

13194

No. _____

Supreme Court of Illinois

Lane

vs.

Chamberlain

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 208.

Lane
vs
Chamberlain

1861

13194
Chamberlain

In the Supreme Court
State of Illinois

Edward C. Chamblain
Samuel P. Crawford }
appellants.

vs
Robert P. Lane }
appellee.

Appeal from the Win-
nebago Circuit Court.

It is hereby agreed and stipula-
ted by the attorneys for the respective
parties herein, that the appeal taken
in this cause be dismissed on the
costs of the Appellants, (but without
damages against the said Appellants,)
and the cause remanded for the ex-
ecution of the decree made in said
cause.

Brown & Taylor
Attys for appellants

L. J. Warner
Atty for appellee

In the 208
Supreme Court
Edward G. Hamilton
Respondent
Appellant

vs
Robert N. Low
Appellee

Stipulation of
Parties

Filed April 16, 1861,
L. Leland
Clerk

may be made a party defendant herein was indebted to one John O. Hair in the sum of three thousand and one dollar and thirty eight Cents, by his two certain promissory notes of that date. One for the sum of six hundred and seventy one dollar and thirty eight Cents payable on the first day of November next after the date thereof, and the other said note bearing same date for the sum of Two thousand three hundred and thirty dollars payable on the first day of November A.D. 1857. to the said John O. Hair or order, at the City of Rockford with interest:

And your Orator shews your Honor that the said Chamber then and there, at said Winnebago County to secure the prompt payment of the said sum of money in the two said notes specified at the time of the Execution and delivery of his two said said notes, executed and delivered to the said John O. Hair, a mortgage in fee of the following Lands and premises situate in the County of Winnebago State of Illinois described as follows to wit: The north and east parts of the north east quarter, And the north east part of the south east quarter of Section number four (4) in Township twenty six north, range eleven east, Bounded as follows commencing at the north east Corner of said section. Thence south on the section line fifty seven chains, and one link to the County road Thence along the said road following the middle of the same, North eighty seven degrees west fourteen Chains to a post. Thence north eighty four degrees and fifteen minutes.

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west five Chains and eighty six links to a post. Thence north thirty Chains and ninety links to a post. Thence west twenty Chains to a post. on the half section line. Thence north on said line twenty four chains and thirty six links to the quarter section post on the Township line. Thence east on the east said line thirty eight chains and ninety five links to place of beginning. Containing one hundred and sixty one acres. which said mortgage deed was made and is subject to the following defeasance therein contained in substance that if the said Chamberlain or his heirs executor or administrator shall well and truly pay or cause to be paid the said sum of three thousand and one dollar and thirty eight cents as follows. six hundred and seventy one dollar and thirty eight cents on the first day of November next after the date thereof and two thousand three hundred and thirty dollars on the first day of November A.D. 1857. with interest on each payment at six per cent agreeable to the conditions of his two certain promissory notes of even date with said deed signed by said Edward C. Chamberlain payable to John O. Hair or order, then the said Deed shall be null and void any thing therein contained to the contrary notwithstanding which said mortgage deed now ready in court to be produced will more fully and at large appear.

And your Orator shews your Honor that the said mortgage deed was duly acknowledged by the said Chamberlain and delivered to the said John O. Hair for the purposes therein expressed and duly recorded in the Records Office.

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of said Winnebago County on the twenty second day of January
A.D. 1857 in Book O. of mortgages page 343. a copy of which
mortgage with the certificate of acknowledgment and assignment
and certificate of record. is hereto attached marked as exhibit "A"
which your orator prays may be taken as a part of this his bill
of Complaint.

And your Orator shews your Honor that the said note
in said mortgage described as the note of six hundred and seventy
one dollars and thirty eight cents was duly paid at its maturity.
And your Orator further shews your Honor that after the making
of the said notes and mortgage by the said Chamberlain. and
before the time specified for the payment of the said note of two
thousand three hundred and thirty dollars in the said mortgage
to wit before the first day of January A.D. 1857. the said John
McLain to whom the said note & mortgage was given assigned
and transferred the said note of two thousand three hundred
& thirty dollars to the Complainant herein by endorsement in writ-
ting on the back of said note & delivered the same to your Orator
by means whereof the said Chamberlain became liable to pay the
said note of two thousand three hundred and thirty dollars
to the Complainant. And the said mortgage so given to secure the
payment of the same as aforesaid thereby became and was vested
in your Orator. the said note of six hundred and seventy one dollar
& thirty eight Cents in said mortgage described having been pre-
viously fully paid & satisfied.

And your Orator shews your Honor that come

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time afterwards the assignment of the said note to your Orator by the said Olmstead as aforesaid. and as your Orator believes in the month June A.D. 1858. the said Olmstead made on the back of said mortgage a written assignment of the said mortgage to transfer the said mortgage to your Orator more fully than he had done by the assignment of the note in said mortgage described. and that he duly acknowledged the assignment of said mortgage to your Orator on the 8 day of December A.D. 1858. A copy of which said assignment and Acknowledgment is hereto Attached marked as exhibit B. which your Orator prays be made a part of this his Bill of Complaint.

And your Orator shews your Honor that he is the owner of the said note of two thousand three hundred and thirty dollars. and the mortgage given to secure the payment of the same by the said Chamberlain. And that the said sum of money in the said note of two thousand three hundred and thirty dollars was long since due and payable to your Orator. And that the whole sum in said note specified is now due your Orator and unpaid except the sum of seventy dollars paid on the same. that no proceedings have been had at Law or otherwise to collect the same or any part thereof.

And your Orator further shews your Honor that he has been informed and believes that Samuel P. Crawford of said Hennepin County and Allen Wilder have or claim to have some interest in said mortgage premises by way.

