

No. 12065

Supreme Court of Illinois

Newhall

vs.

Turney, Admr.

71641  7

Sup. Court
Heratio Merdall appellant

Nancy J. Young admty
of Dec. Young the appellee } against of
- v -

The appellant H. Merdall comes
& assigns the following errors in
said record & proceedings being

1. The Court erred in ~~sustaining~~ ^{sustaining} the
denial of the ~~affidavit~~ ^{sustaining} to
appellants 3. 4. 5. & 6. & also by him
filed - in sustaining the
denial to each & every
of them the Court erred -
2. The said plans are good & the
denial to each & every
has been created & the appellant
assigns error & assigns in creating
each of said plans -
3. The judgment should be here
for Merdall - on the whole
and -
4. The distinction was had -
& did not authorize Aff
to return -

In these latter cases, the
Appellant pays for a reversal
of such judgment.

J. D. Arnold
Atty for appellant

Appellees say that in the said Record
& proceedings aforesaid there is no error wherefore
they pray an affirmance of said judgment.

State of Illinois
Fourteenth Judicial Circuit
So Daviess County

Pleas in the Circuit Court
begun and held within and
for the County of So Daviess aforesaid, on the fourth Mon-
-day of November, in the year A.D. 1852, before the Judge
of said Fourteenth Judicial Circuit to wit: Hon Benjamin
B. Sheldon

Nancy F. Furney administratrix
of John Furney deceased

vs

Horatio Newhall &
Davis Divine

Be it remembered that
heretofore, to wit: on the
12th day of November A.D. 1852. The said Plaintiff Nancy
F. Furney administratrix of John Furney deceased, by her
Attorneys sued out of the office of the clerk of the Circuit
Court for said So Daviess County a writ of summons to
the said Defendants, which said writ together with the
Sheriff's return thereon, is in the words and figures follow-
-ing to wit:

State of Illinois
So Daviess County

The people of the State of
Illinois. To the Sheriff of So Dav-
-iess County: Greeting: We command you to sum-
-on Horatio Newhall & Davis Divine. To appear before
the Circuit Court of So Daviess County at the next
Term to be holden at Galena, on the fourth Monday
of November next, to answer Nancy F. Furney as

Administration of John Turney deceased, in a plea of debt.
Debt Three hundred Dollars. Damages Three hundred Dol-
-rs. And have you then there this writ.

Witness William H. Bradley Clerk of
Circuit Court of Jo Daviess County
Illinois, at Galena. This 12th day
of November A.D. 1852.

Dealt

Attest: William H. Bradley Clerk

Endorsed

Served this writ by reading the same to the
within named H. Newhall, this 12th day of November A.D.
1852. Davis Divine not found.

C. C. Saunders Sheriff.

And on the same day, to wit: on the 12th day of
November A.D. 1852 the said Plaintiff by her attorney
filed in the Clerk's Office of said Circuit Court her decla-
-ration against the said Defendants: Which said
declaration is in the words and figures following. To wit:

State of Illinois }
Jo Daviess County } p Jo Daviess Circuit Court
November Term 1852

Nancy J. Turney as administratrix
of John Turney deceased, complains of Horatio Newhall
and Davis Divine in a plea of debt. For that whereas
the said Horatio Newhall and Davis Divine on the
28th day of September A.D. 1839. (to wit: at the County
aforesaid) made then certain writing obligatory of that

dated, sealed with their seals, and unto the Court here shown, and then and there delivered the same to the said John Turney, then in full life, and thereby acknowledged themselves to be bound to the said John Turney admr. of the Estate of William Smith dec'd, in the sum of Ninety One Dollars and 8 ⁷/₁₂ cents, for value received, to be paid to the said John Turney Six Months after the date of said writing obligatory. Yet the Horatio Marshall and the said David Divine, though then requested so to do, have not, nor hath either of them paid the same, or any part thereof to the said John Turney in his life time, nor to the said Nancy J. Turney as his Administratrix, to the damage of the said Nancy J. Turney as Administratrix as aforesaid, Three hundred Dollars. And thereupon she sues &c

And the said Nancy J. Turney brings into Court her letters administration duly granted &c.

