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Principal and Agent--Principal's Liability for the Fraudulent Act of His Agent--Act Solely for the Agent's Benefit

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So, in the recent case of *Gallagher* v. *Gallagher*,[15] set forth above, the court has continued the policy inaugurated in *Hays* v. *Harris*[16] in giving the statute a broad construction, and construed "benevolent purpose" to cover scholarships in a college. The wording of the statute is certainly liberal, for "benevolent" has been defined to mean "all gifts prompted by good will or kindly feeling toward the recipient, whether an object of charity or not. It is a word of somewhat broader, larger, and wider meaning than charitable."[17] That the statute will be construed in keeping with its liberal wording, is indicated by *Gallagher* v. *Gallagher*.[18]

As the cases now stand, a devise or bequest in trust for religious purposes is void, because the court in its earlier decisions construed the word "conveyance" not to include a devise or bequest. But in construing the same word in a statute relating to charitable trusts of a non-religious nature,[19] the court in more recent decisions has arrived at an opposite result, and decided that both devisee and bequest are included in the world "conveyance." *Quaere*, if the question now came before the court as to the validity of a devise or bequest in trust for religious purposes, would the court adhere to its earlier decisions and declare the trust void; or would it decide in accordance with its present liberal views with regard to trusts of a non-religious nature?

—W. T. O'Farrell.

Principal and Agent—Principal's Liability for the Fraudulent Act of His Agent—Act Solely for the Agent's Benefit. —McDonnell was an agent of the defendant railway. His duty was, and his continuous practice had been, to give notice to consignees, including the plaintiff, of the arrival of goods. The agent, in pursuance of a scheme of his own, notified the plaintiff of the arrival of goods under a bill of lading and the plaintiff relying on this notice, paid a draft. The agent had forged the bill of lading. The plaintiff sued the railway in deceit. The Circuit Court of Appeals followed *Friedlander* v. *Texas and Pacific Rail-*

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15. *Supra*, n. 1.
16. *Supra*, n. 12.
17. 7 C. J. 1141.
18. *Supra*, n. 1.
19. Code, c. 57, §3.

road Company,[1] gave judgment for the defendant, and were of the opinion that the Bills of Lading Act[2] was a Congressional approval of the rule in that case.[3] The United States Supreme Court overruled the Friedlander Case and held that the agent was acting in the scope of his authority, and though he was acting fraudulently and for himself, the principal was liable. The Supreme Court said that the Act has no application to the present case.[4]

Upon the question presented, namely whether a carrier is bound by the act of its agent in issuing a fraudulent bill of lading, there is a square conflict of authority. The rule laid down by a minority of the courts, known as the New York rule, is that where the authority of an agent depends upon some extrinsic fact which from its nature rests particularly within his knowledge the principal is bound by the representation of the agent as to the existence of such fact.[5] In Illinois and Nebraska liability has been imposed on the ground of estoppel.[6] The majority rule as laid down by the English, Canadian, and Federal courts of the United States, and by most of the state courts, is that the agent of the carrier, having goods, cannot bind the carrier even as to an innocent transferee for value of the bill of lading.[7] The principal's nonliability has been placed on the ground that a false statement in the instrument signed by the agent does not of itself operate as an estoppel against the principal.[8] The minority rule is more consistent than the majority rule with the doctrine that vicarious liability of a principal extends to all tortious conduct which is incident to the class

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1 130 U. S. 416, 9 Sup. Ct. Rep. 570, 32 L. ed. 991 (1889).

2 39 Stat. 542 (49 U. S. C. A. 102). 22 is as follows: "If a bill of lading has been issued * * * by an agent * * * whose actual or apparent authority includes the issuance of bills of lading * * * the carrier shall be liable * * * for damages caused by the non-receipt of goods."

