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AGENCY, GENERAL AND SPECIAL*  
BY BASIL H. POLLITT**  
III  
SITUATIONS IN WHICH THE COURTS HAVE HELD GENERAL AGENCY TO EXIST  
  
The idea of general agency usually connotes connection with some business,96 the idea of dealing with a class of persons, relatively large in number, or the performance of a class of acts,97 the idea of continuity,98 of a relative degree of permanency,99 the idea of many contracts under one authorization.100  
  
There were general agencies in the colony of Virginia101 and in the Plymouth Colony.102  
  
Innumerable definitions of general agency could be given but a few will suffice.103

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97 Butler v. Maples, 9 Wall. 766 (1869).
99 In re Senate Bill, 12 Colo. 188, 21 Pac. 48 (1888) (at 192 of 12 Colo.).
100 This idea of continuity, etc., is not exclusive to general agency as we have seen, supra, note 88.
102 Records of the Town of Plymouth (1667), p. 90.
103 The Pennsylvania, Delaware and Maryland Steam Navigation Co. v. Dandridge, 8 G. and J. 248 at 318, 29 Am. Dec. 543 (1836). "In the law of Principal and Agent, 259, it is stated that by a general agent is understood not merely a person substituted for another for transacting all manner of business, but a person whom a man puts in his place, to transact all his business of a particular kind, as to buy and sell certain kind of wares, to negotiate certain contracts, and the like." Wilcox v. Routh, 17 Miss. 476, 481 (1848), Manning v. Gasbarre, 27 Ind. 399 at 411 (1866), Schwartz v. Maryland Casualty Co., 82 N. H. 177, 131 Atl. 352 (1926), Cooley v. Perrine, 41 N. J. L.
For a number of years an erroneous idea, now fortunately obsolete, was repeated by the text writers and some of the courts to the effect that general agency was synomous with a universal agency. This idea has now long been outgrown and has been recognized by the courts as clearly erroneous.

(a) A "Multitude of Instances" May Create a General Agency.

"A multitude of instances", said Lord Ellenborough, in Whitehead v Tuckett, "constitute a general agency"

It seems clear that a general agency can never be inferred from a special agency and reasonably clear that one special agency cannot be inferred from another.

322, 32 Am. Rep. 210 (1879) (affirmed in 42 N. J. L. 623.). "A general agent, Mr. Russel, in his treatise on Factors and Brokers, p. 75, defines to be either, first, a person who is appointed by the principal to transact all his business of a particular kind; or, secondly, an agent who is himself engaged in a particular trade or business, and who is employed by his principal to do certain acts for him in the course of that trade or business." Restatement, Section 13. "A general agent is one authorized to represent his principal in the contractual negotiations or bargains of a particular business or employment, or in those of a particular class or nature or in those at a particular place."

Birmingham Mineral R. R. Co. v. Tennessee Coal, Iron and R. R. Co., 127 Ala. 137, 28 So. 679 (1899). "A general agency implies authority in the agent to act generally in all the business usually conducted by the principal." The Home Life Ins. Co. v. Pierce, 75 Ill. 426 at 435 (1874). "We understand a general agent to be one empowered to transact all his principal's business," citing 1 Parsons on Contracts, 40. National Furnace Co. v. Keystone Mfg. Co., 110 Ill. 427 (1884), Hooe and Harrison v. Oxley and Hancock, 1 Wash. 19, 1 Am. Dec. 425 (1791). "Agents may be clothed either with general or special powers. 1st. A general agent may do everything which the principal may. Powers of this sort are not usually granted, and none such appear in the present case."

Oran v. The First National Bank of Jacksonville, 114 Ill. 516 (1885), La Point v. Scott, 36 Vt. 603 (1864). "If it be true, then that a general agent can bind his principal to the same extent that the principal can bind himself, this charge was correct. But a general agent, is not a universal agent, having the complete disposal of all the rights and property of the principal. Such an agency completely merges the legal existence of the principal in the agent, and such an agency will never be inferred from general expressions and can only be made out by the clearest proof of express authority." Aetna Indemnity Co. v. Ladd, 135 Fed. 636 at 646 (1905) (C. C. A. Ore.).


