

No. 13964

Supreme Court of Illinois

Lee

vs.

Bain

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 77.

1860

Lee

vs

Barn

13064

State of Illinois {
Bureau County } ss.

Be it remembered that on the 26.th day of March A.D. 1858 came into the Office of the Clerk of the Circuit Court of Bureau County and State of Illinois Charles Lee and filed his transcript of proceedings lately had before Mr Martin a Justice of the Peace for said County and State aforesaid and hereinafter described in the bill of Exceptions filed herein.

Also on the same day to wit on the 26.th day of March A.D. 1858 the said defendant filed his appeal Bond for appeal to the Circuit Court and is in the words and figures following to wit

I know all men by these presents that me Charles Lee and Amos Lewis are held and firmly bound unto Edward Bain in the penal sum of One hundred and twenty five dollars lawful money of the United States for the payment of which well and truly to be made bind ourselves our heirs and administrators jointly severally and severally firmly by these witness our hands and seals this 25.th day of March 1858 The condition of the above obligation is such that whereas the said Edward Bain did on the fifth day of March 1858 before Mr Martin a Justice of the Peace for the County of Bureau recover a judgment against the above bounden Charles Lee for the sum of sixty dollars and 5/100 debt and one dollar and 8/100 costs from which judgment the said Charles Lee has taken an appeal to Circuit Court of the County aforesaid & State of Illinois Now if the said Charles Lee shall prosecute his appeal with effect and shall pay what

Judgment may be rendered by the Court upon the dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and Effect

approved by me at my
office this 25th day of
March 1838

Charles Lee *Deced*
Amos H. Lewis *Deced*
Wm Martin J. P.

Copy of note

\$58.35

Princeton Ill July 24th 1857
On or before the first of January next I promise
to pay Edward Bain or barar the sum of Fifty
Eight dollars and thirty five cts for value
Received with six per cent interest from date
Charles Lee

Pleas before the Honl. Martin Ballou Judge
of the twenty third Judicial Circuit of the Cir
cuit Court of the State of Illinois at the April
Term of the said Circuit Court begun and held
at the Court House in Princeton in the County
of Bureau on monday the Fifth day of April
in the Year of our Lord One thousand Eight
hundred and Fifty Eight

Present Honl. Martin Ballou Judge
Edward M. Fisher Clerk
L. H. Waldron Sheriff
George W. Stipp State Atty

Edward Bain

vs
Charles Lee

appeal To wit on the 3^d day of said term

Now comes the Plaintiff by Taylor

his attorney and the defendant having failed to
file his affidavit of merits herein in compliance
with a rule of this Court It is considered by
the Court that the appeal herein be dismissed
and that a proce~~ndor~~^{cedo} be awarded to the justice
from whose docket the ^{said} appeal was taken It is also
further considered by the Court that the said
Plaintiff have and recover of the said defendant
the sum of five dollars his damages for delay herein
together with all his costs and charges in and
about his suit in this behalf in this Court
Expended and that he have execution therefor

Also on the 24th day of April A D 1858 the
said defendant files his bill of exceptions herein
in the words and figures following to wit

State of Illinois }
Bureau County } B. Bureau Circuit Court of the April
Term A D 1858

Edward Bain

vs appeal

Charles Lee

Be it remembered that this cause
came into the said Circuit Court by defendant's
appeal from a Justice of the Peace and was
pending in said Circuit Court at said April
Term 1858 and numbered on the docket of said
Court 378 and was docketed by the Clerk for
the last day of said term to wit ~~on~~ the 18th
day of the Term (according to a prior rule of Court
as follows to wit.

To the Hon. M. E. Hollister Judge &c.

We the undersigned members of the Bureau Bar respectfully request your Honor that you hereafter direct the Clerk to apportion the criminal cases for the first day, and 10 Civil cases for Each succeeding day of the Term subject to taking defaults at any time in case there is no appearance

Ans. 19th 1856

Peters & Farwell. Mr. Kendall
W. M. Zearing, John M. Crimes
Martin Ballou, Taylor & Stiff
J. Porter Jr.

Classify cases as above hereafter

M. E. Hollister

The following is a copy of a transcript of the Judgment of the Justice in this cause

Edward Bain } February 26th 1858 Suit on a
vs } note executed by defendant
Charles Lee } to plaintiff for \$ 58.35 dated
Debt \$60.55 } July 24/57 due January 1/58
Six per cent interest Demand \$60.55 Summons
issued returnable the 5th day of March 1858 at
ten O'clock A. M. and returned by const. J. E.
Norton duly served, March 5th this cause being called
and defendant not appearing. It is considered that the Plaintiff recover of said defendant
said sum of Sixty dollars & 5/100 debt and One
dollar and 8/100 cost of suit.

