

12544

No. _____

Supreme Court of Illinois

Goodell.

vs.

Woodruff.

State of Illinois

Sasalle County Pleas before the Honorable Madison E. Hollister Circuit Judge for the north judicial district of the State of Illinois and the presiding judge of the Sasalle County Circuit Court at a court commenced and held at the Court House in Ottawa in said County and State on the second Monday in May the same being the twelfth day of May in the year of our Lord one thousand eight hundred and fifty six and of the Independence of the United States of America the Eighth Month.

The Honorable Madison E. Hollister Presiding Judge
John H. Nash Clerk
William H. S. Wallace State Attorney
Francis Warner Sheriff

It is remembered that on the 26th day of March A.D. 1836 a precept was filed in the office of the Clerk of the Circuit Court of said County in the words and figures following to wit:

"State of Illinois Sasalle County vs. Circuit Court thereof of the May term A.D. 1836 - Norman W. Woodruff vs. Roswell E. Goodell - Action of Assumpsit - Demand one thousand dollars - Clerk of said Court with please issue summons as soon returnable to May term of Court 1836 and Mize yours &c
Roswell E. Goodell
Plffs Atty"

And afterwards to wit: on the same day said assumpsit and after the filing of said precept a summons was issued out of and under the seal of said Court in the words and figures following to wit:

"State of Illinois As Sale County ss. The People of the State of Illinois to the Sheriff of said County Greeting;

We command you that you summon Roswell E. Goodell if he shall be found in your county personally to be and appear before the Lewis County of said County on the first day of the next term thereof to be holden at the Court house in Attain in said County on the 12th day of May next to answer unto Norman W. Woodruff in a plea of trespass on the case upon premises to the damage of the said plaintiff as he says in the sum of one thousand dollars, And have you there and there this writ with an endorsement thereon in which manner you execute the same.

Witness John F. Nash Clerk of said County and the seal thereof at Attain this 26th day of March
 1836 J. F. Nash Clerk

Said summons was returned of said said Clerk's office on the 10th day of May 1836 with the Sheriff's endorsement in words and figures following to wit:

"Executed this writ by reading the same to R. E. Goodell March 26th 1836 F. Warner Shff."

And afterwards to wit: on the 23rd day of April 1836 the plaintiff filed in said Clerk's office his declaration in the words and figures following viz:

"State of Illinois As Sale County ss. Lewis County
 Sheriff of the May term 1836 - Norman W. Woodruff vs Roswell E. Goodell - Action of assumpsit

Norman W. Woodruff the plaintiff in this suit by Burkett & Grogan his attorneys complains of the said Roswell E. Goodell in a plea of assumpsit For that whereas the said Roswell E. Goodell on the 1st

day of March in the year of our Lord one thousand eight hundred and fifty six at Dallas County aforesaid was indebted to the said Norman W. Woodruff in the sum of one thousand dollars for the price and value of goods and chattels then and there bargained & sold by the plaintiff to the defendant at his special instance and request.

And in the sum of One thousand dollars the price and value of goods and chattels then and there delivered by the plaintiff to the defendant at his special instance and request.

And in the further sum of one thousand dollars for the price and value of work and labor then and there done & materials for the same provided by the plaintiff for the defendant at his request.

And in the sum of one hundred dollars money loaned by plaintiff to defendant at his request.

And in the further sum of one thousand dollars the price & value of money laid out and expended by plaintiff for defendant at his request.

And in the sum of one thousand dollars money loaned & received by defendant for plaintiff's use & benefit.

And in the further sum of one thousand dollars for money found to be due from defendant to the plaintiff on an account then & there stated between them.

And whereas the defendant afterwards on the 10th day of March A.D. 1856 in consideration of the promises then and there promised to pay the said several sums of money to the plaintiff on request yet he hath disregarded his promises and hath not paid the said several sums of money nor within of them nor any part thereof to the damage of the plaintiff in the sum of one thousand dollars and therefore he brings his suit &c. of

Bushnell & Gray his Atty.

And afterwards to wit: On Tuesday May 15th 1854 the same being one of the days of the May term of said Court for the year 1854 a certain order was entered of record in the words and figures following to wit:

"Sorrow W. Woodruff

^{vs} *Assumpsit*
Roswell E. Goodell } This day the plaintiff comes by
Bushnell & Gray his attorney
and the defendant of Ebenezer Clark his attorney and on motion of plaintiff's counsel the defendant is ruled to plead Verdict on or before Tuesday morning of next week."

And afterwards to wit: on Monday May 19th 1854 the same being also one of the days of the said May term of said Court for said year, another order was made and entered of record in said cause in the words and figures following to wit:

"Sorrow W. Woodruff

^{vs} *Assumpsit*
Roswell E. Goodell } On motion of the defendant by
Ebenezer Clark his attorney it is
ordered by the Court that this cause be continued as the
plaintiff's case to be tried for most of a day of the
account said on and having been filed two days
before the first day of the present term of this Court."

And afterwards to wit: on Thursday November 13th 1854 the same being one of the days of the November term of said Court for the year 1854 the following further order was entered of record in said cause to wit:

"Norman W. Woodruff

Assumpsit
 Roswell E. Goodell 3 On motion of the defendant by
 Messrs Clark his attorneys it is
 ordered that this cause be continued at the call of the
 plaintiff, for want of a bill of particulars.

On the 26th day of January AD 1837 the plaintiff
 filed in the office of said Clerk his bill of particulars
 in the words and figures following to wit:

"Bill of Items - Roswell E. Goodell to N. W. Woodruff
 Dr To 50000 M, fence boards at \$24 pr M, \$1000.00
 To 20000 M, feet common boards at \$20 pr M, 400.00
 " 4000 M, posts at 15¢ pr piece 600.00
 Money paid out & expended 1444.00
 " Banded by plf to deft 1000.00
 " Labor done " " " 1000.00
 Ball done plf, from Deft on a set stick 1000.00
 23000 M, feet fence boards at \$24 pr M, 552.00

At the February Special term 1837 of this Court this
 cause was continued generally.

On the 8th day of June 1837 the defendant by his
 counsel filed his plea in the words and figures
 following to wit:

"Norman W. Woodruff to Roswell E.
 Goodell - LaSalle County levies term June 1837
 Assumpsit - Damages \$1000.00

And now comes the said defendant by Messrs Clark
 his attorneys and defends to & where and says
 as to our because he says he did not undertake
 & promise in manner & form as the said plaintiff
 in his declaration as thereof declared against him &

of this he puts firmly upon the Committee
"Shun Hook Deft. Attys."

"And the plaintiff de to the like
"Bushman & Eng. Attys for plffs"

And at the same time of this Court for the year 1857
this cause was continued generally

And afterwards to wit: at the November term of said
Court for the year 1857 three several orders were
made and entered of record in said cause in the words
and figures following to wit:

"Wednesday November 11th"

"Norman W. Woodruff

"Assumpsit

Robert E. Goodell } This day the plaintiff comes by
Bushman & Eng. his attorneys and
the defendant of Storrs & Cook & Wallace his attorneys
and thereupon comes the following names of a jury to wit:
Samuel M. Cutler, Joseph Leonard, A. C. Eng., David R.
Shaw, Abel Ford, Dolphin Leach, James M. Ginnis,
A. M. Squires, John R. Jones, Donald Nickerson,
Ardern P. Lamm, and William F. Deury who are
sworn to and do and truly try the
issues herein according to the evidence, and after
hearing the testimony, the further hearing of this cause
is postponed until the coming in of the Court the
morning.

"Thursday November 12th"

"Norman W. Woodruff

"Assumpsit

Robert E. Goodell } This day again come the parties

7
before of their attorneys together with the jury sworn
herein, and after hearing the arguments of counsel
together with the instructions from the Court the jury
retire to consider of their verdict: And after due deliberation
they had return into Court the following verdict
to wit: "That the plaintiff the issues joined in favor of the
plaintiff and assess his damages at five hundred
and fourteen dollars."

Defendants counsel move the Court for a new trial."

"Friday November 13th"

"Honnor W. Woodruff

^{vs} Assumpsit
Roswell E. Goodell } This day again came the
parties here by their attorneys
and after hearing the arguments of counsel, it is
ordered by the Court that the defendants motion for a
new trial herein is sustained. It is therefore ordered
by the Court that the defendant be granted a new trial
upon paying the costs of this term."

