

## RATIFICATION BY SILENCE

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The cases in which the language of ratification is used by the courts to determine the liabilities of principals fall into three groups. The first, the one chiefly to be considered here, consists of cases in which one for whom another purported or, in the case of acts of service, intended to act, voluntarily becomes a party to the obligations which would have been created by the transaction if he had authorized it. For present purposes this may be described as a voluntary ratification, since the affirmance of the transaction results from the willingness of the ratifier to become a party to the transaction and is not imposed upon him because of what he does or fails to do.

The second group of cases in which ratification is found are those in which ratification is imposed because of inconsistent conduct. Here the ratifier's conduct, said by the courts to be an affirmance by him, is of one of two types. First where, knowing the facts, he receives property which is the product of a prior unauthorized transaction or, having received such property, he learns the facts before he has changed his position, and fails to return it. In imposing upon him the liabilities of ratification, the courts create a remedy alternative to an action for conversion or for restitution which otherwise the person whose property was received would have had. The receiver or holder in such a case may or may not be willing to be a party to the transaction but he becomes responsible as if he were, irrespective of his consent, because of his conduct in receiving or failing to return the property. The second type of cases where there is "forced" ratification includes those in which, without receiving property, a purported principal does an act which is inconsistent with the non-existence of affirmance, as where he brings an action upon a prior contract purported to be made for him, or brings an action against the pseudo agent for the proceeds of the transaction, or brings against a third person an action which would be justified only if the prior transaction were authorized or ratified. Again, willingness to be a party to the earlier affair is immaterial. The resulting liabilities are created by the courts despite any unwillingness.

The results in the third group of cases do not depend upon a doctrine of ratification but upon the rules of estoppel. In these cases, the

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purported principal either does something which misleads the third person into believing that the prior transaction was authorized or ratified or, more frequently, does nothing to destroy the other's belief that the act was authorized. In both cases there is the failure to discriminate between ratification and estoppel, similar to that which has led to the confusion of apparent authority and estoppel. Although properly the liability in such cases should be limited to the harm caused by the misleading conduct, the technique involves finding ratification with its normal consequences in favor of the one asserting the estoppel.

#### MENTAL ACT AS A BASIS FOR LIABILITY

Cases involving all three types of the situations outlined above have been cited to support a rule that "ratification can be effected by silence." Since the reasons for such a rule differ in the three types of situations, it seems worthwhile to sort out the cases in order to determine whether the rule exists in the case of the purely voluntary type of affirmance where there is neither inconsistent conduct nor estoppel. In this type of situation, if ratification follows it is only because of the mental act of the ratifier, that is, his willingness to become a party to the earlier transaction.

It is frequently assumed that one cannot change his legal relations with another to whom he owes no duty merely by willingness to do so. Thus, one who is not responsible for harm to another does not become liable by being willing to be or even, unless for consideration, by so agreeing. One does not become a criminal if there is no manifestation of approval before or at the time. Ordinarily, one who receives an offer does not, in the absence of a prior relation with the offeror, accept the offer by remaining silent, although intending to accept.

However, there are situations in which willingness, aside from activity, manifestation or communication, may make a difference in one's rights and liabilities. Thus, if I consent that another should enter my land or take my chattels, I cannot complain if he does so whether or not he otherwise would be a trespasser and whether or not I have expressed my consent to him.<sup>1</sup> One who takes my chattel with a larcenous state of mind is not a thief if at the time I am willing that he, or anyone, should take it.<sup>2</sup> Again, an offer may be made in such terms that it can be accepted without either communication or external manifestation and although there was no prior relation between the parties.<sup>3</sup> Thus one may become a fiduciary by intending to accept the obligations

1. RESTATEMENT, TORTS § 49, as amended (Supp. 1948).

2. *McDaniel's Case*, Foster Cr. Law 121, 127 (Cr. Cas. Res. 1755).

3. RESTATEMENT, CONTRACTS § 72(1) (1932); WILLISTON, CONTRACTS § 91 (2d ed. 1936).

of an agency power conferred upon him;<sup>4</sup> one may take possession of land or chattels upon which he is or which is in his physical control merely by an intent to take possession; a servant leaves the "scope of his employment" by deciding to act wholly for his own purposes.<sup>5</sup>

### VOLUNTARY RATIFICATION

In this category of situations in which an act of the will can change legal relations are those in which it is held that one ratifies by consenting to be a party to a prior transaction. It has never been doubted that consideration is unnecessary.<sup>6</sup> It is also clear that a statement either to the third person or to the pseudo agent is sufficient as to both,<sup>7</sup> and the cases seem to indicate that, unlike authorization, ratification does not require communication to either: all that is needed is evidence having probative value which indicates a willingness to affirm.<sup>8</sup>

*Probative value of silence.* That a person's failure to repudiate a prior transaction in which his property or name is involved has probative value to indicate his assent is consistent with, and limited by, the generalization that a failure to take action is evidence of a state of mind wherever the situation is such that action would have been taken by the ordinary person who did not have such a state of mind. Thus "a failure to assert a fact, when it would have been natural to assert it, amounts in effect to an assertion of the non-existence of the fact."<sup>9</sup> Silence following a communication stating facts or liabilities indicates consent to the truth of the statements where "the circumstances are such that a dissent would in ordinary experience have been expressed if the communication had not been correct."<sup>10</sup>

This generalization has many illustrations. Thus, if the failure to respond to an offer to make a bilateral contract does not result in the

4. RESTATEMENT, AGENCY § 15 (1933).

5. RESTATEMENT, AGENCY § 235, illustration 1 (1933).

6. *Ernshaw v. Roberge*, 86 N.H. 451, 170 Atl. 7 (1934); *Grant v. Beard*, 50 N.H. 129 (1870); *McClintock v. South Penn Oil Co.*, 146 Pa. 144, 23 Atl. 211 (1892); *Evans v. Ruth*, 129 Pa. Super. 192, 195 Atl. 163 (1937).

7. *Sheffield v. Ladue*, 16 Minn. 388 (1871).

8. "A ratification, though it must be evidenced by external demonstrations, is merely an act of the mind. It is a volition or determination to abide by and adopt the act of another. The validity of a ratification, where no act of another is founded upon it, does not depend upon its being communicated." Morton, J., in *Bayley v. Bryant*, 24 Pick. 198, 203 (Mass. 1842). Cases like *Shinn v. Smiley*, 1 N.J. Misc. 459, 122 Atl. 531 (Ch. 1922), in which it was held that a letter by the purported principal to his attorney could not be construed as an affirmation, can be accepted on the ground that there was no intent that it should be definitive.