March 25th 1858 the above named
defendant with Amos H. Lewis as his security filed
his bond for an appeal to the Circuit Court
which bond was approved by me and appeal
granted

Sum
Docket
Judgt
Enter security
183/4
12 1/2
25
25

Transcript

Entrapped

Certificate

J. E. Norton

Const. fees

Lawyer

15 miles, travel

100 granted

State of Illinois }
Bureau County } ss.

I Mr. Martin a Justice of the Peace in and for said County certify the foregoing to be a correct transcript of my docket in the above entitled cause. Given under my hand this 25th day of March 1858

William Martin J. P.

That on calling the causes upon the docket by the Court on the 3^d day of the said term for the purpose of taking defaults in causes this cause was called in its order and the defendant by his ^{attorney} appeared in the cause and said the defendant would be ready for trial when the cause should be reached on the day the same was set by the Clerk on the docket the plaintiff by his attorney said the suit was upon a note and demanded that the cause should be tried immediately or that the defendant be required forthwith to show by affidavit a meritorious defense according to a rule of said Court as follows to wit.

Bureau Circuit Court April Term 1858

At a meeting of the members of the Princeton Bar held on the Fifteenth day of March A.D. 1858 at which Joseph S. Taylor was Elected President and G. Gilbert Gibbons Secretary it was unanimously

- " Resolved that we recommend to the Honorable
- " Martin Ballou Judge of the Bureau County
- " Circuit Court to adopt at the next term the
- " following rule of practice for the said Court to
- " wit

" In all docketed suits brought upon notes bills of

" Exchange single bills and accounts to which no
" attorneys name shall be entered for defendant
" by the seventeenth day of March and in all
" suits of the same nature that shall hereafter
" be instituted in, or appealed to, this Court Judg-
" ment shall be entered for the plaintiff or plain-
" tiffs upon the first calling of the docket unless
" the defendant or defendants his or their attorneys
" shall give satisfactory evidence to the Court by
" affidavit that he or they have a meritorious
" defense to the whole or a part of the plaintiffs
" claim

J. J. Taylor President

G. Gilt Gibbons Clerk

I Martin Ballou Judge of the Bu-
reau County Circuit Court do hereby make the
above a rule of said and hereby direct the Clerk
thereof to enter the same as such on the rule Book
March 16th 1858

M. Ballou Judge &c

The defendant said he was not now ready for
trial and was not prepared to show by Affida-
vit the merits of his defense thereupon the Court
ordered the defendant to be called and the defendant
being so called answered the cause but objected
to go into immediate trial for the reasons before
stated by him and refused to make or file an
affidavit that he had a meritorious defense
to the note and thereupon the Court dismissed
the appeal for non compliance by defendant
with said rule of Court last mentioned and
ordered a procedendo to the Justice of the Peace
and awarded damages for delay against the defen-
dant } To the orders and judgment of the Court

7 in Entering the default of the defendant and dismissing the appeal and awarding the said damages for delay and awarding the proce^{do} the defendant by his attorney then and there excepted and prays the Court to sign & seal this his bill of exceptions which is done

M. Hallow Judge Clerk
23^d Judicial Circuit Ill.

State of Illinois }
Bureau County } ss

I Edward M. Fisher Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing is a full true and perfect Transcript of the Record on the same appears on file & of Record in my Office Given under my hand and ^{the} Seal of said Court at my Office in Princeton in said County this 6th day of December A.D. 1854

Edward M. Fisher

clerk

And now comes Charles Lee 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.

1st The court erred in dismissing the appeal in this cause.

2nd The court erred in rendering the judgment aforesaid in manner and

from aforesaid.

Glover took attys
for Plt's in error

Let supersedeas. Surety \$300
Amos H Lewis

J. H. Canton

and now comes the said de-
fendant in error and complains the
errors above assigned &
says the same are well
taken & says that the judgment
be reversed & remanded
Taylor Paddock & Puffy
for heretofore error

Filed Dec. 18, 1839
L. Deland
Allen

Edward J. Carr
vs
Charles Lee

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Bureau Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau County, before the Judge thereof, between Edward Bain plaintiff, and Charles Lee

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon^{ble}. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of December - in the Year of Our Lord one thousand eight hundred and fifty-nine
L. Deland

Clerk of the Supreme Court.

