

Nova Scotia.

SUPREME COURT.

Full Court.]

KENNY v. HARRINGTON.

[Nov. 15, 1898.]

Agents—Liability of principal in respect of contracts made by in excess of power—Power of attorney defining powers—Deposit of, in Registry Office ineffective as notice in absence of statute—Evidence.

Defendant gave to his father, A.H., a power of attorney to carry on a general trading business for cash only or barter or exchange of goods, with moneys supplied by defendant from time to time for that purpose, but giving A.H. no power or right whatsoever to make, accept or indorse any promissory note for defendant, or in his name, or to pledge his credit to any extent whatever without further authority. Subsequent to the giving of the power of attorney, defendant instructed A.H. that he was not to purchase any goods from plaintiff. A.H., in violation of these instructions, purchased goods from plaintiff, and gave a note for the amount.

In an action by plaintiff to recover from defendant the amount claimed for the goods so sold, evidence was given by A.H. to the effect that defendant must have found out by the books and papers that he was dealing with plaintiff. There was also some evidence of defendant, from which it might be inferred that A.H. could purchase goods on credit provided defendant knew of it.

Held, per GRAHAM, E. J., HENRY, J., concurring. 1. that the trial judge was justified in coming to the conclusion that the purchase of goods on credit was within the apparent scope of the powers of A.H. as agent.

2. The deposit of the power of attorney in the office of the registrar of deeds could not affect the case in the absence of a statute giving efficacy to such deposit.

3. The fact that the goods were charged in plaintiff's books to A.H. without using the word "agent," and that a note was taken from A.H. in his own name for the amount was not sufficient reason for disturbing the finding of the trial judge that the credit was given to defendant, plaintiff being aware at the time that A.H. was defendant's agent, and A.H. having no credit of his own.

Held, per MEAGHER, J., RITCHIE, J., concurring. (1) The evidence of A.H. that defendant must have known from the books and papers of his dealings with plaintiff being mere matter of opinion, greater effect must be given to the positive evidence of defendant that he had no such knowledge, there being nothing to shew that the testimony of defendant was discredited by the trial judge.

2. A statement of defendant that plaintiff must wait like the rest of the