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NOTES

THE LIABILITY OF A PRINCIPAL FOR THE FRAUD OF HIS AGENT COMMITTED FOR THE BENEFIT OF THE AGENT.

It is doubtful whether there is any question of law upon which there is a more direct conflict of authority in the United States than on the question of the liability of a principal where his agent commits a fraud within the apparent scope of the authority, and under cover of the principal's name and business, but for the benefit of the agent.

This conflict of judicial opinion is well illustrated in two classes of cases: (1) Where the agent fraudulently issues stock certificates and sells them for his own benefit; (2) where the agent fraudulently issues bills of lading and sells them for his own benefit.

In England it seems to be established that the principal is never liable under such circumstances. The leading case on the subject is *British Mutual Banking Co. v. the Charnwood Forest Railway Co.*¹ In this case the secretary of a company answered questions which were put to him as secretary as to the validity of certain debenture stock of the company. The answers were untrue and were fraudulently made by the secretary for his own benefit. In an action against the company for loss arising from the representations, the jury found that the secretary was held out by the company as a person to answer such inquiries in their behalf, but on appeal from the decision of the Queen's Bench Division, it was held that a principal is not liable in an action of deceit for the unauthorized and fraudulent act of a servant or agent committed, not for the general or special benefit of the prin-

1. L. R. 18 Q. B. Div. 714.

cipal, but for the servant's or agent's private ends. In the opinion on the case, Lord Esher, M. R., said, "Although what the secretary said related to matters about which he was authorized to give answers, he did not make the statements for the defendant but for himself. I know of no case where the employer has been held liable when his servant has made statements not for his employer, but in his own interest." Fry, L. J., in his opinion stated, "It is plain that the action cannot succeed on any ground of estoppel for otherwise the defendants would be estopped from denying that the stock was good. No corporate body can be bound to do something beyond their powers. The action, therefore, cannot be supported on that ground. Nor can it be supported on the ground of direct authority to make the statements. Neither can it be supported on the ground that the company either benefited by or accepted or adopted any contract induced or produced by the fraudulent misrepresentation. I can see no ground for maintaining the action."

Cox, Patterson & Co. v. Bruce & Co.,² decided the same point in regard to a fraudulent bill of lading. A bill of lading signed by the captain of a ship in respect of a shipment of bales of jute stated that there were more bales of the higher grade of jute than there really were, and it was held that an indorsee of the bill of lading for value, without notice of the incorrectness of the description of the bales had no right of action against the shipowners either for breach of contract or upon the ground that they were estopped by the representation contained in the bill of lading. Another English case, Grant v. Norway,³ held that the principal was not liable for a fraudulent bill of lading issued for the benefit of the agent and the argument of the Court was that the agent is authorized to do what is usual in his agency and it is not usual to issue fraudulent bills of lading.

2. L. R. 18 Q. B. Div. 147.

3. 10 C. B. 665.

In the United States two opposite views are taken. The English rule on the subject has been followed in the decisions by the U. S. Supreme Court. This rule was laid down in *Friedlander v. Texas Pacific Railway Co.*,⁴ which decided that where a station agent having authority to sign bills of lading, by collusion with a pretended shipper, issues a bill of lading of goods which are not delivered for transportation and which have no existence, and the shipper negotiates it for value to a third person, who is ignorant of the facts, the railroad company is not liable on the bill to the purchaser; the fraud of the agent being outside the scope of his employment, as he could only issue bills for property delivered. Part of the opinion of Chief Justice Fuller was, "Easton (the agent) was not the company's agent in the transaction for there was nothing upon which the agency could act. The fraud was in respect to a matter within the scope of Easton's employment or outside it. It was not within it, for bills of lading could only be issued for merchandise delivered; and being without it, the company which derived and could derive no benefit from the unauthorized and fraudulent act, cannot be made responsible."

The case of *Pollard v. Vinton*,⁵ also decides that neither the master of a steamboat, nor its shipping agents at points on 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 owner and such bill is void even in the hands of a transferee in good faith and for value.