J. B. Rice Deputy

Charles Lee

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Edward Bain

Writ of Error

This writ of Error is
made a Supersedeas
and as such is to be
obeyed by all concerned

L. Leland

Clerk

by J. B. Rice Deputy

Filed Dec 18 1837

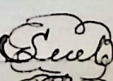
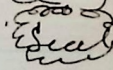
L. Leland
Clerk

Know all men by these presents that we Charles Lee and Amos H. Lewis of the County of Bureau and State of Illinois are held and firmly bound unto Edward Bain in the penal sum of Three Hundred Current Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this Fifteenth day of December A.D. 1859.

The condition of the above obligation is such that Whereas the said Edward Bain did ~~at~~ the April Term day of A.D. 1858 of the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Charles Lee for the sum of Sixty ^{five} dollars and fifty five cents damages and costs - from which said judgment the said Charles Lee has prayed for and obtained a writ of Error to the Supreme Court of said State.

Now if the said Charles Lee shall duly prosecute his said suit in Error with effect and shall moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue.

Signed Sealed and Delivered
in presence of
Levi Lewis

Charles Lee 
Amos H. Lewis 

79

Charles Lee

by

Edward Bain

Bond

Filed Dec 18, 1839

Leland
Clerk

Wm. H. Bond

Wm. H. Bond

Wm. H. Bond

Wm. H. Bond

Wm. H. Bond

State of Illinois }
Bureau County } 88

Be it remembered that on the 26th day of March A. D. 1858 came into the Office of the Clerk of the Circuit Court of Said County of Bureau Charles Lee, and filed his transcript of proceedings lately had before Wm. ~~XX~~ Martin a Justice of the Peace of Said County, and which said transcript will be hereinafter mentioned in the bill of Exceptions. Also on the same day to wit on the 26th March A. D. 1858 the said Charles Lee filed his bond for appeal herein which said Bond is in the words and figures following to wit

I know all men by these presents that Charles Lee and Amos H. Lewis are held and firmly bound unto Edward Bain in the penal sum of One hundred & thirty six dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals this 25th day of March A. D. 1858 The condition of the above obligation is such that whereas the said Edward Bain on the Fifth day of March 1858 before Wm. Martin a Justice of the Peace for the County of Bureau recover a Judgment against the above bounden Charles Lee for the sum of Sixty six dollars and $\frac{1}{2}$ per cent debt and One dollar and $\frac{1}{2}$ per cent costs from which judgment the said Charles Lee has taken an appeal to the Circuit Court of the County aforesaid and State of Illinois. Now if the said Charles Lee shall prosecute his appeal

Effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above Obligation to be void otherwise to remain in full force and Effect

Approved before me at my } Charles Lee Seal
Office this 25th day of March 1855. } Amos H. Lewis Seal
Wm. Martin J. P.

Copy of Note sued on
\$95.00 Princeton Va. 11th 1856
On the first day of October after date
I promise to pay to the order of Edward Pain
Ninety Five dollars with interest at six per ann
from date
Value received

Judgment rendered on
this note March 18th 1858
Wm. Martin J. P.

Charles Lee

And on the back of said note there appears the the following endorsement "July 8th 1857 Received on the within note forty dollars

Plead before the Honl. Martin Ballou
Judge of the twenty third Judicial Circuit of the
Circuit Court of the State of Illinois at the April
Term of said Circuit Court begun and held at the
Court House in Princeton in the County of Bureau
on Monday the Fifth day of April in the Year of
our Lord One thousand Eight hundred and fifty eight

Present Honl. Martin Ballou Judge

Edmund M. Fisher Clerk

J. H. Waldron Sheriff

George W. Stepp States atty.

Edward Pain }
vs } appeal
Charles Lee }

To wit on the 3rd day of said term

3.

Now comes the Plaintiff by Taylor his attorney and the defendant though three times solemnly called comes not but makes default. It is therefore considered by the Court that the appeal herein be dismissed and that a procedendo be awarded to the Justice from whose docket the said appeal was taken. It is also further considered by the Court that the said Plaintiff recover of the said defendant the sum of Five dollars his damages for delay herein together with all his costs and charges in and about his suit in this behalf in this Court expended and that he have execution therefor.

Also on the 8th day of April A D 1838 the said defendant filed his bill of exceptions herein which said bill is in the words and figures following to wit

State of Illinois } In the Circuit Court of the
Bureau County } County of Bureau and State of
Illinois of the April Term thereof
A D 1838.

