

12701

No. _____

Supreme Court of Illinois

Newman

vs.

Funk

Wingate J. Newman
Isaac Smith

III

12701

1859

Mingate J. Newman
vs

Isaac Fink

Abstract

Filed July 22. 1856

L. Leland
Clerk

In the Supreme Court of
the State of Illinois

Wingate L Newman & others }
Isaac vs Fink }

} Error from
McLean

And now comes the plaintiff
in this Cause by ^{Holmes} ~~on behalf of said W L Newman~~
their solicitor, & assigns
for Error

1st The Rendition of a decree
of foreclosure & Sale against
the said plaintiff Wingate L
Newman -

2^d Because the service of process
as to said Wingate L Newman
was defective & void first
for not showing that the "white
person" to whom the sheriff
delivered the "Copy" ^{a member} was 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 Copy was
left "was made informed of its contents"
as required by Law. Revised Laws of
1845 page 94 sect 7 -

Townsend vs Griggs 2 Steam 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 confessed—
& there was no proof before the court
of any indebtedness whatever as
between the Mortgagee W. J. Newman
& the Complainant Fink, which
would authorize a decree against
said W. J. Newman—

3^d There was no proof either
by 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 secured by
said Mortgage.

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
Elston March & Zachariah Webster
yet a decree was taken against
the said plaintiff in error ^{& others} jointly
with said Benj. Webster Elston March
& Zachariah Webster. who were

not parties to said Cause
For these

2 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 J Newman
& others }

vs

Isaac Funk

Errors 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. 1854 - 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 Furrk was Complainant and Win-
gate J. Newman and others were Defendants.

Whereupon afterwards to wit - on the
23^d day of September A.D. 1854 - the following
order was made by said Circuit Court as
appears of Record - in vol. 5 page 465 of
Chancery Records - to wit -

Order

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Isaac Furrk

vs

Bill to

Wingate J. Newman - foreclose a Mortgage -
to William Wallace & thet

This day came the Com-
plainant by Hanna his Solicitor, and dis-
misses his Bill as to W^m Wallace, Beng. H.
Webster - Elson Monk - Jeremiah Webster - And
thereupon Asa hel Gridley Esq. an Attorney of
this Court, enters the appearance of Charles B.
Sruitt. W. D. Sruitt - Samuel L. Kneuty torq -
John H. Bennett - George D. Pittman - and

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

And thereupon afterwards, to wit -
the following Decree was had and rendered in
the above entitled Cause as appears of Record in
Vol 5th ^{p. 495} of Chancery Records of said Court which
is in words and figures following, to wit -

Isaac Fink.

vs.

Wingate J. Newman.

Benjamin F. Webster.

Elston Marsh.

Zachariah Webster.

Cleifton H. Moore.

Wm Wallace - Charles

B. Pruitt. Robert W. D.

Pruitt - Samuel Greut-

berg - 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 F. Webster - Elston Marsh

Zachariah Webster - Charles B. Pruitt - Robert
W. D. Smith - Samuel Crutzyborg - John Ben-
nett - George D. Pitman & Albert Linnert - is
entered in this cause by A. Gridley their Direc-
tor - And the appearance of Clifton 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's 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
Complainant's Bill set forth, the sum of three
Hundred and twenty nine Dollars. and forty ~~four~~
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 known and described
as follows to wit - Being a part of lot fifty six
and fifty seven (56 & 57) in the original ^{township} town of
Bloomington - and bounded as follows. Com-
mencing forty six feet East of the North West
corner of lot number fifty seven - running
southerly and parallel with the North & South
lines of said lot to the alley - thence East twenty
six feet - thence Northerly on a parallel with
first line 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 said complainant.
It is further ordered, adjudged and decreed that
William W. Orme the Master in Chancery of said
County be 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 Pantagraph 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 Wayne on a day to be fixed
by said William W. Orme - and shall be at pub-
lic 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 purchaser 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 in full the
said sum of \$327.44 & 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, Wingate J.
Newman -

The following is a copy of the Com-
plainant's Bill - which Bill is in words
and figures following, to wit:-

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State of Illinois } In the McLean Circuit Court.
McLean County } September Term A.D. 1854 =

