

FIRST NATIONAL BANK *v.* GODBEY & SONS.

Opinion delivered June 16, 1930.

1. **BROKERS—EVIDENCE.**—Evidence *held* to justify a finding that a broker employed by plaintiffs had no authority to sell cotton belonging to plaintiffs.
2. **PRINCIPAL AND AGENT—APPARENT AUTHORITY.**—Apparent authority is such authority as the principal knowingly permits the agent to assume or which he holds the agent out as possessing.
3. **ESTOPPEL—SILENCE.**—While mere silence may operate as an estoppel in equity, there must be both the opportunity and the duty to speak, and the action of the party asserting the estoppel must be the natural result of the silence and the party maintaining the silence must have been in a situation to know that some one was relying thereon to his injury.

Appeal from Conway Chancery Court; *W. E. Atkinson*, Chancellor; affirmed.

STATEMENT OF FACTS.

W. N. Godbey & Sons, a firm composed of W. N. Godbey and his sons, Buck Godbey and Wylie Godbey, instituted an action in the circuit court against J. A. Patterson, First National Bank of Morrilton and Federal Compress & Warehouse Company, to recover the possession of 22 bales of cotton or its value in the sum of \$2,139.79.

The First National Bank of Morrilton filed an answer in which it claimed title to the cotton by purchase from J. A. Patterson, and pleaded equitable estoppel against the rights of plaintiffs to recover damages against it. This defendant also moved to transfer the case to the chancery court, which was done.

During the pendency of the action, an agreement was had between the plaintiffs and the bank whereby the lat-

ter was allowed to sell the cotton and substitute the proceeds of sale for the cotton involved in the action. It was agreed that, if upon the trial the plaintiffs were allowed to recover the cotton from the bank, the bank would pay over the proceeds of the sale of cotton to the plaintiffs. It was further stipulated that the Federal Compress & Warehouse Company should be released from any further liability in the action upon turning over to the bank or any purchaser from it said 22 bales of cotton, which was done.

According to the testimony of Wylie Godbey, he had known J. A. Patterson for about 15 years; and in September, 1928, Patterson owed the firm of W. N. Godbey & Sons, of which Wylie Godbey was a member, between \$150 and \$200. Wylie Godbey entered into a contract with J. A. Patterson to buy cotton for his firm during the cotton season commencing in the fall of 1928. The agreement was that, if Patterson could make anything above the price of the cotton, he was to have all the profits. Patterson was given a book with fifty leaves in it to be used in buying cotton. The book contained the letterhead, "W. N. Godbey & Sons, Dealers in Drygoods, Groceries and Hardware." Patterson would write on one of these leaves containing the letterhead of Godbey & Sons the price of the cotton bought and the number of bales purchased, and give it to the owner of the cotton. He would keep a duplicate of the transaction, and the owner of the cotton would carry the original to the store of Godbey & Sons and receive payment for the cotton. Wylie Godbey told the owner of the cotton yard that his firm was going to have Patterson buy cotton for it, and that Patterson had agreed to pay the rent for storing the cotton purchased in the cotton yard. Godbey told the owner of the cotton yard that, if Patterson did not pay the rent, he would pay it. Under the contract, Patterson purchased for the firm 134 bales of cotton. This cotton was sold at different times by Patterson under the supervision of Wylie Godbey for the firm. On the 23d day of

October, 1928, there were 22 bales of cotton on the yard, which cost 19 20/100 cents per pound. Godbey stopped Patterson from buying several times because he was paying too much for cotton. Patterson was not required to put up any margin on the cotton purchased by him for the firm. At the time the 22 bales were purchased by Patterson for the firm, Patterson owed the firm \$2,130.15, which was the purchase price of the cotton. When witness found that Patterson had carried the 22 bales of cotton to Morrilton without the permission of the firm, he sent his brother, Buck Godbey, down there to see about it. He told his brother to get the money for the cotton from Patterson. Buck Godbey did not get either the money or the cotton from Patterson, and on the next day witness went down to see about it. Patterson told Wylie Godbey that the cotton was at Morrilton in the compress company's yards, and that he had not sold the cotton. Witness told him that he wanted the compress receipts. Patterson replied that they were in a bank, but refused to tell him which one of the banks at Morrilton the receipts were in. Patterson told Wylie Godbey that he was not going to get the compress receipts. Patterson never told Godbey that he had borrowed any money from the bank on the compress receipts. He just stated that he had not sold the cotton.

