analysis thereof has been made. It must be remembered that, in disposing of this motion, it is only necessary to look to the averments of the petition, for the purpose of ascertaining whether the plaintiffs' claim is a demand arising upon contract. It is well settled in Ohio that an affidavit and an order of attachment form no part of the pleadings in an action, and the grounds for an attachment should not be stated in the petition. Harrison v. King, 9 Ohio St. 388. The affidavit, having referred to the petition as showing that the claim, debt, and demand did arise upon contract, so far authorizes us to look to the petition for the purposes of determining this fact. Further than that, it is not necessary to consider the force and effect of the different averments in the petition. Does the plaintiffs' claim or demand arise upon contract? The covenants of the lease made by the defendant Dickson entitle the plaintiffs to the possession of the premises described for the purposes of boring for oil and natural gas. There are certain limitations in these covenants, but the general effect of the contract is certainly an implied agreement that the plaintiffs shall have peaceable and uninterrupted possession of the premises for the purposes of prosecuting the explorations for oil and gas in the manner prescribed in the lease. The defendant Dickson, by the proceedings complained of in the petition, certainly violated this implied agreement and contract. As before stated, it is not necessary to examine the averments of the petition to ascertain whether or not they are well pleaded for the purpose of stating a breach of contract or maintaining a cause of action for damages for an eviction. It is only necessary to look to the petition and the lease, which is made an exhibit thereto, for the purpose of determining whether or not, upon the facts therein stated, this claim sued upon is a demand arising upon contract; and, for this purpose, the facts set out in the petition, though not well pleaded, may be considered. The lease is certainly a contract. The facts stated in the petition certainly show that, because of certain acts done by the defendant Dickson, a demand or claim has accrued to the plaintiffs for damages against the defendants growing out of said contract. That is all the issue involved in this motion to dissolve the attachment. A demurrer or motion to the petition may raise questions as to its sufficiency in other respects. The pleading may be inartificially drawn, and may be insufficient in many respects; but, if it states facts enough to show that the suit in which the attachment was issued is based upon a demand growing out of a contract, it is sufficient. The motion to dissolve is therefore disallowed.

CHAMBERLAIN v. NEW YORK, L. E. & W. R. CO. et al.

(Circuit Court, N. D. Ohio, E. D. November 12, 1895.)

No. 5,436.

1. RAILROAD RECEIVERS—LIABILITY FOR NEGLIGENCE OF EMPLOYES—LIABILITY OF RAILROAD COMPANY.

Receivers having the full possession, control, and operation of a railroad under the directions of a court are alone liable for the negligence or wrongdoing of their agents and employés in the operation of the road, and the

railroad company itself is not liable to suit upon a cause of action so arising.

2. SAME—LEASED ROAD—LIABILITY OF LESSOR.
The Ohio statute making a lessor railroad company liable for the acts, injuries, and wrongs inflicted by the officers, agents, or employés of the lessee company does not operate to give a right of action against a lessor company for negligent acts of the employés of a receiver who is operating the road as receiver of the lessee company.

3. REMOVAL OF CAUSES—DIVERSE CITIZENSHIP—NOMINAL PARTIES.
An action was brought by a citizen of Ohio against the receivers of a New York railroad corporation, who were citizens of New York, to recover damages for personal injuries sustained in the operation of a road belonging to an Ohio corporation, but which had been leased to the New York corporation prior to the appointment of the receivers. Both the New York corporation and the Ohio corporation were joined as parties defendant with the receivers. *Held*, that the sole controversy was between the plaintiff and the receivers, and the latter were entitled to remove the cause to a federal court.

This was an action by Nellie J. Chamberlain against the New York, Lake Erie & Western Railroad Company, the New York, Pennsylvania & Ohio Railroad Company, and J. G. McCullough and E. B. Thomas, receivers, to recover damages for personal injuries. The action was commenced in a court of the state of Ohio. The defendants McCullough and Thomas removed it to the federal court. Plaintiff moved to remand. Denied.

