

12069

No.

Supreme Court of Illinois

School Trustees, T.16 R.4

East

vs.

Chamberlain, et al

71641  7

35
School Trustees T.16 R.4 E
W. C. Chamberlain et al.

35

12069

Repaired

1853

Trustees of Schools of Township
16 A B 10 E 4 P M

} unit
of
error
to

Wm O Chamberlain & Lazarus Reeves

Executors of Nathaniel Chamberlain dec'd } Bureau

and the said plaintiffs in error now

come and say that in the record and proceedings
aforesaid there is manifest error in this to wit

1st overruling Pltffs in error motion to quash summons

2 sustaining Demurrer to pltffs in error 2^d Plea

3^d Receiving the verdict of the Jury for damages only

4 Entering Judgment on said verdict

5 Receiving verdict and entering Judgment

there on, when the verdict did not find the facts

6 Proceedings are in damages when the action
is in debt

7 Verdict and Judgment are for damages only

8 Rendering Judgment for defendants in error
in their personal capacity.

9 Awarding costs against plaintiffs in error

10 Awarding execution against pltffs in error

11 Entering a Judgment against the officers personally

12 overruling motion for new trial

13 Record shows no cause of action —

14th — said Judgment was given in favor of the
defendants in error when it should have
been given in favor of the plaintiffs in error

Wherefore the said plaintiffs
in error pray that the said
Judgment may be reversed and
annulled

Milton J Peters
Atty for Plaintiffs
in Error

Over to Bureau
Masters of Schools
16 N R 10 4 P M
as
Wm A Chamberlain
& Sargents Reeves
Executions &
Assignment of Errors

Filed June 21st 1853
L. Leland Clk
By J. H. Leland Jr

State of Illinois } In Circuit Court of said County
Bureau County } January Term. A.D. 1853.
William O Chamberlin & Lazarus Reeve Executors
Of the last will and Testament of Nath^l. Chamberlin Decd.

vs. } Indebted
Joseph N. Hoise, Jesse Atkins & Perry Piper Trustees
Of Schools of Township 16 North of Range No 10 East
&c. in Bureau County Illinois.

The Clerk of The Circuit will please issue a
Summons in The above entitled Cause against The above
Defendants returnable to the first day of The next Term
of said Court. To answer The Plaintiffs in a plea of debt.
for \$ 150. Damages 100. Dollars

Princeton Decr. 27th 1852. J. J. Taylor atty for Plffs
State of Illinois Bureau County 3ss. The People of The State
of Illinois. To The Sheriff of said County Greeting;
We Command you to summon Joseph N. Hoise, Jesse Atkins,
& Perry Piper, Trustees of Schools of Township 16 North of
range 10 East of the fourth principal meridian, if they
may be found in your County, to appear before our Circuit
Court on the first day of The Term thereof, to be held at
Princeton, within and for The said County of Bureau
on the second Monday of January next, then and
there in our said Court to answer unto William O Cham-
berlin, and Lazarus Reeve, Executors of The last will and
testament of Nathaniel Chamberlin deceased, Of a plea
of Debt. That they render to them The said plaintiffs
the sum of One Hundred and fifty Dollars;

which they owe to and unjustly detain to their damage, as they say in the sum of one hundred dollars, and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid



Witness Edward M. Fisher Clerk of our said Court, and the Seal thereof at Princeton this 27th day of December in the Year of our Lord One Thousand Eight Hundred and Fifty Two.

Edward M. Fisher Clerk by Justin H. Plets Deputy
I have executed this writ, by reading to and in the presence and hearing of the within named Joseph N. Rice, Jesse Atkins, and Perry Piper Trustees of Schools of Township 16 North Range 8 East, this 30th day of December A.D. 1853. Comyn Smith
State of Illinois
Bureau County, Ill. In Circuit Court of said County.

January Term A.D. 1853.

Williams O Chamberlin & Sargans Reeve Executors of the last will and testament of Nathaniel Chamberlin deceased, Complain of the Trustees of Schools of Township Number Sixteen (16) North of Range Number Ten (10) East &c. in Bureau County Illinois in a plea of Debt. For that whereas the defendants on the first day of January in the Year of our Lord One Thousand Eight hundred & forty, at the County of Bureau aforesaid was indebted to the said Nathaniel Chamberlin in One hundred and fifty dollars for the price and value of goods then and there bargained sold and delivered by the said Nathaniel Chamberlin

To the said Defendants. And in One Hundred & fifty Dollars for work then and there done, and materials for the same provided by the said Nathaniel Chamberlin for the defendants at Their request.

