No. 8491

Supreme Court of Illinois

Duncan ~~Sherwin~~ Sherman & Co.

vs.

N. Miles

71641 7

State of Illinois } In the Circuit Court in and for the
St Clair County } County of St Clair & State of Illinois.

Be it remembered that on 5th day of March
A.D. 1862 the following Declaration was filed to wit:

1st State of Illinois } March Term 1862 of the
St Clair County } St Clair County Circuit Court

Alexander Duncan, Watts Sherman,
Charles H. Dabney, William B. Duncan and
Davis Duncan partners doing business under
the firm name and style of Duncan, Sherman & Co.
plaintiffs complain of Nathaniel Niles defendant
of an action of trespass on the case on promises.
For that whereas heretofore to wit: on the first
day of August 1860 at Belleville Ills. to wit:
at the county aforesaid John J. Anderson & Co.
lent and advanced the said deft. a large sum
of money to wit: ten thousand dollars at his
request, in consideration thereof the said
deft. made a promissory note in writing of
that date and delivered the same to said
John J. Anderson & Co. whereby the said
deft. then and there by the name and description
of Nathaniel Niles County Judge of St Clair
County Ills. promised that the county of St Clair
Ills. would pay on or before the 1st day of July
1861 to said John J. Anderson & Co. of St Louis Mo.
the sum of ten thousand dollars for value received
negotiable and payable without defalcation or

[8491-]

discount at the bank of Commerce in New York City with interest from said date at the rate of ten per cent per annum. And the said John J. Anderson & Co. then and there endorsed said promissory note and delivered the same to said pltffs. And the said pltffs. say that the said deft. had no authority from the said county of St Clair to make said promissory note on its behalf, nor has said county of St Clair ever ratified the said promissory note or paid the same or any part thereof, whereby the said deft. became liable to pay the said sum of money in the said promissory note mentioned when the same became due and payable to the said pltffs. according to the tenor and effect of said promissory note and of the said endorsement thereon and being so liable in consideration thereof the said deft. then and there undertook and promised to pay the same to said pltffs. accordingly. And for that whereas also the said deft. on the 1st day of August 1860 at Belleville Illinois, to wit, at the county aforesaid made a promissory note in writing of that date and delivered the same to John J. Anderson & Co. whereby the said deft. by the name and description of Nathaniel Niles County Judge of St Clair County Illinois then and there promised that the County of St Clair Ills. would pay on or before the first day of July 1861 to John J. Anderson & Co. of St Louis Mo. the sum

2d

of ten thousand dollars for value received, negotiable and payable, without defalcation or discount at the bank of Commerce in New York City with Interest from its date at the rate of ten per cent per annum. And the said John J. Anderson & Co. then & there endorsed and delivered the said promissory note to said pltffs. And the said pltffs say that said St Clair County Illinois did not pay the said promissory note or any part thereof when the same became due or at any time since the same became due and payable to the said pltffs. whereby the said deft. became liable to pay the said sum of money in the said promissory note specified when the same became due and payable to the said pltffs. according to the tenor and effect of said promissory note and of the said endorsement thereon and being so liable in consideration thereof the said deft. then and there undertook and promised to pay the same to said pltffs accordingly. And for that whereas also heretofore to on the first day of August 1860 at Belleville Ills. to wit at the county aforesaid John J. Anderson & Co lent and advanced the said deft. a large sum of money to wit: ten thousand dollars at his request in consideration thereof, the said deft. then and there made and delivered to said John J. Anderson & Co. a certain instrument in writing of that date in words

3d

[8491-2]

and figures following to wit:

$10.000 Belleville Ills 1st August 1860

On or before the first day of July 1861 The county of St Clair Ills. promises to pay to John J. Anderson & Co. of St Louis Mo. the sum of Ten thousand Dollars for value received Negotiable & payable without defalcation or discount at the Bank of Commerce in New York city with interest from date at the rate of ten per cent per annum

Nathaniel Niles
County Judge of
St Clair County Ills.

And the said John J. Anderson & Co. then and there endorsed said instrument in writing and delivered the same to said pltffs.

And the said pltffs say that the said deft. had no authority from the said county of St Clair to make said instrument in writing on its behalf nor has said county of St Clair ever ratified the said instrument in writing or paid the same or any part thereof; whereby the said deft. became liable to pay the said sum of money in said instrument in writing mentioned, when the same became due and payable to the said pltffs. according to the tenor and effect of said instrument in writing and the endorsement thereon and being so liable in consideration thereof the said deft. then and there undertook and

promised to pay the same to said pltffs.
4th accordingly. And for that also the said deft.
on the 1st day of August 1860 at Belleville
Illinois to wit: at the county aforesaid made
his other instrument in writing of that date
in words and figures following to wit:

$10.000 # Belleville Ills 1st August 1860

On or before the first day of July 1861
The County of St Clair Ills promises to pay
to John J. Anderson Jr. of St Louis Mo. the
sum of Ten thousand Dollars for value received
Negotiable & payable without defalcation or
discount at the Bank of Commerce in
New York City with interest from date at
the rate of ten per cent per annum.

