

IN THE SUPREME COURT,

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

NICHOLAS P. IGLEHART AND CHARLES W. CLAYTON, <i>Plaintiffs in Error,</i>	}	<i>Error to the Circuit Court of Cook County.</i>
vs. BUCKNER S. MORRIS, <i>Defendant in Error.</i>		

ABSTRACT AND POINTS OF PLAINTIFFS IN ERROR.

The defendant in error, on the 2d of Nov. 1859, on filing his declaration, with a cognovit, note and warrant of attorney, took judgment against the plaintiffs in error for \$1,649.41 damages, besides costs.

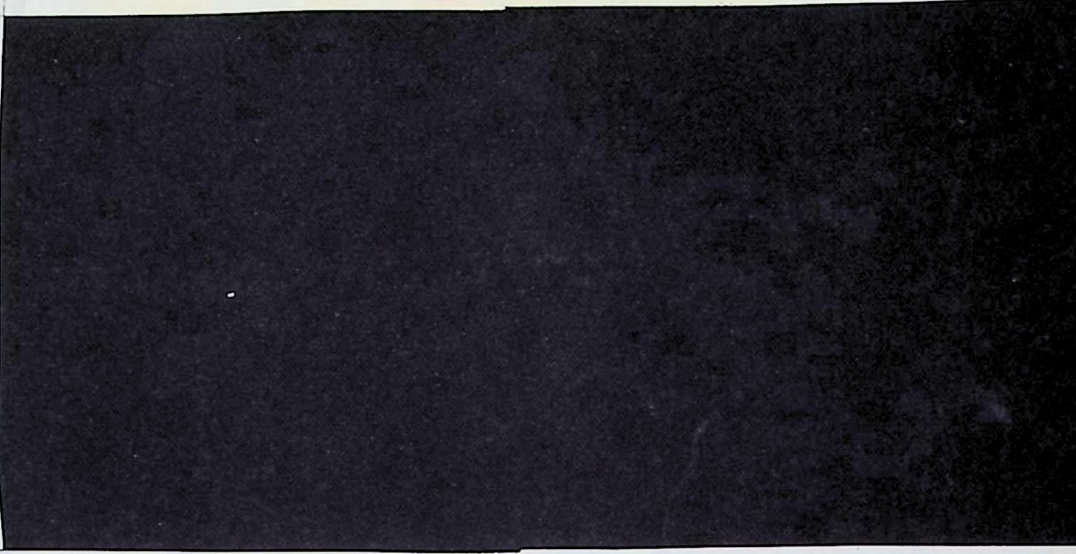
The note and warrant of attorney bear date Feb. 17, 1859. The note was for \$1,540.25, payable sixty days after date, with interest after due at ten per cent. per annum.

The warrant of attorney purported to "constitute and appoint or any attorney in any court of record,
* * * to confess judgment upon said note," for what should appear to be due thereon, with costs, and \$10 attorney's fees.

There was no affidavit to show the execution of the note or warrant of attorney.

It is assigned as error that the Court erred in rendering judgment without such affidavit or proof, and also in rendering judgment for a larger amount than was authorized by the warrant of attorney; the note, with \$10 attorney's fees, amounting to only \$1,633.87, when the judgment was entered.

I.



ARRINGTON & DENT,
Atty's for Plt'ffs in Error.

99.

Iglehart, et al.

²²
Morris.

Abstract & Points
of Phipps' Error.

28 Ill. 350-

18 Ill. 159-

Filed April 23, 1864

L. L. L. L. L.

Ball v. Miller

Unreported -

Arrington & Dent,
Attys for Phipps & C.

Nicholas P. Iglehart &
Charles H. Clayton,
Plffs. in Error.

vs.

Buckner S. Morris
Def't. in Error

Error to Cook
Circuit Court

(Judgment November 2,
1859, in favor of defend-
ants in error against
plaintiffs 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 & Dent,

Attys for Plffs in Error.

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Iglehart, et al. vs. Morris,

Præcipe.

Filed Feby. 9. 1864,
L. Island
Ck.

Arrington & Deah,
Attys for Aff. in Error.

99.

