

Arkansas Black History Online

1927 account of Scipio A. Jones of Little Rock, Arkansas, and the Elaine court cases.

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Scipio Africanus Jones

A girl of ten was waving her arms in front of her astonished brother. "Justice!" she cried, her voice rising in excitement. "All I ask of you, gentlemen of the jury, is justice."

"Shut up," the small boy said unsympathetically, but she continued to call for justice and to raise one hand and then another to heaven. Suddenly, she relaxed and dropped into a chair. "Can't you guess who I was?" she said reproachfully, "I was Scipio Jones."

That was thirty-odd years ago. The little girl had been taken by her mother to court to hear the young colored lawyer, already becoming famous, defend a Negro client. His eloquence had roused her imagination. She had recognized his power.

Scipio Jones is an Arkansan who have lived most of his life in Little Rock. He was educated in the public schools and at two of the city's private institutions, Philander Smith and Shorter colleges. He early wanted to study law, and tried his best to get into the state law school. His color barred his admittance. He thought that he might pick up crumbs of learning if he were janitor, and offered his services for nothing; but his plan may have been suspected, for he was refused the job. He ended by reading law in the offices of various white lawyers in the city, and was admitted to the bar in 1889. He opened his office and began his legal practice.

The career of a colored lawyer in Arkansas was not unlike that of a white lawyer, save that he practiced only among Negroes. But Scipio Jones was recognized as having unusual ability. With a clear mind and a tenacious memory he combined with an orator's persuasiveness. The court began to appoint him of counsel when the accused had no lawyer. Much of this work was without compensation, but it was valuable experience. Many a man's life depended upon his acumen and eloquence. His reputation for success grew, and with it his practice. In 1915 he was admitted to practise [sic] in the Federal Courts, and in April of the same year he was elected a special judge in the municipal court of Little Rock. A number of secret societies, prominent among them the Masonic Order, retained him as their counsel. He was trusted by the Negroes and esteemed and respected by the whites.

Arkansas had some ugly scandals regarding the treatment of its convicts. The county handed over prisoners to contractors, who paid their fines, holding them until the fines were worked off. This might be for an indefinite period. Jones defended many convicts, charging the contractors with false imprisonment and cruelty. In one case he sued a planter for \$75,000 in the Federal Court. Finding how expensive the suit was becoming, the planter set all his convict labor loose and went back to Mississippi, his former operating place. The Negro lawyer learned to understand the helplessness of the prisoner, who at times had committed no greater offense than "loitering," and the power of the planter equaling that of a master under slavery.

It is given to some people to do their best work early in life. They ripen quickly and their energy is soon exhausted. It was not so with Scipio Jones. He steadily increased his practice. He grew to be regarded by the white lawyer as an opponent to be reckoned with. Tactful, with a psychologist's understanding of people, he overcame any latent prejudice against him. He did not fail in his respect to the white man, whether witness or legal opponent, but he also did not fail to make his point. One of his white acquaintances tells of how he corrected a judge, who was about to condemn a man on his own uncorroborated confession of guilt. Jones pointed out to the judge that there was a statute forbidding the conviction of a man on his unsupported statement.

"Is there?" the judge said. "Find it for me."

This the Negro lawyer did, and the judge dismissed the case. One can see this dark man, small of stature, well-dressed—he was something of a dandy in his youth—courteously setting the judge right on a matter of law. His pleasant smile and respectful manner robbed the occasion of any judicial irritability.

So Scipio Jones's life went on, full of useful work, successful, secure. And then, quite suddenly, he was called upon to enter into a legal battle that would last for four years, that would call for all his skill, that would test his standing with the white world, that above all would be dangerous. In November, 1919, he became counsel for the farmer tenants accused of murder in the Elaine rioting.

The story of the Elaine riots, like many other stories of labor uprisings, has been forgotten or lingers vaguely in the memories of a few. One needs to recall it to understand the part that Scipio Jones played in its aftermath of litigation.

In eastern Arkansas there is rich bottom land that is held in large plantations and operated by Negroes. The Negroes are not paid wages, but are furnished with house and tools and promised a certain share in the fall crop. Receiving no wage, and usually having nothing when they start in, these tenant farmers live for months on credit, trading at the store, which is frequently the property of the owner of the plantation. Often they are too illiterate to read statements of their accounts should they be rendered. It is possible to keep them continually in debt, their fall crop never equaling the amount that they owe. This is a condition that came about after the Civil War, when the Southern planter had no capital.

