

14357

No. \_\_\_\_\_

# Supreme Court of Illinois


Hutchins~~x~~s

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vs.

Lyons.

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 106

14357

1862

*Hutchins*

*vs*  
*Lynn*  
1862

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,** }  
*APRIL TERM, A. D. 1862.* }

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EDWARD HICHINS,  
NICHOLAS H. HICHINS,  
CORNELIA R. HICHINS,  
*Plaintiffs in Error,*  
vs.  
ISAAC R. LYON,  
EBEN SHERWOOD,  
*Defendants in Error.*

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ERROR TO McHENRY COUNTY.

## ABSTRACT OF RECORD.

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Page 1, 2	Affidavit for a writ of attachment.
3, 4	Attachment writ, and levy thereon.
5, 6	Attachment bond.
6, 7	Certificate of levy, and precipe.
8, 9, 10	Declaration in assumpsit; <i>ad damnum</i> , \$123.
11, 12	Judgment by default for plaintiffs, \$132.46.
12, 13	Execution.
14	Certificate of the clerk to the record.

### Assignment of Errors.

THE said Cornelia R. Hichins, by Knox, Eustace & Reed, her attorneys, comes and says there is manifest error in the record of the proceedings, and judgment aforesaid, in this, 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. 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.

### Brief of Plaintiff in Error.

1. The affidavit for the writ of attachment is insufficient in law, as it *fails* ~~states~~, to state the nature and amount of the indebtedness as near as may be, which the statute requires.

Section 1, of the act concerning attachments.

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

*Vide* sec. 3, Attachment Act, page 17, Purple's Statute.  
*Morrie vs. Trustees, &c.*, 15th Ills. 266—269.

3. The *attachment bond* is dated February 1st, 1860, and recites that the defendants in error have, on the day of the date hereof, &c., and recites that the writ is returnable on the third Monday of March next, which bond was filed March 1st, 1860, and the writ was sued out March 1st, 1860. The bond is defective, because it is uncertain whether the third Monday of March next refers to the date of the filing, or the date of the bond.

4. The record fails to give the notice of publication. There was no personal service. 16 Ills. 27.

5. The judgment *exceeds* the *ad damnum* in the declaration. The judgment is for \$132.46, whereas the *ad damnum* is for \$123 only.

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

In the last case 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.”

KNOX & REED,  
*Attorneys for Plaintiff in Error.*

<sup>100</sup>  
Hichins et al  
vs

Syme et al

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Abstract, & Brief  
of Appellant  
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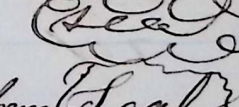
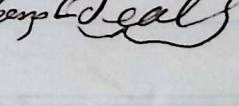
Filed April 22-1862  
G. Ireland  
Clark

Know all men by these presents  
that Cornelia Reichins, Olga  
W. Hammond Esira Sheward John Moor  
are held and firmly bound to  
Isaac R. Lyon and Eben Sher-  
wood in the penal sum of  
Three hundred and fifty  
dollars lawful money, for  
the payment of which well  
and truly to be made we  
hereby bind ourselves our heirs  
executors administrators and  
assigns firmly by these presents.  
Witness our hands and seals  
this 28<sup>th</sup> day of October A.D. 1861  
-----

The condition of the above  
obligation is such that whereas  
at the October term A.D. 1860  
of the Circuit Court of the  
County of Mc Henry and State of  
Illinois the said Isaac R. Lyon  
and Eben Sherwood recovered  
a judgment against the said  
Cornelia Reichins and Nicholas  
The Reichins and Edward Reichins  
for the sum of one hundred  
and thirty two dollars and forty  
six cents and costs in a certain

action of assumpsit in  
foreign attachment:  
and whereas the said Cornelia  
Heichins ~~is desirous~~ has taken  
said cause to the Supreme  
Court of said State of Illinois  
by writ of error:  
and whereas she desires the  
said writ of error to operate  
as a supersedeas:

Now if the said Cornelia Heichins  
shall pay the said judgment,  
costs, interest and damages, in  
case the said judgment shall  
be affirmed, and shall also duly  
prosecute said appeal, this  
obligation is to be void other-  
wise and remain in full force  
and effect.

