

No. 12451

Supreme Court of Illinois

Barrett

vs.

Igleheart

71641  7

64 - ~~238~~ 238

Lacey, J. Barnett
238 02 208
vs

Nichols, P. D. J. L.

Apr 1858

238

12451

1858

X

Prepared

State of Illinois } S.S.
County of Cook }

Pleas before the Honorable
John M. Wilson Judge of the Cook County
Court of Common Pleas in and for the County
of Cook and State of Illinois, at a regular
term of said Cook County Court of Common
Pleas begun and holden at the Court House
in the City of Chicago in said County and
State on the Second Monday being the Fourteenth
day of September, in the year of our Lord
One Thousand Eight Hundred and fifty
seven, and of the Independence of the United
States of America the Eighty Second.

Present The Honorable John M. Wilson Judge
Carlos Haven Pro. Atty.
John L. Wilson Sheriff
Attest Walter Kimball Clerk.

Be it Remembered, That heretofore, to-wit:
on the Sixteenth day of May A.D. Eighteen
Hundred and fifty six Lucy D. Barrett (for
the use of Alexander Ingram) by H. S. Nelson
her Attorney filed in the office of the Clerk of
the Cook County Court of Common Pleas
her Precept for Summons & Security for Costs
in the words and figures following, to-wit:

Cook County Court of Common Pleas
June Term A.D. 1856

Lucy D. Barnett

for the use of
Alexander Ingram

vs
Nicholas P. Sgheharb

Debt \$384.29

Damages &c.

Walter Kimball Esqr, Clerk

Sir

You will please issue a writ of summons
in the above case returnable to the June Term
of said Court. and oblige

Yours &c.

A. J. Helin

Plffs Attorney

I hereby enter myself security for costs in
the above cause and acknowledge myself
bound to pay or cause to be paid all costs
which may accrue in this action. Either to
the opposite party or to any of the officers of
this County in pursuance of the laws of this
State. Dated this 17th day of May 1856
A. J. Helin

And afterwards to wit. on the same day and year last aforesaid, there issued out of the office of the Clerk of said Court, a writ of Summons, which said writ and the Sheriff's Return thereon endorsed are in the words and figures following, to wit,

State of Illinois
County of Cook Iss.

The People of the State of Illinois, to the Coroner and Acting Sheriff of said County - Greeting:

We command you that you summon Nicholas P. Sglibarb if he shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of June next, to answer unto Lucy O'Barrett for the use of Alexander Ingraham in a plea of that he render unto the said plaintiff the sum of Three Hundred & Eighty four Dollars and twenty nine cents, debt, which he owes and detains from said plaintiff, to the damage of the said plaintiff as he says in the sum of Three Hundred Dollars.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Seal

Witness Walter Kimball, Clerk
of our said County and the seal thereof
at the City of Chicago in said County
this 17th day of May A.D. 1856
Walter Kimball, Clerk

Endorsed

Served by reading to the withinnamed
Nicholas P. Sglibhart the 17th day of May 1856
James S. Beach Cleronon
& acting Sheriff
By John H. Durb Deputy

And afterwards to wit. on the Twentythird day
of May in the year last aforesaid, the said plaintiff
by her said Attorney filed in the office of
the Clerk of said County her Declaration in the
words and figures following to wit.

Print

Cook County Court of Common Pleas

June Term A.D. 1856.

State of Illinois }
Cook County ss.

Lucy D. Barrett Plaintiff in
this suit. (who sues for the use of Alexander
Ingram) by Henry T. Helms her Attorney Com-
plains of Nicholas P. Sglibhart. Defendants in this
suit, of a plea that he tender to the said plaintiff
the sum of Three Hundred and Eighty four dollars
and twenty nine cents, which the said defend-

and owes to, and unjustly detains from the said plaintiff,

For that whereas the said plaintiff here before to wit, on the Twentieth day of June in the year Eighteen Hundred and fifty one, in the May Term of the Commercial Court of Cincinnati. Held at the Court House in Cincinnati in the County of Hamilton and State of Ohio before the Honorable Thomas M. Key the Judge of said Court, by the consideration and judgment of the said Court recovered against the said defendant the said sum of money above demanded, which in and by the said Court was then and there adjudged to the said plaintiff for her Damages, which she had sustained as well by reason of the nonperformance by the said defendant of certain promises and undertakings then lately made by the said defendant to the said plaintiff as for her costs and charges by her in and about her suit in that behalf expended. Whereof the said defendant was convicted as by the Record and proceedings thereof in said Court more fully appears. Which said judgment still remains in full force and effect, not reversed, satisfied or otherwise vacated. And the said plaintiff has not obtained any satisfaction of or upon the the said judgment. So recovered as aforesaid. Whereby an action has accrued to the said plaintiff, to demand and have of and from the said defendant the said

Sum of money above demanded.

Nevertheless the said defendant (although often requested so to do) has not yet paid the said sum of money above demanded or any part thereof to the said plaintiff, ^{but} he has hitherto wholly neglected and refused, and still neglects and refuses so to do to the damage of the said plaintiff of Three Hundred Dollars and therefore she brings her suit &c.

H. T. Nelson

Plff Attorney.

And afterwards to wit, on the Third day of June in the year last aforesaid, the said defendant by Arnold Larned & Lay his attorneys filed in the office of the Clerk of said Court his Plea to the said plaintiffs Declaration in the words and figures following to wit,

Cook County Court of Common Pleas
Nicholas P. Sglehant }

vs
Lucy D. Barrett (who sues
for use of Alexander Ingram)

And the said Nicholas P. Sglehant defendant in this suit by Arnold Larned & Lay his Attorney comes and defends the wrong and injury when &c. and says that there is not any record of the said supposed recovery

in the said Declaration mentioned. Remaining in the Commercial Court of Cincinnati in manner and form as the said Plaintiff hath above in his said declaration alleged. And of this he puts himself upon the Country &c.

