

13781

No. _____

Supreme Court of Illinois

Turney

vs.

Turney

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

1860

No. 94.

Richard
Turney
vs

Turney
13781

Supreme Court--Third Grand Division.

William A. Turney,
HENRY TURNEY, MARY ELLEN TURNEY,
AND NANCY JANE TURNEY,

vs.
NANCY J. TURNEY, Administratrix of
JOHN TURNEY, deceased.

} Error to Jo Daviess County.

Abstract and Brief.

- This was a petition by Nancy J. Turney, as Administratrix of the estate of John Turney, deceased, in the County Court of Jo Daviess County, for the sale of the real estate of the decedent to pay the debts of the estate. The Notice of intention to apply for an order of sale will be found on page 20 of the Record, and is in the following words, marked as exhibit (C):
- (p. 20.) "Notice is hereby given, that the undersigned will make application to the Jo Daviess County Court at the next term thereof to be holden at Galena, on the FIRST MONDAY OF JULY next, for an order to sell the real estate of which John Turney died seized for the payment of the debts of the said deceased.
NANCY JANE TURNEY, Adm'x.
- (p. 21.) "May 21st-29-6w. of John Turney's estate."
To this is appended the publisher's certificate that the above was published six weeks successively in the North Western Gazette and Galena Advertiser, the first of which publications was on the 21st day of May, 1847.
- (p. 1.) At the September term of the court, A. D. 1847, the administratrix filed her petition, and the foregoing notice.
- (p. 2.) The petition fails to set forth the names of the heirs of Turney, but there is an allegation of their minority, and prayer for *Guardian ad litem*; refers to exhibit (C) as the notice given of intended application.
- (p. 4.) At the said September term of the court, an order of sale was made for the sale of the real estate.
- (p. 22.)
- (p. 24.) At the April term of the court, 1848, the petitioner came into court, and, on her motion, had so much of the order of the former term vacated, as required the sale of a portion of the property, alleging a misdescription of the property as to which the order was made; and leave was given to amend the petition so as to properly describe the real estate of the decedent, and a *Guardian ad litem* was then appointed for the infants.
- (p. 25-6, 7 and 8.) Amended petition sets out a corrected description of the real estate; names the heirs of Turney; alleges them to be infants, and prays appointment of a *Guardian ad litem*; also sets out that two of the lots had been sold under the former order of sale.
- (p. 31.) *Guardian ad litem* answers, that defendants are *strangers* to the matters contained in the original and amended petitions; that they are *minors*, and claim such interest in the premises as they are entitled to, and submit their interests to the protection of the court.
- (p. 32.) At the said April term, 1848, a further order of sale was made by the court,
- (p. 33.) directing the balance of the real estate to be sold according to its amended description.
- (. 34.) At the May term, 1849, the administratrix filed her report, reciting sale of two of the lots under original order of sale, before amended petition was filed and amended order obtained, and a sale of the balance of the property under the original and amended orders of sale; which report was approved.
- (p. 37.)

POINTS AND AUTHORITIES.

There was no proof that publication was made in the nearest newspaper
Rev. Stat. p. 558.

The notice of intention to apply for the sale of the real estate did not conform to the law. The statute especially provides, that the notice should request all persons interested in the real estate to show cause why it should not be sold for the purpose of paying the debts. Revised Statutes, page 558.

The object of the law was, that parties so interested should be thus apprised of their right to show cause against it, and the statute expressly requiring it to be set forth, the notice was fatally defective in omitting it.

There was no proof of the publication of the notice before the court. The publisher's certificate did not conform to the law, and hence it did not prove it. The statute requires that the publisher shall give the dates of the first and last publications containing the same. Rev. Stat. p. 47.

The notice contains no year & it can only be ascertained that it was in 1847 by the aid of the certificate of publication; hence the notice itself would not inform the parties of the time

The notice in this case sets forth that application would be made at the July term, A. D. 1847, of the court. No application whatever was made at that term; no petition then presented; no case then docketed, or instituted; no step whatever taken until the September term of the court, when for the first time the case was presented to the court under the notice, as above given, and the proceedings were then had under said notice. It is respectfully submitted, that this was clearly erroneous and rendered the whole proceedings irregular and void. For the Administratrix to have availed herself of the notice given, she should at the July term have presented her petition and appeared at that term. The reasonable presumption would be that parties interested to oppose the sale, would appear at that term, and finding no petition filed, or proceeding instituted, would reasonably conclude that the intention was abandoned. Failing to prosecute or present her petition at the time, or term fixed in the notice, or to appear, or take any steps at that term, she should have given another notice before proceeding at a subsequent term.

The first order of sale, and under which two of the lots were sold, was further irregular, because the names of the heirs were not set forth in the petition, although it is alleged that there were heirs, and that they were all minors, and for the further reason that no *Guardian ad litem* was appointed or answered for them. *Coat v. Reed 17 Ill 276.*

The subsequent proceedings at the April term of the Court, A. D. 1848, permitting an amended petition to be filed, and in vacating a portion of the order of the former term, was done without notice to the parties interested, and therefore irregular. *Coughran vs Gutcheus, 18th Ill. 390.*

M. HAY,
 for Plaintiffs in Error.

The petitions fail to show that the application was made in the County where the Administratrix was appointed as required by statute
Rev. Stat. 558 sec. 103.

The petitions fail to show the filing of Inventory appraisement and sale bills as required.
Rev. Stat. 559. sec 108.

