

14186

No. _____

Supreme Court of Illinois

Mason for use

vs.

Caldwell.

In the Supreme Court of the State of
Illinois 2nd Division December Term A. D. 1879.

Paul Mason for the use of Sarah Mason guardian
of the appellant

vs } Appal from Jury

John R. Leadwell Appellee

In this case it is stipulated & agreed, so that
each party may assign such cross as will hasten
the final decision of this case, that the record
in the case, is to be considered as so modified &
altered as that the demurrers to the pleas & repli-
cations were sustained that occurred in the Court
below.

And now came the appellant & appellee by
their attorneys respectively & mutually assign for
error the sustaining of demurrers to Pleas Nos 2, 4,
& 5 severally & respectively & the sustaining of demurrers
to Replikations to 1st 2d 3rd 4th pleas severally & respec-
tively - & the parties mutually say in mutuo uter
ratione.

January 17th

A. D.

1879

Bellinger & Parsons
Atty for plaintiff. -
D. A. Smith atto.
for Appellee

State of Illinois
Jersey County

Pleas before the Honorable Samuel L
Lockwood Judge of the first Judicial
Circuit of the State of Illinois

Be it remembered that on the 27th day of May 1842
there was filed in the office of the Clerk of the Circuit Court
of Jersey County a precept in the words and figures fol-
lowing viz

United States of America
State of Illinois
Jersey County

Jersey Circuit Court of Term of
September A D 1842

Paris Mason for the use of
Jacob Mason Guardian &c

^{vs}
John R Caldwell

Action Responde on the Case on promises
Damages \$800

The Clerk of the Jersey Circuit Court
will please issue a Summons in this Cause directed to the
Sheriff of the County of Jersey returnable to the next Term
of our said Court

Alton May 26th 1842

Strong Hoace
Attorney for Plaintiff

And afterwards to wit on the day aforesaid there was
issued from the said office a Summons in the words
and figures following viz

State of Illinois
Jersey County

The People of the State of Illinois
to the Sheriff of Jersey County Greeting:
We command you to Summon John R Caldwell if he can

be found in your County to be and appear before the Judge
of our Circuit Court on the first day of the next Term, to
be holden at Leeseville within and for County of Leesey,
on the third Monday of September next to answer unto
Paris Mason for the use of Sarah Mason Guardian &c in
an action of Trespass on the Case on promises Damages
Eight hundred dollars. And of this writ, make legal
Service and due return at the time and place aforesaid.

Witness Robert L. Hoise Clerk of our
said Court at Leeseville this 27th day
of May 1842 the seal of said Court being
hereby affixed

R. L. Hoise Clerk

And afterwards to wit on the 5th day of September 1842
there was filed in the said office a declaration in the
words and figures following viz

State of Illinois
Leesey County

In the Circuit Court of said County of
the September Term A.D. 1842

Paris Mason for the use of Sarah Mason Guardian
&c the Plaintiff in this suit by Strong Hoise his Attorney
complains of John R. Baldwin the Defendant in a plea
of Trespass on the Case on promises. For that whereas the said
Defendant on the twenty seventh day of May in the year
one thousand eight hundred and thirty six at Grafton
in said County made a certain note in writing com-
monly called a promissory note, bearing date the day and
year last aforesaid and then and there delivered the said
note to the said Plaintiff. By which said note the said
Defendant promised to pay to the said Plaintiff for the
use of Sarah Mason Guardian of Martha Maria Mason

in one year from the date thereof at Grafton one hundred and ninety two $\frac{15}{100}$ dollars with interest at six per cent per annum from date for value received. By reason whereof and by force of the Statute in such Case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant in consideration thereof afterwards, to wit, on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note. And whereas also the said defendant afterwards to wit, on the twenty seventh day of May in the year one thousand eight hundred and thirty six at Grafton in said County made a certain other note in writing, commonly called a promissory note bearing date the day and year last aforesaid and then and there delivered the said last-mentioned note to the said plaintiff, by which said last-mentioned note the said defendant promised to pay to the said plaintiff for the use of Sarah Mason Guardian of Martha Maria Mason in two years from the date thereof at Grafton one hundred and ninety two $\frac{15}{100}$ dollars with six per cent interest per annum from date for value received. By reason whereof and by force of the Statute in such Case made and provided the said defendant became liable to pay to the said plaintiff the said sum of money in the said last mentioned note specified according to the tenor and effect of the said last mentioned note; and being so liable the said defendant in consideration thereof afterwards, to wit, on the same day and year, and at the place last aforesaid, undertook and

