

Jesse B. Thomas Jr.
1843-1845, 1847-1848

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The nephew of U.S. Senator from Illinois Jesse Burgess Thomas, Supreme Court

Justice Jesse Burgess Thomas Jr. was born in Lebanon, Ohio on July 31, 1806, the



second son of Richard Symmes and Frances Pattie Thomas, young Jesse graduated from Transylvania University in Kentucky in 1828. He moved at his uncle's invitation to Edwardsville and was admitted to the Illinois bar.¹

On February 18, 1830, Thomas married Adeline Clarissa Smith, daughter of Illinois Supreme Court Justice Theophilus W. Smith. They became the parents of four sons and six

daughters.² Later in 1830, legislators elected Thomas as Secretary of the Senate, and he served a second term in 1832.

In 1834, as a Whig candidate, he won election as a Madison County Representative to the General Assembly, "but was at no time considered a pernicious partisan," wrote historian John Francis Snyder; "his conservatism and moderation in politics being probably in deference to his illustrious father-in-law, who was one of the prominent leaders of the democratic party in Illinois."³

Thomas resigned from the legislature in 1835 to succeed Ninian W. Edwards as Illinois Attorney General, but a year later resigned that position to again become

Secretary of the Senate. “In that era,” explained Snyder, “the Attorney Generalship of Illinois was not the exalted and important position it is now considered to be, and almost every incumbent of it resigned just as soon as he could get into any other place, even one of as little consequence as Secretary of the Senate.”⁴ After legislators in 1837 elected Thomas judge of the First Judicial Circuit, he and his family moved to Springfield. Serving on the bench for nineteen months, “he became tired of the routine drudgery of the circuit” and resigned to resume his law practice.

In August 1843, Governor Thomas Ford appointed Thomas to the Illinois Supreme Court, succeeding newly elected U.S. Congressman Stephen A. Douglas. Thomas also presided over the nine-county western Illinois Fifth Judicial Circuit. In the 1843 *Sarah v. Borders* case, Thomas joined fellow Supreme Court justice Walter B. Scates in affirming a circuit court ruling that favored Randolph County resident Andrew Borders against one of his Negro indentured servants, Sarah. After her escape from Borders, “a man well known for his cruelty and rapacity,” a justice of the peace declared her freedom, but Borders’ lawyer immediately appealed the case.⁵ Both Scates and Thomas cited Territorial acts as well as the state Constitution in upholding the lower court decision. “The Constitution of our State recognizes the indentures under consideration, as valid and binding contracts,” Thomas wrote.⁶

“This decision excited much criticism throughout the State,” reported historian N. Dwight Harris, “especially from the antislavery men. The Court was accused of corruption, and of subserviency to the slave power, and its opinion was a matter of great disappointment to many who had earnestly hoped that the Court would declare the holding of Negro indentured servants illegal.”⁷

In 1844, Thomas heard a circuit court case involving Mormon prophet Joseph Smith. This case was the first in a series of events that led to Smith's murder. After several of Smith's followers destroyed the newly established anti-Mormon newspaper, the *Nauvoo Expositor*, a justice of the peace in the Hancock County seat of Carthage issued arrest warrants for Smith and his associates. Smith obtained a writ of habeas corpus to have the case brought before a Nauvoo, rather than the Carthage, justice of the peace. The Nauvoo court, according to Mormon historian Dallin H. Oaks, decided that Smith had acted under proper authority in destroying the *Expositor* and rendered his arrest "a malicious prosecution." The decision infuriated non-Mormons, and rumors of mobs organizing to destroy Nauvoo caused Smith to place the city under martial law.⁸

Non-Mormon Nauvoo authorities, doubting the legality of the court's action and reacting to the rising anti-Mormon hostility, asked the opinion of Justice Thomas, the presiding judge in that judicial circuit. Thomas advised that, "in order to satisfy the people," the defendants be retried before a non-Mormon magistrate. In the second trial, the non-Mormon justice of the peace heard numerous prosecution and defense witnesses and counsel before issuing a judgment of acquittal. That decision led to reports of anti-Mormon mobs forming around Nauvoo. Illinois Governor Thomas Ford intervened, declaring that only a trial before the Carthage justice of the peace who issued the original writ would "vindicate the dignity of violated law and allay the just excitement of the people."⁹

On June 25, Smith and his brother Hyrum voluntarily surrendered to the constable who had attempted to bring them to Carthage on the original riot warrant. Almost immediately, they were arrested on a charge of treason against the state for having

declared martial law in Nauvoo. Two days later, an anti-Mormon mob overpowered the jail guards and murdered the brothers.¹⁰

Thomas resigning from the Supreme Court in August 1845 and moved to Chicago to open a law practice. In January 1847, he was again elected to the Supreme Court, replacing Richard M. Young and presiding over the Seventh Judicial Circuit. Upon sitting on the Supreme Court, Thomas and his fellow justices heard *Garrett v. Stevenson et al.*, involving a labor contract. In 1839, Augustus Garrett had hired Andrew Stevenson and Orin Wardwell to construct a house, but when Garrett failed to pay the amount due the contractors sued to place a mechanic's lien on the property. Losing a circuit court decision on grounds that Garrett had not commenced the suit within the time frame required by an 1833 law, his attorney Abraham Lincoln appealed to the Supreme Court. In upholding the circuit court decision, Justice Thomas cited a later law that revoked the time limitation for initiating a suit.¹¹

In 1848, when the new state Constitution provided for the election of only three justices, Thomas did not seek retention. That same year, he formed a partnership with Patrick Ballingall, "a criminal lawyer of considerable local repute" in Chicago, reported historian John M. Palmer.¹² Thomas died in the city on February 21, 1850, at the age of forty-three, and was buried in Chicago's City Cemetery, but later his body was transferred to Rosehill Cemetery.¹³

Jesse B. Thomas Jr. Papers: Abraham Lincoln Presidential Library & Museum, Springfield, Illinois.

¹ J. F. Snyder, "Forgotten Statesmen of Illinois: Jesse Burgess Thomas, Jr.," *Transactions of the Illinois State Historical Society*, 1904, 523.

² John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 177.

³ Snyder, 523.

⁴ Snyder, 523-24; Palmer, 177.

⁵ N. Dwight Harris, *The History of Negro Servitude in Illinois and of the Slavery Agitation in That State, 1719-1864* (1904, rpt. Ann Arbor, MI: University Microfilms, 1968), 106-08.

⁶ *Sarah v. Borders*, 5 Ill. (4 Scammon) 341 (1843).

⁷ Harris, 108-09.

⁸ Dallin H. Oaks, "The Suppression of the *Nauvoo Expositor*," *Utah Law Review* (1964), 862, 864-65.

⁹ Oaks, 865, 866.

¹⁰ Oaks, 866, 868; Theodore Calvin Pease, *The Frontier State, 1818-1848* (1918, rpt. Urbana: University of Illinois Press, 1987), 352.

¹¹ *Garrett v. Stevenson et al.*, 8 Ill. (3 Gilman) 261 (1846); Susan Krause and Daniel W. Stowell, *Judging Lincoln; The Bench in Lincoln's Illinois* (rev. ed., Springfield: Illinois Historic Preservation Agency, 2008), 61.

¹² Palmer, 44.

¹³ *Chicago Daily Democrat*, 22 February 1850, 2.