THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 315,

John Langham et al, Appellants,

vs.

A. E. Jackson as Superintendent, etc. Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to four inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 21st day of June, 1924.

Robt. F. Ligon,
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama.

OCTOBER TERM, 1923-24

1 Div., No. 315,

Langham, et al,
Appellants

VS.

Jackson, as Superintendent of Banks,
Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO. MONTGOMERY.

Copy

CERTIFICATE OF APPEAL. (Civil Cases.)

I, T.W.Richerson, Clerk of Circuit Court, of Baldwin County, Alabama, hereby certify that in the cause of A.B.Jackson as Superintendant of Banks for the State of Alabama, plaintiff,

VS.

John Langham, C.W.Hall and J.H.Bryars, defendant,s which was tried and determined in this Court on the 30th, day of May 1923, 191 , in which there was a judgment for Eight Thousand Nine hundred 897/100 Dollars, in favor of the plaintiff, (or ~~judgment for defendent,~~) the Defendants, on the 12th day of July, 1923, 191 , took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that John Lanham,C.W.Hall, & J.H.Bryars, ~~filed security for cost of appeal, to the Supreme Court, on~~ the 12th day of July, 1923, ~~191~~ , and that W.R.Holley, and A.A.Graham, , , are sureties on the appeal bond.

I further certify that notice of the said appeal was on the 13th, day of July, 1923, ~~191~~ , served on Chas. Hall as attorney of record for said appellee, and that the amount sued for was $2000.00 Dollars. ~~(or certain lands) (or personal property.)~~

Witness my hand and the seal of this Court, this the 13th, day of July, 1923 ,191 .

T.W.Richerson

Clerk of the Circuit Court of Baldwin County, Alabama.

FORM 626.

INDEX TO CONTENTS.

FRANK S. STONE
LAWYER
BAY MINETTE, ALA.

A E Walker Supt Banks

vs

John Langham Et. Als.

Wehereby enter appearance for the defendants in above case.

Frank S Stone
James A Webb
Attys for defendants

CIVIL SUBPOENA.

In case the witness shall wish to charge for attendance he will please produce to the clerk in term this copy of his Subpoena, or within five days after adjournment of court, else he will be barred.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

You are hereby commanded to summon R E Patrick
John E McDavid

if to be found in your county, at the instance of the Deft
to appear before the honorable Circuit Court, of Baldwin County at the Court House thereof,
on the 20th day of Nov 1917, then and there to testify,
and the truth to say, in a certain case pending, wherein
R E Harper Plaintiff,
John Langham Defendant,
and there remain during said Court until discharged by due course of law.

Herein fail not, and have you then and there this Writ.

Witness my hand this 2 day of Nov A. D., 1917.

ATTEST: T M Simmons Clerk.

Original

No.....

THE STATE OF ALABAMA,

Baldwin County.

A. E. Walker

Vs. || SUBPOENA FOR

John Langham

CIRCUIT COURT

WITNESSES:

R. E. Carroll
John Elric David

SET FOR TRIAL

20 day of Nov 1917

Times Print—Bay Minette, Ala.

Received in full Nov 13th 1917
C. B. Embrey
Sheriff

The State of Alabama,)
Baldwin County—Circuit Court.

To the Sheriff of the State of Alabama—Greeting:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the eighth Monday after 4th, Monday in May, 1911 in a certain cause in said Court wherein H.H.Montgomery, as Supt, of Banks of the State of Alabama, liquidating the affairs of the Ban Of Bay Minette, Plaintiff, and John Langham, C.W Hall, J.H.Bryars, as Executor of the will of Alex Boone, deceased, and E Ward, Defendant, a judgment was rendered against said John Langham, C.W.Hall, J.H.Bryars, as Executor of the will of Alex Boone, and E.Ward, to reverse which Judgment, the said H.H.Montgomery, as Superintendant of Bank, of the State of Alabama, liquidating the affairs of the Bank of Bay Minette. C.W.Hall and J.H.Bryars

has on this day applied for and obtained from this office an **APPEAL**, returnable to the present, Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the next call of cases from Southrn division, day of next, and the necessary bond having been given by the said C.W.Hall, J.H.Bryars, with Jno T Owens, U.L.Bethea, W.P.Holley, sureties,

Now, You are Hereby Commanded, without delay, to cite the said H.H.Montgomery, as Superintendant of Banks of the State of Alabama, liquidating the affairs of the Bank of Bay Minette,. or Gordon and Faddington and Chas.Hall, attorneys to appear at the next call of the present Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

WITNESS, T. W. Richerson, Clerk of the Circuit Court of said County, this 28th day of October A. D. 1911.

Attest:

T W Richerson Clerk.

