

14674

No. _____

Supreme Court of Illinois

~~I~~Aglehart

vs.

Little.

71641  7

14674

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 96

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

Wright
vs
Little

~~1864~~
1864

STATE OF ILLINOIS, }

LA SALLE COUNTY.

STATE OF ILLINOIS, SUPREME COURT.—Within and for the Third Grand Division of said State. Nicholas P. Iglehart vs. William Little, administrator &c., of Richard Bowen, deceased.—Error to Cook Circuit Court.

Whereas, the said Nicholas P. Iglehart has sued out a Writ of Error from said Supreme Court to reverse a judgment obtained by said William Little, administrator, &c., of Richard Bowen, deceased against said Nicholas P. Iglehart, in the said Cook Circuit Court, which said Writ of Error is now pending in said Supreme Court; and whereas, a Writ of Scire Facias has been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next according to law; and whereas, also, it appears by affidavit on file in the Clerk's Office of said Supreme Court, that the said William Little is a non-resident of the State of Illinois, and without the reach of the process of said Supreme Court.

Now therefore, you, the said William Little, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the Justices of 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 brought into said Supreme Court on return of said Writ of Error and the errors assigned, if you shall see fit, and further to do and receive what said Court shall order in this behalf.

Dated this 2th day of February, A. D. 1864.

L. LELAND, Clerk.

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

This Certifies, That the annexed Notice in *Iglehart vs Little, admr. &c* was inserted *four* weeks successively in the OTTAWA FREE TRADER, a weekly newspaper published at Ottawa, La Salle County, Illinois, commencing with the number of said paper dated *Febre 12th* A. D. 1864, and ending with the number dated *March 4th* A. D. 1864

PRINTER'S FEE \$ 5.00



Paid by Dent
Wm Osmer, Publisher.

98

J. G. Hart v. Little, ad^r₄₂

Cent. of publn.

Filed Apr. 27. 1864.
S. Veland
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 Little administrator, &c, of Richard Bowen deceased -

plaintiff....., and

Nicholas P. Cylemart

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 Little

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 *Little*

notice, together with this writ.

Witness, The Hon. *John W. Eaton* Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *9th* day of *February* in the year of our Lord One Thousand Eight Hundred and Sixty-Four.

J. Seland
Clerk of the Supreme Court.

279
Nicholas P. Delahant

No.

vs.

William Little and/or

Power

SCIRE FACIAS.

Filed April 23, A. D. 1864

C. Deland Clerk.

The within named William Little not found
in my County this 8th day of April 1864
Fris loc David S Hammond Sheriff
Said by Wiff By John A Nelson Deputy



Nicholas P. Sglehart.

William Little, administrator
of Richard Bowen, dec'd.

Error to
Cook Co.
Court.

Supreme Court of Ill. Sp. Term A.D. 1864.
State of Illinois,
Cook County. ss.

Nicholas P. Sglehart, of Chicago, in said county, being duly sworn, says on oath, that he acted as agent for the said Nicholas P. Sglehart in serving out the said writ of error, and in causing publication of a notice to said Little as a non resident to be made therein, and that he at the time of so doing made diligent inquiry to ascertain the residence or post office address of the said William Little, and was unable to do so.

Nicholas P. Sglehart

Subscribed & sworn to, before me,
this 25th day of Sept. A.D. 1864.

R. Schloepfer
Notary Public



Iglekaro 96
Little, Adm^r &c

Affidavit of H. E. Iglekaro.

Filed April 27. 1864.
L. S. Leland
Clerk

Arrington & Dent,
Attys for Affiant's Oppos.



Nicholas P. Iglehart,
Plff. in Error,

vs.

William Little,
Administrator, &c., of
Richard Bowen, dec'd,

Def't. in Error.

Error to Cook Circuit
Court.

(Judgment September 14, 1860,

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.

Nicholas P. Iglehart,
plff. in error,

vs.

William Little, adm'r. &c.
of Richard Bowen, dec'd.

Error to Cook.

State of Illinois,
Cook County,
city of Chicago.

ss. Nicholas J. Iglehart,
of said county, on his oath states that he is in-
formed & believes that the above named William
Little is a now resident of this State.

Subscribed & sworn to before me
this 6th day of February A.D. 1864.

R. Schloepfer Notary Public

N. J. Iglehart

Iglehart vs Little, Admors.

