

No. 14661

Supreme Court of Illinois

Iglehart

vs.

Bierce et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 94

J. W. Middleton & Co., Stationers, 126 Lake St.

Indefinite
1864

Pier

1864

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 judgment of a plea which was in the Superior Court of Chicago County, before the Judge thereof, between William H. Bierce, Marcus Brown & Henry St. Hedges Jr. Receivers of the Bank of Cicleville, plaintiffs, ~~and~~ Richard P. Delahart, Frances M. Delahart, Leopold Mayer, Nathan Clark Buluhay, Mary Ann Chays, Paschall Woodward, Farmers College of Hamilton County, Samuel Hawk S. James, William P. Baist, Henry Holson Page, Francis A. Hoffman, John Gidley & Philip A. Hoynes defendants, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by them the record and proceedings of which said judgment 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 H. Bierce, Marcus Brown and Henry St. Hedges Jr.

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 Bierce, Brown & Hedges

notice, together with this writ.

Pinckney H. Hatten

Witness, The Hon. John H. Hatten, 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.

L. Deland

Clerk of the Supreme Court.

Michael P. Delahanty

No.

vs.

William H. Bruce et al.

SCIRE FACIAS.

Filed April 23. A. D. 1864

Delahanty - Clerk.

The within named William H. Bruce, Marcus Brown and Henry H. Hedges for not found in my County this 8th day of April 1864
David S. Hammond Sheriff
by John A. Nelson Deputy
Fees 10^c
Paid by Plaintiff

SUPREME COURT.

NICHOLAS P. IGLEHART, ET AL, }
vs
WILLIAM W. BEIRCE, ET AL, }

ERROR FROM SUPERIOR COURT OF CHICAGO.

POINTS FOR APPELLEE.

The Suit below was a Bill in Chancery to foreclose a Mortgage made by Nicholas P. Iglehart and wife to William P. Darst and Henry Folsom as receivers of the Bank of Circleville. They resigned and the present Plaintiff's were appointed Receivers, who file this bill, making the old Receivers party defendants.

The equitable owner of the claim is the proper party to sue in equity, in his own name :—Townsend *vs* Carpenter, 11 Ohio R. 21.—Dixon's Assignee *vs* Buel, 21 Illinois R. 204.—Mosely *vs* Gouch, 4 Rand., 592.—2 Story's Equity ~~cases~~^{Rep.}, 311.

II. The mortgage in this case was made by Iglehart to the Receivers, and they certainly have the right to enforce the same in our Courts. The words Receivers could be treated as surplusage. The present Plaintiff's are their assignees and as such in equity are entitled to sue. 7 Mich. R. 38. †

III. By his failure to pay the sum for which the original debt was compromised, the original sum became due and payable and is secured by the mortgage. The conditions of the compromise were that he was to pay it punctually, to have the benefit of the compromise, otherwise the whole of the original debt continued due.

WAITE & TOWNE,
for Appellees.

7 Ohio Statutes Vol 40 P 18. Means Statute 1840
P 130- Hoyt vs Thompson 15 Id R 340. 13 Piles
R 570 Bank of Circleville as Receiver

94-156-
Superior Court

Nicholas D. G. Leach
et al

vs

William W. Beirce
et al

Appellee's Points

Briefs to be filed for Appellee

Filed May 9, 1864
J. Leland Orr

Kate and Son
for Deed

Iglehart, et al., }
 vs.
 Biérce, et al. }

Computation followed by the com.
 Plaintiffs.

Total amt. of judgt. which was
 to be compromised Sept. 21., 1853, \$9812.63
 P^d. thereon at that time — 500.00
 \$9312.63

Interest on balance, 9 yrs. 4 mos. &
 16 days at 6%, to Feb. 7., 1863, 5239.89
 \$14.552.50

The decree was for \$14.574.93:
 Thus exceeding the amt. above computed, 14.552.50,
 by \$22.43.

This computation is objectionable
 because it makes \$9812.61 the principal
 on Sept. 21., 1863, when by the compromise ^{payment of} only
 half that amount ~~was to be paid~~ ~~was to~~
 with interest on such half was to
 be secured.

94 156
Tglehart, et al.,
vs.

Bierce, et al.

Computation,
according to basis
adopted by the
decree; - ~~objected~~
which basis is
objected to by
plfs. in cor.

SUPREME COURT.

NICHOLAS P. IGLEHART, ET AL, }
vs
WILLIAM W. BEIRCE, ET AL, }

ERROR FROM SUPERIOR COURT OF CHICAGO.

POINTS FOR APPELLEE.

The Suit below was a Bill in Chancery to foreclose a Mortgage made by Nicholas P. Iglehart and wife to William P. Darst and Henry Folsom as receivers of the Bank of Circleville. They resigned and the present Plaintiff's were appointed Receivers, who file this bill, making the old Receivers party defendants.

The equitable owner of the claim is the proper party to sue in equity, in his own name:—Townsend vs Carpenter, 11 Ohio R. 21.—Dixon's Assignee vs Buel, 21 Illinois R. 204.—Mosely vs Gouch, 4 Rand., 592.—2 Story's Equity Juris, 311.

II. The mortgage in this case was made by Iglehart to the Receivers, and they certainly have the right to enforce the same in our Courts. The words Receivers could be treated as surplusage. The present Plaintiff's are their assignees and as such in equity are entitled to sue. 7 Mich. R. 38. *T*

III. By his failure to pay the sum for which the original debt was compromised, the original sum became due and payable and is secured by the mortgage. The conditions of the compromise were that he was to pay it punctually, to have the benefit of the compromise, otherwise the whole of the original debt continued due.

WAITE & TOWNE,
for Appellees:

*Ohio Statutes 1840 P18. Swans Statutes
1840 P130- Hoyt vs Thompson 13 R
340 Bank of Augusta & Earle 13 R
R590*

Supreme Court

Nicholas P. Oglesby

vs

William M. Birce et al

Appellate Court

Brief to be filed for appeal

Filed May 9, 1864.
J. L. Mearns

AMERICAN M. BIRCE, et al
vs
NICHOLAS P. OGLESBY, et al

IN THE SUPREME COURT OF CHICAGO

IN ORDER TO PREPARE THE BRIEF FOR APPEAL FROM
THE DECISION OF THE COURT OF COMMON PLEAS IN
AND TO THE JUDICIAL COUNCIL OF THE COUNTY OF CHICAGO
IN ORDER TO PREPARE THE BRIEF FOR APPEAL FROM
THE DECISION OF THE COURT OF COMMON PLEAS IN
AND TO THE JUDICIAL COUNCIL OF THE COUNTY OF CHICAGO

Wm. M. Birce
for Defendant in error

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the 1st day of January in the year of our Lord One Thousand Eight Hundred and Sixty seven and of the Independence of the United States of America the Eighty seventh

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Grant Goodrich } Judges.

Joseph J. Fox Prosecuting Attorney.

David J. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to-wit: on the Twenty Third day of June in the year of our Lord one thousand Eight Hundred and Sixty seven William H. Bruce Marcus Brown & Henry A. Meager Jr. Recipients of the Bank of Chicago chartered by the Legislature of Ohio 1818, by Shumway Waite & Towne. their Solicitors filed in the Clerk's office of the Superior Court of Chicago, their certain Bond for Costs, Process for Summons, and Bill of Complaint, which are in words, and figures following to-wit:

William H. Bruce et al

Nicholas P. Iglehart et al

} Superior Court of
Chicago

I do hereby enter myself security for Costs in this
Cause. and acknowledge myself bound to pay
or Cause to be paid all Costs which may accrue
in this action either to the opposite party, or to
any of the Officers of this Court in pursuance of
the Laws of this State
 Signed this Twenty third }
 day of June 1860 } Shumway Waite & Towne

Præcipe.

State of Illinois }
 County of Cook 1st

Superior Court.

August Term A.D. 1860

William W. Bruce versus Brown.
 Henry A. Heagy Jr. Receiver of the
 Bonds of Circuit Court Chartered by the
 Legislature of this State 1818.

Archibald P. Iglehart. Francis M.
 Iglehart. Leopold Mayer. Nathan
 Clark Burdham. Mary Ann May.
 Paschall. Woodward. James College.
 Hamilton County. Daniel Shaw Jr. & Co.
 James William P. Darr. Henry Holcomb
 Page. Francis A. Hoffman. John Hudley.
 Philip A. Hargreave.

in
 Chancery

The Clerk of said Court
 will give summons in the above cause &

(31)

directed to do shuff of Cook Cook County; to
turnable at do August Term. of said Court &
P 1860. Shumway Waile & June.
As Walter Shumway Esq clerk Plaintiff's attorney
Chicago June 23 1860

Bill of Complaint.

State of Illinois

Cook County ss

Superior Court of Chicago. In Chancery
To the Judge of the Superior Court of
Chicago in the County of Cook at and to
William W. Bruce Master of said Court
Hedger & Receiver of the Bonds of Cook County
Chartered by the Legislature of this in 1811 are
Citizens of the State of Illinois, being the
Bill of Complaint against Nicholas P. Iglehart
Francis W. Iglehart Leopold Mayer &
Katharine Clark Burnham May Mrs Mayo
Paschall Woodward James College of Hamilton
town County. James Harts. J. James Miller
J. East. Henry Holcomb Page. Francis & Hoggan
John Gundry Philip & Hayne. That on the
day of September in the year of our Lord Eight
Hundred and fifty three the said Nicholas P.
Iglehart. and James W. his wife, ^{made} and executed
in due form of law a Mortgage deed to Henry
Page and William East Receiver of the Bonds

(41)

of Cuervoille aforesaid and which Margago
was duly acknowledged and recorded in the
Clerk's Office of the Circuit Court of the County
of Cook, & State of Illinois & ex officio Recorder
of deeds in Book 16 of Margago deed page
46, and which Margago deed is on the fol-
lowing described property, namely, Lot thirty
thirty one, thirty two thirty three, thirty four thirty one
(30, 31, 32, 33, 40 & 41 in Block (24) twenty four
and lot thirty five (25) twenty six (26) thirty
nine (39) & thirty two (42) in Block twenty
five (25) in the subdivision and resubdivi-
sion of part of the south East quarter of section
twenty seven (27) Township thirty nine (39)
north of Range Tenth (14) East of the
third principal Meridian according to the
map of the same recorded in Book 49 of maps
pages 10, 17, and 50 of the Record of Maps in the
Recorder's Office of Cook County aforesaid and
which Margago deed so made and so rec-
orded is as follows.

A. P. Iglehart. To Henry H. Page, w. H. P.
Daist.

This Indenture made this twenty first
day of September in the year of our Lord, one
thousand Eight Hundred and fifty three (1853)
Between Nicholas P. Iglehart of the City

(57)

Martha and Francis
Miles wife and children
before signing
Miles E. L. Lumb.

of Chicago in the County of Cook, and State of
Illinois and Francis Miles his wife party of the
first part. and Henry F. Page, and William P.
Durst. Receivers of the Bank of California in the
County of Berkeley and State of Ohio party
of the second part. Witnesseth that whereas
the said Nicholas P. Igglehart, a fully insur-
ed, unto the said Henry F. Page, and William
P. Durst. in the sum of Nine thousand, &
Eight hundred, and twelve dollars and sixty
one Cents, (\$9812.61) and whereas the said
Page, and Durst. have compromised said
claim and agreed to release said Igglehart in
consideration that the said Igglehart would
secure to them the prompt and punctual
payment of one half the above amount, viz
the sum of Four thousand, ^{nine hundred} and six dollars
and thirty cents (\$4906.30) to be paid in
the manner and at the times hereinafter specified.
And whereas the said Igglehart, hath ex-
ecuted & delivered his certain bond or writing
obligating himself even date herewith in the
penal sum of Ten thousand Dollars (\$10000)
conditioned for the payment unto the above
named Page and Durst. their executors ad-
ministrators or assigns of the full and just
sum of Four thousand Nine hundred and
six dollars. Thirty Cents. (\$4906.30) in manner

(61)

following Namely, Four Hundred dollars
\$500. in Cash and the balance in four equal
payments annually of Eight Hundred Eighty
one. Dollars Twenty Six Cents (\$881.26) each
with interest at the rate of Six per cent per
annum, payable annually upon the whole sum
remaining unpaid with the understanding
and agreement, that if default shall be made
in the payment of either of said installments
at the time when due, and payable, and the
same should be and remain due and unpaid
for the space of thirty (30) days after the same
should become due, and payable then and in
that case, the whole of said sum of nine hundred
Eight Hundred and twelve dollars sixty one cents.
(\$9812.61) less the amount which might
have been paid thereof should forthwith become
due, & payable, and might be immediately due
after demanded, anything therein contained to the
contrary notwithstanding, with a proviso hereunder
written, that in case the said Page might
should not obtain the ratification of the Court of
Common Pleas of the County of Pickaway in
the State of Ohio to the said compromise of said
claim, the said Bond should be null and void as
by the said Bond, and the condition thereof
being thereunto had null and void and at large
appear.

(8)

And therefore the said undersigned do hereby
 said party of the first part for the better securing
 the payment of the said sum of money mentioned
 in the condition of said Bond unto interest thereon
 on according to the true intent and meaning thereof,
 and also for and in consideration of the sum of
 one dollar to him in hand paid by the said party
 of the second part. the receipt whereof is hereby ac-
 knowledged hath granted bargained sold aliened
 released confirmed and by these presents doth
 grant bargain sell alien release convey and
 confirm unto the said Page & Daut, their heirs
 and assigns forever. all of the following described
 lot piece or parcel of land situated lying and
 being in the City of Chicago in the County of
 Cook & State of Illinois and bounded and descri-
 bed as follows to wit. Lot Forty (40) Forty one (41)
 Forty (30) Forty one (31) Forty two (32) Forty
 three (33) in Block Twenty two, and lot Forty
 three (39) Forty two (42) Twenty five (25) and
 Twenty six (26) in Block Twenty two (25) in
 the ^{and re-subdivision} subdivision of part of the South East
 quarter of section Twenty seven (27) Township
 Forty one (39) North Range Twenty (14) East
 of the ~~land~~ the said subdivision being recorded
 in the records of Cook County. Book 49 p. 10 and
 the said subdivision in Book 49. page 16132
 of a more otherwise describing the said tract of

(81)

land described, and subdivided as Block 27,
being a tract of land bounded as follows, be-
ginning on the West line of said South East quarter
of said fractional section (27) 11^{62 1/2} Chs. South from
the North West Corner thence East to West bound-
ary of Union Central Rail Road 15⁵⁷ Chs
thence Northwardly along said boundary 11^{67 1/2} Chains thence West 15³⁸ Chains thence
South 0.645 Chs to place of beginning con-
taining one acre, and the said Block being
described as follows. Beginning on the said
West line of said fractional section 10⁹⁸ Chains South
from the ~~North~~^{North} West Corner thence thence
East to said Rail Road line 15³⁸ Chains +
thence Northwardly along said line 0.684 +
Chains thence West 15.185 Chains thence +
South 0.655 Chs to place of beginning contain-
ing one acre, together with all and singular
the tenements hereditaments and appurtenances
thereunto belonging or in any wise appertaining
and the reversions and reversions remainders
and remainders rents issues and profits thereof
and also all the estate right title interest pro-
perty, proper claim and demand whatsoever
as well by law as by equity, of the said party of
the first part, or in and to the same, and every
part and parcel thereof with the appurtenances
to have and to hold the above named granted and

bargained and deserved premises into the
 appurtenances unto the said party of the second part,
 then heirs and assigns forever provided always
 and these presents are upon this express condition
 notwithstanding that if the said party of the first part
 his heirs Executors administrators, or assigns shall
 well and truly pay or cause to be paid unto the
 said party of the second part their Executors ad-
 ministrators or assigns the said sum of money
 mentioned in the Condition of said Bond, with
 the interest thereon at the time and times re-
 spectively and in the manner specified in the said
 Condition according to the true intent and meaning thereof,
 that then and from thence forth, these pre-
 sents, and the estate hereby granted, and conveyed,
 shall cease determine utterly null and void
 any thing herein contained to the contrary notwith-
 standing. And the said party of the first part
 for himself his heirs Executors, administrators, and
 assigns doth hereby covenant promise and agree
 with said party of the second part, their Executors
 administrators, and assigns that he will well,
 and truly pay, or cause to be paid unto the said
 party of the second part, their Executors adminis-
 trators, and assigns the said principal sum of money
 mentioned in the Condition of said bond with
 the interest thereon according to the said ^{Condition}. And also
 that he will at any time unto the said principal sum

(10)

of money. and the interest thereon shall be fully paid. suffer said premises or any part thereof to be sold for any taxes or assessments. whereupon nor will he permit or suffer any thing to be done upon or about said premises or any part thereof which shall in any wise lessen the Value thereof or weaken diminish or impair the security hereby intended to be effected. But it is hereby expressly agreed, and fully understood by and between the parties to these presents. that in case default be made in the payment of said principal sum of money, into the interest thereon or any part thereof at the times and times respectively when the same should be paid as set forth in the condition of said Bond, or if the said party of the first part, shall suffer or allow said premises or any part thereof to be sold for taxes or assessments, or shall do or permit or suffer any thing to be done upon or about said premises that shall lessen the Value thereof or tend to weaken diminish or impair the security intended to be hereby effected. that then and from thence forth he shall and may be lawful for the said party of the second part, their certain attorney, executor, administrators or assigns either in person or by attorney for such person duly authorized constituted and appointed to enter into and

111

upon all and singular the said premises hereby
 granted, or intended to be and either in person
 or by attorney, for that purpose duly constituted
 to sell and dispose of the same and of all the
 benefit and Equity of redemption of the said In-
 debtedness in them and assigns therein at public
 auction after having first given Thirty⁽³⁰⁾ days
 notice of the time and place of such sale &
 such sale to be made in the City of Chicago by
 advertisement in any of the daily papers that
 may at that time be published in the said City
 of Chicago and also by leaving a copy of such
 notice at the office of said Registrar or with
 his authorized agent in said City of Chicago
 if he has any at such time (personal notice
 of such sale to the said party of the first part
 being hereby expressly waived) and also the attorney
 of the said party of the first part for that purpose, by
 deed presents, duly authorized, constituted, and
 appointed to make and deliver to the purchaser
 or purchasers thereof a good and sufficient deed
 of conveyance in the law for the same in
 fee simple and out of the money arising from
 such sale to retain the principal and interest
 which may then be due on said bond (it
 being lawful for the said party of the second part
 their executors administrators or assigns to deduct
 the said principal sum to be due in case of a

These lines intended
 to be signed

(12)

beach of the covenants herein contained and
also all taxes, assessments and redemption money
that may be paid by said party of the second part,
their Executors administrators, or assigns from
the redemption from tax or assessment, sale, or sale
of said premises or any part thereof notwithstanding
on all such tax, assessment, and redemption money
from the time of paying the same together with
the costs, charges, and expenses of advertising and
sale of said premises rendering the overplus of
any thing shall be unto the said party of the first
part. The executor administrators or assigns which
sales to be made shall forever be a bar and bar
to the law and equity against the said
party of the first part, his heirs and assigns,
and all other persons claiming or to claim said
premises or any part thereof by force or wrong
claim or other of them.

In Witness Whereof the said party of the
first part, hath hereunto set his hand and seal,
the day and year first above written.

Signed sealed and delivered

In presence of.

J. P. Iglehart Deed
Francis Iglehart Deed

It is further agreed as a part and portion of said
deed, that the said party of the second part, with
release and discharge lot number forty (40)

(13)

above decreed from the term of this mortgage as
from the payment to them of the sum of Four
Hundred Dollars in cash and lot Forty one
(41) on the payment of the sum of Four hun-
dred and Fifty dollars in cash and Lot thirty
(30) on payment of Eight Hundred dollars in cash
and Lot Thirty one (31) on payment of Nine
hundred in cash and Lot Thirty two (32) on
payment of the sum of Nine hundred dollars in
cash and lot Thirty three (33) on the payment
of seven hundred dollars in cash and lot thirty
four on payment of Four Hundred Dollars
in cash and lot Forty two on payment of Five
Hundred and fifty Dollars in cash and Lot
Forty four on payment of Eight Hundred Dollars
in cash and Lot 46 on payment of Nine
hundred dollars in cash, the said respective
payments being the value appraised for each
of the said lots respectively with respect to the se-
curity hereby intended and the said pay-
ments, respectively if made to be in the place
and stead of the lot or lots so released, and to
be credited as payments on said bond,
provided of course that the payment by
said Agent of the whole amount hereby re-
quired with 2% percent interest up to the time of
such payment shall at any time entitle him to
a discharge of this incumbrance this agreement in

intended etc

(141)

written in this deed. and made a part thereof,
before the said deed was signed & delivered and
it to be deemed good law as a part and part
of the deed. In Witness Whereof the said
parties of the first part. have hereunto set their
hands and seals the day and year first above
written. Signed A.P. Iglehart. Deed
Signed, ^{sealed} and delivered to Francis M. Iglehart. Deed
in presence of
The patron of said deed in this page written having
been written as above. prior to the signing of de-
livering of said deed.

