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Recommended Citation

Floyd R. Mechem, "Effect of Ratification as Between the Principal and the Other Party," 4 Michigan Law Review 269 (1905).

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THE EFFECT OF RATIFICATION AS BETWEEN THE PRINCIPAL AND THE OTHER PARTY*

THE question of the effect of ratification as between the principal and the other party to the transaction involves two aspects: *a.* What are the rights of the other party against the principal based upon the ratification? *b.* What rights does the principal by his own ratification acquire against the other party to the transaction ratified? Each of these also may be considered from the standpoint of actions based upon contract or sounding in tort.

A. OTHER PARTY AGAINST PRINCIPAL.

The aspect presented when the other party is seeking to enforce rights against the principal based upon his ratification of an unauthorized act is the typical one. In this field, the doctrine of ratification had its origin. Here it has full sway. The great majority of the cases upon the subject involve this form of it. Two general classes of cases are found: those involving some kind of liability in contract, and those based upon tort.

I. In Contract

Where a contract has been made by one person in the name of another, of a kind that the latter might lawfully make himself, and the only defect is the lack of authority on the part of the person acting, the subsequent ratification of that contract, while still in that condition, by the person on whose behalf it was made and who is fully apprised of the facts, operates to cure that defect and to establish the contract as his contract as though he had authorized it in the first instance. From this time on, he is subject to all the obligations that pertain to the transaction in the same manner and to the same extent that he would be had the contract been made originally by him in person, or by his express authority. The other party therefore may demand and enforce on the part of the principal the full performance of the contract entered into by his agent.¹ If the contract of the agent was tainted or procured by fraud, the principal by ratification assumes ordinarily responsibil-

*This article has been adapted from the forthcoming second edition of the writer's treatise on the Law of Agency—a fact which may serve to explain some peculiarities of form.

¹No attempt is here made to gather together the cases upon this subject. They will be found in any of the text books upon the law of agency.

ity for the fraud.² Statements of admissions made, or knowledge possessed, by the agent which would charge the principal if the agent had been previously authorized, will charge him after the relation has been established by ratification.³ It is unnecessary to cite instances of this. Whatever may be said of the obligations of the principal, applies, in general, as well to one who became such by ratification as to one who was such by original agreement.

In order that these results shall ensue, however, it is essential that the contract shall have been made on account of the person ratifying, and that he shall have had full knowledge of the facts. The attempted contract must also still continue, for there must be something to ratify; it must still be capable of performance on both sides, for clearly the other party cannot call upon the principal to perform when performance of his own correlative obligations has become impossible; and the attitude of the parties must have remained unchanged, for the principal cannot be compelled to assume relations to new parties to any greater extent than the contract originally contemplated.

2. *In Tort.*

The doctrine of liability by ratification in tort cases is abundantly established. Indeed this seems to have been the earliest form of it. By whatever methods the act be adopted and approved, the principal becomes liable for the tort as though he had previously directed it. And it is not always necessary that the approval shall look to the particular act. In the case of master and servant, for example, if the approval establishes the relation, the master becomes responsible for any torts committed within its scope for which he would have been responsible had the relation been regularly created. As said in such a case,⁴ "The ratification goes to the relation and establishes it *ab initio*. The relation existing, the master is responsible for torts which he has not ratified specifically just as he is for those which he has not commanded, and as he may be for those which he has expressly forbidden."

Ratification in tort cases is a distinct gain to the other party, giving him a remedy against the principal while not depriving him of his remedy against the wrong-doer himself.

B. PRINCIPAL AGAINST THE OTHER PARTY

Where, however, instead of the ordinary case wherein the third person is endeavoring to hold the principal on the ground of the

² See *National Life Ins. Co. v. Minch*, 53 N. Y. 144; *Elwell v. Chamberlin*, 31 N. Y. 611; *Smith v. Tracy*, 36 N. Y. 79; *Lane v. Black*, 21 W. Va. 617.

³ *Lampkin v. First Nat. Bank*, 96 Ga. 487, 23 S. E. 390.

⁴ *Dempsey v. Chambers*, 154 Mass. 330, 28 N. E. 279, 26 Am. St. Rep. 249.

latter's ratification of the act, the principal takes the initiative and attempts, by means of his ratification, to build up and enforce affirmative rights against the other party, different considerations apply. Does the doctrine of ratification work both ways? May the principal avail himself of it for his benefit as well as the other party? It will be convenient to discuss this question under the three heads of (1) Contracts, (2) Torts, and (3) Other acts creating rights or duties.

