

14271


No. _____

Supreme Court of Illinois

Shafer

vs.

Newlan

71641  7

143

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 258

14277

Super

Regular

1862

Proposed

United States of America
State of Illinois
Kane County
City of Aurora

ss
Plea before the Honorable
Benjamin. F. Parks

The Judge of the Court of Common Pleas
of the City of Aurora at a regular Term
of said The Court of Common Pleas of
the City of Aurora began and held at
the Court Room in the City of Aurora
in said County and State on the Third
Monday (the 27th day) of October in the year
of Our Lord One Thousand Eight Hundred
and Sixty One

Present The Honorable Benjamin. F. Parks

The Judge of said Court

Charles. J. McHenry State Attorney

Demarcus Clark Sheriff of Kane County

Attest

Charles. P. Johnston Clerk

The Court opened by proclamation

Be it remembered that hereupon
to wit on the 9th day of October A. D. 1861
then issued out of said Court and under
the seal thereof a summons as follows
to wit.

11/10/21

Summons for the Court of Common Pleas
 State of Illinois }
 County of Peoria } ss
 City of Aurora }

The People of the State of Illinois
 to the Sheriff of said County. Greeting:
 We Command you that you Summon
 Thomas Newlan

if he shall be found
 in your County personally to be and appear
 before the Court of Common Pleas of the City
 of Aurora in said County on the first day
 of the next term thereof to be holden at the
 Court House in the City of Aurora in said
 County on the third Monday of October 1861
 to answer unto Frederick Shaper in a plea
 of Assumpsit to the damage of the said
 plaintiff in the sum of
 Two Hundred Dollars And have you
 then and there this writ with an execu-
 -tion thereon in what manner you shall
 have executed the same

Seal

Witness C. P. Johnston Clerk of
 Our said Court and the seal
 thereof at Aurora aforesaid this
 9th day of October A. D. 1861
 Char. P. Johnston Clerk

with an indorsement on the back as follows to wit
Page 3.

The Court of Common Pleas of the
City of Aurora October Term A.D. 1861
Frederick Shaffer Plff

vs

Thomas Newland Deft

Summons for deft

Filed October 21st 1861

C. P. Johnston Clerk

Fees 1 Sw 00

1 mile 5

ret $\frac{10}{65}$

C. J. Motyner Plff attys

Executed this writ October the 11th 1861
within the City of Aurora Kane County State
of Illinois by reading to Thomas Newland

D. Clark Shiff

By J. D. Andrews

Deputy

And afterwards to wit on the 15th
day of October A.D. 1861 a declaration
was filed in the office of the Clerk of said
Court in said cause as follows to wit
Declaration

State of Illinois }
Kane County } ss

City of Aurora } Court of Common Pleas
of the City of Aurora

W.H.
October term thereof A.D. 1861

Thomas Newlans defendant in this suit
has been summoned to answer Frederick Shaffer
Plaintiff in this suit in a plea of Trespass
on the Case upon promises made thereupon
the said Plaintiff by Charles J. M'etyne
his Attorney complains For that whereas
the said defendant hereof to wit on the
twenty second day of August in the year
of Our Lord One thousand eight hundred
and Sixty one at Annam to wit at the
City of Annam made a certain order in
writing commonly called order bearing
date the day and year aforesaid and then
and then delivered the said order to this
plaintiff by which said order the said defen-
-ant requests H. Buchanan Esq. to pay the
bearer Mr. Frederick Shaffer (this plaintiff)
One Hundred Dollars in Liguors this plaintiff
further avers that afterwards to wit on the 20th day
of September in the year of Our Lord One thou-
-and eight hundred and Sixty one he the said
plaintiff made an presentment of said order
for payment to H. Buchanan Esq. and that
the said H. Buchanan Esq. then and then
utterly refused to pay the said liguor or any
part thereof specified in said order all of
which the said defendant then and then

on the day and year aforesaid had notice by reason whereof and by force of the statute in such cases made and provided the said defendant then and there became liable to pay to the said plaintiff the sum of One hundred dollars and being so liable the said defendant in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of One hundred dollars in said order specified

