Anderson, Thomas W. et al vs. Sanders, James T. 1855 Taney Co. 13th Cir 204/11

Old 70/3

Affirmed

Dollars 817.58/100 June 29th 1853

One day after date due Joseph L Norris or order Eight hundred and Seventeen dollars 58/100 For Value received

Steam Boat Ben Lee & Owners

By W R Wilson Capt

Witness

C M Webb

Endorsed on the back

For Value received I assign the within note to James T Sanders

March 14th 1854 J. L. Norris

James T Sanders Plaintiff
Against
Thomas W Anderson
William R Wilson
Benjamin Cannafax
Joseph Barthel
Thomas Epperson defendants

In Vaney Circuit Court May Term A D 1854

Plaintiff States that defendants by their promissory note hereunto annexed dated June 29th day 1853 promissed for Value received to pay One Joseph L Norris or order Eight hundred and Seventeen Dollars and fifty eight cents One day after date. Plaintiff further states that on the 14th day of March 1854 For Value received said Joseph L Norris assigned said note of defendants to Plaintiff which said note and the interest are yet due Plaintiff and for which he asks Judgement

J T Sanders

(2)

James T Sanders Plaintiff makes oath and says he believes the above petition and the matters therein as stated are true

Sworn to & Subscribed before me this 2d day of May A D 1854

J. T. Sanders

Wm C Berry Clerk

Filed May 2d A D 1854

Wm C Berry Clerk

The State of Missouri

To the Sheriff of Taney County Greeting

You are hereby required to Summon Thomas W Anderson William R Wilson and Thomas Epperson to be and appear before the Hon. Judge of our Taney Circuit Court on the first day of the next Term thereof which will commence and be holden at the Court House in the Town of Forsyth in said County of Taney on the 4th Monday after the 4th Monday in April A D 1854 (May 22d) then and there to answer the petition of James T Sanders a copy of which is hereto annexed Herein fail not and have you then and there this writ together with how you execute the same

In Testimony whereof I Wm C Berry Clerk of the said Circuit Court have hereunto set my hand and affixed the Seal of said Court at office this 2d day of May 1854

Wm C Berry Clerk

A copy of the Original Petition attached to this writ in words

and figures following

Dollars 817 58/100

One day after date due Joseph L Louis or order Eight hundred and seventeen dollars 58/100 for value received Steam Boat Ben See Journey By Wm R Wilson Capt

Witness
C M Webb

James T Sanders Plaintiff
Against
Thomas W Anderson
William R Wilson
Benjamin Cannafax
Joseph Carthel
Thomas Epperson Defendants

In Laney Circuit Court May Term A D 1854

Plaintiff states that defendants by their promissory note hereunto annexed dated June 29th day 1852 promised for value received to pay one Joseph L Louis or Order Eight hundred and seventeen dollars and fifty eight Cents One day after date Plaintiff states that on the 14th day of March 1854 for value received said Joseph L Louis assigned said note of Defendants to Plaintiff which said note and the interest are yet due Plaintiff and for which he asks Judgement

J T Sanders

J T Sanders Plaintiff makes oath and

says he believes the above Petition and the matters therein as stated are true
Sworn to & Subscribed before me this 2d day of May A.D. 1854
Wm C Berry Clk

J. T. Sanders

Upon which writ &c The Sheriff made the following return

Served by reading the summons & Petition in the hearing of the said J W Anderson W R Wilson & Epperson on the 2d day of May A.D. 1854
J. T. Sanders Shff

Filed July 3d 1854
Wm C Berry Clerk

The State of Missouri
To the Sheriff Greene County Greeting
You are hereby required to Summon Benjamin Cannaday and Joseph Cantrell to be and appear before the Hon Judge of our Caney Circuit Court on the first day of the next Term thereof which will commence and be holden at the Court House in the Town of Forsyth in said County of Taney on the 4th Monday after the 4th Monday in April A.D. 1854 (The 22d day of May 1854) then and there to answer the Petition of James T Sanders a copy of which is hereunto annexed Herein fail not and have you then

And there this writ together with how you have executed the same

In Testimony whereof I Wm C Berry Clerk of the said Circuit Court have hereunto set my hand and affixed the seal of said Court Done at office this 8 day of May 1834

Wm C Berry Clerk

A copy of the original petition attached to this writ in words and figures following

