Lee Brobst's

EYE OF THE EAGLE

NEWSLETTER

THY WILL BE DONE IN ASSOCIATION

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QUASI CONTRACTS

To fully explain this subject, it will be necessary first to briefly review some of the fundamental principals of the common law system of pleading. Under that system a plaintiff, in stating this case to the court and to his opponent, had to use the appropriate form of action. That is to say, all legal wrongs were for the purposes of pleading divided into a number of distinct classes, and in each class there was an appropriate form of stating the case to the court which the plaintiff was obligated to use. Some of these forms were developed at a much later period than others and one of the last to be developed was the action of assumpsit, which received its name from the Latin words in the declaration, "super se assumpsit," meaning he undertook or promised. This action of assumpsit was subdivided into two classes, special and general. It is with the later action that we have chiefly to deal in connection with the subject of quasi-contracts.

The term "quasi-contract" translated into plain English, means "as if a contract"--something like a contract, and yet not one. Only by a consideration of the form of pleading can a clear understanding be had of why the obligation we have to deal with here received the name of "quasi-contract." The action of special assumpsit was the from of action for the enforcement of simple contracts, that is, legally enforceable promises which were not under seal. Before the development of general assumpsit, there was a form of action known as "debt" which lay for the enforcement of any duty to pay a sum of money which was definite and certain. There were connected with the action of debt certain procedural dis-advantages which made it desirable to extend, so far as possible, the action of assumpsit to cover the cases to which debt applied; and this was done by holding, first, that if a man made a debt and a subsequent

express promise to pay the same, the promise was legally enforceable-the debt was the consideration of the promise, it was said. The form of declaration alleged the existence of the debt and the facts giving rise to it in general terms, only. At first, an express promise to pay the debt, made subsequently to the origin of the debt, had to be proved in order that assumspit might be brought. After a time, however, it was argued that the law would imply a promise to pay the debt, and that no express promise need be proved. In other words, the debt was all that had to be proved, and the promise alleged in the declaration in this form of assumpsit was implied by the law. At this stage, however, the action of assumspit in this form was still only a new remedy for old rights, a new way of enforcing rights already recognized. The sum sought to be recovered had to be one which could have been recovered in the old action of debt.

LORD MANSFIELD

It remained for Lord Mansfield, borrowing to a large extent from the Roman Law, to extend the action to cover a whole new field, and thus to create a new branch of the law--a new set of rights under the pretense of simply determining whether, the plaintiff could use a new form of action. In 1760 the celebrated case of Moses v Macferlan 2 Burr. 1005 Lord Mansfield said: "The first objection is that the action of debt would not lie here and no assumpsit could lie where an action of debt might not be brought. . . . . If the defendant be under an obligation, from the ties of natural justice, to refund, the law implies the debt, and gives this action, founded on the equity of the plaintiff's case, as it were upon a contract ('quasi ex contractu' as the Roman Law expresses it)." In other words, Lord Mansfield, not only may the action be used for the previously recognized cases, but whatever, according to natural justice and natural equity, a person ought to pay a sum of money to another person, the law imposes a duty upon him to do so; and in addition, in order to compel the performance of the duty, the law implies a fictitious promise to do so, so that the action of assumspit may be brought for the breach of the fictitious or implied promise.

It is with these obligations to pay money, arising, not because the plaintiff has received the defendants's promise to pay, but because on certain principles of justice and equity, the court decides the defendant ought to do so, that we have to do in this portion of this work. These obligations in the common law system of pleading were enforced as if they were contracts, by an action of assumpsit, and were called, by the older generation of lawyers, and to a large extent are still called, "contracts implied in law," meaning that the promise to pay is implied, or better, constructed, by the court from the facts of the case, and does not, in fact, exist.

