

THOMAS V. CLARK ET AL.

[2 McLean. 194.]¹

Circuit Court, D. Michigan.

Oct. Term, 1840.

PLEADING AT LAW—PLEA DENYING INSTRUMENT
SUED ON—AFFIDAVIT—GENERAL ISSUE.

1. By the rules of the court, a plea which denies the instrument on which the action is founded, or the indorsement of it, must be sworn to.
2. If filed without affidavit, the general issue may be good for some purposes, but the note and the indorsement, under such plea, are admitted.
3. And this admission is, that the signature on the note is as averred in the declaration.

[Cited in *Ames v. Quimby*, 106 U. S. 346, 1 Sup. Ct. 120.][Cited in *Pegg v. Bidleman*, 5 Mich. 29.]

At law.

Lockwood & Barstow, for plaintiff.

Mr. Backus, for defendants.

OPINION OF THE COURT. This action is brought against the defendants, who are partners, as indorsers of a bill of exchange to the plaintiff. A rule of court requires a plea of the general issue, denying the execution of an instrument, or of an indorsement on which the action is brought, to be sworn to. The general issue in this case being filed, without oath, a question is made, whether the ground of the action is admitted. The defendants' counsel contends, that the signatures of Clark and Cole, as they appear to be indorsed on the note, only are admitted, and not the partnership, and that it is necessary for the defendants to prove the partnership. The rule was designed to prevent delays by filing issues, which are not true in fact. A plea of the general issue, under the rule, may be good for some purposes, but it admits the instrument on which the action is brought. In this case,

the indorsement by the defendants is admitted. *Smith v. McManus*, 7 Yerg. 477. But to what extent does this admission go? Most clearly, the admission is, that the defendants indorsed the note, as they are alleged to have done in the declaration. In the declaration, they are stated to be partners, and, as such, indorsed the note in the partnership name. This construction of the rule imposes no hardship on the defendants. If the note were not indorsed by them, as partners, they might have sworn to the plea, which would have thrown on the plaintiff the necessity of proving their signatures, as alleged in the declaration. Judgment.

¹ [Reported by Hon. John McLean, Circuit Justice.]

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