REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

IN SIX VOLUMES.

VOL. III.

THIRD EDITION.

TO WHICH, (THROUGH THE FIRST THREE VOLUMES,) BESIDES THE NOTES OF THE LATE JOSEPH TATE, ESQ., ARE ADDED COPIOUS REFERENCES TO STATUTES AND SUBSEQUENT ADJUDICATIONS ON THE SAME SUBJECTS.

BY LUCIAN MINOR,

COUNSELLOR AT LAW.

RICHMOND:
PUBLISHED BY A. MORRIS.
1854.

CHAS. H. WYNNE, PRINTER, RICHMOND.

trict Court, relative to the deed, we think there is no just ground of exception on that account. For it was the defendant who moved for the instruction; and the Court, in effect, only gave their opinion, that it was, in substance, conformable to the tenor of the declaration; and not that the plaintiff was entitled to recover, upon the evidence offered. So that the opinion merely served as an inducement to the other evidence, *de hors* the deed; which was to form a component part of the plaintiff's right to recover. It is, therefore, not like the case of *Keel* v. *Herbert*, where there was an express declaration to the jury, upon the whole evidence; for, in the present case, it was a construction of papers, and the opinion confined to a single point, without any attempt to prescribe the verdict which the jury were to find. The Court is, therefore, unanimously of opinion that there is no error in the judgment; and that it ought to be affirmed.

Judgment affirmed.

BLANE *v.* PROUDFIT, AND BLANE *v.* SMITH.

Monday, May 3d, 1802. [207]

If a merchant abroad writes to his correspondent here, to buy grain for him and to draw bills for the amount, the agent here cannot exceed his powers; and if a third person sells the agent grain, without a reference to the agency, or to the principal, he cannot recover of the principal, although the agent drew bills on the principal for the purchase money at the time of the sale. [See the Decree.*]

The general rule is, that to charge the principal, the agency must be proved to be universal, or the dealing must be within the agent's explicit powers, [*Per* LYONS, J., giving opinion of Court, 215.]

Proudfit filed a bill in the High Court of Chancery, stating, that Hunter was employed by Blane of London, to purchase grain in Virginia, and to draw bills on him for payment. That the plaintiff, knowing of Hunter's authority, sold him 10,000

* If a general published power is given, with a verbal (*i. e.* unwritten) restriction as to a particular act; a person dealing with the agent without notice of the restriction, is not bound by it. *Mann* v. *King*, 6 Mun. 428.

Cases where agents, exceeding their powers, failed to bind their principals,—*Morris, &c.* v. *Terrell*, 2 Rand. 6; *Hortons, &c.* v. *Townes*, 6 Leigh, 47.

When a land-owner empowers another to contract for the sale of his land, the agent is empowered, *ipso facto*, to receive the cash payment of the purchase money. *Yerby* v. *Grigsby*, 9 Leigh, 387.

bushels of corn for £1,588 sterling, in bills to be drawn by Hunter, and endorsed by Patten & Dalrymple, who were also agents of Blane. That after 9,400 bushels were delivered on board one of Blane's vessels, by the name of the Scipio, Patten & Dalrymple refused to endorse, but assured the plaintiff that Hunter had authority to draw, and shewed him a copy of the orders sent to Hunter. That the plaintiff forwarded the bills of exchange to London in order to receive payment; but the same were protested. The bill, therefore, prays an attachment against the effects of Blane in Virginia, and for general relief. The answer of Patten admits Patten & Dalrymple refused to endorse, but denies that they ever assured the plaintiff Hunter had authority to draw. On the contrary, they expressed doubts whether he was not exceeding his authority: That they shewed the plaintiff a copy of Blane's orders to them, which only authorized them to draw upon actual shipments made; and told him that Hunter's instructions were of the same nature. The answer of Blane states, that Hunter and others being indebted to him, he chartered vessels and sent them to Virginia to be laden with corn for Europe, if they should judge it proper to undertake such shipments, and gave instructions in the letters of the 20th and 23d of November, 1789, and that the plaintiff ought to have demanded and seen that of the 20th, if he meant to bargain with Hunter, in consequence of having seen that of the 23d: denies that he em-
[208] ployed Hunter to purchase grain on his account, or to draw bills unless warranted to do so by placing funds in his hands; and insists that his instructions only obliged him to receive any consignments of grain which Hunter might send him, except as to another ship by the name of the Brinkley, which Hunter was ordered to lade. On the contrary, the instructions were limited to particular objects, that the defendant declined receiving the cargo of the Scipio. That his offer to accept the bills on him, was only for the honor of Hunter, and not upon his own account. That he interfered with the destination of the ship as well for the sake of lessening the freight, as for the benefit of Hunter, and not because he considered the cargo as belonging to himself.