O. S. Rockwell, M. A. Norris, and J. T. Siddall, for plaintiff.
M. Stuart, for defendants.

RICKS, District Judge. This is a suit brought by the plaintiff against the defendants for an injury sustained by her through the alleged negligence of the agents and employés of J. G. McCullough and E. B. Thomas, as receivers of the New York, Lake Erie & Western Railroad Company. The petition avers that the defendant the New York, Pennsylvania & Ohio Railroad Company was and is the owner of a line of railroad extending from the east line of the state of Ohio to the city of Dayton, in said state, and passing through the township of Franklin, in the county of Portage and state of Ohio. Prior to the grievances set forth in the petition, and subsequent to April 13, 1883, the said New York, Pennsylvania & Ohio Railroad Company duly leased the whole of said line of railroad to the said New York, Lake Erie & Western Railroad Company, and put it into possession thereof, and the said the New York, Lake Erie & Western Railroad Company has ever since operated and managed said railroad, by propelling, by steam, locomotives and cars thereon, and over and along its lines. The suit was originally instituted in the court of common pleas of Portage county. Upon application of the receivers, made in due time, it was duly removed to this court. The petition for removal avers that said receivers are nonresidents of the state of Ohio; that the New York, Lake Erie & Western Railroad Company was organized under the laws of New York, and is a citizen thereof; that the New York, Pennsylvania & Ohio Railroad Company is a corporation organized under the laws of the state of Ohio, and a citizen thereof and of this judicial

district. The petition further avers that the sole controversy in this case is between the plaintiff and the receivers of the said New York, Lake Erie & Western Railroad Company; that the latter-named company and the New York, Pennsylvania & Ohio Railroad Company are merely nominal parties; and that they were fraudulently joined as defendants with the receivers for the purpose of defeating the jurisdiction of the United States court, and preventing the receivers from removing this controversy into said court. The case was accordingly removed. The plaintiff filed an answer denying that the sole controversy in the suit is between the plaintiff and the receivers; denying that the New York, Pennsylvania & Ohio Railroad Company and the New York, Lake Erie & Western Railroad Company are merely nominal parties; and denies that they were made defendants for the purpose of defeating the jurisdiction of this court, or for the purpose of defeating the removal of the case to this court by the receivers. The answer further alleges that there is a right of action against the defendants the New York, Pennsylvania & Ohio Railroad Company and the New York, Lake Erie & Western Railroad Company, in behalf of the plaintiff, and that there is a controversy between them which can be settled only in this proceeding. Thereupon, for the reasons stated, the plaintiff moves to remand the case to the court of common pleas of Portage county.

It is conceded, for the purposes of this motion, that the New York, Pennsylvania & Ohio Railroad Company is a citizen of the state of Ohio and of this judicial district; that, long before this cause of action accrued to the plaintiff, it leased its line of road to the New York, Lake Erie & Western Railroad Company, which latter corporation has since then completely controlled, operated, and managed said line of railroad; that the New York, Pennsylvania & Ohio Railroad Company has in no wise taken any part in the operation of its said road so leased as aforesaid, and had nothing whatever to do with the management thereof. The further fact is established that the New York, Lake Erie & Western Railroad Company was placed in the hands of the receivers, John G. McCullough and E. B. Thomas, appointed by the circuit court of the United States for the Southern district of New York; that, by ancillary proceedings instituted in this court, the receivership was extended to the lines of railroad and all property within this jurisdiction. It is further established that, at the time of the injury complained of in the plaintiff's petition, the receivers were in the sole management and control of the New York, Lake Erie & Western Railroad Company, the lessee as aforesaid. The statutes of Ohio make a lessor railroad liable for the acts, injuries, and wrongs inflicted by the officers of the lessee road. Under this statute, the plaintiff claims that she has a just cause of action as well against the New York, Pennsylvania & Ohio Railroad Company as against the lessee road, the New York, Lake Erie & Western. But, conceding this liability under the Ohio statute, the further question presents itself whether either the lessor or the lessee road can be sued for wrongs and injuries done by the receivers, who have the sole

