

14302


No. _____

Supreme Court of Illinois

O'Leary

vs.

County of Cook

71641  7

121

STATE OF ILLINOIS,
SUPREME COURT,

Third Grand Division.

14302

No. 221

O'Leary

Casey

1862

Referred

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

POINTS OF APPELLANT.

1 That the Act of the Legislature, approved February 14th, 1855 (Laws of 1855, p. 483), entitled *An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851*, is in contravention of the 23d section of Art. 3 of the Constitution—which provides that *no private or local law shall embrace more than one subject, and that shall be expressed in the title*—in this: that it embraces two separate and independent subjects—the one of a private character, viz., the amendment of the corporate powers of the University; the other of a public nature, viz., the prohibition of the sale of liquor within a given locality under a penalty—two subjects not germane to one another, and having no natural or necessary connection with each other, while only one subject is expressed in the title of the act.

Session's Laws of 1855, p. 483.

Constitution, Art. 3, Sec. 23.

2 The second section of the Act prohibits the sale of liquor under a penalty given to the County, and though affecting a particular locality, it affects public interests, and applies to all persons. It is, therefore, of a local, public nature.

Sedgwick on Con. and Stat. Law, p. 33.

Case of Rodgers, 2 Greenleaf, R. 303.

Henridia vs. Ayres, 12 Pick. R. 334.

Pierce vs. Kimball, 9 Greenleaf, 54.

3 The other sections of the Act are manifestly of a private character.

4 The character of an Act is to be determined by its provisions, and not by its title.

16 New York, 61.

5 That the object of this section of the Constitution was to place a restriction on the practice and procedure of the Legislature.

Walker v Caldwell
4 Ann. R. 298

Davis vs. State, 7 Maryland, 151.
Sedgwick on Con. and Stat. Law, 567.
Sun Mutual Ins. Co. vs. Mayor, etc., 4 Selden, 252.
Conner vs. Mayor, etc., 1 Selden, 285.
Opin. of Ch. J. Ruggles, 1 Selden, 293.
Opin. of Justice Foot, 297.
Same case, 2 Sand. Supr. Ct. R. 361.

6 That without this provision in our Constitution, the Act in question would be valid.

12 Modern, 249.
12 Modern, 613.
Hob. 227.
Sid. 24.
Sedgwick Con. and Stat. Law, 32.

7 That the object of the section of the Constitution in question was to prevent the passage of statutes public in one part and private in another.

Walker v Caldwell, 4 Ann. R. 298 et seq. *Sedgwick Con. and Stat. Law, 567.* *569*

8 That this section of the Constitution cannot be evaded by declaring such an Act as the one in question to be a public law.

The Belleville, etc., R. R. Co. vs. Gregory, 15 Ill. 20.

9 That the Legislature have not the power to absolutely and unqualifiedly prohibit the sale of any commodity or article of merchandise.

HOPKINS & HIRSHBACH,
Attorneys for Appellant.

121
22
Supreme Court

John Cleary
vs
County of Cook

Points of Appeal

To wit April 23. 1862
J. L. Caswell
Clerk

Hopkins & Birchback
atty for appellts

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JOHN O'LEARY, Appellant,
vs.
THE COUNTY OF COOK, Appellee. } APPELLEE'S POINTS.

The question in this case is whether the "*act to amend an act, entitled an act to incorporate the North-western University, approved Jan. 28, 1851,* is obnoxious to that part of the Constitution which provides that "no private or local law shall embrace more than one subject, and that shall be expressed in the title, said act containing a prohibition of the sale of spirituous liquors *within four miles of the location of said University,* under penalty of \$25, to be received by the county of Cook.

We suppose the question is to be viewed the same as if this provision was in the original act to which this is an amendment, the title to which is "*An act to incorporate the North-western University.*"

There can be no doubt that the design of the prohibition is to protect the *students* of the University and are such as may be connected therewith, for both the moral and physical influences of bar-rooms, saloons and all other places for the sale of spirituous liquor. And the court has only to enquire whether such a precaution is *germain* to the objects of a University of learning in the neighborhood of a large city like the city of Chicago as this is the word *subject*, (which is from Latin *subjectus*, participle of *subjicio* to lie under), signifies the thing forming the groundwork. It may contain many particulars which grow out of it and are *germain* to it and which if traced back, will lead the mind back to it as the generic head. For instance, in legislation, the Incorporation of a Bank, Rail Road, College, &c., is the *subject* and such *particulars* as will be subservient to such an incorporation, are *germain* to it and properly included in the law.

