if any, were not joint, and therefore could not be made the matter of a joint appeal. Now the appeal in this case included, not only an appeal against the payment of the maintenance money, but also one against the adjudication of the settlement: an appeal of this sort necessarily must do so in effect; for the liability to the former must depend on the decision as to the latter: *Regina* v. *Justices of Middlesex* (5 Dowl. & L. 9): and both the parties appellant were necessarily interested in the decision of both parts of the order. The treasurer of the guardians, on their behalf, was clearly and by the statute interested to appeal against the payment of the money: and, if so, as that depended on the settlement, he was interested to dispute that adjudication: the overseers were clearly interested to get rid of the settlement, and also the payment of the maintenance, which depended on it, because, when their parish settled its accounts with the union, the burden would ultimately fall on their rate. As, then, either party might have appealed separately, and each had an interest in the whole matter of the appeal, we can see no ground for objecting to the joinder of both in one appeal: and therefore the rule will be absolute.

Rule absolute (*b*).

See the three preceding cases.

[310] GRACE HUMBLE *against* HUNTER. Monday, May 29th, 1848. In assumpsit on a charter-party executed, not by plaintiff, but by a third person who, in the contract, described himself as "owner," of the ship. Held, that evidence was not admissible to shew that such person contracted merely as the plaintiff's agent.

[S. C. 17 L. J. Q. B. 350; 12 Jur. 1021; Considered, *Schmalz* v. *Avery*, 1851, 20 L. J. Q. B. 231. Referred to, *British Waggon Company* v. *Lea*, 1880, 5 Q. B. D. 152. Distinguished, *Killick* v. *Price*, 1896, 12 T. L. R. 264. Referred to, *Associated Portland Cement Manufacturers* v. *Tolhurst*, [1902] 2 K. B. 669; [1903] A. C. 414.]

Assumpsit, on a charter-party, for freight, demurrage, &c. The declaration stated the instrument as "a certain charter-party of affreightment then made between the plaintiff, then and still being the owner of the good ship or vessel called 'Ann,'" and the defendant. Pleas: non assumpsit; and others which it is unnecessary to state.

On the trial, before Wightman J., at the Durham Summer Assizes, 1847, the charter-party was put in, signed, not by the plaintiff, but by her son: and the words of agreement were: "It is" "mutually agreed between C. J. Humble, Esq." (the son), "owner of the good ship or vessel called the 'Ann,'" "and Jameson Hunter," the defendant. Humble the son was called as a witness on behalf of the plaintiff, to prove that she was the real owner of the vessel, and that he had signed the charter-party as her agent, and not as principal. This line of examination was objected to on the ground that a person who has signed a contract expressly as principal cannot be admitted to prove, in contradiction to the written instrument, that he was merely an agent. The evidence was received, and a verdict found for the plaintiff. Watson, in Michaelmas term, 1847, moved for a new trial on account of the reception of this evidence, and on other grounds. The Court granted a rule nisi, on this point only.

[311] In last Easter vacation (*a*), and on this day,

Knowles and F. Robinson shewed cause. "It is the constant course to shew by parol evidence, whether a contracting party is agent or principal;" per Park J. in *Wilson* v. *Hart* (7 Taunt. 295, 304). There the bought note named Reed as the purchaser, but it was held allowable to prove that the defendant was so in reality. A party meaning to act as agent may bind himself in such form that he cannot be treated otherwise than as principal; *Appleton* v. *Binks* (5 East, 148), where the agent had bound himself, his heirs and assigns, under seal: and it also results from the authorities, that an agent who has made a written contract in his own name cannot adduce parol evidence for the purpose of discharging himself from liability. [Patteson J. That is the rule I acted upon in *Magee* v. *Atkinson* (2 M. & W. 440); and the law is so stated in 2 Smith's Lead. C. 224, 3d ed.(*e*).] But this does not

(*b*) Reported by H. Davidson, Esq.

(*a*) Cause was shewn on May 15th before Lord Denman C.J., Patteson, Wightman, and Erle Js.