Arnold Larned and Lay
Atty for Defs.

80 And the said defendants for a further plea in this behalf, by leave &c. of the Court here first had and obtained, says actio non, because he says that after the recovery of the said judgment and before the commencement of this suit, to wit, on the first day of January A.D. 1856, at Cincinnati to wit, at Chicago aforesaid. In the said defendants paid and satisfied to the said Lucy D. Barrett the said sum of three hundred and eighty four dollars and twenty nine cents in form aforesaid recovered, and this he is ready to verify.

Wherefore he prays judgment &c.

Arnold Larned and Lay
Atty for Defs.

omit And the said defendants for a further plea in this behalf, by leave &c. first had and obtained says actio non, because he says the said several supposed causes of action in the said declaration mentioned and each and every of them, accrued beyond the limits of the State of Illinois, to wit, in the State of Ohio, and that the said several sup-

posed causes of action in the said declaration mentioned did not, nor did any or either of them accrue to her the said plaintiff at any time within five years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against him the said defendant, and this he is ready to verify.

Wherefore he prays judgment &c.

Arnold Larued & Lay

Attys for Defd

Print

Cook County Court of Common Pleas.
Lucy D. Barnett who sues
for use &c.

vs

Nicholas P. Sgleharb } State of Illinois }
Cook County }
Ill.

Nicholas P. Sgleharb being duly sworn deposes and says, that he is defendant in above suit, and that he believes he has a good and substantial defence upon the merits in the above entitled Cause, and further saith not.

Subscribed & sworn to this 3rd day of June A.D. 1856. before me }
F. P. Sgleharb
J. Kimball Clk

omit

And afterwards, to wit, on the tenth day of July in the year last aforesaid the said plaintiff by her said attorney filed in the office of the Clerk of said Court, her Replication and Demurrer

to said defendants - pleas in the words and figures
following - to wit,

Cook County Court of Common Pleas

July Term A.D. 1856

Lucy O. Barrett for the use
of Alexander Ingram }

vs
Nicholas P. Sgleharb }

And the said plaintiff,
iff as to the said plea of the said defendant by
him firstly above pleaded, says that the said
plaintiff by reason of anything by the said defend-
ant in that plea alleged, ought not to be barred
from having or maintaining his aforesaid action
thereof against the said defendant, because the said
plaintiff ^{thinks} that there is such record of the said
recovery remaining in the said County, as the
said plaintiff has above in her said declaration
in that behalf alleged. And this the said plaintiff
is ready to verify by the said record, when
where and in such manner as the Court here
shall direct and award, and he prays that the
said record may be seen and inspected by the
Court here do. H. P. Helmer. Plffs Atty.

And the said plaintiff as to the said
plea of the said defendant by him secondly above
pleaded, says, that the said plaintiff by reason
of anything by the said defendant in that plea

alleged ought not to be barred from having and
 or maintaining her aforesaid action thereof, a-
 gainst the said defendant, because she says that
 the said defendant did not satisfy and pay to
 the said plaintiff the said sum of Three Hundred
 Eighty four Dollars and twenty nine cents, in
 manner and form as the said defendant has
 above in his said plea in that behalf alleged.
 And this the said plaintiff prays may be in-
 quired of by the Country &c.

D. T. Helms Plffs Atty

And the said Defendant doth the like &c.

Arnold Larued & Lay
 for Def.

omit

And the said plaintiff as to the said plea of
 the said defendant, by him thirdly above pleaded,
 says that the same and the matters therein contained
 in manner and form as the same are above pleas-
 ed and set forth are not sufficient in law to bar
 or preclude the said plaintiff from having or main-
 taining his aforesaid action thereof against the
 said defendant, and that the said plaintiff is
 not bound by law to answer the same. And
 this the said plaintiff is ready to verify.
 Wherefore by reason of the insufficiency of the
 said plea in this behalf, the said plaintiff
 prays judgment, and her debt aforesaid together
 with her damages by her sustained on occa-
 sion of the detention thereof to be adjudged to

her ob.

H. T. Helms Peffs atty.

omit

And afterwards. to wit, on the Twentyfifth day of April in the year of our Lord Eighteen Hundred and fifty seven. said day being one of the days of the April Term of said Cook County Court of Common Pleas. the following among other proceedings. was had in said Court and entered of Record. to wit

Lucy D. Barrett for use of Alexander Ingram	}	Duty
Nicholas P. Splehant		

And now comes the said plaintiff by H. T. Helms her Attorney. and the said defendant by Arnold Larned & Lay his attorney, also comes, and on argument of the Demurrer of plaintiff to defendants third plea heretofore filed herein, ^{the Court being now fully advised in the premises} it is ordered that said plaintiffs said demurrer be sustained.

omit

And afterwards. to wit. on the Twentythird day of September in the year last aforesaid the said plaintiff by his said attorney filed in the office of the Clerk of said Court. a Transcript of Record in the words and figures following To wit.

Print

I was at the Court House in Cincinnati, in the County of Hamilton and State of Ohio, of the Commercial Court of Cincinnati, at the May Term thereof in the year of our Lord one thousand eight hundred and fifty one, begun and held on Monday the fifth day of May in the year aforesaid before the Honorable Thomas M. Key sole Judge of said Court.

Print to this mark (*)

No 5384

Lucy D. Barnett

vs

Nicholas P. Sgleharz

In a plea of Assumpsit.

