

No. 12701

Supreme Court of Illinois

Newman

vs.

Funk

71641  7

Wingate & Peterson
as. 11

Isaac Smith

411

1200

1859

Wingate J. Chapman
vs
Isaac Finch

Abstract

Filed July 22. 1856

L. Leland
Clerk

In the Supreme Court of
the State of Illinois

Wingate & Newman & others
vs Isaac Tink

{ Error from
McLean

And now comes the plaintiff
in this cause by their solicitor ^{Attala & Newman} & on behalf of said plaintiff
for Error —

1st The rendition of a decree
of foreclosure & sale against
the said plaintiff Wingate &
Newman —

2^d Because the service of process
as to said Wingate & Newman
was defective & void first
for not showing that the "white
person" to whom the Sheriff
delivered the "Copy" was ^{a member} of the family
of the defendant — Second the
name of the person to whom the
Copy was delivered should have
been stated in the return & thirdly
the return does not show that the "white"
person with whom the process Copy was
left "was made informed of its contents"
as required by Law. Revised Statute
of 1845 page 94 sect 7 —

Townsend vs Griggs & Kean 366
2^d Gellman 584 (Montgomery vs
Brown et al)

2^d) The complainant below proceeded to a hearing against all of the defendants & without an order to take the bill for confess - & there was no proof before the Court of any indebtedness whatever as between the Mortgagor W. J. Newman & the Complainant Funk, which would authorise a decree against Said W. J. Newman -

3^d) There was no proof either of any mistake in the date of the note as described in the Mortgage - & no evidence was before the Court to show that the note Dated July 5th 1852 & Made an Exhibit "A" in said cause - was ever intended to be received by Said Mortgagor.

4th) The decree was taken against more defendants than were parties to the bill of foreclosure. The bill had been dismissed at the previous term as to William Wallace Benj F Webster Elton March & Zachariah Webster yet a decree was taken against the said plaintiffs in error ^{& other} jointly with said Benj Webster Elton March & Zachariah Webster who were

not parties to said Cause
For these

& other causes apparent on
the face of the Record the decree
ought to be reversed with
Costs

Wm H. Holmes
"Atty for plffs
in error

Wingate & Newmarch
& others {
vs
Isaac Funk

Error to McLean

Assignment of
Errors

Complete Copy of Proceedings continued
and held at the Court House in Bloom-
ington, at the September Term A.D. 1834 - of a
Circuit Court held within and for the County
of McLean and State of Illinois. Before the
Hon David Davis - Presiding Judge of the Eighth
Judicial Circuit of the State of Illinois. In a
Case upon the Chancery side thereof - wherein
Isaac Funk was Complainant and Win-
gate J. Newman and others were Defendants.

Whereupon afterwards to wit - on the
23rd day of September A.D. 1834 - the following
order was made by said Circuit Court, as
appears of Record - in Vol. 5 page 468 of
Chancery Records - to wit -

Order Isaac Funk
303 vs. Bill to
 Wingate J. Newman to foreclose a Mortgage -
 William Wallace & others

This day came the Com-
plainant by Hanna his solicitor, and dis-
misses his Bill as to W^m Wallace, Bengt F.
Webster, Eleon Monk, Jonathan Webster - And
thereupon Asa Kel Gridley Esq. an attorney of
this Court, enters the appearance of Charles B.
Pruitt, W. D. Scott, Samuel L. Kreutzberg,
John F. Bennett, George D. Pittman, and

Albert Lennent and C. H. Moore Esq. comes and enters his appearance herein - And it is ordered
that this cause be continued -

Ands Whereas afterwards to wit -
the following Decree was had and rendered in
the above entitled Cause as a ^{b. 495.} Pleas of Record in
Vol 5 of Chancery Records of said Court which
is in words and figures following. to wit -

Isaac Funk.

303.

vs.

Wingate J. Newman.

Benjamin S. Webster.

Elston Marsh.

Zachariah Webster.

Leffton H. Moore.

W^m Wallace - Chems.

P. Snitt, Robert W. D.

Snitt - Samuel Creut-

zberg - John F. Bennett.

George D. Pittman.

Albert Lennent.