2^d Count.

And whereas, also, the said Defendants afterwards, to wit: on the first day of November, in the year of Our Lord One Thousand Eight hundred and Fifty Two, at the County aforesaid, were indebted to the said Plaintiff, as administratrix as aforesaid in the further sum of \$300 Dollars lawful money of the United States, for the work and labor, care and diligence of the said John Turney in his life time, by said John Turney done, performed and bestowed, in and about the business of the said Defendants, and at their like special instance and request: and also for divers materials and other necessary things, by the

said John Turney in his life time, before that time found and provided, and used, applied, in and about that work and labor for the said Defendants, and at their like special instance and request: And also, in the further sum of \$300 Dollars of like lawful money, for divers goods, wares and merchandize by the said John Turney in his life time before that time, sold and delivered to the said Defendants and at their like special instance and request: And also, in the further sum of \$300 Dollars of like lawful money for money, by the said John Turney in his life time, before that time lent, and advanced to, and paid, laid out, and expended, for the said Defendants, and at their like special instance and request: And also, in the further sum of \$300 Dollars, of like lawful money, for other money by the said Defendants, before that time had and received, to, and for the use of the said John Turney in his life time: and also, for that the said Defendants accounted with the said John Turney in his life time, of, and concerning divers other sums of money from the said Defendants to the said John Turney in his life time, and before that time due and owing, and then in arrear and unpaid, and upon such accounting, the said Defendants were then and there found to be in arrear and indebted to the said John Turney in his life time in the further sum of \$300 Dollars of like lawful money, and being so indebted, the said Defendants in consideration thereof, afterwards, to wit: on the day and year last aforesaid, at the County aforesaid, agreed then & there to pay the said Plaintiff as administratrix as aforesaid the said

Several sums of money in this Court mentioned, when they, the said Defendants should be thereunto afterwards requested

Breach. And yet the said Defendants, not regarding their said several agreements, have not as yet paid the said several sums of money, or any, or either of them, or any part thereof, to the said John Farney in his life time, nor to said Nancy F. Farney, as his administratrix, though often requested so to do: But the said Defendants, to pay the same have hitherto wholly neglected and refused, and still do neglect, and refuse, to the damage of said Plaintiff as administratrix as aforesaid. Three hundred Dollars. And therefore she sues &

And the said Plaintiff brings into Court her letters of administration duly granted &

Higgins & Brother

Plff Atty

Copy of the note sued on
\$91.87 1/2. six months after date, we or either of us promise to pay to John Farney Adm^r of the Estate of William Smith dec^d the sum of Ninety One Dollars and 87 1/2 cents for value received. Witness our hands and seals 28th Sept 1839.

H. Newhall
D. Divine

Exec^t
Exec^t

Proceipe.

Nancy F. Farney as administratrix
of John Farney deceased

vs

Horatio Newhall & Davis Divine

{ State of Illinois
{ Jo Davies County
{ In Circuit Court

Term 185

To the Clerk of said Court: Upon the filing
of this declaration in your Office, let a summons issue
to the said Defendants, returnable to the next Term of the
said Court, in an action of debt, Three Hundred Dollars
Damages Three hundred Dollars.

Higgins & Another Atty for Plff
Entered

Filed Nov 12th 1852

Wm H. Bradley Clerk

And afterwards, to wit: on the 22^d day
of November, in the November Term of said Circuit
Court, A.D. 1852. the said Defendant Newhall by his
Attorney filed in open Court, with the Clerk thereof,
his demursers to the 1st and 2^d Counts of the Plaintiffs
declaration. Which said demursers are in the words
and figures following, to wit:

State of Illinois to Davis County

Horatio Newhall impleaded
with Davis Divine

ads

Nancy P. Turney Administratrix
of John Turney deceased

Circuit Court
November Term
A.D. 1852.

