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THE LIABILITY OF AN AGENT SIGNING NEGOTIABLE PAPER

--BY--

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1894
Probably there is no question in law to-day which has called forth more opinions by eminent judges or arguments from more able lawyers than the question as to the liability of an agent signing or purporting to sign for a principal, and it is certain that no question has been more differently and, in my humble opinion, less satisfactorily answered. It has in fact been answered differently in many of the states, and in some one can scarcely tell even now what the law is, so many opinions differing in each particular having been handed down by each succeeding judge on the same bench.

This is particularly true in regard to the presumptions raised by law as to the liability of a person signing a negotiable instrument as agent for another.
As one learned judge says, "The books are full of cases on this refined subject and are overburdened with elaborate learning not infrequently more nice than wise, and show such embarrassing conflict of judicial opinion that one in search of the law is well nigh tempted to discard the whole that is written and follow the dictates of his own understanding." This is the subject I intend to discuss and particularly the liability of one signing for a corporation.

In the first place, I think all the courts have from the beginning laid down rules altogether too strict and arbitrary as to the liabilities of those persons. The reason, it seems to me, is the fact that written contracts were originally all formal and later when mercantile contracts began to be in writing, although there was
an effort, and in fact it was successful, to a certain extent, to be more lenient and do away with a large part of the formality of the old contracts under seal and thus broaden their usefulness, yet the courts have retained more or less of the law of those instruments especially with regard to negotiable instruments.

The two are yet much alike and in some ways to the advantage of business usages, but in regard to the liability of agents the rule is too strict. In the case of U. S. Bank vs. Lyman, 20 Vt. 666, Prentiss J. says,: "Upon the whole it appears to me that the true rule of law is that no person, although in fact a principal or partner, can sue or be sued upon a bill or negotiable note, unless he appear upon its face to be a party to it. A promissory note, according to the expression of
very great judges, partakes in some manner of the nature of a specialty importing a consideration and creating a debt or duty by its own proper force. Being assignable and passing by mere indorsement, it is necessary that the parties to it should appear and be known by bare inspection of the writing, for it is on the credit of the names appearing upon it that it obtains circulation. It is for these qualities and on these considerations that it is distinguished from simple contracts in general and made subject to a different rule." This statement expresses exactly the reason given for this rule by judges and text writers. But on a closer examination is this exactly true? Is it always on the credit of the persons named in the paper that it obtains circulation? In the case of a bank or a large corporation, this is
certainly not generally so. Then how does it obtain circulation? Not because the cashier is a responsible man personally but because he represents some one who is, and the signer is known to be the authorized agent. Any corporation business has to be carried on through an agent and when paper is accepted from him in the regular course of the corporate business, it seems absurd to assume that he intended to give his personal note or that it was accepted as such. In the state of Iowa the very strict rule as to negotiable instruments prevails, but recognizing the injustice of a strict enforcement of the same, the court has found a means of modifying it, till it can almost be said that no such rule exists. The ground on which this is done is well shown in the case of Lee vs. Percival, 52 N.W.Rep. 543.
A note was given to plaintiff in the ordinary course of the business of the Herndon Natural Gas and Land Company, signed F. A. Percival, President, Alex Hastie, Secretary.

Suit was brought against the signers, but they alleged that if it was so signed that it was not the obligation of the Company only, the manner of signing it was the result of a mutual mistake, and asked that it be reformed and made to express the true contract of the parties.

This was allowed by the Court of Equity, Judge Robinson saying, "It is well settled in this State that a signature like those in question, renders the signer individually liable, the addition of words denoting an official title being deemed a mere description of the person. It is also the rule that parol evidence is not admissible to show that such a signature was designed to bind the
corporation of which the person signing was an officer, but that has no application to actions in equity where the signature is alleged to be the result of a mistake the correction of which is asked."

This plainly arrives at a just and fair interpretation but why should it be necessary to resort to a mere technicality when the instrument could be interpreted just as well in a court of law without the necessity of having a technical reformation in a court of equity?