then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said last mentioned note specified according to the tenor and effect of the said last mentioned note. And whereas also the said defendant afterwards to wit, on the twenty seventh day of May in the year one thousand eight hundred and thirty six at the place aforesaid was indebted to the said plaintiff in the sum of eight hundred dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant and at the special instance and request of the said defendant. And for other money by the said plaintiff before that time paid laid out and expended for the said defendant and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted the said defendant in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned when the said defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrears and unpaid; and upon such accounting the said defendant then and there was found to be in arrears and indebted to the said plaintiff in the further sum of eight hundred dollars of like lawful money as aforesaid

And being so found in arrears and indebted to the said plaintiff the said defendant in consideration thereof afterwards to wit on the same day and year last aforesaid, and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although often afterwards requested &c) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of Eight hundred dollars, and therefore the said plaintiff brings suit, &c.

Strong & Hall a.p.g.

Copy of Notes declared on.

One year from date for value rec^d I promise to pay to Paris Mason for the use of Sarah Mason Guardian of Martha Maria Mason the sum of One hundred and ninety two $\frac{15}{100}$ dollars at Grafton with interest at six per cent per annum from date

May 27th 1836

John R. Calderell

Two years from date for value received I promise to pay to Paris Mason for the use of Sarah Mason Guardian of Martha Maria Mason the sum of One hundred and ninety two $\frac{15}{100}$ dollars at Grafton with six per cent interest per annum from date

John R. Calderell.

And afterwards the above recited summons was returned to the said office with an endorsement thereon in the words and figures following

Executed this writ by reading to John R. Baldwin
this 6th day of September 1842

P. Silloway Sheriff J. C.

And afterwards at a Term of said Court continued and held for said County on the 20th September 1842 in the cause herein before stated and in several other causes between the same plaintiff and other defendants there was made an order in the words following to wit:

In the above entitled causes it is agreed by Strong and Hall attorneys for the plaintiffs and Hoarden and Smith attorneys for the defendants that these causes stand continued until the next Term, that the defendants attorneys file pleas in some one of the cases and that said pleas be considered as applicable to, and filed in each case. Said pleas to be filed four weeks before the sitting of the next Term of this Court and all pleadings thereafter shall be contained in one case and stand as applicable to all.

And afterwards to wit on the 26th day of April 1843 at a Term of the Court then being held there was entered of Records an order in the causes herein before stated as aforesaid in the words following to wit:

By Consent of the parties It is ordered that the above entitled causes be continued and that pleas be filed previous to the first day of next Term.

7.

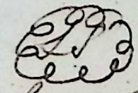
And afterwards to wit on the 19th day of September 1843 at a term of the Court then being held there was filed pleas in the words and figures following to wit

Paris Mason for use of Sarah
Mason Guardian of Martha Maria Mason April Term 1843
vs
John R Baldwin of the Levy Circuit
Court

And the said defendant by Hardin & Smith his Attorneys comes & defends the wrong & injury when &c & for plea says. plff acts now because he says that the only consideration of the note mentioned in plff declaration was the sale of certain lots in the Town of Grafton in the County of Jersey aforesaid specified in a certain pretended title Bond hereinafter set forth, & the delivery of the said bond on the day of its date to the said defendant by the said Paris Mason, which bond is as follows -

