

14652

No. _____

Supreme Court of Illinois

Hichins et al

vs.

Lyon et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 36

J. W. Middleton & Co. Stationers, 120 Lake St.

*Henry
B. J.*

364

X

Monday Oct 15 A.D. 1860
United States of America
State of Illinois
McHenry County Ill. Pleas before the
Honorable Isaac G. Wilson
Judge of the Thirteenth Judicial Circuit of
of the State of Illinois and Presiding
Judge of the McHenry County Circuit
Court at a Circuit Court begun and held
at Woodstock in said County at the Court
House on Monday the fifteenth day of
October in the year of our Lord One Thousand
Eight Hundred and fifty

Present
The Honorable Isaac G. Wilson Judge
Edward J. Goolsby State Atty
G. D. Kellum clk. C. C. Thomas Sheriff

And herebefore to wit on the 1st day
of March of same year last aforesaid
was filed in the Office of said Clerk of said
Court aforesaid an affidavit for writ of
Attachment in a case wherein Isaac R.
Lyons Eben Sherwood are Plaintiffs and
Edward Hichens, Nicholas H. Hichens and
Cornelius P. Hichens Defendants, which
affidavit is in words and figures following
that is to say

State of Illinois
McHenry County Ill. Eben Sherwood, Eben
Sherwood for Isaac R. Lyons

of said County being duly sworn doth depose
and say that against Edward Hickins, Nicholas
H. Hickins, Cornelius R. Hickins against
whom the said Lyon & Sherwood is about
to sue out an attachment is justly indebted
to them in a sum exceeding one hundred
dollars to wit the sum of One Hundred and
twenty three Dollars for goods wares and
merchandise upon two Promissory notes
and that the said Edward Hickins, Nicholas
H. Hickins & Cornelius R. Hickins are not
residents of this state.

Subscribed and sworn to } Eben E. Sherwood (Seal)
before me this 1st day
of March A.D. 1860.

Chas. W. Smith J.P.
Endorsed filed Mar 1. 1860. J. P. K. R. C. R.

And thereupon was issued out of said
Circuit Clerk's Office aforesaid a writ of
Attachment which is in words and figures
as follows that is to say:

State of Illinois }
McHenry County } ss. The People of the
State of Illinois to the
Sheriff of said County Greeting.

Whereas Eben E. Sherwood and Isaac
R. Lyon by Eben E. Sherwood of the County
of McHenry and State of Illinois have
complained on oath to George I. K. R.
Clerk of the Circuit Court of McHenry

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County that Edward Hickins, Nicholas H. Hickins & Cornelius R. Hickins of the County of McKury and State of Illinois are justly indebted unto them in a Sum exceeding One Hundred Dollars to wit the Sum of One Hundred and twenty three dollars for goods wares and Merchandise and upon two promissory notes and that the said Edward Hickins, Nicholas H. Hickins & Cornelius R. Hickins are not residents of this State. And the said Eben E. Sherwood and Isaac R. Lyon having given Bond and Security according to the Act in such Cases made and provided

We therefore command you that you attach so much of the Estate real or personal of the said Edward, Nicholas H. & Cornelius R. Hickins to be found in your County as shall be of value sufficient to satisfy said Debt and costs according to the said Complaint and such Estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to Law at the Circuit Court to be holden at Woodstock within and for the County of McKury on the 7. Monday of March next so as to compel the said E. Hickins N. H. Hickins & C. R. Hickins to appear and answer the Complaint of the said Lyon & Sherwood

And that you also summon as furnished
to be and appear before the said Court
on the said 3^d Monday of March next
then and there to answer what may be
objected against them: when and where
you shall make known to the said Court
how you have executed this writ and
have you then and there this writ

(Seal)

Witness George D. Kelson Clerk
of our said Court and the Seal
thereof at Woodstock in said County
this 1st day of March 1860.
G. D. Kelson clk.

(Endorsed.)

State of Illinois
McHenry County J. P.

By virtue of the within
attachment I did on this
first day of March 1860 Levy the same
on Lot number ten in Block number one
in Archers addition to Woodstock
Woodstock. Nov the 1st. 1860. Edwin E. Thomas Sheriff
Levy 50 miles travel 10 By C. H. Craig Deputy
Service 10. Ret 10. = 70.

Edwin E. Thomas Sheriff
By C. H. Craig Deputy
Filed Mar 19. 1860 J. D. Kelson clerk

And also on same day was filed in said Clerk's
Office a Bond which Bond is in
words and figures as follows that is to say.

5- I know all men by these Presents, that we
Eben S. Sherwood Isaac R. Lyon and
Abel W. Fuller are held and firmly bound unto
Edward Hickins Nicholas H. Hickins & Cornelia
R. Hickins in the penal sum of Three Hundred
Dollars lawful money of the United States
for the payment of which said sum well
and truly to be made we bind ourselves
our heirs Executors and administrators
jointly and severally by these presents
Sealed with our seals and dated this 1st.
day of February A.D. 1860.

The condition of this obligation is
such that whereas the above bounden
Lyon & Sherwood have on the day of the
date hereof prayed an attachment out of
the Circuit Court at the Suit of the said
Lyon & Sherwood against the Estate of the
above named Hickins, Hickins & Hickins for
the sum of One Hundred & twenty three Dollars
and — cents And the same being about
to be sued out of said Court returnable on
the 3^d Monday of March next to the Term
of said Court then to be holden. Now if
the said Lyon & Sherwood shall prosecute
their said suit with Effect or in case of
failure therein shall well and truly pay
and satisfy the said Hickins & Hickins & Hickins
all such costs in said suit and such damages
as shall be awarded against the said
Lyon & Sherwood their heirs Executors, or

6 administrators in any suit or suits
which may hereafter be brought for
wrongfully issuing out ^{the} said attachment
then the above obligation to be void
otherwise to remain in full force and
Effect

Lyon & Sherwood Seal
W. H. Fuller Seal

(Endowed) Filed Mar 1. 1860

G. W. Kiffin clk.

And on same day was filed in said Clerk's
Office aforesaid a certificate of Levy in words
and figures as follows that is to say

State of Illinois

McHenry County) I hereby certify that

by virtue of a certain
Writ of attachment to me directed from the
Circuit Court of McHenry County in favor
of Eben E. Sherwood & Isaac W. Lyon
against Edward Hitchens, Nicholas H. Hitchens
& Cornelius R. Hitchens and dated the 1st
day of March 1860. I did on this 1st day of
March 1860 Levy upon the following real
Estate to wit: Lot number ten in Block number
three in Kuchin's addition to Woodstock

Woodstock Mar 1st 1860.