And in One Hundred and fifty Dollars, for money then and there lent by the said Nathaniel Chamberlin to the Defendants, at Their request.

And in One Hundred and fifty Dollars, for money then and there paid by the said Nathaniel Chamberlin for the use of the defendants at Their request.

And in One Hundred and fifty Dollars for money then and there received by the said Defendants for the use of the said Nathaniel Chamberlin.

And in One Hundred & fifty Dollars for money found to be due from the defendants to the said Nathaniel Chamberlin on an account then and there stated between them.

And the Defendants afterwards on the day and year aforesaid at the County aforesaid, in Consideration of the premises respectively agreed with the said Nathaniel Chamberlin to pay him the said moneys on request, Yet the said Defendants hath disregarded Their agreement, and hath not paid any of the said moneys or any part thereof either to the said Nathaniel Chamberlin in his life time or to the Plaintiffs as Executors aforesaid since the death of the said Nathaniel Chamberlin to the damage of the Plaintiffs as Executors as aforesaid of One Hundred Dollars, & therefore ^{upon} They bring Their Suit &c. and the Plaintiffs bring into Court here Letters Testamentary

of the said Nathaniel Chamberlin deceased, which were
after the decease of the said Nathaniel Chamberlin to wit
On the Tenth day of April in the Year of Our Lord One
Thousand eight Hundred and forty nine granted in due
form of Law by the Probate Court of Monroe County
in the State of Illinois. whereby it appears to the Court
here that the plaintiffs are executors of the last will and
Testament of the said Nathaniel Chamberlin deceased
and hath the Execution thereof &c.

Filed December 31st 1853 S. S. Taylor atty for Plffs
C. M. Fisher Clerk.

A/c of ~~Copy~~ of The Common Counts sued upon in the forego-
ing Narration.

1840 Invoices of Schools of Township 16 N. R. 10 E. To William O Cham-
berlin & Lazarus Reeve Exrs. of The Estate last will and
Testament of Nath^l Chamberlin Decd. &c.

To amt for goods sold & delivered by Nathaniel Chamberlin
in his life time to Defendants at their request $\frac{3}{4}$ \$ 150.00

Same To Same Dr

To amt for work and materials for same provided by Nathaniel
Chamberlin in his life time for Defendants at their request $\frac{3}{4}$ \$ 150.00

Same To Same Dr

To amt for money lent by Nath^l Chamberlin in his life
time to Defendants at their request $\frac{3}{4}$ \$ 150.00

Same To Same Dr

To amt for money paid by Nath^l Chamberlin in his
life time for use of Defendants at their request $\frac{3}{4}$ \$ 150.00

Same To Same Dr

To amt for money received by The said Defendants

for the use of The said Nath^l. Chamberlin
in his life time

\$ 150.00

Same To Same &c.

To amt. for money found to be due from the said heirs
to the said Nath^l. Chamberlin in his life time on any
account stated between them.

\$ 150.00

Copy of The Plaintiffs account sued on in
The foregoing narration

Trustees of Schools of Township Number sixteen
North of Range No 10 East in Bureau Co. Illinois. In
opc with William O Chamberlin & Lazarus Kieve
Executors of the last will & Testament of
Nathaniel Chamberlin deceased

1837 To amt of cash paid by Nath^l. Chamberlin in
Sang his life time to you by mistake

\$ 100.00

1837. To amt. of Cash Received by you. of Nath^l
Chamberlin. in his life time for the use of said

Sang. Nathaniel Chamberlin

\$ 100.00

Filed December 31st. 1853. Edward M. Fisher Clerk.

Pleas before The Honorable C. S. Leland
Judge of The Ninth Judicial Circuit of The State of Illinois
at the January Term of The said Circuit Court in and for
the County of Bureau begun and held at The Court house
in Princeton in said County on Monday the tenth day
of January in The Year of Our Lord One Thousand Eight
hundred and fifty Three.

Present Hon^l C. S. Leland Judge
Edward M. Fisher Clerk
Ormyrn Smith Sheriff
Wm H. L. Wallace States Atty.

William O Chamberlain and
Lazarus Reeve Exrs of the Estate
of Nath^l. Chamberlain deceased

vs

Trustees of Schools of Town 16 N 10 G.