and exclusive control and management of the property of both roads. I think the rule is well settled that where a court of proper jurisdiction seizes a railroad, takes it from the custody and control of its corporate officers, and puts the same into the hands of a receiver, to be operated under the directions of the court, such receiver is the governing power operating the road, and is alone liable for wrongs and injuries committed by himself or his servants. See High, Rec. (2d Ed.) § 396; Murphy v. Holbrook, 20 Ohio St. 137. In the latter case the supreme court of Ohio say that, as to employés operating the road under the receivers, the receivers had "no tangible principal behind them. They were the governing power in operating the road, by virtue of the authority conferred upon them as receivers. From the time of their appointment, they had supreme control in relation to the running of cars on the road. They alone had authority to employ, direct, control, and dismiss the various agents employed by them to operate the road." I think, under this rule, the plaintiff's cause of action, whatever it may be, is wholly and entirely against the receivers of the New York, Lake Erie & Western Railroad Company. This being true, it follows that there is no cause of action against the New York, Lake Erie & Western Railroad Company, or against the New York, Pennsylvania & Ohio Railroad Company.

But counsel for the plaintiff contends that, under section 3305 of the Ohio statutes, she has a right of action against the New York, Pennsylvania & Ohio Railroad Company alone, as the lessor company, as well as a joint cause of action against the New York, Pennsylvania & Ohio and the New York, Lake Erie & Western; the former being the lessor, and the latter the lessee, corporation. He says the courts of Ohio have uniformly held that the lessor company, under this statute, is liable for the wrongs and injuries committed by the lessee company, and that it is not necessary to join the latter company in a suit to recover for such wrongs and injuries. Counsel refer to the case of Rush v. Railroad Co., which was originally instituted in the court of common pleas for Mahoning county, and removed to this court by the defendants, as supporting his contention. I have examined the records of said case, and find that, while it is true that the suit was originally brought against the two defendants first named, an amended petition was afterwards filed, making the New York, Lake Erie & Western Railroad Company, the lessee of the New York, Pennsylvania & Ohio Company, a party defendant. Before this amended petition was filed, an answer had been interposed to the original petition by the New York, Pennsylvania & Ohio Railroad Company, setting forth the fact that prior to the wrongs and injuries alleged in the petition the defendant the New York, Pennsylvania & Ohio Railroad Company had leased its road to the New York, Lake Erie & Western Railroad Company, and that the latter, as such lessee, "was in the lawful, sole, and exclusive possession and control of the said railroad property and premises, and was, at the time of the accident complained of in the petition, engaged lawfully in the operation, sole and exclusive possession and control, of the said railroad property

and premises, as an independent contractor in relation thereto, and any liability to the plaintiff, if any there be, by reason of the matters set forth in the petition, is the sole liability of the said New York, Lake Erie & Western Railroad Company." A demurrer was interposed to this answer, and the same was sustained by the court of common pleas of Mahoning county. The reasons are not given in support of said ruling, but it must be readily seen that the contention of the defendant that the lessee company was alone liable must have been the ground upon which said demurrer was sustained. It is perhaps, therefore, no strained interpretation of this ruling to hold, as plaintiff's counsel contend, that the court in that case decided that the action against the lessor company alone, as brought, might stand. But the plaintiff's course in that suit is hardly consistent with her contention. She was not satisfied to prosecute the action against the lessor company alone, but, by her amended petition, made the lessee company a party, and on the trial of the case no serious claim was made that the plaintiff was entitled to a judgment against the lessor company. On the contrary, this court, in charging the jury in the case, directed their attention to the fact that although the suit, as brought, was against the Cleveland & Mahoning Railroad Company and the New York, Pennsylvania & Ohio Railroad Company, counsel for the plaintiff were not asking for a judgment against them, and they might therefore return a verdict in favor of the said two defendants, and consider the case upon the testimony solely as to whether the plaintiff was entitled to a verdict against the New York, Lake Erie & Western Railroad Company. No exception was taken to said instruction. The jury returned a verdict in favor of the plaintiff, and against the New York, Lake Erie & Western Railroad Company. But, further considering the force of section 3305, it is to be observed that the statute distinctly provides that the lessor company shall be liable for acts and wrongdoings of the lessee company; and, while there may be a question as to the sole liability of the lessor company, as now contended by plaintiff's counsel, there certainly cannot be any claim that the lessee company is exclusively liable. Such a holding would defeat the very object of the statute, which was to hold the lessee company by making it jointly liable with the lessor company, and thereby conferring jurisdiction upon the courts of this state. But the plaintiff's proceedings in this suit are hardly consistent with her contention now made. She does not sue the lessor company alone, but joins as defendants the receivers of the lessee company. The allegations of her petition are that the New York, Lake Erie & Western Railroad Company was the lessee of the New York, Pennsylvania & Ohio Railroad Company, and that the defendants John G. McCullough and E. B. Thomas, as receivers, were operating said railroad and said leased line of the said New York, Pennsylvania & Ohio Railroad Company, their locomotives and cars, for the purpose of carrying passengers and freight, etc. Under the averments of the petition, the plaintiff claims judgment against the New York, Pennsylvania & Ohio Railroad Company only, because of the wrongs and injuries committed by the receivers operating the leased line,