Edwin E. Thomas Sheriff

By C. W. Craig Deputy

Filed Mar 1. 1860

G. W. Kiffin clerk

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And same day was ~~then~~ filed in said Office
aforesaid in said Cause a Receipt for Summons
as follows to wit;

State of Illinois

McHenry County

McHenry Circuit Court
March Term A.D. 1860

Isaac R. Lyon
Eben Sherwood

Plaintiff

Edward Nichols

Nicholas H. Nichols

Cornelia Nichols Defendants

The Clerk of said Court will issue
a Summons and attachment in the above
cases directed to the Sheriff of County in
a plea of assumpsit returnable at the
March Term of said Court A.D. 1860 to the
damage of the Plaintiff of One Hundred & twenty
three Dollars.

Judges Wanchett Plaintiffs Attorneys
J. W. Hefner Esq Clerk

(Endorsed) Filed this 1st day of March 1860.

J. W. Hefner Clerk.

And thereafter to wit on the 9th day of March
in the year last aforesaid was filed in said
Clerks office aforesaid the Plaintiff's de-
=claration in said cause of attachment aforesaid which Declaration is as follows
to wit;

McHenry Circuit Court

Of the March Term A.D. 1860
State of Illinois }
McHenry County } J. Isaac R. Lyon &

Chas Sherwood doing
business under the name and style of
Lyon & Sherwood Plaintiffs in this suit by
Jaslyn & Kunchet their Attorneys complain
of Edward Dickens Nicholas H. Dickens
& Cornelius R. Dickens Defendants who were
summoned etc. in a plea of trespass on the
case on promises. For that whereas the said
Defendants heretofore to wit on the 1st day of
June in the year of Our Lord One thousand
Eight Hundred and 59 to wit at — in said
County of McHenry made their certain
Promissory notes and then and there delivered
the same to the said Plaintiffs in and by
which said note said Defendants by the
name style and description of promised to
pay to the order of the said Plaintiffs
by the name style and description of
Lyon & Sherwood fifty five & 100th Dollars
Seven months after the date thereof with
interest at ten per ct. per annum pro value received
By means whereof and by force of the
Statute in such case made and provided
the said Defendants became liable to pay
said Plaintiff said sum of money mentioned
in said note and being so liable in

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consideration thereof then and there undertook and promised to pay the Same to the said Plaintiff according to the tenor and Effect true intent and meaning of the said note to wit at the place aforesaid & for that whereas the said Defts in the day and year aforesaid at the County aforesaid made their certain other promissory ^{note} and then and there delivered the Same to the said Plff. in & by which said note the said defts by the promised to pay the order of the said Plff. by the name & style as aforesaid the sum of fifty five & 00/100ths. dollars seven months after the date thereof with interest at ten per cent per annum for value recd. By means whereof & by force of the Statute in such case made and provided the said Defts became liable to pay the said Plff. said sum of money mentioned in said note & being so liable in consideration thereof then and there undertook & promised to pay the Same to the said Plff. according to the tenor & Effect true intent and meaning of the said promissory notes to wit at the County aforesaid

And whereas also the said Defendants afterwards to wit on the 1st day of June in the year of Our Lord One thousand eight hundred and fifty nine 59 to wit at McHenry in said County became and was indebted unto the plaintiff in a large sum of money to wit One Hundred and twenty three Dollars.

for money before that time lent and advanced to and paid laid out and expended for said Defendants by said Plaintiffs at said Defendants request. and for money before that time had and received by said Defendants to and for the use of said Plaintiffs and also in like sum for goods and wares and Merchandise before that time sold and delivered by said Plaintiffs to said Defendants at like special instance and request; and also in like sum for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said Defendants and at the like instance and request of said Defendants and being so indebted said Defendants in consideration thereof then and then undertook and promised to pay said Plaintiffs said last mentioned sum of money when thereunto afterwards requested

Yet the said Defendants not regarding their said promises and undertakings but contriving &c although often requested so to do have not paid said Plaintiffs either of said sums of money or any part thereof but so to do have hitherto wholly neglected and refused and still doth neglect and refuse to the damage of said Plaintiffs of One Hundred & Twenty three dollars and therefore he bring this suit &c.

Josiah & Hannahette
Plffs. Atty.