And whereas also the said defendant afterwards to wit on the ninth day of October in the year of Our Lord One thousand eight hundred and sixty one at the place aforesaid was indebted to the plaintiff in the sum of Two hundred dollars lawful money of the United States of America for goods wares and Merchandise sold and delivered to the said defendant by the said plaintiff at said defendant's request and also in the further sum of Two hundred dollars for money before that time lent and advanced by the said plaintiff to the said defendant and at the request of said defendant And also in the further sum of Two hundred dollars for other money by the said plaintiff before that time paid laid out and expended

for the said defendant and at the like request of the said defendant. And also in the further sum of Two Hundred Dollars for other money by the said plaintiff before that time paid laid out and expended for the said defendant and at the like request of said defendant And also in the further sum of Two Hundred Dollars for other money by 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 aforesaid and at the place aforesaid undertook 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 then and there being in arrears and unpaid and upon such accounting the said defendant then and there was found to be in arrears and indebted to the said plaintiff in the further sum of Two Hundred Dollars of like lawful money aforesaid And being so found in arrears and indebted to the said plaintiff

copy

~~and said defendant in consideration of~~
 afterwards to wit on the same day and year last
 aforesaid and at the same place aforesaid under
 took and then and there faithfully promised
 the said plaintiff well and truly to pay unto
 the said plaintiff the said sum last mentioned
 when the said defendant should be thereto after
 and requested Nevertheless the said defendant
 has not yet paid the said 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 at-
 tention refused and still does refuse to the
 damage of the said plaintiff of Two Hundred
 Dollars therefore the said plaintiff brings suit
 &c
 C. J. McIntyre Plaintiff's attorney

Copy of Order and accounts declared on

Anna August 22 1861
 \$100.00 H. Buchanan Esq
 please pay the bearer
 Mr. Frederick Chapin One Hundred Dolla-
 -rs in ligens which will leave a balance
 due me of Fifty Dollars and oblige yours
 Thomas Newton

Goods Trans Merchandise	Additional	\$200.00
Money lent and advanced		\$200.00
" paid laid out & Expended		\$200.00
" laid out and Expended		\$200.00
" had and received		\$200.00
" Account Stated		\$200.00

Entered on the books as follows to wit

Fredrick, Shapw

vs

Thomas Newton

Filed October 10th 1861

C. P. Johnston

Clk

C. J. McTymmer Piff Atty

October 9, 1861 it being one of the days of

of October A.D. 1861 it being one of the days of
the regular October Term A.D. 1861 the following
demurrer ~~to the same~~ to plaintiffs declaration
was filed in this cause in said court to wit

State of Illinois
Kane County }
City of Aurora }

Court of Common Pleas
October Term 1861

Thomas Newland

vs

Fredrick's, Chapin }

Appropriat

And now comes the
said defendant by J. D. Harvey his Attorney
and says that the said first and second counts
of the plaintiffs declaration not sufficient in
law and the defendant shows to the court the
following causes of demurrer to said declaration
to wit 1st for the first count the plaintiff
designates it as two different instruments
both as an order in writing and as a promi-
=sory note

2^d It being a suit by payee of an order or
draft against drawer for non acceptance by
the drawee declaration should give notice of
non acceptance by drawee to the drawee

3^d Does not aver presentment to answer
within reasonable time no delinquency averred
4th that it appears from the second count or
Common Counts that the plaintiff declared
in this action before the said supposed prom-
-ise was made or cause of action accrued
inasmuch as they are dated the 9th day of
October 1861 and suit commenced on the
same day to wit the 9th day of October A.D. 1861

J. D. Harvey
Deft. Atty

Endorsed on the back as follows to wit

Court Com Pleas

Thomas Newlan

cto

Frederick Sheperd

Dem^t

Filed Oct 21st 1861

C. P. Johnston clerk

Also on the same day
to wit the 21st day of October A.D. 1861 is being
one of the days of the regular October Term,
A. D. 1861 the following among other proceed-
-ings were had in this cause and entered
of record in said Court to wit

as } Appropriet

Thomas. Newlan

This day comes the defendant by J. D. Harvey his attorney and enters his answer to ^{the} plaintiff declaration herein in which plaintiff joins and the Court not being fully advised takes time to consider

