

14260

No. _____

Supreme Court of Illinois

Sherman

vs.

Laflin

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

14760

No. 174.

Sherrin

*vs
Fuller*

1862

Referred

In Supreme Court of Illinois
April 1. 1862

Lafayette } appellant
Shuman } appellee.

And now comes the
said appellee, and moves
that the appellant be required
to file sufficient abstract
of the record in this case

By his Atty.

Samuel W. Clegg & Fuller

April 28. 1862

1862

Sept 17/4

Sherrin

Motion for a sufficient
abstract to be
made by appt

Motion allowed
& Rule for abstract
"

S. M. Cozz ~~Sherrin~~
at 1/2 past 12

18/4
P. M. Cozz

18/4
P. M. Cozz

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UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }

Van H. Higgins }
and Grant Goodrich } Judges.

Charles Warren Prosecuting Attorney.

Anthony C. Herzig Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

So it is remembered that hereafter to wit, on the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty one there issued out of the office of the Clerk of the Superior Court of Chicago, the Proper Writ of Summons, which said Writ, with the Sheriff returns thereto endorsed is in words and figures following to wit;

State of Illinois
County of Cook SS

The People of the State of Illinois
To the Sheriff of said County: Greeting - We
Command You that You summon Matthew Saphie
if he shall be found in Your County, personally to be

and appear before the Superior Court of Chicago, of
 said Cook County, on the the first day of the term
 thereof, to be holden at the Court House in Chicago,
 in said Cook County, on the first Monday of June
 next to answer unto Benjamin B. Sherman in a
 plea of Trespass on the Case as is premises, to the
 damage of the said Plaintiff as is said, in the sum of
 Five Thousand Dollars

And have You then this writ, with an endorsement
 thereon in what manner You shall have executed the
 same. Witness Walter Kimball, Clerk of said
 Court and the Seal thereof, at Chicago
 aforesaid, this 3rd day of May AD 1861
 Walter Kimball Clerk

Served by executing this writ to the within named
 defendant the 9th day of May 1861
 A. C. Hering Sheriff
 By H. Lumbard Deputy

And afterwards to wit on the Eighth day of May
 in the Year aforesaid, B. B. Sherman by Leonard
 Mc Cagg & Fuller his attorney filed in the office
 of the Clerk of said Court his certain declaration
 in words and figures following to wit:—

State of Illinois
Cook County ss

The Superior Court of Chicago
June Term 1861

Benjamin D Sherman Plaintiff the Action
Complain of Matthew Safflin Defendant in this
Action. of a plea of Trespass on the Case upon
Promiss, For that whereas, the said defendant,
henceforth, to wit, on the Eighteenth day of April
in the Year of our Lord, one thousand eight hundred
and fifty (1860) at Chicago, to wit: at the County
of Cook and State of Illinois made his certain note
in writing, commonly called a promissory note,
bearing date a certain day and Year therein mentioned
to wit: the day and Year last aforesaid, and then and there
delivered the said note to John H Dunham by which
said note the said defendant then and there promised
to pay to the order of said John H Dunham under the
name and style of Matthew Safflin Two Thousand &
Seven hundred dollars (\$2700) in one Year after date
of said note, at the Banking Office of the Merchants
Savings Loan and Trust Co. for Valued account with
interest at ten per Cent, and the Plaintiff avers that
afterwards, on to wit the eighteenth day of April
A.D. 1860. the said Dunham did here order the
said note was payable ordered and assigned the
same to the Plaintiff by writing on the back of said note
and then and there delivered the said note to the Plaintiff

By Reason Whereof, and by force of the Statute in such Case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of Money in the said Note specified, according to the tenor and effect of the said Note; and being so liable, the said defendant in Consideration thereof, afterwards, to wit, on the same day and Year and at the place aforesaid, and then and there, faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of Money in the said Note specified according to the tenor and effect of the said Note.

And whereas, also, the said defendant afterwards, to wit, on the First day of May in the Year of our Lord one thousand eight hundred and fifty one at the place aforesaid was indebted to the said plaintiff in the sum of Five thousand Dollars, lawful Money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant and at the special instance request of the said defendant, And for other Money by the said plaintiff before that time paid, laid out and expended for the said defendant and at the request of said defendant, 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, the said defendant in Consideration thereof, afterwards, to wit, on the same day and Year last