9. 2 WIGMORE, EVIDENCE § 1042 (2d ed. 1923).

10. 2 *id.* § 1071.

formation of a contract, it is either because communication or an act intended to result in communication (*e.g.*, the mailing of a letter) is a necessary part of acceptance, or because the failure to respond would not normally indicate a willingness to accept the offer. In a proper case, that is, where the offer indicates that the acceptance may be by silence and the offeree intends his silence as an acceptance, it has been held that the contract has been completed even where there has been no receipt of property or prior relations between the parties.<sup>11</sup> In the agency field, failure to object to the doing of an act has frequently been held to create authority to do future acts,<sup>12</sup> and in many of the cases the court finds that the principal is bound either because he has authorized or has ratified, it being unimportant in a particular case which has occurred.

However, the acceptance of the idea of ratification by acquiescence has not been without some hesitation. This is particularly true where the original act was done by one who was not an agent. This, in spite of Story's statement that "acquiescence of the principal may well give rise to the presumption of an intentional ratification" where the agency actually exists, although "the presumption is far less strong, and the mere fact of acquiescence may be deemed far less cogent, where no such relation of agency exists. . . ." <sup>13</sup> The same result was reached by Mechem, who states that liability may be based purely on the assent of the principal, and that the question whether there is ratification without affirmative conduct depends merely upon the weight of the evidence, which will vary with the situation.<sup>14</sup> There are a number of early cases, and a few later ones, which indicate difficulty in the acceptance of the idea where there is not something more than a failure to repudiate, particularly true where the initial act was done by a stranger.<sup>15</sup> It must be admitted also that, in most of the cases where ratification has been found, not only was the prior act done by one who was an agent, and in many cases one who may have been authorized, but also there was something received by the principal or there were elements of estoppel which would support the result aside from the failure to repudiate. Many of the decisions are rested upon these grounds in whole or in

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11. WILLISTON, *CONTRACTS* § 91(a) (2d ed. 1936).

12. *RESTATEMENT, AGENCY* § 54 (1933); *Grossman v. Calonia Land & Imp. Co.*, 103 N.J.L. 98, 134 Atl. 740 (Ct. Err. & App. 1926); *Leslie v. Bard*, 57 N.E.2d 804 (Ohio App. 1944). See also cases citing with approval *RESTATEMENT, AGENCY* § 15, *e.g.*, *Brown v. Schmitz*, 237 Iowa 418, 424, 22 N.W.2d 340, 343 (1946).

13. STORY, *AGENCY* 300 (9th ed. 1882).

14. MECHEM, *AGENCY* § 468 (2d ed. 1914).

15. See cases cited *id.* n.21.

part. But it is now clear that there may be ratification through acquiescence alone,<sup>16</sup> although in many of the cases in which

16. *Atherton v. Beaman*, 256 Fed. 871 (D. Mass. 1919) (shareholders failed to object to the act of a director in using their money to pay his own bills); *Standard Oil Co. v. Lyons*, 130 F.2d 965 (8th Cir. 1942) (paraphrasing *RESTATEMENT, AGENCY* § 94 (1933)). The question was whether an employment had begun in Iowa or Illinois, the rights of the deceased employee being dependent upon this; held that the employment had begun where the unauthorized agent of the employee had contracted on his account); *Wolfe v. Texas Co.*, 83 F.2d 425 (10th Cir. 1936) *semble* (paraphrasing *RESTATEMENT, AGENCY* § 94 (1933)); *Mobile & M. Ry. v. Jay*, 65 Ala. 113 (1880) *semble*; *Dierks Lumber & Coal Co. v. Coffman Bros.*, 96 Ark. 505, 132 S.W. 654 (1910) (contract to supply goods to third persons); *Baker v. Brown & Hackney Inc.*, 137 Ark. 530, 215 S.W. 578 (1919) (improper sale by agent); *Hibernia Savings & Loan Soc'y v. Belcher*, 4 Cal.2d 268, 48 P.2d 681 (1935) (assignment of corporate asset coming to the knowledge of a director not present at directors' meeting); *Heck v. Heck*, 63 Cal.App.2d 470, 147 P.2d 110 (1944); *Gain v. Austin*, 58 Cal. App.2d 250, 136 P.2d 584 (1943); *Mayfield v. Fidelity & Casualty Co. of N.Y.*, 16 Cal. App.2d 611, 61 P.2d 83 (1936) (affirmance of insurance by the assured); *Union Gold Mining Co. v. Rocky Mountain Nat. Bank*, 1 Colo. 531 (1872) (agent borrowed money for his own purposes; held that, although there was no duty by the principal to repudiate promptly, his silence was evidence upon which a jury could find ratification); *Lynch v. Smyth*, 25 Colo. 103, 54 Pac. 634 (1898) (court distinguishes between the inference to be drawn from silence and the estoppel which may result where a principal does not act promptly); *Harris v. Underwood*, 208 Ga. 247, 66 S.E.2d 332 (1951) (unauthorized sale); *Holmes v. Morris*, 341 Ill. 351, 173 N.E. 402 (1930) (gratuitous conveyance by purported agent); *Federal Land Bank v. Union Bank*, 228 Iowa 205, 290 N.W. 512 (1940) (citing *RESTATEMENT, AGENCY* § 94 (1933)); *Marion Sav. Bank v. Leahy*, 200 Iowa 220, 204 N.W. 456 (1925) (altered note; ratification and estoppel distinguished); *Burlington Gas Light Co. v. Greene, Thomas & Co.*, 22 Iowa 508 (1867); *Pacific Ry. v. Thomas*, 19 Kan. 256 (1877) (physician called by employee had already rendered the services); *Elk Valley Coal Co. v. Thompson*, 150 Ky. 614, 150 S.W. 817 (1912) *semble* (although, where the principal has not derived any benefit and no third person has suffered loss, evidence of ratification by acquiescence must be clearly shown); *Mangum v. Bell*, 20 La. Ann. 215 (1868); *Pitts v. Shubert*, 11 La. 181 (1837) (sale by purported agent) [*cf.* *Watson v. Schmidt*, 173 La. 92, 136 So. 99 (1931) (proceeds of the sale of principal's property used to pay a debt of principal)]; *Hix v. Eastern S.S. Co.*, 107 Me. 357, 78 Atl. 379 (1910) (acquiescence to agreement for limited liability under a bill of lading for goods shipped by agent); *Auto Outing Co. v. McFrederick*, 146 Md. 106, 125 Atl. 886 (1924) *semble* (where failure to dissent, "the ordinary intelligent man would be justified in inferring that the principal assented . . ."); *Jackson & Co. v. Great Am. Indemnity Co.*, 282 Mass. 337, 185 N.E. 359 (1933) (possibly estoppel); *Child, Jeffries & Co. v. Bright*, 283 Mass. 283, 186 N.E. 571 (1933) *semble* (no ratification when mere delay in notifying payee of check drawn by treasurer for his personal indebtedness, where no elements of estoppel); *Sherman v. Fitch*, 98 Mass. 59 (1867) (transfer of corporate property); *Amory v. Hamilton*, 17 Mass. 102 (1821) *semble* (no ratification found); *Burns v. Kelley*, 41 Miss. 339 (1867) *semble* (where not such acquiescence that ratification could be inferred); *Cannon v. Gibson*, 162 Mo. App. 386, 142 S.W. 730 (1912) *semble* (acquiescence not found); *Lorie v. Lumbermen's Ins. & Cas. Co.*, 8 S.W.2d 81, 85 (Mo. App. 1928) (no ratification found, the court holding it to be a jury question); *St. Louis Gunning Adv. Co. v. Wanamaker & Brown*, 115 Mo. App. 270, 90 S.W. 737 (1905) (well reasoned opinion distinguishing between ratification and estoppel); *Renland v. First Nat. Bank of Grass Range*, 90 Mont. 424, 4 P.2d 488 (1931) *semble*; *Obherne v. Burke*, 50 Neb. 764, 70 N.W. 387 (1897) (affirmance of a guarantee); *State v. Farmer's & Merchant's Bank*, 125 Neb. 247, 254 N.W. 675 (1934) *semble* (citing *RESTATEMENT, AGENCY* § 94 (1933)); *Wright v. Boynton & Hayward*, 37 N.H. 9, 72 Am. Dec. 319 (1858) (held that the trial court should have charged that if defendant failed to dissent to an agreement purporting to make him a member of a partnership, he ratified, but judgment for defendant was sustained); *Erie R.R. v. S. J. Groves & Sons Co.*, 114 N.J.L. 216, 176 Atl. 377 (Ct. Err. & App. 1935) *semble* (ratification not found because of lack of knowledge); *Warren v. New York Life Ins. Co.*, 40 N.M. 253, 58 P.2d 1175 (1936) (ratification of acceptance of check by principal's wife); *Pollitz v. Wabash Ry.*, 207 N.Y. 113, 100 N.E. 721 (1912); *Barter v. Barrett*,