Nathaniel Niles
County Judge of
St Clair County Ills.

and the said deft. then and there delivered
the said instrument in writing to said John
J. Anderson Jr. therein mentioned, and the
said John J. Anderson Jr. then and there
endorsed and delivered the same to said
pltffs. And the said pltffs. say that said
St Clair County Illinois did not pay the said
instrument in writing or any part thereof
when the same became due or at any time
since to said pltffs. whereby the said deft. became
liable to pay the said sum of money in said
instrument in writing mentioned when the

same became due and payable to the pltffs. according to the tenor and effect of said instrument in writing and of the said endorsement thereon and being so liable in consideration thereof the said deft. then and there undertook and promised to pay the same, to said pltffs accordingly.

5th And for that also the said deft. heretofore to wit on the 4th day of July 1861 at the county aforesaid was indebted to said pltffs. in the sum of fifteen thousand dollars for money had and received from said pltffs. by said deft. at his request.

And in fifteen thousand dollars for money paid laid out and expended by said pltffs. for the use of said deft. at his request.

And the said deft. being so indebted afterwards to wit on the day and year and at the county aforesaid in consideration of the premises respectively undertook and promised to pay said pltffs the said monies on request, yet although often requested, the said deft. has not paid said moneys or any of the moneys in this declaration mentioned and all of the said moneys remain wholly due and unpaid to the damage of said pltffs. of fifteen thousand dollars and therefore they sue &c.

Underwood & Stoetling
Attys for pltffs.

(Copy of instrument and indorsement to be given in evidence under the foregoing declaration)

"$10.000 " Belleville Ills. 1st August 1860"

" On or before the first day of July 1861 the county of St Clair Ills promises to pay to John J. Anderson Ills. of St Louis Mo. the sum of Ten thousand Dollars for value received. Negotiable & payable without defalcation or discount at the Bank of Commerce in New York city with interest from date at the rate of ten per cent per annum.

" Nathaniel Niles "

(Endorsement) " County Judge of "

"John J. Anderson Ills." St Clair County Ills. "

And now on the 18th day of March 1861 the following Demurrer was filed to wit:

Alexander Duncan et al
vs.
Nathaniel Niles

Comes now the said defendant and defends the wrong and injury when &c. and says that the said declaration and each count thereof, severally, are insufficient in law and this he is ready to verify &c.

N. Niles
in person

And afterwards to wit at the March Term of said Court the following proceedings were had to wit:

Alexander Duncan et al
vs.
Nathaniel Niles } Assumpsit

On the fourth Friday the Court orders that this cause be continued.

And afterwards to wit at the October Term of said Court the following proceedings were had to wit:

Alexander Duncan
Watts Sherman
Charles H. Labney
William B. Duncan
Davis Duncan under the firm of
Duncan, Sherman & Co.
vs.
Nathaniel Niles } Assumpsit

And now on the first Thursday of the term come the parties by their respective attorneys and the demurrer heretofore filed to the first second third, fourth and fifth counts of pltffs declaration; and said demurrer having been argued and the court being sufficiently advised

overrules said demurrer to said first second and fifth counts and sustains said demurrer to said third and fourth counts and thereupon said plaintiffs abandon said first second and fifth counts and stand by said third and fourth counts. It is therefore considered by the Court that said deft recover from said pltffs. the costs of this suit and have execution therefor.

State of Illinois }
St Clair County } I the undersigned Clerk of the Circuit Court in and for said County of St Clair, do hereby certify the foregoing to be a true copy of the Declaration, the Demurrer, and the proceedings and final Judgment of the court in the said entitled cause as the same are on file and of record respectively in my office.

In Testimony Whereof I hereto sign my name and affix the seal of said Court at office this 14th day of April 1863.

Wm. S. Thomas Clk.
by John Glaniz dep.

Alexander Duncan
Watts Sherman, Charles
H Dabney, William B
Duncan and Davis
Duncan, partners under
the firm name and
Style of Duncan Sherman & Co
vs.
Nathaniel Niles

Error to St Clair

And now come the said pltffs. and say that in the records and proceedings aforesaid there is manifest error in this to wit:
1st The Court below erred in sustaining the demurrer to said ~~pltffs~~ third and fourth counts of pltffs declaration, 2d In rendering judgment for said deft and not for said pltffs.