And afterwards to wit: At the February term
of said Court for the year AD 1858 three other
orders were made and entered of record in said cause in
the words and figures following to wit:

"Thursday February 18th"

"Honnor W. Woodruff

^{vs} Assumpsit
Roswell E. Goodell } This day the plaintiff comes by
Beckwith & Gough his attorneys and the
defendant by Glover & Clark his attorneys and
thereupon came the following names of a jury to wit:
Richard King, R. W. Mearns, Edward Temple, William
Brooker, Lechelus Wiley, Gerrard Cooper, Thomas W.

Needell, J. W. Drake, Leab Wiltand, Agn Grant,
Samuel T. Stetson, and John Merrill who are duly
sworn to and sworn to and truly say the issues
being according to the evidence; and after hearing
the testimony and part of the arguments of counsel
the further hearing of this cause is postponed until the
coming in of the Court to morrow morning.

"Friday February 19th"

"Samuel W. Woodruff

"

Assumpit

Roswell E. Goodell } This day again came the parties
before of their attorneys together
with the jury sworn herein and after hearing the remainder
of the arguments of counsel together with the instructions
of the parties read by the Court, the jury retired to consider
of their verdict, and after due deliberation therein had
returned into Court the following verdict to wit: "We the
jury find the issues joined in favor of the plaintiff and
assess his damages at five hundred and fourteen dollars
and seventy six cents."

The defendants counsel now move the Court
for a new trial.

"Friday February 26th"

"Samuel W. Woodruff

"

Assumpit

Roswell E. Goodell } After due deliberation therein
had it is ordered by the
Court that the defendants motion for a new trial
be overruled.

It is therefore considered by the Court that the
plaintiff has and recovers of the defendant Five
hundred and fourteen dollars and seventy six cents for

his damages, also his costs and charges by him herein expended and that he have execution therefor.

Defendants cannot now pay for an appeal to the Supreme Court which is granted upon condition that the defendant within forty days from this date file an appeal bond payable to the plaintiff in the penal sum of Eight Hundred dollars with William Piddick or Eric L. Waterman as his security.

And on further motion of defendants attorneys it is ordered that they have ten days from this date to prepare and file a bill of exceptions.

Said attorneys to wit: on the 17th day of April as of the 6th day of March A.D. 1835 the defendant filed his bill of exceptions in the words and figures following to wit:

State of Illinois
 LaSalle County And Circuit Court thereof
 February Term A.D. 1858

Norman W. Woodruff
 vs
 R. Eaton Goodell

Assumpsit

Be it remembered that when this cause came on to be heard the Plaintiff to maintain the issues on his part, called as a witness Orango Leavens, who testified as follows:

In the winter of 55 & 56, I was employed for Woodruff in a lumber yard on North Side of Illinois and Michigan Canal, Joseph Light-hall sold this yard to Norman W. Woodruff about the last of November 1855 - he sold Woodruff all the lumber there was in the yard, and some that was to arrive from Michigan. At the time of sale there was about thirty thousand feet of fencing more or less of all lengths in the yard three or four thousand feet of the same was sixteen foot stuff and about ten thousand feet of fencing, twelve foot. About One Hundred and thirty thousand feet more was expected from Michigan none of it ever arrived - There was about two hundred thousand feet of all kinds in the yard. The fencing was sold to Woodruff at \$15.75 per thousand feet.

There was delivered to Dr. Wm. for Goodell the amount of this bill \$574.76 as annexed -

1855

R. E. Goodall

			To W. W. Woodruff	D
Dec 4	To 3948 ft fencing	14 ft @ 20		78.96
" 17	" 700 "	" 20		14.00
" 18	" 700 "	" "		14.00
" 19	" 2100 "	" "		42.00

Dec 1855	112	20	To 700 ft fencing	@	20	14, 00
		21	" 1400 "	"	"	28, 00
1856		22	" 700 "	"	"	14, 00
Jan		7	" 525 "	"	"	10, 50
"		"	" 700 "	"	"	14, 00
"		"	" 119 "	"	"	2, 38
"		12	" 700 "	"	"	14, 00
"		17	" 1400 "	"	"	28, 00
"		18	" 1400 "	"	"	28, 00
"		19	" 2100 "	"	"	42, 00
"		21	" 1295 "	"	"	25, 90
"		21	" 90 " 12 ft "	"	19	1, 71
"		22	" 1500 " " "	"	19	28, 50
"		23	" 1500 " " "	"	19	28, 50
"		24	" 2250 " " "	"	19	42, 75
"		"	" 35 " 2 in plank	"	19	" 66
"		25	" 2250 " 12 ft fencing	"	19	42, 75
"		"	" 8 ft scantling	"	19	" 15
						<u>514, 76</u>

I delivered it all but a load or two - Woodruff did not get more than three or four thousand feet of fourteen foot Stuff of Lighthall, and about ten thousand feet of twelve foot Stuff - balance of the amount delivered to Irwin was procured by Woodruff in Chicago, when Irwin first came for the lumber about the 26th of November 1855, I was standing in the office, Irwin had a letter in his hands which he stated he had received from Goodell, and said, Goodell writes me that he has made a Contract with Lighthall for a quantity of lumber, and directs me to obtain the lumber on the Contract - Lighthall says that he has sold out to Woodruff and referred Irwin to me, and said you can get the lumber there - Lighthall was standing by and said that he had sold out - I told Irwin that we had fourteen foot Stuff, we could not let it go less than \$20 -

Irwin made no reply. The contract between Lighthall and Woodruff was \$1000, down and the balance in the Spring March I think. The Yard was in possession of Woodruff before Irwin came. The lumber had not all been tallied off - it was done afterwards some time in the fall - Lighthall when he sold out said that he had made some contracts, on which he had received money, one to Cushman, one to Reddick - Lighthall stated that there were contracts out, that he (Lighthall) would like to fill. The one to Goodell & others - Woodruff was to fill or not, as he pleased - Mr Irwin got most of the lumber in the fall - Sometimes his team came - I understood he was living in Goodell's place - The lumber was to be used for fencing Goodell's land - I saw a pile of lumber at Irwin's house afterwards supposed it to be some of same lot he got of us - Sometime after the fencing had been taken away - I saw Goodell, he stated that he had been advised by counsel not to pay the money to Woodruff - I did not present the bill. The conversation took place at the Depot, the train was just going out and I had but little time to talk with Goodell.

Cross Ex.

No lumber had arrived from Michigam at the time Irwin got this lumber there was a large pile on the Canal Bank, it was included in the amount, I have stated was in the yard, we were selling all the time, made large sales and delivered from this pile, on the Canal bank, Lighthall and Woodruff were negotiating two or three days about their trade. There was no written contract - I did not see the \$1000 - paid. There was about 200,000 feet sold to Woodruff, and about 20,000 of this was fencing.

Direct Res

Never heard Lighthall say he received \$1000 from Woodruff. The contracts to Cushman and Reddick and others were to be filled from the lumber that was to arrive, except Cushman's which was for sixteen foot stuff, and was to be filled out of the yard. It would take about all there was there. No lumber ever came from Michigaw after Woodruff let out Lighthall.

The Plaintiff then offered in Evidence the following letters after proving Goodell's signature thereto "

Solict Feb'y 29. 1856.

N. W. Woodruff Esq.

Ottawa. Dear Sir: Your favor of the 28th is received. The bill of Lumber mentioned has also been received. I bought the fencing of Mr. Lighthall, and supposed I was to pay him for it, and he has been here & notified me that he should expect the payment to be made to him. I shall be down in your City on Monday or Thursday & will see you. I am ready to pay one of you but don't want to pay both.

Respectfully Yours,

R. E. Goodell "

Solict March 18. 1856

N. W. Woodruff Esq. Ottawa,

Dear Sir:

If Mr. Lighthall surrenders his claim on me for that Bill of Lumber, could I sell you enough Burr or White Oak Posts 6½ feet long, good size at 12½ c. each to pay the Bill. I could deliver, I

15 Think, the posts between the 10th of April & 1st of May on the Canal bank at Ottawa

Respt Yours
R. E. Goodell.

The plaintiff then offered in Evidence Woodruff's Check on the Bank of Ottawa for \$1000 - payable to Lighthall's order and endorsed by him which is in the words and figures following:

No. 8. Ottawa, Dec 3, 1855
Bank of Ottawa. Pay J. S. Lighthall or order one thousand dollars and charge to account of \$1000#

N. W. Woodruff.

Endorsed J. S. Lighthall.