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aforesaid, and at the place aforesaid, Justice R. and
 then and there faithfully promised the said Plaintiff
 well and truly to pay unto the said Plaintiff, the said
 sum of money in this Court mentioned, when the said
 defendant should be therunto afterwards requested
 And whereas, also, the said defendant afterwards,
 to wit, on the same day and year last aforesaid, and
 at the place aforesaid, accounted together with the
 said Plaintiff of and concerning divers other sums of
 money, before that time due and owing from the said
 defendant to the said Plaintiff and there and there
 being in arrear and unpaid and upon such account
 the said defendant then, and there was found to be in
 arrear and indebted to the said Plaintiff in the further
 sum of Five Thousand dollars of like lawful money
 as aforesaid, And being so found in arrear and indebted
 to the said Plaintiff the said defendant in consideration
 thereof, afterwards, to wit, on the same day and year
 last aforesaid, and at the place aforesaid Justice R.
 and then and there faithfully promised the said Plaintiff
 well and truly to pay unto the said Plaintiff the said
 sum of money last mentioned, when the said defendant
 should be therunto afterwards requested

Nevertheless, the said defendant (although often
 requested, etc. to wit, on the day when the said note
 became due and payable, according to the tenor and effect
 thereof, and ofentimes since, to wit, at the place afore-
 said) has not yet paid the several sums of money above

mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still does refuse to the damage of the said plaintiff of Five Thousand (\$5000) Dollars, and therefore the said plaintiff brings suit etc.

By his attorneys

Samuel McCazy & Hall

Copy of Instrument sued on:

Expos # Chicago April 18th 1860

One Year after date promise to pay to the order of John H. Demhorne Two Thousand Seven Hundred Dollars, at the Banking Office of the Merchant Savings Loan and Trust Co. value received with interest at ten per cent

Endorsed

Matthew Laflin

Witness, my hand & seal

J. H. Demhorne

And afterwards to wit on the fourth day of June in the Year aforesaid, Matthew Laflin by Amos Eastace & Reed his attorneys filed herein his certain plea and affidavit of merits in word and figures following to wit:

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State of Illinois }
County of Cook }
vs

In the Superior Court of Chicago
June Term A.D. 1861

Benjamin P. Sherman }

vs
Matthew Laflin }

Assumpsit

And now comes the said
Defendant by Knox Eustace & Reed his Attorneys
and defends the Verdict and injury shown to and
says that he did not undertake or promise in
manner and form as the said Plaintiff has
above thereof complained against him and of
the facts sincerely upon the Country of

Knox Eustace & Reed

Attorneys for Defendant

And Plaintiff does the like

Seammon McCagg & Keller
Plff Atty

In the Superior Court of Chicago
June Term A.D. 1861

Benjamin P. Sherman }

vs
Matthew Laflin }

Matthew Laflin being
duly sworn on his oath says that he is the
Defendant in said suit, and that he believes

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he has a good and substantial defense to
 said suit upon the merits
 Subscribed & Sworn to } Matthew Laflin
 the 4th day of June A.D. }
 1861 before me }
 W Kimball Clk;

And afterwards do wit on the fifteenth day of
 December in the Year last aforesaid, said day
 being one of the days of the December Term of said
 Court, the following among other proceedings was
 had ^{in said Court} and entered of record to wit:

Benjamin D. Sherman
 vs Assumpsit
 Matthew Laflin

This day comes said plaintiff by
 Samuel W. Fuller his attorney, and the said defendant
 by Knox Eustace & Reed his attorneys also comes and upon
 agreement of the parties made now here in open Court this
 Cause is submitted to the Court for trial upon the issues
 found therein without intervention of a jury, and the
 Court now here after hearing evidence and arguments
 of Counsel and being fully advised in the premises
 finds issues for said Plaintiff and assesses his damages
 herein against said defendant to the sum of Three Thousand
 One hundred and fifty dollars. And therefore said defendant
 submits his motion herein for a new trial in said Cause

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And afterwards to wit, on the Twentieth second day of March in the Year of our Lord One Thousand Eight Hundred and Sixty two, Said day being one of the days of the March Term of Said Court the following among other proceedings was had in said Court and entered of record to wit

Benjamin S. Sumner
vs Assumpsit
375- Matthew Laflin

And now at this day again comes Said plaintiff by Samuel W. Haller his attorney and Said Defendant by Knapp & Reed his Attorneys also comes and this Cause coming on now to be heard before the Court sitting in banc upon the motion of Said defendant heretofore submitted herein at the December Term last part of the Court a D. I. S. C. for a new trial in said Cause and Counsel being heard thereon and the Court being fully advised in the premises was of the opinion that the reasons filed by Said defendant in support of his said motion are not sufficient to warrant the same, it is therefore considered by the Court that the motion of said defendant be and is hereby overruled and a new trial refused Said defendant, to which ruling of the Court said defendant then and there excepts and enters his exception herein to the ruling of the Court in overruling his said motion for a new trial

Wherefore said plaintiff ought to have judgment entered upon finding of the Court for his damages herein as aforesaid

Therefore it is Considered that Said Plaintiff do have and receive from Said Defendant his damages of Three thousand one hundred and fifty dollars in some amount by the Court here found and assessed and also his Costs and Charges in this behalf expended and have execution therefor.

