

Liability of an Agent Signing a Negotiable Instrument in New York

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Conclusion

At this point it is apparent that virtually no situation involving the application of Section 53 of the Civil Practice Act is free from indecision and conflict. The enactment of a statute of limitations covering actions in equity and supplementing the traditional doctrine of laches has as its aim the establishment of uniformity and consequent predictability.⁶³ It is submitted that the legislature's failure to define adequately the boundaries of operation of Section 53 and its further delinquency in failing to indicate clearly the time when the statute will be set in motion, as it has done with regard to the "legal" statutes of limitation,⁶⁴ has resulted in greater disunity and unpredictability than had formerly existed when laches exercised exclusive control.



LIABILITY OF AN AGENT SIGNING A NEGOTIABLE INSTRUMENT IN NEW YORK

Introduction

The liability of an undisclosed principal is well settled under ordinary rules of agency.¹ However, the exception to this rule lies in the field of negotiable instruments.² No one may be charged on a negotiable instrument unless his name appears thereon.³ Nevertheless, one may lawfully authorize another to sign⁴ as maker, acceptor or indorser and this delegation of authority may be established as in other cases of agency.⁵ Therefore, it follows that such authority may

⁶³ The propriety of this aim has, nevertheless, been seriously questioned. See Finkelstein and Bergman, *Limitations of Actions in Equity in New York*, 5 ST. JOHN'S L. REV. 199, 211 (1931).

⁶⁴ See, e.g., N. Y. CIV. PRAC. ACT §§ 15, 48, 49.

¹ See *Kayton v. Barnett*, 116 N. Y. 625, 23 N. E. 24 (1889).

² See *New York Life Ins. Co. v. Martindale*, 75 Kan. 142, 88 Pac. 559 (1907).

³ NEGOTIABLE INSTRUMENTS LAW § 18; N. Y. NEG. INST. LAW § 37. "No person is liable on the instrument whose signature does not appear thereon But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name."

⁴ N. Y. GEN. CONST. LAW § 46. "The term signature includes any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise placed upon any instrument or writing with intent to execute or authenticate such instrument or writing."

⁵ NEGOTIABLE INSTRUMENTS LAW § 19; N. Y. NEG. INST. LAW § 38.

be oral or written,⁶ express or implied,⁷ and an unauthorized signature may be ratified⁸ or a principal may be estopped from denying the agent's lack of authority.⁹

Unauthorized Signatures

Section 20 of the Negotiable Instruments Law provides that "[w]here 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 . . .*"¹⁰ A number of very early New York decisions imposed personal liability upon an agent who signed the instrument without authority.¹¹ Later the rule was changed to accord with the majority view under the law merchant that the holder's remedy was limited to an action for damages for breach of implied warranty of authority.¹² New York once again reversed its position in 1928, when the Court of Appeals, interpreting Section 20 of the Negotiable Instruments Law in the case of *New Georgia National Bank v. Lippmann*,¹³ held the agent personally liable on the instrument.

Authorized Signatures

Although the foregoing is now settled law, the controversial problem still exists of determining the form necessary to indicate that

⁶ Written authority, however, is required in Kentucky and South Dakota. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW 408 (Beutel's ed. 1948). However, the agent's authority must be in writing where the transaction concerns itself with the creation, grant or assignment of any interest in land. See N. Y. REAL PROP. LAW § 242.

⁷ See *Keyes v. Metropolitan Trust Co.*, 220 N. Y. 237, 115 N. E. 455 (1917) (express authority); *Guaranty Trust Co. v. Manhattan Co.*, 183 App. Div. 586, 170 N. Y. Supp. 81 (1st Dep't 1918) (implied authority); *Collins v. Widger*, 231 App. Div. 321, 248 N. Y. Supp. 133 (3d Dep't 1931) (implied authority).

⁸ *Rumsey v. Briggs*, 139 N. Y. 323, 34 N. E. 929 (1893).

⁹ See *Dodds v. McColgan*, 222 App. Div. 126, 225 N. Y. Supp. 609 (1st Dep't 1927); see *Bank of Monongahela Valley v. Weston*, 172 N. Y. 259, 265, 64 N. E. 946, 948 (1902).