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of subsequent purchasers or otherwise whom your Orator prays
may be made defendant herein: But your Orator shews your
Honor that such interest as they or either of them may have
in and to said mortgage premises are subsequent to and subject
to the rights and interests of your Orator in the premises:-

Your Orator therefore prays your Honor for an order
or decree from your Honorable Court, ordering and directing
a sale of all or so much of the aforesaid Lands and prom-
ises as may be necessary to pay and satisfy the amount which
be found due your Orator from the said Chamberlain upon the
aforesaid note & mortgage & that the Court may ascertain the a-
mount due your Orator upon the same & that the said defend-
ants may be barred from any equity of redemption of the said
premises except according to the Statute in such case made &
provided. And for such further and other order as to your Hon-
orable Court shall seem fit and proper, as your petitioner doth
ever pray.

To the end therefore your Orator prays your Honor
that the Peoples writ of Summons may issue Commanding
the said Edward Chamberlain Samuel P. Crawford & Allen
Hildes and each of them, to be and appear before your Hon-
orable Court on the first day of the next term thereof to be
holden at the Court House in Rockford in said County of
Winnebago on the fourth Monday of September next then & there
to answer the foregoing Bill of Complaint without Oath
the oath of the said defendants being hereby expressly waived

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And and to stand to, and abide by the order of the Court
in the premises.

L. F. Warner Sub E
for Compt. E

Robert F. Lane
for L. F. Warner Atty.

Copy of the note and assignment of the same hereby
foreclosed:

" 2330⁰⁰ Rockford 18th Jan'y 1856 "

On the first day of November A.D. 1857 for value
" received I promise to pay John O. Hair or order at the City "
" of Rockford Two thousand three hundred and thirty dollars "
" with interest. "

E. C. Chamberlain."

Copy of Assignment of note.

" Pay to Robert F. Lane the within "
John O. Hair.

Exhibit A referred to in Bill.

This Indenture, made this eighteenth day of January
in the year of our Lord one thousand eight hundred and fifty
six: Between Edward C. Chamberlain of the Town of Rock
ford, County of Winnebago, and State of Illinois, of the first
part, and John O. Hair of the Town of Winnebago County
& State aforesaid of the second part: Witnesseth, that the said

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party of the first part, for and in Consideration of the sum of three thousand one ³⁸100 dollars to him in hand paid, the receipt of which is hereby acknowledged, has granted, bargained, sold conveyed and Confirmed, and by does hereby grant, bargain, sell, convey and Confirm unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land situate and being in the Town of Minnetago County of Minnetago and State of Illinois and known & described as follows to wit: The north east parts of the north east quarter, & the north east part of the south east quarter of section number four (4) in Township twenty six north range eleven east Containing bounded as follows Commencing at the north east Corner of said section, thence south on the section line fifty seven chains & one link to the County road Thence along the said road following the middle of the same north eighty seven degrees west fourteen chains to a post: Thence north eighty four degrees of fifteen minutes west, five chains & eighty six links to a post, thence north thirty chains & ninety links to a post: Thence west twenty chains to a post on the half section line thence north on said line twenty four chains & thirty six links to the quarter section post on the Township line: Thence east on said line thirty eight Chains & ninety five links to the place of beginning Containing one hundred & sixty one acres.

Together with all and singular, the appertinances there unto belonging or in any wise appertaining: To have and to hold the above described premises unto the said party of the second part, and to his heirs and assigns forever: And the said party

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of the first part. for himself and his heirs. executors and administrators. does covenant and agree to and with the said party of the second part his heirs and assigns. that he is well seized of the premises above Conveyed as of a good and indefeasible inheritance in the law in fee simple. and that the said premises are clear of all liens. taxes. assessments and incumbrances whatsoever. And in Consideration of the further sum of One dollar to said party of the first part in hand paid. the receipt of which is hereby acknowledged. all right and benefit of exemption of said premises and every part thereof. under the exemption laws of the State of Illinois is hereby waived relinquished and released.

And the said party of the first part. the aforesaid promises unto the said party of the second part. and his heirs and assigns. against the claim or claims of all and every person whomsoever and against all liens. taxes. assessments. exemptions and incumbrances whatsoever. does and will warrant and forever defend by these presents. The said party of the second part or his heirs. executors. administrators. agent or agents. attorney or Attornies. or assigns. may pay all taxes and assessments now existing or hereafter levied or assessed against said premises or any part thereof. and the same. with six per cent. interest from the date of each payment. shall be added to the moneys secured by this mortgage. and be recovered by virtue hereof. as though they had been part of the amount originally secured. and the receipt or receipts of the Officer or Officers. person or persons. to

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whom the same are paid, shall be final and sufficient proof or evidence of the payment or payments.

Provided always, That if the said party of the first part or his heirs, executors or administrators, shall well & truly pay or Cause to be paid the said sum of three thousand one ³⁹/₁₀₀ dollars as follows (Viz) six hundred & seventy one dollars & thirty eight cents on the first day of next November & two thousand three hundred & thirty dollars on the first day of November, A.D. 1857, with interest on each payment at six per cent agreeable to the Conditions of two certain promissory notes of even date herewith signed by the Edward Chamberlain payable to John O. Hain, or order, then these presents shall be null and void, any thing herein before contained to the contrary notwithstanding.

In Witness whereof, the said party of the first part has hereunto set his hand and seal on the day and year first above written.

Executed in presence of { E. C. Chamberlain "Seal"
Duncan Ferguson { "Seal"

State of Illinois {
Winnebago County S.D. { I Duncan Ferguson a Notary
Public in & for the said County, do hereby certify that Edward
C Chamberlain personally known to me to be the person whose
name is subscribed to the foregoing Deed as having executed the
same, appeared before me this day in person and acknowledged
that he signed, sealed and delivered the same as his free and

voluntary act and deed for the uses and purposes therein
set forth:

Given under my hand and Notarial seal at Rock-
ford this Eighteenth day of January A.D. 1856.

L. S.

Duncan Ferguson

Notary Public L. S.

Endorsed "State of Illinois
Winnebago County & Records Office.

"Filed for record on the 22 day of January, A.D. 1856. at 1 1/2
O' Clock P.M. Recorded in Book, C, of Mortgages page 343.
"and examined.