(*e*) Note to *Thomson* v. *Davenport*, 9 B. & C. 78.

prevent the principal, for whom the agent has contracted, from suing in his own name, and shewing by evidence that he is entitled to do so. [Wightman J. On a policy of insurance the action is brought in the name of the party who actually executes, or in that of the person entitled to the benefit.] The rule on the subject is laid down in Smith's Mercantile Law, 144, 4th ed. (book i. c. 5, s. 5), where it is said that, "When a factor dealing for a principal, but concealing that principal, delivers goods in his own name, the person contracting with him has a right to consider him **[312]** to all intents and purposes the principal," but that "the real principal may appear and bring an action on that contract against the purchaser of the goods." The latter point is also stated in Story on Agency, c. 16, s. 420; and the author adds: "It will make no difference, that the agent may also be entitled to sue upon the contract;" "Nor that the third person has dealt with the agent, supposing him to be the sole principal." So, in *Sims* v. *Bond* (5 B. & Ad. 389, 393), this Court said: "It is a well established rule of law, that where a contract, not under seal, is made with an agent, in his own name, for an undisclosed principal, either the agent or the principal may sue upon it." The Court of Exchequer explained the law on this subject in *Higgins* v. *Senior* (8 M. & W. 834, 844), and, although they declared that "to allow evidence to be given that the party who appears on the face of the instrument to be personally a contracting party, is not such, would be to allow parol evidence to contradict the written agreement; which cannot be done," they said also: "There is no doubt, that where such an agreement is made, it is competent to shew that one or both of the contracting parties were agents for other persons, and acted as such agents in making the contract, so as to give the benefit of the contract on the one hand to, and charge with liability on the other, the unnamed principals: and this, whether the agreement be or be not required to be in writing by the Statute of Frauds: and this evidence in no way contradicts the written agreement:" and, in a note to the report, *Garrett* v. *Handley* (4 B & C. 664), and *Bateman* v. *Phillips* (15 East, 272), are cited. [Wightman J. re-**[313]**-ferred to *Skinner* v. *Stocks* (4 B. & Ald. 437).] The principle now relied upon was recognised in *Cothay* v. *Fennell* (10 B. & C. 671). In *The Duke of Norfolk* v. *Worthy* (1 Camp. 337), Lord Ellenborough held that an unnamed purchaser of an estate might recover back deposit money paid on his behalf by his agent, the purchase being rescinded. [Erle J. The effect of recognising the unnamed party in such a case might be that the vendor might find himself under contract to the very person whom he wished to avoid. And in the case of a continuing contract, as, for instance, to supply steam engines, the party contracting to have the supply might find himself dealing with a person incompetent to carry it on.] The rule may perhaps be confined to contracts not continuing. And the case put is an extreme one, and within the class of those in which the contract is considered personal. In *Bickerton* v. *Burrell* (5 M. & S. 383), which may be relied upon for the defendant, this Court held that a party who, throughout the transactions of a purchase by auction, had represented himself as agent for a third party, could not sue as principal and allege that the title was in him and not in the party named. That case (which is the only one of the kind) seems to have proceeded partly on the ground of estoppel, and partly on want of notice to the defendant, before the action was commenced, of the new character which the plaintiff then assumed. There is no authority in support of the latter reason. Nothing was said of notice in *Skinner* v. *Stocks* (4 B. & Ald. 437), or *Cothay* v. *Fennell* (10 B. & C. 671). The only true principle which restricts the action by the party really interested is that he shall not come forward so as unfairly to prejudice the party sued; and **[314]** that is secured by allowing to the defendant in such a case every defence which he would have had if the agent had been the principal. The only circumstance that can be suggested as distinguishing the present case from former ones which have been referred to is, that here the plaintiff's son mentioned himself in the charter-party as "owner" of the ship. But that is a word of description, and not an essential part of the contract. If the charter-party had been merely between "C. J. Humble and Jameson Hunter," Humble would still have been primâ facie owner, though not so described; and then the case would have been wholly undistinguishable from former ones relied upon by the plaintiff.

