exists, is certainly questionable. To say that the act of the servant was lawful because committed against his wife would be to pervert the meaning and effect of the disability. The chief bone of contention, it seems, has been whether the liability of the master is primary or secondary, derivative or non-derivative. Less emphasis should be placed on this phase of the controversy, and more careful thought given to the broad and general principles behind the employer's liability. He has been held responsible because it has been found desirable that those injuries incidental to carrying on an enterprise be made a part of the cost of operation. Tiffany, Agency, p. 100, 2nd Ed. (1924). Are there any practical reasons that necessitate a different result here? It is believed not. It may be argued that the servant in driving for the defendant, was engaged in the project of earning a living for himself and his wife, and that the project should bear its costs of operation. But such a rule, if carried to its logical conclusion, would disable any one dependent for support on the negligent employee from suing the employer for injuries. If we can apply the analogy of a contract and say that the transaction was between the injured party and the principal, thus regarding the agent husband as a mere conduit, it is difficult to see why a personal disability existing between husband and wife (inter se) should be allowed to defeat the wife's right to recover.

WALTER LEAR GORDON, JR.

LIABILITY OF AGENT ON SIGNATURE MADE IN BEHALF OF CORPORATION — NEGOTIABLE INSTRUMENTS

The plaintiff company held two promissory notes, reading, "I, we, or either of us, promise to pay," etc., and signed, "Central Freightways, Inc., John L. Cannon, Jr., Treas., Lyman H. Treadway, V. P." The plaintiff brought an action on these notes against the agents whose signatures appeared thereon. The defendants demurred to the petition on the ground that it did not state a cause of action against the agents. The demurrer was sustained and plaintiff appealed. Held, that, under Section 8125, Ohio General Code, the individual signers are not personally liable. Weygandt, C. J., dissented. *Cannon, Jr.* v. *Miller Rubber Co.*, 128 Ohio St. 72, 190 N.E. 210, 39 O.L.R. 656, 40 Bull. 145 (1934).

The statute above referred to, being identical with Section 20 of the Uniform Negotiable Instruments Law, provides that "When the instrument contains or a person adds to his signature words indicating

that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized. But the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal does not exempt him from personal liability."

Where the officers of the corporation have ostensibly signed in a representative capacity within the limits of their authority for a disclosed principal, the instrument is on its face the obligation of the corporation. *Aungst* v. *Creque*, 72 Ohio St. 551, 74 N.E. 1073 (1905); *Jump* v. *Sparling*, 218 Mass. 324, 105 N.E. 878 (1914); *New England Electric Co.* v. *Shook*, 27 Colo. App. 30, 145 Pac. 1002 (1915); *Consumers' Twine & Mach. Co.* v. *Mt. Pleasant Thermo Tank Co.*, 196 Iowa 64, 194 N.W. 290 (1923); *Kilpatrick* v. *Plummer*, 145 Okla. 117, 291 Pac. 501 (1930); *Hughes* v. *Washington Finance Corp.*, 218 Ky. 729, 292 S.W. 335 (1927); *Wright* v. *Drury Petroleum Corp.*, 229 Mich. 542, 201 N.W. 484 (1924); *Mathis* v. *Liberty Straw Spreader Co.*, 238 Ill. App. 467 (1925). Under similar circumstances an earlier Ohio case reached the opposite conclusion. *McKisson* v. *Thomas*, 18 O.C.C.N.S. 443 (1911). Accord: *Briel* v. *Exchange National Bank*, 172 Ala. 475, 55 So. 808 (1911); *Daniel* v. *Glidden*, 38 Wash. 556, 80 Pac. 811 (1905). The court in the principal case through dictum approved the opinion of Chief Justice Cardozo in the case of *New Georgia National Bank* v. *Lippman*, 249 N.Y. 307, 164 N.E. 108, 60 A.L.R. 1344 (1928), in which it was held that it logically follows from the statute that if the officers of the corporation act without being duly authorized, they are individually liable. *Pain* v. *Holtcamp*, 10 F. (2d) 443 (8th. C.C.A., 1926); *Austin, Nichols Co.* v. *Gross*, 98 Conn. 782, 120 Atl. 596 (1923); *Durham* v. *Blood*, 207 Mass. 512, 93 N.E. 804 (1911). If the principal is not disclosed on the face of the instrument, it is the personal obligation of the officers. *Watt* v. *German Sav. Bank*, 183 Iowa 346, 165 N.W. 897 (1917); *Baird* v. *Publishers' National Service Bureau*, 199 N.W. 757 (N.D., 1924); *Sutherland State Bank* v. *Dial*, 103 Neb. 136, 170 N.W. 666 (1918). Numerous cases have held the officers liable if the instrument failed to show the representative capacity of the individual signers. *Toon* v. *McGaw*, 74 Wash. 335, 133 Pac. 469, L.R.A. 1915A (1913); *Belmont Dairy Co.* v. *Thrasher*, 124 Md. 320, 92 Atl. 766 (1914); *Rudolph Wurlitzer Co.* v. *Rossman*, 196 Mo. App. 78, 190 S.W. 636 (1916); *Farmers' State Bank of Newport* v. *Lamon*, 132 Wash. 369, 231 Pac. 952, 42 A.L.R. 1072 (1925). But where the officers have apparently signed in behalf of the corporation, it is presumed that they

