No. 8676

Supreme Court of Illinois

Charles T. Jones

vs.

John Bain

71641 7

Charles L Jones
vs
John Bain

In the Supreme Court
November Term 1849.

And the said Charles Jones, by Thomas G. Davis his attorney comes and says that in the record and proceedings and in the rendition of judgment there is manifest error in this that, the Circuit Court of the Cass County gave judgment for the said John Bain, whereas by the law of the Cass judgment ought to have been given for the said Jones.

2nd The court erred in refusing to grant a new trial to the plff

3 And in giving final judgment in favor of the said John Bain, and this the said Charles Jones is ready to verify for which errors and others appearing in the record the said Charles Jones prays that the said judgment may be reversed, annulled and for nothing esteemed &c

Thos. G. Davis atty for
plff in Error

And the said Deft enters his joinder in Error assigned by Plff. without prejudice to his right of making application to dismiss Bill of Exceptions for legal cause

J Faikeatty for Deft
in Error
11 Nov. 1852

[8676-1]

State of Illinois } ss.
Johnson County } I Samuel Copeland clerk of the circuit court in and for the County of Johnson and State aforesaid do hereby certify that the foregoing Pages contain a true copy and Exemplification of the Record and proceedings and papers appertaining to ~~the~~ and filed in the within cause as appears of Record in my office -

Witness Samuel Copeland clerk of said Court and Judicial Seal thereof at Office in Vienna this 12th day of November AD 1849

Samuel Copeland Clk
By Isaac N. Pearce dep

Be it remembered that on the 16th day of April AD 1849 the following writ of Scirfacias issued from the office of the clerk of the circuit in and for the County of Johnson, to wit,

State of Illinois, ss.
Scifa Johnson County } The people of the State of Illinois to the Sheriff of said County Greeting—

Whereas Charles T. Jones on the 9th day of October AD 1844 in our circuit court within and for the said County of Johnson recovered a judgement against John Bain in a certain action for the sum of $492 25/100 besides cost of suit as appears to us of record and whereas the said judgement remains unsatisfied as we are informed by the said Charles T. Jones we therefore command you that by good and lawfull men of your County you cause to be made known to the said John Bain Jr that he be and appear on the first day of the next Term of our circuit court to be holden at the court house in the Town of Vienna in said County on the 2nd Monday in the Month of May next then and there to show cause if any he has why the said Charles T. Jones ought not to have execution against him for the debt and costs as aforesaid and further to do and receive what ever said court shall then and there

consider proper in the premises and have you then and there this writ.

Witness Samuel Copland clerk of our said court and judicial seal thereof at Vienna this 16th day of April 1849 Saml Copland Clk

Charles T. Jones
vs
John Bain } Writ of Scire Facias
Executed by Reading and Leaving a copy with the defendant on the 18th day of April 1849.
Serving 50 and Returning 12 - - - 62½
Basil S. Gray Sheriff

John Bain
vs
Charles T. Jones } Scire fac -

and the said defendant comes and defends the wrong and injury when &c and for plea in the charge saith that the said Charles T. Jones pltff ought not to have and maintain his action thereof again

and afterwards towit at the May Term of the Johnson circuit court the Honorable William A. Dunning Presiding Judge

[8676-6]

Appearance}

And afterwards to wit
On Friday 18th May AD 1849
Term At the May term of the Johnson
Circuit Court AD 1849 the
Honorable William A Denny
presiding came the said John
Bain defendant, by J Jack
his attorney and filed his
plea in the words and figures
following to wit.

John Bain
vs
Charles L Jones } Ci. of a

Plea

And the said defendant
now comes and defends the wrong
and injury when &c; and for
plea ~~says~~ in this behalf saith
that the said Charles L Jones plff ought
not to have and maintain his action
thereof against him the said deft;
because he says that after the recovery
of s.d judgment in plfs declaration
mentioned and before the
commencement of this suit to wit
on the 10th day of Oct. 1845 he the
said defendant paid and satisfied
the said judgment debt interest and
costs in full to the said plaintiff, by the

according to law by the payment of the sum in all of five hundred and fifty dollars in form aforesaid recovered against him, and this the said defendant is ready to verify, wherefore he prays judgment if the said plaintiff ought to have or maintain his said action thereof against him &c

J. Jack Defts Atty.

And afterwards to wit on the same day and year last aforesaid came the plaintiff by his attorney and filed his demurrer to the above plea in the words following to wit.

