

No. 1360

Supreme Court of Illinois

Nathaniel J. Brown

vs.

Harvey Newcomb

(379)  7

Pleas before the Hon. John Pinson Judge
of the Seventh Judicial Circuit of the State
of Illinois & Presiding Judge of the Cook
Circuit Court.

At a Circuit Court
begun & held in the City of Chicago
at the Court Room of the Cook Circuit
Court on the 5th Day of March A.D. 1838

Nathanial J. Brown —

vs

Harvey C. Newcomb } ~~Be it remembered~~

Be it remembered

that on the fourth day of January A.D. 1838
Nathanial J. Brown filed in the office
of the Clerk of the Circuit Court
County Cook the following affidavit which is
in the words following to wit,

State of Illinois }
Cook County } 3

Nathanial J. Brown

being duly sworn doth depose & say
that Harvey C. Newcomb is justly indebted
to this deponent in ^{the} sum of fourteen
Hundred ~~Dollars~~ and Eleven Dollars
and Twenty Two Cents over and above
all discounts & set off being the amount
due on two promissory Notes executed
by said Newcomb one of which was made
payable to Henry Lake and by him endor-
sed to deponent and the other made
payable to this deponent together with a
balance due ^{deponent} in Book account for goods

sold to said Newcomb. And this depo-
-nant further saith that said Harvey C.
Newcomb is nonresident of the State of
Illinois and is an inhabitant of the State
of New York so that he cannot be person-
-ally served with process issuing out of
any of the courts of this State

And deponent further saith that
said Newcomb has real Estate within
this State liableth attachment and depo-
-nant further saith that he deponent
is a resident Citizen of the County
of Cook aforesaid and he prays process
of attachment to be issued by the Clerk
of Cook Circuit Court against said
Newcombs estate pursuant to law

N. J. Brown

Sworn & subscribed this
4th day of Jan^y 1838 before me

Richard Hamilton clerk

Not ap^{er}ed Jan^y 4th 1838

R. J. Hamilton Clerk

And afterwards to wit on the 4th day of
January 1838 the aforesaid Nathaniel
J. Brown filed in the office of the Clerk of
the Cook Circuit Court his bond which
is in the words & figures following to wit

Know all men by these presents that
we Nathaniel J. Brown & Benjamin Bent-
-ly am held and firmly bound unto
Harvey C. Newcomb in the Penal Sum
of Three Thousand Dollars lawful money
of the United States the payment of which

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Said Sum well & truly to be made we
bind ourselves our heirs executors and
administrators jointly & severally by
these presents. Sealed with our seals
and dated this fourth day of January AD
1838.

The condition of the above obligation
is such that whereas the above bounden
Nathanial J. Brown has on the day of
the date hereof prayed an attachment
at the suit of him the said N. J. Brown
against the estate of the above named
Harvey C. Newcomb for the sum of
fourteen Hundred & Eleven ²⁴/₁₀₀ Dollars
lawful money of the United States and
the same being returnable about to be
sued out returnable on the first Monday
of March next to the March Term of
the Circuit Court then and then to be
holden in and for the County of Cook at
Chicago in said County. Now if the said
Nathanial J. Brown shall prosecute the
said suit with effect or in case of fail-
-ure therein shall well & truly pay and
satisfy the said Harvey C. Newcomb
all such costs in said suit and such
damages as shall be awarded ^{against} the said
Nathanial J. Brown his heirs executors
and administrators in such suit or suits
which may hereafter be brought for
wrongfully suing out the said attach-
-ment, then the above obligation to be void
and of no effects otherwise to remain in

in full force & virtue

N. J. Brown—

Benj Bently,

Seal
Seal

And afterwards to wit on the fifth day of January A.D. 1838. Then issued out of the office of the Clerk of the Cook County Circuit Court a writ of Attachment in the words & figures following to wit

State of Illinois }
Cook County— } 441

The people of the State of Illinois to the Sheriff of Cook County Greeting
Whereas Nathaniel J. Brown of the county of Cook and State of Illinois hath complained on oath to Richard J. Hamilton clerk of the Circuit Court of Cook County that Harvey C. Newcomb of the State of New York is justly indebted to him in the sum of fourteen thousand eleven $\frac{22}{100}$ Dollars due by promissory notes and that the said Newcomb is a non resident and has real estate within the limits of this State liable to attachments, doth the said Nathaniel J. Brown having given bond and security according to the act in such cases made & provided.

