

No. 14590

Supreme Court of Illinois

Favorite

vs.

Lord et al

STATE OF ILLINOIS,

April 3, 1864

SUPREME COURT,

THIRD GRAND DIVISION.

Favorite v Lord

No.

220

128

J. W. Middleton & Co., Stationers, 196 Lake St.

Favorite

vs

Lord



Ottawa Nov. 11. 1865.

Hon. S. Bruce
Sir -

In 220 of APl.

Nov. 1864 I find only the
abstract & Piffs. brief and
enclose them - My minutes
do not show that the Dept.
filed any papers in the case.

I supposed Mr. Rice had
replied to your previous letter
& am sorry to learn that he
did not.

Yours truly
S. Leland

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the 20th day of March in the year of our Lord One Thousand Eight Hundred and Sixty Eight and of the Independence of the United States of America the Eighty Eighth

Present, The Honorable John W. Nelson Chief Justice of the }
Superior Court of Chicago. }

Van A. Higgins }
Joseph E. Gary } Judges.

Joseph Smoot Prosecuting Attorney.

David J. Hammond Sheriff of Cook County.

Attest, Thomas B. Coates Clerk.

Be it remembered that heretofore to wit on the Eighteenth day of July in the year of our Lord one Thousand Eight Hundred and Sixty one Samuel Davout by & Arrington & Dent his attorneys filed in the Clerk's office of the Superior Court of Chicago his Certain Petition for writs of Habeas Corpus and Declaration which are in words and figures following to wit

Samuel Davout

vs
Thomas Lord & La Fayette
of Smith partners under the
name of Lord & Smith

In the Superior
Court of Chicago

(2)

I do hereby enter my self security for costs
in this cause and acknowledge myself &
bound to pay or cause to be paid, all &
costs which may accrue in this action
either to the opposite party or to any of the
officers of this Court in pursuance of the laws
of this State.

Dated this 18th day of
July A.D. 1861

David Gallminger

Samuel Narvick

vs
Thomas Lord and La.
Gayelle & Son
partners under the
name of Lord & Son

In Accompaniment

Sum of \$800.00

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

The Clerk of said Court may please issue a
writ of attachment as above to the Sheriff of Cook
County & oblige

Wm. G. & Dent
Pepper Attys

(3)

Superior Court of Chicago
of the August Term A.D. 1861.

State of Illinois }
County of Cook } ss

Samuel Garrito plaintiff
in the suit by Livingston & Dent his attorneys
complainers of Thomas Lord and La Fayette
St. Smith who are partners under the name
of Lord & Smith Defendants. who are summoned
to of a plea of his pass on the case on
promises. In that whereas the said Defend
ants heretofore lent on the 19th day of
April in the year of our Lord one Thou-
sand, eight hundred, and fifty one,
at Chicago lent at said County of Cook
made their certain promissory note in
writing, bearing date the day and year
aforesaid, and then and there delivered the
same to Wahl Brothers in and by which
said note said Defendants by the name
style and description of Lord & Smith pro-
mised to pay to the order of the said Wahl
Brothers the month after said date Two
Hundred and Eighty five Dollars at West-
ern Marine Bank value received
And the said Wahl Brothers to whom
or to whose order said note was payable
afterwards by the name of Wahl Bros lent
on the day and year aforesaid at Chicago

(24)

that is to say at the County of Centre
said endorsed said note in writing by which
said endorsement the said Wall. Bro &
them and there ordered and appointed the
said sum of money in said note mention-
ed to be paid to the said Plaintiff and
then and there delivered said note so
endorsed to the said plaintiff

By means whereof, and by force of
the statute in such case made, and pro-
vided the said defendants became liable
to pay said plaintiff said sum of money
mentioned in said note and being
so liable in consideration thereof then &
there undertook, and promised to pay the
same to the said Plaintiff according to
the tenor and effect of the said note, and
of the endorsement aforesaid to wit at the
place aforesaid.