(Ordered) Filed this 9th day of March 1860
Geo. H. Spencer clerk

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And thereafter to wit on the 22^d. day of October in the year last aforesaid being one of the days of the October Term of said Court, the following among other proceedings were had by said Court and ordered to be Entered of Record to wit:

Isaac R. Lyon
C. E. Sherwood

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Nicholas H. Hickins
E. R. Hickins
Cornelia R. Hickins

Attachment

And now

Come the Plaintiffs

by Joslyn & files his
proof of publication

herein by which it appears that a notice of the pendency of this suit has been published in the Murengo Journal a weekly newspaper published at Murengo, McHenry County Illinois for six successive weeks the first publication of which was more than sixty days prior to the first day of the present term of this Court And the Defendants being called came not nor any one for them but fail and make Default herein which is ordered to be Entered of Record. It is thereupon ordered that the Plaintiffs have judgement for their damages. But inasmuch as these are uncertain and unknown to the Court this suit having been brought upon instruments of writing for the payment

of money only it is ordered that the Clerk assess the same. And he having assessed and reported the sum of One Hundred thirty two Dollars and forty six cents which is ordered to stand confirmed. It is therefore ordered and considered that the Plaintiffs have and recover of the Defendants the sum of One Hundred thirty two Dollars and forty six cents their damages as also their costs and charges herein Expended and that they have a special execution therefor commanding the Sheriff of said County to sell the following described property to satisfy the same to wit: Lot, number ten in Block number three in Hutchins addition to Woodstock

And thereafter to wit on the 7th. day of December A.D. 1860 was issued out of the Office of the Clerk of said Court a writ as Special Execution which is in words and figures as follows that is to say

State of Illinois }
McHenry County } ss. The People of the
State of Illinois to the
Sheriff of said County Greeting:

We command you that of the following goods and chattels lands and tenements of Nicholas H. Hutchins Esq. & Co. Hutchins to wit: Lot No (10) ten in Block number three in Hutchins addition to Woodstock

Defendants in your county you cause to be made the sum of One Hundred and thirty two Dollars and forty six cents which Isaac R. Lyon and E. E. Sherwood Plaintiffs lately in the Circuit Court of ^{the} said County at a Term thereof begun and held at Woodstock in said County on the 3^d. Monday of October A.D. 1860 recovered against the said Defendants and which by the said Court was adjudged to the said Plaintiffs for their damages

And also the further sum of Four Dollars and twenty five cents which were adjudged to the said Plaintiffs for costs and charges in that behalf expended whereof the said Defendants do stand convicted as appears to us of Record: And have these moneys ready to render to the said Plaintiffs for their debt and costs aforesaid and make return of this writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof

Seal.

Witness C. A. Russell Clerk
of said Court and the Seal thereof
at Woodstock in said County this
7 day of Dec. A.D. 1860
C. A. Russell Clerk

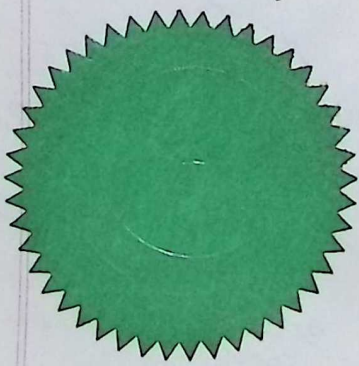
(Endorsed) Sheriff will collect interest from Oct. 22. 1860
Rec'd. Dec. 7 10 o'clock Am.
Pct \$132.46 Piffs cost. 4.20. Shiffs cost 7.99 Int. 1.58
Whole amt Due \$146.28.

Satisfied in full by Plaintiff's bid on Real
Estate Sale of Real Estate Jan'y 5. 1861

Lewis Ellsworth Sheriff
This Jan'y. 7. 1861. C. H. Russell clerk

State of Illinois
W. Henry County

I Charles H. Russell
Clerk of the Circuit Court
in and for said County in the State aforesaid
do hereby certify that the above foregoing
is a full true and complete copy of the
Record of the proceedings of this Court
in a case of Attachment, wherein Isaac
R. Lynn, E. C. Sherwood are Plaintiffs
and N. H. C. R. & E. R. Hickins defendants
except the proof of publication which
by the most diligent search I can not find
upon the files



In Witness whereof I have
hereunto set my hand and
the seal of said Court at
Hoodstock this the 12th. day
of October A.D. 1861
C. H. Russell clk.

Filed Apr. 20. 1864.
L. V. Leland

State of Illinois vs. To the April term 1862
Supreme Court of the Third Grand Division.

Edward Hickins	}	Plaintiff in Error
Nicholas M. Hickins		
Cornelia R. Hickins		
vs		
Isaac R. Lyon	}	Error to M. Henry Co.
Eben Sherwood		
		Defendant in Error.

Assignment of Errors

The said Cornelia R. Hickins
by Thos Eustace Wood her
Attorneys comes and says there
is manifest error in the record
of the proceedings and judgment
aforesaid, in this Court:

- 1 The affidavit for the writ of
attachment is defective and insuffi-
cient in law.
- 2 The attachment bond is irregular
and void.
- 3 There is no return by the Sheriff

as to whether or not the
Defendants below were, or
were not found.

4 There was no personal service
or appearance, and the record
fails to contain the Notice
of Publication.

5- The judgment exceeds the
ad damnum in the Declaration.

John W. Reed
~~John W. Reed~~
Attorneys for Plff. in error

Cornelius R.
~~Reich~~ Reichs
etal

vs

Isaac R. Lyon
etal

Record, and
Assignment of
errors

Leat a supersedeas
writ Bond \$350
Oliver W. Hammond &
Esra Snow Solicitors
J. D. Eaton

Filed Nov. 25. 1861
L. Seland
Clerk

Supreme Court of the State of Illinois

Isaac R. Lyne

Eben Sherwood

ats

Cornelia R. Hildreth

Antonia H. Hildreth

John H. Hildreth

April Term 1864

Defts in error

Plffs in error

And the said defense

acts by L. H. Hildreth their attorney comes &
appears to bring & requires that we should say that
there is no error in the said record and
proceedings as it is and by the said
assignment of errors of the said plea.

Off. Supreme. And thus the said defendants
are ready to verify in

L. H. Hildreth

Atty for Defts in error

SUPREME COURT OF ILLINOIS.

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

CORNELIA R. HICHINS,
EDWARD HICHINS,
NICHOLAS H. HICHINS,

v.

ISAAC R. LYON,
EBEN SHERWOOD.

Error to McHenry.

ABSTRACT OF RECORD.

This was an attachment sued out by said Eben Sherwood for himself, and Isaac R. Lyon against the said Cornelia R. Hichins, Edward Hichins and Nicholas H. Hichins, March 1, 1860.