The fundamental distinction, then, between a true contract and a quasi-contract, lies in the fact that in the eyes of the court, he ought to do so, according to the principles of natural justice and equity as seen by the court, while in the former he is bound to do so because he has agreed to do so. At this point we must guard ourselves against confusing two things, which have often been carelessly mistaken for each other. In all the older books upon contracts and pleading, one will find contracts divided, first, into two main classes: (1) express; and, (2) implied, and the later class subdivided into two sub-classes, (a) contracts implied in fact and (b) contracts implied in law. As we have already seen, this later class are not true contracts, but are quasi-contracts. What are the second class-contracts implied in fact? A concrete illustration

will do more perhaps to answer this question than a general definition. Suppose I go to the grocer's and simply say, send up a bushel of potatoes," and walk out, and the grocer sends them. Here I have actually promised to pay the price of a bushel of potatoes, not by word of mouth, but by my acts; and acts, in this case, speak at least as loudly as words. I have in fact made a promise; in such a case bound to pay the grocer because I have in fact agreed to so so; that is, I am bound by the contract. The express contract, therefore, is legally enforceable promise made in words; a contract implied in fact is also a legally enforceable promise, expressed, however, by acts, but none the less a true promise. The "contract implied in law," as we have seen, is based not upon an actual promise made by one person to another, but upon a fictitious or constructive promise which for the purpose of pleading, the law implies in order to permit the action of assumspit to be used, to enforce the duty to pay which the law imposes upon the defendant. It seems better therefore to drop out from the subject of contracts altogether these so-called "contracts implied in law."[1] and to give them a separate name which indicates that while they are not contracts but obligations imposed by law, they are enforced as though they were contracts.

In the quotation from Lord Mansfield given above, it will be noticed that he used in reference to these obligations the Roman Law term "quasi ex contractu," (as if from a contract). It is by adopting the suggestion therein contained that modern authors have come to use the term "quasi-contract." Many objections have been made to this name for reasons which cannot be given here, but, it is now now generally accepted, especially by recent writers, and will be used in this article. Some writers have suggested as a better name, the phrase "constructive contracts," on the ground that that the promise for the breach of which the plaintiff sues, is in reality constructed by the court from the facts which show that the defendant ought to pay the sum to the plaintiff, but this suggestion has not, to any extent, been acted upon.

For the purposes of this work, then, we may describe, if not define, quasi-contracts as including all duties to pay money to others which arise, not because of an agreement to do so, but because the law imposes the duty upon the defendant. The aim of our discussion, therefore, must be to determine the cases in which, and the principles upon which, our system of law imposes upon 'persons' these duties to pay money to other 'persons.'

One of the earliest examples of what is properly called a quasi-contractual duty arises when a judgment is rendered by a court of common law against the defendant in an action. The entry of the judgment determines that there is a legal duty on the part of the defendant to pay the plaintiff a sum of money, the amount of the judgment. This is true, irrespective of the nature of the action for which the judgment is recovered; that is, whether the action be one for damages for a breach of an actual contract, or for damages arising from a tort of any kind. This duty arises, therefore, not because the defendant has promised the plaintiff in any way to pay the sum, but simply because the court has determined that he ought to do so. [2] An obligation of this kind clearly answers our description of a quasi-contract, and is so classified. Formerly, in accordance

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[1] By operation of law which will be dealt with under principal and Agent; this newsletter.

[2] See page 5, Sept. 89 issue, right column first and third paragraphs.

with the classification given above, it was described as a "contract implied in law," or more specifically, a "contract of record".

It sometimes happens that a statute passed by the legislative body imposes a duty upon one man to pay a sum of money to another man, although he has not agreed to so so. In such a case the resulting duty must, according to our description of quasi-contracts, be classed as a quasi-contract. For example, it is not unusual for statutes to require the master of a vessel to accept the services of the first pilot who offers his services, and to provide that, in case the master refuses the services of the pilot who so offers himself, he shall pay the pilot for his services as if they had been rendered. In a case of this kind, therefore, the action of the pilot against the master to recover for the services which were not rendered but only tendered is based upon a quasi-contract.

In certain cases a public officer in the discharge of his duty is bound by the law to pay over a sum of money to another person, and here again we have a duty to pay money imposed by law, that is, a quasi-contractual obligation.

The most important and by far the largest class of cases which fall under our subject are those in which the duty to pay is based upon Lord Mansfield's famous principle that wherever, according to the principles of natural justice and equity (ex aequo et bono) the defendant ought to pay. The law by Professor Keener, the first writer who published a treatise on this subject, as follows: "No one shall be allowed to enrich himself unjustly at the expense of another." Obviously the statement of such a very general and abstract principle does not take us very far, and we must therefore proceed to discover from the cases decided by the courts what has been held to be and what has been held not to be an unjust enrichment of one man at the expense of another. In doing so we shall discover certain limitations upon the principle which really allow one to enrich himself unjustly at another's expense in certain ways, the court refusing the plaintiff relief, in spite of the unjust enrichment, because of some real or fancied demand of public policy, or for some other reasons which will be set forth later. Let us then proceed to the application of the general principle as we find it in the cases.