C. H. Spafford Recorder."

Exhibit "B" referred to in Bill.

In Consideration of the sum of One thousand dollars
to me in hand paid by Robert P. Lane of the County of
Winnebago, and State of Illinois I John O. Hair, the person
described in the within mortgage, of Floyd County, in the State
of Iowa, do hereby assign, sell transfer & set over to the said R
P Lane, all my right, title & interest in & to the within mortgage
the note therein described, and the premises described in the
mortgage, and fully authorize him to collect the same by all
legal means, as effectually as I could do myself:

Witness my hand and seal this day of June A.D.

1858.

Witnes J. Patterson: 

John O. Haire "seal"

State of Iowa 
 Floyd County S. S.  1858. before me J. G. Patterson a Notary
 Public in & for said County personally came John O. Haire to
 me personally known to be the identical person whose name
 is affixed to the above instrument and acknowledged the same
 to be his voluntary act and deed:

In testimony whereof, witness my hand & notarial seal

S. S.

J. G. Patterson

Notary Public

State of Illinois

Winnebago County S. S.  S. J. Warner being by me first
 duly sworn deposes and says that he is Attorney for the Complain-
 ant in the foregoing Bill of Complaint, that and that Edward
 C. Chamberlain, and Allen Wilder two defendant to the fore-
 going Bill of Complaint, are each non residents of the State
 of Illinois as he has been informed and believes, and cannot be
 served with summons in the said Cause:

Sworn & Subscribed

S. J. Warner

before me this 20th July 1857

Attest: Penmoyer Dep. Clerk

Endorsed "Filed July 20. 1857. M. B. Derrick Clerk

By Attest: Penmoyer Dep. Clerk

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Summons.

State of Illinois
Winnebago County S. S.

The People of the State of Illinois to the
Sheriff of said County Greeting:

We Command you that you summon Edward C.
Chamberlin Samuel P. Crawford & Allen Wilder if they shall
be found in your County, personally to be and appear before the
Circuit Court of said Winnebago County, on the first day of the
next term thereof, to be holden at the Court House in the City
of Rockford, in said Winnebago County, on the 4th Monday of
September A.D. 1859, to answer unto Robert P. Lane, in his
certain Bill of Complaint against them 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 Morris B. Derrick, Clerk of our said Court
S. S. and the seal thereof, at his Office in the City of
Rockford, in said Winnebago County this 20th
day of July A.D. 1859.

M. B. Derrick Clerk.

Endorsed

State of Illinois
Winnebago County The within named Defendants
not found in my County this 26th day of September 1859.

"King H. Milliken Sheriff"
 By John A. Davis Dep Sheriff"

Publication:

State of Illinois

Winnebago County Circuit Court

September Term A. D. 1859.

Robert P. Lane

v.

Edward C. Chamberlin In Chancery.
 Samuel P. Crawford
 Allen Hilder

Affidavit of the non-residence of Edward C. Chamberlin, and Allen Hilder, two defendants in the above entitled Cause, having been made and filed in the Office of the Clerk of the Circuit Court of Winnebago County - Notice is hereby given to the said Edward C. Chamberlin and Allen Hilder that Robert P. Lane has filed his bill of Complaint in said Court on the Chancery side thereof against them and Samuel P. Crawford, praying for certain relief, and that a summons thereupon issued out of said Court against said defendants returnable on the first day of the next term of said Court, to be holden at the Court House in Rockford in said Winnebago County on the fourth Monday of September next.

Now, unless you the said Edward C. Chamberlin or Allen

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Hilder, shall personally be and appear before said Circuit Court of the County of Winnebago on the first day of the next term thereof to be holden at the Court House in Rockford in said Winnebago County, on the fourth Monday of September next, then & there to plead to answer or demur to the said Complainants bill of Complaint, the same and the matters and things therein charged will be taken as confessed against you and a decree entered according to the prayer of the said bill of Complaint:
Dated Rockford July 20th 1859.

W. B. Derrick, Clerk

L. F. Warner, Compt^r Solic^r

Printers Certificate

State of Illinois
Winnebago County I & J the E. H. & R. J. Plaisdell, Printers and Publishers of the "Rockford Republican" a weekly public newspaper, printed and published in the City of Rockford, in said County, do hereby certify that the Advertisement or notice hereunto annexed, relating to the matter of Chancery notice of R. O. Lane v. Edward C. Chamberlin et al, in Winnebago County Circuit Court September Term A.D. 1859, has been published in said paper, and in every copy and impression thereof, for weeks successively, of the issues commencing Thursday July twenty first A.D. 1859, and ending Thursday August 11th A.D. 1859, which are the dates of the first and last papers con-

16 training the same.

Given under our hands this 28 day of September A.D.
1859. E. W. & R. P. Glaisdell

Enclosed

"Filed Sep' 28. 1859.

M. B. Derrick Clerk"

And afterwards to wit on the 30th day of September
1859. it being one of the days of the September Term of the Winne-
bago County Circuit Court. the following order was made & entered
to wit:

Robert P. Lane

Pl.

Sep' 30. 1859.

Edw^d C. Chamberlain et al

Now comes the Complainant
by Warner his solicitor. & files proof of publication & notice to de-
fendants E. C. Chamberlain & Allen Wilder & they being three
times solemnly called come not nor any one for them but make
default: It is ordered that Complainant's Bill be taken for
Confessed against them: ^{Alleged Motion} It is ordered that this Cause stand con-
tinued with alias summons to Defendant Crawford.

Summons.

State of Illinois Winnebago County: S. S.: The People of

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the State of Illinois to the Sheriff of said County: Greeting:

We command you as before that you Summon Allen Hilder, if he shall be found in your County, personally to be and appear before the Circuit Court of said Winnebago County, on the first day of the next term thereof, to be holden at the Court House in the City of Rockford, in said Winnebago County, on the first Monday of February A.D. 1860 to answer unto Robert P. Lane in his certain Bill of Complaint filed in the said Court, on the Chancery side thereof against you, Edward C. Chamberlin & Saml. P. Crawford; And have you then & there this writ, with an endorsement thereon in what manner you shall have executed the same.

