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INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

CONTRATS CONCLUS PAR REPRESENTATION

Deuxième Supplément de Dispositions Législatives

(Lois de l'Amerique du Nord)

Rome, Décembre 1944.

C A N A D A

Province de Quebec

CODE CIVIL

(1866)

Livre Troisième

De l'acquisition et de l'exercice des droits de propriété

Titre VIII. - Du Mandat

Chapitre Premier

Disposition Générales

1701. Le mandat est un contrat par lequel une personne, qu'on appelle le mandant, confie la gestion d'une affaire licite à une autre personne qu'on appelle mandataire, et qui, par le fait de son acceptation, s'oblige à l'exécuter.

L'acceptation peut s'inférer des actes du mandataire, et même de son silence en certains cas.

1702. Le mandat est gratuit s'il n'y a une convention ou un usage reconnu au contraire.

1703. Le mandat peut être soit spécial pour une affaire particulière, ou général pour toutes les affaires du mandant.

Le mandat conçu en termes généraux n'embrasse que les actes d'administration.

S'il s'agit d'aliéner ou hypothéquer, ou de tout acte quelconque de propriété autres que les actes d'administration, le mandat doit être express.

1704. Le mandataire ne peut rien faire au delà de ce qui est porté dans son mandat ou peut s'en inférer.

Il peut faire tout acte qui découle de cette autorité et qui est nécessaire à l'exécution du mandat.

1705. Les pouvoirs que l'on donne à des personnes qui exercent certaines professions ou fonctions de faire quelque chose dans le cours ordinaire des affaires dont elles s'occupent, n'ont pas besoin d'être spécifiée, mais s'inferent de la nature de telle profession ou fonction.

1706. Un agent employé pour acheter ou vendre quelque chose ne peut en être l'acheteur ou le vendeur pour son compte.

1707. Les mineurs émancipés peuvent être mandataire; mais le mandant n'a, dans ce cas, d'action contre le mandataire mineur que d'après les règles générales relatives aux obligations des mineurs.

1708. La femme mariée qui exécute le mandat qui lui est confié oblige son mandant; mais il ne peut y avoir d'action contre elle que suivant les dispositions contenues au titre du mariage.

Chapitre II.

Des obligations du mandataire.

Section I.

Des obligations du mandataire et vers le mandant.

1709. Le mandataire est tenu d'accomplir le mandat qu'il a accepté, et répond des dommages-intérêts qui pourraient

résulter de son inexécution, tant que ses pouvoirs subsistent.

Après l'extinction du mandat, il est tenu de faire tout ce qui est une suite des actes faits antérieurement, et il est obligé, si l'extinction du mandat provient du décès du mandant, de terminer l'affaire si elle est urgente et ne peut être différée sans risque de perte ou de dommage.

1710. Le mandataire, dans l'exécution du mandat, doit agir avec l'habileté convenable et tous les soins d'un bon père de famille.

Néanmoins, si le mandat est gratuit, le tribunal peut mitiger la rigueur de la responsabilité résultant de la négligence ou de la faute du mandataire, suivant les circonstances.

1711. Le mandataire répond de celui qu'il s'est substitué dans l'exécution du mandat, lorsqu'il n'est pas autorisé à le faire; et le mandant peut, s'il est lésé par suite de cette substitution, répudier les actes du substitué.

Le mandataire est également responsable, lorsqu'il a la pouvoir de substituer sans désignation de la personne substituée, s'il ne substitue une personne notoirement incapable.

Dans tous ces cas le mandant a une action directe contre la personne que le mandataire s'est substituée.

1712. Lorsqu'il y a plusieurs mandataires établis ensemble pour la même affaire, ils sont responsables solidiairement des actes d'administration les uns des autres, à moins d'une stipulation contraire.

1713. Le mandataire est tenu de rendre compte de sa gestion, et de remettre et payer au mandant tout ce qu'il a reçu sous l'autorité de son mandat, même si ce qu'il a reçu n'était pas dû au mandant; sauf néanmoins son droit de déduire du montant,

du mandat. Si ce qu'il a reçu est une chose déterminée, il a droit de la retenir jusqu'au remboursement.

1714. Il doit l'intérêt sur les deniers du mandant qu'il emploie à son usage, à dater de cet emploi, et aussi sur le reliquat de compte, à compter du jour qu'il est mis en demeure.

Section II.

Des obligations du mandataire envers les tiers.

1715. Le mandataire agissant au nom du mandant et dans les limites de son mandat n'est pas responsable personnellement envers les tiers avec qui il contracte, excepté dans le cas du facteur ci-après spécifié en l'article 1738, et dans le cas de contrats faits par le maître pour l'usage de son bâtiment.

1716. Le mandataire qui agit en son propre nom est responsable envers les tiers avec qui il contracte, sans préjudice aux droits de ces derniers contre le mandant.

1717. Il est responsable de la même manière, lorsqu'il excède les pouvoirs contenus dans son mandat; à moins qu'il n'en ait donné une connaissance suffisante à ceux avec qui il a contracté.

1718. Il n'est pas censé avoir excédé les bornes de son mandat, lorsqu'il l'a rempli d'une manière plus avantageuse au mandant que celle qui était indiquée par ce dernier.

1719. Il est censé avoir excédé les bornes de son mandat lorsqu'il fait seul quelque chose qu'il n'était chargé de faire que conjointe avec un autre.

Chapitre III.

Des obligations du mandant.

Section I.

Des obligations du mandant envers le mandataire.

1720. Le mandant est tenu d'indemniser le mandataire pour toutes les obligations que ce dernier a contractées avec les tiers, dans les limites de son mandat, ainsi que pour tous les actes qui excèdent telles limites, lorsqu'ils ont été ratifiés expressément ou tacitement.