And whereas Said Defendant having entered his exceptions prays an appeal here to the Supreme Court of this State from the judgment of this Court which is allowed to him upon filing his bond in the penalty of four thousand dollars with security to be approved by a Judge of this Court and to be filed with his bill of exceptions within ten days from this day.

And afterwards to wit on the Twenty ninth day of March in the year last aforesaid Messrs. [unclear] by [unclear] & [unclear] his attorney filed herein his Bill of Exceptions in words and figures following to wit

State of Illinois }
County of Cook } ss. Superior Court of Chicago
March Term A.D. 1860.

Benjamin P. Sherman }
vs. }
Mathew Laflin. } Assumpsit

Be it remembered that
heretofore to wit on the 16th day of December A.D.
1861 the said cause was tried by the court, a jury
being waived. And thereupon the Plaintiff to main-
tain the issues on his part offered in evidence a note
of which the following is a true copy to wit:

" \$2700- Chicago April 18th 1860.

" One year after date I promise to pay to
" the order of John N. Dunham two thousand seven
" hundred dollars at the Banking office of the Mechanics
" Savings Loan and Trust Co. name received, with
" interest at ten per cent

Mathew Laflin "

" On the back of which note was and is the following
" to wit; "Without recourse to me"

" J. N. Dunham "

The Defendant by his counsel thereupon then and
there at the time objected to the admission of the
said note in evidence and stated that he had a deposition
of Benjamin P. Sherman the plaintiff in the case
which deposition he dependant then and there read to the

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court as evidence without objection, and which deposition
is as follows to wit:

The deposition of Benjamin B. Sherman of the City County and State of New York a witness of lawful age produced sworn and examined on his corporal oath on the twentieth day of September in the year of our Lord one thousand eight hundred and sixty one at the office of Tullerton Raymond & Knox number eleven Pine St. in said City of New York by me Henry C. Knox a commissioner (duly appointed by a *dedimus protestatorem*) or Commission issued ^{out of} of the Clerks office of the Superior Court of Chicago of Cook County in the state of Illinois bearing Teste in the name of Walter Kimball Esq. Clerk of the said Court with the seal of the said Court affixed thereto and to me directed as such Commissioner for the examination of the said Benjamin B. Sherman a witness in a certain suit and matter in controversy now pending and undetermined in the said Superior Court of Chicago wherein Benjamin B. Sherman is plaintiff and Matthew L. Luffin defendant in behalf of the defendant on the interrogatories of the defendant which were attached to or enclosed with the said Commission and upon none others.

The said Benjamin B. Sherman the person referred to in ~~the~~ said Commission as Benjamin B. Sherman and the plaintiff in said suit against the said Matthew Gallio defendant and the same person heretofore examined by me under and by virtue of a commission issued out of said Court in said suit and returned by me to the Clerk of said Court being duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matter in controversy between the said plaintiff and defendant. So far as he should be interrogated testified and deposed as follows.

Interrogatory first

State what if anything you have ever paid or agreed to pay John H. Dunham for the promissory note mentioned by you in your former deposition. State particularly the sum paid or agreed to be paid by you if anything was paid or agreed to be paid.

Answer to First Interrogatory.

I have never paid anything to Mr. John H. Dunham.

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for the promisory note mentioned by me in my former deposition. I have agreed to pay Mr. John H. Dunham whatever sum I collected on the note referred to, and have placed to his credit on my books the sum of two thousand eight hundred and nineteen dollars and fifty cents \$2819.⁵⁰/₁₀₀ two thousand and seven hundred dollars, being for principle and the balance for interest

Interrogatory Second.

If you paid any money or agreed to pay any state the amount state the amount paid or to be paid and the time where paid or agreed to be paid for said note

Answer to the Second Interrogatory

I have agreed to pay the amount which I shall collect on the note and as I collect it

Interrogatory Third.

State whether or not you received said note by letter or otherwise - if by letter attach to your deposition a copy of said letter, if you did not receive it by letter state fully your

instructions about said note when you received it.

Answer to the Third Interrogatory

I received the note referred to by letter. I have made a careful search for the letter but have been unable to find it. My impression is that it was destroyed. I cannot therefore attach a copy of it to my deposition.

