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AUTHORITY OF BUSINESS MANAGER TO BUY ON CREDIT.

The law of principal and agent contains numerous questions of difficulty, and amongst them must be reckoned those with which the Common Pleas dealt in the recent case of *Daun v. Simmins*, (40 L. T. Rep. N. S. 556). The real point in that case related to the extent of the authority of the manager of a public house, but it involved some important principles of law. The action was brought by a spirit merchant against the owner of a public house for spirits supplied to the defendant's manager. The manager was authorized to order spirits of two persons only, but not of the plaintiff. When the accounts were sent in, the defendant repudiated the acts of his agent and refused to pay. The argument on behalf of the plaintiff was that the defendant put his agent in the business as general manager to carry on the business; and that, inasmuch as the agent was left in possession of the premises, there was a holding out of him by the defendant as having authority to make binding contracts, which estopped the defendants from proving that he had no authority. The license was taken out in the name of the defendant, but was left in the possession of the manager. The invoices, too, were made out in the name of the defendant. The action was twice tried, and on both occasions the jury found for the plaintiff. A rule *nisi*, however, was granted for a new trial on the ground that there was no evidence to go to the jury, and that the verdict was against the weight of evidence.

The grounds of the plaintiff's claim were twofold, but these might be easily resolved into one, namely: that the defendant had held out the agent as possessing the requisite authority, and was therefore liable with respect to such holding out. There is a great variety of illustrations contained in the law books. The principle upon which they depend is that, if one person employs another in a character which involves a particular authority,

he cannot by a secret reservation divest himself of that authority. Hence we have another enquiry raised in *Daun v. Simmins*: did the character with which the agent was invested as manager render the instructions of the defendant with respect to the persons with which he was to deal nugatory so far as concerned a third person without notice?

In the early case of *Pickering v. Bush*, 15 East, 38, the plaintiff, the true owner, had bought goods through A., who was a broker and agent for sale. At the plaintiff's desire the goods were transferred into the name of A., who afterwards sold them. The action was brought to recover the goods. Lord Ellenborough ruled that the transfer by the plaintiff's direction authorized A. to deal with them as owners with respect to third persons, and that the plaintiff who had enabled A. to assume the appearance of ownership to the world, must abide the consequences of his own act. The jury found for the defendants. Upon the argument of the rule to set aside that verdict, his Lordship made use of his often quoted observations with respect to the limits of an agent's authority, remarking that "Strangers can look only to the acts of the parties and to the external *indicia* of property, and not to the private communications which may pass between a principal and his broker; and if a person authorizes another to assume the apparent right of disposing of property in the ordinary course of trade, it must be assumed that the apparent authority is the real authority. I cannot subscribe to the doctrine that a broker's engagements are necessarily and in all cases limited to his actual authority, the reality of which is afterward to be tried by the fact. It is clear that he may bind his principal within the limits of the authority with which he has been apparently clothed by the principal in respect of the subject matter." In a more recent case (*Summers v. Solomon*, 26 L.J. 301, Q. B.) one of the defendants' shops was under the management of his nephew who was in the habit of ordering goods of the plaintiff in the name of the defendant, who paid for them. In Nov. 1855 the plaintiffs received two orders for jewelry from the nephew. The goods were sent and acknowledged by the defendant as ordered by him. On the 7th March 1856, the nephew absconded and obtained on the 10th,