1721. Le mandant ou ses représentants légaux sont obligés d'indemniser le mandataire pour tous les actes faits par ce dernier dans les limites de son mandat après qu'il est expiré par cause de mort ou autre, lorsque le mandataire ignore cette extinction.

1722. Le mandat doit rembourser au mandataire les avances et frais que celui-ci a faits pour exécuter le mandat, et lui payer le salaire ou autre compensation à laquelle il peut avoir droit.

S'il n'y a aucune faute imputable au mandataire, le mandant ne peut se dispenser de faire ce remboursement et ce

paient, lors même que l'affaire n'aurait pas réussi. Il ne peut non plus faire réduire le montant de remboursement sous le prétexte que les avances et frais auraient pu être moindres, s'ils eussent été faits par lui.

1723. Le mandataire a un privilège et un droit de préférence pour le payement de ses avances et frais mentionnés, en l'article précédent, sur les choses mises entre ses mains et sur le produit de leur vente ou placement.

1724. Le mandant est obligé de payer les intérêts sur les deniers avancés par le mandataire dans l'exécution de son mandat.

Ces intérêts sont calculés du jour que les deniers ont été avancés.

1725. Le mandant est obligé d'indemniser le mandataire qui n'est pas en faute des pertes que celui-ci a essuyées en exécutant le mandat.

1726. Si le mandat a été donné par plusieurs personnes, leur obligation à l'égard du mandataire est solidaire.

Section II

Des obligations du mandant envers les tiers.

1727. Le mandant est responsable envers les tiers pour tous les actes de son mandataire faits dans l'exécution et les limites du mandat, excepté dans le cas de l'article 1738, et dans les cas où, par la convention ou les usages du commerce, le mandataire en est seul responsable.

Le mandant est aussi responsable des actes qui excèdent les limites du mandat, lorsqu'il les a ratifiés expressément ou tacitement.

1728. Le mandant ou ses représentants légaux sont responsables envers les tiers pour tous les actes faits par le mandataire dans l'exécution et les limites du mandat après qu'il a cessé, si cette cessation était inconnue des tiers.

1729. Le mandant ou ses représentants légaux sont responsables pour les actes faits par le mandataire dans l'exécution et les limites du mandat, après son extinction, lorsque ces actes sont une suite nécessaire d'une affaire déjà commencée.

Ils sont également responsables pour les actes du mandataire faits pour terminer une affaire après l'expiration du mandat par la mort ou la cessation d'autorité du mandant, lorsque le retard aurait pu entraîner quelque perte ou dommage.

1730. Le mandant est responsable envers les tiers qui contractent de bonne foi avec une personne qu'ils croient son mandataire, tandis qu'elle ne l'est pas, si le mandant a donné des motifs raisonnables de le croire.

1731. Il est responsable des dommages causés par la faute du mandataire, conformément aux règles énoncées en l'article 1054

Chapitre IV.

Dcs Avocats, Procureurs et Notaires.

1732. Les avocats, les procureurs et les notaires sont sujets aux règles générales contenues dans ce titre, en autant qu'elles peuvent s'appliquer. La profession d'avocat et procureur est réglée par les dispositions contenues dans l'acte intitulé: "Acte concernant le Barreau du Bas-Canada", et celles des notaires par un acte intitulé: "Acte concernant le notariat".

1733. Les règles particulières relatives aux devoirs et aux droits des avocats et procureurs dans l'exercice de leurs fonctions auprès des tribunaux du Bas-Canada, sont contenues dans le Code de procédure civile et dans les règles de pratique de ces tribunaux.

1734. Les règles de la prescription, en ce qui concerne les avocats et procureurs, et les notaires sont exposées dans l'article 2250.

Chapitre V.

Des Courtiers, facteurs et autres agents de commerce.

1735. Le courtier est celui qui exerce le commerce ou la profession de négocier entre les parties les achat et ventes ou autres opérations licites.

Il peut être le mandataire des deux parties et par ses actes les obliger toutes deux relativement à l'affaire pour laquelle elles l'emploient.

1736. Un facteur ou marchant à commission, est un agent employé à acheter ou à vendre des marchandises pour un autre, soit en son propre nom ou au nom du principal, de qui il reçoit une rétribution communément appelée commission.

1737. Les courtiers et les facteurs sont assujettis aux règles générales énoncées dans ce titre, lorsqu'elles ne sont pas incompatibles avec les articles de ce chapitre.

1738. Le facteur qui a son principal dans un autre pays est responsable personnellement envers les tiers avec qui il contacte, soit que le nom du principal soit connu ou ne le soit pas. Le principal n'est pas responsable envers les tiers sur semblables contrats, à moins qu'il ne soit établi que le crédit a été donné également au principal comme au facteur, ou au principal seul.

1739. Toute personne peut contracter, pour l'achat de marchandises, avec le facteur qui les a en sa possession, ou à qui elles ont été consignées, et peut les recevoir de lui et lui en payer le prix; et tel contrat et paiement lient le propriétaire des marchandises, lors même que l'acheteur sait qu'il ne contracte qu'avec un facteur.

1740. Tout facteur à qui on a confié des effets et marchandises ou des documents qui en forment le titre, en est réputé propriétaire pour les fins suivantes, savoir:

1. Pour en consentir la vente ou un contrat tel que mentionné en l'article qui précède;
2. Pour conférer au consignataire des marchandises consignées par ce facteur, un privilège sur ces marchandises pour toute somme de deniers ou valeur négociable avancée ou donnée par ce consignataire à tel facteur pour son usage, ou reçue par le facteur pour l'usage de tel consignataire de la même

manière que si ce facteur était le véritable propriétaire de ces marchandises.