It seems to me that the strictness of the rule at common law in regard to the mode of execution extends only to solemn instruments under seal. It does not reach unsolemn instruments and especially commercial and maritime contracts. In regard to these the liability of the principal is made to depend upon the fact that the
act was done in exercise and within the bounds of the powers delegated and especially that it was the intent of the parties that the principal and not the agent should be bound and in ascertaining these facts as connected with the execution of a written instrument it should be held that parol testimony should be admissible to prove who is the principal. New York and nearly all the older states, except Maine, do allow that as far as the original parties and those acquainted with the circumstances are concerned, it is allowable to show who is the principal, while Maine and some western states allow no parol evidence to be introduced to make any one responsible whose name does not appear on the face of the instrument, in most of which cases it would be most just and equitable that it should be done.
But with regard to third parties who hold without knowledge of the facts, the courts seem universal in applying a strict rule governing the liability of an agent, and in order to relieve himself from liability he must unequivocally make it appear on the face of the note that he signs for another and no extrinsic evidence is allowed under any circumstances to show otherwise. Why should this be so? Bigelow says: "A person is constructively given notice of equities when he has knowledge of a preliminary fact or set of facts which would suggest to the average man the existence of some ulterior fact of importance. The preliminary fact puts him on inquiry concerning the probable ulterior fact. If he does not pursue the inquiry suggested, or if he pursues it faithlessly, he is fixed with notice of it. He stands
as if he knew it."

Why should not this rule apply when the addition of cashier, agent, etc. is put to a person's signature; when it is the universal custom among both banks and business men to accept such a signature as that of the principal? Yet plainly from many cases it is seen that though an agent signing in that manner did not intend to bind himself or that the person taking the note never expected him to, yet he is held liable. This first person should certainly not be able to get any better security than he bargained for, simply because the person signing instead of writing the whole thing out abbreviated it in such a way that they and any business man of ordinary intelligence would understand what the abbreviation stood for. Why should not a third person taking
the note be considered to have constructive notice just the same? The words President, agent, etc. must mean something. If he does not know what they mean, why should he not find out? The law says though that such an addition is just intended as a description and is understood as such by holders of the note. But that is not reasonable. The fact, on the other hand, is that no one except one who is versed in the law of this subject ever understood it to be intended as a description, and if they do not understand it that way, why should the law presume that they do? In case of Hodgson vs. Dexter (1 Cranch, 264) John Marshall C.J. very aptly said where the defendant had entered into a contract as agent and described himself as such, "The official character of the defendant is stated in the description of the
parties. This it has been said might be occasioned by a willingness in the defendant to describe himself by a high and honorable title he then filled. This unquestionably is possible but is not the fair construction to be placed on this part of the contract, because it is not usual for gentlemen in their private concerns to exhibit themselves in their official character."

But this is not the general construction put upon such a signature and though it is rather presumptuous for me to criticise what has been laid down by the most eminent of judges, nevertheless, I do criticise on the grounds, first, that no man should be able through a technical rule of law to get more or less than he bargained for; second, it is a usage of business which is almost universal for an agent to sign paper which the law
would say bound him and yet he did not intend to bind
himself or the persons through whose hands it passes did
not think of him as principal, in fact, in many cases
if they had they would not have accepted the paper;
third, a person taking negotiable paper should be pre-
sumed to have notice of this the same as other equities
when there is anything on the face of the paper to sug-
gest such a thing to an ordinary person.

Nevertheless, this reasoning has certainly not been
followed by most of the courts and though some cases
seem to have been decided in accord with it, others, and
in fact most of them, though not overruling, have found
some distinguishing feature and ruled otherwise; and
in fact the courts seem tending all the while to a more
strict interpretation of the contract as evinced on the
face of the negotiable instrument, while the doctrine of the lenient interpretation of many of the older cases is being discarded.

The old case of Mechanics Bank vs. Bank of Columbia, 5 Wharton 326, might be cited to illustrate how far the courts have departed from old rules. The note read

"Mechanics Bank of Alexandria, July 12, 1817.

Cashier of Branch Bank of the United States, Washington:-- Pay to the order of Phillip H. Minor amount of discount made me, which I believe is seventeen thousand six hundred and twenty-six dollars and five cents.

(Signed) Wm. Patton, Jun."

Here without a word on the face of the note as to who was the principal, it was allowed to be proved that Patton was simply cashier, acting as agent for the Bank.

The Judge in his opinion said that "there would not be the
least question as to whether he could be tried as principal if the agent had put Cas. or Ca. after his name, but that as there was nothing to show it, it is by no means true, as contended in the argument, that the acts of the agent derive their validity from professing on the face of them to have been done in the exercise of the agency.

