for and in good faith taken and that the Company was going to build and equip the said Rail Road immediately and that the cars would be running through from Sterling to Rock Island within Eighteen months or less from the date of said note and the defendant says that he relied on said representations as being true and so relying on said representations being true and in consideration thereof he was induced to and did make execute and deliver unto the said Company And by means thereof this said Company procured and obtained said note And the defendant avers that the aforesaid representations are false and untrue that the amount of Capital Stock required to build construct and procure the motive power of said Rail Road has not been subscribed

2/ for nor has it been otherwise, nor has the Sterling and Rock Island Rail Road built although it is more than Eighteen months since said note was given but on the contrary the work on said Rail Road has been suspended and in fact really abandoned All of which the said Reynolds Wilder & Co and all who claim any interest in said note well knew at the time they and each of them received said note and this the defendant is ready to verify wherefore he prays Judgment &c

Samuel Strawder
Samuel R Allen Defts Attys

9 And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non that the note mentioned in the plaintiffs declaration was given in payment of two shares of the Capital Stock of the said Sterling & Rock Island Rail Road Company that the defendant had previously subscribed for and that was all and the only consideration given or received for said note and the defendant says that he was induced to make and execute and deliver said note to the Sterling & Rock Island Rail Road Company by means of the false and fraudulent representations of the said Sterling and Rock Island Rail Road Company

its officers and agents in stating that all the Capital Stock required to build construct and procure the right of way and buy the motive power and every other equipment necessary to build said railroad had been subscribed for and in good faith taken and that the company was going to build & equip said Rail Road immediately and that the Cars would run through from Sterling to Rock Island within Eighteen months or less from the date of said note and the defendant says that he relied on said representations as being true and relying upon said representations as being true at the time when he executed and delivered said note to the said Company he thereby was induced by said false and fraudulent representations to make and deliver said note to the said Rail Road Company and by means thereof the said Company procured and obtained said note the defendant avers and says that the aforesaid representations are false fraudulent and untrue and that the amount of Capital Stock required to build construct procure the right of way and procure and buy the motive power and the other necessary equipments for said Rail Road has not been subscribed

for and taken and that the said
said road has not been built and
that the work thereon has been sus-
-pended and that the said Company
have abandoned the work on said Rail
and will not build said Rail
Road from the City of Sterling in
Whiteside County & State of Illinois to the
City of Rock Island in the County of
Rock Island & State aforesaid according
to the Articles of association or in-
-corporations of said Company. Wherefore
the consideration for which said note was
given has entirely failed and that there
is no consideration for said note
whatever. All of which the said Reynolds
Wilder and Co and all claiming any
interest in said note well knew - at
the time they and each of them
received said note and this the
defendant is ready to verify.

Wherefore he prays Judgment &c

Samuel Strawder

Samuel R Allen & Defts attys

And for a further plea in this behalf by
leave of the Court first had and obtained
the defendant says actio non because
he says that he was induced to make ex-
-cute and deliver the said note mentioned
in the plaintiffs declaration to the
said Sterling and Rock Island Rail
Road Company by means the false
and fraudulent representations of the
said Sterling and Rock Island Rail
Road Company and its officers and

Agents made to this defendant before and at the time said note was executed & delivered to said Company and that the said note was procured and obtained by the said Sterling & Rock Island Rail Road Company from this defendant by fraud & circumventon practiced upon this defendant by the said Company its officers and agents all of which the said Reynolds Wilder & Co. well knew and all others that claim any interest in said note at the time they had each of them received said note and this the defendant is ready to verify wherefore he prays judgment &c

Samuel Strawder
Samuel R Allen
Defts Attys

And for a further plea in this behalf by leave of the Court first had and obtained the defendant says actio non because he says that he ought not to be charged with the said debt or claim by virtue of the said supposed writing obligatory because he says that the said supposed note or writing obligatory was obtained from him by the said Sterling and Rock Island Rail Road Company and its officers and agents by fraud