Edward Bain }
vs } appeal
Charles Lee }

Be it remembered that on the 3rd day of the April Term of said Court A D 1838 on calling the Docket for the first time for the purpose of taking defaults and upon reaching and calling this cause the defendant who is the appellant in this cause, by Mr. Wendall his attorney appeared in said Cause and answered to the same on behalf of defendant, upon the same being

called and the defendant demanded to be heard in defence of the said cause and that the same be tried in its order upon the docket (this cause being an appeal suit and numbered on the docket 375 and set by the Clerk for the last day of said Term there being many other causes set for trial on the docket before this) The Plff demanded and the Court ordered immediate trial of the cause the defendant demand that said cause be tried on the day set for this cause the Court refused to permit any appearance or defence to said Cause by the defendant unless the defendant would proceed immediately to trial or make and present to the Court ^{without delay} a satisfactory affidavit of a meritorious defence according to a rule of said Court heretofore made as follows to wit

Bureau Circuit Court April Term 1858

At a meeting of the members of the Princeton Bar held on the fifteenth day of March 1858 at which Joseph I. Taylor was elected President and G. Cricht Secretary it was unanimously
 " Resolved that we recommend to the Honorable Martin
 " Ballou Judge of the Bureau County Circuit Court
 " to adopt at the next April Term, the following
 " rule of practice for the said Court to wit;
 " In all docketed suits brought upon notes billed
 " of Exchange single bills and accounts with no
 " attorneys names shall be entered for a defendant by
 " the seventeenth day of March, and in all suits of
 " the same nature that shall hereinafter be instituted
 " in, or appealed to, this Court Judgment shall
 " be entered for the Plaintiff or Plaintiffs upon the
 " first calling of the docket unless the defendant
 " or defendants his or their attorney shall give

I "Satisfactory Evidence to the Court by affidavit
"that he or they have a meritorious defence to a
"whole or a part of the plaintiff's claim

J. S. Taylor President
G. Gilbert Gibson Secretary

I Martin Ballou Judge of the Rensselaer
County Circuit Court do hereby make the above
a rule of said and hereby direct the Clerk thereof
to Enter the same as such on the Rule Book
March 16th 1858 M. Ballou Judge &c.

The following is a transcript of ^{the} Judgment con-
sidered by the Justice of the Peace from whom
the said appeal was taken said suit being
upon a promissory note

Edmund Bain }
vs }
Charles Lee }
Debt \$66.10.

February 26th 1858 Suit on a note
executed by defendant to Plaintiff
for \$95 dated January 9/56 & due
Oct '56 with six per cent interest
and Endorsed July 8/57 rec'd \$40.

J. P. fees

Summons	18 3/4	demand \$66.10. Summons issued returnable the
Docket	12 1/2	5 th day of March 1858 at ten O'clock A. M.
Judgt.	25	and returned duly executed by Const. J. E. Norton
Enter security for	25	March 5 th this cause being called defendant not
cost	81	appearing. It is considered that the Plaintiff
Enter appeal	25	recovers of said defendant said sum of Sixty
Transcript	25	Six dollars and 10/100 debt and One dollar and
Certificate	25	8/100 Cost of Suit
J. E. Norton	156	March 25 th 1858 the above named defendant
Const. fees service	25	with Amos H. Lewis as his security filed his
15 miles travel	75	bond for an appeal to the Circuit Court which
	100	bond was approved by me and the appeal granted

6.

State of Illinois } ss
Bureau County }

I Wm Martin a Justice of the Peace in and for said County certifies the foregoing to be a correct transcript of my docket in the above entitled cause Given under my hand and seal this 25th day of March 1858

William Martin J. P. *Ed*

The defendant refused to make affidavit & according to said rule and refused to go into an immediate trial but demanded that same be tried in its order & on the day set on the docket, where upon the Court dismissed the appeal in ^{this cause} for non compliance by deft with said Rule of Court last mentioned and ordered a Proceedendo to the Justice of the Peace as in case of default of the defendant. To the Ruling and the orders of the Court in Entering said default and dismissing said appeal and ordering a proceedendo as aforesaid the defendant then and there assented and prays the Court to sign & seal this his bill of Exceptions which is done

Wm. Ballou Judge *Ed*

State of Illinois }
Bureau County }

I Edward Mc Fisher Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing is a true full & perfect Transcript of the record as the same appears in file & of record in my office. Given under my hand & the seal of said Court at my office in Princeton in said County this 5th day of December A.D. 1859.