In Debt

And the said Hor-
-atio Newhall as to the said first Count, comes
& craves oyer of the said supposed writing obligatory
in said first Count of said Plaintiffs declaration men-
tioned, And it is read to him in words & figures

following, to wit:

\$ 91. 87½ Six Months after date, we or either
of us promise to pay ^{to} John Turner adm^r of the Estate
of William Smith dec^d the sum of Ninety One Dollars
and 87½ cents, for value received. Witness our
hands and seals, 28th Sept 1839.

H. Newhall *Real*

D. Divine *Real*

And said Newhall says that said Plaintiff
Administratrix as aforesaid, ought not to have, or
maintain her action as such administratrix as afore-
said, against him, impleaded as aforesaid, because
he says that said first Count of said declaration, and
the matter therein contained, are not sufficient in law
to maintain the action aforesaid, and that he is not
bound by law to answer the same. Wherefore he prays
judgment & that said Plaintiff administratrix as afore-
said, may be barred of her said action against him
impleaded as aforesaid.

Wm & Wilson Attys for
Jd^r Newhall.

And said Defendant Newhall, as to said second
Count of said Plaintiff's declaration, says that the same
and the matter therein contained, are not sufficient in
law to maintain the action aforesaid against him,
impleaded as aforesaid, & that he is not bound by law
to answer the same. Wherefore he prays judgment,
and that said Plaintiff Administratrix, as aforesaid, may
be barred of her aforesaid action against him impleaded

as aforesaid.

Woye & Wilson Attys for
Edw Newhall.

Endorsed

Filed Nov 22^d 1852

Wm H. Bradley Clerk

And afterwards, to wit: on the 23^d day of November, in said November term of said Court, A.D. 1852, the said Plaintiff by her Attorneys filed in said Court her joinders in demurrer to 1st and 2^d Counts of Plaintiff's declaration. Which said joinders are in the words and figures following, to wit:

Nancy J. Farney as
Adm^t of John Farney dec^d.

v
Horatio Newhall &
Davis Divine

In for Davis Circuit
Court November
Term 1852.

And the said Nancy J. Farney as Administrator as aforesaid, says that the first Count of her declaration aforesaid, is sufficient in law to maintain her action as aforesaid, and that she is ready to verify. Wherefore she prays judgment, and her damage aforesaid, to be adjudged to her.

And the said Plff says that the said second Count of her declaration aforesaid is sufficient in law to maintain her action aforesaid And that she is ready to verify. Wherefore she prays judgment and her damages to be adjudged to her

Higgins & Strother Plffs Atty.

Endorsed

Filed Nov 23^d 1852

Wm H. Bradley Clerk

And afterwards, to wit: on the 29th day of November, in said November Term A.D. 1852 of said Court, the said Defendant Newhall, by his Attorney filed in said Court with the Clerk thereof his plea and also his reply. Which are in the words and figures following, to wit;

State of Illinois vs Davis County vs

Horatio Newhall
impleaded with
Davis Divine

ads

Nancy J. Torney
Administratrix of
Jno Torney dec^d

Circuit Court, Nov
Term A.D. 1852.

In Debt

And said Newhall impleaded as aforesaid, by his Attorneys Hodge & Wilson, comes & defends &c. And as to the said first Count of the said declaration, says that the said supposed writing obligatory therein mentioned, is not his deed, and of this he puts himself upon the Country &c

And Pley likewise by

Higgins & Strother Atty

2.

And as to the second Count of said declaration, said Dfdt says that he, impleaded as aforesaid does not owe the said sums of money therein mentioned, nor any of them, nor any part thereof, in manner and form, as said Plaintiff Administratrix, as aforesaid hath complained, against him, and of this he puts himself upon the Country. *Worrel & Wilson Attys*
for Newhall.

