

No. **8676**

Supreme Court of Illinois

Charles T. Jones

vs.

John Bain

71641  7

Charles F Jones }
vs
John Bain }

In the Supreme Court
November Term 1849.

And the said Charles Jones, by Thomas
Gle 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, ~~by~~ the
Court of the said 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 even 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 returned &c

Thos. Gle Davis atty for
plff in error

And the said Defendant has appeared in error
assigned by plff, without prejudice to his
right of making application to dismiss
Bill of exceptions for legal cause

Respectfully to Dept
in error.
11 Nov. 1852

State of Illinois }
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 appert-
aining 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
A D 1849

Samuel Copeland Clerk
By Isaac A. Pearce deputy

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

State of Illinois } ss.
Seizure } 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 $\frac{25}{100}$ besides
cost of suit as appears to us of records
and whereas the said judgement rem-
ains 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 or that he
he and appear on the first day of the
next Term of our Circuit Court to be hold-
en at the Court house in the Town of
Vincennes 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
our said Court shall then and there

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

Witness Samuel Copland Clerk of our
said court and judicial seal
thereof at Vienna this 16th day of
April 1849 Samuel Copland CM

Charles T. Jones

vs

John Bain

} writ of scire

} Executed by Reading and
Leaving a copy with the agin-

dant on the 18th day of April 1849.

Serving 50 and Returning 12 - - - 62^{1/2}

Basil S. Gray Sheriff

John Bain

vs

Charles T. Jones

} scire -

~~and the said defendant
comes and answers the wrong and inj-
ury whereof and for plea in the charge
saith that the said Charles T. Jones, plff
ought not to have and maintain his
action thereof again~~

~~and afterwards took at the May Term
of the Johnson Circuit Court the Honorable
William A. Dunning Presiding Judge~~

Appearance }

And after wards to wit
On Friday 18th May AD 1849
Term At the May term of the Johnson
Circuit Court AD 1849 the
Honorable William A. Denney
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 T. Jones 3 Dec. & a

And the said defend-
ant comes and defends the wrong
and injury, when it; and for
plea says in this behalf saith
that the said Charles T. Jones plff ought
not to have and maintain his action
thereof against him the said deft;
because he says that after the res-
toring of S. D. judgment in plffs dec-
laration 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 that
the said defendant is ready to
verify, wherefore he prays
judgment if the said plaintiff
accept to have or maintain his
said action thereof against him
of

J. Jack depts
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 I Jones
vs
John Davis } 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 therein above
pleaded are not sufficient in law

to bar him the said plaintiff and this
he is ready to verify wherefore he
prays Judgment of and for spe-
cial Causes of Demerit the said plff
shows 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 disjunc-
tive to the plff his assignees or agents,
4th There is no day of payment
named.

Thos. G. Davis
Atty for plff

Which said demerit was sustained for
with leave to dep't to amend his
plea, which was according down

Repli- The plaintiff then files his Repli-
cation to the defendants plea
in the words following to wit

Charles T. Jones
vs
John Bain } Serfa on
Judgment

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

\$550 or in the said sum 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 be the said Charles S. Jones may
may be enquired of by the County

defts Add
a sum of ten

Thos. G. C. Davis Atty
for plffs -

J. Jack
defts. Attorney

And afterwards
tried 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.
as G. C. Davis for the plain-
tiff and Leediah Jack
for the defendant and the
plaintiff by his counsel sum-
moned to the plea filed herein
which said summons was
sustained by the Court with
leave to amend the plea. Issue
being joined thereupon let a
jury come of twelve good and

Cauful men, To wit Christopher
Peterson, John Sumner, William
Buckanow, Henry Baggy,
John Kagaw, William Walker,
Nathan Rushing, Josiah
Thompson, John Harris,
Owen Peterson, John Bridges

James O'Neal, who being
elected true and sworn and
having the evidence on the part
of the plaintiff as well as that
of the defendant and argument
of counsel of Guttenner 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 plain-
tiff his costs and charges about
this suit in this behalf expended
and execution issued thereon.
H^c

Whereupon the plaintiff
moved the Court for a new
trial, which Motion was over-
ruled by the Court, to which
opinion of the Court the plff by
his counsel accepted 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 3

Be it remembered
that on the trial of the above styled
cause, the defendant offered in
evidence the following recovery.

