

agent's authority was disclosed to the buyer, a set-off of a debt due from the agent is a good defence to a claim by the principal against the buyer, notwithstanding that the agent, though so intrusted with the goods, was under an agreement with his principal not to sell in his own name: *Ex parte Dixon*; *Re Henley*, L. Rep. 4 Ch. Div., 133; 46 L. J. 20, Bank.; 35 L. T. Rep. N. S., 644.

Lord Justice Brett explained, in a subsequent case, that the statement by Mr. Justice Willes, in *Semonza v. Brimley*, 18 C. B. N. S., 467, to the effect that it must be shown that the agent acted with the authority of his principal, was due to the fact that he was dealing with the demurrer; and that such authority is shown when the facts prove that he is intrusted as a factor: *Ex parte Dixon*; *Re Henley*, 4 Ch. Div., 133.

An agent to whom bills of lading are handed for the purpose of obtaining possession of the cargo of a stranded vessel, has implied authority to bind the owner by an agreement to pay, on condition of the cargo being given up, charges for which there is a lien on the cargo: *Hingston v. Wendt*, 1 Q. B. Div., 367.

An auctioneer has a possession coupled with an interest in goods which he is employed to sell; not a bare custody, like a servant or shopman. There is no difference whether the sale be on the premises of the owner or in a public auction room. The auctioneer has also a special property in such goods, with a lien for the charges of sale, commission and the auction duty: *Williams v. Millington*, 1 H. Bl., 81, 84, 85. The catalogue and conditions may afford evidence that he has contracted personally, and so be liable for the non-delivery of goods and the like: *Woolfe v. Horne*, 2 Q. B. Div., 355. The authorities are conclusive to show that a broker acting for one of the contracting parties making a contract for the other, is not authorized by both to bind both; but the broker who makes a contract for one may be authorized by that person to make and sign a memorandum of the contract, and the signed entry in the broker's book is a sufficient memorandum of the bargain to satisfy the Statute of Frauds: *Thomson v. Gardiner*, 1 C. P. Div., 777.

A broker who acted for the plaintiff, made a contract for the sale of goods to the defendant. He sent a note to each party, but signed only

that which was sent to the seller. The contract was entered in the book and duly signed. The defendant kept the note which was sent to him, and made no objection until called upon to accept the goods. The court held that the conduct of the defendant amounted to an admission that the broker had authority to make the contract for him: *Thomson v. Gardiner*, 1 C. P. Div., 777.

Thirdly, as to questions of ratification:

In order to amount to a ratification after attaining a full age, within 9 Geo. 4, c. 14, s. 5, Chief Justice Cockburn states the rule that "there must be a recognition by the debtor, after he has attained his majority, of the debt as a debt binding upon him." *Rowe v. Hopwood*, L. Rep. 4 Q. B., 1. A recognition when of full age, and a promise to pay it "as a debt of honor," when of ability, is not such a ratification: *Maccord v. Osborne*, 1 C. P. Div., 568. By ratification is meant an admission that the party is liable and bound to pay the debt: *Per Parke, B., Mawson v. Blane*, 23 L. J., 342 Ex.; 10 Ex. 206-210.

When a policy of marine insurance is made by one person on behalf of another without authority, it may be ratified after the loss of the thing insured by the party on whose behalf it is made, though he knew of the loss at the time of the ratification: *Williams v. North China Insurance Company*, 1 C. P. Div., 757. The justice as well as the authority of this principle was insisted upon by the Court of Appeal, in a case decided in 1876, where Chief Justice Cockburn pointed out that, where an agent effects an insurance subject to ratification the loss insured against is very likely to happen before ratification, and it must be taken that the insurance so effected, involves that possibility of the contract: *Ib.*

A set-off cannot be maintained of a debt contracted by the plaintiff during infancy, and not ratified by him in writing after full age: *Rawley v. Rawley* 1 Q. B. Div., 460.

Fourthly, as to the agent's right to commission:

In considering whether an agent is entitled to commission for the introduction of a purchaser or capital, the question is whether the purchase or advance was the result of that introduction, or of an independent negotiation between the parties. *Causa proxima* is not the