The plaintiff offered to prove the payment of said sum by the Bank of Ottawa to Lighthall but the defendant waived the offer, and admitted the payment of the money.

To the introduction of which check the defendant then and there objected, which objection was overruled by the Court, the plaintiff's attorney stating that he intended to prove the fact aliunde, but wished to fix the time, by the check, and the defendant by his counsel then and there excepted to the decision of the Court in over-ruling said objection - The plaintiff then called witness Joseph O. Glover who testified as follows -

I believe that I am acquainted with the handwriting of Joseph Lighthall - I think the endorsement on this check is in his hand writing -

Plaintiff then rested his case.

The defendant to maintain the issues on his part called, William Drwin who testified as follows -

I am the person spoken of by Levens, - Before I took the lumber I spoke to Woodruff, and on the same day, and shortly after I had spoken to Levens, I told him that I wanted the lumber for Goodell on the Contract, Woodruff said that I should have it. That this was one of the reserved contracts - I never asked Woodruff to let me have the lumber and charge it to Goodell - I had no authority to do so, I generally saw Woodruff about the yard when I was taking away lumber. There never ^{was} any other arrangement except the one above spoken of upon which I got lumber from Woodruff's yard for Goodell - The contract price in the contract between Goodell and Lighthall was \$19 or \$20 - per thousand. I commenced taking away the lumber about the 3^d or 4th of December 1855 -

Cross Ex

I got some two inch plank there for my own use told them to charge it to William Bruin, I did not tell Levens to charge plank to Goodell - never got two inch plank but once - got some scantling there for myself - never got any for Goodell - I sent a copy of this bill to Goodell sometime in February or March. The fencing was got for Goodell and used on his farm. All the fencing was got from Woodruff under the arrangement before spoken of I told Lighthall that I was there to get lumber on the contract he made with Goodell. He said that he had sold out but had reserved this contract of Goodell's, and that Woodruff would give me the lumber on it.

Direct Resumed.

After I had the conversation with Levens in the office Woodruff came in and Levens told him that I had come for the lumber

on the contract between Goodell and Lighthall.

Woodruff said he supposed it was all right this was one of the reserved contracts but said he could not let me have the lumber for less than \$20 - I was acting for Goodell as his agent under these instructions. I recollect of Woodruff coming to my house to see about the pay - I told him that I had sent the bill to Goodell - did not say that Goodell would pay it I don't recollect of sending any orders for lumber, if I did it was either Woodruff or Levens -

The defendant then called - Goadspeed as witnesses who testified as follows; I had a conversation with Orango Levens about the reservation of this Goodell contract, and others, I had a contract with Lighthall - I spoke to Woodruff about it, he said that he supposed that it was good as there had been some contracts reserved.

Cross Ex.

Woodruff did not claim to have any thing to do with the contract, my lumber came down after the close of navigation, on the cars, I got the lumber from the Cars, and Woodruff had nothing to do with it. I showed my contract with Lighthall to Woodruff and received my lumber on it from the Rail Road. I had paid Lighthall in full for that lumber before Woodruff bought him out.

Direct Resumed.

I think that Woodruff stated that the Goodell contract was mentioned as one of the reserved ones - I think Lighthall spoke to me twice about the Goodell contract last fall.

Defendant then called - Bennette who testified as follows;

I was engaged in this

lumber yard in measuring off the lumber, I remember of a Mr Clark coming there for lumber - Lighthall said to Woodruff that Clark had come for the lumber on that contract -

Woodruff said it was all right that this was one of the reserved contracts, he also mentioned the others, Goodells among the rest

Cross. Ex.

Clark got a load of lumber that day - the way I understood the conversation - the lumber was to come out of the lot which Lighthall sold to Woodruff, I am a Brother in Law of Lighthall

Orangus Lerous - recalled by Plaintiff.

I did not hear the conversation between Lighthall and Erwin near the Canal bank.

Did Mr Woodruff authorize you to deliver lumber to Goodell on Lighthall's account, To which question the defendant then and there objected - which Objection was then and there overruled by the Court and the defendant by his Counsel then and there excepted to the decision of the Court in overruling said Objection -

The witness in reply to the question stated that Woodruff never did authorize him to deliver lumber to Goodell on Lighthall's account.

This was all the evidence in the case.

The plaintiff asked the Court to instruct the Jury as follows.

1st If the Jury believe from the evidence that the lumber hauled from the yard of Woodruff by the Witness Erwin, was the lumber of Woodruff, and that said Erwin was the duly authorized agent of Goodell, in purchasing and

hauling the same away, then the Jury will find for the Plaintiff, for the value of the lumber, unless it was agreed that the lumber was to be delivered on Lighthalls account.

2^d If the Jury believe from the evidence that at the time Lighthall, sold his lumber yard to Woodruff that Lighthall, sold to Woodruff all the lumber he had in said yard, and that Woodruff paid or agreed to pay, Lighthall for the full amount of the lumber, and put Woodruff in possession of the lumber, then the lumber, was the lumber of Woodruff, and beyond the control of Lighthall, and even though Lighthall had agreed to deliver a bill of lumber to Goodell, and that Woodruff agreed to fill such contract with Goodell for Lighthall, still Woodruff had a right to change such lumber to Goodell, if Goodell by his agent, Erwin duly authorized took away and used the lumber, for his own use and benefit, unless it was expressly agreed, that the sale of the lumber, was a sale to Lighthall.

3^d What a person does by his agent, he does himself, and if the Jury believe from the evidence that Erwin was the duly authorized agent of Goodell, in purchasing and hauling lumber from Woodruffs yard, and for Goodells use, then Goodell would be liable to Woodruff for the value of the lumber got by Erwin from the Plaintiff.

5th If the Jury believe from the evidence, that Erwin was the general agent of Goodell in purchasing lumber for the use of Goodells farm, then Erwin could buy lumber of Woodruff for Goodell, and in Law Goodell would be liable to Woodruff for the same.

20 6th Goodell is liable for the lumber to Woodruff, if the Jury believe from the Evidence, that the lumber was got from Woodruff by Erwin by the authority of Goodell, either Express or implied & also is Goodell liable for the lumber to Woodruff, if the Jury believe from the Evidence, that the lumber was got by Erwin of Woodruff without the authority of Goodell, if the Jury believe from the Evidence that Goodell afterwards voluntarily availed himself of the use of the lumber and received the benefit of the same, knowing that the lumber was obtained for him of Woodruff and the fact that Erwin was the general agent of Goodell, duly authorized to buy lumber for the use of Goodell's farm, and used the lumber in fencing on said farm, and that Erwin was the Brother in law of Goodell, and in possession of said farm, and that Goodell afterwards made no objection to the said acts of Erwin, if proven, and facts proper to be considered by the Jury in determining the authority of Erwin in the premises, and whether Goodell in any manner ratified the act of Erwin, as his agent.

8th If the jury believe from the evidence that Light-hall, having a lumber Yard had agreed to sell to Goodell a quantity of lumber from the Yard, to be paid for on delivery, or after delivery, and if after this agreement between Lighthall and Goodell, Lighthall sold all his lumber in said Yard to Woodruff without deducting from the price thereof the price of the lumber so contracted to be sold by Lighthall to Goodell, and it was agreed between Woodruff and Light-hall that Woodruff should furnish to Goodell the lumber so contracted by Lighthall, to be sold and delivered to Goodell, and it was

not a part of this agreement that Goodell should pay Lighthall for the lumber and not Woodruff - and if afterwards Goodell knowing these facts applied through his agent Erwin to Woodruff, and that Woodruff sold and delivered to Goodell the lumber so agreed to be sold and delivered by Lighthall, then Woodruff is entitled to recover the price of the lumber from Goodell -

The defendant objected to each of said instructions - the Court overruled the objections and gave each of said instructions to the jury to which decision defendant then and there excepted.

The defendant asked the Court to instruct the jury as follows:

1st If Goodell made Erwin his agent to receive lumber from Lighthall, that did not authorize Erwin to get lumber on Goodell's account from Woodruff

2^d If Woodruff did deliver lumber to Erwin as agent for Goodell, and did believe that he was selling the lumber to Goodell - yet Goodell is not liable to pay for such lumber unless Erwin had authority from Goodell to get lumber from Woodruff, on his (Goodell's) account.