In the summer of 1919, cotton was high, and the Negroes in Phillips County, Arkansas, started an organization known as the "Progressive Farmers and Household Union of America." They were ignorant; many could not read and write, but they knew that something was wrong when there was no money coming to them and cotton higher than it had been for years. Toward the end of September they went to a white lawyer of Little Rock, U. S. Bratton, who was known as having attacked peonage in Roosevelt's time. They asked him if he would take up their case. He said he would consider the matter if they would bring him an initial fee, and he appointed a place of meeting at a wayside station near their work. On the evening of September 30 a meeting was held in a church at Hoop Spur to raise the needed fee. A group of white men, suspecting that something was afoot, fired into the church, putting out the lights. Panic ensued. There was firing on both sides and a white man was killed. The next morning, all over the United States came word that the Negroes of Phillips County had organized to kill their landlords and seize their property. Rioting began. A few whites and many Negroes were killed. Bratton's son, who went in his father's place to meet the tenant farmers, only escaped lynching by being thrown in jail. When matters had quieted down, ninety-two Negroes were arrested, speedily tried and convicted at the circuit court in Helena, November 3.

Scipio Jones had no part in this trial, which was conducted entirely by white men. The mob wanted a lynching, but were held back by United States troops. A committee of seven prominent white men had been appointed to investigate the situation by the Governor. They assured the mob that rioting was unnecessary; that the Negroes would be punished to the full extent of the law. So the trial proceeded at top speed. The counsel appointed by the court prepared no defense, and did not consult with the prisoners. The jury were out for five minutes. Twelve men were condemned to death and sixty-seven to imprisonment of from one to twenty-one years. The date of execution set for the twelve Negroes was December 27.

Thus far the situation had been in the control of the planters. The committee of seven felt it had reason for congratulation, since it had prevented a lynching. The execution of the twelve men would be an object lesson. Whether or not they were guilty of the crime of murder, they had been guilty of conspiring against their masters. But it was this labor side of the situation that made it of interest to the country at large, and an appeal for funds for carrying on the cases was sent out in November by the National Association for the Advancement of Colored People and met with a generous response. The Elaine riots were not to be disposed of as quickly as the first trial seemed to indicate.

Scipio Jones, with Colonel Murphy, ex-confederate soldier, entered an appeal to the supreme court of Arkansas and a new trial was granted. This postponed the execution. The case came up in March, 1920, with the result that six men, headed by Ed Ware, were given a new trial; but in the case of the other six, headed by Frank Moore, the judgment of the circuit court was confirmed.

Scipio Jones now entered upon a stupendous piece of work. Colonel Murphy was a man of highest integrity, esteemed by all in the community, but he was advanced in years and in poor health. He, with Jones, prepared the brief that was presented to the court of appeals, but he was taken ill during the trial at Helena and died shortly after. His firm, Murphy, McHaney, and Dunaway gave further assistance and stood back of Scipio Jones; but the burden and the anxiety were with the colored lawyer. At Helena, after Murphy's sickness, he was alone.

Little Rock is a progressive, liberal Southern city; but life took on a different aspect when Scipio Jones dropped south to Helena. The day coach on the Yazoo and Mississippi road moves through woodlands, the trees sometimes so close to the train that one scarcely sees the sun. During the recent rioting, four Negroes, all professional men, had been shot in woods like this. They had gone out squirrel hunting and had been potted by the "nigger"-hunting whites. No one was indicted for their murder. In Phillips County a white man would not be held responsible for the death of a colored man. The colored lawyer, as he journeyed to the circuit court, knew that the security of the capital city was gone. The town of Helena, when it was reached, seethed with race bitterness. Even a man of Colonel Murphy's high social position was treated with rudeness.

The cases lasted a week. Soon deprived of Murphy's help, Jones argued them alone. The court met early and late, and he had little time for further preparation. But his cross-examination was masterly. When the day at court was over, he would enter a drug store in the colored section, and there talk to the men who dropped in. As it came time to go to bed, he went out, and walking to a colored home, knocked at the door. Though he was not expected, the door always opened and the home sheltered him. He slept and left early the next morning. No two nights were spent in the same house. No one knew where Scipio Jones put up. The last night he went into the country and walked three miles from where he had left the car. So he went through the week in safety.

The case was lost. Again the men were convicted and sentenced to death. Again their counsel appealed to the Supreme Court.

But there were the six other men who had been condemned to die. Their cases had been left in abeyance pending the outcome of the Helena trial. An effort had been made to carry them directly to the Supreme Court of the United States on a writ of certiorari, but without success. On the day that writ was denied, Colonel Murphy died. "I think," Jones says, "that he died on the very hour." The cause of his death was obscure. Probably in those last months he lived too intensely for an enfeebled body.

