

W. & Co. Bookbinders

State of Tennessee
Montgomery Circuit Court I Peter Nellan Clerk
of our said Court do hereby certify that the foregoing
is a true transcript of the record in the case Philip
Mason Exr & Susan Mason Executrix of Samuel
Mason decd against Peter Nellan & G. W. Sellers
as the same remains of Record in my office In testimony
whereof I have hereto set my hand & private
seal having no other official seal, at office in
Clarksville this 3 day of April 1828 & 52nd
year of the Independence of the United States

P. Nellan Clk

George W. Bellon } in the record & proceedings of the
in the record & proceedings of the
judgment of judgment thereon
there is manifest error in this that from
2d record & proceedings judgment should
have been given per the 2d ^{judgment} where in
judgment is given per ^{judgment} ~~judgment~~
The judgment in which the debt is brought
is good & binding & conclusive between
the parties in this suit. After other proofs
afforded to judgment should be ~~judgment~~
reversed. The proper measure of damages on the
note paid me is the nominal amount thereof &
interest thereon from the time it fell due, & not
the value of the bank note now common in this
State at that time. Page 2600 & 9.8

that the measure of damages for the breach of the
obligation sued on was the nominal amount of said
obligation, or \$1533.33 1/3. & interest thereon from the
time the same became due & payable, but the court
refused to instruct the Jury, but instructed them that
the measure of damages was the specie value of such
bank notes as were most abundant in the country
& generally used as a medium of exchange & perhaps
Tennessee bank notes might or would be found to
answer that description, that value with the interest
should be given in damages. After the Jury rendered
their Verdict & before any Judgment pronounced thereon
by the Court, the Defendants moved the Court for an
appeal to the Supreme Court at Nashville & the Pliffs
stated they wished to appeal to the Supreme Court at
Nashville ^{& Pliffs stated they wished to appeal to Knoxville} and after the rendition of the Verdict &
on the same day to wit Saturday the Judgment
on said Verdict was entered on the minutes of the Court
and the Defendant immediately gave his bond & security
& the appeal was granted, the minutes of the Court not
being signed, The Plaintiff moved the Court to set aside
said Verdict & grant them a new trial, whereupon
Defendants by attorney offered to consent to a new trial
& the Plaintiffs attorney stated that they did not wish
a new trial unless they had some assurance that upon
a future trial the Court would instruct the Jury
differently as to the measure of damages, to wit, that
the measure of damages is as insisted on by the Plaintiffs
attorney whereupon the Defendant D. N. Adams in person
& the Defendants attorney offered to consent to said new
trial on said terms, The Plaintiffs not consenting, the
Court overruled the motion, The Plaintiffs insisted
on the opinion & decision of the Court, who overruled
the motion for a new trial, To which several oaths,
and opinions of the Court the Plaintiffs by their
council except, & pray this their Bill to be signed noted & made
a part of the record which is done.

J. W. Humphrey

Know all men by Presents That
we Peter Stellan & Johnson William H. Allen Richard
Daly & Mortimer & A. Statten all of Montgomery County
are held & bound unto Phillip Mason & Susan Mason
Eors in the penal sum of Three thousand two hundred
& eighty four dollars & Six Cents, for the true payment
whereof, we bind ourselves, our heirs Executors & assigns
&c. given under our hands & seals this 13th day of Fe-
bruary 1828.

The condition of the above obligation
is such, That whereas the aforesaid Eors of Samuel
Mason did hath this day obtained a Judgment in
the Circuit Court of Montgomery County against
Peter Stellan & George W. L. & their Sureties
in appeal and the said Defendants having prayed
an appeal in the nature of a writ of Error to the
Supreme Court at Nashville, now if the said
Defendants do with effect prosecute their said
Appeal, or in case of failure therein, shall pay

as said Supreme Court may make in the premis
then this obligation to be void, otherwise to remain
in full force & effect, given under our hands
& seals the day & date above written.

