

14248

No. _____

Supreme Court of Illinois

Sears

vs.

Trustees of Illinois

Wesleyan

124 217

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 217

14248

Sears
vs
Trustee

1862

Prepared

State of Illinois

Supreme Court 3d Grand division

Attorn April term 1862

Clinton W. Sears for use &c

vs

Trustees Illinois Wesleyan University

Warrenville Cook County

I do hereby enter myself & my estate
for costs in this cause and
acknowledge myself bound to pay
or cause to be paid all costs that
may accrue in this cause either to the
opposite party or to any of the officers
of this Court in pursuance of the Laws
of this State, dated this 16th day
of April 1862

R. E. Williams

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C. H. Sears made

^{as}
J. C. Weylagon University

Bond for costs

Filed April 22, 1862
L. Leland
Clerk

R. S. Williams

State of Illinois

Supreme Court - 3rd Grand division

Ottawa April Term 1862

Clinton W. Sears for use &c

vs

Trustees Illinois Wesleyan University

Sherr Co, McLean county

Assignment - ~~of~~ Errors.

1st

The Court Erred to the prejudice of plfs in Error by admitting the evidence for Defendants below.

2nd

The Court Erred to the prejudice of plfs in error in giving judgment for Deft below.

3rd

The Court Erred to the prejudice of plfs in Error in not giving judgment for plfs below.

4th

The Court Erred in not granting a new trial.

For all of the above, and for other errors that will be apparent upon inspection of the record. The judgment is reversed and the cause remanded.

R. E. Williams for

Plfs in Error

In Nulla est erratum

Bruin & Birch & Rees

for Appt in error -

1. *Sears continued and held at the Court house in Bloomington, in and for the County of McLean in the State of Illinois before the Hon. David Davis, Judge of the Circuit Court of the Eighth Judicial Circuit of said State in a certain cause wherein Clinton W. Sears, who sues for the use of John K. Goodloe & others as, assigns of James H. Shouse was plaintiff, and the Trustees of the Illinois Wesleyan University were Defendants.*

State of Illinois }
McLean County. } *ss. Be it remembered, that*
heretofore, to wit: on the 10th, day of February A.D. 1858, came Clinton W. Sears who sues for the use of John K. Goodloe & others assigns of James H. Shouse by Kil, Sims & Packard his attorneys & filed in the office of the Clerk of the Circuit Court of said County his Declaration against the Trustees of the Illinois Wesleyan University, a copy of the instrument sued on & Bond for costs, which said Declaration, Copy of Instrument sued on and Bond for costs, were respectively in words and figures as follows, to wit:

State of Illinois }
McLean County. } *ss. In the Circuit Court of said County. March Term A.D. 1858.*

Clinton W. Sears plaintiff in this suit, who sues for the use of John K. Goodler, Joel W. Tugman and Jesse E. Haskins, assignees of James H. Shouse. Complains of the "Trustees of the Illinois Wesleyan University", a regularly incorporated institution, defendants herein, of a plea of assumpsit.

For that whereas the said defendants heretofore, to wit: on the 4th day of September 1857, at the County aforesaid, accounted with the said plaintiff of and concerning divers sums of money, from the said defendants to the said plaintiff before that time due owing, and then in arrear and unpaid, and upon such accounting the said defendants were then and there found to be in arrear and indebted to the said plaintiff in the sum of Nine Hundred and Ninety nine $\frac{46}{100}$ Dollars of lawful money of the United States and being so found in arrear and indebted they the said defendants afterwards, to wit: on the day and year and at the place aforesaid, undertook and promised in consideration thereof to pay to the plaintiff the said sum of money so found to be due and owing to him

on said accounting, on request. And whereas also the said defendants afterwards, to wit: on the day and year and at the place aforesaid, were indebted to the plaintiff in Fifteen Hundred dollars for labor done & services rendered as a teacher by the plaintiff for the defendants at their request. And in Fifteen Hundred Dollars for Goods, wares & merchandize, sold and delivered by the plaintiff to the defendants at their request; and in Fifteen Hundred Dollars for money lent by the plaintiff to the defendants at their request. And in Fifteen Hundred Dollars, for money paid, laid out and expended by the plaintiff for the defendants at their request, and in fifteen Hundred Dollars for money had & received by the defendants, for the use of the plaintiff. And in Fifteen Hundred Dollars for interest, for the forbearance of the plaintiff at the defendants request of money due and owing from the defendants to the plaintiff.

And being so indebted the defendants afterwards, to wit: on the day and year and at the place aforesaid, promised the plaintiff to pay him the last mentioned several sums of money respectively, in consideration thereof, on request.