S. S. ~~~~~ Witness Morris B. Derrick, Clerk of our said Court, and the seal thereof, at his Office in the City of Rockford, in said Winnebago County, this 27th day of January A.D. 1860.

M. B. Derrick Clerk

By A. Penoyer Dep Clerk

State of Illinois ~~~~~ I have served the within writ, by delivering a copy thereof to the within named Allen Hilder, this 27th day of Jan'y A.D. 1860.

King H. Milliken Sheriff"

Summons:-

State of Illinois Winnebago County S. S. The People of

the State of Illinois to the Sheriff of said County - Greeting:-

We Command you as before that you summon Samuel P. Crawford Impleaded with Edward C. Chamberlain & Allen Hilder if he shall be found in your County, personally to be and appear before the Circuit Court of said Winnebago County, on the first day of the next term thereof, to be holden at the Court House in the City of Rockford, in said Winnebago County, on the First Monday of February A.D. 1860, to answer unto Robert P. Lane, in his certain Bill of Complaint filed in the said Court, on the Chancery side thereof. And have you then & there this writ, with an endorsement thereon in what manner you shall have executed the same

S. S. Metrop Morris B. Derrick, Clerk of our said Court and the seal thereof, at his Office in the City of Rockford, in said Winnebago County, this seventh day of November A.D. 1859.

M. B. Derrick Clerk

By O. Penoyer Dep Clerk

State of Illinois

Winnebago County I have duly served the within writ by delivering a true copy of the same, to the within named Samuel P. Crawford, this 11th day of November 1859.

O. H. Milliken Sheriff

By G. V. Carr Dep S

And afterwards to wit on the 6th day of February 1860 it being one of the days of the February Term of the Winnebago County Circuit Court. the following entry was made as appears of Court record: to wit.

Robert P. Lane

Or.

Edward C. Chamberlain
et al

Now Comes the Complainant
by Warner his solicitor & the De-
fendant Chamberlain by Miller
& Taylor his Attornies also Comes and moves the Court to set
aside the default of Chamberlain heretofore taken in this Cause.

And afterwards to wit on the 7th day of February 1860
it being one of the days of the aforesaid Term of Court. the follow-
ing entry was made. to wit:

Robert P. Lane

Or.

Edward C. Chamberlain
Sam^l P. Crawford.
Allen Hilder

Now comes the Complainant by
Warner his Solicitor & the defend-
ants by Taylor their Attorney also
Comes & on motion of Complainant
It is ordered that the default of Allen Hilder heretofore taken in
this Cause be set aside & that the Answer herein be Friday
morning next: Also on motion of Deft Chamberlain. It is.

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ordered that the default of E. C. Chamberlain be set aside & that he be permitted. & ruled to answer herein within 60 days from the rising of this term of Court:-

And afterwards to wit on the 10th February 1860 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record:

Robert P. Lane

(Pl.)

Edward C. Chamberlain et al

Now Comes the Complainant
by Warner his Solicitor on
his motion. It is ordered that Defendant Samuel P. Crawford file his Answer in this Cause within 60 days after the rising of ^{the} Court:-

Answers.

In Winnebago County Circuit Court:

In Chancery:

The joint and several answer of Edward C. Chamberlain Samuel P. Crawford & Allen Thider Defendants to the Bill of Complaint of Robert P. Lane against these defendants.

These Defendants now and at all times saving and reserving to themselves all advantage and benefit of

exception to the errors insufficiencies contained in the said Bill of Complaint. for answer thereto. or to so much thereof as they are advised is material for them to make answer unto Answering say:

They admit the execution of the two notes and the mortgage as set forth in the Complainants. Bill of Complaint. And that the copies referred to in said Bill are correct copies of one of the said notes and the said mortgage. and they admit that the said mortgage was duly acknowledged and recorded as set forth in the said Bill of Complaint:

And these Defendants further answering admit and insist that one of the said notes has been paid. and that certain payments have been made on the other note. but how much has thus been paid or whether as set forth in the said Bill of Complaint. these Defendants are not able to say but they believe the same is endorsed on the said note:

And this Defendant Edward C. Chamberlain further answering denies. and these Defendants Samuel P. Bradford & Allen Hilder believe such denial to be true. that he was justly and equitably indebted to the said John O. Hair. at the time of the execution of the said notes and mortgage in the ^{sum} therein specified (Although he admits the execution of the said instrument) and he insists that the following statement of facts shows the only consideration for the said notes to wit: On the eighteenth day of January in the year of Our Lord One thousand Eight hundred fifty six. this

L.R.

Defendant Edward C. Chamberlain purchased of the said John O. Hair the premises in said mortgage described and to secure a part of the purchase price of the said premises, he gave his two notes secured by mortgage on the said premises, which two notes and mortgage are the same as set forth and described in the said Bill of Complaint.

And this Defendant Edward C. Chamberlain further answering says, and these Defendants Samuel P. Crawford & Allen Hilder believe it to be true, that at the time he purchased the said premises of the said John O. Hair as aforesaid, it was winter and the ground was covered with snow to the depth of several inches, so that this Defendant could not see the condition of the ground and was obliged to rely in a great measure upon the statements of the said John O. Hair as to the condition of the ground.

