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[L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, JJ.]

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LIOPETRI  
TRANSPORT Co.,  
v.  
LOUCAS  
CONSTANTINOU

LIOPETRI TRANSPORT CO.,  
*Appellant-Plaintiff,*  
v.  
LOUCAS CONSTANTINOU,  
*Respondent-Defendant.*

(Civil Appeal No. 4960).

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*Principal and agent—Agent's authority—Actual authority—Ostensible or apparent authority—Principal's liability for contracts entered into by agent—Law applicable—See further infra.*

*Agency—Actual authority—Ostensible or apparent authority—See supra ; see also infra.*

*Company—Shareholder acting as agent—Ostensible authority—Transport company—Shareholders, who were also drivers of the company's buses, collecting fares against receipt to the knowledge of the Company—Held that such shareholders had ostensible authority to act on behalf of the Company—And that, therefore, the payments made to them were payments in full discharge of the payer's (respondent's) debt to the Company.*

*Ostensible or apparent authority—See supra.*

The facts of this case sufficiently appear in the judgment of the Court whereby they dismissed the Company's appeal, holding that, inasmuch as its shareholders, who were also drivers of its buses, were collecting fares against receipt to the knowledge of the Company, they had, thus, ostensible authority to act on its behalf and that, consequently, the payments so made by the respondent were payments in full discharge of his debt to the appellant Company.

Cases referred to :

*Hely-Hutchinson v. Brayhead, Ltd. and Another* [1967] 3 All E.R. 98 ;

*Freeman and Lockyer v. Buckhurst Park Properties (Mangal) Ltd.* [1964] 1 All E.R. 630.

## Appeal.

Appeal by plaintiffs against the judgment of the District Court of Famagusta (S. Demetriou, D.J.) dated the 15th January, 1971, (Action No. 1928/70) whereby plaintiff's claim for the sum of £10.500 mils, being fares for the transport of defendant's son from Liopetri to Famagusta for a period of six months, was dismissed.

*Ch. Mylonas*, for the appellant.

*N. J. Antoniou*, for the respondent.

The judgment of the Court was delivered by :--

L. LOIZOU, J. : This appeal concerns a sum of £10.500 mils.

The appellants are a transport company and it is common ground that the respondent became indebted to them for the sum of £10.500 mils being fares for the transport of his son, who was a student at Famagusta, from the village of Liopetri to Famagusta for a period of six months—from mid-December, 1969 to mid-June, 1970—at the rate of £1.750 mils per month.

The respondent's allegation, which the trial Court accepted, was that he paid the said amount against receipt to three of the shareholders of the company who were also drivers of the company's buses. This allegation has been supported by one of these three drivers who gave evidence before the Court. The contention of the appellants is that the three shareholders-drivers who received the money and signed the receipt were not authorised to collect money on behalf of the company. The trial Court found as a fact that these three persons had authority to and did in fact to the knowledge of both the plaintiff company and the defendant collect money on behalf of the company ; and that the payment made to them was a good payment and a full discharge of respondent's liability to the company.

The appellants base their appeal mainly on two grounds. Firstly, on the question of the authority of the three employees to collect the money on behalf of the company ; and secondly on wrongful admission of evidence.

We think that it is convenient to deal with the second ground first. In the course of the evidence of one of the three drivers of the company who had collected

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the sum of £10.500 mils from the respondent and issued the receipt on behalf of the company learned counsel for the appellants objected to a question put to the witness whether he used to collect fares from passengers. The objection was based on the ground that there was no such averment in the pleadings. The trial Judge overruled the objection, quite rightly in our view, for although the drafting of the defence may leave much to be desired it is reasonably clear from paragraph 1 thereof and this becomes even clearer from paragraph 4 of the reply that the matter objected to was properly an issue before the Court. We, therefore, find no substance in this ground.

Coming now to the first ground, the contention of the appellants is that the trial Court was wrong in coming to the conclusion that, on the evidence, it could be held that the three shareholders-drivers who collected the money had authority to do so and give a valid discharge. The case for the respondent, on the other hand, is that the payment against receipt to the three shareholders-drivers was a good payment in settlement of his debt. Learned counsel cited a number of authorities on the question of a principal's liability for contracts entered into by an agent in support of their respective contentions. But the findings of fact in this case, which have not been seriously challenged, make it unnecessary for us to consider at length the law on the authority of an agent.

One of the more recent cases on the subject is the case of *Hely-Hutchinson v. Brayhead, Ltd. and Another* [1967] 3 All E.R. p. 98, in which the earlier case of *Freeman and Lockyer v. Buckhurst Park Properties (Mangal) Ltd.* [1964] 1 All E.R. p. 630 is cited with approval and followed.

Lord Denning, M.R., in the course of his judgment in the first case after referring to the *Freeman* case had this to say on the question of an agent's authority :

“ It is there shown that actual authority may be express or implied. It is express when it is given by express words, such as when a Board of Directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied,

is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.

Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the actual authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation he may himself do the 'holding-out'. Thus, if he orders goods worth £1,000 and signs himself 'Managing Director for and on behalf of the company', the company is bound to the other party who does not know of the £500 limitation . . . . ."

On the question of a master's liability to third parties for contracts made by a servant paragraph 1010 of Halsbury's Laws of England, 3rd ed., vol. 25 at p. 531 under the heading "Apparent Scope of Authority" reads as follows :—

"Where the servant, whilst acting in the ordinary course of his employment on his master's behalf, makes a contract which falls within the apparent scope of his authority, the master cannot escape liability on the ground that he did not authorise the making of the contract, nor even on the ground that he forbade his servant to make it. All persons dealing with the servant are entitled to assume, unless they have notice to the contrary, that he possesses the authority which it is usual for a servant in his position to possess, and his master, by placing him in that position, impliedly holds him out as having such

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authority. Where it is sought upon this ground to fix the master with liability upon his servant's contract it is necessary to take into consideration certain matters, namely the nature of the contract, the circumstances of the servant's employment, and the business of the master."

As stated earlier on, the learned trial Judge in the present case found as a fact that the three shareholders-drivers did in fact, to the knowledge of the company and the respondent, collect money from customers on behalf of the company. In fact the only witness called by the plaintiff, who was the company's cashier, stated in evidence that although the drivers of the buses had only authority to collect fares from passengers they did actually on occasions collect money due to the company for season tickets but that on such occasions he rebuked them and told them not to do it again.

In the light of the above principles and findings of fact we are not prepared to agree with the contention on the part of the appellants and we are of the view that the three shareholders-drivers had ostensible authority to act on behalf of the appellant company and that, consequently, the money undisputedly paid by the respondent was a payment in full discharge of his debt to the company.

In the result this appeal fails and is dismissed with costs.

*Appeal dismissed with costs.*