And whereas also the said
Defendant. afterwards to wit, on the 17th day
of July in the year of our Lord one Thousand
Eight Hundred, and Sixty one to wit at
said County, became and were indebted
unto the plaintiff in a large sum of
money to wit Eight Hundred Dollars
for money before that time lent and
advanced to said Defendant by said

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Plaintiff at said Defendants request~ and also in the like sum for money before that time paid laid out, and expended for said defendants by said Plaintiff at the like special request of said Defendants and in the like sum for money before that time had and received by said defendants to and for the use of said Plaintiff and also in the like sum for goods, wares and Merchandise before that time sold and delivered by said Plaintiff to said Defendants at the like special instance and request. and also in the like sum for the labor, care, and diligence of said Plaintiff before that time done and performed by said Plaintiff for said defendants. and at the like instance and request of said Defendants and also in the like sum, then and there found to be due, and owing to said Plaintiff on account, stated between them and being so indebted said Defendants in consideration thereof then and there understood and promised to pay said Plaintiff said several sums of money above mentioned & when thereunto afterwards requested

Yet the said Defendants not regarding their said promises and undertakings but continuing &c. as though often.

(6)

requested to do. have not paid said
plaintiff either of said sum of money &
above mentioned or any part thereof but
to do so have hitherto wholly neglected and
refused and still do neglect and refuse
to do damage of said Plaintiff of Eight
Hundred Dollars & therefore he brings suit.
&c.

Amington & Dent.

Plaintiff's attorneys

Copy of Instrument. and account paid
on

" \$589 7/10

Chicago April 19th 1881
Two months after date we promise
to pay to the order of Wahl Brothers Four Hundred
& Eighty nine 7/10 Dollars at Western Marine
Bank. Value Received

Signed Lord & Smith "

Endorsed

"Wahl Bros"

Lord & Smith To Saml J. Garretts Dr.	
\$ money lent and advanced	\$ 800
Money paid laid out & expended.	\$ 800
Money had & received to & for the use of said plaintiff	\$ 800
To goods wares & merchandise sold & delivered	\$ 800.
To labor & services	\$ 800
To balance due on account stated	\$ 800.
" amt of your note to Wahl Bros	800

(7)

And thereupon afterwards writ on the day
and year of said writ issued out of the
office of the Clerk of said Court the &
People's Book of Summons, which together
with the return of the Sheriff endorsed there-
on it in the words and figures following
writ.

State of Illinois }
County of Cook }

The People of the State
of Illinois to the Sheriff of said County greeting
We command you that you
Summon Thomas Lord and La Fayette
W. Smith partners, &c. if they shall be
found in your County personally to be and
appear before the Superior Court of
Chicago of said Cook County, on the
first day of the next term thereof to be
holden at the Court House in Chicago
in said Cook County, on the first Monday
of August next to answer unto &
answer Harriet in a plea of trespass
on the case upon premises to the dam-
age of the said plaintiff and said in the
sum of Eight Hundred Dollars.

And have you true, and do this
with due diligence, then in what
manner you shall have executed the
same.

(8)

Witness Walter Kimball Clerk
of said Court, and the
said Clerk, at Chicago aforesaid
said this 18th day of

(Seal)

July A.D. 1861

Walter Kimball Clerk

(Return of Sheriff.)

Personally reading the
within writ to the within named defend-
ants the 24th day of July 1861

Anthony - B. Keeling Sheriff.
By John A. Nelson Deputy.

And afterwards sent on the 20th day of
August in the year aforesaid, the said
Defendants Thomas Lord, and La Fayette
St. Smith by Harry B. Hurd, their attorney
filed in the office of the Clerk of said
Court, their certain Plea, Notice, and
affidavit of merit, which are in words
and figures following to-wit,

Samuel Harvick

vs

Thomas Lord &
Lafayette St. Smith
Anti by H. B. Hurd.

Superior Court of Chicago
August Term A.D. 1861

And the said defend-
ants by H. B. Hurd, their attorney comes.

(9)

defendants do wrong and injury where &
& say they did not undertake and pro-
mise in manner and form as said
plaintiff hath above thereof complained.
against them and of them they put &
themselves upon the Country &c.
H. B. Kirt.
Attor. for. defts.