¹⁰ (emphasis added). Where the signature is made without authority or if the name of the principal is forged, there is no right of enforcement regardless of whose hands it falls into and the instrument is wholly inoperative unless the principal is estopped from setting up this want of authority. NEGOTIABLE INSTRUMENTS LAW § 23; N. Y. NEG. INST. LAW § 42.

¹¹ *Dusenbury v. Ellis*, 3 Johns. Cas. 70 (N. Y. 1802); see *White v. Madison*, 26 N. Y. 117, 122, 123 (1862); *Palmer v. Stephens*, 1 Denio 471, 480 (N. Y. 1845).

¹² *White v. Madison*, *supra* note 11; *Walker v. Bank of N. Y.*, 13 Barb. 636 (N. Y. 1852) (the court was of the opinion that the fact that he executed the instrument in the name of another showed that he did not intend to be personally bound).

¹³ 249 N. Y. 307, 164 N. E. 108 (1928).

the signature was made in a representative capacity, assuming the agent was duly authorized. Prior to the enactment of the Negotiable Instruments Law, the respective liabilities of principal and agent were uncertain¹⁴ due to an adherence to common-law precedents and failure to recognize commercial custom and usage. This resulted in the frequent subjugation of the intent of the parties because form (of the signature) rather than substance dictated the results. Much of the difficulty has been alleviated by the enactment of the statute, which relieves the agent or representative of personal liability if the instrument contains or the signer adds words to indicate his representative character, and if he discloses his principal. A few examples will serve to illustrate and point up this problem that has constantly plagued the courts:

(1) How may one sign as agent for another to avoid any possibility of personal liability? The ideal way is exemplified by the signature, "Acme Shoe Corp., by John Smith, Agent," and no one could seriously contend that this is the agent's obligation.¹⁵ The variants of this type of signature fall within the ambit of two extremes; where, in the above signature, the word "by" or "for" is omitted or where the agent merely signs his own name without disclosing his principal on the instrument and without adding words of representation. Although no individual liability would probably result in New York where the word "by" or "for" is omitted,¹⁶ it is interesting to note that such a signature has not been uniformly construed in other jurisdictions.¹⁷ However, according to the weight of authority, the instrument is a corporate obligation, free from any ambiguity.¹⁸ Though a corporation is a legal entity, it can only act through its authorized agents,¹⁹ so that a signature embodying merely

¹⁴ *Green v. Skeel*, 2 Hun 485 (N. Y. 1874). "It is difficult to reconcile the cases, so as to ascertain, with certainty, when a principal is bound by a writing, executed by a person who signs the same as agent." *Id.* at 487.

¹⁵ See *Walker v. N. Y. State Bank*, 9 N. Y. 582, 584 (1854).

¹⁶ In *New Georgia Nat. Bank v. Lippmann*, 249 N. Y. 307, 164 N. E. 108 (1928), the defendant signed a note, "J. & G. Lippmann, L. J. Lippmann, Pres.," and Chief Judge Cardozo, speaking of this type of signature, said: "Some courts were able to discover ambiguity in a form of signature as unequivocal as the one before us here The instrument has the same meaning whether there is authority or none. In form it is still by hypothesis the promise of the principal." *Id.* at 312, 164 N. E. at 110; see *Union Nat. Bank v. Scott*, 53 App. Div. 65, 70, 66 N. Y. Supp. 145, 147 (3d Dep't 1900).

¹⁷ See *Myers v. Chesley*, 190 Mo. App. 371, 177 S. W. 326 (1915) (parol evidence admitted to exonerate the individual defendants); *McCandless v. Belle Plaine Canning Co.*, 78 Iowa 161, 42 N. W. 635 (1889) (individual defendants held liable); cf. *Bayh v. Hanna*, 69 Ind. App. 348, 122 N. E. 7, 8 (1919).

¹⁸ *Cannon v. Miller Rubber Products Co.*, 128 Ohio St. 72, 190 N. E. 210 (1934); see *Saint Joseph Valley Bank v. Napoleon Motors Co.*, 230 Mich. 498, 202 N. W. 933, 934 (1925).