1-2

AFFIDAVIT OF EBEN SHERWOOD, aforesaid, for a writ of attachment, filed March 1, 1860. Said affidavit alleges, that said Cornelia R. Hichins, Edward Hichins, and Nicholas H. Hichins, were indebted to said Lyon and Sherwood in "a large sum, to wit: the sum of one hundred and "twenty-three dollars for goods, wares and merchandise, and upon two "promissory notes, and that the said Edward Hichins, Nicholas H. "Hichins, and Cornelia R. Hichins, are not residents of this State.

"EBEN E. SHERWOOD."

2

SAID AFFIDAVIT verified before Enos W. Smith, J. P.

2-3-4 WRIT OF ATTACHMENT in usual form for \$123.

4 LEVY OF THE WRIT OF ATTACHMENT by sheriff of McHenry county, on March 1st, 1860, on Lot number ten (10), in Block three (3) in Hichins' Addition to Woodstock.

5 BOND FILED in penal sum of \$300, dated on the *first day of February*, A. D. 1860.

SAID BOND recites that "*on the day of the date hereof* the above " bounden Lyon & Sherwood have prayed an attachment out of the Circuit Court at the suit of the said Lyon & Sherwood, against the estate " of the above named Cornelia R. Hichins, Nicholas H. Hichins, and " Edward Hichins for the sum of \$123," etc., etc.

6 CERTIFICATE OF SHERIFF of levy of attachment writ, filed March 1st, 1860.

7 PRECIPUE FOR SUMMONS.

8 DECLARATION FILED, March 9th, 1860, by defendants in error against plaintiffs in error.

9 The declaration counts, in usual form, upon two certain promissory notes, dated June 1st, 1859, made by plaintiffs in error to defendants in error, for \$55.67 each, each due in seven months after date, with ten per cent. interest.

9-10 Also, common counts, in usual form, in assumpsit.

10 *Ad damnum in the declaration in the sum of one hundred and twenty-three dollars (\$123.)*

11 Certificate of the clerk, that publication of notice of the pendency of said suit had been made in the *Marengo Journal*, a weekly journal, etc., for six successive weeks, the first publication of which was more than sixty days prior to the first day of the present term of this court.

The notice of publication does not appear in the record.

- 11 Default of plaintiffs in error and judgment against them for the sum
12 of *one hundred and thirty-two dollars and forty-six cents* (\$132.46) in
 favor of defendants in error.
- 12-13 SPECIAL EXECUTION in usual form.
- 14 CERTIFICATE OF THE CLERK to the Record, in which the clerk certifies
 that he cannot find the notice of publication.

ERRORS ASSIGNED.

And now comes the said Cornelia R. Hichins by Knox & Reed, her attorneys, and says that there is manifest error in the record of the proceedings, and judgment aforesaid, to wit:

1. The affidavit for the writ of attachment is defective, and insufficient in law.
2. The attachment bond is irregular and void.
3. There is no return by the sheriff as to whether or not the defendants below were or were not found.
4. The court erred in rendering the judgment as aforesaid, for the reason that there was no personal service of process or appearance by defendants below, and the record does not show any notice by publication.
5. *The judgment exceeds the ad damnum in the writ and declaration.*

BRIEF OF PLAINTIFFS IN ERROR.

1. The affidavit for the writ of attachment is insufficient, as it fails to state the nature of the indebtedness as near as may be.

Section 1 of the act concerning attachments.

2. There is no return by the sheriff, as to whether or not the defendants were or were not found.

Morris v. Trustees, etc. 15 Ill. 266—269.

4. There was no personal service upon the defendants below, and the record does not contain any notice of publication.

In the case of *Randall v. Songer*, 16 Ill. 27, this court say :

“ The latter (meaning a defendant) must have actual or constructive notice of the proceedings against him, before his default can be properly entered. The record fails to show any such notice in this case. The statute prescribes the mode in which a non-resident defendant is to be brought into court. * * * * *

“ This advertisement is the act of the clerk and it performs the same office as process. It is as much a part of the record of the case as is the summons issued by the sheriff.

“ *Varin v. Edmondson*, 5 Gilman, 270.

“ *It is not enough for a decree to recite that the defendant has been duly served with process, or that he has been regularly notified of the pendency of the suit, but the summons or advertisement should appear in the record, so that this court may determine whether the statute has been complied with.*”

5. The judgment is clearly erroneous, for the reason that it exceeds the *ad damnum* in the declaration.

The ad damnum is only for the sum of \$123, whereas the judgment is for the sum of \$132.46.

Breese, 174 ; 3 Scam., 347 ; 2 Gilm., 375 ; 4 Gilm., 79 ; 19 Ill. 46 ; 22 Ill. 287 ; 24 Ill. 197.

In the case last cited, this court use the following language, to wit :

“ There is no rule of practice better settled, than that it is error to
“ render judgment for a larger sum than that *claimed in the declaration*,
“ whatever the form of the action.”

See also to the same effect the case of *Rives v. Kumler*, 27 Ill. 293,
where this court say :

“ We have repeatedly decided that a plaintiff in an original suit in the
“ Circuit Court, cannot recover more damages than he has claimed in
“ his declaration.”

For the above reasons, we respectfully submit that the judgment
should be reversed.

KNOX & REED,
Attorneys for Plaintiffs in Error.

Handwritten notes in the bottom left corner, partially obscured by a large brown stain. The text is written vertically and appears to be a list of names or dates, including "1842", "1843", "1844", "1845", "1846", "1847", "1848", "1849", "1850", "1851", "1852", "1853", "1854", "1855", "1856", "1857", "1858", "1859", "1860", "1861", "1862", "1863", "1864", "1865", "1866", "1867", "1868", "1869", "1870", "1871", "1872", "1873", "1874", "1875", "1876", "1877", "1878", "1879", "1880", "1881", "1882", "1883", "1884", "1885", "1886", "1887", "1888", "1889", "1890", "1891", "1892", "1893", "1894", "1895", "1896", "1897", "1898", "1899", "1900".

