

11814

No. _____

Supreme Court of Illinois

Hobart, et al

vs.

Iglehart

71641  7

James S. Hobart
vs
A. P. Iglehart
Appellant

237
Hobart

1858
11814

~~XXXX~~
Papers

State of Illinois }
County of Cook ss.

Pleas before the Honorable
John M. Wilson, Judge of the Cook County
Court of Common Pleas, in and for the
County of Cook and State of Illinois, at a
regular term of said Cook County Court of Com-
mon Pleas, begun and holden at the Court House
in the City of Chicago in said County and State,
on the Second Monday, being the Fourteenth
day of September in the year of our Lord
One Thousand Eight Hundred and fifty
seven, and of the Independence of the
United States of America the Eighty second.

Present the Honorable John M. Wilson Judge

Carlos Haven Prob. Atty

John L. Wilson Sheriff

Walter Kimball Clerk

Attest

Be It Remembered, that heretofore, to wit,
on the Seventeenth day of May A.D. Eighteen
Hundred and fifty six, James T. Hobart and
Francis Richardson, Aaron S. Bowen and
David A. Enyard for the use of Alexander
Ingram, by A. S. Helm their Attorney filed

in the office of the Clerk of the Cook County Court of Common Pleas. their Receipt for Summons and Security for Costs in the wordsaid requires following, to wit.

Cook County Court of Common Pleas
June Term 1856

James T. St bart & Francis Richardson. Aaron S. Bowen & David A. Euyant for the use of Alexander Ingrant	} Debt \$ 1667.86
Nicholas P. Sglehart	

The Clerk will please issue a summons in the above cause returnable to the June Term of said Court and oblige

Yours ob. A. T. Helin
Plffs atty

I do hereby enter myself security for Cost in the above cause and acknowledge myself bound to pay, or cause to be paid all costs which may accrue in the action either to the opposite party or to any of the officers of the Court, in pursuance of the laws of this State.

Dated this 17th day of May 1856
A. T. Helin

And afterwards, to wit, on the same day and year last aforesaid, there issued out of the office of the Clerk aforesaid, the People's writ of Summons, which said writ and the Sheriff's Return thereon endorsed are in the words and figures following, to wit,

State of Illinois }
County of Cook } ss.

The People of the State of Illinois, To the Coroner and Acting Sheriff of said County: - Greeting:

We command you, that you summon Nicholas P. Iglehart if he shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County on the first Monday of June next, to answer unto James T. Hobart, Francis Richardson, Aaron S. Bowen and David A. Engant for the use of Alexander Ingram, in a plea of that he render unto the said plaintiffs, the sum of Sixteen Hundred and sixty seven Dollars, and Eighty six cents Debt, which he owes to and detains from said plaintiffs, to the damage of the said plaintiffs as they say in the sum of One Thousand Dollars.

And have you then and there this writ, with
and endorsement thereon in what manner you
shall have executed the same.

Seal

Witness, Walter Kimball clerk of
our said Court and the seal thereof at the
City of Chicago in said County this 17th
day of May A.D. 1856.

Walter Kimball Clerk

Endorsed

Served by reading to the within named
Nicholas P. Squire this 17th day of May
1856, James T. Beach coronor
and acting Sheriff
By John A. Darg Deputy.

And afterwards, to wit, on the Twenty third
day of May in the year last aforesaid, the
said plaintiffs by their said Attorney filed in
the office of the Clerk of said Court, their Decla-
ration in the words and figures as follows, to wit,

Declaration -
Print all of declar-
ation

Cook County Court of Common Pleas
June Term A.D. 1856

State of Illinois }
Cook County ss.

James T. Hobart and Francis
Richardson partners under the firm name of
Hobart and Richardson, and Aaron S. Bowen

and David A. Euyart partners of the firm of
Bowen & Co. the plaintiffs in this suit. (who sue for
the use of Alexander Ingram) by Henry T.
Helm their attorney, complain of Nicholas P.
Sglehart, defendant in this suit, of a plea that
he render to the said plaintiffs the sum of
Sixteen Hundred and sixty seven Dollars
and Eighty six cents, which the said defendant
owns to and unjustly detains from the said
plaintiffs: For that whereas the said plaintiffs
heretofore, to wit; on the fourteenth day of Novem-
ber in the year Eighteen Hundred and forty
nine in the October Term of the Commercial
Court of Cincinnati, held at the Court House
in Cincinnati in the County of Hamilton and
State of Ohio, before the Honorable Thomas M.
Key the Judge of said Court, by the consideration
and judgment of said Court, recovered against
the said defendant, and one John S. Sglehart,
now deceased, and whom the said defendant
has survived, the said sum of money above
demanded, which in and by the said Court
was then and there adjudged to the said plain-
tiffs for their damages, which they had sus-
tained, as well by reason of the nonperformance
of the said defendant and the said John S.
Sglehart, deceased, of certain promises and under-
takings then lawfully made by the said defendant
and the said John S. Sglehart deceased to the said,

6
plaintiffs, as for their costs and charges by them
in and about their said suit in that behalf
expended. whereof the said defendants and the said
John S. Splehart were convicted, as by the Record
and proceedings thereof in the said Court more
fully appears. which said judgment remains
in full force and effect, not reversed or satisfied
or otherwise vacated: and the said plaintiffs have
not had or obtained any satisfaction of or upon
the said judgment recorded as aforesaid. Whereby
an action has accrued to the said plaintiffs
to demand and have of and from the said
defendant, the said sum of money above de-
manded.

