

December 1928

Bills and Notes--Evidence

Byron B. Randolph
West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Agency Commons](#), and the [Evidence Commons](#)

Recommended Citation

Byron B. Randolph, *Bills and Notes--Evidence*, 35 W. Va. L. Rev. (1928).
Available at: <https://researchrepository.wvu.edu/wvlr/vol35/iss1/18>

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

relative term, and implies a non-observance or omission to perform a duty which is prescribed by law, or which arises from the situation of the parties and circumstances which surround the transaction. *Burdick, Law of Torts*, 509; *Sias v. Rochester Railway*, 169 N. Y. 118, 62 N. E. 132, 56 L. R. A. 580; *Dobbins v. Missouri, K. & T. Railway Company*, 91 Tex. 60, 41 S. W. 62, 38 L. R. A. 573, 66 Am. St. Rep. 856. Hence, if the act is one which the actor, as a man of ordinary prudence, could foresee might naturally or probably produce the injury complained of, there is negligence. *Coley v. Statesville*, 121 N. C. 301, 28 S. E. 482; *Fowlkes v. Southern Railway Company*, 96 Va. 742, 32 S. E. 464; *Scheffer v. Railroad Company*, 105 U. S. 249. This rule is supported and followed in cases, like the present, involving explosives. *The Nitro-Glycerine Case*, 15 Wall. (U. S.) 524, 21 L. Ed. 206; 11 R. C. L. 665, 666-667; *Mills v. Central of Georgia Railroad Company*, 140 Ga. 181, 78 S. E. 816, Ann. Cas. 1914C, 1098 and note. Obviously then, the foreseeability of this injury determines the liability of the defendants, and since the test must be applied to each individual case, the only question in the principal case was whether the servant of the defendant, as an ordinary prudent man, could foresee an injury of this character. This question was left to the jury, *Blankenship v. Ethel Coal Company*, 69 W. Va. 74, 70 S. E. 863; 22 R. C. L. 148; and the jury found contrary to the contention of the defendant. The court apparently found no reason to disturb this finding.

—L. C. HESS.

BILLS AND NOTES—EVIDENCE.—Agent signed notes "A, trustee", *Held*, that agent was not liable to payee if he could show that payee knew that he was acting, and executed the instrument, in a representative capacity. Holder, charged with notice, could maintain assumpsit against the principal without joining the agent, and show by parol evidence that debt, as evidenced by the note, was in fact the principal's, and that it was so understood between the agent and payee. *Huntington Finance Company v. Young*, 143 S. E. 102 (W. Va. 1928).

It is well settled law in West Virginia that an agent is not liable to the payee if he can show that the note was in fact that of the principal and it was so understood between the agent and payee. *Clark, Trustee, v. Talbott*, 72 W. Va. 46, 77 S. E. 523. There is a square conflict of authority as to the effect of §20 of the Negotiable Instruments Law. One line of cases holds that the express language of §20 makes the agent personally liable. *Citizens*

National Bank v. Ariss, 68 Wash. 448, 123 Pac. 593. *Daynes v. Lindsly*, 128 La. 259, 54 So. 791. Another view is that the section imposes *prima facie* liability and that extrinsic evidence is admissible to show a contrary understanding. *Megowan v. Peterson*, 173 N. Y. 1, 65 N. E. 738. *G. C. Riordan & Company v. Thornsbury*, 178 Ky. 324, 198 S. W. 920. These contrary holdings are not surprising, since the language is not very explicit. "In fact, it may be argued that the statute left untouched the question of whether extrinsic evidence of mutual understanding and intention might not change the liability." 27 *Yale L. J.* 686. Under such circumstances the courts which had admitted such evidence before the statute have admitted it under the statute by various interpretations of the language.

If the agent cannot be held on the note, can an action be maintained against the principal, even though his name does not appear on the note? It is clear that the principal cannot be held directly on the note, as this would be flying squarely into the teeth of §18 of the Negotiable Instruments Law. *Logan v. Parson*, 79 Oreg. 381, 155 Pac. 365. In the principal case, however, the action of assumpsit was not on the note directly, but on the debt as evidenced by the note. There is much authority supporting this distinction. *Wood v. Key*, 256 S. W. 314 (Tex. Civ. App.) *In re Metropolitan Bank & T. Company*, 1 Oh. App. 409.

It is well to note that the syllabus in the Southeastern advance sheets states that an action of assumpsit on the note may be maintained against the principal while the headnote of the West Virginia court states that the holder may maintain assumpsit on the debt as evidenced by the note.

BYRON B. RANDOLPH.

CONSTITUTIONAL LAW—UNREASONABLE SEARCHES AND SEIZURES—ADMISSIBILITY OF EVIDENCE.—Defendants were in the business of selling and transporting liquor. Federal prohibition officers tapped wires from their residences and from the chief office. The taps from the house lines were made in the streets near the house. The taps from the chief office were made in the basement of an office building. By so intercepting conversations of the defendants they obtained the evidence which convicted defendants of conspiracy. Wire-tapping is illegal in the state (Washington) where the act occurred. The Supreme Court of the United States in a five-four decision held that the evidence so intercepted did not constitute "unlawful search or seizure" and was admissible. *Olmstead et al. v. United States*, 48 Sup. Ct. Rep. 564.

Justice Taft in delivering the opinion of the court held that