In the more solemn exercise of derivative powers as applied to the execution of instruments known to the common law, rules of form have been prescribed. But in the diversified exercise of the duties of a general agent the liability of the principal depends upon the facts:

(1) That the acts were done in the exercise and (2) Within the limits of the powers delegated. These facts are necessarily inquirable into by a court and jury and this inquiry is not confined to written instruments."
Again in the case of Baldwin vs. Bank of Newbury, (1 Wallace, 234) the Judge cited the previous case with approval and went to the extent in speaking of parol evidence being admitted to prove whether the person signing a negotiable paper was acting as agent or principal, of saying "The same rule as applied to ordinary simple contracts has since that time (time of decision in Mechanics Bank vs. Bank of Columbia above) been fully adopted by this court."

The latest case on this question in the United States Court is Metcalf vs. Williams 104, U.S. 93. It was a draft in this form:


Judge Bradley said: "Where a person acts merely as agent of another and signs papers in that capacity, that is, signs them as agent and the party with whom he deals has full knowledge of his agency and of the principal for whom he acts an express disclosure of the principals named on the face of the papers or in the signature is not essential to protect the agent from personal liability". He further says, "It is unnecessary to determine whether the form of the document in this case was sufficient to charge innocent holders of the check with notice of its character. The fact that it bore two official signatures, that of the complainant as Vice President, and Aistrop as Secretary, is so unusual on the hypothesis of its being an individual transaction, and points so distinctly to an official origin, that it may
be very doubtful whether any could claim to be ignorant of its true character."

This case goes farther in the right direction of justice and according to business usages than any other late case that I have been able to find, and it is to be regretted that the last point was not involved. For though he ends up by admitting that the ordinary rule is that the adding of agent or some like term is only a descriptio personae and would have no weight except with persons acquainted with the circumstances. Still I think that where paper was signed in that way and passed through the hands of business men in the ordinary course of business if it was to come before a federal court, the court would go very far in taking into consideration the business usages and the meaning an ordinary man would
give to such an addition. If a court would do this, there would certainly be a strong tendency to raise a presumption of law that notice had been given, for although many learned judges have said that such additions are meant and understood to mean simply a description of the person, Judge Bradley's opinion would lead one to think that the court would not necessarily keep rigidly to that rule.

The strongest argument for the strict rule of interpretation, I think, is that a negotiable instrument is used in a greater or less degree as a circulating medium and as such should be as free from all conditions and uncertainties as possible so as to fulfill in the highest degree this mission. As one learned Judge puts it, "A negotiable instrument is like a traveler without
But why should this be necessarily so? There are many things on a negotiable instrument which the law presumes gives notice to a holder which are much more unjust and which do not have to appear on the face of the paper even as clearly as this does in order to be presumed to have given constructive notice. An old rule was to the effect that if a note endorsed in blank was offered for discount by an entire stranger, was discounted without any inquiry being made concerning this stranger, and it turned out that the note had been stolen or obtained fraudulently, the Bank who discounted could not recover, and these principles although denied for many years by the courts, seem to be recognized again to a certain extent in the late New York case of Vosburgh vs. Diefendorf,
119 N. Y., 357.

Why should not an acceptor of a note bearing President, Treasurer, or some like term after the signature, be put upon inquiry as to the meaning of these words, if he does not already know what they are intended for, and if he does know why not be bound by them.

If this rule was adopted there would be no injustice to any person. The paper would be in many instances harder to circulate, but the inconvenience would fall on the maker, and when a person finds an inconvenience in doing a certain thing, he generally inquires into the cause, and if it is not too much labor he remedies it. This would be done by the maker of a note if it was found that it did not circulate as well and was therefore worth less. Of course it could be said that under the
present law if an agent has to pay one of his notes once, he will probably afterwards know how to make one which will bind his principal. But that is a pretty hard way to learn and in most cases a very inequitable way, and since negotiable instruments are drawn up by all kinds of people educated and uneducated in the laws, they should receive a liberal interpretation and not one adapted to those instruments which all persons admit themselves not learned in the law enough to make and therefore leave to professional men to draw up.

Nevertheless, the administrators of justice have not seen fit as yet to look at it this way but have laid down much stricter rules in most of the states and in England.