this is stated, there were other grounds for holding ratification.<sup>17</sup>

Supporting the view that ratification can be inferred merely from a failure to repudiate are those cases where a tort has been committed, usually by an employee acting beyond the scope of employment. In such cases there is no chance of estoppel and, normally, no receipt of benefit; the acquiescence results only in the liability of the principal, and, presumably, the discharge of the servant from liability to the principal. Because of this, the courts require clear evidence of the approval of the wrongful conduct. This is ordinarily not found merely from the continuance of the servant in the employment.<sup>18</sup> However, continuance in employment has some evidential value which may be considered with other evidence,<sup>19</sup> and one court has suggested that it would be sufficient if an "ordinary prudent employer" would have discharged the employee upon hearing the facts.<sup>20</sup> If approval is found,

186 App. Div. 715, 174 N.Y. Supp. 779 (1st Dep't 1919) (retention of receipt with unauthorized terms); *Curtis v. Thomson*, 166 Misc. 870, 2 N.Y.S.2d 418 (Sup. Ct. 1937) (one of two grounds of decision); *Depot Realty Syndicate v. Enterprise Brewing Co.*, 87 Ore. 560, 171 Pac. 223 (1918) (extension of lease); *Prentice v. Unemployment Compensation Board*, 161 Pa. Super. 630, 56 A.2d 295 (1948) *semble*; *Hall v. Crawford & Delphenis Co.*, 11 S.W.2d 804 (Tex. Civ. App. 1928) (use by an officer of a corporation of money to pay his own debts); *Miles Realty Co. v. Dodson*, 8 S.W.2d 516 (Tex. Civ. App. 1928) (agreement to subordinate corporate lien to the interests of another); *Piedmont Mt. Airy Guano Co. v. Buchanan*, 146 Va. 617, 131 S.E. 793 (1926); *Thompson v. Murphy*, 60 W. Va. 42, 53 S.E. 908 (1906) *semble*; *Parish v. Reave*, 63 Wis. 315, 23 N.W. 568 (1885) *semble* (failure to repudiate a conveyance); *Zuehlke v. Ott*, 221 Wis. 89, 92-93, 266 N.W. 242, 243-44 (1936) *semble* (quoting RESTATEMENT, AGENCY § 94, comment b (1933)); *Commonwealth Tel. Co. v. Paley*, 203 Wis. 447, 233 N.W. 619 (1930) (sale by agent); *Waisner v. Hasbrouck*, 34 Wyo. 61, 241 Pac. 703 (1925) (agent took note instead of money; action by principal against agent).

17. Many cases in which the rule of Section 94 of the Restatement of Agency is said to apply are based upon the taking or refusal to surrender property obtained by the unauthorized act. See, e.g., *Faryour v. Geltis*, 91 Cal. App.2d 603, 205 P.2d 424 (1949); *Southern Motors v. Krieger*, 86 Ga. App. 574, 71 S.E.2d 884 (1952); *Will v. Hughes*, 172 Kan. 45, 238 P.2d 478 (1951); *Prellow v. Dorian*, 53 So.2d 467 (La. App. 1951); *Yarnall v. Yorkshire Worsted Mills*, 370 Pa. 93, 87 A.2d 192 (1952).

18. *Sheaf v. Minneapolis, St. P. & S.S.M.R.R.*, 162 F.2d 110 (8th Cir. 1947) (unprovoked assault); *McChristian v. Popkin*, 75 Cal. App.2d 249, 171 P.2d 85 (1946) (assault by special police officer, committed for master's benefit); *Rosenberg v. J. C. Penney Co.*, 30 Cal. App.2d 609, 86 P.2d 696 (1939) (defamation); *Turner v. American Dist. T. & M. Co.*, 94 Conn. 707, 711, 110 Atl. 540, 544 (1920) *semble* (battery; continuance in employment "is too readily open to explanation on other grounds"); *Parry v. Davison Paxon Co.*, 87 Ga. App. 51, 73 S.E.2d 59 (1942) (intent to rob); *J. J. Newberry Co. v. Faulconer*, 248 Ky. 59, 58 S.W.2d 217 (1933) (defamation); *Pruitt v. Goldstein Millinery Co.*, 169 Ky. 655, 184 S.W. 1134 (1916) (defamation); *Kane v. Boston Mutual Life Ins. Co.*, 200 Mass. 265, 86 N.E. 302 (1908) (defamation of a rival); *Craft v. Magnolia Stores Co.*, 161 Miss. 756, 138 So. 405 (1931) (defamation of customer, for servant's own purposes); *Fisher v. Hering*, 88 Ohio App. 107, 97 N.E.2d 553 (1948) (assault); *Tauscher v. Doernbecher Mfg. Co.*, 153 Ore. 152, 56 P.2d 318 (1936) *semble* (employer believed servant justified in assault).

