Williams, Charles E vs. The Christian Female College; 1859 Boone Co. #2 C.C. 243/6

85/13

Affirmed - instructions properly refused

Debt, $1437

Charles E. Williams, Plaintiff,
Against } Civil action.
Christian Female College, Defendant.

Pleas had before Hon. William A. Hall, Judge of the Circuit Court within and for the County of Boone, in the Second Judicial Circuit, in the State of Missouri, at a Term of said Court continued and held at the Court House, in the Town of Columbia, on the 28th day of October, A.D. 1859.

Be it remembered that on the 30th day of July, A.D. 1858, said Plaintiff, Charles E. Williams, filed in the office of the Clerk of our said Circuit Court his Petition against the Defendant, Christian Female College, and also a bond for costs; which Petition is as follows, To wit:

Petition

"In the Circuit Court
of Boone County.
August Term 1858.

Charles E. Williams, Plaintiff,
against
Christian Female College, Defendant,

Plaintiff charges & alleges, that by

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an act of the General Assembly of this State approved January the 18th 1851, defendant was created a body politic or corporation for the purpose of endowing & establishing a Female College & invested with power to sue & be sued, defend & be defended in all Courts of Law & equity in this State, & also with power to purchase real estate & to improve the same as said defendant might think most conducive to the interest of said College.

Plaintiff further charges that defendant, on the — day of July 1856 was indebted to plaintiff in the sum of Fourteen hundred & thirty seven dollars & 13 cents, upon the virtue of an award, herewith filed, made by James B. Ruckle, John Lackland & John Berkebile, on a submission before that time made by the Plaintiff & Trustees of Defendant to the award & determination of the said James B. Ruckle, John Lackland & John Berkebile, concerning certain matters in difference then depending between the Plaintiff and the said defendant, & upon which said reference the said James B. Ruckle, John Lackland & John Berkebile award that the Trustees of Defendant should

3 pay to the Plaintiff the sum of money aforesaid. Whereby, and by reason of the non-payment whereof, an action has accrued to the plaintiff & against defendant, to demand & have of & from the said defendant the sum aforesaid.

Yet the said defendant has not paid the same, & still refuses to pay the same or any part thereof. Plaintiff asks judgment for the sum of Fourteen hundred & thirty seven dollars & 13 cents with the interest thereon from the date of said award. Guitar & Gordon

attys for Plft.

John H. Field, agent for plaintiff makes oath & says he believes the above petition & the matters therein as stated are true.

John H. Field.

Sworn to before me, Clerk of the Boone Circuit Court. Witness my hand and the seal of said Court hereto affixed, at office in Columbia, July 30. 1858. R.L. Todd.

Clerk "

The award filed with said Petition is as follows, To wit:

Award. "We the undersigned (Arbitrators) between the Trustees of Christian College & Dr Williams, after

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taking an estimate of the work done by said Dr Williams consider him entitled to the sum of Fourteen hundred and thirty seven dollars and thirteen cents

$1.437.$\frac{13}{100}$

Jas B. Ruckel
John Lackland
John Berkebile. "

The Bond for costs filed with said Petition is as follows, Towit:

Bond for Costs

"Charles E. Williams, Plaintiff, } In the Circuit Court
Against } of Boone County,
Christian Female College defendant } August Term 1858.

John H. Field, a resident of Boone County, binds himself to pay all cost that may be adjudged against the Plaintiff in the above entitled cause. This the 30th July 1858 - John H. Field (Seal)

Approved.

R. L. Todd. clk. "

And afterwards, Towit, on said 30th day of July, A.D. 1858, the Clerk of our said Circuit Court issued a writ of summons, annexed to a copy of said Petition - which writ is as follows, Towit:

Writ of Summons.

"State of Missouri } The State of Missouri,
County of Boone } To the Sheriff of Boone

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County, Greeting: We hereby command you to summon Christian Female College to appear before the Judge of our Boone Circuit Court, on the first day of the next Term thereof, to be held at the Court House in the Town of Columbia, within and for the County of Boone, on the Third Monday in August next, 1858, to answer the Petition of Charles E. Williams; a copy whereof is hereto annexed; and have you then and there this writ. Witness Robert L. Todd, Clerk of said Court, at office in Columbia, July 30. A.D. 1858. Geo R.L. Todd. Clerk. "

And afterwards, to wit, on the return day of said writ the Sheriff of Boone County made return thereof, as follows, To wit:

Sheriff's Return

"Executed the within Petition and Summons by delivering a true copy of the Petition and Summons to David Gordon on the 31th day of July 1858 in Boone County, Missouri. J. Orear, Sheriff."

Aug. Term 1858.

And afterwards, to wit, on the Sixth day of the Term of our said Circuit Court, begun and held on the Third Monday in August, A.D. 1858, the following proceedings were had,

6.
Deft's Answer.

To wit: "And now on this day came the Defendant, by her attorney, and filed her answer to Plaintiff's Petition."

Which said answer is as follows

To wit:

"Charles E. Williams, Plff, } In the Circuit
Against } Court of Boone
Christian Female College, Deft. } County.

August Term 1858.