In Chancery -

Bill to foreclose
a Mortgage -

And now at this day
comes the said Complainant by W. H. Hanna
his Solicitor. and it appearing to the Court by the
entry upon the records of this Court at the
September Term A.D. 1834 - that the appear-
ance of Benjamin S. Webster - Elston Marsh

Zachariah Webster - Charles P. Smith - Robert
W. D. Smith - Samuel Brewster - John Ben-
nett - George D. Pitman & Albert Lemerit - is
entered in this cause by A. Gridley their At-
tior. And the appearance of Clefton H. Moore
is entered in his own proper person. And the said
Complainant now here dismissing his Bill as to
said William Wallace - and it appearing to the
Court by the process herein & the Sheriff return
thereto, that the said Defendant Wingate J. New-
man - has been duly served with process herein
more than days previous to the first day of the
present Term of this Court. he is thrice called and
comes not, but wholly makes default, and this
cause coming on to be heard upon the bill default
of said ^{Defendant} Wingate J. Newman and the exhibits
herein - And the Court being fully advised in
the premises, does hereby order, adjudge and decree
that there is now due and owing from the said
Defendant Wingate J. Newman - to the said Com-
plainant - upon the note and Mortgage in said
Complaints Bill set forth, the sum of Three
Hundred and Twenty Nine Dollars, and forty
cents (\$329.44). That the said defendant Wing-
ate J. Newman - pay to the said Complainant the
said sum of (\$329.44) within twenty days
from this date - with interest from this date -
at the rate of six percent, per annum - That the
~~said~~ Equity of Redemption in said Mortgage

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contained. be and the same is hereby forever
foreclosed. That if default be made in the pay-
ment of said sum of money as aforesaid. that
the land in said Mortgage described. to wit being
the following described premises. situate. lying
and being in the County of McLean and
State of Illinois. and bounded described
as follows. to wit = Being a part of lot fifty six
and Fifty Seven (56 & 57) in the original ^{Survey} Town
of Bloomington. and bounded as follows. Com-
mencing forty six feet East of the North West
corner of lot number fifty Seven. running
sotherly and parallel with the North & South
lines of said lot to the alley. thence East Twenty
Six feet. thence Northerly on a parallel with
firstline to the North side of said lot. thence
West Twenty Six feet to the place of beginning -
be sold and the proceeds thereof. applied to the pay-
ment of the said sum of money & interest that
may accrue thereon to the aid complainant.
It is further ordered adjudged and decreed that
William W. Orme the Master in Chancery of said
County. and he is hereby appointed & author-
ized by the Court. to carry into effect this
decree if default be made in the payment of
said sum of money as herein before directed.
That in case default be made as aforesaid.
said William W. Orme. advertise said Real
Estate for sale in the Paragraphs a weekly

Newspaper printed and published in the city
of Bloomington - for at least Twenty days
previous to the day of Sale - Stating in such
advertisement the description of the said Real
Estate and the time place of selling the same.
That said sale shall be made at the Court House
Door in the County of McLean on a day to be fixed
by said William W. Orme - and shall be subject
to Auction to the highest bidder for cash in hand.
That upon the sale of said Real Estate, said
William W. Orme, shall make out and deliver
to the purchasers thereof, a certificate of sale which
shall entitle the holder thereof to a deed for said
the Real Estate so sold within fifteen months
from the day of said sale unless said Real
Estate be redeemed according to Law - That out
of the proceeds of said sale said William W. Orme
shall first pay the costs of this proceeding - and
he shall pay the said complainant or full the
said sum of \$329. 44 & interest at six per
cent thereon from this date - and if there
should be any surplus remaining, he shall
pay the same to the said defendant Uringate J.
Newman -

The following is a copy of the Com-
plainants Bill - which Bill is in words
and figures following, to wit -

State of Illinois In the McLean Circuit Court
McLean County September Term A.D. 1834 =