(State of Illinois)
County of Cook. I H. H. Stewart a Notary Public
in said County in the State of said do hereby
Certify that W.P. Iglehart and Francis M.
his wife who are personally known to me to be
the same persons whose names are subscribed to the
annexed Mortgage appeared before me this day
in person and acknowledged that they had
signed sealed & delivered the said instrument of
mortgage as their free act and deed for the use
& purposes therein expressed. And the said
Francis M. wife of the said W.P. Iglehart having
been by me examined separate and apart and
out of the hearing of her husband and the
contents and meaning of the said instrument
of mortgage having been by me made known

(15)

and fully explained to her acknowledged that she had fully & voluntarily executed the same without any compulsion of her said husband & relinquished her dower to the lands and tenements therein mentioned, and that she does not wish to retract the same.

GIVEN under my hand and notarial seal this 20th Twenty first day of September A.D. 1853
W. W. Stewart

L. D. S. Notary Public
No 44965 Records September 26, 1853,

And which mortgage was given pursuant to a bond of which the following is a copy, the original of which is lost. as your orators are informed and believe.

Item we all men by these presents that I Nicholas P. Squire of Chicago of the County of Cook and State of Illinois are held and firmly bound unto Henry H. Page and William P. Dyer Receivers of the Bonds of Caldwell of the County of Pickaway and State of Ohio in the Penitentiary of the said State of Ohio the sum of Ten thousand (\$10,000) Dollars to be paid unto the said Henry H. Page and William P. Dyer Receivers their Executors Administrators or assigns to which payment well and truly to be made I bind myself my heirs Executors and

1161

administrators hereby by these presents sealed
with my seal and date the twenty first day
of September in the year Eighteen hundred and
fifty three (1853)

The condition of this obligation is such that
whereas the said Nicholas P. Iglehart a party
indicted unto the said Henry H Page and
William P. Paist Receivers as aforesaid in
the sum of Nine Thousand Eight Hundred
and twelve Dollars and fifty one Cents
(\$9812⁰¹) and the said Page and Paist
have compromised said claim and agreed
to release and discharge said Iglehart from
any consideration that the said Iglehart
would secure to them the prompt and sum-
tual payment of one half the above named
amount, viz the sum of four thousand
nine hundred and six Dollars and thirty
Cents (\$4906.30) in manner following
Namely, viz, five hundred dollars as Cash
and the balance in five equal annual
payments of eight hundred Eighty one
Dollars and twenty six Cents, (\$881²⁶) each
with interest at the rate of six (6) per cent-
um per annum payable annually upon
the whole sum remaining unpaid until
the understanding and agreement that if
default be made in the payment of either

1171

of said sum of money at the time when the same shall become due and payable, and the same shall be and remain due and unpaid for the space of ninety days (90) after the same is due and payable. That then and in that case the ~~same~~ whole of said sum of nine thousand eight hundred, and no less dollars, and fifty one cents (\$9812 ⁰¹) less the amount which shall have been paid thereon shall forthwith become due, and payable and may be immediately thereafter demanded any thing herein contained to the contrary notwithstanding. Provided further that no case do said Henry H Page and William Odus shall not obtain the adjunction of the Court of Common Pleas of the County of Pickaway in the State of Ohio to the said compromise of said claim then any obligation to be null and void.

H P Iglehart & Co

signed sealed & delivered.

In presence of
E C Larned.

Of our Order further upon contracts your Honor that the consideration of said Bond was an indebtedness due and owing from the said Iglehart to the Bank of Clevelville of Ohio and that on consideration of the judgment of the Court of Common Pleas

(181

in and for the County of Pickaway and
State of Ohio in a certain Suit in Chancery
then pending wherein Julius L. Rayman
was Complainant and the President & Directors
Company of the Bank of Cincinnati Chartered
in 1818, by the Legislature of the State of Ohio the
said Henry H. Page, & William P. Dast were
appointed Receivers of the said Bank of Cin-
cinnati & the assets thereof with the usual
power of Receivers in such cases and they were
such Receivers at the time of the taking of
the said Bond & Mortgage above recited
that after taking said Bond & Mortgage said
Henry H. Page and William P. Dast obtained
the ratification of the Court of Common
Pleas within and for the County of Pickaway
in the State of Ohio to the compromise of
said claim according to said Bond &
Mortgage above recited as in said Bond
& Mortgage provided

That at the time said
Henry H. Page was appointed Receiver in
such case, his name was Henry Holson, but
previous to taking said Bond & Mortgage
by proceedings instituted under the Court of
the State of Ohio said Henry Holson had
had his name changed to Henry H. Page, which is now his name by said pro.

(19)

cedings, & by which heretofore known and called
That subsequently to the making of
said Bond & Mortgage said Wm. P. Daniel
& Henry Holson Page resigned the Office
of Receiver of said Bank of Louisville and
their resignation was accepted & subsequently
& previous hereto your Orators William W.
Rice Marcus Brown & Henry W. Deager Jr.
were appointed receivers in said case of
said Bank of Louisville and are now
such Receivers and as such Receivers are
the owners & holders of said Bond and
Mortgage. That since the resignation of said
Henry Holson Page as such Receiver he
has moved from the State of Ohio where he
then resided and of which State he was a
Citizen to the State of Illinois That the
order accepting their resignation as such
Receivers and appointing your Orators Wm.
W. Rice Marcus Brown & Henry W. Deager
Jr. Receivers fully vested in them as such
Receivers all the assets of said Bank and
among such assets the said Bond & Mortgage
and they further allege & state the Considera-
tion of said Bond and Mortgage was a debt
due and owing to said Bank of Louisville
from the said Nicholas P. Iglehart
That all that said Iglehart has now

(20)

paid upon said Bond & Mortgage was the sum of Two Hundred Dollars which said Nicholas P. Iglehart, paid sometime in October 1853. That the entire Balance of said Bond, remains due and unpaid and which payment of Two Hundred Dollars was the last payment on said Bond mentioned. That said original Indebtedness against ^{said} Iglehart, which was to be compromised by said Bond, was nine thousand Eight Hundred twelve dollars and fifty cents and which Indebtedness was only to be compromised upon the condition that said Iglehart, would secure to the said East & Page the punctual payment of the sum of four thousand nine hundred six dollars and thirty cents in the manner on said Bond aboveset specified with interest payable annually and which compromise, was made upon the express understanding and agreement that if default be made in the payment of either of said sums of money at the time when the same should become due and payable and the same should remain due and unpaid for the space of ninety days after the same became due & payable, that then and in that case the whole of said sum of nine thousand Eight hundred and twelve dollars and fifty one

(211

cents less the amount which shall have been
paid thereof shall forthwith become due &
payable and may be immediately thereafter
demanded anything herein contained not
withstanding. And you or either further
Charge that by the said Conditions of said
Bond by reason of the default made by
the said Nicholas P. Iglehart in the pay-
ment of said several sum of money. pro-
vided to be made at the time the same
were provided to be made, there is now &
due upon said Bond and mortgage to
your claims Wm. St. Pierre, Marcus
Brown & Henry. H. Keager Jr. Receivers of
said Bank of Xenia, Ohio created
in 1818, the said sum of nine thousand
Eight hundred twelve dollars and sixty
one cents with interest thereon at the
rate of 4% per centum since September
21st 1853 less the sum of Two &
four hundred Dollars paid as above stated,
together with the sum of Fifty six dollars
& four cents paid for taxes as hereinafter
stated together with interest thereon from
June 14th 1860 & which sum being so due
& payable to them they have repeatedly called
upon said Nicholas P. Iglehart, to pay the
same, and he has hence hitherto neglected

(22)

and refused so to do. And your states further represent unto your Honor that on the 14th day of June A.D. 1858, the said land was sold for State & County taxes of Cook County Illinois as follows namely, Lot twenty five (25) of said above named subdivision to W. E. Richmond for the sum of two Dollars and one Cent (\$2⁰¹), Lot twenty six of said subdivision to W. E. Richmond for three Dollars and twenty five Cents (\$3²⁵) Lot thirty (30) for two Dollars and one Cent (\$2⁰¹)

31 for (\$3²⁰) three Dollars and seventy six Cents - 33 for the sum of one Dollar and Eighty one Cent (\$1⁸¹) to R. Pelt, Lot thirty nine (39) for the sum of one Dollar and fifty Cents (\$1⁵⁰) forty (40) for the sum of one Dollar & fifty Cents (\$1⁵⁰) - forty one (41) for the sum of one Dollar & fifty Cents (\$1⁵⁰) to H. D. P. Morris and Lot forty two (42) to R. B. Shill for the sum of one Dollar & fifty Cents (\$1⁵⁰)

And your states further represent unto your Honor that on the 25th day of July A.D. 1859 the said land was sold for State and County taxes of Cook County Illinois as follows namely

Lot thirty nine (39) of said subdivision for the sum of one Dollar & forty one Cent

(23)

(\$1 ⁴¹/₁₀₀) Lot forty (40) for the sum of one dollar
 and forty one cents (\$1 ⁴¹/₁₀₀) Lot forty one (41)
 for the sum of one dollar and forty one cents
 (\$1.41), and lot forty two (42) for the sum
 of one dollar and forty one cents (\$1 ⁴¹/₁₀₀) all
 to W L Shepard, and said land having
 been so sold the said Wm W Pierce, Maria
 Brown and Henry N. Hedge for receivers of the
 Bank of Cleveland & Co on the 14th day of June
 A.D. 1854 paid to redeem said land & the
 taxes thereon the sum of sixty four dollars
 and four cents (\$64 ⁰⁴/₁₀₀) in gold, and
 which gold cost your orator the sum
 of 2% premium making said sum
 of \$66 ⁰⁸/₁₀₀ as aforesaid and which sum
 is all now paid land. And your Ora-
 tor further represents unto your Honor
 that on or about the first day of March A.D.
 1854, said Nicholas P. Ogden by article
 of agreement dated March 1st 1854, &
 recorded in the Clerk's office of the Circuit
 Court of Cook & Leon March 16, 1854, in
 Book of deeds 76, page 401, sold Lot
 forty two (42) aforesaid to one Leopold
 Mayer and whom your orator may
 be made a party, defendant, to this Bill
 but the rights of said Mayer are subse-
 quent to the lien of your orator.

(247)

And your orator further represent unto your Honor that on or about the 4th day of September 1856, said Leopold Mayer by articles of Agreement, dated September 4th 1856, recorded in the clerk's office of the Circuit Court of Cook's County, Illinois October 22 1856, in Book 123 of deeds page 182, agreed to sell lot (32) thirty two in Ogden's subdivision in the south west fractional quarter of section twenty seven (27) of said to one Nathan Blackburn and whom your orator pray may be made a party defendant to this Bill but the right of said Blackburn are subsequent to the lien of your orator.

And your orator further represent unto your Honor that on or about the 27th day of January 1859 said Nicholas P. Ogden and Frances M. his wife by special Commission dated January 27th A.D. 1859, and recorded in the clerk's office of the Circuit Court of Cook's County Illinois January 9th 1859 in Book 17 of deeds page 27 sold Lots thirty (30) thirty one (31) & thirty three (33) forty (40) & forty one (41) in Block twenty four of said and lot & twenty five (25) twenty six (26) thirty nine (39) & forty two (42) in Block twenty five

(25)

(25) agreed to Mary Ann Shays, and your Oration may be made a party defendant. to this Bill but the rights of said Mary Ann Shays. are subsequent to the lien of your Oration

And your Oration further represent unto your Honor that since the execution and recording of said Mortgage several fragments operating as liens upon said mortgaged premises have been rendered & against the said Nicholas P. Iglehart, as follows to-wit,

One in Cook County Court of Common Pleas on the 14th day of November A.D. 1857 for the sum of \$519 ²⁵/₁₀₀ with costs of suit in favor of Paschall Woodward of Chicago Cook County Illinois, one in the same Court last aforesaid on the 22nd day of July A.D. 1858. for the sum of \$687 ⁶³/₁₀₀ with costs of suit in favor of said Woodward of Chicago aforesaid,

one in the same Court last aforesaid on the 22nd day of July A.D. 1858. for the sum of \$224 ⁴/₁₀₀ with costs of suit in favor of said Woodward of Chicago aforesaid, one in the same Court last aforesaid on the 25th day of June A.D. 1858 for the sum of \$135 ³⁰/₁₀₀ with costs of suit

(261

in favor of the Hamden College of Hamden
Conn., one in the Circuit Court of Cook
County, on the 12th day of December A.D. 1857
for the sum of \$732⁷⁰/₁₀₀, with costs of suit,
in favor of Samuel Hawk.

And one in the same Court last aforesaid
on the 7th day of December A.D. 1858, for
the sum of \$296⁹³/₁₀₀, with costs of suit, in
favor of James Allen of whom your
orators pray may be made parties defen-
dants to this Bill, but the rights of said Allen
ward. The Hamden College of Hamden
County, Samuel Hawk & J. James. are
subsequent to the time of your orators of said
judgments are unsatisfied, but your orators
allege, and so charge the fact to be, that
said judgments are fully paid & satisfied.

That your orators are informed and
believe & so charge the fact to be that
James A. Hoffman through the said
many Mr. Clays. Claims or pretends
to claim some interest in lots 25, 26,
& 42 in Block 25, & lots 30, 31, 40, & 41, & 47
in Block 24 of Sglehatts subdivision
aforesaid but whatever claim he has
is subject to the rights of your orators in the
same.

That your orators are informed and be-

1271

here and also charge de fact to that John
Gaddy through one Nathan C Burnham
Claims or pretends to claim some interest
in the South half of Lot 32, in said Sglehart
Subdivision and that Philip A Hogue by
a Trust Deed from said John Gaddy Claims
or pretends to claim some interest in the
said South half of said Lot 32, of said
Subdivision but all Claims are all sub-
ject to the rights of your Orator

Your Orator therefore pray process of
Subpoena against the said Nicholas P
Sglehart. James M Sglehart. Leopold
Mayer. Nathan C Burnham May Ann
Shays. Paschal Woodward. Harmon College
W Hamilton Combs. Samuel Hawitt. James
William P Daut. Mary Johnson Page. &
James A Hoffman. John Gaddy Philip
Hogue. and that they may to the best
advantage of the Mortgage remembrance
information and belief full true direct
and perfect answer make full and sin-
gular. do matters and things aforesaid an
answer under oath being hereby sworn and
that an account may be taken under
the direction and decree of this Honorable
Court of what is due to your Orator upon
the said Bond & Mortgage and that said

Nicholas P Iglehart may be decreed to pay
 unto your orator what shall thus appear
 to be due, with the cost of this suit, by a short
 day to be appointed by this Honorable Court,
 your orator being ready and willing, and
 thereby giving or being paid then said
 money, and interest and costs, and costs ad-
 vanced, at such appointed time to reconvey said
 mortgaged premises to the said Nicholas P
 Iglehart, as this Honorable Court shall di-
 rect, and that in default of such payment,
 the said Nicholas P Iglehart, and all persons
 claiming under him may be absolutely
 barred and precluded of and from all right
 and equity of redemption in and to said
 mortgaged premises and may deliver up to
 your orator all and every such deed, in-
 strument & writings now in his possession, custody
 or power relating to said mortgaged premises
 as your orator ought to have, and that
 your orator may have such other further
 relief in the premises as to your Honor
 shall seem meet, and they shall ever
 pray &c.

Shumway Hale & Son,
 Solicitors for Plaintiff

(30)

in said Court Bill of Complaint filed
in said Court on the Chancery side thereof
And have you then and then this writ &
with an endorsement thereon in what manner
you shall share executed the same.

Wm. Waller & Son, Attorneys
of said Court, and the said
peace of the City of Chicago aforesaid
this Twenty third day of June 1860

Waller & Son

and this writ on the return named &
Nicholas P. Delahant, Francis M. Delahant,
Leopold Mayer, Francis A. Hoffman
& Philip A. Conyne. (The other dist. not found
in my Co.) by reading and delivering a copy
of said writ to them the 19th day of July
1860

John Gray Sheriff
By H. Lombard, Deputy

And afterwards to wit, on the fourth day
of August, in the year aforesaid, Nicholas
P. Delahant by Goodman Larned & Goodman
his Solicitors filed in said Court a Bill
of said Court in said Court General
Demurrer which is in words and figures
following to wit,

1811

Superior Court of Chicago, In Chancery.

The Demurer of Nicholas P. Ogden, one of the defendants to the Bill of Complaint of Melan W. Pierce, Marcus Brown, & Henry H. Hedges Jr. Recipients of the Bank of Leavenworth Complainants.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Complainants Bill of Complaint in such manner and form as the same are therein alleged and set forth doth demur thereto, and for cause of demurrer sheweth that the said Complainants have not in and by said Bill made or stated such a case as doth or ought to entitle them to any such answer or relief as is therein sought, and prayed for, from or against the defendant wherefore the defendant demands, the judgment of the Honorable Court, whether he shall be compelled to make any further or other answer to the said Bill or any of the matters and things therein contained and pays to be hereby dispensed with his reasonable costs in this behalf sustained

Godwin Larned & Godwin
Sol. of Counsel for said Defendant

(32)

And afterwards went on Tenth day of October in the year aforesaid the same being one of the days of the October Term of said Court the following among other proceedings were had and entered of record in said court book,

Wm H Bruce Marcus Brown
and Henry A. Hager Jr, Receivers
of the Bank of Louisville Charters
by the Legislature of Ohio in 1818

637

4733

^{vs.} Nicholas P. Squire, Henry A. Page, William P. Duer, James A. Hoffman, John G. Taylor, Philip A. Smyth

And now this cause coming on to be heard on the defendant's demurrer, herein filed by ^{the} ~~the~~ Bill of Complaint, and counsel being heard, ^{on the demurrer} in support, as well in opposition of the ~~the~~ ^{the} ~~Bill~~, and due deliberation being thereupon had, and the premises being fully understood, it appears to the Court, that the demurrer herein pleaded in bar to ^{the} ~~the~~ Bill, is not sufficient ^{of Complaint involved cause} ~~to bar complaint~~ ~~therein~~ the demurrer is therefore being overruled.

And afterwards went on the Tenth day of November in the year aforesaid the said Defendant Nicholas P. Squire

(33)

by. Goodwin Larned & Goodwin his solicitors
filed in the Clerk's Office of said Court, his
Certain answer, which is in words and
figures following to-wit,

Superior Court of Chicago
In Chancery

William W Bruce Marcus Brown
& Henry H. Hedgcock Receivers of
the Bank of Cincinnati re Comph

vs.
Nicholas P. Iglehart Henry H. Page
and William P. Darrist Defts

The said answer
of Nicholas P. Iglehart one of the defendants
to the Bill of Complaint of William W Bruce Mar-
cus Brown and Henry H. Hedgcock Receivers
of the Bank of Cincinnati submitted by the Legi-
slature of Ohio in 1818. Complainants.

The Defendant now and at all times
hereafter, saving and reserving to himself all
manner of benefit & advantage of Exception to
the many errors & insufficiencies in the Com-
plainant's said Bill of Complaint contained
for answer thereto, or unto so much, or such
parts thereof as this defendant is advised is ma-
terial for him to make answer unto he answer-
ing for himself severally answers and says
that he denies that the said William W

(34)

Marion Brown. & Henry W. Hedgcock, or any or either
of them are Recorders of the Bank of Cleveland Char-
tered by the Legislature of Ohio in 1818, and he denies
that the Legislature of Ohio did charter the
said Bank of Cleveland in 1818 or at any other
time and he denies that, there is any such incor-
poration as the said Bank of Cleveland mentioned in
said Bill or that the said Complainant has
any right or authority in the law to sue in the name
of the said Bank of Cleveland or as Recorder
of said Bank and he requires of the said
Complainant strict proof of all and every the
said matters respectively and claims the same
benefit in that regard, as if he had denied the
said facts by a special plea.

And the defendant for further answer to said Bill
says, that he denies that on the 21st day of Septem-
ber 1853, or at any other time the said Frederick
D. Lohman and Frances W. his wife or either
of them made, and executed in due form of law.

a mortgage deed to Henry G. Page, and William
Dart. Recorders of the Bank of Cleveland or that
any such deed was duly acknowledged, and recor-
ded, as charged in said Bill of Complaint.

And he denies that the instrument set forth in
the said Bill is the copy of any mortgage
made, and executed by said defendant, or that
he ever did make and execute any such mortgage.

(35)

as is set forth in said Bill or acknowledged the same, or that the same was in due form of law, or that said defendant became in any manner bound or obligated as therein set forth and he requires of the said Complainants strict proof of all and every the matters aforesaid,

And this defendant further answering denies that the said Bank of Louisville or the said Receiver so called had any power or authority whatsoever to enter into or become a party to the said Indenture in the said Bill mentioned or to receive the same or that the same is of any legal force, validity or effect whatsoever, or can be enforced in any Court of law or equity.

And this defendant further answering denies that the said Indenture was given to place the bond mentioned and set forth in said Bill of Complaint or that any such bond was ever executed by this defendant, or that the bond set forth in said Bill was a copy of any bond executed by this defendant, and requires of the said Complainants to make strict proof of all and the said matters aforesaid.