Charles T Jones
vs
John Bair
} Sci Fa

And the said plaintiff by Davis his attorney says that the plea of the said defendant, and the matters and things therein set forth in manner and form as the said defendant has thereof above pleaded are not sufficient in law

Dem.

[9676-5]

to bar him the said plaintiff and this he is ready to verify wherefore he prays Judgment &c and for special causes of demurrer the said plff shews to the court here

1st the plea is not responsive to the writ and form of action of the plff.
2nd the sum is not stated, which constitutes the payment. 3rd the plea alleges payment in the disjunctive to the plff his assignees or agents, 4th there is no day of payment named.

Thos. Gale Dennis
Atty for plff

Which said demurrer was sustained for with leave to deft to amend his plea which was according done

Replication

The plaintiff then filed his replication to the defendants plea in the words following to wit

Charles T. Jones
vs
John Bain } Suffer an Judgment

And the said plaintiff as to the said plea of the said defendant says precludi non because he says that the said John Bain did not pay to him the said plaintiff the said sum of

$550 ox in the said sifa mentioned with all Interest and cost in manner and form as the said defendant has above in his said plea in that behalf alleged and this he the said Charles S. Jones prays may be enquired of by the County

Thos. G. Davis Atty for plffs –

Defts Add a Demurrer

J. Jaski defts. Attorney –

And afterwards to wit on the 18th day of May A.D. 1849 the following judgment was entered up to wit –

Charles S Jones
vs
John Bain
} Sci. fa.

Now on this day came the parties to this Cause by their attorneys Thos. G. Davis for the plaintiff and Jedediah Gack for the defendant and the plaintiff by his Counsel demurred to the plea filed herein which said demurrer was sustained by the Court, with leave to amend the plea. Issue being joined thereupon at a jury come of twelve good and

lawful men, to wit Christopher Peterson, Johan Sumo, William Buckannon, Henry Bagg, John Kagan, William Walker, Nathan Rushing, Josiah Thompson, John Harris, Owen Peterson, John Phelps, James O'Neal, who being elected tried and sworn and having the evidence on the part of the plaintiff as well as that of the defendant and argument of Counsel of Gentlemen licensed in the law and after retiring to consider of the premises, on their oaths do say that we the jury find for the defendant. It is therefore ~~considered~~ ordered and adjudged by the Court that the defendant recover of the plaintiff his costs and charges about this suit in this behalf expended and execution issue thereon, &c."

Whereupon the plaintiff moved the Court for a new trial, which motion was overruled by the Court, to which opinion of the Court the plff by his Counsel excepted and tendered his bill of exceptions in the words

following to wit "In the Johnson circuit Court

Illinois, May Term 1849

Charles L Jones } Sci fa
vs
John Bain }

Be it remembered that on the trial of the above styled cause the defendant offered in evidence the following recovery "Wednesday 4th October 1844 Charles L Jones assignee of J B Lane for the use vs John Bain Sr. On this day came the plaintiff as well the defendant in proper person, who waved process and confessed judgment for four hundred and eighteen dollars and five cents together with their damages and as it is uncertain what the damages is let the Clerk assess and report the same, who reports the same to be seventy-four dollars and twenty-cents; debt and four hundred and eighty eight dollars. Therefore it is considered by the Court that the plaintiff recover of the defendant the sum of four hundred and ninety two dollars and twenty five cents and costs

[8676-3]

of suit and may have execution
on the margin of which recovery
or judgment are the entries following
"Received ~~on this judgment $30~~
fifty-five dollars this 1st Sept
1845 S Copland Clk" "Rec'd on
this judgment $30 and 51 cents this
18th June 1848 S Copland Clk"
"Received twenty five dollars on
this judgment this 12th July 1846
S Copland Clk" "Satisfied decr
ith 1846 S Copland Clk", which
were read to the jury. the defendant
then introduced Samuel Copland
as a witness who stated that he
received the note upon which
the recovery was obtained and
had, from one Thomas, who represented
himself to be the attorney of Jones
the plaintiff — that he Copland
never saw nor corresponded with
Jones the plaintiff either before or
since the obtention or rendition of
said judgment; that Bain the
defendant paid ~~the~~ the judgment
interest and cc to him Copland.
That he corresponded with Thomas
before he witness received payment
of the judgment. That Thomas
requested him witness to send
the number of certain land which
he Copland had offered for the judg

