

8527

No. _____

Supreme Court of Illinois

M. E. Jones, Admr.

vs.

Isaac Lane, et al

71641  7

State of Illinois }
Saline County } S.S.

Went had in the Circuit Court
of Saline County in the State of Illinois to-wit;

Be it Remembered, that heretofore
to-wit: On the 29th day of July A.D. 1861, the following
Transcript and other appeal papers were filed in the
Clerks office of the Circuit Court of Saline County in
the State of Illinois to-wit

Transcript

Raleigh Saline County Illinois, Justices docket
July the 5th - 1861

McE Jones administrator of Wm G Grable Decast

vs } By Note \$ 99 ⁷⁵/₁₀₀

Isaac Lane, J F Gasaway & Wm J Moore

Summons issued July the 5th 1861

Trial set for the 16th day of July 1861 at 7 o'clock A.M.

Summons returned Executed July the 8th 1861

Wm Lowe, C. C.

Now on this 16th day of July 1861
the parties appeared for trial, and after hearing the
Evidence, and the argument of counsel, It is
ordered that the plaintiff have judgment against
two of the defendants J. F. Gasaway & Wm J Moore
for the sum of Ninety six dollars debt (\$96 ⁰⁰/₁₀₀)
and also for the costs of Suit, Isaac Lane not
having been served with summons, not found
in the County

Wm Burkhart (J.P.)

Appeal taken to the Circuit Court, Bond filed
and approved July 24th 1861

Transcript made July 29th 1861

| | | | |
|-------------------|--------|--------------------------|-----------|
| Constables Cost | 2 | Justice Cost | " |
| Serving Summs " | 50 | cketing Suit | 20 |
| Miles travel 6, " | 30 | Issuing Summons | 25 |
| Serving Subpone " | 37 1/2 | Issuing Subpoena | 25 |
| Miles travel 6 " | 30 | Sweating three witnesses | 15 |
| | | Entering Judgment | 25 |
| | | Entering Appeal | 50 |
| | | Taking Bond | 50 |
| | | Transcript & Certificate | 50 |
| | | | <hr/> |
| | | | \$ 206 00 |

State of Illinois }
Saline County } Sd.

I, William Burkhart a Justice of the
Peace in and for said County, do hereby certify
that the foregoing Transcript, and the papers her-
ewith, being five in number, and being marked
from one to five inclusive, contain a full and
perfect statement of all the proceedings before me
in said cause, In Witness Whereof I have hereunto

Set my hand this 29th day of July A.D. 1861

Wm Burkhart J.P.

On the back of said Transcript is the following

M E Jones admr &c

vs

Isaac Lane Etal

Transcript on appeal

N^o 5

Filed July 29th 1861

T A Jones C.R.

Appeal Bond taken by the justice to wit,
Know all Men by these presents, that we William
J Moore, J. C. Manier and Voltane Choissen,
are firmly bound unto M. E. Jones Administrator
of Wm G. Grable deceased, in the penal sum of one
Hundred and ninety seven dollars and fifteen cents
(\$197¹⁵/₁₀₀) lawful Money of the united States, the
payment of which well and truly to be made, we bind
ourselves, our heirs and our administrators jointly
severally and firmly by these presents, Witness our
hands and seals this 24th day of July A D 1861 -
The condition of the above obligation is such, that
whereas the said M. E. Jones Administrator as aforesaid
did, on the 16th day of July A D 1861, before William
Buckhart a Justice of the peace in and for the
County of Saline in the State of Illinois, recover
a Judgment against the above bounden Wm J
Moore & F. H. Gasaway for the sum of ninety six
dollars, besides costs of suit, from which judg-
ment the said Wm J Moore has taken an appeal
to the Circuit Court of Saline County, Now if the
said Wm J Moore shall prosecute his appeal with
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 by me at my office in Raleigh

This 24th day of July 1861

1861-2

Wm Buckhart J P

Wm J Moore (Seal)
J. C. Manier (Seal)
Vol Choissen (Seal)

Indorsement on Back of said Bond.
Appeal Bond
Mc Jones admr &c

vs
T F Gasaway, Wm J Moore
vs

Filed July 29th 1861

T. A. Jones CLK

(Summons)

The State of Illinois }
Saline County }

The People of the State of Illinois, County Constable
of said County - Greeting,

You are hereby commanded to summon
Isaac Lane, T. F. Gasaway & Wm J Moore, to
appear before me, at my office in Raleigh on the
16th day of July 1861 at 10 o'clock A.M., to answer
the complaint of Mc Jones admr of Wm J Grable deceased
for a failure to pay him a certain demand, not exceed-
ing one hundred dollars, and thereof make a due
return as the Law directs