acted with authority, and the petition does not state a cause of action against them in the absence of allegations setting forth facts to the effect that they acted without authority. *Kennedy & Parsons* v. *Lander Dairy Co.*, 36 Wyo. 58, 252 Pac. 1036 (1924); *Eisinger* v. *E. J. Murphy Co.*, 48 App. D.C. 476, 52 App. D.C. 197, 285 F. 921 (1922); *Jump* v. *Sparling*, supra. The view thus adopted by the Supreme Court of Ohio is supported by the great weight of authority in this country. Brannan's Negotiable Instruments Law, 256 (5th Ed., 1932).

The court further held that the words, "I, we, or either of us, promise," etc., do not change the import of the instrument so as to make the agents personally liable. *Williams* v. *Harris*, 198 Ill. 501, 64 N.E. 988 (1902); *New England Electric Co.* v. *Shook*, supra; *Kilpatrick* v. *Plummer*, supra. The dissenting opinion, which was based entirely on this point, took the opposite view, holding that these words, appearing in four vital places in the body of the note, undoubtedly imposed personal liability on the agents. The same position was taken in the case of *Huron County Banking Co.* v. *The Oberlin Co.*, 19 O.C.C.N.S. 151 (1911). Where the intention to bind the corporation is as aparent as it is in the principal case, it would seem that the view taken by the majority of the court is the better one, being more in accord with modern principles and authority. The fact that the agents did not place such a word as "by" or "per" before their signatures was also held to be immaterial. Accord: *Aungst* v. *Creque*, supra. Contra: *Briel* v. *Exchange National Bank*, supra.

A discussion and a list of decisions concerning the law in Ohio on this question before the enactment of the present statute are contained in 1 O.Jur. 718. As to the admissibility of parol evidence to show who was actually intended to be bound by the instrument see 1 O.Jur. 722; Brannan's Negotiable Instruments Law, 263 (5th Ed., 1932).

ARCH. R. HICKS, JR.

RESPONDEAT SUPERIOR — TORT LIABILITY OF PRINCIPAL FOR NEGLIGENCE OF AGENT HIRED FOR SINGLE UNDERTAKING

The defendant, an undertaker, contracted to supply transportation for a funeral party. Plaintiff, one of the party, was injured because of the negligent operation of the car by the driver. The defendant hired the car and the driver from a livery service to augment his facilities for handling the funeral. The trial court directed a verdict for the defendant. The Court of Appeals affirmed the trial court. Held, the jury should have been asked to determine whether the negligent driver was