3^d If Lighthall contracted, with Goodell to sell lumber to him & afterwards Woodruff delivered to Erwin as agent for Goodell lumber upon Lighthall's contract for the purpose of filling the contract, and Erwin received the same upon Lighthall's contract, this does not make Goodell liable to Woodruff for the price of the lumber, whether the lumber delivered was lumber reserved by

by Lighthall or whether the lumber belonged to Woodruff.

4th If Woodruff delivered the lumber in question to Erwin and Erwin received the same, not as a sale from Woodruff to Goodell but as filling a Contract between Lighthall to Goodell for the sale of Lumber. Plaintiff can not recover of Goodell the price of said lumber

5th The Jury will give no weight to the assertion of Counsel, that Woodruff, has paid Lighthall for the lumber in question unless that Statement is proven by the Evidence in this case to be true

6th If the Jury believe from the evidence in this cause, that the plaintiff delivered the lumber in controversy to Erwin for Goodell, ~~for Lighthall~~, on the account of Lighthall with the understanding, that Goodell should account to Lighthall for it, the plaintiff cannot recover for it in this Suit.

7th If the Jury believe from the evidence in this cause that Woodruff agreed to furnish Goodell the bill of lumber in question on Lighthall's account, believing Lighthall would furnish a large quantity of fencing in addition to what was there on the yard — then it makes no difference in this case whether Lighthall furnished such additional lumber or not, and it makes no difference either, whether the lumber furnished to Goodell was lumber that Woodruff had purchased from Lighthall. —

The Jury found the issues for Plaintiff — Defendant moved for a

new trial - the Court overruled the motion and gave judgment on the Verdict - So which decision defendant then and there Excepted and prays that this his Bill of Exceptions may be Signed sealed and made a part of the record, which is done in open Court.

M. E. Hollister
Judge

Seal

And afterwards to w^{ts}: on the 24th day of March A.D. 1838 the defendant filed his appeal bond in the words and figures following to w^{ts}:

Roswell E. Lord

no 264

Norman W. Woodruff

Friend

Filed April 23, 1858

L. Leland

Clk

Dec 7. 70

paid by B. C. Cook

Know all men by these presents that on P. Eaton Goddell
as principal & E. L. Waterman as surety are held and
firmly bound unto Norman W. Woodruff in the penal
sum of Eight hundred dollars for the payment of which
well and truly to be made on demand since matters
concerning Executors & administration jointly & severally
firmly by these presents. Witness our hands and seals this
Eighteenth day of March A.D. 1838

The condition of the above obligation is such that
whereas the said Norman W. Woodruff died at the
Sitting term of the Sadale County Circuit Court of the
State of Illinois next a judgment against the said
Norman P. Eaton Goddell for the sum of five hundred
and fourteen dollars and seventy six cents besides costs
from which said judgment the said Goddell has
prayed for & obtained an appeal to the Supreme
Court of said state. Now therefore of the said Goddell
shall prosecute his said appeal with effect & without
delay and shall pay or cause to be paid the said
judgment, costs, interest & damages in case said
judgment shall be affirmed, then this obligation to be
void, otherwise in full force & effect.

P. Eaton Goddell
E. L. Waterman

[Signature]
[Signature]

State of Illinois } I John F. Nash Clerk of the
Sadale County } Circuit Court in and for said
County and State do hereby certify that
the above and foregoing contains a true, full, perfect
and complete record in the case of Norman W. Woodruff vs
Roswell E. Goodell as the same appears of record and
on file in said cause in my office

In Testimony Whereof I have hereunto set my
hand and the Seal of said Court at Alton
this 19th day of April A.D. 1838

J. F. Nash Clerk

And now comes the said R. E. Goodell appel-
lant & says that in the record & proceedings
aforesaid and in the rendition of the
Judgment aforesaid there is manifest
error in this & in

1st The Court erred in giving each of the
instructions asked for by ~~the~~ plaintiffs

2nd The Court erred in overruling the motion
for a new trial

B. C. Cook
att'y for appellant

Deuman v Bloomer 11 Ill 193
Rossiter v Rossiter 8 Wend 494
Arendt v Hendam 6 Conn 384
Reeds v Allen 18 John 363

If a special agent exceed the
special and limited authority
conferred upon him - the principal
is not bound by his acts, unless
he has held the agent out to
possess more enlarged au-
thority. Story on Agency 151 & note

Woodborn v Beauford 2 Cranch & Mus 395
Gordon v Anton. 4 Mus & Mils 645
Smith v East Ind Co 16 Simons 46

It is the duty of a party dealing
with a special agent to ascertain
the extent of his authority & if he
does not he must abide the
consequences. Story on Agency
151 & note

Woodborn v Beauford 2 Cranch & Mus 95

Did Goodell afterwards ratify
the act?

All the evidence on this point
are the two letters from Goodell
to Woodruff - (pages 14 & 15) - one is
a refusal to ratify - the other
contains a proposition in
case Lighthall surrenders his
claim - which, as evidenced by
the suit, has not been done
Then letters taken along do not
even tend to prove a ratification
& they are not connected with other testimony

The fact that the lumber was
used on Goodell's farm does not
tend to prove a ratification
either, because there is nothing
in the evidence showing that
Goodell had knowledge of that
fact and acquiesced in it.

Story on Agency 248 & 9
2 Johnson Cases 431

Roswell E Goodell
" } Prints & Authorities
Norman W Woodruff }

This case rests upon one
or the other of these two questions
1st Was the witness Lewis the duly
authorized agent of Goodell in
purchasing & receiving lumber
of Woodruff for Goodell - or if not
2nd Was the act of Lewis in the
premises afterwards ratified by
Goodell

The distinction made in the
books between a general agent
and a Special agent is, a
general agent is one delegated
to do all acts pertaining to a
particular business or employment
- while a special agent is one
delegated to do a single act

Story on Agency Page 18
2 Kent Commentaries 620 & 21
Whitehead v Suckett 15 East 408

Irwin's authority as agent of Goodell
(see pages 12 & 16 of record) was to obtain
(not to purchase, for the lumber
was already purchased by Goodell
of Lighthall) Lumber of Lighthall
"on the contract" between Lighthall
& Goodell - to do a single
act - and must in this
view of the case be considered a
special agent

Irwin says on his examination
that he was not authorized to
get lumber of Woodruff & charge
it to Goodell (see page 16 of record)

Goodell in his letter (page 14) states
he bought the fencing of Light
hall & supposed he was to pay
him for it - This letter was
introduced by the plaintiff below

If then Irwin purchased lumber
of Woodruff for Goodell he was
clearly acting without authority
his acts are not binding
upon Goodell Story on Agency 151 note

The 1st instructions given for the plaintiff below is not law - because it instructs the jury in relation to a matter of fact of which there is no evidence - There is no evidence tending to show that Lewis was the duly authorized agent of Gordell in purchasing lumber of Woodruff - He had "no authority to purchase lumber of Woodruff" The instruction was misleading & ought not to have been given

Lewis v Brown 1 Sil 14
2 Williams 802

Montgomery v Evans 8 Geo 148²⁸³
Harrison v Thompson 9 Geo 310
Dunphy v Collins 1 Seam 83
Baxter v People 3 Sil 368
Pate v Do " " 644
Vanderburgh v Houston 4 " 127
McBain v Enloe 13 Ill 98

The 2nd instructions is liable to the same objection (see page 19) with the further objection that it presumes an agreement between Woodruff & Gordell of which there is no evidence

The 3^d & 5th instructions are
liable to the same objection
urged against the 1st -

The 6th instruction is also bad
for the same reason - There
is no evidence that Goodell
voluntarily availed himself of
the use of the lumber received
the benefit of the same know-
ing that the same was
obtained for him of Woodruff
Nor that Erwin is the brother-
in-law of Goodell, nor that
Goodell afterwards made no ob-
jections to the act of Erwin
His letter on the contrary shows
that he did object

The 8th instruction asks the jury
to pass upon the fact whether
"Goodell knowing that it was

agreed between Light-hull and
Woodruff that Woodruff should
furnish the lumber or contracted
by Light-hull to be sold & delivered
to Goodell, and that it was not
a part of this agreement that
Goodell should pay Light-hull
not Woodruff. Applied through
his agent - Wain to Woodruff &
that Woodruff sold & delivered to
Goodell the lumber as agreed
to be sold by Light-hull then
Woodruff is entitled to recover

The evidence does not show that
Goodell had any knowledge
of any contract between Light-
hull & Goodell - if indeed there
was any.