Now Comes The defendants by
W. J. Peters, their attorney, and enter their motion to quash
The summons in this suit, To wit. }

William O Chamberlain &
Lazarus Reeve admors &c.

vs

Trustees of Schools in
T. 16. N. R. 10 East

Debt

The defendants move The Court to Quash The above
writ. for the reasons that said writ. 1st does not specify
the form of action 2^d. The writ does not designate the
official Character of The defendants. January 10th 1853

Filed Jan 10. 1853 J. H. Olds. Clerk

Milton J Peters atty for defts

Which said Motion is overruled. The Plaintiffs Come
by Taylor their attorney and Entered his Motion for leave
to amend The summons in this Cause by the precept
by inserting the words of the fourth principal Meridian
which said motion is sustained by The Court and said
plaintiff has leave to amend said summons accordingly
And The said Defendants by Their said attorney file
their answer to the said Plaintiffs declaration in
the words and figures following. To wit.

Chamberlain & Keene
Administrators &c.

Debt.

Trustees of Schools &c.

And The Said Debt. Comes and
Defends &c. and Says That The said declaration and the
Matters therein contained are not sufficient in law
for The Plffs to recover & for reasons Shows The
following. 1st no Cause of action stated 2^d
defendants were not a body politic and Corporate in
1840. 3^d not alleged That defendants were successors
of The Trustees of the same School District in 1840.
4th Trustees of Schools Could not become liable in
The manner therein stated. 5th Demurrance in the writ
& declaration in regard to The Meridian.

January 10th 1853.

Milton J. Peters atty for Debt.

Filed Jan'y. 11th 1853. C. H. Olds Deputy Clk.

William O. Chamberlain and

Lazarus Keene Adminr of

Nath^l. Chamberlain Sec^y.

Debt.

Trustees of Schools Town

16 N. 10 East

Now Come the said parties
by Their attorneys aforesaid and This Cause Comes up
on said defendants demurrer to said plaintiffs
declaration. and after argument of Counsel and
The Court being fully advised in the premises Consider
That said demurrer be overruled.

William O Chamberlain and
Lazarus Reeve Executors of
Nathl. Chamberlain Decd.

vs

Debt }

The Trustees of Schools of

Township N. N 10 E

Now Comes The Defendants
by Peters Their attorney and file Their pleas to The
Said Plaintiffs declaration in the words and figures
following to wit. and The said defendants Come and
defend The wrong and injury when &c. and say That they
do not owe The said sum above demanded or any
part thereof. as the plaintiffs have above Complained
against Them and of This They put Themselves upon
The Country &c. M. S. Peters atty for defts.

And for a further plea in This behalf
the defendants say actio non because They say that
the said Supposed Causes of action in the said declar-
ation mentioned did not nor did either of Them
accrue at anytime within ten years next before the
Commencement of This Suit. and This The defendants
are ready to verify. wherefore They pray Judgment &c.
Filed Jan 17th 1853. Milton S. Peters atty for defts.

C. M. Fisher Clk

And The plaintiffs Come by Saylor Their attorney
and file Their answer to said defendants Second
plea herein above pleaded as follows to wit.

And The Plaintiffs Comes ~~Comes~~ and says That
The second plea of The defendants by Them secondly

alone pleaded, is insufficient in law to prevent
the said plaintiffs from having and maintaining
Their aforesaid action thereof against the said def-
endants and that they the said plaintiffs are not
bound by law to answer the same and this they are
ready to verify, wherefore they pray Judgment &c.
Filed January 17th 1853 J. S. Taylor for Plt.

C. M. Fisher Clerk.

William O Chamberlain and
Sylvanus Reeve Executors of
Nathaniel Chamberlain deceased

vs

Debt.

Trustees of Schools 16, N. 10, &c.

Now come the said parties
by their attorneys aforesaid and the Court being
fully advised in the premises considers that said
demurrer be sustained.

To be read before The Honorable Edwin S.
Leland, Judge of the Ninth Judicial Circuit of the
State of Illinois, at the March Term of said Circuit
Court, in and for the County of Bureau, Begun and
held at the Court House in Princeton in said County
on Monday the Twenty Eighth day of March in
the year of our Lord one Thousand Eight hundred
and fifty Three. Present Hon. E. S. Leland, Judge

Edmund M. Fisher Clerk

Osney Smith Sheriff
Wm H. D. Wallace State Atty.

William O Chamberlain &
Sargant Reeve Executors of the
Estate Nathl Chamberlain decd.

vs

Debet.