3. Pour rendre valable tout contrat ou convention mandissement, privilège ou sûreté, fait de bonne foi avec ce facteur, tant pour prêt primitif, avances ou paiement faits sur le mandissement de telles marchandises ou titres, que pour tout autre renouvellement d'avance à cet égard; et

4. Pour rendre tels contrats obligatoires à l'égard du propriétaire des marchandises et de toutes autres personnes qui y sont intéressées, nonobstant la connaissance que celui qui réclame le droit de gage ou privilège peut avoir qu'il ne contracte qu'avec un facteur.

1741. Dans le cas où une personne qui a un droit de gage ou privilège sur des marchandises ou documents qui en forment le titre, ou autres valeurs négociables, pour des avances antérieures sur un contrat avec le facteur, lui en fait remise en considération d'un droit de gage ou privilège sur d'autres marchandises, titres ou valeurs qui lui sont donnés en échange par ce facteur, pour remplacer le gage des marchandises, titres ou valeur ainsi remis, alors ce nouveau contrat, s'il est fait de bonne foi, est réputé valable et fait en considération d'avances actuelles en argent, suivant les dispositions contenues en ce chapitre; mais le gage acquis par ce nouveau contrat, non plus que les marchandises, titres ou valeurs donnés en échange, ne peuvent excéder la valeur de ceux qui ont été libérés par l'échange.

1742. Ne sont valides que les contrats mentionnés en ce chapitre, et les prêts, avances et échanges faits de bonne foi et sans avis que le facteur qui les contracte n'a pas d'autorité pour ce faire, ou qu'il agit de mauvaise foi à l'égard du propriétaire des marchandises.

1743. Les prêts, avances et échanges de bonne foi, quoique faits avec la connaissance que le facteur n'est pas le propriétaire, mais sans avis qu'il agit sans autorité, lient le propriétaire et toutes autres personnes intéressées dans les marchandises, titres ou valeurs, suivant le cas.

1744. Les dettes antérieures dues par le facteur à qui on a confié des marchandises ou documents qui en forment les titres, ne peuvent justifier l'octroi d'un privilège ou droit de gage sur telles marchandises ou titres à icelles; et tel agent ne peut se départir des ordres formels ou des pouvoirs qu'il a reçu de son principal en ce qui concerne telles marchandises.

1745. Tout connaissance, reçu ou ordre d'un garde-magasin ou garde-quai pour la délivrance d'effets, tout certificat d'inspection de potasse ou perlassé, et tout document en usage dans les cours ordinaire des affaires comme faisant preuve de la possession ou droit de disposer de quelques marchandises, ou comportant une autorisation, par le moyen de l'endossement ou la livraison, au possesseur de tel document de céder ou recevoir les marchandises représentées par tel document, est réputé un titre dans le sens des disposition contenues en ce chapitre.

1746. Tout facteur porteur d'un semblable titre, soit qu'il le tienne immédiatement du propriétaire des effets, ou qu'il ait obtenu à raison de la possession qui lui a été confiée des marchandises ou titres à icelles, est réputé saisi de la possession des marchandises représentées par tels titres.

1747. Tout contrat conférant un droit de gage ou privilège sur un document formant titre est réputé nantissement ou constitution de privilège, sur les marchandises auxquelles le titre se rapporte, et le facteur est réputé possesseur des marchandises ou titres, soit qu'ils soient actuellement sous sa garde ou qu'ils soient entre les mains d'une autre personne agissant pour lui et sujette à son contrôle.

1748. Lorsqu'un prêt ou des avances sont faits de bonne foi à un facteur nanti de possession de marchandises ou titres, sur la foi d'un contrat par écrit pour la consignation, le dépôt, le transport ou la délivrance de telles marchandises ou titres, qui sont de fait reçus par la personne qui fait le prêt ou les avances soit au temps même du contrat ou à une époque subséquente, sans avis que le facteur n'est pas autorisé à consentir de gage ou nantissement, tels prêt ou avances sont censés faits sur le nantissement de ces marchandises ou titres, dans le sens des dispositions du présent chapitre.

1749. Tout contrat fait soit directement avec le facteur, ou avec son commis ou autre personne de sa part, est censé un contrat fait avec tel facteur.

1750. Tout paiement fait soit en argent, en lettres de change ou autres valeurs négociables, est censé une avance dans le sens de ce chapitre.

1751. Tout facteur en possession de marchandises ou titres, ainsi qu'il est dit ci-dessus, est, pour les fins de ce chapitre, censé en avoir été chargé par le propriétaire, à moins de preuve contraire.

1752. Rien de contenu dans ce chapitre ne diminue ni n'affecte la responsabilité civil du facteur pour contravention à ses obligations, ou inexécution des ordres ou des pouvoirs qu'il a reçus.

1753. Nonobstant ce qui est contenu dans les articles qui précèdent le propriétaire peut en tout temps, avant qu'ils soient vedus, racheter les marchandises ou titres mis en gage comme il vient d'être dit, en remboursant le montant ou en restituant les valeurs pour lesquelles ils sont engagés, et en payant au facteur les deniers pour sûreté desquels ce facteur a droit de retenir les marchandises et titres par privilège à l'encontre du propriétaire; ou bien il peut recouvrer de la personne à qui les marchandises ou titres ont été donnés en gages ou qui y a un privilège tout reliquat de deniers restant entre ses mains sur le produit des marchandises, déduction faite du montant assuré par le contrat.

1754. Dans le cas de faillite du facteur, et dans le cas du rachat des marchandises par le propriétaire, ce dernier est censé, quant aux deniers qu'il a payés pour le compte de ce facteur avant sa faillite; ou, si les marchandises n'ont pas été ainsi rachetées, le propriétaire est considéré comme un créancier du facteur pour la valeur des marchandises ainsi données en gage, du jour du nantissement: et dans l'un ou l'autre cas, il peut faire valoir ou opposer en compensation, la somme ainsi payée, ou la valeur des marchandises, suivant le cas.

