

Signing Negotiable Instruments in a Representative Capacity and the Parol Evidence Rule

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Commentary

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SIGNING NEGOTIABLE INSTRUMENTS IN A REPRESENTATIVE CAPACITY AND THE PAROL EVIDENCE RULE It is correct to describe procuration as a specific form of agency, viz: "the art of constituting another one's attorney in fact".¹ A signature by procuration² indicates a limited authority in the signer and the legal significance of such a signature, at least as far as negotiable instruments are concerned, is covered by s. 51 of the *Bills of Exchange Act*.³

This article will deal with the problem created by the absence of the words "per pro" or their equivalent to a signature. In these cases the signor relies on other facts or circumstances surrounding his signature to indicate that he did not intend to sign the document in his personal capacity. The examination to follow will be limited to documents caught by the *Bills of Exchange Act*⁴ which have been signed by an employee of a *limited company* who has at the relevant time the authority to negotiate such an instrument. The general principles which will emerge are applicable to documents outside the *Bills of Exchange Act*⁵ as well. S. 52 is itself a statutory embodiment of the common law which applies to all written contracts.

The problem is highlighted in negotiable instruments by the effect of s. 131 of the Act. S. 131 excludes from liability on any negotiable instrument anyone who has not signed it as a drawer, endorser or acceptor, while in the case of other contracts, "both principal and agent may be liable on one signature."⁶ Hence it is crucial to determine in the case of negotiable instruments whether a signature is that of the principal or that of the agent for normally⁷ only one may be liable.

The problem is one of frequent occurrence because of the nature of a company, which must necessarily act through the medium of agents or servants. Thus, when a company becomes insolvent, the receiver of a cheque or promissory note will try to establish the liability of the agent or servant who signed the instrument rather than wait his turn along with the other creditors of the company.

Sec. 52(1) of the *Bills of Exchange Act*⁸ states that:

Where a person signs a bill as drawer, endorser or acceptor, and adds words to his signature indicating that he signs it for or on behalf of a

¹ Black's Legal Dictionary, 4th ed. 1372.

² Some examples of such a signature are:

A per pro P

A by procuration of P

A pp. P.

For a discussion of the effect of the various forms of such a signature see 2 O.H.L.J. (1960-61) 102.

³ R.S.C. 1952 c. 16, s. 51.

⁴ See; *supra*, footnote 3.

⁵ See; *supra*, footnote 3.

⁶ Falconbridge, *Banking and Bills of Exchange* (1956) 6 ed. at p. 591.

⁷ There may be an exception in "*undisclosed principal*" cases but I will deal with this later.

⁸ See; *supra*, footnote 3.

principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent or as filling a representative capacity, does not exempt him from personal liability.

The question which this section necessarily raises is simply whether the signor of the document has sufficiently indicated on its face that he signs as an agent of the company, or whether he makes himself personally liable. S. 52(1) states that in determining this question "*the construction most favourable to the validity of the instrument shall be adopted.*"⁹

We can only speculate that because businessmen must prefer to settle these matters among themselves in order to expedite the mechanics of everyday commercial transactions the courts are spared the arduous task of doing it for them in multitudinous civil actions. The businessman who receives a negotiable instrument interprets it with regard to the usage and custom of the trade and takes into account all the pertinent circumstances surrounding the instrument. In result, the receiver seldom has any doubt who is intended to be liable on the instrument. On the other hand, the court, except in the unusual case, determines the intention of the parties solely on the basis of what is within the four corners of the document. It will not consider any of the available extrinsic evidence to help it determine the true intention of the parties.

As Lord Denman said:

If there be a contract which has been reduced to writing, verbal evidence is not allowed to be given of what passed between the parties, either before the written instrument was made or during the time that it was in a state of preparation, so as to add to or subtract from, or, in any manner to vary or qualify the written contract.¹⁰

This rule, known as the 'parol evidence' rule, covers any extrinsic evidence, whether parol or real, and applies equally to all written contracts. In practice, the strictness of this rule is evaded in situations which may be considered as exceptions to the general rule¹¹ or simply as cases falling outside the general rule.¹² Extrinsic evidence may be admissible to show a condition precedent to the existence of the contract¹³ to show fraud,¹⁴ illegality, misrepresentation,¹⁵ mistake¹⁶ or duress, etc. Although extrinsic evidence cannot be admitted to vary or contradict the written agreement it is admissible in some circumstances to explain it.¹⁷ This general rule as stated by Tindal C.J. in *Shore v. Wilson*¹⁸ is that extrinsic evidence of the true intentions of

⁹ See; *supra*, footnote 3.

