

PARKER v. TOWN OF CONCORD *et al.*

Circuit Court, N. D. Illinois.

July 22, 1889.

EQUITY—ANSWER—DISMISSAL.

Where an answer to a bill in equity completely denies all its equities, and complainant has not met these denials with any proof, nor made any issue by replication, the bill will be dismissed.

In Equity. Bill for relief.

Bailey & Sedgwick, for complainant.

Bisbee, Ahrens & Decker, for defendants.

BLODGETT, J., (*orally.*) This is a bill filed by the complainant, as a holder of the bonds of the town of Concord, for relief against the town and the railroad company. The allegations are, substantially, that in 1869 the town of Concord voted \$25,000 to aid in the construction of the Chicago, Danville & Vincennes Railroad, and subsequently issued bonds in payment of this subscription; that the complainant has become the holder of 20 of these bonds for \$1,000 each by purchase for value in the market, and that the courts have held these bonds void. The complainant, as such bondholder, now seeks to be subrogated to the place of the railroad company as the payee of the subscription, with the averment that the issue of void bonds did not pay the indebtedness created by the subscription, it being averred that the railroad was completed according to the terms of the subscription, and that, as the complainant now stands in the position by virtue of being the owner in good faith of the bonds from the town, he is entitled to relief against the town by a decree requiring the town to pay him the amount of the 20 bonds which he holds in satisfaction of the subscription. The case is brought to hearing on bill and answer.

The answer denies many of the substantial allegations in the bill, such as the completion of the railroad according to the terms of the subscription; and the fact that the railroad was located as was required by the terms of the subscription; and generally that the railroad company has failed to perform the conditions upon which the subscription was voted. It seems to me, without considering any other question, that as the answer completely denies the equities of the bill, and the complainant has not met those denials with any proof, or even made an issue thereon by replication, the bill must be dismissed for want of equity. A decree will be entered accordingly.

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