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Corporations--Principal and Agent in Contract for Land Sale Where Principal is a Non-Existent Corporation (Weiss et al. v. Baum, 217 N.Y. Supp. 820 (App. Div. 2nd Dept. 1926))

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eyes of the law the relation of master and servant is created. Judgment affirmed. Fuller *v.* Metcalf, 130 Atl. 875 (Sup. Ct. Me. 1925).

The authorities are unanimous in holding that a master is always liable for the negligence of his servant while in the course of the master's business. Round *v.* Delware Lana W. Ry. Co., 64 N. Y. 129, 21 Am. Rep. 597 (1876); 2 Cooley, Torts, 1925, sec. 3; Cosgrove *v.* Ogden, 49 N. Y. 255 (1872). The mere fact that the relation of parent and child is present should in no way affect the relation of principal and agent with consideration given to the fact that the minor receives no compensation for his services. Johnson *v.* Newman, 271 S. W. 705 (1925); Daggy *v.* Miller, 180 Ia. 1151, 162 N. W. 859 (1917); Kelley *v.* Thbodeau, 120 Me. 402, 115 Atl. 162 (1921). The payment of money is not necessary to create the relation of master and servant as long as there is some valuable consideration given in return. 2 Cooley, Torts 1007. There are some cases which hold that upon some facts as in principal case the parent would be classed as a mere guest and no liability can be attached to him. Reiter *v.* Graber, 173 Wis. 493, 181 N. W. 739 (1921); 18 A. L. R. 362. But the soundness of the above rule is questioned and is not considered the better of the two rules. Where an automobile is in the possession of a bailee there is without doubt no liability placed on the owner although he is present in the car. Potts *v.* Pardee, 220 N. Y. 431, 116 N. E. 78 (1917), 8 A. L. R. 785; Pease *v.* Montgomery, 111 Me. 582, 88 Atl. 973 (1913). But in the principal case the minor daughter was not a bailee of the automobile but was a servant of the defendant parent. A passenger who is also the owner (not a bailee) who accepts services rendered his right of control of automobile and every reason for the application of the doctrines of respondet superior is present.

CORPORATIONS—PRINCIPAL AND AGENT IN CONTRACT FOR LAND SALE WHERE PRINCIPAL IS A NON-EXISTENT CORPORATION—In an action for specific performance of a written contract for the sale and transfer of realty, the defendant herein fraudulently represented himself to be the agent of a non-existent corporation, alleged to be in the process of formation. The contract proceeds in the customary form employed in the sales of real property with the duly attested signatures of the plaintiffs and the corporation by the defendant as agent. The plaintiffs seek to hold the defendant as the real purchaser and demand judgment against him as the real vendee for specific performance of the contract. It is further alleged that defendant committed a fraud in representing to the plaintiffs that a certain corporation was then being effected by him and in process of incorporation under the laws of the State of New York. *Held,* in the Lower Court, the learned judge held that the grounds of the complaint were untenable and accordingly dismissed the case. This ruling was affirmed by the Appellate Division. "Weiss *et al. v.* Baum, 217 N. Y. Supp. 820 (App. Div. 2nd Dept. 1926).

The Court recognized that the proposition presented here appears not to have been decided in New York but the principles involving the personal liability of one assuming to act as agent for a non-existent principal or claiming a power of agency without authority, have been frequently set forth. Plew *v.* Board, 274 Ill. 232, 113 N. E. 603 (1916). Earlier decisions in New York supporting such liability have been regarded by the Courts as "substantially repudiated." White *v.* Madison,

26 N. Y. 117, 123 (1862), and in later cases, an agent was held liable for damages for a breach of contract arising out the agent's implied warranty on an unauthorized power he assumed to possess. Baltzen *v.* Nicolay, 53 N. Y. 467 (1873); Taylor *v.* Nostrand, 134 N. Y. 110, 31 N. E. 246 (1892); 116 App. Div. 748 (2nd Dept. 1907), 113 N. Y. Supp. 688, 61 M. 286 (1908). Proceeding further, on a written contract to purchase a plant of a new company to be thereupon organized, the defendants were not held liable; Fowle *v.* Kerchner, 87 N. C. 49 (1882); thereby following the point most stressed in the Court of Appeals of Kentucky, which held that where the agent did not undertake to guaranty a ratification, one cannot bind him; Murray *v.* Carothers, 1 Metc. (Ky.) 71 (1858). In the principal case, there is no dispute as to the parties to the contract. The defendant, was not named as purchaser, but a corporate vendee was specified. There was no mistake, either mutually or unilaterally, thus it follows that the contract was not of the defendant nor can he be a substitute vendee, for to do so would be the effecting of a new contract. The authority for the preceding statement has been based upon the qualification of the general rule of law, as to the agent's personal liability, Ogden *v.* Raymond, 22 Conn. 379, 385 (1853), (58 Am. Dec. 529), with the aid of another state's corollary ruling; Belding *v.* Vaughan, 108 Ark. 69, 157 S. W. 400 (1913), where knowledge is imputed.

Upon authority, therefore, unless it is clear that an agent, upon the face of the contract is intended to be personally bound, the agent cannot be held, Mechen Agency (1st Ed.), Sect. 550, and "even though the contract itself cannot be enforced against the principal, the agent may be held for the fraud." 2 Clark & Syles, Law of Agency, Sec. 567. Thus, the action on a contract by an unauthorized agent in dealing with another, can be compelled to respond therefor, for the loss occasioned by his act, Taylor *v.* Nostrand, 134 N. Y. 108, 110; 31 N. E. 246, 247 (1908), and again, recognized for the damages sustained by the purchaser. Rowland *v.* Hall, 121 App. Div. 459, 106 N. Y. Supp. 55 (2nd Dept. 1907). Thus, it is submitted that the action cannot be properly upheld for specific performance and that relief can only be granted in an action based upon fraud.

ADMIRALTY—JURISDICTION—SUIT FOR WRONGFUL DEATH—PLACE OF DEATH—INJURY TO DIVER—Plaintiff's intestate, while employed as a diver by a shipbuilding company, submerged himself from a floating barge anchored in a navigable river in Texas thirty-five feet from the bank, for the purpose of sawing off timbers of an abandoned set of ways, once used for launching ships, which had become an obstruction to navigation. While thus submerged he died of suffocation due to failure of the air supply. Damages for the death were recovered from the employer's insurer under the workmen's compensation law of Texas. *Held,* that the facts disclosed a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state compensation Act; but the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist. Millers' Underwriters *v.* Braud, 270 U. S. 49 (1926).

The Supreme Court based its decision on the case of Grant Smith-Porter *v.* Rohde, 257 U. S. 469 (1922), which held that where a car-