***Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bryant, Powis, and Bryant, Limited,* v. *La Banque du Peuple, and on the Appeal of Bryant, Powis, and Bryant, Limited,* v. *The Quebec Bank, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 4th March* 1893.**

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD HANNEN.
LORD SHAND.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The Appellant in these appeals is a Company, incorporated with limited liability under the statute of the United Kingdom known as the Companies Act, 1862. It was formed in 1885 for the purpose of taking over the business of the firm of Messrs. Bryant, Powis, and Bryant, of London, Quebec, and Montreal, lumber merchants.

On the 1st of January 1888 the Company discontinued the business of buying and shipping timber, which up to that time it had carried on in Quebec in succession to the firm of Bryant, Powis, and Bryant, and thenceforth the Company restricted its business in Quebec to making advances on the security of lumber and timber, principally if not solely in connection with the

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operations of a firm of lumber merchants trading as "Smith, Wade, & Co."

On the formation of the Company one Charles Griffiths Davies, of Quebec, who had been agent and attorney for the firm of Bryant, Powis, and Bryant, was appointed the agent and attorney of the Company in Canada. The appointment was contained in a power of attorney, bearing date the 25th of November 1885. Davies remained in the regular employment of the Company at a fixed salary up to the 1st of January 1888. He then went into business on his own account, and carried on business as broker and general commission and shipping agent, under the style of "C. G. Davies & Co." But he still acted for the Company when occasion required, receiving a commission for his services. His power of attorney was not revoked or withdrawn, and the Company continued to hold him out as their agent.

In February 1890 Davies left Quebec under the pressure of pecuniary difficulties. It was then discovered that he had taken advantage of his position as agent and attorney for the Company to procure money on the credit of the Company for his own private purposes. The Company in consequence found itself exposed to heavy and unexpected demands, and there was a good deal of litigation, in the course of which various points were raised, depending on the special circumstances of the particular case. That litigation has given rise to these two appeals which their Lordships will now proceed to consider separately.

Bryant, Powis, and Bryant, Limited, v.
La Banque du Peuple.

In the appeal of Bryant, Powis, and Bryant, Limited, *v.* La Banque du Peuple, the question is whether the Company is to be charged with monies obtained by Davies for his own purposes,

but borrowed by him in the name of the Company and professedly on their behalf.

The facts are not in dispute. On the 1st of October 1889 Davies went to the Bank, who had been at one time, but who were not then, the bankers of the Company, and asked the manager, M. Dumoulin, for a loan of $25,000 on account of the Company, saying that it was required for the purpose of a remittance to be made by him on that day to the head office in London. The manager consented to make the advance on what is termed a "short loan." Davies drew a cheque on the Bank in the name of the Company, "per pro C. G. Davies," for $25,000. The cheque was paid as an overdraft, and as collateral security for its repayment Davies deposited with the Bank three promissory notes, amounting together to $40,000, drawn by Smith, Wade, & Co., in favour of Bryant, Powis, and Bryant, Limited, and endorsed in their name, "per pro C. G. Davies."

On the 5th of the same month Davies went to the Bank again, and told the manager that he found that the sum of $25,000 more was required, and thereupon he obtained a further loan to that amount. The transaction was carried out in precisely the same manner as the former loan, and by way of collateral security Davies endorsed and deposited three further promissory notes of Smith, Wade, & Co., amounting together to $35,000.

Before the 4th of December 1889 Davies paid the Bank out of his own monies $10,000 in reduction of the loan. On that day the six promissory notes, which then had become due, but had not been presented for payment, were returned to Davies, who gave in exchange two other promissory notes for $25,000 each, dated the 28th of September 1889, and made by Smith, Wade, & Co. to the order of the Company,

and endorsed in the name of the Company, " per " pro C. G. Davies."

For these notes Davies took the following receipt:—

" Quebec,
" 4th December 1889.

" Received of Messrs. Bryant, Powis, and ' Bryant (Limited) through their agent here " the following bills payable as collateral security " for the payment of loan of ($37,000) thirty-" seven thousand dollars with interest at 7 per " cent., viz.:—

	$
" S. W. & Co. p. note due 31st " March - - -	25,000
" S. W. & Co. p. note due 31st " March - - - -	25,000
	" 50,000

" p. AUGUSTE LABARDIE,
" pro Manager Banque du Peuple,
" Quebec."