In New York there have been many cases decided on
the points in question, and the law, at least, for the present, is well settled that a bona fide holder can look to the agent for payment of the note if he has not clearly shown on the face that he acts as agent and not as principal. Just what the court has decided is sufficient to show this has been up many times, though, and has been answered in different cases somewhat differently. Even as to cases between the original parties there has been much litigation as to whether it can be shown by parol evidence who is the principal in a negotiable instrument. But that question, I think, has been disposed of in the interests of justice and equity, and the law is to-day that an agent can show by parol evidence at all times between himself and the payee of the note, the circumstances under which and understanding between
them as to the capacity in which he signed.

One of the oldest cases to be found in New York State directly on this point is the case of Taft vs. Brewster, 9 Johnson, 334. A Bond was given by A.B.&C. as trustees of the Baptist society of Richfield, for a certain amount of money and signed "A.B.C., Trustees of Baptist Society, of Richfield" and sealed by their private seals, held that they were independently liable. The opinion is given per Curiam with no reason for the decision and not a single case cited. This was a very arbitrary ruling, it seems to me, or else the court was very much influenced by the rules governing other contracts in writing, and since at that early time (1812) all contracts in writing were construed with much the strictness of sealed instruments, it is not at all
singular that the true distinction between an ordinary contract in writing and a negotiable note was to a certain extent overlooked and the note treated as any other contract; yet it is unfortunate since this case is cited continually in later cases as settling the law forever on this point.

The fact that Judges and lawyers generally did not distinguish contracts in the form of negotiable instruments from others in writing is plainly seen in the early cases, for continually cases of ordinary written contract are cited in these old cases both by the attorneys and by the judges on points as to an agent's ability to bind his principal in a negotiable instrument and vice versa, and in not one of them is it intimated that there is a difference between their liabilities.
The case of Pentz vs. Stanton, 10 Wendall, 271, is a good example showing this and is cited continually in later cases. The agent of a manufacturing establishment drew a bill of exchange on a third person signing it W. A. Pentz, Agent. It was held that the principal could not be charged as the word "agent" was only a word of description. Judge Sutherland in the opinion says

"The import and legal effect of a written instrument must be gathered from the terms in which it is expressed and this note must be considered as a separate security.-------- No person in making a contract is considered to be the agent of another unless he stipulates for his principal by name stating his agency in the instrument which he signs, nor do I know an instance in the books of an attempt to charge the person as the maker of a
written contract appearing to be signed by another unless the signer professed to act by procuration or authority and stated the same of the principal on whose behalf he gave his signature. He also discusses at length the question of the admissibility of parol evidence in such cases to show the real character of the transaction and holds it to be utterly incompetent. So that he practically decides that there must appear on the face of the paper who is the principal.

This case is cited continually on the question of an agent's liability signing negotiable papers, yet it is perfectly plain that as to written instruments generally it states the law wrong, for it can now always be shown by parol evidence, who is the principal in all written instruments not under seal, and since it bases
its rulings as to the agent's liability in this particular instance on a wrong premise, why should the conclusion arrived at be cited in support of later cases?

It is not intimated by a single word in the opinion that a negotiable note stands on any different ground than any other instrument in writing, and no distinction seems to have been made until much later cases.

The law as to the admissibility of parol evidence to show who is the principal to a written contract has changed, though, and it now, as I said above, allows to be shown by parol who are the real parties to the contract. This is also allowed between the original parties or a person holding and knowing the circumstances under which a negotiable instrument was given. But the courts have not yet gone to the extent of saying
that a person taking receives constructive notice where it does not plainly on its face show who is the principal,

The first case in this state holding that a third person with notice of the circumstances of the drawing of the paper could not recover from the agent is that of Hicks vs. Hinde, 9 Barbour 528. The agent drew a draft on his principal and signed it "Hinde, agent"; the draft was accepted by the third person with knowledge of the circumstances. Held that this knowledge could be proved by parol evidence and that Hinde was not liable on the draft.

