

14619

No. _____

Supreme Court of Illinois

Chicago Marine & Fire Ins.
Co.

vs.

Inglehart

STATE OF ILLINOIS,
May 1864
SUPREME COURT,
THIRD GRAND DIVISION.

No. 97-71

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

Lehigh Valley

Lytle

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

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between The Chicago Marine & Fire Insurance Company

plaintiff, and Nicholas P. Eglehart

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

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

that said Company 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 said Company 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 The Chicago Marine & Fire Insurance Company

notice, together with this writ.

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

L. Deland

Clerk of the Supreme Court.

J. B. Rice Deputy

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Nicholas P. Ogden

No. VS.
The Chicago, Marine &
Fire Insurance Company

SCIRE FACIAS.

Filed April 23 A.D. 1864

A. Delmon Clerk.

Served this writ on the within named The Chicago
Marine & Fire Insurance Company by reading and
delivering a copy thereof to J. Young Hammond who
is the President of said Company and by reading
and delivering a copy to John W. Underwood who
is an agent of said Company this 16th day of April
1864

David S. Hammond Sheriff of Cook Co

By John A. Nelson Deputy

Fees

2 km 1-00

2 Copies 1-00

4 miles 20

1 rate 32 30

Paid by Mft

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between The Chicago Marine & Fire Insurance Company

complaint, and Nicholas P. Iglehart
Nicholas P. Iglehart

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

as we are informed by his complaint 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. Martin
Witness, The Hon. JOHN D. CATON, 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. Leland

Clerk of the Supreme Court.

J. D. Rice Deputy



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Nicholas P. Zglehart

No.

vs.

The Chicago Marine
& Fire Insurance Company

WRIT OF ERROR.

FILED April 23 A. D. 186 4

L. L. C. C. C.

Clerk.

Nicholas P. Iglehart,
Plff in Error,

vs.

The Chicago Marine and
Fire Insurance Company,
Def. in Error

Error to Cook
Circuit Court.

(Judgment May 4, 1860

in favor of the defendant
in error against the
plaintiff in error.)

The Clerk of the Supreme Court
will please issue a Writ of Error and seire
facias to the Sheriff of Cook County, and
oblige

Arrington & Deat,
Atty. for Plff. in Error.

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Iglehart vs. Chas. M. & J. H. Co.

Præcipe.

Filed Feb. 9, 1864.
L. Island
Clk.

Arrington & Dent,
Attys for Plff. in Error.

(11)

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Maniere Judge of the Seventh
Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the Second Monday, (being the
Twentieth day) of April in the year
of our Lord One Thousand Eight Hundred and Sixty and of the
Independence of the said United States the Eighty fifth

Present, Honorable George Maniere Judge of the 7th Judicial Circuit)
of the State of Illinois. (

Carlos Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it Remembered that on the fourth day
of May in the year of Our Lord one thousand
eight hundred and sixty. there were filed in
the Court aforesaid certain pleadings and
papers, viz: a declaration, note, Power of Attorney
and cognovit in the words & figures following
to wit:

State of Illinois,

Cook County, ss.

Narr and Cognovit.

CIRCUIT COURT OF COOK COUNTY,

April

TERM, A. D. 1860.

The Chicago Marine & Fire Insurance Company, a corporation
incorporated under the laws of, and doing business within the State of Illinois
Plaintiffs in this suit, by J. V. Le Moynes their Attorney, complain of
Nicholas P. Iglehart

Defendant in a plea of trespass on the case on promises: For that whereas the said Defendant, heretofore,
to wit, on the Seventh day of January in the year of our Lord one
thousand eight hundred and Sixty at Chicago

to wit, at said County of Cook, made his two certain promissory Notes, in writing, bearing date the day
and year aforesaid, and then and there delivered the same to the said Plaintiff

in and by which said Note, said Defendant
by the name, style and description of St. P. Iglehart promised to pay to the Order of the said Plaintiff
ten days after the date thereof the sum of fourteen hundred and fifty dollars and twenty five cents
with interest at the rate of twelve per centum per annum at their office in the City of Chicago
for value received, and by the second of said notes said defendant by the name style and
description of St. P. Iglehart promised to pay to the Order of the said Plaintiff ninety days after
the date thereof the sum of five hundred dollars at their office in the City of Chicago
for value received. And the said

