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Principal and Agent--Notice--Fraudulent Acts of Sole Agent

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PRINCIPAL AND AGENT — NOTICE — FRAUDULENT ACTS OF SOLE AGENT. — Prior to September 3, 1925, the directors of the plaintiff bank extended the defendants a line of credit. Blank notes signed by the defendants, were deposited with specific directions to the cashier only to fill in notes for amounts necessary to cover checks drawn by defendants against the credit. On Sept. 3, 1925 defendants paid off their indebtedness and closed out their account demanding of the cashier the unused blank notes. The cashier, the sole agent dealt with, told the defendants he had destroyed the notes. In January, 1928, the cashier filled in two of these notes, naming the bank as payee, to cover up his defalcations. The bank was denied relief in this action to recover on the notes. *State Bank of Pamplin v. Payne.*[1]

So far as third persons are concerned notice to an agent acting within the scope of his authority is, as a rule, notice to the principal, even though the agent has not in fact communicated such notice.[2] The reason substantiating this rule is the duty of the agent to disclose to his principal facts pertinent to his agency coupled with the presumption that he has discharged that duty. Cases where the agent obtained the knowledge, while engaged in an independent fraudulent act, disclosure of which to the principal would prevent its consummation, form an exception to the above general rule.[3] For in such cases there can be no presumption that the agent has made disclosures so obviously adverse to his interests.

The court recognized the validity of these general principles, but adopted a modification of the exception and imputed notice to the principal. The court said, "To this exception there is a qualification equally important and decisive, that is, in cases in which the agent when committing the fraud was the sole representative of the principal. When this appears, the general rule of imputed notice to his principal applies." The cases cited by the court substantiate this modification of the exception to the general rule of imputed notice.

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[1] 159 S. E. 163 (Va. 1931).

[2] Jaquith v. Davenport, 191 Mass. 415, 78 N. E. 93 (1906); Sheppard v. Wood, 78 Ill. App. 428 (1898).

[3] Innerarity v. Merchants National Bank, 139 Mass. 332, 1 N. E. 282 (1885); Metcalf v. Draper, 98 Ill. App. 399 (1901).

[4] Knobley Mountain Orchard Co. v. People's Bank of Keyser, 99 W. Va. 438, 129 S. E. 474 (1925); Mays v. First State Bank, 247 S. W. 845 (Tex. Com. App. 1923); Marietta Trust & Banking Co. v. Faw, 31 Ga. App. 507, 121 S. E. 244 (1924); Lowndes v. City National Bank, 82 Conn. 8, 72 Atl. 150 (1909); Atlantic Cotton Mills v. Indian Orchard Mills, 147 Mass. 268, 17 N. E. 496 (1888).

The decision effects a desirable result, but some difficulty is encountered with the theory relied upon to support it. It is difficult to perceive how the mere fact that the agent was the sole representative of his principal in contradistinction to situations in which the principal has two or more agents acting in the transaction would make any difference, that is, it would not make such sole agent any more likely to disclose to his principal facts coming to his knowledge during an independent fraudulent transaction. Where the agent is the sole representative of a corporation, the corporation cannot claim anything except through him and, therefore, if it claims through him, after notice of the facts, it must accept his agency with its attendant notice.[5] In the situation involved in this case the bank in accepting is affected with notice, accordingly it is not a holder in due course, and hence cannot recover.[6]

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[5] See 2 MECHEM ON AGENCY p. 1412.

[6] If it be granted that the agent here was acting outside the scope of his authority resort might be had to a ratification theory, since he would then be in the position of having received the item for the bank, as agent for the bank, and the bank under such circumstances could not claim the unmixed benefits of the transaction.