ment; That Thomas, who resided in Indiana afterwards came down to see about the matter and would have taken the land, but one Fletcher, who it was thought would purchase the same refused to do so; That neither Jones nor Thomas, who represented himself as Jones' attorney ever authorized him or any to receive payment and satisfy said Judgment and this was all the testimony in the cause whereupon the jury returned a verdict for the defendant and the plaintiff moved the Court ~~for~~ to set aside and for a new trial upon the ground that the verdict was contrary to law and evidence which motion the Court overruled and entered judgment for the defendant to which decision of the Court the in refusing a new trial to plaintiff the plaintiff by his counsel excepts and prays that this his bill of exceptions may be signed sealed and allowed and made a part of the record in the cause which is accordingly done

Wm Demmings (Seal)

[2876-3]

3

Supreme Court

Charles T. Jones

vs.

John Bain

Johnson

Error to ~~Madison~~

Filed 20th Nov. 1849

F. D. Preston

Clerk

Nov. 1857

Plead in the Madison County Circuit Court Illinois before the Honorable William A. Denning Judge Now Term A.D. 1849

Supreme Court Nov Term 1852.

Ch Jones
vs
Jno Bain

Error to Johnson - On Motion to Strike out bill of exceptions

S. S. Marshall being first duly sworn deposes and says, that Tho G. C. Davis the Atty for Jones in the circuit Court drew up a bill of exceptions in this cause at the trial term, and hasing to leave the Court - requested deponent to present said bill for approval & allowance. That deponent did so at the term - but whether in open court or not, deponent does not recollect. The Judge suggested some objections to it or alterations of it - Whereupon deponent drew up another bill of exceptions conforming, as he supposed it, to the suggestions of the Judge - and again presented it for allowance, whereupon the Judge suggested that it could be settled and allowed at Metropolis to which court they were going. That the Judge or deponent took the bill as drawn up to Metropolis, where Mr. Davis & Jack got together and were talking it over, and appeared to disagree about what ought to be in it, or about the facts of the case. Which is about all that deponent knows about it. And further saith not.

Subscribed & sworn to before me this day of November 1852.

C.K.

These are the facts as I now recollect them. I may possibly be somewhat mistaken in regard to some of the particulars. I know nothing about the signing or filing of the bill of exceptions.

S. S. Marshall

Nov 7. 1852

Ch. F. Jones

v

John Bain

Affidavit of S. S. Marshall

Chas. T. Jones Adm
of Danforth Ho
vs
John Bain
Co.

In the Supreme Court of Ills
at Mt Vernon At Nov term
1851 Writ of Certiorari awarded
by Supreme Court to Saml Copland
Clk Circuit Court of Johnson

To the Hon the Judges of the Supreme Court aforesaid In answer to the writ of Certiorari aforesaid I have to say that on examining the Bill of exceptions on file in my office in the above cause there is no file mark on it, and the record in the Supreme Court is full as it is here, I recollect however the cause was tried in the Circuit Court of this Johnson Co in May term, and Mr. Davis atty. of Plff when on his way to the Supreme Court next holden in Mt. Vernon the next fall after the trial here, stopped at the office and left the Bill of exceptions. I have further to say, that the Bill of exceptions does not set forth the testimony as it was given by me on the stand at the trial. I stated on the trial that I never had seen Jones, but that the note was sent to me po mail by one Thomas of Indiana who represented himself to be the attorney of Jones the Plff enclosed in a letter which requested me to obtain a Judgment against Bain who was then supposed by many to be in failing circumstances that the letter requested me to ~~[illegible]~~ do the best I could with the debt, and try if possible to make it secure, and that after this Thomas and I continued to correspond in relation to the Debt,

[8676-9]

That negotiations were made between Thomas and myself in relation to his taking land of me on the Ohio River for the Debt and he wrote to me to send him the No's of the land which I did That Thomas afterwards came on having made arrangement to sell the land to Owen Fletcher as I understood from him and I went with him to make and execute the Deed for the same, when he refused after ajentaining that Owen Fletcher whom Thomas believed would buy the land refused to do so, And I further testified that I considered myself authorized by virtue of contract with Thomas to do all that I did in relation to the Debt and Judgment

H. Plane

State of Illinois
Johnson County } S. On the 23th day of April AD 1852

Personally appeared before me W. A. Denning Judge of the Circuit Court of Johnson Co. Same & Copland after being duly sworn according to law saith that the above statements are true and correct to the best of his knowledge and belief & further saith not.