And this defendant further answering denies that the said Bank of Louisville so called had any power or authority or legal right to receive any such bond from this defendant or that the said Bond had any existence, legal effect, force or validity what-

(36)

seven.

And this defendant further answering denies that the original of said Bond is lost, and requires the Complainants to make full and strict proof thereof.

And this defendant further answering denies that the consideration of the said Bond was an indebtedness due from this defendant to the said Bank of Cleveland (as called) or that there was any good and valid consideration whatsoever for the said bond, and requires the said Complainants to make strict proof thereof.

And this defendant further answering denies that by the judgment of the Court of Common Pleas for the County of Cuyahoga and State of Ohio in a certain suit in Chancery then pending wherein John D. Myman was Complainant and the President Directors and Company of the Bank of Cleveland Charted in 1818, by the Legislature of the State of Ohio defendants, that said Henry H. Page and William Dusk. now appointed receivers of the said Bank of Cleveland, and of the assets due of and to the said Bank of Receivers in such cases and that they were such Receivers at the time of taking the said Bond & mortgage in said Bill Recites and requires of said Complainants strict proof thereof.

(37)

And the defendant further answering denies that the said Henry H Page and William O. Dast. at, times the recognition of the Court of Common Pleas in and for the County of Pickaway in the State of Ohio to the compromise of said claim according to said mortgage as in said bond provided and requires the said complainants to make such proof thereof.

And the defendant denies that the said Henry H Page as called in said Bill had previously to letting said Bond and Mortgage by proceedings instituted under the laws of the State of Ohio had his name changed from ^{Henry} John to Henry Holson Paige and that the same is now Henry Holson Paige and requires the said complainants to make proof thereof.

And the defendant further answering denies that the said William O. Dast. and Henry Holson Paige subsequently to said Mortgage resigned the office of Receivers of said Bank. - and that their resignation was accepted as stated in said Bill and he denies that the said William H Price, Marcus Brown & Henry H. Hedgcock were appointed Receivers in said case of said Bank of Cincinnati and that they are now such receivers and denies that as such Receivers they are the owners holders of said Bond and Mortgage and he denies that there was any

(38)

order accepting the Resignation of the said Cashier and Bank as Receivers of said Bank. and appointing the said Complainants Receivers as stated in said Bill or that they became vested by such order with all the assets of said Bank. or with the said Bond and Mortgage or that the Emortgage of the said Bond and Mortgage, was a debt due and owing to the said Bank of Louisville from the said O. P. Sglehart. as stated in said Bill and requires the said Complainants to make such proof of all and every the said allegations.

And the defendant denies that the said Bond except the sum of Two Hundred dollars, is due and unpaid or that any part of said Bond is due and unpaid and requires the Complainants to make proof thereof.

And the defendant denies that there was an original indebtedness of the said Bank against said Sglehart of \$9812 ⁰⁰/₁₀₀ or that there was any original indebtedness of said Sglehart to said Bank or that the same was to be compromised in the manner and upon the conditions as the said Bill mentioned or that there was an Express understanding or agreement or any understanding or agreement that of default should be made in the payment of either said sum of money in said Bill mentioned when

11
(39)

the same should become due and payable and the same should remain due and unpaid for ninety days, that then and in that case, the whole of said sum of \$9812⁰⁰/₁₀₀ less the amount, which had been paid thereof should forthwith become due & payable as in said bill stated.

And the defendant further answering denies that there is any due from the defendant upon the said Bond & Mortgage mentioned in said bill to the said Complainants, as. Receivers of said Bank of Cincinnati of Ohio the sum of \$9812⁰⁰/₁₀₀ with interest thereon at the rate of six per cent. since September 21st 1853, less the sum of \$500. as stated in said bill or that any sum whatever is due and owing to said Complainants from said defendant on the said Bond & Mortgage.

And the defendant further answering denies that the sum of \$66⁰⁰/₁₀₀ has been paid by the said Complainants for taxes on the premises mentioned in said ^{Mortgage} or that any money has been paid for taxes on the same or that the said amount of \$66⁰⁰/₁₀₀ is due to the said Complainants from said defendant on account of taxes paid by said Complainant on the 14th day of June 1854 or that any money is due to the said Complainant for said taxes or any interest on the same as in the said bill stated and

(401)

set forth. and requires said Complainants to make strict proof of all and every the said allegations of said Bill of Complaint.

And this defendant further answering that the said premises were sold for taxes at the time and in the manner stated in said Bill and to the respective person and for the respective amount in said Bill mentioned or that the said Complainants paid to redeem the said land and the subsequent taxes thereon the sum of \$64⁰⁰/₁₀₀ in gold and the sum of \$2⁰⁰/₁₀₀ for premium on such gold making the amount of \$66⁰⁰/₁₀₀ and that the said amount is a lien on said land as it charged in said Bill and requires of the Complainant to make strict proof all and every the said allegations

And this defendant believes that the statement of sales and conveyances of said property is in substance correct but for greater certainty requires that the said conveyances shall be produced and proved

And as to the respective judgments in said bill mentioned claimed to be liens on the said premises this defendant requires of the said Complainants to make proof thereof as may be deemed material

And this defendant further answering that he has been informed and believes that

(41)

The said Bank of Cincinnati, so called is not a corporation existing under the laws of the State of Ohio and has no lawful authority to sue in this Court and claims the same. Briefly as if he had set up such fact by way of special plea. And the defendant further answering says that if the said Complainants were the legal Receivers of said Bank of Cincinnati and if the said Bank were a lawful corporation of said State of Ohio as averred in said Bill. (which the defendant denies) that the said Receivers would under the laws of the said State have no power to collect any more money than would be necessary to pay the debts and discharge the obligations of the said Bank so called. remaining unpaid and charges that the said Receivers are fraudulently continuing said office and collecting said money for their own private purposes under cover of salary and compensation and are seeking thereby to Expropriate from the defendant money to be appropriated to their own individual use and benefit.

And the defendant further answering says that by an agreement in writing bearing date the second day of August A.D. 1856. and signed by the said Complainants reference to which is hereby made and the Duplicate

(42) original of which is in the possession of the defendant ready to be produced as this Court may direct. It was amongst other things expressly agreed that whatever amount of the \$900. that was agreed by said instrument to be paid by said Ogden, should exceed the amount required to liquidate the liabilities of said Bank and the expenses of the Receiver which should in Equity be due said Ogden, should be repaid to him and this defendant insists that there is equitably due to the said Defendant of the said sum of \$900. and of other monies paid to said complainant and equitably belonging to the said defendant a larger sum of money viz more than the whole amount of the said claim and demand, mentioned in said Bill of Complaint and this defendant insists that the amount so equitably due and owing to him from the said complainants as such Receiver or from the said Bank of Louisville or called or either or any of them are a valid and just set off against the said pretended demand and if the said demands are decreed to be due from this defendant that the said amount so equitably due as aforesaid should be applied to the payment, release and satisfaction of the said claims.

And this defendant further answering says

(123)

that he has paid to the said complainant during large sums of money viz the sum of \$500. on the 21st day of September A.D. 1853 \$400. on the 23rd day of June A.D. 1856, \$1275.00. on the 18th day of September A.D. 1856, \$1190.00. on the 30th day of December A.D. 1856, \$1190.00. on the day of November A.D. 1857 all of which amounts this defendant insists should be applied toward the payment of the said Bond & Mortgage if this defendant is decreed by this Court to be obligated to pay the same.

And this defendant further answers says that the said Bill is demurrable in law. and the said complainants are not entitled to the relief prayed by the said Bill because the said complainants have not on their said Bill offered any security or indemnity to this defendant against the said Bond & Mortgage agreed to be lost in their said Bill of Complaint and because no affidavit of such loss is annexed to said Bill and this defendant prays the same benefit of said objection as if the same had been made by demurrer to said Bill.

And this defendant denies all unlawful combination and conspiracy on the said Bill charged. in that that any other matter is material or necessary for this defendant to make answer unto and not herein or hereby.

(44)

will or sufficiently answered unto. Confessed or
avowed traversed or denied in toto to the knowledge
or belief of this defendant; all which matters and
things this defendant is ready to aver maintain &
prove as the Honorable Court shall direct and
humbly pray & be hence dismissed with his reasonable
costs and charges in that behalf most wrongfully
sustained.

Nicholas P Iglehart

Attorney Larned & Gordon

Sols. & of Counsel for Iglehart.

And afterwards to wit, on the sixteenth day of
November in the year aforesaid, the said
Complainants John W Bierce and others filed
in the said Clerk's office of said Court, by A
H Waino their solicitor, this certain Reply,
etc., which is in words and figures following
to wit,

State of Illinois }
County of Cook ss }

Superior Court of Chicago
An Chancery

The Replication of William
W Bierce & others Complainants to the answer
of Nicholas P Iglehart & others defendants.

This Plaintiff saving and reserving to
himself all and all manner of advantage of
Exception to the manifold insufficiencies of the

(45)

said answer for replication thereto, saith
that he will aver, and prove, his said bio
to be true and sufficient in the law to be
answered unto and that the said answer of
the said respondents is ^{in whole} untrue, and insufficient
to be replied unto by the Plaintiff, without this
that any other matter or thing whatsoever in the
said answer contained material or effectual,
in the law to be replied unto, confessed and avor
ed, traversed or denied is true all which matters
and things the Plaintiff is, and will be ready
to aver, and prove, as that Honorable Court
shall direct and pray, as in and by the
said Bill he hath already prayed.

J. H. Woots
Clerk of the Court.

And afterwards took on the sixteenth day of
February in the year of our Lord one thousand
Eight hundred and eighty one, the said Com
plainants by Edward P. Lorne one of their
solicitors, filed in the Clerk of the said Court
their said affidavit, which is in words
and to the following tenor,

State of Illinois
County of Cook ss.

} Superior Court of Illinois

William H. Bruce, Marcus Brown.

(46)

and Henry N. Kidger Jr.
Rivers Bank Cuckville
vs.
Nicholas P. Sglehaut, et al

Edward P. Lorne, being duly sworn, says that
he is one of the Solicitors for the above named
Complainants that he is informed and believes
that Nathan Clark, Burnham, Mary Ann
Sharp, Paschall Woodward, the Harmon Col-
lege of Hamilton County, J. James and John
Gudley are now Residents of Cook County,
and of the State of Illinois so that process
cannot be served on them in the State of
Illinois that applicant has made diligent
search for the said mentioned parties that
cannot find their whereabouts that said
parties and all defendants in said above mentioned
suit therefore applicant prays that notice may
be given to said parties by publication as pro-
vided by statute

subscribed & sworn to
this 16th day of
February 1861 before me
Walter Kimball clerk

Edward P. Lorne

13
1/4
(47)

And thereupon afterwards took on the day and
year last aforesaid three copies out of the
clerk's office of the said Superior Court of
Chicago. The People's Alia's Petition of Damages
which together with the Return of the Sheriff
endorsed thereon in no order and figures
following to wit,

State of Illinois } ss
County of Cook }

The People of the state
of Illinois to the Sheriff of said County greeting
We command you as we have before
commanded you that you summon Nicholas
P. Sgilehart, James M. Sgilehart, Leopold Mayer,
Nathan Clark Burnham, Mary Ann Mayo,
Paschall Woodward, Harmon College of
Hammett County, Samuel Hawk, J. James
William O. Dyer, Henry Solomon Page, Francis
A. Duggan, John Lindley & Phillip A. Hogue if
they shall be found in your County personally
to do and appear before the Superior Court of
Chicago of said County of Cook, on the first
day of the next term, to wit of to be holden at
the Court House in the City of Chicago in said
County on the first Monday of March next
to answer unto them the said Marcus Bean
& Henry D. Sgilehart Jr. Receivers of the Bank
of Leclercville Chartered by the Legislature of this

(48)

1818 on Ann Outam Bill of Complaint,
filed in said Court, on the Chancery side
thereof.

And have you seen and know this Bill with
an endorsement thereon in what manner you
shall have executed the same

Witness, Walter Pembroke Clerk of said
Court. and the Seal thereof at the
City of Chicago of record this 16th day
of February 1861
Walter Pembroke Clerk,

Served this Bill on the within named Samuel
Hawthorne by reading & delivering a copy thereof
to him the 21st day of February 1861

A. C. Thompson Sheriff
by J. Lombard Deputy

And afterwards to wit on the day and year
last aforesaid the said Defendants Henry
Holcomb Page and William O. Dwyer Trustees
and some their solicitors filed in the Clerk's
office of said Court this certain appearance
which is in words and figures following to wit:
State of Illinois } Superior Court of Chicago
County of Cook } ss
William W. Pierce et al

(49)

Nicholas P. Iglehart
et al

And now come the said defendants Henry
Holmes, Page and William P. Dusk, and
waive the service of process and enter their
appearance therein by
(Thurs & Linn, themselves)

And afterwards to wit on the sixteenth day
of May in the year of our said state was
filed in the clerk's office of said court a
Custom Notice of Publication, with the cer-
tificate of publication thereof, which in its
words and figures following to wit,

State of Illinois } Chancery Notice,
County of Cook } ss. Superior Court of Chicago
March Term 1861.

William W. Beece Marcus Bunn
and Henry R. Heagy Jr. Receivers
of the Bank of Cleveland Chartered
by the Legislature of Ohio 1818.

Nicholas P. Iglehart. Francis M.
Iglehart. Leopold Mayer. Nathan
Clark Bunnham. Mary Ann Shays
Paschall Woodward. Farmers College of
Hamilton County, Samuel Hawke. J.

(58)

James Melan, O. D. Aust, Henry
Holmes Page, Francis A. Hoffman,
John Bradley and Philip A. Doyle

In Chancery.
Affidavit

of the non residence of Nathaniel Clark Burnham,
Mary Ann Shays, Paschall Woodward, The Farmers
College of Hamilton County of James, and John
Bradley part of the defendants above named hav-
ing been filed in the office of the Clerk of the
Superior Court of Chicago Notice is hereby
given to the said Nathaniel Clark Burn-
ham, Mary Ann Shays, Paschall Woodward, the
Farmers College of Hamilton County, of James, and
John Bradley, that the complaints filed this
Bill of Complaint in said Court, on the same
side thereof on the 23rd day of June, 1860 and
that a summons issued out of said
Court against said defendants returnable on
the first Monday of August, 1860 as is by law
required, and afterwards took on the 16th
day of February 1861, on which summons is-
ued out of said Court against said defendants
returnable on the first Monday of March next,
1861. Now therefore unless you the said Nathaniel
Clark Burnham, Mary Ann Shays, Paschall
Woodward, The Farmers College of Hamilton County
of James, and John Bradley, shall personally be
and appear before said Superior Court of Chicago

(57)

of Cook County on the first day of the next term thereof, to be holden at Chicago in said County, on the first Monday of March 1861, and plead answer or demur. to the said Complainant's Bill of Complaint the same. and the matters and things therein charged and charged and stated well & lawfully as Complainant and decree entered against you. according to the prayer of said Bill.

Walter Merrill Clerk
Shumway Wade, & Son.
Clerks of Court.

This is to certify that the annexed notice was published in the Chicago Journal, a Daily Newspaper, printed in the City of Chicago County of Cook and State of Illinois 3 times or 4 successive weeks as follows:

The first insertion on the 19 day of July 1861. and the last on the 19th day of March 1861

Dated at Chicago May 16, 1861.

L. L. Wilson
Publisher, Chicago Daily Journal.

And afterwards on the Thurd. day of March in the year of our Lord one thousand Eight hundred and Sixty two, there was filed in the Clerk's office of the said Superior Court of Chicago certain depositions which are

(52) in words and figures following to wit:

Deposition of Hocking St. Hunkin,

Interrogatory First. What is your name, age, occupation and place of residence?

Answer to first Interrogatory, My name is Hocking St. Hunkin age sixty years occupation at. Lawyer at Law. place of Residence Lancaster Ohio, Interrogatory second, Do you know the parties - plaintiffs and defendants in the caption to these interrogatories mentioned or either and when of them and how long have you known them respectively? What of any thing had you to do with the case of Julius L. Wayman vs. The President & Directors of the Bank of Cleveland & Chartered by the Legislature of Ohio in 1818, pending in the Chancery side of the Court of Common Pleas of Cuyahoga County, and State of Ohio? If you say, as attorney or solicitor when was said case commenced, and has there been recovery in said case? If so who, and what changes of any has there been in such Receivership who were the Receivers in June 1860?

Answer to second Interrogatory, I am personally acquainted with all the plaintiffs and have known them fifteen years and some of them longer.

(53)

I have been personally acquainted with the defendant Nicholas P. Ogden for six or seven years. I do not know Mr. Ogden.

I was associate Counsel for the complainant in the case of Julius L. Weyman against the President and directors of the Bank of Leavenworth chartered by the Legislature of Ohio in 1818, up to and in the interrogatory extracted in that behalf as attorney for creditors of said Bank. I have known said Weyman. I am unable to state from memory when said suit was commenced and have not convenient access to the Records to aid my memory. Recivers have been appointed in the case. The complainants William St. Pierre, Marcus Brown and Henry M. Steager for the complainants in this suit are at this time and during a number of years past have been the Recivers. There have been changes in the Receivership since the first appointment, but I am not able to state more certainly all such changes that may have been made. There have not been any such changes to my knowledge since 1856, perhaps some time before. The business above named as complainants were the Recivers in August, 1856, and have been such ever since. Prior to that time but at what time is particular I cannot state.

(54)

State Henry J Page and William P. Daut had
been received of said Bank.

Interrogatory Third. Do you know any thing
about a claim against Nicholas P. Sglehaut
on which a bond and mortgage was taken
If any thing state fully and at large all
you know in regard to the same.

Answer to said Interrogatory. I have no per-
sonal knowledge of the claim on which the
Bond and Mortgage was given by Nicholas
P. Sglehaut. signed to in the Interrogatory. All I
know in regard to that claim is by information
from others.

Interrogatory Fourth. Have you a mortgage
or Grant out of Attorney and bond made by
Nicholas P. Sglehaut? If so produce the
same. and make the same a part of your depo-
sition. If you say you cannot produce any
of the same why not?

Answer to Fourth. No. And I do not know.

I now have before me a mortgage purporting
to be executed by the defendants Nicholas P. Sgle-
haut. and Frances M. Sglehaut his wife as
Grantors. to Henry J Page and William P.
Daut. Recd. &c. dated the 21st day of Sept-
ember. AD 1853, purporting by the instruments
on the back or cover attached to it to be N^o 44th
and to have been filed in the County of Cook. State

(155)

of Illinois for record. September 26, 1853, and
 recorded in Book No 16 of Mortgages page 46.
 (Said Mortgage is attached to my deposition marked
 Red. and enclosed as above indicated in the case
 of the same Plaintiff as in this case, against St.
 P. Ogden, & H. Age, and J. C. Dast.
 being in the same book on the law side with
 this case,). I have also before me a warrant of
 Attorney made by the defendant Nicholas P.
 Ogden dated September 21st 1853. Embracing
 Edward P. Lamed Esq. or any other attorney of any
 Court of record in the United States of America
 for the purpose therein expressed (marked
 A) and made a part of my deposition in
 said other case. I have not in my possession
 the handwriting to or the above named Mortgage
 and Warrant of Attorney have never seen it
 to my knowledge. I have been of counsel for the
 Receiver in the prosecution of claims in favor
 of said Bank against St. P. Ogden and
 others during the last ten years and my
 impression and best recollection is that the Mortgage
 and probably the Warrant of Attorney first
 came into my hands some time after the 22nd
 day of August 1856. That being the date of a
 contract entered into between the Receiver
 of said Bank and Ogden relating to the
 claims of the Bank against Ogden referred

(56)

to no the mortgage above named, and a
certain other claim in favor of the Bank, against
Sylvan, upon which a suit in Chancery was
then pending in the Circuit Court of the United
States for the Southern District of Illinois. I never
had any charge of the Bond and Mortgage,
claim as attorney for the Receiver until after
the arrangement made by the Contract, referred
to, of August 22 1856, nor until after Syl-
van came to be in default under said
Contract. Messrs. Williams & Woodbridge attor-
neys at law of Chicago had previously been,
attorneys for the Receiver in respect to said
Bond and Mortgage claim and had the
mortgage in their possession. I obtained a copy
of it whilst they held it in August 1856,
and desired to get a copy of the Bond. It was then
thought to be in their hands also but it could not
be found, and no copy of it was obtained. I
afterwards obtained (but I cannot now remember
from whom) the original mortgage and I
think, transfer of attorney hereafter referred
to but from whom I cannot say with confidence
but my impression is from Williams & Woodbridge
at Chicago. It is possible however that it was
from Judge Briggs one of the Receivers as
above stated. I have no recollection of ever having
seen the Bond, but I might be in error.

(57)

in this and trusting it possible I might have had it I have on several occasions made diligent search among my papers where it should be if I ever had it and have not found it and am quite confident it is not in my possession. I however found among my papers relating to this business a copy (so it purports) of the bond in the handwriting of Judge Price which is now before me (marked "B" and attached to my deposition in said other case.) I cannot remember when, where, or from whom I obtained this copy but suppose from my relations as attorney to the business that I obtained it from Judge Price & after Sglehart's default to comply with the contract of August 1856. No doubt I obtained it for the purpose of being used by me as counsel for the Receiver as might be proper and sufficient in prosecuting the claim evidenced by it against Sglehart. Judge Price is the principal acting Receiver and I have conducted the necessary correspondence to a large extent though not entirely in relation to the claims made Sglehart. Since 1856, and for that purpose as well as to enable me to advise in regard to it it was natural for me to have the bond or a copy of it.