And afterwards to wit on the 22^d day of October AD 1861 it being one of the days of the regular October Term AD 1861 of said Court the following among other proceedings were had in said Court and entered of record in said Court to wit

Frederick. Shaffer

as } Appropriet

Thomas. Newlan

This day this cause coming on to be heard upon the Defendants answer heretofore entered to the plaintiffs declaration and the Court now being fully advised sustains said answer as to the first count of said declaration and overrules as to the balance

Therefore it is considered by the Court that said defendant have

recovers of said plaintiff his costs and charges by him about this return ~~of~~ ended and have execution therefor

And afterwards to wit on the 25th day of October A.D. 1861 it being one of the days of the regular October Term A.D. 1862 of said Court the following among other proceedings were had in this cause and entered of record in said Court to wit

Frederick Shaffer }
vs } *ex parte*
Thomas Newlan }

This day on plaintiff's motion leave is given him to amend his declaration herein

And also on the same day to wit the 25th day of October A.D. 1861 it being one of the days of the regular October Term A.D. 1861 of said Court the following Plea in said cause was ~~presented~~ filed in said Court to wit

State of Illinois } Court Common Pleas
St. Clair County } ss October Term 1861
City of Hannibal }
Thomas Newlan

vs } *ex parte*
Frederick Shaffer }

Page 9.

The said Defendant by J. D. Harvey his
Attorney and Defends & And says Action
Pro because he says that he did not
undertake or promise in manner and form
as the said Plaintiff in his amended decla-
ration hath complained against him and
of this he puts himself upon the Country
and the Plaintiff doth
the like
J. D. Harvey
Defts atty

C. J. Metcalf

Attay for Pff

Endorsed as follows on the back to wit

Corn Pleas Court

Newton

vs

Shaffer

Plea

Filed Oct 25th 1861

Chas. P. Johnston

Clerk

And afterwards to wit on
the 26th day of October A D. 1862 it being one of
the days of the regular October Term A D. 1862
of said Court the following among other proce-
-dings were had in this cause and entered of
record in said Court as follows to wit

Fredrick Shaffer }
vs }
Thomas Newlan } Assumpsit

This day come the parties to this cause by their Attorneys receive a Jury and submit this cause to the Court for trial to be heard at some future day

And afterwards to wit on the 28th day of October A.D. 1862 it being one of the days of the regular October Term A.D. 1862 of said Court the following among other proceedings were had in this cause and entered of record in said Court as follows to wit

Fredrick Shaffer }
vs }
Thomas Newlan } Assumpsit

This day come the parties to this cause by their Attorneys and this cause having heretofore been submitted to the Court for trial and the Court having heard a portion of the evidence adduced the hour of adjournment for the day having arrived It is ordered that the further hearing in this cause be continued to some other day

Page 11th of November A.D. 1861 it being one of the days

Page 11th

And afterwards to wit on the 1st day
of November A. D. 1861 it being one of the days of
the regular October Term^{A. D. 1861} of said Court the following
among other proceedings were had in this cause
and entered of record in said Court as follows
to wit

Fredrick Shaffer
vs
Thomas Newland } Appropit

This day again came
the parties to this cause by their attorneys and
it is stipulated and agreed between the parties
hereto that the Court can hear the same
further in vacation and make his decision
and enter judgment thereon and the same
to be entered of record as of this term with
the right of either party to the ruling of the
Court to be the same as if entered in term
time

And afterwards to wit on the 7th day
of December A. D. 1861. the following among
other proceedings were had (in vacation as per
agreement of counsel) in this cause and entered
of record as follows to wit

Fredrick Shaffer
vs
Thomas Newland } Appropit

This day again came

the parties by their attorneys to this suit and as by agreement at the October Term A D 1861 that the Court hear the matter further in vacation and render his decision and enter judgment thereon with the same right of either party to the ruling of the Court as if entered in Term time

The Court after hearing the proofs and evidence adduced and arguments of Counsel and after taking the same under consideration finds the issue joined for the plaintiff and assess his damage at the sum of Eighty Dollars

