

No. 14662

Supreme Court of Illinois

Iglehart

vs.

Church

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 98-72

J. W. Middleton & Co., Stationers, 196 Lake St.

April 27 1864

*Report of
Ingelhart*

Church

~~1863~~

1864

IN THE

Supreme Court of the State of Illinois.

THIRD GRAND DIVISION,

April Term, 1864.

NICHOLAS P. IGLEHART,

Plaintiff in Error.

v.

WILLIAM L. CHURCH,

Defendant in Error.

No. 98.

NICHOLAS P. IGLEHART,

Plaintiff in Error.

v.

THE CHICAGO MARINE &
FIRE INS. CO.,

Defendant in Error.

No. 97.

POINTS FOR DEFENDANTS IN ERROR.

In the first of the above entitled cases, the only point made is, that there was no proof of the execution of the

Given May 6, 1864
L. G. Smith

note or of the power of attorney offered in the court below, so far as the record shows. The record of the judgment in this case recites that the note and power of attorney were duly proved, and the record shows that the judgment was entered in term time.

This distinguishes the case from that of *Durham v. Brown*, 24 Ills., 93, in which the judgment was entered in vacation, and therefore was not a judicial act; not the act of the court, but of the parties, and of the clerk, who recorded the evidence of their acts, which thereafter operated upon the parties by way of estoppel. But the judgment in that case was reversed "for want of the power of attorney, there "being none filed," and not for want of proof of its execution.

But in this case the court will presume that the court below had sufficient proof of the execution of the note and power of attorney, until the contrary is shown. The judgment in this case was rendered by the court, and sufficient evidence appears to show it had jurisdiction of the subject matter and the person, therefore the judgment should be affirmed.

In the second case, the judgment was entered in term time, and the same errors are assigned as in the first case, and what we have said in the latter case on these points will suffice, as to them, in the present one.

The second error assigned is, that the breach, as laid in the declaration, is too narrow in that it does not allege non-payment of the "notes" instead of the "note." To this we reply:

First. That it was proper, as a mere matter of pleading, to include the two notes in one count.

Godfrey et al. v. Buckmaster, 1 Scam., 447.

Second. That the general breach at the end of the dec-

claration is a sufficient allegation of the non-payment of both notes, and even if not, it is good after verdict.

1 Chitty's Pleading, 337,

Thomas v. Roosa, 7 Johnson, 462,

Weigley et al. v. Weir, 7 Ser. & Rawle, 309,

1 Saunders Reps., 228, n. 1,

is in point.

Third. That this error, if it was one, was released by the cognovit filed in the court below, as will appear by inspection of it.

The production of the notes with the warrant of attorney, which the record states was "duly proved," was sufficient evidence that they were due and unpaid. The powers of attorney in these cases are very broad, and the clauses authorizing a release of errors are equally so, and we think the release of errors contained in the cognovit filed in the case, is sufficient to cure any error of this kind.

The next error assigned is, that there is no proof of Westcott's authority to appear and confess the judgment—this cannot be supported, because the warrants of attorney run to "Mark Skinner, or any attorney of any court of record." The attorneys are officers of the court, and each court is presumed to know who are attorneys of that court, and entitled to practice before it. The court below recognized Westcott as an attorney, and its decision on that point cannot be reviewed on error.

The last error questions the regularity of the judgment, because two notes were included in one judgment, and the attorney had, therefore, no power to confess a judgment for a greater sum than appears to be due upon each note.

We suppose this assignment of error is made upon the authority of the case of *Ball v. Miller*, decided by this court at the April term, 1863.

If that decision is correct in the given case, yet the language of the court implies that the circuit courts may, in their discretion, allow distinct demands to be consolidated, when, in their opinion, it is not inconsistent with the rules of pleading. This judgment was entered in term time, and this discretionary power of the court below having been exercised, it cannot be reviewed on error. As this is not like the case of *Ball v. Miller*, and the judgment below may be supported without overturning that case, we forbear comment upon it, further than to say, that when two judgment notes are made by the same party to the same payee and are both due, we can see no good reason why they should not be included in one judgment, and thus save the defendant the costs of two or more judgments, where one will secure all his and the creditor's rights.

This error, if it be one, ought to be held released, as it appears that both notes were due and unpaid; and the warrants of attorney were sufficiently broad to authorize the entry of one judgment on both notes.

SCAMMON, McCAGG & FULLER,

For Defendants in Error.

OTTAWA, April 29, 1864.

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

NICHOLAS P. IGLEHART,	}	<i>Error to Cook Circuit Court.</i>
<i>Plaintiff in Error,</i>		
vs.		
WILLIAM L. CHURCH,		
<i>Defendant in Error.</i>		

ABSTRACT OF RECORD AND PLAINTIFF'S POINTS.

Record, p.

1, 8

The defendant in error, on the 15th of March, 1859, filed in said court a declaration, note, warrant of attorney, and cognovit, on which judgment was entered in his favor for \$597.35, damages, together with costs. There is no affidavit filed to prove the execution of the note or the power of attorney; and the point is made, that for that reason the judgment is erroneous.