The petitions failing to show the necessary facts to require action, the Court had no jurisdiction. Young vs Lorain 11 Ill. 624

The only proof as to indebtedness was the certificate of probate Justice marked B, as exhibit to the Bill & that states (abstract - p. 19) "the following notes and accounts are on file" but does not show they were allowed

(over)

The plaintiff waives any objection to the decree ordering the sale as to all the property sold by the administratrix, and only asks that the decree be reversed as to the Real Estate not sold & make this as a stipulation.

94-6
Henry Thorne, et al.

vs

Stacy S. Thorne
adm'r. &c

Abstract & Brief

Frederic S.

Filed April 11. 1860

S. Ireland
Clk.

(1) State of Illinois
In David County Pleas in the David
County Court begun
and held within and for the County of
David aforesaid on Monday the 7th day
of May A.D. 1845. before the Honorable
Hugh T. Dickey Presiding Judge of said
Court

Present

The Hon^{ble} Hugh T. Dickey Judge

B. B. Howard Prosecuting Attorney

Georg M. Mitchell Clerk

M. B. Pierce Sheriff

In the Matter of Nancy
Turney Administratrix of
the Estate of John Turney dec^d.
Competition for sale
of Real Estate

Be it remembered
that heretofore to wit on the 14th day of
Sept. A.D. 1847. the above named Nancy
Turney Administratrix &c. filed in the
office of the Clerk of the said David
County Court her petition in the
above entitled cause which said
petition is in the words and figures
following to wit.

(2) State of Illinois }
In David County } On the 1st David County Court
of the September Term 1847

To the Hon Nathl J Dickey Judge of
the County Court aforesaid

Your petitioner Nancy J Turney
respectfully represents that some time in
the month of March AD 1844 John
Turney late a resident of said County
and State died seized of certain Real
Estate more particularly described in
a certain schedule hereto annexed and
marked Exhibit B. and prayed to be
taken as part hereof and also of certain
personal property which has been duly
administered as appears by the Records
of the Probate office a transcript of which
is herewith filed and prayed to be
taken as part of this petition
Said John Turney had at the time of his
death children

Turney all infants
under the age of Twenty one years of age
for whom your petitioner prays a guardian
Ad litem may be appointed
And that on the 18th day of March AD 1844
letters of Administration were granted to

(3)

your petitioner upon the Estate of the said John Turney. That your petitioner has proceeded since the time last aforesaid faithfully and diligently to discharge her duties as Administratrix on said estate and has diligently and faithfully applied to the discharge of the debts due from the estate aforesaid all the personal property which has come into her hands. That a large amount of debts have already been proven against the said estate to wit the sum of \$1434.61. due to various persons and creditors over and above all ^{the} personal estate which has or may come to the hands of the Administratrix all of which will more fully appear upon reference to the transcript from the records of the Probate office herewith filed marked "B" and prayed to be taken as a part hereof. That your petitioner knows of no other means whereby the balance of said debts or any portion thereof can be paid except by the sale of the real Estate already referred to. That your petitioner has given due notice of her intention to apply to this Court at the present term hereof for leave to sell the real Estate of the said John Turney deceased or as much thereof as will

interest therein we do hereby appoint Nancy
J. Turney of the County of Goddard and
State of Illinois Administratrix of all
(6) and singular the goods and chattels
rights and credits which were of the said
John Turney at the time of his decease
with full power and authority to
secure and collect the said property
and debts wherever the same may
be found in this State, and in general
to do and perform all other acts
which now are or hereafter may be
required of him by law.

Witness Charles P. Thomas Probate Justice
of the peace in & for said County of
Goddard at his office in Galena
this eighteenth day of March A.D. 1844
Charles P. Thomas J. P.

Whereupon the said Nancy J. Turney entered
into bonds for the amount of one thousand
dollars with Allen Tomlin and James
McStrode as securities, on the third
day of December 1846. Came James M.
Strode and requested to be released of
further securities of said Nancy J.
Turney and by agreement a new bond
was filed with Allen Tomlin and

(7) Patrick Coy as securities in the same amount of first-bond the same being One Thousand Dollars.
 (Copy of Inventory of the personal property of the Estate of John Turney deceased taken and reported by Nancy J Turney as Administratrix of said Estate March 28th 1844.

Two Cows & Calves	16 00
Three Feather Beds (old)	15 00
One high Post-Bedstead	4 00
" low " "	2 50
" Trunk " "	1 25
Seven quilts	5 25
five old Blankets	3 75
Thirteen Sheets	4 8 1/2
One Bolster	50
Four Pillows	1 00
3 Bolster Cases	3 7 1/2
6 Pillow Cases	25
One White Bed Spread	2 00
3 Wooded Window Blinds	18 3/4
One carpet	8 00
" side board	8 00
" Bureau	5 00
" Ward Robe	3 00
" Writing desk	7 00
Seven One Seat chairs	7 00

(8)

One Book Case	1 00
" Old Stand	50
" " Wash Stand	1 25
Some Old Windsor Chairs	1 75
One Centre Table	10 00
" Breakfast	3 00
" " "	1 00
One Clock	3 00
" Parlor Lamp	2 00
" Franklin Stove & Furnishings	5 75
" Small Chamber Stove & pipe	5 00
" Cooking Stove and furniture	8 00
" Old sheet-Iron Stove	50
" Set Silver table Spoons (6)	7 50
" " Knives & forks	50
" " Silver tea Spoons	1 50
" " Cups & Saucers	25
" " Common plates	75
" " Tinned dishes	1 00
One Sea Tray	25
Four Saw dishes	25
One Cloth Brush	50
" Old vestin	1 00
1 Set Trunkers	1 00
" Sweet-meat dish	25
Three Bowls	18
Four Kitchen Chairs	1 00
Four tin pans	50

(9)

