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adopted which will provide for separate trials of the general plea of not guilty and the plea of not guilty by reason of insanity at the time of the crime. Perhaps the California procedure affords the best solution; perhaps an even better solution can be found. Another improvement would be to have a special sanity board, similar to that of Massachusetts, to examine into the sanity of accused persons who raise or may be expected to raise the plea of insanity.

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JURIDICAL BASIS OF PRINCIPAL — THIRD PARTY LIABILITY IN LOUISIANA UNDISCLOSED AGENCY CASES

The recent case of *Sentell v. Richardson*¹ presented our supreme court with an excellent opportunity to clarify the Louisiana approach to that situation where one person performs a juridical act for another. Under the terms of the contract in that case, plaintiff advanced to defendant the purchase price of certain stock which the latter was to have reissued in his own name without revealing the fact that he was acting for plaintiff. Defendant was then obliged to endorse and deliver the stock to plaintiff. After completing negotiations to purchase it from the owners, however, defendant notified plaintiff of his withdrawal from the contract and sold the stock for himself to a third person. One of the questions in the case was whether or not the contract was one of agency. Plaintiff claimed that defendant was his agent when negotiating for the stock, and as such was legally unable to purchase it for himself. Defendant countered with the proposition that this was no contract of agency since it did not come within the definition of *Mandate* in Article 2985 of the Civil Code,² which required that the mandatary act in his principal's name. Conceding that there was no representation, the court nevertheless found that the relation was one of mandate, stating that representation was not essential to mandate: "Our opinion is that the words 'and in his name' are not essential to the definition of a procuration or power of attorney, as defined in Article 2985 of the Civil Code. If those words were essential to the definition there

1. 211 La. 288, 29 So. (2d) 852 (1947).

2. "A mandate, procuration or letter of attorney is an act by which one person gives power to another to transact for him and in his name, one or several affairs."

could be no such thing as a procuration or power of attorney to buy property for an undisclosed principal."³

Was the method employed by the supreme court a satisfactory approach to the problem? A logical step in the pursuit of a possible answer to this question would be a brief consideration of the general manner in which the French and common law treat the subject of "Agency."

FRENCH AGENCY CONCEPTS

Mandat, or representative agency, is specifically provided for in the French Civil Code.⁴ The French Commercial Code sanctions the contract of *commission*,⁵ or non-representative agency, in commercial matters, and French jurisprudence and doctrine have recognized the contract of *prête-nom*, which is no more than *commission* transferred to the civil law.⁶ While in *mandat*⁷ liability between principal and third party is recognized, the opposite is true in *prête-nom* and *commission*.⁸ Here we see the result of the French emphasis upon the requirement that there be representation before a principal, rather than his agent, may be held liable by a third person. Thus, in French law, the question of the liability of principal and third party is resolved into one of whether or not there was representation.

COMMON LAW AGENCY CONCEPTS

Omitting discussion of the various definitions⁹ of "agency" proper, for purposes of this comment, the common law agency situations may be classified as (1) agency disclosed with principal identified, (2) principal undisclosed—either with the fact of agency

3. 211 La. 288, 298, 29 So. (2d) 852, 855.

4. 2 Planiol, *Traité Élémentaire De Droit Civil* (11 ed. 1939) 785, no 2231.

5. Goirand, *French Commercial Law and the Practice of the Courts* (2 ed. 1898) 155. French Commercial Code, Art. 94.

6. Planiol, *loc. cit. supra* note 4.

7. Planiol, *op. cit. supra* note 6, at 795, no 2266.

8. *Id.* at 797, no 2271: "*Les tiers ne connaissent, ou sont censés ne connaître que le prête-nom: c'est lui qui est leur créancier, lui qui est leur débiteur, lui qui est propriétaire des biens mis sous son nom. Ils ont donc le droit de le poursuivre et ils peuvent être poursuivis par lui; et, d'autre part, ils ne peuvent poursuivre que lui ou être poursuivis que par lui.*" Also see note 7, *supra*.

9. A. L. I., *Restatement of Agency*, § 1, defined it as "the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

More terse definition is given by Seavey, *The Rationale of Agency* (1919) 29 *Yale L. J.* 859,868: "A consensual relationship in which one (the agent) holds in trust for and subject to the control of another (the principal) a power to affect certain legal relations of that other."

concealed altogether, or with agency disclosed but principal unidentified. The first situation is very similar to the French *mandat*, with the rights and duties of principal and agent practically the same. The second classification is comparable to the *prête-nom* and *commission* situation, since the principal's identity in both is unknown at the time of the transaction. However, there is one important practical difference between the two. Under this common law situation, which we may call "simple agency" for convenience, principal and third party are permitted to sue each other directly.¹⁰ As previously noted,¹¹ no such suit is sanctioned under *prête-nom* or *commission*.

