

WILLIAM RICHARDS (DEFENDANT).....APPELLANT ; 1896
 AND
 THE BANK OF NOVA SCOTIA }
 (PLAINTIFF)..... } RESPONDENT. *May 6, 7.
*June 6.

ON APPEAL FROM THE SUPREME COURT OF NEW
 BRUNSWICK.

Principal and agent—Agent's authority—Representation by agent—Principal affected by—Advantage to other than principal—Knowledge of agent—Constructive notice.

Where an agent does an act outside of the apparent scope of his authority, and makes a representation to the person with whom he acts to advance the private ends of himself or some one else other than his principal such representation cannot be called that of the principal. In such a case it is immaterial whether or not the person to whom the representation was made believed the agent had authority to make it.

The local manager of a bank having received a draft to be accepted induced the drawer to accept by representing that certain goods of his own were held by the bank as security for the drafts. In an action on the draft against the acceptor :

Held, affirming the decision of the Supreme Court of New Brunswick, that the bank was not bound by such representation ; that by taking the benefit of the acceptance it could not be said to adopt what the manager said in procuring it which would burden it with responsibility instead of conferring a benefit ; and that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction and the duty of the manager to make known to the bank.

APPEAL from a decision of the Supreme Court of New Brunswick setting aside the verdict at the trial for the defendant and entering a judgment for the plaintiff bank.

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Sedgewick, King and Girouard JJ.

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The facts are fully set out in the judgment of the court.

Blair Q.C., Attorney General of New Brunswick, and *Pugsley* Q.C. for the appellant. The bank is seeking to enforce the contract with the defendant made by its agent and cannot say that it is not bound by what the agent did. *Foster v. Green* (1); *Wilde v. Gibson* (2); *Kennedy v. Panama Mail Co.* (3); *Central Railway Co. of Venezuela v. Kisch* (4).

Borden Q.C. and *Coster* for the respondent referred to *Oliver v. The Great Western Railway Co.* (5); *Chapleo v. Brunswick Building Soc.* (6).

The judgment of the court was delivered by :

KING J.—This is an action brought by the respondent as holder of two drafts against the appellant as acceptor and as drawer of the respective drafts.

The first was drawn by one James A. Morrison to his own order upon defendant for \$458.80 at three months and endorsed to respondent.

The other was drawn by defendant upon one James Robinson, December 9th, 1892 at 90 days for \$448.74 and was endorsed to plaintiff.

The defendant pleaded that he was induced to accept the one bill and draw the other by the fraud of the plaintiff.

He also pleaded as to the first bill that the plaintiff requested defendant to accept the same for the accommodation of the drawer, and upon the undertaking that the same would be paid out of the proceeds of certain goods held by the bank as security from the drawer. And, as to the second bill, that the same was drawn for the accommodation of the bank.

(1) 31 L. J. (Ex.) 158.

(2) 1 H. L. Cas. 605.

(3) L. R. 2 Q. B. 580.

(4) L. R. 2 H. L. 99.

(5) 28 U. C. C. P. 143.

(6) 6 Q. B. D. 696.

It appeared that the head office of the bank is at Halifax, N.S., and that, at the time of the transactions in question, it had an agency at Newcastle, N.B., under the charge of one Frank R. Morrison. Besides acting as agent of the bank Morrison carried on business for himself without the knowledge of the bank, and was in the habit of applying to customers of the bank for accommodation under various pretenses. As part of his plan of financing drafts were made or accepted by his brother, James A. Morrison, doing business at Halifax, N.S. Sometime in the year 1892, James A. Morrison drew upon defendant without any authority, and the draft was discounted with the respondent bank at Halifax before acceptance and was by the bank sent on to its Newcastle agency where Richards resided for acceptance and to be there retained for collection in case of acceptance.

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F. R. Morrison, who knew that his brother had drawn without authority and who was desirous, in the interest of his brother and presumably of himself, that the draft should not be returned for non-acceptance, endeavoured to induce defendant to accept.

From what took place we have only the testimony of the defendant as Morrison died before the maturity of the draft in suit. The defendant's account of is that, after exhibiting an invoice of molasses and vainly endeavouring to persuade Richards to purchase and to accept the draft in payment, with offers of renewal. etc., he then said that the goods were held by the Bank of Nova Scotia, and that the bank would see that they were sold and would look after the draft when it became due, adding that in case the goods were not sold the bank would want a renewal. He says that thereupon he accepted. The draft in suit is a second renewal.

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Then, as to the other draft in suit, he says that he drew this because F. R. Morrison (as before) pointed out certain molasses which he offered to sell as the property of the bank, and upon defendant's declining to buy requested him to make the draft upon Robinson as he "wanted to return the paper instead of the molasses, and he would see that the goods were disposed of and the paper taken up when it became due."

The jury found that the representations were made by F. R. Morrison and *bonâ fide* believed in by defendant, and that he became a party to the drafts upon the faith thereof; and that the statements were untrue to the knowledge of F. R. Morrison.

They, however, further found, as to the first draft, that it was accepted for the accommodation of James A. Morrison the drawer, and, as to the second, that it was drawn for the accommodation of F. R. Morrison, and to enable him to obtain money on it for himself.