Buck Godbey corroborated the testimony of his brother, Wylie Godbey, about the employment of Patterson to buy cotton for the firm. Patterson would sell the cotton in lots as he bought it with the permission of some member of the firm, generally Wylie Godbey. As soon as they found out that Patterson had carried the 22 bales of cotton to Morrilton without their consent, Buck Godbey went down there to see about it. He did not see Patterson trying to sell the cotton in Morrilton. He asked Patterson if he had sold the cotton, and Patterson replied that he had not sold it. Before Buck Godbey left Morrilton, he demanded the cotton compress receipts from Patterson, and Patterson refused to let him have them.

Two other employees of the firm corroborated the testimony of Wylie Godbey as to the fact that Patterson was employed by the firm to buy cotton for it and was not buying the cotton on his own account. Two other witnesses testified that Patterson admitted to them at Morrilton that the 22 bales of cotton belonged to the firm of Godbey & Sons.

According to the testimony of J. A. Patterson he did not agree to purchase cotton for Godbey & Sons but purchased it for himself. They merely furnished him money with which to buy the cotton. He testified in positive terms that the cotton belonged to him, and that he had a right to sell it. The record also shows that Patterson paid the rent for the storage of the cotton in the cotton yard at Atkins.

According to the testimony of the vice president of the bank, he asked Patterson who owned the cotton, and Patterson assured him that it was his cotton. He produced the compress receipts for the cotton made out in his own name and asked to borrow \$1,500 in cash on them. The vice president of the bank became satisfied from the representations made by Patterson that the cotton belonged to him and let him have \$1,500 in currency.

Other facts will be stated or referred to in the opinion.

The chancellor found the issues in favor of the plaintiffs, and it was adjudged and decreed that they recover from the bank as the value of the cotton the sum of \$1,515.92, together with interest at six per cent. from November 24, 1928, until paid. The First National Bank has appealed.

W. P. Strait, for appellant.

Robert Bailey and *E. A. Williams*, for appellee.

HART, C. J., (after stating the facts). The chancellor was justified in finding that the 22 bales of cotton in controversy belonged to the plaintiffs. It is true that the testimony is contradictory on this point, but we think that the chancellor was warranted in finding that a preponder-

ance of the evidence shows that the cotton belonged to the plaintiffs. Two employees of the firm and two of the members of the firm testified to that effect. It is true that their testimony was contradicted by that of Patterson, and by the further fact that the space in the cotton yard where the cotton was stored as it was purchased was marked in the name of Patterson, but the Godbeyes testified that this was done for the sake of convenience, because the members of the firm were also buying cotton, and the cotton purchased by Patterson was stored at a place in the cotton yard in his name in order to distinguish it from the other cotton purchased by the plaintiffs. In all instances the plaintiffs furnished the money which paid for the cotton. Patterson did not handle any of the money. He would give the owners of the cotton tickets showing the price he had agreed to pay and the number of pounds bought, and the seller would carry this ticket to the store of Godbey & Sons, and the money would be paid there by a member of the firm.

It is next insisted that, even if the cotton belonged to the plaintiffs, that Patterson had a right to sell it. The evidence showed that some eleven other sales of cotton had been made by Patterson, but it also showed that Wylie Godbey supervised the selling of the cotton and received the proceeds of sale. Patterson was allowed to actually handle the cotton in the sale because he was to receive as his commission all profits derived from the purchase and sale of the cotton. Wylie and Buck Godbey both denied in positive terms that Patterson had any right to sell the cotton without the consent or supervision of some member of the firm. They are corroborated by the attendant circumstances. The cotton was purchased and stored in a cotton yard at Atkins. Patterson took the cotton without the knowledge of any member of the firm of Godbey & Sons and hauled it to Morrilton and deposited it in a compress warehouse and received receipts therefor. He carried these compress receipts to a bank and borrowed \$1,500 on them. The bank did not

see the cotton at all. It was not necessary for Patterson to have hauled the cotton itself to Morrilton in order to borrow the money. At the time he hauled the cotton there, he owed the plaintiffs' firm over \$2,000 and received the amount borrowed and refused to pay the plaintiffs any part of the amount which he owed them. The attendant circumstances justified the chancellor in finding that he had no actual authority to sell the cotton.

