

should remain in charge of said business and carry it on for and on behalf of the defendant in accordance with instructions received. It did not appear that any specific instructions as to the purchase of new goods were given, but it seemed to have been contemplated by the defendant that some new goods would have to be ordered from time to time to enable Pifer to clear out the old stock. Pifer then remained in charge and in his own name purchased from the plaintiff goods such as would reasonably be required in the business, and the Judge of the County Court found that the goods had been ordered for the said business.

*Held*, following *Armstrong v. Stokes*, L.R. 7 Q.B. 598, and *Watteau v. Fenwick* (1893), 1 Q.B. 349; that defendant had constituted Pifer as his general agent for taking charge of and carrying on the said business, and was liable to the plaintiff for the price of the goods furnished by him. *Hechler v. Forsyth*, 22 S.C.R. 489, distinguished. Judgment in the County Court affirmed and appeal dismissed with costs.

*Nugent*, for plaintiff. *A. D. Cameron and Clark*, for defendant.

ALLAN v. M. & N. W. R. CO.

*Practice—Receiver—Ex parte application—Trustee and cestui que trust.*

This was a motion made by two holders of bonds issued by the defendant company, and secured by a mortgage made to Grey and Heron, the plaintiffs in the second suit, as trustees for leave to bring an action to administer the trusts of the mortgage deed, for a declaration that the power of sale and other powers contained in that deed are valid, and for a declaration of the true construction of the mortgage as to certain matters. The mortgage covered a portion of the line of the defendant's railway, known as the first division: but as part of it is beyond the province it had been decided that the court had no jurisdiction to order a sale. Receivers of the profits, tolls and revenues of the railway had been appointed in the respective suits, but they were not in possession of any part of the company's property, and had nothing to do with the management of the railway. The trustees Grey and Heron had formerly applied to the court, and got leave to take certain proceedings which they had taken, but without any practical result to the bond holders, beyond the appointment of separate receiver for the first division. It was deemed necessary to make the present application because the railway would have to be made a party to the action to be brought, and receivers had been appointed in the above actions.

*Held*, that leave should be granted as asked, and that the applicants were not precluded from bringing an action for the administration of the trusts on account of anything done by the trustees; also that no notice of the application need be given, as the receivers were not in any sense in possession of any part of the company's property.

*Howell*, Q.C., for applicants.