Oliver W. Hammond   
Esira S. Spang   
John, Moore   
Cornelia R. Heichins 

State of Illinois }  
County of Cook }

George W. Hammond  
being duly sworn says that he  
signed and sealed the above  
and foregoing bond executed  
by himself Esira S. Shaw  
John Moor and Cornelia R.  
Heichins to Isaac R. Lyon  
and Eben Sherwood in the  
penal sum of three hundred  
and fifty dollars: that he  
deponent saw said Shaw  
Moor and Heichins sign and  
seal said bond:

deponent further says that  
he is the owner of Lot no.  
four in block no. eight,  
and lot seventeen in block  
no. two in the town of  
Cordova in the County of  
Rock Island and State of  
~~Illinois~~ Illinois: that said  
lots are worth in cash  
six hundred dollars:  
that said lots are free  
from all encumbrances  
of every kind and description

that said lots are not the  
homestead of deponent;  
deponent further says that  
he is not indebted to any  
person: that he has real  
estate in the State of Iowa  
free from all encumbrances  
to the value of five  
hundred dollars:  
deponent further says that  
the said Shaw is worth  
over and above all debts  
and claims against him  
the sum of two thousand  
dollars: that said Shaw  
owns eighty acres of real estate  
near Admunt in said County  
of book of the value of two  
thousand dollars free  
from all encumbrances:

Done and subscribed before me this 6<sup>th</sup> day of Nov 1861. W. H. Howard  
Clerk of the Circuit Court of Cook County Illinois

106  
75  
Lemuel Nichols et al

vs,

Lynn Howard

Bond for prosecution of  
above cause in his case in  
Sup. Court.

Filed Nov. 25, 1861  
Leland  
Clerk

In Supreme Court of Iowa

April Term 1862

Isaac R Lyon

Eben Sherwood

vs Defendants in Error

Edward Hitchcock

Archibald Hitchcock

Cornelia R Hitchcock

Plffs in Error

Esprit M. Henry

The defendants in Error by Clerk & Bar  
their attys submit the following  
Brief and ask the consideration of the  
Court of the suggestions then made

1<sup>st</sup> That the affidavit for attachment  
in this case is sufficient

See Phelps vs Jerry Brown (Banker) 327

2 The bond is a good one but even  
if not it is too late to object to the  
insufficiency in this Court both the  
bond and affidavit are amendable  
in the court below and their insufficiency  
ought to be no ground of Error in this  
Court

See Morris vs Trustees of School 15 Ill 266

3 The Defendants are brought into Court by publication and while it is true that the record does not show a copy of of the notice published. I know of no law requiring that it should, It would undoubtedly be generally the most convenient method of proving publication to file a copy of notice with certificate of publication of the newspaper. But suppose the publisher of the paper to be dead or that he should refuse to certify Is it not proper to prove the publication by affidavit or by parol evidence in Court?

In this case the record recites in the order directing the defendants that publication had been made It must therefore be presumed that the Court had sufficient proof upon which to ground such order

4<sup>th</sup>

The ad Damnum in the declaration is less by a small amount than the sum awarded in the judgment This was evidently a mistake of the clerk and I think if the discrepancy is great enough between the judgment and the amount claimed to require notice at the hands

of this Court that it would better  
serve the ends of justice to allow a  
remittitur of the excess and  
affirm the judgment for the balance  
Interest on the amount claimed in  
the declaration added accordingly amounts  
to the sum in the judgment

This Court has not questioned its power  
to allow the small excess to be remitted  
See *Chasot vs Lefevre* 3 Gilman 643

The defendants in error hereby offer to  
remit this excess say \$9,46 and  
ask the Court to affirm the judgment  
on such terms as to costs as shall  
be deemed proper by the Court

Respectfully

Submitted

Edward A. Kerr

Att'y for Dfts in Error

49 No 106

In Sapsan Court  
April Term 1862

Isaac R. Lyon  
Eben Sherwood  
at

Edward Hutchins  
Nicholas Hutchins  
Amelia R. Hutchins

Defts Argument

Filed April 29, 1862  
V. C. L. C.  
C. L. C.

Clarendon & Burr  
for Defts in error

State of Illinois }  
Supreme Court } of said court.

Edward Hichins } Plaintiff in Error  
Nicholas H. Hichins }  
Cornelia R. Hichins }  
vs } Error to McHenry Co.  
Isaac R. Lyon } Defendant in Error.  
Eben Sherwood }

The clerk of said court  
will please issue a writ of  
error in the above case.

Thos Cusack  
Atty for Cornelia R. Hichins.

