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Liability of a Principal for the Frauds of His Agent

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LIABILITY OF A PRINCIPAL FOR THE FRAUDS OF HIS AGENT.

-By-

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LIABILITY OF A PRINCIPAL FOR THE FRAUDS OF HIS AGENT.

In an English case which has come to be regarded as classical authority, Willes, J., said: "The master is answerable for every such wrong of the servant or agent as is committed in the course of the service, and for the master's benefit."¹ This is a concise and frequently quoted expression of the general rule of vicarious liability: a rule which was enunciated by Lord Holt in the early case of Hem v. Nichols, (1709) 1 Salk. 289,² and is now firmly entrenched in the law. The precise limits of the rule, however, especially in its application to cases of fraud, are not clear. Indeed, their determination presents some interesting and difficult problems, the intelligent solution of which demands a study of the doctrine as a whole, and of the theory upon which it rests.

¹Barwick v. English Joint Stock Bank, L. R. 2 Ex. 259, 265.
²It has been said that the rule was introduced in the case of Michael v. Alestree, 2 Lev. 172, but it is at best doubtful upon what ground the decision in that case rests.
The rule is clearly an anomalous one. Under its operation, a person is compelled to answer not only for his own wrongs, but for wrongs of which he is entirely innocent; for which, indeed, another is morally and legally answerable. This is not a fatal objection, however, for experience rather than logic is the life of our law, and history affords the true test of expediency. The origin of the rule is obscure. Judge Holmes, in his treatise on "The Common Law", attributes it to the jurisprudence of Rome. When a slave committed a wrong, his master, in order that the desire for vengeance might be satisfied, was compelled to forfeit him to the person injured, that he might do with him as he liked. In time, the master was granted the privilege of buying off the vengeance by agreement, of paying the damages instead of surrendering the slave, and with the advance of civilization this became the general custom. Then followed a more startling innovation. It was held that inn-keepers and ship-owners should be responsible for the wrongs of those in their employ, even though the wrong-doer was a free man, and therefore himself legally answerable for his wrong. Although in reality resting on grounds of public policy

1 pp. 15. 16.
alone, the jurists explained this extension of the doctrine of vicarious liability on the theory that the inn-keeper or ship-owner is negligent in employing such servants --- a theory which applies with equal force to every form of employment. That the reason is unsound is shown by the fact that no amount of care or vigilance in the selection of his servants will save the master from liability. Yet the principle thus introduced by the praetor in an exceptional case has become the general rule of law in both England and America, and is applied as well to the relation of principal and agent as to that of master and servant.

Conceding then, that the reason for the origin of the rule is irrational, can there not be found a more satisfactory reason for its maintenance? For it may be said that notwithstanding the hardships which occasionally accompany its application, the rule is universally regarded as a just one. Is it then merely a survival of ancient tradition, or may it be reconciled to modern legal conceptions? Judge Holmes contends, and with considerable force, that the rule rests to-day entirely upon the fiction of identity --- that the act of the servant is the act of the master; and cannot be resolved into an application of general and accepted principles. The same view is taken in the leading English case
of Laugher v. Pointer, 5 B. & C. 547, where Littledale, J. says: "The servant represents the master himself and their acts stand upon the same footing as his own." Baron Parke, in Sharrod v. London & N. W. Ry. Co., 4 Ex. 580, 585, follows the old fallacy of the Roman jurists, that the master is liable because he employs negligent servants. And Lord Brougham declared, in Duncan v. Findlater, 6 Cl. & Fin. 910, that the reason for holding the master is that by employing the servant he set the whole thing in motion and is responsible for the consequences. Still others have suggested that the rule in reality rests on the theory that public policy demands that there should be some responsible person who can be relied upon to pay the damages. But all of these reasons are far from satisfactory, and it is a pleasure to find that an American judge, Mr. Chief Justice Shaw of Massachusetts, as early as in 1842, placed the rule upon a sound and rational basis. In the leading case of Farwell v. Boston & Worcester Railroad Co.\(^1\), he said: "This rule is obviously founded on the great principle of social duty, that every man, in the management of his own affairs, whether by himself or by his agents or servants, shall so conduct

\(^1\)(1842) 4 Met. (Mass.) 49.
them as not to injure another; and if he does not, and another thereby sustains damages, he shall answer for it."