Received Nov. 2nd 1921 by showing copy of within with Chas Hall atty Member of the firm of Gordon Edington & Hall

M R Stuart
Sheriff

14 on Original

CIRCUIT COURT
BALDWIN COUNTY, ALA.

H H Montgomery

VS. } CITATION IN APPEAL.

John Langham et al

Issued 28 day of Oct 1921

BALDWIN TIMES PRINT, BAY MINETTE.

Serve Copy on Judge Hall

CIVIL SUBPOENA.

In case the witness shall wish to charge for attendance he will please produce to the clerk in term this copy of his Subpoena, or within five days after adjournment of court, else he will be barred.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

You are hereby commanded to summon

C. S. Woodson

if to be found in your county, at the instance of the Plaintiff to appear before the honorable Circuit Court, of Baldwin County at the Court House thereof, on the 21st day of May 1918, then and there to testify, and the truth to say, in a certain case pending, wherein ~~John Lan~~ F. E. Walker, as Supt. of Banks Plaintiff, John Langhelm et al Defendant, and there remain during said Court until discharged by due course of law.

Herein fail not, and have you then and there this Writ.

Witness my hand this 18th day of May A. D., 1918.

ATTEST:

T. M. Redmon Clerk.

6 Original

No.

THE STATE OF ALABAMA
Baldwin County.

A Ewerton

Vs. } SUBPOENA FOR

Jno Langham
et al

Circuit Court

WITNESSES:

L S Woodson

SET FOR TRIAL

21 day of May 1918

Times Print—Bay Minette.

Executed March 18th 1918
B B Cunningham
Sheriff

Plaintiff claims Four hundred and fifty Dollars as a reasonable attorney's fee incurred by him in bringing this suit.

Erwin McAlexx
Chas Hall

Attorneys for Plaintiff.

SUMMONS AND COMPLAINT

The State of Alabama } No. .....
Baldwin County

Circuit Court

.....Febuar 22nd.....191 6.

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon John Langham, C.W. Hall, J.H. Bryars, Alex Boone, and E Ward.

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against them the Defendant's by A.E. Walker as Superintendant of Banks of the State of Alabama, liquidating the affairs of the Bank of Bay Minette. Plaintiff

Witness my hand this 22nd, day of Febuary 191 6.

T.W. Richmon Clerk.

COMPLAINT

.....

.....Plaintiff Versus.....

The plaintiff claims of the defendant

.....Dollars due by

.....
Plaintiff's Attorney.

Brennan
2nd Original

No. .....

STATE OF ALABAMA,

BALDWIN COUNTY.

CIRCUIT COURT

.....

vs. Plaintiffs

.....

Defendants

SUMMONS AND COMPLAINT

Filed ..... 191....

T W Rickman Clerk

Defendant lives at

.....

Plaintiff's Attorney

.....Defendant's Attorney

Times Print, Bay Minette

Received in office

Feby 22nd 1916

.....Sheriff

I have executed this Writ

this 26th day of February 1916

by leaving a copy of the within summons and complaint with

C W Hall, Alex Boone and J. H. Bryars, John Langham and E. Ward not found in my County

J T Kelly Sheriff

by J. M. Keller Deputy Sheriff.

Recorded

W. C. Walker, Co. Supt. of Schools
vs
Vol

John Leizgheni et al
vs
Supt

now comes the plaintiff and demurs to plea 15, a special to each count of the complaint upon the following grounds.

1st Because there is no law requiring said plaintiff to file suit against this defendant at the first term of court to which it was proper to be brought.

2nd Because said plea fails to aver that said roads are not governed by the commonwealth law, or to allege any fact to show cause.

3rd Because said plea fails to aver any fact to show that said roads are not navigable, but simply avers a conclusion.

Chas Lee & Linn & Gentry
Attys for Pltff

JUN 12 1924

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1923-24.

1 Div. 318.

John Langham, et als.,

v.

A. E. Jackson, Superintendent of Banks.

Appeal from Baldwin Circuit Court.

THOMAS, J.

The court gave the general affirmative charge at the request of the plaintiff. The instant assignments of error relate to the action of the court in refusing to allow in evidence testimony as to the acts, conduct and declarations of William B. Powell relating to the taking by the Bank of Bay Minette of the note of defendants and one C. B. Thompson. The suit is by the Superintendent of Banks on the endorsement by defendants of the note to said bank by said Thompson.

The real defense by the endorsers is that the endorsements were conditional - that the note would be also endorsed by W. D. Owens, Jr., and that it was not so endorsed before it was taken and used by the bank with knowledge of the character of defendants' respective conditional endorsements.