This English (Supreme Court) doctrine is the rule in Missouri. In the case of *Louisiana Nat. Bank v. Laveille*,⁶ it was decided that the owners of a boat were not liable, at the suit of a third party, in consequence of a bill of lading having been issued for goods as shipped on board that boat by one appar-

4. 130 U. S. 416.

5. 105 U. S. 7.

6. 52 Mo. 380. Also Minnesota, Maryland, Louisiana and Washington decisions to the same effect.

ently having authority therefor, to the consignor named in the bill of lading, who negotiated a bill of exchange drawn on the consignee to such third party, who purchases and has indorsed to him for value the bill of exchange on the faith and on the security of the bill of lading, which is also transferred to him, without any knowledge or notice of lack of authority on the part of him who signed the bill of lading, or that the goods recited in the bill of lading were never shipped.

In 1890 in the case of the National Bank of Commerce v. Chicago, B. & N. Ry. Co.,⁷ the Supreme Court of Minnesota held that a bill of lading issued through fraud, mistake, or negligence by an agent of a common carrier for property not received, subjects the carrier to no liability, even to a bona fide indorsee for value.

This decision was upheld in the case of Swedish-American Nat. Bank v. C. B. & Q. Ry.,⁸ deciding that a carrier, even as to an innocent indorsee, is not estopped by statements in its bill of lading issued by its agents from showing that no goods were in fact received for transportation unless by his usual mode of doing business he had given authority to his agents to issue bills of lading for goods not received.

It has also been decided in Minnesota, *Dunn v. State Bank of Minneapolis*,⁹ that where the president of a bank purchased increased stock of the bank by the use of funds of a city of which he was treasurer, the bank is not responsible for his false representations to a third person purchasing the stock from him.

In *Baltimore & Ohio Ry. Co. v. Wilkins*,¹⁰ the Court decided that a railroad company is not liable for advances made by a commission merchant upon the faith of a bill of lading fraudulently signed by one of its station agents; the goods therein specified never having been shipped or received at the depot for transportation.

7. 44 Minn. 224.

8. 96 Minn. 436.

9. 59 Minn. 221.

10. 44 Md. 11.

In Washington in 1906 it was decided in the case of *Roy & Roy v. Northern Pacific Ry. Co.*,¹¹ that the act of a carrier's agent in delivering a bill of lading for goods which he knew were not delivered to the carrier, being beyond his authority, does not bind the carrier even as to an innocent transferee or pledgee notwithstanding, Ballinger's Ann. Codes & St. ¶3598, making bills of lading negotiable by indorsement for certain purposes.

The law is the same in Louisiana where, in the case of *Henderson v. Louisville & N. Ry. Co.*,¹² it was held that a railroad company is not bound by a bill of lading given by its agent for sugar not received or delivered for transportation, though the instrument has been transferred to a third person for value in the usual course of business.

However, the opposite view, upholding the liability of the principal upon the doctrine of estoppel, is taken in New York Pennsylvania, Massachusetts, Ohio, Nebraska, Kansas, South Dakota, Alabama, and a number of other States. A leading New York case is *Bank of Batavia v. New York, etc. Ry. Co.*¹³ Here a local freight agent whose duty it was to receive and forward freight over the defendant's road and give a bill of lading therefor, but having no right to issue such bills except upon the actual receipt of the property for transportation, issued fraudulent bills of lading to one Williams who drew a draft on the consignee mentioned in the bills of lading and procured the money upon it of the plaintiff by transferring the bills of lading to secure its ultimate payment. The court held that the plaintiff was entitled to rely upon the representation in the bills of lading that the goods were actually shipped, and that the defendant was estopped to deny the authority of the agent to issue the bills, since the act was within the apparent scope of his authority. Finch, Justice,

11. 42 Wash. 572.

12. 116 La. 1047.

