1933

Agency, General and Special--A Further Study: Part III

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AGENCY, GENERAL AND SPECIAL—A FURTHER STUDY.*

By Basil H. Pollitt**

PART III.

GENERAL AGENTS IN CHARGE OF LAND 173

It frequently happens that a non-resident owner of land, particularly of uncultivated or "wild" land, will place a local representative in charge thereof to lease, and collect the rent, to make repairs, pay the taxes and, generally speaking, look after it. Such agents, from the very nature of their duties, the continuity of their authority, and their power to make many contracts under one authorization are normally general agents. It is now in order to inquire into the extent of their authority.

A large number of the cases involving general agents to manage property are concerned with questions arising out of leases. It is held in England that such an agent has no implied authority to enter into long term leases. 174 Nor can such an agent lease his own land with that of his principal; and thereby make his principal a joint lessor, and, accordingly, liable on the stipulations of the lease with respect to the property of the agent. 175 A general agent, however, of a cemetery company, whose authority included the renting of a house on its grounds, was held to be authorized to rent the house free.

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*This concludes an article the first installment of which appeared in 17 Minn. L. Rev. 17 (1932). The second installment appeared in 21 Ky. L. Jour. 407 (1933).


173 The writer desires to strongly emphasize the fact that the conclusions stated in this part of the article are merely tentative. They cannot be final because they are not based on all the data available.

174 Collen v. Gardner (1856), 21 Beav. 540, 52 Reprint 968 (Chancery).

172 La Point v. Scott (1864), 35 Vt. 603.
such an agreement appearing to be beneficial to the company, even though in so doing he violated his instructions.\textsuperscript{176}

Also, a general agent in charge of lands may agree with a vendee that improvements made by him will be credited against the rent in case he is unable to complete the purchase.\textsuperscript{177}

An agent to rent lands is a general agent, and, as such, may validly rent lands for cash even though he was instructed to rent only for a share of the crop.\textsuperscript{178} However, a general agent to rent land does not impliedly have authority to execute an option contract for its sale at the end of the lease.\textsuperscript{179}

A general agent in charge of a farm may waive the landlord’s lien on the crop.\textsuperscript{180}

A general agent to manage property rented out cannot sue out a distress.\textsuperscript{181} It would appear that there is little merit in this holding, for the agent can often most effectively protect the interest of the absent principal by levying a distress. On the other hand, an agent for the general care of property may make an entry on behalf of the owner.\textsuperscript{182}

Such an agent cannot perform acts that border on the unusual and the bizarre. Thus an agent to exercise supervision over wild lands, with power to negotiate sales subject to approval, pay taxes, sue for trespass etc., has no authority to buy

\textsuperscript{176} Mt. Olivet Cemetery Co. v. Shubert (1858), 2 Head. (39 Tenn.) 116.


\textsuperscript{178} Three States Lumber Co. v. Moore (1918), 132 Ark. 371, 201 S. W. 508. Compare, National Loan and Investment Co. v. Bleasdale, (1909) 140 Ia. 695, 119 N. W. 77. (No authority to contract the payment of rent in something other than money, such as board for the agent and his family). The distinction between the two cases is an obvious one.

\textsuperscript{179} Grant v. Burrows (1919), 139 Ark. 16, 212 S. W. 95.

\textsuperscript{180} Fishbaugh v. Spunaugle (1902), 118 Ia. 337, 92 N. W. 58. (1) Here one A was the agent of the plaintiff with respect to plaintiff’s farm. A leased it, collected the rents, superintended and directed repairs, authorized tenant to sell corn, for payment of taxes and purchase of fencing, etc. Held, that A was a general agent. (2) The tenant sold the corn crop without having paid the rent, and the owner brought this action against the purchaser of the corn to enforce his lien as landlord. D claimed that A had authorized the sale and the jury so found. Held (for defendant, affirmed) A had implied authority to make the waiver, he being a general agent.

\textsuperscript{181} Fishburne v. Engledove (1895), 91 Va. 548, 22 S. E. 354.

\textsuperscript{182} Richards v. Folsom (1833), 11 Me. 70. (A case involving ejectment and also apparently trespass ab initio.)
60,000 staves and sell them to another. Similarly, authority to manage property, make repairs, rent it, collect rents, etc. (general agency) implies no authority to erect a hotel, or an addition to one.

**General Agency. Authority To Rescind, Modify Or Waive An Agreement**

A difference between general and special agency is brought out by the cases involving the power of an agent to rescind or modify a contract or other agreement, or to waive a provision or condition thereof, to which agreement the principal is party. The decisions show that a special agent rarely, if ever, has such power, whereas a general agent has this power much more frequently than not.

It seems, however, that even a general agent cannot modify

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135 *Gilchrist v. Pearson* (1892), 70 Miss. 351, 12 So. 333.
137 *Moore v. Tickle* (1831), 14 N. C. (Devereaux Law) 244. (A groom held to have no authority to alter the contract terms advertised by his employer.) *Greening v. Steele* (1894), 122 Mo. 287, 26 S. W. 971. *West End Hotel and Land Co. v. Crawford* (1897), 120 N. C. 347, 27 S. E. 31. (A special agent empowered to sell land has no power to rescind the agreement thus made.) *Dudley v. Perkins* (1923), 235 N. Y. 443, 139 N. E. 570. (Special agent cannot modify the contract made by his principal which he himself is employed to carry out.) *Joseph v. Strulier* (1898), 25 Misc. 173, 54 N. Y. S. 162. (1) D agreed to sell plaintiff 40,000 Mexican silver dollars. D delivers only 20,000. Hence this suit. (2) D says that B, a clerk for the plaintiff, altered the agreement so as to provide for only 20,000. Held, that B was only a special agent (Why? The case does not tell or show), and the peril and pursuit rules applied. He had no authority either actual or incidental to alter a contract made by his principal. *Sprague v. Train* (1861), 34 Vt. 150. Special agent sent to notify an offeror of an acceptance by the offeree cannot vary the terms of the contract. Compare *Denman v. Bloomer* (1849), 11 Ill. 177. (Perhaps contra.)
138 *E. T. Kenney Co. v. Anderson* (1904), 26 Ky. L. R. 367, 81 S. W. 663. General agent may modify a contract of sale after breach of the warranty under which the article was sold. *Scott v. Wells* (1843), 6 Watts and S. (Pa.) 357, 40 Am. Dec. 568. A general agent to sell may rescind the contract made for his principal and make a different bargain. *So. Car. Cotton Growers' Assoc. v. Weil* (1930), 220 Ala. 568, 126 So. 637. See also cases in notes 166-170 inclusive. *Anderson v. Conley* (1889), 21 Wend. (N. Y.) 279. A general agent authorized to make contracts for the purchase of grain has the power to waive or modify a contract made by him in respect to such grain. *Driver v. Galland* (1910), 59 Wash. 201, 109 Pac. 593. An agent with general authority to build a house has authority to change or abrogate the written contract made by him, and to substitute an oral agreement respecting the compensation of the builder.
the contract which he is himself employed to carry out, 187 except in the carrying out of an involved plan, such as refinancing, where wide discretion must be left to the general agents, and they may then have the power to change the agreement they were appointed to execute. 188 Even though a general agent may not have the authority to modify the contract which he himself is engaged in executing, he has the power to modify other contracts previously made by himself. And a limitation on his authority forbidding parol contracts does not affect innocent third parties. 189

There seems to be no doubt but that rules governing matters of detail laid down by general agents may be dispensed with by them. 190 Now and then, under the particular facts of the case, a third party may be justified in accepting a required "approval" of a contract, when such approval is made by the general agent with whom he has dealt. 191

A general agent has broad powers with respect to making waivers binding on his principal. 192 It is most uncommon for a special agent to have such power. 193

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187 Reinforced Concrete Pipe Co. v. Bayes (1914), 180 Mich. 609, 147 N. W. 577. (A questionable decision on the classification of the agent. The court impliedly holds him to be a special agent but he might more properly have been termed a general agent.)

188 Lehigh Coal and Navigation Co. v. The Central Railroad Co. of New Jersey (1881), 34 N. J. Eq. 88. See also Larkey and Smith v.Sucor Mill and Mining Co. (1874), 10 Nev. 17. Here it was held that the superintendent of a mining corporation had no implied authority to alter the terms of a written contract made by the board of trustees. It would appear that the superintendent himself may have been working under this very contract.

189 Van Santvoord v. Smith (1900), 79 Minn. 316, 82 N. W. 642, Walberg v. Jacobson (1919), 143 Minn. 210, 173 N. W. 409. (An ambiguous type of agent allowed to waive the formality of a written modification, required by the contract.) Perhaps, Platte Valley Drainage District of Worth County v. National Surety Co. (1927), 221 Mo. App. 895, 295 S. W. 1083. (Oral contract made by general agent allowed to supersede written one.)

190 Lowenstein v. Lombard, Ayres and Co. (1900), 164 N. Y. 324, 58 N. E. 44.

191 Damon v. Hinckley Fibre Co. (1923), 96 Vt. 528, 121 Atl. 579.


The cases suggest that there may be more differences in the authority of a general agent to make a warranty, in connection with a sale of personalty owned by his principal, as contrasted with the degree of authority possessed by a special agent, than the language of the Restatement would lead us to believe was so.

The authority of a general agent to warrant is by no means unlimited, but the power of a general agent to make normal and customary warranties has been recognized almost from time immemorial. The classic case is that of Fenn v. Harris. Section 309.

25Upton v. The Suffolk County Mills (1853), 11 Cush. 586, 59 Am. Dec. 163. A general selling agent had no implied authority to bind his principals by a warranty that flour sold by him on their account will keep sweet during a sea voyage from Boston to San Francisco, in the absence of any usage of business to that effect. Palmer v. Hatch (1870), 46 Mo. 585. Here the principal sent his agent "through the country" to sell whiskey, as per prices set out on a printed card handed to him. The agent warranted that the whiskey would not be seized for any violation of the revenue laws prior to the sale. Subsequently the whiskey was seized by the U. S. Government. Action for breach of warranty. Held, that the warranty was so unusual a one that the agent could not be presumed to have the power to give it. He warranted against seizure which might be groundless and unwarranted, not merely that the property was free from tax liens. The agency was general although there may have been others in the same territory. Query: Suppose the agent had concealed the price card and sold for a lower price? Reid v. Alaska Packing Co. (1905), 47 Ore. 215, 83 Pac. 139. A, in Oregon, was engaged in packing Alaska salmon. Employed B, brokers of Chicago, to act as agents "in selling its salmon" in Illinois and adjoining states. (Query: General agency under place rule? The principal is also "at a distance.") B agreed with C, on behalf of A, for the sale to C of a quantity of "sockeye" (owl eye?) salmon, which kind is not packed in Alaska, and was not dealt in by A. A objected, whereupon the contract was modified so as to provide for fish packed in Alaska, but warranted exactly like Puget Sound "sockeye." Held, that B had no authority either to sell non-Alaska salmon for A, or to warrant that A's salmon should be equal to salmon not found in Alaskan waters, nor dealt in by A.

26Turner Bros. v. Manley (1914), 14 Ga. App. 215, 30 S. E. 680. An agent to sell mules has authority to agree with the purchaser that if one which appears to be sick does not recover, the seller (principal) will repay the purchase money. Murray v. Brooks (1875), 41 Ia. 45. A general agent for the sale of reapers may make parol warranties, and a limitation to written warranties unknown to third parties is not binding on them. Compare Richmond v. Greeley (1874), 38 Ia. 696 (contra). A general agent to sell "Bran Dusters" for use in mills had no authority as such to vary the terms of a written contract of warranty upon which the machines were sold. But here the oral warranty was made after the completion of the sale, so that there is really a distinction. The First National Bank of Conneautsville, Pa. v. Robinson
wherein it was held, by way of dictum,

"If a person keeping livery stables, and having a horse to sell, directed his servant not to warrant him, and the servant did nevertheless warrant him, still the master would be liable on the warranty, because the servant was acting within the general scope of his authority, and the public cannot be supposed to be cognizant of any private conversation between master and servant."

A special agent, on the other hand, has relatively little authority to warrant the article he sells on behalf of his principal.

There is a wide distinction between liability in deceit and liability on a warranty which the agent had not been authorized to make, and the special agent may render a principal liable for his fraud where he would be unable to bind him by a warranty.

General and Special Agency—Power To Settle Or Release

The cases show that there is also a marked difference between the power of a general agent to settle or release a claim, and the authority inherent in a special agent in this respect. True enough, this may be a difference only of degree (everything is relative), but differences of degree are important.

(1898), 105 La. 463, 75 N. W. 334. A general agent authorized to make some, or a warranty may make any warranty so long as the third party is unaware of the limitation. Contra, Harring, Furrall and Sher- man v. Skaggs (1878), 62 Ala. 130, 34 Am. Rep. 4.