Chapitre VI.

De l'extinction du mandat.

1755. Le mandat se termine:

1. Par la révocation;
2. Par la rénunciation du mandataire;
3. Par la mort naturelle du mandant ou du mandataire;
4. Par l'interdiction, la faillite ou autre changement d'état par suite duquel la capacité civile de l'une ou l'autre des parties est affectée;
5. Par l'extinction du pouvoir dans le mandant;
6. Par l'accomplissement de l'affaire, ou de l'expiration du temps pour lequel le mandat a été donné;
7. Par autres causes d'extinction communes aux obligations.

1756. Le mandant peut en tout temps révoquer son mandat et obliger le mandataire à lui remettre la procuration si elle ne porte pas minute.

1757. La constitution d'un nouveau mandataire pour la même affaire vaut révocation du premier à compter du jour où elle lui a été notifiée.

1758. Si l'avis de la révocation n'a été donné qu'au mandataire, elle ne peut affecter les tiers qui, dans l'ignorance de cette révocation, ont traité avec lui, sauf au mandant son recours contre celui-ci.

1759. Le mandataire peut renoncer au mandat qu'il a accepté en donnant dûment avis au mandant. Néanmoins, si cette renonciation préjudicie au mandant, le mandataire est responsable des dommages, à moins qu'il n'y ait un motif raisonnable pour cette renonciation. Si le mandat est salarié, le mandataire est responsable, conformément aux règles générales

relatives à l'inexécution des obligations.

1760. Les actes du mandataire, faits dans l'ignorance du décès du mandant ou de toute autre cause qui pouvait mettre fin au mandat, sont valides.

1761. Les représentants légaux du mandataire qui connaissent le mandat, et qui ne sont pas dans l'impossibilité d'agir par cause de minorité ou autrement sont tenus de notifier son décès au mandant et de faire dans les affaires commencées tout ce qui est immédiatement nécessaire pour prévenir les pertes auxquelles le mandant pourrait être exposé.

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UNITED STATES OF AMERICA

L O U I S I A N A

REVISED CIVIL CODE

(1870)

Title XV. - Of mandate

Chapter I

Of the nature and form of mandates

2985. Definition. - A mandate, procuration or letter of attorney is an act by which one person gives power to another to transact for him and his name, one or several affairs.

2896. Kinds of mandate. - The mandate may take place in five different manners: For the interest of the person granting it alone; for the joint interest of both parties; for the interest of a third person; for the interest of such third person and that of the party granting it, and finally, for the interest of the mandatary and a third person. (As amended, Acts 1871, No. 87).

2987. Objects and powers. - The object of the mandate must be lawful, and the power conferred must be one which the principal himself has right to exercise.

2988. Acceptance of mandate required. - The contract of mandate is completed only by the acceptance of the mandatary.

2989. Power of attorney. - Method of accepting. -

A power of attorney may be accepted expressly in the act itself, or by a posterior act.

It may also be accepted tacitly; and this tacit acceptance is inferred, either from the mandatary acting under it, or from his keeping silence when the act containing his appointment is transmitted to him.

2990. Denial of acceptance. - Proof of acceptance. -

If the proxy or attorney in fact pleads that he has not accepted or acted under the power, it is incumbent on the principal to prove he has.

2991. Agency presumed. - Gratuitous. - The procuration to gratuitous unless there has been a contrary agreement.

2992. Methods of giving power of attorney. - A power of attorney may be given, either by a public act or by a writing under private signature, even by letter.

It may also be given verbally, but of this testimonial proof is admitted only conformably to the title: "Of Conventional Obligations".

2993. Blank power of attorney. - A blank may be left for the name of the attorney in fact in the letter of attorney.

In that case, the bearer of it is deemed the person empowered.

2994. Kinds of powers conferred. - It may be either general for all affairs, or special for one affair only.

2995. Indefinite or restricted power. - It may vest an indefinite power to do whatever appear conducive to the interest of the principal, or it may restrict the power given to the doing of what is specified in the procuration.

2996. Mandate in general terms. - Construction. -

Express power. - When required. - A mandate conceived in general terms, confers only a power of administration.

If it be necessary to alienate or give a mortgage, or do any other act of ownership, the power must be express.

2997. Acts for which express power required. - Thus the power must be express and special for the following purposes:

To sell or to buy.

To incumber or hypothecate.

To accept or reject a succession.

To contract a loan or acknowledge a debt.

To draw or indorse bills of exchange or promissory notes.

To compromise or refer a matter to arbitration.

To make a transaction in matters of litigation; and in general where things to be done are merely acts of administration, or such as facilitate such acts.

2998. Power to compromise does not include arbitration. -

A power to compromise on a matter in litigation does not include that of submitting or referring to arbitrators.

2999. Power to receive includes giving receipt. - A power to receive includes that of giving a receipt in acquittance.

3000. Implied powers. - Powers granted to persons, who exercise a profession, of fulfill certain functions, of doing business in the ordinary course of affairs to which they are devoted, need not be specified, but are inferred from the functions which these mandataries exercise.

3001. Women and emancipated minors. - Appointment as attorneys. - Women and emancipated minors may be appointed attorneys, but, in the case of a minor, the person appointing him has no action against him, except according to the general rules relative to the obligations of minors; and in the case of a married woman, who has accepted the power without authority from her husband, she can only be sued in the manner specified under the title: OF MARRIAGE CONTRACT? AND THE RESPECTIVE RIGHTS OF THE PARTIES IN RELATION TO THEIR PROPERTY.

Chapter 2.

Of the obligations of a person noting under a power of attorney.

3002. Agent's duty to execute power. - Liability. - The attorney in fact is bound to discharge the functions of the procuration, as long as he continues to hold it, and is responsible to his principal for the damages that may result from the nonperformance of his duty.