These words are quoted with approval by such a distinguished authority as Sir Frederick Pollock, who, in his "Essays on Jurisprudence and Ethics"¹, discusses the subject with perspicuity and force. "An employer's liability to strangers for the acts and defaults of his servants", he says, "does not stand alone in being a duty extending beyond acts and events under the direct control of the person liable. Duties as wide or wider are imposed in other cases. Is there any common element present in all these cases in which a reasonable ground of liability may be discussed? There seems to be this common point in all of them, that a man has for his own convenience brought about or maintained some state of things which in the ordinary course of nature may work mischief to his neighbors. Whether his property be cattle grazing in his field or water stored in a reservoir, or a structure crossing or overhanging a public road, there is a certain risk to adjoining owners or to the public which necessarily accompanies the state of things so kept up. It is an intelligible principle that whoever thus exposes others

¹pp.
to risk should abide the consequences if the risk ripens into actual harm. ... A man's undertaking or business is his property in a broad sense of the word. The vehicles, plant, machinery or other effects with which he carries it on are his property in a strict sense. And by analogy to the cases we have already considered, the use of this property, so far as it entails any risk upon the public, must carry with it a proportionate duty." This duty, he concludes, is that reasonable care should be used in the conduct of his business, whether by himself or by his servants or agents.

It is believed, as was intimated before, that this broad principle furnishes a rational and satisfactory reason for the maintenance of the rule. It is certainly the only principle by which its existence can be justified, and should therefore be the true test by which to define the limits of its application. Keeping it, as a guide, clearly before us, let us turn to the study of some of the leading decisions which have to do with the fraudulent acts and representations of agents, and determine, if possible, how far in that direction the rule of vicarious liability should be carried.
Frauds of Agent.

The fraud of an agent may be either:

(1) An Authorized Fraud, including one which although unauthorized when committed is subsequently ratified by the principal; or

(2) An Unauthorized Fraud.

Authorized Fraud.

It is perfectly plain that for frauds committed by his direction and authority, the principal is answerable. Indeed, this is such a clear and simple proposition of law, that authority is hardly needed to support it. *Qui facit per alium, facit per se.* The agent is merely an instrument in the hand of the principal, and his act is in reality that of the principal himself. The liability of the principal is not a vicarious liability, but a liability for his own wrong, and the person injured has all the remedies contractual and in tort to which he would be entitled if the principal had committed the wrong personally. The same is true,
of course, where the tort, although unauthorized when com-
mitted, is subsequently ratified by the principal. It should
be noted in this connection, however, that the principal is
not bound by his ratification of a tort, unless such tort
was committed in his name and on his behalf. If the wrong
was committed by the agent in his own name, or on behalf of
a third person, it cannot be effectually adopted by the
principal.

Unauthorized Fraud.

It is with this class of fraud that the difficulty is
encountered. In the first place, the rule is well estab-
lished, that in order to bind the principal, the fraud must
have been committed by the agent while acting within the
general scope of his employment. The reason for this limita-
tion is apparent. Every one, as has been seen, is responsi-
ble for the conduct of his own business and property, whether
by himself or his agents. But when an agent steps outside
the limits of his general employment, he ceases to be an
agent, even in the eye of the world, and though he may pretend
to act in that capacity, he cannot bind his principal any
more effectually than a person who has no authority from the principal at all --- indeed, who is an entire stranger to him. The difficulty is therefore resolved to these terms. Under what circumstances is the principal liable for the fraud of his agent, committed while acting within the scope of his employment, but without the principal's knowledge or consent? This problem must be considered with reference to two quite distinct and essentially different states of fact. These are:

(1) Where the fraud is committed for the benefit of the principal.

(2) Where the fraud is committed for the benefit of the agent.

Fraud for Benefit of Principal.

