

No. 14161

Supreme Court of Illinois

Wright

vs.

Myers et al.

71641  7

Myer & Wright

SUPREME COURT
OF
ILLINOIS,
—
SECOND GRAND DIVISION.
—

60

Supreme Court of Illinois--Second Grand Division.

JANUARY TERM, 1864.

PHILIP MYERS,
vs.
MASON M WRIGHT,

} *Appeal from Ford.*

This is a bill to foreclose a mortgage in the Circuit Court of Ford County.

Philip Myers gave his three promissory notes to Squire Cunningham as follows: Dated Sept. 1, 1859, first, for \$355 78, due in two years, six per cent. interest; second, for the sum of \$300, due in one year, six per cent. interest; third, for the sum of \$194 22, due Sept. 1st, 1862—last note drawing ten per cent interest, paid half yearly in advance. To secure the payment of said notes a mortgage was given on certain lands in the county of Ford, and to foreclose which mortgage this suit was brought.

It is alleged in the bill that the \$300 note was by mistake made for \$300 when in truth and in fact it should have been made for \$350;

And the \$355 78 note was assigned as follows:

“Pay Mason M. Wright, Squire Cunningham.”

The note for \$300, but which is alleged should be for \$350 is endorsed as follows:

“I sine the within two hundred dollars fifty cents over to David Patent at Ten Mile Grove; the balance to be paid to S. Cunningham when due—June 12, 1860;” also, the following: “Pay two hundred and four dollars of the within, to Soloman Wilson, June 21st, 1861. Pay Mason M. Wright the within note and interest.”
S. CUNNINGHAM.

At the May term, 1863 of said Court, the said cause of foreclosure came on for trial, and thereupon Philip Myer, by his solicitor, filed his demurrer to said bill, alleging as a cause of special demurrer that David Patent, Solomon Wilson were not made parties in said bill. The Court overruled said demurrer, and a decree of foreclosure and sale *pro confesso* was taken against said Philip Myer. Whereupon, said Philip Myer prayed an appeal to this Court. An appeal was granted on conditions which have been complied with.

Errors assigned:

And now comes the said appellant, Philip Myers, and says that in the record and proceedings aforesaid, and in rendering the decree aforesaid there is manifest error in this—

1st. That the said Circuit Court in overruling said demurrer of the said appellant, to the said bill of complaint of the said complainant, for that it appears by the bill of complainant that David Patent, Solomon Wilson and Squire Cunningham were necessary parties to said action.

2d. That the proper parties were not made in said bill as shown from the record.

And the said appellant prays that the decree aforesaid, for the errors aforesaid and for other errors in said record and proceedings may be reversed and held as nought, so that he may be restored to all rights, &c.

E. S. TERRY, and
L. WELDON,
For Appellant.

W. Co =
Philip Myers
V B =
Marion W. Wright

Filed Jan 18/64
Watney
de

Supreme Court of Illinois--Second Grand Division.

JANUARY TERM, 1864.

PHILIP MYERS.
vs.
MASON M. WRIGHT, } Appeal from Ford.

Suit to foreclose mortgage on two notes—three notes in mortgage.
First note partially assigned to Patent and Wilson; then assigned to Wright;
second note assigned to Wright; third note, assumed by appellant to be unpaid
and in hands of Cunningham, original payee.

Demur to bill—because Patent and Wilson were not made parties, they have
an interest in money when collected. Cunningham not being made a party is
assigned as one of the errors, appearing on face of record.

Cunningham is a necessary party, he had a right to redeem from sale the first
two notes, he has right to defend in this suit by showing that notes have been paid
to Wright. Thereby protecting property for the payment of his own note. He
is necessary party, see 2 Ben. Mon., p 29.

Myers.

33 =

Fright =

Appellants brief

See Beckers Memo
366-367 contra to
app.

Filed Jan 25/64
Asatuma
C. J.

Supreme Court of Illinois--Second Grand Division.

January Term, 1864.

PHILIP MYER, *et. al.*, *Appellants*, }
vs. }
MASON M. WRIGHT, *Appellee*. }

COMPLAINANT SUBMITS THIS CASE ON THE FOLLOWING POINTS.

Copy of one of the Notes sought to be foreclosed:

“SEPTEMBER 1ST, 1859.

“One year after I promise to pay Squire Cunningham or order three hundred dollars, for value received, with six per cent. interest from date.

“PHILIP MYER.”

These are the endorsements:

- 1st. “I sine the within two hundred and four dollars fifty cents over to David Patton, at Ten Mile Grove, the balance to be paid to S. Cunningham, when due. June 12th, 1860.”
- 2d. “Pay two hundred and four dollars of the within to Solomon Wilson. June 21st, 1861.”
- 3d. “Pay Mason M. Wright the within note and interest. S. CUNNINGHAM.”