Be it Remembered

That heretofore - that is to say on the Thirtieth day of September in the year of our Lord Eighteen Hundred and fifty, came the said Lucy D. Barnett by messrs Morris, Tilden & Ainsden her attorneys, said out of the Clerk's office of the Commercial Court of Cincinnati, a certain writ of Summons against the said Nicholas P. Sgleharz, which writ with the endorsement thereon written is in the words and figures following, to wit

Summons The State of Ohio }
Hamilton County ss.

To Joseph Cooper Esqr
Sheriff our said County - Greeting:

You are hereby commanded to summon

Nicholas P. Sgihart if he shall be found in
your bailiwick to be and appear before the
Hon. Thomas M. Key Judge of the Commercial
Court of Cincinnati in and for said County on
the first Monday of October next to answer
unto Lucy D. Barrett in an action of Assump-
sit, to the damage of the said Plaintiff Six
Hundred Dollars as is said.

And have you then and there this writ,
(Seal of the } In Witness Whereof, I have here
Commercial } unto set my hand and affixed
Court of } the Seal of the said Court at Cin-
Cincinnati } cinnati this 30th day of September
A.D. 1850. Edward P. Branch
Clerk of the Commercial Court of Cincinnati

By E. Page Deputy.
Summons in Assumpsit on a promissory note
for the sum of \$354.00
Due \$360.00
Damages \$60.00

And afterwards, to wit, on the Seventh day of
October in the year Eighteen Hundred and
fifty, during the October Term in the said
year of the said Court, held before the Hon.
Thomas M. Key Judge thereof, the said writ
was returned to the Court aforesaid, by the
said Sheriff, endorsed as follows, to wit,
1850. October 4,

Return

Served Nicholas P. Sgihart

by copy personally

Joseph Leachman Shiff.

By E. B. Stoub Dep.

And this cause was continued till the next term of said Court.

And the plaintiff was ruled to declare by the fourth day of November in the year last aforesaid.

And afterwards to wit, on the fifth day of November in the year last aforesaid. Came the Clerk of said Court. and by order of the same entered in his said office a default against the plaintiff for want of a declaration.

And afterwards to wit, on the Twentieth day of November in the year last aforesaid, during the term last aforesaid of said Court, the said default for declaration was set aside, and leave was given the plaintiff to declare.

And afterwards to wit, on the Eighteenth day of December in the year last aforesaid, came the plaintiff by her said Attorneys, and filed in the said Clerks office, her declaration against the defendant, in the words and figures following, to wit,

Decln.

Commercial Court of Cincinnati

October Term A.D. 1850

State of Ohio }

Hamilton County ss. Assumpsit.

Lucy D. Barnett plaintiff

Complains of Nicholas P. Lytlehant, defendant,
in a plea of Assumpsit. For that whereas
the said defendant heretofore to wit on the 14th
day of July A.D. 1848. at the County aforesaid
made his promissory note in writing, and
delivered the same to the said plaintiff, and
thereby promised to pay to the said plaintiff or on
order the sum of Three Hundred and thirty
four Dollars with interest, in one year after
the date thereof, which period has elapsed.

And the said defendant afterwards to wit then
and there in consideration of the premises, prom-
ised to pay the amount of said note to the said
plaintiff, according to the tenor and effect,
thereof.

And, ^{also} for that whereas the said defendant
heretofore to wit on the first day of October
A.D. 1849, at the County aforesaid was indebted
to the said plaintiff in a large sum of money
to wit Five Hundred Dollars for the price and
value of goods then and there bargained and
sold by the plaintiff to the defendant, at his re-
quest, And in a large sum to wit Five
Hundred Dollars for the price and value of
work and labor then and there done, and
materials for the same provided by the plain-
tiff for the defendant at his request.

And in a large sum to wit Five Hundred
Dollars for money then and there lent and ad-

vanced by the plaintiff to the defendant, at his request, And in a large sum to wit, Five Hundred Dollars, for money then and there paid by the plaintiff for the use of the defendant at his request, - And in a large sum to wit Five Hundred Dollars, for money then and there had and received by the defendant, to the use of the plaintiff, and in a large sum to wit, Five Hundred Dollars, for money found to be due from the defendant to the plaintiff, upon an account then and there stated between them, And the said defendant, afterwards to wit, on the day and year last aforesaid, at the County aforesaid, in consideration of the premises, promised to pay the said several last mentioned sums of money, to the plaintiff on request, Yet the said defendant has disregarded his said promise, and though after requested, has not paid the said sums of money, nor any of them, nor any part thereof, to the damage of the said plaintiff, Six Hundred Dollars, and therefore she doth bring suit &c.

Morris Tilden & Rainden

Attorneys for plaintiff

And the defendant was ruled to plead to the said declaration.

And afterwards to wit on the 24th day of December in the year last aforesaid, the clerk of said Court, by order of the same entered in his

said office. a default against the defendants for want of a plea.

And afterwards, to wit, at the January Term in the year Eighteen Hundred and fifty one of the said Court this cause was continued.

And afterwards, to wit, on the Twentieth day of June in the year of our Lord Eighteen Hundred and fifty one, during the May term in the same year of the said Court, held before the Hon. Thomas M. Key, Judge thereof, came the plaintiff, and the defendant being called. came not but made default, and no jury being demanded, the Court assess the plaintiff damages at (\$380.12) Three Hundred and Eighty Dollars and twelve cents.

Therefore it is considered, that the plaintiff recover of the defendant her said damages, and her costs herein expended, taxed at Four: 7/100 Dollars. Defendants costs \$1.28

Damages	\$ 380.12
Costs	5.15

Costs on Execution 1.90
Int. from May 5. 1851

And afterwards, to wit, on the Twenty first day of August, during the Term of May in the year Eighteen Hundred and fifty one of said Court, a writ of Fi fa et lev. fa. was issued out of the clerks office of said Court, No. 638, to October Term 1851. directed to the Sheriff of

Hamilton County aforesaid. Which said writ
 was on the seventh day of October, in the term
 of October in the year last aforesaid of said
 County, returned into the said Clerk's office
 with the following endorsement thereon writ-
 ten, to wit: "No Property"
 "Fees 40" C. J. W. Smith Shff"

The State of Ohio }
 Hamilton County } ss.