And Plff likewise, by
Higgins & Brother
Plff's Attys

3

And the said Defendants, impleaded as aforesaid, for a further plea to said first Count of said Plaintiff's declaration says, Actio non, because he says that said writing obligatory in said first Count mentioned, was executed & delivered by said Newhall & Divine, to said John Turney in his life time, as Administrator of William Smith deceased, in consideration of a sale, and delivery of divers goods & chattels of the Estate of William Smith deceased, by said Turney as such Administrator, to said Newhall, at a public sale, by said Turney, as such Administrator of the goods & chattels of said Estate of William Smith deceased, & the said writing obligatory, by said Newhall, with said Divine as his surety (as between themselves) executed to said Turney as such Administrator as aforesaid, in pursuance of the Statute in such case made and provided, & that the same belongs to the

Estate of William Smith deceased, & is part of the
assets thereof, and that on the day of
A.D. and long prior to the beginning of
this Suit, the said John Turney departed this life,
leaving a portion of the Estate of said William Smith
deceased, unadministered, and that after the death
of said John Turney, & prior to the commencement
of this Suit, John E. Potts, of the County of
St Davids aforesaid, was duly appointed Admin-
istrator de bonis non, of said Estate of William
Smith deceased, & then & there duly qualified according
to the law, & executed the Bond in such case made
and provided, & took upon himself the said Admin-
istration, & still & now is the Administrator as afo-
said of said Smith deceased. And this, said
Defendant Newhall is ready to verify. Wherefore he
prays judgment if the said Plaintiff Administrator
as aforesaid, her action aforesaid thereof, against him
impleaded as aforesaid, ought to have or maintain.

Hoge & Wilson for Newhall

4

And the said Defendant Newhall for
a further plea to said first Count, comes & says Actio
non, because he says that before the commencement
of this Suit, and at the time thereof, the said Estate
of said Smith deceased, & the said John Turney during
his life time, & at the time of his death, as such
Administrator of William Smith deceased, were indebted
to said Defendant in a large sum of money, to wit:
Three hundred Dollars for the price & value of goods,

then & there sold and delivered, by the said Defendant
to said William Smith, in his life time, at his request

And in Three hundred Dollars, for the price &
value of labor & work, then & there done, by the said
Defendant, & materials for the same provided by said
Defendant, for said Smith, in his life time, at his
request. And in Three hundred Dollars for
work, labor, diligence, and care, by said Defendant,
before that time, at the request of said Smith in his
life time, done, and performed, as a physician, in and
about the healing and medical attendance of said
Smith, in his life time & last illness: & for divers med-
icines & potions, for said Smith then & there provided
by said Defendant, at said Smith's request.

Which said sum, or sums of money, so due & owing
from the said Smith in his life time, & said John
Turney as his administrator, exceed the damages
sustained by the said Plaintiff administratrix as aforesaid
by reason of the nonperformance of said several promises
& promises in said declaration mentioned, and out of
which said sums so due & owing the said Defendant
he is ready & willing, & hereby offers to set off & allow to
the said Plaintiff adm^t as aforesaid, according to the
statute &c

Kege & Wilson Attys for Defd,

(Copy of set off)

Estate of Wm Smith To Horatio Newhall herein
enclosed marked "A." & "B."

And for a further plea to said first Count of the said Plaintiff's declaration, said Defendant impleaded as aforesaid, says actis non, because he says before the commencement of this suit, and in the life time of said William Smith in said first Count mentioned, to wit: the 21st day of March A.D. 1839, at Galena, to wit: the County aforesaid, the said William Smith made his certain promissory note in writing, and delivered the same to one Ambrose Kimball, & thereby bound himself to pay the said Ambrose Kimball, or order, on demand, Sixty nine Dollars and twelve cents, with interest from date, to wit: the day & year last aforesaid, and the said Ambrose Kimball then & there, endorsed the same to said Newhall & Divine, whereof the said Smith had notice, and then & there in consideration of the premises, agreed to pay the amount of said note to said Newhall & Divine according to the tenor & effect thereof. Yet the said Smith did pay said note, though often so requested, nor has the same been paid, but remains unpaid & unsatisfied, to the damage of said Defendants Three hundred Dollars, out of which said sums so due & owing said Defendants, he here claims as a set off against said supposed indebtedness, in said first Count of said declaration mentioned, according to the Statute &

Koep & Wilson for
Newhall.