And whereas also the said plaintiffs
heretofore, to wit, on the fourteenth day of Novem-
ber in the year Eighteen Hundred and forty
nine, in the October Term of the Commercial
Court of Cincinnati held at the Court House
in Cincinnati in the County of Hamilton and
State of Ohio, before the Honorable Thomas M.
Key the judge of said Court by the consideration
and judgment of said Court, recovered against
the said defendant and one John S. Splehart
now deceased, and whom the said defendant
has survived, for the use of one Lucy D. Barrett
the said sum of money above demanded, which
in and by the said Court was then and there
adjudged to the said plaintiffs for their damages

which they had sustained as well by reason of
the nonperformance by the said defendants and the
said John S. Sglehart deceased, of certain promises
and undertakings then lately made by the said
defendants and the said John S. Sglehart de-
ceased to the said plaintiffs as for their costs
and charges by them in and about their suit
in that behalf expended. Whereof the said defend-
ant and the said John S. Sglehart were convict-
ed as by the record and proceedings thereof
in the said Court more fully appears. Which
said last mentioned judgment remains in full
force and effect, not reversed, satisfied or other-
wise vacated: and the said plaintiffs have not
had or obtained any satisfaction of or upon the
said last mentioned judgment recovered as afove-
said. And afterwards, to wit, on the day and
year last aforesaid, the said Lucy D. Barrett
for whose use and benefit the said last mentioned
judgment, was obtained, assigned, transferred and
set over, by a certain indenture in writing, signed
by her hand and sealed with her seal, all her right,
title and interest in and to the said last mentioned
judgment to the said Alexander Ingraham for
whose use the plaintiffs in this action sue.
Whereby an action has accrued to the said plaint-
iffs to demand and have of and from the said
defendants, for the use and benefit of the said
Alexander Ingraham, the said sum of money

above demanded.

Nevertheless the said defendant
(although often requested so to do) has not yet (nor
has the said John S. Squire) paid the said several
sums of money above demanded or any or either
of them or any part thereof to the said plaintiffs
but has hitherto neglected and refused, and still
neglects and refuses so to do, to the damage of
the said plaintiffs of One Thousand Dollars,
and therefore they bring their suit &c.

A. J. Selwin

Plff. atty.

omit this

And afterwards, to wit, on the Third day of
June in the year last aforesaid, the said Nicholas
P. Squire by Arnold, Larned & Lacy his attorney
filed in the office of the Clerk of said Court, his
Plea in the words and figures following, to wit,

Pleas

Print

Cook County Court of Common Pleas

Nicholas P. Squire

vs

James T. Hobart & Francis Richardson
& Aaron S. Bowen & David A. Ingraham
(who sue for use of Alexander Ingraham)

And the said
Nicholas P. Squire defendant in this suit, by
Arnold, Larned and Lacy his attorney comes and

defends the wrong and injury whereof, and says that there is not any record of the said supposed recovery in the said declaration mentioned, remaining in the Commercial Court of Cincinnati, in manner and form as the said plaintiff hath avowed in his said declaration alleged.

And of this he puts himself upon the Country etc.

Arnold Larned & Say

Atty for Def^t.

And the said defendant for a further plea in this behalf, by leave etc. of the Court here first had and obtained, says actio non, because he says that after the recovery of the said judgment, and before the commencement of this suit, to wit, on the first day of January A.D. 1856, at Cincinnati, to wit, at Chicago, he the said defendant paid and satisfied to the said James T. Hobart & Francis Richardson and Aaron S. Bowen & David A. Englund, then being the owners of said judgment the said sum of Sixteen Hundred and Sixty Seven Dollars and Eighty six cents, in form aforesaid recovered, and this he is ready to verify. Wherefore he prays judgment etc.

Arnold Larned & Say

Atty for Def^t

omit

And the said defendant for a further plea in this behalf by leave etc. first had and obtained, says actio non, because he says that the said several

supposed causes of action, in the said declaration mentioned, and each and every of them accrued, beyond the limits of the State of Illinois, to wit, in the State of Ohio, and that said several supposed causes of action in the said declaration mentioned did not nor did any or either of them accrue to them the said plaintiffs at any time within five years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against him the said defendant. And this he is ready to verify. Wherefore he prays judgment &c.

Arnold Larned and Lay
Atty's for Def't

omit Cook County Court of Common Pleas

James T. Hobart & Francis Richardson & Aaron S. Bowen and David W. Eighart (who sue for use of Alexander Ingram)

vs
Nicholas P. Sglehart

} State of Illinois
Cook County Ill.
Nicholas P. Sglehart

Sglehart being duly sworn deposes and says, that he is defendant in above suit, that he believes he has a good and substantial defence upon the merits in the above entitled cause, and further saith not.

N. P. Sglehart

Subscribed & sworn to this 3rd day of June A.D. 1856 before me

W. Kimbrell clk

omit

And afterwards, to wit, on the Ninth day of July in the year last aforesaid, the said plaintiffs by their said Attorney, filed in the office of the Clerk of said Court their Replication and Demurrer in the words and figures following to wit.

omit this

Boots County Court of Common Pleas
July Term Ad. 1856
James T. Hobart & Francis
Richardson, Aaron S. Bowen
and David A. Engard for the
use of Alexander Ingram
vs
Nicholas P. Sgleharb

And the said plaintiffs as to the said plea of the said defendant by him firstly above pleaded, say that the said plaintiffs by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because the plaintiffs say that there is such record of the said recovery remaining in the said Court as the said plaintiffs have above in their said declaration in that behalf alleged, and this the said plaintiffs are ready to verify by the said record when where and in such manner as the Court here shall direct and award, and they pray that the

said record may be seen and inspected by the
Court here.