13. 106 N. Y. 195.

said, "Where the principal has clothed his agent with power to do an act upon the existence of some extrinsic fact necessarily and peculiarly within the knowledge of the agent, and of the existence of which the act of executing the power is itself a representation, a third person dealing with such agent in entire good faith, pursuant to the apparent power, may rely upon the representation, and the principal is estopped from denying its truth to his prejudice."

In regard to false stock certificates the New York courts also hold the principal liable. In *Fifth Ave. Bank v. Forty-Second Street & Grand Street Ferry Co.*,¹⁴ it was decided that where the secretary and treasurer of a corporation is also its agent for the transfer of stock with power to countersign and issue stock when signed by the president, the corporation is bound by his representation that certain stock is genuine though in fact it was fraudulently issued by him after forging the president's signature thereto.

This New York doctrine was very strongly approved by the Pennsylvania court in the case of *Brooke v. N. Y., Lake Erie & Western Ry. Co.*¹⁵ In this case defendant was a railroad and its authorized shipping clerk at one of its stations issued a bill of lading in the company's name for certain goods that the company had never received. This bill came to the hands of an innocent third person, who made advances of money upon it. Upon suit brought against the railroad to recover such advances by the third party, the Court held that the company was estopped by the act of its agent from denying the receipt of the goods, although the clerk had no authority to give bills of lading without receiving the goods, and although the company had never done anything to lead anyone to suppose that he had such authority. In his opinion on the case Justice Sterrett stated, "The principal is bound by all the acts of his agent within the scope of the authority which he

14. 137 N. Y. 231, follows *N. Y. & New Haven R. R. Co. v. Schyrer*, 34 N. Y. 30—the leading New York case on the subject.

15. 108 Pa. St. 529.

held him out to the world to possess, notwithstanding the agent acted contrary to instructions; and this is especially the case with officers and agents of corporations. The authority of an agent to act for and bind his principal will be implied from the accustomed performance by the agent of acts of the same general character for the principal with his knowledge and consent. These elementary principles are founded on the doctrine that where one of two persons must suffer by the act of a third person, he who has held that party out as worthy of trust and confidence and as having authority in that matter should be bound by it."

In the Kansas case of *Wichita Savings Bank v. Atchison, Topeka & Santa Fe Ry. Co.*,¹⁶ the agent of a railroad had authority to receive grain for shipment and issue in the name of the corporation a single bill of lading for each consignment received. The agent issued two original bills of lading on the same terms. One was negotiated to W. and the other transferred to a bank, which, knowing the custom of the railroad company to issue only one bill of lading for each shipment and relying wholly on the bill for its security with no knowledge that another bill had been issued, advanced money thereon in good faith and in the regular course of business. It was held that the railroad company was estopped to deny that it had received the grain mentioned in the bill of lading and that it was liable to the indorsee and assignee for the advances made thereon by the bank.

In Nebraska the same point was decided in the case of *Sioux City & Pacific Ry. Co. v. First Nat. Bank of Fremont*.¹⁷ Here an agent of a railroad company, authorized to issue bills of lading, issued bills to a certain shipper for five cars of wheat. In fact less than one carload of wheat and about the same amount of barley was shipped. Drafts were drawn by the shipper against the bills and attached thereto and were delivered to a bank which in good faith discounted the same

16. 20 Kan. 519.

17. 10 Neb. 556.

and forwarded them for payment. The drafts being protested and the shipper having absconded and leaving no property in the State, it was held that, as against the bank, the railroad company was estopped from denying that it had received the wheat.

Fletcher v. Great Western Elevator Co.,¹⁸ decided that a warehouseman whose agent fraudulently issues a receipt for grain, which has not been received, is estopped to deny that the grain mentioned in the receipt has been received, as against a bona fide holder for value.

