

This does not mean that the manager of a company is presumed to have authority to enter into any contract *intra vires* of the directors, but was spoken of the contract there in question—a mercantile contract for the manufacture of goods. The distinction is well shewn in *Cartmell's Case*, L.R. 9 Ch. 691, where the principle is confined to cases “of an individual or body corporate, carrying on business in the ordinary way, by the agency of persons apparently authorised by him or them, and acting with his or their knowledge. The case differs in no respect from the ordinary one of dealings at a shop or counting-house; the customer is not called upon to prove the character or authority of the shopman or clerk with whom he deals; if he is acting without or contrary to the authority conferred upon him by his employers, it is their own fault.” And it is further said that “the plaintiffs could only know that the directors had power to appoint persons to perform the duties they appeared to be doing; and they had a right to assume that they were duly and properly appointed.”

The Court in that case refused to extend the application of the principle to a matter outside of the ordinary dealings of the company, although the transaction was one clearly within the authority of the directors.

But there is another and more fundamental difficulty in the plaintiff's way. In this case there was no holding out, and there is no room for the application of the principle relating to apparent authority; for the contract was not with the company but with W. C. Ferrier; and, when the plaintiff alleges that Ferrier was acting as agent for the company, and seeks to hold the company liable upon a contract entered into with the agent, he must establish an agency in fact. He has failed to do so; and he cannot, therefore, enlarge the obligation of W. C. Ferrier upon which he was content to rely when he made the agreement in question.

W. C. Ferrier remains liable upon that agreement. He could only be relieved by something amounting to a novation. This is not established.

Judgment will, therefore, be for the plaintiff against W. C. Ferrier for the amount due, with costs; and the action as to the company will be dismissed without costs.