I. In Contract

May principal ratify and enforce unauthorized contract?—Where the contract made by an unauthorized agent involves mutual acts of performance, the other party who, in reliance upon the principal's ratification, has called upon the latter to perform or who has accepted performance from him, must also assume responsibility for the duties of performance which the contract imposes upon himself; and there can be no doubt that the principal who has thus performed or stands ready to perform in pursuance of such a demand, may require the other party to perform on his part.⁵

But where acts are to be done upon but one side only and that the other side, or where the acts first due are those of the other party, or where acts of performance are contemporaneously due, may the assumed principal who deems the contract advantageous to himself voluntarily come forward, declare his approval, promise or tender performance on his side, as the contract may require, and insist upon performance by the other party? If so, within what time and subject to what conditions?

Before the principal has acted, the matter stands in this condition: Here is what was intended to be and what purports to be, not an option or an offer, but a *contract* between parties. One of these parties—the principal—is not bound by it, or, at least, he may repudiate all liability. Is the other party bound? What is the consideration for his promises? Where is the mutuality? May he withdraw? If he is not then bound, may the principal approve the contract and, without any further act or assent on the part of the other, hold the latter to its performance? If the other party, before the principal has acted, discovers the lack of authority and expressly dissents, may he still be held if the principal is willing to ratify?

Or, again, suppose that, before the principal has intervened, the other party and the agent have consented to undo what has been done; may the principal nevertheless ratify and enforce the contract?

⁵ Soames v. Spencer, 1 D. & R. 32; Hammond v. Hannin, 21 Mich. 374, 4 Am. Rep. 490; Andrews v. Aetna L. Ins. Co., 92 N. Y. 596.

These questions have recently aroused much interesting discussion,⁶ though the cases which are directly in point are comparatively few.

It will conduce to convenience to dispose of the question last suggested first.

If agent and other party have previously consented to cancel the contract.—Before the principal has intervened to ratify the contract, may the agent and the other party consent to cancel it in such wise as to prevent subsequent ratification? If the contract were an authorized one, of course the agent could not cancel it, but it is as yet unauthorized. The agent here is usually an interested party. If he has made a contract without authority, he ordinarily incurs a personal liability. Suppose then that, having made a contract in good faith which he believed he had authority to make, he discovers that he had no such authority: May he go to the other party, explain the situation, and, with the latter's consent, undo what has been done at least so far as to release the agent? This question seems not to have been adjudicated, but no doubt can exist that this may be done.

But may the agent and the other party by their consent release the latter from any future liability to the principal? Mr. WHARTON has expressed the view, relying upon German authorities, that this may not be done.⁷ But the English courts seem to hold that it may be. Thus where a former agent without authority had paid a debt for his former principal, but afterwards and before the latter had ratified it went to the latter's creditor and requested him to return the money, which he did and then sued the principal, it was held that the latter could not by ratifying avail himself of the payment in defense.⁸ "*Prima facie*," said KELLY, C. B., "we have here a ratification of the payment by the defendant's plea; but whether the payment was then capable of ratification depends on whether previously it was competent to the plaintiff and Southall [the agent], apart from the defendant, to cancel what had taken place between them. I am of opinion that it was competent to them to undo what they had done. The evidence shows that the plaintiff received the money in satisfaction under the mistaken idea that Southall had authority from the defendant to pay him. This was a mistake in fact, on discovering which he was, I think, entitled to return the money, and apply to his debtor for payment. If he had insisted

⁶ See, for example, note in 5 Am. St. Rep. 109; 24 *American Law Review*, 580; 25 *id.* 74; 9 *Harvard Law Review*, 60; 35 *American Law Review*, 864.

⁷ Wharton on Principal and Agent, § 76, citing Seuff. Archiv. XIV., pp. 210, 211; Windschied, Pandektenrecht, § 74.

⁸ *Walter v. James*, L. R. 6 Exch. 124.

on keeping it, the defendant might at any moment have repudiated the act of Southall, and Southall would then have been able to recover it from the plaintiff as money received for Southall's use. I am, therefore, of opinion that the plaintiff, who originally accepted this money under an entire misapprehension, was justified in returning it, the position of the parties not having been in the meantime in any way altered, and that the defendant's plea of payment fails."