Deft Joins in Error
T. Dwight Atty for deft in Error

Underwood & Northing & J. B. Underwood Attys for pltffs in error

Same } In Supreme Court
vs. } 1st Grand Division.
Same } I hereby enter myself security for costs in this case and acknowledge myself bound to pay or cause to be paid all costs that may accrue in this case in the Supreme Court to the opposite party or to any of the officers of

this court in pursuance of the
laws of this state April 27 1863
W. H. Underwood (Seal)

9

Duncan Sherman & Co. vs Nathaniel Niles

Record

The clerk will please file this record & the errors within assigned and issue Sci fa. to the Sheriff of St Clair County. Eleven dollars are enclosed to pay docket & clerk fee.

~~Robbins~~
Underwood & Northing
Attys for Plffs.

Filed July 24. 1863.
N. Johnston Cl

Paid by Underwood & Northing — $11.00

Copy

Fee $2.80 paid by Plffs

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of St. Clair Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* St. Clair *county, before the Judge thereof between* Alexander Duncan et al. under the firm name of Duncan, Sherman & Co.

plaintiffs and

Nathaniel Niles *defendant it is said manifest error hath intervened to the injury of the aforesaid* Duncan, Sherman & Co.

as we are informed by their *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after the 2d Monday of November *next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty-fourth *day of* July *in the year of our Lord one thousand eight hundred and* Sixty-three.

Noah Johnston
Clerk of the Supreme Court.

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9

SUPREME COURT.

First Grand Division.

Duncan, Sherman & Co

Plaintiffs in Error,

VS.

Nathaniel Niles

Defendant in Error.

WRIT OF ERROR.

Issued & FILED July 24. 1863 –

N. Johnston Clk

November term Supreme Court 1863

Duncan, Sherman & Co. plaintiffs in error
vs
Nathaniel Wells
Defendant in error

} Error to St Clair
Judgment Affirmed.

Pltffs Costs

1863.	To filing Transcript 20 – Docketing Cause 12	32.
	" Writ of Error & Stamp	125
	" Sci fa	1.00
	" filing Papers	50
	" Abstracts (800 words each)	11-20
	" Ent Mo. & orders	1 00
	" Opinion	1 30
	" Docket fee	6-00
	" Cost bill & Ent Same 37 – Postage 21 –	58
	" Fee Bill 50 – Stamps 5	55
		23.70
Ad		
Shff Galbraith Cy Check. fees on Sci fa		70
		24,40

Defts Costs.

1860.	To filing Papers	56-
	" Entering motions & orders	1-00
	" Cost bill & Ent. Same 37 – ~~Postage~~	37
	" Ex. 50 – Postage 6 –	56
		249

Pltffs Costs in full – – – is $24.40
Defts Costs do 2.49
26.89
Less Paid $11.00 – Abs furnished $1.60 12 60
$14.29
~~Balance due~~
~~Credit by Postage~~ 1 Ex fee bill off 1 11
Bal Due 13.18

and Ex hereby indorsed
May 27, 1864.

[2491-10]

This Cost bill is entered on page 577 – and is paid to for as fees of Clerk is concerned & Receipt sent to Supp Vanderwoord – filed 24-64

1863

Duncan, Sherman & Co.