to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid, at
to wit, in the County of Cook aforesaid, endorsed said note in writing,
by which said endorsement the said

then and there ordered and appointed the said sum of money in said note
mentioned to be paid to said Plaintiff, and then and there delivered said note, so endorsed, to the said
Plaintiff. By means whereof, and by force of the statute in such case made and provided, the said
Defendant became liable to pay said Plaintiff said sum of money mentioned in said note, and being so
liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff
according to the tenor and effect, true intent and meaning of the said note, and of the endorsement aforesaid,
to wit, at the place aforesaid.

Yet the said Defendant, although often requested, &c., hath not yet paid the said sum of money, or any
part thereof to the Plaintiff, but so to do hath hitherto wholly refused, and still do refuse, to the damage
of the Plaintiff of Twenty five hundred dollars
and therefore they bring suit, &c.

J. V. Le Moynes PLAINTIFFS ATTORNEY.

CIRCUIT COURT OF COOK COUNTY.

April

TERM, A. D. 1860.

Nicholas P. Iglehart
Ads.

COGNOVIT.

The Chicago Marine and Fire
Insurance Company

And the said Nicholas P. Iglehart
Defendant in the above entitled suit, by J. W. Hiscott his Attorney comes
and defends the wrong and injury, when, &c., and waived services of Process, and says that he cannot
deny the action of the said Plaintiff, nor but that the said Plaintiff have sustained damages on occasion of
the non-performance of the several promises and undertakings in the said declaration mentioned, including the
sum of fifty Dollars, for their reasonable attorney's fees for entering up this judg-
ment, over and above their other costs and charges by them about about
expended to Twenty one hundred

dollars and ten cents; and the said Defendant further
agree that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any
bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby
release all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to
immediate execution upon such judgment.

J. W. Hiscott DEFENDANTS ATTORNEY.

G. No.
Circuit Court of Cook County

VS.

NARR AND COGNOVIT.

Filed this *day of*

..... 186

..... *Clerk.*

..... *Plaintiff's Attorney*

(5)

(6)

\$500

Chicago Jan 7 1860.

Ninety days after date for value received I promise to pay to the Chicago Marine and Fire Insurance Company, at its Office in Chicago, Five Hundred Dollars it being for money loaned to me out of the Deposit Fund of said Company.

N P Sgbrhart.

Know all Men by these presents, That I N. P. Sgbrhart am justly indebted to the Chicago Marine and Fire Insurance Company, upon the foregoing Promissory note bearing even date herewith, for the sum of Five Hundred Dollars, and due Ninety days after date.

Now therefore in consideration of the premises we do hereby each for himself make constitute and appoint Mark Skinner or any Attorney of any Court of Record, to be our true and lawful Attorney and the Attorney of each of us irrevocably for us and in our names places and stead, to enter our appearance and that of each and one of us, and the appearance of the survivor of us in any Court of Record in the United States of America, or any Territory thereof, or District therein or elsewhere at any time after the date hereof; to waive the Service of process, and confess a judgment against us or the survivor

(8)

of us or of any one or more of us, in favor of said Chicago Marine and Fire Insurance Company, or its assignee or assignees upon the said Promissory Note, for the above sum legal damages and interest on the same at the highest rate authorized by the Charter of said Company or for so much as may appear to be due according to the tenor and effect of said Promissory Note, and interest thereon after said Note becomes due as aforesaid at the rate aforesaid, to the day of Entry of said judgment together with legal damages, Costs, and also Attorneys fees thereon, at the rate of five per Cent and Such Costs and fees; which Attorneys fees we hereby agree to pay for the Collection thereof; and also to file a Coganovit for the Amount that may be so due, with an agreement therein that no writ of Error or appeal shall be prosecuted upon the judgment Entered by Virtue hereof, nor any bill in Equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment or issuing any Execution thereon; and also to waive all benefit or advantage to which we or any one of us may be entitled by virtue of any homestead or other Exemption Law, now or hereafter in force, in this or any State, Territory or District, or elsewhere, where judgment may

