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Principal and Agent-Authority-Creation and Relationship

PRINCIPAL AND AGENT—AUTHORITY—CREATION OF RELATIONSHIP—Samuel E. Skaggs, a bailer of, and dealer in straw, sold most but not all of the straw he handled to the appellant company at Terre Haute. He procured straw from the appellee, Charles E. Kennedy, and shipped it to the appellant company under an agreement with Kennedy that Skaggs should pay him whatever amount, less $2.00 per car, the appellant paid Skaggs. For about a month this agreement between Skaggs and Kennedy was kept; then, after the appellant had reduced its price to Skaggs from $6.25 to $6.00 per ton, Skaggs represented to Kennedy that the appellant was paying only $5.50 per ton for straw; and Kennedy did not learn the true price being paid until almost a year later. He sued for the accumulated difference between the represented and the true price, and alleged that Skaggs was the agent of the appellant company—which allegation would, if true, make appellant liable for the unpaid amount. Evidence showed that Skaggs sold straw to other strawboard manufacturers, that he was not bound by any contract to sell to the appellant all the straw he purchased, that Kennedy had never received a check from appellant company, and that he did not claim to have a contract with the company, other than his agreement with Skaggs. *Held,* Skaggs was an independent buyer and not an agent of the appellant. Aside from the evidence stated, no reasons were given for the decision. Judgment against appellant, Terre Haute Paper Company, was reversed. *Terre Haute Paper Company v. Kennedy,* Appellate Court, June 23, 1930, 171 N. E. 881.

"An agency is created—authority to act is actually conferred—very much as a contract is made, i. e. by an agreement between principal and agent that such a relation shall exist. The minds of the parties must "meet" in establishing the agency. The principal must intend that the agent shall act for him, and the agent must intend to accept the authority and act on it, and the intention of the parties must find expression either in words or in conduct between them." Taft, J. in *Central Trust Co. v. Bridges,* 57 Fed. 753. Appointment of an agent may be effected by contract whereby a principal promises to employ and compensate the agent, and the agent promises to act as such; or it may be effected by mere request or permission of the principal, following by the agent's entrance upon performance of the act requested. But if no contract is made, and if only a permission or a request is followed, the relation of principal and agent does not arise until the agent has entered upon performance. *Powell's Tiffany on Agency* (2nd ed.) p. 10. A merely gratuitous offer to perform services for another imposes no legal obligation until performance is undertaken. *Conden v. Exton-Hall Agency,* 142 N. Y. S. 548.

"Authority to act as agent in any given manner will be implied whenever the conduct of the principal is such as to manifest his intention to confer it." *Powell's Tiffany on Agency,* p. 23. "No one can become the agent of another person except by the will of that other person. His will may be manifested in writing or orally, or simply by placing another in a situation in which, according to the ordinary rules of law, or perhaps it would be better to say according to the ordinary usages of mankind, that other

is understood to represent and act for the person who has so placed him." *Pole v. Leask*, 33 L. J. (N. S.) Ch. 155. "Agency may be inferred from the acts, conduct, and relations of the parties, without proof of any express appointment. In fact, direct proof of agency frequently is not available, and in most of the ordinary transactions of business the agency is either conferred verbally or is implied from the circumstances." *Radio Corporation of America v. Radio Audion Co.*, 284 Fed. 581. Agency may arise by implication from acts done by an assumed agent with the consent or acquiescence of the principal (*James Bradford Co. v. Edward Hill's Son & Co.*, 31 Del. 596, 116 Atl. 353); From prior habits or courses of dealing between the parties (*Bennett v. Potashnick* (Mo. 1924), 257 S. W. 836); or from apparent relations of agent and principal (*Colt Co. v. Wheeler*, 31 Ga. App. 427, 120 S. E. 792.)

If one has frequently employed another to do certain acts for him, or has usually ratified such acts when done by him, such person became an implied agent to do *such acts;* as, for example, a plantation manager's customary buying of supplies for the plantation, or a sawmill superintendent's contracting for logs for the use of the mill. A single act of an assumed agent, together with its recognition, may be so positive and comprehensive in character as to place the authority of the agent to do similar acts for the principal beyond question. And similar acts subsequent to the one in question may, by being ratified, become evidence of an agency to do the particular one in issue. *Graves v. Horton*, 38 Minn. 66. But the agency implied from past acts, or from subsequent acts ratified, is limited to the performance of like acts under like circumstances. And for an agency to be implied from facts, the facts must be those for which the principal is responsible; the agency must find its creation implied from acts of or in the acquiescence of, the principal.

But it is necessary to distinguish between implied and apparent authority. Implied authority is that which the principal in fact intended the agent to have, though the intention be implied from acts. Apparent authority is that which, though not actually intended by the principal, he does permit the agent to appear to have, and the appearance of which gives the agent, if not authority from the principal, at least a power to bind him as to third persons. *Columbia Mill Co. v. Bank*, 52 Minn. 224. Ostensible authority to act as agent may be conferred if the party charged as principal affirmatively, or by lack of ordinary care, causes or allows a third person to trust and act upon such apparent agency.

From a consideration of the foregoing requisites and methods for setting up an agency relationship, one must conclude in the principal case that neither express, implied, nor apparent agency was created; for Kennedy failed to bring the conduct or relations of the parties within the ambit of any of the described rules and situations. And one dealing with the alleged agent has the burden of proving the agency (*Oldman-Magee Boiler Works v. Ocean & Inland Transp. Co.*, 205 N. Y. S. 550); the establishment of the alleged principal's liability requires proof of the authority of the agent to bind the principal, the law indulging in no presumptions that an agency exists (*Rhodes v. Smith*, (Tex. Civ. App., 1921) 230 S. W. 227.)

Since the appellant company did not have any control over the activities of Skaggs; since it had no contract with him to take all his straw, and

had none directly with Kennedy; since, therefore, Kennedy could have no definite intent to pass title farther than Skaggs, and did not pass title any farther; since Kennedy did not claim to have been dealing with a known agent; and since the company neither had an actual contract of agency with Skaggs nor held him out as an ostensible agent, it therefore follows that Kennedy failed to establish Skaggs as the agent of the *Terre Haute Paper Company*. H. W. J.