Receipt & Affidavit of
non residence

Filed July 9, 1864,
L. Island
CR.

Arrington & Leach,
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 Little administrator, of Richard Bowen deceased

complaint, and

Nicholas P. Eglehart

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 plaint 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.

Prattley K. McKen

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. Island
Clerk of the Supreme Court.



Nicholas P. Eglehart
 No. vs.
William Little admr. &c.

WRIT OF ERROR.

FILED *April 23* A. D. 1864

L. Selman

Clerk.



UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, 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 first Monday, (being the third day) of September in the year of our Lord One Thousand Eight Hundred and Sixty and of the Independence of the said United States the Eighty fourth.

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, Wm L Church Clerk.

Be it Remembered that heretofore, to-wit: on the fourth day of September A.D. 1866 to-wit: at the September term of said Court for the year aforesaid, there were filed in said Court, a certain Declaration, Cognovit, Power of Attorney & note in the words and figures following, to-wit:

Declaration,

Cook County Circuit Court
of the September Term 1866

State of Illinois }
Cook County } S.S.

William Little who sues
as administrator of Richard Bowen dec'd
Plaintiff in this Suit by John V Le Moyne

(2)

his Attorney complains of Nicholas Sglehart
defendant who was summoned &c. of a plea
of trespass on the case on promises: For that
whereas the said defendant heretofore to wit
on the twenty first day of March in the year
of our Lord One thousand Eight hundred and
fifty three at Chicago to wit at said County
of Cook made his certain instrument in
writing bearing date the day and year aforesaid
and then and there delivered the same to
the said Richard Bowen during his life time
in and by which said agreement said defendant
by the name style and description of W Sglehart
promised to pay the order of Richard Bowen
the sum of Six thousand dollars with interest
for value received, Six months after the date
thereof and after Compliance with the terms
of an agreement then and there made between
said parties which agreement was in substance
as follows: That said Richard Bowen or
John Little Jr. for the use of Richard Bowen
should immediately thereafter institute a suit
in Cincinnati Ohio against the Executors
or administrators of John S Sglehart demand
for the sum of \$6,000. with interest Costs &c.
said suit to be brought on six drafts drawn
by John S Sglehart and said drafts being
the same for which John Little Jr. obtained
Judgment against Nicholas S Sglehart in

2
(13)
Wheeling, Virginia, and constituting a part
of the judgment obtained by said Little in
the Commercial Court of Cincinnati at the
January term thereof for the year 1851.
And that the said Bowen or Little should
prosecute said Suit with due diligence and
whatever sum of money should be obtained
upon the first execution issued upon any
judgment which might be obtained in such
Suit against the representatives of John S. Sglehart
if any such judgment should be obtained
should be credited upon the said note for
\$6,000. if the sum recovered upon the said first
execution should exceed the amount of interest
which had accumulated upon said said drafts.
If the money recovered from the representatives
of said John S. Sglehart should not exceed
the interest costs &c. on said drafts then
the said Nicholas S. Sglehart should not
be entitled to any credit upon said note
and that said Nicholas S. Sglehart should
thereupon pay to said Richard Bowen the
full amount named in said agreement
with interest.

And said plaintiff avers that said time
when said note became due has long
since elapsed and that the said Richard
Bowen did in compliance with the terms

(44)
of said agreement institute a suit in -
Cincinnati Ohio in the Superior Court of
Cincinnati in the County of Hamilton and
State of Ohio against Ann R Sglehart
administratrix &c. of John S Sglehart for said
sum of \$4,000. upon the drafts mentioned
in said agreement, and that said Richard
Bowen during his life time did prosecute -
said suit with due diligence and did
obtain a judgment against said Ann R
Sglehart administratrix &c. on the twenty eighth
day of June in the year eighteen hundred and
fifty five at the June term of said Court
for the sum of Eight thousand Seven hundred
dollars and Costs.

And that said Richard Bowen during
his life time did cause an Execution to be
issued upon said judgment and that no
money whatever was obtained or collected
upon said Execution but that the same was
returned by the Sheriff of said County of
Hamilton wholly unsatisfied.

And the said plaintiff avers that he
is the administrator of the said Richard
Bowen.