- The 8th instruction presumes the
agency to exist

An assignment of errors

R E Goodell
N. W. Woodruff

Points & Authorities

STATE OF ILLINOIS—SUPREME COURT.

ROSWELL E. GOODELL }
vs. } *Appeal from LaSalle Circuit Court.*
NORMAN W. WOODRUFF. }

This was an action of assumpsit. Declaration contained only the common counts.

Record
page 3
Page 5 Plea, general issue.

Page 6 Nov. 11th, 1857. Trial; verdict for the plaintiff.

Page 7 On motion of the defendants, the court granted a new trial in the cause.

Page 8 February term, 1858, the second trial was had, which again resulted in a verdict for the plaintiff.

11 On the trial, O. Leavens testified as follows: In the winter of 1855 and '6, I was employed for Woodruff in a lumber yard, north side of the canal. Lighthall sold the lumber yard to Woodruff last November, 1855. He sold Woodruff all the lumber there was in the yard, and some that was to arrive from Michigan. At the time of sale, there was about 30,000 feet of fencing in the yard; 3,000 or 4,000 was 16 foot stuff, about 10,000 10 foot stuff. About 130,000 feet more was expected from Michigan. None of it ever arrived. There was about 200,000 feet of all kinds of lumber in the yard. Fencing was sold Woodruff at 15.75 per M. There
12 was delivered to Irwin, for Goodell, a bill for, amounting to \$514.76. I delivered it all but a load or two. Woodruff did not get more than three or four thousand feet of fourteen foot stuff of Lighthall, and about ten thousand feet of twelve foot stuff; balance of the amount delivered to Irwin was procured by Woodruff in Chicago. When Irwin first came for the lumber, about the 26th of November, 1855, I was standing in the office. Irwin had a letter in his hand, which he stated he had received from Goodell, and said, Goodell writes me that he has made a contract with Lighthall for a quantity of lumber, and directs me to obtain the lumber on the contract. Lighthall says that he has sold out to Woodruff, and referred Irwin to me, and said, you can get the lumber there. Lighthall was standing by, and said that he had sold out. I told Irwin that we had fourteen foot stuff; we could not let it go less than \$20.

13 Irwin made no reply. The contract between Lighthall and Woodruff was \$1000 down, the balance in the spring—March, I think. The yard was in the possession of Woodruff before Irwin came. The lumber had not all been tallied off; it was done afterwards—some time in the fall. Lighthall, when he sold out, said that he had made some contracts, on which he had received money. One to Cushman, one to Reddick. Light-

hall stated there were contracts out, that he (Lighthall) would like to fill. The one to Goodell and others Woodruff was to fill or not, as he pleased. Mr. Irwin got most of the lumber in the bill. Sometimes his team came. I understood he was living on Goodell's place. The lumber was to be used for fencing Goodell's land. I saw a pile of lumber at Irwin's house afterwards; supposed it to be some of the same lot he got of us. Some time after the fencing had been taken away, I saw Goodell. He stated that he had been advised by counsel not to pay the money to Woodruff. I did not present the bill. The conversation took place at the depot; the train was just going out, and I had but little time to talk with Goodell.

Cross examined.—No lumber had arrived from Michigan at the time Irwin got this lumber. There was a large pile on the canal bank; it was included in the amount I have stated was in the yard. We were selling all the time. Made large sales, and delivered from this pile on the canal bank. Lighthall and Woodruff were negotiating two or three days about their trade. There was no written contract. I did not see the \$1000 paid. There was about 200,000 feet sold to Woodruff, and about 20,000 of this was fencing.

¹⁴ Direct resumed.—Never heard Lighthall say he received \$1000 from Woodruff. The contracts to Cushman and Reddick and others, were to be filled from the lumber that was to arrive, except Cushman's, which was for sixteen foot stuff, and was to be filled out of the yard. It would take about all there was there. No lumber ever came from Michigan after Woodruff bought out Lighthall.

¹⁴ The plaintiff then offered in evidence the following letters, after proving Goodell's signature thereto.

JOLIET, Feb. 29, 1856.

N. W. Woodruff, Esq., Ottawa—Dear Sir.—Your favor of the 28th is received. The bill of lumber mentioned has also been received. I bought the fencing of Mr. Lighthall, and supposed I was to pay him for it, and he has been here and notified me that he should expect the payment to be made to him. I shall be down in your city on Monday or Thursday and will see you. I am ready to pay one of you, but don't want to pay both.

Respectfully Yours,

R. E. GOODELL.

JOLIET, March 10th, 1856.

N. W. Woodruff, Esq., Ottawa—Dear Sir.—If Mr. Lighthall surrenders his claim on me for that bill of lumber, could I sell you enough burr or white oak Posts 6½ feet long, good size, at 12½ cents each to pay the bill? I could deliver, I think, the posts between the 10th of April and 1st of

¹⁵ May, on the canal bank at Ottawa.

Respectfully Yours,

R. E. GOODELL.

The plaintiff then offered in evidence Woodruff's check on the bank of Ottawa for \$1000, payable to Lighthall's order and endorsed by him, which is in the words and figures following, to wit:

No. 8.

OTTAWA, Dec. 3, 1855.

Bank of Ottawa. Pay J. S. Lighthall or order one thousand dollars and charge to account of \$1000.

N. W. WOODRUFF.

Endorsed, J. S. Lighthall.

The plaintiff offered to prove the payment of said sum by the Bank of

Ottawa to Lighthall, but the defendant waived the offer and admitted the payment of the money.

To the introduction of which check the defendant then and there objected, which objection was overruled by the Court. The plaintiff's Attorney stating that he intended to prove the fact alinnde, but wished to fix the time, by the check, and the defendant by his counsel then and there excepted to the decision of the Court in overruling said objection. The plaintiff then called witness Joseph O. Glover, who testified as follows:

I believe that I am acquainted with the handwriting of Joseph Lighthall. I think the endorsement on this check is in his hand writing.

Plaintiff there rested his case.

The defendant to maintain the issues on his part, called William Irwin, who testified as follows, to wit:

¹⁶ I am the person spoken of by Leavens. Before I took the lumber I spoke to Woodruff, and on the same day, and shortly after I had spoken to Leavens. I told him that I wanted the lumber for Goodell on the contract. Woodruff said that I should have it. That this was one of the reserved contracts. I never asked Woodruff to let me have the lumber and charge it to Goodell. I had no authority to do so. I generally saw Woodruff about the yard when I was taking away lumber. There never was any other arrangement except the one above spoken of upon which I got the lumber from Woodruff's yard for Goodell. The contract price in the contract between Goodell and Lighthall was \$19 or \$20 per thousand. I commenced taking away the lumber about the 3rd or 4th of December, 1855.

Cross-Examined.—I got some two inch plank there for my own use. Told them to charge it to William Irwin. I did not tell Leavens to charge plank to Goodell. Never got two inch plank but once—got some scantling there for myself; never got any for Goodell. I sent a copy of this bill to Goodell sometime in February or March. The fencing was got for Goodell and was used on his farm. All the fencing was got from Woodruff under the arrangement before spoken of. I told Lighthall I was there to get lumber on the contract he made with Goodell. He said that he had sold out but had reserved this contract of Goodell's and that Woodruff would give me the lumber on it.

Direct resumed.—After I had the conversation with Leavens in the office, Woodruff came in and Leavens told him that I had come for the lumber on the contract between Goodell and Lighthall. Woodruff said he ¹⁷ supposed it was all right, this was one of the reserved contracts, but said he could not let me have the lumber for less than \$20. I was acting for Goodell as his agent under these instructions. I recollect of Woodruff coming to my house to see about the pay. I told him that I had sent the bill to Goodell. Did not say Goodell would pay it. I don't recollect of sending my orders for lumber, if I did it was to either Woodruff or Leavens.

The defendant then called

Goodspeed as witness, who testified as follows: I had a conversation with Oranzo Leavens about the reservation of this Goodell contract and others. I had a contract with Lighthall. I spoke to Woodruff about it. He said that he supposed it was good, as there had been some contracts reserved.