Two Tin Buckets	50
~ Wooden Baskets	50
~ Old Kitchen Sieves	50
24 Gali Stone Ware	150
4 Candlesticks	50
2 Tea Boards	50
One Cotton Sp Spread	25
1 Patent Silver Watch	2500
One Looking Glass	75
~ Hearth Rug	150
~ Small door rug	50
Crochets Vir Jour 2 vol @ 150	300
Laws of Michigan	25
Philips on evidence	100
Edwin Sapiro Act	1 3/4
Blackstones Commentaries	200
Moors Index	50
Statute Laws of Ills	100
Wacoms Abridgment 7 vol	1150
Vattel's Laws of Nations	100
Laws of Missouri	12 1/2
Geological Manual	75
Barleys Digest Index	150
Ills Reports 1 vol	12
Trials Revised	50
Keudo Commentaries	800
Chitty on Contracts 1 vol	110
Pub Land Law part 1 1 vol	150
Mithological table 1 vol	25

(10)

Music Books	12 1/2
Holy Bible	1 50
Map of Illinois	1 00
" United States	2 00
Parlor Book	2 00
Eclectic Fourth Reader	25
Wonders of the Universe	75
Statute of Wisconsin	1 00
Cook's reports	50
Walker's School dictionary	25
Senate Journal	6 1/4
rep	6 1/2
Comstock's Mineralogy	50
Cooper Sibel	50
Rochette's interest	1 25
Webster's dictionary	1 50
Marygale's works	2 00
Mysteries of Udolpho 3 vol	3 7/2
Breese Reports	50
Memiors of Hannah Moore	25
Sacon	50
Coombe on Constitution of man	25
Pickwick Club 4 vol	50
Stimes works	50
Birnes works	75
Wisdom of Shakespeare	25
Shakespeare's Plays	1 50
Pulvers Novels	1 50
Males United States	1 1/2

(11)	Bucks Dictionary Small	25 $\frac{1}{2}$
	Constitution	12 $\frac{1}{2}$
	McKenzie's 5000 Receipts	50
	Lawrence's Gazette	50
	Burns C. Cotton	25
	Mallet Brown Universal Geography 4 vol	200
	Palcy's Philosophy	50
	Yahoo (Tennyson & Noble)	
	Form Book	25
	American Biography	3 $\frac{1}{2}$
	Goldsmith's Greece (School Book)	25
	Toggs Pantheon	25
	Glory of America	50
	Mrs Hemans Works	75
	Lala Book	12 $\frac{1}{2}$
	Good Sense (Tennyson & Noble)	
	Ainsworth's Dictionary	50
	Cleveland Mineralogy	50
	Letters of John Randolph	25
	Highwayman	25
	Democratic Review 48 vol's	300
	Pelham 2 vol	12 $\frac{1}{2}$
	Don Quixotte 3 vol	37 $\frac{1}{2}$
	Historical Sketch of City of New York	12 $\frac{1}{2}$
	Knowledge for the people	25
	Paradise Lost	6 $\frac{1}{4}$
	" Regained	6 $\frac{1}{4}$
	Life of Jackson	12 $\frac{1}{2}$
	Spiritual Mustard Pot (Tennyson & Noble)	
	Hudibras	12 $\frac{1}{2}$

(12)

Life of Sayfuzetto	12 1/2
Dutchmans fire side	25
Volney's Russia	10 1/2
Ohio Gazetteer	10 1/2
French Testaments	25
Goodwins lives	12 1/2
Memoirs of Duke of Wellington	10 1/2
Plutarchs lives	150
State of Illinois	264 1/2

County of Doddavip ² of Me the undersigned James McStrode Elias Bayles and Allen Tomlin having been this day appointed by Charles S Thomas Probate Justice of the peace in and for the County of Doddavip and State of Illinois to appraise the personal property of the late John Turney now deceased and after taking the oaths hereunto annexed proceeded to the late residence of the said John Turney and on the same day appraised the foregoing articles of personal property shown to us by Nancy Turney Administratrix of the Estate of the said late John Turney as all the personal property which was of the estate of the said John Turney deceased and that we have appraised each article of said property at the price set down opposite each

of said articles

(13)

Given under my hands and seals this
8th day of April AD 1844

(signed) James Mc Strode Seal

Elias Bayley Seal

Allan Tomlin Seal

A Schedule of Notes and Accounts belonging
to the Estate of John Turney deceased

One Note on H. Stewallen dated May 26 th 1837	40.00
" " Michael Kennedy July 14 th 1830	20.00
" " Robert Blain March 2 nd 1836.	50.00
Act against Godfrey Wahn 1840.	45.00
" " D B Moorehouse 1838.	100.00
Note Charles G Thomas (Paid) 1842	55.00
" Alex ^r Mc Brown. March 1 st 1838	25.00
" John Auras Feby 9 th 1835	7.50
" James Sinions dec ^r 26 th 1832.	9.00
" Benj Robinson July 30 th 1833	25.00
" Rich Ruaton Oct 13 th 1836	50.00
Act Charles McCoy Oct 16 th 1839.	4.00
" Wm Bennett 1837	180.00
Note Peter Whalens Oct 26 th 1842	5.00
" Edward Kenyon Jun 20 th 1846	50.00
Act John Atkinson 1840	290.00
" John McDonald Sept 26 th 1839.	25.00
Note Wm Rice Feby 15 th 1836.	25.00
" D Daley March 14 th 1842	15.00
Act Wm Campbells Estate 1837	202.50

(14)