H. S. Helms

Plffs atty

Print this

And the said plaintiffs as to the said plea of
the said defendant by him secondly above pleaded,
say that the said plaintiffs by reason of anything
by the said defendant in that plea alleged, ought
not to be barred from having or maintaining
their aforesaid action thereof against the said
defendant, because they say that the said defen-
dant did not satisfy and pay to the said
Hobart, the said Richardson, the said Bowen
and the said Cuyart or any or either of them the
said sum of Sixteen Hundred and Sixty Seven
Dollars and Eighty Six Cents in manner and
form as the said defendant has above in his
said plea in that behalf alleged. Without this
that the said Hobart, Richardson, Bowen and
Cuyart or any or either at the time mentioned
in the said plea of the said defendant, were
the owners of said judgment in the said declar-
ation of the said plaintiff mentioned, and this
the said plaintiffs pray may be enquired of
by the Country &c.

H. S. Helms

Plffs atty.

And the said defendant doth the like etc

Arnold Larued & Jay
for Def

omit

And the said plaintiffs as to the said plea of the said defendant by him thrice above pleaded say that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude the said plaintiffs from having or maintaining their aforesaid action thereof against the said defendant, and that the said plaintiffs are not bound by law to answer the same, and this the said plaintiffs are ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiffs pray judgment, and their debt aforesaid together with their damages by them sustained on account of the detention thereof, to be adjudged to them &c.

As T. Nelson

Plffs Atty

And the said defendant comes and joins a demurrer and says the said plea is sufficient &c

Arnold Larned Edsall
Atty

omit

And afterwards to wit, on the Twenty fifth day of April A.D. Eighteen Hundred and fifty seven. Said day being one of the days of the April Term of said Cook County Court of Common Pleas, the following among other proceedings was had in said court and entered of

Record. to mit.

James T. Hobart et al. for
use of Alexander Ingram

vs
Nicholas P. Sgubans

Debt;

And now come the
said plaintiffs by H. T. Helm their Attorney,
and the said defendant by Arnold Larned and
Lay his Attorneys also come. And on argument
of the Demurrer of the plaintiffs, to defendants
third plea heretofore filed herein the Court,
being now fully advised in the premises, it is
ordered that plaintiffs said Demurrer be sustained

And afterwards, to mit. on the Twentythird
day of September in the year last aforesaid the
said plaintiffs by their said Attorney filed
in the office of the Clerk of said Court a
Transcript of Record in the words and figures
following, to mit.

Print this to
(*) (this mark)

Pleas at the Court House
in Cincinnati in the County of Hamilton and
State of Ohio, of the Commercial Court of Cin-
cinnati, at the January Term thereof in the
year of our Lord one thousand eight hundred
and fifty, begun and held on Monday the

Seventh day of January in the year aforesaid
before the Honorable Thomas M. Key, Judge
of said Court,

James T. Hobart & Francis Richardson
partners under the name of Hobart & Richardson,
and Aaron S. Bowen & David
A. Emyant partners under the name of
Bowen & Co. for the use of Lucy D. Barnett

No 1686

vs

Nicholas P. Sglehart and John S.
Sglehart partners under the name of
Sglehart Brothers & Co.

In a plea of
Assumpsit,

Be it Remembered that, heretofore, that is to say
on the Twenty ninth day of January in the
year of our Lord Eighteen Hundred and forty
nine came the said James T. Hobart, and
Francis Richardson, partners under the name of
Hobart & Richardson, and Aaron S. Bowen
& David A. Emyant partners under the name of
Bowen & Co. for the use of Lucy D. Barnett by
Messrs Morris & Rainden their Attorneys, and
sued out of the Commercial Court of Cincinnati
then in session at the January term thereof
in the year aforesaid before the Honorable Thomas
M. Key Judge thereof a certain writ of Summons
against the said Nicholas P. Sglehart and
John S. Sglehart, partners under the name of
Sglehart, Brothers & Co. in a plea of Assumpsit.

returnable forthwith, which writ together with the endorsement, is in the words and figures following to wit,

Summons

The State of Ohio }
Hamilton County } ss. To Joseph Cooper Esqr
Sheriff of our said County - Greeting;

You are hereby Commaunded to summon Nicholas P. Sglehart and John S. Sglehart, partners under the name of Sglehart Brothers Co, if they shall be found in your bailiwick, to be and appear before the Honorable Thomas M. Key Judge of the Commercial Court of Cincinnati in and for said County, forthwith to answer unto James T. Hobart and Francis Richardson partners under the name of Hobart Richardson, and Aaron S. Bowen and David A. Engant partners under the name of Bowen Co, for the use of Lucy D. Barrett in an action of Assumpsit, to the damage of the said plaintiffs, Ten Thousand Dollars, as is said, and have you then and there this writ.

Seal of the
Commercial
Court of Cin-
cinnati

In Witness Whereof I have here unto set my hand and affixed the seal of the said Court at Cincinnati this 29th day of January A.D. 1849, Edward P. Branch Clerk of the Commercial Court of Cincinnati
By C. Page Deputy.

Summons in apud for goods sold and delivered
id. money, lease, work done &c. amounting to the
sum of \$8250.00. amount due \$2345.00
Dams \$10000

p. 9
And afterwards. to wit. on the Twenty seventh
day of February in the year last aforesaid,
during the term last aforesaid of said court
the said writ was returned to the court aforesaid
by the said Sheriff endorsed as follows,
to wit.