Crabb's Synonyms, p. 325.

The Belleville R. R. Co. *vs.* Gregory, 15 Ill. 20.

The word used in the constitution, "*expressed*," is peculiar, and does not mean that the "*subject*" should be stated in so many words in the title of the bill, but that it should be shown forth, made apparent, expressed so that by reflection, the mind may grasp it. The constitution does not intend to hold the legislature to an accurate *nomenclature* of all its acts. If we can look through the words used in the title of the law, and discover the subject, groundwork or design of it, and that subject or design appears to be single, that will answer the constitution, however awkwardly it may be expressed, or however many *particulars*, which are *germain* to the purpose of the law, may be stated. The *Belleville &c., R. R. Co. vs. Gregory*, 15 Ill. 28.

Fireman's Ban. A. C. vs. Lounsbury 21 Ill. 511.
Schuyler Co. vs. R. I. & A. R. R. Co. 25 Ill. 181.

Nearly all railroad charters contain penal provisions. The charter of the Ill. Cent. R. R. Co. is a fair example. The 9th sec. Prov. L. 1851 p. 64 provides that "If any person shall wilfully spoil, injure, &c., said road, or any part thereof, or *anything belonging thereto, or used in connection with it &c.*, shall forfeit to the R. R. Co. treble damages, shall be liable to indictment in the county in which the offence may be committed, and pay a fine of from \$30 to \$100 to the use of the people &c. or may be imprisoned in the penitentiary, &c."

The legislature has seen fit to charter a *University of Learning*, to be located away from the corrupting influences of a large city, where all may send their sons to be trained and educated for usefulness, and where the first duty of the teacher is to guard the moral and physical well-being of all placed under his care. Can it be said it is not *germain* to these objects to exclude from their immediate presence the *rum shop*, leading in its train all vices, and more insidious and deadly in its influences than all other vices that tempt the youth?

HURD BOOTH & POTTER,
 Att'ys for Appellee.

121 221

John O'Leary

v

The County of Cook

Appellee's Point



Filed May 2, 1862

J. Selman
clerk

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

POINTS OF APPELLANT.

1 That the Act of the Legislature, approved February 14th, 1855 (Laws of 1855, p. 483), entitled *An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851*, is in contravention of the 23d section of Art. 3 of the Constitution—which provides that *no private or local law shall embrace more than one subject, and that shall be expressed in the title*—in this: that it embraces two separate and independent subjects—the one of a private character, viz., the amendment of the corporate powers of the University; the other of a public nature, viz., the prohibition of the sale of liquor within a given locality under a penalty—two subjects not germane to one another, and having no natural or necessary connection with each other, while only one subject is expressed in the title of the act.

Session's Laws of 1855, p. 483.
Constitution, Art. 3, Sec. 23.

2 The second section of the Act prohibits the sale of liquor under a penalty given to the County, and though affecting a particular locality, it affects public interests, and applies to all persons. It is, therefore, of a local, public nature.

Sedgwick on Con. and Stat. Law, p. 33.
Case of Rodgers, 2 Greenleaf, R. 303.
Henridia vs. Ayres, 12 Pick. R. 334.
Pierce vs. Kimball, 9 Greenleaf, 54.

3 The other sections of the Act are manifestly of a private character.

4 The character of an Act is to be determined by its provisions, and not by its title.

16 New York, 61.

5 That the object of this section of the Constitution was to place a restriction on the practice and procedure of the Legislature.

Davis vs. State, 7 Maryland, 151.

Sedgwick on Con. and Stat. Law, 567.

Sun Mutual Ins. Co. vs. Mayor, etc., 4 Selden, 252.

Conner vs. Mayor, etc., 1 Selden, 285.

Opin. of Ch. J. Ruggles, 1 Selden, 293.

Opin. of Justice Foot, 297.

Same case, 2 Sand. Supr. Ct. R. 361.

Walker v Caldwell
4 Am. R. 298

6 That without this provision in our Constitution, the Act in question would be valid.

12 Modern, 249.

12 Modern, 613.

Hob. 227.

Sid. 24.

Sedgwick Con. and Stat. Law, 32.

7 That the object of the section of the Constitution in question was to prevent the passage of statutes public in one part and private in another.

Walker v Caldwell, 4 Am. R. 298 cited in Sedgwick Con. and Stat. Law, 567.

8 That this section of the Constitution cannot be evaded by declaring such an Act as the one in question to be a public law.