In the case where the fraud is committed for the benefit of the principal, it is generally conceded that he is answerable. Indeed the first reported case on the general rule of vicarious liability, Hern v. Nichols, supra, was one of this nature. The action was for deceit, the plaintiff setting forth that he bought several parcels of silk of the
defendant, as silk of a certain make, whereas it was in reality another kind of silk. At the trial it appeared that there was no actual deceit in the defendant, who was the merchant, but that it was in his factor beyond sea, and the question was raised whether the merchant could be charged with the deceit. Lord Holt held that the merchant was liable civiliter for the deceit of his factor: for seeing somebody must be a loser by this deceit, he was of opinion that it was more reasonable that he who employed and put trust and confidence in the deceiver should be a loser than a stranger. This judgment seems to have been followed in several other early cases, and also in the comparatively recent one of Udell v. Atherton, (1862; 7 H. & N. 172) where the court was evenly divided upon another point. But the ruling case in England to-day is that of Barwick v. English Joint Stock Bank, already mentioned. The action was brought for an alleged fraud, which was described in the pleadings as being the fraud of the bank, but which the plaintiff alleged to have been committed by the manager of the bank in the course of its business. At the trial it

\[1\] See Grammar v. Nixon, 1 Stra. 653 (1739); Alexander v. Gibson, 2 Camp. 555 (1811) afterwards overruled; Moens v. Heyworth, 10 M. & W. 157 (1842).
was proved that Barwick, the plaintiff, had been in the habit of supplying oats to a customer of the bank, of the name of Davis; that he had done so upon a guaranty given to him by the bank through its manager; that he became dissatisfied with his guaranty and refused to supply more oats without a more satisfactory one; and that the manager induced him to continue by giving him a new guaranty, which last guaranty was alleged to be fraudulent. It was held that if the guaranty were fraudulent, the bank would be liable. The opinion of the court on the point, however, is brief and dogmatic, and since we have already quoted the vital sentences, it is unnecessary to dwell upon it.

The English courts seem to have recognized one exception to this rule. If the agent of a corporation induce subscribers by fraudulent representations to purchase stock in the corporation, it is said that the subscriber cannot have an action for deceit against the corporation, but must seek his remedy by rescission of the contract. The earliest authority for this exception is the case of Western Bank of Scotland v. Addie, L. R. 1 H. L. (Sc.) 145, which was decided at about the same time as Barwick's case. Addie alleged that he had been induced to take shares in the Western Bank of Scotland by the fraudulent representations of its direct-
ors, and claimed to recover the value of his shares or to be reimbursed the damages which he had sustained. After his purchase of the shares and before he instituted the suit, the bank, which had been an unincorporated company, was with his concurrence incorporated, and registered, for the purpose of being wound up. Upon these facts it was held that Addie had no action for deceit against the newly formed corporation. The opinions of the judges, however, are not as clear as might be desired, and it is difficult to determine the precise reason for the decision. In Mackay v. Commercial Bank of New Brunswick (1874) L. R. 5 P. C. App. 394, a case which follows Barwick's case, Sir Montague Smith, referring to Addie's case, expresses the opinion that it does not constitute a real exception to the rule, but was decided upon special grounds. And in support of his view he quotes the opinion of Lord Cranworth: "He (Addie) was a party to a proceeding whereby the company from which the purchase was made was put an end to --- it ceased to be unincorporated, and became an incorporated company, with many statutable incidents connected with it, which did not exist before the incorporation. The new company is now in the course of being wound up. . . . . He comes too late; the appellants are not the persons who were guilty
of the fraud, and although the unincorporated company is by the express provisions under which it was incorporated made liable for the debts and liabilities incurred before the incorporation, I cannot read the statute as transferring to the unincorporated company a liability to be sued for frauds or other wrongful acts committed by the directors before incorporation." But in the later case of Houldsworth v. City of Glasgow Bank, (1880) L. R. 5 App. Cas. 317, the decision in Addie's case seems to have been considered as creating a real exception to the rule, for it is expressly followed, even though under a state of facts to which the reasoning of Lord Cranworth, quoted above, is entirely inapplicable. Indeed Lord Selborne, in referring to the opinion of Lord Cranworth, says: "One expression, indeed, of Lord Cranworth in that part of his judgment which relates to the question of damages ("He comes too late"), might possibly, if it were not qualified by the subsequent context, have been taken to mean that even if the unregistered company had been liable to be sued for damages, by its public officer, down to the time of registration, that liability would not have been among the "debts and obligations" transferred . . . . . to the registered company. Lord Cranworth was, I think, too good a lawyer and too accurate
a thinker to have placed any such narrow (I had almost said unreasonable) construction upon such words in such a statute. He made, to my mind, his real meaning plain by what he went on to say; from which it is apparent that if the western bank had been incorporated before, and not after, the frauds then in question the corporation would not, in his opinion, have been liable for those frauds in an action of this kind for damages." The ground upon which the exception to the rule in this class of cases rests is clearly stated by Lord Selborne, as follows: "This is not a case of parties at arm's length with each other, one of whom has suffered a wrong of which damages are the simple and proper measure, and which may be redressed by damages without any unjust or inconsistent consequences. For many purposes a corporation with whom his own corporation has dealings, or on whom it may by its agents inflict some wrong, is in the same position towards it as a stranger; except that he may have to contribute ratably with others towards the payment of his own claim. But here it is impossible to separate the matter of the Pursuer's claim from his status as a corporator, unless that status can be put an end to by rescinding the contract which brought him into it. His complaint is, that by means of the fraud alleged he was
induced to take upon himself the liabilities of a share-
holder. The loss from which he seeks to be indemnified by
damages is really neither more nor less than the whole ali-
quot share due from him in contribution of the whole debts and
liabilities of the company; and if his claim is right in
principle, I fail to see how the remedy founded on that
principle can stop short of going this length. But it is
of the essence of the contract between the shareholders (as
long as it remains unrescinded) that they should all con-
tribute equally to the payment of all the company's debts
and liabilities. Such an action of damages as the present
is really not against the corporation as an aggregate body,
but it is against all the members of it except one, viz,
the Pursuer; it is to throw upon them the Pursuer's share
of the corporate debts and liabilities. Many of those
shareholders (as was observed by Lord Cranworth in Addie's
case) may have come, and probably did come into the company
after the Pursuer had acquired his shares. They are all
as innocent of the fraud as the Pursuer himself; if it were
imputable to them, it must, on the same principle, be im-
putable to the Pursuer himself so long as he remains a
shareholder; and they are no more liable for any conse-
quences of fraudulent or other wrongful acts of the company's
agent than he is. Rescission of the contract in such a case is the only remedy for which there is any precedent, and it is in my opinion the only way in which the company could justly be made answerable for a fraud of this kind."