Thereupon comes the defendant by his counsel and enters his motion for a new trial herein and the Court being fully advised overrules said motion

So which decision of the Court in overruling said motion for a new trial herein the defendant by his counsel then and there excepted

Thereupon comes the defendant by his counsel and prays an appeal in this cause to the Supreme Court of the State of Illinois It is further ordered by the Court that the appeal be allowed upon defendant entering into Bond in the sum of Two Hundred Dollars with surety to be approved by the Clerk of said Court and that he have Thirty days to file his bill of exceptions herein

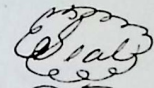
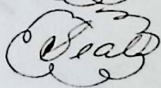
by the clerk of said Court and in the
 Thirty day to file his bill of exceptions herein

And afterwards to wit on the
 17th day of December A.D. 1862 the following
 Appeal Bond was filed in the office of the
 Clerk of said Court as follows To Wit

Know all Men by these presents
 that we Thomas Newlan and John
 Harrison Jr are held and firmly bound
 unto Frederick Shaffer in the penal sum
 of Two Hundred Dollars lawful money
 to be paid to the said Frederick Shaffer his
 heirs executors administrators or assigns for
 which payment well and truly to made
 we bind ourselves our and each of our heirs
 executors and administrators jointly and severally
 firmly by these presents Valid with our Seal
 dated this 9th day of December A.D. 1861

The condition of the obligation is
 such that whereas the above named Frederick
 Shaffer on the 7th day of December A.D. 1861
 in the Court of Common Pleas of the City of
 Aurora State of Illinois recovered a judgment
 against the above bounden Thomas Newlan
 from the sum of Eighty Dollars damage
 and costs of suit from which said judgment
 the said Thomas Newlan has prayed an

Appeal to the Supreme Court of the State of Illinois Now if the said Thomas Newlan shall prosecute his said appeal with effect and shall well and truly pay or cause to be paid the said judgment and all interest costs and damage in case said judgment is affirmed then the above obligation to be void otherwise to remain in full force and effect

Thomas Newlan. 
John Harrison, Esq. 

Enclosed on the back in words and figures as follows to wit

Appeal Bond

Shaper
vs

Thomas Newlan

Filed and approved December 17th 1862
C. P. Johnston
Clerk

~~And afterwards to wit on the~~
and thirty days to file his bill of exceptions
therein

Page 15

And afterwards to wit on the
12th day of March A. D. 1862 the following bill of
exceptions was filed (with an endorsement on the
back under the hand of the Judge as follows
to wit The Clerk will file this bill of exceptions
as of December 26, 1861 B. F. Parks Judge
Co. W. H.

Fredrick Shaper } Court of Common
vs } of the City of
Thomas Newland } Pleas of the
City of Union
October Term 1861

Be it remembered that
on the trial of the above entitled case the
plaintiff to sustain the issue on his part
introduced James Williams as a witness
who being duly sworn testified as follows
to wit I am acquainted with a man
by name of Buchanan dont know his
first name know where his store is
Dont know of Shaper making any demand
of Buchanan for liquor but was present
at a conversation between Shaper and
Buchanan. it was latter part of last August
or first of September Shaper said to Buchan-
an that stuff or liquor you sent me out

was not according to agreement it was not
such stuff as I bought of you or as you agreed
to send Buchanan said there must be
some mistake about it Shafu said there
were three or four men examined the liquor
at Anna and that he had a specimen
with him he showed Buchanan the specimen
- on Buchanan said there were just as
good liquors as he could afford to send out
under the trade he had made with Mr
Newlan that if he did not like the
liquors to get some responsible man that
Buchanan was acquainted with who would
say the liquors should be sent back to
Chicago he would give up the order. J.
told Buchanan that I was not afraid
that what Shafu would do as he agreed and
Buchanan then gave up the order and
Shafu was to ship the liquors as soon
as he got home I saw the order as
Buchanan handed it to Shafu or rather
I saw Buchanan hand Shafu a paper
they called the order I wouldn't swear this
was the order (I'm showing witness a paper)
but the best of my recollection is that this
is the order Buchanan said after tasting
the liquor that Shafu had that those
liquors were as good as he could afford
said if you want good liquor I will sell