¹⁹ See *Bankers' Trust Co. v. International Ry.*, 207 App. Div. 579, 587,

the corporate name would admit of little authority.²⁰ Therefore, when the corporate name is coupled with the signature of an individual who is authorized to sign and, in fact, adds words of representation, it seems hardly plausible to entertain any doubt as to the corporate liability merely because the word "by" or "for" was omitted.²¹ The majority view seems to be the only reasonable conclusion and any other position appears untenable. Since the effect of such a signature has not been construed uniformly, it is hardly surprising to find discord of opinion where the word "agent" is omitted, e.g., "Acme Shoe Corp., John Smith." New York, in adopting the minority view, seems to take cognizance of the fact that a corporation cannot sign an instrument itself and hence parol evidence to show that no individual obligation was intended is admissible in an action between the original parties²² or by one not a holder in due course.²³ The great majority of jurisdictions, however, treat such a signature as creating an individual liability and importing a clear and unambiguous obligation.²⁴ The problem becomes less troublesome if the principal is a natural person, and if the agent signs his own name together with that of the principal. There is nothing in such a signature to import an obligation other than that of a co-maker and hence parol evidence should not be allowed to vary this apparent liability.²⁵

202 N. Y. Supp. 561, 567, 568 (1st Dep't 1924), *aff'd*, 239 N. Y. 619, 147 N. E. 220 (1925); *Jacobus v. Jamestown Mantel Co.*, 149 App. Div. 356, 362, 134 N. Y. Supp. 418, 423 (4th Dep't 1912), *aff'd*, 211 N. Y. 154, 105 N. E. 210 (1914).

²⁰ See *L. W. Cox & Co. v. Chemical Bank & Trust Co.*, 175 Misc. 1063, 1066, 26 N. Y. S. 2d 38, 42 (N. Y. City Ct. 1941) (indorsement for deposit).

²¹ See *Consumers' Twine & Machinery Co. v. Mt. Pleasant Thermo Tank Co.*, 196 Iowa 64, 194 N. W. 290, 294 (1923).

²² *Hoffstaedter v. Carlton Auto Supplies Co.*, 203 App. Div. 494, 196 N. Y. Supp. 577 (1st Dep't 1922); *Dunbar Box & Lumber Co. v. Martin*, 53 Misc. 312, 103 N. Y. Supp. 91 (Sup. Ct. 1907) (the court was of the opinion that the signature created an ambiguity).

²³ *Central Bank of Rochester v. Gleason*, 206 App. Div. 28, 200 N. Y. Supp. 384 (4th Dep't 1923). In *Kraushaar v. Lloyd*, 152 Misc. 269, 273 N. Y. Supp. 231 (Sup. Ct. 1934), the court held that such evidence was inadmissible where plaintiff was presumptively a holder in due course. The court was also of the opinion that, on the face of the instrument, it was the defendant's individual obligation. Compare this view with that taken by the court in *Dunbar Box & Lumber Co. v. Martin*, *supra* note 22.

²⁴ *Murphy v. Reimann Furniture Mfg. Co.*, 183 Ore. 474, 193 P. 2d 1000 (1948); *Coal River Collieries v. Eureka Coal & Wood Co.*, 144 Va. 263, 132 S. E. 337 (1926); see *Farmers' State Bank of Newport v. Lamon*, 132 Wash. 369, 231 Pac. 952, 953 (1926).

²⁵ But see *BRITTON, BILLS AND NOTES* 785 (1943). The word "person" also includes an unincorporated body of persons. *NEGOTIABLE INSTRUMENTS LAW* § 191; *N. Y. NEG. INST. LAW* § 2. This provision seems to cover unincorporated associations, trusts, and businesses, and as an association of this type must necessarily act through its representative, parol evidence should be admissible to explain a signature standing alone under the name of the association.