Cross-Ex.—Woodruff did not claim to have any thing to do with the contract. My lumber, came down after the close of navigation on the cars. I got the lumber from the cars, and Woodruff had nothing to do with it. I showed my contract with Lighthall to Woodruff, and received

my lumber on it from the Railroad. I had paid Lighthall in full for that lumber before Woodruff bought him out.

- ¹⁷ Direct resumed,—I think that Woodruff stated that the Goodell contract was mentioned as one of the reserved ones. I think Lighthall spoke to me twice about the Goodell contract last fall.

Defendant then called Bennette, who testified as follows:

- ¹⁸ I was engaged in this lumber yard in measuring off the lumber. I remember of a Mr. Clank coming there for lumber. Lighthall said to Woodruff that Clank had come for the lumber on that contract. Woodruff said it was all right, that this was one of the reserved contracts, he also mentioned the others, Goodell's among the rest.

Cross Ex.—Clank got a load of lumber that day. The way I understood the conversation, the lumber was to come out of the lot which Lighthall sold to Woodruff. I am a brother-in-law of Lighthalls.

Oranzo Leavens recalled by plaintiff.

I did not hear the conversation between Lighthall and Irwin near the canal bank.

Did Mr. Woodruff authorize you to deliver lumber to Goodell on Lighthall's account? To which question the defendant then and there objected, which objection was then and there overruled by the Court, and the defendant by his counsel then and there excepted to the decision of the Court in overruling said objection. The witness in reply to the question stated that Woodruff never did authorize him to deliver lumber to Goodell on Lighthall's account.

This was all the evidence in the case.

The plaintiff asked the court to instruct the jury as follows:

- 1st. If the jury believe, from the evidence, that the lumber hauled from the yard of Woodruff by the witness, Irwin, was the lumber of Woodruff, and that said Irwin was the duly authorized agent of Goodell in purchasing the same, and hauling the same away, then the jury will find for the plaintiff for the value of the lumber, unless it was agreed that the lumber was to be delivered on Lighthall's account.

2nd. If the jury believe, from the evidence, that at the time Lighthall sold his lumber yard to Woodruff, that Lighthall sold to Woodruff all the lumber he had in said yard, and that Woodruff paid, or agreed to pay, Lighthall for the full amount of lumber, and put Woodruff in possession of the lumber, then the lumber was the lumber of Woodruff, and beyond the control of Lighthall; and even though Lighthall had agreed to deliver a bill of lumber to Goodell; and that Woodruff agreed to fill such contract with Goodell for Lighthall: still Woodruff had a right to charge such lumber to Goodell, if Goodell, by his agent, Irwin, duly authorized, took away and used the lumber, for his own use and benefit, unless it was expressly agreed that a sale of the lumber was a sale to Lighthall.

- 3d. What a person does by his agent he does himself; and if the jury believe, from the evidence, that Irwin was the duly authorized agent of Goodell in purchasing and hauling lumber from Woodruff's yard, and for Goodell's use, then Goodell would be liable to Woodruff for the value of the lumber got by Irwin from the plaintiff.

5th. If the jury believe, from the evidence, that Irwin was the general agent of Goodell in purchasing lumber for the use of Goodell's farm, then

Irwin could buy lumber of Woodruff for Goodell, and in law Goodell would be responsible to Woodruff for the same.

6th. Goodell is liable, for the lumber to Woodruff, if the jury believe, from the evidence, that the lumber was got from Woodruff by Irwin by the authority of Goodell, either express or implied. So, also, is Goodell²⁰ liable to Woodruff for the lumber, if the jury believe, from the evidence, that the lumber was got by Irwin of Woodruff without the authority of Goodell, if the jury believe, from the evidence, that Goodell afterwards voluntarily availed himself of the use of the lumber, and received the benefit of the same, knowing that the lumber was obtained for him of Woodruff; and the fact that Irwin was the general agent of Goodell, duly authorized to buy lumber for the use of Goodell's farm, and used the lumber in fencing on said farm, and that Irwin was the brother-in-law of Goodell, and in possession of said farm, and that Goodell afterwards made no objection to the said acts of Irwin, if proven, are facts proper to be considered by the jury, in determining the authority of Irwin in the premises, and whether Goodell, in any manner, ratified the acts of Irwin, as his agent.

8th. If the jury believe, from the evidence, that Lighthall, having a lumber yard, had agreed to sell to Goodell a quantity of lumber from the yard, to be paid for on delivery, or after delivery; and if, after this agreement between Lighthall and Goodell, Lighthall sold all his lumber in said yard to Woodruff, without deducting from the price thereof, the price of²¹ the lumber so contracted to be sold by Lighthall to Goodell; and it was agreed between Woodruff and Lighthall, that Woodruff should furnish to Goodell the lumber so contracted by Lighthall to be sold and delivered to Goodell, and it was not a part of this agreement that Goodell should pay Lighthall for the lumber, and not Woodruff; and if afterwards Goodell, knowing these facts, applied through his agent, Irwin, to Woodruff, and that Woodruff sold and delivered to Goodell the lumber so agreed to be sold and delivered by Lighthall, then Woodruff is entitled to recover the price of the lumber from Goodell.

To the giving of each of which instructions the defendant then and there excepted.

The defendant moved for a new trial; the court overruled the motion; to which decision of the court the defendant then and there excepted.

ASSIGNMENT OF ERRORS.

1st. The court erred in giving each of the instructions asked by the plaintiff.

2nd. The court erred in overruling the motion of defendant for a new trial.

POINTS AND AUTHORITIES.

1st. The first instruction allowed by the court for the plaintiff, is not sufficiently full and explicit. Irwin might have supposed he was getting the lumber to fill Lighthall's contract to Goodell, and was only authorized so to do.

2nd. The second instruction allowed by the court for plaintiff, *assumes* the fact that Irwin was the duly authorized agent of Goodell, and is, in other respects, bad and erroneous.

3d. The fifth and sixth instructions allowed by the court for the plaintiff, are based upon an assumption, of which there is no evidence.

4th. There is no evidence tending to show that Irwin was the *general* agent of Goodell, but the agent of Goodell to do a *particular act*, viz, to purchase lumber of Lighthall.

5th. If Irwin bought lumber of Woodruff for Goodell, he was not acting within the *scope of his authority*, and his acts are not binding upon Goodell.

246 267

Goodell

vs.

Woodruff

other respects, had and erroneous.
the fact that Train was the duly authorized agent of Goodell, and is in
2nd. The second injunction allowed by the court for plaintiff's expenses

Filed Apr. 28. 1858

Leeland

Clerk

Goodell.
ing within the scope of his authority, and his acts are not binding upon
him. If Train bought lumber of Woodruff for Goodell, he was not act-

State of Illinois }
Supreme Court } 3^d Division April T. 1858

R. E. Goodell
vs.
N. W. Woodruff } Appeal.

Argument & Points for Appellee.

This was an account for \$514.76 of fencing-lumber delivered by Woodruff to Irwin as the agent of Goodell, and used in fencing Goodell's farm, on which Irwin then lived, near Ottawa.

When Lighthall sold the lumber yard to Woodruff, it appears, that he had made contracts for lumber with a number of persons - On some of these contracts, Lighthall had received payment or part payment, and on others he had not received any thing - The wholesale price of the lumber i.e. the fencing from Lighthall to Woodruff was \$15.75 per M. The retail price was about \$20. per M. It appears that, ~~Lighthall~~ was to fill out of the yard those contracts which he had previously made and upon which he had received pay, and was to be charged by Woodruff with such lumber at \$15.75, giving to Lighthall the advantage of the difference between \$15.75 and \$20. per M.; but upon such contracts as Lighthall had previously made, upon which nothing had been paid, Woodruff was to have the privilege to fill those

contracts or not as he saw fit, and if he did file them, Woodruff in such cases was to have the advantage of the difference between \$15.75 (the cash price) and \$20. per M. the retail price.

This contract of Goodells (it is shown by proof) was one upon which no money had been paid. It was understood between Lighthall & Woodruff that this latter class of outstanding contracts, was to be filled or not as Woodruff pleased, out of the 130 M of fencing, which was to arrive from Michigan, but which never came to hand. At the time of the sale of the lumber yard, there was only about 20 M of fencing in the yard, not enough to fill even Goodell's bill to say nothing of the Cushman, Reddick, Clark and other contracts, and the record shows that most of the fencing which Goodell got was bought at Chicago by Woodruff, after his purchase from Lighthall.