The Judge and other Interrogatories answered

(58)

by Mr. Lunter, in his answers to Amato, Interrogatory, as above. now read by him prior to his making his said answer and are in the words following,

Interrogatory No. 1. If you produce the Mortgage, and Demand of attorney, and do not produce the Bond secured thereon why do you not produce the same? Have you ever seen the same if so. when and where? When did you see the same last? Do you know in whose handwriting the same was, and what means have you of knowing handwriting If you say you cannot produce the same. what if any search have you made for the same? State fully and at large what search you have made for the same?

Interrogatory No. 2. What has become of said Bond? If you cannot produce the bond state if you can, the contents thereof If you have a copy of the same produce such copy, and how did you come by the same, and for what purpose did you have it?

Interrogatory No. 3. Did you procure any order of Court in regard to said Bond and Mortgage and if so. what? and on what Court? and when

Answer to Interrogatory No. 1. At the time the Contract of August 22, 1836, was entered into a suit

(59)

in Chancery, was pending in the Circuit Court of the United States for the Eastern District of Illinois wherein the Bank of Leucerville & Chartered in 1818, and the Receiver of said Bank, were plaintiffs and said Nicholas P. Iglehart, was defendant the object of which was to enforce payment of a decree previously obtained in the Supreme Court of the State of Ohio, against Iglehart by said complainants.

The said agreement herein before referred to as dated August 22 1856, was entered into for the purpose of compromising and compromising the claim asserted in said suit against said Iglehart. In return with the said claim of the Receiver evidenced by the ^{pm} Mortgage before referred to. It was a part of said agreement as more particularly appears from the agreement itself (which will probably be given in evidence on the hearing) that a decree should be entered in the case pending in the Circuit Court as aforesaid.

In conformity with that agreement, I procured a decree to be entered in said case in said Court through the immediate attention of Messrs. Chittenden & Woodbridge. The decree I think was entered at October Rules. The Record will show the true date as well as the terms of the decree. A copy of said agreement

(60)

is referred to in the decree, as on file in said Court, and as part of the decree.

Interrogatory Eighth, Who were the Receivers of said Bond when said Bond and Mortgage and warrant of attorney was taken? and what was done with the assets in the hands of such Receiver when removed?

Answer to Eighth Interrogatory, I cannot be certain who, besides Henry H. Page and William O. Dusk, was Receiver at the date of the Bond and Mortgage. The Record will show. I have no personal knowledge of what was done with the assets in the hands of the Receiver when removed. According to the law of Ohio upon this subject, they should be transferred into the hands of the successor of the removed Receiver. It is so expressly provided by statute of Ohio in 382, pages 863. 4. sec. 13.

Interrogatory Ninth, Do you know the consideration of said Bond and Mortgage? If so, what? Do you know whether said Lytle has made any payments on said Bond and Mortgage? If any when? & what? Answer to Ninth Interrogatory, I repeat, what has been paid in substance in my answer to the third Interrogatory. That I have no personal knowledge of the consideration of said Bond

(611)

mortgage, nor have I any personal know-
ledge. that said Ogden has made any
payments upon said Bond and Mortgage ex-
cept as follows. An attorney for the Receiver
I received a remittance by letter from Messrs
Milligan & Woodbridge dated Chicago Oct 4. 1856,
of \$1025.00. being for \$1000. of principal and
\$25.00 of interest and being for the payment
stipulated in the Contract of August 22. 1856
to be made in hand at the execution of the
Contract with interest from May 1st 1856,
but which was not promptly paid in hand.
I am not informed of the precise date of the
payment of the same, to Messrs Milligan & Woodbridge
This payment is not applicable to the Bond
and Mortgage exclusively but upon the
deed entered in the Circuit Court of the
United States, above referred to
Julesogalany, Jurk. Do you know of any
matter or thing of importance to the Com-
plainants: If so. state the same fully &
at large

As to Julesogalany Jurk. It may be
important to state. that the name of Henry
E. Page. was formerly "Henry Holson" and
was changed at his instance according
to the law of this State where he then re-
sided to "Henry Holson Page" I am not

(62)

certain of the fact but thinks it probable that
the change thus made, in Mr Page's name &
may have been after his appointment, as Recor-
der. For this explanation may be material, I also
know and state that the cause for which the
decree in the Supreme Court of Ohio was
rendered for the recovery of which the suit
in Chancery was prosecuted in the Circuit
Court of the United States was not the same,
but other and different from that of the Bond,
and Mortgage. I have corresponded with
the Mortgage defendant: N. P. Aplehart
and by that means know his handwriting
and have no doubt from my knowledge of
the same that the signatures purporting
to be his to the Mortgage and warrant of
attorney are in his handwriting and fur-
ther such not.

Respectfully,
Noel H. Sturges;

Deposition of Henry H. Page Esq.

Interrogatory First What is your name age,
occupation, & place of Residence?

Answer to First Interrogatory, My name is Henry
H. Page. My age is Forty one, occupation
an attorney at Law, residence Clevelands Ohio

(63)

Jalungatay Second, Do you know the parties
plaintiffs & Defendants in the caption to these interro-
gatories, mentions or either and which of them,
and how long have you known them respectively?
Answer to Jalungatay Second, I know the
plaintiffs in this suit & have known each of
them about seventeen years. I have known
St P Ogden about eight or nine years.

Jalungatay Third, What is now your name
and how long has it been so and has there
been any change in your name, of any
what, and if you say there was even any
change, when was it what was it;

Answer to Third Jalungatay, My name
at my instance, was changed by an order of
the Court of Common Pleas in this County,
in November 1848, from Henry Tolson, to
Henry Tolson Page.

Jalungatay Fourth, State whether or not,
you were ever Receiver of the Bank of Cincinnati
Chartered in 1818, by the Legislature of Ohio if
you so, when were so, appointed and how
long did you so continue who was Receiver
with you and how long did each of them
continue and if you say you are no longer
Receiver, who succeeded you as such Re-
ceiver under what name, what name was
you appointed Receiver

(64)

Answer to Honable John H. Gallagher, I was formerly
one of the Receivers of the Bank of Louisville
Chartered by the Ohio Legislature in 1818, under
the law. There were three Receivers. The first
Receivers appointed by the Court. Were
William B. Hall. Joseph H. Geiger & Joel
L. Franklin at the April Term of the Court
of Common Pleas of this County. A.D. 1846,
said Franklin & Geiger resigned & William
D. Duest & I were appointed to fill their places
at the November Term of said 1846.
A.D. said Duest & I accepted said appoint-
ment and gave bond according to Law, and
were duly qualified as such Receivers. I
did not Resign at that date, but continued
to act as such Receiver until February
A.D. 1854, when he resigned. During &
nearly all the time I acted as Receiver I
resided at Columbus. Ohio & gave little atten-
tion to the Business of the Bank. At the Feb-
ruary Term of said Court. A.D. 1854. Duest
Resigned his appointment as Receiver and
at the same Term of said Court viz. February
A.D. 1854, William H. Pierce & Marcus B. Smith
were appointed as Receivers of said Bank.
At the May Term of said Court. A.D. 1854
I resigned my place as Receiver and
W. H. Duest Jr. was appointed as Receiver

(65)

I was appointed Receiver under the name of Henry Holson, James Brown Bruce & Bridges. have acted as said Receiver ever since the appointment to this date and are at present, Receivers of said Bank.

Interrogatory No 1. If in answer to any of the Interrogatories in Chief you say you were Receiver of such Bank state whether or not. If Lehart gave to the Receivers any papers to secure any indebtedness, if any, state what papers he made and the date.

Answer to Interrogatory No 1. At the time I was appointed Receiver of the said Bank, by the Receivers had a judgment against Nicholas P. Lehart the defendant (or I think his partner) that had been rendered in the Court of Common Pleas of Warren County Ohio at the March term of said Court A.D. 1843, for the sum of six hundred and thirty one Dollars. This judgment was in full force & wholly unpaid. A copy of the Record of the Judgment was placed by the Receivers in the hands of Lamer & Noradago Attorneys at Law, in Chicago in the Spring of 1853, A.D. and they were directed to get from Lehart, the whole amount due upon said Judgment of papers. But as he was considered as an evasive one

copy

(66)

Circumstances the said Attorneys were directed to Communicate to the Receiver any offer he might make. After considerable Negotiation, Iglehart proposed to pay fifty per cent on the amount due on said Judgment, & interest provided he could get time, He proposed to pay five hundred dollars down, and the balance in five equal annual payments. Iglehart's proposition was accepted by the Receiver subject to the Ratification of the Court of Common Pleas of this County, of this County. Under the law the Receiver had no authority to compromise without the assent of the Court. The proposition was communicated to the Receiver in August 1833, & promptly accepted upon the Condition that the notes should bear interest payable annually, and should be made secure. The security was to be by mortgage on Real Estate and a power of attorney to Confess Judgment upon the failure to pay either instalment and upon default of payment, the whole original debt, was to be come due. This Judgment was compromised on these terms about the 21st September AD 1833. This Compromise was made through James & Wordbridge Junior Law. Iglehart, upon the subject, until after the settlement had been made. I received from

(167)

Lamed & Woodbridge about October 25th 1853, a bond purporting to be executed by said Ogden in pursuance of said compromise & I received also the power of attorney to enforce judgment. But I believe the Mortgage was retained by the attorneys at Chicago. These papers are dated 21st September 1853,

Antinogating by the State whether or not. The Defendant Nicholas P Ogden, about September 1853, made a penal bond, in the penal sum of ten thousand dollars to Henry A Page, William P Parst, Receivers of the Bank of Leicerville & so where is the same. When did you last see the same. If in your possession please produce the same, and make the same part of your answer.

Answer to 5th Antinogating. The defendant N P Ogden, about the 21st September AD, 1853, made a penal bond, in the penal sum of Ten thousand dollars to William P Parst & myself as Receivers of said Bank of Leicerville. The said Bond, was in possession of the Receivers of said Bank. It was received about the 25th October 1853, & was retained in my hands until April 27th 1854. I do not know where said bond is now. I last saw the Bond on the 27th day of April

1854. It is not in my possession I cannot produce it or make it a part of my answer on the said day. Sent said Bond with some other papers by mail to John Wordhage & family at Law at Chicago and I have a copy of my letter to him in my letter book from which the fact of sending the bond, distinctly, appears. I remember the fact independent of my letter book. The Bond was put in his hands to indemnify him & he procured surety for costs in another suit which the Receivers were about to begin against Ogden. For money due the Receiver upon a decree in Chancery rendered against said Ogden, et al. in the Supreme Court of Pickaway County Ohio at the November Term 1847 of said Court. The decree against Ogden was for twenty nine thousand ~~dollars~~ seven hundred and fifty dollars for stock subscribed by him and unpaid. After the said grant was compromised we executed a Release of the Indemnity to him but did not release any other demand. The sum on the decree was bought in the United States Court at Chicago & I think Wordhage became security for costs at any rate he retained the bond and never restored it while I was Receiver I have

(169)

a letter from Worcester in which he
acknowledges the Receipt of the paper sent
him on the 27th day of April 1854
Antinogaluy Seventh,

Have you made any search for the same
if so state what search. state whether or
not. the same as in your possession. when
and where. did you last see him?

Answer. to Seventh Antinogaluy. I have not
made any particular search for said Bond.
Because I know it is not among my papers
or under my control & has not been in my
possession since April 1854. I have looked
over my papers frequently since this
Bond has been missing. If it was among
my papers I would have found it. The said
Bond is not in my possession.

Antinogaluy Eighth. What means of any
have you of knowing the hand writing of
E. C. Larned, or Nicholas P. Sglehaut. if
any state the same fully and at length.
known to the Eighth Antinogaluy. I believe
I have some knowledge of the hand writing of E. C.
Larned I have received a considerable number
of letters from E. C. Larned while he was the
Attorney for the Receiver which letters I put
up on & I afterwards saw him and had some
conversation with him in relation to the subject

matter of said Lullus. I have seen H. P. Sglehaut photo. & I believe I am acquainted with his handwriting.

Interrogatory written to you from the handwriting of E. C. Larned or Nicholas P. Sglehaut, & so state your means of knowledge & state on whose handwriting was the signature to said Bond. who was the contact to same.

Answer to Interrogatory
I believe I know the handwriting of E. C. Larned & I believe I am sufficiently well acquainted with H. P. Sglehaut's writing to say that the signature to the said Bond was said H. P. Sglehaut. I think the writer was E. C. Larned. At the time said Bond and some of attorney, were in my possession I had no doubt that the signatures of said Sglehaut & Larned to said Bond were their genuine signatures my means of knowing their handwriting is above stated.

Interrogatory Lenth, Was said Bond secured by anything of so what?

Answer to Lenth Interrogatory, The said Bond was secured by mortgage upon certain Real Estate of said Sglehaut, in Chicago said mortgage is now before me, annexed to the deposition of J. H. Hunter, and referred to in his deposition. The said paper is Exhibited.

1711

to me before the said deposition was closed and sealed up.

Interrogatory Eleventh, State whether or not, any deed was procured ratifying said Bond & Mortgage or as in what Court was the same procured and whether or not, any copy of said bond was filed in said Court.

Answer to Eleventh Interrogatory, An order was made by the Court of Common Pleas of Pickaway County Ohio at the November Term 1853, completely ratifying said Bond & Mortgage, and my impression is that a copy of the bond was filed in said Court at the time or produced to the Court, but of this I am doubtful.

Interrogatory Twelfth, If you say there was state who made the same, whether or not the same is a true copy of the same. if so do so. State whether or not. It is a true copy.

Answer to Twelfth Interrogatory, I do not remember who made the said copy. I have no doubt I caused it to be made. A copy was made as I attended almost exclusively before me as the Receiver. The copy filed in said Court if filed at all was undoubtedly a true copy. I never had any other. I have no copy of said Bond in my possession but I doubt

(72)

a copy of said Bond was made before the original was sent to Woodbridge I do not know I would have parted with the original without having a copy made. It is my impression that I employed William W. Pierce to make the copy. That is annexed to the deposition of Hocking A. Hunt. & is now before me. & shown to me before the sealing of his deposition. This copy is by said Pierce & handwriting the said copy is marked & Exhibit "B" referred to in the deposition of said Hunt. I believe the said paper to be true copy of the original Bond. It contains the same terms date parties amounts covenants and stipulations that were contained in the original Bond. according to my recollection of that instrument. I have a distinct recollection of the substance of that Bond independent of the copy. Which recollection I have refreshed by reference to my letter Book. Containing & Copies of letters written at the time the affair was transacted. I have no doubt the said copy is a true copy of the original Bond. I have annexed to this deposition a copy of the copy of said Bond. That is attached to said & Hunt's deposition and is marked Exhibit "B"

(731)

Jalungalay Huteau. What was said Bond
& Mortgage given to secure. How much of
any was paid on the same. When you ceased
to receive had any default been made
by Iglehart? if so when

Ans was to Huteau Jalungalay, said Bond
& Mortgage, were given to secure the one half
that was due. the Receiver of said Paul &
upon a judgment rendered in their favor
against said Iglehart in the Court of
Common Pleas of Cuyahoga County Ohio on
the day of March 1843, in the sum
of \$4 thousand and thirty one Dollars which
judgment had been compromised as I
have before stated. At the time said com-
promise was made. Iglehart paid me
attorneys at Chicago five hundred dollars
and no other sum. I am convinced ~~was~~
even paid during all the time I was re-
ceiver I transacted almost the whole
business of the Paul. Marshall did not
reside at the County, & he gave no attention
to the business. I consulted with Darrist
got his signature to papers when necessary
& default had not been made upon said
Bond. when I ceased to be receiver. The last
payment, according to the Bond. was due
in September 1854, & I resigned in May 1854

1747

The said Four hundred Dollars, was the Cash payment, required by the Compromise & was paid, of the amount, due on the bond Intergalain Intense. When you ceased to be Receiver what did you do with the papers, belonging to such Receivership what did you do with the Bond, Mortgage and Power of attorney

Answer to Intergalain Intense when I ceased to be Receiver of the Bank, I delivered all the papers, belonging to the Receivership, to said Pierce Domeau all the papers that I had in my possession the said Bond had been sent in April preceding my resignation to Woodruff & never was returned to my knowledge. I informed said Pierce, of this fact, when I gave up the papers, as to the Mortgage, that had been retained by James & Woodruff at Chicago and I never had it under my control.

The Power of Attorney Intense was delivered to Pierce at the same time.

Intergalain Intense, Do you know of any matter or thing of importance to the Complaint and you state the same fully and at large? Answer to Intense Intergalain, I do not know what defence is made by Plaintiff in this case I am not certain whether I am stating matters that are pertinent to the case

1751

or not but I will add that when the bond was put into the hands of Gortonage it was solely to indemnify him, as surely for cost as above stated and he had no authority to surrender or run up it was paid I will further add, that in the winter of 1857 1858. I was in Chicago and I called on Sglehart. repeatedly at the Request of the Receiver to obtain the amount due on said Bond. Sglehart did not claim that he had paid anything on the Bond, but he put me off saying he expected money from the East. He paid me at that time twenty dollars to reimburse some expenses I had incurred for the Receiver & this was all I received from him, he did not claim or pretend that said Bond was in his possession. In reference to paying the Bond I called upon Sglehart as late as April 1858, as I find by referring to my letter book. Containing copies of letters that I wrote to Price at that time and further forth not.

Henry H Page,

I know all men by these presents, that I Nicholas Sglehart of Chicago in the County of Cook and State of Illinois am held, and firmly bound unto Henry

(761)

A Page and William P. Dust Receivers of
the Bank of Louisville in the County of
Pickaway and State of Ohio in the final
sum of Ten Thousand Dollars (\$10000) to be
paid unto the said Henry A. Page, and
William P. Dust. Receivers their Executors
administrators or assigns which payment
well and truly to be made I bind myself
my heirs executors and administrators firmly
by these presents sealed with my seal, and dated
this Twenty First day of September in the
year Eighteen Hundred and fifty three (A.D. 1853)
The condition of this obligation is such
that whereas the said Nicholas P. Ogden
a justly indebted unto the said Henry A. Page
and William P. Dust. Receivers as aforesaid
in the sum of nine thousand eight hundred
hundred, twelve dollars and sixty one cents (\$
9812 ¹/₂) and the said Page and Dust. have
compromised said claim and agreed to release
and discharge said Ogden therefrom
in consideration that the said Ogden would
secure to them the prompt and punctual payment
of one half the above named amount, viz.
the sum of four thousand nine hundred
and sixty dollars thirty cents (\$4906.30) in
manner following, namely. Five hundred
dollars in cash and the balance in five equal

(771

annual payments of Eight hundred Eighty one dollar and twenty six cents (\$881.26) each with interest at the rate of six (6) per centum per annum payable annually upon the whole sum remaining unpaid with the understanding and agreement that in default of the payment of either of the said sums of money, at the time when the same shall become due and payable and the same shall be and remain due and unpaid for the space of ninety (90) days after the same is due and payable that then and in that case the whole of said sum of nine thousand eight hundred twelve dollars & the one cent (\$9812.01) less the amount which shall have been paid thereof shall forthwith become due and payable & may be immediately thereafter demanded any thing herein contained to the contrary notwithstanding.

Witnessed and given that in case the said Henry H. Page and William P. Faust shall not obtain the satisfaction of the Court of Common Pleas of the County of Pickaway in the State of Ohio to the said compromise of said claim then this obligation to be null and void

Signed sealed and delivered
In presence of E. C. Lamed

H. P. Glickart

(78)

And afterwards took on the Tenth day of
the month and year aforesaid the same being
one of the days of the March Term of said
Superior Court. the following among other pro-
ceedings were had and entered of record in
said Court book:

William W. Beece Marcus Brown
Army & Heagerty Receivers of the
Bank of Leitchville Charted by the
Legislature of Ohio 1818.

325

. 18,

Bills

4733,

Nicholas P. Aglehart, Francis M.
Aglehart, Leopold. Mayer, Nathan
Carl Burnham, Mary Ann Shays,
Parshall Woodward Hanna College of
Summit County, James Hawk, James

William O. Dusk, Henry Holmes Page Francis
Adloffman, John Lindsey & Philip A. Boyne

And now at this day again come the parties to this
Cause, and the Cause coming on to be heard, upon the
Complainant's Motion for entering of an order ex-
cluding the deposition of H. L. Page the Court upon
due deliberation being fully advised overrules the
said Motion and dismisses defendants' motion. the
Court, to have the deposition of said Page stand
subject to all legal exceptions.