To the Honorable David Davis
Judge of said Court. in Chancery Sitting -

Your Orator Alexander W. res-
pectfully represents, that here^{tofore} to wit = on the
5th day of July in the year of our Lord 1854. One
Wingate J. Neuman - whom your orator makes
a Defendant to this Bill of Complaint, come
indebted to your Orator in the sum of one thousand
Dollars. for borrowed money - and being indebted
the said Wingate J. Neuman ~~from~~ your orator
on the day and year aforesaid - executed to your
Orator his promissory note - whereby the said
Neuman promised your orator to pay to 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 A"
and made a part of this your orators Bill of
Complaint - Your orator further represents
that in order to secure the payment of said
promissory note the said Wingate J. Neuman
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. Neuman - 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 - to wit - 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 appurtenances thereto belonging or in anywise appertaining -

Your orator further shows that in the said Mortgage was and is further in substance provided and conditioned that if the said Wingate J. Newman should pay or cause to be paid to your orator the said sum of money 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

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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 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 mar-
ked "Exhibit A" as aforesaid =

Your orator further represents that he, ^{has} 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 Milan 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. Neuman has not paid said prom-
issory note nor any part thereof Although the
same has long since become due and payable
but your orator acknowledges the receipt of
said Neuman 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 back of said note = Your
orator further represents that subsequent to the
execution and recording of said Mortgage
the following named persons have obtained
judgements against said Wingate J. Newman
which judgements are liens upon said land
that is to say Benjamin F. Webster - Elston Marsh
& Zacheriah Webster - Clifton H. Moore - Wm
Wallace Charles B. Pruitt Robert W. D. Pruitt &
Samuel C. Gentry & John F. Bennett & George D.
Pittman & Albert Bennett =

In consideration of the premises & in as much as
your orator has no adequate and complete ~~remedy~~
remedy at law - Your orator prays your honor
that said Wingate J. Newman - Benjamin F.
Webster - Elston Marsh & Zacheriah Webster -
Clifton H. Moore - William Wallace - Charles B.
Pruitt - Robert W. D. Pruitt & Samuel S. Gentry -
John F. Bennett - George D. Pittman -
& Albert Bennett - be made Defendants to this
your orator's 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-

contained may be forever foreclosed - and that
your honor will grant to your vtrator such other
further relief as equity and good conscience may require.

Filed Sept. 1st 1834

Wm. H. Hanna -

Wm. M. Bullough Clk.

Sols. for Compt.

by W. W. Connelley

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

Springfield July 5th 1852.

Now before the first day of November next for value
received I promise to pay Isaac Finkle or order the
sum of \$1000. one thousand dollars as witness my
hand and with ten per cent from date -

Copy of Receipts =

W. J. Newman

Received on the within one hundred and twenty dollars.

March 24. 1853 = "Exhibit A" =

Nov. 6/1834 - Recd. on this note in another note \$8.54

Feb. 2nd 1835 - of S. Stern \$300.00 March 21-1835, of

S. Stern 400.00 =

And thereupon issued out of said office of Circuit
Clk. certain writ of Subpoa - which is in words &
figures following - to wit =

Subpoa = 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 Marsh. Zach-
ariah Webster - Clifton H. Moore - William Wallace -
and Samuel S. Brechtburg - 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

Next Term there to be holden at the Court house
 next Term there to be 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 Funn and further to do
 and receive what shall there and there be ad-
 judged against them in this behalf - And
 this they shall in no wise omit - And have
 you there and there this writ - and make
 return thereon in what manner you execute
 the same =


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

Wm Mc Bullough, Clerk.
 by his Dfty W. W. Crane =

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 writ 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. 1854 =

Shffs. fees & exp. Ret. 60
 Copy .50
 Mileage 1.50
 \$1.10

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. Neuman of the County of McLean and State of Illinois of the first part. and Isaac Frank 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 per cent 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 effect 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 has granted bargained and sold and remise, 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 bound-
ary to wit - Commencing forty six feet East
of the North West corner of Lot No. Fifty Seven - run-
ning Northerly on a parallel with North
and South lines of said Lot to the Alley, thence
East Twenty two feet - thence Northerly on a par-
allel with first line to the North side of said
Lot, thence West Twenty two feet - to the place of
beginning -