To the Honorable David Fair
Judge of said Court in Chancery sitting -

Your Orator Isaac H. Newell res-
pectfully represents, that he ~~has~~^{to before} come to court on the
5th day of July in the year of our Lord 1854, one
Wingate J. Newman - whom your orator makes
a Defendant to this Bill of Complaint, whom
is indebted to your Orator in the sum of one thousand
Dollars, for borrowed money and being so indebted
the said Wingate J. Newman ~~forwards~~ ~~forwards~~
on the day and year aforesaid - executed to your
Orator his promissory note - whereby the said
Newman promised your orator to pay him on
or before the 1st day of November, then next ensuing
the sum of one Thousand Dollars with ten per
cent interest per annum from date which
said note is herewith filed marked "Exhibit D"
and made a part of this your orator's Bill of
Complaint - Your orator further represents
that in order to secure the payment of said
promissory note the said Wingate J. Newman
on the 24th day of March in the year 1853 -
made, executed and delivered to your orator
his certain indenture of Mortgage - by which
he the said Wingate J. Newman - sold and con-
veyed to your orator the following described

tract of land to wit - Being a part of lots Fifty
Six(56) and Fifty Seven(57) in the original
Town (now City) of Bloomington - in said County
of McLean and State of Illinois - and described
as follows - tract - Commencing Forty Six(46)
feet East of the North West Corner of lot No. Fifty
Seven(57) running Southerly on a parallel
with the North and South line of said lot to the
alley - thence East Twenty Two(22) feet - thence
Northerly on a parallel with said first line
to the North of line of said lot, thence West
Twenty Two(22) feet to the place of beginning -
To have and to hold the same together with all
and singular the hereditaments and appur-
tenances thereto belonging or in anywise
pertaining -

Your Brator further shows that in by
said Mortgage was and is further in sub-
stance provided and conditioned that if the
said Wingate J. Newman should pay or owe
to be paid to your water the said sum of mon-
ey in said promissory note mentioned - together
with the interest thereon, at the time and in the
manner specified in said promissory note
according to the tenor and effect and true
intent and meaning of said promissory note
that then and in that case said instrument of
Mortgage should be null and void - which
said Mortgage was acknowledged according

to Law - Your orator further represents that by mistake and inadvertence said promissory note is wrongly described in said Mortgage as bearing Date the first day of July 1832 - wherein in truth and in fact said note bears date on the 5th day of July 1832 - and was so intended to be described in said Mortgage and that the said note intended to be described in said Mortgage is the same note filed herewith marked "Exhibit A" as aforesaid =

Your orator further represents that he lost or mislaid the original of said Indenture of Mortgage - but that he caused the same to be recorded in the Recorder's Office of said County of McLean in Book A. page 609. that the same was so filed for Record in said Office on the 24th day of March 1833. and recorded as aforesaid on the 31st day of March 1833. and your orator herewith files a Certified Copy of said Mortgage and prays that the same may be taken as a part of this Bill of Complaint - marked Exhibit B. =

Your orator further represents that said Wingate J. Newman has not paid said promissory note nor any part thereof Although the same has long since become due and payable but your orator acknowledges the receipt of said Newman of the sum of one hundred and Twenty Dollars. in part payment of the

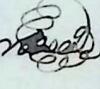
interest accruing upon said note which pay-
ment was made on the 26th day of March 1833, &
is credited in the books of said note - Your
W^t orator further represents that subsequent to the
execution and recording of said Mortgage
the following named persons have obtained
judgments against said Wingate J. Newman
which judgments are liens upon said land
that is to say Benjamin F. Webster - Elston Marsh
& Zariah Webster - Clifton H. Moore - Wm.
Wallace & Charles B. Pruitt Robert W. D. Pruitt &
Samuel Creutzburg & John F. Bennett & George D.
Pittman & Albert Pennington -

In consideration of the premises & inasmuch as
your orator has no adequate and complete ~~suing~~
remedy at law - Your orator prays your honor
that said Wingate J. Newman - Benjamin F.
Webster - Elston Marsh & Zariah Webster -
Clifton H. Moore Wallace & Charles B.
Pruitt - Robert W. D. Pruitt & Samuel L. Creutz-
burg & John F. Bennett - George D. Pittman -
& Albert Pennington be made Defendant to this
your orators Bill of Complaint - that process
of Subpoena be issued for said defendants -
commanding them to appear on the ^{1st} day of the
next Term of your honorable Court then
and there to answer under their several oaths
and that upon a final hearing of this cause
the said equity of redemption in the said Mort-
gage -

contained may be forever foreclosed - and that
 your Honor will grant to your brother such other
 further relief as equity and good conscience may require.
 filed Sept. 1^o 1834. 3
 Wm H. Hanna -
 Wm McCullough Clerk
 by W. W. Orme Atty. 3

The following is a copy of
 the note filed with said Bill of Complaint in words
 and figures following - to wit =

Springfield July 6, 1832.
 On or before the first day of November next for value
 received I promise to pay Isaac Firth or order the
 sum of \$1000. one thousand dollars so witness my
 hand and with ten percent from date -

Copy of Receipt = W. J. Newman 
 Recd on the within one hundred and twenty dollars.