So in a New York case it was held that a person who had voluntarily procured insurance for his own and another's benefit might, before the latter had ratified the act, cancel or surrender the policy. "So long as the option of the owner of the goods to adopt or reject the policy continues, so long must the absolute control of the agent over the policy remain."⁹

If agent and other party have done nothing to cancel the contract.—Returning now to the other question. Where no such act of the agent has intervened, what is the right of the principal to ratify and enforce the contract against the other party? Conceivably the other party in the meantime may have remained passive, or he may, before or after the principal's attempted ratification, have himself sought to escape the contract. So far as the adjudicated cases go upon this question, they represent three distinct views which will now be considered.

———*The Wisconsin cases.*—The earliest cases involving this precise question arose in Wisconsin,¹⁰ and that court has denied that ratification alone can in such a case suffice to charge the other party. Referring to the general principle that subsequent ratification is equivalent to a prior authority, the court declares it to be inaccurate as a rule of universal application. "The inaccuracy consists in not properly distinguishing between those cases where the subsequent act of ratification is put forth as the *foundation of a right in favor* of the party who has ratified, and those where it is made the basis of a demand *against* him. There is a broad and manifest difference between a case in which a party seeks to avail himself, by subsequent assent, of the unauthorized act of his own agent, in order to enforce a claim against a third person, and the case of a party acquiring an inchoate right against a principal by an unauthorized act of his agent to which validity is afterwards given by the assent or recognition of the principal. The principal in such a case may,

⁹ Stillwell v. Staples, 19 N. Y. 401.

¹⁰ Dodge v. Hopkins, 14 Wis. 630, affirmed in Atlee v. Bartholomew, 69 Wis. 43, 33 N. W. 110, 5 Am. St. Rep. 103. Similar views were also expressed in Clews v. Jamieson, 89 Fed. Rep. 63, but they were overruled in 182 U. S. at p. 483. See also Wilkinson v. Heavenrich, 58 Mich. 574, 26 N. W. 139, 55 Am. Rep. 708; Wilkinson v. Harwell, 13 Ala. 660.

by his subsequent assent, bind himself, but, if the contract be executory, he cannot bind the other party. The latter may, if he choose, avail himself of such assent *against* the principal, which if he does, the contract, by virtue of such *mutual* ratification, becomes *mutually* obligatory. There are many cases where the acts of parties, though unavailable for their own benefit, may be used against them."

—*The English cases.*—In 1889, the question came before the English Court of Appeal in *Bolton Partners v. Lambert*.¹¹ It appeared that the defendant had written to one Scratchley, who was managing director of an incorporated company, an offer to lease certain works belonging to that company. Scratchley replied that he would refer the offer to the directors. Before the directors met there was a meeting of "the works committee" of the directors, of which Scratchley was a member, and this committee voted to accept the offer. This committee, however, had no such power. Scratchley then wrote to the defendant saying that the directors had accepted his offer, and that the company's solicitor would prepare the papers. While correspondence over the form of the documents was pending, the defendant wrote withdrawing his offer, though not upon the ground of Scratchley's want of authority. Afterwards the board of directors met and formally ratified Scratchley's letter of acceptance, and, the defendant refusing to go on, this action for specific performance was instituted. The defence was the lack of mutuality and the withdrawal of the offer before acceptance. KEENE, J., granted the relief prayed for, saying: "The doctrine of ratification is this, that when a principal on whose behalf a contract has been made, though it may be made in the first instance without his authority, adopts it and ratifies it, then, whether the contract is one which is for his benefit and which he is enforcing, or which is sought to be enforced against him, the ratification is referred to the date of the original contract, and the contract becomes, as from its inception, as binding on him as if he had been originally a party."

The case went to the Court of Appeal, where the judgment was affirmed. COTTON, L. J., said: "The rule as to ratification by a principal of acts done by an assumed agent is that ratification is thrown back to the date of the act done, and that the agent is put in the same position as if he had had authority to do the act at the time the act was done by him. * * * I think the proper view is that the acceptance by Scratchley did constitute a contract, subject to its being shown that Scratchley had authority to bind the company.¹² If that was not shown there would be no contract on

¹¹ *Bolton Partners v. Lambert*, 41 Ch. Div. 295.