(79)

And after and took on the day and year
aforesaid, the said defendant Nicholas P.
Eglehart, by Amos P. Putnam Solicitor, filed
in the Clerk's office of the said Court his
Clerk's Motion ^{and return} which are in words and figures
following to-wit,

4733
325

N P Eglehart et al

vs -

Wm W Preece et al

In Chancery.
Superior Court of Chicago

Defendant Eglehart
moves to suppress the deposition of Henry J Page
taken in this suit and for cause shows
That said Page is a party to the suit and
no order for the taking of his deposition has been
made.

Also for the reason that no order for the ex-
amination of said Page has been entered,
Amos P Putn,
Sols for Eglehart,

4733
325

N P Eglehart, et al

vs -

William W Preece et al

In Chancery.

In the Superior Court of Chicago
said defendant Eglehart objects to the following
parts of the deposition of Henry J Page and
moves to suppress and strike out the same
1. The following made in the answer to
the fourth Interrogatory, "Under the Law then

(80)

were also Recivers. The first Recivers appointed by the Court were William B. Hall, & Joseph H. Greiger & Joel Franklin at the April Term of the Court of Common Pleas of the County, A.D. 1846, said Franklin & Greiger resigned & William O. Duest & ~~James~~ James were appointed to fill their places & at the November Term of said Court, 1846, A.D. said Duest & James accepted said appointment and gave bond according to law, & were duly qualified as such Recivers" x+x. At the February Term of said Court, A.D. 1854, x+x. viz. February Term A.D. 1854, William W. Bruce & Marcus Brown were appointed as Recivers of said Bank. At the May Term of said Court A.D. 1854, x+x. Henry D. Deagen Jr. was appointed as Reciver. Said Brown Bruce & Deagen have acted as said Recivers ever since the appointment to this date and are at present Recivers of said Bank."

2, Especially so much of the whole of said answer as purports to state the contents of records none of which are produced.

3, So much of the said former interrogatory as calls for the contents of orders and decrees of Court.

4, So much of the answer to the third interrogatory as purports to set forth, ^{the} contents of a

181/

Record.

5. So much of the answer to the 5th Interrogatory, as purports to set out the contents of records not produced.

6. Also the following parts of said answer "After considerable negotiation Iglehart, proposed to pay fifty per cent on the amount due on said fragment & interest provided he could get time he proposed to pay five hundred Dollars down, & the balance in five equal annual payments. Iglehart's proposition was accepted by the Receiver subject to the Ratification of the Court of Common Pleas, of this County, under the Law. The Receiver had no authority to compromise without the assent of the Court. The proposition was communicated to the Receiver in August 1853, & promptly accepted upon the condition that the notes should bear interest payable semi annually, and should be made secure. This fragment was compromised on these terms about the 21st September A.D. 1853.

7. So much of the answer to the 6th Interrogatory, as purports to set out, or give the contents of a bond not produced.

8. The 11th & 12th Interrogatory,

9. The answer to said Interrogatory

182/10, so much of the 12th Interrogatory, as pur-
ports, to set out, or give a copy, a bond not
produced.

Amistown & Dept.
Sol for Sglehaut

4733

325

N P Sglehaut, et al

N D. B. Wice et al

In Chancery

Defendant Sglehaut
moves to suppress parts of the deposition
of Henry Holcomb Page as follows.
1st Part of the answer to 3rd Interrogatory
beginning the following words & figures,
"N W Bice and Marcus Bice were
appointed receivers of said Bank" &c &c.
Henry N Hedger Jr, was a Receiver"
2nd So much of the answer, of the 5th &
6th, as relates to an alleged treaty of
compromise as a certain stated, to have
taken place between said Sglehaut and
Samuel & Woodbridge commencing with
the word "after" on third line from bottom
of the first page on which said answer
is written and ending with the word
"made" on the 3rd line of the bottom of next
page.

3rd So much of said deposition as purports
to set out, the term of an alleged Bond from

$$\frac{22}{4}$$

(83)

Quia Spleenat

4th. So much of the answer to the 8th & 6th,
Intelligo as prompts to set out the terms of said
Bond

5th so much of the answer to the 6th Interrogatory
as it follows. "A decree ^{against} of the court
was for \$29,750 for stock subscribed by
him and unpaid."

6th State on the 11th January.

7th Start on the answer to the Quid. 11. Antiquary

4th Shute out so much of the answer to 12th Inquiry, as purports to give a copy of the Bond above mentioned.

9. ^a Struck out so much ^{all} such parts
of said deposition as purport to set out the
contents of Records and papers not pro-
duced or made Exhibits.

Arington & Dent,
Sols for. H P Lyleant;

Nicholas P. Aglebach, et al. In Chancery,
 vs - In the Superior Court of Chicago
 Plm. Pl. Dece. et al.

Yours Truly
Wm. H. Bruce Esq.

The defendant comes.

and move, to suppress. Cutaway. Parts of the
disposition of Doctoring H. Hunter. on file
in this cause. to wit

(The following parts of his answer to

4739
826

(84)

the 2^d Interrogatory book.

The words "Receivers have been appointed in the case the Complainants William W. Bruce Marcus Brown & Henry & Charles J. The Complainants are this time and during a number of years past have been Receivers" ++ The persons above named as Complainants were the Receivers in August 1856, and have been such ever since "

2. Also to the following parts of said Interrogatory, "If so who were such Receivers and what changes of any had there been in such Receivership and who if any one was the Receiver in June 1860"

3 Also so much of his answer to the 4th 5th & 6th Interrogatories as relates to a sub mit. an alleged bond of the defendant Ogden except the following words, "but lest I might be in error in this and trusting it possible I might have had it I have on several occasions made diligent search amongst my papers where it should be: if I ever had it and have not found it and am confident it is lost in my possession, 4. Particularly to state out the following part of said answer. "I however found among my papers relating to this business a

1851

Copy (so it purports) of the Bond in the
hand writing of Judge W. H. Brewer which is
now before said paper, is hereto, attached
marked B, and made a part of this deposition
5th Strike out, Sentence Introducing and
the answer thereto.

6th Strike out so much of the answer to the
8th Interrog. as is as follows "according
to the law of Ohio upon this subject they
should be transferred into the hands of the
successor of the removed Receiver. It is
so expressly provided by Statute of Cur
roni Ch. 382. pages 1803 & sec. 13.

7th Strike out so much and such parts of
said deposition as purport to set out records
and papers not produced.

8th Strike out the paper marked Exhibit
B, referred to in said deposition.

9th Also Strike out the following part of
the answer to the 10th Interrog. to wit "I also
know and state that the cause for which
the decree in the Supreme Court of Ohio was
rendered, for the Recovery of which the
suit in Chancery was prosecuted in the
 Circuit Court of the United States was
not the same but other and different from
that of the Bond and Mortgage,
said Elephant also moves to

(87)

suppress the deposition of Henry H Page
taken in this Cause.

And for Cause shew. that said Page
is a party, in this Cause. and no order. for
the taking of his deposition had been made.

Also for the reason that no order. for the
Examination of said H Page has been
entered in said Cause.

Samuel H Dent

Attys for J. P. Iglehart,

H. P. Iglehart et al

William W. Price et al

In Chancery
In the Superior
Court of Chicago

Said Defendant Iglehart. object to the
following parts of the deposition, of Docking
H Hunter and move to suppress the
same. to wit,

1st. so much of the answer, to the 2^d inter-
rogatory as is as follows "The complam-
ants, William W Price, Marcus Brown
and Henry H Hedger. the Complainants in
this suit, are at this time and during a
number of years past have been the Receivers
2. so much of the same answer as is as
follows. "The persons above named as
complainants, were the Receivers in

(88) " August, 1856, and have been such ever since"
 3. So much of the answer to the 4.th 5.th &
 6.th Interrogatories as is as follows. "I however
 found among my papers relating to this
 business a copy. (So in purports of de Bond
 in the handwriting of Judge Purce which
 is now before me. (marked 'B' and attached to
 my deposition in said other case) I cannot
 remember when where, or from whom I ob-
 tained the copy, but suppose from my
 relation as attorney to the business that I ob-
 tained it from Judge Purce after the
 assault to comply with the contract of
 August 1856. No doubt I obtained it
 for the purpose of being used by me as
 evidence for the Receiver as might be pro-
 per and expedient in prosecuting the claim
 evidenced by it against Iglehart"

4. The Fifth Interrogatory.

5. The ~~answer~~ 7 Interrogatory

6. So much of the answer to the 8.th
 Interrogatory as is as follows. "accord-
 ing to the law of Ohio upon the subject,
 they should be transferred into the hands
 of the successor of the removed Receiver
 It is expressly provided by the statute
 2 Curwin Ch. 382. pages 863, 4 sec 13.
 7. State out the paper marked Ex

(1891)

hibit B required to read deposition,
& state all parts of said deposition &
purporting to give contents of records not
produced

N. P. Iglehart

And afterwards took on the Eleventh day of Dec-
ember in the year aforesaid there was filed in
the Clerk's office of said Court. certain depositions
which are in words and figures following to-wit

Depositions of W. H. Buice, Marcus Brown and
Henry A. Deagu Jr.

W. H. Buice's deposition

- Q. ^{1st} Interrogatory first. What is your name - occupation
A. ^{1st} Answer. W. H. Buice my occupation is an Iron Manufacturer
Q. ^{2nd} Interrogatory second. Do you know the parties plaintiffs
and defendants in the caption to these interrogatories men-
tioned or either and which of them & how long have
you known them respectively. Were you ever receiver
of the Bank of Louisville chartered in 1818, if so
when & from what time to what time?
A. ^{2nd} Answer. Yes I do know the plaintiffs, I have known
them some 20 years. Of the defendants I have known Mr.
Dart & Page for some 20 years, I have known
Mr. Iglehart some 5 or 10 years the rest of the
defendants I do not know. I am one of the Receivers of
said Bank at present & was appointed such Re

(90) curra March 6.th 1854

3^o Antuogalay, This state whether or not you ever had
in your possession or ever saw a bond made by
Nicholas P. Delehant dated September 21st 1853
to Henry H. Page & William D. Dant Receivers of
the Bank of Leclerville in the County of Pickaway
State of Ohio in the penal sum of \$1000⁰⁰ of so
produce the same, if you cannot why not?

3^o Answer. No Sir I have no such bond in my possession
I did have in my possession what purported to be
a copy of such a bond made in my own hand
writing & endorsed 'Copy' which I have no doubt
whatever was a correct copy of said Bond. This
Copy I forwarded by mail to Allen Shumway Esq
& John Atty Chicago Ill not having this
original bond of course. I cannot produce it.

4th Antuogalay, Now if you say you cannot
produce the same, what has become of the same
state whether the same is in your possession or not.
Have you ever made any search for the same
among your papers or any where. if any &
what search. & state fully and at large what
search you have made?

4th Answer, I am the acting Receiver of this Bank
& have all the papers in my possession (except
what are in the hands of the attys in this case)
I have made most thorough search at different
times for the original Bond among the papers of

(911)

the bank. but cannot find it. and am well & satisfied it is not in my possession nor among the papers in this County. I am satisfied that the Original Bond was forwarded by Henry F. Page formerly one of the Receivers of the Bank to Messrs. Chalmers & Woodruff of Chicago then attys for said Bank & by them received, nor do I believe that it has ever been returned to the possession of said Receivers. Certainly not to mine.

Q^d Interrogatory Fifth. State whether said Bond has been lost or not? If you say it is lost what efforts have you made or any to find it & with what success?

A^d Answer. I refer you to my answer to Interrogatory 4th for a full answer to Interrogatory Fifth.

Q^d Interrogatory Sixth. State whether you have ever endorsed said Bond to any one if so to whom. State when and where you last saw said Bond. How often if you ever made any copy of the same if so when & where is the copy. State when and where you last saw the original of said Bond. If it was sent by H F Page to John Woodruff Jr. of Chicago have you ever seen it since that time if so when & where? State whether or not you have ever received it from John Woodruff Jr. or any one. Since it was so sent to John Woodruff Jr. if it was so sent?

A^d Answer. I have never endorsed said Bond to any one I last saw the bond about the time I made the

(92) copy in Louisville some years ago. I have never seen the bond since. It was sent by Mr Page to John Woodlidge Jr. or to William & Woodlidge. I have never received it from John Woodlidge Jr. nor from any one else.

7th Interrogatory. Do you know any matter or thing of importance to the Plffs if so state the same fully and at large.

7th Answer. I know of nothing except what I have already stated.

Sub Interrogatories & answers made by the parties on the part of the defendants.

1st Interrogatory. In whose charge if you know are the Books of account of any of the Receivers of the Bank of Louisville Ohio.

1st Answer. They are in my charge.

2^d Interrogatory. What person if you know are interested directly or indirectly in the claims of any to be paid out of any moneys which may be collected by said Receivers:

2^d Answer. I know of no person interested except the stock holders of the Bank or their representatives & the holders of the notes issued by said Bank & these last are numerous & I know of no parties indirectly interested.

3^d Interrogatory. What amount of money has been received or collected by said Receivers since the 22nd day of August A.D. 1856.

(93) Answer. I have never received any money from any person or persons since that time, unless it be from Mr. Sglehaut. who has made two payments since I have been Receiver but whether before, or since that date I do not recollect.

4th Interrogatory From whom, & in what sum has money been collected or received by said Receiver, since the 22^d day of August-1856. State fully and at large.

4th Answer. My answer to the 3^d Prop. interrogatory covers this
5th Interrogatory. Do you know any fact matter or thing that will be of benefit or advantage to the defendant Sglehaut herein? If so state the same fully.

5th Answer. Nothing only if he would make his payments promptly he would escape, & am or anee from the Receiver

6th Interrogatory. Have you any interest in the result of this suit, or in the money ought to be collected? If you have had such interest but have parted with it when did you so part with it.

6th Answer. I have an interest in this suit as one of the Receivers of the Bank as already stated, my father in law Isaac Dapst dec'd. was one of the unfortunate stockholders of this Bank, & I represent his interest as administrator of his estate I have no other interest in the result of this suit That is all the interest I ever did have

(74) and that still exists Wt Wt Quice

Interrogatories propounded to the said Marcus Brown as interposed & sworn as aforesaid on the part of said plaintiffs and his answers thereto as follows.

1st Interrogatory first What is your name, - occupation
1st Answer. Marcus Brown - Painter.

2^d Interrogatory second. Do you know the parties plain-
tiffs and Defendants in the Caption to these interroga-
tories mentioned or either and which of them & how
long have you known them respectively. Were you
ever Receiver of the Bank of Louisville chartered in
1818. if so. when & from what time to what
time.

2^d Answer. I know all the plaintiffs & have known
them for upwards of 20 years. Of the Defs I know
Messrs Dyer & Page. I have known them for upwards
of 20 years. and have known Mr H P Isham some
5 years the Receiver of the defendants I do not
know. I am one of the Receivers & have been since
March 6th 1854

3^d Interrogatory 3^d state whether or not you ever
had in your possession or ever saw a bond
made by Nicholas H Isham dated September
of 1853. to Henry H Page & Messrs Dyer &
Receivers of the Bank of Louisville in the County.

(95) of Pickaway and state of Ohio in the penal sum
of \$1000.00. If so produce the same? If you
cannot why not?

3^d Answer. I have not said bond in my deposition, nor
never had. I have no recollection of ever seeing
said Bond. & hence cannot produce it.

4th Interrogatory Fourth. If you say you cannot
produce the same what has become of the same
state whether the same is in your possession or
not. Have you ever made any search for the
same among your papers or any where, if
any what search? and state fully and at large
what search you have made?

4th Answer, I cannot produce the same & do not know
what has become of the same. I have not made any
search for it among my papers as I never had the
bond.

5th Interrogatory Fifth. State whether said bond has
been lost, or not. If you say it is lost. what
efforts you made. If any to find it and with
what success.

5th Answer. I have understood the bond was in the hands
of Good Judge of Chicago & have made no efforts
to find it.

6th Interrogatory Sixth. State whether you have ever
indorsed said Bond to any one. If so to whom, state
when and where you last saw said bond? And
either if you ever made any copy of the same.

(96) 1st q. when and where is the Copy. State when & where you last saw the original of said bond. If it was sent by H. H. Page to John Woodbridge of Chicago have you ever seen it since that time? if so when & where? State whether or not you have ever received it from John Woodbridge or any one since it was sent to John Woodbridge. If it was so sent?

6th Answer. I have turned over the Bond & of course. Could not make a copy or make use of

7th Interrogatory Answer. Do you know of any matter or thing of importance to the plaintiffs if so state the same fully and at large;

7th Answer I do not.

Cross Interrogatories and answers thereto by the witness on the part of the Defendants

1st Interrogatory In whose charge if you know are the Books of account of any of the Receivers of the Bank of Louisville, O.?

1st Answer. In charge of W. W. Price

2^d Interrogatory What persons if you know are interested directly or indirectly in the claims or claims of any to be paid out of any moneys which may be collected by said Receiver?

2^d Answer. I know of no one except the Bell Holman & stockholders & know of no one manifestly interested.

(97) 3^d Interrogatory, what amount of money has been received or collected by said Receiver since the 22^d day of August A.D. 1856

3^d Answer. The Receiver has collected some money and that one atty Mr. Hunter, has rec^d payments from Mr. Egglehart made under his Egglehart's last agreement

4th Interrog. From whom or in what sums has money been collected or received by said Receiver since the 22^d day of August A.D. 1856. state fully & at large

4th Answer. None as above stated in my 3^d answer to & Cross interrogatory.

5th Interrogatory. Do you know any fact or matter or thing that will be of any benefit or advantage to the defendant Egglehart. If so state the same fully?

5th Answer. I do not.

6th Interrogatory. Have you any interest in the suit or this suit or in the money or right to be collected. If you have had such interest but have parted with it when did you so part with it?

6th Answer. I have no interest except as Receiver & never had any other or further interest in it
W Brown.

Interrogatories proposed to the said Henry W. Hedger &c. & witness produced and sworn

(78) as aforesaid on the part of the said plaintiffs
and his answers thereto as follows.

1st Interrogatory first. What is your name - occupation

1st Answer. Henry H. Meager. occupation Banker

2^d Interrogatory second. Do you know the parties Plffs.

& Dfts in the Caption to these interrogatories mentioned,

or either & which of them and how long have you

known them respectively, & were you an Receiver

of the Bank of Louisville chartered in 1818? If

so when & from what time to what time?

2^d Answer. I know and have known the Plffs. &

of the Dfts H. H. Page & Wm P. Dault for upwards

of 20 years I do not know the Residence of the dfts

3^d Interrogatory. third. State whether or not you

ever had in your possession or ever saw a bond

made by Nicholas P. Splehart dated September

9th 1853 to Henry H. Page & William P. Dault.

Receivers of the Bank of Louisville in the County

of Pickaway & State of Ohio in the penal sum

of \$10,000. or of its proceeds the same. If you

cannot why not.

3^d Answer. I never had said bond in my possession

& never saw saw it, & of course cannot pro-

duce it.

4th Interrogatory fourth. If you say you cannot pro-

duce the same. what has become of the same. State

whether the same is in your possession or not. Have

you ever made any search for the same among

- (99) your papers, or any where, if any what, search
I did fully & at large what search you have made
4th Answer. It is not in my possession I do not know
when it is & having never had the bond of course
I have made no search for it.
- 5th Interrogatory, fifth, state whether said Bond has
been lost or not. If you say it is lost, what effort
have you made, if any to find it & into what
success.
- 5th Answer. Personally I know nothing of the bond.
I have made no efforts to find it.
- 6th Interrogatory sixth. State whether you have ever
endorsed said Bond to any one of persons whom
state when and where, you last saw said Bond,
have either of you made any copy of the same, if
so when, and when you last saw the original of said
Bond if it was sent by H. J. Page, to John Woodbridge
Jr. of Chicago, have you ever seen it since that time
if so when and where,? State whether or not you
have ever received it from John Woodbridge Jr. or any
one since it was so sent to John Woodbridge Jr. &
if it was so sent.
- 6th Answer. Having never seen said Bond of course I could
not endorse it or make a copy.
- 7th Interrogatory, seventh Do you know of any matter or
thing of importance to the Plffs. if so state the
same fully and at large.
- 7th Answer. Having never been acting recently I know of nothing

(100) Ser of Interrogatories, & answers. Shown by the Witness on the part of the defendant,

1st Interrogatory. In whose charge of you I am are the Books of account of any of the Receivers of the Bank of Louisville &

1st Answer. W. H. Bruce of Louisville.

2^d Interrogatory. What persons of you I am are interested directly or indirectly in the claims or claims of any to be paid out of any money which may be collected by said Receivers

2^d Answer. I I am of none except the Bill Holders & the Stock holders & I am of none indirectly interested.

3^d Interrogatory. What amount of money has been paid received or collected by said Receivers since the 22^d day of August. 1836,

3^d Answer. I don't I am,

4th Interrogatory. From whom and in what sums has money been collected or received by said Receivers since the 22^d day of August. 1836 State fully and at large

4th Answer. Not knowing I cannot say

5th Interrogatory. Do you know any fact, matter or thing that may be of benefit or advantage, to the defendant or plaintiff? If so state the same fully

5th Answer. I do not,

6th Interrogatory. Have you any interest in the event of this suit, or in the money, or right to be collected. If you have had such interest and parted with it

(107) When did you set out into ch.?

