

14673

No. _____

Supreme Court of Illinois

I~~A~~glehart

vs.

Church

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14673

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 99-73

J. W. Middleton & Co., Stationers, 190 Lake St.

Exhibit
Q. v. [illegible]

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IN THE

Supreme Court of the State of Illinois.

THIRD GRAND DIVISION,

April Term, 1864.

NICHOLAS P. IGLEHART,

Plaintiff in Error.

v.

WILLIAM L. CHURCH,

Defendant in Error.

No. 98.

NICHOLAS P. IGLEHART,

Plaintiff in Error.

v.

THE CHICAGO MARINE &
FIRE INS. CO.,

Defendant in Error.

No. 97.

POINTS FOR DEFENDANTS IN ERROR.

In the first of the above entitled cases, the only point made is, that there was no proof of the execution of the

Given May 9, 1864
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note or of the power of attorney offered in the court below, so far as the record shows. The record of the judgment in this case recites that the note and power of attorney were duly proved, and the record shows that the judgment was entered in term time.

This distinguishes the case from that of *Durham v. Brown*, 24 Ills., 93, in which the judgment was entered in vacation, and therefore was not a judicial act; not the act of the court, but of the parties, and of the clerk, who recorded the evidence of their acts, which thereafter operated upon the parties by way of estoppel. But the judgment in that case was reversed "for want of the power of attorney, there "being none filed," and not for want of proof of its execution.

But in this case the court will presume that the court below had sufficient proof of the execution of the note and power of attorney, until the contrary is shown. The judgment in this case was rendered by the court, and sufficient evidence appears to show it had jurisdiction of the subject matter and the person, therefore the judgment should be affirmed.

In the second case, the judgment was entered in term time, and the same errors are assigned as in the first case, and what we have said in the latter case on these points will suffice, as to them, in the present one.

The second error assigned is, that the breach, as laid in the declaration, is too narrow in that it does not allege non-payment of the "notes" instead of the "note." To this we reply :

First. That it was proper, as a mere matter of pleading, to include the two notes in one count.

Godfrey et al. v. Buckmaster, 1 Scam., 447.

Second. That the general breach at the end of the dec-

claration is a sufficient allegation of the non-payment of both notes, and even if not, it is good after verdict.

1 Chitty's Pleading, 337,

Thomas v. Roosa, 7 Johnson, 462,

Weigley et al. v. Weir, 7 Ser. & Rawle, 309,

1 Saunders Reps., 228, n. 1,

is in point.

Third. That this error, if it was one, was released by the cognovit filed in the court below, as will appear by inspection of it.

The production of the notes with the warrant of attorney, which the record states was "duly proved," was sufficient evidence that they were due and unpaid. The powers of attorney in these cases are very broad, and the clauses authorizing a release of errors are equally so, and we think the release of errors contained in the cognovit filed in the case, is sufficient to cure any error of this kind.

The next error assigned is, that there is no proof of Westcott's authority to appear and confess the judgment—this cannot be supported, because the warrants of attorney run to "Mark Skinner, or any attorney of any court of record." The attorneys are officers of the court, and each court is presumed to know who are attorneys of that court, and entitled to practice before it. The court below recognized Westcott as an attorney, and its decision on that point cannot be reviewed on error.

The last error questions the regularity of the judgment, because two notes were included in one judgment, and the attorney had, therefore, no power to confess a judgment for a greater sum than appears to be due upon each note.

We suppose this assignment of error is made upon the authority of the case of *Ball v. Miller*, decided by this court at the April term, 1863.

If that decision is correct in the given case, yet the language of the court implies that the circuit courts may, in their discretion, allow distinct demands to be consolidated, when, in their opinion, it is not inconsistent with the rules of pleading. This judgment was entered in term time, and this discretionary power of the court below having been exercised, it cannot be reviewed on error. As this is not like the case of *Ball v. Miller*, and the judgment below may be supported without overturning that case, we forbear comment upon it, further than to say, that when two judgment notes are made by the same party to the same payee and are both due, we can see no good reason why they should not be included in one judgment, and thus save the defendant the costs of two or more judgments, where one will secure all his and the creditor's rights.

This error, if it be one, ought to be held released, as it appears that both notes were due and unpaid; and the warrants of attorney were sufficiently broad to authorize the entry of one judgment on both notes.

SCAMMON, McCAGG & FULLER,

For Defendants in Error.

OTTAWA, April 29, 1864.

Chicago, July. 8, 1864.

S. Leland, Esq.,
Clerk of Supreme Court, &c.,

Dear Sir, -

We enclose herewith proccipies for writs of error, &c., in seven cases, with affidavits of non residence in four of the same cases, together with a check for \$80.50., for Judges fees, Revenue stamps and an advance of \$5 in account of your fees in each case. Please send us the Writs of Error and of sci. fa., and have publication made as to non residents in the next issue of the "Free Trader", and state to us the amount of printers charge for publication. There is barely time for publication, but we trust the papers will reach you in time for inserting the notices, sixty days before the next term of Court.

Yours Truly,

Asaington & Deat.

\$5. each notice -