vs

N. Miles

Cost bill

Mileage $13.18 – and 70 cents of that amt due Deputy Jeff Short

13.18
70
12.48

8491

9 — 14

Duncan etal

vs

A. Niles

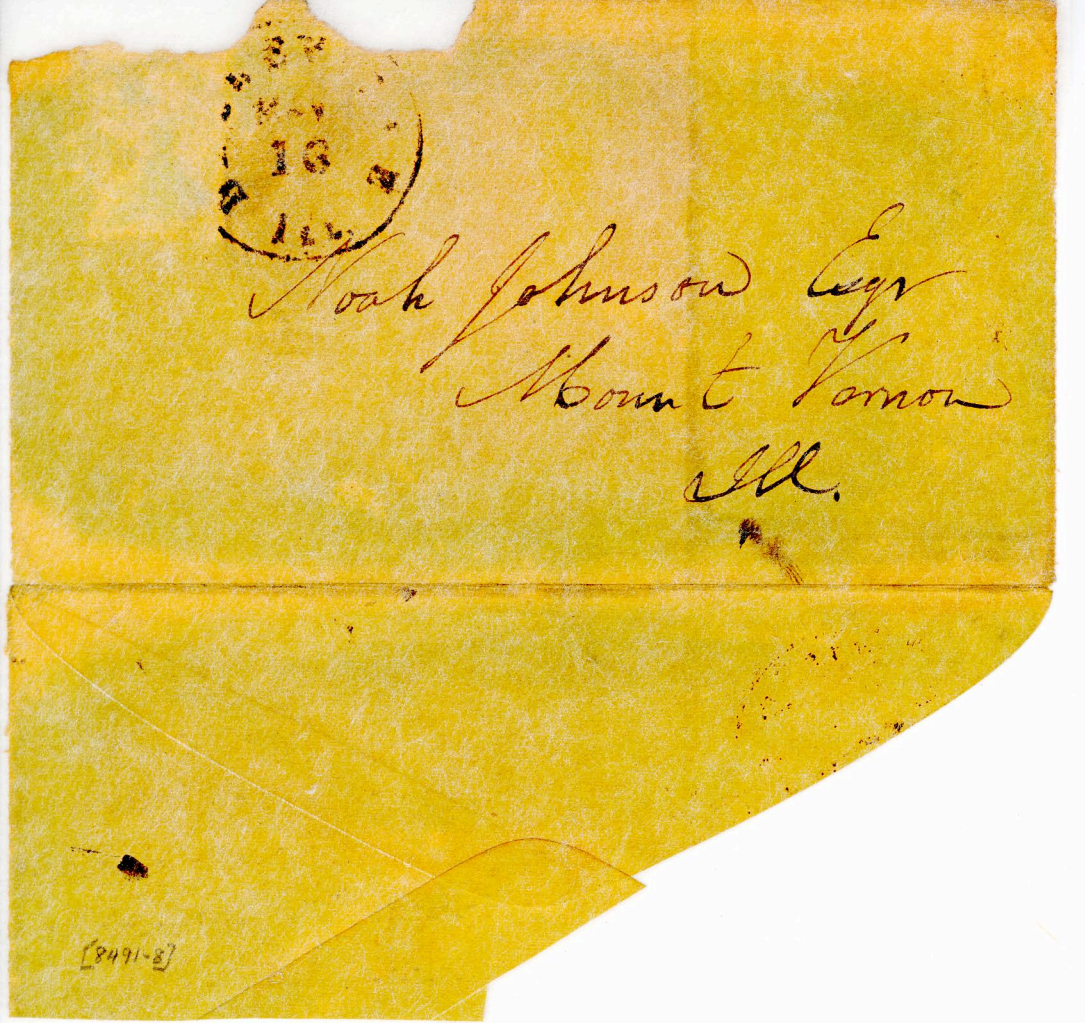
Error to St Clair

Affirmed

Reported 1863

X

[8491-2]


16
Noah Johnson Esqr
Mount Vernon
Ill.
[8491-8]

1863

Belleville, June 22, 1864

Dear Sir:

Duncan, Sherman & Co have just sent me $12,48 to pay your fees in their suit vs. N. Niles. I enclose it in this letter

Yours resp'ly

Wm. H. Underwood

Belleville, May 16, 1864.

Dear Sir: -

I sent you the fees in the case of Brewsing vs. Allen. I forgot to enquire the result of the case of Stewart vs. Bond. Also what are the costs in Duncan, Sherman & Co vs. Niles? Let me know and I will write to them in New York city.

Yours respy

Wm. H. Underwood

[9491-18]

Duncan, Shermadio

vs Error to St Clair.

Niles

Wthomas for defendant contends

1 The Record shewing that there was no joinder in demurrer the defendant was entitled to judgment; and this, resulting from default of pltffs, they cannot assign for Error.

Stephens on pleading Side page 54. 108-9. 138.

Chitty's practice top page 758.

2. The promise here, is by the County, & not the agent, no action can therefore be maintained against the agent on that promise. Story on agency Sec 263.

3 Niles can only be made responsible in a special action on the case, if liable at all, it is on the ground of fraud.

29 Ill Surg vs Socks 313.

Adams on Contracts 421 & cases cited.

[8491-13]

4. Although it may be admitted that Andrews &c could maintain a special action upon the facts of the case, yet it does not follow, that Jeffs case, - they are assignees of the note, and cannot be assignees of a right of action on the case, - the money must be on the note and not on the case, -

5th. If defendant is liable at all, it is because the note is void, or not binding on the County, - the liability is on the agreement, & not the note,

6 the three counts do not charge the note as the note of defendant, or that defendant made the note, or endorsed it as his own note,
the fourth count states defendant made his certain other instrument in writing of that date in words & figures following no allegation that he thereby promised to pay &c

No 9.

Duncan
Sherman to
4
Nov
Lefts Brief

In the Supreme Court, State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1863.

DUNCAN, SHERMAN & CO.,
vs.
NATHANIEL NILES.
} Error, to St. Clair.