Sister Nicholas Perrine	1835	20.00
Charles S Hempstead	1836.	32.30
- M. M. Maughs	1836.	35.00
- Depee Morrison & Son	1836	34.30
- C. Bracken		106.04
- Thomas Crane		5.00
- John P. Thomas		10.00
Moses Hallett		70.00
- Wm S Derring & James Murphy		190.00
Wm S Derring		70.00
Derring & Champion		60.00
Matthew Shears		46.00
Sophia Farna	1836.	25.00
John McDonald & Gray		10.00
Estate of Bertrand		25.00
John A. Deriblet		5.00
Mann & Rice		20.00
John Shipton		5.00
John Foley		20.00
Daniel Whitney		10.00
Glasgow James		20.00
Ernan Johnson		20.00
Lewis D. Vanmeter		90.00
Daniel M. Parkinson		29.00
Johnson & Blanchard		8.00
J. R. Inofs		65.00
Re. B. McDowell		160.00

(15)

Wm Miller	15.00
W H Atkinson	16.00
Michael + Philip Byrne	50.00
Byrne Furlong Carroll	40.00
Barney Morris	10.00
John D Ausley	5.00
Wm C Bryant	35.00
Indy + Wm Kirkpatrick	85.00
Wm J Madden + H Hear	70.00
Joshua Bayley	10.00
Daniel Mann \$100 + Dement \$100 -	
Henry Corwith	10.00
Carson Dean + Leo	55.00
Andrew Mower	162.60
John S Slaymaker	7.25
John Burke	97.75
Thomas Martin	20.00
Lewis Williams	20.00
Michael Saban	20.00
Robert C Howard	75.00
James Conner	15.00
Abner Carson	40.00
Jon + S S Huff	554.00
Patrick Hughes	175.00
John Sent	63.00
Wm Cabbage	24.00
Shaw Batty Segal + Warm	15.00
Robert Shaw	5.00
Godfrey Wahn	25.00

E. Bayless	10.00
John W Campbell	100.89
Estate of Mrs Smith	27.00
John Willey	20.00

(16)

I Nancy J Turney
 Administratrix of the Estate of John Turney
 deceased do hereby certify that the above
 Schedule contains a list of all the accounts
 & notes which were of the said John Turney
 deceased which have come to my knowledge
 or possession since the death of the said
 decedent June 24th 1844 and I further
 certify that all the accounts and notes
 contained in the above list in favor
 of said John Turney's estate are doubtful
 or desperate and that she has collected
 all that she believes to be collectable
 that many of the claims are outlawed
 and barred by the Statute of Limitation
 and that the most had been previously
 paid and liable to set off and
 that the balances of the debtors of
 the said Estate are believed to be
 wholly irresponsible and that the
 personal Estate is wholly insufficient
 to pay the debts of said Estate and
 that unity five dollars is all that
 has been collected and all that
 is believed to be collectable of said

Claims the same being from the following named persons to wit:

(17)	John Flanagan	\$10.00
	Wm Reed	5.00
	J J Sathrop	25.00
	Charles G Thomas	55.00

"Exhibit A"

And also that the list of Real Estate hereto annexed is all of the Real Estate of which the late said John Turney my husband died possessed and that he had such titles to the same as are recognized by the Statute of Illinois as inheritable estate (See section 84 + 85) ~~of the~~ list of John Turney's Real Estate of which he died seized and possessed

The Undivided half of the house and lot - which John Turney formerly occupied on Diagonal Street. which is designated by the recent survey of the town of Galena as lot - Number five (5) between Main & Diagonal Street. Since sold in Execution against said

estate) Lot Number Two (2) in Block Number 69 - except one hundred feet off of the East side sold and conveyed to Patrick Coy.

Lot Number Two (2) in Block Number 60 on which stands the Stone house built by said Turney and in which he resided

at the time of his decease

(18)

Lot Number five (5)
in Block Number Sixty one. Lot Number
nine in Block Number thirteen East side
of Fever River purchased of William
Maddie.

The following allowance was made the widow
as Dower in personal property

For property not specified	\$60.00
Necessary Beds & Bedding	40.32
Stoves & Cooking utensils	50.00
Household & Kitchen furniture	15.00
One cow & calf	15.00
Sheep & fleeces	7.00
Necessary provision fuel &c	100.00
Horse Saddle & Bridle	55.00
	<u>\$332.50</u>

There not being the articles above named
this amount was allowed in other pers-
onal property. Which personal property
amounted to two hundred and sixty
four Dollars and twelve cents leaving
a balance due her of Seventy eight ³⁷/₁₀₀
Dollars.

The following accounts
and notes are on file in my office
against the estate of the said
John Dorney deceased.

(19)

Baldwin Lee	250.00
W. B. Brock assigned of Philip Bangor & Co	10.63
Godfrey Schiffler	42.50
Curly & Keough	3.17
James Johnson	3.15
Meirich & Caller	6.64
M. M. Maughs (note dated Aug 2 nd 1836)	64.69
James Johnson (Acceptance)	11.00
Philip Byrne	40.34
Dr B P Croftsman's Estate	119.00
Wm Boyer	98.62
John Dowling	123.28
Nicholas Dowling	
Aunt Bros - for	<u>125</u>
	784 <u>23</u>
	784.23
Ephraim Selby	24.00
Stahl & Brewster	1.30
Meirich & Caller	7.02
How & Hutchinson	7.50
J & N Stahl	16.52
Young & Whitecites	116.03
H. Newhall	191.53
Strode & Sheldon	10.00
John Galvin	45.00
Alexr Colard	39.94
J P Menden	2.00
A C Davis	7.66
A M Hains	7.50
M. M. Maughs acct	80.30
John Wentworth	9.68

Moses Short for the use of A. R. Sa Croix	45.00
W. B. Truett	10.50
John Dowling's Estate acct	5.00
Wm. Richardt	13.87
W. C. Harkleroads	7.76
Thos. Drum	27.00

(20)

Amnt of Fee Bills due Circuit Court 80.87
 There is a large amount of interest due on some of the above notes not computed.