We therefore com-
mand you that you attach so much of the Estate real or personal of the said Harvey C. Newcomb to be found in your County

as shall be of value sufficient to satisfy the the said ~~said~~ debt & costs according to the said complaint, and and such estate so attached in your hands to secure a ^{do} provide that the same may be liable to further proceedings thereupon according to law at a Circuit Court to be holden at Chicago within & for the County of Cook on the first Monday of March next so as to compel the said Henry C. Newcomb to appear and answer the complaint of the said Nathaniel J. Brown and that you also summon as Garnishee to be and appear before said ^{Court} on the said day of next then & there to answer what may be objected against him when & where you shall make known to the said Court how you have executed this writ And have you then & there this writ Witness Richard J. Hamilton Clerk of our said Court and the Seal thereof at Chicago this fifth day of January A.D. 1838

Seal

Richard J. Hamilton
Clerk

And afterwards to wit on the 25th day of January A.D. 1838 The Sheriff for the County of Cook returned into the office of the Clerk the foregoing writ with the following endorsements thereon in the words & figures following to

Wit.ⁿ Executed by attaching the
property hereupon mentioned mentioned
January 25 1838 J. W. Sherman

By virtue of the within I have attached
the following property to wit the un-
divided half of fractional Block Seven
in Kinzie's addition to the Town of
Chicago this 5th day of January AD
1838

J. W. Sherman Shff

Nathaniel J. Brown
N.
Harvey C. Newcomb }

And afterwards
to wit on the 22^d day of Feb 7 AD 1838
the Plaintiff in the foregoing cause by
Butterfield & Collins his Attorneys filed
in the office of the Clerk of the Cook
County Circuit Court his declaration
in the words & figures following to Wit

Cook Circuit Court of March Term in the
State of Illinois 2 year of our Lord Eight.
Cook County 3 ten Hundred and Thirty
Eight.

Nathaniel J. Brown Plaintiff in
this suit by Butterfield & Collins his
Attorneys complains of Harvey C. New-
comb defendant in this suit in custody
&c. For that whereas one Harvey C.

Newcomb heretofore to wit on the ~~first~~ fourth day of April in the year of our Lord Eighteen Hundred & Thirty Seven at Chicago in the County of Cook aforesaid according to the usage and custom of Merchants made his certain Bill of exchange in writing bearing date the day & Year aforesaid and then and then directed the said Bill of Exchange to the said defendant by the name and addition of Mr Harry C. Newcomb Troy (N.Y.) and thereby then & then requested the said defendant on the fiftenth day of Oct next (then next ensuing meaning) to pay to the order of the said Plaintiff by the name and description of N. J. Brown, one Thousand Dollars at the Troy City Bank in the City of Troy New York and then and then delivered the said Bill of exchange to the said Plaintiff which said bill of exchange the said defendants afterwards to wit on the fourth day of April in the year of our Lord Eighteen Hundred & Thirty Seven aforesaid at Chicago in the County of Cook aforesaid upon sight thereof accepted according to usage & custom of merchants. And the said Plaintiff avers that afterwards to wit on the Eighteenth Day of October in the year of our Lord Eighteen Hundred & Thirty Seven to wit at the said Troy City Bank in the said City of Troy aforesaid the said Bill of

of exchange was duly presented and
and shown to and at the said Troy
City Bank for payment thereof
according to the usage & custom of Mer-
chants and payment of the said
sum of money in the said Bill of ex-
change specified was then & then duly
required: But that neither the said
Troy City Bank, nor the said defend-
ant nor any other person or persons
on behalf of the said defendant did
or would when the said Bill of ex-
change was so presented and shown
for payment thereof as aforesaid or
at any time before or afterwards pay
the said sum of money therein specified
or any part thereof but then and then whol-
ly neglected and refused so to do of all
which said several premises the said
defendant afterwards to wit on the day
and year last aforesaid at the place
to wit: at Chicago in the County of
Cook aforesaid had notice by means
whereof and according to the said
usage and custom of Merchants the
said defendant then and then became
liable to pay to the said Plaintiff the
said sum of money in the said bill
of exchange specified when the said
defendant should be thereunto after-
wards requested and being so liable
and in consideration thereof the said
defendant afterwards to wit on the same