Brady v. Todd (1861), 9 C. B. N. S. 592, 30 L. J. C. P. 223, 4 L. T. 212. Compare, Woodin v. Burford (1834), 3 L. J. Ex. 75. Also compare Second National Bank of Richmond, Indiana v. Adams (1906), 29 Ky. L. R. 566, 93 S. W. 671. See Problem Case No. 19. Cooley v. Perrine (1879), 41 N. J. L. 322, 32 Am. Rep. 210. Here there was a special agency to sell a certain horse to a designated person at a fixed price, but still with some discretion left to the agent. Held, that the special agent, unlike the general one, had no authority to make a collateral contract of warranty any more than he could make any other collateral contract to induce the sale. No warranty being implied by law, no authority so to warrant expressly could be implied to exist in the agent. Smith v. Tracy (1867), 56 N. Y. 79. A, owning $28,000 worth of bank stock, authorized B to sell it at par. A executed written transfers in the books of the bank, leaving blank only the name of the purchaser or purchasers, as it turned out that the stock was sold to three different persons. The bank failed and C, one of the purchasers, sued A's estate on an alleged breach of warranty made by B. Held, (for A) that B was a special agent and had no authority to warrant the bank stock, no warranty being customary in such case.

Morton v. Scull (1861), 23 Ark. 289.
A special agent rarely has authority to release an obligor or settle any other claim,\textsuperscript{200} while a general agent may have the power even to enter into an unusual agreement of release.\textsuperscript{202}

**General Agent—Authority to Appoint Other Agents**

It is familiar law that delegated authority cannot itself be delegated. To this rule there are certain well-recognized exceptions. It is believed that these exceptions operate more often in the case of general agents than special agents. In any event, a general agent has much more inherent power to appoint other agents on behalf of his principal than a special agent similarly situated would possess.\textsuperscript{203}

\textsuperscript{200}Harber v. Hutson (1891), 13 Ky. L. R. 333. An agent authorized to collect a note (hence special) had no authority to release one of several obligors upon his payment of a part of the note, and a written release, indorsed by the agent on the note, was not binding on his principal.

\textsuperscript{201}Yazoo and Mississippi Valley Railroad Co. v. Blum, (1912), 102 Miss. 303, 59 So. 92. The consignee of cotton directed the railway to deliver it to a compress company. \textit{Hold}, that the compress company was a mere agent to receive the cotton (special agency necessarily) and had no authority to release the railway from its common law liability as an insurer. Lamkin and Foster v. Rosenthal (1896), 5 A. D. 532, 39 N. Y. S. 483. A sent B to close a deal for some goods, giving him authority merely to pay for them and ship them to New York City. (2) After B received the goods, C replevined them. (3) B entered into an agreement with C whereby A was to let C have such goods as he could identify, and the replevin action was then to be discontinued. (4) C now seeks to discontinue the action. A objects. \textit{Hold}, (for A, reversed) that B had no authority to agree to a settlement. Query: Was it not the duty of the agent to resist the suit in any event? Not if he could communicate with his principal.

\textsuperscript{202}American Quarries Co. v. Lay (1905), 37 Ind. App. 336, 73 N. E. 608. Here the superintendent of the Quarries Company, who had power to employ and discharge men, and was in charge of the quarry, entered into an agreement of release on behalf of the Company with the plaintiff, an injured employee. Defense: Lack of authority. \textit{Hold}, (for the plaintiff) that the superintendent was a general agent, "with power coextensive with the business." He therefore had power to bind his principal in his transactions incident thereto, i.e. make the agreement of release. Suppose, there had been a claim department?

\textsuperscript{203}Massarvo v. Savoy Estates Realty Co. (1929), 110 Conn. 452, 148 Atl. 342. (General agent held to have power to appoint sub-agents who were in privity with the principal). Louisville and Nashville Railroad Co. v. Tiff, (1896), 100 Ga. 86, 27 S. E. 765. An apparent general agent may employ a sub-agent in mere matters of detail, in behalf of the principal, and may ratify the acts of the sub-agent. Brady v. Sappington (1930), 40 Ga. App. 781, 151 S. E. 525. A employed B, an attorney, to restrain certain public improvements. B employed C, an expert, to estimate the damage to A’s property. A and B had a contract that B should bear all expenses of the litigation. \textit{Hold}, (for C) that C could collect directly from A and was not bound by the agreement between
A special agent ordinarily has no authority to appoint other agents or delegate his duties and may not bind his principal by an act of ratification. It is not so certain, however, that a general agent may not have this power to ratify on behalf of his principal. The answer to the problem would seem to depend in part upon whether the general agent had other employees of the principal directly under his supervision and control.  

It has been held that a general commercial agent may exercise the right of stoppage in transitu on behalf of his principal without special authority so to act.  

FACTORS INVOLVED IN THE DISTINCTION BETWEEN GENERAL AND SPECIAL AGENTS

A study of the cases reveals a number of interesting factors of more or less importance, depending upon the circumstances and facts involved, which go to make up the distinction between general and special agency. It is now in order to examine and analyze these factors.

1. The "At a Distance" Rule.

Where the principal is in Babylon and the agent "in far away Cathay," the inaccessibility of the principal and the dif-

A and B. Compare, *New York Life Insurance Co. v. Smith* (1929), 39 Ga. App. 160, 147 S. E. 126. A special agent to foreclose securities and thereby collect notes may employ an attorney who becomes the agent of the original principal, that is, the owner of the note, and such sub-agent is not bound by any agreement between the principal and the agent that the agent shall bear the expense of the foreclosure proceedings. Query: Is this ruling not inconsistent with the "Peril" rule? Not necessarily. The attorney is not a third party, but an agent in privity with the principal.

Compare, *Plummer v. Knight* (1911), 156 Mo. App. 371, 137 S. W. 1019. A general agent entrusted with the management of the affairs of a friend who has become physically disabled may ratify the unauthorized act of a loan agent in ordering a foreclosure sale under a deed of trust. "The law is not a magician's wand by which the crafty and unscrupulous (that is, the dishonest agent) exceeding his authority can transfer the property of the careful and prudent business man (the principal reveling in the "bliss of solitude") to the imprudent and unwary (that is, the confiding third party) and thus allow them to reap without sowing "(reap what, hen's teeth?)" Editorial note: This gem of literature was too remarkable to pass unnoticed.

*Bell v. Moss* (1840), 5 Wharton 139.
difficulty of communicating with him expeditiously tend to bestow upon the agent thus located "at a distance" from his principal a much wider range of authority than he might possess if the principal and agent were in the same community or neighborhood.

There might be an analogy between the "at a distance" rule and the doctrine, now obselete in the United States if it ever existed, of a "foreign principal." Whether the former is derived from the latter is difficult to state. Many decisions illustrate the "at a distance rule." Occasionally the courts dissent from this rule and sometimes, in spite of the "at a distance" element, courts hold

206 Whalen v. Saunders (1916), 90 VT. 393, 88 Atl. 901.
207 Austrian and Co. v. Springer (1892), 94 Mich. 343, 54 N. W. 50, 34 Am. St. Rep. 350. "The principal was removed thousands of miles from the customer, at a point where in ordinary course of mail, it would take from four to six weeks to exchange letters." In the following cases the agency was general and the principal was "at a distance": Montgomery Furniture Co. v. Hardaway (1893), 104 Ala. 100, 16 So. 29 (principal in Baltimore—agent in Montgomery); Winch v. Edmunds (1905), 34 Colo. 359, 83 Pac. 632. Federal Surety Co. v. White (1930), 88 Colo. 238, 295 Pac. 281 (principal in Iowa—agent in Colorado); Gates Iron Works v. Denver Eng. Works Co. (1901), 17 Colo. App. 15, 67 Pac. 173 (principal in Chicago—agent in Denver); Noble v. Nugent (1878), 89 Ill. 522 (principal living some distance away in the country); Hodges v. The Bankers' Surety Co. (1909), 152 Ill. App. 372; Fatman v. Leet (1872), 41 Ind. 133 (principal in New York—agent at a town in Indiana); McDonald v. Equitable Life Assurance Society (1919), 185 Ia. 1008 at 1030, 169 N. W. 352; Park v. Kansas City Southern Railway Co. (1914), 58 Pa. Super. Ct. 419 (principal a mid-Western railroad—agent in Pittsburgh); Interstate Savings and Trust Co. v. Hornsby (1912), 146 S. W. 360 (not reported elsewhere); Smith v. Droubay (1899), 20 Utah 443, 58 Pac. 1112 (principal in Omaha—agent in Utah); Balfour v. First National Bank of the Dalles, 253 Fed. 244 (D. C. Ore. 1919) (principal in England—agent in Oregon).

208 Andrews v. Kneeland (1826), 6 Cowen 354. The judge charged the jury that S, the agent, "living near his principal" was to be deemed a special agent. But the appellate court said: "Whether the principal and broker reside near each other or far distant, seems to me not material; as, in this case, there was no reference to the principal except as to the mode of payment." Merserau v. The Phoenix Mutual Life Insurance Co. (1876), 56 N. Y. 274. "A lax idea seems to prevail, and certainly is persistently urged upon this appeal, that an agent for an insurance company, representing it and transacting business for it at a distance from its principal place of business, is, and must necessarily be a general agent, with full authority to bind his principals in all matters within the territorial bounds of his agency, and it is sought to render void the most solemn and important stipulations of the contract upon this theory. There is no countenance for the doctrine in any well-considered case."
an agency to be special because of the predominance of other factors. 209

In one case the fact that an agent was not on the job, but was many hundred miles away, was held to be a factor in making his agency a special one. 210

It could be argued that "at a distance" is a coincidence and not a rule, but it is believed that the range of diversification is too great for this to be true, and it is submitted that remoteness from the principal plays a real part in determining the classification into which an agency falls.

2. Title.

"What's in a name?" has often been asked. There may be much, there may be little. Symbols are, after all, only symbols, yet they may be very significant.

In studying general agency we discover that occasionally the title by which an agent is called is an element of some moment in determining the class of the agency. The title "manager" is associated with holdings of general agency over and over again. 211

Less frequently (probably because it is a less frequently used term) the word "superintendent" is associated with holdings of general agency. 212


210 Young v. Harbor Point Club House Association (1901), 99 Ill. App. 290 (See also 99 Ill. App. 292).

211 Simpson and Harper v. Harris and Scrandrett (1911), 174 Ala. 430, 56 So. 968; Warren Webster and Co. v. Zac. Smith Stationery Co. (1930), 222 Ala. 41, 135 So. 545; Glazer v. Hook (1920), 74 Ind. App. 497, 129 N. E. 249; Atlantic and Pacific Railroad Co. v. Reisner (1877), 15 Kan. 458, "general manager and general agent are synonymous terms"; Abuc Trading and Sales Corporation v. Jennings (1926), 151 Md. 392, 136 Atl. 166, (general agent and managing agent held to be synonymous); Benesch v. The John Hancock Mutual Life Insurance Co. (1890), 16 Daly 394, 11 N. Y. S. 714; Domon v. Hickey Fibre Co; (1923), 98 Vt. 528, 121 Atl. 579. "Some slight evidence that Applebee had been authorized to approve this contract is found in the printed word "manager" on the form furnished by the defendant." Buckwalter Stove Company v. Central Trust and Savings Company (1913), 53 Pa. Super. Ct. 585.

Agents of railroads and insurance companies frequently bear the title of "general agent." Although this is not conclusive as to fact of general agency, it offers very strong, cogent, convincing evidence of such fact. 213

The title of "general attorney" may be equally suggestive. 214

In a somewhat questionable decision 215 it was held that the title and position of "buyer" in a department store did not necessarily imply a general agency.

In a few decisions the effect of title, as a factor, has been denied. 216

v. Clark (1929), 152 Va. 715, 148 S. E. 811. Here it was held that an assistant superintendent whose duties were "to assist the men in writing business, keeping the books, and general work" had greater authority than a collector of industrial policy premiums, and had apparent authority to agree to credit payment of the premium of one policy out of the proceeds of another policy then due and payable.

217 St. Louis Southwestern Ry. Co. v. The Elgin Condensed Milk Co. (1898), 74 Ill. App. 619 (aff'd. 175 Ill. 567, 51 N. E. 911, 67 Am. St. Rep. 238). Here the Milk Company claimed the railroad had agreed to carry its condensed milk all the way through from Cairo, Illinois, to Galveston, in refrigerator cars. Breach of this contract and consequent damage to the milk was claimed. The contract had been made by one Shanks, who was in charge of the Chicago office of the railroad and had been its commercial agent for five years. His letterhead styled him a "general agent" and he signed his letters thus. He handled both passenger and freight business and had authority to solicit freight and "make arrangements." Held (for the Milk Company), that Shanks was a general agent and had authority to make the contract in question. Park v. Kansas City Southern Railway Co. (1914), 55 Pa. Super. Ct. 419. Here the railroad, a foreign corporation, had an office in Pittsburgh, with a representative in charge for the soliciting of freight for transportation over its own and connecting lines. On the letterhead and on one of the office doors appeared the sign "The K. C. Southern Railroad Company, Daniel S. Roberts, General Agent." Held (for the third party), that the agent had authority to agree with the landlord for the re-renting of the office in Pittsburgh.

