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## BILLS AND NOTES - EXECUTION BY UAUTHORIZED REPRESENTATIVE - EFFECT OF KNOWLEDGE BY PAYEE

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BILLS AND NOTES — EXECUTION BY UNAUTHORIZED REPRESENTATIVE — EFFECT OF KNOWLEDGE BY PAYEE — Payee accepted defendant's promissory note, executed as guardian, and agreed not to hold him personally accountable. Though familiar with all material facts, the parties mutually mistook defendant's authority to bind the estate of his ward, and when such lack of authority was discovered, plaintiff sued on the instrument for personal judgment. *Held*, the maker is not liable, since Section 20<sup>1</sup> of the Negotiable Instruments Law will not be allowed to override the intention of the parties declared at the time of issuance of the instrument. *Annis v. Pfeiffer*, 278 Mich. 692, 271 N. W. 568 (1937).

Both in genesis and application, few provisions of the Negotiable Instru-

<sup>1</sup> "Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."

ments Law have evoked more contrariety of opinion than Section 20.<sup>2</sup> The current trend of decision interprets the words which release from liability the properly authorized and disclosed representative or agent, by converse implication to extend liability to one who signs without such authorization.<sup>3</sup> In its present decision the Michigan court indicates a willingness to follow this as a general proposition,<sup>4</sup> but it would in turn impliedly except from its aegis this situation where the original parties to the paper dealt at arm's length with equal knowledge or ignorance of the facts. Assuming the applicability of the section altogether,<sup>5</sup> such a view, suggested by some authority,<sup>6</sup> seems fair.<sup>7</sup>

<sup>2</sup> See the cited literature in BRANNAN, NEGOTIABLE INSTRUMENTS LAW ANNOTATED, 4th ed., 163 (1926), 5th ed., 257 (1932); Ames, "The Negotiable Instruments Law," 14 HARV. L. REV. 241 at 247 (1900); Brewster, "A Defense of the Negotiable Instruments Law," 10 YALE L. J. 84 at 90 (1900); Brewster, "The Negotiable Instruments Law," 15 HARV. L. REV. 26 at 27 (1901); McKeehan, "The Negotiable Instruments Law," 41 AM. L. REG. 437 at 462 (1902); Eaton, "The Negotiable Instruments Law," 2 MICH. L. REV. 260 at 272 (1903); Ames, "The Negotiable Instruments Law," 16 HARV. L. REV. 255 at 256 (1903); 10 LAW NOTES 104 (1906).

<sup>3</sup> Cases holding the unauthorized agent include *Ryan v. Hebert*, 46 R. I. 47, 124 A. 657 (1924); *Pain v. Holtcamp*, (C. C. A. 8th, 1926) 10 F. (2d) 443; *New Georgia National Bank v. Lippman*, 249 N. Y. 307, 164 N. E. 108, 60 A. L. R. 1344 at 1348 (1928); *Trust Co. of N. J. v. Bream*, 11 N. J. Misc. 569, 167 A. 163 (1933). Decisions which have found the converse interpretation of the section not inescapable nor absolute include *Haupt v. Vint*, 68 W. Va. 657, 70 S. E. 702 (1911), dictum; *Southern Supply Co. v. Mathias*, 147 Md. 256, 128 A. 66 (1925); *Austin Nichols & Co. v. Gross*, 98 Conn. 782, 120 A. 596 (1923). See 5 UNIFORM LAWS ANNOTATED 138 ff. (1936); 28 COL. L. REV. 821 (1928); 4 WIS. L. REV. 492 (1928); 77 UNIV. PA. L. REV. 926 (1929).

<sup>4</sup> *Annis v. Pfeiffer*, 278 Mich. 692 at 693, 271 N. W. 568 (1937).

<sup>5</sup> The exact nature of the relation between the guardian and ward is not disclosed in the principal case. The guardian is usually treated as trustee although he takes no title to the ward's estate. *Reynolds v. Garber-Buick Co.*, 183 Mich. 157, 149 N. W. 985, L. R. A. 1915C 362 (1914); *In re Stude's Estate*, 179 Iowa 785, 162 N. W. 10 (1917). Cf. *Teasley v. Brenau Association*, 4 Ga. App. 243, 61 S. E. 141 (1908). Doubts have been expressed as to the applicability of Section 20 to the trustee since the estate is not his principal and he is not its agent. BRANNAN, NEGOTIABLE INSTRUMENTS LAW ANNOTATED, 4th ed., 176 (1926), 5th ed., 272 (1932). But to effectuate the intent of the parties, most courts now extend the section to fiduciaries generally. See 33 MICH. L. REV. 766 at 768 (1935); 9 N. C. L. REV. 443 (1931); 18 CORN. L. Q. 134, 136 (1932); 44 YALE L. J. 898 (1935).

