

of acts of ownership for a less period than twenty years; but the plaintiff rebuts that case, by shewing that within the twenty years the freehold was in a third party, in whom, *primâ facie*, it continues, unless the defendant prove a legal transfer of it to himself. [595] The earlier presumption must prevail until a better title is shewn: *Doë d. Harding v. Cooke* (7 Bing. 346; 5 M. & P. 181).

Cur. adv. vult.

The judgment of the Court was now delivered by

PARKE, B. [Having stated the facts, his Lordship continued]:—By the plea of *liberum tenementum*, the defendant admits that the plaintiff is in possession, and that he himself is, *primâ facie*, a wrong doer; but he undertakes to shew a title in himself, which shall do away with the presumption arising from the plaintiff's possession. This he was bound to do, either by shewing title by deed, in the usual way, or by proving a possessory title for twenty years. But here the defendant has only proved acts of ownership extending over seventeen years, and has not connected them with any prior title; it amounts, therefore, to nothing more than a longer against a shorter possession—a mere priority of possession—and for a period insufficient to confer any title, except against a mere wrong doer. We think, therefore, that there was a misdirection, and that the rule for a new trial must be made absolute.

Rule absolute.

HAWTAYNE (Public Officer of the Western District Banking Company) v. BOURNE. Exch. of Pleas. Feb. 13, 1841.—The resident agent, appointed by the directors of a mining company to manage the mine, has not an implied authority from the shareholders of the company to borrow money upon their credit, in order to pay the arrears of wages due to the labourers in the mine, who have obtained warrants of distress upon the materials belonging to the mine, for the satisfaction of such arrears:—nor in any other case of necessity, however pressing.

[S. C. 10 L. J. Ex. 224; 5 Jur. 118. See further, 8 M. & W. 703, and *Cox v. Midland Railway*, 1849, 3 Ex. 268; *In re Cunningham*; *Simpson's Claim*, 1887, 36 Ch. D. 532; *Jacobs v. Morris*, [1902] 1 Ch. 816. Referred to, *Yorkshire Railway Wagon Company v. Maclure*, 1881, 19 Ch. D. 488; *Gwilliam v. Twist*, [1895] 2 Q. B. 84.]

Debt for money lent, and on an account stated. Plea, *nunquam indebitatus*. At the trial before Maule, J., at [596] the last Cornwall Assizes, the following appeared to be the facts of the case:

The defendant, who resides at Liverpool, was the holder of 100 shares in a Company established for the working of a mine called the Trewolvas Mine, in the parish of St. Columb Major, Cornwall. The mine was managed by an agent, appointed by the directors of the Company for that purpose. In March 1839, in consequence of the shareholders not having paid up the calls regularly, the concern fell into difficulties, and the agent, from want of funds, became unable to pay the labourers; a considerable number of whom, their wages being in arrear, applied to the magistrates, and obtained warrants of distress upon the materials belonging to the mine. The agent, finding that these warrants were about to be put into execution, applied in the name of the Company, but in fact upon his own responsibility, and without the knowledge of the shareholders, to the St. Columb Branch of the Western District Banking Company, for a loan of £400 for three months, which was advanced accordingly, and placed by the Bank to the credit of the Company, and out of it the arrears of wages were discharged. To recover the balance of that sum the present action was brought. There was some evidence of a conversation between the defendant and the agent, in which the former had asked whether they could not get money from the Bank to keep the concern going: but this evidence was not left to the jury. The learned Judge, in summing up, stated to the jury, that although under ordinary circumstances an agent could not, without express authority, borrow money in the name of his principal, so as to bind him, yet if it became absolutely necessary to raise money in order to preserve the property of the principal, the law would imply an authority in the agent to do so, to the extent of that necessity: and he left it to the jury to say whether the pressure on the concern was such as to render the advance of this money a case of such necessity. The jury found for the plaintiff.

[597] In Michaelmas Term, Erle obtained a rule nisi for a new trial, on the ground of misdirection.

Bompas, Serjt., and Cockburn now shewed cause. In the first place, there was evidence in this case to go to the jury of an express authority from the defendant to the agent to borrow money for the necessities of the mine. [Alderson, B. That was not left to the jury: the learned Judge reports, that he thought the necessity of the case created, by law, a presumed authority to borrow money.] It was material as shewing the necessity, that the defendant had himself suggested that course. But secondly, the proposition stated to the jury was correct. This money was advanced, not to a common servant or clerk, but to an agent who was entrusted by the Company with authority to carry on the entire control and management of the mine, at a distance from his employers, with whom it was impossible for him to communicate on every sudden emergency. Under such circumstances, the agent has an implied authority to raise money on the credit of the shareholders, whenever an immediate outlay of money becomes necessary for the preservation of the concern. The principle of law is, that where an agent is employed for a specific purpose, he has an implied authority to do what is essentially necessary to carry that purpose into effect. It is like the case of the master of a ship, who has an implied authority to borrow money for the necessary use of the ship, upon the credit of the owner: *Robinson v. Lyall* (7 Price, 592), *Arthur v. Barton* (6 M. & W. 138). In like manner, where a poor person met with an accident, and was attended by the parish surgeon, the parish officers were held liable for the amount of the surgeon's bill, by reason of the necessity of the case: *Lamb v. Bunce* (4 M. & Selw. 275). Suppose a coach were to break [598] down on its journey, would not the coachman have authority to hire another, on the credit of his employers, for the conveyance of the passengers to the end of the journey? [Parke, B. The law provides for that which is common, not for that which is unusual; on that principle it is that the master of a ship has authority to charge his owners, because ships are ordinarily exposed to casualties. There was no evidence here that it was the usual course to borrow money for the use of the mine.] Suppose water had burst in upon the mine, and it became necessary for its preservation immediately to employ persons to clear it, would not the agent have had authority to obtain an advance of the money necessary for that purpose? [Parke, B. Suppose the bankers would not have advanced the money without a mortgage of the mine, would the agent have had authority to contract for a mortgage?] There was no evidence of any repudiation of the act of the agent, which was done solely with a view to the benefit of the Company, and the continuance of the concern; and there are many instances in which, where money has been laid out for a party's benefit, the law will imply a promise to repay it; as in the case of the acceptance of a bill of exchange for the honour of the drawer. [Parke, B. That is by the custom of merchants.] Which arises out of the necessity of the case. [Alderson, B. A party who draws a bill according to the custom of merchants, knows that by that custom a party taking it up for honour has a claim upon him. He contracts on that footing.] Suppose the directors themselves had borrowed this money, would not the partners generally be responsible? Then, whatever they can do, they have invested this their agent with authority to do.