218 Platte Valley Drainage District of Worth County v. National Surety Co. (1927), 295 S. W. 1033. (Mo.—not reported elsewhere).


220 Adriance v. Roome (1868), 52 Barb. (N. Y.) 399. "We cannot assent to the proposition that there is any grant of power in the name by which the officer is designated." St. Louis Gunning Advertising Co. v. Wanamaker and Brown (1905), 115 Mo. App. 270, 90 S. W. 737. See Problem Case No. 22. Breen v. The Miehle Printing Press and Manufacturing Co. (1896), 8 Pa. Dist. 151, 22 Pa. C. C. R. 276 (title "Eastern Manager" held to denote circumscribed authority).
3. Continuing Nature of the Authority.

The Restatement points out that there is a direct relation between general agency and continuing authority.217

An important distinction in the law pertaining to revocation of an agency rests on this fact of continuing authority in general agencies. Nevertheless, an agency may be general, yet temporary in its duration.218 It may even last only a few hours.219

And there may be continuity of authority and employment in the case of special agencies, such as those involving solicitors,220 collectors221 and the like.

Notwithstanding the cases of continuing authority in special agencies, it would be unsafe to generalize to the effect that special agency is less temporary than general agency. Of the two, general agency is a much more permanent relation.

4. Length of Service.

Closely related to continuing authority is the factor of length of service. There is a feeling on the part of the public that the veteran and grizzled employee who has worn himself out in the service of his employer, the aged and decrepit bookkeeper, as it were, is a man much to be relied upon. This idea is reflected in some of the decisions222 which state that long

218Fatman v. Leet (1872), 41 Ind. 133.
220Sioux City Nursery and Seed Co. v. Magnes (1894), 5 Colo. App. 172, 38 Pac. 330. (It would seem that no notice of revocation need be given the third party, at least, where the principal reserves the right to reject or accept the order).
221Siekmann v. Stanton (1928), 251 Ill. App. 442. Merserau v. The Phoenix Mutual Life Insurance Co. (1876), 66 N. Y. 274. Query: Is there not a continuity of action here that would throw the normal person off his guard?
222Kerlin v. The National Accident Assoc. (1893, 8 Ind. App. 628, 35 N. E. 39, 36 N. E. 156 (a case of a special agency, however). "Moreover, the appellee, through his long continuation in the service of the company, as solicitor and collector, may be said to have given him accredit to the public as a suitable and worthy agent for the transaction of the business in which he was engaged for the company, and, therefore, if it was within our province to do so, we would not be disposed, under the circumstances, to enter upon a review or analysis of the evidence as to his credibility as a witness." Lindroth v. Litchfield (1886), 27 Fed. 894 (C. C. Ia.) (a case of general agency). "John H.
continuation in the service of the principal amounts to giving
the agent credit to the public as a suitable and worthy repre-
sentative.

Length of service, however, considered apart from continu-
ing authority, does not seem to be a very important factor,
since it is a characteristic common to all kinds or classes of
agency, high or low, general or special.

5. Discretion.

One of the principal characteristics of the agency relation-
ship is that the agent is a representative vested with more or
less discretion. It is probably true that general agency involves
the exercise of more discretion than special agency, yet the
cases throw some doubt on the correctness of this proposition.
It may be that the difference is a quantitative rather than a qual-
itative one,—that the idea of greater discretion is associated
with a general agent merely because he has a wider field of
operation in which to exercise it.

The result of giving an agent discretionary power is stated
in a very early American decision. 223

When we give our agent discretion we must be prepared
to run the risk of an abuse of such discretion by him. For
there is no hard and fast line between discretion and abuse
thereof in this field of law, and he who entrusts his representa-
tive with discretion must bear the loss if the agent misuses
it. 224

Brown was, for a number of years, in charge of Litchfield's business
at Ogden. It was not for a day or a month, or even a single year, but
for a number of years, that he was so engaged.” St. Louis Southwestern Ry. Co. v. The Elgin Condensed Milk Co. (1898), 74 Ill. App. 619,
(aff'd 175 Ill. 557, 51 N. E. 911, 67 Am. St. Rep. 238) (agency held to
be a general one, five years of service); Elder and McKinney v. Stuart
(1892), 85 Ia. 690, 52 N. W. 660 (special agency, four years service).

223 Hooe and Harrison v. Oxley and Hancock (1791), 1 Wash. 19, 1
Am. Dec. 425. “Alarm of danger to the fortunes of all principals has
been sounded, if this doctrine should prevail. The answer is a short
one. This danger should be contemplated at the time the power is
given, and not when it has been exercised, and many innocent men
thereby drawn in to advance their money on the faith of an open and
notorious agency.”

224 Compare the “Excess Force” cases: Welsh v. West Jersey & S.
R. R. Co. (1881), 87 N. Y. 25; Sternad v. Omaha & Council Bluffs
Street Ry. Co. (1920), 104 Nebr. 460, 177 N. W. 738.
It is often necessary to place a great deal of discretion in general agents. At the same time, a considerable amount of discretion may be given to special agents.

It may be that one reason why special agents empowered to do many acts under one authorization are special, is that they have relatively little discretion vested in them.

A bona fide exercise of allowable discretion may be a defense to the agent when sued by the principal for deviating from his instructions.

6. Exclusiveness and Extent of Territory.

How much weight should we give as a factor to the fact that an agent is the only representative of his principal in a given territory, or to the fact that he represents his principal in territory of large or considerable extent?

Many special agents, such as solicitors, collectors, and the like, have exclusive territory; and yet it can hardly be said that they represent their principals in all their negotiations within that territory, for in this class of cases the final act in making the agreement binding is often consummated at the home office of the principal. Such agencies, therefore, do not fall within the "place" rule of general agency.

A principal may have a number of agents, all assigned to the same territory and all of them special, although in

226. Martin v. Farnsworth (1872), 49 N. Y. 555; Cooley v. Perrine (1879), 41 N. J. L. 322, 32 Am. Rep. 210; Dovden v. Cryder (1893), 55 N. J. L. 329, 26 Atl. 941. Here the owner of a draft employed B to negotiate it for cash at a reasonable discount. The draft was for $3,200 and B transferred it to C for $2,060 in cash and a diamond necklace valued at $1,100. B then took to the "tall timber." C sues the principal. Held (for the defendant, affirmed), that B was a special agent (single act) and that the peril rule applied. Note: that the special agent was vested with discretion here. How far, therefore, could he have gone in selling the draft for cash, and still bind his principal? Savage v. Rit (1838), 9 N. H. 263 (unlimited discretion, yet a special agency); Mitchell's and Davis' Administrators v. Sproul, (1831), 5 J. J. Marsh. (Ky.) 264 (semble).
227. Compare the circumscribed limits thrown around the exercise of authority by a solicitor or collector.
229. Compare the cases of agents to sell stock or other securities of whom there may be many in the same area. See also, Quay v. Presidio and Ferries R. R. Co. (1889), 82 Calif. 1, 22 Pac. 925.
this event, an attempt is usually made by the employer to avoid duplication of effort.

When a general agent has exclusive territory, he falls within the application of the "place" rule, heretofore discussed, and we need say no more at this point.

It may be that a general agent has for the most part a larger territory within which to work than a special agent but, this by no means necessarily follows. 250

We conclude, that the extent of territory is a factor of relatively little importance in determining the classification of the agency, and that exclusiveness of territory, though important where it merges into the place rule, is a rather unreliable element on which to base a conclusion.

7. Volume of Business.

A large volume of business may be done by an agent as part of one transaction, or, under one contract. It follows, that mere volume of acts performed by an agent does not prove a general agency. 251

Volume of business, however, is more usually associated with many acts under one authorization and is analogous, in such event, to a "multitude of instances." Volume of business may, therefore, be relevant element in reaching a finding of general agency. 252

8. Other Factors.

The amount of compensation received by the agent may be a relevant factor. One case held that the smallness of compensation received indicated a special agency. 253

250 Witness the case of the traveling salesman or drummer. See also, Beebe and Co. v. The Equitable Mutual Life and Endowment Ass'n. (1888), 76 la. 129, 40 N. W. 122; Robinson v. Andersen (1885), 106 Ind. 152, 6 N. E. 12; Thompson v. Equitable Life Assurance Society of the United States (1930), 199 N. C. 59, 154 S. E. 21.


252 Lytle and Co. v. Bank of Dotham (1898), 121 Ala. 215, 26 So. 6. Where the inquiry is as to the implied authority of a general agent to give notes in his principal's name, the volume of business done by the agent is relevant. Forehand v. White Sewing Machine Co. (1915), 195 Ala. 208, 70 So. 147 (a general agency held to exist although there was nothing to show it except volume of business—58 sewing machines sold to one man).

253 Williams v. Sharpe (1923), 125 Ore. 379, 265 Pac. 793.
Does the number of agents have anything to do with whether an agency is general or special? Thus a corporation might have a large number of stock selling agents and we at once conceive of them as special. Does not the legal mind look upon the general agencies of one principal as being relatively few in number? 234 This query leads to the suggestion that the number of agents of the same kind may occasionally have some bearing on the classification of the agency.

Again, the number of principals may be a factor entitled to some slight weight. One may be the special agent of many people, but a general agent usually has only one principal. 235

It has been held that the size of the city in which the agent operates is no criterion of the extent of his power. 236

**CLASSIFICATION OF DIFFERENT TYPES OF AGENTS AS GENERAL OR SPECIAL.**

1. **Agent to Sell.**

Agents to represent their principal in sales of personal property may be either general or special. This depends upon whether one article is to be sold or many, and upon whether the agent has authority to close the deal or merely to solicit an order subject to future acceptance by his principal.

There is, relatively little difference between the powers of a general agent and those of a special agent to sell, always excepting warranties. The general agent may possess wider authority to sell on credit and on terms that deviate more from the usual cash sale.

A general agent who has the exclusive sales agency for the product of the principal, may contract for sales for future delivery, and is not necessarily restricted to the sale of the product already manufactured, or as it is manufactured. 237

An interesting case is **Blackmer v. The Summit Coal and**

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235 Witness the case of real estate agents, loan agents, insurance solicitors, traveling salesmen, all of whom are usually special agents and represent several principals at the same time.
236 Lowenstein v. Lombard, Ayres and Co. (1900), 164 N. Y. 324, 58 N. E. 44.
Mining Company. A coal company by written contract employed one Maddox as sole salesman and collector for one year to sell "all coal mined" by the company. The coal company was to maintain an office for Maddox at St. Louis and pay him a monthly salary.

The agent, who was obviously a general one, his authority embracing all of one phase of a business, and being interpreted by the court to require the making of many contracts, made a contract for the sale of the entire output of the mine for a period of ten months, in fact for more than the output of the mine. Held (for the coal company), the peril rule applied. The court thought the parties (principal and agent) intended that the coal company should be represented in the daily market in St. Louis and the product of the mine sold from day to day at the best possible price. Maddox, the agent, therefore, had no authority to make the contract in question.

A general agent may sell on credit, under certain circumstances. A special agent is nearly always restricted to sales for cash.
A sale for cash, means a sale for money only and prevents a trade or barter, in the absence of specific, express authority. 241

A special agent to sell at retail cannot sell in bulk, or prefer a creditor. 242 Neither can he sell at auction, 243 for this is the last extremity of commerce. And, of course, a special agent entrusted with the possession of property for sale cannot dispose of it in payment of his own debt. 244

Even a general agent to sell cannot take notes payable to himself unless expressly so authorized. 245

A general agent to sell cannot agree to resell for the buyer, 246 and an authority to sell, even in the case of a general agent, ordinarily confers no authority to buy, for buying is not in the line of business entrusted to the agent by his principal. 247 Ergo, if this be true of a general agent, it is doubly true in respect to a special agent. 248


242 Beals v. Allen (1830), 18 Johns (N. Y.) 363, 9 Am. Dec. 221. Note: That a bookkeeper-clerk in a retail store is a special agent. He makes many sales under one authorization, but has no discretion as to price.

Query: What, then, is a floor-walker who can usually authorize a credit?


246 Forehand v. White Sewing Machine Co. (1915), 195 Ala. 208, 70 So. 147.

247 Gates Iron Works v. Denver Eng. Works Co. (1901), 17 Colo. App. 15, 67 Pac. 173; Weekes, McCarthy and Co. v. A. F. Shapleigh Hardware Co. (1900), 23 Tex. Civ. App. 577, 57 S. W. 67. B was indebted to A and A accordingly bought in B's stock of goods and placed B. in charge thereof, "with authority to transact any business in reference thereto that may be necessary and in accordance with the desire of or by agreement with said first party (A)." Held, that B had no authority to buy goods from C on credit with which to replenish the stock, and to give a note therefor. The authority contemplated a sale of the goods then on hand for the purpose of liquidating the debt. Buying new goods was not part of the business of the agent.