Interrogatory Fourth

State whether or not you ever received any letter - or letters from John H. Dunham relating to the transfer of said note to you. If you did, attach copies of such letters to this deposition.

Answer to the Fourth Interrogatory

I have received two letters from Mr. John H. Dunham in relation to this note and its transfer. The first related more particularly to its sale by me and the second to its transfer to me. I have made careful search for each of those letters but have been unable to find them. I cannot therefore attach copies of them to my deposition.

Interrogatory Fifth

If you paid or agreed to pay said Dunham for said note, anything besides money State what such thing was, fully and particularly.

Answer to the Fifth Interrogatory.

I did not agree to pay Mr. Dunham anything besides money for said note.

Interrogatory Sixth.

State fully and particularly the kind, nature, and amount of the consideration paid to said Dunham by you or agreed to be paid if anything was paid or agreed to be paid State the exact terms of the transfer by him to you giving the circumstances as they occurred.

Answer to the Sixth Interrogatory.

The consideration which I agreed to pay Mr. Dunham was as I have before stated the amount which I should collect on the note in question. John Dunham sent the note to me with the request that I should sell it for him. I tried to sell it but was unable to do so and informed him of that fact. he then requested me to place the note to his credit on my books and collect the amount.

18 when it should become due. I agreed to do so and to remit to him what amount he should collect.

Interrogatory Seventh

If you have ever received any letters from said Dunham relating to the transfer of said note to you either at the time of such transfer or before or since then attach to this deposition copies of all such letters.

Answer to the Seventh Interrogatory

I have not received any other letters relating to the transfer of said note to me except the two above referred to so far as I recollect those two. I have been unable to find as before stated and I cannot therefore attach them to this my deposition.

Interrogatory Eighth

If in answer to interrogatories above propounded to you you state you have received letters from said Dunham relating to the transfer of said note, state whether you have attached to this deposition copies of all such letters.

Answer to the Eighth Interrogatory
 I have received only the two letters above
 stated and am unable to attach copies because
 I cannot find them after having made a
 careful search for them

Interrogatory Ninth

State what if any agreement
 either express or implied has ever been
 made or exists between you and said Dun-
 ham whereby if you fail to collect the
 amount of said note from Matthew Gaffin
 the maker thereof, that said Dunham is
 to be charged with the amount of said note
 in your account with him state ^{any particulars} fully about
 the said agreement if any such has ever
 been made or now exists

Answer to the Ninth Interrogatory.

There has been no express agreement
 between Mr John H Dunham and myself
 in relation to charging Mr Dunham with
 the amount of said note in the event
 of my being unable to collect it of
 Matthew Gaffin. If I collect the amount
 I shall pay it over to Mr Dunham.
 If I fail to collect it the implied agree-
 ment is that I shall make an entry to

that effect. To counteract the Credit entry
above referred to.

Sworn to before me this Twentieth
day of September 1861

Benj. B. Sherman
Henry C. Knox Commissioner

I Henry C. Knox of the City, County, and
State of New York a Commissioner duly
appointed to take the deposition of the
said Benjamin B. Sherman a witness
whose name is subscribed to the foregoing
deposition do hereby certify that previous
to the commencement of the examination
of the said Benjamin B. Sherman as a
witness in the suit between the said
Benjamin B. Sherman plaintiff and the
said Matthew Gaffin defendant he was
duly sworn by me as commissioner to testify
the truth in relation to the matters in con-
troversy between the said Benjamin B.
Sherman plaintiff and the said Matthew
Gaffin defendant so far as he should be
interrogated concerning the same, that
the said deposition was taken at the
office of Fullerton Raymond & Knox Number
11 Pine Street in the city of New York aforesaid.

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on the Twentieth day of September A.D.
 1861. And that after said deposition was
 taken by me as aforesaid the interrogato-
 ries ^{and answers} thereto as written down were read
 over to the said witness and that there-
 upon the same was signed and sworn
 to by the said deponent Benjamin B.
 Sherman before me the oath being
 administered by me as such Commissioner
 at the place and on the day and year
 last aforesaid

Henry C. Knox
 Commissioner

New York City
 Sept 20th 1861.

And the Defendant thereupon then and there objected to the right of the Plaintiff to recover on said note because it appeared from the evidence that the plaintiff was neither the legal or equitable holder or owner of said note, but the court admitted said note in evidence and found the issues for the plaintiff. And the Defendant then and there by his counsel excepted to the said ruling of the court in admitting said note in evidence; And the said Defendant then and there also excepted to the said finding of the issues for the plaintiff. The attention of the court was not called to the fact that the indorsement upon the note was not filled up, nor was such fact specifically urged to the Court against a recovery,

The above and foregoing is all of the evidence offered by either party in said cause.

