N. Jersey Court of Errors and Appeals.

THE PERTH AMBOY MANUFACTURING COMPANY,
vs.
DANIEL CONDIT AND JOSEPH A. BOWLES.
} In Error to Supreme Court.

STATE OF THE CASE.

Daniel Condit and Joseph A. Bowles brought an action of trespass on the case in the Supreme Court, against the Perth Amboy Manufacturing Company, in the term of September, 1844, and filed their declaration, (prout the same) to which the defendants filed the general issue. The cause was tried at the Circuit Court, holden at Newark, in and for the county of Essex, at the term of April, 1845, before the Honorable Joseph C. Hornblower, Chief Justice of the Supreme Court, when the following bills of exceptions were allowed and sealed.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

DANIEL CONDIT AND JOSEPH A. BOWLES,
vs.
THE PERTH AMBOY MANUFACTURING COMPANY.
} In Case.

10 This case came on to be tried on the eighth day of April, in the year of our Lord eighteen hundred and forty-five, before the Honorable Joseph C. Hornblower, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, at a Circuit Court holden at Newark, in and for the county of Essex, on the issue joined between the parties (prout the same) and a jury duly empanelled and sworn to try the said issue, and thereupon the plaintiffs, in support of the said issue, offered as a witness—

HEZEKIAH THOMPSON, who being duly sworn, testified as follows, that he was acquainted with the plaintiffs, and that they had been

partners in trade since 1837 or 1838; their business was that of manufacturing malleable iron; their shop is in Orange street, in the city of Newark.

On his cross-examination he testified, that there was a change in the firm in 1843, by the death of a silent partner at that time; there are three other partners since 1843. Beach Vanderpool, Handford Smith and Oba Meeker, are silent partners and own shares in the concern. The business is still conducted in the name of Condit & Bowles.

Being further examined in chief, the witness said, I do'nt know the nature of the partnership; I think they had a charter till James Vanderpool died, in the latter part of the winter of 1843, when Beach Vanderpool, his son, took his place; the concern still went on in the name of Condit & Bowles. I understood it was a special partnership, under the act of the legislature: this I understood from the conversation of Condit & Bowles: this existed during the time, from March to December, 1842, and it continued till the death of James Vanderpool, in the latter part of the winter of 1843, and before the commencement of this suit, when the partnership was changed. Condit & Bowles did the business and Beach Vanderpool, Handford Smith and Oba Meeker were the silent partners. The plaintiffs then offered in evidence the record of the county of Essex, of limited partnerships, recording the limited partnership of certain individuals therein named, under the name of Condit & Bowles, as general partners (prout the same) the said Condit & Bowles being the plaintiffs in this suit.

Charles F. Maurice was then called as a witness by the plaintiffs, and was objected to by the defendants, on the ground that he had purchased the articles and was interested; whereupon a general release, executed by the plaintiffs to him, was proved and delivered to him, and he was sworn and testified as follows:—I now reside in Ulster county, New York; I formerly lived in Perth Amboy, which I left in October, 1843. From February, 1842, till December following, I was agent for the defendants in the manufactory of padlock's. I had, as agent for the defendants, dealings with the plaintiffs; I purchased castings from them, the same, as I believe, for which this suit is brought. The bill of

particulars being shown to him (prout the same) he said, I remember the amount, $755 10, and the articles bought by me were of the same description with those therein named. The firm of Andrews & Maurice, of which I was a member, had been in the habit of purchasing articles of this description of the plaintiffs. They had charged Andrews & Maurice. In February, 1842, Andrews & Maurice sold all their materials, tools, steam-engine and factory, to the Perth Amboy Manufacturing Company, who had also bought the patent for the clam-shell padlock, and had a contract with the Government to furnish locks for the mail bags from that patent. The castings for these were furnished by the plaintiffs. The castings for which this suit is brought were delivered at the factory of the defendants in Perth Amboy, and applied to the use of the defendants. A small amount of them were used by a firm doing business on the same premises, but to what amount I cannot specify.