The plaintiff's in errror who were the plaintiff's in the court below filed their declaration in assumpsit against the defendant in error who was the def't in the court below, in the St. Clair Circuit Court on the 5th of March, 1862, containing five counts; the defendant filed a several demurrer to each of said counts. Said demurrer in the court below was sustained to the third and fourth counts, whereupon said plaintiffs abandoned all the counts in said declaration except said 3d and 4th counts, to which the demurrer was sustained. The plaintiffs stood by said counts and brings the cause into this court by writ of error, seeking to reverse the judgment of the court below, because the court below erred in sustaining said demurrer. The defendant joined in error and relies upon the following points and authorities to sustain the judgment of the court below.

DEFENDANT'S BRIEF.

1st. The plaintifts seek to charge the defendant on a note made by him as agent on behalf of St. Clair county—whereas there is nothing on the face of plaintiffs declaration to show that the pl'ffs were deceived or in any way imposed on by def't in contracting on behalf of said county.—Add. on Con. 421-422. 29th Ills., p. 313.

2d. That although the def't was not in fact legally authorized to contract for the county and the county afterwards failed to satisfy his contract, yet he is not personally liable unless the pl'ffs actually give the credit to the def't and not to the county.—Add. on Con. 421, 422, Paley on Agency 368, 376. 377, Story on Agency secs. 287, 288, 1 Parsons on Con. 104, 105, 9th New H. p. 58. 1 Chit R. 36-7

3d. The pl't'ffs, if they sought to make def't liable personally, ought to declare against him as the maker of the note, and show on the face of their declaration that he acted in bad faith in making the note. explain this contr & pency
Add. on Con. 421, 422, Chit. Pl. 36, 37

4th. The 4th count is defective because it does not appear that the money was loaned at his request, and does not allege a want of authority.—1 Chit Pl. 35, 37 Ride paying

5th. If the def't in good faith contracted in the name of the county believing the county would satisfy contracts and John J. Anderson & Co., relying solely upon such ratification loaned the money on the credit of the county, and not on the credit of def't, as the contract shows he did, then def't is not personally liable.—Add. on con. 421, 422

6th. Both counts pl't'ffs declaration are bad for duplicity and because they are each uncertain, argumentative and contradictory.—Chit. Pl. 226 to 228, 232, 233 and 256 to 260. 2 Chit 4-5

7th. The names of the firm of John J. Anderson, are not set forth in pl't'ffs declaration. If John J. Anderson knew the extent or want of def'ts authority, (and this he is presumed to know), then def't is not liable unless the credit has been given to the def't individually. —14 Ver. Rep. 195, 202, 2 N. H. Rep. 356. 19th Ills. R. 477. 1st Peter's 289-290. 1st Carrier R. 5-39 pub. holder upon inquiry. 1st Chit R. 256-7

If upon any hypothesis not inconsistent with pl't'ffs declaration, the def't would not be liable, it is bad on general demurrer. 1st Chit R 256-5

The county of St. Clair was authorized by the laws of 1859, p, 39, to borrow money. A subsequent law was passed for the same purpose in 1861. See laws of 1861, p. 204 and 205.

THOMAS QUICK, Att'y for Def't in Error.

[8491-15]

Mr. Thomas pltff. sue as officer and therefore on the note 1. we consider is demurrer and therefore deft. was entitled to a judgt. - Co. of St. Clair promises.

2 The question is the right of pltff. to recover on this instrument - it is a promise by the Co. of Illinois to be bound by special action on the case which could not be assigned.

3 Defendant 4th count - it does not follow because the County could not pay therefore he must pay -

9
Duncan, Sherman & Co
vs
Nathaniel Niles
Error to St Clair
Judgment Rev'd

Sept. Brief
J. Lisle N. J.

Filed Apr. 13. 1856
A. Lefferts Clk

Supreme Court
State of Illinois
First Grand Division

Duncan Sherman & Co
vs
Nathaniel Niles.

Error to St Clair

And now this day comes the said Deft Nathaniel Niles by his atty Thomas Quick and moves the Court to quash the writ of Scire Facias in said cause for the reason that it does not contain either the Christian or surnames of all of said firm, plaintiffs in said cause.

Thomas Quick
Atty for Deft in Error.

[8491-16]

9

Duncan Sherman
vs
N. Niles

Motion to
quash Sci. Fa.

Filed Nov. 10. 1863.
N. Johnston Clk

Duncan Sherman & Co
vs
Nathaniel Niles

Error to St. Clair County. In the Supreme Court of Illinois at Mt. Vernon. Nov. Term 1863

Jacob Thoma being duly sworn says said defendant Nathaniel Niles is in the Military Service of the United States as Colonel of the 130 Reg. Ill. Vol. and that affiant verily believes that said defendants presence is in some degree necessary for a full and fair defense of said cause.