~~Under the trade with Newton, Buchanan~~
said if you want good liquor I will sell
you some for cash. J. tasted some of Shafers
samples J. didnt consider it liquor in my
opinion it was adulterated liquor Shafers
said it was a cash trade with him that
he paid the cash or the same as cash
that he wanted good liquor and Buchanan
said he could sell Shafers as good liquor
as any man in town that he had paid
Newton more than horse was worth nothing
said about order then Couldnt swear
positive that liquor had been returned
the plaintiff then asked the witness to
detail a conversation subsequently had between
witness and Buchanan to the introduction
of which the defendant then and there obj
ected the Court overruled the defendants
objection and allowed to the witness to testify
to which decision of the Court in overruling
said objection the defendant then and there
excepted (Witness) some two weeks ago. I
met Buchanan in the post office in
Chicago and asked him about the
liquor and he said Shafers had sent
them in as he agreed

Cross Examination

Couldnt swear positive this was the
order (the paper before shown witness)

did not have it in my hands or read it

Direct resumed

Shaw said Newlan and he had a trade of about \$100, and of judge from what Shaw said that the order was for about \$100.

The plaintiff then offered in evidence and which was admitted by the Court the order shown witness Williams which said is in words and figures following to wit

\$100.00

Aurora August 25/61

H. Buchanan Esqr

Sir please pay the bearer Mr. Frederick Shaw One Hundred dollars in Liguor which will leave a balance due me of fifty dollars and oblige yours most Respt

Thomas. Newlan

The plaintiff then introduced as a witness John Whitfield who being duly sworn deposes as follows J. heard no conversation between Newlan and Shaw but Newlan told Shaw that he had a list of Buchanans price of liguor - Newlan tasted of the liguor that Shaw got - Newlan said it was miserable stuff not fit for a dog to drink
 Said that Shaw should not be wronged

Page 19 Said that Shafu should not be wronged
Newlan said that he and Shafu had
been trading horses and that he gave
Shafu an order for liquor Newlan said
he would see Shafu through it and if
he Shafu would get the order back and
pay him (Newlan) for what expense he
had been to on the horse he would take
the order back if Shafu could get it from
Buchanan

Crop Examination

Newlan said also that Shafu had refused
to pay him for delivering and keeping the
horse and he would not take back the order
unless he did

The plaintiff then introduced Robert Johnson
as witness who being first duly sworn testified
as follows (Plaintiff shows witness foregoing order)
The first time I ever saw this order Shafu
presented it to Newlan sometime in early
part of October last before this suit commenced
and asked Newlan to take it back. Newlan
refused to take it back. I had conversation
about the order with Newlan before that time
Newlan said if Shafu could get the order
back he would make it all right or something
to that effect. The Drayman Fred Hanson
brought the liquor there from the depot I testified

of it it was a dutterated stuff I never tasted worse or smell worse stuff in my life the liquor was of no value Don't know where the liquor came from. It was returned to Buchanan & Co Chicago

Crop. Examination

It was two weeks after the liquors were sent back before Shaper offered the order to Newlan after Shaper came back from Chicago the first time he said he had presented the order that it was paid he had got his liquor. This was before the liquor came

Direct Recalled

The witness shown a paper the first time I ever saw this bill the draymen brought it with the liquor

Fred Morrison sworn as a witness on behalf of plaintiff testified I drew some liquor from the depot for Shaper I present when they opened the liquors I tasted of them Newlan was there and tasted to Newlan said the liquors were back that if he had the order he would put Buchanan through on it said if Shaper would get the order and pay him for keeping the horse he would take it and make Buchanan smart on it. We took out some samples in bottles they were as bad liquor

Page 21

as ever I tasted I took the liquors back to the Depot they were marked Buchanan & Co Chicago. I have seen this bill before the first time I ever saw it Shaffer handed it to me in his saloon (same paper shown witness Johnson) wanted me to draw up the liquors

On Cross examination witness stated that he was not skilled in detecting bad liquors but knew good liquors when he tasted