The case of the Bank of Genessee vs. Patchin Bank, 19 N. Y., 312, is in this same line. Here S. B. Stokes, cashier of a bank sent to the plaintiff to be discounted
a bill of exchange payable to "S. B. Stokes, cash", indorsed by him with the same addition to his signature and inclosed in a letter dated at the banking house and signed "S. B. Stokes, cash". The plaintiff Bank was advised at the time of discounting the bill that Stokes was the cashier and that he had been directed to send it in for discount. It was here held that it was the indorsement of the Bank and not of S. B. Stokes individually, because agency of the cashier was communicated to the knowledge of the plaintiff as well as apparent, and it is intimated that no other construction could be put on the bill under any circumstances, even without instruction given in the letter. Gray, J. says, "What else could with any good reason be inferred from his indorsement of the bill as cashier, inclosed as it was
in a letter dated at the Patchin Bank, subscribed as cashier, than that the whole business was done in his capacity as cashier of the Bank." Clearly nothing else could be inferred. But I fail utterly myself to see why anything more can be inferred from a letter dated at the Patchin Bank with the addition of "Cash" to a person's name, than from a draft, note or something else dated and signed in the same manner. A person writes a letter and after his name adds "agent", he is not thought for a moment to be the principal, yet when he fills out a note or a draft in the same way, he is presumed to have meant that he signed as the principal. There is certainly no logical reason for the distinction. Justice Gray further says, "If the addition of cashier was a mere description of the person and not of
the character in which he acted for the Bank, the plain-
tiff's acquired no title to the bill as against the de-
fendant. Suppose a controversy to have arisen between
the Patchen Bank and the plaintiff, as to the title of
the bill, no one, I apprehend, would seriously insist
that its indorsement by Stokes, with the addition of
cashier, did not pass the title, clearly if it would
be an official act binding upon the Bank in one case,
it is in the other, and if it was not intended to make
the Bank liable, the indorsement should have been without
recourse".

But the Justice after going so far in a reasonable
way seems to have considered a little and adds in the
next sentence a qualification to this--- what he probably
thought too broad statement to be consistent with some of
the earlier cases--- to the effect that there is a distinc-
tion between Bank's notes and drafts and those of another kind of corporation. But this, in my opinion, is not at all just. If the cashier of a Bank whose very business is that of discounting notes, etc. is able to bind the corporation and leave himself free from liabili-
ty, how much greater reason is there for allowing an agent of another corporation, whose knowledge of the law of bills and notes is presumably much less than that of a cashier, to be able to bind his principal when he intends to, just the same as the cashier of a bank, and in his endeavor to do so what form of note or draft could he with more reason follow than that of a person whose very business is the filling out and accepting of such paper.? Or in other words, why should a cashier be allowed to
fill out a paper in this way and escape personal liability and then turn around and accept paper from an agent of another corporation signed in the same way, and yet hold him personally liable? There is no ground whatever on which to distinguish the two unless it be to hold a cashier more strictly liable than the agent of another corporation.

But it is unnecessary to discuss more cases on this point as the law in this state plainly is, that generally the addition to a signature of "agent", "Pres.", "Cashier" etc. is merely a descriptio personae, and means nothing by itself unless it is shown that the holder of the note knew the circumstances under which it was made.

It was even held in the C. N. Bank vs. Clark, 139 N. Y. 307, that where a note was made out on a blank
form, with the name of the corporation on the margin and
signed "John Clark, Pres.," "E.H. Close, Treas.," they would
bind themselves personally, although they never so in-
tended and the person to whom the note was made out did
not take it as theirs. But he discounted it at a
Bank and as the court held that there was not enough on
the face of the note to give notice, the unfortunate
agents had to pay.

Nothing, in my opinion, could be more unjust and
though there may be many reasons for keeping negotiable
paper distinct from other written contracts in many ways,
yet I think that they would lose none of their usefulness
and in a very great majority of cases, would be more
conducive to justice, if the law presumed a constructive
notice to be given when a person added, "Pres", "Treas."
or some such title to his signature, which any ordinary prudent man would be apt to inquire about.

Of course that particular paper might be less useful, but if it was less useful it would be harder to circulate and those who wished to circulate it would very soon find the reason why and remedy it. Thus no one would suffer hardship but those deserving it, and they only a just amount.

But it is hardly likely that for years to come, will this be the law, even if it ever is, so firmly has this ruling been established by successive judges in this country and in England, but justice though many times slow, is not the less sure in courts of law; so in this case surely sooner or later the injustice of the present ruling will be seen and remedied.