248 McIntosh-Huntington Co. v. Rice (1899), 13 Colo. App. 393, 58 Pac. 398; Kelly v. Tracy and Avery Co. (1904), 71 Oh. St. 220, 73 N. E. 455. A authorized B to sell goods at retail and devote the proceeds to paying off a mortgage (chattel) given by B to A upon B buying the store from A. (2) B bought goods on credit and now C, the seller of such goods, seeks to hold A. But, held (for A, or rather for A's assignee on the chattel mortgage). Authority to sell for a principal im-
A general agent and manager of a mining company is empowered to sell its personal property. Purchases and sales of personalty for use about mining premises must be of frequent occurrence, and would presumably be under the control of the general manager.  

In Keith v. Herschberg Optical Company a traveling salesman for an optical company sold the defendant a line of eye glasses and at the same time, and as part of the agreement of sale, agreed that defendant should have the exclusive right to sell the glasses in Boonville.  

The salesman violated the agreement by selling to two other stores. The principal sued defendant for the price of the glasses, claiming that the salesman had no authority to make the “exclusive” part of the agreement.  

Held (for the defendant, reversed), that the salesman was a general agent as to the defendant, although maybe a special agent as between himself and his principal. Unknown limitations on his authority were therefore not binding.  

It is elementary law that a factor for purposes of sale, although a general agent, may not pledge the goods entrusted to him for advances on his own account.  

Merely because a man is employed in an establishment engaged in selling does not indicate that such individual has the authority to sell.  

2. Architects.  

Architects are usually employed to handle a single transaction, namely the construction of a house, office building, fact-
ory or other structure. From the standpoint of a single transaction they should be special agents, but it frequently occurs that the architect is employed in something that might be more accurately described as an enterprise. This enterprise may involve the making of many contracts under one authorization. Looked at from this angle, an architect may well be a general agent under the particular facts of a case. We find both view points represented in the decisions, which are usually distinguishable on the facts.

3. Attorneys

An attorney is ordinarily a special agent, notwithstanding that he obtains, by virtue of his employment, a wide scope of discretionary authority in the conduct of litigation. He is usually retained to represent his client in a single law suit or in a title closing, or to draw a will, or to draft a contract, etc.

Where an attorney is employed on an annual retainer, or devotes all his time to the legal activities of a certain client, or is definitely in charge of all the litigation of his client in a certain area, such factors may make his agency general.

Attorneys for Building and Loan Associations appear to be regarded as special agents. The handling of each loan is considered as being done under a separate authorization.

4. Bank Officials

Officers of banks are in most respects similar to officers of


255 Cross v. Atchison, Topeka and Sante Fe Railroad Co. (1897), 141 Mo. 132, 42 S. W. 675.

any other corporation. Whether their agency be general or special depends upon the rank of their office, the title thereof, the powers entrusted, and the duties assigned, to them.

The cashier of a bank is a personage of considerable importance, vested with much authority. He is normally a general agent. A teller, on the other hand, although he deals with many more persons than the cashier in the course of a day, is a comparatively subordinate employee who is limited in his authority. His agency, therefore, is normally a special one.

In one case the title and trust officer of a banking institution was held to be a general agent. This holding appears to be correct, not only upon the facts involved, but on the general problem.

5. Bookeepers

Bookeepers are ordinarily confined to their accounts. They have no authority either to buy, sell or barter on behalf of their employer, unless the bookeeper is also the office manager, as sometimes is the case in small business establishments.

There may be a department of accounts in a business with a bookeeper in charge thereof. In this event, such bookeepers may be general agents in that department of the business.

The average bookkeeper is a special agent, assuming that he is an agent rather than a servant.

6. Business Agent of a Union

With the growth of collective bargaining and the rise to

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257 Grain v. The First National Bank of Jacksonville (1885), 114 Ill. 516.
262 Compare, Harris v. Fitzgerald (1902), 75 Conn. 72, 52 Atl. 315.
263 Here the proof showed that one or the other of the two sons of the defendant had employed the plaintiff as physician to attend to the injuries suffered by one of defendant's workmen. One son was bookkeeper and timekeeper, the other was superintendent and general manager. Held, that the son who was bookkeeper had no implied authority at all to make the contract with the doctor. Query: Was he a special agent? Winkel v. Atlas Lumber Company (1917), 36 N. D. 542, 162 N. W. 364.
power of our now dominant and domineering labor unions, the
business agent of such a union has become a most powerful
and important functionary.

These business agents are undoubtedly general agents of
the union which they represent, but it by no means follows that
they are general agents per se of the individual members
thereof.\footnote{McDermott v. Bancroft (1929), 219 Ala. 205, 121 So. 735.}

7. Claim Agents

In this modern age of tourists and auto camps and exten-
sive travel by everyone, the claim agent of the great railroad
corporation or of the liability insurance company has become a
person of more importance than formerly, an individual who
must be conciliated and whose favor must be gained by the prac-
ticing lawyer. Still, the average claim agent or adjuster is a
person of limited authority and it follows that he is a special
150, 148 S. W. 523. P's wagon was struck by D's engine and his horse
crippled. One Hillis came to see him and told him that he, H, had been
sent to see what was the least P would compromise for. P said,
"$105.00." H said, "We will settle it off. We can't afford to have a
suit over that kind of a case." H was a local attorney for the Railway
and rode on a pass. Two officers of the Railway Company testified H
had no authority to settle claims, but merely went out on request to see
what they could be compromised for. Held (for D, reversed), that H
was a special agent, without power to make settlements. Third parties
were bound to take notice of the limitations on his authority. Query:
Was not H analogous to a solicitor? Ferron v. Boston Elevated Rail-
way Co. (1924), 249 Mass. 212, 143 N. E. 823. An "investigator and
adjuster" for a Street Railway Company working under the direction
of a claims attorney, is a "special agent" "with a limited authority." The
peril rule applied. But query: Are not adjusters and claim
agents often given very wide powers? Cannot the public rely on them
at all? Should they not be bound to apprise third parties of the limi-
tation on their authority if there be one? Do they not handle many
claims under one authority?}

Even such claim agents as possess general powers are lim-
ited in their authority to make settlements\footnote{Bohanan v. Boston and Maine Railroad (1900), 70 N. H. 526, 49 Atl. 103.} or agreements
that are usual and ordinary in that line of work. Other-
wise they could bargain away all the assets of their principals.
But where is the dividing line?
8. Collectors

Agents to collect are either sent out on a distinct, specific errand, or, if they operate on a regular route or under a continuing authority, they act pursuant to instructions which they may communicate to the third party if they so desire. Motivated by these points or similar analogies, the courts hold collectors to be special agents.\(^{266}\)

Even where there is a general agency to collect, very little discretion is given as a rule to such an agent. He must,—collect.\(^{267}\)

9. Payment

Closely allied to the subject of collectors is the problem of payment, that is, the question of when we are authorized to pay the agent to collect, who represents that he has the right to be paid the money due to his principal.

Problems of payment come up more frequently in the case of special agents, probably because of the peril and pursuit rules. It is clear that one incurs more risk in paying a special agent than in paying a general one.

Payment is ordinarily to be made in money, and this is particularly true in respect to special agents. Thus an attorney employed to collect a particular debt is a special agent, (single transaction) and has no authority to accept payment of a bond in other than legal money. Consequently payment in confederate notes was not good.\(^{268}\) Authority to collect the first

\(^{266}\) Davis v. Talbot, Receiver (1893), 137 Ind. 235, 36 N. E. 1098; Lister and Supplee v. Allen (1869), 31 Md. 543; Tubman v. Lovekamp (1875), 43 Md. 318; Moore v. Skyles (1905), 33 Mont. 135, 82 Pac. 799, 114 Am. St. Rep. 801, 3 L. R. A. (N. S.) 136; Lederer v. Union Savings Bank of Lincoln (1897), 52 Neb. 133, 71 N. W. 954. (A collector must collect in money; he cannot sell or assign the claim given to him, or sue on it in his own name.)

\(^{267}\) Compare, Ridgeley National Bank v. Barse Live Stock Commission Co. (1905), 113 Mo. App. 696, 88 S. W. 1124. Query: Was there a general agency here? There was a class of acts under one authority. The court, however, talks about "limited powers" and "prescribed method." McAlpin v. Cassidy (1859), 17 Texas 449 at 462. Compare, Zummock v. Polasek (1929), 199 Wis. 529, 227 N. W. 33. A case where the explanation of the court is "apparent authority," but where general agency would answer just as well.

\(^{268}\) Williamson v. Richardson (1867), Fed. Cas. No. 17, 754 (C. C. Ga.)
payment does not necessarily imply authority to collect subsequently accruing installments. Where the third party is the one who is collecting the payment, he takes the check of the special agent at his peril, if the principal has provided the agent with cash, for the check may amount to absolute payment.

Payment to a special agent is not payment to the principal where the authority of the agent to sell is conditioned upon payment being made to the principal himself directly.

It has been held that the agent may take payment in the cancellation of his own debt where the full amount is first tendered in cash.

It is well-known that special agents, such as "drummers," who never have possession of the goods themselves, do not have the authority to collect payment for the goods which have been ordered through them. Their authority if any is to be confined to cash collections.

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209 Sir Francis Sykes, Bart. v. Giles (1839), 5 M. and W. 645. An auctioneer would not, ordinarily, have authority to receive deferred payments after the day of sale, and, granting that he had such authority, he would be limited to receiving cash only. Willett v. Rose (1915), (Sask. S. C.) 25 D. L. R. 258. A, the vendor of land, gave B, the notary who drew up the contract of sale, authority to collect a cash payment due under the contract from C, the vendee. Held (for A against C), that B was a special agent and had no authority to collect subsequent payment accruing on the same contract from C, who paid him at his peril. Compare, Peck v. Harriot (1820), 6 S. and R. 146.

210 Cleveland v. Pearl and Co. (1890), 63 Vt. 127. (1) C sold wool to A, to be delivered at the store of B. A gave B money to pay for the wool, but when C delivered the wool, B gave him part in cash and part by his own check, B representing to C that he did not have the cash to pay the whole amount. (2) Before C cashed B's check, B went insolvent. (3) C now sues A on the check. Held (for A, reversed), that C took B's check as absolute payment. The authority of B was "special and limited." The peril rule applied. B, having exceeded his authority, was not A's agent in giving the check. Query. Should a principal be allowed to make a profit at the expense of the unwary third party merely because his agent has exceeded his authority? It looks like a "hard case."

211 White v. Langdon (1858), 30 Vt. 599.

212 Kerlin v. The National Accident Association (1893), 8 Ind. App. 628, 35 N. E. 39, 36 N. E. 156. (1) Here the agent was a soliciting and collecting agent of an insurance company in a given territory. The court implies he was not a general agent, and, by the cases already discussed, it would seem that he was a special agent. (2) The premium was $30.00, which the insured, a "baggage smasher," tendered in cash in advance just before the train pulled out. The agent took only $20 and said he would pay the other ten himself, as he owed that amount to the insured. Held, a good payment.

213 Hayes v. Colby (1889), 65 N. H. 192, 18 Atl. 251. P was a cigar dealer, D a hotel keeper. P had an agent, B, whose authority was re-
The class of cases involving payment that occur most frequently in the courts is the line of cases concerned with the payment of the principal of securities represented by written instruments, such as bonds, mortgages, deeds of trust, etc. These cases well illustrate the distinction between general and special agency, for we discover upon looking into the books, that the authority of the general agent to receive payment of the principal due on the security is much wider than that of the special agent.

stricted to taking orders for cigars. (Note: Being a mere solicitor, we must hold him to be a special agent). B received $35 worth of hosiery from D, who merely knew that he was an agent, and sent an order for that amount of cigars, which P delivered and D consumed, while B absconded. Held (for P), that B had no authority to receive payment, not having the goods in his possession, and even if D had reasonable cause to believe that B had authority to make sales and receive payment, he had no reasonable cause to believe an exchange was authorized.

The rules concerning this problem of payment are collected in the Restatement Sections 337, 338.