P. Stellan

W. H. Johnson

Wm. H. Allen

R. Daly

M. A. Mortimer

Know all men by their presents That
we Phillip Mason & Susan Mason Eors of Samu-
el Mason did are jointly bound & indebted to Peter
Stellan in the penal sum of Two thousand dollars for
the true payment whereof we bind ourselves our heirs Eors

I was before the honorable Parry
W. Humphrey Esquire Judge of the Fifth
Judicial Circuit of the State of Tennessee & for
the County of Montgomery at the Court house
in the town of Clarksville on the Third Monday
in February 1828 & 52nd year of the Independence
of the United States.

Be it remembered that hereupon
brought on the first day of February 1827. a
transcript of a record was filed in the Clerk's of-
fice of the Circuit Court for Montgomery County, in
the words & figures following to-wit.

State of Tennessee
At a Court of Pleas Quarter Sessions continued
& held for the County of Montgomery at the Court
house in the town of Clarksville on the Third
Monday in April 1826

Present Valentine Allen
Edward J. Walton Esquire
A. M. Bagwell Justices

A writ was returned in the following words & fig-
ures to-wit.

State of Tennessee
To the Sheriff of Montgomery County Greeting.
You are hereby commanded to take the bodies
of Peter M. Mason & George W. L. Mason & them
safely keep so that you have their bodies before
the Justices of our County Court of Pleas & Quarter
Sessions to be holden for the County of Montgomery
at the Court house in the town of Clarksville on
the Third Monday in April next, then &
there to answer Susan A. Mason Executrix and
Philip A. Mason Executor of the last will
& Testament of Samuel A. Mason deceased.

in a plea of Covenant broken to their damage
two thousand dollars, herein said not, and have then
shewn this writ. Witness Ananias Jones Clerk of
our said Court at office in the town of Clarksville the
third Monday in January 1826
I Ananias Jones
Signed 25th February 1826

I acknowledge myself the Plaintiff's security in the
sum of Two hundred & fifty dollars for the faithful
prosecution of the within suit, witness my hand
& seal this 25th day of February 1826 J. H. Cook
Ordained, came to hand and executed on George
W. L. Mason same day of issue. Executed on Peter N.
Mason 1st day of April 1826 C. Crissman Shff

The Plaintiff by attorney J. H. Cook files
the following declaration to wit.

State of Tennessee
Montgomery County April Term 1826

Susan Mason Executrix & Philip
Mason Executor of the last will & Testament of
of Samuel Mason dec'd by attorney complains of
Peter N. Mason & George W. L. Mason in a plea of breach
of covenant, for that whereas the said Peter N. Mason &
George W. L. Mason on the 30th day of September 1818
at the county aforesaid, by their certain deed & that
deed here to the Court shewn, covenanted with one
Samuel Mason dec'd in his lifetime to pay her
thirty six months after date, thirteen hundred thirty
three & one third dollars, in current bank notes
for value received, and the said Susan Mason Executrix
& Philip Mason Executor of the last will & Testament
of Samuel Mason dec'd in fact oath, that the said
Peter N. & G. W. L. Mason, although often requested so to do
have not kept their said covenant with the said

Samuel Mason died in his life time, nor has the said W^m
H. W. Mason kept their said covenant aforesaid with
the said Susan Execution & Phillip Executor of the last
will & testament of Samuel Mason decd, so by them
made as aforesaid, but hath broken the same, & to
keep the same with the said Susan Execution &
Phillip Executor as aforesaid, Lth he thereto wholly
neglected & refused & still doth neglect & refuse to
the damage of the said Susan Mason Execution
& Phillip Mason Executor as aforesaid two thousand
dollars & therefore they bring their suit. And they
bring into Court here the letters testamentary of the
said Samuel Mason decd by which it appears to
the Court here that the said Susan Mason is the
Executrix & Phillip Mason Executor of the last will
& Testament of Samuel Mason decd & hath the exe-
cution thereof

J^y H. Cook Att^y

Mason & Mason

3

Mason & Mason vs &c And the said Peter &
Mason & the said George W. L. Mason by their attornies
come & defend the wrong & injury wherein &c and say
the said declaration & the matters therein contained
in manner and form as the same are above stated
& set forth are not sufficient in law for the said
Plaintiffs to have & maintain their action thereof
aforesaid; against them the said Peter & George
and that they the said Peter & George are not bound
by the laws of the land to answer the same, and
this they are ready to verify, wherefore for want of
a sufficient declaration in this behalf, the said
Peter & George pray Judgment, & that the said
Phillip & Susan Executors may be barred from having
& maintaining their action against them, the said
dependants of