Dorrelia R. Hickins et. al.
vs.

Isaac R. Lyon et. al.

*Abstract of Record and
Brief of Plaintiffs in Error*

Filed April 29. 1864
L. L. L. M.

SUPREME COURT OF ILLINOIS.

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

CORNELIA R. HICHINS,
EDWARD HICHINS,
NICHOLAS H. HICHINS,
v.
ISAAC R. LYON,
EBEN SHERWOOD.

Error to McHenry.

ABSTRACT OF RECORD.

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AFFIDAVIT OF EBEN SHERWOOD, aforesaid, for a writ of attachment, filed March 1, 1860. Said affidavit alleges, that said Cornelia R. Hichins, Edward Hichins, and Nicholas H. Hichins, were indebted to said Lyon and Sherwood in "a large sum, to wit: the sum of one hundred and "twenty-three dollars for goods, wares and merchandise, and upon two "promissory notes, and that the said Edward Hichins, Nicholas H. "Hichins, and Cornelia R. Hichins, are not residents of this State.

"EBEN E. SHERWOOD."

2

SAID AFFIDAVIT verified before Enos W. Smith, J. P.

2-3-4 WRIT OF ATTACHMENT in usual form for \$123.

4 LEVY OF THE WRIT OF ATTACHMENT by sheriff of McHenry county, on March 1st, 1860, on Lot number ten (10), in Block three (3) in Hichins' Addition to Woodstock.

5 BOND FILED in penal sum of \$300, dated on the *first day of February*, A. D. 1860.

SAID BOND recites that "*on the day of the date hereof* the above " bounden Lyon & Sherwood have prayed an attachment out of the Circuit Court at the suit of the said Lyon & Sherwood, against the estate " of the above named Cornelia R. Hichins, Nicholas H. Hichins, and " Edward Hichins for the sum of \$123," etc., etc.

6 CERTIFICATE OF SHERIFF of levy of attachment writ, filed March 1st, 1860.

7 PRECIPE FOR SUMMONS.

8 DECLARATION FILED, March 9th, 1860, by defendants in error against plaintiffs in error.

9 The declaration counts, in usual form, upon two certain promissory notes, dated June 1st, 1859, made by plaintiffs in error to defendants in error, for \$55.67 each, each due in seven months after date, with ten per cent. interest.

9-10 Also, common counts, in usual form, in assumpsit.

10 *Ad damnum in the declaration in the sum of one hundred and twenty-three dollars (\$123.)*

11 Certificate of the clerk, that publication of notice of the pendency of said suit had been made in the *Marengo Journal*, a weekly journal, etc., for six successive weeks, the first publication of which was more than sixty days prior to the first day of the present term of this court.

The notice of publication does not appear in the record.

- 11 Default of plaintiffs in error and judgment against them for the sum
12 of *one hundred and thirty-two dollars and forty-six cents* (\$132.46) in
 favor of defendants in error.
- 12-13 SPECIAL EXECUTION in usual form.
- 14 CERTIFICATE OF THE CLERK to the Record, in which the clerk certifies
 that he cannot find the notice of publication.

ERRORS ASSIGNED.

And now comes the said Cornelia R. Hichins by Knox & Reed, her attorneys, and says that there is manifest error in the record of the proceedings, and judgment aforesaid, to wit:

1. The affidavit for the writ of attachment is defective, and insufficient in law.
2. The attachment bond is irregular and void.
3. There is no return by the sheriff as to whether or not the defendants below were or were not found.
4. The court erred in rendering the judgment as aforesaid, for the reason that there was no personal service of process or appearance by defendants below, and the record does not show any notice by publication.
5. *The judgment exceeds the ad damnum in the writ and declaration.*

BRIEF OF PLAINTIFFS IN ERROR.

1. The affidavit for the writ of attachment is insufficient, as it fails to state the nature of the indebtedness as near as may be.

Section 1 of the act concerning attachments.

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In the case of *Randall v. Songer*, 16 Ill. 27, this court say :

“ The latter (meaning a defendant) must have actual or constructive
“ notice of the proceedings against him, before his default can be prop-
“ erly entered. The record fails to show any such notice in this case.
“ The statute prescribes the mode in which a non-resident defendant is
“ to be brought into court. * * * * *

“ This advertisement is the act of the clerk and it performs the same
“ office as process. It is as much a part of the record of the case as is
“ the summons issued by the sheriff.

“ *Varin v. Edmondson*, 5 Gilman, 270.

“ *It is not enough for a decree to recite that the defendant has been duly
“ served with process, or that he has been regularly notified of the pendency
“ of the suit, but the summons or advertisement should appear in the
“ record, so that this court may determine whether the statute has been
“ complied with.*”

5. The judgment is *clearly erroneous, for the reason that it exceeds the ad damnum in the declaration.*

The ad damnum is only for the sum of \$123, whereas the judgment is for the sum of \$132.46.

Breese, 174 ; 3 Scam., 347 ; 2 Gilm., 375 ; 4 Gilm., 79 ; 19 Ill. 46 ;
22 Ill. 287 ; 24 Ill. 197.

(5)

In the case last cited, this court use the following language, to wit :

“ There is no rule of practice better settled, than that it is error to
“ render judgment for a larger sum than that *claimed in the declaration*,
“ whatever the form of the action.”

See also to the same effect the case of *Rives v. Kumler*, 27 Ill. 293,
where this court say :

“ We have repeatedly decided that a plaintiff in an original suit in the
“ Circuit Court, cannot recover more damages than he has claimed in
“ his declaration.”

For the above reasons, we respectfully submit that the judgment
should be reversed.