Being cross-examined he testified as follows:—"The firm of Andrews & Maurice had been in existence for about five years before, and as one of that firm I had dealt with the plaintiffs in articles of the same nature with those in question. They had their establishment in the same building occupied by the company. I communicated with the plaintiffs, sometimes by letter, and sometimes personally. I had a communication with the plaintiffs by letter how these articles were to be charged." A letter being shown to him, he says, "that is the letter, dated March 22d, 1842; it is in my hand-writing, and the signature is that of Andrews & Maurice, and my signature (prout the same.)

My agency for the defendants was not created by a written instrument regularly signed by the company. At the time of the date by Andrews & Maurice to the defendants, it was agreed by Andrews that I should be employed as agent for the company, at a salary of $1,000 a year. Andrews was appointed general agent for the defendants, and it was through him that I received the appointment of manufacturing agent. I was, to the best of my recollection, to purchase the materials for use, but in my own name. I was to employ workmen. In the first place I was to receive $1000 per annum, afterwards and when I entered into the manufacture, no appointment having been made regularly, a

memorandum was brought to me by Solomon Andrews, which I had corrected and copied. I was to pay debts I contracted out of the funds of the company paid me, and report such debts as were unpaid. I was to pay for materials out of the monies received from the company, and my compensation was to be graduated according to the number of locks. Upon being shown the paper marked No 30 he said, I considered myself acting in substance under that paper.

The body of it is in my hand-writing—there are interlineations in that of other persons (prout the same.)

The transfer from Andrews & Maurice of their stock and materials to the defendants, was on the first of February, and I wrote to the plaintiffs thereupon the letter of March 22, 1842. I did not mention to the plaintiffs the Perth Amboy Manufacturing Company. The castings were to be charged to C. F. Maurice. They were so charged and directed to C. F. Maurice, Perth Amboy, with an invoice or bill. Lloyd & Dunham were the firm mentioned as having had a shop upon the premises, to whom part of these castings went. I sent a pattern for them to the plaintiffs. Most of the materials obtained from the plaintiffs, mentioned in the bill, were used in the mail locks delivered by the defendants to the government, under contract. Letters of Condit & Bowles, the plaintiffs, to Solomon Andrews, dated January 13, 1843, February 20th, 1843 and January 3, 1843, were shown to the witness and proved by him (prout the same.) The accounts of Andrews & Maurice with the plaintiffs, were closed by the note of Andrews & Maurice, which was paid by Andrews. There were dealings between that firm and the plaintiffs after the occurrence of this account with the defendants.

The paper mentioned as containing his authority, was written shortly after the sale of the stock of Andrews & Maurice to the company. I cannot say how much of the Condit & Bowles stock remained when I left. I left about $1800 worth of stock in the hands of the company. How much of this bill I do not know. All the castings of this kind used by the defendants were purchased by Condit & Bowles.

The company and I have never liquidated or closed our concern. I was never furnished with funds by them to pay this bill.

I received something, about one half of the whole amount of the debts contracted by me for the company. Had I continued with the company I would have had a right to call upon them to pay the debts, not for these particularly, but for the general outlay.

A fair copy of the paper authority under which I acted, after those containing the interlineations, was made by Charles O. Joline, from Ohio, my brother-in-law. I do not know where it is. To the best of my recollection I saw it last in the office of the factory house.

I presented, at the close of my business as agent, all the accounts to the company, and among them the one in question, although it was not actually due at the time.

Lloyd & Dunham paid me the amount of their part of the bill, here, which was entered on the books of the company. The books were always in the factory. I kept them. The general agent and superintendent had free access to the books. No objection was made by them concerning this Lloyd & Dunham sale. Dr. Andrews sometimes examined the books.