WAIVER OF TORT

We can best approach the discussion of the branch of the subject which will be dealt with in this chapter by considering a concrete case. Suppose B takes A's horse without A's permission, and carries him off and sells him. B is said to have converted A's horse, that is, to have committed the tort or wrong known as a conversion. A may therefore sue B in the appropriate common law form of action for the redress of such a wrong, namely, the action of trover. The wrong, from the point of view of the tort action, consists in the unlawful assumption of dominion by B over A's chattel, and the amount of A's recovery is the damage which has been inflicted upon him by this wrongful act of B. Upon examining the transaction, however, we discover that in addition to the tort, that is in addition to the loss inflicted on A by B's wrongful act, we can discover a different relationship in the case supposed; that is to say, we may look at it from a different point of view. Not only has B inflicted a loss upon A, but B has enriched himself by the amount he has received from the sale of A's horse. This enrichment certainly is an unjust one. If then, our principle that no man shall unjustly enrich himself at another's expense be of universal applicability, we have here the basis for a quasi-contractual obligation, that is , a duty

imposed upon B to pay A 's sum of money equal in amount to the enrichment which he has unjustly received at A's expense. We shall expect therefore, in accordance with the view expressed by Lord Mansfield in the case of Moses v Macferlan, above referred to (1), that A could maintain an action of general assumpsit against B, and such is the law. The form of the declaration in such a case, at common law, would allege that the defendant B was indebted to the plaintiff A in the sum of say $100 (stating the amount received by the defendant for the horse) theretofore had and received by the defendant to the use of the plaintiff, and being so indebted, the defendant promised to pay the said sum to the plaintiff on request, and that he has not done so. This form of the declaration in general assumpsit is known as the count for money had and received, and is perhaps the form used more than any other for the enforcement of quasi-contractual obligations. [3] When the plaintiff brings an action of assumpsit, in cases of this kind, instead of suing in trover for the conversion, he is said to "waive the tort and sue in assumpsit." This phrase, however, is not strictly accurate, for as a matter of fact the plaintiff simply chooses to look at the transaction from the point of view of the loss inflicted upon him by the defendant's act. In other words, the plaintiff has his election to adopt either point of view, and therefore to elect between two different remedies. It may with equal truth be said, when the plaintiff in such a case sues in trover, that he waives the assumpsit and sues in tort for the conversion.

Let us now examine our case a little more closely. Suppose the horse so taken by B was worth in the market $100, but that B, being a sharp bargainer, received for him more than that, say $150. In a suit by A against B, in trover for the conversion of the horse, the measure of damages would be the market value, $100. Suppose now instead of suing in trover, A waives the tort and sues in assumpsit for money had and received. How much will he recover? According to the decisions of the courts, he will be entitled to recover the amount which B received, be it more or less than the market value of the horse. That is to say, in the case supposed, he will recover $150. What is the principle back of this? The real question involved is, what is the amount of the unjust enrichment which B has obtained at the expense of A? Is it $100, or $150? The view which the courts have taken is this: The $150 is the substitute for the horse and it would not be just to allow the defendant to take the plaintiff's property, sell it and retain any of the proceeds of the same. They accordingly hold that the measure of damage in the assumpsit action is the amount actually received for the plaintiff's property by the defendant. This rule, it will be noticed, works both ways. For example, if the defendant received only $75 for the horse, although he was worth $100, and the plaintiff were to bring an action for money had and received, all that he could recover would be $75.

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PRINCIPAL AND AGENCY

The following article primirily involves business law in a two party contract with public money for private debt. Government at this time was limited in its scope because of the money therefore; not involved in the individuals every day life. H.J.R 192 in 1933 changed dramatically this concept. Government is now a business. For example, Principle and Agent. Two distant and seperate entities. This is not

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[3] 1040 form or equivalent. See also page 5, Aug. 89 issue, left column first paragraph.

so when dealing as a 14th amendment citizen since 1933.