Stanley and Co. v. Sheffield Land, Iron and Coal Co., 83 Ala. 260, 4 So. 34 (1887), Cheseboro v. Lockwood, 91 Atl. 188, 88 Conn. 219 (1914). Evidence was offered tending to show that the son of the co-defendant had (1) filed tax lists for her, (2) made deposits in the bank for her, (3) left her bank book to be balanced, and (4) occa-
It is also the law that isolated, non-continuous, although occasionally recurring, acts of special agency cannot amount to a multitude of instances\(^\text{109}\) and the same is true of a number of repeated acts, each one under a separate specific authorization.\(^\text{110}\)

How many instances are there in a multitude then? Are two instances enough or are five needed? Or will only fifty or more suffice?

The authorities do not agree on how many acts under one authorization, occurring at relatively close intervals, will make a multitude. It would hardly seem even arguable that two acts would amount to a multitude,\(^\text{111}\) yet five acts under one author-

sionally drawn checks for her under a power of attorney. Held, that these facts did not lead to the inference that he had authority to bind her by a promise to pay for one-half the cost of a new line fence. *Lippincott v. The East River Mill and Lumber Co.*, 79 Misc. 559, 141 N. Y. S. 220 (1913). "...a single act done under express authority is insufficient to justify the inference that the assumed agent has apparent authority to subject the alleged principal to liability upon subsequent purchases made without actual authority."


\(^{107}\) (In other words, the multitude must be at least fairly homogeneous.) *Huffer v. First National Bank of Shelbyville*, 242 Ill. App. 111 (1926).


\(^{105}\) (1) A was in the retail clothing and jewelry business. He employed B as a salesman to solicit orders. He gave B a grip containing cheap jewelry, which he was authorized to sell to such persons as he saw fit on the installment plan, B to collect the installments (2) B was also to endeavor to sell more valuable articles than those carried in the grip; he reported the names of these prospective customers to A with what he knew about their financial standing, and, if A was satisfied, he delivered the article desired to B, who delivered it to the customer. (3) B pledged many articles of class 2 with pawnbrokers, deceiving A, who, discovering the fraud, reclaimed the pledged articles, hence this suit for an accounting and a lien against A. Held, (for A) that B had no general authority to sell or pawn the articles. He was merely authorized to sell each of them to a particular person. (Therefore he must have been a special agent.) Query: Is it fair to third parties to let an agent be general one minute and special the next, particularly where the two lines of employment are closely connected? *Fowler v. Cobb*, 232 S. W 1084 (Mo.) (1921), Compare, *Longworth v. Conwell*, 2 Blackf. 459 (1831).

zation may create a general agency, at least in the opinion of some courts.

On the other hand, we have the radical views of Lord Cranworth and of the Irish courts. Lord Cranworth, dissenting in Pole v Leask, argued that fifty separate authorizations did not imply a fifty-first.

In Barrett v Irvine the Irish Court of Appeal held that no multiplication of acts as a special agent can convert a special into a general agent, following Foley v Carden.

The only safe generalization to make is that nothing short of a considerable multitude of instances will suffice to permit general agency to be inferred from agencies that would otherwise be special. What amounts to a multitude will have to be more definitely determined by the gradual process of inclusion and exclusion in the future.

The discussion immediately preceding brings up the interesting question as to whether there is an intermediate, unknown, undefined, class of agents. In other words, is there a twilight zone of agency? It must be admitted that there is certainly a great gap between "one" and "all". What sort of an agency exists when we have an agent authorized to do more than one act, but less than all the acts connected with a particular employment or belonging to a particular class, etc. Should not "many" be substituted for "all" in the definition of general agency, or is it preferable to create an entirely new class of agents, which might be designated as the "middle" class of


113 (House of Lords) 33 L. J. Ch. (N. S.) 155 (1863).

114 2 Ir. Rep. (K. B. D) 1907) 462 (1906).


agents? These queries are raised by reflection on a multitude of instances.

Now and then the courts talk about an agent who is "more than a special agent".117 Perhaps, in so doing, they are mentally grasping for this intangible, undefined twilight zone.

(b) General Agencies Have Been Held to Arise from the Agent Himself Being in that Particular Line of Business.