or, in other words, the receivers of the lessee company. But if the lessee company is not liable for the wrongs and injuries of its receivers operating its road, as I have hereinbefore held, the lessor company certainly cannot be liable for the wrongs and injuries of such receivers. The statute gives the plaintiff a right of recovery against the lessor company for wrongs and injuries committed by the lessee company. The remedy is enlarged over that provided by the common law, and therefore the statute must be strictly construed. To now hold that the plaintiff is entitled to a judgment against the lessor company for wrongs and injuries committed by a receiver of the lessee company would certainly extend and enlarge the statute beyond what was ever contemplated. I am therefore of the opinion that the only remedy available to the plaintiff by reason of the wrongs complained of in the petition is against the receivers, John G. McCullough and E. B. Thomas, who have removed the suit to this court, and that the plaintiff has no cause of action against the New York, Pennsylvania & Ohio Railroad Company. Said defendant not being a necessary or proper party, and the sole controversy now before the court being between the plaintiff and the receivers aforesaid, the motion to remand will be disallowed.

MONTICELLO BANK v. BOSTWICK et al.

(Circuit Court, D. Nebraska. January 7, 1896.)

PRINCIPAL AND AGENT—LIABILITY OF AGENT—SALE OF COMMERCIAL PAPER.

Defendants, who were note brokers at Omaha, and who had done business as such with the plaintiff bank in Iowa, sent to plaintiff by mail a list of commercial paper offered for sale, including a note described as made by seven persons jointly to the order of one B., and indorsed by B. and another. The list sent plaintiff was headed by defendants' business card as brokers, and it contained sundry items of information about the parties to the note, purporting to be the result of inquiries as to their solvency and standing, and indicating that the same were good. Plaintiff purchased the note, and, by defendants' directions, remitted the sum paid therefor to a bank in Chicago. Defendants received from such sum only their commission for selling the note, the balance being paid to B., for whom they sold it. It afterwards proved that all the signatures on the note except that of B. were forgeries, and that B., although at the time of the sale of the note reputed to be solvent, was in fact insolvent, and wholly worthless. Plaintiff sued defendants to recover the amount paid for the note on an alleged warranty of genuineness. *Held*, that there was nothing in the note or in the circumstances of the transaction between plaintiff and defendants to justify an assumption that defendants had any interest in or ownership of the note, but, on the contrary, that the plaintiff bank must have known that it was taking title as the indorsee of B., and that defendants were acting as brokers only, and, accordingly, that defendants, having acted only as agents of a disclosed principal, could not be held personally liable for the note.

Submitted on special findings of fact returned by jury, as follows:

The Monticello Bank vs. Bostwick and Dixon, Copartners.

We, the jury in the above case, by the direction of the court, and with the consent of the parties hereto, make and return a special verdict in said case upon the facts, finding as follows:

(1) The plaintiff is a banking corporation created under the laws of the state of Iowa, at the town of Monticello, Jones county, Iowa, and was such in June, 1892.

(2) The defendants are citizens of Nebraska, residing at Omaha, Nebraska, and engaged in business as a firm as note brokers, and were so engaged in the year 1892, and prior thereto.

(3) That for some time previous to June, 1892, the defendants had dealt with the plaintiff bank, the usual course of business being to send to the bank a printed circular filled out with the names of parties to paper offered for sale, with the amounts thereof, and statements intended to show the general nature of the paper offered; that the dealings between the parties up to June, 1892, covered several transactions of sales of paper, amounting in the aggregate to about $20,000.