day and year ^{last} aforesaid to wit at the
 place aforesaid undertook and then and
 there faithfully promised the said plaintiff
 to pay him the said sum of money in
 the said Bill of Exchange specified
 when he the said defendant should be
 thereunto requested. And whereas also
 the said Defendant afterwards to wit on
 the tenth day of January in the year of our Lord
 Eighteen Hundred and Thirty Eight at
 the place aforesaid was indebted to
 the said Plaintiff in the sum of Two Thousand
 Dollars for divers goods wares & Merchandise
 by the said Plaintiff before that time sold
 and delivered to the said defendant and
 at his instance & request and also in
 the further sum of Two Thousand dollars
 for money by the said Plaintiff before that
 time lent and advanced to the said defendant
 and at his like instance & request and
 for other money by the said Plaintiff
 before that time paid laid out and
 expended for the said defendant and
 at his like instance and request and
 for other money by the said defendant
 before that time had and received to
 and for the use of the said Plaintiff.
 And being so indebted and in consid-
 -eration thereof the said defendant
 afterwards to wit on the same day and
 year last aforesaid at the place to wit
 at Chicago in the County of Cook aforesaid
 undertook and faithfully promised
 the said Plaintiff to pay him the said
 several sums of money ^{last} above mentioned

although often requested to, but to
pay the same or any part thereof to the
said Plaintiff the said defendant
has hitherto wholly neglected & refused
and still does neglect and refuse to the
damage of the said Plaintiff of Two
Thousand Dollars and therefore he
brings suit to Buttrick & Collins
Plaintiffs & Agents

(Copy of Bill of Exchange declares on)
\$1000⁰⁰

Chicago April 21th 1837
On the fifteenth day of October
next please pay to the order of N. J. Brown
One Thousand Dollars at the Troy City
Bank in the City of Troy New York
Harvey C. Newcomb
Mr. Harvey C. Newcomb }
Troy New York }
Endorsed N. J. Brown

And afterwards to wit on the 17. day
of May A.D. 1838. The Circuit Court
for Cook County being then in session
the following among other proceedings
was had. to wit.

Nathaniel J. Brown - }
v. s } Attachment
Harvey C. Newcomb }
Continued with
order for publication

And afterwards to wit on the Twenty second day August AD 1838 came the plaintiff by Arnold & Ogden his Attorneys and filed the following motion in the words & figures following to wit.

Cook Cir. Court }
 Harvey C. Newcomb }
 A. J. Brown — }

The defendant moves the court that the first Count in the plaintiffs declaration filed in this cause be stricken out because.

- 1 This count is on a bill of exchange and the affidavit upon which attachment issued specifies an entirely different demand to wit two promissory notes.
- 2 This count is for a different demand to that set forth in the affidavit upon which the attachment issued

Arnold & Ogden

And the defendant also moves that this cause be continued because there is no account filed under the general counts

Arnold & Ogden

At the same time the Plaintiff by Butterfield & Collins his Attorneys filed the following cross motion in the words & figures following to wit.

Cook Circuit Court — }
 Nathaniel J. Brown }

Harvey C. Newcomb } The plaintiff comes
 motion that he be allowed to proceed

to trial in this case upon the written
instrument set forth in the ^{first} count of
this declaration and hereby abandons
all right to give in evidence under the
other counts in the declaration any de-
mand except the said bill of exchange
set forth in the said first count of the
said declaration and hereby consents
that the common counts in the declaration
be so far struck out of the declaration
saving only to the plaintiff the right to
give the said Bill of exchange in evidence
under any of the counts of the said de-
claration applicable to the said bill of
exchange
Butterfield & Johnson
Attys Atty

And afterwards to Wit on the 23^d day
of August A.D. 1838 The Circuit Court of
Cook County then being in Session the
following among other proceedings was had
To Wit

Nathaniel J Brown }
Vs } Assumpsit
Harvey Co. Newcomb }

This day comes the
defendant by Arnold & Ogden his Attorney
and moves ~~and moves~~ the Court that the
first count in the declaration herein filed
be stricken out which motion is overruled
Thereupon the defendant moves the Court to
continue the case because there is no account
on file under the general counts

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Hereupon comes the plaintiff by Butler
- field & Collins his counsel and enters his
cross motion to proceed to the trial of this
cause upon the written instrument. Set
forth in the first count of the declaration
upon his stipulating to abandon all right
to give said note in evidence under the other
counts and consenting to have said counts
struck out saving only to the defendant
the right to give the said instrument
in evidence so far as the same shall
be applicable to them. Which motion
to continue having been argued by coun-
- sel is sustained and the cross motion
overruled and cause continued at plaintiff's
costs

And afterwards to Wit on the 27th day
of August the Circuit Court being then
in session the following bill of exech-
- tions was filed in the books & figures follow-
- ing to Wit,