A notion that formerly had much vogue in the law was that, if a principal appointed a person as his agent, who was himself engaged on his own account in that particular line of business, such as a broker or factor, such agent automatically became a general agent, irrespective of the number of acts to be performed by, or the scope of the powers entrusted to him.118 This idea appears to be prevalent in England at present,119 but has just about died out in the United States.120

The true rule would appear to be that such an intermingling of the business of the principal and of the agent may result in invoking an application of the law of "Undisclosed Principal"


118 Bell v. Offut, 10 Bush. 622 (1874). "It is a rule that if one who is himself engaged in a particular calling or business be employed to do certain acts in that trade or business, he will be with respect to his employment a general agent." (Syllabus.). Lobdell v. Baker, 1 Metc. 193, 25 Am. Dec. 358 (1840), Blair v. Sheridan, 86 Va. 527, 10 S. E. 414 (1889). "There can be no doubt that, as a general rule, if a man expressly empowers another as his auctioneer, broker, or factor, or other professional agent, and privately restricts his powers, that a presumption of an authority to deal with the goods according to the agent's usual course of business will arise," (thus attaching a legal consequence that results only from general agency).

119 1 Halsbury's Laws of England, p. 152. "A general agent is one who has authority, arising out of and in the ordinary course of his business or profession, to do some act, or acts on behalf of his principal in relation thereto"

120 Maryland Casualty Co. v. Peoples, 26 Pa. Super. Ct. 142 (1904). "We cannot assent to the proposition that if one transmit an order to a broker in stock or produce or insurance or any other subject of commerce with a limitation as to price or amount or time, the broker may enter into a contract in violation of his instructions which will bind his principal in the absence of conduct on the part of the latter from which a general authority might be inferred. Special orders involving large sums are daily given, and, if it be claimed that brokers so receiving them may disregard their instructions and make different contracts for their principals, clear authority should be shown for such a rule of law."
or even in creating an apparent authority, but will not necessarily make an agency general that would otherwise be special.

(c) The Fact that an Agent Handles All the Business of His Principal in a Certain Area May Make His Agency General.

A very large number of general agencies may be grouped together under this heading. An agent who represents his principal with respect to all his business at a given place or in a certain territory, is almost invariably designated by the court as a general one. The rule operates equally whether the agent be a representative of his principal only at a certain place or is in charge of a certain area or even has a whole state as his territory.

Closely connected with the idea of an agent in a certain area

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121C. C. C. and St. L. Ry. Co. v. Moore, 170 Ind. 328, 82 N. E. 52, 54 N. E. 40 (1907). "Shaw was a general agent since he was authorized to transact all of its business at the particular place," Plummer v. Knight, 156 Mo. App. 321, 137 S. W. 1019 (1911). Compare, C. C. C. and St. L. Ry. Co. v. The Moline Plow Co., 13 Ind. App. 225, 41 N. E. 480 (1895). Here A was the agent of the Plow Co. to distribute (i.e., store, transfer and ship) its products throughout the state of Indiana. A must have been, therefore, a general agent. But held, that A had no authority to sell the goods without the special permission of the Plow Co. "An agent for one purpose only, cannot lawfully do another act and bind his principal." 123St. Louis Southwestern Ry. Co. v. The Elgin Condensed Milk Co., 74 Ill. App. 619 (1898) (Aff'd 175 Ill. 557, 51 N. E. 311, 67 Am. St. Rep. 238). (Agent in charge of Chicago office of a railroad). Fatman v. Lect, 41 Ind. 133 (1872), English v. Ayer, 79 Mich. 516, 44 N. W. 942 (1880), Lowenstein v. Lombard, Ayres and Co., 164 N. Y. 324, 55 N. E. 44 (1900), Johnson v. Jones, 4 Barb. 369 (1848). Compare, Mussey v. Beecher, 3 Cushing 511 (1849), wherein the place rule yielded to other considerations, namely to a numerical limitation.


or at a designated place is the problem of territorial restrictions. Suppose A, my agent, has been given X territory to work in. If A now transacts business professedly on my behalf in area Y, am I bound or may I successfully disavow the act of A, on the ground that his general agency existed only in X?