(2) Though a mere variation of the aforementioned examples, the signature, "John Smith, Agent, Acme Shoe Corp.," has caused conflicting views both in New York²⁶ and in numerous other jurisdictions. It has been remarked that a similar signature is only descriptive of the individual signer and he is held personally liable,²⁷ or that the signer was prima facie liable but that parol evidence would be competent to rebut the presumption.²⁸ The sounder and more reasonable view is that a corporate obligation has been created.²⁹

(3) The signature, "John Smith, Agent," combined with a disclosure of the principal's name *somewhere* on the face of the instrument but not in the body, presents another variant of the problem. Prior to the enactment of the Negotiable Instruments Law, New York courts had adopted the view that where one affixed his name to an instrument, adding his official title with the name of the company stamped only in the margin, a solely individual obligation was created,³⁰ although it seems that such an instrument would be sufficient to put a reasonable man on inquiry.³¹ In *Chatham National Bank v. Gardner*,³² a leading Pennsylvania case, the court approached the problem realistically and held that a firm obligation was created where two partners signed their names, adding their titles, and where the name of the copartnership appeared at the top of the instrument. The New York decisions holding that individual liability was created in such a case now appear archaic³³ by reason of the test laid down by Chief Judge Cardozo in the *New Georgia National Bank* case: "Whenever the form of the paper is such as fairly to indicate to the

²⁶ Compare *Moss v. Livingston*, 4 N. Y. 208 (1850), and *Haight v. Naylor*, 5 Daly 219 (N. Y. 1874), with *Thompson v. Tioga R. R.*, 36 Barb. 79 (N. Y. 1861).

²⁷ Cf. *Sandmann v. Getty*, 254 Ky. 496, 71 S. W. 2d 954 (1934).

²⁸ See *Reeve v. First Nat. Bank of Glassboro*, 54 N. J. L. 208, 23 Atl. 853, 854 (1892).

²⁹ *Citizens' Nat. Bank v. Ariss*, 68 Wash. 448, 123 Pac. 593 (1912); see UNIFORM COMMERCIAL CODE § 3-403(2) (Official Draft 1952).

³⁰ *First Nat. Bank v. Wallis*, 80 Hun 435, 30 N. Y. Supp. 83 (Sup. Ct. 1894), *aff'd*, 150 N. Y. 455, 44 N. E. 1038 (1896); *Casco Nat. Bank v. Clark*, 64 Hun 634, 18 N. Y. Supp. 887 (Sup. Ct. 1892), *aff'd*, 139 N. Y. 307, 34 N. E. 908 (1893); *Merchants' Nat. Bank v. Clark*, 64 Hun 175, 19 N. Y. Supp. 136 (Sup. Ct. 1892), *aff'd*, 139 N. Y. 314, 34 N. E. 910 (1893).

³¹ See *Second Nat. Bank of Akron v. Midland Steel Co.*, 155 Ind. 581, 58 N. E. 833, 836 (1900).

³² 31 Pa. Super. Ct. 135 (1906).

³³ But in *Werner v. Emerson Hotel & Restaurant Co.*, 192 N. Y. Supp. 273 (Sup. Ct. 1922), an action was brought on a check signed "I. Blumenkrantz, Pres.," and at the left-hand margin of the check appeared the words "I. Blumenkrantz, Emerson Restaurant & Hotel Company, Inc." The defendant was held individually liable. Though the decision was prior to Chief Judge Cardozo's test of the "eye of common sense," it still seems the court had not yet, twenty-five years after the adoption of the Negotiable Instruments Law, taken into account the manner in which an ordinary businessman would have regarded the instrument.

eye of common sense that the maker signs as agent or in a representative capacity, he is relieved of personal liability if duly authorized. . . ."³⁴ Courts have been found to make distinctions in cases where the ordinary businessman would not have been troubled for a moment. It is submitted that the mere degrees of emphasis which dictated the results in previous decisions have now been done away with in New York. Liability is to be predicated upon a *construction* of the instrument from its four corners and in the light of commercial usage and custom, not merely because of an irregularity of the signature. The construction of the instrument is a question for the court and not for the jury and the test remains constant whether a payee, holder or holder in due course is involved. This test is consistent with the statute which merely requires a disclosure of the principal but does not specify at what place the principal must be revealed on the instrument. It should make no difference whether the principal be disclosed at the top, in the body or on the margin of the instrument. A construction of the instrument through the eyes of an ordinary businessman will invariably give effect to the real intention of the parties instead of imposing undue and burdensome liability where neither party intended such a result.