A few of our American courts, apparently misled by the English cases of Western Bank of Scotland v. Addie, and Houldsworth v. City of Glasgow Bank, and assuming the exception recognized in them to be the general rule, have denied altogether that an action of deceit will lie against an innocent principal for the fraud of his agent, even though committed in the course of his employment and for the principal's benefit. The leading case is that of Kennedy v. McKay and others, 43 N. J. L. 288, decided in 1881. The action was based upon an alleged fraud committed by the defendant McKay, in the sale to the plaintiff of forty shares of the stock of the State Insurance Company. The deceit consisted in unfounded representations as to the financial condition of the company. The stock at the time of the sale was standing on the corporation books in the name of McKay, and the sale was effected by the two other defendants, acting as his agents. McKay, however, neither authorized nor was privy in any way to the utterance by them of the false representations in question. Mr. Chief Justice Beasley
quotes from the opinions in Addie's case at some length, and says: "In the light of such authorities it is clear that an innocent vendor cannot be sued in tort for the fraud of his agent in effecting a sale. In such a juncture the aggrieved vendee has, at law, two, and only two remedies; the first being a rescission of the contract of sale and a reclamation of the money paid by him from the vendors, or a suit against the agent, founded on the deceit. But in such a posture of affairs, a suit based on the fraud will not lie against the innocent vendor, on account of the deceit practiced without his authority or knowledge by his agent."

The weight of American authority, however, sanctions the rule as laid down in Barwick's case. A frequently cited authority is the New York case of Jeffrey v. Bigelow, 13 Wend. 518, decided as early as in 1835. It appeared that the defendant's agent, duly authorized to sell a flock of sheep, fraudulently sold to the plaintiff a portion of the flock, knowing at the time that they were diseased. Under these circumstances, the court held that the defendant was liable in damages for the fraud of his agent. In Peebles v. Patapsco Guano Co. (1877), 77 N. C. 233, the

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1See also Herring v. Skaggs, 62 Ala. 180.
principal was a corporation, and the court expressly followed Barwick's case. "There is no reason that occurs to us", says the court, "why a different rule should be applicable to cases of deceit from what applies in other torts. A corporation can only act through its agents, and must be responsible for their acts. It is of the greatest public importance that it should be so. If a manufacturing and trading corporation is not responsible for the false and fraudulent representations of its agents, those who deal with it will be practically without redress, and the corporation can commit fraud with impunity." And in Haskell v. Starbird (1890) 152 Mass. 117, it was declared that there is no distinction in the matter of responsibility for fraud between an agent authorized to do business generally and an agent employed to conduct a single transaction, if, in each case, he is acting in the business for which he was employed by the principal and had full authority to complete the transaction.¹

