

# Louisiana Law Review

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Volume 9 | Number 2

*The Work of the Louisiana Supreme Court for the*

*1947-1948 Term*

*January 1949*

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## Civil Code and Related Subjects: Agency

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### Repository Citation

Robert A. Pascal, *Civil Code and Related Subjects: Agency*, 9 La. L. Rev. (1949)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol9/iss2/7>

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the district court had no jurisdiction to entertain a *habeas corpus* proceeding for custody of a child *once* proceedings for adoption had begun in juvenile court. The decision should not be construed to have a broader meaning. It does not deny the jurisdiction of the district court as long as the child is not in "custodia legis" and legally subject to the jurisdiction of the juvenile court under the adoption acts. The recent case of *State ex rel. Simpson v. Salter*,<sup>55</sup> as a matter of fact, was distinguished on that basis. The court explained that in the *Salter* case the district court had been permitted to entertain the *habeas corpus* proceedings because the petitioning parent demonstrated she had not legally surrendered the child and, therefore, that the juvenile court was without right to proceed with the adoption proceedings filed therein.

#### *Interdiction*

In the *Interdiction of Maestri*<sup>56</sup> the annual account filed by the curator and approved by the undercurator was opposed by two nieces and a nephew of the interdict. The supreme court ruled these relatives were without right of action, having no "real and actual interest" as required by Article 15 of the Code of Practice. The underlying reason for the decision, however, seems to have been the possibility of the interdict or his heirs contesting the matter on the rendition of the final account. This proposition appears clearly enough from Articles 356 and 357 of the Civil Code, the former attributing only *prima facie* correctness to homologated annual accounts and the latter requiring a final accounting with the interdict at the end of the curatorship.

#### AGENCY

Robert A. Pascal\*

The fiduciary obligations of a mandatary both under a specific mandate and independently thereof were considered in *Robinson v. Thompson*.<sup>1</sup> In December 1939 plaintiff gave defendant authority to sell her shares of stock in the Item Company, Limited, "on the same basis as he sells his own." In June 1941 defendant requested "additional authority" to sell the stock, whereupon plaintiff wrote defendant giving him "full authority

55. 212 La. 918, 31 So.(2d) 163 (1947).

56. 213 La. 313, 34 So.(2d) 790 (1948).

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1. 212 La. 186, 31 So. (2d) 734 (1947).

to handle the 500 shares of Item Stock in any way you may desire." The defendant sold plaintiff's stock for \$50.00 a share or \$25,000. Later plaintiff discovered defendant had sold, at the same time and to the same parties, his own stock at the rate of \$166.66 $\frac{2}{3}$  a share. At this price the plaintiff would have received \$83,333 for her stock. The court gave judgment for the plaintiff for \$58,333, or the difference between the price the defendant should have obtained, and the amount he did receive, for the plaintiff's stock.

To arrive at this decision the court found that plaintiff's letter of June, 1941, had not modified the mandate of December, 1939, apparently construing it simply as an affirmation of the authority previously given. The court added, however, that even if the letter completely superseded the prior mandate, the mandatary had failed to notify the principal of the material facts concerning the negotiations and especially of the price he was obtaining for his own shares. To support the above conclusions, the court cited only *Corpus Juris Secundum* and common law authorities. Our legislation is very meager on the subject of the fiduciary obligations of mandatary to principal,<sup>2</sup> but it seems that Articles 3003 and 3006 of the Civil Code would have been sufficient authority for the decision in the instant case.<sup>3</sup>

One of the defenses raised by the defendant mandatary was that of ratification based on imputation of notice and subsequent silence. In support of this contention it was alleged that the husband of plaintiff was a silent and inactive partner with an accountant who prepared the defendant's income tax returns showing the amount he received for his stock. This attempt at imputation of notice from accountant to husband and from husband to wife, it is submitted, is rivaled only by some well-known "proximate cause" allegations in tort cases. In addition, it would seem improper to impute notice in a case where the subject matter of the mandate is in no way connected with the professional or business relations of the principal with the agent from whom the notice would be imputed.

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2. See *The Work of the Louisiana Supreme Court for the 1946-1947 Term—Agency* (1948) my remarks on this subject, 8 *LOUISIANA LAW REVIEW* 224, 225.

3. Art. 3003, La. Civil Code of 1870: "The attorney is responsible, not only for unfaithfulness in his management, but also for his fault or neglect. Nevertheless, the responsibility with respect to faults, is enforced less rigorously against the mandatary acting gratuitously, than against him who receives a reward."

Art. 3006, La. Civil Code of 1870: "In case of an indefinite power, the attorney can not be sued for what he has done with good intention. The judge must have regard to the nature of the affair, and the difficulty of communication between the principal and the attorney."