Noble v. Nugent (1878), 89 Ill. 522; Verdine v. Olney (1889), 77 Mich. 310. Here a principal held a man out as his apparent general agent to handle all business pertaining to the loans in question in Michigan. Held, that payment of the principal and interest of the mortgage to the general agent was good and bound the mortgagee (principal). Midland Savings and Loan Co. v. Sutton (1911), 30 Okla. 448, 120 Pac. 1007. Here the A Loan Co. was in Denver, Colorado, and C borrowed money from it in Oklahoma through B, A's general agent. Held, that B had authority to receive payment of the loan from A, even though he did not have possession of the securities. Land v. Reese (1926), 136 S. C. 287, 134 S. E. 253. Here it was decided, on rather slender evidence, that B was the general agent of A to invest A's money, and collect principal and interest, and reinvest same as he saw fit. Held, that B could bind A by accepting payment of principal due on a mortgage from C to A, and could also bind A by agreeing to accept payment of part of the principal before maturity of the obligation. The case is discussed by Professor Mechem in 21 Ill. L. Rev. 722. Compare, Lawther v. Thornton (1896), 67 Ill. App. 214 (rev. o. g. 169 Ill. 228, 48 N. E. 412). Burham v. Wilson (1911), 207 Mass. 378, 93 N. E. 704. A special agency given by the holder of a note and mortgage to receive payment of interest thereon (many transactions, but all of them with the same individual), does not imply an authority to receive payment of the principal, nor does it make the agency a general one to handle the business of the mortgage and note. Belcher v. The Manchester Building and Loan Association (1907), 74 N. J. L. 835, 67 Atl. 399. Here B appeared to be a general agent to make investments for his brother A in New Jersey. Held, that general authority to make an investment plus the continued possession of securities bought, such possession being consistent with the original authority, did not imply a further authority to receive payment of principal and interest on account of such investment. Here the agent bought shares in a Building and Loan and needed the book in order to pay dues. Peters v. Atier (1926), 89 Pa. Super. Ct. 34. Here C paid the principal of a mortgage to B, an attorney at law through whom he had obtained the
The distinction between the authority of a general agent and that of a special one to receive payment is also illustrated by other cases. 276

10. Court Officers

Trustees, receivers, and custodians, appointed by court order, frequently have considerable authority, and yet these powers are limited by the order appointing them and other relevant statutes and rules of court. They are therefore generally considered as being in the nature of special agents, the rules regarding which apply to them. 277

11. Corporate Officers

Formerly the rule appears to have been, that officers of a private corporation, such as the president thereof, were special agents. 278 Under modern corporation statutes, today the chief officers of a corporation should be regarded as general agents. 270

Of course acquiescence by the directors of the corporation

loan and who acted as conveyancer for A, the obligee of the bond and mortgage. B had neither actual authority from A, nor possession of the securities. Held (for A), that two previous safe payments of principal belonging to A, to B, by C, did not prove B was a general agent to receive payment of principal.

276 General agency, Birmingham Mineral R. R. Co. v. Tennessee Coal, Iron and R. R. Co. (1899), 127 Ala. 137, 28 So. 679; Armour Fertilizer Works v. Maddox (1929), 168 Ga. 429, 148 S. E. 152; Halladay v. Underwood (1900), 90 Ill. App. 130. Here the agent had charge of the leased premises, handled all matters pertaining to the rent, repairs, etc., and also had charge of and collected the rents from other premises for his principal. The agent collected one year's rent in advance and left for "parts unknown" with ten months of it. The landlord sued the tenant for the remaining monthly installments as provided for in the lease. Defense: General agency. Held (for the landlord, affirmed) that the composition of the rent by the agent was an act clearly in excess of his authority. Special agency, Everett v. Clements and Thompson (1849), 9 Ark. 478 (an ambiguous decision).


279 Grafius v. The Land Co. (1859), 3 Philadelphia 447. See also the New Jersey corporation law, and the Ohio and California statutes.
in repeated acts of authority by a corporate officer will broaden the authority given him by the charter and by-laws.\textsuperscript{280}

12. Insurance Agents

It has been said that in insurance law, a "general agent" does not mean exactly the same as in the law of agency, but has more of a geographical content. A "local" insurance agent may be a general agent from the standpoint of agency.\textsuperscript{281}

On the other hand, it has been stated that the law applicable to agents of insurance companies stands upon the same footing as the law applicable to agents of other persons and corporations.\textsuperscript{282}

There is a class of insurance agents known as "brokers" who have been called "mere conduits."\textsuperscript{283} An insurance broker is frequently the agent of the insured, rather than of the insurer. Such a broker may or may not be a special agent.\textsuperscript{284}

A person authorized to accept risks, to agree upon and settle terms of insurance, and to issue or renew policies, is the general agent of the company.\textsuperscript{285}

Unknown limitations are not binding on third parties dealing with general agents of insurance companies,\textsuperscript{286} and a "numerical limitation" does not apply.\textsuperscript{287} Known limita-

\textsuperscript{280}\textit{Rowland v. The P. P. Carroll Loan and Investment Co.} (1906), 44 Wash. 413, 87 Pac. 482.
\textsuperscript{281}\textit{Syndicate Insurance Co. v. Catchings} (1893), 104 Ala. 176, 16 So. 46. See also \textit{Thompson v. Michigan Mutual Life Insurance Co.} (1914), 56 Ind. App. 902, 106 N. E. 790 as to the meaning of the term "local agents."
\textsuperscript{282}\textit{Kerlin v. The National Accident Assoc.} (1893), 8 Ind. App. 628, 35 N. E. 39, 36 N. E. 156.
\textsuperscript{283}\textit{Matter of Lane v. Lane} (1930), 229 App. Div. 60, 240 N. Y. S. 537.
\textsuperscript{286}\textit{McDonald v. Equitable Life Assurance Society} (1919), 135 Ia. 1008, 169 N. W. 352, 103; \textit{Corklite Co. Inc. v. The Bell Realty Corporation} (1923), 249 N. Y. 1, 162 N. E. 565.
\textsuperscript{287}\textit{Young v. Mueller Bros. Art and Mfg. Co.} (1905), 124 Ill. App. 94. Here Young and nine other underwriters formed a Lloyd's insurance group and gave one Shute a power of attorney authorizing Shute to make, sign, and issue fire, marine and tornado policies of insurance upon property wherever situated. The power of attorney gave Shute full authority to issue policies, fix rates, collect premiums, pay taxes, appoint agents, etc. There was a numerical limitation to the liability of the defendant, Young, on any one policy up to $250. Shute issued a policy to the plaintiff by which Young was liable individually to the
tions are binding on such general agents and third parties and the policy itself may operate as notice of the limitation of authority. 288

The general agent of an insurance company has broad powers with respect to the delegation of his authority. 289 A general agent is not an “officer” of the company within the meaning of a provision of the policy that a waiver could be made only by an officer. 290

Most questions of agency that arise in insurance law involve (1) notice to the agent or (2) his authority to make a settlement or (3) to waive a condition or proviso of the policy, or (4) to vary the usual terms of payment of premiums. The decisions show that the authority of a special agent of an insurance company, such as a solicitor, 291 is very much limited with respect to all the foregoing problems. 292

amount of $1,000. Young argued no liability whatsoever. But held (for the plaintiff) that Shute was a general agent of Young and the numerical limit did not apply as to third parties.

288 Great American Casualty Co. v. Eichelberger (1931), 37 S. W. (2d) 1050 (Texas). The A Insurance Company had appointed B its agent to take applications for, pass upon such applications, and issue policies known as “Little Giant Travel Accident Policy,” insuring against death from injury received while traveling in a public conveyance. B sold such a policy to C, representing, however, that it covered all kinds of accidental death. Held (for A, reversed) that the only evidence of authority that C had a right to rely upon was the policy which B had in his possession and which he was authorized to issue. This policy was itself notice of the limitations on his authority. There was no apparent authority greater than the real authority. Hutson v. Prudential Insurance Co. (1904), 122 Ga. 347, 50 S. E. 1000.

289 Continental Insurance Co. v. Ruckman (1889), 127 Ill. 364, 20 N. E. 77, 11 A. S. R. 121. Compare, Mutual Life Insurance Co. v. Reynolds (1906), 81 Ark. 203, 98 S. W. 963 (a soliciting agent has no authority to appoint another such agent or to appoint an agent to receive premiums).


291 See heading supra, Solicitors, under Special Agency.

Remarkable results are reached now and then by the courts in attempting to protect the insured in cases of fraud. 293

A special agent may not validly deliver an insurance policy without first ascertaining that there had been no change in the applicant’s health, as he had been instructed to do. 294

The peril and pursuit rules of special agency apply in the field of insurance law. 295

13. Public Administrative Officers

Some public officers are undoubtedly general agents because they stand in the position of general managers. Thus selectmen are, with respect to their ordinary duties, general agents. 296 Where an office is created by statute and the powers

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of its incumbent are exactly defined, and particularly where the office is temporary in duration, the public servant becomes a special agent. 297

The same rule holds good when special additional authority is given to a public officer who is normally a general agent. 298

14. Purchasing Agents

There is nothing particularly unique about agents to buy. Their agency may be either general or special, depending upon the presence or absence of the various factors heretofore seen to be decisive in determining the class of the agency.

The position of buyer in a department store does not necessarily imply a general agency, 299 or at least, it has been so held. If a general agency to buy on behalf of a principal exists, it is immaterial to the third party that the agent makes away with the goods so bought or consumes them himself. 300

297 The Mayor and City Council of Baltimore v. H. R. and J. Reynolds (1862), 20 Md. 1. Here the city of Baltimore by resolution appointed one Shannon a City Commissioner to arrange for the construction of a new jail. The resolution gave him power to (a) alter certain plans and specifications if deemed necessary and contract for building "in conformity to plans and specifications agreed upon." The commissioner (a) contracted for improvements according to plans and specifications to be allowed thereafter (b) took unto himself the power to determine the amount to be paid for the work, in event of disagreement, the matter to be submitted to arbitration. Held (against the contractor), that Shannon had exceeded his power in all three of the foregoing respects. The peril and pursuit rules applied. "Every express agency is special according to the legal significance of that word, and the only reasonable distinction is between express and implied." Savage v. Rix (1838) 9 N. H. 263; Delafield v. State of Illinois (1841), 2 Hill (N. Y.) 159, 28 Wend. (N. Y.) 192. Here an act of the Illinois legislature apparently provided for the appointment of agents to sell certain of its bonds. Held, (1) that the agency was special; (2) that the agents had exceeded their authority in (a) selling the bonds below par; (b) selling them on credit. Note: That no problem of notice of limitation of authority can really arise in the case of a governmental agent, for the laws themselves give the whole world notice.

298 Thurber and Co. v. Anderson (1878), 88 Ill. 167; Williams v. Mitchell (1821), 17 Mass. 98.

299 The Mayor and City Council of Baltimore v. H. R. and J. Reynolds (1862), 20 Md. 1; Ladd v. Town of Franklin (1870), 37 Conn. 53.

300 Brager v. Levy and Markowitz (1914) 122 Md. 554, 90 Atl. 102. Here the buyer was required by his employer to have all orders approved by the owner or manager. Held, that an order given by a "buyer" without complying with this regulation was not binding on the store.
Numerical limitations are not binding on a general agent to buy. 301

The hardest problem that arises in connection with agencies to buy is that of purchases on credit. A principal may not wish his credit to be used by an agent. Accordingly, he furnishes the agent with cash and directs him to make no purchases on credit. Suppose, however, that the agent does buy "on time." Is the principal liable to the third party for the amount of such purchases, or does the prohibition against credit purchases make the agency a special one so that the peril and pursuit rules apply?

The cases are by no means harmonious or easily reconcilable on this point. In general it may be said that if the agency is special, either because of the limitation placed on the authority, or for some other reason, the prohibition against credit purchases is valid and the principal is not liable. 302 If the agency be a general one the credit purchase is binding and the principal is liable. 303

Where the principal gives no directions either way, it seems fairly certain that the general agent to buy may use the credit of his principal. 304

A general agent to buy for cash may give his own check, 305

301 Palmer and Sons v. Cheney (1872), 35 Ia. 281. A principal is liable for goods purchased by a general agent though the purchase in question was, as to the quantity of goods he should purchase, contrary to the principal's instructions. Jasper County Farms Co. v. Holden (1923), 79 Ind. App. 214, 137 N. E. 618. Action for the purchase price of $600 worth of tomato plants bought by the local representative of the defendant, in charge of the farm. The secretary of the farm company testified that the authority of the local representative was limited at all times to items not to exceed $100. Held (for the plaintiff, affirmed) that the case was not of want of authority in the agent to purchase, but one "where liability is denied because the agent violated his private instructions."


303 Bacon v. Dannenberg Co. (1919), 24 Ga. App. 540, 101 S. E. 699; Fatman v. Leet (1872), 41 Ind. 133; Cruzan v. Smith (1872), 41 Ind. 283; Pacific Biscuit Co. v. Dugger (1901), 49 Ore. 302, 67 Pac. 32; Parsons v. Armor (1830), 3 Pet. 413, 7 L. Ed. 724 (contra).