¹⁰ *Goss v. Lord Nugent*, (1833) 5 B. & Ad. 58 at p. 64.

¹¹ Cross "*Evidence*" (1958) p. 476.

¹² *Norton on Deeds* 2nd ed. p. 140.

¹³ *Lindley v. Lacey* (1864) 17 C.B. (N.S.) 578.

¹⁴ *Dobell v. Stevens* (1825) 3 B. & C. 623.

¹⁵ *Pennsylvania Shipping Co. v. Compagnie Nationale de Navigation* (1936) 155 L.T. 294.

¹⁶ *Raffles v. Wichelhaus* (1864) 2 H. & C. 906.

¹⁷ *Chitty on Contracts*, Vol. 1, 22 ed. at 640.

¹⁸ (1842) Cl. & Fin. 355 at p. 365.

the parties is admissible when the document itself is ambiguous to the true expression of those intentions.

Ambiguity is frequently pleaded in the type of case which concerns us here. For the most part, when ambiguity is found, it permits the signor to convince the court he signed in a representative capacity and thus avoid personal liability. In determining whether or not ambiguity surrounds the intentions of the parties, the court will peruse the entire instrument for any patent inconsistencies in either the body of the document or the signature.¹⁹ In the case of negotiable instruments the body of the document is comparatively concise and often of a standard form. It is precisely because the negotiable instrument is so concise that the court will most carefully scrutinize every possible aspect of the signature to help determine the intention of the parties. Is the cheque personalized by the company? Is it typed or written? Is the company's name stamped or printed beside the signature? Most important, what qualifying words, if any, accompany the written signature? All these factors are taken into consideration in helping the court determine if the signature is merely "*descriptio personae*"²⁰ or a signature for or on behalf of a principal.

In two cases²¹ recently decided by the Ontario Court of Appeal, the court was confronted with this very problem and they "*may be usefully compared.*"²²

In the case of *Alliston Creamery v. Grosdanoff & Tracy*²³ the two defendants drew a cheque on The Royal Bank of Canada for the amount of \$344.75 payable to the plaintiff. This cheque was dishonoured upon presentation for payment and we may assume that the company which employed the defendants was insolvent although this is not stated in the judgment. Below the signature of the defendants there appeared stamped the words, "Highland Grove Farms Ltd." Gibson, J.A., in a short oral judgment stated that there was some evidence that the defendants were President and Secretary of the Highland Grove Farms, Ltd., a purchasing company, and what is more, that the cheque was given in payment of an account for goods sold by the appellant to the Highland Grove Farms Ltd.²⁴ After considering

¹⁹ See *Automobiles Renault Canada Ltd. v. Maritime Import Autos Ltd. and Kiley* (1962) 31 D.L.R. (2d) 592.

²⁰ If John Smith signs a cheque as drawer thusly:

John Smith (signature)
Manager of A.B. Co. Ltd. (stamped)

does the addition of the words "*Manager of A.B. Co. Ltd.*" serve to describe John Smith as manager so as to indicate only that he thereby assumes no personal liability, or is the addition merely an explanation of how he came to put his name on the cheque, viz. *descriptio personae*.¹

²¹ *Alliston Creamery v. Grosdanoff and Tracy* (1962) 34 D.L.R. (2d) 189. *H. B. Etilin Co. Ltd. v. Asselstynne* (1962) 34 D.L.R. (2d) 191.

²² In an editorial note to each case, the editors state that the two cases "may be usefully compared."

²³ *Supra*, footnote 21.