H. Plane

Sworn to & subscribed before me the day & year aforesaid at Vienna

Wm. A. Denning
Judge of the Circuit Court of Johnson County and State of Illinois

Pltff in Error

vs

John Bacon Deft

in Error,

Answer to writ

of Error and

affidavit

of Saml Copland

Clk. C.C.J. Co.

Filed 11th day Nov.

A.D. 1852.

P. D. Pierson, Clk.

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Sheriff of Johnson County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Johnson County, before the judge thereof, between Charles T. Jones Plaintiff and John Bain

defendant, it is said that manifest error hath intervened to the injury of said Charles T. Jones, as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at ~~Springfield~~ Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John Bain

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at ~~Springfield~~ Mt. Vernon, in said State, on the 2d Monday in November last 1851 ~~next~~, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Bain notice together with this writ.

Witness, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof, at ~~Springfield~~ Mt. Vernon, this 12th day November in the year of our Lord, one thousand eight hundred and ~~forty~~ fifty one.

Finney D. Preston
Clerk of the Supreme Court.

Supreme Court.

Charles T. Jones

Plantiff in error,

vs.

John Bain

Defendant in error,

Scire Facias.

Filed. 20th November

1857 F. W. Preston, Clerk

Served by reading to John Bain defendant on the 14th day of November 1857

for serving 50¢ R. J. Light Shff Jc

Miles 45

Return 10

Charles T. Jones vs. John Bain } Supreme Court Mount Vernon St November Term, 1857

I do hereby enter myself as 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 12th day of November, A D 1857 and given in lieu of an other bond in said

Thos. G. C. Davis Seal (C.)

Jones
vs.
Davis
Cost Bond

Filed 12th Novr
1851
F. D. Preston
Clk

Charles T. Jones appellee } Supreme Court
vs } Mt. Vernon
John Baine } 20 Nov. 1851

Personally came before me Sedidiah Lack, atty for the Deft in Error in this Cause, and after being by me duly affirmed according to law saith, that the Bill of exceptions as presented in the Records on file in this Court, was not ~~signed~~ ~~& sealed~~ signed during the term at which the Cause was tried, Nor as he believes at, or during the sitting of the Circuit Court at any subsequent time, Deponent believes from what he has learned from the atty of the Pltff. that it was signed & sealed by the Judge who tried the cause, long after the trial perhaps several Months say six or nine Months but when and where said Bill was signed & sealed Deponent can not say as he was not present and had no notice of the time or place of signing it, That Deponent was the atty. & Counsel of Deft. in Error on the trial of the cause below & the only Counsel and that to the best of his knowledge he never Consented or agreed either by writing or otherwise that said Bill should be signed in Vacation, ~~either by writing or parol~~. That said Bill as it appears in the Record here is by no means a correct statement of the evidence of Saml. Copland Clk. the only witness introduced on the trial that the strength and materiality of his evidence in respect to his being authorized by Pltffs atty to receive payment of said Judgt. and that on which the cause was ~~[illegible]~~ rested by the Deft. before the Court and Jury in making out his defence is left out and does

(2476-13)

not appear in the Bill of exceptions, while some parts of the testimony purporting to have been given by witness in said Bill of exceptions was not given at all by the witness on the Stand, in the way or conveying the meaning as stated in the Bill. Deponent saith that witness testified that Thomas who resided in Indiana a lawyer who represented himself as the atty of Plff sent to witness the note drawn by Bain and on which the original judgt. was confessed by Deft in a letter, in which he requested Copland to proceed to obtain a judgt, to watch the circumstances of Bain, exercise a general supervision over the case, and try if possible to make the debt safe, that after that time there was a correspondence between witness and Thomas in which a purchase of the judgt by Witness was negotiated & by which Witness was to convey land on the River, for said judgt. that witness in pursuance of this arrangement recd payment of the judgt from deft in property principally ~~[illegible]~~ (I think stock of same kind) that afterwards Thomas came on to see about the matter & went with witness to the land, and to accept the conveyance and after he (Thomas) saw the land he then refused to accept the Deed because and Ketcher who it was thought would purchase the land refused to do so. On Cross examination in answer to a question put by Mr. Davis to wit Did Jones ever authorize you to receive the money & satisfy the judgt.? Witness answered No, I never conversed with Jones ~~[illegible]~~, or saw him, Witness said he was