106  
Cynthia R.  
~~W. H. H.~~ Hichins  
et al  
vs

Isaac R. Lynn  
et al

~~~~~  
Recipe  
~~~~~

Filed Nov. 25. 1861  
Island Co.,

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of McHenry — 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 Cornelia R. Hichins, Edward Hichins & Nicholas H. Hichins

defendants, it is said that manifest error hath intervened, to the injury of the said Cornelia R. Hichins

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 Command You, That by good and lawful men of your County, you give notice to the said

Isaac R. Lyon & 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.

Witness, The Hon. John D. Gatton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25<sup>th</sup> day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Seland

Clerk of the Supreme Court.



49 106

Correia R. Richards  
vs.  
No. Isaac R. Lyon &  
Eben Sherwood

SCIRE FACIAS.

FILED April 22 A. D. 1862

L. Leland  
Clerk.

I have executed this within writ by reading  
the same to the within named defendants  
Isaac R. Lyon & Eben Sherwood December 9<sup>th</sup> 1861

Shirley J. J.  
\$125

Lewis Elsworth Sheriff  
J. B. Church, Deputy

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of McHenry - Greeting:

Because, In the record and proceedings, as 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 Cornelia R. Aikin's & others

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

Cornelia R. Aikin's

as we are informed by her

complainant 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.

Witness, The Hon. John D. Caten, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25<sup>th</sup> day of November in the Year of Our Lord One Thousand Eight Hundred and Sixtyone.

L. Island  
Clerk of the Supreme Court.



Cornelia R. Hinkins  
imply. &c.

No. 706 vs.

Grace R. Lyons  
Eben Sherwood

WRIT OF ERROR.

FILED Nov. 25 A. D. 1861

L. Deland

Clk.

This writ of error is  
made a supersedeas  
& as such is to be obeyed  
by all concerned.

L. Deland  
Clk.



*Vertical handwritten notes on the left margin:*  
To the Court of the  
SABREM COURT,  
STATE OF ILLINOIS,  
Circuit Court  
County of Cook  
State of Illinois  
In the case of  
Cornelia R. Hinkins  
vs.  
Grace R. Lyons  
&  
Eben Sherwood

*Vertical handwritten notes on the right margin:*  
Charles  
B. W.

STATE OF ILLINOIS, }  
Clerk's Office of the Supreme Court. } ss.

I Hereby Certify, That a Writ of Error hath issued from this Office for the Reversal of a Judgment — obtained by

Isaac R. Lyon & Eben Sherwood

against

Edward Hickins, Nicholas A. Hickins & Cornelia R. Hickins

in the Circuit \_\_\_\_\_ Courts of  
McHenry — County, at the October Term, in  
the year of our Lord one thousand eight hundred and sixty —  
in a certain action of Assumpsit —

which Writ of Error is made a  
Supersedeas, and is to operate as a suspension of the execution of the  
judgment, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the  
said Supreme Court, at Ottawa, this 25<sup>th</sup>  
day of November in the year of our  
Lord one thousand eight hundred and Sixty one.

L. Deland

Clerk of the Supreme Court.



49 106

Carroll R. Nichols  
vs  
wplv. vs

No. 18.

Isaac R. Lyon  
Eben Sherwood

SUPERSEDEAS.

FILED April 22 A. D. 1862

L. Leland  
CLERK

I have executed the within writ by reading the same to the within named defendants Isaac R. Lyon & Eben Sherwood Dec 9<sup>th</sup> 1861

Sheriff fees  
\$1.25-

Lewis Elsworth Sheriff  
By B. B. Church Deputy

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1862. }

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EDWARD HICHINS,  
NICHOLAS H. HICHINS,  
CORNELIA R. HICHINS,  
*Plaintiffs in Error,*

vs.

ISAAC R. LYON,  
EBEN SHERWOOD,  
*Defendants in Error.*

} ERROR TO McHENRY COUNTY.

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## ABSTRACT OF RECORD.

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Page 1, 2	Affidavit for a writ of attachment.
3, 4	Attachment writ, and levy thereon.
5, 6	Attachment bond.
6, 7	Certificate of levy, and precipe.
8, 9, 10	Declaration in assumpsit; <i>ad damnum</i> , \$123.
11, 12	Judgment by default for plaintiffs, \$132.46.
12, 13	Execution.
14	Certificate of the clerk to the record.