6th Answer I have no interest in it except as Receiver
or never had. Henry A. Heagy Jr.

And afterwards took on ch. Eighteenth day of the
month and year last aforesaid. the same being one
of the days of the December Term of said Court.
the following among other proceedings were had
and entered of record in said Court book,

William W. Purce. James Brown
and Henry A. Heagy Jr. Receivers of the Bank of Colum-
bia Chartered by the Legislature of Ohio in 1818.

vs. Bill taken pro Confession.

Nicholas P. Glehart. Francis W. Glehart. Leopold
Mayer Nathan Clark Buchanan. Mary Ann
Shays. Paschall Woodward Hannan College of Ham-
ilton County Samuel Shawk. J. James. William P.
Paet, Emily Holman Page. Francis A. Hoffman,
John Guady. and Philip A. Stoyne.

This day appeared the complainants and it
appearing to the satisfaction of the Court that pub-
lication has been made according to law, against
the following named defendants, Nathan Clark
Buchanan. Mary Ann Shays Paschall Wood-
ward. The Hannan College of Hamilton County.
J. James, John Guady and that they and each
of them have been properly brought into Court, by
publication according to the Statute in such case

(102)

made and provided, and they have failed to plead answer or demur. to said Bill and that the Complainants are entitled to a default against them and each of them and the Court do further find that all the balance of said defendants in said Bill named have been duly summoned by service of process on them according to the statute in such case made and provided and are all of them properly in Court and all and each of the defendants in the Bill named with the exception of Nicholas P. Fglehart have failed to plead answer or demur. to said Bill of Complaint and the Complainants are entitled to a decree for confessed against all the defendants named in said Bill except Nicholas P. Fglehart. and all of the defendants have been properly and duly brought into Court. Whereupon the Court ordered, adjudged and decreed that said Bill and all and singular the allegations therein contained be taken as confessed against all the defendants named in said Bill except Nicholas P. Fglehart. and all of the defendants have been duly and properly brought into Court. namely - James M. Fglehart, Leopold Mayer or Nathan Blair Bunkerham, Mary Ann Shays, Paschall Woodriss, James College of Huntington County, Samuel Haworth, James Melham P. Dush, Henry Adams Page, Francis A. Hoffman, John Gedley, Philip

(103)

A Wayne. bring all the defendants in said Bill
named, except Nicholas Ogdenhart, he having
answered said Bill, and said cause be set down
for hearing upon the Bill, answer of said Nicholas
Ogdenhart the Replecation thereto, and depositions
Exhibits & proofs.

And afterwards went on the Twentieth day of
January in the year of our Lord one thousand
Eight hundred and fifty Three, the said defen-
dant Nicholas Ogdenhart by Amington and Dent,
his solicitors filed in said Court office of said Court
his certain motion to suppress depositions which
are in words and figures following to wit,

Quice et al
vs
Ogdenhart, et al } The defendants move to sup-
press the deposition of Wm. W. Quice he being a party,
Complainant

They also move to suppress the deposition of
Marcus Brown, on the same ground.

They also move to suppress the deposition
of Henry D. Adams &c on the same ground.

The foregoing depositions having been filed
December 11. 1862.

Amington & Dent
for Defs

(104) Bruce et al } In the Superior Court of Chicago
vs. } In Chancery
Sglehaut et al }

The defendants Sglehaut & wife
move to suppress each of the following de-
positions. filed Dec 11. 1882 in this cause to wit:
Those of William G. Bruce Marcus Brown
& Henry W. Hedger Jr. each of said persons
being a party Complainant herein.
Livingston & Deut-
Duff Atty.

And afterwards to wit on the day and year last.
aforesaid. there was filed in the Clerk's office of
said Court certain depositions which do in
words and figures following to wit
State of Illinois } Superior Court of
County of Cook } Chicago January Term 1883.
William G. Bruce Marcus Brown & Henry
W. Hedger Jr. Receivers of the Bank of Cincinnati
Sustained by the State of Ohio in 1818.

vs.
Nicholas P. Sglehaut. James W. Sglehaut. Leopold
Mayr. Bartow Clark Burnham. Mary Lowmyer
Paschal Word and. James College of Hamilton
Co. Samuel Hawk. & James W. P. Duff Henry
John Page Francis & Benjamin John Gully
and Philip A. Payne In Chancery 4733

605/ Menam St Pierce maner. Bann, & Henry & Hayes
Jr. Receivers of the Bank of Louisville Chartered,
by the State of Ohio in 1818,

^{75.}
Mehias & Glehart Henry & Page
- Menam & Park.

In Chancery
4739

The evidence of John Woodrigo & a witness pro-
duced and sworn on open Court on the part of
the complainants in the above entitled case before
me Thomas B. Clark Clerk of said Court this
15th day of January A.D. 1863

My name is John
Woodrigo. I am a lawyer by profession and
I am thirty four years of age. I am acquainted
with Henry Holson Page. I have read part of
the deposition taken in this the Court relating
to the bond and the loss of the bond in controversy
in this case. I have seen the mortgage and the
power of attorney annexed to looking at
Hunt's deposition in this case. The mortgage is
partly in the handwriting of ^{a former} ~~the~~ Clerk of said
ranked Thomas Hoge and partly in the hand-
writing of E. L. Lamed. The power of attorney
is in the handwriting of J. H. Thomsen I think.
It is my recollection that at the execution of
the mortgage there was a bond such as is
set forth in the mortgage made and executed

(1861) by N. P. Sglehart. As to the terms of the bond my recollection is aided by the contents of the Mortgage and without the Mortgage I should be unable to state the terms of the Bond. I do remember independently of the Mortgage, as to the settlement; a sum less than the face of the claim settled was to be received in full in case Mr Sglehart made prompt payment. My impression of the sum to be received was between four and five thousand Dollars. In case of Mr Sglehart's default the whole of the original claim was to be paid. Mr Conductor met of the correspondence about this and the other business of the Bank of Louisville with the said Henry H. Page, and I presume we sent him the papers or he took them. I have given the subject matter of the return of the Bond to me by said Henry H. Page considerable thought during the last six months or more. Sometimes I have the impression he did return it to me, and sometimes that impression fades out of my mind so that I cannot tell whether he did or not. Some time ago perhaps six months or more, Mr Waite of Counsel in this case requested me to search among my papers to see if I could find the bond. Accordingly I made such search in every place where I thought I should be likely to find. I came up with one or more files of papers connected with the Louisville Bank business but was unable

(107) to find the bond. I kept an alphabetical index of all my cases or did until within a year ago. So that if a paper had been in my possession I should have been likely to find it. Upon the dissolution of the firm of Larned & Woodbridge my papers fell into some confusion and I think it was after that I began the system of keeping my papers by files and indexes as above stated. At the time of the search above alluded to I think I found no reference to the Bond. I believe that was the second or third search I made at the request of Mr Grate with the same result. If the bond was sent to me by Amos Holman Page as stated in his deposition I cannot certainly tell what has become of it. I have tried repeatedly to find it for Mr Wadsworth & have failed.
Witnessed & sworn to before me
This 13th day of January
A.D. 1863

Thomas Blewett, Clerk of the Supreme Court of Chicago.

(108) The State of Illinois }
 Cook County ss }
 Chas. C. Rice et al }
 vs }
 Nicholas P. Sylehart.

Superior Court of
 Chicago
 An Allegancy

Deposition of E. C.
 Larned in said case taken by Consent

My name is Edmund C. Larned, am above
 of years of age am attorney & Counsellor at
 Law. I prepared a Mortgage from Nicholas
 P. Sylehart to Henry H. Page, William P.
 Durst, Receivers of the Bank of DuSable County
 of Pickaway & State of Ohio on or about
 the 21st day of September A.D. 1853 and
 Mortgage, is the same which is attached, to
 the deposition of Nicholas P. Sylehart, in
 this case. At the same time that said
 Mortgage was executed, a Warrant of Att
 to enforce Judgment in a bond return deputed
 was also prepared by me, and was executed by
 said Sylehart. I have no doubt, that I at
 the same time prepared by me, ~~and~~ ~~executed~~
~~by~~ a bond such, as is deputed in said
 Mortgage, & Warrant of attorny, and that said
 Bond was executed by said Sylehart, at the
 same time, into the other papers of course
 I have no recollection of the contents of the bond

(109) other than from the description of it given
in these writings, and could not now
undertake from memory alone to state such
contents but I have no doubt that the bond
which I drew was the same in substance as
it in the said writings described, nor have
I any more doubt that I drew said Bond
than that I drew the said other writings. I
have a general recollection that these papers were
all sent to the said Receiver Page & Daub. of
the Bank of Louisville I have never seen
any of the papers until I saw these shown
me this day, and the said Bond I have never
since seen The said Bond is not in my
possession and never has been since it was
sent to the said Receiver nor do I know where
it is, or anything about it. I have carefully
examined the said Original Mortgage now
shown me, and also the Waiver of Attorney
All the alterations in both said documents
are in my handwriting & were made before
said documents were executed; The addition
to said Mortgage is also in my handwriting
Edw. H. Larned.

(111)

And after said court on the fourth day of Feb-
ruary in the year aforesaid the same being one of
the days of the February Term of said Court the
following among other proceedings were had and
entered of record in said Court to wit;
Mellish W Pierce Marcus Brown,
vs Henry N. Hedges Jr, Receivers of the
Bank of Louisville chartered by the Legis-
lature of Ohio in 1818.

325
4733,

vs Deane of Sale,
Nicholas P. Ogden, James M. Ogden,
Leopold, Mayer, Matham Clark Burnham,
Mary Ann Sharp, Paschall Woodward,
Hamm College of Hamilton County,
Samuel Hawke, J. James William J. Dunt,
Henry Holcomb Page, Francis A. Hoffman,
John Lyndley and Philip A. Wayne

This cause came
on for hearing upon the Bill, the answer of
Nicholas P. Ogden, and the Complainant's
Replication thereto and the proofs and disposition
the other defendants having failed to plead
answer or demur., the bill as to them having
been ordered to be taken as confessed. and the
Court being fully advised in the premises do
find that the several allegations in said
Bill are true and that the said Nicholas P.
Ogden and Francis M. Ogden his wife

11111

made and executed and duly acknowledged
the deed of mortgage, in said Bill described.
and the Bond in said Bill described to Henry H
Page, and. Wm P. Dusk. Receivers of said Bank
of Cincinnati chartered in 1818, that the said Henry
H Page, and William P Dusk were at the time
of making said Bond and Mortgage Receivers
of said Bank of Cincinnati having been appointed
such Receivers by the Court of Common Pleas
within and for the County of Prekaway, in the
State of Ohio in a suit by Chancery pending in
said Court. Whereas Julius S. Weyman was
Complainant and President and directors of the
Bank of Cincinnati were defendants. That sub-
sequently to the making of said Bond and Mat-
gage, said William P Dusk and Henry H
Page. Resigned the offices of Receivers of said
Bank of Cincinnati and the Complainants +
William W Bruce Marcus Brown and Henry H
Nedger Jr. were appointed Receivers in said case
of the said Bank of Cincinnati and the Complain-
ants. ~~William W Bruce Marcus Brown and Henry~~
~~H Nedger Jr. resigned~~ that by such appointment,
said Complainants became entitled to said bond
and mortgage among the other assets of said
Bank. and all sums of money due and owing
on the same, belong to the Complainants together
with the mortgage securing the same that

(112)

said Bond. has been lost and that all that said
 Nicholas P. Ogden has paid on the said Bond,
 of the sum of Two thousand Dollars and that
 the entire balance of said Bond remains due
 and unpaid that said Ogden having made
 default in the payment of said sum of money
 as provided in said Bond. the whole of said sum
 of Two thousand, eight hundred and twelve dollars
 and sixty one cents, less the amount of Two hun-
 dred Dollars paid thereon with interest is now due
 and payable from the said Nicholas P. Ogden;
 and that there is now due thereon the sum of
 Fifteen thousand, five hundred, and seventy
 four Dollars and ninety three cents, and
 the Court do further find that whatever rights
 the Defendants other than Nicholas Ogden
 and wife may have acquired in and to said
 premises they acquired the same subject to the
 prior lien of said Mortgage. Thereupon it is
 ordered adjudged and decreed that the said
 Nicholas P. Ogden pay to said Complainants
 within ten days from the date of this decree the
 sum of Fifteen thousand, five hundred, and
 seventy four dollars and ninety three cents
 (\$14574.93) with interest thereon since the date
 of this decree with the costs of this suit and in
 default thereof, Henry M. Sheppard, or any
 appointed Special Master in Chancery to

(113)

Said, premises in said mortgage described, according to the Statutes in such case made and provided and which premises in said mortgage described are as follows. All of the following described lots, pieces or parcels of land, situate lying and being in the City of Chicago in the County of Cook, and State of Illinois and bounded and described as follows. Lot forty (40) forty one (41) thirty (30) thirty one (31) thirty two (32) thirty three (33) in Block Twenty four (24) and Lot thirty nine (39) forty two (42) thirty five (25) and thirty six (26) in Block twenty four (25) in Eagleback subdivision and the subdivision of the part of the South East quarter (SE 1/4) of section thirty seven (27) Township thirty nine (39) North Range, fourteen (14) East. The said subdivision being recorded in the Records of Cook County, Book 49 page 10, and the said subdivision on Book 49 page 10 & 52 or however otherwise described the said tract of land, described, and subdivided as Block 24, being a tract of land bounded as follows beginning on the West line of said South East quarter of said fractional Section twenty seven. Eleven $\frac{62\frac{1}{2}}{100}$ Chains North from the North West corner thereof thence East to West boundary of Illinois Central Rail Road, fifteen fifty seven hundredths ($15\frac{57}{100}$) Chains thence northwesterly along said boundary

(114) Six hundred and seventy four one thousandths (0.674)
Chains thence West (15³⁸) fifteen³⁸ (or Chains
thence South, Six hundred and forty five one thousand
ths. (0.645). Chains to place of beginning containing
one acre. and the said Block twenty five (25) being
described as follows. beginning on the said West
line of said quarter section, ten⁹⁸ Chains south
from the North West. Corner thereof thence East,
to said Rail Road, line 15³⁸, Chains thence
northwardly along said line (0.684) Chains thence
West, 15. 185, Chains thence South 0.655, Chains to
place of beginning containing one acre together
with all and singular the tenements, hereditaments
and appurtenances thereto belonging or in any
wise appertaining

And to be paid a certificate to the purchaser
entitling such purchaser purchaser to a
 deed. according to the provisions of the statutes
in such case made and provided at the
expiration of fifteen months from the date of
said sale, and out of the proceeds of said
sale to pay the cost of this suit and the costs
of making said sale, and next the amount
due to the complainant and the balance to
pay into Court. and of said property or not,
reduced, according to law. that then the
said Henry M. Sheppard, as special master &
make a deed of said premises as such part

(115)

that as may not be redeemed, and that
upon said deed being made said defendants
and each of them be forever barred of all equity
of Redemption and right to said premises and
that said Henry M. Sheppard as such special
master report said sale to this Court for enforce-
ment.

And afterwards to wit on the Twenty third
day of April in the year of aforesaid, this was
filed by Henry M. Sheppard special master
in Chancery. his return report, and notice
of sale, and Certification of publication, which
are in Words and figures following to wit,

Superior Court of Chicago
William W. Price
Marcus B. Price
Henry M. Sheppard
J. S. Dredge & Co. Receivers of the
Bank of Leveville

^{vs}
Nicholas P. Splehant. et al

To the Honorable the
Judge of the Superior Court of Chicago in Chancery
sitting

In pursuance of an order made
in the above Cause bearing date the twentieth
day of January, A.D. 1863, by which among
other things it was ordered adjudged and decreed

(116)

that the said Nicholas P. Fglehart to said & complainants within ten days from the date of said order or decree the sum of five thousand, five hundred, and seventy four dollars and ninety three cents (\$14,574.93/100) with interest thereon from the date of said order with the costs of the above entitled suit and in default thereof, that Henry M. Shuppard, Jr. and Tracy was appointed special master, in chancery, to sell said premises in said order described according to the statutes in such case made and provided to wit: all of the following described lots pieces or parcels of land situate lying and being in the city of Chicago in the County of Cook and State of Illinois and bounded and described as follows. Lot forty (40) only one (41) thirty (30) thirty one (31) thirty two (32) and thirty three (33) in Block twenty four (24) and lots thirty nine (39) & forty two (42), thirty five (25) and thirty six (26) in Block twenty five (25) all in Fglehart's subdivision and a subdivision of part of the 4th East quarter (S E 1/4) of Section twenty seven (27), Township thirty nine North of Range fourteen (14) East. the said subdivision being recorded in the Records of Cook County Book 49 page 10. and the said subdivisions in Book 49 page

(117) 16, and, 52. Among the same property described in said decree. there being an additional description of said property in said decree.

Now therefore in pursuance of the said order entered in said cause I Henry M. Sheppard, special master in Chancery in the above entitled cause. do hereby report and certify that I advertised said above described premises to be sold by me at the north door of the Court of House of Cook County in the City of Chicago Cook County Illinois on Thursday the ninth day of April A.D. 1863. at the hour of ten o'clock in the fore noon of said day being between the hours of 9 a.m. and the setting of the sun of said day by posting there several notices containing a description of the property to be sold as above described and the names of the parties to the suit and the time and place of sale, in three of the most public places in the said County of Cook where the land is situated for more than the space of twenty days and that previous to said sale. I also caused a like notice of the time and place of said sale to be published in the Chicago Post, a newspaper of general circulation printed and published in the City of Chicago County of Cook. of and said the first publication of which notice was made on the

(118)

fifteenth day of March A.D. 1863, and the same continued consecutively unto the ninth day of April A.D. 1863, which was the date of the last publication, thereof, which said notice also contained a description of the property to be sold, as hereinafter described, and the names of the parties to the suit together with a full listing of the cause, and which notice was published for more than the space of twenty days, and I do further report and certify that on said ninth day of April, A.D. 1863 at the hour of ten o'clock in the fore noon of said day, I attended at the north door of the Court House in the City of Chicago County of Cook, State of Illinois, and there appeared, and offered the said above described premises separately for sale, at public auction, to the highest bidder for cash in the following parcels and order, and directed Marcus Brown and Henry W. Meager Jr. and William W. Buice bid direct for the same set opposite each lot or parcel, as follows. For Lot 40 Block 24, in Glebe's subdivision and resubdivision of part of one East quarter of Section 27, Township 39. north Range 14, East. 900.00
For said 41. in same block. & subdivision as above 900.00
" " 30 " " " " " 1500.00

(119/

"	"	"	31	"	"	"	"	"	"	1400.00
"	"	"	32	"	"	"	"	"	"	1500.00
"	"	"	33	"	"	"	"	"	"	1400.00
"	"	"	39	m	Black 25	"	"	"	"	800.00
"	"	"	42	"	"	"	"	"	"	800.00
"	"	"	25	"	"	"	"	"	"	900.00
"	"	"	26	"	"	"	"	"	"	1400.00

and they being the highest and best lands
therefor and those several years for opposite.
the respective lots being the highest, sums bid
the said lots were severally and respectively
struck off to the said Marcus Binn Henry
M. Heager Jr. & William W. Pierce

and I do further report and certify in
pursuance of said decretal order that,
the said William W. Pierce Marcus Binn
and Henry M. Heager Jr. well be entitled to
a deed for the above described premises on the
Tenth (10th) day of July A.D. 1864, unless the
same shall have been sooner redeemed in
the manner required by the Statutes in such
Case made and provided a copy of the notice
of sale duly entered to by the Publisher where
attached and to which reference is hereby made
by the undersigned the Special Master in said
Case

Dated Chicago April 9. 1863.
Special Master in Chancery in said suit

Printers fees

My fees

H. M. Shepard

718.00

50.00

768.00

(120)

Special Master Sale

State of Illinois

County of Cook }^{ss} Superior Court of Chicago.William W. Bruce Marcus Bonn. Henry N.
Sledge Jr. receivers of the Bank of Leveville

vs.

Nicholas P. Sylehaut. James W. Sylehaut
Leopold Mayer. Nathan Clark Burnham. Mary
Ann Chase Paschall Woodward. Harmon College
of Hamilton County Samuel Hawke. J.
James William P. Darr. Henry Holman Page
Francis A. Hoffman John Qualley Philip A
Hayne. In Chancery.

Public notice is hereby given that in pursuance of a decretal order entered in the above entitled cause on the seventeenth day of January A.D. 1863, I Henry W. Shephard Special Master in said cause (and duly appointed by said Court) will on Thursday the fourth day of April A.D. 1863. at the hour of ten o'clock in the forenoon of that day. at the north door of the Court House of Cook County in the City of Chicago Cook County Illinois sell at Public auction to the highest bidder for cash the premises in said decree described as follows to-wit: all of the following described lots pieces or parcels of land situated lying and being in the City of Chicago in the

(121)

County of Cook and State of Illinois, and being
and described as follows Lots forty (40) Forty one
(41) thirty (31) thirty one (31) thirty two (32) and thirty
three (33) in Block twenty four (24) and lots thirty
nine (39) forty two (42) twenty five (25) and twenty
six (26) in Block thirty five (35) all in Sgle-
harts out division and a subdivision of part
of the sub east of quarter (SE 1/4) of section 20
township 27N. Range 14E. The said sub-
division being recorded in the records of Cook
County, book 49, page 10 and the said sub-
divisions in Book 49, pages 16, and 52, being
the same property described in said decree, to
gather into all and singular the tenements,
and hereditaments thereto belonging or so much
of said premises as may be necessary to
satisfy the amount due the complainants
under said decree together with the interest
thereon and costs of suit and expenses of sale.
J. W. Shepard.