And this Defendant Edward C. Chamberlain further answering says and these Defendants Samuel P. Crawford & Allen Hilder believe it to be true, that of the said premises about sixty acres was new breaking, having been broken the previous season, and as one inducement held out to this Defendant Edward C. Chamberlain to induce him to purchase the said premises, the said John O. Hair informed him that the said breaking had been done at the proper season of the year to be in good condition for a wheat crop the following season, that the same had been broken in the months of June and July and was well broken, whereupon this Defendant

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Edward C. Chamberlain purchased the said premises and took possession of the same. But this Defendant Edward C. Chamberlain, found when the snow was so far gone that he could judge of the Condition of the ground that the said breaking had been very badly and imperfectly done, yet relying on the Statement of the said John O. Hain that the same had been done at the proper season of the year to be fit for a wheat crop. This Defendant Edward C. Chamberlain sowed the same with wheat and was at great expense for seed and labor for that purpose. That after he had sowed the same he learned that the said breaking had not been done in the months of June and July, as had been declared to the said Edward C. Chamberlain by the said John O. Hain as aforesaid so as to be fit for a wheat crop or for other purposes of Cultivation, but on the contrary it had nearly all been done as late in the season as August and September so as to be totally unfit for a wheat crop or for any other purpose for Cultivation and in consequence of such breaking having been done badly and out of season this defendant Edward C. Chamberlain suffered great loss in that the crop of wheat was light and of poor quality, and the said land was worth much less for purposes of Cultivation for the succeeding two or three years than it would have been, had it been broken properly and at the proper season of the year as it was represented to have been as aforesaid.

And this defendant Edward C. Chamberlain further

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answering say. And these Defendants Samuel J. Bradford & Allen Hilder believe it to be true, that the damage which he suffered as aforesaid in the almost total loss of his wheat crop and the reduced value of the premises in consequence of the said bracking having been done badly and out of season, contrary to the representations of the said John O. Hair to this Defendant is not less than eight hundred dollars, which sum he insists should be deducted from what appears to be due on the said note now unpaid. And this defendant is ready and willing to pay the amount which appears to be due on said note, less the said sum of eight hundred dollars which he insists he is entitled to have set off against the said note now unpaid as his damages as aforesaid.

And these defendants further answering say that they deny that the said note still remaining unpaid was ever assigned to the said Robert J. Lane for the purpose of making it the property of the said Lane but as these Defendants are informed and upon belief charge, the said note was assigned as collateral security for the payment of an indebtedness from the said O' Hair to the said Lane, or to the firm of Lane Sanford & Co. in which firm the said Lane was at that time and still is a partner, which indebtedness, these defendants are informed and believe did not exceed the sum of twelve hundred dollars. And the said John O. Hair retained an interest in the said to an amount of not less than eight hundred dollars at the time the same became due and payable, and

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these Defendants deny that the said Lane was the owner of the said note when it became due or that he had any interest in the same, except as aforesaid, or that he is now the owner of the said note in such a manner or to such an extent as to deprive this Defendant Chambalain of his right to set off his said damages against the sum which appears to be due on the said note.

All which matters and things these Defendants are ready to aver maintain and prove, as this Court may direct, without this, that there is any other matter ^{cause} or thing in the said Complainant's bill of Complaint contained, material or necessary for these Defendants to make answer unto, and not herein and hereby well and sufficiently confessed, traversed and avoided or denied is true to the knowledge or belief of these Defendants, And they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained:

Edward C. Chamberlain

Samuel P. Crawford

Allen Wilder.

By H. H. Payson.

Brown & Taylor

Solicitors for Defts.

Entered "Filed May 7 1860. M. A. Derrick Clerk"

By Attny for Defts

Replication:

In Hennebago County Circuit Court:

Robert J Lane

vs.

Edward C. Chamberlain } In Chancery
 Samuel J. Crawford & }
 Allen Wilder }

The replication of Robert J. Lane Complainant to the joint and several answers of Edward C. Chamberlain Samuel J. Crawford and Allen Wilder Defendants.

This replicant saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, for replications thereunto says that he will and maintain and prove his bill of Complaint to be true, certain, and sufficient in the law, to be answered unto: and that the said answers of the said defendant is uncertain untrue, and insufficient to be replied unto by this replicant without this, that any other matters or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, and not herein, and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true: All which matters and things

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this replicant is and will be ready to aver maintain and
 prove, as this Honorable Court shall direct, and humbly prays
 as in and by his said Bill he has already prayed:

L. J. Warner

Sol for Compt.

Endorsed

Elected May 10. 1860.

Mr. Derrick Clerk

By At. Attorney Dep.

Affidavit:

Winnebago County Circuit Court

June Term A.D. 1860.

State of Illinois

Winnebago County S.S. } Samuel J. Crawford being first
 duly sworn on his oath says that he is one of the Defendants
 in a Cause now pending in this Court in which Robert P.
 Lane is Complainant, and this affiant and Edward C. Cham-
 berlain and Allen Tilden are Defendants, on the Chancery
 side of this Court, said suit being for the foreclosure of a mort-
 gage. And this Affiant further says that the said Defendants
 cannot safely go to trial at the present term of this Court for the
 reason that John O. Haw, a material witness in this cause
 is absent from the State and is not expected to be present at the
 present term of this Court, that the said John O. Haw as

28 This affiant is informed and believes is a resident of the County of
Floyd in the State of Iowa, and that there has not been time to
obtain his deposition upon said Cause since this affiant learned
that it would be necessary, that he expects to be able to prove by the
said John O. Hain, that the note and mortgage in question,
in said suit were never assigned to the said Robert P. Lane
or to any other person or persons as his or their property, but as
Collateral security for a sum of money borrowed of the said
Lane as of the firm of Lane Sanford & Co and that the indebtedness
of the said John O. Hain to the said Lane or to the firm
of Lane Sanford & Co. arising as above, did not exceed the sum
of about fourteen hundred dollars and that the balance of the
said note of the paying the said indebtedness to the said Lane
or Lane Sanford & Co still belongs to the said John O. Hain
said balance being about the sum of eight hundred dollars,
against which the said Defendant Chamblain has an equi-
table set-off as set forth in the answer of the said Defend-
ants in this Cause. This affiant further says that the said De-
fendants know of no other witness by whom they can prove the
facts above stated & set forth. And that the said Defendants
expect to be able to obtain the testimony of the said John O.
Hain to be used at the next term of this Court.

Subscribed & Sworn

before me this 26 June 1860

Attest my Dep. Clerk

S. J. Crawford

Endorsed

"Filed June 26" 1860.