(4) That on or about the —— day of June, 1892, the defendant sent by mail to the plaintiff, in the usual course of defendant's business, a written communication reading as follows:

"Bostwick & Dixon, Brokers, Omaha, Neb.

"Bonds, Warrants, Bank Stocks, and Commercial Paper. Room 11, Chamber of Commerce.

"Reference: Bank of Commerce, Omaha, Neb.
"The National Bank, Mattoon, Ill.

"List of Paper Offered, Subject to Previous Sale or Withdrawal.

"Names offered have been investigated and found responsible.
"Please order the number wanted by wire.
"On request will hold for investigation when possible.

"June Series. June 24, 1892.

"Joint Note—Nine Good Farmers and Others.
"No. 29—$3,000—Six months at 7% discount.
"Payable at Council Bluffs, Iowa.

F. M. Bilger (Refers to Citizens' State Bank) Oakland, Iowa.
J. H. Lewis (Refers to Harlan Bank) Harlan, Iowa.
J. M. Malick (Refers to Shelby County Bank) Harlan, Iowa.
Caleb Smith (Refers to Shelby County Bank) Harlan, Iowa.
Benj. Piefer (Refers to Shelby County Bank) Harlan, Iowa.
George Hayward (Refers to Shelby County Bank) Harlan, Iowa.
Mrs. A. F. Cosgrove, Council Bluffs, Iowa.
F. M. Bilger is a good farmer, owning 200 or more acres of land at or near Oakland, Iowa, and considered worth $10,000 to $12,000, reported by good authority to be out of debt, and a good and reliable man.
J. H. Lewis is quite a prominent man of Shelby county, and a prosperous farmer and stock man; has been county treasurer; and considered worth near or quite $20,000, and good for all obligations he makes; also honorable and prompt on business matters.
Messrs. Malick, Smith, Piefer, and Hayward are farmers, reliably reported worth $8,000 to $15,000 each. They own their farms, are practically out of debt, and prudent, industrious, and prosperous. A banker, who was inquired of, says, 'All own good farms, and are well fixed.'
Mrs. A. F. Cosgrove is considered worth $8,000 to $10,000, consisting in part of improved farm lands; balance, money at interest.

Payable to and indorsed by W. W. Bilger, Council Bluffs, Iowa.

Also indorsed by W. C. Acker, late of Harlan, Iowa, now of Atlantic City, Iowa.

W. W. Bilger is considered worth several thousand dollars in Council Bluffs property, but his worth is not definitely estimated.

He is an active, energetic man, and gives close attention to all business matters.

W. C. Acker is a farmer, worth $5,000 or more, and, like other names on this paper, considered honorable and reliable.

This paper is made by responsible names, all of whom are prudent and honorable, conservative in making obligations, and authentically reported prompt in meeting them. We believe it good and desirable."

(5) That the plaintiff bank, upon due receipt of the foregoing communication, determined to purchase the note thus offered it, and thereupon, on the 27th day of June, 1892, wired defendants their acceptance of the offer.

(6) That upon receipt of the telegram from the plaintiff bank the defendants procured the note from W. W. Bilger, who then indorsed it, and forwarded the same to the plaintiff bank, by letter, the same reading as follows:

"Memorandum:

"Bostwick & Nixon,
"Commercial Paper, Warrants, Bonds, Bank Notes.
"Omaha, Neb., June 27th, 1892.

"Sold to Monticello Bank, Monticello, Ia., following described contract:
"Made or accepted by
"W. W. Bilger, J. H. Louis, J. M. Malick, F. M. Bilger, Benj. Piefer,
"Caleb Smith, George Hayward, & Adelia F. Cosgrove.
"Indorsed or secured by
"W. C. Acker and W. W. Bilger.
"Payable at
"First National Bank, Council Bluffs, Ia., with 8% interest after date.
"Dated June 13–92. Due Decem. 16–92.

	Int.	
"Discounted from June 28–92.	Amount	$3,000 00
171 days at 7%..............................	$104 47	124 00
1 day's transit of collection..................		
Collection, 1-10 of 1%........................	3 13	107 60
Net proceeds		$3,016 40

"Please discount above-described item at 7%. Remit proceeds to Commercial National Bank, Chicago, Ill., for credit National Bank of Commerce, this city, our use; and wire us amount when you remit.