Defendant answering says it is denied that in July 1856, or now, Defendant is indebted to Plaintiff in the sum of Fourteen hundred & thirty seven 13/100 dollars, or in any sum. Defendant denies that any such submission to an award, to be made by said Lackland, Burkabile & Ruckle, was made by defendant with Plaintiff, or that defendant submitted any matter in dispute as alleged in the petition to their arbitration & award, or that it was done by the Trustees of Defendant & the Plaintiff. Defendant further denies that any such arbitration was really had by said men named, as Arbitrators, or that there was any award, in accordance to a previous submission made by them as stated by plaintiff. Defendant denies that it was awarded & determined,

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after defendants' submission to said Arbitrators, by them, that this defendant should pay the plaintiff the sum claimed in the petition aforesaid, or that any legal & valid award was by them made, whereby an action has accrued to the plaintiff.

And defendant further answering, says, by way of counter claim or set-off, that plaintiff owes defendant the sum of Four hundred dollars, being for the value & consideration of a large lot of Books or library, which belonged to defendant, & was in defendant's possession in the Christian Female College buildings & were about July or August 1856, wrongfully taken possession of & boxed up and carried off by plaintiff, against defendant's consent, & are still held & kept by plaintiff to the injury of defendant of Four hundred dollars, for which defendant now asks judgment against plaintiff

Rupell & Prewitt
Atty for defts.

Caleb S. Stone, one of the Trustees of Christian Female College, the deft, above, makes oath that he believes the above answer & the matters therein as stated, to be true.

Caleb S. Stone.

Sworn to before me, Clerk of the Boone Circuit Court. Witness my hand and the Seal of said Court hereto affixed, at office in Columbia, Aug. 21. 1858. R. Todd. Clerk."

And afterwards, to wit, on the Seventh day of said August Term of 1858 of our said Court, the following proceedings were had, To wit:

Plts Motion to strike out Answer.

"The Plaintiff filed his motion to strike out the defendant's answer filed herein."

Which said motion is as follows. To wit:

"In the Boone Circuit Court.
August Term 1858.

Charles E. Williams Pltff,
vs
Christian Female College, Deft.

Plaintiff comes by his atty and moves the Court to strike out all that part of defendants answer relating to his counterclaim & offset & is included in brackets thus (—)— for the following reasons.

1st Because the same does not arise out of the contract or transaction set forth in the petition, and is in no way connected with the subject of the action.

2d Because the matter set up by way of offset or counterclaim does not grow out of any contract between the parties.

3d Because the matter set up constitutes a Trespass, & the claim is for unliquidated damages.—

Guitar & Gordon
Attys for Plntffs."

And afterwards, to wit, on the eighth day of said August Term of 1858, of our said Circuit Court, the following proceedings were had, to wit:

ans. stricken out — leave to amend ans. & continued.

"The motion filed by the plaintiff to strike out that part of deft's answer, relative to a counter claim, is sustained — and on motion sixty days after bond are allowed deft to file an amended answer — and this cause is set for trial at the next Term of this Court, until which time it is continued. —"

And afterwards, to wit, on the 28. day of September, A.D. 1858, said defendant filed her amended answer to Plaintiff's Petition: which is as follows, to wit:

Amended Answer.

"Charles E. Williams, Plff, } In the Circuit Court
against } of Boone County, in
Christian Female College, Deft. } Vacation, Septr 1858.—

And defendant for further amended answer, made by leave of Court in vacation, says by way of Counterclaim or set-off, that plaintiff owes defendant the sum of Four hundred dollars, being for

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the value & consideration of a large lot of Books or Library which belonged to defendant & which plaintiff took & detained in July or August 1856, & still detains. Wherefore defendant now asks judgment against plaintiff for four hundred dollars & costs of suit.

Russell & Prewitt -
attys for deft. "

C. S. Stone, one of the Trustees of Christian Female College, the deft above, makes oath that he believes the above answer & the matters therein as stated to be true.

C. S. Stone.

Subscribed and sworn to before me, Clerk of the Boone Circuit Court. Witness my hand and the seal of said Court hereto affixed, at office in Columbia, September 28. 1858 -

R. L. Todd Clerk
By E. V. Ferguson D.C. "

Feby Court 1859.

And afterwards, to wit, on the Third day of the February Term of 1859 of our said Court - begun and held on the Third Monday in February 1859, the following proceedings were had, to wit:

Mo. to strike out answer

"The Plaintiff, by his attorney, came and filed his motion to strike out part of the defendant's answer filed herein. "

11 Which said motion to strike out is as follows, to wit:

"Charles E. Williams, Plff } In the Boone Circuit
vs } Court - July
Christian Female College, Deft } Term 1859.

Plaintiff comes by his atty & moves the Court to strike out all that part of defendant's answer relating to his counter claim or offset & included in brackets thus ( ), for the following reasons.

1st Because the same does not arise out of the contract or transaction set forth in the petition & in no way connected with the subject of the action.

2° Because the matter set up by way of offset or counter claim does not grow out of any contract between the parties.

3° Because the matter set up constitutes a Trespass, and the claim is for unliquidated damages. Guitar & Gordon
atty for Plff."

And afterwards, to wit, on the Sixth day of said February Term of 1859 of our said Court, the following proceedings were had, to wit,

Continuance "This cause is continued until the next Term of this Court, by consent of the parties."