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Mr. Z. Derrick Clerk " "
 By Ottemoyer Dep. Clerk "

And afterwards to wit. on the 28th day of June 1860.
 it being one of the days of the June Term of the Winnebago
 County Circuit Court. the following entry was made as appears
 of Court record:

Robert P. Lane

Or.

Edward C. Chamberlain et al

June 28. 1860.

Now come the parties by
 their Attornies & the Court having heard argument of Counsel
 on (motion) of Defendant Crawford. for a Continuance in this
 Cause. overrules the same:— To which decision of the Court the
 said Defendant excepts:

Mortgage:

This Indenture made this eighteenth day of January
 in the year of our Lord one thousand eight hundred & fifty
 six: Between Edward C. Chamberlain of the Town of
 Rockford County of Winnebago and State of Illinois of
 the first part, and John W. Hair of the Town of Winne-
 bago County & State aforesaid of the second part. Witness
 that the said party of the first part for and in consideration

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of the sum of Three thousand one ³/₁₀₀ dollars to him in hand paid. the receipt of which is hereby acknowledged; has granted, bargained, sold, conveyed and confirmed, and does hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, All that tract or parcel of land situate and being in the Town of Winnebago County of Winnebago and State of Illinois and known and described as follows, to wit:

The north and east parts of the north east quarter and the north east part of the south east quarter of section number four (4) in Township Twenty six north range eleven east bounded as follow: Commencing at the north east corner of said section, thence south on the section line fifty seven chains and one link to the County road, thence along said road following the middle of the same, north, eighty seven degrees west four teen Chains to a post thence north eighty four degrees and fifteen minutes west five Chains and eighty six links to a post thence north thirty chains and ninety links to a post, thence west twenty chains to a post on the half section line, thence north on said line twenty four chains and thirty six links to the quarter section post on the township line, thence east on said line thirty eight Chains and ninety five links to the place of beginning, Containing one hundred and sixty one acres.

Together with all and singular the appurtenances thereunto belonging or in any wise appertaining: To have and to hold the above described premises unto the

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said party of the second part, and to his heirs and assigns forever: And the said party of the first part, for himself and his heirs, executor and administrator, does covenant and agree to and with the said party of the second part his heirs, and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple, and that the said premises are clear of all liens taxes, assessments and encumbrances whatsoever. And in consideration of the further sum of One dollar to said party of the first part in hand paid, the receipt of which is hereby acknowledged, all right and benefit of exemption of said premises and every part thereof, under the exemption laws of the State of Illinois, is hereby waived, relinquished and released.

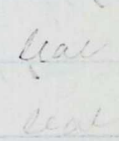
And the said party of the first part the aforesaid premises unto the said party of the second part and his heirs and assigns, against the claim or claims of all and every person whomsoever, and against all liens taxes, assessments exemptions and encumbrances whatsoever, does and will warrant and forever defend by their presents: The said party of the second part, or his heirs, executor, administrator, agent or agents, attorney or Attorney, or assigns, may pay all taxes and assessments now existing or hereafter levied or assessed against said premises or any part thereof, and the same, with six per cent interest from the date of each payment, shall be added to the money secured by this mortgage, and be recovered by virtue hereof, as though they had been part of the amount originally

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secured, and the receipts or receipts of the Officer or Officers, person or persons, to whom the same are paid, shall be final and sufficient proof or evidence of the payment or payments.

Provided always, That if the said party of the first part, or his heirs, executor or administrator, shall well and truly pay or cause to be paid the said sum of three thousand and one ⁷⁹/₁₀₀ dollars as follows: Vixt six hundred and seventy one dollars and thirty eight Cents on the first day of next November, and two thousand three hundred and thirty dollars on the first day of November A D 1857 with interest on each payment at six per cent agreeably to the Conditions of two Certain promissory notes of even date herewith signed by the said Edward C Chamberlin and payable to John W. Hair or order, then these presents shall be null and void, any thing to the contrary herein contained before contained to the contrary notwithstanding.

In witness whereof, the said party of the first part has hereunto set his hand and seal on the day and year first above written:

Executed in presence of E. C Chamberlin.
Duncan Ferguson  

State of Illinois I Duncan Ferguson a Notary
Winnibago County p. Public in for the said County, do
hereby Certify that Edward C. Chamberlin personally known
to me to be the person whose name is subscribed to the foregoing Deed as having executed the same, appeared before me

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this day in person and acknowledged that he signed, sealed and delivered the same as his free and voluntary act and deed for the uses and purposes therein set forth

Given under my hand and notarial seal at Rockford
this eighteenth day of January A.D. 1856.
L. S.  Duncan Ferguson Notary Public.

Endorsed "State of Illinois Mennebag County: Recorder's Office:
Filed for record on the 22^d day of January A.D.
1856 at 1 1/2 O'Clock P.M.

Recorded in Book C. of Mortgages page 343.
and examined:

C. H. Spafford Recorder

Assignment:

In Consideration of the sum of One thousand dollars to me in hand paid by Robert P. Lane of the County of Mennebag and State of Illinois. I John O. Hair (the person described in the within mortgage) of Floyd County in the State of Iowa, do hereby assign, sell, transfer and set over to the said R. P. Lane all my right, title and interest in and to the within mortgage, the note therein described, and the premises described in the mortgage and fully authorize him to collect the same by all legal means, as effectually as I could do myself. Witness my hand and seal this day

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of June A.D. 1858.

Witness J. H. Patterson

John O. Hair " seal "

State of Iowa } On this 2^d day of December A.D. 1858
 Floyd County S. S. } before me J. H. Patterson a Notary Public
 in & for said County personally came John O. Hair to me
 personally known to be the identical person whose name is af-
 fixed to the above instrument and acknowledged the same to be
 his voluntary act and deed.

In testimony whereof witness my hand and Notarial seal
 J. H. Patterson Notary Public.

Note.

Rockford 18th Jan'y 1856.