<sup>6</sup> *Megowan v. Peterson*, 173 N. Y. 1, 65 N. E. 738 (1902); *Loveland v. Hanson*, 172 Wis. 627, 179 N. W. 782 (1920), within the statute although no reference was made thereto; *Southern Supply Co. v. Mathias*, 147 Md. 256, 128 A. 66 (1925), receiver; *Grisby v. Long*, 13 Tenn. App. 463 (1931), trustee; *Foster v. Featherston*, 230 Ala. 268, 160 So. 689 (1935), executor.

<sup>7</sup> "It seems clear that the statute . . . was not intended to prevent persons with full knowledge of all material facts, dealing with one acting in a representative capacity, from agreeing with him that he should not be personally bound by contracts executed by him in that capacity. . . . There is no doubt but that under such circumstances a representative executing a promissory note would not be personally bound if he was

Whether disclosure of all material facts of the putative agency or representative relation prevents the operation of the rule,<sup>8</sup> or whether the general liability imposed is escaped by giving the exculpatory understanding of the parties contractual force,<sup>9</sup> it is submitted that the provision, designed defensively, should not be allowed to become a weapon to be asserted by one mistaken party against the other after they had together agreed to share the risks of a possible mistake.<sup>10</sup> No liability under the statute, transcending the limits of all common-law remedies, seems intended.<sup>11</sup>

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duly authorized to execute it, and there seems to be no apparent reason why the same rule should not apply where he was not authorized if the parties so agree with knowledge of that fact, in cases where the rights of a holder in due course are not involved." *Southern Supply Co. v. Mathias*, 147 Md. 256 at 260, 128 A. 66 (1925). As much was intimated by Chief Justice Cardozo in *New Georgia National Bank v. Lippman*, 249 N. Y. 307 at 313, 164 N. E. 108, 60 A. L. R. 1344 at 1348 (1928).

<sup>8</sup> Such a view is voiced in *Birmingham Iron Foundry v. Regnery*, 33 Pa. Super. 54 at 56 (1907), where the court, discussing Section 20, said, "the statement of the law in this form, instead of in the form of an affirmative declaration that doing this or that shall create a personal liability indicates that the Legislature did not intend to establish a fixed and rigid rule to be applied without regard to other facts, and particularly the intention of the parties to the instrument." The purpose of the section, the court thought in *Kerby v. Ruegamer*, 107 App. Div. 491 at 497, 95 N. Y. S. 408 (1905), "is limited to putting the payee of such a note in possession of the knowledge that in the execution and delivery no personal liability was intended to be assumed by the makers."

<sup>9</sup> The cases do not appear to consider this approach, but it is conceivable that even if the section were construed to impose liability irrespective of the knowledge of the lack of authority by the payee, his agreement not to hold the representative individually as in the instant case would amount to a waiver of the statutory right given him.

<sup>10</sup> Where all facts material to the supposed agency are disclosed, there is no liability on nonnegotiable instruments. *Schloss & Kahn v. McIntyre*, 147 Ala. 557, 41 So. 11 (1906); *Eliason State Bank v. Montevideo Baseball Assn.*, 160 Minn. 341, 200 N. W. 300 (1924); *Mott v. Kaldes*, 288 Pa. 264, 135 A. 764 (1927); *A. Lorenze Co. v. Wilbert*, 165 La. 247, 115 So. 475 (1928); *Hunt v. Adams*, 111 Fla. 164, 149 So. 24 (1933). See 1 *MÉCHEM, AGENCY*, 2d ed., 1007 (1914), and cases cited. The same rule was applied to negotiable paper at common law. *Kansas National Bank v. Bay*, 62 Kan. 692, 64 P. 596, 54 L. R. A. 408 (1901); *Wolfe & Sons v. McKeon*, 2 Ala. App. 421, 57 So. 63 (1911). Nor in such a situation was there liability for breach of an implied warranty. *Ogden v. Raymond*, 22 Conn. 379 (1853); *American Surety Co. v. Morton*, 32 Okla. 687, 122 P. 1103 (1912).

<sup>11</sup> This view is taken in 4 *Wis. L. Rev.* 492 at 495 (1928), which, though approving the imposing of liability on the agent who is unauthorized, urges its restriction to situations where the plaintiff was ignorant of the lack of authority. Limitation to those cases where the unauthorized agent would be liable in an action for breach of warranty is urged in 23 *Col. L. Rev.* 392 (1932). For cases so inclining, see note 6, *supra*.