KNOX & REED,
Attorneys for Plaintiffs in Error.

Handwritten notes in cursive script, likely a signature or reference, located at the bottom left of the page.

36
Cornelia R. Hichings et
al
Isaac H. Lyon et al.

Abstract of Record and
Brief of Plaintiffs in Error

Filed April 29, 1864
J. L. Luce & Co

SUPREME COURT OF ILLINOIS.

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

CORNELIA R. HICHINS,
EDWARD HICHINS,
NICHOLAS H. HICHINS,

v.

ISAAC R. LYON,
EBEN SHERWOOD.

Error to McHenry.

ABSTRACT OF RECORD.

This was an attachment sued out by said Eben Sherwood for himself, and Isaac R. Lyon against the said Cornelia R. Hichins, Edward Hichins and Nicholas H. Hichins, March 1, 1860.

1-2

AFFIDAVIT OF EBEN SHERWOOD, aforesaid, for a writ of attachment, filed March 1, 1860. Said affidavit alleges, that said Cornelia R. Hichins, Edward Hichins, and Nicholas H. Hichins, were indebted to said Lyon and Sherwood in "a large sum, to wit: the sum of one hundred and "twenty-three dollars for goods, wares and merchandise, and upon two "promissory notes, and that the said Edward Hichins, Nicholas H. Hichins, and Cornelia R. Hichins, are not residents of this State.

"EBEN E. SHERWOOD."

2

SAID AFFIDAVIT verified before EUGEN W. Smith, J. P.

2-3-4 WRIT OF ATTACHMENT in usual form for \$123.

4 LEVY OF THE WRIT OF ATTACHMENT by sheriff of McHenry county, on March 1st, 1860, on Lot number ten (10), in Block three (3) in Hichins' Addition to Woodstock.

5 BOND FILED in penal sum of \$300, dated on the *first day of February*, A. D. 1860.

SAID BOND recites that "*on the day of the date hereof* the above " bounden Lyon & Sherwood have prayed an attachment out of the Circuit Court at the suit of the said Lyon & Sherwood, against the estate " of the above named Cornelia R. Hichins, Nicholas H. Hichins, and " Edward Hichins for the sum of \$123," etc., etc.

6 CERTIFICATE OF SHERIFF of levy of attachment writ, filed March 1st, 1860.

7 PRECIPE FOR SUMMONS.

8 DECLARATION FILED, March 9th, 1860, by defendants in error against plaintiffs in error.

9 The declaration counts, in usual form, upon two certain promissory notes, dated June 1st, 1859, made by plaintiffs in error to defendants in error, for \$55.67 each, each due in seven months after date, with ten per cent. interest.

9-10 Also, common counts, in usual form, in assumpsit.

10 *Ad damnum in the declaration in the sum of one hundred and twenty-three dollars (\$123.)*

11 Certificate of the clerk, that publication of notice of the pendency of said suit had been made in the *Marengo Journal*, a weekly journal, etc., for six successive weeks, the first publication of which was more than sixty days prior to the first day of the present term of this court.

The notice of publication does not appear in the record.

- 11 Default of plaintiffs in error and judgment against them for the sum
12 of *one hundred and thirty-two dollars and forty-six cents* (\$132.46) in
 favor of defendants in error.
- 12-13 SPECIAL EXECUTION in usual form.
- 14 CERTIFICATE OF THE CLERK to the Record, in which the clerk certifies
 that he cannot find the notice of publication.

ERRORS ASSIGNED.

And now comes the said Cornelia R. Hichins by Knox & Reed, her attorneys, and says that there is manifest error in the record of the proceedings, and judgment aforesaid, to wit:

1. The affidavit for the writ of attachment is defective, and insufficient in law.
2. The attachment bond is irregular and void.
3. There is no return by the sheriff as to whether or not the defendants below were or were not found.
4. The court erred in rendering the judgment as aforesaid, for the reason that there was no personal service of process or appearance by defendants below, and the record does not show any notice by publication.
5. *The judgment exceeds the ad damnum in the writ and declaration.*

BRIEF OF PLAINTIFFS IN ERROR.

1. The affidavit for the writ of attachment is insufficient, as it fails to state the nature of the indebtedness as near as may be.

Section 1 of the act concerning attachments.

2. There is no return by the sheriff, as to whether or not the defendants were or were not found.

Morris v. Trustees, etc. 15 Ill. 266—269.

4. There was no personal service upon the defendants below, and the record does not contain any notice of publication.

In the case of *Randall v. Songer*, 16 Ill. 27, this court say :

“ The latter (meaning a defendant) must have actual or constructive
“ notice of the proceedings against him, before his default can be prop-
“ erly entered. The record fails to show any such notice in this case.
“ The statute prescribes the mode in which a non-resident defendant is
“ to be brought into court. * * * * *

“ This advertisement is the act of the clerk and it performs the same
“ office as process. It is as much a part of the record of the case as is
“ the summons issued by the sheriff.

“ *Varin v. Edmondson*, 5 Gilman, 270.

“ *It is not enough for a decree to recite that the defendant has been duly
“ served with process, or that he has been regularly notified of the pendency
“ of the suit, but the summons or advertisement should appear in the
“ record, so that this court may determine whether the statute has been
“ complied with.*”

5. The judgment is clearly erroneous, for the reason that it exceeds the *ad damnum* in the declaration.

The ad damnum is only for the sum of \$123, whereas the judgment is for the sum of \$132.46.

Breese, 174 ; 3 Scam., 347 ; 2 Gilm., 375 ; 4 Gilm., 79 ; 19 Ill. 46 ;
22 Ill. 287 ; 24 Ill. 197.

(5)

In the case last cited, this court use the following language, to wit :

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“ whatever the form of the action.”