²⁴ *Ibid.*, at p. 190.

the relevant sections of the *Bills of Exchange Act*,²⁵ Gibson J.A., concluded:

There is nothing on the *face* of the cheque in question to indicate that the respondents occupied any position as officers or officials of the Highland Grove Farms Ltd. or that they were signing other than in their own individual capacities.²⁶

So the respondents were personally liable.

The only case noted by the court in the *Alliston Case* was that of *Daymond Motors Ltd. v. Thistle town Developments Ltd.*²⁷ wherein Roach J.A. stated:

If these appellants intended that they should not be liable as makers, they could have invoked the provisions of s. 52(1) and indicated that they were signing these notes in a representative capacity.

This statement is cited by Gibson, J.A., near the end of his judgment in the *Alliston Case* but it appears to the author that this statement is the judgment of the case. The very issue in fact of the *Alliston* case is whether or not the defendants had invoked s. 52. Therefore this passage cited from the *Daymond Motors Case* has prejudged the issue rather than dealt with it.

In his reasons for the decision, Gibson J.A., also cites a passage from Falconbridge on *Banking and Bills of Exchange*:²⁸

A man who puts his name to a bill makes himself personally liable, unless he states upon the face of the bill that he subscribes for another or by procuration of another which are mere words of exclusion: Unless he says plainly '*I am a mere scribe, he is liable*'.²⁹

In the footnote to this passage Falconbridge refers to the cases of *Fairchild et al. v. Ferguson & Nolan*³⁰ and *Chapman v. Smethurst*³¹ which he discusses later in the same chapter³² where the above statement is found. In the *Ferguson* case a promissory note beginning "sixty days after date we promise to pay," and signed "R. manager O.L. Co." was held to bind the company and not R. as the court accepted evidence that both R. and the payees intended to make the company liable and R. had authority to bind the company by note. The learned author states that, "this decision gives effect to the intention of the parties, but it is difficult to reconcile it with a strict reading of s. 52"³³ It is arguable that the use of the word "we" in the body of the note indicated that the obligation was that of the Company and not of R. alone, but the problem was whether R. and the company were both liable and not just R. Even if the word "we" is more consistent with a company's liability than with an individual's, it is not

²⁵ *Supra*, footnote 3.

²⁶ *Ibid.*, at p. 190.

²⁷ [1956] O.W.N. 867.

²⁸ *Supra*, footnote 6.

²⁹ *Ibid.*, at p. 592.

³⁰ (1892) 21 S.C.R. 484.

³¹ [1909] 1 K.B. 927.

³² *Supra*, footnote 6 at p. 594.

³³ *Ibid.*, at p. 594.

inconsistent with the company and the individual both being liable.³⁴ Therefore by exonerating R. from liability, the court gave its attention to other circumstances which suggested that R. intended to sign in a representative capacity.

In the *Chapman* case, the note ran, "I promise . . ." and was signed, "J. H. S. Laundry and Dye Works Ltd. J. H. S. Managing director," and the action was against J. H. S. personally. Falconbridge states that:

although the note did not purport to be signed "for" or "on behalf of" the company, the stamped signature of the company over the written signature of the defendant was held sufficient to show that it was the company's note and not the defendant's.³⁵

and further he states that:

the case of *Chapman v. Smethurst* seems to indicate a tendency to look at the substantial intent rather than the form of the document.³⁶

It is submitted that neither in the *Ferguson* case nor in the *Chapman* case did the signor plainly indicate, 'I am a mere scribe', and yet, in neither case was the signor held liable. Furthermore, the learned author, it is submitted, indicates by these two cases that this is no longer the true test to be applied to such documents. This view would seem to be borne out by the recent case of *Industrial Businessman's Credit Corp. v. Wainwright Const. Ltd.*³⁷ At this point it is sufficient to say that in this case a person was held not to be liable on a note because it was not clear from the face of the note that he was liable. The judgment of that case indicates a tendency of the court to require the plaintiff to show that the signor intended to be liable in very clear terms. This is inconsistent with the signor being required to show that he *clearly* signs as a mere scribe. This tendency is not so as to alter the onus on the plaintiff or defendant in the main issue, it is rather, a tendency to find the document ambiguous if any doubt appears and not require that the signor indicate plainly "I am a mere scribe" to avoid liability.