Know all men by these presents that I Sarah Mason Guardian of Martha Maria Mason infant heir of James Mason deceased by Paris Mason my Attorney by deed bearing date the 13th day of May 1835 am held and firmly bound unto John R Baldwin of the County of Greene and State of Illinois in the penal sum of Eight hundred and fifty four dollars the payment of which well and truly to be made. I bind myself and my successor as such Guardian firmly by these presents - The condition of the above bond is such, that whereas the said John R Baldwin has this day purchased at public sale Lots No 9 + 11 in Block 37 thirty seven in the Town of Grafton County of Greene and State of Illinois for the sum of Four hundred and twenty seven dollars and the said John R Baldwin having executed his notes for the sum three hundred and eighty four ³⁰/₁₀₀ dollars being

even date herewith and payable to Paris Mason for the
use of Sarah Mason Guardian of said infant heir, one
and 2 years from the date thereof - Now therefore if the
said John R. Baldwells shall pay or cause to be paid
said sum of money specified in said notes according to
the tenor and effect thereof then the said Sarah Mason
Guardian as aforesaid by the said Paris her Attorney as
aforesaid covenants for herself and her successor to make
and execute a good and sufficient deed with war-
rantee of the above described lots of land to said John
R. Baldwells or his assigns in pursuance of and according
to the provisions of an Act passed by the Legislature of
the State of Illinois entitled an Act for the benefit of
the infant heir of James Mason deceased Approved
January 20th 1835 and January 16 1835. but should the
said J. R. Baldwells or his assigns fail to pay said
sum of money specified in said notes with ten days
after the same becomes due he hereby forfeits all
claim to said lots and all money paid thereon and
this bond in such event shall be void both in law and
equity and the title to said lots shall continue in the
original proprietor, as if no sale had been made - In
testimony whereof I have hereunto set my hand and seal
by Paris Mason my Attorney as aforesaid this 27th day
of May 1836 - Signed by

Sarah Mason by Paris Mason Attorney 

Defendant further avers that the said acts of the Legisla-
ture in said bond specified have not been complied
with by said Sarah Mason in this, that she did not as
required by said Act of said Legislature execute bonds
& obtain the sanction or direction of the Judge of Probate
of Madison County in regards to the sale of said real estate
specified in the pretended title bond aforesaid - that

9.

She had no power or authority in law to sell & convey said real estate & that she has no title to the same so that in fact & in truth the consideration of said note has wholly failed, & this deft is ready to verify. Wherefore he prays judgment &c

Hardin & Smith p. d.

2 Plea - And for further plea in this behalf deft says ^{plff} actio now because he says that ^{the} said note in plffs declaration sued on was given for no other or further consideration than that specified in his first plea herein pleaded. That said deft has wholly failed to pay or cause to be paid the said sum of money in said note specified, as also to pay or cause to be paid the interest due thereon annually, when by according to the stipulations of said pretended title bond said defendant forfeited all claims to said lots therein mentioned & the said title bond became & is void, & the title to said lots is in said original proprietor to wit: the said Martha Maria Mason as if no sale or pretended sale had taken place, or been made - that said Sarah Mason or said Paris Mason have no title to the same or authority in law to sell the same, so that the consideration of said note has wholly failed, & this deft is ready to verify wherefore &c

Hardin & Smith p. d.

3 Plea - And for further plea in this behalf deft says ^{plff} actio now because he says that the note mentioned in plffs declaration was given for no other or further consideration than that specified in plffs first plea. That said sale of said lots specified in said pretended title bond was had & made by the said Paris Mason as pretended attorney in fact of the said Sarah Mason guardian of Martha Maria Mason, who was at the time of the execution & delivery of said bond, an

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infant under the age of twenty one years, that said sale was had & made by said Paris Mason without any authority of law & is wholly null & void, not binding upon the rights & responsibilities of the said Martha Maria Mason. That said Paris Mason had not nor has he any right or title of in & to said lots, so that in fact the consideration of said note has wholly failed, and this deft is ready to verify. Wherefore &c