Dollars 817.55/100

One day after date due Joseph L Sonis or order Eight Hundred and Seventeen dollars 55/100 — for Value received

Steam Boat Ben Lee & Owners
By W. R. Wilson Capt

Witness
C M Webb

James F Sanders Plaintiff
Against
Thomas W Anderson
William R Wilson
Benjamin Cammafax
Joseph Barthel &
Thomas Epperson Defendants

In Taney Circuit Court May Term A D 1834

Plaintiff States that Defendants by their promissory note hereunto annexed dated June 29th day 1833 promised for value received to pay one Joseph L Sonis or Order Eight Hundred and Seventeen Dollars and fifty eight cents One day

after date Plaintiff further states that on the 14th day of March 1854 for value received said Joseph L Davis assigned said note of defendants to Plaintiff which said note and the interest are yet due Plaintiff and for which he asks Judgement

J W Sanders

James W Sanders Plaintiff makes oath and says he believes the above petition and the matters therein as stated are true

J W Sanders

Sworn to & subscribed before me this 3d day of May AD 1854

Wm C Berry Clk

Upon which writ & petition the Sheriff of Greene County made the following return

State of Missouri
County of Greene } I Junius W Campbell Sheriff of said County do hereby certify that I executed the within summons duly to and within the hearing of Joseph Carthet in Greene County on the 10th day of May AD 1854 in Greene County and State aforesaid and on the said Benjamin Carnahan by leaving a copy of the within summons & petition with his son a male white person over the age of fifteen years at his house in Greene County on the fifteenth day of May AD 1854

J W Campbell Shff

By A M Julien D Shff

Filed July 3d 1854

Wm C Berry Clerk

State of Missouri } In Taney Circuit Court
County of Taney } Adjourned May Term July 3d 1854

Whereas Charles S Yancey Judge of the 15th Judicial Circuit for the State of Missouri in vacation on the 18th day of April A.D. 1854 made the following Order

State of Missouri }
County of Taney } To the Sheriff of Taney County in the State of Missouri Sir being unable to attend the regular May Term of the Taney County Circuit Court you are therefore hereby commanded to adjourn said Court by proclimation at the Court house door in said County on the first day of the regular Term of said Court until Monday the 3d day of July A.D. 1854

C. S. Yancey Judge of 15th Judicial Circuit in the State of Missouri

upon which order James T Sanders Sheriff of said County made the following return

I James T Sanders Sheriff of the County of Taney and State of Missouri do hereby certify that in pursuance of the within Order I made proclimation at the Court house door in the Town of Forsyth in said County of Taney on the first day of the regular Term of said Taney Circuit Court being the 22d day of May 1854 according to the direction of the within Order I adjourned said

regular Term over until the 3d day of July
1854 James T Sanders Sheff

Be it remembered therefore that on the 3d day of July an adjourned Term of the Yancey Circuit Court was held in pursuance of the Order aforesaid present Hon. C J Yancey Judge E B Boone Circuit Attorney James T Sanders Sheriff of said County and Wm C Berry Clerk of said Court

Among the records and proceedings of said Court on the first day of said Term is the following

James T Sanders
vs
T W Anderson
Benjamin Cannafax
Joseph Barthel
Thomas Epperson &
W R Wilson } Civil Action

And now at this day comes the Parties in this cause By their respective Attorneys and by leave of the Court agree that said cause be continued until the next Term of this Court and that Defendants plead at the next Term of this Court and that Plaintiff have leave to amend

In Vance Circuit Court of Nov Term 1854

Be it remembered that at a regular Term of the Vance Circuit Court begun and held at the Court House in the Town of Forsyth on the 28th day of November A.D. 1854 present Hon A.S. Yancey Judge of said Court E.B. Boone Circuit Attorney W.G. Snapp Sheriff of said County and Wm. C. Berry Clerk of said Court the following proceedings were had

On the 4th day of said Term

James T. Sanders
vs
Thomas W. Anderson
W.R. Wilson
Thos J. Epperson
Benjamin Cannaday
Joseph Carthel
} Civil Action

At this day comes the Plaintiff by Attorney and by leave of the Court dismisses said Cause as to Thomas W. Anderson

James T. Sanders
vs
William R. Wilson
Thomas J. Epperson
Benjamin Cannaday
Joseph Carthel
} Civil Action