However, the doctrine of these latter cases which follow the New York rule is subject to the qualification that the purchaser must act in good faith and prudently; it is not good faith or prudence to trust to the representation where the agent is known to be acting for himself in the sale of stock, *Bank of New York City, etc. v. American Dock & Trust Co.*¹⁹

Also the agent must be acting within the apparent scope of the powers entrusted to him; an unauthorized seizure of the powers as a means of fraud, where no authority to exercise them exists, will not render the principal liable, *Manhattan Life Ins. Co. v. Forty-Second St., etc. Ry. Co.*²⁰

There are two instances in which the principal is practically universally held liable for the fraud of the agent, even though committed for the benefit of the agent. They are the case of a bank cashier who employs his power to draw checks, for the purpose of converting the funds of the bank to his own use, and the case of an agent of a telegraph company who employs his power to send telegrams as an operator in the sending of forged telegrams requesting the transmission of money. Two cases which illustrate these two points are *Phillips v. Mercantile Nat. Bank*,²¹ and *McCord v. Western Union Tel. Co.*²²

18. 12 S. D. 643.

19. 143 N. Y. 539.

20. 139 N. Y. 146.

21. 140 N. Y. 556.

22. 39 Minn. 181.

In the New York case it was decided that a bank cashier who employs his powers to draw checks, for the purpose of converting the funds of the bank to his own use, is using a trust and confidence reposed in him by the bank and the loss must fall on it rather than on innocent parties. Here the Court said: "If his (the agent's) position and the confidence reposed were such as to enable him to escape detection for a while, then the consequences of his fraudulent acts should fall upon the bank, whose directors, by their misplaced confidence and gift of powers, made them possible, and not upon others who, themselves acting innocently and in good faith, were warranted in believing the transaction to have been one coming within the cashier's powers."

The Minnesota case laid down the rule that the agent of a telegraph company who employs his power to send telegrams as an operator in the sending of forged telegrams requesting the transmission of money, is abusing a trust and confidence placed in him by the company, and the latter, rather than the innocent receiver of the telegram, should bear the loss. Part of the opinion was, "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 impractical rule to require the receiver of a dispatch to investigate the integrity and fidelity of the defendant's agents in the performance of their duties, before acting."

The result of the whole matter is this: One class of cases insists upon the hard and fast rule that the fraud must be for the principal's benefit in order to render him liable, while the other class of cases gives to that fact only an evidential force in determining the decisive question whether the representation was so far within the scope of the agent's ostensible authority as to warrant third persons in relying upon it.

The latter view appears to be more nearly in accord with the general principles of agency, and even the courts, which hold the other doctrine, recognize the essential justice of this. In the case of *National Bank of Commerce v. Chicago, etc. Ry.*,²³ the Court (referring to the doctrine of estoppel in pais in respect to the cases where the fraud of the agent is committed within the apparent scope of the authority of his principal, but for his own benefit) said, "If the question was *res integra* we confess that it seems to us that this argument would be very cogent." VERNE W. VANCE, '23.

Note—The above question in regard to fraudulent bills of lading has now been settled in respect to interstate commerce by a Federal statute and in respect to intrastate commerce in those States which have passed the Uniform Bills of Lading Act, but the question in regard to fraudulent issues of certificates of stock has never been dealt with by statute and the law on the subject is still in the uncertain state related above.

The Federal Statute (Barnes Federal Code, Sec. 7999) is as follows:

Liability for Non-Receipt or Misdescription of Goods—If a bill of lading has been issued by a carrier, or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor, for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or a part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

The Uniform Bills of Lading Act adopted in both Missouri

23. 44 Minn. 224.

(R. S. Mo. 1919, Sec. 13545) and Illinois (R. S. Ill. 1913, Chap. 27, ¶24) reads as follows: *Liability for Non-Receipt or Misdescription of Goods*—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee, the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to—

- (a) The consignee named in a non-negotiable bill, or
- (b) The holder of a negotiable bill,

who has given value in good faith relying on the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or a part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or the condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also, by inserting in the bill the words "shipper's load and count" or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or the non-receipt or by the misdescription of the goods described in the bill. V. W. V.