March 24, 1833 = "Exhibit A" =

Nov. 6 1834 Recd. on this note in another note \$10.54
 Feb. 25 1833 - J. Stern \$300. on March 21, 1835, of
 S. Stern \$400. 00 =

And thereupon sued out of said office of Circuit
 Clk. certain sum of Debts - which is in words &
 figures following - to wit =

~~Debts =~~ State of Illinois The people of the State of Illinois -
 McLean County To the Sheriff of McLean County, Greeting:
 We command you to summon Wingate J.
 Newman, Benjamin F. Webster, Elston Webb, Jack-
 anah Webster, Clifton H. Moore, William Wallace,
 and Samuel L. Cadyborg - If to be found in your
 County - personally to be and appear before the
 Circuit Court of said County - on the first day of the

Present Lem there to be holden at th Court house
near & from thence to holden at the Court House
in Bloomington - at the Court House
on the second Monday in the month of
September present to answer to a certain
Bill of Complaint filed in our said Circuit
Court on the Chancery side thereof against
them by Isaac Banks and further to do
and receive what shall then and there be ad-
judged against them in this behalf - And
that they shall in no wise omit - and have
you then and there this writ - and make
return thereon in what manner you execute
the same =

Witness William Mc Cullough Clerk
of said Circuit Court and the seal
thereof hereto affixed - at Bloomington
his first day of September in the year
of our Lord one thousand eight hun-
dred and fifty four.

Wm McCullough Clerk.
by his Dfty W. W. Orme

Which writ of Subpoena was by the Sheriff
of said County returned to said Clerks Office
endorsed as follows - to wit -

Endorsement Executed the within and by leaving a true copy of it at
the place of residence of the within named Wingate
J. Newman, with a white person over the age of ten
years -

Sept. 1. 1834 =

Shffs. fee Inv. & Rec. 60
Copy .50
Mileage .50
Bt. 15

Geo. Parke Sheriff =

The following is a Copy of the Mortgage Marked "Exhibit B." which Mortgage is in words and figures following - to wit -

This Indenture, Made this Twenty fourth day of March in the year of our Lord Eighteen hundred and fifty three - Between Wingate J. Neiman of the County of McLean and State of Illinois of the first part, and Isaac Funk of the same County and State of the second part. Witnesseth, that whereas the said party of the first part is justly indebted to the said party of the second part in the sum of one thousand Dollars, secured to be paid by a certain promissory note dated the first day of July Eighteen Hundred and fifty two, and drawing ten percent interest from date till paid. Now therefore, this Indenture - Witnesseth, that the said party of the first part, for the better securing the payment of the money aforesaid with interest thereon according to the tenor and intent and true intent and meaning of the said promissory note above mentioned - And also in consideration of the further sum of one dollar to him in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged to be granted bargained and sold and remised, aliened and conveyed, and by these presents does grant

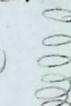
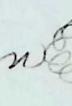
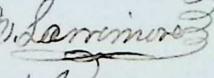
bargain sell remise alien and convey unto
the said party of the second part and to

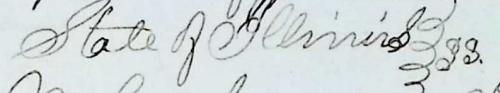
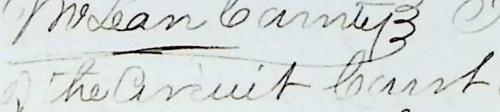
his heirs and assigns forever. the following described premises situated lying and being in the County of McLean and State of Illinois and known and described as follows to wit - Being a part of lot Fifty Six (56) and Fifty Seven (57) in the original Town (now City) of Bloomington - described by the following boundary to it - Commencing forty six feet East of the north West corner of said lot No. Fifty Seven running Northwesterly on a parallel with North and South lines of said lot to the Alley, thence East Seventy two feet - thence Northwesterly on a parallel with first line to the North side of said lot, thence West Seventy Two feet to the place of beginning -