Nearly all the cases involving a territorial restriction upon the authority of a general agent involve insurance agents. It has been thought that such a restriction was not binding on a general agent. There is, however, practically equal authority, both numerically and qualitatively, to the contrary.

The case of the railroad station agent stands on a somewhat different footing. There has to be one station agent in every town through which the railroad passes. His authority, therefore, is purely local and he is invariably bound by geographical limitations on his authority.

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126 St. Louis and Memphis Packet Co. v. Parker, 59 Ill. 23 (1871). Action against a common carrier for goods delivered to its agent at Cairo and "swept away by the rising flood of the Mississippi." D contended that the agent's authority was limited to the city of Cairo. Held, that if defendant employed Captain H as agent at Cairo and permitted him to advertise his name as agent without noting the above limitation, plaintiff would not be bound by it without actual knowledge thereof. Lightbody v. The North American Insurance Co., 23 Wend. 18 (1840). A geographical limitation on the authority of a general agent for an insurance company is not binding on third parties ignorant of the limitation. Here B was a general agent of the insurance company for Troy and vicinity. Held, that insurance issued by him at Utica, 100 miles away, bound the company. Atlas Assurance Co., Lit'd, London, England v. The Hub, Inc., 109 Okla. 101, 235 Pac. 172 (1925). The A Insurance Co., a foreign corporation, had B as its agent at X and vicinity, E as its agent at Y. B solicited and issued a policy at Y to C, B being a general agent. Held, that C was able to recover from A on the policy.

127 Springfield Fire and Marine Insurance Co. v. Ferrell, 141 Ala. App. 527, 71 So. 615 (1916), Parks v. The President and Managers of the S. and L. Turnpike Road Co., 4 J. J. Marsh. 456 (1830). See Problem Case No. 17, Baldwin v. Connecticut Mutual Life Insurance Co., 152 Mass. 339, 65 N. E. 837 (1903). Here one Cooper was the general agent of the insurance company in western New York and a soliciting agent in Massachusetts. Held, that Cooper could exercise no authority as a general agent in Massachusetts and certainly a mere soliciting (i. e., special) agent could not make the unusual oral contract made here, to-wit, that the life insurance should take effect immediately, before a medical examination and before payment of the premium except by way of a promissory note.

(d) Authority to Handle All Negotiations of a Particular Class or to Make Many Contracts Under One Authorization May Make an Agency General.

A large group of cases which illustrate the meaning of general agency consist of decisions in which the representative of the principal handles all the negotiations of a particular class. Under this state of facts the inference and holding of general agency nearly always follows.129

We have seen that a special agent may have authority to make a number of contracts under one authorization, nevertheless, this factor is much more characteristic of a general agency,130 and is often the decisive element in the case.

(e) Known Agents are Presumed to be General.

Every known agent may be presumed to be a general one by the third party negotiating with him.131 This rule has many


130 Jeffrey v. Bigelow and Tracy, 13 Wend. 518, 28 Am. Dec. 476 (1835). An agent to sell all or any part of a flock of sheep, in such numbers, to such persons and for such prices as in his discretion he thought proper, is a general agent.