And, as to both drafts, they find that the representations were not within the apparent scope of F. R. Morrison's authority as agent of the bank, and that there were such suspicious circumstances in connection with the alleged representations as to put defendant on inquiry, or to make it his duty to inquire as to the truth of the statements and the authority of the agent to make them.

The learned trial judge upon these findings directed a verdict for the defendant with leave for the plaintiff to move to enter a verdict in its favour for either or both of the drafts, in case the court should consider it entitled to recover either in whole or in part.

The Supreme Court of New Brunswick (VanWart J. dissenting) directed a verdict to be entered for the plaintiff for the amount of both drafts, and the appeal is from such judgment.

Upon the argument we thought it unnecessary to call upon the counsel for the plaintiffs in respect of the second draft, it appearing to us that the representation did not unequivocally purport to be on behalf of the bank. On the contrary it appeared to be on behalf of F. R. Morrison himself, for whose accommodation the jury have found the draft to have been drawn in order to enable him to obtain money for himself. The defendant was therefore not induced to draw it by the fraud of the plaintiffs, through themselves or their agent, as charged in the first plea to the court upon such bill, nor was it for the accommodation of plaintiffs as charged in the second plea to such court.

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Then as to the other draft. This was discounted at Halifax by the head office and sent to Morrison at Newcastle to be presented for acceptance, and in case of non-acceptance to be protested, and in case of acceptance to be held for collection.

The extent of the liability of a principal for the wrongful or fraudulent act of his agent is considered in *Barwick v. English Joint Stock Bank* (1); *Mackay v. Commercial Bank of New Brunswick* (2); and *British Mutual Banking Co. v. Charnwood Forest Railway Co.* (3). In the former of these cases it is said that the general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, and that the principal's or master's responsibility extends to the manner in which the agent or servant has conducted himself in doing the class of acts which he is put into position to do.

With regard to the draft in question it seems from the evidence of Mr. Blair to have been sent for a special purpose. Bills are ordinarily presented for acceptance in order to secure the liability of the acceptor. Here

(1) L. R. 2 Ex. 259.

(2) L. R. 5 P. C. 394.

(3) 18 Q. B. D. 714.

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it was found that the defendant accepted the draft, and of course at the request of the bank agent, for the accommodation of the drawer James A. Morrison and upon a representation and engagement by the bank agent that the acceptance would involve no liability. It was found that this was beyond the apparent scope of the agent's authority, and further that the circumstances were so suspicious in connection with the representation as to have put defendant upon inquiry, or to make it his duty to inquire, as to the truth of the statements and as to the authority of the agent to make them.

When a person is acting outside of the apparent scope of his authority and makes a representation to advance his own private ends (or what is the same thing the private ends of some one other than his principal) it can in no sense be called the representation of the principal. In other words it is not a representation by him as agent. In such case the belief of the person acting upon it is immaterial as against such obvious want of authority.

The cases as to adopting the burdens with the benefits of a contract made by an agent are not applicable, because, to the extent that F. R. Morrison was an agent, he did not make a contract, and to the extent that he promoted the personal advantage of the drawer he was acting for private ends and not within the scope of his limited authority.

The plaintiff bank is indeed to be held to have adopted whatever its agent said or did in procuring the acceptance provided that he was in fact acting for the bank, and this cannot be said when the stipulation was that instead of the bank receiving an advantage it was incurring a responsibility.

But it is urged that as F. R. Morrison was an agent to present the draft for acceptance and report to his principals, the bank would be affected by his knowledge of the transaction. Ordinarily this would be so.

In *Wyllie v. Pollen* (1), Lord Westbury expressed the opinion that the doctrine of constructive notice ought not to be extended, and held *inter alia* that it must be confined to knowledge of that which was material to the transaction and something which it was the duty of the agent to make known to the principal,

because (says his Lordship) the doctrine was based upon the assumption that the agent told him something that it was important he should know.

Where the agent acts in breach of trust and in fraud of his principal, and for private ends, as here, it is a violent presumption to make that the principal was informed by the agent, and a presumption contrary to the truth in almost every case. The presumption in such case would entirely be the other way. The fiction of constructive knowledge, properly limited, is a useful one, but extended this far it would be an instrument of fraud.

I think, therefore, that the representation of Morrison was in effect that of a third person, and consequently that defendant was not induced to accept the bill by the fraud of plaintiff or its agent, and that for like reasons the proof of the second count also fails.

Upon the whole I think that the appeal should be dismissed with costs.

*Appeal dismissed with costs.**

Solicitor for the appellant: *J. H. Barry.*

Solicitors for the respondent: *G. C. & C. J. Coster.*

*In *Bank of Nova Scotia v. Robinson*, an appeal from a decision of the Supreme Court of New Brunswick (2) in a case arising out of the same transactions as those in the case of Richards, the jury found that the drafts were accepted by Robinson for the accommodation of the bank and that he was induced to accept by untrue representations of the manager. The defendant had a verdict which the Supreme Court of New Brunswick refused to set aside for improper admission and rejection of evidence.

The appeal was dismissed with costs.

(1) 32 L. J. Ch. 782.

(2) 33 N. B. Rep. 326.

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