Aug. adj. Jan 1859.

And afterwards, to wit, on the third day of the August adjourned Term of 1859, of our said Circuit Court, begun and held on the Third Monday in October 1859, the following proceedings were had, to wit:

Mo to suppress Pets Depos.

"The defendant, by her attorney, filed her motion to suppress the depositions of plaintiff filed herein."

Which motion is as follows, to wit:

Mo.

"In the Circuit Court Boone County,

Charles E. Williams
vs
Christian Female College } Defendant moves the Court to suppress all and every part of each of the depositions of Betty Jennison, J.T. Williams, S.B. Neville, E.G. Webster, & W.A. Buckner filed in this cause because the same and every part thereof are irrelevant and improper.

Rupell & Overall
for Defendant."

And afterwards, to wit, on the fifth day of said August adjourned Term of 1859 of our said Court, the following proceedings were had, to wit:

Submission

"The parties came by their attorneys, and neither party requi-

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ring a jury, the issue joined herein is submitted to the court, by oral consent in court, entered on the minutes. and the court not being fully advised of and concerning the premises, took time to consider."

And afterwards, to wit, on the eleventh day of said August adjourned Term of our said court, being the 28th day of October, A.D. 1859, the following proceedings were had, to wit:

"And now on this day came the parties aforesaid, by their attorneys, and the court now being sufficiently advised of and concerning the premises, on motion of plaintiff leave is given him to take a voluntary non-suit, with leave to move to set the same aside, And the court doth order and adjudge that said defendant go hence without day and recover against said Plaintiff and John H. Field, his security for costs of this cause, her costs by her about her defence herein laid out and expended, and that said plaintiff be in mercy &c. And said plaintiff, by his attorney, filed his motion to set aside the judgment of non-suit

non-suit.

Judg.t

Mo. for new trial.

entered herein and grant him a new trial; and such motion is now here overruled. And said Plaintiff tendered here his Bill of Exceptions to the opinion of the Court, which he prayed might be signed, sealed and made part of the Record, and which is now done accordingly. "

Bill of Exceptions filed.

Said Motion for a new trial is as follows.

Mo: for new Trial

"In the Boone Circuit Court.
August adjourned Term 1859.

Charles C. Williams, Plaintiff,
against
Christian Female College defendant.

Plaintiff comes by his attys and moves the Court to set aside the judgment of non-suit rendered herein, and for a new trial, for the following reasons.

1st Because the Court refused to give the instructions asked by the Plaintiff.

2d Because the Court gave the instructions asked by the defendant.

3d Because the instructions asked by the plaintiff and refused by the Court, were legal and proper and warranted by the evidence.

4th Because the instructions asked by defendant and given by the Court were illegal and improper and not warranted by the Evidence.

Switzler & Gordon
attys for Pltff. "

15. Which said Bill of Exceptions is as follows, To wit:

"In the Boone Circuit Court.
August Adjourned Term 1859.

Charles E. Williams, Plff
Against
Christian Female College, Deft.

Be it remembered that upon the trial of this cause which was tried by the Court sitting as a jury, neither party requiring a jury, the plaintiff produced as a witness,

Jno. Berkebile

John Berkebile, who testified that he was working at Christian Female College in July 1856, and had been for some time previous thereto, that sometime in the early part of the month aforesaid and when he was at the College, the plaintiff Williams and one Alexander Douglas came to him, and told him that he had been selected by the Trustees of defendant and the plaintiff as an Arbitrator, to assess the value of the improvements made by the plaintiff Williams upon the grounds of the defendant, and that witness was to act in conjunction with John Lackland and James Ruckle, who

had been chosen by the parties for the same purpose. Plaintiff and Douglas brought with them pen, ink and paper, and the other referees being present directed witness and the said Lackland & Ruckel to go on and make the appraisement, which they did on the same day.

At the time plaintiff and Douglas came to witness it was stated by Douglas in the presence of plaintiff that it was the agreement that the defendant should pay to the plaintiff the amount which should be appraised by the referees, after deducting 10 per cent therefrom. Whereupon the plaintiff

award offered. produced to the witness the award sued on, which is in the words and figures following:

"We the undersigned (Arbitrators) between the Trustees of Christian College & Dr Williams, after taking an estimate of the work done by said Dr Williams consider him entitled to the sum of Fourteen hundred and thirty seven dollars and thirteen cents.

$1437.$\frac{13}{100}$

Jas B Ruckel
John Lackland
John Berkebile. "

Witness stated that he signed his name to said award, and that the other referees

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did likewise, and that the same was made under the directions of plaintiff and Douglas as before stated, that when said award was made and signed witness thinks it was taken by one of the referees (Ruckle).

award read. Thereupon plaintiff produced and read in evidence the award sued on.

To the admission of all of which testimony the defendant objected, but the Court overruled his objections, and allowed the

Deft excepts. same to be given in evidence, to which opinion of the Court defendant excepts.

On cross-examination the witness Berkabile stated further, that he knew what improvements he was called on to value because plaintiff and Douglas told him he was to value those made by the plaintiff, and that witness had worked at the College for several years and knew the buildings and improvements that had been made by the plaintiff, and that no one except plaintiff and Douglas called upon witness to make the assessment.