There are some cases which indicate a tendency to restrict the recovery, in the action against the principal, to the amount of the benefit derived by the principal from the fraud. This carries logically the corollary that the principal may rescind the contract, if by so doing he can place the person defrauded in as good a position as he was before. But if he cannot or does not rescind, he must pay the person defrauded the amount which he holds as the fruit of the fraud.1 The weight of both reason and authority, however, permits a recovery to the full extent of the damage.2

Fraud for Benefit of Agent.

It has been seen that the courts are fairly in accord in regard to cases of fraud committed by an agent for the benefit of his principal. As to the liability of the principal for fraud committed under cover of the principal's business, but for the benefit of the agent, the decisions

2Jeffrey v. Bigelow, 13 Wend. 518; White v. Sawyer, 16 Gray 586; Surré v. Francis, 3 App. Cas. 103.
are by no means so harmonious.

In the admirable statement of the general rule which has already been quoted from the opinion of Willes, J., in Barwick's case, it is apparent that in England the principal is only responsible for frauds committed for his benefit. And in the case of British Mutual Banking Company v. Charmwood Forest Railway Company, (1887) L. R. 18 Q. B. D. 714, it is expressly so held. In America the point is not so clear. The United States Supreme Court holds the same view as do the courts of England, but in many of the States a contrary rule is as strenuously maintained. The principal, say these courts, impliedly warrants the fidelity of his agent in the exercise of his apparent authority. In the words of the learned Story,¹ "The principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of the agency." Thus, if the agent is a general agent in the sense that his powers are fixed by custom, a person dealing in good faith with such agent may assume that the agent has the power commonly exercised by such agents, and hold the principal liable for

¹Story on Agency (9th Ed.) Sec. 452.
Boston Railroad, (1889) 150 Mass. 200, declared it to be the
general rule that a corporation is estopped to deny the
validity of certificates issued in proper form under its
seal, and duly signed by the officers authorized to issue
certificates, if they are held by persons who took them for
value without knowledge or notice that they had been fraud-
ulently issued. But in Farrington v. South Boston Railroad,
(1890) 150 Mass. 406, decided about a month later, it was
held that a person who accepts a certificate of stock from
an agent of a corporation in pledge for the payment of money
borrowed for such agent's personal benefit, without inquir-
ing into its validity, and relying entirely upon the agent's
representations, is not an innocent holder, and cannot bind
the corporation. In issuing such a certificate, argues
the court, the agent has a personal interest adverse to that
of the corporation, and consequently a third person should
reasonably be required to investigate his title. The Feder-
al case of Moores v. Citizens National Bank, to which we
have already referred, arose under similar circumstances,
and at least in the Circuit Court, was decided upon the same
grounds. "The plaintiff having had knowledge of the fact",

acts within such apparent power. This is merely an applica-
tion of the doctrine of estoppel in pais, commonly stated in this form: "When one of two innocent parties must suf-
f er, he must bear the loss who reposed the confidence."

The difference of opinion is strikingly illustrated in cases where the agent, under cover of his principal's business, issues for his own benefit fraudulent documents of title, such as certificates of stock, bills of lading or warehouse receipts. In British Mutual Banking Company v. Charmwood Forest Railway Company, (supra), the defendant's agent fraudulently issued certificates for debenture stock in excess of the amount which the company was authorized to issue, and subsequently made false representations to the plaintiff's manager as to the validity of the transfers of such stock. As a result the plaintiffs made a loan upon the security of the fraudulently issued stock, and suffered the damages for which the action was brought. It appeared that the defendant did not benefit in any way by the false statements of their agent, which were made entirely in his own interest. Bowen, L. J., quoted with approval the rule in Barwick's case, and Lord Esher said: "Although what the secretary stated related to matters about which he was auth-
orized to give answers, he did not make the statements for
the defendants but for himself. He had a friend whom he
desired to assist and could assist by making the false state-
ments, and as he made them in his own interest or to assist
his friend, he was not acting for the defendants. The rule
has often been expressed in the terms that to bind the prin-
cipal, the agent must be acting 'for the benefit' of the
principal. This, in my opinion, is equivalent to saying
that he must be acting 'for' the principal, since if there
is authority to do the act it does not matter if the prin-
cipal is benefitted by it." The Supreme Court case of
Moores v. Citizens National Bank, (1883) 111 U. S. 156, has
been regarded as authority for the same view, though the
decision was apparently governed by special circumstances.