By means whereof and by force of the
Statute in such case made and provided
the said defendant became liable to pay

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(57)
Said plaintiff said sum of Money mentioned
in said agreement according to the tenor and
effect of the said agreement and being so
liable the said defendant in consideration
thereof then and there undertook and promised
to pay the same to the said plaintiff according
to the tenor and effect of the said agreement
to wit at the place aforesaid.

And whereas also the said defendant
afterwards to wit on the same day and year
and at the place aforesaid was indebted to
the said Richard Bowen in his life time in
the sum of Six Thousand dollars for money
before that time lent and advanced by the
said Richard Bowen in his life time to the
said defendant and at the like request of the
said defendant and in the like sum for
other money by the said Richard Bowen
in his life time before that time paid raised
and expended for the said defendant and
at the like request of the said defendant.
And in like sum for other money by the
said defendant before that time had received
to and for the use of the said Richard Bowen
in his life time.

And whereas also the said defendant
afterwards to wit on the Seventh day of June
in the Year Eighteen hundred and Sixty at

(6)
the place aforesaid, since the death of the
said Richard Bowen accounted together
with the said plaintiff as such administrator
aforesaid of and concerning divers other sums
of money before that time due and owing from
the said defendant to the said Richard Bowen
in his life time and then and there bring in
arrear and unpaid and upon such accounting
the said defendant was then and there found
to be in arrear and indebted unto the said
plaintiff as administrator as aforesaid, in the
further sum of Nine thousand dollars of like
lawful money as aforesaid, and being so
found in arrear and indebted to the said
plaintiff as administrator as aforesaid in
the said sum of Nine thousand dollars
lawful money as aforesaid 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 as such administrator as aforesaid
to pay unto the said plaintiff as administrator
aforesaid the sum of money last mentioned
when the said defendant should be thereunto
afterwards requested.

Nevertheless the said defendant (although
often requested so to do) has not yet paid the

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(7)
Said several sums of money above mention-
ed or any or either of them or any part thereof
to the said plaintiff as administrator aforesaid
but to pay the same the said defendant
hath hitherto altogether refused and still
does refuse to the damage of the said
plaintiff as such administrator as aforesaid
Ten thousand dollars and therefore the
said plaintiff as administrator aforesaid
brings suit &c.

John W Le Moyne
Plff's atty.

Cognovit—

Circuit Court of Cook County
State of Illinois } In Sept Term A.D. 1865.
Cook County } S.S.

Nicholas Iglschart
ad.

William Lute who, sues as
Administrator of Richard Brown

Cognovit.

And the said Nicholas
Iglschart by John M S Leusin 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

(8)
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 nonperformance
of the said several promises and
undertakings aforesaid to the amount of
Eight thousand Six hundred & Eighty three
Dollars, besides the costs and charges by
the said plaintiff in this suit expended
to be taxed, And the said defendant
releases all errors in these proceedings and
agrees that no appeal shall be presented
on the judgment entered by virtue hereof,
nor any bill in Equity filed to interfere
in any manner with the operation of
said judgment

John W. S. Cousin
Atty. for Defs

Power of Attorney & Note.

Know all men by these presents
That whereas the Subscriber Nicholas P.
Iglehart is justly indebted to Richard Bowen
upon a certain promissory note bearing
even date herewith for the sum of Six
thousand Dollars (\$6,000) made payable
to the order of the said Bowen and due

5
1891
Six months after date. Now therefore in
Consideration of the premises, and of the sum
of one dollar to me in hand paid, I do
hereby make and Appoint David S Lee as
or any Attorney of any Court of Record to
be my true and lawful Attorney irrevocably
for me and in my name and place to appear
in any Court of Record in term time or
Vacation in any of the States or Territories
of the United States and at any time after
the date hereof, to waive Service of process,
and Confess a judgment in favor of the
Said Richard Bowen, or his assignee or his
assignees, upon the Said note, 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 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 presented upon the
judgment entered, by virtue hereof nor any
bill in Equity filed 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 upon such judgment,
hereby ratifying and Confirming all that
my said Attorney may do by virtue hereof

