

(an attempt is made to shew that Reuben W. Prest's name was on the notes given in payment of these goods, but I find as a fact that they were bought solely on plaintiff's responsibility and paid by him), but save that all contracts were to be made in plaintiff's name there **was nothing** whatever to shew that there was any change in the business. The old building with the old sign was used, sometimes at least the old bill heads were used and the same people were in charge. Defendant obtained from Reuben W. Prest out of the store the goods sued for, and credited the amount on the notes he held of Reuben. When the amounts of the accounts which were rendered to him were credited on the notes (one of the notes was in this way paid in full and returned to Reuben) these accounts were receipted. And to plaintiff's suit for goods sold and delivered defendant pleads payment. He sets up no plea of estoppel and asks for no amendment.

From the foregoing statement of facts it will be seen that everything depends upon the view to be taken of the arrangement between the plaintiff and Reuben W. Prest. If it were a partnership agreement plaintiff does not deny that he has lost his right of action against defendant. If it were not, but on the contrary was of such a character that plaintiff was the principal and Reuben W. Prest only his agent, then plaintiff contends that his agent could not use the principal's goods in satisfaction of his own private debts. With this contention in this particular case I agree. If the arrangement be only one of principal and agent, not partnership, plaintiff must have judgment. Of course, if there were anything in plaintiff's conduct that had induced defendant to believe, and he did believe, that in dealing with Reuben he was dealing with the actual principal the case would be different (*Cooke v. Eshelby*, 12 A. C. 271). As I have said, there is no plea of estoppel, and though I should judge a fairly strong case of estoppel could have been made out, the witnesses were not fully examined along that line. From what appears I would infer that defendant kept on dealing with Reuben W. Prest as he had formerly done without any belief one way or the other as to whether Reuben were the principal or an agent, which, under the case cited, is not enough. But it might quite well be if asked he would have gone farther and said he believed he was dealing with Reuben as principal and might have been able to shew that