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Principal and Agent-Distinguished from Similar Relationships

PRINCIPAL AND AGENT—DISTINGUISHED FROM SIMILAR RELATIONSHIPS—The case of *Terre Haute Paper Co. v. Kennedy*, 171 N. E. 881 is abstracted in the note next preceding.

"The relation of 'agency' is a consensual relation between two persons by virtue of which one acts for and on behalf of another and subject to his control." *Miller v. Chatsworth Savings Bank*, 203 Iowa, 411, 212 N. W. 722. It is necessary, however, to distinguish between agency and other relations involving the rendering of service, the acting in behalf of another, and the affecting of another's legal relations with a third person.

The function of an agent is to bring about, modify, affect, accept performance of, or terminate, contractural obligations between his principal and a third person; the function of a servant is to render service but not to create contractural obligations. *Mechem on Agency*, sec. 35.

An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, and without being subject to control by his employer, except as to the result of his work. *Powell v. Construction Co.*, 88 Tenn. 692, 13 S. W. 691. The independent contractor in the course of his work supplies his own materials, servants, and equipment; undertakes to accomplish a certain result; and is not subject to control or direction by his employer, but is responsible to him for the end achieved rather than for the means used to accomplish it. He has no authority to bind his employer in any form of contractural dealings. So, an agreement by proprietors of a bank that a miller should buy wheat and pay for it by checks on the bank, whose proprietors should receive flour made from the wheat, did not make the miller their agent so as to make them liable for wheat for which he did not pay. *Witzman v. Sjoberg*, 164 Minn. 411, 205 N. W. 257. And a contract whereby defendants took conveyance of land from a corporation and agreed to furnish certain sums of money for lumbering operations, the corporation agreeing to pay all indebtedness, was held not to create an agency relationship, not to make defendants liable for materials sold to the corporation, and to have for its purpose merely the financing by the defendants of the corporation's lumbering operations. *Chase v. West*, 121 Me. 165, 116 A. 213. Payment of a workman by the employer of the contractor does not make the latter an agent of his employer. *Miller v. Minnesota, etc. Ry. Co.*, 76 Iowa 655, 39 N. W. 188. It seems, therefore, that some control of the acts of the alleged agent in the course of his work must rest in the principal, and some power in the so-called agent to affect legal relations between the principal and a third person, before an agency relationship between the alleged agent and his principal is set up.

A trust involves control of property; an agency may be totally disconnected from any particular property. The trustee holds the legal title; the

agent usually has no title. (Notice will later be taken of the course of title in the present case.) The trustee acts in his own name; the agent acts generally in the name of his principal. A trust is not necessarily a contractural relationship; an agency is usually, though not always, to be so regarded. A trust is usually not revocable; but an agency is unless coupled with an interest. Where a mortgagee placed money for which the mortgage was given in the hands of a broker through whom the loan was negotiated, to be paid for building material on order of the mortgagor, the broker was held not to be an agent of the mortgagee so as to bind him by accepting bills of exchange by the mortgagor on the broker as trustee of the fund. *Shepard v. Abbott*, 179 Mass. 300, 60 N. E. 782. But if the so-called trustee is only nominal or a "dummy," held forth merely to screen the alleged *cestui que* trust from responsibility, the relation between them is not one of trustship but of agency. 8 *Law Quarterly Rev.* 220.

Whether one accumulating goods to be delivered to another under an ambiguous contract is an agent to buy or a vender to the other party is a difficult question. Mechem makes the distinction that if one who is to supply the goods is to do so at a fixed price regardless of market fluctuations, that fact is evidence of sale rather than of agency; that if the goods are to be obtained upon the credit and responsibility of the one delivering them to the averred principal, such circumstance is further evidence of a vendor-vendee relationship. *Mechem on Agency*, sec. 46. *But the essence of sale is the transfer of title to goods for a price paid or to be paid.* What was the course of the title in the instant case? The answer will provide a more useful key to the solution of the present problem than will Mechem's test, which is useless where no provision is made for saltatory prices and for the placing of responsibility in the buyer. Title will pass at such time as the parties to the transaction intend, intent being adjudged from their contract and from their acts, if any, which might show an intent not otherwise ascertainable. *Meyer v. Grace & Co.*, 290 Fed. 785. Operation of the rules as to passage of title to goods under contract of sale is subordinate to intention of the parties. *Wenger & Co. v. Propper Silk Hosiery Mills*, 239 N. Y. 199, 146 N. E. 203. If Skaggs was the agent of the appellant company in the principal case, then title necessarily passed from appellee directly to appellant and Skaggs had no exercise of will or choice in the passage of title to appellant, for it passed *ipso facto* with the transaction. But it did not so pass to appellant directly and invariably from appellee; it passed to appellant only as Skaggs delivered to the company with intent to pass title. Skaggs could and did pass title in portions of the straw to vendees other than appellant, which fact strongly suggests that title vested in Skaggs until he selected a vendee and sold to him. Although appellee doubtless intended that title should go out of him and should go to whoever was vendee, he could not intend that title to all the straw, or to any particular part of it, should go to appellant company; for he could not know how much the appellant would get and how much an undisclosed vendee other than appellant would take. Appellee's only concern, therefore, was in conveying title away from himself; and no other intent can be shown from the evidence. He could not intend to pass title to sundry (then) unknown vendees of the straw without making Skaggs *his* agent rather than that of the appellant company; he could have no intent to pass title to definite

persons when those persons were not ascertained. If title left appellee Kennedy and did not immediately go to the ultimate vendee, it must have lodged somewhere; and that lodgment could have been in no one except Skaggs. Thus, the course of title having gone evenly to Skaggs and then having ramified from him out to several separate vendees whom he selected at will, and appellee having known nothing of the multiple courses of title from Skaggs to his divers vendees, any claim of intent on appellee's part to pass title farther than Skaggs is reduced to absurdity. Therefore, since appellee intended to convey his title away from himself, and since title to each parcel delivered up lodged in Skaggs until he decided upon a vendee and sold to him, title did not go to appellant with the undiverted directness necessary to constitute appellant the principal of Skaggs.

H. W. J.