Points made by Appellee.

- 1st. The first two endorsements are not signed by Cunningham, payee; they are merely requests on the part of payee to payor to pay amount of endorsements—the payee still holding the note; and on the non-payment, it was returned to Cunningham.
- 2d. The second endorsement shows that the note was still in Cunningham’s possession, and owned by him. If it had passed out of his possession, he could not have made the endorsement.
- 3d. The last assignment to complainant was *subsequent* in point of time to the other two, and was *not partial*, but full and *complete*, and carried the *entire interest* of payee to the note. This assignment is signed by payee, *which alone* could carry his interest in the note.
- 4th. Payee, Cunningham, could not assign the note in part; and had he assigned, by signing his name, a partial interest in said note, it was void at law: and the fact that he subsequently assigned his entire interest, shows that he so considered it: that the other supposed assignments having proved fruitless, and the note still remaining in his possession, he now *absolutely* endorses said note, thereby conveying the legal interest.
- 5th. The only errors assigned by respondents are that David Patton, Solomon Wilson, and payee Cunningham, by virtue of pretended assignments, ought to have been made parties: the Court will not look for others.
- 6th. There can be no pretence that Cunningham has any interest in the said note; his assignment to complainant being absolute.

A. E. & O. F. HARMON,
Solicitors for Appellee.

Meyer + Wright

Appellee's brief

Filed Jan 20/64
W. Turner
cl

Philip Myers-

vs-

Mason W. Wright-

The question presented by the assignment of moneys is are Patent Wilson & Cunningham necessary parties - if they are the Court should have sustained the Demurrer -

In equity all parties interested in the relief sought are necessary parties -

The object of the suit to foreclose was to make the money -

Patent Wilson had an equitable interest in the money then collected. They were therefore interested in the relief sought -

Wright took the assignment of the note from Cunningham with notice of the equitable claim of Patent Wilson - he is therefore bound by it although there was an unqualified assignment to him -

Is Cunningham a necessary party -?

If so his interest is apparent on the face of the record and is well assigned although not owned by the Demurrer -

There is no allegation that he has parted with least notes or that the same has been paid - although the other notes are to be paid first as he Cunningham not entitled to notice so that he may protect his security -

Has he not an interest antagonistic to the relief sought by Wright and is he not therefore on principles of equity entitled to his day in Court so that he may protect his interest =

He may be able to show that the first two notes are paid thereby protecting the mortgage property for the full payment of the last note - is he not therefore interested in the same manner that the mortgagee is interested - We assume that the mortgagee is a necessary party - And cite as conclusive on this point = the case of Bell et al - vs. Shamrock - Ben Monroe. page. 29 =

Very Obedient =

No. 60-

Philip Myers-

VS-

Masson M. Wright

Argument of
Mr. Weldon for

Filed Jan 19/64
W. T. J. J.
ca

The People of the State of Illinois.
To all to whom these presents shall come
Greeting!!

Know Ye. That we having caused to be inspected
the Records and proceedings now remaining on file in the office
of the Clerk of the Ford County Circuit Court do find
there certain Proceedings, in the words and figures fol-
lowing. To wit:—

United States of America
State of Illinois SS
Ford County B.

At a Regular Term of the
Ford County Circuit Court begun and held at the Court
House in Paxton in said County on the 4th Monday of Novem-
ber it being the 25th day of said month in the year of our
Lord one thousand eight hundred and sixty onest of the Inde-
pendence of the United States the Eighty sixth

Present Hon. O. S. Davis judge of the 27th judicial circuit

J. H. Common State Attorney

James. D. Hall Sheriff of said County

Attest Samuel L. Day Clerk of said Court

And heretofore so wit on the 15th day of November
A. D. 1861 aforesaid the complainant Mason M. Wright
by his solicitors Harmon & Barnhouse did file in the office
of the clerk of Ford County aforesaid his certain Bill of
Foreclosure in the words and figures following To wit:

State of Illinois }
County of Ford } of the November Term 1861
of the Ford County Circuit Court