Plaintiff then produced as a

Jas Ruckle witness James Ruckle, who stated that some time in July 1856, and on the evening before the award sued on was made, he, witness, was called upon by

Caleb S. Stone, who stated to witness that he, witness, had been chosen to act in conjunction with John Berkabile & John Lackland, in making an estimate of the value of certain improvements made by plaintiff upon the grounds of the defendant - and the said Stone instructed witness to go to the College on the next morning for that purpose, which he accordingly did - and found there, the plaintiff, Alexander Douglas and the said Berkabile & Lackland.

Plaintiff & Douglas instructed the witness & the other referees to go on and make out an estimate of the value of the buildings & improvements made by the plaintiff, on the grounds of the defendant, which they did on the same day. The award sued on was written by witness & signed by himself and the other referees on the same day it was made, and was made in pursuance of instructions received from Stone, Douglas and the plaintiff, and was by the witness delivered to the Plaintiff -

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D. Gordon

Plaintiff then called as a witness David Gordon, who stated that in January 1858, and prior and subsequent to that time he was President of the Board of Trustees of defendant, that in February 1858, witness was present and presided as chairman aforesaid, at a meeting of said Board, when John H. Field was present, that it was the only meeting of said Board at which the said Field was present when witness was presiding as chairman aforesaid, - that at the time aforesaid and when said Field was present said Board was duly organized (a quorum being present,) and acting in its official capacity, that said Board had and still has the management of the property and business of the defendant under her charter, that at the meeting aforesaid and whilst said Board was organized and acting in their official capacity the said Field presented to said Board for settlement, a claim which Field stated he had against defendant and in favor of the plaintiff, for improvements made by plaintiff upon the grounds of defendant.

Plaintiff then produced as a witness John H. Field who

Jn. H. Field

stated that some time in 1858 he was authorized by plaintiff to present for payment to the Board of Trustees of the defendant the award sued on, that in pursuance of such authority he was present at a meeting of said Board in the month of February 1858, and when the witness David Gordon was presiding as chairman, that at said meeting and whilst said Board was organized and acting officially, he presented said award for payment, that thereupon C. S. Stone, a member of said Board stated to and in the presence & hearing of said Board and whilst officially organized as aforesaid, that he, Stone, Douglas et al had been appointed a Committee by the Board of Trustees of the defendant, for the purpose of settling the claim of plaintiff, that the award had been made under the directions of said Committee, that said award was not unsatisfactory to said Committee and would have been reported on by the Committee to the Board, but that certain books had been removed from the college. He desired to be discharged from said Committee, and that some other member be appointed in his place, and thereupon several

21. other persons were added to the committee,
Nothing was said about carrying out the award or approving the same by the Board: Nothing was said about obtaining means to pay the same. I understood these additional members were added for the purpose of adjusting Mr Williams' the pl'ff's claims.

To the admission of all the evidence offered by plaintiff defendant objected, and his objections being overruled and the evidence admitted, defendant excepts.

And this was all the evidence in the cause.

Thereupon the plaintiff moved the Court to instruct the jury as follows - To wit:

No 1 Pl'ts Instructions "That if the award sued on was made under a submission by Stone and Douglass, and if after the making thereof, the Trustees of defendant whilst assembled and acting in their official capacity, either tacitly or expressly assented to, or ratified said award, the Court will find for plaintiff the amount of said award with six per cent interest from its date.

Given.

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Refused

N°2. The fact that the award sued on was submitted to defendant's Board of Trustees whilst assembled and acting in their official capacity and the declaration of a member of said Board then and there made, and not controverted or denied, that the same had been made under a submission by a committee appointed by said Board, of which Committee Stone and Douglass were members, is evidence that the submission by Stone and Douglass, was under the authority of said Board."

To the giving of all of which the defendant objected, and the Court sustained his objections as to the 2d instruction asked by plaintiff, and refused to permit the same to be read to the Jury, to which opinion of the Court plaintiff excepts.

Defendant then moved

Dfts Instruction

the Court to instruct the Jury as follows, (Towit.)

Given

"That before the Court can find for the plaintiff, it must be found that there was a submission to arbitration made by plff & Defendants, & an award made in pursuance thereof."

23. To the giving of which plaintiff objected, but the Court overruled his objections and permitted said instruction to be read to the jury, To which opinion of the Court in permitting said instruction to be read to the jury plaintiff excepts.

And thereupon the plaintiff suffered a Non-suit with leave to move to set the same aside, and on the same day moved the Court to set the nonsuit aside and for a new trial, which motion was filed and is in the words and figures following, to wit:

Motion for new trial.

"In the Boone Circuit Court.
August adjourned Term 1859.

Charles E. Williams, Plaintiff,
against
Christian Female College, defendant.

Plaintiff comes by his attys and moves the Court to set aside the judgment of nonsuit rendered herein, and for a new trial for the following reasons.

1st. Because the Court refused to give the instructions asked by the plaintiff.

2d. Because the Court gave the instructions asked by the defendant.

3d. Because the instructions asked by the plaintiff and refused by the Court

were legal and proper and warranted by the evidence.