He is bound even to complete a thing which had been commenced at the time of the principal's death, if any danger result from delay.

3003. Unfaithfulness or neglect. - Liability. - Gratu-
tuitous mandatories. - 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.

3004. - Duty to account for management. - He is obliged to render an account of his management, unless this obligation has been expressly dispensed with in his favour.

3005. Things received - Delivery to principal. -

He is bound to restore to his principal whatever he has received by virtue of his procuration, even should he have received it unduly.

3006. Exercise of discretion - Liability of agent.

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.

3007. Acts of substitute - Liability for. - The attorney is answerable for the person substituted by him to manage in his stead, if the procuration did not empower him to substitute.

3008. Substitute notoriously incapable, or of suspicious character - Liability. - He is also answerable for his substitute, if, having the power to appoint one, and the person to be appointed not being named in the procuration, he has appointed for his substitute a person notoriously incapable, or of suspicious character.

3009. Liability of substitute. - Even where the attorney is answerable for his substitute, the principal may, if he thinks proper, act directly against the substitute.

3010. Agent exceeding powers - Liability - Ratification. The attorney can not go beyond the limits of his procuration; whatever he does exceeding his power is null and void with regard to the principal, unless ratified by the latter, and the attorney is alone bound by it in his individual capacity.

3011. Advantageous fulfilment of trust - Variance from terms. - The mandatary is not considered to have exceeded his authority, when he has fulfilled the trust confided to him, in a manner more advantageous to the principal, than that expressed in his appointment.

3012. Scope of authority made known - Liability to person with whom dealing. - The mandatary, who has communicated his authority to a person with whom he contracts in that capacity, is not answerable to the latter for anything done beyond it, unless he has entered into a personal guarantee.

3013. Mandatary - When liable to third persons. - The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers.

3014. Several attorneys appointed in same act - Liability. - When there are several attorneys in fact empowered by the same act, they are not responsible in solido for the acts of each, unless such responsibility be expressed in the procuration.

3015. Interest chargeable to agent. - The attorney is answerable for the interest of any sum of money he has employed to his own use, from the time he has so employed it; and for that of any sum remaining in his hands from the day he becomes a defaulter by delaying to pay it over.

Chapter 3

Of the mandatary or agent of both parties.

3016. Broker or intermediary defined. - The broker or intermediary is he who is employed to negotiate a matter between two parties, and who, for that reason, is considered as the mandatary of both.

3017. Obligations of broker. - The obligations of a broker are similar to those of an ordinary mandatary, with this difference, that his engagements is double, and requires that he should observe the same fidelity toxards all parties, and not favor one more than another.

3018. Brokers' liability. - Brokers are not responsible for events which arise in the affairs in which they are employed; they are only, as other agents, answerable for fraud or faults.

3019. Liability - Vendee or one procuring loan insolvent. - Brokers, except in case of fraud, are not answerable for the insolvency of those to whom they procure sales or loans, although they receive a reward for their agency and speak in favor of him who buys or borrows.

3020. Commercial and money brokers. - Commercial and money brokers, besides the obligations which they incur in common with other agents, have their duties prescribed by the laws regulating commerce.

Chapter 4

Of the obligations of the principal who acts by his attorney in fact.

3021. Duty to fulfil engagements contracted by attorney.

The principal is bound to execute the engagements contracted by the attorney, conformably to the power confided to him.

For anything further he is not bound, except in so far as he has expressly ratified.

3022. Liability for expenses and commissions. - The principal ought to reimburse the expenses and charges which the agents incurred in the execution of the mandate, and pay is commission where one has been stipulated.

If there be no fault imputable to the agent, the principal can not dispense with this reimbursement and payment, even if the affair has not succeeded; nor can he reduce the amount of reimbursement, under pretense that the charges and expenses ought to have been less.

3023. Agent - Right to retain expenses, costs and liquidated debts. - The mandatary has a right to retain out of the property of the principal in his hands, a sufficient amount to satisfy his expenses and costs.

He may even retain, by way of offset, what the principal owes him, provided the debt be liquidated.

3024. Compensation of attorney for losses. - The attorney must also be compensated for such losses as he has sustained on occasion of the management of his principal's affairs, when he can not be reproached with imprudence.

3025. Interest on advances made by agent. - If the attorney has advanced any sum of money for the affairs of the principal, the latters owes the interest of it, from the day on which the advance is proved to have been made.

3026. Liability of joint principals to attorney. - If the attorney has been empowered by several persons for an affair common to them, every one of these persons shall be bound in solido to him for all the effects of the procuration.

Chapter 5

How the procuration expires

3027. Termination of agency - Irrevocable powers. -

The procuration expires:

By the revocation of attorney.

By the attorney's renunciation of the power.

By the change of conditions of the principal.

By the death, seclusion, interdiction or failure of the agent or principal.

But powers of attorney by public act or by writings under private signature, or by letter, to transfer on the books of stock corporation, bonds or shares of stock in said corporations, shall be irrevocable, and shall not expire by the death, seclusion, interdiction or failure of the principals, where the said bonds or shares of stock have been previously sold to the persons holding the said powers of attorney, for value received, and said facts are set forth in such powers of attorney.

3028. Principal's right to revoke power. - Except in the case of irrevocable powers of attorney, as prescribed in the preceding article the principal may revoke his power of attorney, whenever he thinks proper, and, if necessary, compel the agent to deliver up the written instrument containing it, if it be an act under private signature.

3029. Notice of revocation by principal to agent - Third persons. - If the proncipal only notifies his revocation to the attorney, and not to the persons with whom he has empowered the attorney to transact for him, such persons shall always have the wright of action against the principal to compel him to execute or ratify what has been done by the attorney; the principal has however, a right of action against the attorney.