I, Edward P. Branch, Clerk
 of the Commercial Court of Cincinnati in
 and for said County, do hereby certify, that
 the foregoing is a true transcript of the Record
 of the Judgment and proceedings of the said
 County in the above mentioned case.

 Witness my hand and the Seal of
 said Court this 2nd day of Septem-
 ber A.D. 1852

Edw. P. Branch

Clerk Com'l Court of Cin'ti.

The State of Ohio }
 Hamilton County } ss.

I, Thomas M. Key, Judge of
 the Commercial Court of Cincinnati in and
 for said County, do hereby certify that Edward
 P. Branch, whose name is subscribed to the fore-
 going certificate, was on the day of the date thereof
 the Clerk of said Court, and that his attestation

above written is in due form of law
Given under my hand and seal this 2nd
day of September A.D. 1852.

Thomas M. Key *Seal*
Judge of the Commercial Court of Cincinnati.

The State of Ohio } The Court of Common Pleas
Hamilton County } doct.

I Thomas Spooner Clerk
of the said Court do certify that the foregoing
Transcript, is a full and true copy of the record
of the proceedings and judgments of the Commer-
cial Court of Cincinnati, late a Court of Law
and of Record in and for said County, in the
case of Lucy D. Barrett against Nicholas P.
Sglehart, as appears from the records and files
of said Court in my office, remaining by
virtue of the Constitution and laws of the State
of Ohio.

I further certify that the Clause of the Consti-
tution, and the Act of the General Assembly of
the State of Ohio, by virtue of which the said files
and records, were transferred to my office and
custody and so remain, are, as appears from a
printed copy thereof in my possession, in the
words and figures following, to wit,

"Section 2" of "Schedule" of the "Constitution of the
State of Ohio". The Superior and Commercial
Courts of Cincinnati, and the Superior Court

of Cleveland. shall remain until otherwise provided by law. with the present powers and jurisdiction and the judges and clerks of said courts in office on the first day of September. One Thousand Eight Hundred and fifty one. shall continue in office until the expiration of their terms of office respectively, or until otherwise provided by law. but neither of said courts shall continue after the second Monday of February One Thousand Eight Hundred and fifty three, and no suit shall be commenced in the said two first mentioned Courts. after the second Monday in August, one thousand eight hundred and fifty two, and all business in either of said courts, not disposed of within the time limited for their continuance as aforesaid, shall be transferred to the Court of Common Pleas."

Section 9. This Constitution shall take effect on the first day of September One Thousand Eight Hundred and fifty one"

An Act, to regulate the Superior & Commercial Courts of Cincinnati.

Sec 1. Be it Enacted by the General Assembly of the State of Ohio. That whenever the office of Judge of the Superior or Commercial Court of Cincinnati shall become vacant by death, resignation or otherwise, such vacancy shall not be filled. but the Court shall at once cease and

determined, and all business thereof not then disposed of shall be transferred to the Court of Common Pleas of Hamilton County, and the Clerk of the said Court of Common Pleas shall take charge of the Dockets, Journals, Records, original files, and all other property & papers of said Superior or Commercial Court, and all proceedings & causes, orders, judgments, decrees and matters theretofore pending, entered, and had in the Superior and Commercial Courts, shall stand, be proceeded on, and prosecuted, in all respects to final determination, as though the said had been originally commenced in the Court of Common Pleas.

James C. Johnson
Speaker of the House of Representatives,
William Medill

President of the Senate,

April 24th 1857.

Witness my hand and the Seal of
said Court of Common Pleas in
Cincinnati Ohio this 20th day of
April A.D. 1857.

And I do hereby further certify that on the
Second day of September A.D. 1852 the said
Commercial Court of Cincinnati was in
existence as a Court of Law and Record and
that Thomas M. Key was sole Judge thereof
and Edward P. Crauch Clerk thereof at the

times of subscribing the certificates to said Record
appended of that date, as appears from the Records
of said Court in my office remaining.

Esab

Witness my hand and the seal of said
Court of Common Pleas at Cincinnati
this 30th day of April A.D. 1857
Thos Spooner

Clerk Court Com'n Pleas
Hamilton Co. Ohio.

State of Ohio }
Hamilton County Sct.

I Alfred G. W. Barton,
Presiding Judge of the Court of Common Pleas
in and for said County and State do hereby
Certify that Thomas Spooner, whose name is
signed to the foregoing Certificate was at the time
of signing the same, the Clerk of said Court
and that his said Attestation, is in due form
of law, and by the proper officer

Witness my hand at Cincinnati
Ohio this first day of May 1857
A. G. W. Barton

Presiding Judge of the Court of Common Pleas
Hamilton County, Ohio.

And afterwards, to wit, on the same day and
year last aforesaid. Said day being one of
the days of the September Term of said Court
County Court of Common Pleas, the follow-

ing among other proceedings, was had in said Court and entered of Record, to wit.

Lucy D. Barnett use of
Alexander Ingram }
vs } Debt
Nicholas P. Squire

Print

And now at this day comes the said plaintiff by H. T. Helms her Attorney, and the said defendant by Arnold Larned and Lay his Attorney also comes, and upon agreement of the parties the trial of this cause was submitted to the Court without the intervention of a jury. And the Court having heard the proofs and allegations submitted, and being fully advised, now, finds the said defendant to owe and be indebted to said plaintiff in the sum of Three Hundred and Eighty four Dollars and twenty nine cents debt, and assesses the damages therein to the sum of One Hundred and sixty six Dollars and forty eight cents.