4th Because the instructions asked by defendant and given by the Court were illegal and improper and not warranted by the evidence.

Guitar & Gordon
Attys for Pltff. "

But upon hearing said Motion the Court overruled the same, and refused to set aside the nonsuit and to grant a new trial, To which opinion of the Court in refusing a new trial and overruling said motion plaintiff also excepts, and now prays the Court that his Bill of Exceptions may be signed, sealed and made a part of the Record.

Wm A. Hall. (Seal) "

State of Missouri } Ct.
County of Boone } I, Robert L. Todd, Clerk of the Circuit Court within and for Boone County aforesaid, do hereby certify that the foregoing annexed Twenty four pages contain a full, true and complete Copy of the Record and proceedings had in a cause lately pending in our said Court, wherein Charles E. Williams was plaintiff and Christian Female College was defendant, as fully and amply as the same now remain of Record in said Court.

In Testimony Whereof, I hereto set my hand and affix the Seal of said Court, at office in Columbia, November 28. A.D. 1859. R.L. Todd. Clerk.

R.L. Todd fee

Copy of Record	$6.85
certificate & Seal	.50
Copy of Bill Exceptions	1.70
postage	.20
certificate & Seal	.50
	$9.75

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The State of Missouri, ss.

The State of Missouri, To the Judge of the Second Judicial Circuit in said State, Greeting:

Whereas, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Boone County, in the Judicial Circuit aforesaid wherein Charles E Williams was plaintiff and The Christian Female College was defendant

in an action of manifest error hath intervened to the great damage of the said plaintiff as by his complaint, we are informed.

Now, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, **COMMAND YOU,** that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the County of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done, and have then there this writ.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the first day of December in the year of our Lord one thousand eight hundred and fifty nine

SEAL OF THE SUPREME COURT OF MISSOURI

Wm E Dunscomb

State of Missouri } ss.
County of Boone } I, Robert L.
Todd, clerk of the circuit court
for Boone county aforesaid, in obe
dience to the order of the within
writ, do hereby and herewith transmit
to the clerk of the Supreme court
a true, true and complete transcript
of the Record and proceedings had in
the within named cause in our said
circuit court. In Testimony Whereof,
I hereto set my hand and
affix the Seal of said court,
at office in Columbia,
December 3. A.D. 1859.
R L. Todd. clerk.

93 ~~90.~~

Chas. E. Williams pa

vs & Record.

The Christian Female College

Aff. March 17th

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filed December 15th 1859.

(Clerk's fee $10. paid)

Wm E Dunscomb

Clerk

Boone

2nd

Charles E. Williams Plft.
against
Christian Female College Deft.

In the circuit court of Boone county.

To F. T. Russell attorney of Record of Defendant in the above entitled cause. Sir you are hereby given to understand that ~~the~~ plaintiff caused a writ of Error to be sued out of the clerks office of the supreme court at Jefferson city upon the judgment rendered against him in said cause in favor of defendant by the aforesaid circuit court & which writ of Error is returnable to the next term of said supreme court to be begun & held at said Jefferson city on the 2nd monday in January 1860. when & where plaintiff & his attorneys would be happy to see you

Charles E. Williams
By Guitar & Gordon
attys.

This 16th Dec. 1839

I Served the within Notice by delivering a True Copy to F T Russell on the 14th day of December 1859 in Boone County Missouri

Inom Samuel Staff
By Jas C Orr Ss

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Charles E Williams
vs. Notice
C H College

Sheriff will serve this by delivering Copy to Mr Russell

Filed December 30th 1859
Mr E Duncomb
Clerk

Jno M Samuel
Sheriffs
Fee
$.50

Charles R. Williams Plff in Error,
vs.
Christian Female College Deft in Error
In the Supreme Court
January Term 1860,

Plaintiff comes by his atty & insists that there is manifest error in the record proceedings and judgment of the Court below in this,

1st The Court erred in refusing to give the record instructions asked by the plaintiff,

2nd The Court erred in refusing to set aside the nonsuit, and in not giving plaintiff a new trial,

And the said plaintiff in error prays the Court may examine and hold the errors above assigned and others being in the said record and proceedings, and

they may reverse annull and wholly vacate the said Judgment, and restore the said plaintiff in error to all things which he may have lost by reason thereof,

Clinton & Gordon
Pro Pltff in error

And

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Chas E. Williams
Pltfp in error
vs Assignment of
errors
Christian Female
College Dept
in error,

filed Jan. 9th 1860
Wm E Dunscomb

Williams v. Christian Female College

The only question presented by the record is whether under the circumstances the Circuit Court was warranted in refusing to give the second instruction which the plaintiff asked. The case was tried by the Court without a jury. The object of the refused instruction seems to be, to procure from the Court a declaration of law, that ~~the fact~~ is a ~~[illegible]~~ statement by a member of the Board of Trustees, made during the session of the Board, being allowed to pass uncontradicted, is to be considered as binding the Board. This is going further, we think, than the authorities will warrant.