¹² What was it in the meantime?

the part of the company, but when, and as soon as authority was given to Scratchley to bind the company, the authority was thrown back to the time when the act was done by Scratchley, and prevented the defendant withdrawing his offer, because it was then no longer an offer but a binding contract."¹³

LINDLEY, L. J., said: "The question is what is the consequence of the withdrawal of the offer after acceptance by the assumed agent but before the authority of the agent has been ratified? Is the withdrawal in time? It is said on the one hand that the ordinary principle of law applies, viz., that an offer may be withdrawn before acceptance. That proposition is of course true. But the question is—acceptance by whom? It is not a question whether a mere offer can be withdrawn, but the question is whether, when there has been in fact an acceptance which is in form an acceptance by a principal through his agent, though the person assuming to act as agent has not then been so authorized, there can or can not be a withdrawal of the offer before the ratification of the acceptance? I can find no authority in the books to warrant the contention that an offer made, and in fact accepted by a principal through an agent or otherwise, can be withdrawn. The true view on the contrary appears to be that the doctrine as to the retrospective action of ratification is applicable."

LOPES, L. J., said: "If there had been no withdrawal of the offer this case would have been simple. The ratification by the plaintiff would have related back to the time of the acceptance of the defendant's offer by Scratchley, and the plaintiffs would have adopted a contract made on their behalf. It is said that there was no contract which could be ratified, because Scratchley at the time he accepted the defendant's offer had no authority to act for the plaintiffs. Directly Scratchley on behalf, and in the name of the plaintiffs, accepted the defendant's offer, I think there was a contract made by Scratchley assuming to act for the plaintiffs, subject to proof by the plaintiffs that Scratchley had that authority. The plaintiffs subsequently did adopt the contract and thereby recognized the authority of their agent Scratchley. Directly they did so the doctrine of ratification applied and gave the same effect to the contract made by Scratchley as it would have had if Scratchley had been clothed with a precedent authority to make it. If Scratchley had acted under a precedent authority the withdrawal of the offer by the defendant would have been inoperative, and it is equally inoperative where the plaintiffs have ratified and adopted the contract of the agent. To hold otherwise would be to deprive the

¹³ In the meantime, what? If merely an offer, why not revocable?

doctrine of ratification of its retrospective effect. To use the words of Baron MARTIN in *Brook v. Hook*,¹⁴ the ratification would not be 'dragged back as it were, and made equipollent to a prior command.'

Bolton Partners v. Lambert has been affirmed in later cases¹⁵ in the same court, though one of the judges who concurred in it gave an explanation of it not to be reconciled with the opinions in the original case. Its doctrine that there may be ratification notwithstanding a previous attempt at withdrawal by the other party, has, however, been criticised by judges of lower courts,¹⁶ nevertheless bound by it, by magazine and text writers,¹⁷ and by Lord Justice Fry in a note added for that purpose to his *Treatise on Specific Performance*.¹⁸ As stated by the latter, "It seems to follow from it that the intervention of a mere stranger may prevent a person who has made an offer from withdrawing that offer until it be seen whether the person to whom it is made will ratify it or not, and consequently places that person in the difficult position of neither having a contract nor a right to withdraw an offer. An offer made to a principal may be withdrawn: an offer made to a person who professes to be an agent but is not, cannot be withdrawn; so that the person making the offer is worse off in the latter than the former case." "To hold him (the other party) bound with perhaps the market rising," says another writer,¹⁹ "while the principal is free to ratify or reject, is to place him at an undeserved disadvantage."

The later cases have attached an obviously just limitation that the ratification must take place within a reasonable time, a matter here, as elsewhere, depending upon the circumstances of each case.²⁰

—Several American cases declare a contrary rule.—The rule that the principal can ratify even after the other party has attempted to withdraw is denied in several American cases. In one of the most recent,²¹ one Simcock, acting as agent for complainant, but without written authority, entered into a contract to sell land to defendant. "It needs no citation of authorities to show that this contract was void under the statute of frauds, and did not bind

¹⁴ *Brook v. Hook*, L. R. 6 Exch. 96.

¹⁵ See *In re Portuguese Consolidated Copper Mines; Steele's Case*, 42 Ch. D. 160; Same, *Bosanquet's Case*, 45 Ch. D. 16; *In re Tiedemann* [1899] 2 Q. B. 66.

¹⁶ See per NORTH, J., in *Bosanquet's Case*, *supra*. See also per CHITTY, J., in *Dibbins v. Dibbins* [1896], 2 Ch. 348.

¹⁷ See 5 *Law Quar. Review*, 441; 9 *Harv. Law Review*, 40.

¹⁸ Appendix, Note A.

¹⁹ 5 *Law Quar. Review*, 441.

²⁰ See, per BOWEN, L. J., in *Bosanquet's Case*, *supra*.