Therefore it is considered that said plaintiff ^{for the use of Alexander Ingram as aforesaid} do have and recover of said defendant her debt of Three Hundred and Eighty four dollars and twenty nine cents, and also her damages of One Hundred and sixty six dollars and forty eight cents, in form so as aforesaid by the Court assessed and also her costs and charges in this behalf expended, and have execution

therefor,

And afterwards. to wit on the
Twenty Eighth day of September in the year
last aforesaid. said day being also one of the
days of the September Term of said Court, the
following. among other proceedings. was had in
said Court and entered of Record. to wit.

Lucy D. Barrett use of	}	Debb
Alexander Ingram		
Nicholas P. Sglehant		

And now at this day
again come the parties to this case by their Attor-
neys as aforesaid. and the said defendant sub-
mits to the Court his motion for a new trial
herein. and after argument had thereon, and
being fully advised, the Court overrules said mo-
tion. Whereupon the defendant enters his excep-
tions. to such ruling by the Court, and prays
an Appeal to the Supreme Court of the State
of Illinois. which is allowed on filing Bond
in the sum of Eight Hundred Dollars to be
approved by the Judge of this Court. the Bond
and Bill of Exceptions to be filed in thirty days.

End

And afterwards, to wit, on the Twenty sixth day of October in the year last aforesaid, the said defendant by his said Attorneys, filed in the office of the Clerk of said Court, his Appeal Bond in the words and figures following, to wit,

Know all men by these presents, That we Nicholas P. Iglehart and Charles W. Clayton, of the County of Cook and State of Illinois, are held and firmly bound unto Lucy D. Barrett for the use of Alexander Ingram, in the penal sum of Eleven Hundred Dollars, for the payment of which, well and truly to be made we bind ourselves, our heirs, Executors and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals, this 24th day of October A.D. 1857.

The Condition of the above Obligation is such, That whereas the said Lucy D. Barrett for use of Alex. Ingram, did on the 23rd day of September, of September Term of Cook County Court of Common Pleas, recover a judgment against the above bounden Nicholas P. Iglehart, for the sum of Three Hundred and Eighty four 29/100 Dollars Debt, and One Hundred Sixty six 48/100 Dollars damages, and costs from which said judgment of the said Common Pleas the said Nicholas P. Iglehart has prayed for and obtained an appeal to the Supreme Court of said State,

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

Approved

John M. Wilson

Judge C.

N. P. Sglharb

Le. W. Clayton

Seal

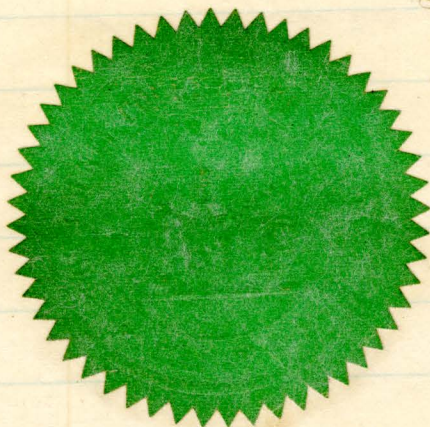
Seal

State of Illinois }

County of Cook ss. J. Walter Kimball, Clerk of the Cook County Court of Common Pleas within and for said County, do hereby certify that the above and foregoing is a full and true transcript of the papers on file in my office and the proceedings entered of Record in said Court in the case wherein Lucy D. Barnett (for the use of Alexander Ingram) is plaintiff and Nicholas P. Sglharb defendant;

In Testimony Whereof I hereunto subscribe my name and affix the Seal of said Court at the City of Chicago in said County this 24th day of March A.D. 1858

Walter Kimball Clerk



Supreme Court April Term A.D. 1858.
Nicholas P. Sglehart - Appellant
vs.
Lucy D. Barrett re
Appellee

And now comes the said appellant by Arnold, Larned & Lay, his attorneys, and says that in the record and proceedings and the judgment rendered there is manifest error, and that the judgment should have been for the appellant.

And the said appellant comes and assigns the following special causes of error:

First. The Court erred in rendering a judgment for the appellees, whereas the verdict should have been for appellant.

Second. The Court erred in admitting in evidence the judgment record offered and produced in evidence, for that there was a fatal variance between the judgment record produced and read in evidence, and the record declared on in declaration.

Third. For that the judgment record produced and read in evidence was not the judgment record, sued on and declared upon.

210457-14
Says and even says Arnold, Larned & Lay
there is no error
They are appointed atty. for Appellant
St. Louis

Supreme Court

Nicholas P. Iglehart
vs. ^{Defendant}

Lung D. Barrett who
was for use of Alexander Ingram
Defendant } In error

It is stipulated and agreed
that the copy of judgment record introduced in
the above entitled cause and set forth
in the record herein filed is the judgment record which
was offered in evidence to support the issues in the above
cause is the only evidence which was offered to sustain
the same & that the said record shall have the same effect
to all intents and purposes as if the said judgment record
had been set forth in a bill of exceptions & accepted to, & it
shall have same effect as tho. a bill of exceptions had
been filed & having that said record was objected to
offered in ground of variance & objection & exception thereto
taken.