Before the two notes became due the Company forbade Smith, Wade, & Co. to pay the Bank, and they also gave notice to the Bank disclaiming liability, and calling upon the Bank to hand over the notes to them.

When the notes fell due the Bank brought this action upon them against Smith, Wade, & Co. and the Company. Smith, Wade, & Co. submitted themselves to the judgment of the Court. The Company disputed their liability on various grounds, and they also filed an Incidental Demand, claiming the promissory notes in question as their property.

The case came on to be heard before Mr. Justice Andrews. The learned Judge in an able and elaborate judgment decided in favour of the Company, on the ground that the Bank had notice that Davies was acting under a

limited authority, and that the power of attorney of the 25th of November 1885, from which alone Davies derived his authority, did not authorize him to borrow money in the name of the Company.

The other grounds upon which the Company resisted the claim of the Bank were rejected by the learned Judge. As the argument before their Lordships was substantially confined to the question of authority, it is not necessary to allude to them, beyond saying that in the course of the discussion the learned Counsel for the Appellant very properly disclaimed in express and unqualified terms any imputation of want of good faith on the part of the Bank or on the part of M. Dumoulin.

On appeal, the Court of Queen's Bench for Lower Canada, by a majority of three to two, reversed the decision of Mr. Justice Andrews, and condemned the Company to pay to the Bank the sum of $37,000, with interest from the 31st of March 1890, and costs of suit.

The learned Judges who formed the minority in the Court of Appeal adopted and relied upon the judgment of Mr. Justice Andrews. The views of the majority are expressed in the formal judgment pronounced by Mr. Justice Cross. That judgment proceeds upon the ground that "the specific powers" granted to Davies by the power of attorney "did not necessarily imply "the negation of the powers of general agency "granted to and exercised by the said Charles G. "Davies under the said power of attorney," and that the words used in the concluding part of the power of attorney, which are quoted in the judgment, and which will be considered presently, "refer not specially to said special "powers but to the business generally of the "Respondents" (*i.e.*, Bryant, Powis, and Bryant, Limited), "and by their terms give the said

" Charles G. Davies a discretion to do execute
" and perform any matter or thing which in the
" opinion of the said Charles G. Davies ought
" to have been done or performed in or about
" business of the Respondents, therefore outside
" and beyond what had been otherwise provided
" for by the said power of attorney," and consequently that Davies had power to bind the Company "and did so bind them by his en-
" dorsation in their name of said promissory
" notes and drawing the money advanced
" thereon."

On the appeal before this Board the learned Counsel for the Appellant did not seriously dispute the proposition that the words "per "pro," in the acceptance or endorsement of a bill of exchange or promissory note amount to an express statement that the party so accepting or endorsing the bill or note has only a special and limited authority, and therefore, that a person who takes a bill or note so accepted or endorsed is bound at his peril to inquire into the extent of the agent's authority. (*Stagg* v. *Elliot*, 12 C. B., N. S. 373—381 per Byles, J.) Nor was it disputed that powers of attorney are to be construed strictly, that is to say that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. It was pointed out, indeed, that the decisions on which the learned Counsel for the Appellant mainly relied in support of these propositions were decisions of English Judges, but it was not shown that there is any difference in this respect between the law of Canada and the law of England. The provisions

of the Civil Code of Lower Canada, and the Canadian authorities which were cited to their Lordships, appear to be in harmony with English law and English authorities.

In the result the argument was reduced to a consideration of the true construction and effect of the power of attorney of the 25th of November 1885. It will therefore be necessary to state its provisions somewhat in detail.

That instrument begins by reciting the formation of the Company, " to undertake and " carry on as successors to Messrs. W. Bryant " F. C. Bryant and H. W. Powis who were " the founders of the Company the trade and " business of wood and timber importers brokers " merchants and dealers then carried on by " them in partnership together at London " Quebec Montreal and elsewhere under the " name or style of Bryant Powis and Bryant and " for other purposes more particularly men- " tioned in the Memorandum of Association of " the Company." It then recites the provisions of the Articles of Association authorizing the appointment of an attorney, and proceeds as follows :—" And whereas the Directors deem it " desirable in the interest of the Company to " appoint an agent and attorney to represent " the Company in Canada aforesaid now know " ye that the Company doth hereby appoint " Charles Griffiths Davies of Desprairie Street in " the City of Quebec Canada aforesaid to be the " true and lawful attorney of the Company, for " and in the name on behalf of the Company " to enter into any contract or engagement for " the purchase or sale of goods and merchandise " of whatever nature or kind and for the charter " and recharter of any ships or vessels and for " the engagement of all such agents clerks and " servants as may be necessary for carrying on " and conducting the business of the said Com-