Crowder (with whom was Erle), in support of the rule, was stopped by the Court.

PARKE, B. This is an action brought by the plaintiffs, [599] who are bankers, to recover from the defendant, as one of the proprietors of the Trewolvas Mine, a mine carried on in the ordinary way, the balance of a sum of £400, advanced by them to the agent appointed by the Company of proprietors for the management of the mine. Now the extent of the authority conferred upon the agent by his appointment was this only—that he should conduct and carry on the affairs of the mine in the usual manner; there is no proof of express authority to borrow money from bankers for that purpose, or that it was necessary in the ordinary course of the undertaking; and certainly no such authority could be assumed. There are two grounds on which it is said the defendant may be made responsible; first, on that of a special authority given to the agent to borrow money; and secondly, on the assumed principle, that every owner who appoints an agent for the management of his property must be taken to have given him authority to borrow money in cases of absolute necessity. There certainly was, in the present case, some evidence from which a jury might have inferred that a power to borrow money, for the purposes of the mine, had been

expressly given to the agent; but that evidence does not appear to have been left to the jury, and therefore the verdict cannot be supported on the first ground. Then as to the second ground, it appears that the learned Judge told the jury that they might infer an authority in the agent, not only to conduct the general business of the mine, but also, in cases of necessity, to raise money for that purpose. I am not aware that any authority is to be found in our law to support this proposition. No such power exists, except in the cases alluded to in the argument, of the master of a ship, and of the acceptor of a bill of exchange for the honour of the drawer. The latter derives its existence from the law of merchants; and in the former case the law, which generally provides for ordinary events, and not for cases which are of rare occurrence, considers how likely [600] and frequent are accidents at sea, when it may be necessary, in order to have the vessel repaired, or to provide the means of continuing the voyage, to pledge the credit of her owners; and therefore it is that the law invests the master with power to raise money, and, by an instrument of hypothecation, to pledge the ship itself if necessary. If that case be analogous to this, it follows that the agent had power not only to borrow money, but, in the event of security being required, to mortgage the mine itself. The authority of the master of a ship rests upon the peculiar character of his office, and affords no analogy to the case of an ordinary agent. I am therefore of opinion, that the agent of this mine had not the authority contended for. Whether he had or had not was a question for the jury; but, on the general principles of law, it seems to me that the ruling of the learned Judge cannot be supported, and therefore that the rule for a new trial must be made absolute.

ALDERSON, B. I am of the same opinion. There is no rule of law that an agent may, in a case of emergency suddenly arising, raise money, and pledge the credit of his principals for its repayment; and even if it were so, in this instance there was ample time and opportunity for him to have applied to his principals. Several cases have been cited as analogous to the present, but they have been already satisfactorily distinguished by my Brother Parke. *Lamb v. Buncce* may appear to be a case similar to the present, but it is very distinguishable, for there is an original liability in parish officers to support the poor in their parish; and it appears, moreover, that the parish officers in that case were aware of the surgeon being in attendance on the pauper, and made no objection. Those were circumstances from which a jury might well infer a contract on their part to pay his bill. In the present case there was no such evidence.

ROLFE, B., concurred.

Rule absolute.

[601] PENLEY AND ANOTHER, Executors of Penley v. WATTS AND ANOTHER, Executors of Watts. Exch. of Pleas. Feb. 13, 1841.—A. leased premises to B., from the 25th of March, 1823, for 16 years wanting ten days, and B. covenanted with A. to keep the premises in repair, and to paint once in every five years of the term, and to leave the premises in repair. B. underleased the premises to C., from the 24th of June, 1834, for four years and three quarters wanting eleven days, and C. covenanted with B. to keep the premises in repair (the covenant so far being in the same terms as in the original lease), and to paint once during the term, and to leave the premises in repair. A. sued B. for breaches of this covenant, and B. let judgment go by default, and upon the writ of inquiry the damages were assessed at 64l. 10s., being the amount of dilapidations proved by a surveyor, whose estimate had been laid before B. previous to the commencement of the action. B. afterwards sued C. for the amount of the dilapidations, and the costs of the action brought against him. The jury found the amount of the dilapidations to be 57l. 10s.:—Held, that B. was not entitled to recover also the amount of the costs in the former action.

[S. C. 10 L. J. Ex. 229.]

This was an action of covenant on a lease, brought by the plaintiffs, as the executors of William Penley, deceased, against the defendants, as the executors of George Watts, deceased. The declaration stated, that heretofore, and in the lifetime of the said W. Penley, since deceased, to wit, on the 26th day of March 1823, by a certain indenture made between one Edward Price of the one part, and the said W. Penley of