²¹ *Baldwin v. Schiappacasse*, 109 Mich. 70, 66 N. W. 1091. See also *Cowan v. Curran*, — Ill. —, 75 N. E. 322.

either complainant or defendant, until complainant had ratified the act in some manner which would take it out of the statute." Defendant tendered compliance, but complainant insisted upon other terms to which defendant would not assent. After further negotiation, complainant declared that if the matter was not closed by a certain hour he "should call the deal off," to which the defendant replied, "If that is so, all right," and the parties separated. After this, complainant tendered a deed and signed a paper ratifying the act of Simcock and handed it to him. This document, however, was never shown to the defendant, and, said the court, "of course, was not binding upon him."²² The complainant then insisted that a sale had taken place and filed this bill to enforce a vendor's lien. The bill was dismissed. Said the court: "Until complainant has placed himself in such a position that defendant could enforce the contract against him, he was not in position to enforce it against the defendant. Until that was done, there was in fact no contract binding upon either party, and the defendant was at liberty to withdraw."²³ After such withdrawal, the complainant could not bind the defendant by any act of ratification. The paper executed by Simcock and the defendant was not a continuing offer to purchase, which might at any time be accepted by the complainant. It purported to express the terms of an agreement of sale, void because there was no written authority to make it, and incapable of being ratified after the refusal of the defendant to be bound by it."

In a case before the Appellate Court in Illinois²⁴ it appeared that the plaintiff had authorized one Evans, a broker, to buy oats, not stating the grade, and thereby, as the court held, authorizing only the purchase of the usual grade, No. 2. The broker contracted with defendant for the sale of "cool and sweet" oats, an inferior grade. The broker advised the plaintiff that he had bought of defendant "mixed oats" to arrive "cool and sweet," at a certain price. There was no such grade of oats as "mixed oats," and therefore, the court held, grade No. 2 must be inferred. Plaintiff then wrote directly to defendant confirming the purchase of "grade 2, mixed oats." Defendant immediately replied that he had not offered to sell oats of grade No. 2 and withdrew his offer of the "cool and sweet" oats. Plaintiff then wrote confirming the purchase of the

²² Citing *Dickinson v. Wright*, 56 Mich. 42.

²³ Citing Pom. Cont. § 166; *Duvall v. Myers*, 2 Md. Ch. 405; *Bodine v. Glading*, 21 Pa. 50, 59 Am. Dec. 749.

²⁴ *Gregg v. Wooliscroft*, 52 Ill. App. 214. See also *Cowan v. Curran*, — Ill. —, 75 N. E. 322. Where an agent without authority sells lands to a purchaser who enters and makes improvements, and the principal on learning of the sale disapproves of it, whereupon the buyer abandons the land, the principal cannot afterwards ratify and enforce the contract: *Wilkinson v. Harwell*, 13 Ala. 660.

oats as "cool and sweet," but defendant refused to recognize a contract or deliver the oats. The action was for damages, and in the Circuit Court the plaintiff recovered, but this judgment was reversed on the defendant's appeal. "Before the appellee wrote the letter (of confirmation) he had received notice from Evans and also from the appellant that the appellant had revoked his offer and canceled any alleged sale. If the appellant offered to sell cool and sweet oats and Evans accepted the offer for the appellee the acceptance was unauthorized and not binding on the appellee until he adopted it, and in such case the appellant might lawfully withdraw the offer at any time before the appellee had accepted."

Other American cases also declare a rule contrary to that of the English cases, although the facts are distinguishable. The most carefully considered of these is, perhaps, the Pennsylvania case of *McClintock v. South Penn Oil Co.*²⁵ Here the plaintiff's husband, as her agent, but without written authority, had entered into a contract to sell to defendant certain interests in land belonging to the plaintiff. Later written ratification was supplied, after which the defendant sought to repudiate. Said the court per MITCHELL, J.: "If the agent had been properly authorized, the contract would have bound both parties in the first instance, and the settled rule is that ratification is equivalent in every way to plenary prior authority. The objection of want of mutuality is not good in many cases of dealing with an agent, for if he exceeds his authority, actual and apparent, his principal will not be bound, yet may ratify, and then the other party will be bound from the inception of the agreement. The *aggregatio mentium* of the parties need not commence simultaneously. It must co-exist; but there must be a period when the question of contract or no contract rests on the will of one party to accept or reject a proposition made, and this interval may be long or short. The offer, of course, may be revoked or withdrawn at any time prior to acceptance, but after acceptance it is too late. The contract is complete."