\$ 2330.00

On the first day of November A.D. 1857 for value
 received I promise to pay John O. Hair or order, at the city
 of Rockford, two thousand three hundred and thirty dollars
 with interest.

E. C. Chamberlin.

\$ 2871.

Endorsed

" John O. Hair

Rec^d Jan'y 18th 1858. seventy dollars

\$ 70⁰⁰

John O. Hair

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And afterwards to wit. on the 30th day of June 1860. it being one of the days of the aforesaid June Term of the Thinebago County Circuit Court. the following entry was made as appears of Court record to wit: -

Robert F. Lane

vs.

Samuel J. Crawford

Edward C. Chamberlin

Allen Wilder

State of Illinois Thinebago County Circuit
Court June Term A.D. 1860:

Now on this twenty eighth day of June A.D. 1860 it being one of the days of the June Term of said Court. this Cause coming on to be heard before the Honorable Benjamin A. Sheldon Judge of said Court, sitting as Chancellor in and for said County of Thinebago in the State of Illinois. Upon the Bill. Answers. Replications exhibits and proofs made and filed herein: And it appearing to the Court now here upon the inspection of the Bill and answers exhibits and proofs. in this Cause. that there is due the said Complainant Robert F. Lane upon the note and mortgage in the Bill described the sum of twenty eight hundred and seventy one dollars at this date from the said Defendant Edward C. Chamberlin of principal and interest which said amount

is now due and owing to the said Robert P. Lane from the said Edward C. Chamberlin. It is therefore ordered adjudged and decreed by this Court that the said Complainant Robert P. Lane have and recover of and from the said defendant Edward C. Chamberlin the said sum of twenty eight hundred and seventy one dollars. And it is further ordered that the said Defendant Edward C. Chamberlin or some one for him pay to the said Complainant or his solicitor for him the sum of twenty eight hundred and seventy one dollars the said sum so found due the said Complainant and interest from this date. And also pay all the costs herein within twenty days from the rising of this Court: And it is further ordered and decreed herein that in case the said Defendant Edward C. Chamberlin shall make default in the payment of the monies so found due the Complainant or any part thereof at the time herein before specified, or shall make default in the payment of the costs herein: That in such case the Master in Chancery of this Court shall proceed to sell the land and premises described in said Bill of Complaint to wit the Northeast parts of the north east quarter and the north east part of the south east quarter of section number four (4) in Township number twenty six north range eleven east. Bounded as follows. Commencing at the north east corner of said section thence south on the section line fifty seven chains and one link to the County road. Thence along said road following the middle of the same north eighty seven degrees west fourteen chains to a spot: Thence north eighty four degrees and fifteen minutes

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west five chains and eighty six links to a post. thence north thirty Chains and ninety links to a post: Thence west twenty Chains to a post on the half section line. Thence north on said line twenty four Chains and thirty six links to the quarter section post on the Township line: Thence east on said line thirty eight Chains and ninety five links to the place of beginning. Containing one hundred and sixty acres at public sale to the highest bidder giving notice of such sale as is by law required in case of sales by Sheriff upon executions: And that the Complainant Robert P. Lane have leave to become the purchaser upon such sale.

And that the said Master upon making such sale make out a Certificate thereof to the purchaser and file the same in the Recorders Office in said Winnebago County and that unless the said Lands and premises be redeemed according to Law by the defendants. within twelve months from the date of such sale. that the said Defendant be forever barred and foreclosed from any equity of redemption in and to the same.

And that unless the ^{said} lands and premises be redeemed from such sale according to Law within fifteen months from the date of such sale that the said Master be directed to make Conveyance of the same to the purchaser or his assigns.

And it is further ordered that upon such sale being made as aforesaid. that the Master pay first the Costs herein

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and secondly that he pay to the Complainant or his solicitor for him the said sum of twenty eight hundred and seventy one dollars and interest from this date. and if any surplus remains, that he pay the same into this Court. And that the Master in Chancery make report to this Court of his doings under this decree. and that this Cause stand Continued:

Benj N. Sheldon

Endorsed

"Filed June 30. 1860. at 9 am.

W B Derrick Clerk"

And afterwards to wit on the 30 day of June 1860. it being one of the ^{days} June Term. 1860. of the aforesaid term of Court the following entry was made as appears of Court record to wit:

Robert J. Lane

Pl.

Samuel P. Crawford

Edward C. Chamberlin

Allen Thelen

June 30. 1860.

And now come the Defendants

Samuel P. Crawford & Edward

C. Chamberlin. pray an appeal to the Supreme Court of this State. which is allowed by the Court. Conditioned, that they file their appeal Bond properly Conditioned with the Clerk of this Court. to Complainant. with Henry Slaus as surety

69 in the sum of Six hundred dollars within Thirty days from
rising of Court.

Bill of Exceptions:

Winnebago County Circuit Court
June Term A.D. 1860.

Robert P. Lane

vs.

Edward C. Chamberlin
Samuel P. Crawford
Allen Wilder

In Chancery.

Be it remembered that during
the pendency of said Cause to
wit. at the June Term A.D. 1860 of said Court the said
Defendants made motion the Court for a Continuance of said
Cause upon the Affidavit of Samuel P. Crawford one of the
defendants in this Cause:

Winnebago County Circuit Court
June Term A.D. 1860.