"Respectfully, Bostwick & Nixon."

(7) That upon receipt of the note so forwarded by the defendants, the plaintiff bank paid, as directed, the agreed price, to wit, the sum of $3,016.40; paid June 28th, 1892.

(8) That in making such purchase the plaintiff bank had no other information concerning said note, its validity, value, or ownership, other than that contained in the written communications received from the defendants and as set forth in findings 4 and 6 hereof; and that plaintiff bank relied thereon in making such purchase.

(9) That in fact none of the names signed to or upon said note were genuine, except that of W. W. Bilger; all the others named being forged and false.

(10) That on June, 1892, W. W. Bilger was apparently the owner of some real property and of equities therein in Council Bluffs, Iowa, and was an active, energetic man, and might have been deemed to have property of the then supposed value of several thousand dollars, but, as it afterwards appeared, he was then probably insolvent, and has since disappeared, being wholly worthless, and nothing can be now, or could have been, collected of him since November, 1892.

(11) That in forwarding and offering the note in question for sale to the plaintiff bank and in selling the same the defendants acted in good faith, believing the signatures to the notes to be genuine. That before selling the same, the defendants made reasonable inquiry as to the solvency and responsibility of the parties whose names appear upon said note, but did not make inquiry with respect to the genuineness of the signatures thereto.

(12) That the defendants were not the owners of said note when the same was offered for sale and sold to the plaintiff bank as above stated, nor did defendants receive the money paid therefor for their own use, but accounted for and paid over to W. W. Bilger the whole amount received from the plaintiff bank, except the sum of $30.00, paid them as commissions for making the sale as brokers.

And the jury further find that if, upon the foregoing findings of fact, the law is held by the court to be in favor of the plaintiff, then the jury find as their general verdict in favor of the plaintiff and against the defendants,

and assess the damages at the sum of $3,016.40, wth interest from June 28, 1892, at seven per cent., making the sum of ——.

Geo. L. Dennis, Foreman.

But if, upon the foregoing facts, the court holds the law to be in favor of defendants, then the jury find as their general verdict in favor of defendants. Geo. L. Dennis, Foreman.

M. W. Herick and Brome, Burnette & Jones, for plaintiff.

F. B. Tiffany and Wharton & Baird, for defendants.

SHIRAS, District Judge. Counsel for the adversary parties in this case are agreed upon the general proposition that in sales of personal property there is an implied warranty of title upon part of the vendor, and that this implied warranty covers cases of sales of notes or other commercial paper wherein it appears that the names attached to the paper are not genuine, but are false and forged. In other words, one who offers for sale and sells commercial paper, purporting to be the obligation of A., is held to warrant the genuineness of the paper, and, if it proves that the paper, though upon its face it appears to be what it purports to be, is not such in fact, but in truth is false and forged, the vendor is liable to the purchaser, although he may have acted in perfect good faith. The question upon which the parties disagree in this case is whether the obligation created by this implied warranty can be enforced against any one except the one in whose interest the sale was in fact made, and who received the consideration price paid by the purchaser. On part of the plaintiff the rule is claimed to be "that, where a person, in executing a contract, describes himself as agent, without disclosing his principal, the contract becomes the personal obligation of the maker, and no one else"; and, further, that an agent, auctioneer, or broker who deals in his own name without disclosing the name of his principal will be bound, not only by any express contract he may make, but also by all the contracts which the law implies from the circumstances; and in support of these propositions counsel cite and rely upon the cases of Wing v. Glick, 56 Iowa, 473, 9 N. W. 384; Insurance Co. v. Stratton, 59 Iowa, 697, 13 N. W. 763; Dumont v. Williamson, 18 Ohio St. 515; Merriam v. Wolcott, 3 Allen, 258; Canal Bank v. Bank of Albany, 1 Hill, 287; Mills v. Hunt, 20 Wend. 431; Hamlin v. Abell (Mo. Sup.) 25 S. W. 516. It is further claimed that if the agent sells in his own name it is immaterial whether he discloses his principal or not, upon the theory that evidence is not admissible to discharge an undisclosed principal. I shall not attempt to discuss the several authorities cited by counsel for the respective parties, nor to reconcile the real or apparent diversity found therein, for, in my judgment, the general rules of law applicable to this case are to be found in the decisions of the supreme court of the United States. Thus in Whitney v. Wyman, 101 U. S. 392, it is said:

"Where the question of agency in making a contract arises, there is a broad line of distinction between instruments under seal and stipulations in writing not under seal, or by parol. In the former case the contract must be in the name of the principal, must be under seal, and must purport to be his deed, and not the deed of the agent covenanting for him. Stanton v.

