

In the year 1852 the case of *Lewis v. Nicholson*, 18 Q.B. 503, was decided. The court held that the defendant was not liable as principal on a contract which he had entered into in good faith as an agent, but without authority to do so. "In no case," said Lord Campbell, C.J., "where it appears that a man did not intend to bind himself but only to make a contract for a principal, can he be sued as principal, merely because there was no authority." But the court incidentally threw out the suggestion that in such a case the defendant might be liable "on an implied contract that he had authority, whether there was fraud or not."

Then came the important case of *Collen v. Wright*, (supra) in which this suggestion was adopted and authoritatively crystallized into a rule of law. The defendants were the executors of one Wright, deceased, who was land agent for one Gardener. Wright, in the belief that he had authority to do so, made an agreement with the plaintiff for a lease of a farm belonging to Gardener, on the strength of which plaintiff entered into possession. Gardener refused to give the lease, alleging, accurately, as it turned out, that he had conferred on Wright no authority to agree for so long a term. The plaintiff brought an action against Gardener for specific performance, which was dismissed with costs, on the ground of the absence of authority. The plaintiff then brought the present action claiming damages. The action being against personal representatives, it was necessary to plaintiff's success to establish a cause of action based on contract, in order to escape the effect of the "iniquitous maxim" (to borrow Sir F. Pollock's expression) *actio personalis moritur cum persona*, which would have been a fatal bar had the action been based upon false representation. Accordingly it was not argued that the deceased had acted otherwise than innocently, and in good faith. The Court of Queen's Bench held that the deceased was liable in damages for breach of an implied warranty, or collateral contract of his own, that he had authority to make the contract in question, and this decision was affirmed in the Court of Exchequer Chamber, notwithstanding the emphatic dissent of Sir Alexander Cockburn, C.J. "My view is" (said he), "that this implied contract, which we are called upon to establish in this case, is a thing unknown to our law; that we are dealing not with a mere mode whereby an acknowledged liability may be