Mr Samuel Garouti plaintiff in the above
entitled cause,

Take notice that do above
named defendants in the trial of this cause
will give in evidence & insist that at the
time when the note sued upon in this
cause became due & payable and for a
long time before, and for a long time &
thereafter, was the property of Francis A
Hoffman Otto Gelpcke and Alexander
Diller doing business in the City of Chicago
under the name & style of Hoffman &
Gelpcke & in the actual possession &
control and on the day of payment of
said note & while the same was still
owned & possessed by the said Hoffman &
Gelpcke the said Defendant then living
and for a long time before having been the
owners & having the actual possession
of a certain paper commonly called a

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Hoffman & Gelpcke
Defendants

certificate of deposit in mon. and figures
substantially as follows: "Bent."

\$740⁵⁷/₁₀₀ Chicago April 22. 1861 No 27.291
Buel Hill & Granger have deposited
with us seven hundred forty 57/100 dollars in
currency payable on return hereof to the order
of J H Lester

Hoffman & Gelpcke

End used as follows.

"Pay Buel Hill & Granger or order.

J H Lester"

"Pay Lord & Smith or order.

Buel Hill & Granger"

made and by virtue of which said certificate
the said endorsement the said Defendants
were entitled to have and demand of said
Hoffman & Gelpcke the said sum of \$740⁵⁷/₁₀₀
and that said sum being then and there due
from the said Hoffman & Gelpcke to the said defendants
the said defendants then and there applied
to the said Hoffman & Gelpcke and showed
them the said certificate of deposit as aforesaid
endorsed & offered and demanded to pay
under the same to them and apply the
same or so much thereof as might be
necessary to pay the said Note, which the
said Hoffman & Gelpcke refused to do.
And these defendants well further prove
that the said Plaintiff lost or procured

(7)

the said note from the said Hoffman & Gierke long after the same became due & payable & after the right of the said defendant had accrued and that the said Hoffman & Gierke now do & have ever since the time owed the said sum of seven & hundred forty & 57/100 dollars to the said defendant, which sum is still due and unpaid and that the said defendants will set off and allow on the trial of this cause so much of the said sum of seven hundred & forty ⁵⁷/₁₀₀ dollars against the said demand of the said Plaintiff on said note as will be sufficient to satisfy and discharge the same according to the form of the Statute in such case made & provided

And the said Defendant will take further notice that on the trial of this cause the said Defendants will move & insist that whatever right the said Plaintiff has on said note if he has any right therein was acquired after the same became due and that at the time when the same became due & while the same was the property of Hoffman & Gierke through whom the said Plaintiff procured the same the said Hoffman & Gierke were & ever since have been & still are indebted

(12)

to the said defendants in the further sum
of seven hundred & forty dollars and fifty
~~seven~~^{one} cents. upon a certain certificate com-
monly called a certificate of deposit bear-
ing date the 22^d day of June A.D. 1861
& payable in currency on the return of said
certificate. & the order of J. H. Lester and duly
addressed to the said defendants before the day
of the payment of said note. and that the
said defendants will get off and allow on
the trial hereof so much of the said
sum as will be sufficient to satisfy &
discharge such demand according to the
form of the Statute in such case made &
provided

your &c

J. B. Hunt

Deft ally.

Samuel Garret

vs.
Oliver Lord &c.

La Fayette St Smith

State of Illinois

County of Cook

} Superior Court of Chicago
August Term A.D. 1861.

vs. La Fayette St Smith one
of said defendants being duly sworn deposes and
says that the said defendants have a good defence
to the above entitled suit upon the merits

Subscribed & sworn to before me this 10th day of August A.D. 1861
J. W. Kimball clerk

(13)

And afterwards writⁿ on the Thir^d day of
September, in the year aforesaid, the said
Samuel Garrett^r by Amington & Dent^r his
Attorneys filed in the office of the Clerk of
said Court their return similar to the
plea of general issue of said Defendant
which is in the words and figures fol-
lowing writⁿ;

Samuel Garrett^r

vs
Thomas Lord &

La Fayette St Smith

} In Remission

} Superior Court of
Chicago

And do said plaintiff as to the plea of the
said defendant whereof the said defend-
ants have put themselves upon the country
doth do like &c