I left the books in Perth Amboy with a Mr. Sturges—I do not know where they are. I have been to Amboy to look for them, without success. I left the factory in December, 1842—quitted Amboy in October, 1843. The accounts left were copied from the books. The account marked (D) is the one presented to the company. The name of Condit & Bowles is in it according to the amount here demanded. The accounts of Condit & Bowles were regularly entered in these books.

Patterns for hasps, keys, &c. were made by the workmen employed by me and sent to Condit & Bowles. These patterns were kept there to the end of my time. They were patterns of hasps and keys for clam-shell padlocks. Andrews was the owner of most of the capital stock of the company, and was general agent. Francis W. Brinley was superintendent. The workmen were paid by me with money received from the company, and if not paid by me they looked to the company.

The plaintiffs counsel proved and read in evidence several orders (prout the same) drawn by F. W. Brinley or S. Andrews, or both, marked order 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, which orders

Charles F. Maurice stated had been delivered to him as manufacturing agent of the company by said Brinley or Andrews, or both, as officers thereof, and had been by him performed and executed.

Mr. Maurice again testified Condit & Bowles had no knowledge, as far as I know, of the nature of my connection with the defendants. I never told them of it. The plaintiffs never gave more than six months credit on such an account as this. Lloyd & Dunham used but few castings, and Mr. Andrews said I had better order castings for them and I did. I ordered but few—only a few dollars worth.

Hezekiah Thompson recalled, testified that he had been and was clerk for plaintiffs, proved in evidence the day book, and other books of account of plaintiffs (prout the same) and testified that the items as contained in the bill of particulars in the cause, are contained in the day book, charged to C. F. Maurice. He also proved that he personally attended to the shipping of the various items directed as per order of Mr. Maurice, to him at Perth Amboy.

The plaintiffs also offered in evidence the Newark Daily Advertiser files, which were admitted to be such by defendants, and whereby it appeared, that due publication of the limited partnership of the plaintiffs as general partners, with others as special partners, as recorded in the records given in evidence in the cause, had been fully made, according to law, and the same was admitted by defendants.

Whereupon the plaintiffs rested their cause, and thereupon the defendants, by their counsel, moved that the plaintiffs be called, because

1st. The agency of Mr. Charles F. Maurice had not been proved.

2d. That whether agent or not the goods were sold to him and credit was given exclusively to him.

3d. That James Vanderpool, one of the special partners, having died, action ought to have, therefore, been brought by Condit & Bowles, as surviving partners, or in the name of all the partners.

Which motion the court overruled and the said defendants, by their counsel, did then and there except and tender this, their

bill of exceptions, and prayed that the same might be sealed according to the statute, in such case made and provided, and it is sealed accordingly.

The defendants then offered in evidence a writing, marked No. 30, proved by said Charles F. Maurice, as containing in substance the authority and directions under which said Maurice acted, the admission of which was objected to on the part of plaintiffs, because (among other things) the same contained interlineations and corrections, and it had been proved that a fair copy of the same had been made and deposited in the office of the company: the court overruled the objections and the writing was read in evidence.

Charles F. Maurice, being re-called for the defendants, testified that the paper admitted, is according to the arrangement between him and the defendants, except as to the interlineations, which is as follows :—"Purchases to be made on the account of C. F. M., individually." Witness said, "I do not recollect that phraseology; I do not think it existed there, when the paper was made, and seen by me.

The defendants offered and read in evidence a letter, from plaintiffs to Solomon Andrews, dated February 3, 1843; one of February 11, 1843; one of June 17, 1844 (prout the same.)

Francis W. Brinley being called for the defendants, was sworn on his voirdire, and testified as follows :—I am not a member of the Perth Amboy Manufacturing Company; I ceased to be a stockholder on Monday last, by a transfer of my stock, nine shares, to William T. Rogers. I suppose the stock was bought of me, in order that I might be qualified to become a witness in this cause. It was a bona fide sale on my part without any private understanding. The stock has sold at sheriff's sale in Amboy as low as two dollars, or three dollars per share. Mr. Rogers asked me if I would sell at par, fifty dollars per share. I said I would, and did, taking his note, payble on demand, for four hundred and fifty dollars. Rogers had purchased at one of the sheriff's sales mentioned. The stock did not bring its value. It was, however, much depressed in the market.