B.S. Morris } Supreme Court of Illinois
 vs } 3rd Grand Division
 N. P. Splunk } Error to book circuit court

The Defendant Morris moves the court for leave to file as part of the Record in this case as copy of a part of the record in this case the order of the circuit correcting the alleged error of excess of the damages included in the judgment sought - releasing and remitting each Excess to wit \$25.63/100. to obviate the assignment of the alleged error -

That this judgment has been standing some years with Executions returned "no property found to make the amount of said Executions" - That this Defendant has reason to believe & does believe that one or both of said plaintiffs in error have had real estate on which the judgment, now sought to be reversed for an alleged mistake in the calculation of the damages, if any there is, is a lien and by ~~that~~ which this Defendant may be able to make the balance of his judgment & costs - whereas the reversal of the judgment may result in the loss of the ^{benefit of said} judgment to this Defendant in error - and the question now is whether this Judgment shall be reversed when this alleged error is removed by release of that amount of the alleged error - For had the parties notified this deft. of the alleged error before suing out their writ of Error he would have released it at once by correcting the error -

B.S. Morris Dkt in Error

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Lylehart

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Morris

Suggestions in
Support of Motion

Filed April 25, 1874
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT

ss. 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 judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Buckner S. Morris

Complainant, and Nicholas P. Zylchert and Charles W. Clayton

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 complaint 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.

Priscilla H. Walker

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.

L. Leland

Clerk of the Supreme Court.
J. B. Rice Deputy



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Nicholas P. Zglehartel

No.

vs.

Buckner S. Morris

WRIT OF ERROR.

FILED April 23 A. D. 1864

G. Delancey

Clerk.



Buckner S. Morris &
vrs.

Supreme Court of Illinois
held in for the Northern 3rd Grand
Division - April Term 1864.

Nicholas P. Iglehart &
Charles W. Clayton

Error to Cook Circuit Court

And the said Defendant Morris
now comes and answer to the 5th Assignment of Error, to wit,
"that said Judgment was for an excessive amount and for
more than could be allowed under the warrant of attorney,"
says that said plaintiffs in error ought NOT for that cause
further prosecute said writ of Error, because he says - That
after said writ was sued out of this Court - to wit -
on 23rd April A.D. 1864 at Chicago in the said Cook County
Circuit Court, then & there sitting, in which said judgment
was rendered as aforesaid, the Defendant then & there in
open Court on Motion they leave of said Court granted
remitted and released of record the alleged amount of the
excess of said Judgment complained - to wit - the sum of twenty
five ⁶³/₁₀₀ Dollars of the damages, as by the record thereof
remaining will appear. and this he is ready to
verify whereupon he prays Judgment if the said plaintiffs
ought further prosecute ^{for} said alleged error so assigned
as aforesaid &c.

B. S. Morris for Deft.

And the said Defendant in Error further says,
that there are no such errors in the Records and
proceedings as amended, as are assigned by the
said plaintiffs in error. whereupon he prays
said Judgment may be affirmed with
costs &c.

B. S. Morris for Deft.

And the said Defendant for ^{further} reply to the

first and second assignment of errors of
 said plaintiffs, says that said judgment ought not
 to be reversed either of said alleged errors because
 he says, that satisfactory proof of the execution
 of said warrant of attorney was made to said
 court at the time of the rendering said judgment
 wherefore he prays the judgment of this court
~~and that~~ as to those alleged errors, be ~~prayed~~
 and that the judgment as to them be affirmed with
 costs &c.

B. S. Morris for Def^t
 Error

Buchanan S. Morris

adv

Lylehart & Clayton

Forced in

Error.

Filed M. 26. 1864

J. G. Lawrence

Morris for Def^t

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 Buckner S. Morris

plaintiff....., and Nicholas P. Zylchert & Charles W. Clayton

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

..... as we are informed by their complainants..... 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 Buckner S. Morris

that he 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 he 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 Buckner S. Morris

..... notice, together with this writ.

Pierceney H. Watten

Witness, The Hon. John T. Eaton, 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. R. Rice Deputy

Nicholas P. Schuchert et al
No. VS.

Benjamin S. Morris

SCIRE FACIAS.

FILED... April 23... A. D. 1864

D. C. Clark Clerk.

Served by reading this writ to the within
named Benjamen S. Morris this 5th day
of April 1864

David S. Hammond Sheriff
By John A. Nelson Deputy

Fees
1 Serus 50
ret 25
rate 10

65 Paid by Off



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 -

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre 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 twelfth day) of October in the year of our Lord One Thousand Eight Hundred and fifty nine and of the Independence of the said United States the Eighty third

Present, Honorable George Manierre Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Charles Hovan States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

As it remembered that heretofore to-wit: on the 2nd day of November A. D. ¹⁸⁵⁹ at the October Term of the Court aforesaid the following proceedings among others were had and entered of record, to-wit:

Buckner S Morris

vs.