Durham vs. Brown, 24 Ill., 93.

ARRINGTON & DENT,

Att'ys for Plaintiff in Error.

98.

Iglehart

th
Church

Abstract & Points
of P^h. in Error.

Given April 23. 1864

Lecture on

Arrington & Dent,
Atty for P^h. in Error.

Nicholas P. Iglehart,
Plff. in Error,
vs.
William L. Church,
Def. in Error. } Error to the Circuit
Court of Cook County.
(Judgment March 15, 1859, in
favor of defendant in error against
Plaintiff in error)

The Clerk of the Supreme Court
will please issue a Writ of Error and scire facias
to the Sheriff of Cook County, and oblige
Arrington & Dent,
Attys for Plff. in Error

Iglehart vs. Church.

Receipt.

11

Filed Feb. 9, 1864,
 Mel and
 Ch.

Arrington & Dent,
 Attys for plff in Error.

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between William L. Church

complaint, and Nicholas P. Zglehart

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid defendant.

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

Pinckney H. Walker

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty four



L. Leland

Clerk of the Supreme Court.
J. M. Rice

Nicholas P. Zylchert

No.

vs.

William L. Church

WRIT OF ERROR.

FILED

April 23

A. D. 1864

J. L. Leman

Clerk.



STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between William L. Church

plaintiff, and Nicholas P. Ziehart

defendant, it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complainant the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said William L. Church

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William L. Church

notice, together with this writ.

Pinkney H. Barker

Witness, The Hon. John W. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of February in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Leland

Clerk of the Supreme Court.
J. B. Rice Deputy

No. *Nicholas J. Delahunt*

vs. *William L. Church*

SCIRE FACIAS.

Filed *April 23* A. D. 1864

W. L. Church Clerk.

Served by reading aforesaid writ to the within named *William L. Church* this 5th day of April 1864

David J. Hammond Sheriff
By John A. Nelson Deputy

Fees
1 dem 50
nil 05
1 ret. 10
65
Paid by [Signature]

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plens, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the twenty first day) of February in the year of our Lord One Thousand Eight Hundred and fifty nine and of the Independence of the said United States the eighty third.

Present, Honorable George Manierre Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Carlos Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore, viz:
on the 15th day of March A.D. 1859, to wit: at
the February term of said Court aforesaid,
there were filed in said Court certain papers
in the words and figures following to wit:
Declaration.

State of Illinois The Cook County Circuit Court,
Cook County, ss: February Special Term 1859.

William L. Church Plaintiff in this suit
by J. V. Le Moigne his attorney complains of
Nicholas P. Ogden Defendant in this suit
of a plea of trespass on the case upon promises,
to wit: that whereas the said defendant, heretofore
to wit: on the sixth day of January in the
year of our Lord one thousand eight hun-
dred and fifty nine at Chicago, to wit:

(21)

at the County of Cook and State of Illinois, made his certain note in writing, commonly called a promissory note, bearing date a certain day and year therein mentioned, to wit: the day and year last aforesaid, and and then and there delivered the said note to the said Plaintiff. By which said note the said defendant then and there promised by the name and style of N. P. Iglehart to pay to the order of said Plaintiff under the name and style of William L Church the sum of Five Hundred and sixty five (\$565.00) Dollars on the first day of March Eighteen Hundred and fifty nine with interest at the rate of ten (10) per centum per annum after due, for value received.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit: on the same day and year and at the place aforesaid, undertook, and then and there faithfully promises the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note. And whereas also, the said defendant afterwards, to wit: on the twelfth day of March in the year of Our

(3) Lord one thousand Eight Hundred and fifty nine at the place aforesaid, was indebted to the said plaintiff in the sum of Six Hundred Dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant at the special instance and request of the said defendant, and for other money by the said plaintiff before that time paid laid out and expended for the said defendant at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted, the said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid and at the place aforesaid undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this Court mentioned, when the said defendant should be therunto requested. And whereas also, the said defendant afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid accounted together with the said plaintiff of and concerning divers other ~~assess~~ sums of money before that time due and owing from the said

(4)

defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of Six Hundred dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested,

Nevertheless, the said defendant (although often requested, &c. to wit: on the day when the said note became due and payable, according to the tenor and effect thereof and often times since, to wit: at the place aforesaid,) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff but to pay the same or any part thereof to the said plaintiff the said defendant has without altogether refused, and still does refuse, to the damage of the said plaintiff of Seven Hundred

(5) dollars, and therefore the said plaintiff brings
suit &c.

J. V. LeMoigne Pffr, atty,

\$565.

Copy of note sued on

Chicago January 6. 1839.

" On the first day of March after date
for value received I promise to pay to William
L Church or order the sum of Five Hundred
and sixty five dollars with interest at ten
per cent after due. N. P. Iglehart"

Note and Power of Attorney.