To all the foregoing evidence relating to the subsequent promise of Newlan to take back the order were objected to by the defendant on the ground that it was irrelevant and inadmissible under the plaintiff's declaration in this case the Court overruled the defendant's objections and permitted the testimony of the witnesses Whitfield, Johnson and Morrison to be taken and considered as evidence in this case to which ruling of the Court in overruling said objection and admitting the said evidence the defendant by his counsel then and there excepted

The plaintiff then offered in evidence the paper or bill shown witness Johnson and Morrison which said bill is in words and figures following to wit

Chicago 3^d Sept 1861

M^{rs} F. Shaffer

Bought of Buchanan & Bakewell
importers and wholesale dealers in
Brandy Wines Liqueurs
Tobacco and Cigars

Duns		N ^o 10 South Dearborn Street			
1	Bbl	Bow ^m	43	75	\$2.25
1	"	Rye	42	"	3.87
2	"	Ric	86	90 ⁰⁰	14.
10	Gal	Gin		1.25	12.50
10	"	Rum		"	12.50
3		Cigs			1.80
		Dray			30
					<u>\$105.22</u>

Ric Payment
By order from Rowland

To the introduction of which said Bill as evidence the defendant then and there objected the Court overruled the defendants objection and permitted said bill to be read as evidence to which said ruling of the Court in overruling said objection and permitting said Bill to be read as evidence the defendant then and there excepted

The plaintiff then introduced Calcutt Stowell as witness who being duly sworn testified as follows Question by plaintiff
Were you present at a conversation

Page 23

Were you present at a conversation between plaintiff and defendant about a horse trade or when was the trade made
 If so go on and state the conversation and what the trade was. To which question the defendant objected on account of irrelevancy and not being any count in the declaration to support such proof. The court overruled the defendants objection and permitted the witness to answer the question. To which said ruling of the Court in overruling said objection the defendant by his counsel then and there excepted.

Witness I was present at the trade between Maulam and Shaper. Did not pay particular attention. Maulam let Shaper have an order for liquor. Don't know the amount near a hundred dollars. Fred Shaper was to let Maulam have a horse that they called Eighty Dollars I think and Shaper was also to give his note for a small amount. Don't remember just how much somewhere about Twenty dollars. This was sometime in August. Don't know the exact day.

Johnson Flowers sworn as a witness testified as follows all I know about it is I saw Shaper deliver to Maulam a horse on some trade. Don't know what the trade was. To all the foregoing evidence relating to the original consideration of the order being considered as evidence

by the Court, then and there objected. The Court overruled the defendant's objection and decided to admit said testimony as evidence. To which decision of the Court in overruling said objection and admitting said testimony the defendant by his counsel then and there excepted.

Plff rests

It is then admitted by the plaintiff that after his return from Chicago and before the liquors come from Buchanan & Co. after presenting the order for acceptance and payment to Buchanan that he told the defendant Newlan that he had presented the order to Buchanan that Buchanan had paid it that he (Shaffer) had bought his liquors and was well satisfied with his trade. But this was before the liquors come.

The defendant then introduced as a witness Henry Buchanan who being duly sworn testified as follows to wit: (As to the testimony of Henry Buchanan his testimony was received subject to Plff's objection to be disposed of on the final argument.)

My name is Henry Buchanan reside in Chicago I am a liquor dealer know Mr. Shaffer have seen this order before (Some order introduced in evidence by Plff)

this order was accepted by me he selected his liquors upon that order did put up his liquors according to the order and delivered them

liques when that order did not ^{at his} ~~order~~ ^{direction}
according to his order and delivered accor-
Page 25 - ding to his direction I changed the order
on my book to you (Newlan) I paid the
order about the first of September. I sold
him the kind of liquors he ordered at the
price agreed upon between him and me
I paid the order in liquors to the plaintiff
according to his order he delivered the order
to me at that time I filled the order accord-
-ing to agreement and changed the order to
Mr. Newlan