It has been said that each member of a joint venture is both an agent for his coventures and a principal for himself. #76 Summers v Hoffman, 341 Mich. 686, 69 NW 2d 198, 48 ALR 2d 1033; Varbel v #77 Acri 156 Ohio St 467, 103 NE2d 564, 30 ALR 2d 853; and that each coventurer stands in the relation of agent as well as principal to the other coventures. Smith #78 v Grenadier 203 Va. 740, 127 SE 2d 107 Each joint venturer is the agent of the other and each is the principal, so that the act of one is the act of all. Mercer v #79 Vinson 85 Ariz 280, 336 P2d 854. Taken from August 89 issue, page 6.

The size and complexity of the modern business enterprise make action through representatives a necessary supplement to direct and personal action. Undertakings involving special knowledge or skill, transactions taking place in widely separated parts of the world, form part of a business under a single head. Corporate organization necessarily involves action through representatives. An insurance company with its management resident in New York, if it wishes to write policies in San Francisco, will find it practically necessary to appoint a representative to act for it there. In general such a representative, authorized by a competent person to act, and acting under his direction and control, is an agent, and the authorizing person is called a principal. It should be observed, however, that an agent is only one type of representative through whom a principal may accomplish his ends. He is to be distinguished from other representatives chiefly by the facts that he owes his appointment to the principal and is subject to the principal's direction in the details of execution of the task he is authorized to perform.

In its broader sense the word agent denotes a person who represents his principal and acts under his direction, whether in performing merely operative acts or in bringing the principal into relation with third parties. More narrowly, when the employment does not necessarily involve a third party in relations with the principal-for instance when it is such an operative act as plowing the principal's field or painting his portrait the relation is spoken of as that of master and servant, and the relation of principal and agent is confined to the bringing of the principal into contractual relations with third parties. Of course the same person may be for example when P's plowman purchases oats for the farm horses on P's credit.

To give legal sanction and aid to the extension of the principal's personality through the acts of his representatives is a boon to the principal for which the law exacts a return. One who receives the benefit of the increased capacity to act him through agents must bear the burden of responsibility within reasonable limits for the acts they do. But the agent may do things he is not authorized by his principal to do; he may act negligently, or may disobey his master and act in reckless or willful disregard of the rights of others with whom his occupation brings him in contact. Yet within limits the principal is responsible for these acts also. It is the function of the law of agency to fix these limits of responsibility.

Again, since the principal's selection of his representative depends on his belief in the agent's skill, prudence, diligence, and especially his fidelity, and since the agent's willingness to accept the appointment also depends largely on the personal qualities of the principal, the personal element, and particularly the fiduciary element, in the relation is an important factor in shaping the legal doctrines of agency. Out of these two

fundamental ideas that certain acts of a representative may, for purposes of fixing legal rights and duties, be attributed to his principal, and that the relation in its formation and its conduct, particularly as regards the rights and duties of the principal and the agent, is a personal one-the distinguishing feature of the law of agency may be said to be developed.

In general any lawful business may be transacted through agents, and an agency may be created for the purpose of doing any act which the principal can lawfully do himself in his own behalf. One cannot do through an agent what one is forbidden by law to do himself. Hence agencies cannot be created to do acts illegal or violative of public policy, or even having a natural and direct tendency to promote the commission of such acts. The inquiry of the law is not as to whether in a particular undertaking anything improper was done or intended, but whether the natural and probable tendency of such an undertaking was to lead to acts opposed to public policy or law. So for example contracts of agency which require the agent to commit crimes, to endeavor to bribe the servant of another, to deal in prohibited articles, to seek to suppress a criminal suit, or to further and increase litigation-such acts and all others of similar character and tendency are declared void.

A principal not only cannot appoint an agent to do an act which he cannot legally do himself, but also he cannot appoint him to do any act which the law or an agreement of the parties requires the principal to do in person. Thus an agent cannot exercise the principal's political franchise of voting for him.