Trustees of Schools of
Town 16 N. 10 E.

This day the Plaintiffs come by Taylor
their attorney, and the defendants by Peters their attorney
and the Court orders that a jury be empaneled to
try the issues joined herein. and there comes a jury
of twelve good and lawful men to wit. James M.
Turk, John Miller, Peleah Rockey. Jacob Albright,
Dennis A. Cusic, Truman Culver, Harrison Epperson,
John Elliott Fitzgibbon Cummings, Lewis Weiser,
Solomon Robinson, and Cyrus Cotton. who are duly
elected, tried and sworn well and truly to try the
said issues herein and a true verdict render according
to the evidence and say upon their oaths we of the
Jury do find the said issues for the plaintiffs, and
assess their damages at the sum of one hundred
dollars. And the said defendants by their said
attorney, enter their motion for a new trial.

William O Chamberlain and
Sargant Reeve Advers of
Nathl Chamberlain deceased

vs

Debet.

Trustees of Schools of Township 16. N. 10 E.

Now Come The parties aforesaid by their attorneys
aforesaid, and after argument of Counsel and being
fully advised in The premises The Court Considers
That said motion for a new trial be Overruled
It is Therefore Considered by The Court That The said
plaintiffs have and recover of The said defendants
the said sum of One Hundred dollars Their damages
as aforesaid together with all Their Costs in and about
Their suit in This behalf expended and That They
have Execution Therefor.

State of Illinois

Bureau County } ss. I Edward M. Fisher Clerk of
The Circuit Court in and for said County in the
State aforesaid, do hereby Certify That the foregoing
is a true and perfect copy of The Record of This Court
in the above and foregoing Entitled Cause.



In Testimony whereof I have hereunto
set my hand and affixed the Seal of
said Court at Princeton in said
County This Twentieth day of May,
A.D. 1853. Edward M. Fisher
Clerk

Clerks fees

Copy 34 folios \$2.40
Cfft & Seal 25
\$2.65

E M Fisher ck

Wm. C. Chamberlain
& Sons, New York
of North Chamberlain
recd.

us
Faculty of School of
Law, N. H. C.

Certified Copy of
Record

Filed May 25, 1853.
Leland C. C.

5-62007

Trustees of Schools of
Township 16 N R 10 E - 4 PM
as
William A Chamberlain &
Lazarus Reenes executors of
Sathaniel Chamberlain
deceased

} unit of
In or
to Bureau
County

Mr L Sel and Clerk of the
Supreme Court please send
down a subpoena's by the
bearer to be served upon the
above defendants. The record
is made out in the above and
two other cases but Fisher the
Clerk is away and they cant
be got. But I will forward them
all in a day or two with your
fees

Milton J Peters
atly for Plffs

May 23^d - 1853.

Bureau No. 35,
Trustees of Schools of
T. 16, A. R. 10 & 4, P. M.,
vs,
William C. Chamberlain
et al, Executors &c,

Praise.

Trustees of
Schools
vs
Chamberlain
& Executors
of

Filed May 24th 1853,
L. Leland Clk.
By F. K. Leland Dep.

Trustees &c

Chamberlain et al

Ex or to Bureau

1st overruling motion to quash summons
3 Sum 134

2 Denies to 2^d plea inassessable Laws 1849 page 132

2^d Sup 149. page 37. Laws 51 page 182. Laws 49. 2 Sup page 183

Law does not favor repeals by implication

2 Pick 172 - 13 do 348

In case of two statutes on the same subject, they should
if possible be so construed, that both may stand.

20 Pick 410 - 24 do 297-298

The mischief existing at the time of the enactment
& the remedy intended is to be taken into consideration
in construing a statute

1 Iowa Rep 275 -

an act of the assembly will not be construed to repeal
by implication an express enactment unless there be a
clear & strong inconsistency between them

Q Smedes & Marshall 628

They must be manifestly inconsistent & unreconcilable
or the later act must take some ^{express} notice of the former

5 Hill 226

In construing a statute whenever the intention of the
legislature can be ascertained it should be followed
though such construction seem contrary to the ^{letter of the} statute

3 Conen 89

an act of the legislature is to be interpreted according to the intention of the legislature apparent upon its face technical rules must yield to the will of the legislature

2 Peters 627

In the construction of a law of the assembly, the intention of the legislature must prevail, which is to be collected from the whole of the law & the circumstances which produced it.