The question of agency and how the same may be shown, where that fact rests in parol, has been the subject of frequent discussion by the courts. When the fact of agency rests in parol or is to be inferred from the conduct of the principal, and there is evidence tending to show agency, the acts and declarations of the alleged agent become admissible to enable the jury to determine whether or not there was agency.- Roberts & Sons v. Williams, 198 Ala. 290; Lytle & Co. v. Bank of Dothan, 121 Ala. 215; Gambill v. Pugua, 148 Ala. 446; Reynolds v. Collins, 78 Ala. 94; Martin v. Brown, 75 Ala. 442; Simon v. Terrell, 58 Ala. 308; Buist v. Guice, 96 Ala. 255; 2 C. J., p. 945 et seq.; 38 Cyc. 2079.

It is further declared by this court that where it is shown that the actor has been held out by the principal as being his agent, or as possessing the authority assumed by such agent within the scope of the principal's business, the rule of apparent authority can be invoked by one who has been misled thereby to his detriment.- Pacific Mut. Life Ins. Co. v. Hayes, 202 Ala. 460, 465; Roberts & Sons v. Williams, supra; Fulton v. Sword Med. Co., 145 Ala. 331, 334; Patterson v. Neal, 135 Ala. 477, 482; Robinson & Co. v. Greene, 148 Ala. 434; Syndicate Ins. Co. v. Catchings, 104 Ala. 176; 1 Am. & Eng. Encyc. of Law (2nd Ed.), p. 990. A principal who would avail himself of a contract made by another for him, whether by an appointment or as a gratuitous agent, is bound by the representations made and methods and means employed by such agent to effectuate the contract.- Pacific Mut. Life Ins. Co. v. Hayes, supra; Roberts & Sons v. Williams, 198 Ala. 290, 292; Capitol Security Co. v. Owen, 196 Ala. 585, 587; Doran & Co. v. Gilreath, Id. 377; Williamson v. Tyson, 105 Ala. 644.

There was error in excluding the evidence sought to be evoked by the questions sought to be propounded to Mr. Woodson, and on which assignments of error from one to five, inclusive, are based. The agency and interest of Mr. Powell in the premises were subject of a proper cross-examination, and this was denied.

The questions sought to be propounded to Mr. Woodson were:

"Now, before he brought these notes back to you, and they were delivered to the bank, didn't you receive a

phone call from one of the defendants, telling you about the circumstances under which these endorsements were obtained and telling you not to discount those notes?"

"Didn't Mr. Briers there call you up on Tuesday morning before these notes were delivered to you, and explain to you the circumstances under which these endorsements had been gotten, and tell you for the bank not to take those notes?"

"Now before he took - he went out with these notes to get these endorsements, did he not say to you that you and Cotrett should not have loaned Thompson that $2000 and more, that you had loaned him without security, and that if the bank examiner came down and found that out, that it would cause trouble, and did you and he not agree then, that he should go and endeavor to get a note with endorsements, in order to protect the bank on this loan that was made to Thompson without security?"

These questions called for competent evidence tending to show notice to the bank and the circumstances entering into the securing of the endorsements. No opinion of the witness was called for - merely the facts entering into or concomitant with the endorsements and the res gestae thereof.

The fact of Powell's interest in the bank and his participation in the conduct of its affairs, as making or approving loans, at or about the time of the making of the Thompson loan or renewal thereof, with the endorsements, should have been given the jury, so that they might consider the bona fides of the defense of conditional endorsement secured by Powell.

The witness Langham, and the other defendents as witnesses, should have been permitted to answer the question, "Just state what occurred at the time that the notes were endorsed", as calling for the res gestae of that act. So, also, of the question, "What, if anything, did the man Powell say to you on that occasion before you endorsed the note in regard to endorsing it?"

The facts and circumstances becoming a part of or entering into and inducing the endorsements of the note by the re-

spective defendants, were relevant under the defense pleaded.

The judgment of the circuit court is reversed and the cause remanded.

Reversed and remanded.

Anderson, C. J. Somerville and Bouldin, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 815,

John Langham et al, Appellants

vs.

A. E. Jackson as Supt. of Banks, Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to four inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 17th day of June, 1924.

Robert F. Ligon,
Clerk of the Supreme Court of Alabama.

4504

The Supreme Court of Alabama.

OCTOBER TERM, 1923-24

1 Div., No. 815,

Langham - et al
Appellants

VS.

Jackson - as Supt.,
Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO. MONTGOMERY.

Filed in Office of Circuit Clerk
of Baldwin County, Ala
June 19th 1924.
T. W. Nicerson
Clerk Circuit Court

If the jury believe the evidence they should return a verdict for the defendants.

Rufus Leigh Jr. 18

I charge you, Gentlemen, that if you believe the evidence in this case you should allow a verdict in favor of the plaintiff for the amount sued for, with interest thereon from maturity, said