19. *Sandoval v. Southern Cal. Enterprises*, 98 Cal.App.2d 240, 219 P.2d 928 (1950); *Saberton v. Greenwald*, 146 Ohio St. 414, 66 N.E.2d 224 (1946); *Gantt v. Belk-Simpson Co.*, 172 S.C. 353, 174 S.E. 1 (1934).

20. *Cobb v. Simon*, 119 Wis. 597, 97 N.W. 276 (1903) (false arrest).

as it may be from failure to disavow, the employer becomes liable.<sup>21</sup> In many cases ratification was not found although the courts recognized that ratification could be found from acquiescence.<sup>22</sup> Consistent with these cases are those where the plaintiff claims to have acquired rights because of his uncommunicated affirmance.<sup>23</sup>

There are a few cases which have held that there can be no ratification by acquiescence in the absence of some further element such as the receipt of property or a change of position or, at least, the likelihood of a change of position.<sup>24</sup> These cases are, of course, in conflict with those previously cited and I question whether they represent the present rule in their own jurisdictions. Also, there is an occasional case which denies that there can be ratification by acquiescence where the other party knows that the agent is not authorized.<sup>25</sup> But there are many others to the contrary.<sup>26</sup>

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21. *Central Ry. & B. Co. v. Cheatham*, 85 Ala. 292 (1888) (libel); *Pollock v. Gantt*, 69 Ala. 373 (1881) (abuse of process); *Sandoval v. Southern Cal. Enterprises*, 98 Cal.App.2d 240, 219 P.2d 928 (1950); *Jameson v. Gavett*, 22 Cal.App.2d 646, 71 P.2d 937 (1937) (employee was protecting employer's property); *Pennsylvania Iron Works Co. v. Vogt Mach. Co.*, 139 Ky. 497, 96 S.W. 551 (1906) (slander of competitor resulted in a favorable contract); *Odom v. Tally*, 160 Miss. 797, 134 So. 163 (1931) (malicious prosecution); *Keidel v. Baltimore & O. Ry.*, 281 Pa. 289, 126 Atl. 770 (1924); *Forbes & Allers v. Hagman*, 75 Va. 168 (1881); (false imprisonment).

22. *Sheaf v. Minneapolis, St. P. & S.S.M. R.R.*, 162 F.2d 110 (8th Cir. 1947) (assault by servant not purporting to act for master); *Shannon v. Simms*, 146 Ala. 673, 40 So. 574 (1906) (malicious prosecution); *Wofford Oil Co. v. Stauter*, 26 Ala. App. 112, 154 So. 124 (1934) (prosecution ordered, stopped when facts were known); *Edwards v. Kentucky Utilities Co.*, 289 Ky. 375, 158 S.W.2d 935 (1942) (defamation, not an affirmance to plead that the unauthorized servant told the truth); *Tucker v. Jerris*, 75 Me. 184 (1883) (lack of full knowledge); *Henriques v. Franklin Motor Car Co.*, 260 Mass. 518, 157 N.E. 580 (1927) (malicious prosecution; failure to stop it not sufficient); *Bunting v. Goldstein*, 283 Pa. 356, 129 Atl. 99 (1925) (defendant did not ask for plaintiff's further detention); *Dawson & Campbell v. Holt*, 11 Lea 583 (Tenn. 1883) (silence alone not ratification of slander as a matter of law); *Rigby v. Herzfeld-Phillipson Co.*, 160 Wis. 228, 151 N.W. 260 (1915) (false imprisonment where authorized agent asked for plaintiff's discharge from custody when he learned the facts); *Eastern Counties Ry. v. Broom*, 6 Ex. 314 (1851) (not ratification to defend action for battery on ground that servant was privileged).

23. *Mayfield v. Fidelity & Casualty Co.*, 16 Cal.2d 611, 61 P.2d 83 (1936) (affirmance by assured of insurance policy); *Argus v. Ware & Leland*, 155 Iowa 583, 136 N.W. 774 (1912) (broker by mistake purchased too much wheat; on a rising market the broker, to protect himself, sold and made a profit; held, that the customer who had remained silent, but who testified that he had accepted the purchase, was given the profit of the transaction).

24. *Deane v. Gray*, 109 Cal. 433, 42 Pac. 443 (1895) (defendant did not object when told that physician called by unauthorized employee had looked to defendant for payment); *Britt v. Gordon*, 132 Iowa 431, 108 N.W. 319 (1906); *Guimbilot v. Abat*, 6 Rob. 284 (La. 1843); *Beaumont Building Material Co. v. Barbe*, 13 La. App. 335, 127 So. 484 (1930); *Young v. Ellis*, 149 La. 1001, 90 So. 373 (1922) (perhaps only to effect that facts not sufficient to find ratification). See also *Watson v. Schmidt*, 173 La. 92, 136 So. 99 (1931) (where one of the grounds of decision was acquiescence); *Embry v. Long*, 256 Ky. 266, 75 S.W.2d 1036 (1934) *semble*; *Heyn v. O'Hagen*, 60 Mich. 150, 26 N.W. 861 (1886) *semble*; *White v. Langdon*, 30 Vt. 599 (1858).

25. *Hirzel Funeral Homes v. Equitable Tr. Co.*, 46 Del. 334, 83 A.2d 700 (1951).

26. *Slater v. Berlin*, 94 A.2d 38 (D.C. Munic. Ct. App. 1953); *Public Sav. Ins. Co. v. Greenwald*, 68 Ind. App. 609, 121 N.E. 47 (1918); *Wilkins v. Waldo Lumber Co.*, 130 Me. 5, 153 Atl. 191 (1931).

*Strangers.* Where the one who acted was a stranger, some courts have denied that there can be ratification merely by acquiescence.<sup>27</sup> Clearly, as a factual matter, it is ordinarily more easily found that the principal desired to support one who in other matters was his representative and had now acted only in an excess of zeal.<sup>28</sup> But, if it is found that the principal was willing to become a party to the transaction, there is no rule of policy which would prevent the acquiescence from resulting in ratification as it does where the willingness is expressed affirmatively.