This day comes the Plaintiff by

attorney and the said Defendants having appeared to the action at a former Term of the Court and Joseph Earthel and Benjamin Camafax having also been duly served with Process more than twenty days before the commencement of the Court and said Defendants being three time Solemly called Come not but make default Wherefore the Court sitting as a Jury do find that the said demand is founded on an instrument of writing and the amount ascertaind thereby the Court, do find that the said Defendants are indebted to the Plaintiff in the sum of Eight hundred and seventeen Dollars and fifty eight cents debt and Seventy three Dollars damages. It is therefore Considered by the Court that the said Plaintiff have and recover of and from the said Defendants the said Sum of Eight hundred and Ninety Dollars and fifty eight cents together with his costs in this behalf out and expended and that he have execution therefor

The above Judgement being rendered on the last day of the Term and only the minutes of the court for that day signed by the Judge Therefore the Judge made the following Order H

James J Sanders
Vs
William R Wilson
Thomas Thompson
Benjamin Camafax &
Joseph Earthel

Civil Action

This day came the Plaintiff by Attorney and the said Defendants having appeared at a former Term of this Court and also the said Joseph Cuthel and Benjamin Cannafax having also been served with process more than twenty days before the Commencement of this Court and said cause being founded on an instrument of writing and the amount ascertained thereby said cause being submited to the Court the Court sitting as a Jury find that the said instrument was duly executed by the Defendants and that the amount of said debt is Eight Hundred and seventeen dollars & 58 cents and that said Plaintiff hath sustained damages in the sum of seventy three dollars The Court do adjudge that the said Plaintiff have Judgement for said amount & that the Clerk of this Court enter up Judgement for the same

C S Guiney Ct Judge

Filed Nov 28th 1854

Wm C Berry Clerk

I Benjamin W Cannafax do hereby apply to the Clerk of the Circuit Court of Taney County in the State of Missouri for an appeal in the Cause wherein James T Sanders recovered Judgement against me & others in said Court at the Nov Term 1854 and herewith present my bond as the law requires in such case March 2d 1855

B. W. Cannafax by
L Hendrick his atty

Filed March 2d 1855

Wm C Berry Clerk

Know all men by these presents that we Benjamin W Cannafax as principal and I D Caldwell & J. W. Canforth as Securities are held and firmly bound to James T Sanders in the sum of Fifteen hundred dollars for the payment of which we bind ourselves jointly and severally firmly by these presents signed with our hands and sealed with our seals this 2d day of March AD 1855

The Condition of this bond is as follows whereas the said Benjamin W Cannafax is about to appeal to the Supreme Court of the State of Missouri from the Judgement of the Circuit Court of Taney County in said State rendered in favor of said James T Sanders and against him the said Benjamin W Cannafax and others at the Nov. Term of said Circuit Court in the

Year 1854 Now if the said Cannafax will pay all costs and damages which may be awarded against him occasioned by said appeal prosecute his appeal and perform such Judgement as shall be given by the Supreme Court & such as the Supreme Court may direct the Circuit Court to give & if the said Judgement of the Circuit Court or any part thereof be affirmed & he said Cannafax will comply with and perform the same so far as it may be affirmed and pay all damages which may be awarded against him the appelant by the Supreme Court this bond to be void else to remain in full force

B. W. Cannafax Seal
J. D. Caldwell Seal
J. W. Danforth Seal

I William C Berry Clerk of the Circuit Court within and for the County of Taney Missouri do approve of the securities in the within bond

March 2d 1855 Wm C Berry clk

Filed March 2d AD 1855
Wm C Berry Clerk

14

James F Sanders
vs
Thomas W Anderson
} Civil Action

Clerks Fees

To Issuing writ to Taney County $1.00
" Copy of Petition H attached thereto .25
" Issuing writ to Greene County 1.00
" Copy of petition H attached thereto .25
" Filing 4 papers .20
" Continuance .25
" Motion to dismiss as to T W Anderson .25
" Judgement by default .50
$3.70

Sheriff of Taney County Fees

To Serving writ on 2 defendants $3.00
" Calling cause .10
" Calling parties .10
3.20

Sheriff of Greene County Fees

To Serving writ on 2 defendants 2% 2.00
$8.90

Wm C Berry Clerk

Clerks Fees in Appeal

To entering appeal to the Supreme Court .25
" Copy of record 2,200 words @ figures 2.20
" Certificate & seal to same .50
$2.95