Ward & Smith p d

4th Plea - And the said deft for further plea in this behalf says plff action because he says that the note in plffs declaration mentioned was given for no other or further consideration than that specified in defts first plea. That said Acts of the Legislature in said pretended title bond mentioned have not been complied with by the said Sarah Mason in this. That the Judge of Probate of Madison County has never made any order divesting the said Martha Maria Mason of her title of in & to the said lots of land. That said Sarah Mason & Paris Mason have not, nor has either of them any right or title to said lots of land, so that in fact the consideration of said note has wholly failed & this deft is ready to verify. Wherefore &c

Ward & Smith p a

5th Plea - And the said deft for further plea in this behalf says plff action because he says that the note in plffs declaration mentioned was executed for no other or further consideration than that specified in defts first plea - That said pretended sale of said lots of land in said bond specified was made by Paris Mason as agent of Sarah Mason Guardian &c & that at the time of said pretended sale said Paris then and there represented to and agreed with said defendant that if deft bought said lots & would execute his note for the same & would

pay ten per cent of the purchase money down, that said
deft should have the option of declining to pay for said
lots & the said sale become void by the failure of deft to pay
said note & the interest which might accrue thereon annu-
ally - That said deft relying upon said representations &
agreement of said Paris Mason agent of said Sarah Mason
as aforesaid did then & there agree to purchase said lots
upon those conditions & did then & there pay down to said
Paris Mason one tenth of the purchase money & executed
his note as set forth in plffs declaration, & accept the bond
set forth in plffs first plea - Deft avers that he being desirous
of summing his interest in said lots wholly failed to pay
or cause to be paid any part of said note or interest ac-
cruing on said note annually, whereby according to the rep-
resentations & agreement of the said Paris Mason agent of
said Sarah Mason as aforesaid - said deft forfeited all
his claims to said lots in said bond specified & the title to the
same is & has continued to be in Martha Maria Mason the
original proprietor thereof as if no such sale or pretended
sale had been made, and deft avers that he has never had
possession of said lots - That said Paris Mason & said Sarah
Mason nor either of them have any title to said lots - or au-
thority to sell the same - so that the consideration of said
note has wholly failed & this deft is ready to verify. Where-
fore &c

6th Plea - And for further plea in this behalf deft says plff
action not, because he says that the note in plffs declaration
mentioned was given for no other or further consideration
than that set forth in defts first plea - That sale of said lots
specified in said pretended title bond was made & said
title bond executed by Paris Mason - he pretending then and
there to have authority as attorney in fact of & from the said
Sarah Mason Guardian &c as aforesaid by deed from her

to make said sale & execute said title bond. That the said sale was had & made & the said title bond executed by the said Paris Mason without any such power of attorney. Wherefore the said title bond is wholly null & void, not binding upon the rights or responsibilities of the said Sarah Mason or of her ward Martha Maria Mason and that said Paris Mason had not any authority to sell said lands, or title thereto, so that in fact the consideration of said note has wholly failed, & this deft is ready to verify. Wherefore &c
Wardlin & Smith p.c.

And afterwards to wit on the day last aforesaid there were filed demurrers and replications in the words and figures following viz

State of Illinois } In the Circuit Court of said County
Sevier County } of Sept 9. A.D. 1843
Paris Mason who sues for the use &c }

vs
John R. Caldwell

Demurrer to 3^d plea -

And the said plaintiff as to the said plea of the said defendant secondly above pleaded says that he ought not to be barred by reason of anything therein contained because he says that the said plea & the matter therein contained are not sufficient in law to bar him the said plaintiff from having & maintaining his said action - all which he is ready to verify. Wherefore &c. he prays judgment &c

Strong a.p.g.

Demurrer to 4th plea -

And as to the said plea by the said defendant fourthly above pleaded. plaintiff says (preclusion)

because he says that the said plea & the matters & things herein contained are not sufficient in law to bar him the said plaintiff from having & maintaining his said action Wherefore &c he prays judgment &c

Strong a. p. q.

And for special cause of demurrer to the said fourth plea the said plff assigns that the said plea is substantially the same with the said first plea above pleaded

Strong a. p. q.