Amington & Dent^r

" Esq^s atty^s

And afterwards writⁿ on the seventeenth day
of March, in the year of our Lord one thou-
sand Eight Hundred and sixtyth From
the said day being one of the days of
the March Term of said Court, the fol-
lowing proceedings were had in the above
cause, and among others entered of re-
cord in said Court writⁿ;

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7402

Samuel Davoulé
vs
Thomas Lord and
La Hayette & Smith

assumpsit

This cause having
been this day again called for trial, Comes said
Plaintiff by Amington & Delt his attorneys, & the
said Defendants by said Booth & Khamer. their
attorneys also come, and upon agreement of
the parties made now here in open Court this
cause is hereby submitted to the Court for trial,
upon the issues joined therein without intervention
of a jury and the Court now here after hearing the
evidence and arguments of Counsel, and being fully
advised in the premises finds for the said de-
fendants.

And whereupon the said plaintiff submits his
motion herein for a new trial in said cause. which
motion, is overruled by the Court, to which ruling
of the Court in overruling his said motion for a
new trial said plaintiff then & there excepted
Wherefore it is considered that the said defendants
do have, and recover, of and from the said plaintiff
their costs and charges about their defence, in this
behalf expended, and thereof have execution
And whereupon said Plaintiff, enters his exception
herein to the ^{ruling} ~~Court~~ of the Court.

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And after due to out on the nineteenth day
of the month and year last aforesaid the said
Samuel Parule by his attorney Mephring
hō & Put filed in the office of the Clerk of said
Court his certain Bill of Exceptions which is in
words and figures following to wit.

Halt of Illinois }
Scott County } ss

Superior Court of Chicago
March Term A.D. 1864

Samuel Parule
vs
Thomas Lord and
La Hayette & Smith

Assumpsit

Be it remembered that on the trial of this cause
before the Hon. Judge E. Gary one of the judges of
said Court a very long Warrent the plaintiff
produced, and read as endorsed a note as fol-
lows

\$559 00/100

Chicago April 19th 1861

For months after date we promise to pay
to the order of Wahl Brothers Five hundred eighty
nine 00/100 Dollars at Western Marine & Bank value
received

(Signed)

Lord & Smith

Endorsed

"Pay

Samuel Parule a order
Wahl Bros"

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The Defendants then offered and was introduced
a certificate of deposit as follows

\$740 ⁵¹/₁₀₀

Chicago April 22. 1861. R. 27-29

Buel Hill & Granger have deposited with
us sum Amount forty ⁵¹/₁₀₀ dollars in currency
payable on return hereof to the order of J. H.
Lester

Hoffman & Gelpcke
which said certificate is endorsed as follows.
Pay Buel Hill & Granger or order
J. H. Lester.

Pay Levi & Smith or order
Buel Hill & Granger

The defendants next read, ~~in evidence~~ the de-
position of A. Hudson Smith which is as follows:

My name is A. Hudson Smith I reside in
Chicago I am in the Wholesale Grocery &
business I am a brother of the Defendant
Smith

Witness was then shown a certificate of
deposit Dated Chicago April Twenty second
1861 For sum Amounted. and forty Dollars
and fifty one cent payable to the order
of J. H. Lester signed Hoffman & Gelpcke
endorser. Pay Buel Hill & Granger or order

(17)

I N Lulu, pay Loro Smith or order,
Buell Mull & Granger.

I know that the defendant had a note payable at the office of Hoffman & Gelpcke it was due. I went up with Smith the Defendant to Hoffman & Gelpcke Bank the Defendant Smith presented the certificate of deposit, he showed me and asked for the note they had payable at that office and presented the certificate of deposit in payment of that note, and they refused to take it.

The Plaintiff's attorney by Mr. Dent has shown that the note spoken of by the witness is the note paid upon

I suppose the day we went there was the day the note fell due, my brother asked me to step in the Bank with him there was a notice posted on the outside of the Buller stand it was either posted or hung there, it was there. It was to the effect, that certificates of deposit were taken in payment of notes due at the Bank, or payable to the Bank either one, that was the substance of the notice. I don't recollect that there was any notice that Buller or Wisconsin Currency would be taken for all notes due at the Bank.