See also to the same effect the case of *Rives v. Kumler*, 27 Ill. 293,
where this court say :

“ We have repeatedly decided that a plaintiff in an original suit in the
“ Circuit Court, cannot recover more damages than he has claimed in
“ his declaration.”

For the above reasons, we respectfully submit that the judgment
should be reversed.

KNOX & REED,
Attorneys for Plaintiffs in Error.

³⁶
Cynthia R. Perkins et al.
vs.
Isaac R. Lyon et al.

Abstract of Record and
Index of Plaintiffs in Error

Filed Apr 29, 1864
J. L. Lucey Clerk

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of McHenry County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of McHenry County, before the Judge thereof, between Isaac R. Lyon & Eben Sherwood

plaintiffs, and Edward Hickins, Nicholas H. Hickins & Cornelia R. Hickins

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

Cornelia R. Hickins

as we are informed by her complaints 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 ^{as we have heretofore commanded you} Command You, That by good and lawful men of your County, you give notice to the said

Isaac R. Lyon and Eben Sherwood

that They 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 They 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

Lyon & Sherwood

notice, together with this writ.

^{Printed by J. C. Walker}
Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 29th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-four.

S. Ireland
Clerk of the Supreme Court.

Cornelia R. Richards
vs
No. 26

vs
R. Lyon
vs
Eben Sherwood
vs
SCIRE FACIAS

FILED April 20 A. D. 1864

at hand Clerk.

State of Illinois
McHenry County ss I have duly served the
within writ by reading the same to the
within named Eben Sherwood this 31 day
of March A.D. 1864. I R Lyon not found in
my County B F Church Sheriff McHenry Co

SUPREME COURT OF ILLINOIS.

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

CORNELIA R. HICHINS, EDWARD HICHINS, NICHOLAS H. HICHINS, v. ISAAC R. LYON, EBEN SHERWOOD.	}	Error to McHenry.
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ABSTRACT OF RECORD.

This was an attachment sued out by said Eben Sherwood for himself, and Isaac R. Lyon against the said Cornelia R. Hichins, Edward Hichins and Nicholas H. Hichins, March 1, 1860.

1-2 AFFIDAVIT OF EBEN SHERWOOD, aforesaid, for a writ of attachment, filed March 1, 1860. Said affidavit alleges, that said Cornelia R. Hichins, Edward Hichins, and Nicholas H. Hichins, were indebted to said Lyon and Sherwood in "a large sum, to wit: the sum of one hundred and "twenty-three dollars for goods, wares and merchandise, and upon two "promissory notes, and that the said Edward Hichins, Nicholas H. Hichins, and Cornelia R. Hichins, are not residents of this State.
"EBEN E. SHERWOOD."

2 SAID AFFIDAVIT verified before Enos W. Smith, J. P.

2-3-4 WRIT OF ATTACHMENT in usual form for \$123.

4 LEVY OF THE WRIT OF ATTACHMENT by sheriff of McHenry county, on March 1st, 1860, on Lot number ten (10), in Block three (3) in Hichins' Addition to Woodstock.

5 BOND FILED in penal sum of \$300, dated on the *first day of February*, A. D. 1860.

SAID BOND recites that "*on the day of the date hereof* the above " bounden Lyon & Sherwood have prayed an attachment out of the Circuit Court at the suit of the said Lyon & Sherwood, against the estate " of the above named Cornelia R. Hichins, Nicholas H. Hichins, and " Edward Hichins for the sum of \$123," etc., etc.

6 CERTIFICATE OF SHERIFF of levy of attachment writ, filed March 1st, 1860.

7 PRECIPE FOR SUMMONS.

8 DECLARATION FILED, March 9th, 1860, by defendants in error against plaintiffs in error.

9 The declaration counts, in usual form, upon two certain promissory notes, dated June 1st, 1859, made by plaintiffs in error to defendants in error, for \$55.67 each, each due in seven months after date, with ten per cent. interest.

9-10 Also, common counts, in usual form, in assumpsit.

10 *Ad damnum in the declaration in the sum of one hundred and twenty-three dollars (\$123.)*

11 Certificate of the clerk, that publication of notice of the pendency of said suit had been made in the *Marengo Journal*, a weekly journal, etc., for six successive weeks, the first publication of which was more than sixty days prior to the first day of the present term of this court.

The notice of publication does not appear in the record.

- 11 Default of plaintiffs in error and judgment against them for the sum
12 of *one hundred and thirty-two dollars and forty-six cents* (\$132.46) in
 favor of defendants in error.
- 12-13 SPECIAL EXECUTION in usual form.
- 14 CERTIFICATE OF THE CLERK to the Record, in which the clerk certifies
 that he cannot find the notice of publication.

ERRORS ASSIGNED.

And now comes the said Cornelia R. Hichins by Knox & Reed, her attorneys, and says that there is manifest error in the record of the proceedings, and judgment aforesaid, to wit:

1. The affidavit for the writ of attachment is defective, and insufficient in law.
2. The attachment bond is irregular and void.
3. There is no return by the sheriff as to whether or not the defendants below were or were not found.
4. The court erred in rendering the judgment as aforesaid, for the reason that there was no personal service of process or appearance by defendants below, and the record does not show any notice by publication.
5. *The judgment exceeds the ad damnum in the writ and declaration.*

BRIEF OF PLAINTIFFS IN ERROR.

1. The affidavit for the writ of attachment is insufficient, as it fails to state the nature of the indebtedness as near as may be.

Section 1 of the act concerning attachments.

2. There is no return by the sheriff, as to whether or not the defendants were or were not found.

Morris v. Trustees, etc. 15 Ill. 266—269.

4. There was no personal service upon the defendants below, and the record does not contain any notice of publication.

In the case of *Randall v. Songer*, 16 Ill. 27, this court say :

“ The latter (meaning a defendant) must have actual or constructive notice of the proceedings against him, before his default can be properly entered. The record fails to show any such notice in this case. The statute prescribes the mode in which a non-resident defendant is to be brought into court. * * * * *

“ This advertisement is the act of the clerk and it performs the same office as process. It is as much a part of the record of the case as is the summons issued by the sheriff.