Yet the defendants have wholly disregarded their several promises and undertakings herein made, and have not paid the said sum of money so found due and owing to plaintiff in said accounting, nor either of the last mentioned several sums of money, or any part thereof, to the plaintiff but have hitherto, and still do wholly neglect and refuse to pay the same, although often requested so to do; wherefore the plaintiff saith that he hath sustained damage in the sum of Fifteen Hundred Dollars and therefore he brings his suit &c.

Williams & Packard
Pltff Attys.

Copy of instrument sued on:

This certifies that there is due from the Board of Trustees of the Illinois Wesleyan University to Rev. C. W. Sears the sum of Nine Hundred and ninety nine $\frac{46}{100}$ Dollars, as appears by the Records of said Board to this date.

Sep. 4th 1857. C. T. Reeves Jr.

Secy. of the Board of Trustees.

On which are the following endorsements:

This certifies that I have transferred the within

5

amount & do guarantee the same to A.B. Shaffer, being \$999.46
Bloomington, Sept. 5th, 1857. } Clinton W. Sears.

Jay Goodloe, Tugman & Hastings assignees of
James H. Shouse. A.B. Shaffer.

We do hereby enter ourselves security for Costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all costs that may accrue in this suit either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State, dated this 6th day of February A.D. 1858.

Williams & Packard

And thereupon on said 10th day of February A.D. 1858, there issued out of said Clerk's office a writ of Summons in words and figures as follows, to wit:

State of Illinois } ss. The People of the State of
McLean County. } Illinois.

To the Sheriff of said County, Greeting:

We command you to summon The Trustees

6 of the Illinois Wesleyan University, - If
found in your County, personally to appear be-
fore the Circuit Court of said County of Mc-
Lean, on the first day of the next term thereof,
to be holden at the Court House in Bloom-
ington, on the Fifth Monday in the month of
March next, to answer unto Clinton W. Sears,
who sues for the use of John K. Goodloe, Joel
W. Troyman & Jesse E. Hoskins, assignees of
James H. Shouse, in a plea of assumpsit to
his damage Fifteen Hundred Dollars, as he says,
and have you then and there this writ, and
make return thereon in what manner you exe-
cute the same.

{ L. S. }

Witness, W^m McCullough, Clerk
of the said Circuit Court, and the
Seal thereof hereto affixed, at Bloom-
ington, this 10th day of February
A.D. 1858.

W^m McCullough, Clerk
Jr. H. Burr, Deputy.

Which summons was by the Sheriff of
said County returned into said Clerk's office,
endorsed as follows, to wit:

7 Executed by Copy delivered to H. W. Holder
President of the Illinois Wesleyan University
March 10th, 1858.

Fee per. return 60, mif. 5. copy 50[¢] - \$ 1.15.

J. H. Moore, Shff.

And thereupon, afterwards, at the March
term of said Court, to wit: on the 30th day
of March A. D. 1858, the following order was
made in this cause, to wit:

Clinton W. Sears, use of
Goodloe, Tugman & Hoskins.

vs

Trustees of the Ill^o Wesleyan
University.

In Assumpsit.

This day, it appearing
that said Defendants have not been served
with process herein Ten days prior to the first
day of the present term of this Court. There,
fore it is ordered that this cause be continued.

And afterwards, at the regular September Term
of said Court, to wit: on the 11th day of Sep-
tember A. D. 1858, further order was made by
said Court in this cause, to wit:

8 Clinton W. Sears use of
Goodloe, Tugman & Hoskins

vs
Trustees of All. Wesleyan University.

} In Assumpsit.

This day come
said plaintiffs by their attorney, and said De-
fendants by their Attorney move the Court to
quash the Sheriff's return upon the writ of sum-
mons issued herein, which motion is by the Court
sustained, and now comes Jesse Birch Esq. an
attorney of this Court, and enters the appearance
of said defendants in this cause, and this cause
is continued.

And afterwards, at the December term of said
Court, to wit: on the 17th day of December
A. D. 1858, the following order was made in
this cause, as appears of Record, to wit:

C. W. Sears, use of Goodloe,
Tugman & Hoskins

vs
Trustees of All. Wesleyan University.

} In Assumpsit.

This day, on motion
of said plaintiffs by their Attorney, said Defendants

3.

Trustees of All Wesleyan University
at
C. H. Sears use of Goodhue,
Trimann & others.