Given under my hand and seal

This 5th day of July 1861

Wm Bunkhart (J P)

(Indorsement on Back of summons)

P. 50. Summons.

Mc Jones Administrator of Wm J Grable

vs

Isaac Lane T F Gasaway Wm J Moore
P. 99 75

Serving Summons 50 miles travel 6-30

Executed by reading to T F Gasaway + Wm J Moore
on this 6th day of July 1861. Isaac Lane not found
in the County Wm Lane 6/30

N^o 2

Filed July 29th 1861

T A Jones CLK

(Note)

\$ 96⁰⁰ Twelve Months after date me or Either of us
for value received promise to pay M E Jones
administrator of the Estate of Wm J Grable deceased
the Sum of Ninety Six dollars - and - cents

Witness our hands and seals

This 1st day of December A D 1857

Isaac Lane (seal)

T F Gasaway (seal)

Wm J Moore (seal)

Filed July 29th 1861

T A Jones CLK

(Subpoena)

The State of Illinois }
Saline County } ss

The People of the State of Illinois
Do Sh^o P Moore Sh^o A. Jones + T. D. Wiseman
you are hereby Commanded to appear before me
at Raleigh on the 6th day of July A D 1861, at 10
o'clock A M, thence to testify the truth, in a
matter in suit wherein M E Jones administrator

of Wm G Grable deceased is Plaintiff and Isaac Lane
L F Gasaway & Wm J Moore is Defendants, and
this you are not to omit under the penalty of the Law
Given under my hand and seal this 9 day of July 1861

Wm Buckhart *(Signature)*

Indorsed on back

M E Jones admr to

vs

Isaac Lane Etal

Subpoena to Thos P Moore T & Wiseman

Thos A Jones - Cost 25

Amos 37 1/2 middy 130

Swearing by readin to all the witness

This the 11 day of July 1861

Wm Love lsc

N^o 3

Filed July 29th 1861

T A Jones lck

And on said 29th day of July A D 1861

the following summons was issued by the clerk
of said Circuit Court of Saline County Illinois to wit.

State of Illinois }
Saline County } *set*

The People of the State of Illinois

To the Sheriff of said County - Greeting

We command you that you summon M E Jones
Administrator of Wm G Grable deceased, if he may
be found in your County, to be and appear in the

Circuit Court, within and for the County of Saline
 and State of Illinois, on the first day of the next
 Term thereof, to be commenced and holden at the
 Court house in the Town of Harrisburg in said County
 on the fourth Monday of August next, then and
 there to answer to an appeal executed by Wm J Moore
 from Judgment of William Geo Rhart Esquire, a
 Justice of the peace within and for the said County
 of Saline in favor of the said Mc Jones administra-
 tor as aforesaid, and against T F Gasaway & the
 said Wm J Moore, and further do and receive
 what the said Court shall consider of and concerning
 the premises, and have you then and there this writ &c

Witness Thomas A Jones Clerk of our
 said Court, and the judicial seal thereof
 this 29th day of July A D 1861

Thomas A Jones Clerk



Improvement on back of Jurors names

Law No 63

Mc Jones Adm'r

vs

Isaac Lane T F Gasaway & Wm J Moore
 Saline Circuit Court August Term 1861

Shff fees

Served on 1 - 50

Mileage 50

returning 10

 \$110

T. G. Reynolds Shff

Served the within as I am commanded
August 5th A D 1861

Thomas G Reynolds Shff
By G G Skelton Esq

And on said day the following other writ was
issued by the Clerk of said Court to wit:

State of Illinois }
Saline County } ss

The People of the State of Illinois
To the Sheriff of said County Greeting
Whereas M E Jones administrator of Wm G Grable
deceased did, on the 16 day of July A D 1861, before
William Burkhart a Justice of the Peace, in and for
said County, recover a Judgment against T F Gasaway
and Wm J Moore, for the sum of Ninety six dollars
and costs of suit. And whereas the said Wm J Moore
has taken an appeal from said Judgment to the Cir-
cuit Court of said County, we therefore Command you
that you Summon the said T F Gasaway if he be
found in your County personally to be and appear, before
our said Court on the first day of the next term thereof
to be held at the Court house in the Town of Hannibury in
said County, on the fourth Monday in August next, then
and there to abide by and perform the order or decision
of said Court in the premises, And have you then and there
this writ, Witness Thomas at Jones Clerk of our
said Court and the Seal thereof