There is no doubt, that in order to establish an agency from a corporation or an authority in a known & recognized agent to do certain acts on behalf of a corporation, it is not indispensable to show a written authority or vote or resolution of the Corporation. In the present case however, there was an attempt to prove an authority on the part of the committee to submit the matter in dispute between the plaintiff & defendant, out to arbitration, by the mere declaration of one of the committee. This is not like the case of recognized & regular officers, such as cashiers of a Bank or secretary of a board - where the corporation has been in the habit of adopting & ratifying every thing

done by them in a certain ~~prescribed course of conduct~~ routine of duties. Here is a temporary committee of the board, submitting a disputed claim to arbitration, which they say the Board referred to them with authority to settle. If the authority to settle implied a power to refer to arbitration, then it would seem that in order to make the award binding on the Board the committee must first approve of it & report it to the Board as their settlement. The declaration of Stone, referred to by them, does not show any final report of the committee — but that the committee failed to take further action by reason of some other difficulty which sprung up.

But it is clear that the declaration of Stone or any other individual corporator made in the presence of the Board, without contradiction, was not of itself conclusive as ~~to the~~ a ratification of the Board. The mere silence or inaction of the Board ~~at that time~~ under such circumstances ought not to be regarded as conclusive. The subsequent-

reference to the same committee, with a change of some of its members, shows that such was not the understanding of the Board.

If then the object of the instruction was to declare that ~~declarations~~ admissions of one or more trustees were ~~not~~ conclusive, ~~then~~ the instruction asked was properly refused. But if the object of the instruction was simply to declare that the facts, enumerated in it were competent evidence, in the case the refusal to give such an instruction could not be error, as the Court by admitting the evidence had already declared it competent. The only reasonable interpretation to be placed ~~upon~~ the refusal ~~such action~~ on the part of the Court when discharging the functions of both Court & jury ~~as well as trust~~ to give such an instruction, would seem to be, that the facts ~~testimony~~ referred to in the instruction, although considered competent ~~undoubtedly~~ evidence, were not regarded by the Court as satisfactory to the Court sitting as a jury upon the question ~~fact~~ of ratification. ~~Viewed in this light, we have no authority for disturbing the judgment~~ Regarded in either point of view, there was no error in refusing the instruction.

Judt. affirmed

The other Judges concur

W. B. Napton

30

William

v.

Christian Female College

opinion

of the Court

Affirmed

Napton

filed March 17 1866

Wm E Duncomb

Clerk

Charles E. Williams Plaintiff in Error, against
Christian Female College Defendant in error,

Supreme Court
January Term 1860,

Error to Boone Circuit Court,
This was an action brought by the plaintiff to recover the sum of $1437 & 13/100 dollars. the value of certain improvements made and erected by the plaintiff upon the grounds of the defendant, and was founded upon the following award,

"We the undersigned arbitrators between the trustees of Christian College and Geo Williams after taking an estimate of the work done by said Geo Williams consider him entitled to the sum of Fourteen hundred and thirty seven dollars and thirteen cents, $1437 & 13/100,

(Signed) James B. Ruckle
John Lacklane
John Berkebile,"

The defendant by her answer denied the making of said award, or that the same had been made under or by virtue of any submission authorized by her, or that she (the defendant) was in any way bound thereby, and this was the only issue in the cause.

It is admitted by the pleading that defendant is a corporation and that under her charter she was authorized to make the improvements in question.

At the trial before the court neither party requiring a jury the plaintiff offered the following testimony.

1st John Berkebile a witness stated that in July 1856, plaintiff and one Alexander Douglass called upon him at the College Edifice of the defendant, and informed him that he had been chosen by the Trustees of the defendant, and the plaintiffs

as an arbitrator to assess
the value of certain improve
ments made by the plaintiffs
upon the grounds of the
defendant, and that Buckle
and Lacklana had also
been chosen by the plaintiffs
& the trustees of defendant
as arbitrators to act in con-
junction with witness in
making said assessment -
that the other referees being
present, plaintiffs & Slanglass
furnished them with pen
ink and paper, and directed
them to go on and make
the assessment, which they
did upon the same day,
that at the time Slanglass
and plaintiffs instructed wit-
ness and the other referees
to make the assessment - he
stated in the presence of
~~of~~ the plaintiffs - that it was
the agreement that defend-
ant should pay the plain-
tiff the amount assessed,
after deducting ten per

cent therefrom, that the
aware Sena on was made
and Signed by the witness
and the other referees in
persuance of the instructions
and directions of the plaintiff and Douglass as above
Stated,

2nd Plaintiff also proved by a
witness James B. Ruckle that
some time in July 1856 -
he was called upon by one
Caleb S. Stone, who Stated
that he (witness) had been
chosen to act in Conjunction
with John Berkebile and
John Lacklana in making
an estimate of the value
of certain improvements
made by the plaintiff upon
the grounds of the defendant,
- that Stone instructed witness
to go to the Collegee Edifice
on the next morning for
that purpose, which he did
and found there Douglass,
the plaintiff, & Lacklana
& Berkebile, Plaintiff and

Douglass instructed witness and the other referees to go on and make out an estimate of the value of the buildings and improvements made by the plaintiff upon the grounds of the defendant, which they did on the same day - that the award sued on was written by witness and signed by himself & the other referees, on the day it was made, and was made in persuance of instructions received from Stone, Douglass and the plaintiff.