“ *Varin v. Edmondson*, 5 Gilman, 270.

“ *It is not enough for a decree to recite that the defendant has been duly served with process, or that he has been regularly notified of the pendency of the suit, but the summons or advertisement should appear in the record, so that this court may determine whether the statute has been complied with.*”

5. The judgment is *clearly erroneous, for the reason that it exceeds the ad damnum in the declaration.*

The ad damnum is only for the sum of \$123, whereas the judgment is for the sum of \$132.46.

Breese, 174 ; 3 Scam., 347 ; 2 Gilm., 375 ; 4 Gilm., 79 ; 19 Ill. 46 ; 22 Ill. 287 ; 24 Ill. 197.

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“ render judgment for a larger sum than that *claimed in the declaration*,
“ whatever the form of the action.”

See also to the same effect the case of *Rives v. Kumler*, 27 Ill. 293,
where this court say :

“ We have repeatedly decided that a plaintiff in an original suit in the
“ Circuit Court, cannot recover more damages than he has claimed in
“ his declaration.”

For the above reasons, we respectfully submit that the judgment
should be reversed.

KNOX & REED,
Attorneys for Plaintiffs in Error.

³⁶
Cornelia R. Wickings et al.
vs.

Lease R. Lyon et al.

Abstract of Record and
Brief of Plaintiffs in Error

Filed Apr 29, 1864
J. C. Leonard

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

To the Sheriff of Mc Henry 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 Mc Henry County, before the Judge thereof, between
Isaac N. Lyon and Eben Sherwood

plaintiffs, and Edward Hickins, Nicholas H. Hickins
and Cornelia Hickins

defendants, it is said that manifest error hath intervened, to the injury of
the said ~~defendants~~ Cornelia Hickins

as we are informed by her
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 Isaac N. Lyon and
Eben Sherwood

that ~~that~~ they 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
they 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 Isaac N. Lyon and Eben
Sherwood

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this 10th
day of March in the year of our Lord One
Thousand Eight Hundred and Sixty-Three

L. Deland

Clerk of the Supreme Court.

J. B. Rice Deputy



34 54

Cornelia Hickins

No. 36 vs.

Joace W. Lyon & Co

SCIRE FACIAS.



Filed April 20 A. D. 1864

J. Deland Clerk.

Thus day

Where by reading the within in the
within named Eben Sherwood this 26th
day of March A.D. 1863 - I have not found in my
return -

P. F. Church
Sheriff of McHenry Co
Ill -



Printed by BEACH & BARNARD, 14 South Clark St.

SUPREME COURT OF ILLINOIS.

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

CORNELIA R. HICHINS,
EDWARD HICHINS,
NICHOLAS H. HICHINS,

v.

ISAAC R. LYON,
EBEN SHERWOOD.

Error to McHenry.

ABSTRACT OF RECORD.

This was an attachment sued out by said Eben Sherwood for himself, and Isaac R. Lyon against the said Cornelia R. Hichins, Edward Hichins and Nicholas H. Hichins, March 1, 1860.

1-2

AFFIDAVIT OF EBEN SHERWOOD, aforesaid, for a writ of attachment, filed March 1, 1860. Said affidavit alleges, that said Cornelia R. Hichins, Edward Hichins, and Nicholas H. Hichins, were indebted to said Lyon

(2)

~~2-3-4~~ WRIT OF ATTACHMENT in usual form for \$123.

4 LEVY OF THE WRIT OF ATTACHMENT by sheriff of McHenry county, on
March 1st, 1860, on Lot number ten (10), in Block three (3) in Hichins'
Addition to Woodstock.

5 BOND FILED in penal sum of \$300, dated on the *first day of February*,
A. D. 1860.

- 11 Default of plaintiffs in error and judgment against them for the sum
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- 12-13 SPECIAL EXECUTION in usual form.
- 14 CERTIFICATE OF THE CLERK to the Record, in which the clerk certifies
 that he cannot find the notice of publication.

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And now comes the said Cornelia R. Hichins by Knox & Reed, her attorneys, and says that there is manifest error in the record of the proceedings, and judgment aforesaid, to wit:

1. The affidavit for the writ of attachment is defective, and insufficient in law.
2. The attachment bond is irregular and void.
3. There is no return by the sheriff as to whether or not the defendants below were or were not found.
4. The court erred in rendering the judgment as aforesaid, for the reason that there was no personal service of process or appearance by defendants below, and the record does not show any notice by publication.
5. *The judgment exceeds the ad damnum in the writ and declaration.*

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1. The affidavit for the writ of attachment is insufficient, as it fails to state the nature of the indebtedness as near as may be.

Section 1 of the act concerning attachments.

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Morris v. Trustees, etc. 15 Ill. 266—269.

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“ This advertisement is the act of the clerk and it performs the same office as process. It is as much a part of the record of the case as is the summons issued by the sheriff.

“ *Varin v. Edmondson*, 5 Gilman, 270.

“ *It is not enough for a decree to recite that the defendant has been duly served with process, or that he has been regularly notified of the pendency of the suit, but the summons or advertisement should appear in the record, so that this court may determine whether the statute has been complied with.*”

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The ad damnum is only for the sum of \$123, whereas the judgment is for the sum of \$132.46.

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“ We have repeatedly decided that a plaintiff in an original suit in the
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For the above reasons, we respectfully submit that the judgment should be reversed.

KNOX & REED,
Attorneys for Plaintiffs in Error.

³⁶
Cornelia R. Wickens et al.
vs.
Isaac R. Lyon et al.
Abstract of Record and
Brief of Plaintiffs in Error

Filed April 29, 1864
J. L. L. L. L. L.