Subscribed & Sworn to before me this 2nd November 1863

Jacob Thoma

Wm S Thomas Clk Cir Co
by Richard Wangelin
Deputy

Duncan Sherman & Co.
vs
Nathaniel Niles

Error to St Clair County

Said Defendant Nathaniel Niles by J. Baker his atty (for this purpose) moves the Court that said cause be continued.

J. Baker
Atty of sd. Niles for the purpose of moving for a continuance of said cause

[8491-17]

9

Duncan Sherman
& c
vs
Nathaniel Niles

Affidavit &
Motion for
Continuance

Filed Nov. 5. 1863 –
A. Johnston Cl

Supreme Court.

STATE OF ILLINOIS.

FIRST GRAND DIVISION.

DUNCAN SHERMAN & CO.
vs.
NATHANIEL NILES.
} ERROR TO ST. CLAIR.

Page 1. This was an action of assumpsit commenced in the St. Clair Circuit Court on the 5th of March 1862 upon the following instrument of writing:

"$10,000 Belleville, Ills., 1st August 1860.

"On or before the first day of August 1861 the county of St. Clair, Ills., promises to pay John J. Anderson &
4. "Co. of St. Louis, Mo., the sum of ten thousand dollars for value received, negotiable and payable without defal-
"cation or discount at the bank of Commerce in New York city with interest from date at the rate of ten per cent
"per annum.

NATHANIEL NILES,
County Judge of St. Clair County, Ills.

The third count of the declaration alleges that on the 1st of August 1860 at Belleville, Ills., John J. Anderson & Co. lent and advanced to Deft. $10,000 at his request and in consideration thereof Deft. made and delivered to said John J. Anderson & Co. the said instrument in writing. That the said John J. Anderson & Co. then and there endorsed and delivered said instrument in writing to said pltffs. The count then avered that said Deft. had no authority from the said county of St. Clair to make said instrument of writing on its behalf nor has the said county of St. Clair ever ratified the said instrument in writing or paid the same or any part thereof, whereby the said deft. became liable to pay the said sum of money in said instrument in writing, when the same became due and payable to said pltffs. according to the tenor and effect of said instrument of writing, and said indorsement there-
5. on and being so liable, in consideration thereof &c. The 4th count is substantially the same. Dft. demurred to each
7. count severally of said declaration. Demurrer sustained to each of said counts. Other Counts were abandoned and
9. and pltffs. stood by the demurrer to said third and fourth counts and final judgment was rendered by the court on said demurrer against said pltffs. for costs. Pltffs. now assign for error. 1st The sustaining demurrer to said 3d and 4th counts. 2nd In rendering judgment for deft. and not for pltffs.

BRIEF.

1. The county of St. Clair was authorized to borrow money and issue bonds, signed by all the Judges and countersigned by the clerk under the seal of the court and with a copy of the act authorizing the issue of such bonds L. of 1859, page 61. Laws of 1861, pages 204, 205. These acts and the law forbid any one of the county judges from assuming such a dangerous power.

2. Where a contract is made by a public officer *in the line of his duty* he is not personally responsible. 1 U. S. Cond. R. 171, 329. 1 Term. R. 179. 11 How. R. 362.

3. But where he notoriously acts beyond his line of duty and power and the principal has no right to ratify his act and could only issue bonds as provided by law, the assumed agent must necessarily be held personally liable.

4. Where the name of the assumed agent who has no authority appears in the contract he is personally liable on it in assumpsit. 9 New H. R. 55 to 58, 2d Id. 352, 12 Id. 181, 191. 2 Alabama R. 719, 726, 2 Devereaux R. 90. 2 Pike R. 338. 14 Vermont R. 195, 202. 1 Cowen R. 515, 536. 8 Wend. R. 494. 1 Denio R. 472, 480. 2 New J. R. 343. 24 Ang. L & E. R. 403. Edwards on Bills &c. 90. Story on Agency Sec. 280 to 289.

5. The same is true when one assumes to act for a municipal or other corporation. 12 Add. & El. R. 745. 1 Parsons on Con. 106. Addison on Con. 960, 961. 2 New H. R. 206, 229. Story on A. Sec. 282, 283, 284, 285, 286. 15 John R. 3. 13 Id. 313. 4 Mass. R. 595.

6. In such cases the onus is on the assumed agent to show his authority. 1 Cowen R. 513, 536. 17 Wend. R. 40. 7 Porter R. 455, 461. 2 Pike R. 338. 9 Alabama R. 659. 2 Id. 719, 725. 1 Denio R. 472, 481. 8 Metcalf R. 456, 461.