And as to the said plea by the said defend ant fifthly above pleaded. plff says (precludi non) because he says that the said plea & the matters & things therein contained are not sufficient in law to bar him the said plaintiff from having & maintaining his action aforesaid Wherefore &c he prays judgment &c

Strong a p q

And for replication to the said plea of the said defendant by him first above pleaded. plaintiff says (precludi non) Because he says that soon after the making and delivery of the said notes & of the said bonds in the said plea mentioned the said Martha Maria Mason became of full lawful age & intermarried with one William H Allen and that after the maturity of the said notes & after the said marriage of the said Martha Maria to the said William H, but before the commencement of this suit, and also before any demand for a deed such as is stipulated for in said bonds, or any tender of the money expressed in the said notes, or any proposal or offer to pay the same or any part thereof had been made by the said defendants, to wit, on the tenth day of May A D 1842, the said William H Allen & the said Martha Maria his wife & the said Sarah Mason

Guardian &c executed a good & sufficient warranty deed to the said defendant for the lots in the said bond mentioned & caused the same to be duly tendered to the said defendant viz on the said 10th day of May, at the County of Essex aforesaid - that they always were & still are ready & willing to make & deliver such deed upon payment being made of the said notes according to the terms tenor & effects thereof - But the said defendant then and there & at all times since refused to pay the said notes & receive the said deed - whereby would have been conveyed to him an indefeasible estate in the said lots in fee simple absolute, And this the said plaintiff is ready to verify - Wherefore the said plaintiff says that the consideration of said notes has not failed and prays judgment &c

Strong v. p. q.

And for replication to the said plea of the said defendant thirdly above pleaded - plaintiff says (precludes non) because he says that the said sale in said plea mentioned, to wit, at the time when &c was made by the said Paris Mason as agent of the said Sarah Mason under a certain Power of Attorney supposed to be ample, binding, & sufficient between the said Sarah & the said plaintiff - And that afterwards and before the maturity of ^{the} said notes & at divers times since the making of the same and before the commencement of this suit - viz. at the County aforesaid the said Sarah fully adopted & confirmed the said act of her said agent - and has at all times been ready & willing & is still ready & willing & has duly offered to fulfil the stipulations of said bond according to the terms tenor & effects thereof, upon the said debt paying the said sums of money in the said notes mentioned according to their several terms tenor & effect. And thereupon the said plaintiff says that the consideration of

The said notes has not wholly failed in manner of form &c
And this he is ready to verify Wherefore &c he prays judgment &c
Strong a. p. q.

And for replication to the said sixth plea of the
said defendant, plaintiff says (precludi non) because
says that in the matter of the said sale in the said plea
mentioned he acted with the full knowledge & under the
advice & direction of the said Sarah Mason & under a power
of Atty from the said Sarah to him the said plaintiff which
was erroneously supposed to be ample & sufficient to authorize
him the said plaintiff to act in that behalf - & that subsequently
to the said sale & before the maturity of the said notes, the
said Sarah fully adopted & confirmed all the acts of her
said agent in that behalf & that she has been at all times
ready & is still ready & willing to fulfil all the stipulations
of the said bond so far as the same depend upon her upon
the said defendant paying the said notes in the said plea
mentioned according to the terms tenor & effect thereof
And therefore he says that the consideration of the said
notes has not wholly failed in manner of form &c - All which
he is ready to verify Wherefore &c he prays judgment &c
Strong a. p. q.

And afterwards to wit on the day last aforesaid
there was filed the following -

State of Illinois } In the Circuit Court of said County
Jersey County } of Sept 23 1843
Paris Mason who lives for the use &c }
vs } An Assumpsit
John R Caldwell }

And as to the said demurrers of the said

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plaintiff to the said 2^d, 4th & 5th pleas of the said deft above
pleaded, deft says that the said pleas & the matters & things
therein contained are sufficient in law to bar him the said
plaintiff &c Wherefore &c *Wardin p d*

And as to the said replications of the said plff
to the said first three & sixth pleas of said deft above
pleaded comes and says that the said replications & the
matters & things therein contained are not sufficient in law
to preclude him the said deft of his defence as aforesaid,
as he is ready to verify Wherefore &c he prays judgment &c
Wardin p d

Verdict in Demurrer
Strong p. 9.

