

Div. Court, Ont.]

BENNETT v. VICKERS.—NOTES OF RECENT DECISIONS.

[Quebec.

transmit and deliver C.O.D. was part of the agent's authority. The difficulty in this case arises from the fact of the agent, as he swears, never having seen the bill accompanying the parcel. Had he done so, he would, he says, have refused to receive it. As, however, I must upon the evidence find that this bill was delivered at the agent's office, along with the parcel, and that this parcel was marked C.O.D., and that the clerk's attention was called to the fact that it was C.O.D., upon these facts, I must also find that the plaintiff has done all that he was called upon to do. The loss arises from some default or neglect on defendant's part. This being so, and the defendant's agent (as I find) having made the contract with plaintiff, can I allow the defendant now to evade the loss resulting directly from his act, and set up the plea that his agent has gone beyond his authority?

The defendant's objection, put in other words, is, that his agent had authority to make special contracts (for he admits receiving parcels to go beyond limits, but not C.O.D.); that on this occasion he did not make one of these; leaving the inference to be drawn that the agent, having chosen to make another contract, different from the special one he was authorized to make, the defendant was not liable. This I felt at the trial to be a grave objection, but still one to which I did not feel inclined to give effect. Had the plaintiff been in the habit of receiving from defendant's agent receipts in the shape of contracts whenever he deposited goods for transmission, it might be urged that he had notice of the extent of the agent's authority (assuming, for the sake of argument, that these contracts did show the extent of the authority). The plaintiff, however, swears, that he never did receive one of these contracts, consequently no notice to him is proved. But even if it was the custom of the agency to give these receipts, the plaintiff might fairly infer that, as the agent agreed to forward this parcel, he would have no objection to make out a written document embodying the contract, or to alter one of his printed ones to suit the changed terms. No evidence, however, was given at the trial to show that, even if one of these printed contracts had been given to plaintiff, it contained any notice of the extent of the agent's authority.

The case of *Muschamp v. Lancaster and Preston Junction Railway*, 8 M. & W. 421, is the case constantly quoted where the liability of a railway company, which has connecting lines, for losses beyond their own lines, is the subject of dispute. Rolfe, B., there stated the law to the

jury in this way: "That where a common carrier takes into his care a parcel directed to a particular place, and does not by his *positive agreement* limit his responsibility to a part only of the distance, that is *prima facie* evidence of an undertaking on his part to carry the parcel to the place to which it is directed, and the same rule applied although that place were beyond the limits within which he in general professed to carry on his trade as a carrier." If, then, it were a simple matter of liability by the defendant (apart from a question of agency altogether), I should, under the authority of this case, have to find for the plaintiff. The defendant has not protected himself by any positive agreement, as no written contract seems to have been entered into at all with the plaintiff, who had no notice of any such limitations or conditions (whatever they may be) as the printed receipt may show.

As to the question of the agent's authority, I think it was quite natural for the plaintiff to infer that it was within the scope of the agent's powers to receive the parcel for Bracebridge C.O.D., and that the defendant should be bound by his act and the loss arising therefrom.

Judgment for plaintiff.

QUEBEC REPORTS.

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(From the *L. C. Jurist*, Vol. 19.)

INSOLVENCY.

Held—1. Although it be not proved that a party has traded for over three years, yet such party will be still considered a trader if her debts are unpaid, and will be liable to the provisions of the Insolvent Act of 1869. — *Buchanan v. McCormick*, 29.

2. A creditor of a debt of a non-commercial nature, can demand an assignment from a trader, under the Insolvent Act of 1869. — *Id.*

3. The fact of the debt upon which a creditor bases his demand for an assignment being in litigation and disputed in the Superior Court, does not prevent that creditor from taking proceedings in Insolvency against his debtor founded upon the disputed debt. — *Id.*

4. A judgment being appealed from, and then the defendant having declared that he did not object to execution going against him, and having given security for costs only in appeal, the creditor may base his demand for assignment upon such judgment. — *Id.*