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Banks and Banking--Principal and Agent (Cahan v. Empire Trust Co., 9 F.2d 713 (2nd Cir. 1926))

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be interpreted as a condition attached to the license of the theatre ticket brokers. Mr. Justice Sanford does not see how the fourteenth amendment is in the way of the constitutionality of this statute. Mr. Justice Holmes with whom Mr. Justice Brandeis concurs feels that the entire distinction between industries affected with a public interest and industries not so affected is meaningless and that the real distinction is between regulations with and regulations without compensation.

INJUNCTIONS—STRIKES IN INTERSTATE COMMERCE—The defendant is a national association, divided into a number of locals. The plaintiffs for a number of years worked under agreements with the general union. Because of certain demands, these agreements were not renewed and the plaintiffs organized a union of their own. The defendants then issued an order, by virtue of their constitution, whereby no member of the association shall cut, carve or fit any material that has been cut by men working in opposition to the association. The plaintiffs seek to have the enforcement of this provision restrained. The case was dismissed in the lower court and comes up on appeal. *Held,* the order is in violation of the Anti-Trust Act inasmuch as it restrains interstate commerce. Judgment reversed and injunction granted. Bedford Cut Stone Co. *v.* Journeymen Stone Cutters' Asso. of North America, U. S. Sup. Ct. Oct. 1, 1926, No 412, 71 L. Ed. 581 (1927).

For a discussion of the principles involved see supra, page 189.

BANKS AND BANKING—PRINCIPAL AND AGENT—Plaintiff gave a power of attorney to his son to make, sign, indorse, deposit, draw and deliver checks and other orders for the payment of money on two New York City banks. The son, prior to the issuance of this power of attorney, had an individual account with one of the banks, the defendant in the action. Shortly after the issuance of the power, the son began to draw a series of 21 checks, either payable to his own order or to that of the defendant, signed "C. H. Cohan by C. H. Cohan, Jr., his Attorney." Each of these checks were deposited in the personal account and to the credit of the agent. All but two checks had been certified by the drawee bank before deposit. More than a year after the last of the series had been drawn, deposited and paid, plaintiff ascertained of the withdrawals from his account and of the crediting of the same to his agent's (son) account. The checks had been expended for purposes unknown and not beneficial to the plaintiff. *Held,* that the plaintiff was able to recover inasmuch as the defendant bank was charged with notice by the form and face of the instruments themselves as to the purpose for which the agent was drawing the checks, and where a bank of deposit permits a depositor to unlawfully apply the funds of another if it has notice which would lead a reasonable man to suspect wrong, and facts to either verify or dispel that suspicion, it is responsible for the consequences of its act. Judgment affirmed. Cahan *v.* Empire Trust Co., 9 Fed. (2d) 713 (C. C. A. 2d, 1926).

The rule enunciated above, if an agent's bank receives for deposit, to the personal account of the agent, checks drawn by the agent to his own order on the principal's fund, that bank is, by the checks themselves, charged with notice that the agent is wrongfully

applying the money to his own use, and failure to make inquiry, will subject the bank to liability, on suit of the principal, for an ensuing fraudulent appropriation to his own use by the agent, has been generally approved. Havana, etc., *v.* Central, etc., 204 Fed. 546 (C. C. A. 2d, 1913); Anderson *v.* Kissam, 35 Fed. 699 (C. C. S. D. N. Y. 1888); Farmers, etc., *v.* Fidelity Co., 86 Fed. 541 (C. C. A. 9th, 1898); Oklahoma Bank *v.* Galian Co., 4 Fed. (2d) 337 (C. C. A. 8th, 1925); Ducket *v.* National Bank, 86 Md. 400, 38 Atl. 983 (1897); Bank of Hickory *v.* Macpherson, 102 Miss. 852, 59 So. 934 (1912); United States, etc., Co. *v.* Peoples Bank, 127 Tenn. 720, 157 S. W. 414 (1913); Underwood, Ltd. *v.* Bank of Liverpool [1924], 1 K. B. 775.

This rule is not followed in the earlier English decisions and in some states. The doctrine as laid down there holds the principal's bank liable on the theory that the agent's bank is a mere conduit and should not be charged with notice as to any defects appearing on the face of the instrument. Havana *v.* Knickerbocker, 198 N. Y. 422, 92 N. E. 12 (1910), L. R. A. 1915B 720; Whiting *v.* Hudson, etc., Co., 234 N. Y. 394, 138 N. E. 33 (1923), 25 A. L. R. 1470; Ex Porte Darlington, etc., 4 DeG. J. & S. 581 (1918); John *v.* Dodwell [1918], A. C. 563; Ross *v.* London Bank [1919], 1 K. B. 678; but see Underwood, Ltd. *v.* Bank of Liverpool, supra; Santa Marina Co. *v.* Condain Bank, 254 Fed. 391 (C. C. A. 9th, 1918); Compare, Farmers, etc., Co. *v.* Fidelity, etc., Co., supra; Goodwin *v.* American National Bank, 48 Conn. 550 (1881).

It is submitted that the rule as followed by the New York courts is the sounder inasmuch as the bank acts as a mere conduit for the collection of funds, and furthermore, that the mere drawing of the instrument by the agent in and of itself is not sufficient notice to the depositor's bank. Since the principal case, a law has been adopted in New York (New York Laws, 1927, ch. 473, Cons. L. 37, sec. 95, adopted March 31, 1927), which in effect confirms the previous New York rulings as to what constitutes notice where a negotiable instrument is drawn by an officer or agent of a corporation to his own order.