Camp, 4 Barb. 274. In the latter cases the question is always one of intent; and the court, being untrammeled by any other consideration, is bound to give it effect. As the meaning of the lawmaker is the law, so the meaning of the contracting parties is the agreement. Words are merely the symbols they employ to manifest their purpose that it may be carried into execution. If the contract be unsealed, and the meaning clear, it matters not how it is phrased, nor how it is signed, whether by the agent for the principal or with the name of the principal by the agent or otherwise. The intent developed is alone material, and when that is ascertained it is conclusive. Where the principal is disclosed, and the agent is known to be acting as such, the latter cannot be made personally liable unless he agreed to be so."

To the same effect is the ruling in Post v. Pearson, 108 U. S. 418, 2 Sup. Ct. 799.

In Metcalf v. Williams, 104 U. S. 93–98, after a full discussion of a number of authorities, the court held that:

"The ordinary rule undoubtedly is, that if a person merely adds to the signature of his name the word 'agent,' 'trustee,' 'treasurer,' etc., without disclosing his principal, he is personally bound. The appendix is regarded as a mere descriptio personæ. It does not of itself make third persons chargeable with notice of any representative relation of the signer. But if he be in fact a mere agent, trustee, or officer of some principal, and is in the habit of expressing in that way his representative character in his dealings with a particular party, who recognizes him in that character, it would be contrary to justice and truth to construe the documents thus made and used as his personal obligations, contrary to the intent of the parties."

As the contract in the case now before the court is not under seal, it is permissible, under the rules recognized in these decisions of the supreme court, to show by evidence outside the letters passing between the parties the real relation of the parties to the transaction, and the course of dealing between plaintiff and the defendants, in order to ascertain what obligations, either express or implied, were created on part of the defendants to the plaintiff with relation to the forged paper in question. The facts, as found by the jury, show that the business of the defendants was that of bill brokers; that in that capacity they had dealings with the plaintiff bank previous to the sale of the forged note; that they were not the owners of the forged note, but sold it on behalf of W. W. Bilger; that the defendants, beyond their commission of $30, received no benefit from the sale, the money received being paid over to W. W. Bilger. When, therefore, the defendants, in the usual course of their business, with which the plaintiff must have had a reasonable familiarity, addressed to the plaintiff bank the written communication dated June 24, 1892, headed: "Bostwick & Nixon, Brokers, Omaha, Neb. Bonds, Warrants, Bank Stocks, and Commercial Paper,"—the only reasonable inference is that the plaintiff dealt with them in their capacity as brokers, and there is nothing in this communication, viewed in the light of the facts known to the plaintiff, which would justify the bank in assuming that the paper offered was the property of the brokers. The paper offered was stated to be the joint note of seven persons, naming them, payable to W. W. Bilger, and indorsed by him. The note did not have upon it the names of the defendants in any capacity, either as makers, payees, indorsers, or guarantors. There was nothing upon the note, therefore, upon

which to base an assumption that the defendants had any interest in or ownership of the note, and there is nothing in the written proposition of June 24, 1892, which so states, but, on the contrary, the form of that communication tends strongly to show that in dealing with the paper the defendants acted only in the capacity of brokers, and the jury have found such to be the fact.