The Belleville, etc., R. R. Co. vs. Gregory, 15 Ill. 20.

9 That the Legislature have not the power to absolutely and unqualifiedly prohibit the sale of any commodity or article of merchandise.

HOPKINS & HIRSHBACH,

Attorneys for Appellant.

Supreme Court
231

John Seary
County of Cook

Points of Appeal

Filed Apr 23 1862
J. Seary
clock

Hopkins & Sushbach
atty for appeal

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

POINTS OF APPELLANT.

1 That the Act of the Legislature, approved February 14th, 1855 (Laws of 1855, p. 483), entitled *An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851*, is in contravention of the 23d section of Art. 3 of the Constitution—which provides that *no private or local law shall embrace more than one subject, and that shall be expressed in the title*—in this: that it embraces two separate and independent subjects—the one of a private character, viz., the amendment of the corporate powers of the University; the other of a public nature, viz., the prohibition of the sale of liquor within a given locality under a penalty—two subjects not germane to one another, and having no natural or necessary connection with each other, while only one subject is expressed in the title of the act.

Session's Laws of 1855, p. 483.

Constitution, Art. 3, Sec. 23.

2 The second section of the Act prohibits the sale of liquor under a penalty given to the County, and though affecting a particular locality, it affects public interests, and applies to all persons. It is, therefore, of a local, public nature.

Sedgwick on Con. and Stat. Law, p. 33.

Case of Rodgers, 2 Greenleaf, R. 303.

Henridia vs. Ayres, 12 Pick. R. 334.

Pierce vs. Kimball, 9 Greenleaf, 54.

3 The other sections of the Act are manifestly of a private character.

4 The character of an Act is to be determined by its provisions, and not by its title.

16 New York, 61.

5 That the object of this section of the Constitution was to place a restriction on the practice and procedure of the Legislature.

Walker v Caldwell
4 Ann. R. 298

Davis vs. State, 7 Maryland, 151.

Sedgwick on Con. and Stat. Law, 567.

Sun Mutual Ins. Co. vs. Mayor, etc., 4 Selden, 252.

Conner vs. Mayor, etc., 1 Selden, 285.

Opin. of Ch. J. Ruggles, 1 Selden, 293.

Opin. of Justice Foot, 297.

Same case, 2 Sand. Supr. Ct. R. 361.

6 That without this provision in our Constitution, the Act in question would be valid.

12 Modern, 249.

12 Modern, 613.

Hob. 227.

Sid. 24.

Sedgwick Con. and Stat. Law, 32.

7 That the object of the section of the Constitution in question was to prevent the passage of statutes public in one part and private in another.

Walker v Caldwell, 4 Ann. R. 298 ^{cited in} Sedgwick Con. and Stat. Law, 567.

8 That this section of the Constitution cannot be evaded by declaring such an Act as the one in question to be a public law.

The Belleville, etc., R. R. Co. vs. Gregory, 15 Ill. 20.

9 That the Legislature have not the power to absolutely and unqualifiedly prohibit the sale of any commodity or article of merchandise.

HOPKINS & HIRSHBACH,

Attorneys for Appellant.

224
Supreme Court
"

John O'Leary

of
County of Cook

Plaintiff of app't

Judged At 23. 1862
J. Deland
Clerk

Hopkins & Linsbach
attys for app't

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

ABSTRACT.

This action was brought by the County of Cook against John O'Leary, to recover the penalty prescribed by the second section of an Act of the Legislature of the State of Illinois, approved February 14th, 1855, entitled An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851, for selling liquor within four miles of the location of the said Northwestern University, in violation of the said section.

1 The action was commenced and tried before a Justice of the Peace
2 in said Cook County; and upon the trial before the Justice, judgment
3 was rendered in favor of the said County of Cook, for the sum of \$25
and costs.

4 From which judgment the said John O'Leary appealed to the Circuit
Court of said Cook County.

9 That the cause came on to trial before the Hon. George Manierre,
Judge of the said Circuit Court of Cook County, without a jury, on the
30th day of January, 1862, and was submitted to the Court upon the
11 following facts agreed upon by the Counsel for the respective parties :

“That the Northwestern University, mentioned in the act entitled an
“Act to amend an act entitled an Act to Incorporate the Northwestern
“University, approved January 28th, 1851, is located in the town of
“Evanston, in Cook County, Illinois.

“That the said O’Leary did, within one month previous to the
“bringing of this suit, sell to one Mortimer Russell spirituous liquor at this
“defendant’s house, within two miles of the location of said University, in
“violation of said Act.