Crop. Examined

I have had a subsequent conversation with
Shaper he wished to exchange the liquors he
purchased of me and in return, return
him the order he said the liquors did not
suit him he said they were not so good
as he expected them I told him to select
any quality of liquors he wished I told
him that was as good liquors as I could afford
for the price Don't remember whether I told
him I paid Newlan more for the horse than
it was worth I told him I would sell him
liquors for cash five per cent less I think
I charged him 16 cents per gallon for Common
Whisky Rye Whiskey about 75 cents per gallon
and also the Bombon there was a man
present when this conversation took place don't
remember the price of the Gin was a dollar

or 1.25 or 1.50 The liquor I sent him was of the sample I showed him I don't think I put up the liquor myself I might have some of it I think I assisted the Porter in putting up some of it Shaffer had sample of the liquor with don't know what it was oil or water he told me he had bored a hole in the barrels and got some out and said these were the samples Do not know that I told him there was a mistake about that I traded him the order for the liquor

Direct Resumed

Do not know that the liquor that Shaffer returned is the same liquor that I let him have know it was the same cask this order is charged to Newlan on my books previous to that I was owing Newlan \$1.50 payable in liquor my purchasing this liquor of him and giving him this order was another transaction never gave Newlan credit for the order or never intend to I sold him Rum at a dollar a gallon he wanted not to pay over a dollar for it pure Rum is worth \$1.65 cents in New York I showed Shaffer the rum and he wanted some worth half as much should him how to do it half rum and half Spirits

The foregoing was all the evidence adduced in the case The Court thereupon being fully

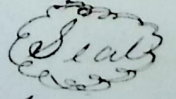
in the case The Court thereupon being fully advised found the issues joined in favor of the plaintiff and assessed the plaintiffs damages at the sum of Eighty Dollars

The defendant thereupon made a motion for a new trial and specified the following reasons

- 1st The Court erred in admitting improper and irrelevant testimony
- 2^d The Court erred in giving judgment in favor of the plaintiff
- 3^d The finding of the Court is contrary to law and the evidence in the case

The Court overruled the defendants motion for a new trial and rendered judgment against the said defendant for said sum of Eighty Dollars To which ruling of the Court in overruling said motion for a new trial and rendering judgment on the said appearance the defendant by his counsel then and there excepted and prays that this his bill of exceptions may be signed sealed & which is done.

B. F. Parks



Judge of the Court of
Common Pleas of the
City of Aurora

Entered on the back as follows to wit

Com. Pleas Court
Frederick Shaffer
vs

Thomas Newlan
Bill of Exceptions

March 12/62

Filed December 26th 1861

As per order of the Judge

of the Court

C. P. Johnston

Clk

Dec 26th 1861

The Clerk will file this bill of exceptions
as of December 26. 1861

B. S. Park

Judge

State of Illinois }
St. Louis County } ss
City of Aurora }

J. Charles P. Johnston
Clerk of the Court of Common Pleas of the
City of Aurora in County and State aforesaid
do hereby certify that the above and foregoing
is a true correct and complete copy of the files
and ^{records} in a certain cause lately pending in
said Court of Common Pleas of the City of
Aurora wherein Frederick Shaffer is plaintiff
and Thomas Moulton is defendant as appears
to us of record

Witness my name and seal
of said Court at the City of
Aurora in said County & State
this 24th day of April A.D. 1862
Charles P. Johnston
Clerk



And now comes the said appellant and
says that in review and proceeding
aforesaid and in the rendition of the
Judgment aforesaid there is manifest
error in this to wit

The court erred in admitting improper
& irrelevant testimony

& The court erred in giving Judgment
for the plaintiff

& The finding of the court is contrary
to law and the evidence in the case

Wm Cook & Campbell

Frederick Shaper } Supreme Court 3^d
vs } Fraud division.
Thomas Newlaw }

And now comes the said
Appellee by G. Metzner his attorney
He says there is no error in the proceed-
ings aforesaid & the rendition of said
judgment & he wherefore he prays
that said judgment may be affir-
med & he G. Metzner.

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Com Pleas Aurora

vs
Frederick Shaffer

vs

Thomas Stewart

Copy of Record
of

Filed Apr. 23, 1862.
L. Keland
Clk.

Fee

75 Folios 7.50

Cost & Seal .35

\$7.85