To those in the East who were watching the cases, advising when possible, giving financial support, it was difficult to know which to admire most in Scipio Jones, his courage or his persistency. He did not allow himself to be discouraged, and he exhausted every legal resource. The cases of the Ed Ware group that had been tried at Helena, grew to be the less immediately demanding. The Supreme Court, to which they had again been appealed, again reversed the decision of the circuit court, this time on the ground that no Negroes had been on the jury. When for a third time they came to trial in the Phillips County court, a change of venue was granted. Trial was next to take place in the Lee County court.

But while the lives of Ed Ware and his five companions were for a time in no immediate danger, the second set of men were in desperate straits. After the writ of certiorari was denied, the date of execution was set by Governor McRae for June 20, 1921. There was a strong sentiment in Phillips County that at least six of the men must suffer death. The promise that had been made must not be forgotten. An American Legion Post in Helena passed a resolution calling on the governor for the execution of the six men. The Rotary Club of the city approved this action. The press was insistent that the execution should not be stayed.

But it was stayed. A formal application for a writ of error from the Arkansas Supreme Court to the Supreme Court of the United States was filed and heard. But the motion was denied. The time for the execution drew very near. An over-zealous Chicago paper printed the full account of the electrocution of the prisoners on Friday morning, the day they were to be executed. But on Wednesday afternoon, their counsel petitioned for a writ of habeas corpus in the chancery court, and presented it to Chancellor John E. Martineau. Judge Martineau, after grave consideration, issued a writ and injunction restraining the keeper from executing death sentence. The execution was postponed.

The Supreme Court of the State decided that the court of chancery did not have criminal jurisdiction, and Governor McRae again fixed a date for execution, September 23. But on the presentation of new evidence, a writ of habeas corpus was granted by the United States District Court, eastern district of Arkansas, and on September 27, an appeal was granted to the Supreme Court of the United States.

They say that Frank Moore and his companions never doubted the outcome. Their confidence in their counsel was complete. Twenty-four hours before the last day set for their execution, they were brought from their cells and shown the six coffins in which they were to be buried. Their white accusers were rejoicing in the certainty of vengeance. But the men believed that their lawyer would find some way to save their lives. The way came in the writ of habeas corpus granted by Martineau.

In 1922, the case came before the Supreme Court of the United States. It was argued by Moorfield Storey, whose brief incorporated material that Jones had used in his appeal. New evidence of two white men, a deputy sheriff and a district railroad agent, had been introduced in the course of the long legal proceedings, and the brief gave their account of the torturing of Negroes before the trial to terrify them into testifying against their fellows. One of the white men had himself beaten and tortured. The Supreme Court heard the argument. The case rested.

Before the United States Supreme Court had rendered its verdict, the other six Negroes were released from custody by the Supreme Court of Arkansas. Their cases were not prosecuted and they were ordered discharged. Their final freedom had a humorous aspect. The sheriff of Lee County was ordered by the judge of that district to take the men to the State penitentiary at Little Rock. The officials at the penitentiary refused to receive them. They told the sheriff he might take the men to a jail in Little Rock for the night. The sheriff refused to do this, saying he had obeyed the court, and he went away, leaving the men outside the prison. There they stood, bewildered, not knowing whether they were free men or prisoners. Of course their counsel, Scipio Jones, was at hand. Realizing that the outskirts of a city was not a safe place for six Negroes as notorious as they, he hired automobiles and guards, and carried them swiftly to Little Rock, where he found homes for them. Thus the Ed Ware group became free men.

On February 19, 1923, the Supreme Court rendered its decision. It found the court, at the first trial at Helena, had been so paralyzed by mob domination that but one verdict could have been possible. Under these circumstances the men could not have had a fair trial, and the cases were remanded to be retried. The men were again to be brought before the Federal District Court, but the governor instead commuted their sentences to twenty years imprisonment, and on January 13, the day before Governor McRae's term of office expired, Scipio Jones presented to him a petition for pardons. Conditional pardons were granted all six men, and they were released from imprisonment. This was on January 14, 1924, four years and two months from the time they were first condemned to die.

I have a photograph of the twelve men sitting in their lawyer's office. They look like hard-working black farmers, men of sufficient intelligence to attempt to better their condition. The story goes—I do not vouch for it—that the seventy-nine Negroes convicted were those who would not sign up with the planters and sell themselves into slavery. They were not criminals. That the feeling against them has changed is seen in the appointment of McHaney, of Colonel Murphy's firm, as Associate Justice of the Supreme Court of Arkansas, and still more in the election as Governor of the state of John E. Martineau, who, at the last hour, granted the writ that saved the six men's lives.

"How does Scipio Jones stand in this community?" I asked Mr. McHaney, after we had had a talk regarding the case.

The white man leaned back in his chair and said with real conviction: "Scipio Jones is respected by everyone in this community whose respect is worth anything, white or black. He stands ace high."