And the Defendant thereupon then and there entered a motion for a new trial, which motion for a new trial is in the words and figures following to wit:

Benjamin P. Sherman

Mathew Laflin

Superior Court of Chicago

December Term 1861

And now comes the said Defendant by his Attorneys and moves for a new trial in said cause for the following reasons, to wit:

The finding of the court is manifestly against the evidence,

"First

"

" 23
Seem

The finding of the court is contrary to the law.

" Third

The finding of the court should have been for the Defendant.

"
"
"

Honor Eustace & Reed
Atty's for Def."

And afterwards to wit on the 22nd Day of March A.D. 1869 the court after hearing the arguments of counsel overruled said motion for a new trial.

And thereupon the Defendant then and there at the time excepted to the said ruling of said court in overruling said motion for a new trial.

And for as much as the matters and things herein contained do not appear of record, the Defendant prays that this his bill of exceptions may be signed and sealed, which is according by done.

Grant Gordrich { seal }

And afterwards to wit, on the twenty ninth day of March in the Year last aforesaid, the said Matthew Saffin filed said his appeal bond in words and figures following to wit:—

Know all men by these presents that Matthew Saffin as principal and Aaron Gibbs as surety are held and firmly bound unto Benjamin P Sherman in the penal sum of four thousand dollars for the payment of which well and truly to be made we her by bind ourselves or heirs, executors administrators and assigns firmly by these presents

Witness our hands and seals this 29th day of March A D 1862. The Condition of this obligation is such that whereas the said Benjamin P Sherman on the 22nd day of March A D 1862 received a judgment against the said Matthew Saffin for the sum of thirty one hundred and fifty dollars and Costs of suit, in the Superior Court of Chicago, from which judgment the said Matthew Saffin has prayed an appeal to the Supreme Court.

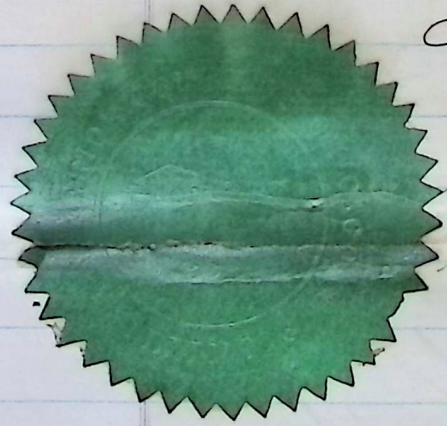
Now if the said Matthew Saffin shall pay said judgment with the Costs interest and damages in Case said judgment shall be affirmed, and also duly execute said appeal, this obligation shall be void, otherwise to be and remain in full force and effect.

Matthew Saffin
Aaron Gibbs

Approved
Gerrit Goudy
Judge of Superior Court of Chicago

State of Illinois
County of Cook } ss.

I Thomas P. Carter Clerk of the
Superior Court of Chicago, within and for the County
and State aforesaid, do hereby certify that the above
and foregoing is a full, true and complete transcript
of all the pleadings on file in my office, and of all
orders and judgment entered of record in said
Court, together with the Bill of Exceptions & Appeal
Bonds, in a certain suit wherein Benjamin
Sherman is plaintiff and Matthew Laffin defendant
In testimony whereof I hereunto subscribe
my name, and affix the seal of said
Court, at the City of Chicago, in said
County, this 14th day of April 1882.
Thomas P. Carter Clerk



State of Illinois }
Supreme Court }
Third Grand Division }
} ss. April term A.D. 1862
} at Ottawa.

Matthew Seftin } Plaintiff in Error
vs }
Benjamin B. Sherman } Defendant in Error.

And now comes the said Matthew Seftin by Thos A Reed his attorneys and says, that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error, in this, to wit:

First The court erred in admitting improper evidence offered by the appellee.

Second The court erred in admitting in evidence the note offered by appellee.

Third The court erred in finding the issues for the appellee.

Fourth The court erred in overruling the motion of appellant for a new trial.

The court erred in rendering
the judgment aforesaid in
manner and form aforesaid.

~~Fifth~~ The said Superior Court of
~~Chicago is unconstitutional.~~

Thos A Reed
Atty for Appell
Index in Error
Samuel Weyss Fuller
Atty for Appell

April 23^d 1862

174
Benjamin B. Sherman
vs

Matthew Saffin

Copy of Record
of the Court of Equity

Filed April 19th 1862
L. Leland
Clerk

174
Benjamin B. Sherman
vs
Matthew Saffin
No. 174
April 14 1862
\$5.50
The Clerk's Office