3 Seaboard Air Line R. Co. *v.* Gleason, 21 F. (2d) 883 (1927).

4 Gleason *v.* Seaboard Air Line R. Co., 49 Sup. Ct. Rep. 161 (1929).

5 Harold *v.* Atchison, etc., R. Co., 93 Kan. 456, 144 Pac. 823 (1914); Batavia Bank *v.* New York, etc., R. Co., 106 N. Y. 195, 12 N. E. 433, 60 Am. Rep. 440 (1887); Sanford *v.* Seaboard Air Line R. Co., 79 S. C. 519, 61 S. E. 74 (1908).

6 St. Louis & I. M. R. Co. *v.* Larned, 103 Ill. 293 (1882); Sioux City & P. R. Co. *v.* First Nat. Bank, 10 Neb. 556, 7 N. W. 311, 35 Am. Rep. 488 (1880).

7 Friedlander *v.* Texas, etc., R. Co., *supra*, n. 1; Dun *v.* City Nat. Bank (C. C. A.) 58 F. 174 (1893); Louisville, etc., R. Co. *v.* Natl. Park Bank, 188 Ala. 109, 65 So. 1003 (1914); Baltimore, etc., R. Co. *v.* Wilkins, 44 Md. 11, 22 Am. Rep. 26 (1875); Roy *v.* Nor. Pac. R. Co., 42 Wash. 572, 575, 85 Pac. 53 (1906); McLean *v.* Fleming, L. R. 2 H. C. Sc. 128 (1871); Cox *v.* Bruce, 18 Q. B. Div. 147 (1886); Erb *v.* Gt. West. R. Co, 42 U. C. Q. B. 90, 3 Ont. App. 446, 5 Can. S. C. 179 (1887).

8 Cox *v.* Bruce, *supra*, n. 7; Second Nat. Bank *v.* Walbridge, 18 Oh. St. 419 (1849).

of acts which the tort-feasor is engaged to perform. It is worthy of note that the early English cases which established the majority rule, and which the American courts have followed, were decided before the doctrine extending a principal's liability was fully developed,[9] also that the majority rule, even where it is followed, has not always met with the approval of the courts.[10] This leads one to believe that had the doctrine extending the principal's liability been established at the time of the early cases the courts would have taken a different course. It is submitted that the Supreme Court in overruling the Friedlander Case adopted the sounder rule. A bill of lading is negotiable in a sense. The railroads, knowing this, entrust an agent to issue such bills. The limits of the agent's authority are in his own peculiar knowledge, even to the extent that should the consignee attempt to investigate he would in most cases have to inquire of the very agent who issued the bill of lading. Under such circumstances the carrier should be held liable.

—R. H. PENDLETON.

THE POWER OF THE COURT TO GRANT A NEW TRIAL ON CONFLICTING EVIDENCE.—The trial court granted a new trial to the defendant, after a verdict in favor of plaintiff who was suing for personal injuries sustained while a passenger on defendant's motor bus. The testimony for the plaintiff was, in effect, that the driver of the motor bus was driving rapidly in an attempt to pass a car in front, and while about to pass it, the Bowlby car appeared in the opposite direction causing the driver to swerve to the right so abruptly that plaintiff's arm which was in the window sill was projected through, and severed when the two cars came in contact. The defendant's testimony was a denial of this. Also, the defendant contends that the testimony of the Bowlbys that they did not see the bus until they were passing the car in front of it is inconsistent with plaintiff's claim that the bus was on the left side of the road. The defendant further contends that, as the physical facts show contact only with the rear of the Bowlby car and the front of the bus, this raises doubt as to whether the bus swerved

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[9] Barwick *v.* Eng. Joint Stock Bank, L. R. 1867, 2 Exch. 259; Grant *v.* Norway, 10 C. B. 665 (1851); Coleman *v.* Ricks, 16 C. B. 104 (1847).

[10] Whitechurch *v.* Cavanaugh, 1902 A. C. 117; Nat. Bank *v.* Chicago, etc., R. Co., 44 Minn. 224, 46 N. W. 342, 9 L. R. A. 263 (1890).