To the Honorable Oliver S Davis Judge of said Court in
Chancery sitting. Your orator Mason M Wright respectfully
shows unto your honor that on or about the first day of September in
the year one thousand Eight Hundred and Fifty one Philip
Myer became and was indebted unto one Squire Cunningham
in the sum of nine hundred dollars and being so indebted in
consideration thereof the said Philip Myer on the day and year
aforesaid made and executed under his hand three certain promises
or notes one for the sum of \$350. due one year from its date with
six per cent: one note for \$355.78 due two years from its date with
six per cent. one note for \$194.22 due three years from its date with
ten per cent to said Squire Cunningham which said first described
note was by mistake drawn for \$300 in the body of the note. And
your orator further shew unto your honor that the said Philip Myer
& Elizabeth Myer his wife on the first day of September in
the year of our Lord one thousand Eight Hundred and Fifty
one to secure the payment of the principal and interest mentioned
in said notes made and executed under their hand and seal
and delivered to the said Squire Cunningham a Mortgage
conditioned for the payment of the sum of money and interest mention-
ed in the said notes according to the conditions of the said notes by
which said mortgage the said mortgagors mortgaged to the said Squire
Cunningham in fee certain lands and Real estate situated in the
County of Ford in the state of Illinois and described in the

said mortgage as follows to wit: All of Lot number Four, being the west Half of the north west qr of section sixteen in Township Twenty Three North of Range Ten East which said sum of Nine Hundred dollars is for the purchase money of said tract of land which said Mortgage was duly acknowledged and afterwards Recorded as a mortgage in the office of the Recorder of deeds of the County of Ford in the State of Illinois on the 17th day of November in the year one thousand Eight Hundred and Fifty nine at 11 o'clock in the fore noon in Book 1001 of Mortgages on pages 72 + 73 as by said Mortgage and the certificates of acknowledgement and recording indorsed thereon and ready to be produced in court and to which your orator pray leave to refer will more fully appear which said mortgage marked A + said first + second notes on herewith filed marked B + C + made part of this Bill of Complaint and which said two first described notes were assigned by Squire Cunningham by his endorsement thereon under his hand to said complainant + delivered to him. And your orator believes and states that the sum of Seven Hundred + Two ⁷⁸/₁₀₀ dollars with interest from the 1st day of September one thousand Eight Hundred and Fifty nine remains due and unpaid to your orator on the said two first notes and mortgage and that no proceedings at law have been had to recover the debt secured by the said notes and Mortgage or any part thereof. And your orator further states and believes that the said premises described in the said mortgage are meager and scant security for the ^{said} sum of and interest mentioned in the said and mortgage now due your orator and your orator further shew unto your honor and state upon information and belief that one Jaest H Myer has or claims to have some interest in the said mortgaged premises or some part thereof as purchaser mortgage or otherwise which interests if any have accrued

subsequent to the lien of the said mortgage of your orator and is subject thereto. Your orator therefore asks the aid of this court in the premises and that the above named Philip Myer Elizabeth Myer his wife & Jacob H Myer the defendants in this suit may appear before the judge of the said court in the court of chancery and answer this your orators bill according to the rules and practice of said court and that the said usual decree be made for the sale of mortgaged premises aforesaid and for the payment of the amount due your orator for principal and interest in the said two notes and mortgage and his costs of suit and that the said defendants and all persons claiming under them subsequent to the commencement of this suit and all other persons although not parties to this suit who have any liens by judgment or decree upon the mortgaged premises subsequent to the said mortgage of your orator or any liens or claims thereon by or under any subsequent judgment or decree either as purchasers, incumbrancers or otherwise may be barred and foreclosed of all equity of redemption in said premises and that your orator may have such other and further relief as the nature of this case may require and as to this court shall seem agreeable to equity and good conscience.

And may it please your honor to grant unto your orator the Peoples writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the said defendants therein and thereby commanding them and each of them on a certain day and under a certain penalty to be therein inserted that they personally be and appear before the judge of said court at the Court Room in Boston then and there to answer all and singular the premises and to stand to and abide by and perform such order

and decree therein as shall seem agreeable to equity and good
conscience. And your orator will ever pray etc.

Harmon & Barnhouse
Sols

Mason M Wright
Complainant

on the back of which is the following

"Filed Nov 15th 1861

Saml. L. Day Clk "

"Mr Clerk:

Please issue a writ on within

& oblige

Harmon & Barnhouse
Sols "

"

And said complainant by his said solicitor aforesaid did
on the 15th day of Nov A.D. 1861 aforesaid also file in said office of
said clerk a certain mortgage in the words and figures following to wit:

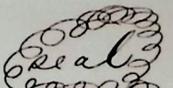
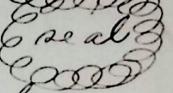
This Indenture made this first day of September in the
year of our Lord one thousand eight hundred and Fifty Nine
Between Philip Myer and Elizabeth his wife of the County of Ford
and State of Illinois party of the first part and Squire Cunningham
of the County of Vermillion County and State aforesaid party of the
second part. Whereas the said party of the first part is justly indebted
to the said party of the second part in the sum of Nine Hundred
Dollars secured to be paid by three certain promissory notes.