Plaintiff proved also by a witness David Gordon that in february 1858, and prior and subsequent to that time, that he (witness) was the President of the Board of Trustees of the defendant, that in february 1858 witness was present, and presided as president aforesaid at a meeting of said Board;

when one Jno. H. Feild was present — that said Feild was never present at any other meeting of said Board where Witness was presiding, that at said meeting and when said Board was duly organized (a quorum being present) an acting in its official capacity, the said Feild presented to said Board for settlement a claim which Feild said he had against Defendant and in favor of the plaintiff, for improvements made by plaintiff upon the grounds of the Defendant, the Board of Trustees of which Witness was Chairman had and still has the management of the property and business of Defendant under her Charter,

Plaintiff proves also by a witness John H. Feild that he was authorized by plaintiff to present the award said on

to the Board of Trustees of defendant for payment — that witness was present at a meeting of said Board in the month of February 1858. when the witness Gordon was presiding as Chairman, that at said meeting and when said Board was duly organized, and acting officially he presented said account for payment, that thereupon C. S. Stone a member of said Board, stated to and in the presence, and hearing of said Board, and whilst officially organized as afore said, that he (Stone) Douglas and others had been appointed a committee by the Board of trustees of the defendant for the purpose of settling the claim of the plaintiff, that the account had been made under the directions of said committee, that said account was not satisfactory to said committee, and

would have been reported, by said Committee to the Board but for the reason that certain Books had been removed from the College, Nothing was said about approving carrying out or paying said award,

This was all the evidence adduced in the Cause,

The plaintiff then asked the Court to declare the law as stated in the two following instructions, which the Court did as stated in the first, but refused to give the second, to which refusal defendant excepted,

1st "That if the award sued on was made under a Submission by Stone and Douglas, and if after the making thereof the trustees of defendant whilst assembled and acting in their official capacity, either tacitly or expressly assented to or ratified said award — the Court will find for plaintiff,

Second

the amount of said award with six per cent interest from its date.

No 2. The fact that the award said was submitted to defendants Board of Trustees whilst assembled and acting in their official capacity, and the declaration of a member of said Board then, and there made, and not controverted or denied, that the same had been made under a submission by a committee appointed by said Board, of which committee Stone and Douglas were members. it evidences that the submission by Stone and Douglas was under the authority of said Board,

Defendants

The defendant then asked the Court to declare the law as stated in the following instruction, which the Court accordingly did, to which plaintiff also excepted,

given

"That before the Court can find for the plaintiff it must be found that there was a submission to arbitration made by plaintiff & defendant, and an award made in pursuance thereof",

Thereupon the plaintiff suffered a non suit with leave to move to set the same aside, and on the same day filed his motion which was over ruled by the court and the plaintiff brings the case here by writ of error,

Gentle & Gordon for the plaintiff in error rely upon the following points and authorities,

1st In order to authorize the submission by Stone & Douglass as the agents of the defendant it was not necessary that a vote or resolution appointing them should have been

entered upon the minutes or records of of defendant, — but such appointment may be implied from the permission or acceptance of their services or from the recognition or confirmation of their acts, See Angell & Ames on Corporations 220 - 221, 270. Pass Statute 1855, vol. 1. Pg. 371. Sec 5 & 8.

2ond It was not necessary that defendant should have expressly authorized the submission, it is enough if it was made under her implied authority, or that defendant afterwards assented to it, and such authority, or assent may be proved by the declarations or admissions of defendants agents or trustees made whilst acting in their official capacities, See authorities above cited, also - Magill vs Kauffman 4. Serg & Rawle 317. - Elgsville Manufacturing Co, vs. Okisco -

Co. 1. Ma Chan Decisions 398.
Angelo & Ames. on Corporations
5-21,

For the reasons. Stated the Court erred in refusing the second instruction asked by plaintiff as the Court thereby declared that the declarations and admissions of defendants agents and truthes made whilst acting in their official capacity was no evidence as against defendant of the facts so declared and admitted,
Plaintiff therefore insists that the Judgment of the Court below, was erroneous, and that the same be reversed and the Cause remanded, all of which is respectfully submitted

Gleitor & Gordon
attys for Pltff in error

Chas. E. Williams
Pltff

vs

The Christian
Female College
Deft.

"Plaintiff's Brief"

Guitar & Garson
attys

In the Supreme Court
January, Term 1860
Charles E. Williams Pltf in Error
against
Christian Female College Defendant

Briff of Defendant

Plaintiff sued defendant on a submission and an award in pursuance thereof, Defendant denied any submission or award ~~in pursu~~

On the trial plaintiff proved ~~that Alexd Douglass~~ by Jno Berkerbile that Alexander Douglass and plaintiff came to him in July 1856 and told him that he and John Larkland and James Reukle had been chosen by the Trustees of Defendant as arbitrators to assess the value of the improvements made by plaintiff on the College grounds and that they made the assessment on the same day ~~and~~ that plaintiff & Douglass stated also at that time that it was agreed that the ~~[illegible]~~ defendant should pay the amount they should assess after deducting ten percent therefrom, and that the witness Reukle & Larkland made and signed on the same day the paper sued on

under the direction of Douglass and plaintiff

Plaintiff also proved by Ruckle that on the Evening before he was called on by ~~Stone~~ C. S. Stone who told him that he had been chosen with Becker bile & Lackland to make an Estimate of the value of certain improvements made by plaintiff on defendants grounds, that he went and found the other two referees and Douglass & plaintiff there and that Douglass & plaintiff told them to go on and Estimate the ~~the~~ value of the improvements which they did, that he wrote the paper sued on and that they signed it the same day ~~signed by them~~ and that he delivered it to the plaintiff.