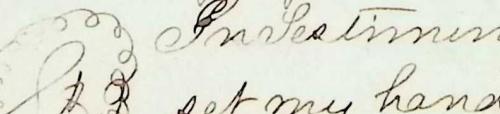
To have and to hold the same together with all and singular - the tenements, hereditaments, privileges and appurtenances thereto belonging or in any wise appertaining - with the rents issues and profits thereof - and also all the estate, right, title, interest and claim whatsoever in law as well as in equity - which the party of the first part has in and to the premises hereby conveyed to the said party of the second part his heirs and assigns, and so their only proper use benefit and behoof - forever - Provided always, and these presents are upon this express condition - that if the said Wm. J. Norman party of the first part, his heirs,

executors and administrators shall well and truly pay or cause to be paid to the said party of the second part his heirs executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory note according to the tenor and effect and true intent and meaning thereof that then and in that case these presents and anything herein expressed shall be absolutely null and void.

In witness whereof the said party of the first part have hereunto set his hand and seal the day and year first above written -

Signed Sealed Delivered  W. J. Newman 
in presence of Jno. W. Leminore 

State of Illinois 
McLean County  I. William McCullough, Clerk
of the Circuit Court in and for said County do hereby certify that the above named W. J. Newman who is personally known to be the person whose name is subscribed to the foregoing Mortgage as having executed the same this day in his proper person came before me and acknowledged that he signed sealed and delivered the said Mortgage for the uses and purposes therein mentioned -

In testimony whereof I have hereunto set my hand and affixed seal this
Seventy Fourth day of March 1833.
Signed March 24th 1833  W^m McCullough, Clerk
Recorded March 31st 1833 by Jno. W. Leminore, Deputy

State of Illinois
McLean County I. William McCullough.
Clerk of the Circuit Court and Ex Officio Register
of Deeds, Mortgages &c in and for said County and
State do hereby certify the foregoing to be true and
copy of the mortgage between the parties therin
named as the same appears of record in my
Office in Book 'A' of Mortgages on pages 609 &
610

In Testimony Whereof I have hereunto
set my hand and affixed the seal of said
Court at Bloomington this 1st day of
September A.D. 1834—

Wm McCullough Clerk
by his Deputy Wm Ward. Orme

Pearl Lums

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vs.

Bill to foreclose =

Wingate J. Newman ^{notary}

And thereupon after-
wards to wit = on the Twenty Second day
of September A.D. 1838. came the Master in
Chancery of said County of McLean and made
report of the sale of the premises in the Decree
herein before rendered, described which report
is by the Court approved and is in the words
and figures following — to wit —

Report.

Pearl Lums

vs.

McLean Circuit Court

Bill to foreclose a Mortgage —

Wingate J. Newman ^{notary}

To the Hon. David Davis Judge
of the McLean Circuit Court in Chancery
sitting -

The undersigned having been required
by a Decree rendered in the above entitled
cause - at the April term A.D. 1835 - of the Mc-
Lean Circuit Court - to make sale of certain
premises in said Decree described as follows to
wit - A part of Lots 56. and 57. in the original
Town of Bloomington, bounded as follows: com-
mencing 46 feet East of the North West corner of
~~said~~ Lot 57. running southerly over a parallel
with the North and South lines of ~~said~~ Lot to
the Alley - thence East 22 feet. thence over a north
easterly parallel with the first line to the North
side of ~~said~~ lot - thence West 22 feet to the place
of beginning = would respectfully report -
That default having been made in the pay-
ment of the money as required by ~~said~~ Decree
on the fourteenth day of June A.D. 1835 - the
undersigned (having given at least Twenty
days notice of the time place and terms of sale
with a description of the premises, ^{to be} sold - by
publication in the Weekly Pantagraph a
weekly newspaper published in ~~said~~ County
of McLean - a certified copy of which notice is
hereto filed) at the door of the Court House
in Bloomington between the hours of 9 A.M.
and 5 P.M. of said day. sold said premises

to Isaac Funk, the complainant, he being the highest and best bidder therefor. The said Isaac Funk having bid therefor the sum of \$358.37 amount of his debt, interest thereon and the costs of suit. The undersigned received from said Isaac Funk the amount of costs of this proceeding, and executed to him a ~~certified~~
purchase entitling him to a deed for said premises according to the Statute -

And now he submits this report of his doings herein to the Court for approval. Dated this 14th day of June A.D. 1835 -

William W. Orme - 3
Master in Chancery

The following is a copy of the publication made in the above entitled cause and filed with the above report which publication is in words and figures following - to wit -

Masters Sale -
Isaac Funk
vs.