3
10/
be entered by virtue hereof. Hereby ratifying
and confirming all that our said Attorney
may do by virtue hereof. And we do hereby
stipulate that a judgment against any one or
more of us, shall in no way or manner re-
lease or discharge the liability of such of us
as may not be included in such judgment,
but separate judgments may be confessed,
hereon, or suits maintained, against either
and every one of us as though no such judg-
ments had been entered, until the whole
debt, interest, costs, and fees are fully paid.
Witness our hands and Seals the 7 day of January
A.D. 1860. N. O. Sglehart. Seal
In Presence of

\$1490.²⁵ Chicago Jan 7 1860.
Ten days after date, for value received
I promise to pay to the Chicago-Marine and Fire
Insurance Company at its office in Chicago,
fourteen hundred ninety ²⁵/₁₀₀ Dollars in being
for money loaned to me out of the Deposit Fund
of said Company with interest at 12%.
N O Sglehart.

Know all Men by these presents That I N. O.
Sglehart am justly indebted to the Chicago
Marine and Fire Insurance Company upon the

foregoing Promissory Note bearing even date
 (12) herewith, for the Sum of Fourteen hundred Ninety
 25/100 Dollars with interest at 12% and due
 Ten days after date. Now therefore in con-
 sideration of the premises we do hereby each
 for himself, make constitute and appoint Mark
 Skinner, or any Attorney of any Court of Record
 to be our true and lawful Attorney, and the Attorney
 of each of us irrevocably for us and in our names
 places and stead to enter our appearance, and that
 of each and every of us, and the appearance of the
 Survivor of us, in any Court of Record in the United
 States of America, or any Territory thereof, or District
 therein or elsewhere, at any time after the date
 hereof, to waive the service of process, and confess
 a judgment against us, or the Survivor of us, or
 any one or more of us, in favor of Said Chicago
 Marine and Fire Insurance Company, or its assignor
 or assignors, upon the said promissory note, for the
 above sum, legal damages, and interest on the same
 at the highest rate authorized by the Charter of
 Said Company, or for so much as may appear
 to be due, according to the tenor and effect of
 Said promissory note, and interest thereon after said
 note becomes due as aforesaid, at the rate afore-
 said, to the day of entry of said judgment, to-
 gether with legal damages, costs, and also Attorneys
 fees thereon, at the rate of five per cent, and for

Costs and fees; which Attorneys fees we hereby
(14) agree to pay for the Collection hereof, and also
to file a Cognovit for the Amount that may be
so due with an agreement therein that no writ
of Error or appeal shall be prosecuted upon the
judgment entered by virtue hereof, nor any bill
in Equity filed to interfere in any manner with the
operation of said judgment, and to release all
errors that may intervene in the entering up said
judgment, or issuing any Execution thereon; and
also to waive all benefit or advantage to which
we, or any one of us, may be entitled by virtue of
any homestead or other Exemption Law, now or
hereafter in force, in this or any State, Territory
or District, or elsewhere, where judgment may be
entered by virtue hereof. We hereby Ratifying and
Confirming all that our said Attorney may do by
virtue hereof, And we do hereby stipulate that
a judgment against any one or more of us, shall
in no way or manner release or discharge the
liability of such of us as may not be included
in such judgment, but Separate judgments may
be confessed hereon, or suits maintained, against
either and every one of us, as though no such judg-
ments had been entered, until the whole debt,
interest, Costs and fees are fully paid.
Witness our hands and seals the 4th day of Jan'y A.D. 1900
In presence of N. P. S. J. L. Hart. Seal

And afterwards, to wit: on the 14th day of May in the year first aforesaid, and at the term of said Court first aforesaid the following proceedings among others in said Court, were had and entered of record therein to wit:

The Chicago Marine and Fire Insurance Company	}	Confession
vs. Nicholas J. Sghehart		

This day comes the said Plaintiff by J. W. Le Mayne its attorney and files herein its certain declaration, on a plea of trespass on the case upon promises. And thereupon comes also the said Defendant by J. W. Macbeth his attorney in fact, who files herein his warrant of attorney the execution of which being duly proved, and also his Cognovit confessing the Action of said Plaintiff against him, and that it has sustained damages herein to the sum of Two Thousand One hundred Dollars and ten Cents.