Copy of note set off
On demand I promise to pay To Ambrose Kimball
or order Sixty nine Dollars and Twelve cents, with interest
from date. Galena 21st March 1839.

\$69.12

(Signed) W^m Smith

Endorsed on back

"Pay H. Newhall & D. Divine.

(Signed) Ambrose Kimball"

6 And for a further plea to the said first Count
of said declaration, the said Defendant Newhall says
Octor non, because he says the said writing obligatory, in
said Count mentioned, was executed to, & received by said
John Turney in his capacity of Administrator of the
Estate of said Smith deceased, & was given in consideration
of a purchase by said Newhall of said Turney in his
capacity of Administrator at a public sale of the
personal property of said Smith, of divers goods & chattels,
part of the Estate & effects of said Smith. & said writing
+ obligatory held by said Turney only in the capacity of
+ administrator of the Estate of William Smith, & that
said writing obligatory belongs to, and is part of the Estate
of said William Smith deceased. & that prior to the
commencement of this Suit, said John Turney died, & that
at no time since his death, or prior to the commen-
-ent of this Suit, or since, has the said Nancy C. Turney
entered into a Bond and security, relative to the Esta-
-te of said Smith, nor undertaken the final settlement
of the same, according to the Statute in such case

made & provided. And this, the said Defendant Newhall is ready to verify. & prays judgment if the said Plaintiff Administrator as aforesaid, her action aforesaid against him, impleaded as aforesaid, ought to have or maintain. Hoge & Wilson for Newhall

Endorsed

Filed Nov 29th 1852
Wm H. Bradley, clk

And afterwards, to wit. on the 1st day of December, as apt. of said November Term, A.D. 1852 of said Court, the said Plaintiff by her Attorneys filed in said Court with the Clerk thereof her demurrers to the 3^d 4th 5th & 6th pleas of the Defendant Newhall. which said demurrers are in the words and figures following, to wit:

State of Illinois St. David's County

Nancy J. Turney, as
Administratrix of
John Turney dec^d

Circuit Court, November
Term 1852

v
Horatio Newhall et al } And the said Nancy J. Turney as Administratrix as aforesaid, says that the said plea of the said Horatio Newhall, impleaded as by him thirdly above pleaded, and the matters in the same contained, is not sufficient in law to bar her of her aforesaid action against him. And that she is not bound by law to answer the same.

And this, she is ready to verify. Whereupon she prays judgment, and her damages aforesaid, to be adjudged to her.

Higgins & Strother Esqrs. Attys

And for causes of demurrer, assigns the following

- 1st Said Esqr. Newhall sets up an undivided offset to a joint claim against him and another.
- 2^d The Deft attempted to prove up a claim against William Smith dec^d, by pleadings instead of the ordinary course of law
- 3^d Esqr. sets up an undivided offset to a joint demand.
- 4th Deft sets up a defence to a suit in favor of William Smith who is not a party in the suit, & for other causes.

And the said Plaintiff says that said Defendants plea by him fifthly above pleaded, is insufficient in law, and that she is not bound by law to answer the same. And this she is ready to verify. Wherefore she prays judgment, & her damages &c

Higgins & Strother for Plff

And for causes of demurrer the Plff shows the following

- 1st Said Deft sets up a debt due by William Smith in his life time, as an offset to a claim arising in favor of another person, since said Smiths death.
- 2^d And for other good & sufficient reasons.

