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## Agency - Apparent Authority of Sales Agent

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## RECENT DECISIONS

AGENCY—APPARENT AUTHORITY OF SALES AGENT—Defendant's agent, a consignee of automobiles for sale, received from plaintiff a used truck, and agreed to apply the proceeds from the sale of the truck to the purchase price of a new automobile, to be sold and delivered to plaintiff when available. Defendant's agent sold the truck and absconded with the proceeds from such sale. Plaintiff sued for the value of the truck, and the lower court rendered judgment in his favor. On appeal, *held*, affirmed. The acts of the agent bound the defendant, although the agency contract gave only express authority to sell new automobiles. *Correa v. Quality Motor Co.*, (Cal. App. 1953) 257 P. (2d) 738.

The court in this case found that there was a general custom or usage in the automobile business allowing dealers to accept used vehicles as part payment on the purchase price of new cars. It stated that the parties to the agency contract "are deemed to have contracted in reference to the usage unless the contrary appears; that the usage forms a part of the contract. . . ."<sup>1</sup> Applying a relevant California statute,<sup>2</sup> the court then held that the agent acted with actual authority. In light of the statute, this result may be considered sound. However, insofar as the decision rests upon the well-established common law ground that a principal may become bound to third persons by acts within the apparent authority of the agent,<sup>3</sup> the reasoning of the court is open to some question. Under California decisions, a plaintiff may not recover from a principal on the basis of the apparent authority of the agent without a showing of facts sufficient to raise an estoppel.<sup>4</sup> This requires, of course, representations or conduct on the part of the principal, and reasonable reliance thereon by the third person. The sole conduct of the principal in the present case consisted of investing his agent with less actual authority than is usually given to agents in a similar position. It would appear that this conduct should be sufficient, since if more were required, e.g., an affirmative manifestation to the third person by the principal, too great a burden would be placed on those who deal in established markets.<sup>5</sup> But it would also appear that more than the mere fact of reliance should be necessary to

<sup>1</sup> Principal case at 741, quoting from *Hind v. Oriental Products Co., Inc.*, 195 Cal. 655 at 667, 235 P. 438 (1925). *Accord*: *Federal Reserve Bank of Richmond v. Malloy*, 264 U.S. 160, 44 S.Ct. 296 (1924); *Continental Coal Co. v. Birdsall*, (4th Cir. 1901) 108 F. 882.

<sup>2</sup> Cal. Civ. Code (Deering, 1949) §2316 provides: "Actual authority is such as the principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess."

<sup>3</sup> 1 MICHAM, AGENCY, 2d ed., §720 (1914).

<sup>4</sup> *Hobart v. Hobart Estate Co.*, 26 Cal. (2d) 412, 159 P. (2d) 958 (1945).

<sup>5</sup> *Cf. Ellis v. Nelson*, 68 Nev. 410, 233 P. (2d) 1072 (1951); *Federal Supply Co. v. Wichita Sales & Supply Co.*, (Tex. Civ. App. 1921) 232 S.W. 879; *Texas Wine & Liquor Co. v. Willis*, (Tex. Civ. App. 1951) 239 S.W. (2d) 695. But *cf. Berryhill v. Ellett*, (10th Cir. 1933) 64 F. (2d) 253.

complete the picture of estoppel. Courts often require that the plaintiff be a person of ordinary prudence, reasonably conversant with business usages and customs,<sup>6</sup> and that he exercise reasonable diligence in determining the nature and extent of the agent's authority.<sup>7</sup> It is believed that these requirements are eminently reasonable. As the court in the principal case says, if the loss must fall upon one of two "innocent" persons,<sup>8</sup> it seems completely fair to require that the one who is relieved of the loss make a showing that no lack of reasonable care on his part was instrumental in bringing about the loss. In the present case there was no showing that the plaintiff made an inquiry even of the agent as to whether the agent's act in taking the used truck was authorized by his principal.

The general rule that in the absence of a trade usage to the contrary, an authority to sell does not carry with it an authority to barter or exchange,<sup>9</sup> is not strictly applicable to the facts of this case, since a contrary trade usage did exist. However, the court does not consider the fact that here there was no sale at all, outright or in exchange for the truck; there was merely an agreement to sell in the future. In another case<sup>10</sup> having substantially identical facts, the court noted that the sale was merely executory, not included within the custom or usage of the trade, and said: ". . . we are of the opinion the transaction had by plaintiff with the salesman appears to be rather unusual. . . ." <sup>11</sup> It was therefore held that in order to justify a finding that the act of the agent in accepting the used truck was within the apparent authority of the agent, proof would be required of similar previous dealings between the agent and the plaintiff or between the agent and the third persons. Since this proof was not made, the principal was not liable for the value of the truck upon its conversion by the agent.

Despite the court's questionable reasoning on the facts of the principal case, it is perhaps not too much to require as a general rule that a businessman who desires to invest his agent with less authority than that usually possessed by agents in a similar position must display the terms of the agency contract in the agent's place of business, on sales slips, contracts, etc. No case has been found considering the effectiveness of such means of giving notice. But it would seem that if these steps fail to protect the principal, the businessman may come to regard certain elements of an important and valuable business relationship—the sales agency—as too highly charged with danger for general use.

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<sup>6</sup> E.g., *Texas Wine & Liquor Co. v. Willis*, note 5 supra.

<sup>7</sup> *Spann v. Commercial Standard Ins. Co. of Dallas, Texas*, (8th Cir. 1936) 82 F. (2d) 593; 1 *MERCHEM, AGENCY*, 2d ed., §§725, 726 (1914), and cases cited. But see *Federal Supply Co. v. Wichita Sales & Supply Co.*, note 5 supra.

<sup>8</sup> Principal case at 742. *Accord*, *Commercial Solvents, Inc. v. D. A. Johnson and T. L. Bailey*, 235 N.C. 237, 69 S.E. (2d) 716 (1952).

<sup>9</sup> C.J.S., *Agency* §§104, 114 (1936), and cases cited.

<sup>10</sup> *Salley v. Jones Motor Co.*, 12 La. App. 150, 125 S. 599 (1929).

<sup>11</sup> *Id.* at 152.