

entered as of the date when this cause was submitted to this court.

*Decree affirmed.*

MR. JUSTICE MILLER, MR. JUSTICE FIELD, and MR. JUSTICE BRADLEY dissented.

NOTE. — A petition was filed for rehearing.

MR. JUSTICE HARLAN delivered the opinion of the court.

We do not perceive that the petition for rehearing in behalf of the county of Morgan contains any suggestion which was not pressed upon our attention in oral argument, as well as in the printed briefs heretofore filed. All that counsel said was carefully considered by us. But there were one or two matters, not distinctly covered by our opinion, to which we may properly refer. A rehearing is asked to the end that a complete record of the suit, in the Circuit Court of the United States for the Southern District of Illinois, of *Studwell, Hopkins, and Cobb, Trustees, v. Morgan County, &c.*, may be obtained and embodied in the transcript of the present case. If the record of that case were here, it could be of no use to the county. The decree therein is not pleaded for any purpose. Further, it is apparent, as well from the printed arguments filed in this court, for and against the county, as from the testimony of the witnesses who refer to the case in the Circuit Court, that the suit of *Studwell, &c. v. Morgan County, &c.*, was dismissed by the complainants therein, and that there was no adjudication upon the merits. The decree of dismissal in that suit, therefore, concluded none of the parties to it, even were it conceded that the trustees had authority, in virtue of their position, to represent the present appellees in any litigation with Morgan County touching its liability to creditors of the Illinois River Railroad Company.

We did not, as counsel seem to suppose, overlook the argument based upon the subscription made by the city of Jacksonville. That subscription, as matter of law, was wholly disconnected from the subscription made by the county, and we could not regard the former as payment, in whole or in part, of the latter, without assuming to make for the parties a contract which they did not choose to make for themselves. If, as urged, that the result is unfortunate for the county, we can only say, what cannot be too often repeated, that hard cases cannot be permitted to make bad law.

*Petition denied.*

*Allen v. County of Morgan*, appeal from the same decree, was argued by the counsel who appeared in the preceding case. MR. JUSTICE HARLAN remarked, in giving the opinion of the court, that no error was perceived in the record to the substantial prejudice of the appellants. The decree below was therefore

*Affirmed.*

MR. JUSTICE MILLER, MR. JUSTICE FIELD, and MR. JUSTICE BRADLEY dissented.