The conversation was made the

(18)

paying teller, I don't know that it was Jellie
I had heard that was his name since but
I did not know what his name was at the
time. My Brother said to the paying teller
what his reason was for not taking the Cu-
tificate of deposit for the note his answer
was that Lord & Smith were better than Hoff-
man & Gelpcke

This was before Hoffman &
Gelpcke closed their doors. It was the Spring
of the difficulty of the currency

Crop examination
Mr Dent for Peff

Q. About what difference if any was there between
specie and currency at that time?

The Defendant Counsel. Mr. Skid's object to
the question as immaterial -

A. There might have been from fifteen to twenty
per cent. I can't tell except by exchange.
I think we were paying about from 15
to 20. per cent exchange at that time, there
were different lists of currency some were more
depreciated

I don't know the fact about what

(19)

Lord & Smith paid for this certificate of deposit
I went with my mother for the purpose of
taking up the note. I went in there with
him on his request. I don't know that he anti-
cipated whether they would take it or not I
have been at Putney on this case, once or twice
before, and naturally heard the case talked up
that is the way I heard that Miller was the
paying teller.

Re direct for Jett.

I mean by Cumney when I speak of depositories
Cumney I mean the Bank Bill of Illinois
& this common Bank

Int.

Now these other Bills in circulation in Chicago
and the State of Illinois at that time than
Illinois and this common Bank Bills
there were

Ans

Int.

Did the person into whom you conversed at the
Bank at the time the certificate was presented
as you have stated, give as a reason why he
would not take the certificate that the
certificate was payable in Cumney?

Ans.

Question objected to as leading
I don't recollect any such reason being
given there might have been but I don't
recollect.

Int.

Do you recollect any other reason being

(20)

gain than the reason you have before, given
to wit that that Lord & Smith were better than
Hoffman & Gephke.

Question objected to by Peff

Ans
Qnt

I do not

Was anything said as to who was the owner
of the Note?

Ans

I cant say

A. J. Smith

Harry B. David was then sworn as a witness
for the defendants and testified that he was
a deposit in the Bank of Hoffman & Gephke
in Chicago in May June & July 1881
& was doing business with them and frequently
in this Bank during that time and that
there was during such time posted up in
said Bank on a part of the railing therein a
notice that they would receive German and
Prussian currency in payment of notes due
said Bank.

The Plaintiff then read the deposition of
Alexander Piller which is as follows

Int 1st

Please state your name age residence and
occupation?

Ans to 1st Int

Alexander Piller 29 years of age, city mch.

(2)

Waukegan Combs of this state of this club
in grain elevator.

Interrogatory 2^d. Are you acquainted with the parties
to this suit and if so how long have you known
them respectively?

Ans. to the 2^d Inter. Yes I am acquainted with the
parties to this suit and have been for (4)
years or thereabouts.

Interrogatory 3rd. In what business were you engaged
in the Spring of 1881 and how long did you
continue therein and what was the style of
your firm?

Ans. to the 3rd Interrogatory I was engaged in Building
Business in the Spring of 1881 and continued
therein until the 26th of August 1881 the
style of my firm was "Hoffman & Gelpcke"

Interrogatory 4th. State whether or not the firm
of Hoffman & Gelpcke at any time held
the note on which this suit is brought viz
a note given by Lord & Smith to Wahl
Bros. \$589 payable six months after date
dated April 19th 1881. If yes about how
long did said firm of Hoffman & Gelpcke hold
said note and when and to whom did they
part with it.

Ans. to 4th Interrogatory

The firm of "Hoffman & Gelpcke"
did hold the note on which this suit is brought

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given by Lord & Smith to Wahl Bro. for \$589
payable 12 months after date. and dated April
19th 1861 They had said note. three months
or thereabouts. The ^{said} note was transferred, to J.
G. Lam. & Co of Chicago in the State of Illinois
in the latter half of July or the first half of
August 1861

Interrogatory 3rd What if any ^{was paid, by the plaintiff} consideration, ~~for~~ on the
transfer of said note to him
Ans to 3rd Interrogatory.

J. G. Lam. & Co in consideration
for the transfer of said note. gave them check
to Hoffman & Gelpcke for the amount due
by Hoffman & Gelpcke to J. G. Lam. & Co. to
wit \$700. or thereabouts and then J. G. Lam.
& Co. note for \$170, or thereabouts,
Interrogatory 6th.