Nicholas S Glehart

and Charles W Hayton

Defendants.

This day comes the said Plaintiff by Samuel Blackburn his Attorney and files herein his certain declaration or plea of trespass on the case upon promises and thereupon come also the said Defendants by W. G. Munroe their Attorney in fact who files herein

their Warrant of Attorney the execution of which
being duly proved and also their Cognovit confessing
the action of said plaintiff against them and
that he has sustained damages herein to the
sum of One thousand Six hundred and forty nine
Dollars and forty one Cents -

Therefore it is considered that said plaintiff
do have and recover of the said defendants
his damages of One thousand Six hundred
and forty nine Dollars and forty one Cents
in form as aforesaid Confessed together with
his Costs and Charges by him about his
Suit in this behalf Expended and have Execu-
tion therefor.

And afterwards to wit: at the April
Term of said Court. to wit: on the 23rd
day of April A D 1864. the following
proceedings were had in said Cause
and entered of record. to wit:

Buckner S. Morris }
Nicholas P. Glehart } Confession
and Charles W. Haytin }

This day Comes in
open Court the said Plaintiff in his own proper
person and on Motion and by leave of the
Court here permits the sum of twenty five
Dollars ²⁵ of the Judgment heretofore entered

against the Defendants in said Cause
and so much of his said judgment is
hereby released which is ordered to
be entered of record &c.

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 record of judgment, and an order remitting a
portion of the same in a certain cause lately pending in said Court,
on the Chancery Common Law side thereof, wherein Buckner & Morris
Nicholas P. Iglehart was plaintiff and
and Charles W. Clayton were Defendants

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court, at Chicago, this
25th day of April
A. D. 1864.



Wm L Church Clerk.

99.

Buckner S. Morris

ads.

Nicholas P. Lylehart &

Chas. W. Clayton

Amended Petition

Filed April 26. 1864.
L. Leland
Clk.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

11
Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and also 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 Manday, (being the tenth day) of October in the year of our Lord One Thousand Eight Hundred and fifty nine and of the Independence of the said United States the Eighty third.

Present, Honorable George Manierre 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 heretofore to-wit: on the second day of November A.D. 1859 to-wit: at the October term of said Court for the year aforesaid. There were filed in said Court, a certain Declaration, Cognovit, Power of Attorney and Note, in the words and figures following, viz:

Declaration.

State of Illinois Cook County
Cook Circuit Court of the April term

Reuben S Morris Complain
of Nicholas Sglehart and Charles W Clayton
in a plea of assumpsit for that whereas the

Said defendants on the 17 day of February 1859 at Chicago in said County made their certain promissory note in writing of that date and delivered the same to the said plaintiff and thereby promised to pay to the said plaintiff or order the sum of Fifty hundred and forty $\frac{35}{100}$ Dollars sixty days after date for Value recd. with interest after due at the rate of ten per cent per annum, which period of sixty days has now elapsed, and the said plaintiff avers, that although said defendants have often been requested to pay said sum of money in said note specified, since the same became due & payable, yet they have disregarded their promise and have neglected & refused to pay the same or any part thereof, to the damage of the said plaintiff of two thousand dollars and therefore he brings this suit by Simmes & Blackburn, for plff.

Cognovit.

And the said Defendants by U. E. Monroe their attorney in fact come and say that they can not deny the promise in the foregoing declaration stated but admit the same to be true as alleged and by virtue of the power and authority

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(3)

annexed to said Note. the said Defendants
by their said Attorney duly authorized for
this purpose do confess a judgment in
favour of said plaintiff against the said
defendants for the sum of Sixteen hundred
and forty nine $\frac{41}{100}$ Dollars in damages
and it is agreed no writ of Error or appeal
shall be prosecuted upon the judgment
hereof nor any bill in equity filed to interfere
with the same thereby release all errors that
may intervene in entering up judgment
in this Case, or issuing Execution on the same

N P Sglibhart & C^o Clayton
by W L Monroe their Atty
in fact

Power of Attorney Note

Chicago Ill. February 17. 1859

\$1540.35

Sixty days after date for Value
Received we promise to pay to P S Morris
or order the sum of Fifteen hundred & forty $\frac{35}{100}$
Dollars with interest after due at rate of 10
per Cent p^a annum

N P Sglibhart.