Return. 1849 Feby 8. Served Nicholas P. Iglehart
by copy personally and John S. Iglehart by
copy left at residence.

Jas. Cooper Shff
C. T. Carson Dpty.

And afterwards. during the term last aforesaid
of said court this cause was continued
till the next term thereof. And afterwards
to wit. on the Twenty seventh day of February
in the year last aforesaid came the plaintiffs
by their said attorneys. and filed in the Clerk's
office of said court. their declaration against
the defendants in the words and figures
following. to wit.

18
Declw.

The State of Ohio Hamilton County
The Commercial Court of Cincinnati of
January Term A.D. 1849.
Hamilton County, sc;

James T. Hobart
and Francis Richardson late partners under
the name of Hobart & Richardson and Aaron
S. Bowen. and David A. Engart, late part-
ners under the name of Bowen & Co. complain
of Nicholas P. Sglibart and John S. Sglibart
partners under the name of Sglibart Brothers
& Co. in a plea of Assumpsit. For that the said
Defendants heretofore, to-wit, on the first day of
January 1849 at the said County were indebted
to the said plaintiffs in the sum Eight Thousand
two hundred and fifty dollars for goods
sold and delivered by the plaintiffs to the def-
endants at their request. and in the like sum
for work done and materials furnished
by the said plaintiffs to and for the defendants
at their request. and in the like sum for
money lent to the defendants at their request
by the plaintiffs. And in the like sum for
money had and received by the defendants
to the plaintiffs use. And in the like sum
for money paid by the plaintiffs for the defend-
ants at their request. And being so indebted
the said defendants afterwards, to-wit, on the
day and year and at the County aforesaid.

in consideration thereof promised to pay the said several sums of money above specified when thereto requested.

Yet the said defendants although often so requested have not paid the several sums of money or either or any part thereof, but so to do have hitherto wholly refused and still refuse to the plaintiffs damage Ten Thousand Dollars, and they sue &c.

Morris & Raisden

Attys for plff

And the ~~xxx~~ defendants were ruled to plead to the said declaration by the Twelfth day of March in the year last aforesaid of Eighteen Hundred and forty nine.

And afterwards, to wit, on the Twelfth day of March in the year last aforesaid came the defendants by Messrs Spencer & Corwin their Attorneys and filed in the said Clerk's office their plea to the said declaration in the words and figures following, to wit.

Plea

Nicholas P. Iglehart et al } Commercial Court
ad } of Cincinnati

Hobart & Richardson } January Term 1849

And the said defendants by Spencer & Corwin come and deny the wrong and injury whereto and say that they did not undertake and promise in manner and form as said plaintiffs have declared against them, and

this he prays may be enjoined of by the Country
and the plaintiffs do the like,

Spencer Corwin atty
And afterwards to wit, at the April term in
the year last aforesaid of the said Court held be-
fore the judge aforesaid, this cause was contin-
ued till next term,

And afterwards, to wit, at the July Term in the
year last aforesaid of the said Court, this cause
was continued

And afterwards, to wit, on the fourteenth day
of November in the year Eighteen Hundred
and forty nine; during the October term in
the same year of the said Court, held before the
judge aforesaid, came the parties, and there
also came a jury, to wit, James Chambers
Garret Vanaustral, Charles Sargent, Nicholas
Schoonmaker, Sylvester Fries, John A. Davis,
Lewis Coriell, John Greiner, John Thompson,
John B. Brown, Tunis Brewer, David L. Rusk,
who being duly empanneled and sworn to try
the issue joined, retired under the instructions
of the Court, return their verdict, and say,
We the jury find the issue joined for the
plaintiffs, and assess their damages at (\$1654.³³)
Sixteen Hundred and fifty four Dollars and
thirty three Cents, and the Court assess the
jury fee at Six Dollars,

Judge

Therefore it is considered

that the plaintiffs recover of the defendants
their said Damages, and their costs herein
expended, taxed at Thirteen ⁰³/₁₀₀ Dollars,

Defendants Costs Four ⁰³/₁₀₀ Dollars,

And afterwards, to wit, on the thirty first day
of December in the year last aforesaid, during
the term last aforesaid of said Court, on mo-
tion of defendants, leave is given to enter a
motion to set aside said judgment, and for
a new trial, which motion is entered, and is
ordered by the Court to stand continued,

And afterwards, to wit, on the Twenty ninth
day of March in the year of Our Lord Eight
een Hundred and fifty, during the January
Term in the same year, of the said Court
held before the Hon. Thomas M. Key, Judge
thereof this cause came on to be heard on the
defendants motion continued from the last
term to set aside said judgment rendered at
the last term of this Court, and the Court
overrule said motion.

Damages \$1654.33

Costs 17.56

Set from 1st Oct. 1849

Costs on Ex^{pt} 2.50

And afterwards, to wit, on the first day of De-
cember in the year Eighteen Hundred and forty
nine, a writ of Fi. fa. et lev. fa. No. 149, to
January Term 1850. issued out of the Clerk's

*
omit

21814-47

25

office of the Court aforesaid, directed to the Sheriff
of the County of Hamilton aforesaid, in the said
cause, which said writ was afterwards, to wit,
on the Seventh day of January in the year
Eighteen Hundred and fifty in the term of
January, returned by the said Sheriff into
the office of the Clerk aforesaid, endorsed as
follows, to wit: "No goods or chattels lands or
tenements found." Jas. Cooper Shff
Shff fees 75. By E. T. Carson Deputy.