Wm. L. Lorne, Jols.
for Compl.

Special Master in said suit

Dated Chicago March 14, 1863.

This certifies that a notice of Special Master
sale of which the annexed printed copy

(122) of a true copy, was published for twenty
two (22) successive days both twenty two
(22) times in the Daily Edition of the Chicago
Post. a newspaper printed in the City of Chicago
and of general circulation throughout
Cook County and State of Illinois and
that the date of the first paper containing
the same was the fifteenth 15th day of March
and that the date of the last paper containing
the same was the ninth 9th day of April
A.D. 1863 and that we have received eighteen
dollars for publishing the same.

Dated at Chicago this 9th day of April 1863

The
Per Seal
Court

Geo W. Sheahan Pres.
Geo S Adams Secy

And afterwards took on the day and year aforesaid
said the same being one of the days of the Spring
Term of said Court the following among
other proceedings were had and entered of
record in said Court to wit

William St Pierre Marcus Brown and Henry
W. Mead vs. Receiver of the Bank of Cicero
Chartered by the Legislature of Ohio in 1818.

vs. Corporation of master up of rule
Nicholas P. Syleant. Francis M. Syleant
Lopold Mayer. Nathan Clark Burnham

(123)

many am Shays Paschall Wood ward,
James College of Hamilton County, Samuel Hawk,
J. James, William O. Daise, Henry Holson Page
James & Hoffman John Gualy and Philip A. Horne

And now at this day come said Compt.
Lamant by, State & more than solicitors, and
present and file, the report of H. M. Shepard.
The special Master who made the sale under
the decree in above entitled cause, pursuant to
the decretal order made, and entered of Record,
therein on the seventeenth day of February to
wit at the February Term A.D. 1863 of this
Court, now last past. And it appearing to
the Court, from said Masters Report, that he
did in pursuance of the directions contained
in said decretal order, after first giving no-
tice by publication of the time and place of sale
sell, on the ninth day of April A.D. 1863, at
the hour of ten o'clock in the forenoon of said
day, at the north door of the Court House in
the City of Chicago County of Cook and State
of Illinois to the highest bidder for cash, all
the following described lots and parcels
of land, decreed in said decretal order, at
which time & place, Marcus Brown, Henry
N. Dodge & and William A. Pierce bid,
therefor for each lot, or parcel, as follows, for
Lot forty Block twenty four, in Squabards

Subdivision and resubdivision of part Small &
 East quarter of Section twenty seven (27) Town
 Ship Thirty nine (39) north Range Twentieth (14)
 East, nine hundred Dollars for said lot forty
 in said Block subdivision and resubdivision nine
 hundred Dollars for Lot thirty one thousand Dollars
 for lot thirty one fifteen hundred Dollars for lot
 thirty two, fifteen hundred Dollars and Lot thirty
 three fifteen hundred Dollars all in said Block
 Twenty four of said subdivision and resubdivision
 also for lot thirty nine in block twenty five, eight
 hundred Dollars for lot forty two, in said Block
 Eight hundred Dollars for lot twenty five in said
 Block, nine hundred Dollars and for lot twenty
 six in same Block, fifteen hundred Dollars.
 And they being the highest and best bidders there-
 for, and those present set opposite to the respective
 lots, being the highest second bidder the said
 lots were severally struck off, to the said
 Marcus Brown, Perry M. Ridgely, and
 William O. Purce and they did and they
 became the purchasers of said several lots, at
 and for the prices of resale: And it ap-
 pears to the Court, that said Special
 Master has in all respects complied with the
 directions and requirements of said decretal
 order in this cause. It is ordered by the Court
 that the said report of said Special Master

(124) If Mr Shepard is in all respects approved,
and the same is thereby ratified and confirmed

(126) State of Illinois }
County of Cook }

I Thomas B. Carter Clerk
of the Superior Court of Chicago certify and for the
County and State aforesaid do hereby do above
and foregoing to be a true, perfect and complete trans-
cript of the papers on file in my office, together
with all the orders and decrees made and entered
of record in said Court in a certain Cause lately
pending in said Court on the Chancery side and
of wherein William W. Pierce Marcus Brown and
Henry W. Adams Jr. Receivers of the Bank of Cicleville Chartered
by the Legislature of Ohio in 1818. were Complainants and
Nicholas O. Appleton, Francis M. Appleton, Leopold Mayers,
Nathan Clark Burnham Mary Ann Mayes, Parshall Wood-
ward, Hannan College of Hamilton County, James Davis, J. James
William P. Dyer Henry Adams Page, Francis Hoffman,
John Grady and Philip S. Doyle. were Defendants.

In Witness Whereof I have hereunto set my
hand and affixed the seal of said Court at
Chicago this Twenty Eighth day of March
A.D. 1864

Thomas B. Carter

Clerk



(127)

Given. In making a decree of Compell.
not dismissing Bill.
in fixing part of the mortgage. —

And now come the said Plaintiffs
in error, by Arrington & Dent, their at-
torneys, and say that in the record and
proceedings aforesaid there is manifest
error, in this, to wit:

That said Superior Court
erred in not dismissing the Bill of
Complaint.

That said court erred in
rendering any decree for the complain-
ants.

That said court erred in fix-
ing the amount of the mortgage debt.

That the decree was for more
than the amount of the mortgage
debt: as also for more than the penalty in
the Bond. —

And for these, and other errors
in said record and proceedings, the
plaintiffs in error pray that said decree
be reversed, and that they be restored to
all things which they have lost thereby, &c.

Arrington & Dent,
attys. for plfs. in error

And now comes the defendant who says that
there is no error in said decree & proceedings —

W. H. Hart / for
defendant in error

94

Nicholas P. Dyckhart,
et al.,

^{vs.}
William W. Bierce,
et al.

Record.

Filed April 21, 1864.

L. Selome CLK

Fees. \$31.55.

paid by
W. B. Carter
conty

1621k

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

NICHOLAS P. IGLEHART,
FRANCES M. IGLEHART, *et al.*
Plaintiffs in error,

vs.

WILLIAM W. BIERCE, MARCUS
BROWN & HENRY N. HEDGES,
Jr., *Receivers of the Bank of Cir-*
cleville, Ohio, Defendants in error.

*Error to the Superior Court
of Chicago.*

ABSTRACT OF RECORD.

3 This was a suit in chancery, brought by the defendants in error, against the plaintiffs in error, for the foreclosure of a mortgage, given September 21, 1853, by N. P. Iglehart and wife, to Henry F. Page, William P. Darst, receivers of the Bank of Circleville.

The bill sets forth in ^{*hac*}~~*hac*~~ *verba* the mortgage and accompanying bond.

They are substantially as follows:

By the mortgage it is recited that Iglehart was justly indebted to said Page and Darst, in \$9,812.61; that they had compromised their claim against him, and agreed to release him, in consideration that he would secure to them the prompt and punctual payment of one-half of said amount, viz: \$4,906.30, in the manner and at the times thereafter specified, and that he had executed his bond of the same date in the penalty of \$10,000, conditioned for the payment unto them, their executors, ad-

6 administrators or assigns, of said \$4,906.30, as follows: \$500.00 cash, and the balance in five equal payments annually of \$881.26 each, with interest at six per cent., payable annually upon the whole sum remaining unpaid, with the understanding that if default should be made in the payment of either of said instalments, and if such default should continue for ninety days, then the whole of said \$9,812.61, less what might be paid thereof, ^{should} ~~shall~~ forthwith become due and demandable; and with a proviso written under said bond, that if said Page and Darst should not obtain the ratification of said compromise by the court of common pleas of Pickaway county, Ohio, said bond ^{should} ~~shall~~ be void.

7 After these recitals, it is stated that "for the better securing the payment of the said sum of money mentioned in the condition of said bond, with interest thereon, according to the true intent and meaning thereof," &c., said mortgagors conveyed "unto the said Page and Darst, their heirs and assigns forever,"
 9 certain real property described in said mortgage; but on condition that if payment should be made unto the mortgagees, "their executors, administrators or assigns," of "the said sum of money mentioned in the condition of said bond, with the interest thereon at the time and times respectively; and in the manner specified in the said condition," the estate so conveyed should cease.

By the mortgage, also said N. P. Iglehart, for himself, his heirs, &c., promised to pay unto said mortgagees, "their executors, administrators and assigns, the said principal sum of money mentioned in the condition of said bond, with the interest thereon according to the said condition."

10 The mortgage further provided, that in case default should be "made in the payment of said principal sum of money, with the interest thereon ~~for~~ any part thereof, at the time and times respectively when the same should be paid as set forth in the condition of said bond," or if the mortgagors should suffer any part of the premises to be sold for taxes or assessments, or should permit the same to be lessened in value so as to impair the security intended to be effected by the mortgage, then the mortgagees,
 11 &c., could enter ^{upon} ~~in~~ said property and sell the same, &c., "and out of the money arising from such sale, retain * * the principal

11 and interest which might then be due on said bond," ("it being law-
ful for the" mortgagees, their executors, &c., "to declare said
principal sum to be due, in case of a breach of the covenants"
of the mortgagors, &c.)

12, 13 Appended to the mortgage was an agreement declared to be a
part of the mortgage itself, by which it was provided that the
mortgagees would release the mortgaged premises in separate
parcels for designated prices, amounting in the aggregate to the
sum of \$7.100.00, to be paid on the mortgage; "the said re-
spective payments being the value appraised for each of the said
lots respectively, with respect to the security" intended by said
mortgage; and further, that the payment by Iglehart, of the
whole amount thereby secured, with interest to the time of pay-
ment, would at any time entitle him to a discharge of the incum-
brance.

16 ~~The condition of the~~ bond as set out at length was condition-
ed as above stated, and contained such proviso, making it ne-
cessary to obtain a ratification of the compromise, as before sta-
ted.

18 The bill recited that Page and Darst were, in a certain suit in
chancery, in the common pleas court of Pickaway county, Ohio,
appointed receivers of said Bank of Circleville, &c., with the
usual powers of receivers in such cases, and were such receivers
on taking said bond and mortgage, and obtained the requisite
ratification of said compromise. That when appointed receivers,
said Page was named Henry Folsom, but that afterwards, by
proceedings under a law of Ohio, his name was changed to
19 Henry Folsom Page. That after the giving of said bond and
mortgage, the said Darst and Page resigned the office of receiv-
ers of said bank, and that said defendants in error were appoint-
ed receivers in said case, and as such, were the owners and hold-
ers of said bond and mortgage, and that the order accepting the
resignation of said Page and Darst, and appointing the defen-
dants in error as receivers fully vested in them, as such receivers,
all the assets of such bank, including said bond and mortgage,
the consideration of which was a debt due to said bank from
20 said N. P. Iglehart, and that the whole of the mortgage debt
was due except \$500.00, paid in October, 1853.

- 21 The bill claimed to be due to the complainants, as receivers, \$9,812.61, with interest after September 21, 1853, less said payment of \$500.00, and together with \$66.04 paid by the complainants for taxes.
- 22-27 It recites that the claims of sundry persons joined with Iglehart and wife as defendants, should be postponed to the lien of said mortgage.
- 28 Answer without oath was called for, and the usual prayer for foreclosure was made.
- 31-34 The bill was first demurred to by Iglehart. Afterwards he filed an answer, by which all the material allegations of the bill were traversed.

To this answer a replication was filed.

- 46 Affidavit was made by Edward P. Town that he was informed and believes that certain of the defendants, to wit: Nathan C. Burnham, Mary Ann Shayer, Paschall Woodward, the Farmer's College of Hamilton county, S. James and John Gridley, were non-residents of Cook county, and of the state of Illinois, so that process could not be served on them in said state, and that said deponent had made diligent search for them, and could not find their whereabouts, on which publication of notice was made as to said defendants.
- 52, 53 The deposition of Hocking H. Hunter states that complainants have been, since August 1856, receivers in the suit in chancery in Pickaway county, Ohio, mentioned in the bill, viz: a suit of Wayman vs. the Bank of Circleville. That before that time there were changes in the office of receivers in said case. That Henry F. Page and William P. Darst had been receivers of said bank.
- 55 He attached to his deposition the foregoing mortgage, and a warrant of attorney given ^{with} ~~by~~ it by N. P. Iglehart, and stated that they came into his hands as counsel for the receivers of said bank about August 22d, 1856.
- 56 That he had never seen the bond, but wanted to get a copy of

57 it at the same time, and it could not be found. That he had made dilligent search among his papers for such bond, and could not find it, but that having what purported to be a copy of it, which copy was in the hand-writing of judge Bierce, formerly one of the receivers, he gave such copy attached to another deposition taken with this.

59 That, on August 22d, 1856, as such counsel, he made a settlement with Iglehart, by which the claim in a certain suit then pending in the United States circuit court at Chicago, in favor of the Bank of Circleville, and the receivers thereof, against said Iglehart, together with the claim of said receivers evidenced by the above recited bond and mortgage, ^{were adjudicated} under which settlement a decree was entered in said case, in Oct., 1856, to which decree he referred, as alsoto the agreement filed on the entry of said decree.

60 That he had no personal knowledge what was done with the assets in the hands of Page and Darst, receivers at the date of said mortgage; but that by law of Ohio, (2 Corwin St., pp. 863-4, §13,) they should have been transferred by the removed receivers to their successors. That about October, 1856,
61 he received through Williams and Woodbridge of Chicago, \$1025, to apply on said decree in the United States court, but not to apply on the aforesaid bond and mortgage.

That the surname of Page was formerly Folsom, but his name was, according to a law of Ohio, changed to be Henry Folsom Page.

62 That the cause of action for which said decree was rendered in the United States court was different from that of said bond and mortgage.

63 The deposition of Henry Folsom Page shows such change of his name; and stated that at the April term of said Common Pleas court of Pickaway county, Ohio, he and said Darst were appointed receivers of said Bank, to succeed Franklin and Geiger, who then resigned, there being also another, viz: Thrall, who, without having during the term of the witness' receivership, attended much to the business, resigned in February 1854,

65 when Darst also resigned, and William W. Bierce and Marcus Brown were then appointed to succeed Thrall and Darst. That, in May 1854, the witness resigned, and Henry N. Hedges, Jr., was appointed to fill the vacancy thus created; since which time, said Bierce, Brown and Hedges have been such receivers.

66 That, on the appointment of the witness, the receivers of the bank had an unsatisfied judgment against Iglehart, recovered in the Common Pleas court of Warren county, Ohio, in March 1843, for \$6031; and they employed Larned and Woodbridge, attorneys of Chicago, to collect it or to ^{re-work} offer to compromise, and they having communicated an offer to pay one-half of the amount, in the manner stated in the aforesaid mortgage, said offer was accepted, subject to the ratification of the Common Pleas court of Pickaway county, Ohio, and the bond and warrant of attorney given by Iglehart in pursuance of the compromise were sent to the witness; but said mortgage was retained by Larned and Woodbridge.

67 He states that he held said bond until April 27, 1854, when
68 he forwarded it to Woodbridge at Chicago, by mail, and afterwards received his acknowledgment of the receipt of the papers so sent.

70 That he had not had said bond since he so sent the same to Woodbridge.

71 That the signatures of Iglehart and Larned upon the bond and warrant of attorney were genuine.

That the bond was secured by the aforesaid mortgage.

72 That said Common Pleas court of Pickaway county, Ohio, at the November term thereof, 1853, made an order completely ratifying said bond and mortgage, and the witness thought a copy of said bond was then filed in said court. That he believed the copy so referred to by Hunter to be correct, and thought he had that copy made by Bierce before sending the original to Woodbridge.

73 That the bond and mortgage were given to secure one-half

the amount due the receivers on said judgment in the Common Pleas court of Warren county, Ohio, and that only \$500, the cash payment, had been paid on the mortgage.

74 That when he ceased to be receiver, in May, 1854, he handed over such papers as he held as receiver, to said Bierce, and among them the said warrant of attorney; but not the bond, for, as he then informed Bierce, it had been so forwarded to Woodbridge. That the mortgage had never been in the possession of the witness.

78 A motion was made to exclude the deposition of Page, on the ground that he was a party to the suit, and no order for taking his deposition had been entered. This motion was overruled.

79-89 Defendant Iglehart filed exceptions to various parts of the depositions of Hunter and Page, namely, to parts thereof purporting to state the contents of records, statutes, and giving matter of hearsay; but the record contains no order on these exceptions.

90-101 The depositions of the complainants, taken in their own behalf, are next set out in the record.

The deposition of Bierce tends to show that he made the copy of the bond to which Hunter referred, and that the original had not been returned by Woodbridge to the receivers. It also shows, that said Bierce was interested in the event of this suit, both as one of the receivers, and as administrator of one of the stockholders of the Bank of Circleville.

104 The depositions of the other complainants tend to show that they never saw or had said bond. Defendant Iglehart moved to suppress these depositions of the complainants.

102 The bill was taken *pro confesso* against all the defendants except Iglehart.

105-7 The evidence of Woodbridge shows a careful, but ineffectual search by him, for the bond.

108-9 The deposition of Larned tends to show that he prepared the bond, mortgage and warrant of attorney; that the bond was correctly recited in the mortgage, and that the papers were forwarded to Page and Darst, the receivers.

110 The cause was heard as to Iglehart, on the bill, answers replications, depositions and proofs, and the Court found the complainants, as receivers, to be entitled to the bond and mortgage, and that there was due thereon, at the date of the decree, February 7,
 112 1863, \$14,574.93; and directed a sale of the mortgaged premises, subject to redemption under the statute, unless the same should be paid within ten days.

A record in the case wherein the complainants were appointed receivers, was also introduced by the complainants, (under objection,) with the statutes of Ohio, which record and statutes are not incorporated in the present record, but may be referred to in the argument, on being filed.

The plaintiffs in error pray a reversal of the decree; ^{and assign, as causes,} that the Supreme court erred in rendering any decree for the complainants, and in not dismissing the bill.

That the decree was for more than was due on the mortgage.

94.

SUPREME COURT,

Third Grand Division,

APRIL TERM THEREOF, A. D. 1864.

*What are the allegations of Bill and answer
in regard to the ratification of the compromise by the
Court of Ohio.*

NICHOLAS P. IGLEHART *et al.*) *Error to the*
^{vs}) *Sup. Court of*
WM. W. BIERCE and others.) *Chicago.*

ABSTRACT.

ARRINGTON & DENT,

Attorneys for Plaintiffs.

Filed April 23. 1864
L. L. Carden

01.20
Nicholas P. Iglehart & Frances M. Iglehart, ~~et al~~ } Error to Superior
Plffs in Error } Court of Chicago.

vs.

William H. Bierce
Marcus Brown &
Henry A. Hedges, Jr.,
Defts. in Error

State of Illinois }
Cook County } P.

Nicholas G. Iglehart of said
County in his oath says that the above
named William H. Bierce, Marcus Brown
and Henry A. Hedges, Jr.,

are nonresidents of this State.

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

R. Schloepfer
Notary Public

N. G. Iglehart

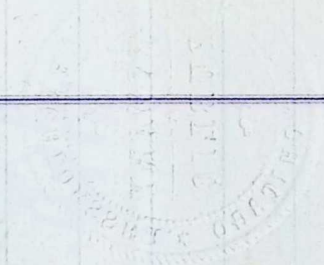


94
Iglehart, et al. vs. Bierce

Affidavit of nonresidence

Filed Feb. 9, 1864,
S. Leland
Clk.

Arrington & Dent,
Attys for plff. in Error.



STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Superior Court ~~for the County of Chicago~~ — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago — County, before the Judge thereof, between William H. Bierce, Marcus Brown & Henry C. Hedges, Receivers of the Bank of Cicleville, plaintiffs — and Nicholas P. Iglehart, Francis M. Iglehart, Leopold Mayer, Nathan Clark Burnham, Mary Ann Shays, Paschall plaintiff, and Woodward, Farmers College of Hamilton County, Samuel Hawk, S. James, William P. Daut, Henry Folsom Page, Francis A. Hoffman, John Gidley & Philip A. Hoyle —

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

as we are informed by their 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.

Pinckney H. Parker

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.



S. Ireland
Clerk of the Supreme Court.

⁹⁴
Superior

Nicholas P. Eglehart

vs. Others

No.

vs.

William H. Bierce et al.

WRIT OF ERROR.

FILED *April 23* A. D. 1864

J. C. Leland

Clerk.



Nicholas P. Iglehart, Frances M. Iglehart,
Leopold Mayer, Nathan Clarke Birnham,
Mary Ann Shap, Paschall Woodward,
Farmers College of Hamilton County,
Samuel Hawk, S. James, William P.
Dorst, Henry Tolson Page, Francis
A. Hoffman, John Gridley &
Philip A. Hogue,

Plffs. in Error.

vs.