At least two parties are involved in the relation of agency; the principal who authorizes the agent to act for him, and the agent who acts. Such was the case when the people issued their own money. Public money for private debt. As of H.J.R. 192 in 1933 we now have third parties in the law of agency when dealing with government. The third party is the public at large in communal fashion because of the private money for public debts. The Federal Reserve System is in contract (treaty) with the congress and in turn these treaty obligations attach to the U.S. Treasury, that is if you are subject to the 14th amendment. If the authorization contemplates the bringing of the principal into contractual relations with others, a third party may be involved. Or the existing rights of third parties may be affected apart from contract by the performance of the agent's duties. The law of agency then concerns itself with the relations arising out of agency between the principal and the agent, the principal and the third party, and the agent and the third party.

THE FORMATION OF THE RELATION

Generally capacity to act as a principal depends on capacity to do directly the act which the appointment contemplates having done through an agent. One cannot do through an agent what one is legally incapable of doing in person, but anyone who can make a valid contract can authorize an agent to make it. Conversely, the limits on one's capacity to make binding contracts are the limits of one's capacity to appoint agents.

In general the contracts of infants, except for necessaries, are voidable at their option; in other words an infant can perform or repudiate his obligation at his election.

Since these organizations are not legal entities they cannot as organizations appoint agents. They are not even partnerships, so that individual members cannot appoint agents to bind the society; but the members who expressly or

impliedly assent to them and mere membership in the society is not sufficient to constitute an assent. But a member may by previous assent be bound by the act of a majority such as the case where one signs government forms or exercises the franchise of voting or where he signs a constitution which recognizes the power of a majority to bind the society by its action.

As far as third parties are concerned, anyone may act as agent in representing a principal in dealings with them, excepting cases of special sorts of agents, such as attorneys at law, where the law fixes certain requirements, and in the case of the usual provisions of the statute of frauds, which prevents the agent who makes the memorandum required by the statute from being in fact the other principal. As between the agent and the principal, the ordinary rules of contractual capacity apply. If the agent is an infant he may disaffirm his contract of employment, but if he chooses to abide by it the principal is

The ordinary way in which the relation of agency is formed is by a contract between the principal and agent, by which the agent agrees to act as the principal's representative, and the principal to compensate the agent for his services. But the agreement may fall short of being a contract to become a quasi-contract. All that is essential is an appointment by the principal and an acting under it by the agent. P[4] makes an offer to one T to take some bagging at a set price in liquidation of notes which P held against T, and named one A as authorized to conclude the agreement. T notified A that he accepted P's offer but found that A had no word directly from P of his appointment, and that he therefore declined to act for P. T, however, relied on his acceptance as completing the contract with P, and brought a bill in equity to compel specific performance on P's part of the agreement to take the bagging. The question raised by the facts was whether the mere nomination of A as agent by P created the relation of agency unless A consented. The court held that it did not. A man cannot be made agent against his will. In every real agency there is mutual consent of the principal and his representative.

It is not necessary that this consent be expressed in words. It may be implied from the circumstances of the case. Thus when a wife, whose husband's work frequently took him away from home for considerable periods, during which time she managed the household, borrowed money for the use in a family matter, the circumstances were held to show, even in the absence of any express appointment, that she was her husband's agent.

Intervening rights of strangers must be respected. Where, prior to the attempt at ratification, parties unconnected with the original transaction between the quasi agent and the third party have in good faith obtained rights in the subject matter of the transaction, the principal can no longer ratify. Thus where an unauthorized agent had contracted to sell to T a ranch belonging to P, but before P learned of this he himself had transferred his title to another party, F, P could not then ratify A's contract and so escape from his own transaction with F

A without authority gave T, a tenant of P's six months' notice to quit. T declined to act on the notice without further assurance of A's right to serve him with it. P then told of A's act approved it, and six months after A's service of notice brought an action of ejectment against T. It was held that the ratification was invalid, since T had a right to be assured at the very time at which he was called on to act and prepare to leave that the

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[4] P is for Principal, A is for Agent and T is for Third party.

principal might not disavow the agent's notice afterwards, and claim T still as his tenant.

In general any manifestation, whether by express words or conduct, of the principal's intention to approve the agent's act is sufficient to constitute ratification. But if a prior appointment to do the act the agent has done would have had to be in writing or under seal, or executed with any special formality, this formality should be followed in ratifying it. Apart from the formal and express methods of ratification, the question whether or not the principal has ratified is a question of evidence. Even where the principal had no express intent to ratify, if his conduct reasonably interpreted has led another person to believe that the act of the quasi agent was done by his authority, he will not be heard to deny that it was so done. A common method of ratifying an act is by accepting the benefits of it.

