

Williams, the agent of the factory, or to Mr. George Williams, the town agent, that the complainant was so chargeable.

Mr. George Williams, according to the proof of McEldery, did not, when informed by the latter that the timber was nearly ready for delivery, question the obligation of the defendant to comply with the contract, by receiving and paying for it. On the contrary, he applied to the witness to release the defendant from the contract, and it was only on his urgent solicitation that the former consented to do so. And the agent at the factory, recognising the right of the town agent to make the compromise, gave his note, as agent, for the amount agreed upon, which note was duly paid out of the funds of the Company. Now, it appears to me, that if the contract between the complainant and McEldery for the lumber, could be considered as binding on the Company, as falling within the general scope of his authority as agent (as is assumed in the amended answer), it may with equal propriety be assumed, from the acts of the town and country agents subsequently, in settling the claim and paying the money, without the suggestion of a doubt regarding the authority of the complainant to make the contract, that he was authorized to make it. And especially may such authority be assumed, when we find, that only very recently has the claim to charge the complainant with the money so paid, been brought forward. But conceding, that the complainant, in making this contract with McEldery, though acting within the general sphere of his authority, was guilty of an abuse of power, which would have rendered him responsible for the damage resulting from it, how can it be maintained, that the defendant shall, by a compromise, made in the complainant's absence, and without his knowledge or concurrence, fix the amount of his liability? For these reasons, I think this ground of claim against the complainant must be rejected.

20th. This item of surcharge in the amended answer having been withdrawn, need not be noticed.

21st. In this paragraph of the answer, the defendant surcharges the account, by insisting that the complainant is