And afterwards, to wit, on the twenty fifth day
of April in the year last aforesaid in the term
of January of said Court, a writ of Alias
Fi fa. et lev. fa. issued out of the office of
said Clerk No 272, to May term in the same
year, ^{of said Court} directed to the Sheriff aforesaid, which
said alias writ, was afterwards, to wit, on
the 20th day of May in the year aforesaid in
the term of May of said Court, returned into
the said Clerk's office, by the said Sheriff
endorsed as follows, to wit: "No Goods or
Lands"

Jas Cooper Shff.
By E. T. Carson Deputy
Shff fees 75.

The State of Ohio }
Hamilton County ss. J. Edward P. Branch
Clerk of the Commercial Court of Cincinnati
in and for said County, do hereby Certify

that the foregoing is a true transcript of the
Record of the judgment and proceedings of
the said court in the above mentioned cases.

Seal

Witness my hand and the
Seal of said court this 2nd day
of September A.D. 1852

E. P. Branch

clerk court, court of Cinti.

The State of Ohio }
Hamilton County ss.

I, Thomas M. Key, judge
of the Commercial court of Cincinnati in
and for said County do hereby certify that
Edward P. Branch, whose name is sub-
scribed to the foregoing certificate, was on the
day of the date thereof, the clerk of said court
and that his attestation above written is in
due form of law.

Given under my hand
and seal this 2nd day of
September A.D. 1852

Thomas M. Key Seal
Judge of the Commercial court of
Cincinnati.

The State of Ohio
Hamilton County Oct. The Court of Common Pleas

I Thomas Spooner Clerk
of the Court of Common Pleas, within and
for said County and State, do certify that
the foregoing transcript is a full and true
copy of the Record of the proceedings and
judgments of the Commercial Court of Cin-
cinnati, late a Court of Law and of Record in
and for said County, in the case of James
T. Hobart, and Francis Richardson, partners
under the name of Hobart Richardson, and
Aaron S. Bowen and David Henry partners
under the name of Bowen & Co, for the
use of Lucy A. Barrett plaintiffs, against
Nicholas P. Sglehard and John S. Sglehard
partners under the name of Sglehard Brothers
& Co, as appears from the Records and file of
said Court in my office remaining, by
virtue of the Constitution and laws of the State
of Ohio.

I further certify that the clause of the
Constitution and the act of the General Assem-
bly of the State of Ohio, by virtue of which the
said file and Records were transferred to
my office and custody and so remain,
are as appears from a printed copy thereof
in my possession in the words and figures
following, to wit

"Section 2" of "Schedule" of the "Constitution of the State of Ohio" - The Superior and Commercial Courts of Cincinnati, and the Superior Court of Cleveland shall remain until otherwise provided by law, with their present powers and jurisdiction, and the Judges and Clerks of said Courts in office on the first day of September One Thousand Eight Hundred and fifty one, shall continue in office until the expiration of the terms of office, respectively or until otherwise provided by law, but neither of said Courts shall continue after the second Monday of February One Thousand Eight Hundred and fifty three, and no suit shall be commenced in said two first mentioned Courts, after the second Monday in August one thousand Eight Hundred and fifty two: and all business in either of said Courts not disposed of within the time limited for their continuance as aforesaid shall be transferred to the Court of Common Pleas"

"Section 9" This Constitution shall take effect on the first day of September One Thousand Eight Hundred and fifty one.
An Act to regulate the Superior & Commercial Courts of Cincinnati,

Sec 1. Be it enacted by the General Assembly of the State of Ohio, that whenever

the office of Judge of the Superior or Commercial Court of Cincinnati shall become vacant by death - resignation or otherwise, such vacancy shall not be filled, but the Court shall at once cease and determine, and all business thereof, not then disposed of shall be transferred to the Court of Common Pleas of Hamilton County, and the Clerk of the said Court of Common Pleas, shall take charge of the Dockets, Journals, Records, original files and all other property and papers of said Superior and Commercial Courts; and all proceedings, causes, orders, judgments, decrees and matters theretofore pending, entered, and had in the said Superior and Commercial Courts shall stand, be proceeded on, and prosecuted in all respects, to final determination as though the same had been originally commenced in the Court of Common Pleas.

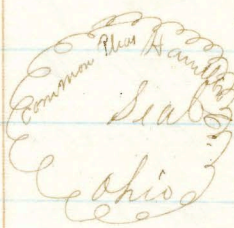
James C. Johnson
Speaker of the House of Representatives

William Medill President of the Senate,
April 24th 1852.

Witness my hand and the
Seal of said Court of Common
Pleas at Cincinnati Ohio this 30th
day of April A.D. 1852

And I do hereby further certify that on the
Second day of September A.D. 1852. The said

Commercial Court of Cincinnati was in
Existence as a Court of Law and Record
and that Thomas M. Key was sole Judge
thereof, and Edward P. Branch Clerk thereof
at the time of subscribing the certificates to
said Record appended, of that date as appears
from the Records of said Court in my office
remaining.



Witness my hand and the seal of
said Court of Common Pleas, at
Cincinnati this 30th day of April
A.D. 1857

Thos Spooner
Clerk Court Common Pleas
Hamilton County Ohio.

The State of Ohio }
Hamilton County } Ct.

J. Alfred G. M. Carter Presid-
ing Judge of the Court of Common Pleas in and
for said County and State, do hereby certify
that Thomas Spooner, whose name is signed
to the foregoing certificate, was at the time
of signing the same the Clerk of said Court,
and that his said attestation is in due form
of law, and by the proper officer,

Witness my hand at Cincinnati
Ohio, this first day of May 1857
A. G. M. Carter, Presiding
Judge of the Court of Common Pleas, Hamilton
County, Ohio.