"Wednesday 9th October 1844 Char-
les L Jones assignee of J W Sam-
forth vs John Bain Jr. On
this day came the plaintiff as well
the defendant in proper person,
who waived 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; all 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

of suit and may have execution
on the margin of which recovery
or judgment are the entries following
"Received on this judgment ~~\$20~~
fifty-five dollars this 1st Sept
1846 J Copland Clerk" "Paid on
this judgment \$30 and 11 cents this
18th June 1848 J Copland Clerk"
"Received twenty-five dollars on
this judgment this 12th July 1848
J Copland Clerk" "Satisfied decr
with 1846- J Copland Clerk", which
were read to the jury, the defendant
the 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 obtaining or rendition of
said judgment; That Bain the
defendant paid ~~the~~ the judgment
interest and ~~to~~ to him Copland.

That he corresponded with Thomas
before he witnessed payment
of the judgment. That Thomas
requested him (witness) to send
the number of certain land which
he Copland had offered for the

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 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 mo-
tion the Court overruled and
entered judgment for the de-
fendant 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. C. Sumner (Seal)

3
Supreme Court

Charles T. Jones
vs.

John Davis

~~Johnson~~
Error to ~~refuse~~

Filed 20th Nov. 1849

F. D. Preston
Clerk

Nov. 1857

Filed in the Northern District Circuit
Court at New York before the Honorable
William A. Burdett Judge
May Term 1857

Supreme Court Nov Term 1852.

Ch. F. Jones }
Jno. Davis }

Error to Johnson - On motion to strike out bill of
exceptions

S. S. Marshall being first duly sworn deposes and
says, that Tho. G. Davis the Atty for Jones in the Circuit
Court drew up a bill of exceptions in this cause at
the trial term, and having 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} to the suggestions of the
Judge - and again presented it for allowance, whereupon
the Judge suggested that it could be settled and al-
lowed 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 a-
bout 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. } These are the facts as I now
subscribed & sworn to before me } recollect them. I may possi-
this day of November 1852. } bly be somewhat mistaken in
} regard to some of the particulars.
} I know nothing about the signing
} or filing of the bill of exceptions.

Atk.

S. S. Marshall

Nov 2. 1852
Ch. F. Jones

John Bain

Affidavit of S. S. Marshall

Chas. J. Jones of the } In the Supreme Court of Ills
 of Danforth Co. } at Mt Vernon At November
 John Bain } 1851 Writ of Certiorari awarded
 by Supreme Court to said Plaintiff
 Clerk Circuit Court of Johnson
 Co.

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 by 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 ~~do the~~
~~best I could with~~ ^{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,

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 W^{ss}
of the land which I did. That Thomas
afterwards came on ^{having made arrangement to see Thomas} ~~to see me~~
and I went with him to make and
execute the ^{same}, when he refused
after ascertaining that one Fletcher
whom ~~Thomas~~ believed would buy
the land refused to do so, And
I further testified that I considered
myself authorized by virtue of con-
tract with Thomas to do all that
I did in relation to the Debt and
Judgment
H. Plana

State of Illinois }
Johnson County } On the 23rd day
of April A.D. 1852

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

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

Answer to writ
of Habeas Corpus
in Error

John Bain Dft
in Error

Answer to writ
of Habeas Corpus
and affidavit
of same Plaintiff
Chas. E. J. Esq.

Filed 11th day Nov.
A. D. 1857.

J. D. Burton, Clerk

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*, 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*, in said State, on the *2^d* 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 *John Bain* notice together with this writ.

Witness, the Hon. *Samuel H. Just* Chief

Justice of our said Court, and the seal thereof, at *Springfield*, this *12th* day *November* in the year of our Lord, one thousand eight hundred and

forty-fifty One

Fanny D. Preston
Clerk of the Supreme Court.

Supreme Court.

Charles T. Jones

Plaintiff in error,

vs.

John Barr

Defendant in error,

Scire Facias.

Filed. 20th November

1857

H. D. Preston, Clerk

served by sending to John Barr defendant
on the 14th the day of November 1857
for serving 50 \$
Miles 45
Return 10
R. J. Light Mpf. Jc

Charles T. Jones } Supreme Court
vs. } Mount Vernon Tr
John Barn } Norwich 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 required

Thos. G. Davis Secy. C. D.

Jones

Mr.

Bain

Cost Bond

Filed 12th Nov^r =
1857

F. D. Preston

OK

Charles J. Jones apptd by Supreme Court
vs
John Baird } Mt. Vernon
20 Nov. 1851

Tennant came before me I did not
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 ~~read~~
~~signed~~ and signed during the time at which
the cause was tried, nor as he believes at, or
during the session of the Circuit Court at any
subsequent time, Depoent believes from
what he has learned from the atty of the
Plff. 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 Depoent can not say as he was
not present and had no notice of the time
or place of signing it, that Depoent 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
Clerk, the only witness introduced on the trial
that the strength and materiality of his evidence
in respect to his being authorized by Plffs atty
to receive payment of said Judgt. and that
on which the cause was ~~rested~~ rested by the
Deft. before the Court and Jury in making
out his defence is left out and does