State of Illinois

County of Jo Daviess } I Charles G. Thomas
 Probate Justice of the peace
 in and for said County do hereby certify
 that the foregoing is a true copy from the
 record of the probate Court and papers
 on file in said Probate Office and papers
 of all the proceedings had before me
 in reference to said estate

Seal

Witness my hand and seal of
 Probate Court at my office in
 Galena this 11th day of Sept
 A. D. 1847.

Charles G. Thomas. P. J. P.

Exhibit "C"

Notice is hereby given that the undersigned
 will make application to the Jo Daviess
 County Court at the next term thereof
 to be holden at Galena on the first Mon-
 day in July next for an order to sell

6
(21)

the Real Estate of which John Turney
died seized for the payment of the debts
of said deceased.

Nancy J Turney Administratrix
May 21-29-62 of John Turney's estate

I hereby certify that the advertisement
hereto annexed was published for six weeks
successively in the North Western Gazette and
Galena Advertiser, the first of which publication
was on the 21st day of May A.D. 1847

W. C. E. Thomas. Ed. & Pub. said paper

Endorsed
Filed Sept 14th 1847
Geo M Mitchell Clerk

And afterwards to wit on the said 14th day
of September A.D. 1847 at the September
Term A.D. 1847 of said St. Lawrence County
Court in the Record of the proceedings
thereof in said cause appears the
following entry to wit

In the matter of Nancy J Turney ^{vs} On petition for the
Administratrix of John Turney's estate Sale of Real Estate
And now at this
day come the said Administratrix by her

(29)

Counsel and presents her petition for the sale of real Estate of which the said John Turney died seized and the said petitioner having filed with her petition on abstracts from the Probate Justice of the Peace of So. Davis County from which it appears that an inventory appraisement Bill has been made and filed in the office of the said Probate Justice according to Law, and that the personal Estate of the said John Turney is insufficient to pay his just debts and notice having been duly given and proved according to Law of the presentation of this petition and the Court having heard and examined the allegations and proofs of the said Administratrix and upon due examination being satisfied of the truth of the allegations contained in said petition and of the necessity for the sale of said Real Estate for the purpose of paying the Debts of the said John Turney deceased doth hereby order and direct that the Real Estate described in said petition to wit the undivided half of the house and lot which John Turney

formerly occupied on Diagonal
street - which is designated by the
recent survey of the Town of Galena
^{between Main and Diagonal Street, which said described Lot 74 fine}
(23) as Lot Number five (5), has since
been sold on an execution issued
against the said John Turney,
deceased, on a judgment recovered
against the said John Turney in his
lifetime on which an execution had
been issued within a year from the
rendition thereof which judgment
was rendered on the Day of A.D.
A.D. 1842 In favor of Stewart Brown.
Lot Number two (2) in Block Number
sixty nine (69) except One hundred feet
of the East side sold and conveyed to
Patrick Cox. Lot Number two (2) in
Block Number sixty (60) in which stands
the Stone House built by said Turney
and in which he resided at the time
of his decease. Lot Number five (5) in
Block Number sixty one (61) Lot Number
nine (9) in Block Number (13) thirteen East
side of Terre River all of which said
Lots are situated in the City of Galena
and State of Illinois be sold by the
said Administrator at the public
Vendue according to the manner and
the Conditions as prescribed by Law

and upon such sales conveyances thereof to make according to Law And to make a return of her proceedings hereon at the next term of this Court

(24)

And afterwards to wit on the 6th day of April AD 1848 at the April Term AD 1848 of said To Davis County Court in the Record of the proceedings thereof in said Cause appears the following entry to wit-

In the matter of Nancy Turney Administratrix of the Estate of John Turney Deceased

On Petition for the sale of Real Estate

On Motion of the Petitioner by her Attorney. So much of the order heretofore entered for sale of Real Estate as requires the sale of Lot No two in Blk sixty nine & lot No two in Block sixty situated in the City of Galena. is ordered by the Court to be vacated and leave is given her by the Court to amend her petition herein so as properly to describe the Real Estate belonging to John Turney deceased in pursuance of motion this day filed. And on Motion of the petitioner by her Attorney Walter Merriman Esq is appointed

7
Guardian Ad Litem of the Infants,
who is present and accepts said trust

(25)

The amended petition filed by
the said Administratrix is in the words
and figures following to wit:

State of Illinois } In the So Davie's County
So Davie's County } Court of the April
Term AD 1848.

To the Hon Hugh T Dickey judge of the
County Court aforesaid.

