

Royal was empowered to close the contract with the plaintiffs, and did so. If he were not so empowered, it was the duty of the defendants to repudiate his apparent assertions of authority immediately—which they did not do. The contract was with reference to a kind of business of which he was the apparent agent of the defendants to discuss and transact, and which the defendants might well have given him authority to execute: *McKnight Construction Co. v. Vansickler* (1915), 51 S.C.R. 374; *Perry v. Suffields Limited*, [1916] 2 Ch. 187.

Donald knew that the defendants would have to change their machinery and alter their plant in order to make the nails for the plaintiffs; but that was not in itself sufficient to render the contract ultra vires: *National Malleable Castings Co. v. Smith's Falls Malleable Castings Co.* (1907), 14 O.L.R. 22.

Again, the defendants treated the contract as an existing one—their conduct in fact amounting to a ratification.

The plaintiffs at once began to specify and continued to do so. They had made substantial specifications before any hint of repudiation reached them. When the defendants definitely repudiated, there was no longer any need for the plaintiffs to continue to specify.

The defendants sought to shew a custom of trade to the effect that there was no contract until the specifications were sent on—that it was up to then only an option. But no proper proof of the existence of such a custom was offered.

Even if the furnishing of a credit by the plaintiffs was a term of the contract, the defendants would not be warranted in cancelling the contract on the ground of the lack of such a credit, without giving the plaintiffs reasonable notice of their intention to cancel on that ground, so as to give the buyer an opportunity of complying with the condition: *Panoutsos v. Raymond Hadley Corporation of New York*, [1917] 2 K.B. 473.

The plaintiffs were entitled to succeed and to recover damages.

As to the damages, to the extent that they could not get similar goods to take the place of those which the defendants had agreed to supply, except at higher prices, the plaintiffs sustained loss. They acted with reasonable dispatch and thoroughness. They were obliged to pay at least \$8 a ton more than the prices named in the contract, and were entitled to damages to that extent, amounting to \$9,600.

They were entitled also to recover for their loss by reason of the increase in freight rates, after the delay in procuring the goods, caused by the defendants' default. On this head \$1,000 should be allowed; if the plaintiffs were dissatisfied with that amount, they might have a reference, limited to this item of damage, and at their risk as to costs.