131 Oak Leaf Mill Co. v. Cooper, 103 Ark. 79, 146 S. W 130, (1912). (The burden is on the principal to show notice to, or knowledge by, the third party of a limitation on the authority of a general agent.) Three States Lumber Co. v. Moore, 132 Ark. 371, 201 S. W 508 (1918), Arkadelphia Milling Co. v. Green, 142 Ark. 565, 219 S. W 319 (1920), Watertown S. E. Co. v. Davis, 10 Del. (5 Houston) 132 (1877). "Wherever an agency exists, it is presumed to be general, or general about the business with which it is concerned, and the public is authorized so to regard it." But compare, Maher v. Moore, 42 Atl. 721 (1898) placing a rational limit on the rule in Delaware. Gaar, Scott and Co. v. Rose, 3 Ind. App. 269, 29 N. E. 616 (1891) (one does not deal with a general agent at his peril and there is no duty to ascertain the extent of his powers. To support the verdict in the court below the agency may be presumed to have been a general one). Compare, Jasper County Farms Co. v. Holden, 79 Ind. App. 214, 137 N. E. 618 (1923) apparently contra. Austrian and Co. v. Springler, 94 Mich. 343, 54 N. W 50, 34 Am. St. Rep. 350 (1892), Mitchell v. Canadian Realty Company, 131 Mo. 612, 118 Atl. 373 (1822), Sharp v. Knapp, 45 Mo. App. 169 (1891), Midland Savings and Loan Co. v. Sutton, 30 Okla. 448, 120 Pac. 1007 (1911), Daniel v. Pappas, 93 Okla. 165, 220 Pac. 355 (1923), Rae v. Heilig Theatre Co., 94 Ore. 408, 135 Pac. 909 (1919),
important consequences. Followed to its logical conclusion, no agent as to such third party would be a special agent unless the principal brings home to him notice of such fact or the circumstances of the case put him on inquiry. At the trial the third party makes a prima facie case by proving an agency relationship and raising an inference that the act done was within the general line of the principal's business. The burden of going forward with evidence to overcome the presumption of a general agency then rests on the principal.\textsuperscript{132}

An analogous rule with which it is somewhat more difficult to agree is the one announced in a few decisions\textsuperscript{133} that an agent is presumed to be acting within the scope of his authority. This rule seems to go too far to meet the approval of the orthodox, conservative, legal mind. If this rule be correct, then every third party should rely on the presumption in question and have a right to abstain carefully from any inquiry whatsoever, irrespective of whether the agency be general or special. The statement would appear to be as fallacious as the one that everybody is presumed to have a good character.\textsuperscript{134}

Care must be exercised by the courts not to apply the rule of a presumption of general agency in cases where the fact of special agency is clear and the third party should be charged with notice of such fact. The harmful results of such lack of care are shown by the erroneous result reached in \textit{Smith v. Droubay}.\textsuperscript{135}

(f) \textit{Service of Process.}

Statutes frequently provide that process may be served on

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\textsuperscript{134} \textit{Greer v. United States}, 245 U. S. 559, 38 Sup. Ct. 209, 62 L. Ed. 469 (1918).

\textsuperscript{135} Stated \textit{supra}, note 31.
the general agent of a foreign or domestic corporation. To determine the validity of service of the process in question, and thereby to decide whether the court has acquired jurisdiction over the person of the defendant, it is necessary for the court to inquire as to whether the individual served was, or was not a general agent. This inquiry proceeds along the normal lines of the groups into which general agency falls, the test being, whether the person served would be a general agent in other respects.\footnote{Great West Min. Co. v. Woodmas of Alston Min. Co., et al., 12 Colo. 46, 20 Pac. 771, 13 A. S. R. 204 (1888), Toledo, Wabash and Western Ry. Co. v. Owen, 43 Ind. 405, 408, 409 (1873) (a case that seems to run counter to the legislative intent). Little v. Minneapolis Threshing Machine Co., 166 Ia. 651, 147 N. W 872 (1914) (a great deal of the evidence bearing on the point appears to be nothing more than conclusions of law).}

IV

LEGAL CONSEQUENCES FLOWING FROM GENERAL AGENCY

(a) Third Parties are not Bound by Unknown Limitations Placed upon the General Agent by His Principal.

We have seen that special agents must strictly pursue their authority and that third parties deal with them at their peril. The inquiry now arises as to what extent these rules, which are so characteristic of special agency, apply to general agency. The answer is clear—they do not apply at all. Instead of third parties dealing at their peril with a general agent, the situation is just reversed, and the peril is normally on the principal, who has sent his general agent out into the world clothed with the insignia of authority.

Life is too brief and fleeting, the affairs of the modern business world too intricate and complex, the presumption of ordinary honesty too great for men of affairs to pause in their dealings and inquire as to the extent of a general agent’s authority.\footnote{Smith v. McGure, 3 H. and N. 554 (1858). “If a person professes to convey an estate as trustee, the party taking the conveyance from him is bound to ascertain that he had authority, as trustee, to convey it; but the same principal does not apply to commercial dealings. It would be most inconvenience if a person could not go into a shop and purchase an article without first asking the shopman whether he has authority to sell it. It may be that he was merely employed to sweep the shop; but it would be absurd to apply to the general business of}
A third party, then, dealing with the general agent of a principal is not bound by undisclosed or unknown limitations placed on the authority of the agent by the principal. As to such third party, the agent need not strictly pursue his authority, so long as he keeps within the usual line of his employer's business and does not abnormally deviate therefrom, nor does the third party act at his peril in dealing with the agent, and this is true although he has made no inquiry of the principal.