The amended petitioners of
Nancy J Turney, Administratrix of the Estate
of John Turney deceased, your petition-
er would most respectfully represent
that some time in the month of March
AD 1844 John Turney late a resident
of said County and state died seized
of certain Real Estate more particular-
ly described in this Amended Exhibit
hereto Annexed & marked "D" and prayed
to be taken as a part hereof and also
of certain personal property which
has been duly administered as appears
of the Records of the Probate office a
manuscript of which is herewith filed
together with the original petition

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and prayed to be taken as a part hereof
Said John Turney at the time of
his decease left five children living
William, Henry, Mary Ellen, Nancy
Jane & John Amos Turney, all
infants & under the age of twenty
one years for whom your petition-
er prays a Guardian ad Litem
may be appointed. Your petition-
er further shows that on the 18th
day of March AD 1844. Letters of
Administration were granted to
your petitioner upon the estate
of the said John Turney, that
your petitioner has proceeded since
the time last aforesaid faithfully
and diligently to discharge her
duties as Administratrix on said
estate and has diligently & faithfully
applied to the discharge of the debts
due from the estate aforesaid all
the personal property which has come
to her hands, that there is a large
amount of debts to wit, the sum
of \$1434.61 cts due to various persons
& creditors over & above all the
personal estate which has or may
come to the hands of the said

Administratrix on said estate all of which will more fully appear upon reference to the transcript hereinbefore filed with the original petition in this (27) cause & prayed to be taken as a part hereof the same being marked B and your petitioner knows of no other means whereby the balance of said debts or any portion thereof can be paid except by a sale of the Real Estate already referred to, that an application was made at the last term of this court for that purpose by filing a petition setting forth that the personal estate was insufficient to pay the just claims against said estate for greater certainty whereof your petitioner begs leave to refer to the same and that it may be made a part hereof the same being herewith filed, and that an order was obtained at the last term of this Court due notice having been previously given that all the Real Estate of the said John Turney dec'd be sold or so much thereof as should be necessary to pay the debts of said John Turney dec'd but by reason of an error in the description of said Real Estate only two of said

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lots in the said order and petition described were sold the residue of said lots being erroneously described which said two lots brought no more than two hundred Dollars although they were sold to the highest & best bidder at public sale at the door of the Court House in Sabana in pursuance of the said order & the Statute in such case made and provided bearing a large amount of debts due and unpaid amounting to about thirteen hundred Dollars, that the amended exhibit "D" contains a full & perfect description of all the Real Estate which is not properly described in the said order heretofore made by this Court as aforesaid which is which belonged to the said John Turney dec'd. ^{at the time of his death} which said schedule is prayed to be made a part hereof. Wherefore your petitioner prays this Hon. Court will make such order as may be necessary & that an Amendment may be made of the order heretofore made in this behalf so as to describe the Real Estate correctly which belonged to the said John Turney deceased and which is herein described in the said schedule.

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"Amended to this your petition amended
 petition herein and made a part hereof
 and that the same may be ordered
 to be sold or so much thereof as shall
 be necessary to pay the said debts
 of the said John Turney dec^d as in
 the original order herein before
 obtained and in pursuance of
 law and that your petitioner may
 be authorized to sell & convey the
 same under such regulations as
 are by law provided

Nancy Turney Adverser
 sc. By Buel & Higgins

"D" Amended Exhibit "D" of the Real Estate of
 John Turney deceased
 Lot No One in Block Number Sixty
 Lot No Two in Block No Sixty on which stands
 the Stone House built by said Turney
 and in which he resided at the time of his
 decease, which said Lot is subject
 to a life estate as the Dower of Nancy
 Turney assigned and set off to
 her as appears of Record
 And Lot No Two in Block No Fifty
 Nine except one hundred feet off
 the East side sold & conveyed to Patrick

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Corner and all the rights title & interest of said estate in and to the undivided half of Lot Number five between Main and diagonal streets. which said property has been sold on an execution issued more than a year after the death of John Turney on a Judgment rendered against him in his lifetime

Endorsed

Filed 15th Apr. 1848

Geo. M. Mitchell Clerk

The Report of the Guardian Ad Litem is in the words and figures following to wit

In the matter of	
Nancy Turney Adminis.	vs. M. D. J. Davies
Trustee of the Estate of John Turney deceased.	County Court
Application to Sell Real Estate	April Term 1848

The joint and several answers of William, Henry, Mary Ellen, Nancy Jane & John Annett Turney all infants under the age of twenty one years. Walter Merriman their Guardian Ad litem comes and for

And afterwards to wit on the 15th day of April
A.D. 1848. At the April Term. A.D. 1848 of said
So Davie's County Circuit Court. in the
Record of the proceedings thereof in said
(82) Cause appears the following entry to wit

In the matter of Nancy Turney An Petitioner for
Administration of the Estate of John Turney deceased Sale of Real Estate

Now at this day
Came the said Administratrix ^{by her counsel} and files
her amended petition for the sale of the Real
Estate of which the said John Turney deceased
died seized and which was erroneously
described by mistake in the original petition
in this Cause. And the order entered thereon
at the last term of this Court. And the
said petitioner having proved satisfactorily
to the Court that the lots described in
the former order heretofore entered were
erroneously described by mistake and
it appearing by the proof furnished & the
papers on file that the personal Estate of the
said John Turney is insufficient to pay
his just debts and that a sale of the
Real Estate or a portion thereof is necessary
to pay the residue of his said debts, and
a Guardian ad litem having been appo-
-inted for the minor heirs and he having

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filed his answer herein and the Court
having heard and examined the allegations
and proofs of the said Administrator
and upon due examination, being satisfied
of the facts contained in the amended peti-
tion herein and of the necessity of the sale
of said Real Estate, doth hereby in this
amended order decre. order & direct, that
the Real Estate described in the amended
Petition to wit: Lot-Number one in Block
Number Sixty, Lot-Number Two in Block
Number Sixty, on which stands the Stone
House built by said Turney and in
which he resided at the time of his decease
which said Lot is subject to a life estate
as the Dower of Nancy O Turney assigned
and set off to her as appears of Record.
And Lot-Number Two in Block Number
Fifty-Nine except One hundred feet
off the East side sold and conveyed
to Patrick Corp and all the rights, title
and interest of said Estate in and
to the undivided half of Lot-Number
five between Main and Diagonal Streets
which said property has been sold on an
Execution issued more than a year after
the death of said John Turney on a judgment
rendered against him in his life time