Therefore it is considered that said Plaintiff do have and recover of the said Defendant its damages of Two Thousand One hundred Dollars and ten Cents, in form as aforesaid Confessed together with its Costs and Charges by it about its Suit in this behalf Expended, and have Execution therefor.

(16)

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the pleadings, papers & proceedings of record in a certain cause Patent pending in said Court, on the Common Law side thereof, wherein The Chicago Marine & Fire Insurance Company were plaintiffs and Nicholas P. Gylehart was Defendant.

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

W. L. Church Clerk.



(17) And now comes the said Nicholas P. Iglehart, by his attorneys, Arrington & Dent, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit: that said judgment was entered without any affidavit being filed to show the execution of the notes and warrants of attorney respectively.

That said judgment was for a greater amount than was authorized under the declaration, —

That while the declaration alleges, and affirms as a breach, the non payment of one note only, to wit: a note for \$500.—, the judgment was entered for ~~about~~ four times the amount of said note.

That the ~~first count of the~~ declaration was defective.

That while the record recites that a warrant of attorney was filed, &c., none appears sufficient to authorize confession of its judgment entered.

That the power of attorney referred to in the record was insufficient to authorize such confessions.

And for these & other errors, the plf. in error prays a reversal of said judgment, and that he be restored to all things which he has lost thereby, &c. Arrington & Dent, attys. for plf. in error.
J. M. C. McCall & Sullivan, For Deft in Error.

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Chicago M & F Ins. Co.

N. P. Iglehart

Filed April 21. 1864.

L. Leland
Clerk.

IN THE SUPREME COURT,

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

NICHOLAS P. IGLEHART,
Plaintiff in Error,

vs.

CHICAGO MARINE & FIRE
INSURANCE CO.,
Defendant in Error.

Error to Cook Circuit Court.

Record, p. ABSTRACT OF RECORD AND POINTS OF PL'FF IN ERROR.

1, 15

The defendant in error, on the 4th of May, 1860, filed in said court its declaration, with two notes and two warrants of attorney annexed thereto, and thereon procured the entry of judgment, as by confession, against the plaintiff in error for \$2100.10 damages, besides costs.

1

The declaration contained one special count, alleging that the defendant in error, on the 7th of January, 1860, executed two promissory notes, payable to the order of the defendant in error, at the office of the defendant in error, one for \$1490.25, so payable ten days after date, with interest at 12 per cent. per annum, and the other for \$500.00, payable ninety days after said date. After describing these notes, the court proceeds to say that the "defendant became liable to pay the plaintiff said sum of money mentioned in said note, and being so liable," &c., undertook to pay the same, &c., according to the tenor, &c., of said note.

The breach assigned, is, that the defendant had not paid the said sum of money, or any part thereof, but refused so to do, &c.

15

The record entry recites, that on the filing of the declaration the defendant came, by J. W. Wescott, his Attorney in fact, who filed his warrant of Attorney, the execution of which being duly proved, and also his cognovit, confessing, &c., it was considered that the plaintiff should recover, &c.

It is assigned as error, that the judgment was entered without any affidavit being filed to show the execution of the note and warrant of Attorney.

That the breach assigned in the declaration was the non-payment of said note for \$500.00, and that alone.

That it does not appear that Wescott was an Attorney authorized under the power to appear for the defendant.

And that according to the record entry, he purported to act under a warrant of Attorney; and neither of the warrants of Attorney, as set out in the record, would authorize the entry of a judgment for any such sum as that for which the judgment was entered.

ARRINGTON & DENT,

Atty's for Pltff in Error.

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Iglehart v. E. M. & F. L.
Co. —

Abstract of Record
re. —

Dallas Miller

same as 98499

Filed April 23, 1864

L. L. v. E. & F. L.

Arrington & Dent,
Attys. for Plff. in Error.