

of the 23rd March, fully adopts what Barr had done, as therein he says, "This is the way we get served by trying to accommodate shippers in changing consignments." And in the same letter he further shews that the company were not alleging that they had performed their contract, by requesting the plaintiff "to advise his Liverpool correspondents that they confer with Meadows & Co., and turn the property over to them if not already sold;" whereas, if he had been repudiating Barr's authority, he would simply have asserted that the defendants had performed their contract by carrying the seed to Liverpool. The question of the authority of an agent, where such authority is not contained in some written document or appointment, is clearly one of fact, and there was ample evidence in this case to warrant the finding of the learned Judge.

Technically, on the pleadings, the defendants may be entitled to succeed, as the plaintiff has alleged that the seed was delivered to the defendants at Waterford, to be carried from there to London, and the defendants have, in terms denied this by their pleading. The evidence shows that the seed was *delivered at Waterford to be carried to Liverpool, and no seed was actually delivered to the defendants to be carried to London*; so had there been no ratification of Barr's act by McIlhanny, Barr would not, by virtue of any authority shown to have been vested in him, have had power to bind the company by any contract when he himself did not receive the goods, an agent of a carrier not having merely by his employment authority to contract for the carriage of goods by his employer, unless the goods are actually delivered to him: *Hubberstij v. Ward*, 8 8 Ex. 330; *Oliver v. Great Western R. W. Co.*, 28 C. P. 143; *Erb v. Great Western R. W. Co.*, 42 U. C. R. 90, affirmed on appeal to the Supreme Court, 6 S. C. 179. The plaintiff's cause of action is rather that, having delivered the seed to the defendants at Waterford, to be carried to Liverpool, while in transit, and in consideration of an increased rate of freight, the defendants undertook to carry it to London, instead of Liverpool, and it is this contract that McIlhanny,