“That a portion of the towns of Niles and New Trier are included
“within the distance of four miles from the location of said University.

“That all facts necessary to maintain the action under said law are
“admitted by O’Leary, he only reserving to himself the right to insist that
“the said law is unconstitutional.”

12 This was all the evidence in the cause, the proof of the Act being
13 waived; and thereupon the Court found for the plaintiff below, for \$25
and costs.

Thereupon the appellant took an appeal to this Court, and assigns
for error the following ground:

That the Court erred in deciding said cause in favor of the plaintiff
below, the said law being unconstitutional.

221
Supreme Court

John O'Leary
of
County of Cook

Abstract

Filed Apr 23, 1842
J. Selman
Clerk

Stephens & Washburn
attys for appellts

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

ABSTRACT.

This action was brought by the County of Cook against John O'Leary, to recover the penalty prescribed by the second section of an Act of the Legislature of the State of Illinois, approved February 14th, 1855, entitled An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851, for selling liquor within four miles of the location of the said Northwestern University, in violation of the said section.

1 The action was commenced and tried before a Justice of the Peace
2 in said Cook County; and upon the trial before the Justice, judgment
3 was rendered in favor of the said County of Cook, for the sum of \$25
and costs.

4 From which judgment the said John O'Leary appealed to the Circuit
Court of said Cook County.

9 That the cause came on to trial before the Hon. George Manierre,
Judge of the said Circuit Court of Cook County, without a jury, on the
30th day of January, 1862, and was submitted to the Court upon the
11 following facts agreed upon by the Counsel for the respective parties :

“ That the Northwestern University, mentioned in the act entitled an
“ Act to amend an act entitled an Act to Incorporate the Northwestern
“ University, approved January 28th, 1851, is located in the town of
“ Evanston, in Cook County, Illinois.

“That the said O’Leary did, within one month previous to the
“bringing of this suit, sell to one Mortimer Russell spirituous liquor at this
“defendant’s house, within two miles of the location of said University, in
“violation of said Act.

“That a portion of the towns of Niles and New Trier are included
“within the distance of four miles from the location of said University.

“That all facts necessary to maintain the action under said law are
“admitted by O’Leary, he only reserving to himself the right to insist that
“the said law is unconstitutional.”

12 This was all the evidence in the cause, the proof of the Act being
13 waived; and thereupon the Court found for the plaintiff below, for \$25
and costs.

Thereupon the appellant took an appeal to this Court, and assigns
for error the following ground:

That the Court erred in deciding said cause in favor of the plaintiff
below, the said law being unconstitutional.

221
Supreme Court

John Leary
vs

County of Cook

Abstract
"

Filed Apr. 23. 1842

J. Leary
Clerk

Hopkins & Hirschbach
attys for appels

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

ABSTRACT.

This action was brought by the County of Cook against John O'Leary, to recover the penalty prescribed by the second section of an Act of the Legislature of the State of Illinois, approved February 14th, 1855, entitled An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851, for selling liquor within four miles of the location of the said Northwestern University, in violation of the said section:

1 The action was commenced and tried before a Justice of the Peace
2 in said Cook County; and upon the trial before the Justice, judgment
3 was rendered in favor of the said County of Cook, for the sum of \$25
and costs.

4 From which judgment the said John O'Leary appealed to the Circuit
Court of said Cook County.

9 That the cause came on to trial before the Hon. George Manierre,
Judge of the said Circuit Court of Cook County, without a jury, on the
30th day of January, 1862, and was submitted to the Court upon the
11 following facts agreed upon by the Counsel for the respective parties :

“That the Northwestern University, mentioned in the act entitled an
“Act to amend an act entitled an Act to Incorporate the Northwestern
“University, approved January 28th, 1851, is located in the town of
“Evanston, in Cook County, Illinois.

“That the said O’Leary did, within one month previous to the
“bringing of this suit, sell to one Mortimer Russell spirituous liquor at this
“defendant’s house, within two miles of the location of said University, in
“violation of said Act.

“That a portion of the towns of Niles and New Trier are included
“within the distance of four miles from the location of said University.

“That all facts necessary to maintain the action under said law are
“admitted by O’Leary, he only reserving to himself the right to insist that
“the said law is unconstitutional.”

12 This was all the evidence in the cause, the proof of the Act being
13 waived; and thereupon the Court found for the plaintiff below, for \$25
and costs.