authorized or considered himself authorized to receive the payment and do all he did do, in relation to the case by the contract he had with Plfs. atty and by virtue of that authority, Deponent believes Mr Keys said nothing from or by which the idea could be drawn as stated in the bill "that neither Jones nor Thomas ever authorized him to receive the judgment," but on the contrary said, that "he was authorized by Thomas through a contract with him to do all that he did in relation to the case, and Deft. put the case on ~~the~~ part of Deft. on this ~~[illegible]~~ ~~[illegible]~~ ground, to wit That the Clk was not ex officio a receiving officer, but at the same time the Clk might be authorized as any other to receive it, and left the Jury to decide from the evidence whether he was so authorized or not ~~by the proof~~ ~~Affirmed & subscribed~~

before me this 20 Nov 1855

Jedidiah Jack
atty Pro Deft
in Error.

Cha. S. Jones
against
vs
Jno. Bain

Motion to
Dismiss Caus

Affidavit of
Dfts atty.

Charles T Ames
vs
John Bain } Error to Johnson

In this case Ames recovered judgment in the Johnson Circuit Court against Bain (deft. in Error)

Bain paid the full amount of the judgment to Samuel Copland Clerk of the Johnson Circuit Court, and the judgment was so entered satisfied on the margin of the order book by Copland

Scire facias issued on this judgment for Bain to shew cause why Execution should not issue

Bain plead payment & pltff. took issue

Trial by Jury

Pltff. read in evidence the order book shewing recovery, upon the margin of which recovery or judgment are the entries following

"Received fifty-five dollars this 1st. Sept. 1845-
S. Copland, Clk."

"Rec^d on this judgment $30 and 11 cents this 18th. June 1845- S. Copland, Clk."

Satisfied Decr. 10th. 1845 S. Copland Clk."

which were read to the jury

Deft. then introduced the Clerk as a witness who stated that one Thomas who resided in Indiana, and claimed to be attys for pltff. sent him the note - witness never corresponded with pltff. - was not authorized by pltff. or Thomas to receive payment and satisfy said judgment.

Upon this evidence the jury returned a verdict for defendant,

The pltff. moved the Court to set aside the verdict and for a new trial - upon the

ground that the verdict was contrary to law and evidence - Motion over ruled & judgment for defendant. to which over ruling pltff Excepted.

The plaintiff assigns the following Errors viz.

That in the record and proceedings and in the rendition of Judgment there is manifest error in this

1st. That the Court gave judgment for the said John Bain, whereas by the law of the land judgment ought to have been given for the said Jones

2d. The Court Erred in refusing to grant a new trial to the plaintiff.

3d. And in giving final judgment in favour of the said John Bain

No. 1.

Charles S Lyles
vs
Wm Pepper
Administrator
John Bain

Jones & ux &c
vs
R. J. Bain

Supreme Court Mt. Vernon
21st Nov. 1851

Error to Johnson County

And now to wit - the 22d day of Nov. 1851 personally came before me Lidiah Jacks atty Dep Dept. in Iowa, and after being duly qualified according to law saith, that the Bill of exceptions as it appears in this Court, was not signed and sealed at the term at which it was tried by the Judge trying the cause, That he knows this to be the fact as well as he can know any thing else which he did not see, that he deponent never made any agreement that the same should be signed sealed & filed of Record or that any Bill should be so signed & sealed and filed in Vacation, that deponent never saw the Bill signed or sealed or even presented to the Judge, and thinks it was not presented in open Court at all, that he has some recollection of seeing a Bill drawn up at the term at which the cause was tried then in the hands of Saml. Marshall Esq. now Judge who handed it to atty of Dept who handed it back objecting to it as improperly stating the evidence, He recollects of Judge Denning either at the same term of the Johnson Court, or at the Mahaska Circuit Court the succeeding week saying that a Bill had been presented to him, but that he refused to sign it because it did not state the facts proved, Deponent saith that at the Mahaska term aforesaid F. G. Bain Esq Pltff atty. invited deponent into his private room in the Metropolis house where said

[26746]

Davis Boarded to look over the Bill of exceptions, and on looking it over Deponent objected to it as not stating the evidence & suggested parts left out, an which he said Davis partially interlined what this Deponent suggested but this Bill contains no part of what was there interlined Deponent after said interlineation still objected to said Bill because it did not yet fully state the evidence, At that time there could not have been a bill signed & sealed as this Deponent believes Deponent believes the Bill of exceptions as filed in the Clks Office of the Circuit Court of Johnson Co. will have upon it endorsed a file mark showing the time it was filed, but he never saw it, He further says that he has reason to believe that although there was some kind of Bill of exceptions privately exhibitted to His Honor Judge Denning at the time the Cause was tried which the Judge refused to sign, yet this Bill he thinks is not a copy of said Bill then exhibitted as aforesaid, at all events Deponent is positive that this Bill here on file is not a copy of the one in the hands of Mr Davis at Metropolis he done refused to,

