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Article 15

Banks and Banking--Principal and Agent--Transmission of Sum of Money "At Disposal" of a Petrograd Bank "By Order" of One of Its Citizens (Lewine v. Nat'l City Bank, 248 N.Y. 365 (1928))

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RECENT DECISIONS

BANKS AND BANKING-PRINCIPAL AND AGENT-TRANSMISSION OF SUM OF MONEY "AT DISPOSAL" OF A PETROGRAD BANK "BY ORDER" OF ONE OF ITS CITIZENS.—Plaintiff, Lewine, sued defendant, National City Bank to recover the balance of a deposit of $200,000. made by the Azoff Don Bank of Petrograd, Russia. Before this deposit could be made it was necessary to procure the sanction of the Russian Government. This was obtained from the foreign section of its Finance Department, through which Russian rubles were exchanged into American dollars.

The letter of transmittal which accompanied the check stated that the money was to be credited as follows: "disposal Banque Commerce Azoff Don, Petrograd, by order Engineer A. Lewine, Petrograd." Receipt of the deposit was duly acknowledged by defendant and credit given pursuant to instructions.

Plaintiff desired to make certain purchases in the United States and intended to pay for them with the money so deposited. Cables from the Russian bank directing payment of various sums to plaintiff's brother were honored by defendant without question. Before the fund was exhausted the Russian Government fell, at which time there remained about $40,000. of the original deposit still unused. Defendant refused to pay plaintiff this sum and predicated its alleged right to do so upon the theory that the account was a general one standing in the name of the Azoff Don Bank and it could therefore charge off an indebtedness of the Russian Bank against the account.[1] *Held,* for the plaintiff. Lewine v. Nat'l City Bank, 248 N. Y. 365 (1928).

If we were to accept defendant's argument, then the words, "by order Engineer A. Lewine, Petrograd" would be practically meaningless. Defendant knew, or ought to have known that these moneys belonged to plaintiff.[2] This transaction was not an isolated one, nor was there anything unusual or novel about it in so far as defendant was concerned. It had engaged in many similar ones and was thoroughly familiar with the circumstances and restrictions surrounding them. The only fair interpretation of the language used is that the moneys were the property of plaintiff to be used by him for making purchases, the orders for which would come through the agency of

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[1] Little v. Wilcox, 119 Penn. St. 439 (1888); Scott v. Parker, 1 A. & E. (Q. B., N. S.) 809 (1841); Wheeler v. Newbould, 16 N. Y. 392 (1857); Simson v. Satterlee, 64 N. Y. 657 (1876); Selleck v. Manhattan Fire Alarm Co., 121 N. Y. S. 587 (1910).

[2] Fidelity & Deposit Co. v. Queens Co. Trust Co., 226 N. Y. 225, 123 N. E. 370 (1919); Wagner Trading Co. v. P. B. Nat. Bank, 228 N. Y. 37, 126 N. E. 347 (1920); Anderson v. Kissam, 35 Fed. Rep. 699 (C. C. S. D. N. Y. 1888).

the Azoff Don Bank. Title was at all times vested in Lewine. He simply parted with the custody of the fund for a specified purpose and maintained the Russian bank as his agent for forwarding orders to defendant. That the latter was fully cognizant of the special nature of the account is aptly shown by the wording of its telegram in accepting the account: "Received Kidder, Peabody $200,000.—order Engineer A. Lewine." Why should either bank be concerned with the orders of this Russian merchant, if the funds were the property of the Russian bank? Most certainly, defendant contending that absolute ownership was vested in the bank, would not be, since it knew neither the individual nor his signature.

From this last statement it logically follows that defendant had no contractual relationship with plaintiff.[3] All its negotiations and dealings were with the Azoff Don Bank, but as previously stated the letter of transmission informed it that the former was not a principal but an agent acting for plaintiff. Concededly the wording of the Russian bank's letter is not entirely unambiguous and defendant complains that it was error for the trial court to exclude evidence of the practice of New York banks; evidence which, if admitted would explain the meaning of these words and show that disposition of funds so marked was controlled by custom.[4] Inasmuch as defendant has paid out the major portion of the deposit upon advice from the Russian bank by order of plaintiff, the evidence was properly excluded. The Court of Appeals in awarding its judgment for plaintiff has so decided.

CONSTITUTIONAL LAW—STATE STATUTE PROVIDING FOR SERVICE OF PROCESS ON NON-RESIDENTS.—Plaintiff, a resident of Pennsylvania, while driving an automobile on a highway in New Jersey, struck a wagon on which defendant Pizzutti was riding, damaging it and injuring him and his horses. Defendant instituted suit in the Supreme Court of New Jersey and, after serving Wuchter according to the terms of the statute, he obtained a judgment interlocutory against him. This statute provides for service upon the Secretary of State only, without requiring that official to notify the person sued. Notice of the proposed execution of a writ of inquiry of damages was served personally on Wuchter in Pennsylvania, though the statute was silent on the matter of service. A final judgment was entered. Wuchter, who hitherto had not appeared, appealed to the Supreme Court of New Jersey, contending that the act was unconstitutional,

[3] Morse, Banks and Banking (5th Ed.) 408 Sec. 178; Heath v. New Bedford Safe Dep. Co., 184 Mass. 481, 69 N. E. 215 (1904); Carthage Tissue Paper Mills v. Carthage, 200 N. Y. 1, 93 N. E. 60 (1910).

[4] Shoyer v. Wright-G. Co., 240 N. Y. 223, 148 N. E. 328 (1925); Merchants Bank v. State Bank, 10 Wall. (U. S.) 604 (1870); Humfrey v. Dale, 7 E. & B. 266 (1857); Mazukiewicz v. Hanover N. Bank, 240 N. Y. 317, 148 N. E. 535 (1925).