To have and to hold the same together
with all and singular - the tenements, heredita-
ments, 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 their
only proper use benefit and behoof - forever -
Provided always, and these presents are upon
this as free condition - that if the said Wingate
J. Newman 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 is pressed - 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. Neuman 
in presence of Jno. W. Larimore

State of Illinois

McLean County } J. William McCallough, Clerk
of the Circuit Court in and for said County do hereby certify that the above named W. J. Neuman 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 official seal this
Seventy Fourth day of March, 1853.
Filed March 24: 1853.  J. W. McCallough, Clerk.
Recorded March 31: 1853. by Jno. W. Larimore, Dpty.

State of Illinois

Milan County

J. William McCullough.
Clerk of the Circuit Court and Ex Officio Recorder
of Deeds, Mortgages &c. in and for said County and
State. do hereby certify the foregoing ^{perfect} and
Copy of the Mortgage between the parties therein
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. Come

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Pease & Fink

vs.

Bill to Foreclose =

Wingate J. Newman

And thereupon after-

wards to wit = on the Twenty Second day
of September A.D. 1833. came the Master in
Chancery of said County of Milan 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

Pease & Fink

vs.

Wingate J. Newman & the

Milan Circuit Court

Bill to foreclose a Mortgage -

To the Hon. David Davis Judge
of the Milan 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 Mi-
lan Circuit Court - to make sale of certain
premises in said Decree described as follows to
wit - A part of lots 5 6. and 5 7. in the original
Town of Bloomington. bounded as follows: com-
mencing 46 feet East of the North West Corner of
~~said~~ lot 5 7. running southerly on a parallel
with the North and South lines of said lot to
the Alley - thence East 22 feet. thence on a North-
erly 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 Milan - 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 \$358.34 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 Certificate of 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 - *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 ~~vs.~~ 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 M'Lean Circuit Court. I shall sell at public ~~sale~~ at the door of the Court House in the City of Bloomington, in the County of M'Lean

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and State of Illinois - on Thursday the 14th day
of June next - between the hours of 9. A. M. and
5 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 - and
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 H. Orme -
Master in Chancery

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

Recd. payment -
Merriman & Merris

State of Illinois
McLean County J. William McCallough
Clerk of the Circuit Court in and for said
County. do hereby certify that the foregoing is a
full 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 Bloom-
ington - this Fifteenth (15th) day of July
A.D. 1856

W McCallough
Clerk

Let a superseadus issue upon
filing this record on bond in the penal
sum of five hundred dollars with Isaac
J Friedman surety
July 21. 1856 J D Locant

No. ⁶⁴ 203 = Chy =

Isaac Hunt

Is

Wingate 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

Recd. \$6.00 for making Complete

Record July 21/56 - Wm. McCallough Clerk.

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 Furber, Benjamin & Webster & others* against *Wingate J. Newman* ^{impleaded 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. B. Rice Deputy

Wingate J. Newsum

vs

Isaac Funk

Superseas

Filed Sept. 28, 1856

L. Leland
Clerk

entered. They within supersedeas by reading to
Isaac Funk and W. W. Orme West in chambers
August 14th 1856

Decease B. E. 11th 1850

12 m. Received 1.70

Decease B. E. 11th 1850

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

Wingate L Newman
Benjamin F Webster
Elston March
Zachariah Webster
Clifton H Moore
Charles B Truitt
Robert Tennent

Error to McLean

vs
Isaac Funk

Clerk in process.
Directed to the Sheriff of McLean
County on the filing of security
for Costs J. F. Howell, of this place is
perfectly responsible Wm H Holmes
Supts Atty

In the Supreme Court of the State of Illinois
to be holden at Ottawa,

Wingate L 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
pursuance of the laws of this State
Dated this 22nd day of July 1856
Isaac S. Friedman
J. F. Howell

Wingate J Newman
& others

vs

Isaac Funk

Error to McLean

Price & Security
for Cots

Filed July 22. 1856

L. Selwin
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 thereof, between Isaac Frank

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

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

as we are informed 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 thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record 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 Second Monday in June next, that the record and proceedings, being inspected, we may cause to be done thereon, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. Walter B. Scates Chief Justice
SAMUEL H. TREAT
 of our said Court, and the Seal thereof, at Ottawa, this 22^d day of July
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

L. Leland
 Clerk of the Supreme Court.
By J. B. Rice Deputy

Wingate J. Newman
vs
Laure Fenn R.