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All of which said Lots are situated in
the City of Galena in the County of Jo
Davies and State of Illinois" be sold
by the said Administratrix at public
vendue according to the manner and
the conditions as prescribed by law,
and upon such sale conveyances
thereof to make according to law
and to make a return of her
proceedings herein at the next
term of this Court -

And afterwards to wit on the 8th day of
May A.D. 1849, at the May Term A.D. 1849
of said Jo Davies County Court in
the Record of the proceedings thereof in
said Cause appears the following
entry to wit

In the matter of
Nancy ^{Jane} Turney Administratrix On Petition for
of the Estate of John Turney the sale of
Turney Deceased Real Estate

Now at this day came the
petitioner by her Counsel and files
her report of proceedings herein

(33) And on his Motion It is ordered by the Court
that the said report be filed accepted
and confirmed unless cause be shown
to the contrary by tomorrow morning,

The report of the Administratrix referred
to in the last recited entry is in the
words and figures following to wit;

In the Matter of Nancy
Furney Administratrix } On application
of the Estate of John Furney } to sell Real Estate
deceased }

In pursuance of an
order ~~and~~ an amended order made in
this cause at the September Term A.D.
1847 and at the April Term A.D. 1848 I
sold to Artemus S. Holms at Public Auction
on the twentieth day of December A.D. 1847
between the hours of 10 o'clock A.M. and
5 o'clock P.M. of said day at the ^{door of the} Court House
in the City of Galena the following real Estate
to wit Lot Number five in Block Number
sixty one on the west side of Town River
in said City of Galena for the sum
of one hundred and fifty three dollars
and at the same time & place and
at public Auction to Alexander Young
Lot Number nine in Block Number thirteen

Set five (5) in Block No 61 was sold to J. S. Holmes
for one hundred & thirty five dollars - not 153 as herein reported
Van H Higgins

(34)

on the East side of Ferre River in said
Galena. for the sum of Sixty five Dollars
on a credit of Twelve Months and took
therefor a bond with good security
and a mortgage upon the premises
and that afterwards by writ by virtue
of and amended order made at the
April term A D 1848, I sold to William
H Bradley at Public Auction on the sec-
-ond day of August A D 1848. between
the hours of 10 O'clock A M and 5 O'clock
P M of said day at the door of the
Court House in the City of Galena the following
real Estate to wit Lot No One in Block
No sixty for the sum of Fifty two Dollars
and at the same time and place
and at public Auction to Van H Higgins
Lot No Two in Block No Sixty subject
to the Dower Estate of the said Nancy
D Miner, as hereinbefore assigned
for the sum of One hundred Dollars
and at the same time and place
and at public Auction to William
P Millard Lot No two in Block No
fifty nine for the sum of thirty dollars
having given notice of said time
and place of sale according to Law All
All of which is respectfully submitted
for approval of this Hon Court

Endorsed

Filed May 8th 1849

Geo M Mitchell clk

(37)

And afterwards to wit on the 9th day of May
A D 1849 as yet of the said May Term
A D 1849 of said Jo Davies County
Court in the record of the proceedings
thereof in said Cause appears the
following entry to wit:

In the matter of Nancy
J Turney Administratrix } On Petition for
of the Estate of John Turney } Sale of Real Estate
deceased. }

Now at this day Cause again
the petitioner by her Counsel and no objec-
tions having been made to the order
entered yesterday accepting the report
of the petitioners proceedings herein
according to the order of the Court her-
inbefore entered. It is thereupon considered
by the Court that said order be made
absolute. And it is further ordered
by the Court that the petitioner pay the
costs of these proceedings and that Execu-
tion issue therefor.

(38) State of Illinois,
Jo Daviess County, of J. William R. Rowley
Clerk of the Circuit Court
in and for said County. And by operation
of law. Custodian of the Records of the
late Jo Daviess County Court do hereby
certify the foregoing to be a full, true and
correct Transcript of the Records & proce-
-dings of said Jo Daviess County Court
In the Matter of Nancy Jane Turney Admin-
-istratrix of Estate of John Turney deceased.
On application for sale of Real Estate.
As the same appear of Record in
my office

In testimony whereof I have
herunto set my name and
affixed the Seal of said Circuit
Court at my office in Galena
this 22nd day of Feby. AD 1860
Attest J. W. R. Rowley Clerk



William a Turney and
Henry Turney, Mary Ellen Turney & Nancy Jane Turney who dies by her
next friend William A. Turney vs Nancy Jane Turney Administratrix of John Turney

The Plaintiffs in error

now comes and assigns for error in the Record and proceedings herein the following

1st The Court erred in rendering an order of sale in the cause without the evidence of the publication of a notice of intention to apply for such an order shewing a request therein to all persons interested to appear and show cause against the same.

2^d The Court further erred in making such order, because there was no proof of the publication of any notice whatever -

3^d The Court further erred in rendering such order, because the notice under which the proceedings were had, was a notice that the petition would be presented at the July Term of the Court, ^{4th 1847} and not at the September Term of the Court A.D. 1847 - and there was no notice of an intention to present the petition at the said September Term of said Court. There was no notice upon which the proceeding could be had at that term of the Court.

4th The Court erred in rendering the original order of sale, without having ascertained who the heirs of John Turney were, and without having appointed a Guardian ad litem for them, and without answer from such Guardian -

5th The Court erred in vacating its order of the September Term A.D. 1847 at the

April Term 1848, and in permitting an amendment
of the petition and the subsequent proceedings without
notice to the heirs or their Guardian ad litem.
6th The Court erred in not requiring the Guardian ad litem to file a sufficient
answer.