The witness was objected to, but admitted by the court, and

being sworn, in chief, testified that he had, at different times, acted in this company, as general agent, superintendant and secretary, at different times. From March, 1842, to December, 1842, he was superintendent and secretary of the said, the Perth Amboy Manufacturing Company; upon looking at the writing herein-before mentioned, marked No. 30, he said I recollect this paper; it is in the hand-writing of Charles F. Maurice, except the interlineation, as to purchases, which is partly in Dr. Andrews' hand-writing and partly in mine. I cannot say that Mr. Maurice was present or knew of this interlineation.— The manner in which the business was conducted, was that Maurice had to purchase the materials on his own responsibility, employ the workmen, and pay them, and when he delivered the locks made, at the warehouse, he was to receive so much for each lock. He was the manufacturer and not the agent of the company. The company leased him their factory, and let him use their patent, and he was to sell the locks, when made, to the company; the locks were not the property of the company till paid for; the locks were inspected first, and if not right, were returned to Maurice. The company have settled with Mr. Maurice. Paper marked No. 31, shows the settlement (prout the same.)

The account of Charles F. Maurice with the Perth Amboy Manufacturing Company was shown the witness (prout the same, marked 32) and he said that it is an account of work done to November, 1842. Also, two inventories, one dated February 1, 1842; the 2d, dated December 3 and 5, 1842; that these papers and accounts, with the vouchers, were all examined by Maurice, Andrews and himself, and a settlement of the whole made, and the account of Condit & Bowles was not spoken of at all. I never heard of it till Maurice left the state of New Jersey. Being cross examined, the witness said the general agent of the company made sales. I was general agent before Andrews; then there were the same officers; Mr. Maurice was not agent for the company; there was no authority to make him such; he was Solomon Andrews' agent, as far as mail-locks were concerned; Mr. Maurice was not looked at or treated by the officers of the company as being its agent; he was called manufacturing

agent by Mr. Andrews, but without any ground for it in the rules of the company, nor was he considered so. I addressed him as manufacturing agent in papers marked order (2) (1) (7).

The book of by-laws of the Perth Amboy Manufacturing Company being called for by plaintiffs, was produced and proved by the witness, and a certain by-law relative to the authority of the general agent, of which there is hereto annexed a copy, marked P (prout the same) was read in evidence.

Being further cross examined, the witness said there was a quantity of the materials furnished by Condit & Bowles, left by Mr. Maurice; also of other things which Dr. Andrews asserted were spoiled. I do not know what became of them. Andrews became manufacturer, and went on with the manufacturing, the business being continued; I do not know when new hands were employed; I do not recollect whether an inventory of articles left, was rendered, or that I have seen anything of the kind.

I never, myself, went in the factory or gave any directions to the workmen, or interfered with them; Mr. Maurice paid the workmen; I did not pay for locks always when the goods were rendered; sometimes I was in advance; I lent Maurice $400, in May, 1842, which in December, 1842, was agreed to be passed to the credit of the company.

