ROBINSON & ROBINSON *vs.* DENTON.

The Real Estate Bank, by assignment, vested the legal interest in a promissory note in fifteen trustees—one of them died, two were removed and the remaining twelve, with the successors of those removed and dead, assigned the note to D.—Held that the assignment did not pass the legal interest in the note to D., so as to authorize him to sue upon it in his own name.

Three of the original assignees of the bank not having joined in the assignment and parted with their interest, the assignment to D. was imperfect, and did not vest in him a right of action against the makers of the note. *Roane et al. vs. Lafferty et al.*, 5 *Ark. Rep.* 465, *cited.*

Writ of error to the circuit court of Independence county.

THIS was an action of debt, by Wm. F. Denton against J. J. Waddell, Alexander Robinson, and William Robinson, determined in the circuit court of Independence county, at the August term, 1844, before the Hon. THOMAS JOHNSON, then one of the circuit judges.

The declaration set out the following as the cause of action:

On the 21st day of June, 1841, the defendants (with Samuel Robinson not sued) executed a promissory note to the Real Estate Bank of the State of Arkansas, for $800, due six months after the 8th day of July, 1841. On the 2d day of April, 1842, and before the payment of the note, the bank, by deed of that date, assigned and transferred the note to Sam C. Roane, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, Lorenzo N. Clark, John Drennen, Robert S. Gibson, and to *Carey A. Harris, James S. Conway* and *Daniel T. Witter,* as trustees and assignees of the Bank, and to their successors and survivors: "of whom Sam C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, were the successors and survivors of Carey A. Harris, deceased, and of James S. Conway and Daniel T. Witter, removed." That the said trustees and assignees of the Bank, as successors and survivors as aforesaid, on the 2d day of January, 1843, and before the payment of the note, by Thomas W. Newton, their cashier and secretary, assigned the note to the plaintiff, by virtue of which assignment he claimed the right to sue upon it.

Waddell demurred to the declaration upon the ground (among others) that the assignment of the note to plaintiff, by the trustees of the Bank, as alleged in the declaration, did not pass to him such an interest in the note as authorized him to sue upon it in his own name. The court sustained the demurrer, and gave judgment "that

the declaration be quashed, and that Waddell recover his costs of plaintiff." The plaintiff thereupon prayed an appeal, which was granted. He then moved the court for judgment against the other two defendants by default, which was rendered accordingly; and they brought the case to this court by writ of error.

POPE, BYERS & PATTERSON, for the plaintiffs. We think it impossible that the court could render a valid judgment against Alexander & William Robinson, upon a declaration that had been quashed and held for nought, while the judgment of quashal was yet in full force. As well might the court render judgment by default without any declaration.

We deem it an inflexible rule in all cases *ex contractu,* that where one of the defendants interposes a plea which answers the whole declaration, whether that plea be in law, or of fact, and the issue thereon is found for the defendant interposing the same, it is a full and complete answer for all the defendants, and a complete bar against the plaintiff further proceeding in the case against those who have not pleaded. 2 *Tidd's Practice,* 778 to 780.

The declaration we deem wholly defective, and that it does not show any cause of action against the defendants. According to the settled principles of law, and the rule laid down by this court in the case of *John L. Lafferty vs. The Trustees and Assignees of the Real Estate Bank,* 5 *Ark Rep.* 465, this cause must be reversed.

FOWLER, contra.

JOHNSON, C. J., not sitting: MACLIN, Special Judge, sitting with OLDHAM, J.

MACLIN, delivered the opinion of the court.

The first and second causes assigned for error, question the sufficiency of the declaration, because, it appears upon its face that the Real Estate Bank, by deed bearing date the second day of April, 1842, assigned the note upon which this suit was brought to certain persons therein named as trustees, and that afterwards, a part

of the persons to whom the note was thus assigned, and certain other persons having no legal interest in the note, assigned the same to the defendant in error, and that three of the persons in whom the legal interest in the note vested by virtue of the assignment by the bank, did not assign their interest in the note. This question we consider as fully settled and determined in the case of *Roane et al. vs. Lafferty et al.* 5 *Ark. Rep.* 465. In that case it was held that, "the legal interest in the note in question, became by the assignment thereof by the bank, vested in the fifteen persons to whom it was assigned, and could only be divested by their assignment to some other party or persons. That the legal right in the note, as shown by the pleadings was vested in all the surviving asignees, who alone, for ought that appears in the case, are entitled to maintain an action upon it, and that therefore, no legal title in the note is shown by the pleadings to be in three of the appellants, to wit: the successors of the assignee who is stated to be dead, and of those said to be removed."

Three of the trustees and assignees of the bank not having joined in the assignment and parted with their interest, the assignment to Denton was imperfect and incomplete, and did not vest in him a right of action against the plaintiffs in error for the recovery of the amount of the note. The persons under and through whom he claimed to derive his interest in the note as assignee, did not possess such an interest in themselves as would authorize them to maintain an action in their own names irrespective of their co-trustees in the deed of assignment, as decided in the case of *Roane et al. vs. Lafferty et al.:* and therefore could not by their assignment to Denton, vest in him an interest more extensive than that possessed by themselves, or confer upon him a right of action which they themselves did not possess.

This question finally disposes of this case, and it is therefore unnecessary to determine the other questions raised by the assignment of errors.

Let the judgment of the circuit court of Independence county be reversed.