The depositions prove the sale and delivery of the corn, nearly as the bill states them, and that the plaintiff, after Patten & Dalrymple refused to endorse the bills, had no other alternative than to take an assignment of the bill of lading, as a security, in case Blane would not accept the bills. That the ship was chartered by Blane. That the reason given by Blane for not accepting the bills, was, that he was afraid he might

not receive remittances from Ferrol in Spain, to enable him to pay them. That Blane said he had insured the cargo to Ferrol, but as the market there was glutted, he had ordered it to London.

The bills, dated the 6th of May, 1790, are drawn by Hunter on Blane, at 60 days' sight, in favor of the plaintiff.

There is a copy of the charter party entered into by Blane with Davidson, the owner of the ship, for nine months or a longer time, but describes no voyage in particular.

The letters of the 20th and 23d of November, 1789, from Blane to Hunter, and containing the instructions to purchase, are the same with those referred to in the case of *Hopkins* v. *Blane*, 1 Call, 362. The letter of 27th of November, [209] 1789, from Blane to Hunter, confirms those of the 20th and 23d of that month, advises him that he had sent the brig Brinkley, concerning the dispatch and destination of which it would be superfluous to add any thing to what he had already written: states that the brig was to be repaired by Hunter, at Blane's expense; and supposes a few days will suffice for it, while the cargo is preparing, so as not to occasion detention.

Letter of December 24th, 1790, from Blane to Hunter, reminds him of non-payment of certain balances, and reproaches him with having drawn further than he had authority to do, which was at the utmost confined to the Brinkley's cargo; that his drafts had not been accepted, because Hunter had not furnished funds, and he found he had over-accepted before he was aware of the deficiency. For notwithstanding Hunter's advices were not satisfactory, yet Blane, through confidence that Hunter's resources would some how or other justify his drafts and reimburse Blane, had continued to honor his bills longer than was strictly proper. That even the Brinkley's cargo was purchased under circumstances not warranted by the instructions; and that he might have rejected it for that reason, but had waived the right, taken the cargo, and passed it to Hunter's credit. That the other cargoes had been disposed of on Hunter's account. That the Scipio was loaded under circumstances which rendered it optional in Blane to take it or not, and he chose the latter; but previous to his knowledge of the circumstances, he had made insurance on the cargo, the premiums of which, not having been reimbursed, he has placed to Hunter's debit.

Letter from Proudfit to Hunter, dated the 16th of March, 1790, is as follows: "I have for sale ten thousand bushels of corn, which I will deliver you at Port Royal, on board any vessel you may send by the 20th of April next, at fifteen shil-

lings and six pence sterling per barrel (of five bushels.) Should your vessel not be there by that time, the corn is to be received by your friend, and the bills given me, which are to be upon London at sixty days, endorsed by Patten & Dalrymple."

In answer to this, Hunter, by letter of the same date, agrees to take it at 15s. 6d. payable in bills on London *at 60 days' sight.*

Letter of the 11th of April, from Proudfit to Hunter, mentions that he is sending the corn to Port Royal, and wishes him to send the bills to Patten & Dalrymple.

From the same to the same, dated May 16, 1790, complains of his having directed Dalrymple to receive the bills of lading for the corn, as it was in consequence of his *promising to endorse the bills of lading, that I accepted your bills without the endorser's promise;* requests that he will come to Fredericksburg to see about it, *as the bills of lading must be endorsed* by Hunter to Proudfit.

An account between Hunter and Blane, contains statements of sundry drafts of Hunter, in favor of different persons, paid by Blane from June to September, 1790.

A witness says he was present when Hunter and Proudfit contracted, and that the bargain was for 15s. 6d. sterling, *payable in bills on London*, without designating any house on which they were to be drawn. That the name of Blane was not mentioned as the person for whom the purchase was made; that neither he nor any other person was named as in any way interested or concerned in the purchase, or responsible for the payment. That he saw the *missives* of the bargain exchanged between Proudfit and Hunter; and that the price of corn then was about 18 or 20s. Virginia currency per barrel.

The Court of Chancery decreed in favor of the plaintiff, and Blane appealed to this Court.

RANDOLPH, for the appellant.