Defendants according to form of the Statutes in such
case made & provided, state & shew to the court here the follow-
ing causes of the demurrer to the declaration, 1st For that
the Plaintiffs hath not brought the said supposed cove-
nant or, wrighting obligatory, upon which said action
is founded, into Court, or made any proper protest thereof
And because the said Defendants in the manner the
said supposed deed of covenant covenant is above
pleaded cannot have any of the same, so that they
might know whether it is or is not the deed of the
said Defendants, and because it does not appear
from the said Declaration, whether the said supposed
deed of covenant is destroyed, or whether it does not
still exist, and is only lost or mislaid.

2nd That the breach alleged is not commensurate
with covenant. 3rd That the covenant made
commensurate with the breach. 4th That the
declaration is in other respects informal and
uncertain. And the Defendants in this behalf
craves aver of the Plaintiffs letters Testamentary,
which is read to them in the words & figures
following Court of Tennessee

Robertson County. Whereas
appears to the court here that Samuel Mason
late of said County is dead, & hath made his
last will & Testament in wrighting in which
he hath appointed Susan Mason Executor and
Phillip Mason Executor to the same, which Will hath
been exhibited unto Court and proven as the law
directs it is therefore ordered by the said Court, that
letters Testamentary of all and singular the goods and
chattels rights and credits of the said ~~decd~~ ^{issue to}
Phillip Mason ^{he having been qualified agreeable to law} to enter into and upon all and
singular the goods and chattels rights and credits
of the said Samuel Mason decd, & the same into
your possession take, wheresoever the same may be found
and a true & perfect inventory thereof to make & return 8

into our ensuing Court, and the first debts of the said
Samuel Mason due to pay, and also well & truly pay to
deliver all the legacies contained & specified in the said
testament as far as the said goods, chattels & credits
will thereto extend and the law charges. Witness William
Seal Clerk of our said Court at the office the second
Monday in November 1824 and in the 49 year of our
Independence.

Wm Seal Clerk

To which Defendants also Demur and state
shew to the Court the following cause. 1st That the
letters Testamentary are granted to Phillip Mason alone
and that the said Susan ought not to be joined in
the action.

Mason for Defts

Spencer in Demurer J. H. Cook pliffs Attor.

And now at the July Term 1826 the following
proceedings thereon, to wit.

Present Charles Bailey Esquires
Francis Carter Esquires
N. M. Bagwell Justices

Susan & Phillip Mason Exrs

¹³
Peter & Ellen of George W. L. Cotton Esquires
Bouenant
Broken

This day came the parties
by their attorneys, and thereupon all the matters
& things arising in law upon the Defendants
demurer to the Plaintiffs declaration, being argued
and by the Court here fully understood, It is considered
by the Court that the same be overruled, and that the Pliffs
recover of the Defendants, the damages sustained by
reason of the same, but because the damages cannot
now be ascertained, It is Ordered by the Court that
a writ of enquiry be awarded, and that a jury of good &
lawful men come here at the next Term of this Court to en-
quire of the same.

And now at the October Term 1826 the following proceedings were had thereon to-wit,

Present N. M. Bagwell Esquire
Edward S. Waller Esquire
Thomas Smith Justice

Susan & Phillip Mason Executors of Samuel Mason dec'd. 13 Covenant

Peter & John & George W. L. Mann Broken

This day came the parties by their Attorneys and thereupon came a Jury of good & lawful men to-wit, James W. Caraway, Willis Morgan, James McCaughan, Daniel Hudson, William Stewart, George H. Burris, William Mann, Jonas Heskins, Jesse Bailey, John Rudolph, Thomas O'garn and James O'Donally, who being duly elected & tried & sworn, well & truly to assess the Plaintiffs damages, upon their oaths do say, that the Plaintiffs hath sustained damages to the amount of One thousand seven hundred & thirty six dollars & fifty cents besides costs, by reason of the non performance of the covenants in the Plaintiffs declaration mentioned. It is therefore considered by the Court that the Plaintiffs recover of the said Defendants said sum of One thousand seven hundred & thirty six dollars & fifty cents the damages aforesaid in form aforesaid & also their costs by them about this suit in this behalf expended.