Voting being one of those benefits especially, when one considers the fact that the system of elections in this country was unknown to the common law. Taylor v Beckham 178 US 548 44 L Ed 1187. Meisel v O'Brien, 142 W Va 74, 93 SE2d 481. If that is not conclusive upon the subject then consider the fact that the power to legislate in regard to congressional elections is derived from Article I of the United States Constitution. U.S. Constitution Article I sec. 4 (providing that times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof, but Congress may at any time by law make or alter such regulations except as to places of choosing Senators). The powers of Congress over state election can come only from the 14th and 15th amendments and the enabling clauses thereunder. Guinn v United States, 238 US 347, 59 L Ed 1340. James v Bowman, 190 US 127, 47 L ed.979. United States v Cruikshank. 92 US 542, 23 L ed 588.

BY OPERATION OF LAW

In cases of agency by prior appointment or subsequent ratification the basis on which the agency arises is the will of the parties involved in the relation. Furthermore, in some situations agency may be created by necessity, that is, by emergency arising from a particular situation making it necessary or proper for the agent to act without receiving the section or authority of the principal in the matter. Also in a emergency or disaster during a voyage constitutes the master of a ship the agent by necessity of owners, insurers, and all others interested in the vessel or her cargo. Such was the case of H.J.R. 192 in 1933 codified at Title 31 United States Code 463 (a) in which the congress stated "due to the existing emergency it has became public policy for the congress to suspend the "Public National Money Standard" in Payment of debt "in" Law."

At common law, authority under seal is necessary to enable an agent to make a contract under seal binding on his principal. Such is the case of the birth certificate. When the instrument is under seal there is no need for consideration to make the unilateral contract binding. In other words, the birth certificate is like a live wire in a switch box, the minute you touch the wire you have completed the circuit and the evidence would be the kilowatt hours recorded on the meter. The benefits are offered but you do not have to except the offer. Its a unilaterial offer. There is no meeting of the minds but if you accept the offer you have conveyed a power of attorney.

Powers of Attorney

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney.

A power of attorney is a written authorization used to evidence an agent's authority to a third person, and the person holding a power of attorney is known and designated as an "attorney in fact," thus distinguishing such person from an attorney at law.

A power of attorney may be general, special, or partly general and partly limited or special. It has been said that an attorney in fact is essentially an alter ego of the principal and is authorized to act with respect to any and all matters on behalf of the principal with the exception of those acts which by their nature, by public policy, or by contract require personal performance.

In the absence of statute, no form or method of execution is required for a valid power of attorney; it may be in any form clearly showing the agent's authority and may be executed according to any recognized common-law method of executing written instruments such as the birth certificate as a sealed instrument. However, since a power of attorney is ordinarily designed for use when the principal is not present, it should be executed with sufficient formality to carry on its face convincing evidence of its genuiness and in such a manner as to make it valid in law. Note that when ever you see the term in law used such as in this instant case; it does not mean "in" Law as in the sense of the "in" Common Law.

In many jurisdictions statutes require that powers of attorney for particular purposes be recorded. However, in the absence of express provision of statute, the validity of a power of attorney is not affected by a neglect to have the instrument recorded.

Powers of attorney are to be construed in accordance with the rules for the interpretation of written instruments generally; in accordance with the principals governing the law of agency; and, in the absence of proof to the contrary, in accordance with the prevailing laws to the act authorized.

As in the case of other instruments, there is no room for construction of a power of attorney which is not ambiguous or certain, and whose meaning and portent are perfectly plain. But in cases where construction of the instrument or the interpretation of its language is necessary that is, where the meaning of the instrument or the operative language therein is uncertain, obscure, or ambiguous-the first and foremost rule is that the intention of the parties as it existed at the time the power was granted is to be given effect. This of of course is particularly true in the case of the W-4 form or any such forms including voting. Upon signing, you execute to be a receiptent of the social programs of government. Social programs are for benevolent purposes for your benefit and the courts will always construe the issue in favor of the beneficary as was in the U.S. v Ferriera, 13 How. 54 U.S. 40. Afer that is established, the government applies a tax upon those benefits as being goods in interstate commerce. This is the simple explaniation. The more complex explaination is upon executing upon government forms, you submit the res into the hands of the congress and state legislature. The res is now under the control of the District of Columbia called the 14th amendment citizen; whereby a direct tax is applied that is apportioned among its various classes of citizens.