7th The Court erred in each and every
order in the cause, and for these and other
errors apparent in said record appellant
prays a reversal thereof -

And the said money of Twenty
the defendant in error says there is no such
errors in the record as alleged.
State of Illinois ss. Wm. Gandy her atty
for Defendant in error

Let the writ of error
in this case be made a supersedeas, upon
the plaintiffs in error entering into bond
in the penal sum of five hundred dollars, con-
ditioned according to law, with Philip M. W.
Wallace Secretary, Hewittville Mo. Febry 29 1860

P. H. Walker
Pres. Sup. Ct.

Henry Tunney ⁹⁴ stats.

Chancery J. Tunney admr. &c.

Recd & Errors

Filed March 5. 1860.
L. Island
C.A.

Fee for transcript \$10.00
paid for by Wm. A. Tunney

Phineas Turner 1848, used in printing an account

William A. Truhey, Nancy Truhey,)
Mary Ellen Truhey, Nancy Jane Truhey)

Error to J. S. ...

— 74 —
Nancy Jane Truhey, administratrix of
John Truhey, deceased

In The Supreme Court at Ottawa

April Term 1860.

The plaintiffs in error hereby waive the errors assigned
so far as they relate to the lots and real estate sold by
the said Administratrix, as appears in the record in
this cause, and release all right to a reversal of
the decree so far as relates to the lots & real
estate sold as aforesaid.

June 7th 1860.

M. H. ...
for ptffs in error

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the County _____ Court for the County of *Jodaviss* - Greeting:

Because, In the records and proceedings, as also in the rendition of the judgment of a plea which was in the County _____ Court of *Jodaviss* - County, before the Judge thereof, between *Henry Turney et al.*, *Clarence J. Turney ad. et.* & *John Turney ad. et.* plaintiffs and *Henry Turney et al.* defendants,

_____ defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendants

_____ as we are informed by their complaint _____ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly, without delay, send to our Justices of the Supreme Court the records and proceedings of the plea 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 rights ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this _____ day of *March* in the Year of Our Lord our thousand eight hundred and *fifty six*.

L. Island

Clerk of the Supreme Court.

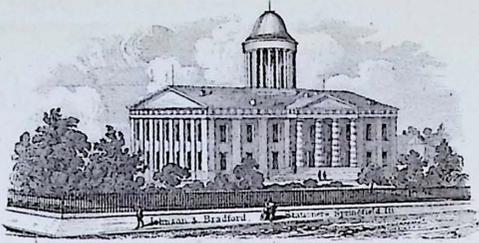
Henry Tunney ⁹⁴ states

St. J. Tunney adm^r. &c

Writ of Error

This writ of error is
made a supersedeas
as such should be
obeyed by all concerned.
L. Deland Clk.

Filed clerk. 5. 1860.
L. Deland
Clk.



State of Illinois,

Supreme Court, - Second Grand Division.

CLERK'S OFFICE.

Springfield February 27 1860

William C. Furney being duly sworn, deposes
says that he is well acquainted with
Philemon Warren who is proposed as
security on the supersedeas bond in the case
of Henry Furney et al. vs Nancy J. Furney
admt. or of John Furney, dec^d. and believes him
to be worth several thousand dollars after
paying his just debts.

Sworn to & subscribed before me
this 27th day of February 1860.

W. C. Furney
Attorney Public



94
Turney vs Turney
App. of Justification

Filed clerk. s. 1860.
J. Island
Clerk.



Know all Men, by these Presents:

That we, Henry Turney, Mary Ellen Turney & Nancy Jane Turney, William A. Turney, next friend of Nancy Jane Turney and Philemon Warren are held and firmly bound unto Nancy Jane Turney, administratrix of John Turney, deceased

heirs, executors, administrators and assigns, in the penal sum of Five Hundred dollars, for the payment of which, well and truly to be made, we, jointly and severally, bind ourselves, our heirs, executors, administrators and assigns, firmly, by these presents.

Witness our hands and seals, this second day of March A. D. 1860.

The condition of the above obligation is such that, whereas the said Henry Turney, Mary Ellen Turney & Nancy Jane Turney, who sues by her next friend William A. Turney has issued out of the Supreme Court for the ~~Second~~ ^{Third} Grand Division of the State of Illinois, a writ of error to the ~~Circuit~~ ^{County} Court within and for the county of Jo Davies, in said Division and State, upon ~~the~~ ^{orders} ~~judgment~~ rendered by said ~~Circuit~~ ^{County} Court, at September Term 1847 and at April term, A. D. 1848, for the sale of certain real estate belonging to the estate in favor of of said John Turney, dec^r

~~and against~~

which writ of error was, by order of one of the Judges in vacation made a SUPERSEDEAS.

Now, if the said Henry Turney, Mary Ellen Turney, & Nancy Jane Turney by her next friend William A. Turney shall prosecute the said writ with effect, and without delay, and shall, moreover, ~~pay to the said~~

pay ~~the said judgment of the said Circuit Court, and also all such costs, interest and damages as may be awarded against him, in case the said judgment of the said Circuit Court shall be affirmed by the said Supreme Court, then this obligation to be void—otherwise to remain in full force and effect.~~

Henry Turney [SEAL.]

Mary E. Turney [SEAL.]

Nancy Jane Turney [SEAL.]

William A. Turney Seal
next friend of Nancy Jane Turney

Philemon Warren Seal

94
Henry Tunney stals
by
Stanley J. Tunney admr. or.

Supd. Bond

Filed March 5. 1860.
S. Irelandy
Clerk.