On the other hand there are decisions in several States,
distinctly holding that if a stock-transfer agent, having
general authority to issue stock certificates, issue fic-
titious certificates for his own benefit, the defrauded
purchaser has an action for deceit against the corporation.
The ruling case of New York & New Haven Railroad Company
v. Schuyler, (1865) 34 N. Y. 30, arose out of the so-called
"Schuyler Frauds." Robert Schuyler, the president and
general transfer agent of the plaintiff company, who had
general authority to issue stock, issued, beyond the capital
limited by its charter, but in the form prescribed by its by-laws and purporting to be transferable on its books on surrender of the certificates, a large number of certificates of stock. The case was remarkable for the number and distinction of counsel, and it was argued, says the court, "with an elaboration and power seldom equalled in a court of justice." In the course of his long and exhaustive opinion, Davis, J., speaking for an unanimous court, says: "I have come to the conclusion that the issuing of the certificates by him must be held to be within the scope of the real and apparent authority which he possessed; and the remedy of the defendants is not prejudiced by the fact that he used and intended to use the avails for his own purposes." And in the recent New York case of Fifth Ave. Bank v. Ferry Railroad Company, (1893) 137 N. Y. 231, Judge Maynard, speaking of a fraudulently issued certificate of stock, said: "It was a certificate apparently made in the course of his employment as the agent of the company and within the scope of the general authority conferred upon him, and the defendant is under an implied obligation to make indemnity to the plaintiff for the loss sustained by the negligent or wrongful exercise by its officers of the general powers conferred upon them." The Massachusetts court, in Allen v. South
says the court, "that Moores, upon whom she relied to have the stock transferred to her, was acting for himself as well as in his capacity of cashier --- that is, acting for the bank upon one side and for himself on the other, in reference to the matter of issuing this certificate --- she is not, in the judgment of this court, an innocent holder of the stock." However, in Tome v. Parkersburg Branch Railroad Company, (1873) 39 Md. 36, another case in which the treasurer pledged fraudulently issued stock as security for payment of a loan to him, the corporation was held liable. "The ground of liability", the court points out, "is not that the principal has been benefited by the act of the agent, but that an innocent third person has been damaged by confiding in the agent, who was accredited by the principal, as worthy of trust, in that particular business."