Cook Circuit Court

Nathaniel J. Brown

vs

Harvey L. Newcomb

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be
Cof
-
Be it remembered
that at the August ^{term} of the Cook Circuit
Court held at the Court House in the
City of Chicago on the 22^d day of Aug-
- ust in the year one thousand eight
Hundred & Thirty Eight came the defen-
- dant by Arnold & Ogden his attorneys

and moved the Court that this cause
be continued because there is no account
filed under the general counts & thereupon
the said Plaintiff by Bullen & Collins
came & made his cross motion that he be
allowed to proceed to trial in this cause
upon the written instrument set forth
in the first count of the declaration
and hereby abandon all right to give in
evidence under the other counts in the
declaration any demand except the said
bill of exchange set forth in said first
count of the said declaration and hereby
consents that the common counts in
the said declaration be so far struck out
of the declaration saving only to the
Plaintiff the right to give the said
bill of exchange in evidence under any
of the counts in the declaration applic-
able to the said Bill of exchange
And therefore the Court decided
that the motion to continue the said
cause be sustained and the cross
motion be overruled and that the cause
be continued at the Plaintiff's costs
to which decision the Plaintiff
excepted and tendered to the said Court
this bill of exceptions to which the said
Court has signed & sealed according to
the Statute in such case made & provi-
- did

John P. [Signature]

State of Illinois } Set
County of Cook, } I Richard J. Hamilton

Clerk of the Circuit
Court in and for the County of
Cook aforesaid, do hereby certify
that the foregoing is a true and
correct Transcript from records
and papers on file in my office
In the case of Nathaniel J. Brown
against Harvey C. Newcomb.

In Testimony whereof I have
hereto set my hand and the
Seal of said Court at Chicago
this 25th day of November
A.D. 1838.

Rich^d. J. Hamilton
Clerk

Nathaniel Brown
vs. 3 Enos
Harvey C. Newman

Filed Aug. 1838
Imprisoned

X
Transcript

Costs to abide the event
of the suit in the court
below

Mandamus
warded Dec. Term
1838

1360
Hollins paid for 1838

Nathaniel J. Brown

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Harvey E. Newcomb

Sup. Court

Gent.

Please take notice

that you shall make the Supreme Court
of this State at the Term thereby to be
held at Vandalia on the 30th Monday
of December inst. ~~that~~ upon the transcript
by the record filed in this cause, that
a writ of mandamus be issued and
remanded to the Judge of the Cook County
Circuit commanding him to vacate
an order made by him in this cause
at the last August term of the said
Court held at Chicago denying a
certain ^{enop} motion made in the said cause
by the said Plaintiff for leave to proceed
to the trial of the said cause upon his
abandoning all right to give in evidence
under either of the said Courts in the
declaration any demand except the said
Bills of exchange set forth in the first
count of the said declaration; and that
the said Judge grant and allow the
said ^{enop} motion =

Dated December 1st 1830.

Yours L

To

Wm. Arnold &

Agden Esqrs. Esqts attys;

Butterson L

Cullins Esq. attys

We admit our possession of a copy of the above notice
of motion and waiving all other questions consent
that the Court make such order in the premises as may be
deemed just: Dated December 12th 1830: Arnold & Ogden
Deft. Attorneys

North and J. Brown

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Harvey C. Stonecomb

} appearance of error
and the said Plaintiff comes
and says that in the record

and proceedings aforesaid there is manifest error
in this record. that the court erred in denying the
said defendant the Plaintiff's motion to be allowed
to produce to trial upon the written instrument
set forth in the first count of the declaration
upon his allowing all right to give in evidence
under the other counts in the declaration any
demand except the said Bill of exchange
set forth in the said first count of the
said declaration &c -

2d. The court erred in allowing the said
motion and continuing the said cause
for which errors aforesaid are other
errors appearing in the record
aforesaid the Plaintiff prays that the order
indicated in caption of the said count
above appearing for errors aforesaid
may be reversed &c

Burke & Collins
Plffs attys

Waltham J. Brown

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Henry C. Vanecko

abstract of
imm—

Filed Dec. 12, 1838
Jm Duman

To be copied

State of Illinois, set.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Book*

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
Book county, before the Judge thereof, between

Nathaniel I Brown

plaintiff and *Harvey*

Greencomb defendant it is said manifest error hath intervened to the injury
of the aforesaid *plaintiff* as we are informed by *his* complaint, and we being
willing that error (if any there be) should be corrected 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 our 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 Vandalia in the county of
Fayette, on the *22^d Monday in December Inst*
next, that the record and proceedings, being inspected, we may cause to be done therein, to
correct the error, what of right ought to be done according to law.

Witness, the Hon. William Wilson, Chief Justice of our said
Court, and the seal thereof at Vandalia, this *Eighth*
day of *December* in the year of our Lord one
thousand eight hundred and *thirty Eight*

J. McDunean clk

Supreme^{149.} Court

Nathaniel L. Brown

B { Writ of Error
Haverb. Newcomb

Filed Dec 8.
1838 Jm Duman