And here the defendants rested—whereupon

The plaintiffs re-called

Charles F. Maurice, who said he had heard the evidence of the last witness, and then testified as follows:—This is the first time I ever knew of any settlement of the account having been made; I was never present at any such settlement, and never sanctioned the things I have heard alluded to by the last witness; in reference to the $400 the fact is thus:—Early in May, 1842, a note by the firm of Andrews & Maurice fell due, payable in New York; the firm had not the means of meeting it; I mentioned it to Andrews, who said he would procure it through Brinley; afterwards he came to, and showed me, a check, of F. W. Brinley, payable to Smith & How, of New York, for $400; the money was received and paid on account of Andrews & Maurice; I knew nothing of this asserted loan till the fall of 1842, when I found it in the

account of mine with the Perth Amboy Manufacturing Company; I then said, "Frank, I never had this money;" well, he replied, "Andrews says I must charge it to you, and I must obey orders;" I never consented to it; I never ordered, consented to, or knew of the payment of the balance mentioned in the account proved by Mr. Brinley to Mr. Andrews; I never had an idea of being Andrews' agent; never heard of being a lessee of the company till this afternoon; no such agreement ever made; Brinley was accustomed to visit the factory; he has sent for locks there without my sending them to the warehouse.

I never gave any consent to the balancing of the accounts; this paper, an account marked (G) is a copy from the books kept by me, and which I considered good against the company, drawn from them under the direction of my book keeper; the balance is in my favor, $5,470.45; if the company paid the debts of the factory, I would have a demand against them, additional for my services; I made an inventory of the stock on hand at the time I left the concern; I considered the locks always the property of the company; I never carried on manufactures on my own account, or I should not have been willing to confine myself to one market; some of the stock of Condit & Bowles was in boxes unopened when I left, and was left by me there; I was accustomed to apply to the officers of the company for money to pay workmen, &c.; I never regarded the advances of Mr. Brinley as loans; I applied among others to the president, Mr. J. S. Green; the goods made by me for the company were a patented article and could not be used by any but the company. Being again cross-examined, witness said:–the statement (G) was made out early in 1843; I brought the paper from New York two days ago; I have not seen the books since I came from Amboy; I went to Mr. Brinley's office to make a settlement, and had difficulty both as regards the check for four hundred dollars, and because also, I found no credit for the inventory of stock left by me with the company, amounting to $1,798.72; I had charged also some part of the damages; I never conversed with Mr. Brinley concerning the alteration of this paper, nor gave him directions concerning it that I recollect of; the substance of the contract as far as regards purchases, was that they were to be in my own name, and not

in that of the company; I did not make or allow the stipulation that purchases were to be on my own account individually. A paper marked (H) being produced on the part of the plaintiffs, the witness said that said paper contained the substance of his agreement, as finally concluded upon and assented to by all parties, according to the best of his recollection; the paper (H) was partly in witness's hand-writing and partly in that of Andrews' & Brinley's; it was in witness's possession for a long time, and he thinks the fair copy was made from it. The plaintiffs then gave in evidence, the account marked (G) and the paper marked (H) alluded to by the last witness, and then called

Charles Eldridge, who being sworn, testified as follows:—I was a workman in the factory of the Perth Amboy Manufacturing Company. Dr. Andrews generally dictated the work. Mr. Maurice we expected to receive our pay from. Dr. Andrews said what the price should be of every thing that was made. Mr. Brinley came there once when they had a difficulty with the bosses about wages and had a fly-round there, said, "if servants did not obey their masters, he'd show them the toe of his boot." Mr. Maurice was our pay agent. I was under Andrews & Maurice and continued on. It was my impression that I was under the employ of the Perth Amboy Manufacturing Company, though I was never directly told so. The work stopped about a week or two when Mr. Maurice left, and afterwards went on under Dr. Andrews both as pay-master and dictator. Some of the goods purchased of Condit & Bowles were left there and worked up.