7. Where one makes a promissory note in the name of another without authority and it is endorsed, the indorsee may maintain an action against the party pretending to act as agent. Dusenberry vs. Elles. 3 John C. 70, 71.

UNDERWOOD & NOETLING,
Atty's. for pltffs. in error.

[8491-18]

9

Duncan, Sherman & Co.

vs.

Nathaniel Niles

Error to St Clair

Abstract & Brief

Filed July 24. 1863.

N. Johnston Cl

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Saint Clair 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 Saint Clair county, before the Judge thereof between Alexander Duncan et al - under the firm name of Duncan, Sherman & Co -

plaintiffs and

Nathaniel Niles defendant it is said that manifest error hath intervened to the injury of said Duncan, Sherman & Co as we are informed by this 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 Mount 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 Nathaniel Niles

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after 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 Nathaniel Niles notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty fourth day of July in the year of our Lord one thousand eight hundred and Sixty Three

Noah Johnston
Clerk of the Supreme Court.

[9491-19]

9

SUPREME COURT.

First Grand Division.

Duncan Sherman
Ceo

Plaintiff in Error,

VS.

Nathaniel C. Niles

Defendant in Error.

Issue by leaving the within Sto of Nathaniel Niles this August 14th 1863
John Galbraith Shff
By A.W. Shroll Dep

SCIRE FACIAS.

FILED.

Shff fees
S & R .60
2 mls .10
.70

Supreme Court.

STATE OF ILLINOIS.

FIRST GRAND DIVISION.

DUNCAN, SHERMAN & CO.
vs.
NATHANIEL NILES.
} ERROR TO ST. CLAIR.

Page 1. This was an action of assumpsit commenced in the St. Clair Circuit Court on the 5th of March 1862 upon the following instrument of writing:

"$10,000 Belleville, Ills., 1st August 1860.

"On or before the first day of August 1861 the county of St. Clair, Ills., promises to pay John J. Anderson &
4. "Co. of St. Louis, Mo., the sum of ten thousand dollars for value received, negotiable and payable without defal-
"cation or discount at the bank of Commerce in New York city with interest from date at the rate of ten per cent
"per annum.

NATHANIEL NILES,
County Judge of St. Clair County, Ills.

The third count of the declaration alleges that on the 1st of August 1860 at Belleville, Ills., John J. Anderson & Co. lent and advanced to Deft. $10,000 at his request and in consideration thereof Deft. made and delivered to said John J. Anderson & Co. the said instrument in writing. That the said John J. Anderson & Co. then and there endorsed and delivered said instrument in writing to said pltffs. The count then avered that said Deft. had no authority from the said county of St. Clair to make said instrument of writing on its behalf nor has the said county of St. Clair ever ratified the said instrument in writing or paid the same or any part thereof, whereby the said deft. became liable to pay the said sum of money in said instrument in writing, when the same became due and payable to said pltffs. according to the tenor and effect of said instrument of writing, and said indorsement there-
5. on and being so liable, in consideration thereof &c. The 4th count is substantially the same. Dft. demurred to each
7. count severally of said declaration. Demurrer sustained to each of said counts. O her Counts were abandoned and
9. and pltffs. stood by the demurrer to said third and fourth counts and final judgment was rendered by the court on said demurrer against said pltffs. for costs. Pltffs. now assign for error. 1st The sustaining demurrer to said 3d and 4th counts. 2nd In rendering judgment for deft. and not for pltffs.

BRIEF.

1. The county of St. Clair was authorized to borrow money and issue bonds, signed by all the Judges and countersigned by the clerk under the seal of the court and with a copy of the act authorizing the issue of such bonds L. of 1859, page 61. Laws of 1861, pages 204, 205. These acts and the law forbid any one of the county judges from assuming such a dangerous power.

2. Where a contract is made by a public officer *in the line of his duty* he is not personally responsible. 1 U. S. Cond. R. 171, 329. 1 Term. R. 179. 11 How. R. 362.

3. But where he notoriously acts beyond his line of duty and power and the principal has no right to ratify his act and could only issue bonds as provided by law, the assumed agent must necessarily be held personally liable.

4. Where the name of the assumed agent who has no authority appears in the contract he is personally liable on it in assumpsit. 9 New H. R. 55 to 58, 2d Id. 352, 12 Id. 181, 191. 2 Alabama R. 719, 726, 2 Devereaux R. 90. 2 Pike R. 338. 14 Vermont R. 195, 202. 1 Cowen R. 515, 536. 8 Wend. R. 494. 1 Denio R. 472, 480. 2 New J. R. 343. 24 Ang. L & E. R. 403. Edwards on Bills &c. 90. Story on Agency Sec. 280 to 289.