Susan Mason & Phillip Mason Executors of Samuel Mason dec'd 13 Covenant

Peter & John & George W. L. Mann Broken

This day came the Defendants by attorney, and pray for and obtained an appeal to the circuit Court of Montgomery County & having entered into bond & Security satisfactory to the Court the same is allowed, State of Tennessee & Andrew Vance Clerk of the Montgomery County Court of Pleas & Quarter Sessions 10

for the County of ~~over~~ ^{over} ~~and~~ ^{and} hereby certify
that the foregoing copy of the proceedings, had in
this suit, Susan Mason Executrix & Phillip Mason
Executors of Samuel Mason Deed against Peter A. ~~Mason~~
& George W. L. ~~Mason~~, is truly taken from the original records
as is filed in said Clerk's office. In testimony whereof
I have hereunto set my hand and affixed the seal of
said County at office in the town of Clarksville
the 4th day of January 1827 A. Vance Clerk

Costs on said suit are as follows to wit

State Tax 16 2 1/2	County Tax 100	\$ 2.62 1/2
Clerk's fee		4.92 1/2
Thurff & blum ^{man}		2 1/2
J. H. Cook		2 50
Transcript & seal		16.22 1/2
		13 78 1/2

Know all men by these presents that we the
Peter A. ~~Mason~~ & George W. L. ~~Mason~~ James B. Reynolds & Johnson
& Nathaniel H. Allen of the County of Montgomery
& State of Tennessee are held & firmly bound unto Susan
Mason Executrix & Phillip Mason Executors of Samuel
Mason deceased in the sum of thirty four hundred and
thirty current money of said State to be paid unto or
Susan Mason & Phillip Mason Executors or appointed
certain attorney heirs Executors Administrators or assigns
which payment well & truly to be made & done. We bind
ourselves our heirs Executors Administrators &c. jointly
& severally & firmly by these presents, sealed with our
seals & dated the 9th day of October 1826.

The condition of the above obligation is such
that whereas in an action of Covenant broken
prosecuted in the Court of Pleas & Quarter Sessions for
Montgomery County, by Susan Mason & Phillip Mason
Executors of Samuel Mason Plaintiffs against said
Peter A. ~~Mason~~ & George W. L. ~~Mason~~ Defendants
a Judgment was this day rendered by the said Court
against said Peter A. ~~Mason~~ & George W. L. ~~Mason~~ for One
thousand seven hundred & thirty six dollars & seventy cents
from which said Judgment, the said Peter A. ~~Mason~~

George W. Lollar hath prayed an appeal to the next Circuit Court to be holden for the County of Montgomery, Now if the said Peter Kellan & George W. Lollar shall prosecute said appeal with effect or in case of failure therein, shall perform the Judgment sentence or decree that said Court may make therein then this obligation to be void, null of full force & effect, Signed & sealed & delivered the day & date above written

Acknowledged in open Court

Cur. J. Walton

Term 1825

D. M. Rice
C. H. Pellan Esq
C. Crisman Esq
James B. Reynolds Esq
C. Johnson Esq
M. H. C. H. Esq

And now at the February term of the Circuit Court 1827 the following proceedings were had thereon

Samuel Masons Executors

¹³ Peter Kellan & George W. Lollar ¹⁴ Covenants Appeals.

This day came the parties by their attorneys, and thereupon solemn argument being had, upon all & singular the matters & things arising upon the Defendants Demures to the Plaintiffs declaration and by the Court here fully understood, because it seems to the Court here that there is no sufficient proof of the Debt of Covenants in Plaintiffs Declaration, it is considered by the Court here that Defendant Demures to Plaintiffs Declaration be for that cause sustained, and overruled as to the balance of the causes specified: It is also considered by the Court that the errors upon record were want of proper parties be overruled & leave is hereby granted the Plaintiff upon application to amend his Declaration, & that the Plaintiff pay the costs of the amendment.