\$565#

Chicago Jan'y. 6th 1839

On the first day of March after date,
for value received I promise to pay to Wm L
Church or order, the sum of Five Hundred
and Sixty Five Dollars, with interest at ten
per cent after due, N. P. Iglehart

Know all men by these presents, that whereas
the subscriber, Nicholas P. Iglehart is jointly
indebted to Wm L Church upon a certain prom-
issory note bearing even date herewith, for
the sum of Five Hundred and sixty five dollars
made payable to the said Wm L Church or order,
and due on the first day of March ad 1839,

Now therefore in consideration of the premises,
and of the sum of one dollar to me in hand
paid by the said Wm L Church, the receipt whereof
is hereby acknowledged I do hereby make, con-
stitute and appoint J. V. LeMoigne, or any

(6)

attorney in any Court of record, to be my true and lawful attorney, irrevocably for me and in my name place and stead, to appear in any Court of Record, in term time or vacation, in any of the states or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a judgment in favor of the said William L. Church or his or their assignee or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, with interest thereon, together with costs; also for ~~twenty~~^{thirty} dollars attorneys fees to be added to the amount due on entering up judgment; also, to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill of in equity to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Truly ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal this sixth (6th) day of January A.D. 1869. — C. P. Dglehart (Seal)

(7)

Cognovit.

State of Illinois

Cook County

Nicholas P. Iglehart

ats

William L. Church

Cook County Circuit Court.

February Special Term. A.D. 1859

Cognovit

And the said Nicholas P. Iglehart by Robert Hervey his attorney comes and defends the wrong and injury when, &c. and waives service of process, and says that he cannot deny the action aforesaid of the said Plaintiff, nor but that the said defendant did undertake and promise, in manner and form as the said Plaintiff has above thereof declared against him. nor but that the said plaintiff has sustained damages by reason of the non-performance of the said several promises and undertakings aforesaid, including the sum of thirty dollars Dollars for his reasonable attorneys fees for entering up this judgment. to the amount of five Hundred and ninety seven Dollars and thirty five cents. besides the costs and charges by the said plaintiff in this suit expended to be taxed. And the said defendant consents to immediate execution being issued on the judgment herein rendered. and releases all errors in these proceedings. and agrees that no appeal shall be prosecuted.

(8)

on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment. — Robt. Newey atty for Def't

And thereupon afterwards, to wit: on the same 15th day of March in the year aforesaid, and at the term of said Court aforesaid, the following proceedings, among others in said Court, were had and entered of record therein, viz:

William L. Church

17.006

vs

Nicholas P. Ogden

} Confession

This day comes the said plaintiff by J. W. Le Moyne his attorney who files herein his certain declaration of a plea of trespass on the case upon promises, and thereupon comes also the said defendant by Robert Newey his attorney in fact who files herein his warrant of attorney the execution of which being duly proved, and also his cognovit confessing the action of the said plaintiff against him, and that he has sustained damages herein to the sum of Five Hundred and thirty seven Dollars and thirty five cents,

Wherefore it is considered that said plaintiff

(9) do have and recover of the said Defendant
\$597³⁵ his damages of Five Hundred and Ninety
seven Dollars and thirty five Cents in form
as aforesaid Confessed together with his
costs and charges by him about his suit
in this behalf expended and have execution
therefor

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the
State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete
copy of the pleadings papers and proceedings of
record, in a certain cause lately pending in said Court,
on the Common Law side thereof, wherein William L. Church
was plaintiff and
Nicholas V. Glehart was Defendant

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court, at Chicago, this
twenty fifth day of March
A. D. 1864.



Wm L Church Clerk.

And now comes the said Nicholas P. Lylehart, by Arrington & Dent his attorneys, and says that in the record and proceedings before said there is manifest error, in this, to wit:

That said judgment was entered without any affidavit being filed to show the execution of the note.

That said judgment was entered without any affidavit being filed to show the execution of the warrant of attorney.

That said judgment was entered without proof that the debt was due.

Wherefore, and for other errors in said record and proceedings, the said Nicholas P. Lylehart prays that said judgment be reversed, and that he be restored to all things which he has lost thereby, &c.

Arrington & Dent,

Attys for self in error.

Lindie in error

Leammun McLevy

For Deft in error

Wm L. Church

vs

N. P. Lylehart

Filed April 21. 1864.

L. Leland

Ch.

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

NICHOLAS P. IGLEHART, <i>Plaintiff in Error,</i>	}	<i>Error to Cook Circuit Court.</i>
vs.		
WILLIAM L. CHURCH, <i>Defendant in Error.</i>		

Record, p. ABSTRACT OF RECORD AND PLAINTIFF'S POINTS.

1, 8 The defendant in error, on the 15th of March, 1859, filed in said court a declaration, note, warrant of attorney, and cognovit, on which judgment was entered in his favor for \$597.35, damages, together with costs. There is no affidavit filed to prove the execution of the note or the power of attorney; and the point is made, that for that reason the judgment is erroneous.

Durham vs. Brown, 24 Ill., 93.

ARRINGTON & DENT,
Att'ys for Plaintiff in Error.

98

Iglehart v. Church

Abstract of Record,

28 M - 350

Filed April 23. 1864

L. L. L. M.