\$350 due the first day of September 1860 \$355.78 cts due September
first^{1st} 1861 each drawing six per cent \$194.22 cts due September
first 1862 drawing ten per cent paid half yearly in advance

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 of the said notes above mentioned. And also in con-
sideration 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 hath grown
to be bargained sold, conveyed and by these presents doth grant bar
gain sell and convey unto the said party of the second part his heirs
and assigns forever all of Lot number four (4)
being the west Half of the north west quarter of section sixteen
(16) in Township Twenty Three (23) north of Range Ten (10) east
of the Third principal meridian. To Have and to hold the same
together with all and singular the tenements hereditaments privileges
and appurtenances therunto belonging or in anywise appertaining. And
also all the estate interest and claim whatsoever in law as well as
in equity which the party of the first part hath in and to the premises
hereby conveyed unto the said party of the second part his heirs and
assigns and to their only proper use benefit and behoof. Provided
always and these presents are upon this express condition that
if the said party of the first part his heirs executors or 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 afore
said sum of money with such interest thereon at the time and in
the manner specified in the above mentioned described notes
according to the true intent and meaning thereof then and in that
case these presents and every thing herein expressed shall be
absolutely null and void.

In witness whereof the said party of the first part hereunto set hand
and seal the day and year first above written
sealed and delivered in presence of:

Philip Myer 
Elizabeth Myer 
State of Illinois
Ford County J. J. P. Button a Justice of the Peace
in and for the said county in the state of aforesaid do

herby certifi that Philip Myer personally known to me as
the same person whose name is subscribed to the foregoing
mortgage appeared before me this day in person and
acknowledged that he signed sealed and delivered the said in-
-strument of writing as his free and voluntary act for the uses and
purposes therein set forth. and the said Elizabeth Myer
wife of the said Philip Myer having been by me examined separate
and apart and out of the hearing of her husband and the contents
and meaning of the said instrument of writing having been by me
made known and fully explained to her acknowledged that she
had freely and voluntarily executed the same and relinquished
her dower to the lands and tenements therein mentioned without
compulsion of her husband and that she does not wish to
retract the same.

Given under my hand and seal this first day of Sep-
-tember A.D. 1859 J. P. Button J. P.

on the back of which mortgage is the following endorsement

to wit: State of Illinois

County of Ford } Filed for Record this 17th day of November

1859 at 11 o'clock A. M. and recorded

in Book of Mortgages No 1 page 72 & 73

"Filed Nov 15, 1861"

Saml L Day

Saml L Day Recorder

attached to said mortgage are two notes in the words and
figures following to wit:

\$ 355. 78

September 1st. 1859

Two years after date I promises to pay Squire Cunningham
Three Hundred and fifty five dollars and seventy eight cents

for value received with six per cent interest from date
Philip Meyer

on the back of which note is endorsed the following

" Filed Nov 15th 1861 "

Saml. S. Day Clerk

P H Meyer
Pay Mason M Wright
Squire Cunningham

#3571

September 1st 1859

one year after I promise to pay Squire Cunningham
or order three thousand dollars for value received
with six per cent interest from date

Filed Nov 15th 1861
Saml S Day

Philip Meyer

on the back of the said above note is the following endorsement

" I give the within two thousand and four dollars
fifty cents over to David Patten at Ten mile grove the
balance to be paid to S Cunningham when due
June 13th 1860

" Pay two thousand of our dollars of the within to Solomon
Wilson June 31st 1861

" pay Mason M Wright the within note & interest

S Cunningham "

Whereupon in pursuance of said Proceipe our said Clerk
did issue certain chancery summon's in the words and
figures following to wit:

State of Illinois

Ford County - } The People of the state of Illinois to the sheriff
of said County greeting;

We command you that you summon Philip Meyer

Elizabeth Meyer his wife & Jacob^H Meyer if they shall 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 thereof to be holden at the Court House in Paxton in said County on the fourth Monday of November 1861 to answer unto mason M Wright in his certain bill of complaint filed in the said court on the Chancery side thereof. and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Seal

Witness Saml S Day clerk of our said court and the seal thereof at Paxton this 15th day of November A.D. 1861

Saml S Day clerk

on the back of which summons is the following endorsement to wit:

State of Illinois }
Ford County } I served the within by reading and leaving a copy with Philip Meyer the within named defendant November 15th 1861

James S Hall Sheriff
by H C Hall depy

Filed in the circuit court this 16th day of Nov. A.D. 1861

Saml S Day clerk

said clerk also issued the following summons to wit:

State of Illinois }
Ford County } The People of the state of Illinois to the Sheriff of said County, greeting

We command you that you summons Philip Meyer Elizabeth Meyer his wife & Jacob^H Meyer if they shall 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 thereof to be holden at the Court House in
Paxton in said County on the fourth Monday of November
1861 to answer unto Mason M Wright in his certain bill
of complaint filed in the said Court on the chancery side
thereof. and have you them and there this writ with
an endorsement thereon in what manner you shall have
executed the same. Witness Samuel S Day clerk of our
said Court and the seal thereof at Paxton this
15th day of November AD 1861



Samuel S Day clerk

On the back of which summons was the following endorsement
to wit:

State of Illinois }
Ford County } The within named Jacob H Meyer
not found in this county November 15-1861
James S Hall Sheriff
by H. C. Hall
Sept
Filed in the Circuit Court
this 16th day of November AD 1861
Samuel S Day clerk

and said clerk also issued the following summons. To wit:

State of Illinois }
Ford County } The People of the state of Illinois to the
Sheriff of said County greeting;
We command you that you summon Philip Meyer
Elizabeth Meyer his wife & Jacob H Meyer. if they shall
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 thereof to be holden at the Court House in Paxton in

said county on the fourth Monday of November 1861
to answer Mason M Knight in his certain Bill of Complaint
filed in the said Court on the Chancery side thereof
and have you then and there this writ with an endorse-
ment thereon in what manner you shall have executed the
same Witness Saml Day Clerk of our said
Court and the seal thereof at Paxton this 15th day of
State of Illinois }
November AD 1861

Saml Day Clerk
on the back of which summons appears the following endorse-
ment to wit; State of Illinois }
Ford County } I have served the within by
leaving a copy with the within named defendant Elizabeth
Meyer November 15th 1861 } as shall Sheriff
by H C Hall septy

also the following endorsement to wit

I have this 15th day of November AD 1861
served the within named defendants Philip Meyer & Elizabeth
Meyer by delivering a true copy of this within summons
to each of said defendants. Jacob H Meyer not found in
my County. }
State of Illinois } J O Hall Sheriff
Ford County } per H C Hall septy

and afterwards to wit on the 26th day of November 20 1861 the
same being one of the regular days of the Circuit Court of said
County of the November Term and said Court being
then duly organized and sitting for the transaction of business
in open Court the following proceedings were had and
entered of Record by the said Court in the words And

figures following so mit;

Mason M Knight

221

vs

Philip Myer Elizabeth

Myer Jacob H Myer

Bill to Foreclose

Ordered that this cause

stand continued. And it is further ordered that
Publication be made herein of the pendency of this suit

and afterwards so mit on the 3^d day of February AD 1863
the following affidavit was filed in said cause on the
part of complainant. so mit;

State of Illinois

Ford County ^{vs} of the May Term AD 1862 of the Ford
County Circuit Court

Mason M Knight

vs

Philip Myer Elizabeth

Myer Jacob H Myer

Bill to foreclose mortgage

Henry Barnhouse one of the
solicitors in the above entitled cause being

duly sworn says that he is informed and verily believes
that the said Jacob H Myer one of the above named
defendants. is a non Resident of the state of Illinois so
that service of Process cannot be had upon him in the
ordinary way

sworn to & subscribed before Henry Barnhouse

me this the 3^d day of February

AD 1862 Saml L Day Clerk

" Filed Feb 3^d 1862

Saml L Day Clerk

and afternoon 20 mt on the 27th day of May AD 1862. The
complainant by his solicitors filed in the office of our clerk
a certain notice of publication in the words and figures following
to wit: State of Illinois

Ford County }
of the May Term AD 1862 of the Ford
County Circuit Court

Mason M Wright

v

Bill to foreclose mortgage

Philip Myer Elizabeth

Myer Jacob H Myer

affidavit of the non residence of
Jacob H Myer one of the defendants having been filed
in the office of the clerk of said Ford County ^{Circuit} Court notice is
hereby given to the said Jacob H Myer that the complainant
filed his bill in said Court on the 14th day of November
AD 1861 and that a summons thereupon issued out of
said Court against said defendants returnable on the 25th
day of November AD 1861 as is required by law now
unless you the said Jacob H Myer shall be and personally
appear before said Circuit Court of Ford County on the
first day of the term to be holden at Paxton in said
County on the 4th Monday of May next AD 1862 and
plead answer or demur to the said complainant's bill
of Complaint the same and the matters and things
therein charged and stated will be taken as confessed
and a decree entered against you according to the prayer
of said Bill