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coin and misrepresentation.
All of which the said Reynolds
Weber & Co and all others claiming
any interest in said note well knew at the time they and
them received said note and this he
is ready to verify wherefore he prays Judgment &c

Samuel Strawder
Samuel R Allen Defts attys

12 And for a further plea in this behalf
by leave of the Court first had and
obtained the defendant says actio non
because he says that he never received
any valuable or legal & lawful consideration
for said note whatever All of which
the said Reynolds Wilder & Co and
all persons claiming under them or
having any interest in said note well
knew at the time they and each of them
received said and this the defendant is
redy to verify wherefore he prays Judgment
&c

Samuel Strawder
Samuel R Allen
Defts Attys

13 And for a further plea in this behalf
by leave of the Court first had and
obtained the defendant says actio non
because he says that there is not nor
on the day of the Commencement of
this suit nor ever since was there
X in existance any such Company
or Corporation called the Sterling
and Rock Island Rail Road
Company as the said note men-

26 tioned in the plaintiffs declaration
all of which the said Reynolds
Milder & Co and all claiming any
interest in said note well knew
at the time they and each of
them received said note and
this the defendant is ready to
verify wherefore he prays judgment
&c Samuel Brander
Samuel R Allen
Defts Attys

14 And for a further plea in this
behalf by leave of the Court first
had and obtained the defendant
says actio non because he says
that the said Board of Directors
of the Sterling and Rock
Island Rail Road Company
did not previous to the making
and delivery of said note men-
tioned in the plaintiffs declaration
nor have the said Company
demanded of this defendant the
full sum of the said Capital
stock that he subscribed for to
wit the Two Shares that this
defendant subscribed for
the Sterling & Rock Island
Rail Road Company as
aforesaid all of which
the said Reynolds Milder
& Co knew and all claiming
any interest in said note

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well knew at the time that they and each of them received said note this the defendant is ready to verify wherefore he prays Judgment &c.

Samuel Shawder

Samuel R Allen Defts Attys

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Be it further Remembered that on the 20th day of January AD 1868 the Plaintiff by A. Webster his attorney filed in the office of the said Circuit Clerk County and State aforesaid his Demurrer and Replication to the Pleas heretofore set forth by the Defendants attorneys which is in the words and figures following to wit

State of Illinois
Rock Island County } ss. Of the January term AD 1868 of the Circuit Court of said County

Charles Williams
vs
Rodolphus J. Baker } And now comes the Plaintiff in the above entitled cause by his atty and as to Defendants Pleas in this behalf pleaded (except the plea by him firstly and thirteenthly above pleaded) says that the said Pleas and each of them are not sufficient in law to be replied unto And therefore the said Plff prays judgment &c

By A Webster
Plffs Atty

And now comes the above Plff by his atty and as to said Defendant Thirteenth Plea by him above pleaded says precludi non because he says that on the day of the commencement of this suit there was in existance a corporation called the Sterling & Rock Island Rail Road Company

as by the note mentioned in the Plffs Declaration is supposed

And this the said Plffs pray may be enquired of by the Country &c

By

A Webster

Plffs Attyr

And be it further Remembered that on the 26th day of January AD 1863 came the Plaintiff by his attorney A Webster & takes issue as to the pleas of general issue & nul tiel corporation & the Demurrer filed on the 20th instant to all other pleas having been argued. It is ordered by the Court that the said demurrer be sustained. And the Defendant by his attorney moves the Court for a continuance which the Court overrules & thereupon the Defendant enters non prosequitur to the pleas of General issue & nul tiel corporation & abides by the remaining pleas. It is therefore Considered by the Court that the Plaintiff have and recover Judgment on Demurrer and his damages by him sustained herein And it appearing to the Court that this suit is brought upon a note for payment of money & that the damages rests in computation merely. It is ordered that the Clerk assess the same. Thereupon the Clerk assessed and reported the damages at the sum $628, which report is accepted by the Court—

[redacted]

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It is therefore ordered by the Court that the Plaintiff have and recover from the said Defendant the said sum of $2.88 damages assessed as aforesaid together with his costs & that he have execution therefore And thereupon the said Defendant by his said Attorney prays an appeal which the Court allows on Defendants filing a Bond in 30 days in the sum of $200. security, to be approved by the Clerk by agreement.—

Be it further Remembered that in compliance with the foregoing order the Defts by his Attorneys caused to be filed on the 16th day of February AD 1868 in the Office of the Clerk of Circuit Court in the County of Rock Island & State of Illinois a Bond approved by the said Clerk of said Court which is in the words and figures following to wit.