Watson and Pashley, contrà (*a*). The rule that undisclosed principals in contracts may sue and be sued is subject to the paramount rule of evidence that parol testimony

(*a*) May 29th.

is not admissible to vary a written contract. In *Higgins* v. *Senior* (8 M. & W. 834), where it appeared upon the written contract that the defendant was principal, he was not allowed to discharge himself by shewing that he was merely agent, and that the plaintiff knew him to be so. A passage from the judgment in that case has been relied on to shew that it may be proved that either of the parties to a written contract was agent only, so as to give the benefit of the contract to his unnamed principal. But this can only be where the agent is not, in terms, described as principal. Here the agent is described as "owner" of the ship, that is as principal; and the terms of the instrument are contradicted by evidence that any other person is the owner. *Bickerton* **[315]** v. *Burrell* (5 M. & S. 383), is exactly in point; there the contract was signed "J. Bickerton, for C. Richardson;" and Bickerton, having expressly signed as agent, was not allowed to take the benefit of the contract by shewing that he was really the principal. [Lord Denman C.J. referred to *Lucas* v. *De la Cour* (1 M. & S. 249).] In *Graves* v. *Boston Marine Insurance Company* (2 Cranch Rep. 419), where the plaintiff, in his own name singly, caused himself to be "assured" on "property on board the ship 'Northern Liberties,'" as property may appear, the Supreme Court of the United States held that the policy covered his own interest only, and not that of another also who was jointly interested with him. So, "where one signed a premium note in his own name, parol evidence was held inadmissible to shew that he signed it as the agent of another, on whose property he had caused insurance to be effected by the plaintiff, at the owner's request:" Greenleaf on the Law of Evidence, part 2, chap. 15, sect. 281, p. 320 (Boston, U.S. 1842).

Lord Denman C.J. We were rather inclined at first to think that this case came within the doctrine that a principal may come in and take the benefit of a contract made by his agent. But that doctrine cannot be applied where the agent contracts as principal; and he has done so here by describing himself as "owner" of the ship. The language of Lord Ellenborough in *Lucas* v. *De la Cour* (1 M. & S. 249), "If one partner makes a contract in his individual capacity, and the other partners are willing to take the benefit of it, they must be content to do so according to the mode in which the contract was made," is very apposite to the present case.

[316] Patteson J. The question in this case turns on the form of the contract. If the contract had been made in the son's name merely, without more, it might have been shewn that he was agent only, and that the plaintiff was the principal. But, as the document itself represents that the son contracted as "owner," *Lucas* v. *De la Cour* (1 M. & S. 249), applies. There the partner who made the contract represented that the property which was the subject of it belonged to him alone. The plaintiff here must be taken to have allowed her son to contract in this form, and must be bound by his act. In *Robson* v. *Drummond* (2 B. & Ad. 303), where Sharpe, a coach-maker, with whom Robson was a dormant partner, had agreed to furnish the defendant with a carriage for five years, at a certain yearly sum, and had retired from the business, and assigned all his interest in it to C. before the end of the first three years, it was held that an action could not be maintained by the two partners against the defendant, who returned the carriage, and refused to make the last two yearly payments. In this case I was at first in the plaintiff's favour on account of the general principle referred to by my Lord; but the form of the contract takes the case out of that principle.

Wightman J.(*c*)[1]. I thought at the trial that this case was governed by *Skinner* v. *Stocks* (4 B. & Ald. 437). But neither in that nor in any case of the kind did the contracting party give himself any special description, or make any assertion of title to the subject matter of the contract. **[317]** Here the plaintiff describes himself expressly as "owner" of the subject matter. This brings the case within the principle of *Lucas* v. *De la Cour* (1 M. & S. 249), and the American authorities cited.

Lord Denman C.J. *Robson* v. *Drummond* (2 B. & Ad. 303), which my brother Patteson has cited, seems the same, in principle, with the present case. You have a right to the benefit you contemplate from the character, credit and substance of the party with whom you contract.

Rule absolute (*c*)[2].

(*c*)[1] Coleridge J. having heard the argument for the defendant only, gave no judgment.

(*c*)[2] The latter part of this case is reported by H. Davison, Esq.