Samuel S Day Clerk

Harmon & Barushaw attorneys

Paxton Feb 7th 1862

"Filed May 27-1862 Saml S Day Clerk"

J. S. Burke Publisher of the Ford County Union
a weekly newspaper in Paxton Ford County Illinois
do hereby certify that the annexed notice was published
in said paper for six consecutive weeks commencing
in No 39 Feb'y 7-1862

J. S. Burke
Publisher

and afterwards to wit on the 27th day of May A.D.
1862. the same being one of the regular days of the
May Term of said Circuit Court in said year
A.D. 1862 and the said Court being then duly organized
and sitting in open Court for the transaction of judicial
business the following proceedings were had and entered of Record
to wit:

Mason M. Wright

Bills to foreclose

Philip Meyer Elizabeth

Meyer & Jacob H. Meyer

Now comes the complainant
by A. E. Harmon his Solicitor and makes proof
to the Court here of the due publication of the notice of the
Pending of this Suit to Jacob Meyer one of the Defendants
By which it appears to the Court that an affidavit of non Residence
of said Meyer was filed in the office of the Clerk of the Circuit Court
of Ford County on the 3^d day of February A.D. 1862. That there
upon said Clerk caused a notice to be published in the Ford
County Union in said County to which notice Reference is
hereunto had as a part of this entry, and was published
for six consecutive weeks prior to this present Term of Court
whereupon comes Ed. Terry solicitor and enters the appearance

of Jacob Myers and it is further ordered that
this cause be and the same is hereby continued

And afterwards to wit on the 26th day of November
A.D. 1862. the same being one of the regular days of
the Circuit Court of said said County of the
November Term and said Court being then
duly organized and sitting for the transaction
of business in open Court the following proceedings
were had and entered of record by the said Court
in the words and figures following to wit.

Mason M. Wright

vs
Phillip Myer Elizabeth
Myer & Jacob H. Myer

Bill to foreclose

now comes the
Complainant by A. E. Shannon his solicitor on
whose motion it is ordered by the Court that the
Sheriff have leave to amend his returns and
on further motion of Complainants Solicitor
it is ordered that Complainants have leave
to amend his bill and cause continued

and afterwards to wit on the 27th day of May AD 1862. The
complainant by his solicitors filed in the office of our clerk
a certain notice of publication in the words and figures following
to wit: State of Illinois

Ford County }
of the May Term AD 1862 of the Ford
County Circuit Court

Mason M Wright

vs

Bill to foreclose mortgage

Philip Myer Elizabeth

Myer Jacob H Myer } affidavit of the non residence of
Jacob H Myer one of the defendants having been filed
in the office of the clerk of said Ford County, ^{Circuit} Court notice is
hereby given to the said Jacob H Myer that the complainant
filed his bill in said Court on the 14th day of November
AD 1861 and that a summons thereupon issued out of
said Court against said defendants returnable on the 25th
day of November AD 1861 as is required by law now
unless you the said Jacob H Myer shall be and personally
appear before said Circuit Court of Ford County on the
first day of the term to be holden at Paxton in said
County on the 4th Monday of May next AD 1862 and
plead answer or demur to the said complainant's bill
of Complaint the same and the matters and things
therein charged and stated will be taken as confessed
and a decree entered against you according to the prayer
of said Bill

Samuel S Day Clerk

Harmon & Barubhouse attorneys

Paxton Feb 7th 1862

"Filed May 27-1862 Saml S Day Clerk"

J. S. Burke Publisher of the Ford County Union
a weekly newspaper in Paxton Ford County Illinois
do hereby certify that the aforesaid notice was published
in said paper for six consecutive weeks commencing
in No 39 Feb'y 7 1862

J. S. Burke
Publisher

and afterward do sit on the 27th day of May A.D.
1862. the same being one of the regular days of the
May Term of said Circuit Court in said year
A.D. 1862 and the said Court being then duly organized
and sitting in open Court for the transaction of judicial
business the following proceedings were had and entered of Record
to wit:

Mason M. Wright

Bills to foreclose

Philip Meyer Elizabeth

Meyer & Jacob H. Meyer

Now comes the complainant
by A. E. Harmon his Solicitor and makes proof
to the Court here of the due publication of the notice of the
Pending of this Suit to Jacob Meyer one of the Defendants
By which it appears to the Court that an affidavit of non residence
of said Meyer was filed in the office of the Clerk of the Circuit Court
of Ford County on the 3^d day of February A.D. 1862. That there
upon said Clerk caused a notice to be published in the Ford
County Union in said County to which notice Reference is
hereunto had as a part of this entry, and was published
for six consecutive weeks prior to this present Term of Court
whereupon comes Ed. Terry solicitor and enters the appearance

and afterwards it is not on the 27th day
of May ad 1863 comes E. S. Terry counsel for defendant
Jacob H. Myer and files a certain Demurrer in the
words and figures following to wit:

Mason M. Knight

vs

Philip Myer et al. The separate demurrer of the said
Philip Myer to the Bill of Complaint of the
said Complainant.