And the said
defendants by Brier & Birch his Attorneys comes
& defendants &c and for plea say that they did
not undertake or promise in manner & form as
the said plaintiff hath above thereof in his
declaration complained against him & of this
they put themselves upon the Country &c.
And plffs doth the like } Brier & Birch
Williams for plffs } Atty: for defts.

and p^lffs doth the like (Spier & Birch
Williams for p^lff } Attys for def^s.

And afterwards, on the 19th day of Nov: 1859
came said plaintiffs and filed herein an account,
in words & figures as follows, to wit:

State of Illinois }
McLean Circuit Court. } December Term
A. D. 1859.

Clinton W. Sears
vs
use of Goodloe, Twyman
& Hoskins,

Trustees of the Illinois
Wesleyan University.

Account of Plaintiff
Trustees of the Illinois Wesleyan University,
To C. W. Sears Dr.

For work and Labor as Teacher in College	\$1510.00
for goods, wares & merchandize	1500.00
On an account stated	1500.00

Williams for Plff

10 And thereupon proceedings having been stayed
in this cause by Disjunction) this cause was con-
tinued by said Court from term to term until
the September Term 1861, and at said September
term to wit: on the 9th day of September A. D.
1861.

Present Hon. David Davis, Presiding Judge

W^m McCallough, Clerk

Geo. L. Rutt, Sheriff,

The following proceedings were had in this cause
as appears of Record, to wit:

Clinton W. Sears, who sues for the use of
John K. Goodloe, Esq. W. Fryman &
Jesse E. Hoskins

vs
The Trustees of the Illinois Wesleyan
University.

In
Assumpsit.

And now at this day came the
parties hereto by their attorneys, and by consent,
the issue joined in this cause is submitted to the
Court for trial without the intervention of a Jury,
and the Court having heard the evidence pro-
duced and the arguments of Counsel, and
being fully advised in the premises, doth find
the issue for the Defendants. It is therefore con-

11 sidered by the Court that said Defendants be
hereof discharged and go hence without day,
and that they recover of and from the said
plaintiffs their costs by them in this behalf
expended, and that they have execution there,
for.

And afterwards on the 3^d day of
October A. D. 1861, further order was made in
this cause by said Court, to wit:

Clinton W. Sears, for the use of
John K. Goodloe et al.

} In Accomplish,

^{vs}
Trustees of Ill^o Wesleyan University.

} This day came

the parties hereto by their attorneys, and upon
their agreement, leave is granted the said Plain-
tiffs to file a Bill of Exceptions in this cause
by the first day of the next Term of this Court.

And thereupon, afterwards to wit: on the 18
day of October A. D. 1861, came the said
plaintiff by his attorneys, and filed herein his
Bill of Exceptions, signed & sealed by the Court,
which Bill of Exceptions was in words & figures
as follows:

State of Illinois }
 McLean County. } J. Circuit Court of said County
 September Term 1861.

Goodloe Teyman & Hoskins

vs

Trustees Illinois Wesleyan University.

} In assumpsit.

Be it remembered

that now at this term of the Court, to wit: on
 the 9th day of September 1861 this Cause came
 on to be tried and both parties announced them-
 selves ready for trial and by agreement of parties
 a jury is waived and the Cause submitted to the
 Court for trial and thereupon the plaintiffs -
 proved that C. T. Reens Dr. was on the 4th
 day of September 1857 and for a long time pre-
 vious thereto had been and ever since has been
 and still is the Secretary of said Board of
 Trustees - plaintiffs further proved the signature
 to the following instrument, and also proved that
 the Guaranty and the signature thereto on the
 back of said instrument whereby the same was
 assigned to A. B. Shaffer, was all in the
 handwriting of Clinton H. Sears plaintiff for use &c.
 and also proved the signature of A. B. Shaffer
 to the assignment of said instrument from said

13. Shaffer to Goodloe, Tugman & Hoskins the beneficial plaintiffs to be genuine and their plaintiffs gave in evidence, said instrument with its endorsements as follows:

This certifies that there is due from the Board of Trustees of the Illinois Wesleyan University to Rev. C. W. Sears, the sum of Nine Hundred and Ninety nine ⁴⁶/₁₀₀ Dollars, as appears by the Records of said Board to this date.

Sept. 14th 1857.

C. T. Reeves Jr.
Secy. of the Board of Trustees.

This certifies that I have transferred the within amount & do guarantee the same to A. B. Shaffer being \$ 999.46. Clinton W. Sears

Bloomington, Sept. 5. 1857.

Pay Goodloe, Tugman & Hoskins assignees of James H. Shouse.
A. B. Shaffer.