Covenant Declaration

Mason Es 3 Feb 1827
3 And the said Peter & William &
Mason & George H. Wallard by attorney
come & defend the wrong & injury when to say
that they are not bound by the laws of the country
to answer said Plaintiffs amended Declaration
wherefore for want of a sufficient declaration in this
behalf they pray judgment & the
causes of Demurrer assigned according to the form
of the statute in such case made & provided.

1. Declaration does not shew a cause of action.
2. No profit is made of the covenant on which
suit is brought.

Martin for Deft

Verdict in Demurrer H. Cook attor for Pl

Phillip & Susan Mason Es 3 August Term 1827
Es of Samuel Mason decd Demurrer

3 Peter & William & George H. Wallard This day came
parties by their attor
neys and thereupon all & singular the matters of law
arising upon Defendants demurrer to said Plaintiffs
amended Declaration being inspected seen & by the
Court here fully understood, it is ordered by the Court
here that the Demurrer be overruled, and that a writ of Capias
be awarded at the next term of this Court.

Susan & Phillip Mason Es 3 February Term 1828
of Samuel Mason decd. Covenant broken

3 Peter & William & George H. Wallard This day came the parties
by their attorneys and thereupon came a jury of good &
lawful men to wit John Locke, James Grant, Nath
Humphrey, Willie Bagwell, William & David Peter &
Roberts, Isaac L. Watkins, Francis Carter, Solomon & Neville

David Huth John Keneval & Joseph Barrows

who being duly elected by a & sworn well & truly to enquire into and assess the damages in this case, and by consent of the parties with the assent of the court this Jury are permitted to disperse, & this cause & Jury are adjourned until tomorrow morning nine o'clock.

Phillip Mason & Susan Mason Plaintiffs
of James Mason Decd. Covenant
3 Peter Bellan & George P. Bellan 4 C. Appeal

This day came again into Court here the parties appeared by their attorneys and thereupon came again also the Jury sworn and sworn in this cause, who upon their oaths do say that they find for the Plaintiffs and assess their damages to fifteen hundred & forty two dollars & three cents besides their costs. It is thereupon considered by the Court here that the said Plaintiffs recover of the said Peter N. Mann & George W. L. Mann and on motion against C. H. P. Mann, Benjamin Cramer, James B. Reynolds, C. Johnson & Nathaniel H. Allen their security in Appeal the said sum of five thousand five hundred & forty two dollars & three cents, the damages assessed by the Jury in form aforesaid assessed and also their costs by them about their suit in this behalf expended & the Defendants in moneys.

Whereupon the Defendants by their Council prayed an Appeal in the nature of a writ of Error to the Supreme Court of the State of Tennessee at Nashville to be holden on the first Monday in January next, & having entered into bond & security satisfactory to the Court the same is allowed.

Susan & Phillip Mason Cons

G. W. L. Mann & Peter N. Mann 3 This day came the Plaintiffs by attorneys & moved the Court for a new trial, upon the grounds of misdirection of the Court in its charge to the Jury. Whereupon all and singular the matters things by the Plaintiffs alleged for a new trial being read by the Court and 14

argument had thereon it is contained by the Court. the
said motion be overruled, whereupon the Plaintiffs pray
an appeal in the nature of a writ of Error to the
Supreme Court at Reynoldsburgh, & having entered into
into bond & security agreeable to law the same is
allowed.

Samuel Mason Esq

P. N. Man & G. W. Lellan

Be it remembered that
upon the rendition of a verdict in this case, to-wit, on Friday
25th of February 1828, the Defendants prayed an Appeal
to the Supreme Court at Reynoldsburgh & entered into Bond
& Security on the same day and the said Appeal allowed
the said Plaintiffs claiming the right of appearing to
the Supreme Court at Reynoldsburgh, and afterwards
to-wit, on Monday the 28th of February 1828, the said
Plaintiffs moved the Court to set aside the verdict & grant
them a new trial, to which the said Defendants in open
Court agreed and the said Plaintiffs by their counsel ob-
jected to the same, unless the Court would instruct the
jury differently as to the true measure of damages on the
next trial of said cause, and thereupon the said Defendants
by their attorneys and P. N. Man personally in Court
consented that a new trial should be granted, & instructions
given at the next term of the Court, that the measure
of damages was the nominal amount of the note, which
was also objected to on the part of the Plaintiffs of the
Plaintiffs: unless by Mr Lellan the other Defendant would
in person consent to such instruction, who was not present in
person & the said Court overruled the motion for a
new trial, and thereupon the said Plaintiffs prayed
an appeal to the Supreme Court at Reynoldsburgh
to all which the Defendants except & pray that the
same may be signed sealed & made a part of the record
and the same is allowed.

