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BILLS AND NOTES-PERSONAL LIABILITY OF AGENT WHO SIGNS NOTE WHICH PRINCIPAL HAS NO LEGAL POWER TO EXECUTE

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RECENT DECISIONS

BILLS AND NOTES—PERSONAL LIABILITY OF AGENT WHO SIGNS NOTE WHICH PRINCIPAL HAS NO LEGAL POWER TO EXECUTE—Defendant gave a note, signed by him in his representative capacity as village president, to plaintiff in payment for services rendered to the village. Defendant signed after he was authorized to do so by a resolution of the village board of trustees. The facts showed that the parties understood the village to be the primary obligor on the note. Actually, the village had no legal power to make such notes and could not have been indebted by them. Plaintiff sued defendant as an individual and won a verdict in the trial court. On appeal, *held*, reversed. Defendant having signed in a representative capacity was not personally bound, inasmuch as he was given permission by the board of trustees, and because the plaintiff was charged with notice of the village's lack of capacity. *Greenlee v. Beaver*, (Ill. 1948) 79 N.E. (2d) 822.

Section 20 of the Negotiable Instruments Law provides that when a person properly signs an instrument as an agent, "he is not liable on the instrument if he was duly authorized."[1] This section has been interpreted by Justice Cardozo, in the leading case of *New Georgia National Bank v. Lippmann*, to mean that if the agent is not authorized, he will then be liable personally on the instrument.[2] In the principal case the court recognizes such an interpretation but declares that it has no application here, because the defendant was authorized by the village trustees. Assuming the *Lippmann* decision to be the law, it seems that the issue squarely before the court was what definition is to be given the words "duly authorized." Conceivably, these words could be interpreted to refer to legal effect; that is, following Cardozo's interpretation of section 20, if a note signed by an agent in his representative capacity fails to bind the principal, the agent is then bound. On the other hand, the intended meaning may be such that only when the agent neglects to secure colorable authority which he might have obtained, is he to be personally liable. The court in the principal case seems to have adopted the latter interpretation. In so doing, it fortified its conclusion by referring to the fact that as the village's lack of power was a matter of public law, the plaintiff was charged with full knowledge of the defect and thus must bear the risk of taking the instrument.[3] To justify the use of the first suggested interpretation of the words "duly authorized," one might urge that the purpose of the N.I.L. is to increase negotiability.[4] A rule which binds the agent in all situations in which the

[1] N.I.L., § 20, Ill. Rev. Stat. (1947) c. 98, § 40.

[2] 249 N.Y. 307, 164 N.E. 108 (1928). At p. 310, Cardozo says: "The proviso carries with it a fair implication that he shall be so liable if not authorized." And see BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 6th ed. (1938). The Lippmann case is discussed and the author states, at p. 297: "Although the words of the section (discussing section 20) are unfortunately phrased, this excellent decision sets at rest any doubt as to the proper interpretation."

[3] The theory of this principle is that if the facts are known or should have been known by the payee, there will have been no reliance on the agent's false representation. 1 MECHEM, AGENCY, § 1371 (1914).

[4] BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 6th ed., 296 (1938), quoting from Professor Mechem's comment on the Ames-Brewster controversy over the N.I.L. Also,

principal is not liable would seem to further this purpose. However, more forceful arguments can be made for the second interpretation, particularly where the agent is a public one. The N.I.L. provides that a vendor of instruments shall warrant the capacity of the parties to the instrument. An exception to this rule is held to exist, however, in those cases in which the instruments are public securities.[5] It can be argued that this exception shows an intent to treat public securities on a special basis, and thus by analogy, public officers should be the exception to the general rule of section 20.[6] Using this argument in addition to the agency principles discussed above, it would seem that the second interpretation of the statute is more desirable in this type of situation and that the decision in the principal case is sound.

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at p. 296, the following is attributed to Judge Brewster: "There is no injustice. The agent should know whether he has authority. He should be liable as the maker of the note." This argument was advanced in support of the interpretation of section 20, which Justice Cardozo later adopted in the Lippmann case.

[5] N.I.L., § 65(3). The last paragraph of this section states: "The provisions of subdivision three do not apply to persons negotiating public or corporation securities, other than bonds or notes." This exception follows the decision of Otis v. Collum, 23 Wall. (92 U.S.) 496 (1875).

[6] It can be argued that by not making an express exception in § 20, as was done in § 65, the intent of the makers of the N.I.L. was to include public agents within the scope of § 20. However, if the problem did arise in the minds of the makers of the N.I.L., it would seem that they would have intended to except public officers because of the broad policy of the law of agency which was so well established.