State whether or not: you were present at
the presentation by said Lord & Smith at the
Bank of said Hoffman & Gelpcke of a cer-
tificate of deposit of said Hoffman & Gelpcke
issued to Abel Hill & Granger April 22nd
1861 for \$740 57 in currency payable
to the order of J. H. Lester, if yes about
when was the same presented and for what
purpose and what received or was paid
at the time state fully?

Ans. to 6th Interrogatory There was a certificate
of deposit as described in Int-6th presented

(23)

by Lord & Smith at the Bank of Hoffman & Guepeta to the witness on or about the time of the maturity of the said note, And the same was presented for the purpose of paying the said note. I declined receiving the same in payment giving as a reason that the note payable in dollars was better than Hoffman & Guepeta certificate payable in Currency

Interrogatory 7th What reasons if any did you assign for not taking said Certificate in lieu of said note

Ans to 7th Interrogatory

The same as contained in the answer to the 6th Interrogatory.

Interrogatory 8th

What what if any was said the difference between currency & specie at the time of the interview between yourself and the member of the firm of Lord & Smith, into whom you had such interview as aforesaid.

Ans to Interrogatory 8th The currency was worth from 50 to 75 cents on the dollar in Gold

Interrogatory 9th

Do you know any other fact matter or thing that would tend to benefit or to advantage to the plaintiff in this cause. if you state the same fully and at large

Ans to 9th Interrogatory Witness does not.

(24)

Alexander Dillie

The Defendants Counsel had previously stipulated that the certificate of deposit upon which the said deposit of Dillie was the same, introduced and read by the defendants as aforesaid.

The finding was all the evidence and on the same the Court found for the defendants. Whereupon the Plaintiff moved the Court for a new trial and filed the following reasons.

The plaintiff moves for a new trial because the finding is against the evidence, and because the same ought to have been for the plaintiff in stead of for the defendant and because the plaintiff under the evidence was entitled to recover the amount of the note by him declared upon and offered no evidence.

Brington & Dent
Plff. Atty.

And the Court overruled the motion, and the plaintiff by his Counsel then & there excepted to the decision of the Court overruling said motion, and the Court thereupon rendered judgment on said finding, and because the matters aforesaid do not otherwise ^{fully} appear.

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of record the Bill of Exceptions is on the +
prayer of the Plaintiff, signed, sealed and
made a part of the record

Joseph E. Gary J.P.
Judge of Supreme Court
of Chicago

(27)

State of Illinois }
County of Cook }

I Thomas B. Carter
Clerk of the Supreme Court of Chicago &
within and for the County, and State of Illi-
nois, do hereby certify the above and fol-
lowing to be a full, true, perfect, and complete
transcript of all the papers, on file in my office
together with all the orders and judgments
made and entered of record in said Court, in
a certain cause lately pending in said Court
on the common Law side of said Court.
Wherein Samuel Varado was plaintiff &
Thomas Lord and La Fayette A Smith were
defendants. Having reference to and used on
the last trial of said cause only.

In Witness Whereof I have
hereunto set my hand and
affixed the seal of said Court
at the City of Chicago, in the
County of Cook, this Thirtieth
day of April A.D. 1864.
Thomas B. Carter

Clerk



And now comes the said Samuel Favorite, by Arrington & Dent his attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

That said Superior Court erred in finding for the defendants.

That it erred in overruling the motion for a new trial.

That the judgment ought to have been for the plaintiff, and not for the defendant.

Wherefore the said plaintiff prays that said judgment be reversed, and that he be restored to all things which he has lost thereby, &c.

Arrington & Dent,
attys. for plf.



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And now comes the said defendants
by Hurd Brothers & Kramer and say there is
not any error in the aforesaid record and
proceedings wherefore they pray that the said
judgment may in all things be affirmed

Hurd Brothers & Kramer
Attys for Defts in Error
" J

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Edward F. Pulsifer

as

Thomas

220

Samuel Favonli

as

Thomas Lord et al

Record Eurs &
Jonder.

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Filed April 20, 1864

L. Leland

Clerk

Fees. \$4.00. paid

W. H. Carter Clerk