(4) Where negotiable paper is signed "John Smith, Agent," with no further indication of the principal's name on the face of the instrument, no problem would have arisen under the law merchant. If a bona fide holder was involved in such a case, it was conceded that individual liability was intended, and the holder was protected from any hidden equities;³⁵ the addendum to the signature was treated as words of *descriptio personae* and regarded as mere surplusage. The Negotiable Instruments Law requires one to sign in a representative capacity and to disclose his principal if he wishes to avoid personal liability. A leading New York decision, *Megowan v. Peterson*,³⁶ reiterated the rule which existed under the law merchant and remarked that the statute did not require a disclosure of the principal on the face of the instrument where the transaction did not concern a holder in due course.³⁷ In that specific case the defendant signed

³⁴ 249 N. Y. 307, 311, 164 N. E. 108, 109 (1928).

³⁵ *Manufacturers and Traders' Bank v. Love*, 13 App. Div. 561, 43 N. Y. Supp. 812 (4th Dep't 1897). "The law merchant surrounds the negotiable paper in the hands of a bona fide holder with a credit not given to other contracts, and protects him against hidden equities of which he has no notice, and permits him to recover against the party whose name is signed to the instrument though there be attached to his name the word 'Agent' The rights of the holder are confined to the parties to the instrument" *Id.* at 564, 43 N. Y. Supp. at 814. But see *First Nat. Bank v. Wallis*, 150 N. Y. 455, 458, 44 N. E. 1038 (1896).

³⁶ 173 N. Y. 1, 65 N. E. 738 (1902).

³⁷ "It is contended on behalf of the plaintiffs that his representative character must be disclosed upon the face of the note. This may be so insofar as innocent purchasers for value are concerned, but as to the payees named

the instrument "Charles G. Peterson, Trustee." The court held that it was error to direct a verdict for the defendant, inasmuch as the plaintiff had denied the oral disclosure, and hence there was a question of fact for the jury. This doctrine permitting the introduction of parol evidence under these circumstances is followed in many other jurisdictions.³⁸ The theory on which the doctrine stands is that the holder need not be apprised of knowledge which he already has.³⁹ According to the most approved authorities it is held that parol evidence is inadmissible to negate the agent's liability where suit is brought by a holder in due course.⁴⁰ In such a case it is necessary that the name of the principal be disclosed on the face of the instrument.⁴¹ The result is predicated on the theory that the mere addition of a word *describing* the signer is not sufficient to put a subsequent holder on notice of the agency, but by the same token, a payee or holder with actual knowledge of the agency will not be allowed to take advantage of the non-disclosure on the instrument so as to work an injustice on the agent.

(5) The other extreme referred to in the introduction appears where one merely signs "John Smith," with no words added to indicate that the signing was made in a representative capacity and without a disclosure of the principal's identity on the face of the instrument. There can be no doubt that such a signature imports an individual obligation only and parol evidence to contradict this fact is inadmissible even if the payee or holder received the instrument with knowledge that no personal liability was intended.⁴² However, in 1950, the Syracuse Municipal Court, in *Azzarello v. Richards*,⁴³ cast some doubt on this seemingly well-settled point of New York law by allowing the introduction of parol evidence in such a situation to establish the payee's knowledge. This decision carried the doctrine of *Megowan v. Peterson* beyond reasonable bounds.⁴⁴ This latter doctrine is neither excessively harsh nor unreasonable as it gives

in the note we think a different rule prevails." *Megowan v. Peterson*, *supra* note 36, at 5, 65 N. E. at 739; see *Schmittler v. Simon*, 114 N. Y. 176, 187, 21 N. E. 162, 164 (1889).

³⁸ See Note, 113 A. L. R. 1360 (1938) (cases collected therein).

³⁹ See *Kerby v. Ruegamer*, 107 App. Div. 491, 497, 498, 95 N. Y. Supp. 408, 412 (2d Dep't 1905).

⁴⁰ See BRITTON, *BILLS AND NOTES* 788 (1943); 9 WIGMORE, *EVIDENCE* § 2444(6) (3d ed. 1940) (extrinsic agreements are effective only against the parties assenting to them and not against a holder in due course). But see *Phelps v. Weber*, 84 N. J. L. 630, 87 Atl. 469, 471 (1913).