The proof shows that Woodruff made out his bill for the fencing against Goodell, handed it to Irwin, as his agent, who forwarded it to Goodell at Joliet.

The lumber in question was undoubtedly the property of Woodruff, and there was a sale of it, either to Goodell, or to Lighthall to be delivered to Goodell, and charged to Lighthall.

We think it is begging a little too strongly to say, that Woodruff took the trouble to procure fencing from Chicago, to sell to Lighthall (who himself had just sold out) and give him the profits of his contract with Goodell. besides it is shown, that the price of this fencing, Irwin understood both from Leavens, and Woodruff, before he took away a single board, was to be \$1 per M.

higher than Goodell & Lighthall had agreed upon. The instructions given upon both sides are fair, and Goodell has not seen proper to set forth in the abstract, the instructions given by the Court for him, but if looked at, it will be found, that if the Court below leaned any way, it was toward him, and he has no reason to complain on the score of instructions.

The 2^d Instruction given for Woodruff is good law, and is not subject to the exception taken by Goodell's counsel, in their 2^d point, viz. that it assumes that Irwin was Goodell's duly authorized agent. It does not so assume. The "if" used in that sentence plainly leaves it to the jury to find that fact, whether Irwin was the agent or not, just as much as it leaves the jury to find the other facts mentioned in the same connection afterwards, namely, whether the lumber was taken and used for Goodell's benefit &c.

The objection to the 5th. Instruction for Woodruff is not well taken, because in law the words, general agent are employed in two senses, and Irwin might be a general agent for Goodell if he was employed by Goodell with general powers in that particular employment.

Dunlap's Paley's Agency, 152

Cholly on Contracts, 200.

The 6th. Instruction given for Woodruff is good law, unless this Court overrule their decision in Fisher vs. Stevens 16 Ill. 397.

The first branch of this instruction is unquestionably law. If the jury found that the lumber was obtained from Woodruff, by Irwin, with the authority of Goodell, either express or implied,

then Goodell would be liable to Woodruff.
The second branch is also good law
It is almost verbatim the language used
by this Court in Fisher vs. Stevens.

16 Ill. 397.

If Irwin got the lumber from Woodruff
without the authority of Goodell, and
if Goodell afterwards voluntarily availed
himself of the use of the lumber, and re-
ceived the benefit of the same, knowing that
the lumber was obtained for him from
Woodruff, that this amounts in law to a
ratification of the acts and authority of
Irwin, is a law proposition too well settled
by authority to be shaken.

Fisher vs. Stevens 16 Ill. 397.

North River Bk. vs. Ayneer et al 3 Hill 262

Williams et al. vs. Mitchell 17 Mass. 97

Shiras vs. Morris et al 8 Cow. 60

Moss vs. Ross Lead Mining Co. 5 Hill 137.

Storhard vs. Aull et al. 7 Mo. 318

17 Vermont 449

Shesbald on Prin & Agent 230. 231

Chitty on Contracts - 176

And in this point of view, it is wholly
immaterial whether Irwin acted within
the scope of his authority - from Goodell
or not =

The 8th. Instruction given for Woodruff
was certainly based upon the evidence
in the cause.

This cause has been fairly tried before two juries, and both times with the same result against Goodell.

If there was any improper evidence got in, Goodell has no right to complain, for if the Court will look to the evidence of Irwin, they will see that Goodell begged in to his side, conversations which occurred between the witness and Lighthall, not in the hearing of Woodruff. And as to the question put by Woodruff to Leavens when he was recalled, as to whether Woodruff authorized him to deliver lumber to Goodell on Lighthall's account, to which question Goodell objected, the Court properly over-ruled the objection, on the ground that in the examination of Irwin, Goodell asked him, If he had authority from Goodell to get lumber from Woodruff, and have it charged to Goodell.

If there are any slight errors, if this Court believes that substantial justice has been done between the parties, and that these errors would not have changed the verdict in any way, they will not reverse the judgment for these trivial errors, which occur in almost every jury trial, as lightly contested on both sides, as this cause has been. We submit, that the judgment is right, and that substantial justice has been done to the parties, and that the judgment of the Court below should be affirmed.

Oliver C. Gray
Atty. pro Appellee

No. 264.

Supreme Court
3^d Grand Divm

R. E. Goddell

vs.

J. W. Woodruff

Argument and
Points & Authorities
for Appellee.

Filed May 25, 1858

L. Leland
Clerk

Oliver C. Gray

pro. Appellee.

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12 was delivered to Irwin, for Goodell, a bill for, amounting to \$514.76. I delivered it all but a load or two. Woodruff did not get more than three or four thousand feet of fourteen foot stuff of Lighthall, and about ten thousand feet of twelve feet stuff; balance of the amount delivered to Irwin was procured by Woodruff in Chicago. When Irwin first came for the lumber, about the 26th of November, 1855, I was standing in the office. Irwin had a letter in his hand, which he stated he had received from Goodell, and said, Goodell writes me that he has made a contract with Lighthall for a quantity of lumber, and directs me to obtain the lumber on the contract. Lighthall says that he has sold out to Woodruff, and referred Irwin to me, and said, you can get the lumber there. Lighthall was standing by, and said that he had sold out. I told Irwin that we had fourteen foot stuff; we could not let it go less than \$20.

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¹⁴ Direct resumed.—Never heard Lighthall say he received \$1000 from Woodruff. The contracts to Cushman and Reddick and others, were to be filled from the lumber that was to arrive, except Cushman's, which was for sixteen foot stuff, and was to be filled out of the yard. It would take about all there was there. No lumber ever came from Michigan after Woodruff bought out Lighthall.

¹⁴ The plaintiff then offered in evidence the following letters, after proving Goodell's signature thereto.

JOLIET, Feb. 29, 1856.

N. W. Woodruff, Esq., Ottawa—Dear Sir.—Your favor of the 28th is received. The bill of lumber mentioned has also been received. I bought the fencing of Mr. Lighthall, and supposed I was to pay him for it, and he has been here and notified me that he should expect the payment to be made to him. I shall be down in your city on Monday or Thursday and will see you. I am ready to pay one of you, but don't want to pay both.

Respectfully Yours,

R. E. GOODELL.

JOLIET, March 10th, 1856.

N. W. Woodruff, Esq., Ottawa—Dear Sir.—If Mr. Lighthall surrenders his claim on me for that bill of lumber, could I sell you enough burr or white oak Posts 6½ feet long, good size, at 12½ cents each to pay the bill? I could deliver, I think, the posts between the 10th of April and 1st of

¹⁵ May, on the canal bank at Ottawa.

Respectfully Yours,

R. E. GOODELL.

The plaintiff then offered in evidence Woodruff's check on the bank of Ottawa for \$1000, payable to Lighthall's order and endorsed by him, which is in the words and figures following, to wit:

No. 8.

OTTAWA, Dec. 3, 1855.

Bank of Ottawa. Pay J. S. Lighthall or order one thousand dollars and charge to account of

\$1000.

N. W. WOODRUFF.

Endorsed, J. S. Lighthall.

The plaintiff offered to prove the payment of said sum by the Bank of

Ottawa to Lighthall, but the defendant waived the offer and admitted the payment of the money.

To the introduction of which check the defendant then and there objected, which objection was overruled by the Court. The plaintiff's Attorney stating that he intended to prove the fact alinnde, but wished to fix the time, by the check, and the defendant by his counsel then and there excepted to the decision of the Court in overruling said objection. The plaintiff then called witness Joseph O. Glover, who testified as follows:

I believe that I am acquainted with the handwriting of Joseph Lighthall. I think the endorsement on this check is in his hand writing.

Plaintiff there rested his case.

The defendant to maintain the issues on his part, called William Irwin, who testified as follows, to wit:

¹⁶ I am the person spoken of by Leavens. Before I took the lumber I spoke to Woodruff, and on the same day, and shortly after I had spoken to Leavens. I told him that I wanted the lumber for Goodell on the contract. Woodruff said that I should have it. That this was one of the reserved contracts. I never asked Woodruff to let me have the lumber and charge it to Goodell. I had no authority to do so. I generally saw Woodruff about the yard when I was taking away lumber. There never was any other arrangement except the one above spoken of upon which I got the lumber from Woodruff's yard for Goodell. The contract price in the contract between Goodell and Lighthall was \$19 or \$20 per thousand. I commenced taking away the lumber about the 3rd or 4th of December, 1855.