—*Rules compared—The weight of authority.*—If a comparative statement of these various rules were attempted, it might be said that the Wisconsin cases deny the right of the principal to ratify in the absence of something showing the other party's present adherence to the contract; that the English courts admit a ratification within a reasonable time even though the other party has before the ratification attempted to withdraw; while the majority of American courts permit a ratification, within a reasonable time, if the other party has not previously signified his intention to withdraw, though not afterward.

²⁵ 144 Pa. 146, 23 Atl. 211, 28 Am. St. Rep. 785.

Neither of these rules is entirely satisfactory. The Wisconsin rule seems to the writer fundamentally sound, though it perhaps gives too little effect to the growing doctrine of ratification. The English rule is certainly questionable for the reason already stated, among others, that it puts a person who makes an offer to an agent in a worse position than though he had made it directly to the principal. The other American rule ignores the consideration that the other party may be refraining from a withdrawal when he would be glad to withdraw, only because he supposes he is bound by a valid contract. Perhaps a sufficient answer to the last objection is that if the other party had used due care in the first instance to ascertain the agent's authority, he would not have made the contract; and that in most cases if he has been deceived by the agent as to the existence of his authority, he has a remedy against the agent for any loss thereby sustained.

The latter American rule, however, seems open to fewest objections and is likely to prevail. It may, perhaps, be stated thus: Where one assuming to be agent but without authority has negotiated a contract for the alleged principal, the latter may ratify the act and enforce the contract against the other party where he so ratifies within a reasonable time and before the other party has signified his withdrawal from the negotiation.

The English courts would of course sustain the rule thus far, though they carry it a step further.

—*Applications of the rule.*—Under the application of this rule, the principal may ratify and enforce contracts for the sale or purchase or leasing of real or personal property,²⁶ the furnishing of material,²⁷ the performance of labor, and the like.

—*Ratification by insured of insurance effected for his benefit.*—Within the operation of the general rule also would come the case of the ratification by the insured of insurance effected for his benefit. That this might be done had been held by the English courts long before the difficult questions involved in *Bolton Partners v. Lambert* had presented themselves,²⁸ and this holding had been followed in the United States.²⁹ It is difficult to imagine a case wherein the fast and loose character of the principal's obligation, or his range

²⁶ *McClintock v. South Penn Oil Co.*, 144 Pa. 146, 23 Atl. 211, 28 Am. St. Rep. 785; *Clews v. Jamieson*, 182 U. S. 461; *Soames v. Spencer*, 1 Dowl. & R. 32; *Hammond v. Hannin*, 21 Mich. 374, 4 Am. Rep. 490; *Citizens' Gas Co. v. Wakefield*, 161 Mass. 432.

²⁷ *New England Monument Co. v. Johnson*, 144 Pa. 61, 22 Atl. 974.

²⁸ *Hagedorn v. Oliverson*, 2 M. & S. 485; *Routh v. Thompson*, 13 East 274; *Lacena v. Crauford*, 1 Taunt. 325; *Williams v. North China Ins. Co.*, 1 C. P. Div. 757.

²⁹ *Finney v. Fairhaven Insurance Co.*, 5 Metc. (Mass.) 192, 38 Am. Dec. 397; *Oliver v. Mutual Commercial Ins. Co.*, 2 Curtis 277; *Insurance Co. v. Chase*, 5 Wall. (U. S.) 509; *Snow v. Carr*, 61 Ala. 363; *Miltenberger v. Beacom*, 9 Pa. St. 198; *Watkins v. Durand*, 1 Port. (Ala.) 251.

of speculation whether to ratify or not, could be more clearly illustrated. If no loss occurs he may ignore the contract and escape liability for the premium; if a loss happens, he may ratify and enforce the contract. As against the agent he may ratify even after payment.³⁰

The case is exceptional also in the fact that ratification after loss enables the principal to do by ratification what he could not then himself do directly, namely, insure lost property; and a strong effort was made some years ago in the English courts to induce a reconsideration of the cases holding that it may be done, but it was declared that these cases were much too strong and of too long standing to be overruled.³¹

It has been said, however, that the principal's right of ratification is, where the assumed agent was a mere volunteer, subject to the latter's power to surrender and cancel the policy before ratification takes place.³²

And where it was expressly stipulated that a life insurance policy should not take effect until the advance premium thereon should be paid in the lifetime of the person whose life was insured, it was held that a payment of the premium in his lifetime by an unauthorized person could not be ratified by the administrator and beneficiary after his death.³³