"Know all men by these presents that Rudolphus J R Baker as Principal and Albert J Coe as security are held and firmly bound unto Charles Williams in the penal sum of Six hundred dollars good and lawful money of the United States for the payment of which well and truly to be made the said Baker and Coe bind themselves their heirs executors & administrators jointly severally and firmly by these Presents. Witness their hands

and seals this Eleventh day of February
A D 1863 The Condition of the above
obligation is such. That whereas the
above named Charles Williams did at the
January Term of the Circuit Court held
in and for the County of Rock Island
& State of Illinois A D 1863 recover a
judgment against the above bounden
Rodolphus L R Baker for the sum of
Two hundred and eighty Eight Dollars
as also for his costs in that behalf
expended Said Rodolphus L R Baker
has prayed an appeal from the
said Circuit Court to the Supreme
Court within and for the Third Grand
Division of said State. Now if
the said Rudolphus L R Baker shall
duly prosecute said appeal
and pay or cause to be paid the
amount of said judgment and
all judgments costs interest and
damages which said Supreme
Court shall adjudge against him
in case the judgment of the said
Circuit Court shall be affirmed &
abide the order and judgment of
the said Supreme Court in this
behalf then this obligation to be void
otherwise to remain in full force
and effect

Rudolphus L R Baker (Seal)

A. S. Coe (Seal)

State of Illinois } ss
Rock Island County }

I, Edward A Bowman Clerk of the Circuit Court within and for said County and State aforesaid hereby certify that the foregoing is a true full and Complete transcript of the Record of proceedings had in such cause in said Circuit Court, as also a full complete and true copy of the several Original papers on file therein, as entire as the same now remain of Record or on file in my Office.

In testimony whereof I have hereunto Set my hand and affixed the Seal of said Circuit Court at Rock Island this 19th day of March A.D. 1863.

Edward A Bowman
Clk

Fees for transcript of Record paid by S. Strawder defendants atty $11.95

State of Illinois } To the Supreme Court
Rock Island County ss. } at Ottawa

Rudolphus D. R. Baker appellant }
vs } Errors
Charles Williams appellee }

And the said Rudolphus D. R. Baker now comes and says that in the Record and proceedings aforesaid there is manifest error to wit,

1st The Court erred in sustaining the demurrer to the Special Pleas —

2 The note is void for want of power in the Company to make the contract by which it received said note,

3 There was no consideration for said note,

4 The note was obtained by fraud

5 The Company had no power under or by virtue of the laws of the State to receive said note in payment of the Capital Stock of said Company nor to transfer and endorse the same

6 The contract to pay the interest semi annually is against the policy of the laws of the State and is therefore void,

7 The Court erred in not over-ruling the demurrer,

8 The Court erred in overruling the motion for a continuance of the case until the next term thereof.

9 The Judgment is manifestly against the law and the evidence in the case.

10 The said Judgment was given in favor of the said Charles Williams whereas by the laws of the land it ought to have been given to Rodolphus L. R. Baker Wherefore the said Rodolphus L. R. Baker prays that the said Judgment may be reversed annulled and held for nothing and that he may be restored to all things he has lost by reason thereof.

Samuel Strawder
Samuel R Allen Attys
For said Rodolphus L R Baker

State of Illinois }
Third Grand Division } ss April Term A.D. 1853
of the Supreme Court.