Seal

This 29th day of July A D 1861

Thomas at Jones Clerk

Endorsement on back of said writ
Served the writ by reading to J. F. Gasaway
August 5th A. D. 1861
Thomas G. Reynolds Shff
By G. L. Shelton Supt

Shffs fees

Served on 1-50 mileage 50 returning 10 \$110
T. G. Reynolds Shff

And afterwards to wit. On the 20th day of August
A. D. 1861 the following subpoena was issued by the Clerk
of said Circuit Court to wit:

State of Illinois }
Saline County } ss

The People of the State of Illinois
To the Sheriff of Hamilton County - Greeting
We command you to summon James Twigg, James
Lane and John H Lane to be and appear before the
Circuit Court of said County of Saline on the second day
of the next Term thereof, to be holden at the Court house
in Harrisburg, on the fourth Monday in August Instant
then and there to testify and the truth to speak in
behalf of the Defendants, in a certain Cause in said Court
pending, wherein M. E. Jones adm^r of W. G. Grable is
Plaintiff and Isaac Lane J. F. Gasaway & W. G. Moore
are Defendants, and this you are not to omit under the
penalty of the law, and have you then and there this writ

Witness Thomas A. Jones Clerk of said Court and
Seal The Judicial Seal thereof affixed at Harrisburg
on this 20th day of August A. D. 1861
Thomas A. Jones Clerk

Endorsed on back of subpoena

22nd August 1861 I acknowledge since

August 22nd

James Swigg

I acknowledge since on the within

John H Lane

And on the 21st day of August A D 1861

the following subpoena was issued by said Clerk to wit

State of Illinois }
Saline County }

The People of the State of Illinois
to the Sheriff of said County Greeting
We Command you to summon T P Moore and
F D Wiseman to stand and appear before the Circuit Court
of said County of Saline, on the second day of the next
Term thereof, to be holden at the Court house in
Harrisburg, on the fourth Monday in August Next and
then and there to testify and the truth to speak in behalf
of the Defendants, in a certain Cause, in said Court
pending wherein W E Jones Adm^r of W G Grable is
plaintiff and Isaac Lane Etal are defendants
and this you are not to omit under the penalty of the law
and have you then and there this writ

Witness Thomas A Jones Clerk of said Court
and the Judicial Seal thereof affixed at

Seal

Harrisburg on this 21st day of August A D 1861

Thos A Jones Clerk

Endorsed on back.

Served the within as I am commanded August 23^d 1861

T. C. Reynolds SSB Deo
By G. S. Skelton Deft

Serving Subj on 2 - 50 mileage 50 return 10 \$110

J. G. Reynolds Sheriff

And afterwards to wit:

On Wednesday the 3rd day of the August Term A.D. 1861 of the Circuit Court of Saline County Illinois is held at the Court house in Harrisburg in and for said County. - The Honorable A. D. Duff Judge of the 2^d Judicial Circuit in the State of Illinois presiding, the following Order and proceedings were had in said Court - in the case of McE Jones Administrator of William G. Grable deceased, vs Isaac Lane, J. F. Gasaway and Wm J. Moore to wit -;

| | |
|---|--|
| McE Jones administrator of William G. Grable deceased vs Isaac Lane J. F. Gasaway and Wm J. Moore | } Saline Circuit Court Wednesday August 30 th 1861 Appeal |
|---|--|

Now on this day came the said Plaintiff by Macklin his attorney, and also the defendant Moore by Raum, Allen & Christy his attorneys, and by leave of the Court Voltaire Choissier is substituted on appeal Bond in place of Thos P. Moore whose name by leave of the Court is erased. And now came again the said parties, and for trial say let a Jury come when upon came Napoleon Choissier, Sam Kin of Riley Howard Gastino, John E. Shaw, Samuel Neal, William F. Hawkins, Eli M. Gullidge, Samuel Spurlock, John

Pankey, John Le Spaullock, Charles W Turner, and John J. Jones, twelve good and lawful Men of the County, who being empannelled and sworn according to law. - after hearing the evidence, and being properly instructed by the Court, returned in to Court the following verdict to wit, We the Jury find for plaintiff \$99 ⁷⁵ - Whereupon came the said plaintiff by his attorney and entered a remittitur of three dollars and seventy five cents - Whereupon came the said defendants by their attorney, and enter their motion for a new trial and in arrest of judgment -