*Situations distinguished.* Where a person sells the property of another as his own, not purporting to be acting as an agent, there can be no ratification in the sense in which that term is used here and an indication of willingness to be bound by the sale would not result in causing the owner to be subject to liability upon any warranty given.<sup>29</sup> In such a case the owner has an action in quasi-contract against the converter if he so desires and can receive the amount which the converter received from the sale.<sup>30</sup> His failure to take action, however, would not prevent him later from bringing action against the transferee no matter how long the delay, although even here it is possible that the owner would be bound by estoppel in some cases.

The estoppel cases should also here be distinguished from ratification. If the principal notifies the agent that he does not desire the transaction or if in any other way he indicates his disapproval, his failure to notify the third person would not result in ratification,<sup>31</sup> although it might result in his being estopped.

*Evidentiary matters.* In deciding whether or not there has been ratification through acquiescence, the relation between the principal and

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27. *Dierks Lumber & Coal Co. v. Coffman Bros.*, 96 Ark. 505, 132 S.W. 654 (1910) *semble*; *Gunter v. Williams*, 137 Ark. 530, 210 S.W. 136 (1919) *semble*; *California Bank v. Sayre*, 85 Cal. 102, 24 Pac. 713 (1890) (defendant's name signed to a note without authority); *Ward v. Williams*, 26 Ill. 447 (1861) *semble*; *Myers v. Cook*, 87 W. Va. 265, 104 S.E. 593 (1920) (on the facts it seems clear that there was no consent). *But cf.* *Miller v. Excelsior Stone Co.*, 1 Ill. App. 273 (1878) *semble*. *Contra, e.g.*, act of stranger can be ratified: *Miller v. Chatsworth Sav. Bank*, 203 Iowa 411, 212 N.W. 722 (1927); *Alexander v. Culbertson Irrigation & W.P. Co.*, 61 Neb. 333, 85 N.W. 283 (1901) *semble*; *Warren v. New York Life Ins. Co.*, 40 N.M. 253, 58 P.2d 1175 (1936) (affirmance of wife's receipt of check); *Saveland v. Green*, 40 Wis. 431 (1876) (where action was in good faith).

28. *Ralphs v. Hensler*, 97 Cal. 296, 32 Pac. 243 (1893); *Holmes v. Morris*, 341 Ill. 351, 173 N.E. 402 (1930) (acts done under power of attorney); *Albani v. Bangs*, 220 Mass. 20, 107 N.E. 406 (1914) (slight evidence sufficient where general agent exceeded his powers); *Compton v. Vaughan*, 222 S.W.2d 81 (Mo. 1949); *Lemcke v. A. L. Funk & Co.*, 78 Wash. 460, 139 Pac. 234 (1914).

29. *Bennett v. Holland Furnace Co.*, 116 F.2d 218 (2d Cir. 1940).

30. RESTATEMENT, RESTITUTION §128 (1937).

31. *Myers v. Cook*, 87 W. Va. 265, 104 S.E. 593 (1920).



the one who purported to act for him is important. Thus, as pointed out above, it is easier to find ratification when he was an agent in other matters than when he was a stranger. The extent of departure from the authorized employment is important. It is also sometimes said that it is easier to find an affirmance in actions between the principal and agent than between the principal and third persons. I doubt whether this is true. It is, however, difficult to prove from the cases one way or the other.<sup>32</sup> Obviously where there is an indication of willingness aside from the mere delay, the acquiescence is easily found.<sup>33</sup>

The period during which there is inaction is of course important. In general, the longer the period of inaction the easier it is to infer a willingness to ratify. The issue is not primarily what a reasonable person would feel, but the state of mind of the individual involved, although, of course, in the absence of proof of idiosyncrasies the reasonable man serves as a standard. It is not possible to evoke a rule for these cases other than a statement that, in the absence of evidence otherwise, a person is expected to act as a normal person would act under the circumstances. Thus the difficulty of communication or of taking effective action to notify the other party weakens the inference of acquiescence.<sup>34</sup> On the other hand, the normal desire of a person to repudiate an action which deprives him of the possession of property would strengthen the inference.<sup>35</sup>

*Knowledge.* As in other cases of ratification, no inference of affirmance can be drawn where the principal has no knowledge of the unauthorized act or not sufficient knowledge to enable him to make an intelligent choice.<sup>36</sup> However, knowledge can be inferred although

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32. Such an inference might be drawn in the following cases: *Holloway v. Arkansas City Milling Co.*, 77 Kan. 76, 93 Pac. 577 (1908); *Lemcke v. A. L. Funk & Co.*, 78 Wash. 460, 139 Pac. 234 (1914).

33. *Wolfe v. Texas Co.*, 83 F.2d 425 (10th Cir. 1936) (asking for price of goods sold by agent); *Senger v. Malloy*, 153 Wis. 245, 141 N.W. 6 (1913).

34. *Ladd v. Hildebrant*, 27 Wis. 135 (1870) (identity of other party was unknown).

35. See *Louisville Trust Co. v. Glenn*, 65 F. Supp. 193, 202 (W.D. Ky. 1946); *Mapp v. Phillips*, 32 Ga. 72, 80-81 (1860) (jury wrong in finding ratification from a three months' wait before bringing suit against a purchaser who had paid agent the money and absconded); *Short v. Metz Co.*, 165 Ky. 319, 330, 176 S.W. 1144, 1149 (1915) (where a non-agent contracted to deliver a car, no ratification by failing to repudiate promptly where the other party has already suffered his loss); *American Bank & Tr. Co. v. Farmers' El. & Mil. Co.*, 63 Mont. 612, 617, 208 Pac. 594, 595 (1922) (no ratification found in failure to disavow agent's promise, where delay of a month; for acquiescence to result in ratification "the delay must be so long continued that it can be accounted for on the theory that there has been some affirmative act" [a more than doubtful statement on the authorities]).