304 Martin and Hicks v. Bridges and Jelks (1918), 18 Ga. App. 24, 88 S. E. 747; Ruffin v. Mebane (1850), 41 N. C. (6 Iredell Equity) 507.
for he has the authority to deposit his principal's money in bank and draw it out as expended. 305

Third parties are not bound by unknown limitations placed upon general agents to buy, 306 but the peril and pursuit rules are applicable to special agents. 307

15. Railroad Employees

Railroads play an important part in our modern civilization. They employ many agents in diverse capacities. One of the chief respects in which their agents come in contact with the public is in the making of contracts for the shipment of freight. All railroads employ agents to solicit and handle shipments of freight, and, as these agents normally have authority to "close the deal," they are general agents, and the normal legal consequences follow. 308

Station agents, although bound by geographical limitations, are general agents and have the authority of such. 309

A lawyer, who is a general counsel, or general solicitor, of a railroad, and in charge of its legal work in a certain territory, may be a general agent. 310

305 Bass v. Green and Yates (1918), 201 Ala. 515, 78 So. 869.
306 Empire Rice Mill Co. v. Stone (1922), 155 Ark. 623, 245 S. W. 15; Robinson v. American Fish and Oyster Co. (1911), 17 Cal. App. 212, 119 Pac. 383. Action for purchase price of fish alleged to have been sold to D's agent after being caught in Eel River. D claimed that the agent had no authority to buy the first night's catch. But held, that his authority to buy was apparently unrestricted, hence the secret limitation was not binding on third parties dealing with him. Dunlap v. Dean (1930), 100 Calif. App. 300, 292 Pac. 991.
307 Cannon v. Long (1925), 135 Wash. 52, 236 Pac. 788. See Problem Case No. 33.
310 Cross v. Atchison, Topeka and Santa Fe Railroad Co. (1897), 141 Mo. 132, 42 S. W. 675. B was placed in charge of the legal department of the Santa Fe in the states of Missouri and Iowa. Held, that B was a general agent of the railway. "His authority was general
Several cases have defined the authority of a chief engineer of a railroad without stating whether his agency was general or special. Thus the chief engineer has no implied authority to make a contract for building depots. 311 He is, however, usually vested with much authority, particularly with respect to the building of the railroad. 312

As to passengers, a conductor might well be a general agent, 313 but as to injured employees in the so-called “emergency” cases, his authority approximates that of a special agent. 314

16. Real Estate Agents

The vast majority of real estate agents are nothing more than brokers, i.e., representatives of the owner to find a purchaser 315 ready, able, and willing to buy on the terms stated by the owner. Such agency to “sell” connotes authority merely to find a purchaser, 316 and constitutes only the most limited form of special agency. 317

There may be a general agency to represent an owner with respect to his real estate transactions, 318 in which event the general agent will have the wide authority which is usually associated with that type of agency. 319

There may be an authority to sell, i.e., to make a contract of sale which is binding on the principal, without an authority within certain territorial limits to select local counsel to represent the company and he was not confined in number or to particular persons.” Query: Would a limitation to 50 lawyers, or to lawyers of 10 years’ experience have made his agency special?


316 Gillis v. Duluth, North Shore and Southwestern Railroad Co. (1885), 34 Minn. 301, 25 N. W. 603.

317 Is it not true, however, that the conductor is bound to be a person operating under closely defined limitations of authority?


320 Restatement Section 271.

321 Yates and P. and A. R. R. Co. v. Yates (1888), 24 Fla. 64, 3 So. 821.

322 Lindroth v. Litchfield (1886), 27 Fed. 894 (C. C. Ia.)

323 Schley v. Fryer (1885), 100 N. Y. 71, 2 N. E. 280.
to convey, and a power to sell, although it may include the power to convey, does not necessarily include a power to mortgage.

Most of the litigation involving real estate agents arises in cases where the agency is a special one (because limited to a particular transaction) and the agent is authorized to bind his principal by a contract of sale (i.e. contract to convey). The agent, often at a distance from his principal, in his misdirected zeal to close the bargain, varies slightly from the terms authorized by the principal, who then "reneges" and the disappointed purchaser brings an action for specific performance.

In such cases the peril rule is invoked by the defendant (principal) and the courts apply that rule with unexampled severity and vigor.

A special agent to sell a piece of land must sell for cash, i.e. he must receive money. Thus an agent authorized to

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322 Rhode v. Gallat (1915), 70 Fla. 536, 70 So. 471. Suppose the agent sells the one piece of land in parcels for the same price (total). Has he exceeded his authority? Yes. There are two people to collect from, yet the strain on the credit of neither is so great. Larned v. Wentworth (1901), 114 Ga. 208, 39 S. E. 555; Peabody v. Hoard (1867), 46 Ill. 242; Baxter v. Lamont (1871), 60 Ill. 237; Monson v. Kill (1933), 144 Ill. 248, 33 N. E. 43. Query: Does the law favor the owner on a contract of sale made through his agent, just as it favors the owner on an argument with his tenant? Siebold v. Davis (1885), 67 Ia. 550, 15 N. W. 778. Acceleration of date of payment of installment of principal at option of buyer is beyond power of special agent to sell land. Sullivant v. Jahren (1906), 71 Kan. 127, 79 Pac. 1071; Peddicord v. Berk (1906), 74 Kan. 236, 86 Pac. 465. Here A appointed B his agent to rent the premises in question. C, the tenant, claimed that B authorized him to make repairs and improvements, to be credited on the rent. Held (for A), that B was not a general agent and had no authority to make any such agreement. B could not authorize improvements. Compare, Schaeffer v. Mutual Benefit Life Insurance Company (1909), 38 Mont. 459, 100 Pac. 225. Special agent to obtain offers for the purchase of real estate has no authority to bind his principal by receiving part payment before the making of a binding contract of sale. Michael v. Bley (1891), 61 Hun. 130, 15 N. Y. S. 390; Brown v. Grady (1907), 16 Wyo. 151, 92 Pac. 622; Seergy v. Morris Realty Corp. (1924), 133 Va. 572, 121 S. E. 900. The old story of a real estate broker who exceeded his authority, in this instance by not getting all cash on the signing of the memorandum but taking a deposit and letting the rest go till the closing. But query: Was it ever the intention of the principal to get all cash before the closing? Blair v. Sheridan (1889), 86 Va. 527, 10 S. E. 414.
323 Hann v. Freestone (1924), 99 N. J. L. 357, 123 Atl. 701.
324 Lumpkin v. Wilson (1871), 5 Heisk. (61 Tenn.) 555.
sell a farm exceeds his authority when he accepts bills of exchange. 325

A numerical limitation is binding on a special agent to sell land. 326

A special agent authorized to rent or sell real estate (one act, he could not do both at once) has no authority to permit an adjoining landowner to change the boundary line, or to move fences. 327

A prohibition against selling to any grantee, "other than the legal heirs of William Cooper deceased—for a sum less than $1600" may be binding on a special agent. 328

17. Retail Clerks

Into what class does the retail clerk fall? He consummates many sales with a host of persons, but has no discretion with respect to price. He might be regarded as a mere servant, a person who takes cans off shelves and hands them over a counter, were it not that he is the human agency in completing an executed sale, and he, therefore, possesses more of the characteristics of an agent than of a servant. The fact that he has no discretion as to price is not unique, because that is true of many special agents encompassed with a numerical limitation. The clerk deals with a multitude of individuals and his authority is a continuing one, but overshadowing these factors, pointing towards general agency, are the limitations on his authority with respect to which the whole world is bound to take notice. The conclusion suggested is that his agency is special. 329

Commercial Paper

Writers on the subject have stated many times that authority to make or otherwise handle commercial paper will be inferred by the courts from an agency expressly for another pur-
pose, only with the greatest reluctance.\textsuperscript{330} This is true even though the agency be a general one.\textsuperscript{331}

Nevertheless, in several cases, powers of attorney and other grants of general authority have been construed so as to authorize, impliedly, the execution of promissory notes.\textsuperscript{332}

The question of the authority of the agent to indorse the note or draft, payable to his principal, has been productive of much litigation. There are a number of decisions on both sides of the proposition. It has been held that a general authority to collect bills and take checks therefor implies authority to indorse the checks and cash them\textsuperscript{333} and that a general agent may often have the authority to indorse notes, payable to his principal, as part of the business he is authorized to transact, even though he is not authorized to make them.\textsuperscript{334} Also it has been adjudicated that an attorney employed by a number of heirs and legatees of an estate, such persons residing in several different states, has authority to indorse checks payable to his clients.\textsuperscript{335}

The courts of New York have taken the lead in opposition to the view that an agent may have authority to endorse negotiable instruments payable to the principal.\textsuperscript{336} Inasmuch as

\textsuperscript{330}Restatement Section 366.
\textsuperscript{331}\textit{Waters v. Brogden} (1827), 1 Yonge and J. 457. Authority to a farm bailiff to deliver a check to the payee does not authorize him to have it discounted at the request of the payee, at a bank other than that on which it is drawn.\textit{Huffer v. First National Bank of Shelbyville} (1926), 242 Ill. App. 111.
\textsuperscript{333}\textit{Lorton and Co. v. Russell and Holmes} (1889), 27 Neb. 372.
\textsuperscript{334}\textit{Trundy v. Farrar} (1850), 32 Me. 225.
\textsuperscript{336}\textit{Robinson v. The Chemical National Bank} (1851), 86 N. Y. 404. A employed B as his clerk and agent for the collection of rent and other matters. B endorsed a check which he had collected as rent, same being payable to A. Held, that B had no authority to endorse the check and trover would lie against the depositary.\textit{Jacoby and Company} (Ltd.) v. \textit{Payson} (1895), 85 Hun. 367, 32 N. Y. S. 1032. A, a corporation of England, had employed one B for over two years as its sole selling agent in the United States and Canada. A gave B a general power of attorney to collect all its claims in New York with power of substitution. B transferred his power to B. Note: B was undoubtedly, therefore, a general agent of A. B received a check in payment of a debt due A and indorsed it, in A's name, over to C in payment of a debt due from B to C. Held (for A in trover against C,
the authority of a general agent is so restricted in the case of ordinary commercial paper, we take it for granted that a general agent cannot issue accommodation paper. 337

There may be a general agency to collect notes. Such authority, however, does not imply the authority to exchange notes, already collected, payable to the principal, for notes payable to the agent, thereby substituting another creditor. 338

A general agent of a principal to make, indorse, negotiate, renew and discharge all notes, bills, etc., has authority to receive a notice of protest, and this is so, even though his authority has been created by a power of attorney. 339

Limited as the authority of a general agent usually is with respect to commercial paper, the authority of a special agent is even more limited, and the peril rule, as well as that of strict pursuit, is rigidly and sternly applied. 340

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reversed), that an agent (general) to collect has no authority to indorse negotiable paper thus received, in such a way as to impose any liability upon his principal. Distinguish: Between (a) limited indorsements "for collection," perhaps permitted; (b) general indorsements, not allowed in New York; (c) indorsements over to third parties in payment of personal debt of agent, never allowed.

Robinson v. Bank of Winslow (1908), 42 Ind. App. 350, 85 N. E. 793. A owed the plaintiff money. P sent B to A with A's note for the money owing and a letter requesting A to pay B. A gave B a check for the amount due. B took the check to the bank which is the defendant and signed P's name on the back thereof (i.e., she indorsed the check). The Bank paid B and B "went to Halifax." P sues Bank for the amount of the check. Held, (for P, reversed). Even if B had had authority to receive a check she would have had no authority to indorse it.

Atlantic Trust Co. v. Subscribers to Automobile Insurance Exchange (1926), 150 Md. 470, 133 Atl. 319. Action against a bank by an insurance company for money deposited in the private account of the agent of the insurance company, the agent having first indorsed checks payable to the company. The insurance company had its home office in Philadelphia. The agent was "resident manager" of their Baltimore office. He solicited business and collected and remitted premiums. He was paid on a commission basis and himself bore the cost of the Baltimore office. Held (for the insurance company, affirmed), that the agent had no authority to indorse checks. Such authority was neither necessary to his duties, nor a customary incident of such an agency. Compare, Schneider v. The Lebanon Dairy and Creamery Co. (1898), 73 Ill. App. 612. A strange tale of an elusive, wandering note. It deals with the authority of an agent with whom a note is deposited to negotiate the same. The agency is, of course, a special one.


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337 Robinson v. Anderson (1885), 106 Ind. 152.
338 Wilcox v. Routh (1848), 17 Miss. 476.
339 Heath v. New Bedford Safe Deposit and Trust Co. (1904), 184 Mass. 481, 69 N. E. 215; Tate and Hopkins v. Evans (1842), 7 Mo. 419. A appointed B his agent to draw a bill of exchange on A for a specified
The general question of the liability of the principal for the fraud of his agent is beyond the scope of this article. Incidentally, however, some cases on the liability of the principal for the fraud of his special agent have been turned up.

At an early day a principal was not bound by a false representation made by his special agent to sell. This doctrine did not long prevail and the contrary rule soon became established law.

It is to be noted that in all cases discussed herein the special agent was committing the fraud for the benefit of his principal. This raises the query as to whether the liability of the principal for the fraud of his special agent is limited to cases within the rule as enunciated in *Barwick v. Bank,* and does not include cases within the later and broader decision of *Lloyd v. Grace, Smith and Company.* The latter case was one of general agency and it is suggested that nearly, if not all, acts of an authorized class fall within general agency.