—*Defence based on ratification.*—The principal may, of course, base a defence upon his own ratification as well as a cause of action. Thus where an insurance company, whose agent had inserted an unauthorized clause in a policy, had formally ratified the act and undertaken to perform accordingly, it was held that the other party could not afterwards repudiate the transaction on the ground that no contract had really been entered into and recover back the money he had paid upon the policy.³⁴

2. In Tort

The application of the rule in tort cases must necessarily be limited because the cases wherein the principal will seek to enforce rights based upon his ratification of his agent's torts will be very rare. Injuries to rights acquired by ratification may often occur and give rise to action. Thus it has been held that where property acquired for the principal through the unauthorized act of his agent has been

³⁰ *Snow v. Carr*, 61 Ala. 363.

³¹ In *Williams v. North China Ins. Co.*, *supra*.

³² *Stillwell v. Staples*, 19 N. Y. 401.

³³ *Whiting v. Massachusetts Mut. L. Ins. Co.*, 129 Mass. 240, 37 Am. Rep. 317.

³⁴ *Andrews v. Aetna L. Ins. Co.*, 92 N. Y. 596. See also *Cook v. Tullis*, 85 U. S. (18 Wall.) 332.

converted, the principal may ratify the act and sue for the conversion.³⁵ The bringing of the action is in itself, it was held, a sufficient ratification.

3. *Other Acts Creating Rights or Duties*

In addition to the acts resulting strictly in contract or constituting torts, there is a large class of acts upon which rights may be founded or duties imposed and to which the doctrine of ratification may be applicable. Examples may be suggested in such acts as assignments of causes of action, demands, entries, notices, and the like; and in a number of instances difficult questions will be found presented. The case of a notice to quit given by a person acting as agent but without authority, may be used as an illustration. What is the tenant to do? If he vacates and the giving of the notice is not ratified, he will still be liable for the rent. If he remains and the notice may be ratified, he is remaining at his peril. Judge Story in his work on Agency³⁶ undertook to state a rule to govern these cases, saying that "where an act is beneficial to the principal and does not create an immediate right to have some other act or duty performed by the third person, but amounts simply to the assertion of a right on the part of the principal," the rule giving ratification its retroactive effect is applicable; but when the act done by the unauthorized person "would, if authorized, create a right to have some act or duty performed by a third person, so as to subject him to damages or losses for the non-performance of that act or duty, or would defeat a right or an estate already vested in the latter, there the subsequent ratification or adoption of the unauthorized act by the principal will not give validity to it so as to bind such third person to the consequences." This rule has been criticised³⁷ and can not be regarded as entirely accurate, but it serves to illustrate some of the ideas which must determine the matter. A number of cases will throw further light upon it.

—*Actions—Ratification of unauthorized bringing.*—The unauthorized bringing of an action may, it is held, be ratified by the person in whose name and on whose account it was brought so as to sustain the action from the beginning.³⁸

—*Assignment of cause of action.*—So it has been held that the unauthorized assignment of a cause of action may be ratified

³⁵ *Warder, etc., Co. v. Cuthbert*, 99 Iowa 681, 68 N. W. 917. See also *Smith v. Savin*, 69 Hun (N. Y.) 311.

³⁶ *Story on Agency*, §§ 246, 247.

³⁷ *Farmers' Loan & Tr. Co. v. Memphis, etc., Co.*, 83 Fed. 870; *Wright on Principal and Agent*, p. 75.

³⁸ *Ancona v. Marks*, 7 H. & N. 686; *Day Land & Cattle Co. v. State*, 68 Tex. 526.

after the commencement of the action so as to sustain it,³⁹ but other courts have denied that the defendant can, by ratification, be thus deprived of his defense that the plaintiff had not, when he sued, a complete cause of action,⁴⁰ and the weight of authority seems to be with them.

———*Attachment affidavit and bond.*—In reliance upon the rule suggested by Judge Story, it has been held that authority for the making of the affidavit and bond in attachment must be perfect at the time the action is begun, and consequently an unauthorized making could not be made good by subsequent ratification;⁴¹ but the contrary has also been held or assumed in several cases.⁴²

———*Declaration of maturity to accelerate action.*—So, where a bond and mortgage provided that in case of certain defaults the whole amount unpaid might be declared to be immediately due, it was held that such a declaration made without authority might, after suit brought in reliance upon it, be ratified with retroactive effect;⁴³ but it may be difficult to reconcile this conclusion with certain of those referred to in the preceding sections.