36. See RESTATEMENT, AGENCY § 91 (1933); *Turner v. American Dist. Tel. & M. Co.*, 94 Conn. 707, 110 Atl. 540 (1920) (retention of servant without knowledge of tort); *Short v. Metz Co.*, 165 Ky. 319, 176 S.W. 1144 (1915); *Elk Valley Coal*

there is no direct evidence as to the principal's information.<sup>37</sup> Further, as in other cases, ratification can be effected where the principal knows that he is unaware of all the incidents of the transaction.<sup>38</sup> Likewise, although there may be no ratification, there may be estoppel where the principal does not investigate as a reasonable man should.<sup>39</sup>

*Where agent has duty of disclosure.* Where an agent or other fiduciary violates a duty to his principal, he has a duty of disclosing the facts to the principal so that, unless the latter is made fully aware of the situation, there will be no conclusive ratification, at least with reference to the agent. This is particularly true where the agent has benefited or has sought to deal on his own account with the principal's property. In such a case, the agent is not only under a duty to reveal all the facts concerning the transaction, but is also required to see that the principal has unprejudiced advice concerning the incidents of the transaction. If the agent does not perform his duty in these respects, the acquiescence of the principal will not result in ratification as to the agent.<sup>40</sup>

*Judge or jury.* As in other determinations of states of mind, the question whether the failure to act indicated a willingness which causes the affirmance is a matter for the jury unless the proved facts are clear beyond a substantial doubt.<sup>41</sup> Where the principal has received no benefit and no person has suffered loss, it is sometimes said that af-

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Co. v. Thompson, 150 Ky. 614, 150 S.W. 817 (1912) (no knowledge of promise to pay compensation until service was performed); Tucker v. Jerris, 75 Me. 184 (1883); Auto Outing Co. v. McFrederick, 146 Md. 106, 125 Atl. 886 (1924); Renland v. First Nat. Bank of Grass Range, 90 Mont. 424, 4 P.2d 488 (1930) (knowledge that subagent had been employed without knowing more about contract not sufficient); Beck v. Edwards & Lewis Inc., 141 N.J. Eq. 326, 57 A.2d 459 (Ch. 1948); Erie Ry. v. S. J. Groves & Sons Co., 114 N.J.L. 216, 176 Atl. 377 (Ct. Err. & App. 1935); Williams v. Storm, 46 Tenn. 203 (1869); Thompson v. Murphy, 60 W. Va. 42, 53 S.E. 908 (1906).

37. RESTATEMENT, AGENCY § 91 (1933); Lewis v. Guthrie, 63 Ind. App. 8, 111 N.E. 455 (1916) (knowledge of continuing trespasses); Miles Realty Co. v. Dodson, 8 S.W.2d 516 (Tex. Civ. App. 1928) (held that under the circumstances there was an inference of knowledge and burden was on principal to prove ignorance); Curry v. Hale, 15 W. Va. 867 (1879).

38. Higgins v. Armstrong, 9 Colo. 38, 10 Pac. 232 (1885).

39. Bunn v. Laredo, 213 S.W. 320 (Tex. Civ. App. 1919); see RESTATEMENT, AGENCY § 103 (1933).

40. Adair v. Brimmer, 74 N.Y. 538 (1878) (beneficiary was not told of equitable rights); Smith v. Howlett, 29 App. Div. 182, 51 N.Y. Supp. 910 (4th Dep't 1898) (same); Matter of Long Island L. & T. Co., 92 App. Div. 1, 84 N.Y. Supp. 65 (2d Dep't), *aff'd mem.*, 179 N.Y. 520, 71 N.E. 1138 (1904) and cases cited therein.

41. Mobile & M. Ry. v. Jay, 65 Ala. 113 (1880) (failure to dissent not ratification as a matter of law, where principal had received nothing); Higgins v. Armstrong, 9 Colo. 38, 10 Pac. 232 (1885); St. Louis G.A. Co. v. Wanamaker & Brown, 115 Mo. App. 270, 90 S.W. 737 (1905) (judgment reversed for failure to leave to jury).

firmance must be clearly shown.<sup>42</sup> In cases, however, where the facts are proved and the inference clear, the court may find ratification.<sup>43</sup>

*Formalities.* As in other cases where the original transaction must be effected by the performance of a formality, there can be in general no ratification by acquiescence alone.<sup>44</sup> However, in corporation cases, there appears to have been a considerable relaxation of this,<sup>45</sup> so that in many cases the formality of directors' meetings, for instance, is not insisted upon where the directors individually have acquiesced or where all the stockholders have done so. It should be noted further that, where there has been ratification by the receipt of property or by bringing action or where there is estoppel, the formality requirements are not insisted upon.

*Receipt or retention of property.* Many of the cases which are cited as involving ratification by acquiescence are those in which the principal has received something as a result of a transaction conducted by the agent and thereafter has failed to notify either the third person or the agent of his disapproval. Here the courts have ordinarily said that failure to repudiate within a reasonable time coupled with a failure to offer to return what was received is ratification and not merely evidence of it. These cases are distinct from those dealt with in preceding paragraphs and do not come within the rule as to voluntary ratification since, if there is a retention of property which should be returned, ratification results automatically without reference to the principal's desires. In most cases, however, the conduct of the principal is evidence of an intent to ratify and the cases as a class, using the language of the court rather than the facts, support the narrower rule. It is to be noted that in these cases the state of mind of the defendant is not important and hence the rule is frequently and properly

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42. *Elk Valley Coal Co. v. Thompson*, 150 Ky. 614, 150 S.W. 817 (1912) (ratification found).

43. *Whitley v. James*, 121 Ga. 521, 49 S.E. 600 (1904) (principal seeks to recover land fourteen years after unauthorized sale of land by agent; held, ratification, on demurrer; principal should have pleaded any special reason for delay); *Marion Sav. Bank v. Leahy*, 200 Iowa 220, 204 N.W. 456 (1925) (directed verdict proper).

44. See RESTATEMENT, AGENCY § 93(2) (1933).

45. *Sharon Herald Co. v. Granger*, 97 F. Supp. 295 (W.D. Pa. 1951); *In re Henry Harrison Co.*, 40 F. Supp. 733 (W.D.N.Y. 1941); *Herring v. Fisher*, 110 Cal. App.2d 322, 242 P.2d 963 (1952); *Sandoval v. Southern Cal. Enterprises, Inc.*, 98 Cal. App.2d 240, 219 P.2d 928 (1950); *Be-Mac Transport Co. v. Michigan Express, Inc.*, 348 Ill. App. 460, 109 N.E.2d 370 (1952); *Freeport Journal Standard Pub. Co. v. Frederick W. Ziv Co.*, 345 Ill. App. 337, 103 N.E.2d 153 (1952); *Catlettsburg & B. Tel. Co. v. Bond*, 262 Ky. 106, 89 S.W.2d 859 (1936); *Webb v. Duvall*, 177 Md. 592, 11 A.2d 446 (1940); *Lake Park Development Co. v. Paul Steenberg Constr. Co.*, 201 Minn. 396, 276 N.W. 651 (1937); *Drainage Dist. v. Dawson County Irr. Co.*, 140 Neb. 866, 2 N.W.2d 321 (1942); *Whitfield v. Kern*, 122 N.J. Eq. 332, 192 Atl. 48 (Ct. Err. & App. 1937); *Johnson v. Associated Seed Growers Inc.*, 240 Wis. 278, 3 N.W.2d 332 (1942).