In Chancery
to

Wingate J. Newman & ~~Others~~ Foreclose a Mortgage -
Public notice is hereby given that by virtue of a decree rendered in the above entitled cause at the April Term A.D. 1835. of the McLean Circuit Court. It shall sell at public sale at the door of the Court House in the city of Bloomington, in the County of McLean

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and State of Illinois - on Thursday the 14th day
of June next - between the hours of 9 A. M. and
3 P. M. of said day - to the highest bidder for
cash in hand - the following described premises
to wit - A part of Lots 56 and 57. in the original
Town (now City) of Bloomington - ~~said~~
bounded as follows - Commencing 46 feet
East of the North West corner of Lot 57. running
southerly on a parallel with the North and
South lines of said lot to the alley - thence East
22 feet - thence on a Northerly parallel with the
first line to the North side of said lot. thence
West 22 feet to the place of beginning -

The purchaser at said sale will receive a cer-
tificate of purchase entitling him to a deed for
said premises at the expiration of fifteen months
from the day of sale. if the same be not previously
redeemed according to law -

William W. Orme - 3
Master in Chancery

I bid may certify. That the aforesaid
Notice has been published in four consecutive
numbers of the Weekly Pantograph - a public
newspaper printed and published in Bloom-
ington McLean County - Illinois the first pub-
lication being on the 24th day of May 1835 - Q
Printers fees \$3.00

Resd. payment - 3
Merriman & Morris 3

State of Illinois
McLean County S. William McCullough
Clerk of the Circuit Court in and for said
County do hereby certify that the foregoing is a
true and complete Transcript of the record in
the above entitled Cause.

In Testimony whereof I have here-
unto set my hand and affixed the
seal of the said Court at Blooming-
ton - this Fifteenth (15th) day of July
A.D. 1836.

W. McCullough
Clerk

Let a supersedias issue upon
filing this record or a bond in the penal
sum of five hundred dollars with Isaac
I Friedman security

July 21. 1856

S. D. Loring

No. 283 = Chey=

Isaac Funk.

the

Wigate J. Newman-

and Others =

Complete Record -

Filed July 22. 1856

L. Leland
Clerk

Cost of Complete Record

\$6.00 Paid for W. J.
Newman by Isaac
Friedman

July 21st 1856

Paid \$6.00 for making complete
Record of July 21/56 = Wm McCullough Clerk.

110101

ILLINOIS, SS.
Clerk's Office of the Supreme Court. }

I hereby certify, that a Writ of Error hath issued from this Office for the reversal of a Judgment obtained by Isaac F. Newmⁿ & Webster & others against Wingate J. Newman ^{repleaded with} in the Circuit Court of McLean — county, at the April — Term, in the year of our Lord one thousand eight hundred and fifty five in a certain action of Chancery suit which Writ of Error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

GIVEN under my hand, and the Seal of the said Supreme Court, at Ottawa, this 22^d day of July — in the year of our Lord one thousand eight hundred and fifty five.

L. Leland
Clerk of the Supreme Court.
By J. Becker Deputy

(12701-1)

Wingate & Newman
Dr.

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Isaac Tunk

Supercedens

Filed Sept. 28, 1856

L Leland
Clerk

Accorded them without suspended by sealing to
Succinct and W. W. Morse Mus. Com. in Boston Mass.
August 14th 1856

Supreme Court of the State
of Illinois to be held
at Ottawa

Wingate & Newman
Benjamin F. Webster
Elston March
Zachariah Webster
P. Linton H. Moore
Charles B. Truitt
Robert Denman
vs
Isaac Funk

Error to McLean

Clerk issue process
directed to the Sheriff of McLean
County on the filing of security
for costs T. T. Womble, of this place is
properly responsible
Wm H. Holmes
pros Atty

In the Supreme Court of the State of Illinois
to be held at Ottawa.