Can it be fairly said that the defendants did not disclose the name of their principal, so that the plaintiff may invoke the rule that auctioneers, brokers, and others acting in fact in a representative capacity, but on behalf of an undisclosed principal, may be held bound by the contracts they have entered into in favor of third parties who have dealt with them not knowing who the real party in interest might be? What was offered for sale by the defendants in their capacity as brokers was a promissory note, payable to the order of W. W. Bilger, and by him indorsed. When this note was thus offered for sale to the plaintiff bank, by parties to the bank known to be engaged in the business of negotiating the sale of commercial paper for third parties, what other inference could be fairly drawn by the bank than that the paper so offered for sale was the property of the payee named in the note? If bill brokers offer for sale paper payable to A. B., and in fact owned by him, can it be said that they are acting for an undisclosed principal? On the face of the paper A. B. would appear to be the owner, and such would be the reasonable conclusion to be declared from the facts thus made to appear. In the case at bar, when the paper was offered for sale to the bank, and when it was delivered after the contract of purchase had been closed, it is clear that the bank must have known that it took title to the note as the indorsee of W. W. Bilger, the payee. Knowing from whom it thus took title, there is nothing in the facts that will sustain the contention that the bank supposed or had the right to infer that the defendants were the owners of the note. Their names do not appear on the note. The communication offering the note for sale showed upon its face that the defendants were offering the note in the usual way of business as note brokers, and hence it fairly appears, in the language of the supreme court in Whitney v. Wyman, supra, that the principal was disclosed, and the defendants were known to be acting as agents, and hence cannot be made personally liable unless they had agreed to be so held. As the defendants did not, in fact, retain the money paid by the bank, but paid it over, in due course of business, to W. W. Bilger, there is no ground for implying a promise or obligation to repay the money upon the theory that they had obtained from the bank a sum of money under circumstances which made it inequitable for them to retain it; and therefore the case stands as one in which, to entitle the bank to recover, it must appear that the defendants had agreed to be bound personally, and, as it does not appear that such an agreement was made by them, it must be held that, upon the facts as found by the jury, the law is with the defendants, and therefore the verdict and judgment must be in their favor.

SMITH v. JOHNSON et al.

(Circuit Court, D. Nebraska. January 14, 1896.)

ACCRETIONS—PURCHASERS OF PUBLIC LANDS.

Where lands abutting on a river have been surveyed by the United States government in the usual manner, so that the lands fronting on the river are divided into 40-acre tracts or fractional lots, each purchaser of a lot or tract becomes a riparian owner of so much of the then river front as is included within the side boundary lines of his tract or lot, running to the river, and any accretions upon the river front between such lines belong to such purchaser, and are not required to be apportioned among the other riparian owners of adjacent tracts.

This was an action by George W. Smith against Paul C. Johnson and others to recover possession of certain lands formed by accretion to the bank of the Missouri river. Upon the trial in the circuit court, the jury found a verdict for the plaintiff. The defendants move for a new trial.

Kennedy, Gilbert & Henderson, for plaintiff.

Hall, McCulloch & Clarkson, for defendants.

SHIRAS, District Judge. The plaintiff in this action is the owner of lot 11 in the S. E. ¼ of section 1 in township 15 N., of range 13 E. of the sixth P. M., situated in Douglas county, Neb., and as the owner thereof he claims title to certain accretions formed to the above lot, which abuts on the Missouri river. The case was tried before a jury, and the pivotal point therein, under the evidence, was as to the rule to be observed in apportioning the accretion among the abutting owners. Upon the part of the defendants it is claimed in support of the motion for new trial, and was so claimed upon the hearing before the jury, that, as the total accretion was of large extent, the plaintiff, as the owner of lot 11, could only claim a proportionate share of the accretion; that the owners of lots 9 and 10 and of the portions of section 2 abutting on the river were entitled to their equitable proportion of the entire accretion; and that it was incumbent upon the plaintiff, in some proper proceeding, to have an apportionment thus made, and until this was done it could not be known where the lines bounding plaintiff's share of the accretion should be run or established, and therefore it could not be known whether the portions of the accretion in the possession of the defendants formed part of the property owned by plaintiff or not. The defendants are not owners of any portion of the lands abutting on the accretion, and the claim is not, therefore, that there should be an apportionment of the accretion between the plaintiff and defendants as co-owners of the property abutting on the Missouri river, but the position taken is, in effect, that as the accretion extends for a greater distance along the river than the frontage of the plaintiff's property, the latter cannot show title to any particular part of the accretion in an action at law, and therefore the plaintiff's suit must fail.

The court instructed the jury that, where lands abutting on the Missouri river had been surveyed by the United States government