Chicago April 12, 1888

D. J. Kelly
Plf's Atty -

Arrived, Larned Day
Atty for Iglehart

Cook Coll of Com. Recs

208

Judy A. Bennett

vs

Nicholas P. Ignatoff

Transcript of
cert of mar

Filed April 22, 1888

S. Lehard
clerk

Fee \$ 7.00

Supreme Court
 Nicholas P. Iglehart } Debt on Judgment
 vs Appellant
 Lucy D. Banett } Appellants
 Appellee } Reply -

The ground relied on by the Appellees to escape the variance between the Judgment offered in evidence and the one described in the Declaration is that the Defendants costs form no part of the judgment declared on. The question is not whether they have declared for all the costs but whether the Judgment Record produced to support their Declaration contains more costs than they have declared for and is in this respect variant. Therefore

The ~~only~~ question Do the Defendants costs form a part of the costs in the Judgment Record produced in evidence. If they do then the Declaration sets forth a judgment for a sum total of debt & costs amounting to \$384.²⁹ and the one offered in evidence shows a sum total of debt & costs of \$385.⁵⁷ there is a variance and the Record does not support the Declaration.

The debt in error has arisen

at the first named sum by adding
the damages & a portion of the costs
specified in the Record as the Plaintiffs
costs. - We arrive at the last named
sum by adding the whole of the costs
there marked defts - as well as those
marked plaintiffs

The fact that the defts
costs are expressly embraced in the
Judgment Record shows that they
were intended to form a part of
the Judgment

The language of the
Record is That the plaintiff recovered
her damages and her costs herein
expended taxed at \$4.¹⁴ Defendants
costs \$1.²⁸ Or in other words that
she receive her damages & the costs
which have been expended in the suit
which costs are as follows - Plaintiffs
costs \$4.¹⁴ Defts Costs \$1.²⁸

This is evidenced by
the further statement of the amount
of the Judgment & costs summed up
in figures at the end of the Record
by which the costs adjudged to the
plaintiff and for which his execution
or to him are summed up at \$5.⁴²

Unquestionably Execution issued on
this Judgment - for the damages &
\$5.45 costs and if so should not
a Declaration which ~~it~~ undertakes
to declare for the sum total of
debt & costs in one amount have
given the sum total of the whole
costs ~~that of~~ ~~my~~ \$385.⁵⁷ instead of 384²⁹

The Rule of Exceptions in this case is
waived by stipulation on file

El Larnes
for defendant

Supreme Court
Mukew District

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N. P. Dglehart

vs

Lucy D. Barnett

Appellants Repl
to Defts
Arguments

Filed April 30. 1858
L. Leland
Clerk

El Lancia

Supreme Court

Nicholas P. Iglehart,
vs. Appellant

Lucy D. Barnett who was for
an Alexander Ingram

Error to Cook County Court of Com. Pleas.

Brief of Appellants

Appellee

This is an action of Debt on a judgment Record. Plea of null and void Record and was tried by agreement before the Judge of Court without the intervention of a jury.

On the trial of cause the appellee introduced in evidence and to prove his case a judgment Record to the introduction of which the appellants objected on ground of variance between judgment Record introduced and offered in evidence and the judgment as declared on and set forth in Plaintiffs Declaration. The Court overruled objection and admitted same in evidence to which Defendant below accepted.

The variance is as follows.

Judgment Record introduced in evidence shows judgment for \$380.12 damis.

Plff costs -

4.17

Defrs costs.

1.28

Costs on execution

.90

\$386.47

Declaration declares on judgment for \$384.29 for plaintiffs damages as for her costs and charges by her above her list in that behalf presented.

The Court will perceive that the two items included in and forming part of judgment (as on entered) of Defrs costs \$1.28, and Costs on execution .90 cents are not included in declaration.

The contention that the Variance is fatal and the following authorities are cited.

If a party mistakes even a small sum in setting forth a judgment, the Variance is fatal upon a plea of

will tell Record.

2 Root 90. (2 U.S. Digest Page 150)

A variance between the record declared on and the one produced is fatal

Breeze Page 58. Page 87.

Variance six cents fatal - 4 Wendell 207.

2 Shauge 1171.

1 Clittie's Pleadings 371.

Thompson v. Jamerson 1 Branch 282 notes there.

In an action of Debt on judgment. Declaration set forth a judgment for \$125. + \$10 costs. & the judgment set forth on record was for \$125 and costs generally. Variance fatal.

12 Missouri 484.

A declaration on judgment for \$1200 debt and \$248 damages as well by reason of detention of that debt as for his costs is not supported by a judgment for \$1200 debt and \$248 damages and for costs,

9 Missouri 742.

In an action of debt on judgment where declaration alleges recovery of a sum certain for costs in former suit & the original judgment is left blank as to costs, Variance fatal.

4 U.S. Digest Debt Page 517.

A declaration on judgment for \$834.41 damages and costs is not supported by judgment for \$834.41 damages besides costs.

8 U.S. Digest Page 91.

It will be perceived on reference to above cases that it is necessary to describe the judgment ^{accurately} as it is setting forth accurately the costs which plaintiff

or Defendant and the recovery. The .90 cents costs on
execution issued certainly formed a part and portion
of the costs of plaintiff and should have been
declared upon. The defendant's costs also formed part of judgment.

We submit that the verdict is fatal and that
the judgment below should be reversed.

Arnold L. Lumsden
for Plaintiff.

Supreme Court

238

M. P. Litchart

appellant

vs.

Lucy D. Barrett

Ans for Ingram

appellee

Prif

Filed April 30, 1858

L. Leland
clerk

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SUPREME COURT,

APRIL TERM, A. D. 1858.

NICHOLAS P. IGLEHART, *Appellant*,
ADS.
LUCY D. BARRETT, (who sues for the use of
ALEXANDER INGRAM,) *Appellee*.

ABSTRACT OF RECORD.

COOK COUNTY COURT OF COMMON PLEAS,

JUNE TERM, A. D. 1856.