Thereupon the appellant took an appeal to this Court, and assigns
for error the following ground:

That the Court erred in deciding said cause in favor of the plaintiff
below, the said law being unconstitutional.

²²¹
Supreme Court
"

John O'Leary

vs

County of Cook

Abstract
"

Filed Apr. 23 1862

J. Delancey

Clerk

McPherson & Hushblack
attys for appellts

SUPREME COURT, STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

JOHN O'LEARY,
Appellant,
vs.
THE COUNTY OF COOK,
Appellee.

ABSTRACT.

This action was brought by the County of Cook against John O'Leary, to recover the penalty prescribed by the second section of an Act of the Legislature of the State of Illinois, approved February 14th, 1855, entitled An Act to Amend an Act entitled An Act to Incorporate the Northwestern University, approved January 28, 1851, for selling liquor within four miles of the location of the said Northwestern University, in violation of the said section.

1 The action was commenced and tried before a Justice of the Peace
2 in said Cook County; and upon the trial before the Justice, judgment
3 was rendered in favor of the said County of Cook, for the sum of \$25
and costs.

4 From which judgment the said John O'Leary appealed to the Circuit
Court of said Cook County.

9 That the cause came on to trial before the Hon. George Manierre,
Judge of the said Circuit Court of Cook County, without a jury, on the
30th day of January, 1862, and was submitted to the Court upon the
11 following facts agreed upon by the Counsel for the respective parties :

“That the Northwestern University, mentioned in the act entitled an
“Act to amend an act entitled an Act to Incorporate the Northwestern
“University, approved January 28th, 1851, is located in the town of
“Evanston, in Cook County, Illinois.

“That the said O’Leary did, within one month previous to the bringing of this suit, sell to one Mortimer Russell spirituous liquor at this defendant’s house, within two miles of the location of said University, in violation of said Act.

“That a portion of the towns of Niles and New Trier are included within the distance of four miles from the location of said University.

“That all facts necessary to maintain the action under said law are admitted by O’Leary, he only reserving to himself the right to insist that the said law is unconstitutional.”

12 This was all the evidence in the cause, the proof of the Act being
13 waived; and thereupon the Court found for the plaintiff below, for \$25
and costs.

Thereupon the appellant took an appeal to this Court, and assigns for error the following ground:

That the Court erred in deciding said cause in favor of the plaintiff below, the said law being unconstitutional.

121 : 221
Supreme Court

John Liary

vs

County of Cook

Abstract

Filed Apr 23, 1842

L. Seland

clerk

Hopkins & Freshback
attys for appellts

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George W. Warner Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the 19th day of January in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the said United States the Eighty fifth

Present, Honorable George W. Warner Judge of the 7th Judicial Circuit of the State of Illinois. }

Charles W. Owen States Attorney. }

Anthony W. Downing Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to-wit: on the Twenty Eighth day of June in the year of our Lord One thousand Eight hundred and Sixty One, there was filed in the Office of the Clerk of said Court a certain Transcript from Justice Court, together with an Appeal Bond, which said Transcript and Appeal Bond are in the words and figures following. To-wit:
"State of Illinois }
Cook County }

In Justice Court before J. W. Keaton Esq.
J.P.

The County of Cook }

John O. Deary

Defendant demands \$100.00 in Debt

Dec 24th 1860 summons & subpoena

Returnable Dec 31, 1860 at 10 o'clock AM

(2)

and given to E Russell const, to serve Dec 26th summons
+ subpoena returned served by reading re Const fees
125 - Dec 31, defendant comes and asks for change
of venue, and having made affidavit to that effect -
Change of venue granted to Ely Nelson of Wymetha
Sub fees 1.00. Const fees 1.25
G. M. Keenon J.P.

G. M. Keenon a Justice of the Peace in and for said
County, do hereby certify that the foregoing is a true copy of the
proceedings in the cause therein entitled had before me and
that herewith enclosed are all the papers and documents
belonging to the said suit - Witness my hand this 31st day
of Dec 1860
G. M. Keenon J.P.

State of Illinois }
Cook County } In Justice Court before G. M. Keenon J.P.