Edward Mc Fisher

Ed

And now comes Charles Lee 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:

- 1st The court erred in dismissing the
appeal in this cause
 - 2nd The court erred in rendering the
judgment aforesaid in manner and
form aforesaid
- Glover took attys
for plffs in error

Let supersedeas issue bond \$3000
Amos H. Lewis surety
J. D. Cotton

And now comes the
apt. in error and confesses
~~that~~ the errors above
assigned & says that same
are well taken & says
that the judgment below
be reversed & the cause
remanded

Taylor Paddock & Phelps
for deft in error

75- No 1
Edward Bain
vs
Charles Lee

Filed Dec. 1st 1839
L. Deland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Bureau Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgment of a plea which was in the Circuit
Court of Bureau County, before the Judge thereof, between
Edward Bain
plaintiff, and Charles Lee

defendant, it is said mani-
fest error hath intervened, to the injury of the aforesaid defendant

as we are informed
by his complaint and we being willing that error should be
corrected, if any there be, in due form and manner, and that justice be done
to the parties aforesaid, command you that if judgment thereof be given;
you distinctly and openly, without delay, send to our Justices of the Su-
preme Court the record and proceedings of the plaint aforesaid, with
all things touching the same, under your seal, so that we may have the
same before our Justices aforesaid at Ottawa, in the County of La
Salle, on the first Tuesday after the third Monday in April next, that
the record and proceedings, being inspected, we may cause to be done therein,
to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 18th day of
December in the Year of Our Lord
one thousand eight hundred and fifty-nine
L. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy

75.
Charles Lee
29

Edward Bain

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
abided by all concerned.

L. Leland Clk
by J. B. Rice Deputy

Filed Dec. 18. 1837

L. Leland
Clk

Know all men by these presents that Whereas on the
day of A.D. 1859, Charles Lee of the County
of Bureau and State of Illinois filed in the office of
the Clerk of the Supreme Court of said State four separate
several records of four several suits decided at
the April term of 1858 of the Bureau Circuit Court
Wherein Edward Bain was Plaintiff and said Lee
was defendant, and on the day of

ad 1859, sued out of said Clerk's office
four several Writs of Error upon the said records
at the suits of the said Lee against the said Bain in
said Supreme Court. And Whereas a Supersedeas
has been granted & allowed by one of the Judges of said
Supreme Court in each & all of the said suits, Con-
ditioned that said Lee enter into bond with security
as required by law in such cases, and as required by
the order of the said Judge in that behalf,

Now therefore know ye that we the said Charles
Lee and Amos H. Lewis of the County of Bureau
aforesaid have made Constituted & appointed and by
these presents do make constitute and appoint
Burton C. Cook of Ottawa in the County of LaSalle &
State of Illinois our true & lawful attorney for
us & each of us, in our names & in the name of each
of us and in the place and stead of each of us to make
execute acknowledge & deliver under seals as our
seals four several bonds, that is to say, a bond in
each of the above mentioned suits now pending
in the said Supreme Court, each payable to said
Edward Blain in such sum or sums as required
by the order of said Judge and conditioned as re-
quired by law in such cases, and we do hereby
authorize our said attorney to subscribe our
respective names & to affix our respective
seals to such bonds as our acts & d.

herby ratifying and confirming all that
our said Attorney may do by virtue
hereof.

Witness our hands & seals this 15th day
of December AD 1859.

Witness

Milo Kendal

Charles Lee Seal
Amos H. Lewis Seal

Power of Attorney
Charles Lee
and Amos H. Lewis
do
Burlington, Vt.

Filed Dec. 18, 1859
L. Leland
Clerk

Know all men by these presents that we Charles Lee and Amos H Lewis of the County of Bureau and State of Illinois are held and firmly bound unto Edward Bain in the penal sum of ~~Three~~ ^{Three} ~~thousand~~ ^{thousand} Current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this Fifteenth day of December AD 1854.

The Condition of the above obligation is such that Whereas the said Edward Bain did at the ^{1st} ~~Office~~ ^{Term} ~~day of~~ AD 1855 of the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Charles Lee for the sum of ~~Six~~ ⁵⁵ ~~hundred~~ ⁰⁰ dollars damages and

costs, from which said judgment the said Charles Lee has prayed for and obtained a writ of Error to the Supreme Court of said State

Now if the said Charles Lee shall duly prosecute his said Suit in Error with effect and shall moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue -

Signed sealed & delivered
in presence of
Scri Lewis

Charles Lee Seal
Amos H Lewis Seal

75

Charles Lee

Edward Bain

Bond

1880

Filed Dec 18, 1889
L. Leland
Clerk