And afterwards to wit on the day last aforesaid
there was filed an agreement in the words and figures
following viz

State of Illinois }
Lecny County } of In the Circuit Court of said County
of Sept^r 19. 1843 -

Paris Mason who sues for the use &c

vs
John B. Caldwell

It is agreed that the Court pass upon the demurrer
in this case at any time previous to the next term of the
Supreme Court - & that such judgment as the Court may
direct shall be entered as of the present term of this Court
- that either party may appeal from said judgment of
this Court to the said Supreme Court without security
filed as in ordinary cases of appeal, but upon filing
the record herein in said Supreme Court at any time
in the term of said Supreme Court succeeding said

judgment below & giving ten days notice thereof to the opposite party said appeal shall be perfect. It is further agreed that upon the decision of the said Supreme Court it shall be competent for either party to have the said cause remanded with leave to plead anew.

Sept 18 1844

Wardin p. w.
Strong p. g.

And afterwards to wit on the day last aforesaid there was entered of record an order in the words following viz

Paris Mason for the use of
Sarah Mason Guardian &c
against $\frac{3}{4}$ Allumport
John R. Caldwell

Plaintiff

Defendant

This day came the parties by their attorneys who agree that the cause be submitted to the Court and may be decided in vacation

And afterwards to wit on the 23^d day of April 1844 at a Term of the Court then being held, in the case herein before stated and in several other cases as aforesaid, there was entered of record an order in the words following viz

By consent of the parties It is ordered that the above entitled causes be continued

And afterwards to wit on the 18th day of September 1844 at a Term of the Court then being held there was filed by leave of the Court the following plea

Paris Mason &c

vs
J R Baldwin

And the said deft comes & defends &c. & for plea to all the counts in plff declaration mentioned (except the counts on the notes) say that he did not promise & undertake in manner & form as the plff hath above thereof complained against him, & of this he puts himself upon the Country

And deft likewise
Strong a. p. 90

And afterwards to wit on the day last aforesaid there was entered of record an order in the words following viz

Paris Mason for the use of
Sarah Mason Guardian &c

Plaintiff

vs
John R Baldwin

Defendant

This day came the parties by their attorneys and the defendant having filed six pleas and the plaintiff having filed his replications to the first third and sixth pleas and his demurrers to the second fourth and fifth pleas and the matters of law arising thereon being heard by the Court the same is taken under advisement and by agreement the Court may decide in vacation

and afterwards to wit on the day last aforesaid there was entered of record an order in the words following viz

Paris Mason for the use of

Sarah Mason Guardian &c
against $\frac{2}{3}$ Assumpsit
John B. Caldwell

Plaintiff.

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Defendant

This day came again the parties by their attorneys and defendant having filed six pleas and the plaintiff having replied to the first third and sixth pleas and demurred to the second fourth and fifth, and defendant demurred to plaintiff replications and thereupon by agreement the Court pro forma overruled the demurrers to the pleas and replications and said plaintiff not further answering or replying to the pleas herein.

It is considered and adjudged by the Court that he be banded of his action and that the defendant go thereof and recover his costs. It is agreed that appeal to the Supreme Court may be taken without filing bond and that each party may assign errors in the Supreme Court.

State of Illinois
Jersey County

I Robert L. Hill Clerk of the Circuit Court of said County certify that the foregoing nineteen pages contain a full complete and true transcript of the record in the case therein, ^{as stated} as the same is of record and on file in my office.

In Testimony whereof I hereto set my hand and the seal of said Court at Jerseyville this 23rd day of November
A. D. 1844

R. L. Hill clk

Paris Mason for the
use of Sarah Mason
Guardian &c

No 3 Transcript
John R. Caldwell

14184

Recd \$5.00
W