Rodolphus L R Baker }
vs }
Charles Williams }

And now comes the Appellee in the above entitled cause by Allen his attorney and says the Errors by the Appellant assigned on the foregoing Record says that

no such Errors exist in said Record wherefore the said Appellee says that the Judgment of the Circuit Court ought to be affirmed - and by this pray the Judgment of this court

A. M. Webster
Atty for Appellee

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Baker

v.

Williams

Record & Assgts of Errs

Filed April 21st 1863

L. Edwards
Clerk

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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 ~~filed~~ in this record. The action was upon the with a special count on a promissory note, and the common counts. The pleas are to the whole declaration, which they answer only the special count. 1 Ch. Pleading 555; Snyder vs. Hitt Gaither et al. 3 Scam. 92.

The fact that the plaintiff could not after ~~filing~~ the pleas were filed, that the note was the sole cause of action, cannot dispense with the rule of correct pleading.

But the pleas are substantially objectionable 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 Frye vs. Tucker et. al., ~~Ill.~~ 24 Ill. 180 which was an action on a note executed to the Peoria and Oquawka Rail Road Co. and assigned by the endorsement of the Secretary of the Company, this Court said that a Rail road company have an inherent authority to take and negotiate a promissory note in the ordinary course of

this subscription. 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 ~~running through~~ for the gross amount of the calls in a certain time, he 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
2 in the prosecution of the work as to make 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 time of payment to him, of which he should not, however complain, 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. In a suit brought on a subscription to its stock the defendant set up as a defence the fact that the company had not required the payment of this ten per cent. This court held 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 defence, which should not be allowed unless it is strictly required by some inflexible ruling Case. Ill. River R. R. Co. vs. Zimmer, 20 Ill. 657. With much greater force can this views be urged in this case, where the plaintiffs sues as assignee, claiming the note by assignment, 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 seek in question it legality. The same said in the case of Rice vs. New York & Cleveland and Alton Rail R. Co., 21 Ill. 93, that a party cannot be permitted in this collateral 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 sixth special plea questions the power of the President of the Company to assign the note. In the case of Fay vs. Noble et al. before cited, this court held that the assignment was prima facie the act of the Company by their authorized officer, and if it was not their act, it should have been denied by affidavit. McArthur vs. Newton, 5 Gilm. 60. There is no plea, nothing this assignment in issue.

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 objectionable 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 fact being brought by an assignee of the note, to avoid a defence, the plea avers that the note was assigned after it became due. There is no such account, and consequently the assignee cannot be affected by it. It is no defence as to him, for the declaration shows, the note was assigned before due.

The defendant, under the ~~thirteenth~~ twelfth plea of nul tiel corporation was with-drawn as appears by the record and also the plea of the general issue.

The thirteenth plea avers that the directors of the company were demanded by the defendant the amount of stock be subscribed. We are 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 rests upon usury in this that the interest was made payable semi-annually. It has long been settled, but ~~the~~ reiteration is not useless. McGill et al. vs. Ware, 4 Scam. 21. The whole interest may be lawfully secured in advance, Manhattan Co vs. Osgood 15 Johns. N.Y. Fire Ins. Co vs. Ely 10 Wend. 2 Cowen 678

As to all the pleas pertaining the legality of the organization of the company reference is made to the case of Rend Rock Island Way Co. vs. Cook 29 Ill. 237. decided at Ottawa at the present term. Being no error in the record, the judgment must be affirmed.

Judgment affirmed.

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Goodrich
vs
Reynolds, Wilder & Co
—
Opinion by
Bronson J.

A. K.

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Amos Golden,

v.

Charles M. Knox.

Appeal from the Circuit Court of the County of Rock Island: the Hon Ira O. Wilkinson, Judge, presiding.

Messrs. Samuel Shawder and Samuel R. Allen for the appellant:

Mr. A. Webster for the appellee.

Mr. Justice Breese: This case is similar in all respects, to the preceding case of Goodrich vs. ~~Wilson~~ Reynolds, Wilson &c. and must be decided in the same way. No point is affirmed.

Judgment affirmed.