The following Instructions were given by the Court to the Jury in said cause to wit

1 The Court instructs the Jury that a Surety to a bond, bill or note, in order to release himself from liability on the ground of notice, must satisfy the Jury by the Evidence, that he gave a written notice to the debtor to proceed to the collection of the debt, against the principal debtor
Given

2 The Court instructs the Jury, that if they believe from the evidence that Wm J. Moore the debt was originally liable to the plaintiff as a security on the note introduced in this suit, that in that event, unless they believe further from the evidence that debt Moore gave plaintiff notice in writing to collect said debt from some one save the principal debtor, that they must find for the plaintiff
Given

3 The Court instructs the jury, that in cases of this nature
a creditor is allowed a reasonable time, after receiving
written notice, to proceed against the principal debtor
in which to institute proceedings against such debtor

Given

4 The Court instructs the jury, that even though they
believe from the evidence that debt gave written
notice to plaintiff to collect said debt, yet if they believe
further from the evidence that plaintiff instituted this
suit within a reasonable time after receiving such
notice, they must find for the plaintiff

Given

5 The Court instructs the jury, that if the instrument
sued on does not show on its face that debt
signed the same as a security, that then the statute
in respect to notice in such cases does not apply.
Although it may appear by oral testimony that
debt signed said note as security, and that he
gave written notice as claimed

Given

The Court instructs the jury that although the notice
required by law to be given by the security to the payee
requiring such payee to commence suit, is required to be
in writing, yet it is a question of fact to be determined
by the jury from the evidence whether the notice in this
case was in writing or not, and this fact, like all others
may be proven by circumstances

Given

The Court instructs the Jury, that if they believe from the note introduced as evidence that Wm J Moore was security for Lane in the note in question and also believe from the evidence that Moore notified plff to collect the money from Lane, that the money might have been collected off of Lane by reasonable diligence, and that plff did not use reasonable diligence to collect it from Lane then the law is for Moore, and your verdict should be for him

Given

The Court further instructs the Jury that the admissions of plff Jones is proper evidence for the consideration of the Jury as to whether deft Moore notified him to collect the money from Lane

Given

And afterwards to wit: on Thursday the fourth day of said August Term A D 1861 of said Circuit Court of Sabine County, the following order and proceedings were had in said Court in the case aforesaid to wit:

Mo E Jones administrator of
Wm J Grable decd

vs

Isaac Lane J F Gasaway
and Wm J Moore

} Appeal

Thursday August 29th 1861

And now on this day the motion for a new trial

herein, is by the Court Overruled. And it is ordered
and adjudged by the Court, that the plaintiff have
judgment against the defendants T F Gasaway and
Wm J Moore for the sum of Ninety six dollars debt
and also for his costs in this suit expended, and that
he have Execution therefor &c - And now comes -
again the defendant Wm J Moore by his attorney and
enters his Exceptions to the ruling of the Court and
prays an appeal to the Supreme Court which is
granted upon defendant executing Bond as required
by law with Voltaire Lehaissier as Security, within
thirty days from this date, And leave is given for
Bills of Exceptions to be made and signed in vacation

And on said 29th day of August 1861
the following affidavit was filed in said court to wit:
State of Illinois } Saline Circuit Court
Saline County } August Term 1861

Thomas D Wiseman being duly sworn
deposes and says, that he attended 2 days as a witness
in a case between Mc Jones as one of W G Grable and
plaintiff, and Isaac Lane Et al defendants, at the
instance of said Moore and had to travel 6 miles
to attend said Court

Thomas D Wiseman
Subscribed and sworn to before me this 29th day of
August A D 1861

T A Jones Clerk
Filed August 29th 1861 - T A Jones Clerk

And afterwards to wit. On the 3rd day of September
A D 1861, the following other affidavit was filed
in said Circuit Court to wit

State of Illinois } Saine Circuit Court
Saine County } August Term 1861

Wm Burkhart being duly sworn
deposes and says, that he attended said court
1 day as a witness in a case between M E Jones ~~dam~~
of Wm G Grable ~~est~~- plaintiff- and Isaac Lane
Wm J Moore + J F Gasaway defendants, at the
instance of said plaintiff and had to travel 7
Miles to attend said Court.