In respect to the fraudulent issue of bills of lading, the ruling English authority is Grant v. Norway, (1851) 10 C. B. 665, where it was held that the owner of a ship is not bound by the fraudulent act of the ship's master, in signing a bill of lading for goods which had never been shipped. The court contends that the master is a general agent with authority to perform all things usual in his employment, and since it is not usual for masters to sign
fictitious bills of lading, such an act is not within the general scope of his employment. This argument is a mere play upon words and if carried to its logical conclusion would excuse every excess of duty on the part of an agent. That it is not accepted, even by the English courts, is shown by the decision in Montaignac v. Shitta, (1890) 15 App. Cas. 357, to the effect that where an agent is authorized to borrow money for the purpose of carrying on the business entrusted to him, which authority under circumstances of emergency must be deemed to include power to borrow on exceptional terms outside the ordinary course of business, the lender is not bound to inquire whether in the particular case the emergency had arisen or not, but is entitled to recover from the principal if he made the loan in good faith and without notice that the agent was exceeding his authority. The fallacious reasoning in Grant v. Norway has been adopted by the United States Supreme Court and steadily followed in the Federal tribunals. In the case of The Schooner Freeman v. Buckingham, (1855) 18 How. 182, the Supreme Court said: "The master of a vessel has no more apparent authority to sign bills of lading than he has to sign bills of sale of the ship. He has an apparent authority, if the ship be a general one, to sign bills of
lading for cargo actually shipped and he has also authority to sign a bill of sale of the ship when, in case of disaster, his power of sale arises. But the authority in each case arises out of and depends upon a particular state of facts. It is not an unlimited authority in the one case more than in the other, and his act, in either case, does not bind the owner, when in favor of an innocent purchaser, if the facts upon which his power depended did not exist, and it is incumbent upon those who are about to change their condition upon the faith of his authority to ascertain the existence of all the facts upon which his authority depends." And in Pollard v. Vinton, (1881) 105 U. S. 7, the court, quoting at length the opinion in the foregoing case, distinctly holds that neither the master of a steamboat, nor its shipping agents at points on the rivers of the interior where cargo is received and delivered, can, by giving a bill of lading for goods not received for shipment, bind the vessel or its cargo. The same doctrine also prevails in several of the State courts, including those of Massachusetts, Illinois, Ohio, Maryland, Louisiana, Missouri and North Carolina. In many jurisdictions, however, a contrary rule has been firmly established, resting upon the doctrine of estoppel in pais. Perhaps the leading authority is Armour v. Mich.
Cent. Rd. Co. (1875) 65 N. Y. 111. In this case Grant v. Norway is expressly disapproved and the defendant carrier is held liable to bona fide holders, upon bills of lading issued by its agent who had been deceived by forged warehouse receipts; the decision resting upon the ground that as the agent was acting within the scope of his authority in issuing bills of lading, the carrier was estopped to deny the validity of his act. So, in Brooke v. N. Y. L. E. & W. Rd. Co., (1885) 108 Pa. St. 529, the carrier was held liable, where the agent by collusion with a shipper issued fictitious bills of lading, which passed into the hands of innocent purchasers. This case was decided according to the laws of New York, the contractual rights of the parties having arisen in that State; but, as Mr. Porter at Sec. 434 of his treatise on the Law of Bills of Lading observes, the Pennsylvania court regarded the lex loci contractus with such clearly expressed approval as to render the adoption of it as the lex fori, when occasion may be presented, highly probable.

Another interesting case in support of the view that the principal is liable, even though the fraud is committed for the agent's benefit, is that of McCord v. Western Union Telegraph Co. (1888) 39 Minn. 181. The local agent of the
company, who was also agent of an express company at the same place, sent a forged dispatch to a merchant in a neighboring city, requesting him to forward money to his correspondent at the former place, to use in buying grain. The telegram was duly received, and the money in good faith forwarded by express in response, but it was intercepted and converted to his own use by the agent. The court held that notwithstanding the agent had committed the fraud for his own benefit, the company was answerable in damages to the person defrauded. "The rule which fastens a liability upon the master to third persons for the wrongful and unauthorized acts of his servant", says Vanderburgh, J., "is not confined solely to that class of cases where the acts complained of are done in the course of the employment in furtherance of the master's business or interest. . . . . .

The defendant selected its agent, placed him in charge of its business at the station in question, and authorized him to send messages over its line. Persons receiving dispatches in the usual course of business, when there is nothing to excite suspicion, are entitled to rely upon the presumption that the agents entrusted with the performance of the business of the company have faithfully and honestly discharged the duty owed by it to its patrons, and that they
would not knowingly send a false or forged message; and it would ordinarily be an unreasonable and impracticable rule to require the receiver of a dispatch to investigate the question of the integrity and fidelity of the defendant’s agents in the performance of their duties before acting. Whether the agent is unfaithful to his trust, or violates his duty to, or disobeys the instructions of, the company, its patrons have no means of knowing. If the corporation fails in the performance of its duty through the neglect or fraud of the agent whom it has delegated to perform it, the master is responsible. It was the business of the agent to send dispatches of a similar character, and such acts were within the scope of his employment, and the plaintiff could not know the circumstances that made the particular act wrongful and unauthorized. As to him, therefore, it must be deemed the act of the corporation."

Authorities might be multiplied, but we deem those already discussed sufficient to disclose the nature of the conflict and the tendency of judicial opinion in regard to it. The cases may seem irreconcilable, but upon reason, at least, it seems clear that a principal should be answerable for all acts of his agent within the scope of his real or apparent authority, whether or not such act is committed
in the interest and for the benefit of the principal. The doctrine of estoppel in pais is an eminently just and reasonable one. In any event, some one must suffer from the fraud of the agent, and since the principal, by reposing confidence, made it possible for him to commit it, and moreover is in the better position to judge of fidelity in the execution of his powers, it is only equitable that he should take the risk of loss.

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