Cross-Examined.—I got some two inch plank there for my own use. Told them to charge it to William Irwin. I did not tell Leavens to charge plank to Goodell. Never got two inch plank but once—got some scantling there for myself; never got any for Goodell. I sent a copy of this bill to Goodell sometime in February or March. The fencing was got for Goodell and was used on his farm. All the fencing was got from Woodruff under the arrangement before spoken of. I told Lighthall I was there to get lumber on the contract he made with Goodell. He said that he had sold out but had reserved this contract of Goodell's and that Woodruff would give me the lumber on it.

Direct resumed.—After I had the conversation with Leavens in the office, Woodruff came in and Leavens told him that I had come for the lumber on the contract between Goodell and Lighthall. Woodruff said he supposed it was all right, this was one of the reserved contracts, but said he could not let me have the lumber for less than \$20. I was acting for Goodell as his agent under these instructions. I recollect of Woodruff coming to my house to see about the pay. I told him that I had sent the bill to Goodell. Did not say Goodell would pay it. I don't recollect of sending my orders for lumber, if I did it was to either Woodruff or Leavens.

The defendant then called

Goodspeed as witness, who testified as follows: I had a conversation with Oranzo Leavens about the reservation of this Goodell contract and others, I had a contract with Lighthall. I spoke to Woodruff about it. He said that he supposed it was good, as there had been some contracts reserved.

Cross-Ex.—Woodruff did not claim to have any thing to do with the contract. My lumber came down after the close of navigation on the cars. I got the lumber from the cars, and Woodruff had nothing to do with it. I showed my contract with Lighthall to Woodruff, and received

my lumber on it from the Railroad. I had paid Lighthall in full for that lumber before Woodruff bought him out.

- ¹⁷ Direct resumed.—I think that Woodruff stated that the Goodell contract was mentioned as one of the reserved ones. I think Lighthall spoke to me twice about the Goodell contract last fall.

Defendant then called Bennette, who testified as follows:

- ¹⁸ I was engaged in this lumber yard in measuring off the lumber. I remember of a Mr. Clank coming there for lumber. Lighthall said to Woodruff that Clank had come for the lumber on that contract. Woodruff said it was all right, that this was one of the reserved contracts, he also mentioned the others, Goodell's among the rest.

Cross Ex.—Clank got a load of lumber that day. The way I understood the conversation, the lumber was to come out of the lot which Lighthall sold to Woodruff. I am a brother-in-law of Lighthalls.

Oranzo Leavens recalled by plaintiff.

I did not hear the conversation between Lighthall and Irwin near the canal bank.

Did Mr. Woodruff authorize you to deliver lumber to Goodell on Lighthall's account? To which question the defendant then and there objected, which objection was then and there overruled by the Court, and the defendant by his counsel then and there excepted to the decision of the Court in overruling said objection. The witness in reply to the question stated that Woodruff never did authorize him to deliver lumber to Goodell on Lighthall's account.

This was all the evidence in the case.

The plaintiff asked the court to instruct the jury as follows:

- 1st. If the jury believe, from the evidence, that the lumber hauled from the yard of Woodruff by the witness, Irwin, was the lumber of Woodruff, and that said Irwin was the duly authorized agent of Goodell in purchasing the same, and hauling the same away, then the jury will find for the plaintiff ¹⁹ for the value of the lumber, unless it was agreed that the lumber was to be delivered on Lighthall's account.

2nd. If the jury believe, from the evidence, that at the time Lighthall sold his lumber yard to Woodruff, that Lighthall sold to Woodruff all the lumber he had in said yard, and that Woodruff paid, or agreed to pay, Lighthall for the full amount of lumber, and put Woodruff in possession of the lumber, then the lumber was the lumber of Woodruff, and beyond the control of Lighthall; and even though Lighthall had agreed to deliver a bill of lumber to Goodell, and that Woodruff agreed to fill such contract with Goodell for Lighthall: still Woodruff had a right to charge such lumber to Goodell, if Goodell, by his agent, Irwin, duly authorized, took away and used the lumber, for his own use and benefit, unless it was expressly agreed that a sale of the lumber was a sale to Lighthall.

- 3d. What a person does by his agent he does himself; and if the jury ¹⁹ believe, from the evidence, that Irwin was the duly authorized agent of Goodell in purchasing and hauling lumber from Woodruff's yard, and for Goodell's use, then Goodell would be liable to Woodruff for the value of the lumber got by Irwin from the plaintiff.

5th. If the jury believe, from the evidence, that Irwin was the general agent of Goodell in purchasing lumber for the use of Goodell's farm, then

Irwin could buy lumber of Woodruff for Goodell, and in law Goodell would be responsible to Woodruff for the same.

6th. Goodell is liable for the lumber to Woodruff, if the jury believe, from the evidence, that the lumber was got from Woodruff by Irwin by ²⁰ the authority of Goodell, either express or implied. So, also, is Goodell liable to Woodruff for the lumber, if the jury believe, from the evidence, that the lumber was got by Irwin of Woodruff without the authority of Goodell, if the jury believe, from the evidence, that Goodell afterwards voluntarily availed himself of the use of the lumber, and received the benefit of the same, knowing that the lumber was obtained for him of Woodruff; and the fact that Irwin was the general agent of Goodell, duly authorized to buy lumber for the use of Goodell's farm, and used the lumber in fencing on said farm, and that Irwin was the brother-in-law of Goodell, and in possession of said farm, and that Goodell afterwards made no objection to the said acts of Irwin, if proven, are facts proper to be considered by the jury, in determining the authority of Irwin in the premises, and whether Goodell, in any manner, ratified the acts of Irwin, as his agent.

8th. If the jury believe, from the evidence, that Lighthall, having a lumber yard, had agreed to sell to Goodell a quantity of lumber from the yard, to be paid for on delivery, or after delivery; and if, after this agreement between Lighthall and Goodell, Lighthall sold all his lumber in said yard to Woodruff, without deducting from the price thereof, the price of ²¹ the lumber so contracted to be sold by Lighthall to Goodell; and it was agreed between Woodruff and Lighthall, that Woodruff should furnish to Goodell the lumber so contracted by Lighthall to be sold and delivered to Goodell, and it was not a part of this agreement that Goodell should pay Lighthall for the lumber, and not Woodruff; and if afterwards Goodell, knowing these facts, applied through his agent, Irwin, to Woodruff, and that Woodruff sold and delivered to Goodell the lumber so agreed to be sold and delivered by Lighthall, then Woodruff is entitled to recover the price of the lumber from Goodell.

To the giving of each of which instructions the defendant then and there excepted.

The defendant moved for a new trial; the court overruled the motion, to which decision of the court the defendant then and there excepted.

ASSIGNMENT OF ERRORS.

1st. The court erred in giving each of the instructions asked by the plaintiff.

2nd. The court erred in overruling the motion of defendant for a new trial.

POINTS AND AUTHORITIES.

1st. The first instruction allowed by the court for the plaintiff, is not sufficiently full and explicit. Irwin might have supposed he was getting the lumber to fill Lighthall's contract to Goodell, and was only authorized so to do.

2nd. The second instruction allowed by the court for plaintiff, *assumes* the fact that Irwin was the duly authorized agent of Goodell, and is, in other respects, bad and erroneous.

3d. The fifth and sixth instructions allowed by the court for the plaintiff, are based upon an assumption, of which there is no evidence.

4th. There is no evidence tending to show that Irwin was the *general* agent of Goodell, but the agent of Goodell to do a *particular act*, viz, to *receive* ~~purchase~~ lumber of Lighthall. *purchased of him by Goodell -*

5th. If Irwin bought lumber of Woodruff for Goodell, he was not acting within the *scope of his authority*, and his acts are not binding upon Goodell.

R Eaton Goodell

N W Woodruff

Abstract

Goodell.

ing within the scope of his authority, and his acts are not binding upon
him. If I have bought lumber of Woodruff for Goodell, he was not act-

agent of Goodell, but the agent of Goodell is to do a bad action and not to

do. There is no evidence tending to show that I was the agent of

the are based upon an assumption of which there is no evidence.

21. The fifth and sixth instructions allowed by the court for the plain-

other respects, fact and circumstance.

the fact that I was the duly authorized agent of Goodell, and is in
and. The second instruction allowed by the court for plaintiff's recovery

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Prepared