And the said Plaintiff says that said Defen-
dants plea by him 6^{thly} above pleaded, is insufficient
in law, and that she is not bound by law to answer
the same. And this she is ready to verify. Wherefore she
prays judgment, and her damages &c

Higgins & Strother
Plffs Atty

And the said Plaintiff says said Defendants
plea, by him fourthly above pleaded, is not sufficient in
law, and that she is not bound by law to answer the
same. And this she is ready to verify. Wherefore she
prays judgment & her damages &c

Higgins & Strother Plffs Atty

And for cause of demurrer the said Plff shows
the following.

1st Because said plea sets up a debt due by one William
Smith, which is not a proper matter of set off in this
action.

2^d Said plea states matter between other, and
different parties than those to the action

3^d And for other, and sufficient reasons apparent
on the face of said pleas.

Endorsed

Filed Decbr 1st 1852
Wm H. Bradley, Clerk

And afterwards, to wit: on the 3^d day of December
as yet of the November term A. D. 1852 of said Court

in the Record of the proceedings thereof in said Cause
is the following entry to wit:

Nancy J. Turney
Administratrix of
John Turney deceased
vs

Debt

Horatio Newhall
impleaded with David Divine

Now at this day came on
to be heard the demurrers of the
Plaintiff heretofore filed to the third, fourth, fifth, and sixth
pleas of the Defendant Newhall, on file. Which after hearing
a part of the arguments of Counsel, the further considera-
-tion of the same is postponed until tomorrow morning.

And afterwards, to wit: on the 4th day of Dec-
ember, as yet of said November Term A.D. 1852 of said
Court, in the Record of the proceedings thereof in said
cause, is the following entry, to wit:

Nancy J. Turney Administratrix
of John Turney deceased
vs

Debt

Horatio Newhall impleaded
with David Divine

Now at this day
came the parties by
their Attorneys, and the Court, after hearing further
argument on the demurrers of the Plaintiff to the third,
fourth, fifth, and sixth pleas of the Defendant Newhall

on file, takes the same under advisement.

And afterwards, to wit: on the 9th day of December, as yet of the said November Term A.D. 1852 of said Court, in the Record of the proceedings therein in said cause, is the following entry, to wit:

Nancy J. Turney administratrix
of Estate of John Turney deceased

vs

Hercatio Newhall impleaded
with Davis Divine

Debt.

The Court, having fully considered, and being fully advised upon the demurrers of the Plaintiff heretofore filed by her attorney to the third, fourth, fifth and sixth pleas of the Defendant Newhall, on file, sustains the same. To which decision of the Court, the Defendant Newhall by his attorney excepts. And the said Defendant, by his attorney elects to abide by his said pleas.

And afterwards, to wit: on the 13th day of December, as yet of the November Term A.D. 1852 of said Court, in the Record of the proceedings therein in said cause, is the following entry, to wit:

Nancy J. Turney administratrix
of John Turney deceased

vs

Hercatio Newhall impleaded
with Davis Divine

Debt.

Now at this day came the parties by their Attorney
and upon issue joined, upon the first and second pleas
of the Defendant Newhall, by agreement, they waive the
intervention of a jury, and for trial, put themselves upon
the Court; And the Court, after hearing the evidence,
after examination of the papers, and due deliberation
finds the issue joined on the first Count of the Plaintiffs
declaration, for the Plaintiff, her debt at the sum of Ninety
One Dollars and Eighty Seven & one half cents, and assess her
damages at the sum of Seventy Dollars and Six cents, am-
ounting together to the sum of One hundred and Sixty
one Dollars and Ninety three cents. To which finding and
decision of the Court, the said Defendant Newhall by his
Attorney excepts. It is thereupon considered by the Court
that the Plaintiff have and recover of the said Defendant
Newhall, the said sum of One hundred and Sixty One
Dollars and Ninety three cents, the Debt and Damages afore-
said, together with her costs by her about her suit, in this
behalf expended. And that she have execution therefor.