And afterwards to wit, on the Twenty third day of September in the year last aforesaid said day being one of the days of the September Term of said Court County Court of Common Pleas the following among other proceedings was had in said Court and entered of Record to wit.

James T. Hobart et al
vs
Alexander Ingraham }
vs
Nicholas P. Squire } Deft

Print this

And now at this day come the said plaintiffs by H. T. Helmer their Attorney, and the said defendant by Arnold Larned & Lay his attorneys also comes, and upon agreement of parties the trial of this cause was submitted to the Court, without the intervention of a jury, and the Court having heard the proofs and allegations submitted, and being fully advised now finds the said defendant to owe and be indebted to said plaintiffs in the sum of One Thousand Six Hundred and Sixty seven dollars and eighty six cents debt, and assesses the damages herein to the sum of Nine Hundred and twenty four Dollars and ninety five cents.

Therefore it is considered that said

for the use of Alexander Ingram as aforesaid
plaintiffs, do have and recover of said defend-
ant their debt of One Thousand Six Hundred
and sixty seven Dollars and Eighty six cents
and also their damages of Nine Hundred
and twenty four Dollars and ninety five
cents in form, so as aforesaid by the Court
here assessed, as also their costs and charges in
this behalf expended, and have execution there-
for

And afterwards to wit, on the Twenty Eighth
day of September in the year last aforesaid
said day being also one of the days of the Sep-
tember of said Court, the following among
other proceedings was had in said Court
and entered of Record to wit,

James T. Hobart + Francis
Richardson, Aaron S. Bowen
+ David A. Emery for the
use of Alexander Ingram
vs
Nicholas P. Squire } Debt

And now at this day
again come the parties to this case by their
attorneys, as aforesaid, and the said defend-
ant submits to the Court his motion for a
new trial herein, and after argument had
thereon, and being fully advised, the Court

oversules said motion. Whereupon the defendant enters his Exceptions to such ruling by the Court, and prays an appeal to the Supreme Court of the State of Illinois, which is allowed on filing Bond in the sum of Three Thousand Dollars, to be approved by the Judge of this Court, the Bond and Bill of Exceptions to be filed in thirty days,

End


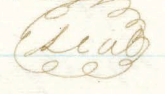
And afterwards, to wit, on the Twenty sixth day of October in the year last aforesaid, the said defendant filed in the office of the Clerk of said Court, his Appeal Bond in the words and figures following, to wit,

Know all men by these presents, That we Nicholas P. Squire and Charles W. Clayton of the County of Cook and State of Illinois are held and firmly bound unto James T. Robert and Francis Richardson, and Aaron D. Bowen and David A. Englehart for the use of Alexander Ingram in the penal sum of Five Thousand Dollars, for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 24th day of October A.D. 1857.

The condition of the above

Obligation is such, That whereas the said
Hobart, Richardson, Bowen & Englehart
for the use of Alex. Ingram, did on the Twenty
third (23rd) day of September, of September term
of Brook County Court of Common Pleas, recover
a judgment against the above bounden
Nicholas P. Sglehart, for the Sum of One,
Thousand Six Hundred and Sixty seven
86/100 Dollars, Dcts. and Nine Hundred and
twenty four 95/100 Dols. Damages, and costs,
from which said judgment of the said Common
Pleas, the said Nicholas P. Sglehart has prayed
for and obtained an appeal, to the Supreme
Court of said State.

Now if the said Sglehart shall duly prosecute
his said appeal with effect and shall moreover
pay the amount of the judgment, costs interest
and damages, rendered and to be rendered
against him, in case the said judgment shall
be affirmed in the said Supreme Court, then
the above obligation to be void, otherwise to re-
main in full force and virtue

N. P. Sglehart 
C. H. Clayton 

Approved
John M. Wilson
Judge C.

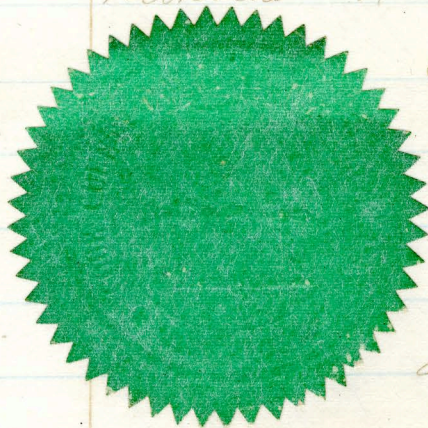
State of Illinois
County of Cook Ill.

J. Walter Kimball,

Clerk of the Cook County Court of Common
Pleas, within and for said County, do hereby
certify that the foregoing is a full and
true transcript of the papers on file in my
office and the proceedings entered of Record
in said Court, in the case wherein James
T. Hobart, & Francis Richardson, Aaron S.
Bowen and David A. Euyart, for the use of
Alexander Ingram, are plaintiffs and
Nicholas P. Sgllhart, Defendants.

In Testimony Whereof I hereunto
subscribe my name and affix
the Seal of said Court at the City
of Chicago in said County this
23rd day of March A.D. 1858

Walter Kimball Clerk



Supreme Court, April Term, Ad. 1858.
Nicholas P. Iglehart, Appellant }
James T. Hobart, ^{vs.} Appellees }

Assignment of Errors

And now comes the said appellant, by Arnold, Larned & Day, his Attorney, and says that in the record and proceedings and the judgment rendered there is manifest error, and that the judgment should have been for the appellant.

And the said appellant comes and assigns the following special causes of error:

First. The court erred in rendering a judgment for the appellees, whereas the verdict should have been for appellant.