⁴¹ See *Megowan v. Peterson*, 173 N. Y. 1, 5, 65 N. E. 738, 739 (1902).

⁴² *Scantlebury v. Tallcott*, 84 Misc. 400, 146 N. Y. Supp. 184 (Sup. Ct.), *application denied*, 163 App. Div. 888, 147 N. Y. Supp. 1139 (1st Dep't 1914).

⁴³ 198 Misc. 723, 99 N. Y. S. 2d 597 (Syracuse Munic. Ct. 1950).

⁴⁴ See Re, *Negotiable Instruments in Some Effects of the Uniform Commercial Code on New York Law—A Symposium*, 26 ST. JOHN'S L. REV. 26, 63 n. 187 (1951).

effect to the intention of the parties, and prevents the payee or holder with notice from perpetrating a fraud on the signer who has not disclosed his principal on the instrument. The Negotiable Instruments Law should be effective in declaring only prima facie liability, which becomes conclusive only when the instrument comes into the hands of a holder in due course. The *Megowan* doctrine seems at variance with the parol evidence rule, as such evidence would seem to change the effect of the instrument,⁴⁵ and it has been repudiated by the Restatement of the Law of Agency⁴⁶ and the proposed Uniform Commercial Code,⁴⁷ inasmuch as both rules require a disclosure of the principal's identity on the face of the instrument. The danger of the doctrine lies in its use as the springboard for decisions such as *Azzarello v. Richards*. In that case the defendant was employed as a bookkeeper by her father who kept his funds in a checking account under her name. She signed a postdated check for services rendered to her father, designating the plaintiff as payee, but added no words on the check to indicate any agency whatsoever. The drawee bank refused payment for insufficient funds and the plaintiff brought suit against the defendant in her individual capacity. The court allowed parol evidence to show that the plaintiff knew this to be the usual way in which the father paid his bills and hence the defendant was relieved of personal liability on the instrument. Thus the court took a stand opposed to the weight of decisional law in New York⁴⁸ and other jurisdictions.⁴⁹

Conclusion

Under the particular fact situation, the *Azzarello* decision arrives at a just and equitable result, but more must be considered. There are three questions which present themselves. How did the court circumvent the applicable section of the Negotiable Instruments Law

⁴⁵ See *Azzarello v. Richards*, *supra* note 43, at 726, 99 N. Y. S. 2d at 601. But see *Bush v. Gilmore*, 45 App. Div. 89, 91, 61 N. Y. Supp. 682, 683 (3d Dep't 1899).

⁴⁶ RESTATEMENT, AGENCY § 324(3) (1933). "If the name of the principal appears upon a negotiable instrument and the agent does not appear unambiguously as a party, extrinsic evidence of an understanding that the agent shall not be a party to it is admissible as against any holder of the instrument who has notice of the agreement or who is not a holder in due course."

⁴⁷ UNIFORM COMMERCIAL CODE § 3-403(2) (Official Draft 1952). "An authorized representative who signs his own name to an instrument is also personally obligated unless the instrument names the person represented and shows that the signature is made in a representative capacity."

⁴⁸ *Purgold v. Hachtmann & Co.*, 201 N. Y. Supp. 76 (Sup. Ct. 1922); *Scantlebury v. Tallcott*, 84 Misc. 400, 146 N. Y. Supp. 184 (Sup. Ct. 1914); *Phelps v. Borland*, 30 Hun 362 (N. Y. 1883).