One of the earliest modern cases in which the rule was life the doctrine as to the necessity of ascertaining whether an agent is acting within the scope of his authority—indeed the business of London could not go on." *Southern Pacific Co. v. Duncan*, 16 Ky. L. R. 119 (1894). "A person dealing with the freight agent of a railroad company has the right to suppose that he has all the powers ordinarily incident to his business, unless he has knowledge to the contrary. Prudent men are accustomed to rely on the acts and statements of such agents in reference to the business with which they are connected. Men have not time to stop and inquire of the heads of the departments as to the powers of those whom they have placed in positions for the purpose of dealing with the public. It is only when the custom of limiting the authority of the agent has become so general that it is a part of the ordinary business knowledge of the world that third parties should be affected by it." *The Duke of Beaufort v. Neeld*, 12 Clarke and F. 248, at 285 (1844) (House of Lords). "Now there can be no doubt that Francis Wedge was his agent for the inclosure and for the exchange. He was his general agent for these purposes. The secret limitation imposed by him on the authority of his agent, uncommunicated to the other side, goes for nothing. I have no doubt in the world that the Duke did impose that limitation on Mr. Wedge's authority. That is a matter between Mr. Wedge and him, and it is wholly immaterial to Mr. Neeld." *Lindroth v. Litchfield*, 27 Fed. 894 (C. C. A.) (1886). "If a merchant, at a distance, should establish a house for the sale of merchandise, and put it in charge of an agent, would not that agent have full power to make all sales within the ordinary scope of that business, and according to its usages? In such case, would any instructions to the agent, not notified to third persons, restraining his authority to sell, or directing his manner of making sales, contrary to the usages of the trade, be of the least avail in respect of the validity of sales made by the agent to third persons? None whatever." It must be frankly admitted that another explanation is frequently, perhaps nearly always, possible for the cases cited in support of this proposition, viz. that of apparent authority. In actual authority the manifestation by the principal to the third party coincides with the representation to the agent. In apparent authority the two manifestations are bound to be different. See Restatement, Section 10; *Columbia Mill Co. v. National Bank of Commerce*, 52 Minn. 224 (1893). From this it follows that if A appoints B his general agent, but places a limitation on his authority unknown to C, the third party, C may hold A (1) because of a legal consequence flowing from general agency, or (2) because of an apparent authority. It is submitted that the explanation of general agency is in accord with what the courts say a large part of the time and is more likely to lead to clear, precise, close-cut legal thinking than the explanation of apparent authority.
applied is *Nickson* v *Brohan*, holding that if a master send a clerk who has the general management of his cash concerns with a note to a banker to receive the money, and the servant, instead of so doing, gets another person to give him a draft upon the banker for it, and the banker fails before the draft is presented, the master is liable for the loss. The court said at page 110:

"But the court were all of opinion, that the verdict was well given, and that the master was chargeable, and he only; for a servant, by transacting affairs for his master, does thereby derive a general authority and credit from him, and if this general authority should be liable to be determined for a time, by any particular instructions or orders, to which none but the master and servant are privy, there would be an end of all dealing but with the master."

A hundred years later in *Whitehead* v *Tuckett*, Lord Ellenborough held:

"If these expressions are to be construed into so many restrictions of the power of the brokers, it will follow that they were not only limited as to price, but also as to the terms of sale, which according to the latter were to be the best, and as to the purchasers who were to be safe men; and if in either of these respects the contract made by them should fail, their principal would have a right to reject it. But if this could be done, in what a perilous predicament would the world stand in respect of their dealings with persons who may have secret communications with their principal. Such communications therefore must not be taken as limitations of their power, however wise they may be as suggestions on the part of the principal."