3030. New attorney appointed - Effect. - The appointment of a new attorney to transact the same business produces the same effect as a revocation of the first, from the day such appointment to notified to the first attorney.

3031. Renouncement of agency by attorney. - The attorney may renounce his power of attorney by notifying to the principal his renunciation.

Nevertheless, if this renunciation be prejudicial to the principal, he ought to be indemnified by the agent, unless the latter should be so situated that he can not continue the agency without considerable injury.

3032. Death or cessation of rights or principal - Acts of agent in ignorance thereof - Validity. - If the attorney, being ignorant of the death or of the cessation of the rights of his principal, should continue under his power of attorney, the transactions done by him, during this state of ignorance are considered as valid.

3033. Third person acting in good faith - Rights.-

In the case above enumerated, the engagements of the agent are carried into effect in favor of third persons acting in good faith.

3034. Death of attorney - Notice to principal. -

In case of death of the attorney, his heir ought to inform the principal of it, and in the meantime, attend to what may be requisite for the interest of the principal.

UNITED STATES OF AMERICA

C A L I F O R N I A

C I V I L C O D E
(1872)

TITLE IX - AGENCY

Chapter I

Agency in General

Article I. - Definition of Agency.

§ 2295. Agency, what. - An agent is one who represents another, called the principal, in dealing with third persons. Such representation is called agency.

§ 2296. Who may appoint, and who may be an agent. - Any person having capacity to contract may appoint an agent, and any person may be an agent.

§ 2297. Agents, general or special. - An agent for a particular act or transaction is called a special agent. All others are general agents.

2298. Agency, actual or ostensible. - An agency is either actual or ostensible.

§ 2299. Actual agency. - An agency is actual when the agent is really employed by the principal.

§ 2300. Ostensible agency. - An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

Article II - Authority of agents.

§ 2304. What authority may be conferred. - An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

§ 2305. Agent may perform acts required of principal by code. Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for the purpose, unless a contrary intention clearly appears.

§ 2306. Agent cannot have authority to defraud principal. - An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

§ 2307. Creation of agency. - An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

§ 2308. Consideration unnecessary. - A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

§ 2309. Form of authority. - An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

§ 2310. Ratification of agent's act. - A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

§ 2311. Ratification of part of a transaction. Ratification of part of an indivisible transaction is a ratification of the whole.

§ 2312. When ratification void. - A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

§ 2313. Ratification not to work injury to third persons. - No unauthorized act can be made valid, retroactively to the prejudice of third persons, without their consent.

§ 2314. Rescission of ratification. - A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

2315. Measure of agent's authority. - An agent has such authority as the principal, actually or ostensibly, confers upon him.

§ 2316. Actual authority, what. - Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

S 2317. Ostensible authority, what. - Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

S 2318. Agent's authority as to persons having notice of restrictions upon it. - Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to person who have actual or constructive notice of the restriction upon his authority.

S 2319. Agent's necessary authority. - An agent has authority :

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of responsible diligence on the part of the person to whom the representation is made.

S 2320. Agent's power to disobey instructions. - An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

S 2321. Authority to be construed by its specific, rather than by its general terms. - When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

S 2322. Exceptions to general authority. - An authority expressed in general terms, however broad, does not authorize an agent :

1. To act in his own name, unless it is the usual course of business to do so;
- 2-To define the scope of his agency; or,
3. To do any act which a trustee is forbidden to do by article two, chapter one, of the last title.

S 2323. What included in authority to sell personal property. - An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

S 2324. What included in authority to sell real property. - An authority to sell and convey real property includes authority to give the usual covenant of warranty.

S 2325. Authority of general agent to receive price of property. - A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

S 2326. Authority of special agent to receive price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

Article III - Mutual Obligations of Principals and Third Persons.

S 2330. Principal, how affected by acts of agent within the scope of his authority. - An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

S 2331. Principal, when bound by incomplete execution of authority. - A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

S 2332. Notice to agent, when notice to principal. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

S 2333. Obligation of principal when agent exceeds his authority. - When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

S 2334. For acts done under a merely ostensible authority. - A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof. (Amendment approved 1905, Stats. 1905, p. 616).

S 2335. When exclusive credit is given to agent.

If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible

S 2336. Rights of person who deals with agent without knowledge of agency. - One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

S 2337. Instrument intended to bind principal does bind him. - An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

S 2338. Principal's responsibility for agent's negligence or omission. - Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfill the obligations of the principal.

S 2339. Principal's responsibility for wrong willfully committed by the agent. - A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

Article IV. Obligations of Agents to Third Persons.

S 2342. Warranty of authority. - One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

S 2343. Agent's responsibility to third persons.

One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others;

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

S 2344. Obligation of agent to surrender property to third person. - If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefore, if, after notice from the owner, he delivers it to his principal.

S 2345. Code provisions governing. - The provisions of this article are subject to the provisions of part one, division first, of this code.

Article V. - Delegation of Agency.

§ 2349. Agent's delegation of his powers. - An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the subagent can lawfully perform;
3. When such delegation is specially authorized by the principal.

§ 2350. Agent's unauthorized employment of subagent.

If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

§ 2351. Subagent rightfully appointed, represents principal. - A subagent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent.

Article VI. - Termination of Agency.

§ 2355. Termination of agency. - An agency is terminated, as to every person having notice thereof, by :

1. The expiration of its terms;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agency (agent) to act as such.

S 2356. Same. - Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by :

1. Its revocation by the principal,
 2. His death or,
 3. His incapacity to contract.
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N. B. Les dispositions des Etats de North Dakota, South Dakota et Montana sont identiques à celles de California:
v. North Dakota, Revised Code 1899, §§ 4303-4355.
South Dakota, Revised Code 1903, §§ 1656-1708.
Montana, Code of 1907, §§ 5413-5465.