Plaintiff also proved by David Gordon that in February 1858 he was president of the board of Trustees of the college, & the board was in Session when John H Field presented to the board a claim which he said he had of plaintiff against Defendant for improvements

Plaintiff also proved by John H Field that he presented the said

claim to the Board at the time mentioned by Gordon that thereupon Lewis Stone who without stating was a member of the board got up and stated that he Douglas and others had been appointed a committee to settle with plaintiff, that the award had been made under the committee directions, that the award was not satisfactory to the committee and would have been reported by the committee but that certain boys had been removed from the lodge that he desired to be discharged from the committee and that some other member be appointed in his place, that thereupon several other persons were added to the committee, that the other members were added to the committee for the purpose of adjusting plaintiff's claim ~~settling with plaintiff~~. Nothing was said about carrying out the award or approving the same or providing means to pay it

To rebut the testimony given by plaintiff, defendant objected at the time it was offered and his objections

being overruled he excepted.

This was all the testimony given the cause, which was tried by the Court sitting as a jury

Plaintiff ~~Defendant~~ asked the following instruction which was given

1st. That if the award sued on was made under a submission by Stone & Loughry and if after the making thereof the Trustees of Defendant while assembled and acting in their official capacity either tacitly or expressly assented to or ratified said award the Court will find for plaintiff the amount of said award with six per cent interest from its date

And the following which was refused

No 2. The fact that the award sued on was submitted to defendants board of Trustees whilst assembled and acting in their official capacity and the declaration of a member of said Board then and there made and not controverted or denied that the same had been made under a submission by a committee appointed by said Board, of

which committee Stone & Douglas were members, is evidence that the submission by Stone & Douglas was under the authority of said Board

To the refusing said instruction plaintiff excepted

Defendant asked the following instruction which was given 1st That before the court can find for plaintiff it must be found that there was a submission to arbitration made by plaintiff and defendant and an award made, in pursuance thereof

To the giving thereof plaintiff excepted

The plaintiff took a non suit and moved to set the same aside which was overruled & plaintiff excepted and brings this suit here by writ of Error

Points and authorities for defendant by Prewitt atty

The only Error assigned is the refusal of the court to give plaintiff 2nd instruction

The first instruction given for plaintiff

gives all that is law in the second. If the second means any more it cannot be law. ~~He~~ It cannot be declared as a matter of law that the facts stated in the second instruction prove a ratification of the award. Rogers vs McCann 19 Mo 557. Schneer vs Lamp 17 Mo 145 Glasgow vs Copeland 8 Mo 268

2nd The testimony does not sustain the state of case put in the second instruction. That instruction is based on the testimony of John St Field. Field stated that Stone stated to the board that he and others had been appointed to settle with Williams. Does an authority to settle imply an authority to submit to arbitration? Stone further stated that the cases mittle had submitted to an arbitration Did the board ratify that act? No They on the contrary appointed ~~a com~~ ~~m~~ additional members on the committee ~~in the place of Stone~~ "to adjust plaintiffs claim" How can the silence of a corporation imply a ratification of the award If every member had risen seperately and contradicted Stone, that

would not have been the act of the Board. A vote was necessary in order for the Corporation to speak. Is it the law that a corporation must pass a resolution repudiating every thing that a member says he has done, and contradicting every statement that he makes in order to prevent the implication that it sanctions the act and admits the truth of the statement made? See Revised acts 1855 page 371 sections 5 & 8. 26 Mo Repts 104 (Barcus vs Hannibal Plk R Co) Angel & Ames on Corporations {See 239 page 251 / See 232 page 238} 8 Mass 298. 1 Greenleaf Evidence See 199 page 239

Admitting that a ratification may be implyed from the acts of the Corporation, ~~[illegible]~~ here is no act except one shewing that it did not ratify ~~it~~ the arbitration. How can it be said to have ratified the arbitration by appointing a committee to adjust the very matter that was adjusted if the arbitration was ratified?

3rd Verbal Testimony of the acts of the corporation is not competent

where the corporation keeps a record until plaintiff shews why the record is not produced See Charter Session Acts 1851 page 311 Secn 7. It can only be secondary Evidence.

5 It is no where shewn that Stone & Douglass were members of the Board.

6 The instruction assumes as a fact that an award was made, when all the testimony shews it was not an award of what Defendant should pay plaintiff but simply an Estimate of what the work was worth Garred vs Doniphan 10 Mo 162.

It was not intended to be a final settlement of the controversy and cannot be sued on as an award

See award Record page 16 at bottom and the testimony of Berkerbile & Rickel pages 15 & 17.

Chr Williams
v. 3
Christian College

Brief of Deft
in Error