It is submitted that the court in the *Alliston* case did not appreciate fully the context of the passage cited from Falconbridge. That passage does not state that the test today is to demand in substance the form "I am a mere scribe". What it does indicate is that the court should look to the substantial intention of the parties.

In the *Alliston* case neither of the defendants indicated on the cheque itself that they were officers of the company. However, evidence that they were officers was disclosed during the course of the trial. This, coupled with the fact that the name of the company was stamped on the cheque, would have permitted the court, had they

³⁴ as to whether the word "I" or "we" is best used by a company see *Industrial Businessman's Credit Corp. v. Wainwright Construction Ltd.* [1962] O.W.N. 31 at 34.

³⁵ *Supra*, footnote 6 at p. 594.

³⁶ *Ibid.*, at p. 594.

³⁷ *Supra*, footnote 34.

considered this evidence, to hold the instrument ambiguous. And so a way would have been open to the defendants to prove their true intentions. This is further justified by the fact that evidence was also admitted which showed that the cheque was in payment of goods sold by the appellant to the Highland Grove Farms, Ltd. but this, too, was not considered because of the parole evidence rule. At face value, such evidence strongly urges the belief that the appellant was dealing with the company alone and not with the respondents personally. As this conclusion was not reached, it is submitted that the court did not follow the "substantial intent" of the parties and the appellant obtained more than he originally bargained for, viz: two extra parties liable on the documents—Mr. Grosdanoff and Mr. Tracy.

In essence, this argument stands or falls on an interpretation of the parole evidence rule. If we assume that the addition of the words "President" and "Secretary" to the signatures of the respondents will render the document ambiguous, the problem resolves itself into finding a method of enabling the court to write in these words without altering, varying, or contradicting the written document.

It has been said that the case of the 'undisclosed principal' is an exception to the parole evidence rule. The court will often allow parole evidence of the existence and liability of a principal where only the agent's name appears on the document. In *Calder v. Dobell*³⁸ where the broker signed the contract in his own name without qualification, Bovill, C.J., stated that:

. . . if a broker enters into contracts in his own name, and has a principal, those whom he contracts with will have the responsibility both of the principal and of the broker. There is nothing inconsistent in thus giving an option to hold either responsible. I am of opinion that, in accordance with all the authorities, the parole evidence [of the principal] was admissible.

It is asserted that such evidence only adds a party to the contract and does not vary it.

In the *Alliston* case, the addition by way of parole evidence to the effect that the company was the principal of the respondents would be adding the company as a party liable on the cheque. Once this is accomplished there is no harm in allowing evidence of what types of agents the respondents were, that is, that they were president and secretary respectively. At this point both the agents and the company would be liable and so it appears that if for some reason the plaintiff had wanted to sue the company, he could have done so. Thus if the plaintiff's intention was to hold both the respondents and the company liable on the cheque when accepting it, he can now do so. But what were the parties' intentions? There was evidence heard that the goods for which the cheque was payment were goods purchased for and by the company. On the cheque there appears the name of the company. Evidence has been admitted that the respondents were officers of the company whose job it was to issue such a cheque within

³⁸ (1871) L.R. 6 C.P. 486.

their authority. Assuming that there is evidence that the cheque was drawn on the company's current account, it is readily seen that for all intents and purposes, it was a company cheque.

Yet, notwithstanding the fact that the instrument is now ambiguous as to the intention of the respondents, a strict application of the parol evidence rule will still find the president and secretary liable because they did not qualify their signatures in fact, and so appear liable on the face of the document. The court would most likely not accept such a circular argument which strains so to render the document ambiguous. The court would likely refuse to write in the necessary qualifying words for the respondents where they did not do so themselves. If the court did write in the qualifying words, it is arguable that they would thereby be rendering ambiguous a heretofore unambiguous document and so in effect varying the terms.

Thus, by treating the parol evidence rule as an 'exclusionary rule of evidence' no parol evidence could reasonably be admitted in this case and in that sense the decision is certainly correct. Yet, what is the true nature of the rule?