[211] Hunter plainly went beyond his powers; and therefore his act was void. For he was not to buy corn unless the other articles could not be obtained. But, instead of this, he purchased when the others might have been had, and he bought it above the market price too. Added to which, instead of forwarding the bills of lading immediately, as he was bound by his instructions to have done, he endorsed them in blank, and one was afterwards actually filled up to Plunket & Stewart. So that Proudfit was co-operating to prevent Blane's

ability to pay. [*Mead* v. *Ld. Orrery*,] 3 Atk. 238; [*Ewer* v. *Corbet*,] 2 P. Wms. 148. But Proudfit never knew Blane in the business, for his contract was with Hunter; and it does not even appear that he ever saw or heard of the powers from Blane to Hunter. The correspondence is with Hunter, in his own name; and the bills do not specify that they were drawn on account of the agency. [*Hopkins* v. *Blane*,] 1 Call, 377;* Pow. on Pow. 118. Blane's offer to accept proves nothing; because an offer not accepted weighs nothing. *Taliaferro* v. *Robb*, 2 Call, 258.† The same arguments apply to *Smith's* case; for the powers were never seen in that case either, and the transaction was personally with Hunter, without reference to his agency. The length of time before the attempt to render Blane liable, is very material, and shews that he was not thought of at the commencement of the transaction. [*Hopkins* v. *Blane*,] 1 Call, 379. The decrees are therefore both erroneous, and ought to be reversed.

NICHOLAS, for the appellee.

The powers given by Blane were the most extensive imaginable, and clearly included the present case. For he was to use his discretion in purchasing, and was not restricted but actually authorized to buy corn. If he abused those powers, as it is pretended on the other side, that circumstance does not affect Smith; in whose case the bills were remitted immediately; and, therefore, there is no objection on the ground of delay, as there was in the case of *Hopkins* v. *Blane*, 1 Call, 361. It is evident from the circumstances, that [212] the sellers saw the powers before the sales were made; but if they only heard of them, it is sufficient. In *Hopkins* v. *Blane*, there was a strong appearance of credit having been given personally to Hunter; but here no reliance was placed on him. In that case, the bills were not drawn for grain, but for tobacco; but here they were drawn for grain, and that was remitted to Blane: which was agreeable to the powers given by him to Hunter, who was his general agent; and therefore, the case is expressly like that of *Hooe & Harrison* v. *Oxley & Hancock*, 1 Wash. 19. For there is nothing to shew that it was a contract by Hunter on his own account, but every circumstance manifestly proves that it was on account of the agency. The argument that the sellers were voluntarily par-

[* Bills drawn by agents should state on what account they are drawn, so as to shew on whose credit they are drawn. PENDLETON, J. in delivering opinion of Court in *Hopkins* v. *Blane*.]

[† *Baird* v. *Rice*, 1 Call, 26; *Williams* v. *Price*, 5 Munf. 538.]

ticipating in the abuse of the powers, and that the corn was purchased at an exorbitant price, is altogether unfounded.

WICKHAM, in reply.

In *Hooe & Harrison* v. *Oxley & Hancock*, there was an extensive general agency to transact their business, given to Ponsonby, and that agency was notorious to the whole world: But here the agency was special and not generally known: so that whoever would make a title under it, must shew that the agency was known to him. But this they cannot do. Hunter being a particular agent for special purposes, had no authority to exceed them, and ought not to have drawn beyond the funds advanced by him. The plaintiffs never made any contract with Blane, but with Hunter only, and upon his own account. It is repugnant to the nature of his business to suppose these letters were shewn by Hunter; because secresy was Blane's object, to prevent competition in the market; and, therefore, it would have been infidelity in him to have divulged them. It was consequently a transaction in the usual course of trade, that is to say, a purchase by Hunter for bills on London, without any regard to the agency. The extravagant price given
[213] for corn, when Blane's orders were to buy as low as possible, proves that Hunter only was trusted: For, there is no proof that his affairs were at that time declining. But, be that as it may, the taking of the bonds, notes and second bills were a discharge of the first, and exonerated Blane altogether, if he ever was liable.

Cur. adv. vult.

LYONS, Judge, after stating the case, delivered the resolution of the Court to the following effect:

In the present case, the defendant might, with safety, perhaps, have demurred to the plaintiff's bill. For, although it charges that the bills of exchange were taken upon the credit of Blane, yet that is inconsistent with the other facts stated in it; such as the requisition that the bills should be endorsed by Patten and Dalrymple, and, when that could not be obtained, taking of an assignment of the bills of lading. These circumstances prove, that the bills were neither drawn nor taken upon the credit of Blane, but that the plaintiff looked elsewhere for security. Therefore, upon his own shewing, it is probable, that the bill could not have withstood a demurrer.