And the said defendant by protraction
but confessing so for the demurrer to the said bill of
Complaint of the said complainant for the following
causes.

1st That the said Bill shows that the said Squire
Cunningham the assignor of the said promissory notes
in said bill first and secondly mentioned is a necessary
party in said action and that said complainant failed
to make him said party

2^d That it also appears from the endorsements on
said promissory note in said Bill of complaint men-
tioned and due on the 1st day of September 1860 that
David Patton and Solomon Wilson have an interest
in said note and that the said Patton and Wilson
are not made parties to said action

3^d That the said Bill is in other respects
uncertain and insufficient

Terry for
Philip Myer

on the back of said demurrer is the following endorsement
To wit: Filed this May 27, 1863

Saml L Day Clk

By B Taft Spry

and afterwards To wit on the 27th day of May A.D. 1863
the same being one of the regular days of the May Term
of said Circuit Court in and for said year 1863
and the said court being duly organized and
sitting in open court for the transaction of business
the following proceedings were had and entered of
Record. To wit

Mason M Wright

vs

Philip Myer, Elizabeth Myer and Jacob^H Myer } Bill to foreclose

22

And now comes the defend-
ant Philip Myer by his Solicitor and files his demurrer
herin to complainants Bill of complaint and the court
being fully advised in the premises it is ordered that said
demurrer be overruled. and it appearing to the court
herin that the defendants Philip Myer & Elizabeth Myer
have been duly notified of the pendency of this suit by
service of process upon them and it further appearing to
the court from affidavit that said defendant Jacob^H Myer
is a non Resident of the state of Illinois and that due notice
of the pendency of this cause has been given by publication in
a weekly newspaper published in said County at least 60
days prior to the first day of the present Term of this court

And the said Philip ^{Elizabeth Meyer} Meyer, and Jacob H Meyer having been three times solemnly called come not but made default herein and the said Philip Meyer having failed to file any answer herein under the rule of this court whereupon the complainant's Bill is taken for confessed against said Philip Meyer & Elizabeth Meyer his wife & Jacob H Meyer defendants herein and now this cause coming on for a final hearing on Bill Exhibits the Parole & written evidence introduced by said complainant and the court being fully advised in the premises finds that said Philip Meyer was justly indebted to one Squire Cunningham in the sum of Nine Hundred Dollars as evidenced by three certain promissory notes dated on the first day of September A.D. 1859 the first of said promissory notes was made for Three Hundred Dollars in the body of the note and was described in the mortgage given by the said Philip Meyer & wife Elizabeth to secure the payment of said promissory notes as made for Three Hundred and Fifty Dollars and the complainant having introduced James P Patton the Justice of the Peace before whom said Meyer & wife acknowledged the execution of said mortgage as a witness & being duly sworn testified that he drew the notes & mortgage that the said Three Hundred Dollar note was by mistake drawn for Three Hundred Dollars in the body of the said note and correctly described in said mortgage as drawn for Three Hundred and Fifty Dollars. Whereupon the court decreed that the Fifty Dollars be allowed in addition to the Three Hundred. said first note being due one year from

the date thereof and the second of said notes was for the sum of Three Hundred and Fifty Five & $\frac{75}{100}$ dollars due in Two years from the date thereof with six per cent interest thereon from date and the third of said Promissory notes was for the sum of \$194. $\frac{22}{100}$ dollars due upon the first of September AD 1862 and that for the better securing of said notes the said Philip Myer & Elizabeth his wife executed and delivered an Indenture of mortgage to the said Squire Cunningham on the following described premises to wit Lot No four being the west half of the north west quarter of section sixteen in Township Twenty three north of Range ^{2nd} 10 east of the third Principal meridian which mortgage was duly acknowledged on the day of its execution to wit September 1st AD 1859 before Jas. P. Button as Justice of the Peace in and for said County of Ford and duly filed and Recorded November 17 1859 and it further appearing to the Court that the said Squire Cunningham has duly assigned said notes for \$350 & \$355. $\frac{75}{100}$ to said Complainant and for the foreclosure of which said Complainant has filed his said Bill of complaint: and the Court finding upon computation the said first Two promissory notes and mortgage with the interest thereon from the first day of September AD 1859 to the 28th day of May AD 1863 amounts to the sum of Eight Hundred and Seventy Three & $\frac{12}{100}$ dollars (\$873. $\frac{12}{100}$) and it further appearing to the Court here that any interest the said Jacob H Myer may have in and to the said premises was acquired since the execution and Recording of said mortgage and