Wm C Berry Clk

Circuit Court Record

Continuance By agreement of Parties Book A Page 262
Motion to dismiss as to J.W. Anderson " " 285
Judgement By default " " 285

State of Missouri } ss
County of Taney }

I Wm C Berry Clerk of the Circuit Court within and for the County of Taney aforesaid do hereby certify that the foregoing 15 Pages contain a complete copy of the record in the cause of James T Sanders against Benjamin W Cannaday (et al)

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court done at Office in the Town of Forsyth this 18th day of March A.D. 1855.

Wm C Berry Clerk

35. ~~54.~~

Jas. T Sanders

vs

Thos. W. Anderson,

Wm R Wilson, Benjn

Cammerfax, Jos. Carthel

& Thos. Epperson, appts

filed March 22 1885

Wm E Dunscomb

Clerk

Tandy

13th

Chg. postage, 15 cents

No 59. Sanders vs Anderson & others

In Sec & Brother against Cox (16 Mo. Rep 166) it was held that in suing upon a promissory note it was not necessary to specify by what name the party bound himself - but that it was sufficient to state the obligation generally, leaving the particular manner of it to the proof - and we suppose there is no doubt of the correctness of this position - The petition in the present case charges that the defendants by the annexed note promissed to pay &c and the allegation therefore, as to the obligation of the defendants is sufficient, if it were competent for them ~~[illegible]~~ to identify and bind themselves in a written instrument, not by name, but by matter of description, such as is here used -

Individuals, as well as partnerships, it seems may assume any name they please and promissory notes executed by them in their assumed names are obligatory upon them - Grafton Bank vs Flanders (4 New Hamp. Rep. 236

"It is true, it was said of old that if one executed a bond in an assumed name, he must be sued in that name - and the bond

would estop him - and that he could not be sued in his true name, alleging that he made the bond in the assumed name

Field vs Winslow Cro. Eliz. 897 - Gould vs Barnes 3. Taunt 503 - Linch vs Hook 6. Mod. 225

but it is presumed this would be otherwise, under the new code of proceedure -

The Touchstone, after stating (Chapt - 12 - p 233) that "the name of the persons in grants is set down only to distinguish persons - and to make the person intended certain" remarks - ~~page~~ (p. 236) "where a grant doth intend ~~[illegible]~~ ~~[illegible]~~ to describe the person of the grantee, by his proper name - and doth omit or mistake his christian name or his surname - in this case, for the most part the grant is void, unless there be some special matter to help it - And yet if the grant do not intend to describe the grantee by his known name - but by some other matter, then it may be good - by a certain description of the person, without either surname - or name of baptism"

The same law is of course applicable to obligations - executing contracts - as well as grants and here the promissors, being ascertained and identified on the face of the instrument by matter of description, - their ownership of the boat - which ought to be deemed sufficient,

in commercial instruments at least and the note having been signed by the captain for them is a valid note in writing within our statute — and obligatory upon the makers as an instrument

There is no reason for reversing the judgment on the other grounds that have been suggested —

The judgment is affirmed

A Leonard

July Term 1855

Vanden

agst

Anderson and

others

Opinion

by Leonard

Judge

Opinion

filed Oct. 3 1855

Wm E Duncanit

Clerk

95

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Taney IN SAID STATE, **Greeting:**

WHEREAS, Jas. T Sanders

on the twenty eighth day of September in the year eighteen hundred and fifty five at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Thos. W. Anderson, Wm R. Wilson, Benjn Cannefax & Thos Epperson the sum of five $\frac{35}{100}$ dollars for his costs and charges by him expended in a certain suit wherein the said Sanders was respondent and the said Anderson & others were appellants which to the said respondent were adjudged, as appears to us of record: **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said Thos. W. Anderson, Wm. R Wilson, Benjn. Cannefax & Thos. Epperson in your bailiwick you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said Jas. T Sanders the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ:

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office; in the City of Jefferson, the fifth day of October in the year of our Lord one thousand eight hundred and fifty five

Wm E Dunscomb

Come to hand on the
25 day of Oct 1855
H. G. Snapp Sheriff

Money made in full
without a levy this Nov
20 1855
H. G. Snapp Sheriff

95

January Term 1856

Sanders

v. } Exeon.