Second. The court erred in admitting in evidence the judgment record offered and produced in evidence, for that there was a fatal variance between the judgment record produced and read in evidence, and the record declared on in declaration.

Third. For that the judgment record produced and read in evidence was not the judgment record sued on and declared upon. Arnold, Larned & Day, for Appellant.

Supreme Court

Nicholas P. Dylekar
vs. Dept in error

In Error,

James W. Hobart, & Francis Richardson
Aaron J. Borwick & David A. Engvall
who are for me of Alexander Ingram
Opp for error

It is stipulated and agreed that
the copy of judgment record introduced in the above
entitled case & included in and set forth in the record
herein filed is the judgment record which was offered in
evidence to support the issues in the above case & is the only
evidence which was offered to sustain the same & that the
said record shall have the same effect to all intents
and purposes as if the said judgment record had
been set forth in a bill of exceptions & accepted to.

and it shall have the same effect as tho, as tho, a Bill of
Exceptions had been duly filed. Showing that said
Record, was objected on grounds of
variance & objection (which I believe
were & have been taken -
Chicago April 12, 1858

Pls Atty

Wm. H. Amelthay

Atty for Dylekar

Cook Co. Ct. of Com. Pleas

237

James I. Hobart et al

vs

A. P. Squire

13 53
165433
<u>6</u>
73 86

165433
<u>6</u>
13 53
166720

Transcript
 as per opinion
 filed April 22 1879
 In testimony
 whereof

James I. Hobart

1879

Supreme Court
 Northern District
 Nicholas P. Ogden } det. on judgment
 v.
 Stuart. Richardson } Appellants Reply.
 v. v.

The ground relied on by the appellee, to
 escape the variance is that the Defendants
 costs form no part of the judgment - declared
 on. It matters not whether they did or
 not - for if they do form a part of the
 judgment - which was offered by them
 in support of their Declaration - the
 variance need be the same.

The question is not ^{whether} ~~what~~ they have
 declared for ~~the~~ all the costs but whether
 the judgment ^{Rec'd} pronounced to support their
 Declaration does not contain more
 costs than they have declared for. Suppose
 they had declared for the det. alone & no
damages. The Rec'd would have accompan-
 ied to the Declaration so far as it
 went - but the variance need have
 been the same.

The Only question is - ^{Sp.} ~~the~~ ~~are~~
 Defs costs - from a part of the
 damages for which the judgment
 was given. If they do then

The Judgement declared on & the one offered in evidence are variant, for - the one declared on makes the amount of debt & damages at. \$ 1667.86 - while the one offered in evidence makes it \$1671.89.

The Plaintiff debts in sum have arrived at the ~~first~~ ^{last} named sum by adding the damages & plaintiffs costs. - The amount at the ~~last~~ ^{first} named sum by adding the damages & all the costs ^{included} ~~included~~ in the judgement record.

The fact that the Defendants cuts are expressly embodied in the judgement Record shows that they were intended to form a part of the judgement.

The Language of the Record is that the plaintiffs "received their said damages & their costs herein expended. taxed at \$13.53 - Defendants \$4.03." - or in other words that they received their damages & also the costs of suit which cuts are as follows Plaintiffs Costs. 13.53 Defendants costs. \$4.03

This is further evidenced
 by the statement of the amount
 of the judgment & costs summed
 up in figures at the end of the
 Record. By this it appears that
 the costs intended to be assigned to
 the plaintiff were - \$17.56 -

Unquestionably ^{Execution} ~~Execution~~ ^{with judgment} issued for
 the sum of \$1654³¹ damages &
 17⁵⁶ ^{cents} on this judgment - & of so
 shined not a declaration undertaking
 to set forth ^{& declare for} the sum of debt & costs
in one amount has given the
sum total of these two amounts
 as 1671.89 - & not 1664.86

E. C. Lane
 for Plaintiff

The Bill of Exceptions in this case is
 waived by stipulation on file.

E. C.

Septen Court
 Andrew Decker
 237
 N. P. Spohard
 21
 Hobson Richardson

Appellants
 Reply to Defts
 Answer
 Filed April 30, 1858
 Subscribed
 E. C. Lane

E. C. Lane

Supreme Court

Nicholas P. Eglehart
vs, Appellant

James J. Hebart et al
who are for us of Alexander Ingram
Appellees

Error to Cook County Court of Common Pleas

Brief of appellants.

This is an action of Debt on a Judgment Record. Plea found the Record and was tried by agreement before the judge without the intervention of a jury.

On the trial of course the appellees introduced in evidence and to prove their case a judgment Record to the introduction of which the appellant objected on ground of variance between judgment Record introduced and offered in evidence and the judgment as declared on and set forth in Plaintiffs Declaration. The Court overruled objection and admitted same in evidence to which Defendants below excepted.

The variance is as follows.

Judgment Record shows judgment for	\$1654.33. Dms
Jury fee -	6.00.
Peffs costs.	13.53.
Defts costs	4.03
Costs execution -	2.50
	<u>\$1677.89</u>

Declaration declares on judgment for \$1667.86 for plaintiffs damages as for costs & charges about suit in that behalf expended.

The Court will perceive that the three items of jury fee \$6.00. Defts costs \$4.03 and costs on execution \$2.50 are not included in declaration.

The court held that the variance is fatal and the following authorities are cited.

If a party mistakes even a small sum in setting forth a judgment, the variance is fatal upon a plea of

mul. lib. Record.

2 Root 90 (2 U.S. Digest Page 150).

Variances between the record declared on and the one produced is fatal.