The rule applies to all sorts of circumstances and conditions, thus, it will override a numerical limitation.

Where the rule applies, a requirement by the principal that all contracts and agreements made by the agent shall be ineffective until approved by him, the principal, is of no force, and does not bind the third party unaware thereof.

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138 10 Modern 109 (1713).
139 15 East. 400 (1812). *Walker* v. *Skywith*, Meigs 502, 33 Am. Dec. 16 (1838). "If such instructions, in such a case as this, would excuse the principal from liability, innocent persons dealing with an unfaithful agent would be constantly liable to loss; while his principal, by employing, and giving him credit with the public, would be liable to no responsibility for his frauds, provided he had given him private instructions. This would be reversing the rule of law upon this subject. The rule is, that where one of two innocent persons must suffer by the fraud of a third, he who enabled that person, by giving him credit to commit the fraud, ought to be the sufferer."
141 *Montgomery Furniture Co.* v. *Hardaway*, 104 Ala. 100, 15 So. 29 (1893). (One B was the manager of a furniture store in Montgomery, the owners of which resided in Baltimore. B was employed under a
Under this rule, a general agent may make valid oral contracts with a third party, although limited by his principal to contracts in writing, and the converse of this proposition is also perhaps true, that is, he may make written contracts that bind his principal although restricted to oral ones. A special agent probably has no such authority.

A general agent may buy on credit and thereby render his principal liable, although limited to purchases for cash. A manager of a cooperative association with power to conduct a general mercantile business for it, to buy and sell, etc., binds the association by a purchase on credit, even though he is directed to buy only for cash. Here one B was the agent of A at Alpena, with authority to buy ties, etc., in that vicinity, make contracts for that purpose, and advance money on them. A claimed, when sued on a contract made by B, that B had no authority "to advance supplies and money for ties beyond what was received by him." But held (for the third party), that B was a general agent and the usual rule applied.


143 Furman v. A. L. Fursman, 39 Calif. App. 278, 178 Pac. 870 (1919), Bacon v. Dannenberg Co., 24 Ga. App. 540, 101 S. E. 699 (1919), Contra, Americus Oil Co. v. Gurr, 114 Ga. 624, 40 S. E. 780 (1902). But here the agency was a special one. Freeman v. Leet, 41 Ind. 133 (1872) (fact of settlement by principal with the agent is immaterial), Cruzan v. Smith, 41 Ind. 285 (1872), Rich v. Johnson, 61 Ind. 246 (1878) (the rule is contra in the case of special agency). Compare, English v. Ayer, 79 Mich. 516, 44 N. W. 942 (1890). Here one B was the agent of A at Alpena, with authority to buy ties, etc., in that vicinity, make contracts for that purpose, and advance money on them. A claimed, when sued on a contract made by B, that B had no authority "to advance supplies and money for ties beyond what was received by him." But held (for the third party), that B was a general agent and the usual rule applied. Analogously, Furnas, Irish and Co. v. Frankman, 8 Neb. 429 (1877). Here A employed B as a general agent in the sale of nursery stock, with full authority to employ subordinates in the name of the firm. A and B had an agreement that B's sub-agents should look to him solely for compensation. B employed C, who was ignorant of the aforesaid agreement. Held (for C against A) that C was not bound by the unknown limitation on the authority of B. Analogously, Johnson v. Jones, 4 Barb. 369 (1848). A employed B to manage his grocery store at Syracuse. Held, that B was a general agent. A told B not to sign any more notes for supplies, but to send to him (A) for them. Held, that these directions were "private instructions;" A was
the other hand, the general agent may sell for cash although limited to credit sales.\textsuperscript{145}

Many other applications of the doctrine are to be found in the books.\textsuperscript{146} No distinction is made between "limitations" and