Anderson et als

Costs

McD Dorriss	30
Wm E Dunscomb	5.05
this suit	1.00
	$6.35

Taney

In the Supreme Court
Feb Sesn AD 1855

Jas T Saunders
vs
Thos W Anderson
William R Welsh
Benj Carnafax
J Carther &
Thos Epperson

} Respondent
} Appeal for Taney
} Appellants

This is an action instituted in the Taney Circuit court by the owners of the steam boat Ben Lee to one Norris & by him assigned to plaintiff

The petition states "that the defendants by their promissory note hereto annexed dated June 29 1853 promised for value rec'd to pay one Joseph L Norris or order eighthundred & seventeen dollars & fifty eight cent one day after date - he further states that on the 14th day of March 1854 for value rec'd said Joseph L Norris assigned said note of defendants to ~~Norris~~ plaintiff which said note & the interest are yet due plaintiff & for which he asks judgment

Defendants were duly served with
process and at the next term
they appeared. The cause was
continued till the next term &
leave then given Defendants to
plead.

At the next term, Defendants
having failed to answer, the
Court rendered judgment for
want of an answer. The
Court, too, assessed the damages
& found that [redacted] Defendants
were entitled to Plaintiff Eight
hundred & seventeen dollars &
fifty eight cents &c

There was no motion in arrest
of judgment, or to set aside the
judgment or for newtrial.

Contempt appeal before the clerk
in vacation & took an appeal

F. P. Wright for plaintiff

1

The promise of defendants to pay arrears & the assignment of the note stands admitted — those allegations not having been denied by answer — Cummings vs Gatridge 17 Mo 469 —

2d The petition constituted a good cause of action, and the averments not being denied, stood admitted & the court did right in rendering judgment see & Brother vs Cox — 16 Mo 166 — This case is exactly in point

Jos T Sanders
vs
Thos W Anderson
& others

Plfs Brief

F. P. Bright

In the Supreme Court
July Term 1853

Thomas W. Anderson et al. Appellants
vs
James I. Saunders Respondent.
Appeal from Lamy.

And the said Appellants by their attorney come and suggest to the Court here that ~~is~~ there is a diminution of the transcript of the record of proceedings had in said cause in said Vincent Court of the County of Lamy as appears by the record of said cause on file in this Court and ask that a rule may be entered against the Clerk of the Vincent Court of said County requiring him to return into Court here a true & proper transcript of the record and proceedings in said cause duly certified as required by law

Edwards atty
for Appellants.

Wm R. Anderson,
Anderson Et. al.

vs

P. T. Saunders

Suggestion of diminution
of the record

Jas. T. Sanders } In the Supreme Court
vs
Wm. R. Wilson et al } Appeal from Jones.

This was a suit on a note signed by a Firm name, against Wm. R. Wilson & B. W. Connifax. & no averment in the Petition that they were the makers of the note or constituted the Firm in whole or in part. Judgment was rendered against Connifax without any proof or allegation that he was one of the Firm. From this judgment the appeal is taken. Asked to reverse it reference is made to the Petition wherein it will clearly appear that the same is not sufficient as against Connifax. and that the Court ought not to have rendered judgment against him -

P. H. Edwards &
L. Hendrick, Atty's for Pl'ff.

Additional points by Ed. Edwards,

1. The Plaintiff having taken leave to amend it was error to render a judgment by default until amendment was filed - Defendants were not bound to answer until Plaintiff had amended his petition -

2. No answer being filed by Defendants the execution of the note sued upon was not admitted, & the Plaintiff was only entitled to

to a judgment upon showing that the note was executed by Defts—

3 The petition was Defective & the court was not authorised to render a judgment upon it unless the defects in the petition had been cured by the answer of the Defendants—

E. L. Edwards for Defts

Jas. T. Sanders

vs Brief

Wm R. Watson et al

Jas. T. Sanders } In the Supreme court
vs
Wm. R. Wilson et al } Appeal from Tomy.

The Appellant comes & assigns the following Errors in this case.

The court erred in rendering judgment against Connifax in this case as he is not alledged to be the maker of the note nor a member of the Firm

P. H. Edwards &
L. Hendrick Attys for appellant.

Jos. T. Sanders

Assignment of
Error

Wm. R. Wilson et al