Wingate & Newman & others

vs
Isaac Funk

Error to McLean

We do hereby
enter ourselves security for costs in
this cause and acknowledge ourselves
bound to pay or cause to be paid all
costs which may accrue in said
action either to the opposite party or
to any of the officers of this court in
prudence of the laws of this state
Dated this 22nd day of July A.D. 1856
S. J. Moore

Wagat J Newman
& others
vs
Isaac Fank

Entered to McLean
Plaza & Security
for costs

Filed July 22, 1857
L. Leland
Clerk

STATE OF ILLINOIS,

Supreme Court,

{ ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of McLean Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a
 plea which was in the circuit court of McLean — county, before the Judge there-
 of, between Isaac Frunk —

plaintiff, and Wingate J. Newman impleaded with
 Benjamin & Webster & others —

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Wingate J.
 Newman —

as we are inform-
 ed by his 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 there-
 of be given, you distinctly and openly without delay, send to our Justices of the Supreme Court
 the record and proceedings of the plaint, 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 second Monday in June next, that the record and proceedings, being inspeeted,
 we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~Samuel H. Treat~~, Chief Justice
 of our said Court, and the Seal thereof, at Ottawa, this 22nd day of July
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

A. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

Wingate & Newman
vs
Isaac Fink R.
Writ of Error

This Writ of Error is
to operate as a Super-
Sedeas, and as such it
is to be obeyed by
all concerned.

L Leland
Clerk
By J. B. Rice Deputy

Filed July 22, 1852

L Leland
Clerk

Know all men by these presents that we
Wingate J. Newman as principal and
Isaac E. Freedman as surety are well
and firmly bound unto Isaac Funk
in the sum of five hundred dollars
to the payment of which sum we will
truly & truly be made over to bind ourselves,
our heirs executors and administrators
jointly & severally firmly by these
presents witnesses our hands and seals
this 22nd day of July A.D. 1856.

The condition of the above obligation
is such that whereas the circuit court
of McLean county in the state of Illinois at its
the April term A.D. 1855 ~~made~~ entered
a decree of foreclosure against the above
bounden Wingate J. Newman with others
in favor of said Isaac Funk for the sum
of three hundred and twenty nine dollars
and forty four cents in a proceeding in
chancery to foreclose a mortgage from
which decree the said Wingate J.
Newman is about prosecuting a writ
of error, which writ of error is ordered
by the Hon. John T. Cather one of the justices
of the Supreme Court of said state to be
made a supersedeas. Now therefore
if the said Wingate J. Newman shall
duly prosecute his said writ of error,
and shall pay whatever decree costs, interest
and damages may be adjudged against
him in case said decree shall be
affirmed then the above obligation

shall be null & void - otherwise
to be and remain of full force and
virtue -

Wm. C. Newman
By John D. Friedman Seal

John D. Friedman Seal

Plaintiff's Attorney
vs.
Plaintiff's Clerk

Superseding Writ

Filed July 22, 1856
J. Leland
Clerk.

STATE OF ILLINOIS,

Supreme Court,

{ ss.

The People of the Sstate of Illinois,

To the Sheriff of the County of McLean — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a
plea which was in the circuit court of McLean county, before the Judge there-
of, between Isaac Funk Plaintiff & Wingate J. Newman
impleaded with Benjamin R. Webster & others
Defendant

defendants it is said that manifest error hath intervened, to the injury of the said Wingate J.
Newman impleaded &c.

as we are informed by his complaint, the record and proceedings of which said judgment we have
caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices
thereof, to correct the errors in the same, in due form and manner, according to law; therefore we com-
mand you, that by good and lawful men of your county, you give notice to the said Isaac Funk

that he be and appear before the Justices of our said Supreme Court, at the next term of said
court, to be holden at Ottawa, in said state, on the second Monday in June — next,
to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and
further to do and receive what said court shall order in this behalf; and have you then there the
names of those by whom you shall give the said Isaac Funk

notice, together with this writ.

Walter B. Scott

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said
Court, and the Seal thereof, at Ottawa, this 22 day of July
in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

L. Leland

Clerk of the Supreme Court. Dr
By J. B. Rice, Deputy.