stated that unless the principal promptly repudiates, it will be assumed that he intends to ratify. There are many relevant cases, of which a few may be cited here.<sup>46</sup>

These cases all have a restitutional base. Primarily, a purported principal who has seized property through the unauthorized act of another who purported to act for him is responsible to the owner of the property if nothing more happens, and the third person at that moment is entitled to a rescission of the transaction with the purported agent and the restitution to him of the subject matter. The principal, therefore, has a duty to return the property to the owner and, if upon demand he refuses to return it, assuming it to be a chattel, he would be guilty of conversion and the third person would be entitled to an action for the restitution of the property or its value. If the recipient refuses to return the property, the courts also impose an alternative liability in that the principal is subjected to liability on the original transaction as if it were authorized. This is done even though the purported principal disclaims such liability and prefers to be a converter. Not only is he liable upon the contract but, if with knowledge of the facts he retains the property, in this situation he would be responsible for fraud or other wrongful means by which the property was obtained. It is clear that although this is spoken of as ratification, this ratification is an entirely different type from the "voluntary" type. Although in this case the purported principal is free to choose, he can choose only between returning the property and being subject to liability; the choice between a restitutional remedy and a remedy based on ratification lies

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46. *Gold Mining Co. v. National Bank*, 96 U.S. 640 (1877); *Smith v. Collins*, 165 Fed. 148 (3d Cir. 1908); *Lorie v. North Chicago City Ry.*, 32 Fed. 270 (C.C.N.D. Ill. 1887); *Waldteufel v. Sailor*, 62 Cal. App.2d 577, 144 P.2d 894 (1944) (agreement to give real estate agent a commission); *Union Gold Mining Co. v. Rocky Mt. Nat. Bank*, 2 Colo. 565 (1875) (money was borrowed and expended for the principal, the court finding an inference of ratification); *Breed v. First Nat. Bank*, 6 Colo. 235 (1882) (money borrowed to meet payrolls, the court saying that the fact that money was used in a way advantageous to the principal was sufficient for the jury to find ratification); *Higgins v. Armstrong*, 9 Colo. 38, 10 Pac. 232 (1886) (purchase of supplies for principal's business; delay of two months in repudiating; held to afford the jury ground for finding ratification as well as authorization); *Pauly v. Madison County*, 288 Ill. 225, 123 N.E. 281 (1919) (retention of building supplies); *Swartwout v. Evans*, 37 Ill. 442 (1865) (sale of an interest in farm machinery with part payment for repair bills for a period of two years); *Public Savings Ins. Co. v. Greenwald*, 68 Ind. App. 609, 118 N.E. 556 (1918) (retention of part payment from a sale); *Watson v. Schmidt*, 173 La. 92, 136 So. 99 (1931) (proceeds of the sale of the principal's property used to pay a debt of the principal); *Dupre v. Splane*, 16 La. 51 (1840) (receipt of part payment of a compromise settlement); *Maddux v. Bevan*, 39 Md. 485 (1873) (proceeds of a settlement retained, the court saying that silence may raise a "conclusive presumption of ratification"); *Friend Lumber Co. v. Armstrong Bldg. Finish Co.*, 276 Mass. 361, 177 N.E. 794 (1931) (purchase of lumber by one of three directors); *Meyer, Weiss & Co. v. Morgan*, 51 Miss. 21 (1875) (receiving proceeds of sale); *Hart, Teneray & Co. v. Dixon*, 73 Tenn. (5 Lea) 336 (1880); *Moran v. Knights of Columbus*, 46 Utah 397, 151 Pac. 353 (1915); *Higginbotham v. May*, 90 Va. 233 (1893) (retaining note given for a debt); *Lemcke v. A. L. Funk & Co.*, 78 Wash. 460, 139 Pac. 234 (1914).

with the other party. It is to be noted, however, that this has two elements in common with the voluntary type of ratification. (1) There is no ratification unless the principal knows the essential facts of the initial transaction, and (2) he is free in choosing between alternate liabilities. If we accept the language of the courts, this is voluntary ratification, since it is usually stated that, unless the recipient promptly repudiates, it will be assumed that he intended to ratify. This of course is in the nature of a legal fiction, his *de facto* intent being completely irrelevant.

*Quasi estoppel.* In many cases where the principal has learned that someone has acted on his account, he had reason to know that if he did not take action the third person would likely suffer a loss if ratification were not to ensue. In some of these there is evidence that the third person would suffer a loss. In other cases this evidence is not introduced but undoubtedly is in the background. They differ from the cases frankly based upon estoppel only in that the technique of ratification is used and the principal becomes liable not for harm that he has caused by failing to act, but on the theory that the transaction is made effective. It is in this group of cases that the courts speak of the duty on the part of the purported principal to act promptly if he does not intend to be bound, and, as in the situation where property has been received, the time during which the failure to act continues is of importance. Likewise in these cases the fact that the principal did not know all the incidents of the transaction becomes of less importance since if he did know all the facts he may have been under a duty to ascertain them in order to prevent harm to others. The cases cited below include both those where the action is between the principal and the third person and those where the issue is between the principal and the agent.<sup>47</sup>

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47. *E.g.*, *Edwards Mfg. Co. v. Bradford Co.*, 294 Fed. 176 (2d Cir. 1923) (two weeks of silence on a year's contract in a fluctuating market); *Baker v. Brown & Hackney, Inc.*, 144 Ark. 641, 215 S.W. 578 (1919) (employment of physician with continued visits, ratification of past visits being for the jury); *Gaine v. Austin*, 58 Cal.App.2d 250, 136 P.2d 584 (1943) (affirmance of payment of mortgage where the unauthorized agent used the proceeds and not disavowal for four months); *King v. Rea*, 13 Colo. 69, 21 Pac. 1084 (1889) (affirmance of a purchase of land; where "the transaction may turn out a profit or loss according to the circumstances, the principal must disavow the act within a reasonable time after notice"); *Hoosac Mining & Milling Co. v. Donat*, 10 Colo. 529, 16 Pac. 157 (1887) (lease of a mine affirmed where the principal knew the other party would work it); *J. B. Owens Pottery Co. v. Turnbull Co.*, 75 Conn. 628, 54 Atl. 1122 (1903) (unauthorized person purchased goods in principal's name, the goods being later seized on an execution by agent's creditor while in agent's possession); *N. Owsley & Son v. Philip Woolhopter*, 14 Ga. 124 (1853) *semble* (ratification might be implied even from silence when the circumstances are such that the agent would suffer from silence if there was no ratification); *Weaver v. Ogletree*, 39 Ga. 586 (1869) (failure to repudiate until too late for the other party to take action against the purported agent); *Whitley v. James*, 121 Ga. 521, 49 S.E. 600 (1904) (fourteen years delay after conveyance