It is next insisted that he had apparent authority to sell the cotton. Apparent authority in any case is such authority as the principal knowingly permits the agent to assume or which he holds the agent out as possessing. It is such authority as a reasonably prudent person would naturally suppose the agent to possess from the attendant circumstances. *Ozark Mutual Life Assn. v. Dillard*, 169 Ark. 136; and *American Southern Trust Co. v. McKee*, 173 Ark. 147.

In the present case, it cannot be said that the plaintiffs knowingly held Patterson out as having authority to sell the cotton which he purchased for them. It is true that he had actually sold the cotton, but the sale had been made under the supervision of Wylie Godbey, and the proceeds of sale were paid to the plaintiffs because they had furnished the money for the purchase of the cotton. A preponderance of the evidence shows that the plaintiffs did not hold out Patterson as having authority to do anything except to buy cotton for the firm, and it is well settled that one dealing with an agent without inquiring of the principal his authority does so at his peril. There is no testimony in the record tending to show that the bank knew any facts or circumstances which would lead it to believe that the plaintiffs held out Patterson as having authority to sell cotton for them. On the other hand, the officer of the bank who conducted the transaction for it with Patterson merely asked the latter if the cotton belonged to him. He had the compress warehouse receipts for it, and they supposed from that fact and from his statement that the cotton belonged to him and that

he had the right to sell or pledge it, and they did not lend him the money on it under any sort of belief that he was acting for the plaintiffs or anyone else but himself. It is a fundamental principle of law that a principal can only be bound by the acts of his agent coming within the real or apparent scope of his authority. *Ozark-Badger Co. v. Roberts*, 171 Ark. 1105.

It is next contended that the plaintiffs are estopped from recovering from the bank by the circumstances in the case. We do not think that it can be said in any sense that the plaintiffs are prevented by equitable estoppel from asserting their rights as against the bank as the purchasers of the cotton in controversy. The plaintiffs did nothing whatever to mislead the bank, and did not in any sense by word or conduct induce it to purchase or lend money on the 22 bales of cotton in question. While mere silence may operate as an estoppel in equity, in order to constitute such silence as an estoppel, there must be both the opportunity and the duty to speak, and the action of the person asserting the estoppel must be the natural result of the silence, and the party maintaining the silence must have been in a situation to know that some one was relying thereon to his injury. *Baker-Matthews Lumber Co. v. Bank of Lepanto*, 170 Ark. 1146; *American Southern Trust Co. v. McKee*, 173 Ark. 147; and *Merchants' & Planters' Bank v. Citizen's Bank of Grady*, 175 Ark. 417.

The whole principle of equitable estoppel is that when a man has done an act or said a thing and another person, who had a right to do so, has relied on that act or word and will be injured if the former can repudiate the act or recall the word, it shall not be done. In the case at bar, the plaintiffs did nothing that would induce the bank to lend the money to Patterson on the faith that he had the right to handle the cotton for them. In fact they were wholly ignorant that he had done so. A member of the firm had gone to Morrilton to see about the cotton as soon as the plaintiffs learned that Patterson

had hauled it there. Patterson stated he had not sold the cotton but had merely left the compress receipts in a bank. That showed that he had already pledged the compress receipts to the bank, and had received the loan of \$1,500 before the plaintiffs knew anything about it. Indeed, the officer of the bank who acted for it does not claim that he was in possession of any facts which would have induced him to believe that Patterson had authority to act for the plaintiffs or any one else in the matter. The bank lent Patterson the money on the theory that the cotton belonged to him. They relied entirely on his statement about the ownership of the cotton, and on the fact that he had the compress receipts in his possession. The fact that he had the compress receipts in his possession added nothing to the transaction under the circumstances of the case. He had hauled the cotton to Morrilton from Atkins without the permission of the owners of it, and had secured the compress receipts on the credibility that he owned the cotton. He had no authority to deliver these receipts to the bank unless the cotton belonged to him or unless he had authority from the owners of it to deliver the receipts to the bank, and pledge them for a loan.

Therefore the decree will be affirmed.