STATE OF ILLINOIS, }
Cook County. }

4 Lucy D. Barrett, plaintiff in this suit, (who sues for the use of Alexander Ingram,) by Henry T. Helm, her attorney, complains of Nicholas P. Iglehart, defendant in this suit, of a plea that he render to the said plaintiff the sum of three hundred and eighty-four dollars and twenty-nine cents, which the said defendant owes to, and unjustly detains from the said plaintiff.

5 For that whereas the said plaintiff heretofore, to wit, on the twentieth day of June, in the year eighteen hundred and fifty-one, in the May term of the

Commercial Court of Cincinnati, held at the Court House in Cincinnati, in the county of Hamilton and State of Ohio, before the Honorable Thomas M. Key, the Judge of said Court, by the consideration and judgment of the said court, recovered against the said defendant the said sum of money above demanded, which in and by the said court was then and there adjudged to the said plaintiff for her damages, which she had sustained as well by reason of the non-performance by the said defendant of certain promises and undertakings then lately made by the said defendant to the said plaintiff, as for her costs and charges by her in and about her suit in that behalf expended, whereof the said defendant was convicted as by the record and proceedings thereof in said court more fully appears, which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated; and the said plaintiff has not obtained any satisfaction of or upon the said judgment so recovered as aforesaid, whereby an action has accrued to the said plaintiff to demand and have of and from the said defendant the said sum of money above demanded.

- 6 Nevertheless the said defendant, (although often requested so to do,) has not yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but has hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the said plaintiff of three hundred dollars, and therefore she brings her suit, &c.

H. T. HELM,

Plaintiff's Att'y.

6 And afterwards, to wit, on the third day of June, in the year last aforesaid, the said defendant, by Arnold, Larned & Lay, his attorneys, filed in the office of the clerk of said court, his pleas to the said plaintiff's declaration in the words and figures following, to wit:

6 And the said Nicholas P. Iglehart, defendant in this suit, by Arnold, Larned & Lay, his attorneys, comes and defends the wrong and injury, when, &c., and says that there is not any record of the said supposed recovery in the said declaration mentioned, remaining in the Commercial Court of Cincinnati, in manner and form as the said plaintiff hath above in his said declaration alleged; and of this he puts himself upon the country, &c.

ARNOLD, LARNED & LAY,
Attorneys for Defendant.

7 And the said defendant for a further plea in this behalf, by leave, &c., of the court here first had and obtained, says *actio non*, because he says that after the recovery of the said judgment and before the commencement of this suit, to wit, on the first day of January, A. D. 1856, at Cincinnati, to wit, at Chicago aforesaid, he the said defendant paid and satisfied to the said Lucy D. Barrett the said sum of three hundred and eighty-four dollars and twenty-nine cents, in form aforesaid recovered, and this he is ready to verify.

Wherefore he prays judgment, &c.

ARNOLD, LARNED & LAY,
Attorneys for Defendant.

- 8 Nicholas P. Iglehart being duly sworn, deposes and says, that he is defendant in above suit, and that he believes he has a good and substantial defence upon the merits in the above entitled cause, and further saith not.

N. P. IGLEHART.

Subscribed and sworn to, this 3rd day of June, }
 A. D. 1856, before me. }
 W. KIMBALL, Clerk.

- 12 Pleas at the Court House in Cincinnati, in the county of Hamilton and State of Ohio, of the Commercial Court of Cincinnati, at the May term thereof, in the year of our Lord one thousand eight hundred and fifty-one, begun and held on Monday, the fifth day of May, in the year aforesaid, before the Honorable Thomas M. Key, sole Judge of said court.

LUCY D. BARRETT, }
 vs. } *In a Plea of Assumpsit.*
 NICHOLAS P. IGLEHART.

Be it remembered, that heretofore, that is to say, on the thirtieth day of September, in the year of our Lord eighteen hundred and fifty, came the said Lucy D. Barrett, by Messrs. Morris, Tilden & Rairden, her attorneys, and sued out of the clerk's office of the Commercial Court of Cincinnati, a certain writ of summons against the said Nicholas P. Iglehart; which writ, with the endorsement thereon written, is in the words and figures following, to wit:

THE STATE OF OHIO, }
 HAMILTON COUNTY, } ss. *To Joseph Cooper,*
Esq., Sheriff of our said County—Greeting :

- 13 You are hereby commanded to summon Nicholas P. Iglehart, if he shall be found in your bailiwick, to be and appear before the Hon. Thomas M. Key, Judge of the Commercial Court of Cincinnati, in and for said county, on the first Monday of October next, to answer unto Lucy D. Barrett, in an action of assumpsit, to the damage of the said plaintiff, six hundred dollars, as is said. And have you then and there this writ.



In witness whereof, I have hereunto set my hand and affixed the seal of the said court at Cincinnati, this 30th day of September, A. D. 1850.

EDWARD P. CRANCH,

Clerk of the Com. Court of Cincinnati.

By E. PAGE, *Deputy.*

Summons in assumpsit on a promissory note for the sum of

	\$354 00
Due,	360 00
Damages,	600 00

- 13 And afterwards, to wit, on the seventh day of October, in the year eighteen hundred and fifty, during the October term in the same year, of the said court, held before the Hon. Thomas M. Key, judge thereof, the said writ was returned to the court aforesaid, by the said sheriff, endorsed as follows, to wit :

1850, October 4. Served Nicholas P. Iglehart, by copy, personally.

JOSEPH COOPER, *Sheriff.*

By E. B. STOUT, *Deputy.*

And this cause was continued till the next term of said court.

And the plaintiff was ruled to declare by the fourth day of November, in the year last aforesaid.

And afterwards, to wit, on the fifth day of November, in the year last aforesaid, came the clerk of said court, and by order of the same entered in his said office, a default against the plaintiff for want of a declaration.

