

Much was sought to be made by counsel for the appellant of the fact that no change was made in the "literature" and printed documents of the agency, upon which the name of Eastmure and Lightbourn, Ltd., describing the company as general agents for the Dominion of Canada of the respondent was printed, and that some of the correspondence from the head office continued to be addressed to the company. This, however, was not inconsistent with the change in the agency having been made. It may have been and probably was thought by the appellant that for his own reasons it would be better not to make any change in the name that had been used, and, as Mr. Woods testified, it did not matter to the respondent in what name the appellant might carry on the business, so long as it was to him that the respondent was to look as the agent in Canada.

Much of the subsequent correspondence respecting the business, and practically all of it except the formal correspondence, was carried on with the appellant personally, and the letters which were written from the agency were written by him personally and not in the name of the company. This fact lends supports to the contention of the respondent, and the further fact that a power of attorney which was executed by the respondent on the 14th March, 1910, appointing the appellant as the attorney to establish and maintain at the city of Toronto, an agency of the respondent to be called the chief agency and that in it the appellant is designated chief agent of the respondent in Canada, is a very important piece of evidence in support of the respondent's case.

While I agree with the conclusions of the learned trial Judge as to the matters with which I have dealt, I am unable to understand upon what ground the appellant is made personally liable for anything that may have been owing by Eastmure and Lightbourn, Ltd., in respect of the transactions of the agency prior to 1st May, 1907. No case is made on the pleadings for such relief, and there is no evidence to support a finding that it was part of the arrangement made in New York that the appellant should assume any such liability, and even if it was so agreed the agreement could not be enforced, as it would have been an undertaking to answer for the debt of another and not enforceable because not evidenced as required by the Statute of Frauds.