Breeze Page 58, Page 87.

Variance of six cents fatal - 4 Wendell 207

2 Strange 1171

1 Chittys Pleadings 371

Thompson v. Jamison 1 Cranch 282 + notes there.

In an action of debt on judgment, Declaration sets forth a judgment for \$125 + \$10 costs & the judgment set forth on record was for \$125 and costs generally. Variance fatal.

12 Mississippi 484.

A declaration on judgment for \$1200 debt and \$248 damages as well by reason of detention of debt as for his costs is not supported by a judgment for \$1200 debt and \$248 damages and for costs.

9 Mississippi 742.

In an action of debt on judgment when declaration alleges recovery of a sum certain for costs in former writ & the original judgment is left blank as to costs. Variance fatal.

4 U.S. Digest Debt Page 517.

A declaration on judgment for \$834.41 damages and costs is not supported by judgment for \$834.41 damages besides costs.

8 U.S. Digest Page 91.

It will be perceived on reference to above cases that it is necessary to describe judgment accurately and as it is setting forth the costs whether plaintiff or Defendant and the recovery. The \$6.00 fine for and \$2.50 costs on execution certainly formed a part and portion of the costs of plaintiff and of judgment

and so appears on record and deemed have
been declared upon. The Defendants costs also
found a part of judgment and should have been
included in Declaration. The declaration does
not describe the judgment set forth in Record but
is entirely different.

It is submitted that the variance is fatal and that
the judgment below should be reversed.

Amos L. Linn
Judge

237

Supreme Court

N.P. Iglehart

vs. Appellant

James J. Hobart et al
vs. the pro se defendant
Appellee

Brief

Filed April 30, 1858
S. Leland
clerk

Supreme Court of Illinois-

Nicholas P. Zehant
 vs
 Lucy D. Barnett for use &c

vs
 James J. Hobart for use &c

In both of the above causes judgment was rendered by the Cook County Court of Common Pleas, against the Appellant upon records of judgments of the Commercial Court of Cincinnati - and the only question understood to be raised by Counsel for Appellant is that of a variance (as alleged) in the description of the amount of the recovery demanded upon -

The question is the same in each case - The Records stood thus -

1st Case

Damages \$ 380.12
 Plaintiff's Costs 4.17
 Defts Costs 1.28
 Costs on Execution 90.-

2d Case

Damages \$ 1654.33
 Plfs Costs 13.53
 Defts Costs 4.03
 Costs on Execution 2.50

The amount demanded for as the original recovery is in the one case _____
\$384. 29. and in the other \$1667. 86
being the precise aggregate of the
damages and Plaintiffs costs - in
each case - omitting Defendants costs
and all costs that accrued on execution

It is contended by Counsel
for the Appellant that the amount
demanded as the amount of judgment
should have included Defendants costs.

We submit that the judgments
were properly described in each case.

The language of the
Declaration (condensed) was that "the
Defendant render to the Plaintiff the
"sum of" \$ - which at that time specified
the Plaintiff recovery against the
said Defendant, - "which in and by
the said Court was then & then adjudged
to the Plaintiff for her damages which
she had sustained as well by reason
of the non performance by the said Defendant
of certain promises &c then lately &c as
for her costs and charges by her in
and about her suit in that behalf
expended - whereof the said Defendant
was convicted as by the record &c &c

In New York and most of the Eastern States it is believed the Defendants costs form part of the Plaintiffs recovery but in Ohio - Indiana, Illinois and Wisconsin - and as we believe in all of the Western States the Defendants costs form no part of the Plaintiffs judgment -

This is shown by the form of the Execution issued upon our judgments which is similar to those of the Western States mentioned -

By it the Sheriff is commanded to make a certain sum - at a certain time recovered by the Plaintiff for his damages and a certain further sum - then and then adjudged to the Plaintiff for his costs &c - by him expended - and the Clerk issues a separate Writ for the Defendants costs -

But the language of the Record in these judgments is entirely conclusive as to what was the recovery in them - and shows that the Plaintiff recovered his damages and his costs - Then follows the words - "Defendants Costs \$_____"

It was also urged on the trial of the
Cause of Robert et al vs Lyell et al, that
while the Declaration states that the
said Judgment said upon was received
on the 14th day of November A.D, 1849,
that the record shows that afterwards
and on the 29th day of March 1850-
a motion for new trial was heard and
overruled - - The transcript shows
that the judgment was rendered on
the 14th of November 1849, as alleged in
said - and that the motion was
"set-aside the judgment rendered at
the last term of this Court"

See Abstract Page 12 - Record, 20 + 21.

In the case in which Lucy D. Panto
is Plaintiff below - Page 8 of the
abstract and 17 of the Record - the
record of the judgment and upon
receipts -

"Therefore it is considered
that the Plaintiff recover of the
Defendant, her said damages,
and her costs herein expended
taxed at four $\frac{17}{100}$ Dollars." -

"Defendants Costs \$1.28 -"

and these records are in precisely
the same form in each case - In
Case of Hobart see Page 11 of the
Abstract and 20 of the Record -
both showing that the judgment or
amount of recovery is correctly -
described, as a sum - the aggregate
of the Damages and Plaintiff Costs
(interest) Hence we think the Records described
in the Declaration are the same Records
offered in evidence - and there is
no variance and the judgments are
correct.

- Harry S. Nelson -
for Appellus -

N. P. Iglehart
vs 251
Lucy D. Parrott

Same

Jas N. Hobart dec
40

Appellus Bond

Filed April 30, 1888
L. Seland
clerk

N. P. Nelson
for appellus