Samuel Thompson sworn for the plaintiffs, testified as follows:—I reside in Perth Amboy; was a workman in the lock factory there from 1839 to 1843; was employed as foreman of the factory. Dr. Andrews often gave orders about the shop, making tools, alterations, &c. Mr. Maurice also. Mr. Brinley frequently visited the factory. At one time he came into the factory and spoke to the men about their work; that it was not done well; that if the men calculated to get their pay, they must do better work. Mr. Maurice left about December 1, 1842. The factory then went on under Andrews. The pass books of the workman were headed Lock Factory per C. F. M., Dr. and Cr. When I wanted money and could not get it of Mr. Maurice, I used to go

to Dr. Andrews, who said at one time an injunction had been served on the company, and therefore the workmen were not paid; that he had tried every way; had offered to get it on bond and mortgage and could not succeed; this was about May 1842. In December, 1842, when Mr. Maurice was about leaving, he desired me to come to his house; said then that he was about to take the factory; after arranging what I was to receive, I applied to him concerning what was due; he said there were 2000 locks that had been furnished to the government, for which the money had not been received, and as soon as these monies came I should be paid; when Mr. Maurice left, the tools, patterns, &c. were left behind. There was raw material there at that time, and left behind; malleable iron castings, &c., to what quantity I cannot say. There was about the usual quantity of stock on hand. Mr. Andrews took possession of this stock and worked it while I remained there, which was about five weeks. As to spoiled locks, the fault was, they had altered the construction of them and new tools had to be made to get out the inside work. No great quantity of locks were spoiled in the manufactory.

Being cross examined, he testified Lloyd & Dunham had their shop in the same lot in the rear; during the time of Mr. Maurice they used malleable castings; I saw such go from their lock factory to Lloyd & Dunham's, some of which had been bought of Condit & Bowles; these were what were used for combination locks, bank locks furnished for a company in New York; I believe they were in barrels or boxes; Mr. Maurice left castings there, hasps and keys just as they were sent from Condit & Bowles; I think as much as one-third of what were sent by C. & B., remained when Mr. Maurice left; might be more; Mr. Maurice kept the books; they were a continuation of the old books; the heading was altered from "Andrews & Maurice" to "Lock Factory." Mr. Maurice then paid sometimes in cash and sometimes in orders on the factory store; I would take my little book into Mr. Maurice; he would credit the work done and charge the pay; when materials were wanted in the factory, application was made to Mr. Maurice; materials brought to the shop were directed to Maurice; cannot say who employed new hands; two came; I think Brown and Cadig; when locks

were finished they were delivered to Brinley at the store or warehouse; the different parts of the locks were made by different persons, part of brass and part of iron; the hasps and keys were such as are charged by Condit & Bowles; the locks after being made, were examined by Mr. Maurice, and then handed over by him to Mr. Brinley; the business of the witness was to mark tools, and I was foreman of the factory; different parts of the locks were made by different workmen; were delivered by them in the lower office, and then handed out to others to place together in locks; Dr. Andrews gave directions as to the change in making of tools; Mr. Brinley was there and said that if the work was not better done the wages would not be paid; during C. F. Maurice's time my wages were fourteen shillings per day; afterwards I bargained with Dr. Andrews for twelve, payable every Saturday night; after working two or three weeks under my agreement with Andrews, he said he must back out; I said I would not work for less, and left; when I left the factory the balance on my book was one hundred and sixty dollars and more.

Being examined by a juror, he said:—I looked to the company for my money; spoke to Dr. Andrews several times about it, and he promised to pay it when he got the money from government.

Being re-examined, in chief, he said the factory buildings belonged to the company; the business was understood to belong to the company; I understood, and so did the hands in the shop, that Mr. Maurice was manufacturing agent for the company; did not understand that he was carrying on his own individual business; Mr. Maurice had no right to sell any manufactured articles without consent of the company; I was never allowed more than fourteen shillings under Mr. Maurice; Dr. Andrews told me in winter of 1843 to sue Mr. Maurice; I considered myself as being in the employ of Maurice as manufacturing agent for the company; I did not understand myself as being in the employ of Mr. Maurice, individually, otherwise I would not have gone to Dr. Andrews for my pay; I expect to receive the balance of my money from the company, if I get it at all; Maurice quitted on Saturday, and on the Monday following, I made a new contract with Dr. Andrews; I considered the Dr. in the shoes of Mr. Maurice.