- 14 And afterwards, to wit, on the twenty-ninth day of November, in the year last aforesaid, during the term last aforesaid of the said court, the said default for declaration was set aside, and leave was given the plaintiff to declare.

And afterwards, to wit, on the eighteenth day of December, in the year last aforesaid, came the plaintiff, by her said attorneys, and filed in the said clerk's office her declaration against the defendant, in the words and figures following, to wit:

COMMERCIAL COURT OF CINCINNATI.

OCTOBER TERM, A. D. 1850.

STATE OF OHIO, }
HAMILTON COUNTY, } ss. *Assumpsit.*

- 15 Lucy D. Barrett, plaintiff, complains of Nicholas P. Iglehart, defendant, in a plea of assumpsit. For that whereas, the said defendant, heretofore, to wit, on the 14th day of July, A. D. 1848, at the county aforesaid, made his promissory note in writing, and delivered the same to the said plaintiff, and thereby promised to pay to the said plaintiff, or order, the sum of three hundred and thirty-four dollars, with interest, in one year after the date thereof, which period has elapsed.

And the said defendant afterwards, to wit, then and there, in consideration of the premises, promised to pay the amount of said note to the said plaintiff, according to the tenor and effect thereof.

- 15 And, also, for that whereas the said defendant heretofore, to wit, on the first day of October, A. D. 1849, at the county aforesaid, was indebted to the said plaintiff in a large sum of money, to wit, five hundred dollars, for the price and value of goods then and there bargained and sold by the plaintiff to the defendant, at his request; and in a large sum, to wit, five hundred dollars, for the price and value of work and labor then and there done, and materials for the same provided by the plaintiff for the defendant, at his request. And in a large sum, to wit, five hundred dollars, for money then and there lent and advanced by the plaintiff to the defendant, at his request. And in a large sum, to wit, five hundred dollars, for money then and there paid by the plaintiff for the use of the defendant, at his request. And in a large sum, to wit, five hundred dollars, for money then and there had and received by the defendant, to the use of the plaintiff. And in a large sum, to wit, five hundred dollars, for money found to be due from the defendant to the plaintiff, upon an account then and there stated between them. And the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the premises, promised to pay the said several last mentioned sums of money to the plaintiff, on request.

Yet the said defendant has disregarded his said promises, and, though often requested, has not paid the said sums of money, nor any of them, nor any

part thereof; to the damage of the said plaintiff, six hundred dollars, and therefore she doth bring suit, &c.

MORRIS, TILDEN & RAIRDEN,

Attorneys for Plaintiff.

16 And the defendant was ruled to plead to the said declaration.

And afterwards, to wit, on the 24th day of December, in the year last aforesaid, the clerk of said court, by order of the same, entered in his said office a default against the defendant for want of a plea.

And afterwards, to wit, at the January term, in the year eighteen hundred and fifty-one, of the said court, this cause was continued.

And afterwards, to wit, on the twentieth day of June, in the year of our Lord eighteen hundred and fifty-one, during the May term in the same year, of the said court, held before the Honorable Thomas M. Key, judge thereof, came the plaintiff, and the defendant being called, came not, but made default, and no jury being demanded, the court assess the plaintiff's damages at (\$380.12) three hundred and eighty dollars and twelve cents.

17 Therefore it is considered, that the plaintiff recover of the defendant her said damages, and her costs herein expended, taxed at four $\frac{17}{100}$ dollars. Defendant's costs, \$1.28.

Damages,	\$380 12
Costs,	5 45
Costs on execution,	90
Interest from May 5, 1851.	

23 And now, at this day, comes the said plaintiff, by

H. T. Helm, her attorney, and the said defendant, by Arnold, Larned & Lay, his attorneys, also comes, and upon agreement of the parties, the trial of this cause was submitted to the court, without the intervention of a jury, and the court having heard the proofs and allegations submitted, and being fully advised, now finds the said defendant to owe and be indebted to said plaintiff in the sum of three hundred and eighty-four dollars and twenty-nine cents debt, and assesses the damages herein to the sum of one hundred and sixty-six dollars and forty-eight cents.

23 Therefore, it is considered, that said plaintiff, for the use of Alexander Ingram, as aforesaid, do have and recover of said defendant her debt of three hundred and eighty-four dollars and twenty-nine cents, and also her damages of one hundred and sixty-six dollars and forty-eight cents, in form so as aforesaid by the court assessed, and also her costs and charges in this behalf expended, and have execution therefor.

24 And afterwards, to wit, on the twenty-eighth day of September, in the year last aforesaid, said day being also one of the days of the September term of said court, the following, among other proceedings, was had in said court, and entered of record, to wit :

And now, at this day, again come the parties to this cause, by their attorneys, as aforesaid, and the said defendant submits to the court his motion for a new trial herein, and after argument had thereon, and being fully advised, the court overrules said motion ; whereupon the defendant enters his excep-

tions to such ruling by the court, and prays an appeal to the Supreme Court of the State of Illinois, which is allowed on filing bond in the sum of eight hundred dollars, to be approved by the judge of this court, the bond and bill of exceptions to be filed in thirty days.

ASSIGNMENT OF ERRORS.

And now comes the said appellant, by Arnold, Larned & Lay, his attorneys, and says that in the record and proceedings and the judgment rendered there is manifest error, and that the judgment should have been for the appellant.

And the said appellant comes and assigns the following special causes of error :

First. The Court erred in rendering a judgment for the appellees, whereas the verdict should have been for appellant.

Second. The Court erred in admitting in evidence the judgment record offered and produced in evidence, for that there was a fatal variance between the judgment record produced and read in evidence, and the record declared on in declaration.

Third. For that the judgment record produced and read in evidence was not the judgment record sued on and declared upon.