Affirmed and Subscribed
before me the 22d day
of Nov 1851

Jedidiah Jack

Turner D. Preston, Clerk
Supt Court

James Error
vs
Bain } To Johnson

Affidavit of
the atty of the
Deft. in Error,

Foundation of
Application for
Certiorari to
the Johnson Circuit
Ct to return a
full & complete
Record

Jones Appellant in Error
vs
John Bain Deft

Supreme Court Mt. Vernon
Nov. term A.D. 1852

Motion

Authorities in support of motion to dismiss Bill of exceptions and exclude the same from the Record

vide Evans vs Fisher 5 Gil 453 & cases there cited
" Buckmaster vs Brawn 4 " 443
Dickit vs Durrell 11 Ill R 72

"A Bill of exceptions should be drawn up tendered signed & sealed at the term at which the case is tried; except in cases where counsel agree; or the Judge by an entry on the Record directs that it may be ~~signed~~ prepared in Vacation & signed nunc pro tunc & in all cases it should appear on its face to be taken and signed at the trial; Where Counsel agree to settle the Bill in Vacation, the better practice is to preserve the evidence of the agreement by writing filed, or by an entry on the Records of the Court."

[3676-18]

C. T. Jones a/p/ee

vs

John Bain

Motion to exclude Bill of exceptions fr. Record

Authorities in Support of

Charles T. Jones
agent & Plff
in Error
vs
John Bain
Deft in Error

Supreme Ct. Mt. Vernon
Nov term 1852

Error to Johnson Co

To the Plaintiff his agents or attys, Lis, Take notice that I intend at this term of the court to move the court to dismiss & exclude the Bill of exceptions in this cause on the ground, 1st

That the Bill was not tendered, signed, & sealed, at the term of the court at which the cause was tried nor at any subsequent time or term fixed by the Judge & noted on the minutes or record nor at any time by agreement of Counsel in the cause And 2d

Because the Bill of exceptions does not contain a true & correct statement of the evidence given on the trial; but in all material parts purports the reverse of what was proved

I will base the motion so far as the 1st ground stated goes on the certificate of the Judge (Denning) who presided at the trial of the cause to the effect of what is set forth on the 1st & above grounds, and of other affidavits to the same effect

And to show the truth of the facts stated in the 2d ground above mentioned I will produce the answer of Saml Copland Clk to a certiorari directed to him; as also his affidavit taken before Judge Denning establishing the facts stated in the 2d ground above mentioned

J Pick atty for
Deft in Error
11 Nov. 1852

[8676-30]

Force aper

B

Bain

Notice to

Defts counsel

Filed 11th Nov 52

F. D. Preston, Clk

Charles T Jones
vs
John Bain } Error to Johnson

In this case Jones recovered judgment in the Johnson Circuit Court against Bain (Deft. in Error)

Bain paid the full amount of the judgment to Samuel Copland Clerk of the Johnson Circuit Court and the judgment was so entered satisfied on the Margin of the order book by Copland

Scire facias issued on this judgment for Bain to shew cause why Execution should not issue

Bain pleaded payment & pltff took issue

Trial by Jury

Pltff. read in evidence the order book shewing recovery, upon the Margin of which recovery or judgment, are the entries following "Received fifty-five dollars this 1st. Sept. 1845 S. Copland Clk."

"Recd. on this judgment $30 and 11 cents this 18th June 1845 S. Copland, Clk."

Satisfied Dec. 10th. 1845 S. Copland, Clk."

which were read to the jury

Deft. then introduced the Clerk as a witness who stated that one Thomas who resided in Indiana, and claimed to be atty. for pltff., sent him the note - Witness never corresponded with pltff. - Was not authorized by pltff. or Thomas, to receive payment and satisfy said judgment

Upon this evidence the jury returned a verdict for defendant

The pltff. moved the Court to set aside the verdict and for a new trial - upon the ground

[96702]

that the verdict was contrary to law and evidence — Motion overruled & judgment for defendant — to which over ruling pltff excepted.