CHARLES F. MAURICE called again, proved a paper in his hand-writing, dated December, 1842, and then written. I sent at that time to Francis W. Brinley, superintendant at that date, 1st. His old company inventory of stock taken 1842; 2nd, agent's account to November; 3rd, a compensation estimate; 4th, an inventory and account of stock left in the building, amounting to $1798.92; 5th, account in consideration as agent; 6th, a balance sheet of accounts of the factory.

And the plaintiffs proved by the witness, and read in evidence as being such papers, the writings marked D. E. F.

Plaintiffs then proved, and read in evidence, a letter of Solomon Andrews to said Maurice, not signed by him, but in his hand, received by Maurice through the mail, April, 1842, marked K.

Being cross-examined in relation to this letter, he said, I brought this letter from Napanock with me and delivered it to the attorneys for the plaintiffs; I had two or three objects; one was that a suit was pending in Chancery, on which it might throw light; another, the desire to see just claims established; the letter produced would refer to workmen under both Andrews and Maurice, and the lock factory; the letter was received at the time Andrews had gone to Washington; I gave no authority for its use in this cause. Proved the hand-writing of a letter from himself to Andrews, dated April, 6, 1842, which was produced and read in evidence for defendants (prout the same); thinks this is an answer to the last letter produced by plaintiffs; the statement therein I suppose to be true; I did not state that I had no conversation with Brinley respecting a settlement; I met him at his office, at Mr. Green's request, and put in the 2d inventory as a claim; in this item as well as others there was a difficulty; we did not agree upon a settlement.

Proved hand-writing of a letter from James S. Green, Esq., to witness, dated April 10, 1843, marked L, which was read in evidence for the plaintiffs. This letter was in reply to one from me to him asking for money for payment of workmen for the factory.

The parties having rested, and their counsel having summed up the causes, the Chief Justice charged the jury, and thereupon

the defendants, by their counsel, excepted to the said charge, as follows:—In that the Chief Justice charged the jury that the article of agreement (prout the same) between C. F. Maurice and Solomon Andrews, made and constituted Maurice the agent of the defendant; and as such, that he could bind the defendants by his purchases; that notwithstanding the restrictive clause contained in said agreement, the defendants were liable on his contract for materials with the plaintiffs for the principal; is liable although he instructs his agents to make his purchases in his own name; provided, the seller is ignorant of the special instructions; and provided, the principal receives and uses the goods purchased, the liability of the principal, does not depend upon his instructions to his agent, but simply upon the question whether the goods purchased were actually purchased for the principal, and received by him, and applied to his use; that this reception and use of the goods was a ratification of, and consent to his agent's doings. The defendants further excepted to the said charge, in that the Chief Justice charged the jury, that while they might say how far they would believe Mr. Maurice's statement, it was only for the court to say whether the terms stated by him and set forth in the article of agreement, constituted Maurice a principal or agent, and that in the opinion of the court, by the terms of the agreement, either the copy produced by the defendants, or the one produced by the plaintiffs, Mr. Maurice was the agent of the defendants; and thereupon the defendants, by their counsel, excepted to the said parts of the said charge, and tendered this their bill of exceptions, and prayed that the same might be sealed accordingly, to the statute in such case, made and provided, and it is sealed accordingly.

JOS. C. HORNBLOWER, [L. S.]

POINTS RELIED UPON.

The following are the points upon which the plaintiffs in error mean to rely :—

I. That the Chief Justice refused to non-suit the plaintiffs, as moved for on the grounds mentioned in bill of exceptions.

(1.) The agency of C. F. Maurice had not been proved.

(2.) That whether agents or not, the goods were sold to him, and credit given exclusively to him.

(3.) That James Vanderpool, one of the special partners, having died, the action ought to have, therefore, been brought by Condit & Bowles as surviving partners, or in the name of all the partners.

II. That the charge of the Chief Justice was contrary to law, in the particulars excepted to in the bill of exceptions.