The Leo of Cook }
vs } Dec 31, 1860
Geo. O'Leary }

Change of venue from G. M. Keenon -
Paper received + cause adjourned till January 4th 1861 at
10 o'clock AM. One subpoena issued returnable Jan
4th 1861 at 10 o'clock AM and given to Const Russell
to serve - January 4th 1861 10 o'clock AM, subpoena
returned personally served by reading to the within named
Const fees 1.25 - parties appear Venue issued on the part of
defendant for fit jurors + given to Const Deugh to serve
Venue returned. Vincent Clefford. D. M. P. Davis

(3)

Anton Belifford, Joseph Waudenfield, John McBean returned as jurors Court fee 50¢ parties agree to a Jury of five, Motion made to dismiss for want of security for costs - Jury called before the motion was made. Motion overruled. - Mr Edwin Sherman Russell, Geo Sharp, David Fisher, E Russell & David Rossiter appeared as witnesses and were sworn on part of the County. After hearing the testimony, the Jury retire under charge of Constable Peagle sworn for that purpose.

The Jury return into Court and say they find for the plaintiff. - Whereupon it is considered by the Court that the defendant pay a fine of Twenty five dollars, together with costs of suit taxed at thirteen dollars and four Cts.

James S. Willson J.P.
Humbolt 1.00 Justice fee 2.06 Court fee 1.00 Veria 0.00
Court $\frac{165}{313}$ Jury 1.00 attor Jury 25 - 385
Witness (H) 1.00 do (W) 3.00

Jan'y 19. 1861. The above named defendant with James Warkby as his security filed his bond of appeal to the Circuit Court - which bond was approved by me and granted. James S. Willson

State of Illinois }
Cook County } ss I, James S. Willson a Justice of the Peace in and for said County, do certify that the foregoing Transcript of papers contain a full and perfect statement of all the proceedings before me in witness whereof I have hereunto set my hand this 21st day of Jan'y 1861
James S. Willson J.P.

(4)

Appeal Bond

Know all men by these presents that we John O'Leary and James Warty of the County of Cook in the State of Illinois, are held and firmly bound unto the County of Cook in the penal sum of Twenty six dollars and $\frac{8}{100}$ lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs Executors & administrators jointly severally and firmly by these presents - Witness our hands and seals this Nineteenth day of January A.D. 1861

The condition of the above obligation is such, That whereas the said County of Cook did on the fourth day of January A.D. 1861 before James S. Wilson of Justice of the Peace for the said County of Cook, recover a Judgment against the above bounden John O'Leary for the sum of Twenty five dollars Judgment & costs of suit & thirteen dollars and four cents cost from which Judgment the said John O'Leary has taken appeal to the Circuit Court of Cook County aforesaid and State of Illinois, Then if the said John O'Leary shall prosecute his appeal with effect, and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

John O'Leary
James Warty

Seal
Seal

(5)

Approved by my attorney Office this 19 day of
January 1861. James L. Mallin
Justice of the Peace

And afterwards do=mit on the 27th day of March
in the year of Our Lord Eighteen hundred and sixty one
said defendant filed in said court his certain
affidavit of merits in words and figures following
do=mit.

State of Illinois }
Cook County } p

John O Seary }
County of Cook }

In Circuit Court of Cook County
March 27, 1861.

John O Seary being first duly
sworn, doth depose and say that he is defen-
dant in the above entitled cause + that he
has a good + valid defense to the same upon
the merits + further saith that
Subscribed & sworn to before John O ^{his} Seary
me this 27th day of March
mark

A. D. 1861. Mrs Church Clerk

And afterwards do=mit at the
June Term of said Court. do=mit on the twenty first
day of June in the year last aforesaid, the following
proceedings, among others, were had and entered
of record. do=mit

(6)

"The County of Cook }
 John O'Leary } Appeal

The said defendant having appealed said cause to this Court, and he having failed to pay the Judge fee and file the papers thereof pursuant to the Statute in such cases made and provided, It is therefore, on motion of H.B. Head of Counsel for said plaintiff, Ordered that said defendant be and he hereby is ruled to pay the Judge fee in said cause and file the papers thereof, on or before the 29th day of June next — and in default thereof said appeal may be dismissed out of this Court with a Proceudo to the Court below

And afterwards Do=ord, at the same Term of said Court, last aforesaid, Do=ord, on the Twenty ninth day of June in the year last aforesaid, the following proceedings, among others, were had and entered of record Do=ord

"The County of Cook }
 John O'Leary } Appeal

This day again came the said Plaintiff by H.B. Head its attorney, and it appearing to the satisfaction of the Court that the said defendant has had due notice given him of the

rule heretofore entered, requiring him by a certain day therein named to file in this Court, the papers in this Cause, and to pay the Judge fee therein; and he having wholly failed to comply with the said rule and being now three times solemnly called in open court comes not, nor does any person for him - Wherefore on motion of said plaintiffs Counsel it is ordered that the appeal herein be and the same hereby is dismissed out of the Court, at the Cost of the said defendant for failing to file the papers and pay the Judge fee therein, and that a Proceudo issue to the Court below.