C W Clayton.

Know all men by these presents, That
whereas the subscribers N P Sglibhart and
C W Clayton are justly indebted to P S

Morris upon a certain promissory note -
 bearing even date herewith, for the sum of
 Fifteen hundred & forty dollars and thirty five
 Cents; made payable to the Said B S Morris
 or order, and due, Eighteenth of April 1859, Now
 therefore in Consideration of the premises, and of
 the sum of one dollar to us in hand paid by
 the Said B S Morris the receipt whereof is
 hereby acknowledged we do hereby make,
 constitute and appoint _____ or any attorney
 in any Court of Record to be our true and
 lawful attorney, irrevocably for us and in our
 name place and stead to appear in any Court
 of Record in term time or Vacation, in any
 of the States or Territories of the United States
 at ~~the~~ any time after the maturity hereof, to
 waive Service of process, and Confess a judg-
 -ment in favor of the Said B S Morris or his
 or their assignee or assignees upon the Said note
 for the above sum, or for as much as appears
 to be due, according to the tenor and effect of
 Said note with interest thereon, together with
 Costs; also for ten dollars usual Attorney's
 fees to be added to the Amount due on
 entering up judgment; 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 such judgment
 and to release all errors that may intervene
 in the entering up of such judgment or issuing
 the execution thereon and also to Consent
 to immediate execution upon such judgment.
 Hereby ratifying and confirming all that
 said Attorney may do by virtue hereof.
 Witness our hands and seals this seventeenth
 day of February A.D. 1859.

In presence of

N. O. Sglehart

Seal

C. M. Clayton

Seal

And thereupon afterwards, to wit: on the
 2nd day of November A.D. 1859, and at the
 term of said Court aforesaid, the following
 proceedings among others in said Court
 were had and entered of record therein
 To wit:

Rucker S. Morris

v.

Nicholas O. Sglehart

Charles M. Clayton

Confession.

This day comes the
 said Plaintiff by Samuels Blackburn his

Attorneys and files herein his certain declaration
 on a plea of trespass on the Case upon promises
 and thereupon come also the said Defendants
 by W B Monroe their Attorney in fact who
 files herein their warrant of Attorney, the
 execution of which being duly proved, and
 also their Cognovit confessing the action of
 said plaintiff against them, and that he has
 sustained damages herein to the sum of
 One thousand Six hundred and forty nine -
 dollars and forty one Cents -

Therefore it is Considered that said plaintiff
 do have and recover of the said Defendants
 his damages of One thousand, Six hundred &
 forty nine dollars and forty one Cents, in
 form as aforesaid Confessed together with his
 Costs and Charges by him about his Suit in
 this behalf expended and have Execution -
 therefor.

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 and proceedings of record _____ in a certain cause lately pending in said Court, on the Common Law side thereof, wherein Blietner & Morris was plaintiff _____ and Nicholas P. Iglehart & Charles W. Clayton were Defendants

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.

Wm L. Church Clerk.

Error - No proof of ex. of note & power -
 Act of judgt. is in error.

And now come the said Nicholas P. Iglehart and Charles W. Clayton, by Arrington & Dent ~~their~~ attorneys, and say that in the record and proceedings ^{above}, there is manifest error, in this, to wit:

1st That judgment was entered against said Iglehart and Clayton without proof of the execution of the note declared ~~on~~.

2nd That such judgment was entered without the filing of any affidavit to show the execution of the note or warrant of attorney.

3rd That the same was entered as upon confession by an attorney, in fact constituted by warrant of attorney, when such alleged warrant did not constitute or appoint such attorney in fact, or authorize him to make such confession.

4th That the warrant of attorney was not sufficient to authorize such confession. -

5th That said judgment was for an excessive amount, and for more than could be allowed under the warrant of attorney.

Wherefore, and for other errors, said Nicholas P. Iglehart and Charles W. Clayton pray that said judgment be reversed, and that they be restored to all that they have lost thereby, &c. -

Arrington & Dent,
 attys. for ppls. in error.

Buckner I. Morris

A. P. Iglehart

Filed Sept. 21. 1864
 L. Selars
 Clk.