———*Demand of payment, delivery, etc.*—On the other hand, a demand of payment, delivery of goods, and the like, must, it is held, in order to put the other party in default so as to sustain an action against him, be made by a person who has then authority to make the demand so that it may safely be complied with, and such a demand made by an unauthorized person will not sustain an action. A ratification of it by adopting it and basing an action upon it, is not enough.⁴⁴

———*Notice of abandonment.*—So it was held that notice of abandonment under a marine policy could be made only by some one then authorized so that it might safely be relied upon, and it was said that a subsequent ratification would not avail.⁴⁵

³⁹ *Ancona v. Marks, supra*; *Persons v. McKibben*, 5 Ind. 261, 61 Am. Dec. 88; *Marr v. Plummer*, 3 Greenl. (Me.) 73.

⁴⁰ *Wittenbrock v. Belmer*, 57 Cal. 12; *Read v. Buffum*, 79 Cal. 77, 12 Am. St. Rep. 131; *Dingley v. McDonald*, 124 Cal. 682, 57 Pac. 574; *Graham v. Williams*, 114 Ga. 716, 40 S. E. 790. See also *Fiske v. Holmes*, 41 Me. 441; *Powell v. Henry*, 96 Ala. 412, 11 So. 311.

⁴¹ *Grove v. Harvey*, 12 Rob. (La.) 221.

⁴² *Bank v. Conrey*, 28 Miss. 667; *Mandel v. Peet*, 18 Ark. 236; *Hutchinson v. Smith*, 86 Mich. 145, 48 N. W. 1090; *Palmer v. Seligman*, 77 Mich. 305.

⁴³ *Farmers' Loan & Trust Co. v. Memphis, etc., R. Co.*, (C. C.) 83 Fed. Rep. 870.

⁴⁴ *Solomons v. Dawes*, 1 Esp. 83; *Coore v. Callaway*, 1 Esp. 115; *Coles v. Bell*, 1 Camp. 478, note. See also *Freeman v. Boynton*, 7 Mass. 483. In *Seguin v. Peterson*, 45 Vt. 255, 12 Am. Rep. 194, a demand by the wife for the return of money spent by her boy for pipes and tobacco was held to sustain a subsequent action by the father, though the court attached emphasis to the peculiar relation of the mother and to the fact that defendant had recognized her authority by returning a part.

⁴⁵ Per CROMPTON, J., in *Jardine v. Leathley*, 3 B. & S. 700.

———*Notice of dishonor.*—Notice of dishonor, also, must, it is held, be given by an authorized person; and the subsequent adoption of a notice given by an unauthorized person is not sufficient.⁴⁶

———*Notice to quit.*—The requirement of present authority is applied also in the case of a notice to quit, and a subsequent assent on the part of a landlord will not, it is held, establish by relation an unauthorized notice to quit given by another as his agent. The tenant must act upon the notice at the time it is given, and the notice must, therefore, at that time, be such as he may act upon with security; otherwise the tenant would be subjected to the injustice of being left in doubt as to his action until the ratification or disavowal of the principal.⁴⁷

———*Options.*—Again, where an option is given to be exercised within a particular period, the other party is entitled to know absolutely within that period whether it is to be accepted, and a notice of acceptance given within the time fixed, but by a person who has no authority cannot, it is held, be made good by ratification after the time has expired.⁴⁸

———*Stoppage in transit.*—And so, it has been decided, a notice of stoppage in transit given by a person without authority during the transit, cannot, after the transit is ended, be made good by ratification.⁴⁹

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⁴⁶ *East v. Smith*, 16 L. J. Q. B. 292; *Brower v. Wooten*, 4 N. Car. T. R. 70, 7 Am. Dec. 692.

⁴⁷ *Pickard v. Perley*, 45 N. H. 188, 86 Am. Dec. 153; *Brahn v. Jersey City Forge Co.*, 38 N. J. L., 74; *McCroskey v. Hamilton*, 108 Ga. 640, 34 S. E. 111; *Right v. Cuttrell*, 5 East, 491; *Doe v. Walters*, 10 B. & C. 625; *Doe v. Goldwin*, 2 Q. B. 143.

Contra, *Roe v. Pierce*, 2 Camp. 96; *Goodlittle v. Woodward*, 3 B. & Ald. 689.

⁴⁸ *Holland v. King*, 6 C. B. 727; *Dibbins v. Dibbins* [1896] 2 Ch. 348, (distinguishing *Bolton Partners v. Lambert*).

⁴⁹ *Bird v. Brown*, 4 Exch. 786.