

But it is said that there was a parol agreement between the parties that defendant should have the right to make contracts on his own behalf. If such an understanding formed a condition precedent to the contract, it might, of course, be proved by parol, and, as defendant sought to establish this, I allowed evidence of what took place at the time of and prior to the signing of the agreement, to go in, subject to objection. Such a condition, however, so materially modifying what I conceive to be the plain effect of the written contract, would obviously require to be established by the clearest evidence. This has certainly not been done. The most that has been shewn is that Dyson explained that the contract need not interfere with defendant's business. Defendant's business was that of manufacturing and selling tents, awnings, flags, etc. Contracting for decorations formed no regular part of it. It is true that both defendant and his manager, Ross, say that for two or three months prior to the date of the agreement they had been preparing material for the anticipated decorations, but the evidence, taking it all together, does not establish that Dyson knew of this.

I therefore find that in respect to all the contracts entered into by defendant during the royal visit, whether taken in his own name or in that of plaintiffs, he acted as plaintiffs' agent; and that he is bound to account to them for all money received thereunder.

Turning to the first part of the counterclaim, it is not disputed that certain goods were supplied by defendant at Dyson's request; but plaintiffs object to the prices charged for them. These prices admittedly include a profit to defendant, whereas plaintiffs contend that they are only liable for the actual cost. The articles in question were all used or intended to be used in connection with the work plaintiffs had undertaken to do in Ottawa. The contract provides that plaintiffs are "to pay all expenses for the carrying out of any work that may be contracted for" . . . "and to pay as remuneration 10 per cent. of all amounts received for public work . . . and 20 per cent. on all amounts received for private work." As a matter of fact, with comparatively few exceptions, plaintiffs supplied from their own stock all the materials required; but there was nothing in the contract obliging them to this. There was nothing to prevent their asking defendant, as their agent, to procure