Notice

The question of notice to the agent as constituting notice to the principal, like that of fraud, comes up only incidently in this article.

Notice is inseparably linked with scope of authority, from which it follows that notice to a general agent may be much more effective than notice to a special agent.

amount at four months. B drew a bill of exchange on A for four months, but antedated it. *Held (A not liable,)* B was a special agent and the pursuit rule applied. *Batty v. Carswell* (1806), 2 Johns. (N. Y.) 48.


*L. R. 2 Ex. 258.

Compare, Pollock on Torts (11th Ed.) pp. 75, 76.


Williams v. Sharpe (1928), 125 Ore. 379, 265 Pac. 793. See also, Willard v. Buckingham (1870), 36 Conn. 335. Special agency: South-
A general agent may certainly make more admissions that bind his principal than a special agent, but the reason for this distinction does not appear to be based on the classification of the agency.

**QUESTIONS OF LAW AND/OR FACT**

A few decisions hold that the question whether an agency is general or special is one of law for the court. Where the agent's authority is entirely in writing and is unambiguous, so that there is no opportunity for the introduction of parol evidence, the written authority, under a well-settled rule, becomes a matter exclusively for the court, which must determine the classification of the agency as a matter of law.

In the great majority of cases, however, the question has gone to the jury. It has been said that it is not necessary States Fire Insurance Co. v. Kronenberg (1917), 199 Ala. 164, 74 So. 63. Notice to the insurance agent who took the application for the policy of insurance and delivered it, that the insured had no iron safe in which to keep his inventories, as required by the policy, was not notice to the insurance company, because such agent was only a special one to negotiate for the application of insurance. Iverson v. Metropolitan Life Insurance Co. (1907), 151 Cal. 746, 91 Pac. 609, 13 L. R. A. (N. S.) 866. Lewis v. Equitable Mortgage Co. (1904), 94 Ga. 572, 21 S. E. 224. Compare, Schenck v. Griffith (1905), 74 Ark. 557, 36 S. W. 880.


This may arise from the fact that the judge regards himself as an umpire, and accordingly "passes the buck." Langenheim and Cochran v. The Anschutz Bradberry Co. (1896), 2 Pa. Super. Ct. 285 at pages 290, 291. See also, Birmingham Mineral R. R. Co. v. Tennessee Coal, Iron and R. Co. (1899), 127 Ala. 137, 28 So. 679; Buchanan v. Catine (1914), 57 Ind. App. 274, 106 N. E. 885; The Loudon Savings Fund Society v. The Hagerstown Savings Bank (1860), 26 Pa. St. 498, 73 Am. Dec. 320; American Car and Foundry Co. v. Alexandria Water Co. (1907), 218 Pa. 542, 67 Atl. 881; Savin v. The Union Building and Savings Association of Des Moines, Iowa (1895), 95 Ia. 477, 64 N. W. 401. Here one of the issues was whether an agent for the sale of shares of stock in the Building and Loan Association was a "special traveling agent" or a "general agent." The question seems to have been left to the jury and the issue determined solely by the way his written appointment read.
sary to instruct the jury as to the meaning of "general manager" or "general management," but it is customary to instruct as to the meaning of "general agency." 353

CONFLICT OF LAWS

The great master in this field, Mr. Justice Story, has laid down the rule that the law of the place of performance by the agent is to be the law governing the transaction, as to legality at any rate. 354

353 Crain v. The First National Bank of Jacksonville (1885), 114 Ill. 516.
APPENDIX

Problem Cases *

CASE No. 1. Golding v. Merchant and Co. (1869), 43 Ala. 705. Here G appointed A his agent at Mobile to sell a cargo of lumber and later to superintend the raising of two sunken vessels.

Was the agency general or special?

CASE No. 2. Slayden v. Augusta Cooperage Co. (1924), 163 Ark. 638, 260 S. W. 741. Query: Is an agent to buy timber (i.e. logs) only on the bank of the river, and for immediate shipment, a special agent? The court so instructed the jury and there was a reversal on this ground. The case, however, is not clear. The issue was whether the agent had authority to buy logs for future delivery.

CASE No. 3. Consolidated Gregory Co. v. Raber (1872), 1 Colo. 511. Here one Hays was the agent of the Gregory Co., whose business was the mining, milling, and melting of ores. Hays employed one R to take care of a team owned by L and Co., who apparently furnished it gratuitously to the Gregory Co. Hays was authorized to employ laborers. Held (for R, but on the theory of ratification), that Hays had no authority to employ Rober.

Is this holding correct?

CASE No. 4. Montez v. George (1920), 68 Colo. 247, 188 Pac. 723. Action for rent. Defense: Eviction from the demised premises by act of P's adopted son. D testified that I' had told him (1) that when he (P) was not present Eusebio represented him in his business or Eusebio "done" business for him, and (2) "when I am not here you can pay Eusebio." Eusebio was the adopted son. Held, that Eusebio was not authorized to evict a tenant or to abrogate a lease. Authority to receive money from a tenant implies no authority to evict him. "Even a general agent may not go outside of the usual course of the business in his charge." Query: Does the court impliedly

* These problems are presented to furnish additional material and "food for thought" in connection primarily with the question of whether the agency is a general or special one and incidentally with respect to other material treated in the foregoing article.
hold Eusebio was a special agent? Was Eusebio a special agent, though his authority was a continuing one?

Was not the court a little bit harsh on the tenant? What agent could possibly have authority to evict a tenant whenever the principal was "out of sight and hearing"? (Language used by the court.)

Case No. 5. Sioux City Nursery and Seed Co. v. Magnes (1894), 5 Colo. App. 172, 38 Pac. 330. Here one Wheeler was an agent to solicit executed orders for nursery stock, while one Michael was the agent for delivery and collection. Wheeler obtained orders aggregating $200.00 from Magnes and subsequently bought two mares from Magnes for $300.00, giving a receipt in full, for the nursery stock and an order on the Nursery Co. to pay Magnes $100.00 out of his (Wheeler's) commissions. Michael demanded cash for the nursery stock, it decayed, and Magnes sued the Company for the horses. Held (for Nursery Co.), that Wheeler was a special agent and his authority was "extremely limited." Magnes dealt with him at his peril. An agent to sell goods must sell for cash, and cannot trade or barter without special authority. Query: Is not the foregoing rule just as true of general agents as it is of special? Note: A soliciting agent (special) has "continuing" authority, but no notice of revocation need be given the third party, at least where the principal reserves the right to reject or accept the order. But, in the present case the "order" may have been "final" as the report on an earlier appeal says: "I, Peter Magnes, this day bought." Query: Is there a difference in the liability of the principal for the fraud of his special agent, and the fraud of his general one? Note: That on the earlier appeal (1 Colo. App. 45, 27 Pac. 257) the court said: "Here was a general agent with power to sell, sent out by his principal to take orders for stock to be delivered at a future time." Yet the evidence on the two trials was virtually the same. What kind of agent was this man after all, general or special? Note: That there were two jury verdicts for Magnes. Would the court have reversed a third time? What happened next?

Case No. 6. Thompson v. Stewart (1819), 3 Conn. 171, 8 Am. Dec. 168 (stated supra note 20). This case involved the liability of an agent to his principal for deviating from his instructions, though with a laudable motive. Query: The court
apparently regarded S as a *special agent*. Would a general agent be less liable to his principal for a departure from his orders? Incidentally, did not this special agent have *very wide powers*? Did he not do all the business of the owner at Bermuda, or all of a particular business?

**Case No. 7.** *Haywood v. Hamm* (1904), 77 Conn. 158, 58 Atl. 695. D left his horse in charge of his son for one day, the son using it to attend to some of his own business and also some of his father’s. The son left the horse unhitched and it ran away, injuring the plaintiff. *Held*, that the son was not the agent of the father for the purpose of making admissions as to the habits of the horse. Besides they were narrative statements and not part of the *res gestae*. Query: Was the son a *special agent* here? Does it matter, liability being based in tort? Remember that it matters not whether a servant or an agent hits you.

**Case No. 8.** *Harris v. Fitzgerald* (1902), 75 Conn. 72, 52 Atl. 315. A case worthy of study.

**Case No. 9.** *Bass Dry Goods Co. v. Granite City Mfg. Co.* (1903), 119 Ga. 124, 45 S. E. 980. Here the liquidating partner of a dissolved firm employed one Brown as traveling salesman and directed him by letter to “call on Bass Dry Goods Company and try to close them the following pants.” *Held*, that, assuming the foregoing letter suspended Brown’s *general agency* as a traveling salesman (query), still the purchaser was only required to examine his authority as contained in the letter. If a *special agency* to sell particular goods to a particular person was created, nevertheless, the agent had power to fix the terms of sale, i.e. to agree on the price. It was therefore error to charge that: “If . . . Arnold. . . sent Brown to the plaintiff with instructions to sell the goods in question to them at a certain price, or at figures not below a certain price, you would be authorized to find that Brown was the special agent of A and as between A and the plaintiff, the plaintiff would be bound to take notice of the instructions given B by A.” The third party was not bound by secret instructions not contained in the writing. Query: Were there really any secret instructions? Query: If I give a special agent some written authority, but omit some directions does that mean that I have given the agent full authority to “fill in the blanks”? May a special agent to
sell acting under written authority fix the price where no limitation is set forth in the writing? In 116 Ga. 176 (which was the second appeal in this case, the principal case being the third), the court held that Arnold could not sell the goods himself without first having revoked Brown's authority to sell to Bass. By selling himself, he was still liable to Bass on Brown's contract. Query: Is this contra to Dickinson v. Dodds? Would Bass have to be notified of the revocation, as well as Brown? The case is not clear on this point.

Case No. 10. Denman v. Bloomer (1849), 11 Ill. 177. Here an agent in the regular employ of Bloomer was sent "down the river" to sell a raft. He received $300 on account from Denman, which represented nearly the whole of the purchase price. Later, however, he rescinded the sale and drew a draft on his principal for $345, which included the expenses of Denman's man in regaining the raft which got loose and floated down stream over night. Held, that the agent had not yet exhausted his powers, even though he had sold the raft, until he had collected all of the purchase money. Therefore, he had authority to rescind. The court does not expressly say whether it regards the agent as a special or general one. It does refer to him, however, as "appointed for a special purpose, to transact a particular business," thus indicating that the agency was a special one. Is public policy and the fundamental theory of justice in accord with the idea of a general agent becoming a special agent ad hoc?

Case No. 11. Cowan v. Curran (1905), 216 Ill. 598, 75 N. E. 322. Here A authorized B to use her (A's) name as a "dummy" conduit of title, i. e. to let the title be deeded to her. Held, that B had no authority to pledge the credit of A by obligating her to execute a note and trust deed for the purchase money, even though his authority was construed as an agency to purchase. Query: But was B an agent at all? Was he not himself the undisclosed principal and A his agent? Or, might it not be said that A merely lent B the use of her name? The doctrine of ratification and undisclosed principal misstated. How can B borrow A's name without also borrowing her credit? The thing is impossible unless B is to be disclosed.

Case No. 11 1/2. Slaughter and Baker v. Fay (1899), 80 Ill. App. 105. Here there was a general agent for the defend-
ant who collected his rents, and paid his bills, and was the only person having anything to do with his business except the defendant himself. The agent was left in charge of D's office at Chicago and of his business during the whole of the summer from June to October. D executed a power of attorney re checks, deposits, etc., which was apparently required to suit the illegal rule of some bank. Query: To what extent was the general agency affected by this power of attorney, the question arising not between the bank and the defendant, but between a third party and the defendant? It should have little effect. But query: To what extent may a third party, who is unaware of a power of attorney at the time he deals with the agent, avail himself of its limitations in an action against the principal? Is not the power of attorney primarily intended for the protection of the principal?

CASE No. 12. Pugsley v. Morrison (1855), 7 Ind. 356, 63 Am. Dec. 424. Here A and B were sued on a note alleged to have been made on their behalf by their agent, C. A and B had owned a store which C managed for them. Later, C bought the store himself, but continued to buy cattle, hogs and sheep for them on cash or credit, also selling live stock for A and B. Held, that C was a special agent from the time of the purchase of the store by himself, up to which time he had been a general one. But, since he continued to act for his principals within the scope of his agency, the burden was on the principals to prove that they had terminated his authority before he performed the act sued on. Under the later, more modern decisions, could not C probably be termed a general agent? Rule: One buying live stock on cash or credit, and giving notes for same on behalf of a principal may be a special agent. Note: Many contracts, wide discretion, reposed in a special agent. Rule: Where special agent continues to act, the principal has the burden of proving revocation. Are the foregoing propositions correct?