William H. Bierce, Marcus Brown &
Henry A. Hedges, Jr. Receivers of the
Bank of Circleville,

Defts. in Error.

Error to the
Superior
Court of
Chicago.

(Rec'd February
17, 1863, in
favor of defend-
ants in Error
against plain-
tiffs 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 Plffs. in Error.

94
Ighart et al. vs Bierce
et al.

Præcipe.

Filed Feb. 9, 1864,
Seland
Ck.

Arrington & Dent,
Attorneys at Law, in Error.

94

Supreme Court of Illinois,

THIRD GRAND DIVISION,

April Term, A. D. 1864.

NICHOLAS P. IGLEHART,

VS.

WILLIAM W. BIERCE, ET AL.

BRIEF FOR DEFENDANTS IN ERROR.

— ♦ ♦ ♦ —
BY WAITE & TOWNE.
~~~~~

CHICAGO:

BEACH & BARNARD, PRINTERS, NO. 14 SOUTH CLARK STREET.

1864.

*Filed May 18. 1864.  
C. C. Leland  
Ct.*



# Supreme Court of Illinois.

---

NICHOLAS P. IGLEHART, ET AL.

v.

WILLIAM W. BIERCE, ET AL.

---

## BRIEF FOR DEFENDANTS IN ERROR.

By the bond it was provided that if Page & Darst should not obtain the ratification of said compromise, by the Court of Common Pleas of Pickaway county, Ohio, said bonds should be void. Now, it is said, that said compromise was not ratified, and the argument is based upon the order reading, three annual payments instead of five. This point is raised here for the first time; it was not raised below. Were this an error at law the party would be cut off from raising the objection. We submit, whether the same rule ought not to prevail in equity. There is no certificate of the points decided below. It certainly was the duty of the plaintiff in error to preserve the points and the evidence by certificate. The record is entirely silent upon the subject. But if it can be raised, we say that the compromise has been confirmed. The substance of the compromise was, taking fifty cents on a dollar. That is confirmed. And it appears, also, that Iglehart had executed the mortgage and the warrant of attorney according to the terms of the proposed settlement, and the same was approved, ratified and confirmed. This, being in proof as being the mortgage and warrant



of attorney made on said settlement, and they reciting five years instead of three years, they control. Further, it nowhere appears that any other mortgage was made and executed. It would follow that this was the compromise which was confirmed. In addition, Mr. Page, one of the receivers, and attorney at law, testifies, "*that the settlement was \$500 down, and the balance in five equal annual installments; and at the November term, 1853, of said court, an order was made completely ratifying said bond and mortgage, and my impressions are that a copy of the bond was filed in said court at the time, or produced in said court;*" but of this last he has some doubts. In addition, he testifies that the papers were executed previous to the confirmation. Now, what the court did confirm was papers which had been executed, not papers to be executed. And the proof every where shows that these were the papers which were made, and the papers which were sought to be confirmed.

The report is not made part of the record; by the report which the commissioners made, and which was what the court did confirm, it is described as a bond and mortgage having five years to run. And the confirmation was, in every respect, according to the bond, and it was simply a clerical mistake in entering the order, now discovered in this court for the first time, and as that suit is still pending, it is not now too late to correct the *record nunc pro tunc*, so as to conform to the order actually made at the date of the confirmation of the settlement. We therefore ask the court that, if they deem there is error on this point, they reverse and remand the case; as, upon another hearing, the variance can be corrected.

It is said the present receivers cannot file the bill to foreclose this mortgage. To whom does the mortgage belong in equity? Certainly to them. Then they are the proper parties to foreclose it. The debt is the principal—the mortgage the incident—the transfer by delivery of the principal, draws after it the incident. They have filed the bill making the old receivers parties defendant. WALKER, C. J., in *Dixon v. Buell*, 21. Ill. 203, thus lays down the rule:



"Equity treats the assignee of a contract not assignable in law as the party in interest, and will afford him relief in a proceeding in equity in his own name." And the same doctrine is affirmed in *Townsend v. Carpenter*, 11 Ohio R., 21; *Wooley v. Gouch*, 4 Rand R., 592; 2 Sturges' Equity R. 311. By being appointed receivers, they became entitled to all the assets, and whether there was a legal assignment or not in equity, they can sue for the same in their own name. But by the testimony, it appears that all the assets were transferred to the present receivers. But it is said the objection is, that these receivers cannot sue in the tribunals of our State. By giving the bond and mortgage to the old receivers, the defendant is estopped to deny their right to take the same. It may be likened to the case of contracting with a corporation, whoever contracts with a corporation is estopped to deny its corporate existence. *11 Wash R 285. 6 New Hamp R 165*

*All Saints' Church v. Lovell* 1 Hall R., 191.

*Boner v. Appleby*, 1 Sand. R., 158.

*Palmer v. Lawrence*, 3 Sand R., 161.

*Steam Navigation Company v. Reed*, 17 Barb. R., 378.

*29 Barb 305. 27 Conn R 218*  
The plaintiff in error feels the force of this, for in his oral argument he admits, that Page & Darst could by virtue of the contract, sue in the courts of this State. If they can sue, and if they have transferred to the defendants in error all their claims to the bond and mortgage, cannot the defendants in error sue? They come here as individuals, describing themselves it is true, as receivers—making the old receivers parties defendant, and proving by them, that the bond and mortgage belongs to the defendants in error. You may treat the "receivers" as surplusage. As individuals, they certainly have the right to sue. The claim certainly belongs to them. If this suit is not properly brought, it is conceded that none can be, and we are without a remedy. And certainly the court will hesitate long before they decide, that the equitable holders of a contract which parties have voluntarily entered into, cannot be collected in our courts. The error on the other side is in stating



that these are chancery receivers. It is true, they are appointed by a court of chancery, but it is under a statute for the winding up of an insolvent corporation. By the law creating the corporation, provision is made for its dissolution, and the administration of its assets. The law of its existence provides for its termination, and authorizes parties, called receivers, to act in its stead. By the laws of Ohio, under which the parties were appointed, they became vested with all the assets, and full power to sue. They became under another name, the corporation, for the purpose of winding up its affairs. See Ohio Statutes, vol. 40, p. 18, secs. 13, 14 and following sections; Swan's Statute, 1840, p. 130, sec. 15. They are the successors of the corporation.

Now could the bank of Circleville sue in this State? Most certainly. But what right has it to sue? It is well settled that such suit is only allowable by the comity existing between one State or county and another. This is clearly settled by *Bank of Augusta v. Earle*, 13 Peters R., 590, 591. By the appointment of a receiver on a corporation, the franchises of the corporation are taken away. In the matter of *Berry*, 26 Barb. R., 55. What kind of a comity can it be called that allows a corporation to sue in this State, and which denies to the receiver who represents the corporation, and becomes vested with all its assets, the right to collect these assets. The old corporation has no longer the power. To extend and uphold this right of comity is necessary for justice. So far as we can discover, it has never been denied in any single instance. STORR, in his *Conflict of Laws*, speaking of assignments under foreign bankrupt laws, says—Sec. 419, 420, 421:

“In most of the cases when assignments under foreign bankrupt laws have been denied to give a title against attaching creditors, it has been *distinctly admitted that the assignees might maintain suits in our courts under such assignments for the property of the bankrupt.*”

This action is brought for the property of the corporation, and falls within the admitted principle. And Chancellor KENT, in



*Holmes v. Ramson*, 4 John. C. R., 460, held that the assignment by a bankrupt in England passed the assets in this country. But in this case, in addition to the proceedings under which the receivers were appointed passing all the assets to them, the plaintiff in error has become their debtor, and by privity of contract assented to their receiving the assets in this State.

And repeated cases are to be found in our books where assignees of foreign bankrupts have sued and been entitled to sue, in another State, for the debts of the bankrupt.

*Thomas v. Merchants' Bank*, 9 Page C. R., 216.

*Bird v. Pierpont*, 1 John. R., 118.

*Bird v. Carilat*, 2 John. R., 342.

*Bank of Augusta v. Earle*, 13 Peters R., 520, 589.

*McLaren v. Pennington*, 1 Page C., 102.

*Holmes v. Ranson*, 20 John. R., 229.

The mode of instituting the suit depends upon whether instituted in a court of law or equity.

2 John. R., 342.

There is a limitation to this doctrine when it is necessary to protect rights *bona fide* acquired. And we defy the other side, when no such conflict exists, to find a single case where this right has been denied, when the assignee has sought to collect a debt or enforce a claim thus assigned him. In *Grayden v. Church*, 7 Mich. R., 63, a receiver appointed under a creditor's bill in the State of New York, filed a bill to foreclose a mortgage in the courts of the State of Michigan, and the same objection now made here was there raised, and the bill was sustained. And in this last case, the court says that it is clearly admitted, in 17 Howard R., 315, if the debtor had assigned to the receiver he could have maintained the suit in the jurisdiction of another State. And in 1 Selden R., 327, *Hoyt v. Thompson*, the right of the receiver of the Morris Canal and Banking Company, appointed in New Jersey, not only to sue, but to collect the assets, is admitted. But interesting as these



questions are, there is no necessity to pursue them. Iglehart has contracted with Page & Darst; they have resigned handing over the assets, and among others, the one in controversy, to the defendants in error, who, as the equitable owners, have a right to enforce, in the courts of this State, the contract thus made.

It is said they should have obtained leave to sue the claim. This is not necessary, as, by the law under which they were appointed, it is made their duty to sue claims.

Ohio Statutes, Edition 1841, p. 130, sec. 15.

Law of 1842, p. 18, sec. 14, and following sections.

It is conceded in the argument, that the default has made the whole debt due, but it is said the mortgage only secures the sum for which it was compromised. This is purely a question of construction. By the terms of the bond, there are two sums named—a greater to be satisfied by the punctual payment of a lesser. The debt is the greater, the compromise is the lesser. The debt continues unless the compromise is punctually made. The very first recital in the mortgage is, what? That Iglehart is indebted \$4,906.30? No; but that he is indebted \$9,812.61. That this they have agreed to release if he would secure to them the prompt and punctual payment of \$4,906.30. It then recites that he has made his bond—and which bond recites the first indebtedness—which can be satisfied upon the payment of a less, but throughout the larger is treated as the indebtedness; and which larger sum is mentioned in the condition of said bond. After reciting the bond, the mortgage is given to secure the sum of money mentioned in the condition of said bond, with interest thereon. Now, what is the true condition and meaning of said bond? In one contingency, one sum—in another, another sum. It is a condition of said bond to pay the large sum if default be made for ninety days in the payment of the lesser. And by said mortgage, it is covenanted by the mortgagor to pay said principal sum and interest. And again, it is said the principal sum of money mentioned in the condition of



said bond according to the said condition. Now, what is the principal sum? What is the principal sum of money mentioned in said condition? It is certainly the debt; the larger—not the smaller. Everywhere is that spoken of as the debt. To render it more certain, it is the principal sum according to the condition of the bond. And it is further provided, that it should be lawful for the party of the second part to declare said principal sum due in case of a breach of the covenants herein contained, showing what is intended by principal sum—referring to the debt, not the compromised sum. And the matter is rendered still more certain by reference again to said bond in connection with these words—where it is said that said Iglehart is indebted in the sum of \$9,812.61—and which they have agreed to compromise upon the prompt and punctual payment of one-half of the above named amount, and in no instance is the lesser sum spoken of as the debt—but simply as a sum they are willing to take. In the event of neglect to pay the installment of the less sum—the whole of said sum of \$9,812.60 *less the amount which shall have been paid thereof*, shall forthwith become due and payable, and be immediately thereafter demanded. So that nowhere in said bond, or its conditions, is the lesser sum made the “principal sum” in the debt, or treated as the debt.

It is said that the division of the sum shows that the lesser sum is the one secured. It simply shows that the parties have agreed that such is the value “appraised to each of said lots.”

In the mortgage is a power of sale, when default be made in the payment of the principal, &c.; when the same should be paid, as set forth in the conditions of sale, bond, &c., after providing for how the sale shall be conducted, and out of the money arising from such sale to retain the principal which may then be due on said bond. What sum is there due upon said bond? Why, the principal debt. That is the original debt, and that is the debt due when default is made upon said bonds. Now that is what can be paid, if sale is made under the power in the mortgage, and therefore, it would seem to follow that that is what is secured by the mortgage.



Then follows the power to declare the said principal sum due. Taking the whole mortgage together there can be no question but what the original debt is covered by it.

But it is said that we cannot recover beyond the penalty of the bond. This we do not understand to be a rule applicable to a proceeding in chancery, when we are seeking to recover the debt, but a technical rule of law.

Nor is it necessary to make the bank of Circleville a party, for it is first a defunct corporation, and these parties are administering upon its effects, and second, it is hereby its proper representatives.

WAITE & TOWNE,

*Attorneys for Defendants in Error.*



# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

---

|                                                |   |                                                    |
|------------------------------------------------|---|----------------------------------------------------|
| NICHOLAS P. IGLEHART <i>et al.</i>             | } | <i>Error to the Superior Court<br/>of Chicago.</i> |
| <i>vs.</i><br>WILLIAM W. BIERCE, <i>et al.</i> |   |                                                    |

---

## POINTS FOR PLAINTIFFS IN ERROR.

The objections of the plaintiffs in error to the decree of the court below may be thus stated, in general terms. That an essential condition on which the right of the mortgagees depended was not shown to have been performed. That the complainants were not entitled to ask any decree, by virtue of their office of receivers. That the Bank of Circleville, under the proofs in the case, was a necessary party. That the decree was for more than the mortgage was intended to secure.

### I.

The bond and mortgage, bearing date 21st Sept., 1853, provided that if Page & Darst, the mortgagees, should not obtain the ratification by the Court of Common Pleas of Pickaway Co., O., of a compromise stated to have been proposed by Nicholas P. Iglehart, then the bond was to be void. The terms of this compromise were, that Iglehart should be released from certain indebtedness to the amount of \$9812.61, in consideration of his



securing to the mortgagees the prompt and punctual payment of one half of that amount, viz: \$4.906.30, as follows: \$500 in cash, and the balance in 5 equal payments annually of \$881.-26 each, with ~~an~~ interest at 6 per cent. per annum, payable annually upon the whole sum remaining unpaid, &c.

But it is not shown that such ratification was obtained. The order of said court of Common Pleas, made Nov. 15, 1853, recites that Iglehart had proposed to make such payment as follows: "\$500 cash in hand, and the residue in *three* equal annual payments, with interest payable annually;" and provided that the receivers should be authorized and directed to compound the judgment to be thus satisfied upon those terms.

Then it does not appear that the court understood or approved the offer of compromise which was actually made, nor that the judgment was actually compounded upon those terms, nor that Iglehart ever was notified of any such ratification. And yet it was indispensably necessary to aver and prove a full compliance with this condition.

## II.

The mortgage, after naming Page & Darst as Receivers of the same bank of Circleville, conveyed the premises to said Page & Darst, their heirs and assigns. The complainants claim to have been appointed successors of Page & Darst, as such receivers, and produced an order of said court showing the resignation of Page & Darst, and appointing them, the complainants, to be such receivers. They then claim that, by virtue of such order, and also under a statute of Ohio requiring receivers, when removed, to transfer the assets to their successors in office, they became the owners and holders of the bond and mortgage.

But we object that neither the order of the court nor the statute could have any extra territorial effect; and that, consequently, the complainants, not being the parties to whom the mortgage was given, nor the heirs or assignees of Page and



Darst, were not entitled to bring suit in this state. And, at all events, they should not have brought the suit without the direction of the court which appointed them.

Booth *vs.* Clark, 17 Howard, 330-1, 338-9; both as to the want of capacity in the receivers, as such, to sue here, and as to the propriety, at least, of their asking permission to bring the suit.

### III.

But we again urge, that such direction to be at liberty to sue was highly necessary in this case, and that the bill was defective in not joining the Bank of Circleville as a party. Here the facts shown by the record of the said Common Pleas Court are, that on the 14th of April, 1842, a bill in equity was filed by Julius L. Wayman, alleging an act of insolvency on the part of the bank in refusing to pay him, on that day, the specie for \$77 of the bills of that bank. That, on the same day, a summons was issued upon said bill, together with a mandamus requiring the sheriff of Pickaway county to take possession of the banking house, books, papers, keys, lands, goods, moneys and effects, &c., of said bank. April 19, 1842, the court appointed receivers, (the same named in said writ of mandamus,) and directed that a writ of mandamus should be issued.

April 20, 1842, said summons was served by copies handed to the cashier and president of the bank.

May 23, 1842, the mandamus issued April 14, was executed.

Nov. 1, 1842, the court ordered that an issue should be made up, for the trial of the question whether the President, Directors & Co. of the bank committed the act of insolvency and forfeiture charged in the bill of complaint, and that the complainant should be ruled to file a declaration within sixty days.

March 28, 1843, a declaration was filed, with a plea thereto, and a jury trial being had upon said declaration and plea, the



jury found that the bank did commit the said act of insolvency and forfeiture of charter.

June 19, 1843, leave was given to P. Voorhes, as one of the defendants, to answer, since which time the cause has been continued without action therein, except to receive reports and resignations of receivers, to direct as to paying some small bills for services by and under the receivers, and to make the order aforesaid in regard to a compromise with Iglehart.

Thus the verdict of the jury, taken simply for the instruction of the Chancellor, stands as yet unconfirmed; and, after such great delay in the prosecution of the suit, the alleged cause of complaint ought to be regarded as stale and unmeritorious. Surely, the rights of the bank cannot be said to be divested; and hence, as the apparent meritorious object of the claim, it ought to have been made a party to the suit.

#### IV.

That the decree was for an excessive amount.

Whether this is so or not, is to be determined by the answer to the question, what amount was the mortgage intended to secure? Now, while it recites that Iglehart was indebted to the mortgagees in \$9,812.61, and while it, with its accompanying papers, provided, upon a contingency, for his continuous personal liability to that amount; it further recites that the mortgagees had compromised their claim against him, and agreed to release him therefrom, in consideration that he would secure to them the prompt and punctual payment of one-half of that amount, viz: \$4,906.30, to be paid in the manner and at the times first above stated, that is, \$500 in hand, and the balance in five equal annual payments, with interest.

The condition in the bond contained the same recitals, to the effect that the claim of \$9,812.61 was compromised on the terms that Iglehart would secure the prompt and punctual payment of \$4,906.30, as aforesaid. And when it is said in the mortgage, "Now therefore, \* \* \* for the better securing the



payment of the said sum of money mentioned in the condition of said bond, with interest thereon according to the true intent and meaning thereof," to what sum of money is reference thus made? Clearly, to no other than the said sum of \$4,906.30, for it was that sum alone which he had so agreed to secure, and as to that sum alone had there been an agreement in the bond to pay interest. But this is made still clearer when we come to the clause of defeasance, for it provided \* \* that if the mortgagors should pay \* \* "the said sum of money mentioned in the condition of said bond, with the interest thereon, at the time and times respectively, and in the manner specified in the said condition according to the true intent and meaning thereof," the estate granted should cease. Next follows, in the mortgage, an agreement by Iglehart to pay \* \* "the said principal sum of money mentioned in the condition of said bond, with the interest thereon, according to said condition;" thus clearly referring, again, to the sum of \$4,906.30 which Iglehart had agreed to secure and pay with interest. Manifestly, this was an agreement only to pay \$4,906.30, with interest; and rightly referred to this as the principal sum, for it alone was to bear interest.

It is true that the mortgage afterwards provides, that upon a breach of the mortgagor's covenants, the mortgagees could "declare the said principal sum to be due;" but if we have been right in the last preceding suggestion as to what was the principal sum, viz: that which was agreed to be paid, with interest, and the payment of which was to be so secured, then, according to well established rules of construction, this reference is to the sum of \$4906 30, also, as it was the last sum previously indicated.

Then again, the stipulation appended to the mortgage, and declared to be a part of it, shows that the mortgage was not intended to secure the whole sum of \$9,812.61, because it required the mortgagees to release the mortgaged premises in separate parcels on the payment of sums specified with reference to the several tracts, the aggregate of the sums thus specified amounting to only \$7100.00.

Moreover, the bond was in the penalty of only \$10,000, and this was all that in any event was intended to be secured by the bond. (*White vs. Sealy, Doug'l. 49.*)



And the record of the Common Pleas Court of Pickaway Co., Ohio, recites that the payment <sup>of</sup> one-half the original indebtedness was to be secured by a mortgage. We therefore urge that, whatever may be said as to the personal liability of Iglehart, he did not undertake to secure by this mortgage more than one-half of the original indebtedness, viz: \$4906.30 with interest.

It is to be remarked, too, as is above suggested, that there is not to be found anywhere any agreement to pay interest on any sum other than \$4906.30; and yet the court below, in fixing the amount of the debt, allowed interest on \$9812.61, from the date of the mortgage, after deducting \$500 then paid; and this we urge was erroneous.

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



94

Sglehart, et al.  
v.

Pierce, et al.

---

Plfs. Points.

Filed May 2, 1864  
J. L. Lander MR