The plaintiff assigns the following Errors viz.

That in the Record and proceedings and in the rendition of Judgment there is manifest Error in this

1st. That the Court gave judgment for the said John Bain, whereas by the law of the land judgment ought to have been given for the said Jones

2d. The Court erred in refusing to grant a new trial to the plaintiff

3d. And in giving final judgment in favor of the said John Bain.

No. 1.

Charles Y. Jones
vs
W. Pepper
& Attachment
John Bain

Abstract

Charles T. Jones ;
vs. ; Error to Johnson
John Bain ;

In this case Jones Recovered judgment in the Johnson Circuit Court against Bain (deft in Error)

Bain paid the full amount of the judgment to Samuel Copland Clerk of the Johnson Circuit Court, and the judgment was so entered satisfied on the margin of the order book. by Copland

Scire facias issued on this judgment, for Bain to shew cause why execution should not issue

Bain plead payment & pltff took issue Trial by Jury

Pltff read in evidence the order book shewing recovery, upon the margin of which recovery or judgment are the entries following "Received fifty-five dollars this 1st Sept 1845 S. Copland Clk."

"Rec'd on this judgment $30 and 11 cents this 18th June 1845 S. Copland, Clk."

Satisfied Decr. 10th 1845 S. Copland Clk." which were read to the jury

Deft then introduced the Clerk as a witness - who stated that one Thomas who resided in Indiana, and claimed to be atty for pltff, sent him the note - witness never corresponded with pltff - was not authorized by Pltff or Thomas to receive payment and satisfy said Judgment.

Upon this evidence the jury returned a verdict for defendant.

The pltff moved the Court to set aside the verdict and for a new trial - upon the ground

[9172-22]

that the verdict was contrary to law and evidence
— motion overruled & judgment for Defendant.
— to which overruling pltff excepted.
The plaintiff assigns the following errors viz:
That in the record and proceedings and in the rendition of Judgment there is manifest error in this
1st That the Court gave judgment for the said John Bain, whereas by the law of the land judgment ought to have been given for the said Jones
2nd The Court erred in refusing to grant a new trial to the plaintiff
3d And in giving final judgment in favor of the said John Bain,

Chas. T. Jones
Plff in Error
vs
John Bain
Deft in Error

Supreme Court Mt. Vernon
Nov. Term 1852
Error to Johnson Co.

To the Plff his agents or attys, Sir, I herewith furnish with a copy of the Certificate of the Hon W. A. Denning Judge of the Circuit Court of Johnson County, in relation to the signing of the Bill of Exceptions in this case, it being the same adverted to in the notice here to fore given you of my intention to move to exclude said Bill from the Record & files &c.

Benton 5 Nov A.D. 1852

Dear Sir,

You ask me for a statement of the facts in relation to the signing the Bill of exceptions in the case of Charles T. Jones vs John Bain; which I give you to the best of my recollection. The case was tried I think near the close of the term, & Mr. Davis the Counsel of the Plff commenced writing the Bill of exceptions, but before he finished it was compelled to leave in the stage for Metropolis; & I think got Judge Marshall either to write a new one, or finish the one which he had commenced. Mr. Marshall done so according to the best of my recollection and presented it to me after the adjournment of Court; and I signed it some time after that perhaps at Metropolis, the next week. It was mentioned in open Court by Mr. Davis that he wished a Bill of exceptions signed in the case and I think he mentioned at the same time that he had it near finished; and I think there was also some thing said at the time about signing it Metropolis; but what I do not now recollect. To all of which to the best of my recollection I hereby certify

W. A. Denning Judge of the Johnson Circuit Court

[1867-23]

Huck atty. for Deft. in Error

This certificate, the affidavit of the Circuit Clerk Saml Copland, and another affidavit of my own on file, all of which I have furnished you constitute the ground of the motion of which I have notified you

Respectfully yours &c

S Tuck atty Pro

Deft in Error

Charles Jeffers
Deft in Error

Geo Baker
Deft in Error

Copy of certificate
& affidavits
&c

Charles T. Jones
Appellee
vs
John Bain
Deft in Error

Supreme Court
Mt. Vernon 20 Nov.
1854

Deft. in Error by his atty. Jediah Luce moves the Court to dismiss the above cause & regret the record from the files on the ground

1st That the Bill of exceptions was not signed and sealed at the term at which it was tried by the Judge presiding at the trial nor at any other term of said Court while said Court was in session

2. That Defts atty had no notice of the time & place of signing and sealing said Bill, & that said atty never consented to its being signed out of the time prescribed by law to wit at the term at which the cause was tried

3. That the evidence is not set out in the said Bill as it was given in Court, material parts establishing Defts Defence being left out & other parts improperly stated so as to convey a meaning differ ent from that conveyed by witness & this to the prejudice of Deft in error.