5. The same is true when one assumes to act for a municipal or other corporation. 12 Add. & El. R. 745. 1 Parsons on Con. 106. Addison on Con. 960, 961. 2 New H. R. 206, 229. Story on A. Sec. 282, 283, 284, 285, 286. 15 John R. 3. 13 Id. 313. 4 Mass. R. 595.

6. In such cases the onus is on the assumed agent to show his authority. 1 Cowen R. 513, 536. 17 Wend. R. 40. 7 Porter R. 455, 461. 2 Pike R. 338. 9 Alabama R. 659. 2 Id. 719, 725. 1 Denio R. 472, 481. 8 Metcalf R. 456, 461.

7. Where one makes a promissory note in the name of another without authority and it is endorsed, the indorsee may maintain an action against the party pretending to act as agent. Dusenberry vs. Elles. 3 John C. 70, 71.

UNDERWOOD & NOETLING,
Atty's. for pltffs. in error.

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Duncan, Sherman & Co.

vs.

Nathaniel Niles

Error to St Clair

Abstract & Brief

Filed July 24. 1863.

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Authorities referred
to in Opinion

In the Supreme Court, State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1863.

DUNCAN, SHERMAN & CO.,
vs.
NATHANIEL NILES. } Error, to St. Clair.

The plaintiff's in errror who were the plaintiff's in the court below filed their declaration in assumpsit against the defendant in error who was the def't in the court below, in the St. Clair Circuit Court on the 5th of March, 1862, containing five counts; the defendant filed a several demurrer to each of said counts. Said demurrer in the court below was sustained to the third and fourth counts, whereupon said plaintiffs abandoned all the counts in said declaration except said 3d and 4th counts, to which the demurrer was sustained. The plaintiffs stood by said counts and brings the cause into this court by writ of error, seeking to reverse the judgment of the court below, because the court below erred in sustaining said demurrer. The defendant joined in error and relies upon the following points and authorities to sustain the judgment of the court below.

DEFENDANT'S BRIEF.

1st. The plaintiffs seek to charge the defendant on a note made by him as agent on behalf of St. Clair county—whereas there is nothing on the face of plaintiffs declaration to show that the pl'ffs were deceived or in any way imposed on by def't in contracting on behalf of said county.—Add. on Con. 421-422. 29th Ills., p. 313.

2d. That although the def't was not in fact legally authorized to contract for the county and the county afterwards failed to satisfy his contract, yet he is not personally liable unless the pl'ffs actually give the credit to the def't and not to the county.—Add. on Con. 421, 422, Paley on Agency 368, 376. 377, Story on Agency secs. 287, 288, 1 Parsons on Con. 104, 105, 9th New H. p. 58. 1 Chit Pl. 36-7

3d. The pl't'ffs, if they sought to make def't liable personally, ought to declare against him as the maker of the note, and show on the face of their declaration that he acted in bad faith in making the note. or pledged his credit personally
Add. on Con. 421, 422, Chit. Pl. 36, 37

4th. The 4th count is defective because it does not appear that the money was loaned at his request, and does not allege a want of authority.—1 Chit Pl. 35, 37 side pagging

5th. If the def't in good faith contracted in the name of the county believing the county would satisfy contracts and John J. Anderson & Co., relying solely upon such ratification loaned the money on the credit of the county, and not on the credit of def't, as the contract shows he did, then def't is not personally liable.—Add. on con. 421, 422

6th. Both counts pl't'ffs declaration are bad for duplicity and because they are each uncertain, argumentative and contradictory.—Chit. Pl. 226 to 228, 232, 233 and 256 to 260. 2 5-4-5

7th. The names of the firm of John J. Anderson, are not set forth in pl't'ffs declaration. If John J. Anderson knew the extent or want of def'ts authority, (and this he is presumed to know), then def't is not liable unless the credit has been given to the def't individually. —14 Ver. Rep. 195, 202, 2 N. H. Rep. 356. 19th Ills. R. 477. 1st Peter's 289-290. 1st Cowen R. 5-39 facts holden upon inquiry 1st Chit Pl. 256-7

If upon any hypothesis not inconsistent with pl't'ffs declaration, the def't would not be liable, it is bad on general demurrer. 1 Chit Pl. 254-5

The county of St. Clair was authorized by the laws of 1859, p, 39, to borrow money. A subsequent law was passed for the same purpose in 1861. See laws of 1861, p. 204 and 205.

THOMAS QUICK, Att'y for Def't in Error.

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Duncan, Sherman & Co

vs

Nathaniel Niles

Error to St Clair

Abstract & Brief

Filed Nov. 13. 1869

A. Thompson Clk

In the Supreme Court, State of Illinois,

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