UNITED STATES OF AMERICA

G E O R G I A

CODE OF GEORGIA
(1933)

TITLE 4 - AGENCY

Chapter 4-1. Creation and nature of the relation.

4-101. How relation arises - The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf.

4-102. Who may be agent. - Any person who is of sound mind may be appointed an agent; so a principal shall be bound by the acts of his infant agent.

4-103. What may be done by agent; delegation of authority. - Whatever one may do himself be done by an agent, except such personal trusts in which special confidence is placed on the skill, discretion, or judgement of the person called in to act; so an agent may not delegate his authority to another, unless specially empowered to do so.

4-104. - Executors and other fiduciaries, conveyance by attorney in fact. - Executors, administrators, guardians, and trustees are authorized to sell and convey property by attorneys in fact in all cases where they may lawfully sell and convey in person.

4-105. - Agency created, how; agents of corporations. The act creating the agency shall be executed with the same formality (and need have no more) as the law prescribes for

the execution of the act for which the agency shall be created. A corporation may create an agent in its usual mode of transacting business and without its corporate seal.

Chapter 4-2. Relations between principal and agent.

4-201. Creation of agency for illegal purpose. -

No rights shall arise to either party out of an agency created for an illegal purpose.

4-202. Agent limited by his authority. - The agent shall act within the authority granted to him, reasonably interpreted; if he shall exceed or violate his instructions, he does it at his own risk, the principal having the privilege of affirming or dissenting, as his interest may dictate. In cases where the power is coupled with an interest in the agent, unreasonable instructions, detrimental to the agent's interest, may be disregarded.

4-203. Diligence required of agent. - An agent for hire shall be bound to exercise, about business of his principal, that ordinary care, skill, and diligence required of a bailes for hire. A voluntary agent, without hire or reward, shall be liable only for gross neglect.

4-204. Agent not to buy or sell for himself. - Without the express consent of the principal after a full knowledge of all the facts, an agent employed to sell may not himself be the purchaser; and an agent to buy may not himself be the seller.

4-205. Personal profit by agent from principal's property. - The agent shall not make a personal profit from his principal's property; for all such he is bound to account.

4-206. Agent of several; protection by instructions of one. - Where several persons shall appoint an agent to do an act for their joint benefit, the instruction of one, not inconsistent with the general directions, shall protect the agent in his act.

4-208. Money deposited by agent, right of principal to follow. - A principal may follow his money deposited by an agent in the letter's name, and recover the same wherever found, unless the rights of innocent third persons shall have intervened.

4-209. Deposit by agent, bank failing; liability of agent. - If the money of a principal shall be deposited by a private agent, in the name of the principal, in the hands of a bank of good credit, and such deposit is according to the common usage of the place, the agent shall not be responsible for any loss arising from the failure of the bank.

4-210. Mingling goods of principal and agent. - An agent by wilfully mingling his own goods with those of his principal, shall not create a tenancy in common, but if incapable of separation the whole shall belong to the principal.

4-211. Agents and fiduciaries to keep accounts; effect of neglect. - It shall be duty of agents, trustees, administrators, guardians, receivers, and all other fiduciaries to keep their accounts in a regular manner, and to be always

ready with the supported by proper vouchers; neglect of this duty shall be ground for charging them with interest on balances on hand, and with costs.

4-212. Commission and expenses of agent. - An agent who shall have discharged his duty shall be entitled to his commission and all necessary expenses incurred about the business of his principal. If he shall have violated his engagement, he shall be intitled to no commission.

4-213. Broker's right to commissions. - The fact that property is placed in the hands of a broker to sell shall not prevent the owner from selling, unless otherwise agreed. The broker's commissions are earned when during the agency, he finds a purchaser ready, able, and willing to buy, and who actually offers to buy on the terms stipulated by the owner.

4-214. Revocation of agency; pledge of certificate of stock. - 1. Generally, an agency is revocable at the will of the principal. The appointment of a new agent for the performance of the same act or the death of either principal or agent, revokes power. If, however, the power is coupled with an interest in the agent himself, it is not revocable at will; and in all cases the agent may recover from the principal, for an unreasonable revocation, any damages he may have suffered by reason thereof.

2. But every creditor or other person advancing money upon the pledge of a certificate, of stck, or other scrip representing an ownership or interest in corporations in Georgia, shall have such an irrevocable interest in such certificate of stock or other scrip as not to be affected by death, insanity, or legal disability thereafter of the person in whose name such stock or other scrip stands upon the books of any corporation

in Georgia; but such pledgee or holder of such stock or scrip assigned in blank, coupled with the power of attorney, shall have the same right after the death, insanity, or legal disability of the person in whose name said stock stands upon the books of said corporation, before the death, insanity, or legal disability of such person.

4-215. Suit for breach of contract of agency. - When the contract is for a year, and the principal wrongfully discharges the agent before the end of the year, the agent may either sue immediately for any special injury from the breach of the contract, or, treating the contract as rescinded, may sue for the value of the services rendered, or he may wait until the expiration of the year and sue for and recover his entire wages.

4-216. Subsequent earnings in mitigation of damages on improper dismissal of agent. - When an agent has been improperly dismissed before the expiration of his time, earnings which were realized or might have been realized by him up to the end of the term shall go in mitigation of damages.

4-217. Injuries by another agent, liability of principal. - The principal shall not be liable to one agent for injuries arising from the negligence or misconduct of other agents about the same business.

Chapter 4-3. Rights and liabilities of principal as to third persons.

4-301. Extent of authority of agent; private instructions; special agency. - The agent's authority shall be construed to include all necessary and usual means for effectually executing it. Private instructions or limitations not known to person dealing with a general agent shall not effect them. In special

agencies for a particular purpose, persons dealing with the agent should examine his authority.

4-302. How far principal bound by acts of agent.

