

Full Court.]

[Jan. 21.

NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLEABLE CASTINGS CO.

Company—Executory contract—Corporate seal—Authority of general manager.

Appeal from judgment of FALCONBRIDGE, C.J.K.B., at the trial. By letter addressed to the plaintiffs signed by the defendants by their general manager the defendants agreed to furnish malleable iron coupler parts to the plaintiffs in certain quantities as might be ordered between certain dates. The letter had at its foot the word "accepted" subscribed with the plaintiffs' name by H. F. Pope, assistant treasurer. The defendants were what is known as a one man company, the president and general manager above referred to, holding 1240 shares out of 1375. No by-law had ever been passed defining the general powers of the board of directors or of the managing director of the above company except as to the power of borrowing money for the purpose of carrying on the business. The managing director did not consult the board before signing the letter referred to and there was no formal subsequent approval by the board of what had been done, nor on the other hand any formal or other dissent. At the time the letter was written the general manager knew that to carry out the proposed contract, an extension of the defendants' plant and premises would be necessary at an additional expenditure of probably \$40,000, and the plaintiffs also knew that the full performance of the contract would require a substantial increase of the defendants' plant. But there was no evidence that they knew anything about the defendants' capital or commercial circumstances, or their ability to furnish the additional plant.

Held, 1. In the absence of bad faith or notice the plaintiffs were entitled to assume that the general manager had been clothed with the real authority which he was ostensibly exercising in entering into the contract in question, which was after all, only one to manufacture and supply articles of the kind for the manufacture and sale of which the defendants were expressly organized, and the agreement therefore, was certainly one to which the board of directors would have had power to bind the company by entering into it.

2. The circumstance that the contract required for its full