(101)
Upon this Condition, That Richard Bowen
or John Little Jr. for the use of Richard Bowen
shall immediately institute a suit in
Cincinnati Ohio against the Executors or
Administrators of John S. Sglehart deceased
for the sum of \$6,000- with interest Costs
&c. Said suit to be brought on Six Drafts
drawn by the said John Little Jr. on and ac-
cepted by John S. Sglehart and said drafts
being the same for which John Little Jr. obtained
judgment against Nicholas S. Sglehart in
Wheeling W. Va. and Constituting a part of
the judgment obtained by said Little in
the Commercial Court of Cincinnati at
the January Term thereof for the Year 1851.
The said Bowen or Little shall prosecute
said suit with due diligence and whatever
sum of money shall be obtained upon
the first Execution issued upon any judgment
which may be obtained in such suit
against the representatives of John S. Sglehart
if any such judgment be obtained shall
be credited upon the said note for \$6,000-
if the sum recovered upon the said first
Execution shall exceed the amount of
interest which has accumulated upon said
six drafts. If the money recovered from
the representatives of said John S. Sglehart

6
(17)

shall not exceed the interest Costs &c. on said drafts. then the said Nicholas Fglehart shall not be entitled to any Credit upon said note. Upon Compliance with this Condition my above named Attorney shall have full power to act in my name as above authorized. The evidence that this Condition has been complied with shall be a Certified Copy of the Record of the Court in which said Suit shall be brought which record must show either that judgment was given against said Little or Bowen, or that judgment was given in their favor, and an Execution issued. When such evidence is shown, My said Attorney, if it appear from said record, that nothing has been received by said Bowen or Little from the Estate of John Fglehart or if it appear that no more has been received by them than the interest and Costs on said Drafts then he shall be authorized as above to Confess judgment against me for the whole Amount of the Note (Six thousand Dollars) with interest &c., If such record shall show that a part of said Six thousand dollars has been recovered in manner aforesaid and if such part shall be more than the interest Costs &c. on said

(121)

Drafts then after Crediting upon the said Note. the Amount of such excess. he is hereby authorized to Confess judgment against me. for the balance of said Six thousand Dollars in manner and form above described.

Witness my hand Seal this
21st day of March A.D. 1853.

In presence of { A P Iglehart Seal
J W Le Moyne }

March 21st 1853.
Six months after date and after
Compliance with Condition mentioned in
annexed Power of Attorney. I promise to
pay to the Order of Richard Bowen
Six thousand dollars \$6,000⁰⁰ with
interest for value received.
A P Iglehart

And thereupon afterwards. to wit: on the
14th day of September A.D. 1860 and at
the term of said Court aforesaid. the fol-
lowing proceedings among others in said
Court were had and entered of record
therein Viz.

(13)

William Little who was as
administrator of Richard Bowen

Nicholas P. Iglehart

Confession

This day comes the
said plaintiff by J. W. Le Moyne his Attorney
and files herein his certain declaration of a
plea of trespass on the case upon promises and
thereupon comes also the said defendant by
John W. Hensin 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 said plaintiff
against him, and that he has sustained
damages herein to the sum of Eight thousand
Six hundred and Eighty three Dollars.

Therefore it is considered that said
plaintiff as administrator aforesaid do have
and recover of the said defendant his damages
of Eight thousand Six hundred and Eighty three
Dollars in form as aforesaid confessed, together
with his Costs and Charges by him about
his Suit in this behalf expended, and
Execution therefor.

(14)

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 Little administrator was plaintiff and Nicholas P. Ogden was Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this twenty fourth 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 aforesaid there is manifest error, in this, to wit:

That said judgment was entered without proof of the execution of the note or agreement.

That the same was entered without proof that the defendant was living.

That the same was entered without proof that the alleged indebtedness, in any part of it, was due.

That the same was entered without proof of the warrant of attorney.

Also for that no affidavit was filed to show the execution of the note & warrant of attorney, and that the defendant was living, and that the debt was due: without which affidavit such judgment should not have been entered.

Also for that there was no proof of compliance with the conditions annexed to the warrant of attorney to the right of any attorney to appear or confess judgment.

Also for that the first count of the declaration did not set forth a good cause of action.

Also for that there was a misjoinder of counts in the declaration: - one count being in debt, & the others in assumpsit. - Wherefore, & for other errors, said Lylehart prays a reversal of said judgment, and that he be restored to what he has lost thereby, &c.

Arrington & Dent,
attys. for plaintiff.

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Mr Little admr

vs
N. P. Lylehart

Record.

Filed April 21. 1864

L. Leland

Ch.