The principal shall be bound by all the acts of his agent within the scope of his authority; if the agent shall exceed his authority, the principal may not ratify in part and repudiate in part; he shall adopt either the whole or none.

4-303. Effect of ratification of agent's acts.

A ratification by the principal shall relate back to the act ratified, and shall take effect as if originally authorized. A ratification may be express, or implied from the acts or silence of the principal. A ratification once made may not be revoked.

4-304. Form in which agent acts immaterial. The form in which the agent acts is immaterial; if the principal's name is disclosed, and the agent professes to act for him, it will be held to be the act of the principal.

4-305. Failure of agent to disclose principal. - If an agent shall fail to do disclose his principal, when discovered, the person dealing with the agent may go directly upon the principal, under the contract, unless the principal shall have previously accounted and settled with the agent.

4-306. Credit given to agent, effect. - If the credit shall be given to the agent by the choice of the seller, he may not afterward demand payment of the principal.

4-307. Representations by agent; binding effect on principal. - The principal may be bound by all representations made by his agent in the business of his agency, and also by his

wilful concealment of material facts, although they are unknown to the principal, and known only by the agent.

4-308. Payment to agent failing to produce obligation, effect of. - Where money is due on a written evidence of debt, payment to an agent of the creditor who fails to produce the obligation shall be at the risk of the debtor. Nonproduction of the security shall rebut the implication of authority arising from the agent's employment, and it must be otherwise established.

4-309. Notice to agent. - Notice to the agent of any matter connected with the agency shall be notice to the principal.

4-310. Notice to agent not binding on principal, when. where an agent shall conspire with the other party, his principal shall not be bound thereby, nor charged with knowledge of facts thus acquired by his agent.

4-311. Principal bound for neglect and fraud of agent. - The principal shall be bound for the care, diligence, and fidelity of his agent in his business, and hence he shall be bound for the neglect and fraud of his agent in the transaction of such business.

4-312. Trespass of agent, liability of principal for. The principal shall not be liable for the wilful trespass of his agent, unless done by command or assented to him.

4-313. Benefit of agent's contract to principal. - The principal shall have advantage of his agent's contracts in the same manner as he shall be bound by them, so far as they come within the scope of his agency. If, however, the agency shall have been concealed, the party dealing with him may act up any defense against the principal which he has against the agent.

4-314. Money illegally paid, etc; recovery back by principal. - The principal may recover back money paid illegally or by mistake of his agent, or goods wrongfully transferred by the agent, the party receiving the goods having notice of the agent's want of authority or wilful misconduct.

4-315. Agent as competent witness; credibility; declarations. - The agent shall be a competent witness either for or against his principal. His interest shall go to his credit. The declarations of the agent as to the business transacted by him shall not be admissible against his principal, unless they were a part of the negotiation, and constituting the res gestae, or else the agent is dead.

Chapter 4-4. Rights and Liabilities of agent as to third person.

4-401. Words of description; signature by one as agent. - An instrument signed by one as agent, trustee, guardian, administrator, executor, or the like, without more, shall be the individual undertaking of the maker, such words being generally words of description.

4-402. Agent may act for principal; effect of repudiation of act. - Any act authorized or required to be done under this code, by any person in the prosecution of his legal remedies, may be done by his agent; and for this purpose he is authorized to make an affidavit and execute any bond required, though his agency shall be created by parol. In all such cases, if the principal shall repudiate the act of the agent, the agent shall be personally bound, together with his sureties.

4-303. Money paid to or by agent by mistake; recovery..

- If money shall be paid to an agent by mistake, and he in good faith shall pay it over to his principal, he shall not thereafter be personally liable therefore. In all other cases he shall be liable for repayment. If money shall be paid by agent by mistake, he may recover it back in his own name.

4-404. When agent has right of action. - Generally an agent shall have no right of action on contracts made for his principal. The following are exceptions:

1. A factor contracting on his own credit.
2. Where promissory notes or other evidences of debt are made payable to an agent of a corporation.
3. In all cases where the contract is made with the agent in his individual name, though his agency be known.
4. Auctioneers may sue in their own name for goods sold by them.
5. In case of agency coupled with an interest in the agent, known to the party contracting with him. In all these cases, payment to the principal before notice of the agent's claim is a good defence.

4-405. Right of action by agent for interference with his possession. - An agent having possession, actual or constructive, of the property of his principal, shall have a right of action for any interference with that possession by third persons.

4-406. When agent responsible for credit given; question for jury. - Where the agency is known, and the credit is not expressly given to the agent, he shall not be personally responsible upon the contract. The question to whom the credit is given is a question of fact to be decided by the jury under the circumstances in each case.

4 407. Public agents, liability on contracts. - Public agents contracting on behalf of the public shall not be individually liable on such contracts.

4 -408. Enforcement of contract where agent exceeds authority. - When the agent shall exceed his authority, so that the principal is not bound, the agent may not enforce the contract in his own name against the person with whom he deals, unless the contract shall have been fully executed upon the part of agent, or the credit was originally given to the agent.

4-409. Liability of agents for excess of authority. - All agents, by an express undertaking to that effect, may render themselves individually liable. Every agent exceeding the scope of his authority shall be individually liable to the person with whom he deals; so, also, for his own tortious act, whether acting by command of his principal or not, he shall be responsible; for the negligence of his under-servant, employed by him in behalf of his principal, he shall not be responsible.

Chapter 4-5 Overseers.

4-501. Rights and powers. - In the absence of the employer, the overseer stands in his place. It shall be his duty to see the sustenance and protection of his employer's property; and to discharge the duty, he shall be justified in repelling aggressors and trespassers to the same extent as the employer.

4-502. Parol contracts between employers and overseers. - Contracts between employers and overseers may by parol, though they may extend beyond a year from the time of the contract.