There exists considerable doubt today if indeed the rule really is an exclusionary rule of evidence. In their treatise on the law of contracts Cheshire and Fifoot state:

. . . in the third place, the exclusion is clearly inappropriate where the document is designed to contain only part of the terms—where, in other words, the parties have made their contract partly in writing and partly by word of mouth. The situation is so comparatively frequent as in effect to deprive the ban on oral evidence of the strict character of a 'rule of law' which has been attributed to it. It will be presumed, in the words of a learned author, "that a document which *looks* like a contract is to be treated as the *whole* contract.³⁹ But this presumption, though strong, is not irrefutable. In each case the court must decide whether the parties have or have not reduced their agreement to the precise terms of an all-embracing written formula. If they have, oral evidence will not be admitted to vary or to contradict it; if they have not, the writing is but part of the contract and must be set side by side with the complementary oral terms. The question is at bottom one of intention and, like all such questions, elusive and conjectural. It would seem, however, that the more recent tendency is to infer, *if the inference is at all possible*,⁴⁰ that the parties did not intend the writing to be exclusive but wished it to be read in conjunction with their oral statements.⁴¹

This passage suggests that the court should in the first place hear all the oral evidence available and then decide if the written contract was intended to be the complete expression of the parties' intentions. Instead, it has been the practice of the court to decide in the first place if the document could exist as a contract in its written state alone. If answered in the affirmative and the document was not ambiguous on its face, then no parol evidence was allowed. It is suggested, however, that "if a dispute should arise as to the

³⁹ Mr. K. W. Wedderburn, *Collateral Contracts*, (1959) C.L.J. 58, esp. pp. 59-64.

⁴⁰ Italics added.

⁴¹ Cheshire and Fifoot, *Law of Contract*, 5th ed. at p. 101.

terms of a contract made by word of mouth, it is necessary in the first instance to ascertain what was said, and the circumstances under which the . . . contract was formed."⁴² Similarly, in a written contract, it is necessary in the first instance to ascertain all the circumstances surrounding the formation of the contract and only in this light can the court determine if the written contract is the true expression of all the intentions of the parties which they intended to be part of their contract.

In this light the parol evidence rule is not a strict rule of law but can be easily overcome to allow extrinsic evidence. In the *Alliston* case the preponderance of oral evidence indicates in the strongest terms that it was a company cheque. Therefore the written document was not by itself intended to contain all the terms of the parties for the very important term that the respondents were not personally liable was missing, and the court should allow evidence to this effect.

The decision of *H. B. Etlin & Co. Ltd. v. Asselstyne*⁴³ delivered by McGillivray, J.A., was decided by the Ontario Court of Appeal only six days after the *Alliston* case. In that case the plaintiff claimed upon a cheque for \$250.00 drawn upon the Bank of Montreal and signed by the defendant who was president and manager of Benson-Wilcox Ltd. As to the cheque itself McGillivray, J.A., stated:

It is a printed cheque which the company has obviously prepared for its personal use for it bears at the top in large letters the company name—*Benson-Wilcox Ltd.* and has at the bottom the printed name of the company as drawer. In the left-hand corner appears the name of *Market Branch, Bank of Montreal, London, Canada*, upon whom the cheque is drawn. As this name appears on a cheque printed on company stationery it must be assumed that the branch in question was the company's bank. Immediately under the company's name as drawer a line appears (also printed) designed to receive the signature of an authorized person necessary to give validity to the printed company name and on this line appears the name of the present defendant. This name is the only writing appearing upon the cheque. At the top is typed the cheque number "8458" which by its size I would think might indicate it to belong to a company rather than that of an individual.⁴⁴ On the line following appears the typed words "*H. B. Etlin Company Limited—\$250*" and on the line after that is inscribed by a perforated stamp the words "*Benson-Wilcox Electric Company—250 dols. 00 cts.*"

At trial, parol evidence was admitted which made it clear that the defendant signed only as a scribe for his company and not in his personal capacity, for it was established that he was a signing officer for the company. Other evidence that the plaintiff had accepted the cheque in payment for goods sold to the company, that the plaintiff was aware that it was a company cheque, and that the plaintiff had accepted such cheques in the past was also admitted and considered. The issue on appeal was whether such evidence had been properly admitted and considered. The plaintiff asserted that the defendant

⁴² *Anson's Law of Contract*, Guest, 21st ed. at p. 128.