To the introduction of which instrument as evidence the defendants objected, for the reason that the same was in no way binding on the Trustees. The plaintiffs then introduced the Book containing the Record of the proceedings of said

Board of Trustees and proved that said book was the Record Book of said Trustees by the Secretary and proved from the said Record Book the following entries. At a meeting of said Board of Trustees held on the 3. day of September 1856 on motion there was allowed C. W. Sears the sum of Seven Hundred & forty two ⁵⁰/₁₀₀ Dollars.

At a Meeting held on the 21. day of July 1857 of said Board of Trustees, on motion there was allowed C. W. Sears the sum of Five Hundred & four Dollars & fifty Cents.

Plaintiffs further proved that the said instrument in writing was received from Shaffer as collateral security on a bona fide indebtedness due from Shaffer to said Goodloe, Toyman & Hoskins, some time in November 1857, & that Shaffer soon after became insolvent and has continued so. On consideration of receiving this and other collateral, did not sue Shaffer at the December Term 1857, & upon cross examination it was shown that nothing had ever been made on judgments rendered against Shaffer at said December Term 1857 in favor of other parties.

And that the debt of Shaffer to Goodloe, Toyman & Hoskins is still unpaid and that all

15 the collateral recd. by Goodloe, Tugman & Hoskins from Shaffer, did not amount sufficient to pay said Shaffer debt to Goodloe, Tugman & Hoskins & that the said Goodloe, Tugman & Hoskins, when they took said claim, took it in good faith, believing Shaffer to be the owner.

The defendant in support of the issues on their part proved by C. T. Rares, that there had been paid to the said C. W. Sears on said account the sum of \$375.46. That by the Charter and By Laws of the Illinois Wesleyan University the Secretary had no authority to give any written instrument, binding the Trustees for the payment of money other than to draw an order on the Treasurer of the University for the amounts allowed by the Board of Trustees - that witness told Sears when he gave him the statement of the amount due him, that he could not give him anything stating the amount of his indebtedness, that would bind the Board and that the certificate could be of no use to him. That on the 27th day of November 1857 the said C. W. Sears made an assignment of all his property both real and personal, including specially his

16 ap. against the debts to Owen T. Rares Jr. for the benefit of his creditors, which said Deed of assignment was recorded in the McLean County Records on the 28th day of November 1857.

That the said Board of Trustees of the Illinois Wesleyan University, at a meeting held on the 9th day of December 1857, having been notified of the assignment of Sears to Owen T. Rares Jr. did settle the indebtedness of the said Board to said Sears and executed a note to the said Owen T. Rares Jr. as assignee of Sears for the sum of \$871.53, being the amount then due Sears on his account, and also execute a mortgage, to secure said Note. That said Note is past due not paid & not assigned. that the said Board of Trustees never had any notice of the claim set up by plaintiffs Goodloe, Tugman & Perkins to amount due from defendant to Sears until the commencement of this suit in February 1858, & that the alleged transfer of the account from Sears to Shaffer was made without consideration to the said Sears and that said instrument of writing produced in this case was assigned to Shaffer by Sears for collection only, to the admission of all of which the plaintiffs objected

17 for the reason that the same was not ad-
missible under the pleadings, - which objection was
overruled & plaintiff then & there accepted. The above is all
the evidence in the case and thereupon the Court
found for the Defendant, to which finding of
the Court plaintiff then & there accepted and
thereupon the plaintiffs moved the Court for a
new trial on the ground that the Court ad-
mitted improper evidence under the State of the
pleadings, and that the finding of the Court
is against the law and evidence, which mo-
tion was overruled by the Court and judgment
was entered for the Defendant, to which ruling
of the Court plaintiff then and there accepted
and render this their Bill of exceptions and
pray that the same be signed and made
part of the Record in this cause, which is
done by Court.

D. Davis (Seal)

State of Illinois } p.
McLean County.

I, Wm M. Cullough, Clerk
of the Circuit Court in and for said County
do hereby certify that the foregoing is a true
and complete transcript of the Records & files of

18 my office pertaining to a certain cause where,
in Clinton W. Sears, who sues for the use of
John K. Goodlor & others were Plaintiffs and
the Trustees of the Illinois Wesleyan University
were Defendants.



Given under my hand and seal
of office at Bloomington this 9th
day of April A.D. 1862
W^m M^cCallough. Clerk

By L. Burr. Deputy.

134 217

~~Clinton A. Sears.~~ for use of
Goodloe. Tugman & Hawkins

13

Trustees of Illinois Wesleyan University

Transcript of Record.

Filed April 22 1862
J. S. Law
clerk

Costs of Transcript. \$3.75. paid by
Pltffs - Attorney -