P. N. Humphreys

Administrators & assigns (sealed with our seal & da-
ted this 23rd day of February 1878. The conditions of
the above obligation is such that whereas the said
Executors of Samuel Mason did obtain a Judgment
against Peter Stellan & George W. Bellan in the
Circuit Court for Montgomery County for the sum
of One thousand six hundred & forty two dollars
& three cents, and whereas the said Plaintiffs are
dissatisfied with the aforesaid Judgment, they may
appeal to the
though an appeal has heretofore been prayed to the
Supreme Court at Nashville. Now if the said
Plaintiffs do with effect prosecute their said appeal
or in case of failure therein shall well & truly pay
satisfy & discharge such order sentence or decree
as said Supreme Court may make in the premises
then this bond to be void, given under our hands
& seals the day & date above written.

Philly. Mason & Co.

Costs in Circuit Court are as follows

State Tax 25 1860 25

Shiff Court & Jury

Costs in County Court

\$4.45
16
\$4.81
1378
\$1.859
J. W. Man

1855
Received

of Samuel. Mason

Shawmut

W. H. Wood

G. W. H. Wood

W. H. Wood

1855

Shawmut

W. H. Wood

No. 0

of Samuel. Mason

S. & P. Mason abusers. A claim of covenant ~~for the~~
21 Brief ~~upon~~ upon a bill single payable
P. & G. W. & L. Mason in current bank notes -
Demurrer overruled & damages

appealed by the jury & judgment appeal by
Mason to this court & by Mason to Reynoldsburg
At Reynoldsburg this court determined Mason's
appeal was void & struck the case from the docket

The appeal by the Mason was for delay -
& to prevent ~~it~~ from appealing to Reynoldsburg.
They have had that advantage -

The new writ the judgment affirmed
with 12% per cent interest.

There is no prejudice of error
to the injury of appellants or any
it is to the injury of appellee. The bill
of exceptions shows a great anxiety for delay.

Pro. & Co. for
an Error -

Masons a day

or 3 Brief
the Masons

Susan & Philip Mason Esq.

By
P. H. Mason Esq.

} Defs statement

Action of Covenant - jury verdict agt. Defendants &
appeal to the Supreme Court at Nashville by Defendants -
applications by plffs for a new trial which Defs. counsel & one
of the Defendants offered to grant which appellant refused
motion overruled and an appeal by plffs to the Supreme Court
at Reynoldsburgh
Defds insist that after the appeal of Defendants
to Nashville, the Circuit Court had no jurisdiction to grant an appeal
to plffs at Reynoldsburgh
Defds insist that the Circuit Court should have
granted a new trial when consented to by Defds
Defds also insists that the true measure of
damages was the nominal amount of the covenant in
bank notes

E. Johnson for appellants

Mason Ex^o

by Σ Deposit

P. to clean to them

285.83

1847.28

2133.13

1333.33

4998

7998

1333

1847.25

205.25

8.21

1970.4

1622.13

61419

7-5

2-

L. C. upon a writ of habeas corpus. Action of covenant upon a bill single payable
 in current bank notes. - Defendant's plea of non assumpsit overruled & damages ascertained
 by the jury - judgment. Defendant's appeal to this court. Affirmed. At Reynoldsburgh the court
 determined plaintiff's appeal was void & dismissed the case from the docket.

The defendants appealed to this court for delay
 & to prevent plft from appealing W. Reynolds her
 ex. they have had the delay: & we know with
 the judgment below affirmed with 12% per
 cent interest. There is no pretence of error
 to the injury of appellants, if any it is to the
 injury of appellees. The bill of exceptions shows a
 great anxiety for delay. B. S. Cook p. d.
 no error—

Alas! a crew
~ ~ ~
The Maroon