Be that as it may, however, the case is clearly in favor of the defendant, upon the testimony; for the plaintiff does not

prove that he ever saw or heard of Hunter's powers before he sold the corn to him. But, if he had, those powers did not authorize Hunter to draw the bills in question: For, it does not appear that the contract was upon the account of Blane; so far from it, his name is not even mentioned in the agreement, but the stipulation is for bills on London, generally, to be endorsed by Patten and Dalrymple, without mentioning on whom they were to be drawn. A circumstance which plainly shews that Blane was not considered as the person on whose account the contract was made; otherwise, it is not [214] conceivable why his name was omitted.

This, however, is not all. There are other circumstances which have considerable weight in determining that it was a transaction between Hunter and the plaintiff, upon the credit of Hunter only. For it appears that, when Patten and Dalrymple refused to endorse, the plaintiff had it in contemplation to stop the delivery of the corn, until the bill of lading was assigned to him; which certainly would not have happened, had he relied upon the credit of Blane. Besides, that charge is exploded by other circumstances; for, in his letter of the 23d of April, 1790, he intimates, that the bills of others, endorsed by Hunter, would be received; which shews, that his confidence was in Hunter himself: and, therefore, after the bills were returned protested, he is found enquiring how he could secure himself, as Hunter's affairs were deranged.

These circumstances plainly prove, that the credit was not given to Blane, but to Hunter; and that the plaintiff relied on other securities for indemnity, in case his confidence in Hunter should turn out to have been misplaced.

But the case of *Hooe, &c.* v. *Oxley, &c.*, 1 Wash. 19, is relied upon by the counsel for the appellee, as establishing Blane's responsibilty. That case carried the principle far enough, and we are not disposed to push it any further. It is sufficient, therefore, to remark, that the analogy between the two cases is not so great as the counsel supposes; for, there, the correspondence held out an idea that Ponsonby's bills would be honored to any extent; whereas, nothing of that kind appears in the present case. Of course, the authority of that case is not so decisive as the counsel for the appellee represents.

The general rule is, that to charge the principal, the agency must be proved to be universal, or the power must be explicitly given. For, if the power is limited to a particular ob- [215] ject, it is a mere relation between merchant and factor; and the latter must act within the pale of his authority, or the

principal is not bound. *Hopkins* v. *Blane*, 1 Call, 361. But here, the agency is not pretended to be universal, and the power was limited to a particular object, which not being attended to, the correspondent could create no responsibility in the principal.

A doctrine, contrary to this, would be ruinous to commerce. For, then, if a merchant in one country, ordered goods from another, he would be liable to the manufacturers and shopkeepers, who furnished them, although he had no communication with them, and there was no confidence existing, or intended to exist between them and him; his engagement being confined to his own correspondent personally, without the least thought of extending it further.*

Upon the whole, the transactions between the plaintiff and Hunter appear to have been of a private nature; and founded on the credit of the latter only. Of course, there is no ground for charging Blane: and, therefore, the decree is to be reversed, and the bill dismissed with costs.*

[* See *Paterson* et al. v. *Gandasequi*, 15 East, 62.]

[†The decree was as follows: This day, &c. on consideration of the transcript of the record, &c. no evidence appearing to prove that H. was factor or general agent for B., or that the said H. had power or authority to draw bills of exchange on B., except to reimburse himself for his advances in making purchases for B. under orders from him; and B. having in his orders, contained in his letters referred to in the bill of P., limited the powers of H. and restricted them to the purchase of grain at a reasonable price, within a certain time, having regard to the prospect of gain on the sale thereof in a foreign market, and not having authorized the said H. to purchase in the name or on the credit of B.; the said H. could only purchase in his own name and on his own credit, in executing the said orders, and could not pledge the credit of B. for the amount of the purchases and shipments made by him, in pursuance thereof; and B. not having authorized or approved of the conduct and proceeding of the said H. with regard to the purchases made by him, or the bills drawn or payment of them, under the orders aforesaid, was not bound in law or equity to accept the bills drawn upon him by the said H. for more than was due from him to said H. or the funds of said H. in his hands: and it appearing that the said H. had not only transgressed his orders, but was largely indebted to B. at the time the bills of exchange in the bill mentioned to have been drawn by said H. in favor of P. were presented to him for acceptance, this Court is of opinion that H. was not bound in equity to accept or pay the said bills, and therefore, &c. (*Order Book*, No. 4, p. 179.)]