2 Harris & Johnson 167

It frequently becomes the duty of Courts in order to give effect to the manifest intention of a statute to restrain, qualify or enlarge the ordinary meaning of the words that are used. Statutes are sometimes construed contrary to the literal meaning of the words. It has been decided that a thing within the letter was not within the statute unless within its intention.

14 B Ohio Rep 208. 1 How 469.

3 Verdict & Judgment for damages is erroneous
2 Scam 565. 3 Scam 96. Breeze 174. 11 Ills 575.
562. 452. 1 Gil 347. 4 Gil 136. 12 Ills 61. 1 Gil 671
2 Gil 270.

4 Verdict did not find the issue.
3 Scam 94.

5 Promissory to award costs against trustees
Statute applicable to costs does not apply to public municipal
incorporations. Rev Stat page 127. Sec 4 —

4 Gil 24. 1 Scam 180. Breeze App 14.

Statute specially makes Counties liable for costs
Rev Stat page 133. Sec 20

Lo of Trans Lams 49 - page 200 - Lams 51 - page 49 - Sec 9
Statute don't provide Juries shall pay costs.

Lams 49 - page 160 - Sec 30 =

Therefore none is allowed of Map 373 =

Costs are not recoverable at Common Law, but
only by Statute. Statute giving costs are strictly
construed -

5 Peters 735 - 4 Banning 13 - 3 Bunnings 1286 - ¹²⁷

6 Judgment in favor of plaintiffs personally

7 Judgment against defendants personally.

8 Erroneous to award execution -

Order to Bureau

Trusty & Co

19

Chamberlain & Co

Brief & Co

Trustees of School of of
Township 16 North 10 East 4 P.M.

as
William O Chamberlain &
Lazurus Reeses executors
of Nathaniel Chamberlain
deceased

} Unit of
Error to
Bureau

Please issue a Scire facias in the above
Case to be served upon the Defendants
Directed to Sheriff of Bureau County
& send the same to me by mail -
unless you have already sent it -
also find enclosed ~~find~~ five dollars
your Docket fee

Milton T. Peters
Atty for Plffs

To L. Leland Clark }
Supreme Court }

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Bureau* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Bureau* county, before the Judge thereof, between
Trustes of Schools of Township 16, N R 10 E 4 PM.
dependants

plaintiffs and

William W Chamberlain & Lazarus Reeves
Executors of Nathaniel Chamberlain deceased
plaintiffs.

~~dependants~~ it is said manifest error hath intervened, to the injury of the aforesaid *dependants* ~~plaintiffs~~

as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *second Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *24th* day of *May* in the year of our Lord one thousand eight hundred and fifty *three*.

L. Leland Clerk of the Supreme Court.
By P. R. Leland Dep. Clk.

35. Bureau
Trustees of Schools of
Township 16, N.R. 10, E. 4, P.M.
25.
William O Chamberlain
Et al. Ex vs &c —

Writ of error.

Sheriff's fee

Service	50
1 me. &c	5
Return	10
	<u>65</u>

Filed June 2nd 1853,
L. Leland Clk.
By P. H. Leland Depy.

I have executed the within writ by reading the same
to and in the presence & hearing of Edward the Clerk
Clerk of the Circuit Court of Adams County Illinois
on this 26th day of May A.D. 1853
Campbell Smith Sheriff
Adams County Ill

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Bureau* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Bureau* county, before the Judge thereof, between *Trusts of Schools of Township 16 N. R 10. E - 4. R. R. Plaintiffs,* and *William O. Chamberlain & Lazarus Reeves Executors of Nathaniel Chamberlain deceased* defendant; it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

William O. Chamberlain & Lazarus Reeves

that *they* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *second Monday in June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *— defendants —* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *24th* day of *May* in the year of our Lord one thousand eight hundred and fifty *three*.

S. Leland Clerk of the Supreme Court.
By P. K. Leland Depy. Clk.

I have executed the within writ by reading the same
 to and in the presence and hearing of the within named
 William O Chamberlin May 26th and to Lazarus
 Reeves May 28th A.D. 1853
 Ormyn Smith, Sheriff
 Bureau County Ill

35 Bureau.
 Trustees of Schools of
 Township 16 N. R 10 E 4 P.M.
 vs.
 William O Chamberlin
 et al. ex. rs. &c.
 Seize facias
 Filed June 4th 1853.
 J. Leland Clerk.
 By J. H. Leland Deputy.

Sheriff's fee	
2 Services	1.00
3 mls	15
Return	10
	<u>1.25</u>