⁴⁹ *United Drug Co. v. Bedell*, 145 Ark. 96, 223 S. W. 372 (1920); see *Clark v. Talbott*, 72 W. Va. 46, 77 S. E. 523, 524-25 (1913); *Crocker Nat. Bank of San Francisco v. Say*, 209 Cal. 436, 288 Pac. 69, 71 (1930).

which requires the instrument itself to contain, or a person to add to his signature, words indicating that he is acting for another? Was the court correct in its interpretation, and finally, what could be the consequences of such a rule? In answer to the first question, the court, in the instant case, did not apply the appropriate provision of the Negotiable Instruments Law as it exists, but rather applied the interpretation given it by the case of *Megowan v. Peterson*. It will be remembered that, in the latter case, the defendant signed the instrument, "Charles G. Peterson, Trustee" and, in the course of the opinion, the court said that where a bona fide holder of the instrument was not involved, the "representative character" of the signer need not be disclosed on the face of the note. The defendant described himself as trustee and yet the court was of the opinion that his representative character had not been disclosed. Thus, the inference is inescapable that the term "representative character" refers to the *name of the principal* and not to a mere word of description placed after the defendant's signature. For this reason alone, the test of the *Megowan* case is inapplicable to the factual situation of the *Azzarello* case where no words of any agency whatsoever were present on the instrument. A conclusion that one may sign as an apparent maker without *some* evidence of the agency on the face of the note and thereafter introduce parol evidence to escape personal liability is unwarranted. Any other result would be inconsistent with the express mandates of the statute. "There is no indication on the note in suit that the defendants signed in any representative capacity. Hence, the provisions of Section 20 of the Negotiable Instruments Act [Section 39 of the New York statute] . . . do not apply, and the authorities construing that section are not applicable."⁵⁰

The court also cites the opinion in the *Megowan* case, which alludes to the common-law rule allowing evidence of the conditions under which the note was delivered in an action between the original parties or a holder with notice. The cases cited in support of this proposition deal with situations wherein a written paper was delivered subject to a condition. The cases proceed on the theory that until such condition occurs or is performed, there is no contract, and parol evidence may always be introduced to show the non-existence of the obligation. The *Azzarello* decision speaks of these conditions as the circumstances attending the delivery of the check. There is no evidence of any conditional delivery as such in the instant case but merely knowledge on the plaintiff's part that the defendant was acting for her father. This knowledge cannot be tortured into a conditional delivery and, at most, is evidence of the circumstances under which the instrument was delivered. Similar cases have recognized the admissibility of parol evidence, but in all those instances there

⁵⁰ Baird v. Publishers' Nat. Service Bureau, 51 N. D. 374, 199 N. W. 757, 760 (1924).

was, at least, *some* evidence of an agency on the face of the instrument.⁵¹ It is submitted that the court indulged in an unwarranted circumvention of the statute.

Lastly, what might be the consequences of such a rule, if followed? There is no doubt that the decision defies the very wording of the statute which requires words of representation to appear on the instrument itself. The procedure of the *Azzarello* case, if followed, may have the effect of rendering the applicable provision of the Negotiable Instruments Law wholly nugatory; the statute itself, and not its previous interpretation, must be applied. Such a rule would doubtless have its effect on the transferability of negotiable paper, since the *sine qua non* of negotiability is certainty in all respects, which requires the maximum amount of freedom from the uncertainties of extrinsic evidence. Regardless of the holder's knowledge, one placing his or her signature on an instrument in such an unequivocal manner must be held to intend the legal consequences of such an act, and it should be no defense that the signer maintains an erroneous belief as to the legal effect of such a signature. A holder could not be certain that payment would be forthcoming on an instrument though, on its face, it admits of clear and unambiguous liability. Lengthy and expensive litigation is not to be considered as a mere remote possibility, and the chance of ultimately escaping liability would be incentive enough to unscrupulous persons to introduce perjured testimony to contradict the holder's averments of good faith. In effect, the purchaser of the instrument would be buying a lawsuit. If the "eye of common sense" is to be used to relieve the agent of personal liability, it should also serve as a guide to a holder where no other construction is possible from the face of the instrument. It is submitted that a closer adherence to statutory mandates is required to establish the necessary degree of certainty which must attach to transactions involving negotiable instruments.



RIGHTS OF BONA FIDE PURCHASER FROM APPARENT DEVISEE OR DISTRIBUTE

Introduction

Once real property has been removed from the public domain, and title thereto has been vested in an individual, there must at all times be someone in whom title to that property is vested. This con-

⁵¹ See *Azzarello v. Richards*, 198 Misc. 723, 99 N. Y. S. 2d 597 (Syracuse Munic. Ct. 1950) (cases cited therein).