It is the general rule that a power of attorney must be strictly construed and strictly pursued. Under this rule, the instrument will be held to grant only those powers which are specified, and the agent may neither go beyond nor deviate from the power of attorney-in other words, the act done must be legally identical with that authorized to be done.

The rule of strict construction of a power of attorney is not absolute and should not be applied to the extant of destroying the very purpose of the power. The rule does not call for a strained interpretation and if the language will permit, a construction should be adopted which will carry out, instead of defeat, the purpose of the appointment. Even if there are repugnant clauses in a power of attorney, they should be reconciled, if possible, so as to give an effect to the instrument in keeping with its general intent or predominant purpose. Furthermore, the instrument should always be deemed to grant such powers as are essential in effectuating the expressed powers.

A power of attorney may be ambiguous either in its language or by reason of the surrounding circumstances, and the kind of ambiguity effects the manner of interpreting or construing the power. Where the words used are ambiguous in themselves they are to be taken most strictly against the principal. In such case it has been said that the agent in his dealings with a third person can bind the principal in accordance with usage or by any construction of it which is reasonable. Moreover, the principal is bound when the agent and third person have acted in regard to an object permitted in the power granted, even through the mode of action is open to question, and the court, on a critical examination of the language used, might be of the opinion that a different construction would be more nearly correct.

Primarily, the nature and extent of the authority conferred by a power of attorney are to be determined from an inspection of the instrument itself, and parol evidence is not, as a rule, admissible to establish the import of the instrument. In case of doubt, however, reference may be had to the situation of the parties and property, usages of the country on such subjects, the acts of the parties themselves, and any other circumstance having a legal bearing and throwing light on the question.

In reviewing powers of attorney in our situation with government; we must understand that the minute one signs any government forms and exercises the voting franchise, those powers become relative powers delegated to an agent under the executive and legislative powers of Article I of the U. S. Constitution to form the parliamentry democracy Absolute powers of the Democratic Republic have been given up in favor of relative powers to be enforced under the 14th amendment. The courts then determine what those powers are. Thus the quasi admiralty-maritime jurisdiction and just about anything else that comes along.

EDITOR COMMENTS

In the past 8 months the editor has been trying to expose some of the real issues before us. At first I had doubts as to whether there were enough ears and eyes tuned in to what the editor had to say about some cold hard facts as to what is really happing in our nation and how to stop it. Fortunately there are people from all over the nation who have responded and their comments range from:

For the past 8 years I have been reading everything I can get my hands on that attempts to explain the root cause of our problems. Your newsletters have helped me

more in this respect than all the rest put together.

The most incredible newsletter in the nation.

Please send me as many copies as you can so I can distribute them to some people who are fed up with war stories.

The list is endless and I want to thank everybody who has shown interest. Understanding our situation has not been easy and has been a long time in coming. I most certainly have to thank the late Bill Avery for given me the tools to forge ahead.

It is very difficult to pick up todays law books and try to figure out what goes where. In order to ramify this; we will venture back to when the law was more simple. A time when there was a separation of the different facets of the law. That was a time before the commercial money. By this, it is hoped you will see how the law has changed and why you cannot use the old law. As stated before, we only go back so we can go foreword. By using this method, you will be able to pick up todays law books and put everything into focus.

People are divided into three classes, those who watch things happen, those who make things happen, and those who wonder what happened. It is the intent of this editor to educate people into making things happen.

At present time I am exploring complete new areas in the law that have never been touched. Areas such as the land and how one individual can stop these corporations from killing us with their poisons. A taxation system that is fair and just, the list is endless. In order to fulfill these dreams we must stop chasing rabbits and UNDERSTAND the basic principals in the law. We cannot let a vacuum in the law. In other words, if we vacate one area we must replace it with another, otherwise we could end up with a system far more dangerous than what we have.

PLEASE NOTE THE CHANGE OF ADDRESS.

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AT THIS TIME I WANT TO WISH EACH AND EVERYONE OF YOU A VERY HAPPY AND JOYIOUS HOLIDAY SEASON.

Lee Brobst