Therefore it is considered that said plaintiff do have and recover of the said defendant its Costs and Charges by it about its suit in this behalf Expended and have execution therefor

And afterwards do-mit. at the same term of said Court last aforesaid do-mit on the first day of July in the year last aforesaid, the following proceedings, among others, were had and entered of record. Do-mit

The bounty of look }
John O. Deary } Motion re

On reading and filing the affidavit of said defendant, and on motion of William Hopkins of Counsel it is ordered that all

(8)

Further proceedings be stayed upon the Judgment
heretofore entered in said Cause until the further
order of this Court

And afterwards Do=mt. at the
same Term of said Court last aforesaid. Do=mt. on the
second day of July in the year last aforesaid, the
following proceedings, among others, were had and entered
of record Do=mt

The security of look	} Motion re
John O'Searcy	

On reading and filing the affidavit
of said defendant and on motion of William Hopkins of
Council, it is ordered upon condition that the said defen-
dant shall pay the Judges fee herein instant that
the order of dismissal and judgment heretofore entered
in said Cause Do=mt. on the 29th day of June last
past, be set aside and for naught esteemed —
Whereupon the said defendant pays into Court the sum
of one dollar and fifty cents, as used for the Judges
fee aforesaid

And afterwards Do=mt. at
the January Term of said Court. Do=mt. on the 30th day
of January in the year of Our Lord One thousand Eight
hundred and fifty two, the following proceedings, among
others, were had & entered of record Do=mt —

(9)

The County of Leek }
 John O'Beary } Appeal

This day comes the said plaintiff by the B. Leard his attorney, and the said defendant by William Hopkins his attorney also comes, and said cause is now here submitted to the court upon an agreed statement of facts, by and between the said parties and the Court not being sufficiently advised of and concerning the premises, takes said cause under advisement

And afterwards Do=ord. at the same time of said court last aforesaid, Do=ord. on the first day of February in the year last aforesaid, the following, among other proceedings, were had and entered of record. Do=ord.

The County of Leek }
 John O'Beary } Appeal

This day again come the said parties by their attorneys, and the Court having had said cause under advisement, and being now fully advised of and concerning the premises, doth find the issue for the plaintiff, and assesses its damages herein by reason of the premises to the sum of Twenty five dollars, to which decision of the court the said defendant by his counsel now here Excepts, and on his motion thirty days are allowed

(10)

in which to file his Bill of Exceptions herein

Therefore it is considered that said Plaintiff do have and recover of the said defendant its damages of Twenty five dollars in form aforesaid by the Court assessed together with do Costs and Charges by it about its suit in this behalf Expended, and have Execution therefor

Whereupon the said defendant Excepts and prays an appeal to the Supreme Court of the State of Illinois, which is granted by the Court upon Condition that the said defendant shall within Twenty days from this date Execute and file his Appeal Bond herein in the penal sum of One hundred dollars, Conditioned according to Law, with good and sufficient surety thereto to be approved by the Clerk of this Court. by Consent of said parties

And afterwards Do=not, on the tenth day of February in the year last aforesaid said defendant by his Attorney, filed in said Court his Bill of Exceptions, in words and figures following Do=not

Circuit Court of Cook County
County of Cook }
John O'Leary } Bill of Exceptions

Be it remembered that this cause

6
111
came on for trial before the Hon George McAnemie
Judge of the said Circuit-Court at the January
Term thereof A. D. 1862 without a Jury. (Jury
being waived by the parties in open Court) and
that the said cause was by agreement of Counsel
submitted to the Court for trial upon the following
stipulation

County of Cook }
John O'Leary } Circuit-Court of Cook County
January Term A. D. 1862

It is hereby stipulated that the
North Western University mentioned in the act En-
titled "An act to amend an act entitled an act
to incorporate the North Western University approved
January 28th 1857 is located in the town of Evanston
in Cook County Illinois

It is further stipulated that
the said defendant did within one month previous
to the bringing of this suit sell to one Mortimer
Russell spiritous liquor at his defendant's house
within two miles of the location of said North
Western University in violation of said act

It is further stipulated that a
portion of the towns of Nile and Merrick are
included within the distance of four miles from
the location of said University