4th Record shows as was the case, that no exception was taken unto after final judgment in the cause

Motion granted as appellant of Deft's atty

Leave to commence sept. term appear at a term begun & on a day past before the writ was issued

Supreme Court

Charles T. Jones

vs.

John Bain

Motion

Filed the 20th

November, 1851

In Supreme Court
November Term 1849

Charles L Jones
vs
John Bain

We write ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs, which may accrue in this action, to the opposite party or any of the officers of this court in pursuance of the laws of this State Dated this 19th Nov 1849

Thos S C Davis

[8676-25]

Charles J Jones
vs
John Bair
Cost bond.

Filed 20th Nov. 1849
F. D. Preston
Clk

E. T. Jones appellant } Supreme Court
vs
John Bain } Points & authorities &

1st Bill of exceptions on motion adjudged to be amended by the Judge who tried the cause by placing his seal thereto after 2d Judge was out of office vide Wiley versus Bean 1 Gil. 185 –

2d The court will not grant a new trial unless the verdict is strongly and palpably against the weight of the evidence, a mere preponderance will not justify the interference of the Court, Will vs Ward, 2 Gil, 293 & 94,

3d Proper practice is to except at the trial & file the Bill at the same term, May in the discretion of the Court permit the Bill to be filed at the next term but the practice is not commendable, Buckmaster vs Beams 4 Gil 443

4th A Bill of exceptions should be reduced to form & signed during the term at which the cause was tried except by consent of counsel consent, or the Judge by an entry on the record directs, that it may be prepared in vacation & signed nunc pro tunc In all cases it should appear on its face that it was taken & signed at the trial – Davis vs Fisher 5 Gil, 453, Treat Justice

5th Same Rule held

6th In Docket vs Darrell 11 Ills Rep. Page 72 Justice Trumbull

[8476-27]

7th " Bill must be signed & taken at the trial or if afterwards reduced to form & signed it must be signed nunc pro tunc Law vs Merriles & Wendell 268

8th " The Record does not show that even any exception was taken during the progress of the, or before final judgment was rendered, so it came too late — Gilmore vs Ballard 1st Scam 252 & Swafford vs Donovan same vol, 165

9th " Exceptions must be taken before the jury is discharged — Swafford vs Donovan 1 ~~Scam~~, Scam, 165,

Motions for Arrest of Judgment

Exceptions

Motions for Arrest of Judgment

8696

When an exception is taken the substance of the objection, should be reduced to writing and tendered to the court before a verdict is returned by the jury in open court, 8 S.& R. 211

Benton 5th Novr 1852

Dear Sir

You ask me for a statement of the facts in relation to the signing the bill of exceptions in the case of Charles T Jones vs John Bain, which I give you to the best of my recollection. The case was tried I think near the close of the term, and Mr Davis the counsel for the pltff commenced writing the bill of exceptions, but before he finished it was compelled to leave the stage for Metropolis, and I think got Judge Marshall either to write a new one, or finish the one which he had commenced. Mr Marshall done so according to the best of my recollection, and presented it to me after the adjournment of Court, and I signed it, some time after, that, perhaps at Metropolis the next week. It was mentioned in open Court by Mr Davis that he wished a bill of exceptions signed in the case, and I think he mentioned at the same time that he had it nearly finished, and I think there was also something said at the time about signing it at Metropolis but what I do not now recollect.

So all of which to the best of my recollection I hereby certify

W. G. Denning Judge of the Johnson Circuit Court

[9176-28]

Burton Ills
Nov 6th 1853

3

5

Mr John Bain

Vienna
Ills

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Massac **County,** Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Massac County, before the judge thereof, between Samuel Armount Plaintiff and Richard McDonald

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

as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Samuel Armount

that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Samuel Armount notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 30th day December in the year of our Lord, one thousand eight hundred and fifty-one

Finney D. Preston *Clerk of Supreme Court.*

[8676-30]

Supreme Court

C. T. Jones

No 1

Charles P. Jones

v

John Bain

8676

Error to Massac

Bill of Exceptions

Expunged

Cause dismissed
by agreement