Various theories are advanced to rationalize the common law acceptance of those ideas represented by "simple agency."¹² As to its historical evolution, we know that not until the seventeenth century did the common law, largely through the efforts of the chancellor, begin to accept some of the more advanced ideas of the law merchant on agency.¹³ For example, although it was originally necessary to show that the specific contract of agency in question was authorized or had been ratified, the court of chancery began to hold a principal liable for goods supplied to his known agent without requiring this proof. Then it took an additional step and protected the interests of a principal whose agent acted in his own name. Eventually this practice was adopted by the law courts.

Mr. Justice Holmes explained the adoption of "simple agency" as he did the master's liability for his servant's torts committed within the scope of employment—the fiction of identity, carried down from ancient times, by which the slave was viewed as one with his master.¹⁴ Another legal historian condemns this theory, pointing to the gap of centuries between the two ideas.¹⁵ He proceeds to expound the proposition that this doctrine came directly from the action of debt, which was given by the law of contract to an undisclosed principal who furnished the *quid pro quo* on which the debt was based. This principle was supposed to have been later extended

10. *Mississippi Valley Co. v. Abeles*, 87 Ark. 374, 112 S. W. 894 (1908); *Humphrey v. Bussey*, 99 Fla. 1249, 128 So 841 (1930); *Johnson v. Maddock*, 119 Fla. 777, 161 So. 842 (1935); *Schweyer v. Jones*, 152 Mich. 241, 115 N. W. 974 (1908); *City Trust Co. v. Brewing Co.*, 174 N. Y. 486, 67 N. E. 62 (1903); *Eckstein v. Caldwell*, 61 R. I. 142, 200 Atl. 434 (1938); *Waddill v. Sebree*, 88 Va. 1012, 14 S. E. 849 (1892); *Harris v. McKay*, 138 Va. 448, 122 S. E. 137 (1924); 2 *Mechem on Agency* (2 ed. 1914) 1313, § 1731; A. L. I., *Restatement of Agency*, 674, § 302.

11. See note 8, *supra*.

12. *Mechem, Outlines of Agency* (3 ed. 1923) 304, § 464.

13. 5 *Holdsworth, A History of English Law* (1927) 297.

14. *Select Essays in Anglo-American Law* (1907-1909) 390.

15. *Walsh, History of Anglo-American Law* (2 ed. 1932) 359.

to all contracts with the view taken that the contract was really between the undisclosed principal and the third person. It is further contended that the agent may be liable at the third party's election, not because he is in fact a party to the contract, but because the agent is estopped from denying that the contract is his, due to the false representation that he was the principal. Still another writer declares that to hold the undisclosed principal liable is consistent with the theory of obligations enforced in the action of *assumpsit*, since he is really the one who caused the third party to act.¹⁶

This doctrine of "simple agency" might be superficially justified on the basis of public policy. To allow such suit would be equitable in most cases, and was certainly conducive to the best interests of commerce. However, these different theories have not been examined in an attempt to reach an exact conclusion, but rather to give the reader some idea of the possible reasons for the common law's recognition that privity of contract is not necessary to allow suit between an undisclosed principal and a third party. While, in contrast, the French insist upon representation to render such suit possible.

LOUISIANA AGENCY CONCEPTS

The Louisiana Civil Code of 1870, like the French Civil Code, provides for only one of the agency situations previously discussed, that of mandate or representative agency.¹⁷ No express reference is made anywhere in our written law to the performance of a juridical act by an agent who *acts in his own name*. As a result, our jurisprudence repeatedly has had to justify suit between principal and third party on some other basis.

The earliest case in point seems to have been that of *Williams v. Winchester* in 1828.¹⁸ There, the defendant had employed an agent to purchase boilers from plaintiff, without revealing defendant's name. Plaintiff claimed the purchase price from the defendant, and the latter contended that he was liable only to the agent. Using common law terms but citing no authority for its proposition, the court held that an unknown principal would be liable when discovered, although no inquiry was made by the vendor.

16. Lewis, *The Liability of the Undisclosed Principal in Contract* (1909) 9 Col. L. Rev. 116.

17. Arts. 2985-3034, La. Civil Code of 1870.

18. 7 Mart. (N. S.) 22 (La. 1828).

In *Ballister v. Hamilton*¹⁹ the opinion was to the effect that "mere knowledge that there is a principal will not destroy the right of a party dealing with an agent, and charging him with the balance due on the transaction, to look to the principal when afterwards discovered." Again, no reference to Louisiana law is made.

Following this was the case of *Carlisle v. Steamer Eudora & Owners*.²⁰ Plaintiff had entered into a written contract with one Ealer, agreeing to act as pilot of a steamboat for a specified length of time. Having been dismissed without sufficient cause, he brought suit against Ealer and one Houston, contending that both were liable as co-owners. The court found that although Ealer had contracted in his own name, if it were afterwards discovered that he acted as agent for Houston, both would be liable.

An Orleans Court of Appeal case²¹ in 1913 held that an undisclosed principal, in a business conducted by an agent in his own name, was liable for debts incurred by the agent in the course of the business.