not appear in the Bill of exceptions, while some parts of the testimony purporting to have been given by witnesses in said Bill of exceptions was not given at all by the witnesses on the stand, ^{in the way or conveying the meaning as stated in the Bill} & Dependent ^{on} that witnesses testified that Thomas who resided in Indiana a lawyer who represented himself as the atty of Pugh sent to witness the note drawn by Bain and on which the original pdt. was conveyed by pdt in a letter, in which he requested Copland to proceed to obtain a pdt. to watch the circumstances of Bain, exercise a general supervision ^{over} of 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 pdt. by witness was negotiated & by which witness was to convey land on the River, for said pdt. That witness in pursuance of this arrangement rec'd payment of the pdt. ^{from pdt.} in property, principally ~~of~~ (I think stock of some kind) That after wards 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 one Fletcher 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 pdt.? Witness answered No, I never corresponded with Jones ~~so~~, or saw him, Witness said he was

authorized or consigned him to receive the payment and do all he did
do, in relation to the case by the Contract
he had with the Depts. atty and by virtue of
that authority, Deponent believes
witness 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 cause on
the part of Deft. on this ~~was~~ ~~the~~
~~other~~ ground, to wit That the Clerk
was not ex officio a receiving
officer, but at the same time the
Clerk might be authorized as any
other to receive it and left the
jury to decide ^{whether the jury} whether he was
so authorized ^{or not} by the proof -
Dependent Subscribed
before me this 20
Nov 1851

Jedidiah Jackson
att'y Pro Deft
in error.

Chas. S. Jones
apud

J. D. Bain

Motion to
dismiss cause

affidavit of
deputy atty,

Charles T. Innes

vs

John Bain

Error to Johnson

In this case Innes recovered judgment in the Johnson Circuit Court against Bain (def. in error)

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

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

Bain plead payment by plff. took issue
Trial by Jury

Plff. 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. Copeland, Clk."

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

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

which were read to the jury

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

Upon this evidence the jury returned a verdict for defendant.

The plff. 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 overruled by judgment for defendant. to which overruling plaintiff 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 J. Jones

vs

Plsda

Abstract

John Bain

James apes d
W. P. Davis

Supreme Court Mt. Vernon
21st Nov. 1857

Memo to Johnson County

And now to wit - the 23rd day of Nov. 1857
Pursuance came before me Sididiah Sacks
att. Geo. Sept. in error, 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 anything
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
recollections 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 att. of Sept 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 Massac 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 Massac term aforesaid J. S. Davis
Esq. att. invited deponent into his private
room in the Metropolis house where saw

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, on which he said Davis partially
intertined what this Deponent suggested
but this Bill contains no part of what was
there interlined Deponent after said interlin-
cation 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 Clerk's 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 exhibited to
His Honor Judge Sumner 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 exhibited 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 Memphis he
has referred to,

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

Samuel D. Preston, Clerk,
Circuit Court

Jedidiah Jack,

Jones Emor
Bain } To Johnson

Affidavit of
the atty of the
Dept. in Emor,

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

Jones vs. Phipps in Error } Supreme Court Wt. Vernon
18 } Nov. term A.D. 1852
John Bain Sept }

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. Brawns 4 " 443
Dechlet vs. Durrell 11 Ill R 72

"A Bill of exceptions should be drawn up tentatively 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 nonne 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 indubium of the agreement by writing filed, or by an entry on the Records of the Court."

C. J. Jones & Co
to
John Bain

Motion to ex-
clude Bill
of exceptions
fr. Record

Authorities in
Support of

Charles T. Jones
apptd. Mist
in error

is

John Bain
Dipt in error

Supreme Ct. Mt. Vernon
Nov term 1852

Error to Johnson Co,

To the Plaintiff, his agents
or attys, Sirs, 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 2^d

Because the Bill of exceptions does not con-
tain a true & correct statement of the evidence
given on the trial; but in all material parts
presents 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 2^d ground above mentioned
I will produce the answer of Saml
Copland Clerk to a Citation directed to
him; as also his affidavit taken before
Judge Denning establishing the facts
stated in the 2^d ground above mentioned

J. H. K. atty. for
Dipt in error
11 Nov. 1852

True apu

3

Bain

Notice to
putt course

Filed 11th Nov 52

A. D. Huston, Clerk

Charles T Jones
vs
John Bain } Error to Johnson

In this case Jones
recovered judgment in the Johnson Circuit
Court against Bain (sett. 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 facis issued on this judgment for
Bain to show cause why execution should
not issue