Wm Burkhart

Subscribed and sworn to before me this 3rd day of September
A D 1861 — — — T A Jones Clerk

Filed September 2^d A D 1861

T A Jones Ck

And afterwards to wit. on the 35th day of
September A D 1861. The following Bond was
filed in said Circuit Court to wit. -

Know all Men by these presents, that we William
J Moore + Voltaire Choissier of the County of Saine
and State of Illinois are held and firmly bound
unto Michael E Jones Administrator of Wm G Grable
deceased, in the penal sum of Two Hundred and
fifty Dollars, Current money of the United States
for the payment of which well and truly to be made
we bind ourselves, our heirs executors and adminis-
trators

Jointly, severally and firmly by these presents
Witness our hands and seals this 25th day of
September A D 1861

The Condition of the above obligation
is Such, that whereas, the said Michael E Jones
administrator as aforesaid, did on the 29th day of
August A D 1861, in the Circuit Court in and for
the County and State of aforesaid, recover a judg-
ment against the above bounden William J Moore
and T F Gasaway for the Sum of Ninety Six dollars
debt, and Twenty five $\frac{72}{100}$ Dollars Costs.
from which said judgment of the said Circuit
Court, the said William J Moore has prayed for
and obtained an appeal to the Supreme Court
of said State. - Now if the said William J Moore
shall duly prosecute his said appeal with effect
and shall moreover pay the amount of the
judgment, costs, interest and damages, incurred
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

Wm J Moore (Seal)
Col Choissier (Seal)

Taken and entered in to before me at my office
this 25th day of September 1861

T A Jones Clerk Circuit Court
Soline County Illinois

Filed September 25th 1861

T A Jones Clerk

Bills of Costs

M E Jones admr of W G Grable, Saline Circuit Court

vs

Isaac Lane Et al

August Term 1861

Appeal

Clerks Fees

| | \$ | cts |
|---|----|-------|
| For fil appeal 50 writ suit 10 ent 4 attys 40 | 1 | 00 |
| Issg Summt + fil 40 Issg notice to Ex deft 50 | | 90 |
| Fil instructions 10 Issg + fil 8 Spas 80 | | 90 |
| Calling + swearing jury 15 receiving verdict 10 | | 25 |
| Swearing 3 witnesses 15 Taking 3 affes 30 | | 45 |
| Ent verdict 20 motion for arrest + new trial 20 | | 40 |
| " Order overruling 20 motion for appeal 20 | | 40 |
| Making less 1 Bill 30 Copy 20 Cert + seal 35 | | 85 |
| Ent Judgment 25 Satisfaction 15 | | 40 |
| Taking Appeal Bond 50 | | 50 |
| Making Record for Supreme court | 4 | 00 |
| Making second Record by request of plff | 4 | 00 |
| Certificates and seals for Records | | 70 |
| Postage on Record | | 20 |
| Amt Clerks fees | \$ | 14 95 |

Sheriffs Fees

| | | | | | |
|----------|-------------------|------------------------|-----------|--------|------|
| Reynolds | For serv Summs 50 | Milage 50 | ret 10 | 1 | 10 |
| " | " | Notice 50 | Milage 50 | ret 10 | 1 10 |
| " | " | Spas on 2 witnesses 50 | Milage 50 | ret 10 | 1 10 |
| | Amt Shffs fees | | | \$ | 3 30 |

Witness Fees

| | | |
|--------------|-------------|------|
| Wm Burkhardt | one day + 7 | 1 00 |
| T D Wiseman | 2 " + 6 | 2 00 |
| James Twigg | 2 " + 34 | 3 70 |
| T P Moore | 2 " + 6 | 2 00 |

Am't witness fees \$ 8 70

Costs before Justice of the Peace

| | |
|------------------------------|------|
| Justices fees (Wm Burkhardt) | 2 60 |
| Constables " (Wm Lowe) | 1 47 |

Am't Costs before J.P. \$ 4 07

Total \$ 31 02

State of Illinois }
Saline County } ss.

I, Thomas A Jones Clerk of the Circuit Court in and for said Saline County in the State of Illinois, hereby certify that the within and foregoing Record is a full true, perfect and complete Record of all the papers on file and of all the orders and proceedings had in said Circuit Court, in the above and foregoing Entitled Cause in which M E Jones administrator of Wm G Grable deceased is plaintiff and Isaac Lane T F Gasaway and Wm J Moreau defendants, which appear of record or on file in my office

Witness Thomas A Jones Clerk of said

Court and the seal thereof attached

This 30th day of October A D 1865

Thomas A Jones Clerk

Record

McE Jones admr + c

vs

Isaac Lane Et al

8527

Filed Nov. 12. 1863.

Asah Johnston Clk

Paid by Pierce \$10.

Edward V. Pierce
Atty for Appellee