⁴³ *Supra*, footnote 21.

⁴⁴ No reasons are given for this proposition.

was solely liable on the face of the document and that no parol evidence was admissible.

In dismissing the appeal, McGillivray, J.A. first reviewed the authorities which establish that in determining if a document is ambiguous, regard must be had to the whole document. Then, after mentioning and approving the decision in *Fairchild et al. v. Ferguson & Nolan*⁴⁵ and in *Chapman v. Smethurst*⁴⁶ he turned to the case of *Daymond Motors v. Thistlethorn Developments Ltd. et al.*⁴⁷ and distinguished it on the facts. In this latter case the cheque was written on plain paper and "had nothing upon it elsewhere to indicate that it was not the note of the individual defendants."⁴⁸ Also in the *Daymond Motors* case the signatures of the defendants did not appear on any line reserved for them which would link their signatures to the company name, and so there was no ambiguity on the document itself. Citing the remarks of Roach, J.A., in the *Daymond Motors* case, "There may be cases where looking at the face of the note, it is apparent that there is some ambiguity." Mr. Justice McGillivray concludes that this is such a case "and an inflexible application of the common law rule in the circumstances here existing, I am satisfied would lead to a gross miscarriage of justice."⁴⁹ In the result, he decided that upon the face of the document the company was solely liable but "at the very least it is ambiguous and it was proper that evidence as to intention should be admitted at trial."⁵⁰

A close examination of the *Alliston* case and the *Etlin* case reveals some interesting problems. In the latter case, Mr. Justice McGillivray cites a passage from *Smith's Leading Cases*:

. . . it may be laid down as a general rule that, where a person signs a contract in his own name without qualification, he is prima facie to be deemed to be a person contracting personally; and in order to prevent his liability from attaching, it must be apparent from the other portions of the document that he did not intend to bind himself as principal.⁵¹

He also notes that:

this statement of the law is of equal authority today.⁵²

Furthermore he says:

where, however, on the face of the document an ambiguity appears, extrinsic evidence may be admitted on the question of intention.⁵³

These passages read together indicate that the addition of words such as "manager" or "president" are not absolutely necessary to render the document ambiguous where an ambiguity appears elsewhere. In a case where there are other sufficient manifestations of

⁴⁵ *Supra*, footnote 30.

⁴⁶ *Supra*, footnote 31.

⁴⁷ *Supra*, footnote 27.

⁴⁸ *Supra*, footnote 21 at p. 195.

⁴⁹ *Supra*, footnote 21 at p. 195.

⁵⁰ *Ibid.*, at p. 194.

⁵¹ *Smith's Leading Cases*, 6th ed., at p. 344.

⁵² *Supra*, footnote 21 at p. 193.

⁵³ *Ibid.*, at p. 193.

ambiguity such as the printed name of the company on the cheque or printed lines for the signing officer's signature, the court will allow in parol evidence. Although this entails a liberal interpretation of the *Bills of Exchange Act*⁵⁴ which says that the mere addition of words describing him as an agent or as filling a representative character does not exempt him from liability,⁵⁵ it is precisely such an interpretation which allows the court to overcome an "inflexible application of the common law rule."⁵⁶

It is still pertinent to ask what the result would have been if the respondents in the *Alliston* case had used a cheque similar to the one in the *Etlin* case without writing in the words "President" and "Secretary". It is quite probable that if such a case arose today the court would be able to find the document at least ambiguous and thereby allow extrinsic evidence as to intention notwithstanding the fact that no descriptive adjectives accompanied the signatures. Such a decision, though an equitable one, would present a formidable problem to the court as well as to the businessman.

Such cheques are written every day by companies of every conceivable size. Though this is speculative, it is probable that a larger company would have as its signing officers men more familiar with the law than those who sign for smaller companies. In addition, the larger and wealthier companies are far more likely to use personalized cheques and expensive 'protectograph' machines inscribing those cheques than smaller companies. In the result, "Mr. One-Man Limited Company" paying his business debts by cheque, simply stamping on the company's name to indicate that it is a company cheque will be more likely to incur personal liability on the document than the signing officer of any larger corporation.