of land); Toledo, Wabash & Western Ry. v. Prince, 50 Ill. 26 (1869) (principal knew that agent had employed a physician who was continuing to act); Johnston v. Berry, 3 Ill. App. 256 (1878) (knowledge of agreement to pay the plaintiff from principal's property); Freeport J.S. Pub. Co. v. Frederick W. Ziv Co., 345 Ill. App. 337, 103 N.E.2d 153 (1952) (knowledge that manager was entering into an unauthorized transaction); Hogate v. Edwards, 65 Ind. 372 (1879) (knowledge of a contract of employment); Indiana Die Casting Develop. Co. v. Newcomb, 184 Ind. 250, 111 N.E. 16 (1916) (agent had employed a physician); Terre Haute & I.R.R. v. Stockwell, 118 Ind. 98, 20 N.E. 650 (1889) (same facts); National Life Ins. Co. v. Headrick, 63 Ind. App. 54, 112 N.E. 559 (1916) (agent had employed an attorney); Farwell & Co. v. Howard, 26 Iowa 381 (1868) (two years' silence after mortgage given); Miller v. Chatsworth Sav. Bank, 203 Iowa 411, 212 N.W. 722 (1927) (agent held not liable for unauthorized investment where he notified the principal; decision based on ground of election and not estoppel); Alexander v. Jones, 64 Iowa 207, 19 N.W. 913 (1884) (transfer of land with receipt of price); Cleveland v. Westmoreland, 191 La. 863, 186 So. 593 (1939) (conveyance of mineral interests); Da Ponte v. Ogden, 161 La. 378, 108 So. 777 (1926) (conveyance by agent; no explicit mention of change of position); Woods, Slayback & Co. v. Rocchi, 32 La. Ann. 210 (1880); Mangum v. Bell, 20 La. Ann. 215 (1868) (sale of cotton); Starr & Howland v. Zacharie & Co., 18 La. 517 (1841) (extension of time on a note given by agent); McNeely v. Dave Lumber Co., 18 La. App. 672, 137 So. 607 (1931) (agreement to pay debt of another); Foster v. Rockwell, 104 Mass. 167 (1870) (purchase by agent, delay until after goods were shipped); Irving Tanning Co. v. Shier, 295 Mass. 380, 3 N.E.2d 841 (1936) (promise to pay for goods shipped to a third person); Jackson & Co. v. Great Am. Indemnity Co., 282 Mass. 337, 185 N.E. 359 (1933) (denial of liability which would have excused proof of loss by insured); Sullivan v. Bennett, 261 Mich. 232, 246 N.W. 90 (1933) (failure of broker to sell shares; held, ratification in favor of a broker as a matter of law); Bacon v. Bankers' Trust & Sav. Bank, 143 Minn. 318, 173 N.W. 719 (1919) (employment of plaintiff to knowledge of defendant's directors); Ammons v. Wilson & Co., 176 Miss. 645, 170 So. 227 (1936) (delay of 12 days after receiving order taken by unauthorized traveling salesman); Mercantile Trust Co. v. Paulding Stave Co., 210 S.W. 438 (Mo. App. 1919); Dangle & R. Mining Co. v. Mexico-Joplin Land Co., 190 S.W. 35 (Mo. App. 1916) (mortgage given to secure extension of time); McLaren Gold Mines Co. v. Morton, 124 Mont. 382, 224 P.2d 975 (1950) (agent had made a mining lease); Larson v. Marcy, 61 Mont. 1, 201 Pac. 685 (1921) (note given for borrowed money); Hedeman v. Fairbanks, Morse & Co., 286 N. Y. 240, 36 N.E.2d 129 (1941) (unauthorized employment of salesman); Goldstein v. Tank, 73 Misc. 300, 132 N.Y. Supp. 466 (County Ct. 1911) (unauthorized receipt of price by salesman, delay of nearly three months); Curtis v. Thompson, 166 Misc. 870, 2 N.Y.S.2d 418 (Sup. Ct. 1937) (citing RESTATEMENT, AGENCY § 94 (1933) (transfer of assets from plaintiff's account to that of third person, alternative grounds of ratification and/or of estoppel); Ocean Accident & Guarantee Corp. v. Denner, 207 Okla. 416, 250 P.2d 217 (1952) (habit by agent of endorsing checks); Price v. Peeples, 66 Okla. 139, 168 Pac. 191 (1917) (delay of several months after entry of judgment against principal); Montgomery v. Van Ronk, 328 Pa. 508, 195 Atl. 910 (1938) (failure to object to broker's failure to follow instructions after notification by broker); Franklin Sugar Ref. Co. v. Lykens Merc. Co., 274 Pa. 206, 117 Atl. 780 (1922) (unauthorized contract for purchase); Sud-Rheinische Gesellschaft, M.B.H. v. Rosedale Foundry & Mach. Co., 113 Pa. Super. 187, 172 Atl. 405 (1934) (delay after receipt of goods purchased); Cole-McIntyre-Norfleet Co. v. Holloway, 141 Tenn. 679, 214 S.W. 817 (1919) (failure to take action on order sent by solicitor); State Life Ins. Co. v. Duke, 69 S.W.2d 791 (Tex. Civ. App. 1934) (agreement to be bound by decision in a parallel case); Wm. Cameron & Co. v. Gibson, 278 S.W. 522 (Tex. Civ. App. 1926) (contract to build house on principal's land); Aetna Life Ins. Co. v. Dunhen, 248 S.W. 165 (Tex. Civ. App. 1923) (unauthorized delivery of insurance policy after death of insured); Pittman & Harrison Co. v. Knowlan Mach. & Supply Co., 216 S.W. 678 (Tex. Civ. App. 1919) (sale of grain, with correspondence not indicating agent's lack of authority); Moses v. Archie McFarland & Son, 230 P.2d 571 (Utah 1951) (salesman taking order "subject to approval"); Winston v. Gordon, 115 Va. 899, 80 S.E. 756 (1914) (shareholders remain silent after knowing of an assignment); Marshall v. McDermitt, 79 W. Va. 245, 90 S.E. 830 (1916) (unauthorized appearance by attorney); Francis H. Leggett Co. v. West Salem Canning Co., 155 Wis. 462, 144 N.W. 969 (1914) (unauthorized sale).