CASE No. 13. Robinson v. Anderson (1885), 106 Ind. 152. Here A appointed B his agent in Marshall and other contiguous counties to take orders for A's Bonanza separators, make sales upon terms prescribed, take notes in the name of the principal for machines sold, and collect any notes placed in his hands for collection. B sold a separator to C and took 3 notes payable to A. Later, B exchanged the notes for 3 similar ones, payable,
however, to himself. A sues on the original note when it comes due. Held (for A). Query: Could B, by virtue of his agency, collect notes not specifically sent him for collection? The court does not decide this point, but says it would be loath so to hold. If he could do so, would he be a general agent?

Case No. 14. Kingan and Co., Ltd. v. Silvers (1895), 13 Ind. App. 80, 37 N. E. 413. Here the complaint averred that the agent was a traveling salesman and not a general agent, and had no authority to make settlements or take notes. The court said, "The same person may be a special agent for same principal in several different matters. Nichols was the agent of the plaintiff to sell goods. He was also its agent to procure the note." The implication is that the court agreed that he was not a general agent. The court held that having collected the note, the agency ended and Nichols was only a servant on the homeward journey. Does an agent cease to be such the moment his dealings with third parties cease and his only remaining duties are to his principal? Is not the court's reasoning fallacious?

Case No. 15. German-American Building Ass’n. v. Droge (1895), 14 Ind. App. 691, 41 N. E. 397 (in part). (1) Here an agent sold prepaid stock in a building and loan association for cash, the argument being that it was beyond his powers. (2) When it came to holding that the power of the agent embraced the right to sell the stock for that of another association the court balked. The power to sell is not the power to exchange. What kind of an agent was the one here?

Case No. 16. Wantess v. McCandless (1873), 38 Ia. 20. Here A appointed B his exclusive agent for 12 months to sell various parcels of land owned by A, at $5 per acre, one-third cash, balance in one and two years, etc. B contracted with C to sell him the land in question at $5.50 an acre, one-third cash when the deed was made and delivered to C. Before A was apprised of B’s contract, he sold to E. C now seeks specific performance. Held (for A), that B exceeded his authority. He should have received one-third cash on the contract of sale, not at a future time, and this was so even though the custom of the country called for cash on the delivery of the deed. Note: B’s departure was of a beneficial nature to A, i.e. he obtained $5.50 rather than $5 per acre. A deed could have been obtained in two weeks. Query: Was B’s agency special or general? He
could make many contracts under one authorization. He handled the bargainings of one particular class or nature.

Case No. 17. Parks v. The President and Managers of the S. and L. Turn Pike Road Co. (1830), 4 J. J. Marsh (Ky.) 456. Here the company authorized A to contract for the construction of the road from Louisville to Floyd’s Fork. A contracted for construction work beyond Floyd’s Fork as far as Bullskin. A’s power was moreover limited to contracting with respect to funds then in control of the company. The contract here sued upon undertook to pledge the future means of the company without limitation as to time. Held (for the company), that A had exceeded his authority. “If the conditions are more burdensome than those specified in the letter of attorney the principal is not bound to any extent.” Query: Was A a special or a general agent here? The court does not say. It would appear that he could make many contracts with different persons indicating that he was a general agent. The location test also makes him general. If so, did the limitation as to place bind him? The court said yes, also the limitation as to present funds.

Case No. 18. Russell and Co. v. Cox (1897), 18 Ky L. R. 1087, 38 S. W. 1087. Here A was authorized by B to solicit orders for certain machinery within certain territorial limits. He was specifically authorized to sell an engine and boiler. Which was B, a general or a special agent?

Case No. 19. Second National Bank of Richmond, Indiana v. Adams (1906), 29 Ky. L. R. 566, 93 S. W. 671. A appointed B his agent to sell “Uncle Tom’s Farmers’ Friend Stacker” and B sold one to C, who had previously bought an engine from A. B made certain warranties re the engine. Held (for A), that there was no evidence in the record that B was a general agent. The extent of his authority was to “make contracts in respect to the machinery he sold.” Query: Did this not involve many contracts with diverse persons under one authorization? But B clearly had no authority to make warranties about any object already owned by C or not sold at that time by A.

Case No. 20. Reinforced Concrete Pipe Co. v. Bayes (1914), 180 Mich. 609, 147 N. W. 577. Here the principal was a manufacturer of patented sewer pipe, the third party, a street and sewer contractor, and the agent was a man introduced by the principal to the third party as “the representative who would
look after their part of the work" under the written contract previously entered into. When sued on the contract, the third party claimed a set-off for changes and extras authorized by the agent. Held (for the principal), that the act of the principal in introducing the agent did not amount to a holding-out, that the agent was a general one. Third parties are bound to inquire as to the extent of an agent's authority from the principal "if accessible" and not from the agent, in absence of a written evidence of authority. Query: Why inquire at all if there be a presumption of general agency? To be consistent, the court should have applied or overruled the "presumption" rule of Austrian and Co. v. Springer (1892), 94 Mich. 343, 54 N. W. 50, 34 Am. St. Rep. 350. Note: A conflict of rules. Here the agent was handling only one transaction, that is, carrying out one contract. This would lead to the result that his agency was special (which is what the court impliedly holds). Yet he was in charge of all the work of the principal at Grand Rapids (place rule) and might well have been termed a general agent. He hired men, bought material, and acted as superintendent. The case reaches a wrong result.

CASE No. 21. Williams v. Kerrick (1908), 105 Minn. 254, 116 N. W. 1026. A, a railroad contractor, authorized B, an employment agency, to hire carpenters to "go up north on the St. John's extension then building into Canada." B engaged C, a carpenter, to work on a depot building at St. John. No work was being done by A at St. John. C sues A. Held (for A) that B's agency was special and temporary. The peril rule applied. Rule: A special agent employed to hire men to work at A exceeds his authority if he hires men to work at B. Query: Was not the agency here a general one? Yes. B could make many contracts under one authorization. He had charge of a class of negotiations. The temporary nature of the employment is not strong enough to overcome these other factors.

CASE No. 22. St. Louis Gunning Advertising Co. v. Wana- maker and Brown (1905), 115 Mo. App. 270, 90 S. W. 737. Here A, a high grade tailoring establishment in Philadelphia, entered into some sort of an arrangement with B in St. Louis under which B conducted a local tailoring establishment in its name and took orders for men's garments. There was evidence that there was a sign in front of B's shop with A's name upon it
followed by B's, and the words "selling agent." B contracted for 6 months billboard advertising in behalf of A. Held (reversed in favor of A, new trial), that B was a special agent and could only order advertising, if same was a necessary act in carrying out his agency. This was a jury question. Query: Was not B in reality a general agent? The court thought that the title of selling agent proved a special agency. Is this so? Was he not in charge of the business at St. Louis (the principal being far away)? Did he not handle the dealings of a particular class under one authority? Is the case wrongly decided?

Case No. 23. Ridgeley National Bank v. Barse Live Stock Commission Co. (1905), 113 Mo. App. 696, 88 S. W. 1124. Here the A bank was in the habit of buying notes, secured by mortgages from the B Commission Co. A authorized B, where no extension of time to pay the mortgages had been granted, to have the cattle covered by such mortgages shipped to Kansas City, sold on the market, and the proceeds received credited by B to A. In this case B took a new, that is, second, mortgage in renewal of the first. Then he sold the accompanying note without applying the proceeds on the debt due A. Later, the cattle were sold, and the B Company remitted the proceeds to A. The holder of the second mortgage sues the Commission firm which made the sale in conversion. But held (for D, affirmed), that the agent had no right to substitute one security for another. The agency was one to collect and no arrangement short of actual collection was authorized. Query: Was there a general agency here? There was a class of acts under one authorization. The court, however, talks about "limited powers" and "prescribed methods."

Case No. 24. Austin v. Young (1919), 90 N. J. Eq. 47, 106 Atl. 395. Here it was held that the secretary and bookkeeper of the corporation holding the legal title to land had no implied authority to make a declaration of trust in the form of a revenue statement or in the books of the holder of legal title binding upon his principal in the absence of express authority. Query: What agent has authority to make a declaration of trust?

Case No. 25. Andrews v. Kneeland (1826), 6 Cowen 354. A employed B, a broker, to sell a large quantity of cotton. B sold part of it to C by sample. The question was whether the
broker had a right to sell by sample and thereby impliedly warrant that the bulk was equal in quality to the sample. Held, that B was not limited in the manner in which he was to transact the business of his principal, and had authority to sell by sample. Query: Was he a general or a special agent? He certainly had the right to make several contracts under one authorization. The court did not decide.

CASE No. 26. Dudley v. Perkins (1923), 235 N. Y. 448, 139 N. E. 570. Query: Could the special agent here handle the supervision of the 486 "farmer" contracts and yet be less than general agent? Is there not a multitude of instances?

CASE No. 27. Molloy v. Whitehall Portland Cement Co. (1907), 116 A. D. 839, 102 N. Y. S. 363. Here a broker, B, negotiated with the general selling agents of C, the defendant herein, for purchase of cement needed by A, the plaintiff herein. (2) C understood from B that it was to be a "winter contract" (seasonal slack period), and, accordingly, fixed a very low price. (3) Cement was delivered by C. to A on demand until December 1. The following August C was required by A to furnish more cement. C declined, claiming the contract was over, cement being then very much higher. Held (for C, affirmed), that B was merely a special agent of C. Query: Why was B not an agent of A? Of course A was bound by B's agreement, but not because the peril rule applied against him, as intimated by the court. Note: That here a broker was most properly held to be a special agent.

CASE No. 28. Globe and Rutgers Fire Insurance Co. v. Warner Sugar Refining Co. (1919), 187 A. D. 492, 176 N. Y. S. 3. A authorized B to procure explosion insurance on A's sugar refinery, but A also provided that the insurance must be taken out in companies which also covered the property by fire insurance. (Difficulty of apportioning the loss). (2) B was an insurance agent and had represented the principal, A, in dealings in insurance with C, the plaintiff herein, an insurance company. (3) B insured A in the C company. When A discovered that C had declined to issue fire insurance on the property, A returned the policy to C. Held (for C, reversed). Majority of 3: B was a general agent and the normal legal consequences resulted. Minority of 2: B was a special agent and the peril rule applied. Which was he?
Case No. 29. Ish v. Crane (1862), 13 Oh. St. 574. Was the agency general or special? See pp. 582-585.

Case No. 30. Beck v. Donohue (1899), 27 Misc. 230, 57 N. Y. S. 741. A mere salesman of a liquor dealer has no authority to bind his non-consenting principal to an agreement that instead of cash being paid by the vendee for liquor sold, payment should be made by permitting the dealer to use the outer walls of the building of the vendee for advertising purposes. Query: A, the seller, thought there had been a sale. C, the buyer, thought there had been an exchange. Where was the meeting of the minds? How can the plaintiff recover for goods sold and delivered? Was there not a single indivisible act the whole of which is void? Note: The court held a special agency existed here. The salesman had authority to close deals. He could make many contracts with diverse persons. How could this be?

Case No. 31. Barber v. Britton and Hall (1853), 26 Vt. 112, 60 Am. Dec. 301. One E was injured while in the employ of the A firm who were railroad contractors. A sent B to get a doctor, C telling B that A would pay Doctor C for the first visit. B engaged Doctor C, but led him to believe that A would pay for all visits necessary. A pleaded special agency when sued by C. Held (for C), that A was liable for the neglect of B to carry out his instructions properly. Query: Is this doctrine right? Does it not make it unsafe to employ an agent at any time? Query. Was not B a special agent (single act) and was there not a numerical limitation on his authority? Yes. The case would be clearly wrong, were it not for a vague element of ratification that may justify the decision.

Case No. 32. McClure v. Evartson and Mottley (1884), 14 Lea (Tenn.) 495. A authorized B to sell musical instruments, B apparently having the power to close the deal. B sold a piano to C and took a note payable to A. B endorsed the note and sold it to E, who collected the amount thereof from C, the purchaser of the piano, although both C and E knew at that time that A denied the authority of B to negotiate the note. A sues both C and E. Held, that A could recover the value of the piano from C, and C, in turn, could recover the amount of the note from E. The purchaser of the apparently negotiable instrument loses. B was a special agent. Why? He was not a mere
solicitor. He could make many contracts under one authoriza-
tion. He was not employed to perform a single act or one trans-
action. Query: Was he in the "twilight zone"? More than one act, but less than all, he not having exclusive territory or being the only salesman.

Case No. 33. Cannon v. Long (1925), 135 Wash. 52, 236 Pac. 788. A, an Idaho corporation, employed B to represent it during the year 1922 in the Spokane district of Washington. Both A and B testified that this agency was special, "limited to receiving apples on consignment." C claimed that B had bought apples outright and sued both A and B. Held (for A on appeal, complaint dismissed as to B at the trial), that B had exceeded his authority. Query: Why was his agency a special one? B had authority to handle all the business of his principal in a large territory. He made many contracts under one authori-
ization. Rule: Special agent to buy on consignment only has no authority to buy outright. Query: Is this not very like Fenn v. Harrison (1790), 3 Term. R. 757 (Eng.)?