

# Bills and Notes--Liability of Unauthorized Agent Under Negotiable Instruments Law (New Georgia National Bank v. J. & G. Lippmann, a New York Corporation, impleaded with L.J. Lippmann, Individually, 222 A.D. 383 (1st Dept. 1928))

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wife's name was presumably for her benefit<sup>5</sup> and survivorship attaches.

In 1914, the Banking Law was amended so as to provide that a deposit made by a person in the name of himself and another and in form payable to either or the survivor, and all accretions thereto, shall become the joint property of both parties, payable to either during the lifetime of both, or to the survivor of them.<sup>6</sup> This statutory provision, however, does not derogate from the value of Surrogate Slater's able review and discussion of bank deposit cases.

**BILLS AND NOTES—LIABILITY OF UNAUTHORIZED AGENT UNDER NEGOTIABLE INSTRUMENTS LAW.**—Plaintiff sued on a promissory note signed "J. & G. Lippmann, L. J. Lippmann, Pres.," alleging in its complaint that the corporate defendant denied the authority of the individual defendant to execute the note as its president, and demanding judgment against the corporate defendant, or in the alternative, against the individual defendant, in the manner authorized by the Practice Act.<sup>1</sup> The individual defendant attacked the complaint upon the ground that, granting he signed the note on behalf of the corporation without authority, he could not be held liable upon the note but only for breach of warranty of authority, and that, therefore, the complaint, predicated upon the note itself, stated no cause of action against him. *Held*, individual defendant liable upon the note, one justice dissenting (apparently on the ground that Negotiable Instruments Law §39<sup>2</sup> admits of no negative implication). *New Georgia National Bank v. J. & G. Lippmann*, a New York Corporation, impleaded with L. J. Lippmann, Individually, 222 App. Div. 383 (1st Dept. 1928).

The rule enunciated in the prevailing opinion that an agent who, without authority, executes a negotiable instrument in the name of his principal is himself liable on the instrument finds general approbation among courts and text writers.<sup>3</sup> This rule, however, was not followed

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<sup>5</sup> *Matter of Blumenthal*, 236 N. Y. 448, 141 N. E. 911 (1923).

<sup>6</sup> N. Y. Banking L., 1914, Sec. 198.

<sup>1</sup> N. Y. Civ. Prac. Act. §213.

<sup>2</sup> "Liability of person signing as agent. 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." (Uniform N. I. L. §20).

<sup>3</sup> 2Williston, Contracts §1144, "The words 'if he was duly authorized' seem to carry the implication that if unauthorized the agent is not merely liable for breach of a non-negotiable warranty, but liable on the instrument itself." Brannan's Neg. Inst. Law (4th Ed.) p. 163. Professor Ames, "Under this section, an agent signing without authority of the principal is, by implication, liable on the instrument."

Judge Brewster, one of the commissioners who drafted the N. I. L. writes: "There is no injustice. The agent should know whether he has authority. He should be liable as the maker of the note. Such is the rule of the German Code."

Accord, Professor McKeehan and Professor Chafee, the editor of the fourth edition of Brannan's Neg. Inst. Law.

in New York prior to the enactment of the N. I. L., nor is it the rule in England. The rule that existed in this state, and that exists in England, was that a person signing for, or on behalf of, a principal was not liable on the instrument, notwithstanding he had no authority to bind his principal. There was an implied warranty on his part that he possessed the requisite authority, and if he did not, he became liable upon such warranty for the damages resulting from the breach.<sup>4</sup>

It is submitted that the rule as stated in the affirming opinion is the sounder, inasmuch as the agent when he signs without authority is in reality not an agent but a principal acting in his own behalf, deriving the benefits of his act, and should, therefore, be primarily liable on the instrument itself and not incidentally on a warranty of authority.

**CONSTITUTIONAL LAW—FULL FAITH AND CREDIT CLAUSE—STATUTE OF LIMITATIONS.**—In an action brought in a superior court of Washington, a judgment was rendered against McDonald on June 24, 1918, in favor of Dart. In February, 1924, Dart assigned this judgment to Roche. In March, McDonald being then temporarily employed in Oregon, Roche brought suit against him upon the judgment in a circuit court of that State. He was personally served with a summons, appeared and demurred to the complaint. The demurrer was overruled and subsequently, in October, 1924, more than six years after the rendition of the Washington judgment, judgment was rendered against him in default of answer for the amount of the original judgment with interest.

Shortly thereafter Roche brought this suit against McDonald, upon the Oregon judgment, in the superior court of Washington. McDonald answered denying the validity of the Oregon judgment under a Washington statute which provided that after six years from the rendition of any judgment it should cease to be a charge against the judgment debtor, and no suit should be had extending its duration or continuing it in force beyond such six years.<sup>1</sup> In reply Roche set up and relied on the full faith and credit clause of the Constitution.<sup>2</sup> The superior court entered judgment for defendant and this was affirmed by the Supreme Court of Washington.<sup>3</sup> *Held*, judgment reversed and the case remanded for further proceedings. *Roche v. McDonald*, 48 Sup. Ct. 142 (U. S. 1928).

It is settled that the full faith and credit clause of the Constitution requires that the judgment of a State Court having jurisdiction of the

*Ryan v. Hebert*, 46 R. I. 47; 124 Atl. 657 (1924); *Pain v. Holtcamp*, 10 Fed. (2d) 443 (C. C. A. 8th, 1925); *Austin Nichols & Co. v. Gross*, 98 Conn. 782, 120 Atl. 596 (1923).

<sup>4</sup> *Haupt v. Vint*, 68 W. Va. 657 (1911); *White v. Madison*, 26 N. Y. 117 (1862); *Dusenbury v. Ellis*, 3 Johns. Cas. 70 (1802); *White v. Skinner*, 13 Johns. 307 (1816); *Feeter v. Heath*, 11 Wendell, 477 (1833); *Collen v. Wright*, 40 Eng. L. & Eq. 182.

<sup>1</sup> Rem. Comp. Stat. Wash. §§ 459, 460.

<sup>2</sup> U. S. Const. Art. 4 § 1.

<sup>3</sup> 136 Wash. 322, 239 Pac. 1015, 44 A. L. R. 444 (1925).