Writ of Error

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

L Leland
Clerk
By J. B. Rice Deputy

Filed July 22, 1856
L Leland
Clerk

Know all men by these presents that we
Wingate J. Newman as principal and
Isaac S. Meadman as surety are well
and firmly bound unto Isaac Fink
in the penal sum of five hundred dollars
to the payment of which sum well and
truly to be made we do bind ourselves,
our heirs, executors, and administrators
jointly & severally firm by by these
presents. Witness 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
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 Fink 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. Catton 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 -

Wingate J. Newman
By John D. Mearns Secy.

John D. Mearns Secy.

Wingate J. Newman

Isaac F. H. H.

Superintendent

Filed July 22. 1856
L. Leland
Clerk.

STATE OF ILLINOIS,
Supreme Court,

} ss.

The People of the State 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 thereof, between Isaac Funk Plaintiff & Wingate J. Newman impleaded with Benjamin & Webster & others Defendants

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 command 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. Scates

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. Do
By J. B. Rice, Deputy.

Wingate J. Newman
vs

Leane Frank.

Serre Facius

Filed Sept. 28, 1856

L. Seland
Clerk

Entered the within Serre Facius by reaching to the
said Leane. Think this original - 14th 1856

Deane & Boland

March 12m

60^{cts}

1/20

J. J. Dwyer

M. Dwyer

2/100

State of Illinois
Supreme Court 3rd Grand Division

Margate J. Newman, complainant }
with others }

vs } Error to McLean
Isaac Funk }

Abstract

Page 6 of the
record.

On the 1st Sept. 1854 Funk filed his bill in Chancery in the McLean circuit court Alleging that on the 5th July 1854 Newman became indebted to Funk in the sum of \$1000 for loaned money & on that day executed to Funk his note whereby he promised to pay Funk on or before 1st Nov. then next issuing \$1000, with 10 per cent interest. a copy of ^{the} note is made an exhibit - and to secure the payment of the note Newman on the 24th March 1853 made and delivered to Funk a mortgage on certain premises being parts of lots 56 & 57 in Bloomington described by meter & 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 -

p. 7.
p. 8.

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

p. 9
The bill further alleges that ~~the~~ Newman had not paid the note nor any part thereof except \$170 in part payment of the *interest - which payment was made Nov 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 Newman which judgments were a lien on the mortgaged premises - to wit - Benj. H. Webster, Elston Marsh, and Zachariah Webster - Clifton H. Moore, William Wallace, Charles B. Truett, Robert W. D. Truett and Samuel Greenberg, & John F. Bennett & George D. Pittman & Albert Bennett -

p. 10.
The bill prays that Newman 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 -

p. 11.
* 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.

"Exercised the within writ by leaving a
"true copy of it at the place of residence
"of the within named Thingate J. Newman
"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
Frank dismissed his bill as to William
Wallace, Benj. K. Webster, Elston Marsh,
and Zachariah Webster - & the appearance
of Chas B. Truett, W. D. Truett, Samuel
L. Krentzberg, John K. Bennett, George
D. Pittman * and Albert Tennent and
C. H. Moore was entered & the cause
continued

p. 3.

Sometime (but when the record
does not show) a decree was made
reciting that at the Sept 2, 1854 the appearance
of Benj. K. Webster, Elston Marsh, * Zachariah
Webster, Chas B. Truett, Robert W. D. Truett
Samuel Krentzberg, John Bennett, George
D. Pittman & Albert Tennent, & Clifford H. Moore
is entered
verdict - & complainant Frank now dismissing
his bill as to Wm 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 Frank on the note
& mortgage mentioned in the bill \$379.44

p. 4. and that within twenty days Newnan
pay complainant that sum with interest
and in default thereof that the mortgage
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 Frank the
complainant on the 14th June 1855, for
the amount of the decree interest &
costs.

W. H. Wallace
for pff in cur.