Bain pleads payment & plff took
issue Trial by Jury

Plff. reads in evidence the order book
showing 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
plff., sent him the note - witness never
corresponded with plff. - was not authorized
by plff. or Thomas, to receive payment
and satisfy said judgment

Upon this evidence the jury returned
a verdict for defendant

The plff. 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 overruled by judgment for defendant - to which overruling plaintiff 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

John Bain

Abstract

Abstract

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

In this case Jones Recovered judgment in the Johnson Circuit Court against Bain (def't 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 show cause why execution should not issue

Bain plead payment & plff took issue Trial by Jury

Plff. read in evidence the order book showing 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

Def't then introduced the clerk as a witness - who stated that one Thomas who resided in Indiana, and claimed to be atty for plff, sent him the note - witness never corresponded with plff - was not authorized by Plff or Thomas to receive payment and satisfy said judgment.

Upon this evidence the jury returned a verdict for defendant.

The plff 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 overruled & judgment for Defendant.
- to which overruling plff 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
 - 3^d And in giving final judgment in favor of the said John Bain,

Chas. J. James } Supreme Court Mt. Vernon
Plff in Error } Nov. term 1852
C } Error to Johnson Co

John Bain

Def in Error

To the Plff his agents or
Attys, &c. Sir, I herewith

furnish with a copy of the Certificate of the
Hon W. A. Denney 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 alluded to in the notice heretofore
given you of my intention to move to ex-
clude said Bill from the Record & files
Respectfully

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 J. James 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 on the stage for Me-
tropolis; & 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
Metropolis; but what I do not now recollect. So all
of which to the best of my recollection I hereby certify

W. A. Denney Judge of the
Johnson Circuit Court

This certificate, the affidavit of the Circuit Clerk
Saml O'Connell, and another affidavit of my
own an file, all of which I have furnished
you. constitute the ground of the motion of which
I have notified you

Respectfully yours &
Thos K. atty Pro
Sept in Error

Charles T. Jones
Att'y at Law

B

Sam O'Connell
Sept in Error

Copy of certificate
of judges during
the

Charles T. Jones } Supreme Court
appears } Mr. Bernard 20 Nov.
1854

John Bain
Dist in Error

Left in Error by his

atly. I did not know moves the
Court to dismiss the above cause
& regret the record from the files
as copy of bill in error
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

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

3d That the evidence is not set
out in the said Bill as it
was given in Court, material
parts establishing Dist's defense
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 Dist in error.

Record shows as was the case, that no
exception was taken until after final
judgment in the cause. - Black 914

5. de la. command dist to
appear at a term begins
to be a day past before
the writ was granted

4th

Supreme Court

Charles T. Jones

vs.

John Davis

Motion

Filed the 20th
November, 1851

Charles I Jones,
vs
John Bain

In Supreme Court
November Term 1849

We certify ourselves security
for costs on this cause and acknowledge
ye 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 offi-
cers of this Court in pursuance of the
laws of this State Dated this 19th Novr
1849

Thos S. Davis

Charles J Jones

vs

John Bain

Cast bond.

N

Filed 20th Nov. 1849

H. D. Preston
Clerk

to Jones against } Supreme Court
John Bain } Points & authorities &

1st Bill of exceptions on motion allowed to be amended by the Judge who tried the cause by placing his seal there to after 2^d Judge was out of office vide Wiley versus Bean 1 Gil, 185-

2^d 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 v. Ward, 2 Gil, 293 & 94,

3^d 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 v. Beane 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 none pro tunc In all cases it should appear on its face that it was taken & signed at the trial - Ware v. Fisher 5 Gil, 453. Treat Justice

5th Same Rule held

6th In Dicket vs. Harrell 11 Ill. Rep. Page 72 Justice Mumford

7th
" Bill must be signed & taken at the trial or if afterwards
induced to form & signed it must be signed none no
time Law as Merrill & 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 4 1st Sess 252
& Swafford vs Governor same vol, 165

9th " Receptions must be taken before the
 Snow is discharged. - Swafford & Davenon
 & ~~Swafford~~ Seam, 1605,

James M
a
Davis
Mother and
the deacons
authorities
liter
in support
of mission
8676

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 plaintiff commenced writing the bill of exceptions, but before he finished it was compelled to leave ~~the~~ in the stage for Metropolis, and I think got Judge Marshall either to write a new one, or finish the one which ~~was~~ 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 Eastern Circuit Court

Benton Ills
Nov 6th 1853

Mr John Bain

Friend
V. Lly

5

Supreme Court

C. T. Jones

No 1

150

Charles S. Jones

v

John Bain

8676

Error to Massac

Bills of Exception

Excluded

Cause dismissed
by agreement