Wingate & Newman

vs
Isaac Funk.

Serre facias

Filed Sept. 28, 1856

S. Deland
Clark

executed the within Serre facias by returning to the
said Isaac Funk the original with the best
Chancery seal.

Franklin
H. P. Dickey
W. S. Dickey
W. S. Dickey
W. S. Dickey

State of Illinois
Supreme Court 3rd Grand Division

Wingate J. Newman, uploaded 3
with others

as

Lake Frank

3 Error to McLean
3

Abstract

Copy of the
record.

On the 1st Sept. 1854 Frank filed his
bill in Chancery in the McLean circuit
court Alleging that on the 5th July 1854
Newman became indebted to Frank in
the sum of \$1000 for borrowed money &
on that day executed to Frank his note
whereby he promised to pay Frank on or
before 1st Nov. then next ensuing \$1000
with 10 pr cent interest. a copy of note is
made an exhibit. and to secure
the payment of the note Newman on the
24th March 1853 made and delivered
to Frank a mortgage on certain premises
being parts of lots 56 & 57 in Bloomington
described by metes & bounds *that by
mistake and inadvertence the note was
wrongly described in the mortgage - that
it was described in the mortgage as bearing
date July 1st 1852 when in fact it bore
date July 5th 1852 & was so intended to be
described in the mortgage - & is the same
note filed with the bill.

The bill further alleges that the

original mortgage was lost, but that it was recorded in the recorder's office of McLean Co. and a copy of the record is attached to the bill as an exhibit -

The bill further alleges that ~~the~~ Bevman had not paid the note nor any part thereof except \$170 in part payment of the interest - which payment was made March 26, 1853 & credited on the note - The bill further charges that after the execution and recording of the mortgage the following named persons obtained judgment against Bevman which judgments are a lien on the mortgaged premises - to wit Benj. F. Webster, Elston Marsh, and Zachariah Webster - Clifton H. Moore, William Wallace, Charles B. Truett, Robert W. D. Truett and Samuel Greenbury, & John F. Bennett & George E. Pittman & Albert Bennett -

The bill prays that Bevman and all the judgment creditors named may be made defendants - for process against them - & that they severally answer under oath - that on final hearing the equity of redemption be forever foreclosed & for general relief -

* On the same day the bill was filed a summons in Chancery was issued in the cause against all the defendants, and

the only return thereon is as follows-

"Executed the within writ by leaving a
"true copy of it at the place of residence
"of the within named Plaintiff
"with a white person over the age of ten years.
"Sept. 1 1854 - (Signed) Geo. Parker Sheriff"

page 1

At the September term 1854 of the
McLean Circuit court the complainant
Fenk dismissed his bill as to William
Wallace, Benj. A. Webster, Elston Marsh,
and Zachariah Webster & the appearance
of Chas B. Truett, W. D. Truett, Samuel
L. Huntington, John H. Bennett, George
D. Pittman * and Albert Clement and
C. H. More was entered & the cause
continued

Sometime (but when the record
does not show) a decree was made
reciting that at the Sept 2. 1854 the appearance
of Benj. A. Webster, Elston Marsh, ^{*}Zachariah
Webster, Chas B. Truett, Robert W. D. Truett
Samuel Huntington, John Bennett, George
D. Pittman & Albert Clement ^{& Clifton H. More} is entered
herein & complainant Fenk now dismissing
his bill as to Mr Wallace & it appearing that
Newman was served with process more than
ten days before this term of the court he is
called & defaulted & the cause coming on
to be heard upon the bill default of Newman
& the exhibits & the court being fully advised
decrees that there is due Fenk on the note
& mortgage mentioned in the bill \$329.14

and that within twenty days Newman
pay complainant that sum with interest
and in default thereof that the mortgage
p. 4. * premises (describing them) be sold by
the Master in Chancery & directs
the manner of giving notice & the
application of the proceeds of the sale.

* p. 15. At the September term 1855 of
said court the Master in Chancery
presented his report of sale, which was
approved by the court - It shows a sale
of the mortgaged premises to New R the
complainant on the 14th June 1855, for
the amount of the decree interest &
costs.

W H Wallace
for plff in error