It is further stipulated
that all facts necessary to maintain the action
in this case under said law are admitted by

(12)

said defendants, he only reserving to himself
the right to insist that the said law is un-
Constitutional

It is further stipulated that
the suits of the said plaintiff against Jacob
Rhem and the same plaintiff against Gustave
Brennan, now pending in said Court shall abide
the result of the above entitled Cause in all
respects except as herein specified, viz all of
said suits shall be submitted to the Court for
trial and if the Court shall find against the
said defendant John O'Searcy, the said defendant
shall pay and take an appeal to the Supreme
Court and if the judgment shall be affirmed then
judgment shall be rendered in the said Cases
against the said Jacob Rhem and Gustave
Brennan for the amount of the judgment against
them rendered by the Justice of the peace but if
the judgment in the above entitled Cause shall
be reversed or if the judge of the Circuit Court
afforded shall find against the said plaintiff
then all of said suits shall be dismissed

Chicago July 27th 1862

W. B. Hand
Atty for plaintiff
J. M. Chapin
Atty for defendant

The which stipulation furnished all the evidence

(13) 7

given on said trial, and upon the same the plaintiff claimed judgment in his favor under the said act Ammendatory of the act of Incorporation of the North Western University referred to in said stipulation, the proof of which act was moved by deft — But the defendant then and there at the trial of said Cause, contending that the said amendatory act was unconstitutional and void, and the Court should find for the defendant —

That the Court thereupon decided said Cause in favor of the plaintiff and rendered judgment upon such decision against the defendant for the sum of Twenty five dollars besides Costs, to which judgment and decision of the Court the defendants counsel then and there Excepted and prayed an appeal, which was granted.

And the said defendant now tenders this his Bill of Exceptions in the premises, to be signed and sealed by the Court and it is accordingly done in open Court this day of February AD 1862 time having been given to the parties to this day to prepare the same

George W. Cameron
Judge of 7th Judicial Circuit Ill
Seal

(14)

And afterwards. Do=mit, on the 19 day of February
in the year last aforesaid said defendant filed
in said Court his Appeal Bond in words and
figures following Do=mit,

Know all men by these
presents. that we John O'Searcy of Evanston County
of Cook Illinois and John W. He of Evanston
of the County of Cook and State of Illinois are
held and firmly bound unto the County of Cook
also of the same County and State in the penal
sum of Two hundred dollars lawful money of
the United States, for the payment of which
well and truly to be made, we bind ourselves
our heirs, Executors and administrators jointly
severally and firmly by these presents -

Witness our hands and
seals this Seventeenth day of February A D 1862

The Condition of the
above obligation is such that whereas the said
County of Cook did on the first day of February
A D 1862 in the Circuit Court in and for the
County of Cook, and State aforesaid, and
of the January Term thereof A D 1862 recover a
Judgment against the above bounden John O'
Searcy for the sum of Twenty five dollars and
— Cents besides Costs of suit, from which
said Judgment of the said Circuit Court
the said John O'Searcy has prayed for and

15,

obtained an appeal to the Supreme Court of said State. — Now therefore if the said John O. Deary shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

John. ^{his} _{made} O Deary
 John L. Ware

Seal Seal

Taken and entered into
 before me at my office
 in Chicago this twentieth
 day of February A.D. 1862
 Wm L Church Clerk

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of All papers (except affidavits) + all proceedings entered of record in a certain cause Salaty pending in said Court, on the Common Law side thereof, wherein The County of Cook was Plaintiff and John O Deary Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this fourth day of March A. D. 1862.

Wm L Church Clerk.

Supreme Court of Illinois

April Term AD 1862

John O'Leary
Appellant

^{vs}
The County of Cook
Appellee

And now comes the said John O'Leary by Hopkins & Hirschbach his Attorneys and says there is manifest error in the foregoing record proceedings & judgment in this -

That the said Law under and upon which the said Circuit Court of the County of Cook decided this cause in favor of the plain-
tiff ^{below} is unconstitutional -

Hopkins & Hirschbach

Attys for Appellant -

And now comes the said defend-
in error and says there is not any error
in the foregoing record proceedings & judgment

H. B. Huel

Atty for Appellee.

121
221
Supreme Court.
The County of Cook
vs Apple

John O'Leary
— " — Applt.

Records: &
Assignment of Error.

Filed Apr. 23, 1862
J. L. Lane
clerk
Hopkins & Kishbach
Attys for Applt.
H. B. Hurd
Attys for Apple -