subject thereto: It is therefore ordered adjudged & decreed
by the court herein that said Respondent Philip Meyer
pay said last sum ^{of money} with interest from the said 28th
day of May A.D. 1863 and the costs of this proceeding
within twenty days from the adjournment of this court
that in default thereof the said mortgage and all rights
and equity of Redemption of said Respondents therein
be forever barred and foreclosed. That the said mor-
tgaged premises or so much thereof as may be nec-
essary to pay said sum and costs as aforesaid ^{and}
all rights and interest of said Respondents therein be
sold at Public sale at the east door of the Court House
in said Ford County to the highest and best bidder for cash
in hand. That the master in Chancery of said County
execute this decree: That previous to making the sale
of said premises he shall give notice of the time place
and terms of sale with a description of the property to be
sold for at least twenty days by posting up notices in
three public places in said County one of which shall
be on the Court House. That the said master in Chancery
if the said premises are not Redeemed from such
sale according to law shall make a deed to the owner
of said Masters certificate or certificates of sale of
said premises and deliver possession of said prem-
ises to the purchaser or purchasers and that the said
master Report his proceedings herein to the next Term
of this court.

O S Davis

Thereupon the said defendant Philip Meyer by his said
attorney comes and prays an appeal of this cause

from the Ford county circuit court to the supreme court
of this state - and the court being fully advised in
the premises it is ordered that an appeal be granted
on condition of defendants filing a Bond in the sum
of Fifteen Hundred Dollars for the faithful prosecution
of said appeal with David Patton and John Bodely
as sureties and said Bond to be filed within sixty
days

and afterwards to wit on the 3^d day of July ad
1863 the said Respondent Philip Myer by his said
attorney files a certain bond in the office of
our clerk aforesaid in the words and figures following
to wit;

Know all men by these Presents that we Philip
Myer David Patton and John Bodely are held and
firmly bound unto Mason M Wright in the penal
sum of Fifteen Hundred Dollars lawful money
of the United States for the payment of which well and
truly to be made we bind ourselves our heirs and admin-
istrators jointly severally and firmly by these presents
Witness our hands and
seals this day of
A D 1863

The condition of this obligation is such
that whereas the said Mason M Wright did on the 28th
day of May ad 1863 in the Circuit Court of Ford county
Illinois obtain a decree of foreclosure against the
above bounden Philip Myer and Jacob H Myer

from which decree the said Philip Myer has taken an appeal to the supreme court of the state of Illinois now if the said Philip Myer shall pay whatever judgments costs, interest and damages in case said decree shall be affirmed and shall prosecute his said appeal with effect then this obligation to be void otherwise to remain in full force and virtue

Philip Myer
David Patton
John Bodley



Filed July 3^d 1863

Samuel S Day clerk

State of Illinois }
Ford County }
I Samuel S Day, clerk
of the Circuit Court in and for
said County in the State aforesaid do hereby certify
that the above and foregoing is a full true and
Perfect Transcript of the Record of the Proceedings
of the Ford County Circuit Court in a certain
Cause pending in said Court wherein
Mason M Wright was Complainant and
Philip Myer, Elizabeth Myer and Jacob H Myer
were Defendants as appears from the Records
now on file in my office.

Witness my hand and official seal at
Porter Ford County July 16th A.D. 1863
Samuel S Day
clerk



State of Illinois

Supreme Court

January Term 1864

And now comes the said Appellant, Philip Myers and says that in the record and proceedings aforesaid and in rendering the decree aforesaid there is manifest error in this,

That the said Circuit Court was in overruling the said demurrer of the said appellant to the said bill of complaint of the said complainant; for that it appears by the bill of complaint that said Patent ~~is~~ ^{is} Solomon ^{of Springfield} below here necessary party to said action

And the said appellant prays that the decree aforesaid for the cross appeal and for other errors in the record aforesaid may be reversed and he asks nothing so that he may be restored to all things he
Very respectfully

A. E. & O. F. Harmon, Solicitors entered the appearance of Messrs M. Wright, joined in the error shown.

A. E. & O. F. Harmon
Sols. for Complainant

Mason & Wright

vs

Philip Myers. et al

— " —

Record

14161

Filed Dec 30/53.
W. T. Swaney
W