"pany, and to draw and sign cheques on the
"bankers for the time being of the said
"Company and to draw accept and endorse
"bills of exchange promissory notes bills of
"lading delivery orders dock warrants coupons
"bought and sold notes contract notes charter
"parties accounts current accounts sales and
"other documents which shall in the opinion of
"the said attorney require the signature or
"endorsement of the Company and also" to
sue for and recover debts, to demand and obtain
delivery of goods belonging to the Company,
and generally to act for the Company in and
about the recovery of debts and the delivery of
goods in all respects as fully and effectually as
the Company could itself do, to give receipts,
to bring and defend and compromise actions;
"also to enter into make sign seal execute
"deliver acknowledge and perform any contract
"agreement deed writing or thing that may
"in the opinion of the said agent or attorney
"be necessary or proper to be entered into
"made signed sealed executed delivered ac-
"knowledged or performed for effectuating the
"purposes aforesaid or any of them and for all
"or any of the purposes aforesaid to use the
"name of the Company"—then follow the
words quoted in the judgment of the Court of
Appeal—"*and to do execute and perform any*
"*other act matter or thing whatsoever which*
"*ought to be done executed or performed or*
"*which in the opinion of the said agent or*
"*attorney ought to have been done executed*
"*or performed in or about the business affairs*
"*of the Company.*"

To put it shortly, the power of attorney
authorized Davies to enter into contracts or
engagements for three specified purposes:—(1)
the purchase or sale of goods (2) the charter-
ing of vessels and (3) the employment of

agents and servants; and as incidental thereto, or consequential thereon, to do certain specified acts and other acts of the same kind as those specified. If the instrument be read fairly, it does not, in their Lordships' opinion, authorize the attorney to borrow money on behalf of the Company, or to bind the Company by a contract of loan. It appears to their Lordships that the words quoted in the judgment of the Court of Queen's Bench are to be read in connection with the introductory words of the sentence to which they belong, "for all or any of the purposes "aforesaid." So read, the words in question do not confer upon the agent powers at large, but only such powers as may be necessary, in addition to those previously specified, to carry into effect the declared purposes of the power of attorney.

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be allowed, and the judgment of Mr. Justice Andrews restored. The Respondents will pay the costs of the Appeal to the Court of Queen's Bench and the costs of this Appeal.

Bryant, Powis, and Bryant, Limited, v. *The Quebec Bank.*

The question raised in the Appeal of Bryant, Powis, and Bryant, Limited, *v.* the Quebec Bank may be disposed of very shortly.

The appeal is from a decision of the Court of Queen's Bench for Lower Canada affirming the decision of Mr. Justice Andrews, who held the Company liable to the Bank in respect of two bills of exchange endorsed in the name of the Company, "per pro C. G. Davies," and discounted by the Bank in the ordinary course of business.

In the discussion at the bar it was conceded by the learned Counsel for the Appellant that the Bank were *boná fide* holders for value; and the

argument as in the previous case was substantially confined to the question of Davies' authority.

The authority of Davies as the agent and attorney of the Company was derived from the power of attorney of the 25th of November 1885, which has been fully stated already. That instrument in terms authorizes the attorney to endorse bills of exchange. Their Lordships agree with Mr. Justice Andrews that the fact that Davies abused his authority and betrayed his trust cannot affect *bonâ fide* holders for value of negotiable instruments endorsed by him apparently in accordance with his authority.

The law appears to their Lordships to be very well stated in the Court of Appeal of the State of New York, in *President* v. *Cornen,* 37 N.Y.R. (10 Tiff.) 322, cited by Mr. Justice Andrews in his judgment in another case brought by the Quebec Bank against the Company. The passage referred to is as follows :—

"Whenever the very act of the agent is autho-
" rized by the terms of the power, that is, when-
" ever by comparing the act done by the agent
" with the words of the power, the act is in
" itself warranted by the terms used, such act is
" binding on the constituent, as to all persons
" dealing in good faith with the agent; such
" persons are not bound to enquire into facts
" *aliunde.* The apparent authority is the real
" authority."

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be dismissed with costs.