State of Illinois

Winnebago County S. S. Samuel P. Crawford being
first duly sworn on his oath says that he is one of the De-
fendants in a Cause now pending in this Court in which Robert
P. Lane is Complainant & this Affiant and Edward C. Cham-
berlin and Allen Wilder are Defendants in the Chancery

side of this Court, said suit being for the foreclosure of a mortgage, and this affiant further says, that the said Defendants can not safely go to trial at the present term of this Court for the reason that John O' Hair, a material witness in this Cause is absent from the State and is not expected to be present at the present term of this Court, that the said John O' Hair, as this affiant is informed and believes is a resident of ^{the County of} Hazel in the State of Iowa, and that there has not been time to obtain his deposition upon said Cause since this affiant learned, that it would be necessary that he expects to be able to prove by the said John O' Hair that the note and mortgage in question in said suit were never assigned to the said Robert P. Lane or to any other person or persons as his or their property, but as collateral security for a sum of money loaned of the said Lane, or of the firm of Lane, Sanford & Co. and that the indebtedness of the said John O' Hair to the said Lane, or to the firm of Lane Sanford & Co. arising as above, did not exceed the sum of about fourteen hundred dollars and that the balance of the said note, after paying the said indebtedness to the said Lane or Lane Sanford & Co still belongs to the said John O' Hair - said balance being about the sum of Eight hundred dollars, against which the said Defendants Chamberlain has an equitable set off as set forth in the answer of the said Defendants in this Cause: This affiant further says, that the said Defendants know of no other witness by whom they can prove the facts above stated & set forth: And that the said Defendants expect to be able to obtain the tests.

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= money of the said John O. Hain to be used at the next term of this Court.

Subscribed & sworn before
me this 26th June 1860

S. P. Crawford:

Ct. Penmoyer Dep. Clerk

But the Judge of said Court overruled the said motion on the ground of the insufficiency of the said Affidavit.

Whereupon the said Defendants Edward C. Chamberlain and Samuel P. Crawford by their Counsel made their exceptions to the said opinion of the said Judge in that behalf and prayed that the said Judge would sign & seal this Bill of exceptions according to the Statute in such case made & provided and thereupon the Judge aforesaid at the request of said Crawford Counsel did sign and seal this Bill of exceptions pursuant to the aforesaid statute in such case made & provided:

Benj R. Sheldon (Seal)

Enclosed

Filed July 3. 1860

W. E. Derrick Clerk

By Ct. Penmoyer Dep. Clerk

Know all men by these presents. That we Samuel P. Crawford of Rockford Winnebago County Illinois. Edward C. Chamberlin of Woodstock County of Windham State of Connecticut & Henry Sears of Rockford Winnebago County Illinois are held and firmly bound unto Robert P. Lane in the special sum of six hundred dollars to the payment whereof we bind ourselves and our and each of our heirs executors and administrators jointly & severally. firmly by these presents.

Sealed with our seals and dated this Eighteenth day of July 1860

Whereas in a certain Cause depending in the Circuit Court for the said County of Winnebago wherein Robert P. Lane was Complainant & Edward C. Chamberlin Samuel P. Crawford & Allen Hilder were defendants, a final decree was made & entered by the said Court: And whereas the said Samuel P. Crawford & Edward C. Chamberlin prayed an appeal from the said decree to the Supreme Court of the said State of Illinois, and the same was allowed to them, by the said Circuit Court, upon Condition that he should enter into a bond in the special sum of six hundred dollars with the said Henry Sears as surety, conditioned according to the form of the Statute in such case made and provided.

Now therefore the Condition of the above obligation is such, that if the said Samuel P. Crawford & Edward C. Chamberlin shall duly prosecute their said appeal and

4.3 Shall repay the decreed judgments, costs, interest and damages in case the said decree shall be affirmed, then the above obligation shall be void otherwise of force:

Sealed and delivered in	Edward C Chamberlin	" Seal,
presence of A. H. Taylor	J. J. Crawford	" Seal,
	Henry Sears	" Seal,

Endorsed

"Filed July 27" 1860

M. B. Derrick Clerk

By Attnmoyer Dep Clerk

State of Illinois

Winnebago County Circuit Clerk's Office: S. Morris B. Derrick
Clerk of the Circuit Court in & for said County, do hereby Certify that the foregoing is a true, full & correct copy from the files & records in the foregoing entitled Cause in my office, duly compared & certified by me.

Witness my Hand & the seal of said Circuit Court this 28th
day of July A.D. 1860

M. B. Derrick Clerk

By Attnmoyer Dep Clerk

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Robert P. Lane

Appeal Supreme Court

v.

E. C. Chamberlain et al

Decree: In Chancery:

Mantleff Co's:

Doc ^o Sum ¹⁰ f ^o P ^o af ^o Ap ¹⁵ O.P. ²⁰ Or S ²⁰ M.P. ²⁰ Or S ²⁰ .	1.65
Def. ²⁰ Or S ²⁰ oral f ^o in C ²⁰ Or S ²⁰ Dr F ¹⁰ f ^o P ^o 2 ^o S ⁸⁰ M.S. ²⁰ Or S ²⁰ .	2.40
Moa ²⁰ Or S ²⁰ in S.A. ²⁰ Or S ²⁰ M.S. ²⁰ Or S ²⁰ Con ²⁰ Or S ²⁰	1.60
S ¹⁰ f ^o in S ²⁰ En S ²⁰ Or P.C. ²⁰ 136 ³⁰ C.D. ²⁰ S ¹⁵ .	3.15
Prospective Costs	3.00
Sh ^o for sum. Davis	.10
" " Milliken	2.75
Prints for Republican	4.00
	<u>\$18.65</u>

Defendants Costs:

Moa ²⁰ Or S ²⁰ Moan ²⁰ Or S ²⁰ .	.80
af ²⁰ Moan ²⁰ Or S ²⁰ f ^o P ^o Moa ²⁰ Or S ²⁰ 136 ³⁰ C.D. ²⁰ S ¹⁵ .	2.15
S ¹⁰ Ct & S ³⁵	.45
	<u>\$3.40</u>

Transcript Sup. C

State of Illinois Winnebago County ss. I do hereby Certify the foregoing to be a true copy from my fee book of Complainant & Defendants Costs in above entitled suit: Witness my hand & seal of Circuit Court this 28th day of July 1860

Wm B. Derrick Clerk
By A. B. Penney & A. B. Penney

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Winnebago Co. Cir. Court.

Robert P. Lane

V S

Edw^d C. Chamberlin
and others.

Record.

Filed April 16. 1861
L. Leland
Clerk

Brown & Taylor, Attornies,
For Defendants.