

[Title]

Blank Power of Attorney and Apparent Authority (Contract of Guarantee)

[Deciding Court]

Supreme Court

[Date of Decision]

10 November 1967

[Case No.]

Case No. 264 (o) of 1967

[Case Name]

Final Appeal in Objection to Claim and Loan Claim

[Source]

Minshu Vol. 21 No. 9: 2417

[Party Names]

Appellant (Plaintiff, Intermediate Appellant) X: Takuma Tanaka

Vs.

Appellee (Defendant, Intermediate Appellee) Y: Shigeru Kawahara

[Summary of Facts]

A borrowed 75,000 yen from Y (Defendant; Intermediate Appellant, Final Appellant), and when A executed the loan contract for this loan, in order to facilitate X (Plaintiff, Intermediate Appellee, Final Appellee) becoming joint and several guarantor, A delivered to Y two promissory notes with X and A as joint drawers, a blank power of attorney under the names of X and A, and other documents in both names including certificates of seal registration, and executed a joint and several guarantee

contract on behalf of X to secure the obligations owed by A to Y. There are no facts to show that A was granted agent's authority by X for executing the joint and several guarantee contract, but the circumstances described in the judgment show that A was in possession of blank powers of attorney and a certificate of seal registration in X's name. When Y sought compulsory execution pursuant to a notarized deed drafted using the blank power of attorney, X entered an objection against this claim, against which Y made a counterclaim against X for performance of the guarantee obligations. Both the court of first instance and the lower court accepted X's objection against the claim and also upheld Y's counterclaim by recognizing X's liability due to apparent authority. X filed a final appeal.

[Summary of Decision]

Final appeal dismissed.

“The lower court's judgment (citing from that judgment) legally established, based on the evidence presented, that (i) the Final Appellant approved a request from non-party Kamata, for a guarantee of financing to be provided to Kamata by a third party through non-party Hayashi, (ii) the Final Appellant delivered to Hayashi a blank power of attorney (the details of which had not been filled in) and a certificate of seal registration in the Final Appellant's name for the purpose of granting agent's authority to Hayashi or a third party delegated by Hayashi to become a guarantor in line with the above request, and (iii) the financing to be provided through Hayashi failed, so Hayashi returned the power of attorney and certificate of seal registration to Kamata. Subsequently, in the course of executing the loan contract with the Final Appellee, Kamata delivered to the Final Appellee the blank power of attorney, certificate of seal registration, and other documents belonging to the Final Appellant and executed the joint and several guarantee contract acting as an agent of the Final Appellant. Given the above facts, it is a reasonable interpretation that the Final Appellant represented to the Final Appellee that he had granted agency to Kamata.”