Citing a common law authority, the court in *Valmont Service Station v. Avegno*²² again held an undisclosed principal liable. There the plaintiff had serviced a truck believing that the agent was its owner, and sending the demands for payment to him. When the account was not paid, plaintiff discovered that defendant was owner of the truck and the agent was merely manager of his dairy. Citing Corpus Juris, the court held that "where there is in fact an agency and the fact is concealed, the person dealing with the agent, may, upon discovering the principal, proceed against the latter and not against the agent."

The undisclosed principal brought an action in *Childers v. Police Jury of Parish of Ouachita*²³ to recover an amount alleged to be due his agent under a contract entered into with defendant for construction of a public road. It was contended that plaintiff had no right of action since he was not privy to the contract. The decision was to the contrary, stating that a direct action by an undisclosed principal is permitted whenever the person contracting with the agent may not be injured. The opinion in *Johnson v. Bisso Towboat*

19. 3 La. Ann. 401 (1848).

20. 5 La. Ann. 15 (1850).

21. *Grimaldi & Co. v. Joseph Sbisà*, 10 Orl. App. 176 (1913).

22. 3 La. App. 335 (1925).

23. 121 So. 248 (La. App. 1928).

*Company*²⁴ was to the same effect, holding that when one discovers that the party with whom he dealt has acted as agent, he may seek out the principal and hold him liable.

A later Orleans Court of Appeal case²⁵ found that "it is a well-established rule of general law, that when an agent, on behalf of his principal, entered into a contract as though for himself, and the existence of the principal is not disclosed, the contract inures to the benefit of the principal who may appear and hold the other party to the contract made by the agent."

Thus, before *Sentell v. Richardson*, our jurisprudence decided the issue of liability between principal and third party in non-representative agency cases in conformity with Anglo-American rather than civilian rules. In the *Sentell* case, Chief Justice O'Niell reaches the same result by a different technique; he denies that representation is essential to mandate. In so saying, he makes our term "mandate" the equivalent of the term "agency" in contract matters at common law.

APPRAISAL

Would it have been more advantageous for the supreme court to have adopted the French or civilian theory that direct litigation between undisclosed principal and third party be forbidden? Practical demands of present-day life weigh heavily in favor of the result achieved by our courts. First, there is the matter of convenience in following the law of those jurisdictions to which Louisiana is so closely bound by commercial ties. An even more cogent reason is the important effect of holding the undisclosed principal liable as an added stimulus to the functioning of our complicated business machinery. There is a very definite tendency in the entire field of law to place the burden of financial responsibility on the solvent party. That person would certainly be the undisclosed principal in the majority of cases. The contract made by the agent is really created for the benefit of the undisclosed principal, and to hold him liable for the performance of its terms would seem to contravene none of the principles of natural justice. And, in turn, to make the third party directly responsible to the undisclosed principal for breach of the contract would generally work no hardship upon that third party since, in any case, he would be liable to the agent.

24. Orleans No. 7279.

25. *De Soto Building Co., Ltd. v. Kohnstamm*, Orleans No. 7627.

Concluding, then, that the result reached in these non-representative agency cases has been satisfactory, what of the techniques employed to achieve these ends? Is it *doctrinally* proper to assume that mandate includes non-representative agency even though there is no provision in our written law to that effect? The better course would seem to be a recognition by our supreme court that Louisiana jurisprudence, through a line of consistent decisions, created a set of rules, analogous to those governing "simple agency," to be applied to a situation not provided for in our written law.

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LOUISIANA JUVENILE COURTS — APPEALS

In the absence of special constitutional or statutory provisions to the contrary and except for equity proceedings, judicial review in common law states does not include questions of fact, but is generally limited to the correction of errors of law.¹ Thus, the distinction made in Louisiana between appeal on questions of law in criminal cases and appeal on questions of both law and fact in civil cases² is peculiar to this state. Limiting review generally to questions of law is predicated upon the philosophy that the jury should be a final judge on issues of fact and is further bolstered by the practical consideration that a review of the facts would burden the appellate court with an examination and appraisal of all testimony adduced upon the trial of the case. Juvenile court cases, however, are not heard by juries and are not conducted with the formalities of a regular criminal or civil trial. As the Louisiana Supreme Court so aptly stated in the recent case of *In re Diaz*, "Such cases are not to be classed as civil or criminal—indeed they are *sui generis*."³ It is appropriate then that the scope of appeal from juvenile court judgments be considered in the light of the nature of those proceedings with balancing of the practical and policy considerations involved.

Two separate and distinct rules are presently employed in Louisiana for appeal from juvenile courts. The Louisiana Constitution⁴ provides for appeal from the juvenile court in the Parish of Orleans to the Louisiana Supreme Court on questions of *law and*

1. 5 C. J. S. 550, n. 92, § 1642.

2. La. Const. of 1921, Art. VII, § 10.

3. 31 So. (2d) 195, 196 (La. 1947).

4. La. Const. of 1921, Art. VII, § 96, as amended by La. Act 322 of 1944.