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Principal and Agent-Authority to Indorse Instrument

PRINCIPAL AND AGENT—AUTHORITY TO INDORSE INSTRUMENT—The trial court made the following finding of facts:

"That on May 15, 1924, appellant issued to appellee its certificate of deposit in the sum of $2,318.38, which said certificate was as follows (H I): 'payable to the order of himself in current funds on the return of this certificate properly endorsed.'" That on September 23, 1924, appellant in regular course of business received from Federal Reserve Bank of Chicago, Ill., said certificate, which bore on the back thereof the following indorsement, to wit:

"Thomas Weiner
"ALEX COPELAND
"Farmers Bank & Trust Company, Fort Collins, Colorado
"Broadway National Bank, Denver, Colorado
"Northern Trust Company of Chicago, Ills.
"Federal Reserve Bank of Chicago, Ill.

"That on said date appellant paid to Federal Reserve Bank of Chicago $2,318.38; that prior to September 25, 1924, appellee placed said certificate

in the possession of one Alex Copeland, who was then interested with appellee in some oil deals and properties in the state of Wyoming, without indorsing the same; that prior to this time Copeland had notified appellee that he (Copeland) would have to put up a cash bond on some oil deals in which they were interested, pursuant to which request appellee sent Copeland the certificate as above stated; that appellee never recovered possession of said certificate after so placing the same in the possession of Copeland; that, at the time said certificate was paid by appellant, the name 'Thomas Weiner' appeared on the back thereof as an indorsement, but appellee did not write or indorse said name 'Thomas Weiner' on the back of said certificate, and said name was not written or placed on the back of said certificate by his direction or consent, and he had no knowledge whatever that the name 'Thomas Weiner' was placed thereon until after it was paid by appellant, and said indorsement . . . . was not genuine and was and is a *forgery*; (Italics ours) that Copeland was not the agent of appellee and was not authorized or empowered to indorse said certificate for and in behalf of appellee and to collect the proceeds thereof . . . ."

The trial court stated as conclusions of law upon the above facts that the law was with appellee and that he recover. On appeal the Appellate Court (Nichols, J.), reversed this finding of law. *Exchange Bank of Warren v. Weiner*, 170 N. E. 788.

As we understand the opinion, the Appellate Court considers three grounds for its decision: 1. That although generally a bank is liable to its depositor upon payment of a forged indorsement, if this forgery was due to the negligence of the depositor, then the innocent bank should not be held liable. 2. Estoppel of plaintiff, in that he having placed the certificate in the hands of Copeland for his use, he could not charge the loss to defendant, since he himself, through his confidence in Copeland, was originally responsible for the loss sustained. 3. That, where the business in hand is of such a nature as to require the agent to indorse commercial paper for the principal, or where such power is reasonably necessary to effectuate the main object of the business in hand, then such agent will be presumed to have the power to do so, and to that end, and for that purpose, he is the agent of his principal so to indorse the paper.

It is submitted that upon the facts in the case the decision should not rest upon the first two grounds, i. e., (1) negligence, and (2) estoppel. The cases pronouncing the rule as to negligence are usually such situations as where the depositor gives an unsigned check, or a check signed but not filled out, to the wrongdoer, without any understanding that it is to be filled out. See Note, 41 L. R. A. (N. S.) 529. The case of *Snodgrass v. Sweetzer*, 15 Ind. App. 682, relied on by the court for this point, was such a case. Compare, however, *Hamilton Nat. Bank v. Nye*, 37 App. 464, which might seem to exclude such acts from the category of negligence. It could hardly be said that the appellee was negligent in the present transaction to such an extent as was apparent in the *Snodgrass* case, *supra*.

Neither was there a proper case of estoppel made out in the facts here. In those cases where estoppel is applied, the depositor has either had a course of dealing, *known to the bank*, which induced it to rely upon the agent's apparent authority (*Snodgrass v. Sweetzer, supra*) or the depositor has accepted money so acquired on different occasions without

complaint. In all these cases, there has been a *reliance* by the bank upon some course of dealing of the depositor. In the present case, no such facts were found. It is not shown that the appellant bank knew anything about appellee, or his partner or agent, or their business.

Upon the third ground stated above, however, the decision can be easily supported. It could have gone on this ground alone, i. e., that inasmuch as there was an implied authority in Copeland, *there was no forgery;* therefore the bank rightfully honored the indorsement. There is abundant authority upon this subject. It seems that there is a presumption against any implied authority in the agent to indorse paper for the principal, especially where such agent is merely one to buy and sell, or to conduct the principal's business generally; *Smith v. Gibson,* 6 Blackf. 369. And some of the older cases state that such authority must be express, and cannot be implied. However, the true rule seems to be that wherever such authority is *indispensible* to the execution of the particular purpose of the principal, it will be implied. See Note 71, 31 Cyc. 1382; Meecham, Agency, 2d Ed. Vol. I, Par. 971. It must be admitted that such authority is implied only as an exception to the general rule; but the facts in this case seem to come well within the exception. On this point in general, see Meecham, *supra,* Par. 961-978.

As an incidental point, but essential to the court's decision upon the substantive law of the case, it was necessary to dispose of the lower court's finding of fact to the effect that "said indorsement was and is a forgery" and "that Copeland was not the agent of appellee and was not authorized . . . . to indorse said certificate," etc. The Appellate Court considered this a finding of *ultimate* facts, inconsistent with the *primary* findings set out; that in such a case the inconsistent ultimate finding would be disregarded. The cases of *Highway Iron Products Co. v. Phillips,* 169 N. E. 878, and *Smith v. Wells Co.,* 148 App. 333, cited in the opinion, appear, upon examination, to support the court in this phase of its decision.

C. W. W.