### Assignment of Errors.

THE said Cornelia R. Hichins, by Knox, Eustace & Reed, her attorneys, comes and says there is manifest error in the record of the proceedings, and judgment aforesaid, in this, 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. 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.

### Brief of Plaintiff in Error.

1. The affidavit for the writ of attachment is insufficient in law, as it <sup>*bails*</sup>~~facts~~, to state the nature and amount of the indebtedness as near as may be, which the statute requires.

Section 1, of the act concerning attachments. \*

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

*Vide* sec. 3, Attachment Act, page 17, Purple's Statute.  
*Morrie vs. Trustees, &c.*, 15th Ills. 266—269.

3. The *attachment bond* is dated February 1st, 1860, and recites that the defendants in error have, on the day of the date hereof, &c., and recites that the writ is returnable on the third Monday of March next, which bond was filed March 1st, 1860, and the writ was sued out March 1st, 1860. The bond is defective, because it is uncertain whether the third Monday of March next refers to the date of the filing, or the date of the bond.

4. The record fails to give the notice of publication. There was no personal service. 16 Ills. 27.

5. The judgment *exceeds* the *ad damnum* in the declaration. The judgment is for \$132.46, whereas the *ad damnum* is for \$123 only.

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

In the last case 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.”

KNOX & REED,  
*Attorneys for Plaintiff in Error.*

F00  
Hickins et al

24

Syon et al

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Abstract & Brief  
of Appellant  
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Do not think of  
that do not  
Comply with the  
Filed April 22-1862  
Robt = Leland  
Clerk

State of Illinois } Vs. To the April term  
Supreme Court } A.D. 1861 of said Court  
Third Grand Division.

Edward Hickins }  
Nicholas H. Hickins } Plaintiffs in Error.  
Lemuel R. Hickins }  
vs } Error to McHenry Co.  
Isaac R. Lyon }  
Eben Sherwood } Defendants in Error

Abstract of the Record.

- Pages 1-2 Affidavit for a writ of Attachment.  
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8-9-10 Declaration in Assumpsit -  
Ad damnum \$123.  
11-12 Judgment by default for Plffs  
\$132.<sup>46</sup>/<sub>100</sub>  
12-13 Execution

14 Certificate of the clerk to  
the record.

## Brief of Plaintiff in Error

1 The affidavit for the writ of attachment is insufficient in law, as it fails to "state the nature and amount of the indebtedness as near as may be" which the statute requires. Sec. 1 of the act concerning attachments.

2<sup>o</sup> There is no return of the Sheriff as to whether the Defendants ~~are~~ were or were not found.  
Vide sec. 3 attachment act page 57 Purples Statute. Morris vs Trustees 4<sup>e</sup> 15 Ills. 266-269.

3<sup>o</sup> The Attachment Bond is dated Feb. 1<sup>st</sup> 1860 and recites that the Defendants in error "have on the day of the date hereof <sup>ye</sup>" and recites that the writ is returnable "on the third Monday of March next", which Bond was filed March

1<sup>st</sup> 1860, and the writ was sued out March 1<sup>st</sup> 1860.

The Bond is defective because it is uncertain whether the 3<sup>rd</sup> Monday of March next, refers to the date of the filing or the date of the bond.

4 The record fails to give the Notice of Publication; there was ~~not~~ no personal service. 16 Ill. 27.

5 The judgment exceeds the ad damnum in the declaration: the judgment is for \$132<sup>(46)</sup>/<sub>100</sub> whereas the ad damnum is for \$123. only.

Brace 174, 3<sup>rd</sup> Seam. 347, 2<sup>nd</sup> Gil. 375  
4 Gil. 79, 19 Ill. 46, 22<sup>nd</sup> Ill. 287,  
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Have instructed Clerk  
Atty's for Plff. in Error.

49 106  
Cornelia K.  
~~Edwards~~ <sup>Hickins</sup>  
et al

vs

Isaac R. Lyon  
et al

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Abstract of  
Record & Brief of  
Plff. in Error  
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Filed Nov. 25, 1864  
L. Keland Clk.

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,** }  
APRIL TERM, A. D. 1862. }

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NICHOLAS H. HICHINS,  
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vs.

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*Attorneys for Plaintiff in Error.*

<sup>186</sup>  
Hickins et al

vs

Syon et al

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Abstract, & Brief  
of Appellant.  
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Filed April 22-1862

L. Island

Clerk