And the said Defendant Newhall, by his Attorney prays
an Appeal to the Supreme Court.

And afterwards, to wit: on the
15th day of December, as yet of the November Term
A.D. 1852. of said Court, in the Record of the proceedings
thereof in said Cause is the following entry, to wit:

Nancy J. Turney administratrix
of John Turney deceased

vs

Horatio Newhall, impleaded with Davis Divine

Debt

The motion of the Defendant Newhall, by his Attorney, made for an Appeal of this cause to the Supreme Court, is sustained. And such Appeal is granted him by the Court, conditioned that he enter into Bond in the sum of Three hundred Dollars, within thirty days from this date, with George Ferguson or E. Ripley as his security.

And afterwards, to wit, on the 12th day of January A.D. 1853, the said Defendant Horatio Newhall, filed with the Clerk of said Court, a certain writing obligatory, commonly called an Appeal Bond, which is in the words and figures following, to wit:

Know all men by these presents, that we Horatio Newhall and George Ferguson, of said Daviess County and State of Illinois, are held and firmly bound unto Nancy J. Turney administratrix of John Turney deceased, in the penal sum of Three hundred Dollars, lawful money of the United States, for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents, as witness our hands, and seals, this twelfth day of January A.D. 1853.

The condition of the above obligation is such that whereas the said Nancy J. Turney Administratrix of John Turney deceased, did on the 12th day of December A.D. 1852, in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Horatio Newhall, impleaded with David Divine, for the sum of One hundred and Sixty one

93/100 Dollars, Debt, and Damages, and Three 80/100 Dollars costs, from which said judgment of the said Circuit Court the said Horatio Newhall has prayed for and obtained an Appeal to the Supreme Court of said State.

Now if the said Horatio Newhall 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 remain in full force and virtue.

Taken and entered into
before me, this 12th day of
January A.D. 1853.
Wm H. Bradley Clerk

H. Newhall
Geo Ferguson

Attest
Attest

Endorsed

Filed January 12th 1853
Wm H. Bradley Clerk

State of Illinois
Joel Camp County

William H. Bradley
Clerk of the Circuit Court in and for said
County, do hereby certify that the foregoing
transcript is a true full and perfect copy
from the Record Files of my Office of all
the proceedings which were had in said
Circuit Court in the said Cause of Camp

I Turney administrator of John Turney deceased no
Harriet Newhall impleaded with Lairs Linn
except the copy of set off filed by Defendant Newhall
by his attorney Nov 29 1852 which has been either lost
or mislaid & is not now in my office.

In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at my Office in Galena in
said County this 28th day of May A.D.
1853.

Alfred William Bradley Clerk.

Fees for this Record \$5. 25

66
Horatio Newhall

Chas. J. Tunney adm. & ex.
Record

66

12065

Filed June 15. 1853.
L. Ireland Clk.

Prepared

Mr. Hall {
v
Turney }

Plea bad.

1 Statute

Adm n de bonis nrm. NS 44 sec 10. 541 sec 22. 552 sec 76.
~~552 sec 75.~~

Adm of Adm. NS 501 sec 70.

The only way to reconcile these provisions is to confine
the power of the adm of the adm n to those assets
which have been adm in upon.

In this case Turney ^{might} ~~may~~ have sued in his individual
capacity without declaring as adm n. 16 Mass 71.

1 Chitty 22-3 3 Black 283. 4 Dana 474. 1 Pet 686.

Ex of Ex. may sue on contract in this case 1 Chitty 24-5

Set off not allowable. 2 Sam DP 78. 789.
Pleas Idem 134.

Kendall

v { Buck

Turney

1 Wms Ey. 542.

4 Bawn 24 { 783-786

1 1/2 + 1/2 274. 502 and 55

4 2/3 new 497-50

3 new 370 1842 554

15 mo 89. 5 Geo 56.

66-1853

Anne Dec 70
75

13 May 17. legal m. l. l.