

Div. Court.]

BENNETT V. VICKERS.

[Ontario.]

sums payable on parcels marked C.O.D. beyond their limits, and that if the bill mentioned as sent with this parcel had been seen by him, he would have refused to collect it; that they had no agent at Bracebridge. Looking at the entry of the receipt, &c., in the proper book, made by him, and not seeing C.O.D. placed against it, he would say there had been no bill sent with the parcel; that though the parcel might have been marked C.O.D., yet if no bill had accompanied it, he would pay no attention to this direction, as unpaid parcels were often sent so marked without bills accompanying them. In that case, the letters C.O.D. would be supposed to be and be taken to mean a direction by the consignor to the defendant to collect his charges thereon for carriage; that Mr. Edwards had authority to make contracts for delivery within defendant's limits, but not beyond.

ARDAGH, J. J.—I have no hesitation in saying, and it is not argued by defendant to the contrary, that if a contract were made with plaintiff to carry this parcel to Bracebridge, that is, beyond defendant's limits, defendant would be liable, unless he had given express notice to the plaintiff that he would not be liable after the goods had passed into the hands of another carrier. Companies acting as common carriers do constantly limit their liability in this way. The point, however, on which the defendant does rely is this, that Mr. Edwards, as agent for defendant, had only a limited authority, that is, authority to receive goods for delivery and collect moneys due on same within certain limits, and not beyond; that if he (Mr. Edwards) did make a contract to deliver or collect beyond the limits, it was in excess of his authority, and defendant is not liable.

No doubt the general rule is that a party dealing with an agent, and knowing him to be such, must make himself acquainted with the nature and extent of that agent's authority. There must be, however, some limit to this rule, and some reason in it. A person held out to be an agent must be presumed to have all needful powers to carry out the object of his agency; but if he goes out of his way, and does acts not so necessary, his principal will be exonerated. Now, here Mr. Edwards had authority of contract with third parties for the carriage and delivery of goods for reward, this being the chief object of defendant's business. The announcement of this business being "Vickers' Northern Express," and its headquarters being in Toronto, it might reasonably be supposed that the business has to be to the north of that city. Suppose a person at Toronto were to enter

defendant's office there, and deliver a parcel for England to some clerk, who, in ignorance, received it, and on the discovery of this by some one in authority, or who knew better, this parcel was delivered over to some other company or carrier, who, in the course of their business, undertook the carriage of goods to England, it could not be argued that defendant would be liable in such a case after loss of this parcel by the second company, even though it was received by him in the manner mentioned, there being nothing in his advertised business to warrant any one assuming that he carried goods to England. In the present case, however, it may fairly be argued that plaintiff might reasonably presume that Bracebridge was within defendant's limits of carriage, and nothing is shown to have come to his knowledge whereby he had notice of the fact that it was not; and it is a fact that for the greater part of the distance between Barrie and Bracebridge the defendant does receive goods C.O.D., and does deliver them. It would then be only reasonable to expect that defendant's agent here, when required to book parcels beyond the limits, should, if he had no authority to do so, state the fact. It was something almost peculiarly within his own knowledge. His receiving a parcel to book for a certain point is something which, in itself, does not suggest to the consignor any inquiry as to the extent of the agent's authority, for he (the agent) is there for the very purpose of receiving and booking parcels, and it would be most natural for the sender to presume that the agent had such authority if the parcel was received without demur. The agent's receiving the parcel to deliver at Bracebridge without objection was tantamount to his answering in the affirmative the question: "Will you receive this parcel and deliver it at Bracebridge?" I observe that while Johnson states that Edwards had no authority to receive parcels to deliver beyond Severn Bridge, yet he did receive it for that purpose, but says that, had he known it to be C.O.D., he would not have received it, and that they invariably refuse to receive parcels, so marked, for delivery beyond their limits, thus leaving it to be inferred that they do receive them in such cases when not marked C.O.D.

While, then, I would be inclined to hold that if the agent had entered into a contract involving conditions unusual, or such as would not usually be supposed to form part of such a contract, the principal would not be liable, yet in this case I cannot see that the condition—for the breach of which the plaintiff now sues—was unusual or extraordinary. Receiving parcels to