The differences between the two cheques are, of course, very real and the law cannot consider whether the person writing the cheque is employed by a large or small company. Nevertheless, it is submitted that there exists today a general uncertainty of exactly what is required on a cheque short of the words 'per pro' or their equivalent to indicate that the signor assumes no personal liability. The recent decision of *Ind. Businessman's Credit Corp. v. Wainwright Const. Ltd.*⁵⁷ affords a ready example of this latter proposition.

In this case a rubber stamp was used to name the company on the promissory note while under the stamp there appeared a dotted line and the word "President"; the individual defendant signing along the dotted line. The case was heard by the Master, J. R. Kimber, who held that parol evidence of the defendant's intention was admissible as the document was ambiguous. Basing his decision on the similarity

⁵⁴ *Supra*, footnote 3.

⁵⁵ *Ibid.*, s. 52(1).

⁵⁶ *Supra*, footnote 49.

⁵⁷ *Supra*, footnote 34.

of facts to the case of *Schaffer v. Tubby Smith & Co.*⁵⁸ the Master held that the use of the word "President" on the stamp together with the fact that there was a space obviously left for the president's signature made the document sufficiently ambiguous to allow the court to admit parol evidence. There is no evidence that any names or figures in the body of the cheque were anything but written so as to suggest that it was a company cheque.

In his judgment, the Master also reviews in brief the case of *Loczka v. Ruthenian Farmers Co-op.*⁵⁹ In this case the defendants signed a promissory note, "*Ruthenian Farmers Co-op Co. Ltd. Glenella, J. O. K. Kroske, President, W. Tzaryk, Manager*" and were held liable. The Master distinguishes that case from the situation in the *Wainwright* case because in the former "the signature of the company was not by way of a rubber stamp [as it was in *Wainwright*] but was hand written."⁶⁰ Also, "In the *Loczka* case, there was no coupling of the signatures by a bracket or rubber stamp to tie the signatures in with the company."⁶¹

It is submitted that a signor who takes the time to write out the name of a company in longhand on a cheque as well as writing out his own position in that company does as much, if not more, to show that it is a company cheque than the individual who uses a rubber stamp and signs his name on the appropriate line. Such a method of distinguishing cases becomes even more subtle if it be shown (as it might possibly have been shown without altering the decision) that the company in the *Loczka* case did not even own a company stamp. It is also submitted that a bracket or rubber stamp linking the signature of the signor to that of the company is entirely unnecessary where the name of the company and that of the signor appear sufficiently close together and it is a fact that the signor is an employee of the company.

The *Wainwright* case is then exemplary of decisions which strain to avoid the strictness of the parol evidence rule and thereby aim to give effect to the true intentions of the parties. This alone justifies such subtle distinctions as are used.

Even a perfunctory glance at any text book dealing with procurement signatures will be sufficient to illustrate how numerous and diversified are the decisions dealing with this problem in our jurisdiction alone. Most decisions conflicting in result can be justified by minor or major differences in the facts of the individual cases. But because negotiable instruments for obvious reasons tend to be in a standard form, the number of possible inherent distinguishing factors become increasingly smaller and the resulting actual distinctions made by the court become increasingly abstruse. Such a multitude

⁵⁸ [1924] 1 D.L.R. 468.

⁵⁹ (1922) 68 D.L.R. 535.

⁶⁰ *Supra*, footnote 34 at p. 33.

⁶¹ *Ibid.*, at p. 33.

of diversified decisions as exists militates against any possibility of reconciling the numerous incongruities to be found. Furthermore it appears that any attempt to reconcile recent cases with a stricter reading of the *Bills of Exchange Act*⁶² would be a step in a backward direction at least as far as any 'equitable' decision is concerned. As a result, and so as to avoid the necessity of postulating an uncommo-
dious series of untested hypotheticals, it is submitted (as is so often the case) that any settlement of the problem must come by way of amendment or novel legislation.

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⁶²*Supra*, footnote 3.

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