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\textbf{liable. New York Telephone Co. v. Barnes, 35 N. Y. S. 327 (1903)} Compare, Wheeler v. McGuire, 86 Ala. 398, 5 So. 190, 2 L. R. A. 808 (1888). Here the court charged the jury as follows: "If D employed said T, and put him in charge of his retail store at W, to conduct his mercantile business, and placed money to his credit in L. and in N., and authorized him to use this money with cash receipts in replenishing the stock, and told him not to purchase on credit, then T was, as to innocent third parties, D's general agent in that business, and had authority to do whatever was usual or customary in conducting the same, and D would therefore be liable for goods bought from the plaintiff on credit, unless the plaintiff had notice that T's authority was limited to purchases for cash." \textit{ Held} (for D reversed), that the charge was erroneous, because the facts stated, without more, would not justify the inference by the plaintiff that the agent had authority to purchase goods on credit. T was a general agent with special powers to purchase. The doctrine of "general agency" limited. Contra, Parsons v. Armor, 3 Pet. 413, 7 L. Ed. 724 (1830). Query: Would the Supreme Court follow this case today?\textsuperscript{147}

\textbf{German American Building Association v. Drogue, 14 Ind. App. 691, 41 N. E. 397 (1895) (in part).}\textsuperscript{148}

\textbf{Gibson v. Snow Hardware Co., 94 Ala. 346, 10 So. 304 (1891)} (one dealing with general agent is not bound to inquire as to the extent of his authority). Montgomery v. Arkansas Cold Storage and Ice Co., 93 Ark. 191, 124 S. W. 785 (1910) (impliedly). \textbf{Three States Lumber Co. v. Moore, 132 Ark. 371, 201 S. W. 508 (1915).} 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. \textbf{Federal Surety Co. v. White, 88 Colo. 238, 295 Pac. 281 (1930).} \textbf{Interstate Savings and Trust Co. v. Hornsby, 146 S. W. 960 (1912) (Texas, not reported elsewhere).} A was a Colorado corporation engaged in loaning money on real estate. B was its agent for the state of Texas. C borrowed money from A through B at a usurious rate. \textit{Held}, (for C), that B was a general agent and his usurious agreement bound the A company, despite some undisclosed limitation on his authority. Otherwise, "usurers who act through agents could easily ply their vocation without fear of detection." \textit{Associated Press v. International News Service, 240 Fed. 983 (D. C. N. Y.)} (1917), modified by \textit{C. C. A.}, 245 Fed. 244 (1917), affirmed by Supreme Court in \textit{248 U. S. 215, 39 S. Ct. 65, 63 L. Ed. 211, 2 A. L. R. 233. Actua Indemnity Co. v. Ladd, 135 Fed. 636 (C. C. A. Ore.) (1905). Lyons Milling Co. v. Goofe and Carlson, Inc., 46 F. (2d) 241, (C. C. A. Kan.) (1931). \textbf{Empire Rice Mill Co. v. Stone,} 155 Ark. 628, 245 S. W. 15 (1922). One Kunz was authorized by plaintiff to purchase rice on its account in the locality where D was engaged in growing it. K bought 3 carloads of rice from D and gave him a draft drawn directly on plaintiff. Plaintiff claimed he never bought the rice because K's authority was limited to buying rice to be shipped to its place of business in New Orleans, with draft for purchase price attached to the bill of lading. \textit{Held} (for D on its counterclaim), that K was a general agent, hence persons dealing with him were not bound by unknown limitations on his authority. \textit{Brown-ning v. McNear, 145 Calif. 272, 78 Pac. 722 (1904).} "in the determination of the question as to what the agreement actually was, limitations as to the general transaction privately placed by D upon the general authority of the agent, and not communicated to F, cannot, under the
circumstances of this case, play any part.” Robinson v. American Fish
and Oyster Co., 17 Calif. App. 212, 119 Pac. 388 (1911). Phoenix Ins-
surance Co. v. Gray, 107 Ga. 110, 32 S. E. 943 (1899). The Home Life
Insurance Co. v. Pierce, 75 Ill. 426 (1874). Gray v. Merchants Ins. Co.,
113 Ill. App. 537 (1904) (a very queer case). Hodges v. The Bankers
117 La. 130, 90 N. W. 592 (1902). Crescent City Bank v. Hernandez,
25 La. Ann. 43 (1873). (1) A, the defendant herein, was a stock,
money and exchange broker, B was his principal clerk. (2) By power
of attorney A authorized B to (a) transact all his affairs in the city,
(b) to handl all his correspondence, (c) “to make checks and draw
money out of any bank or banks wherein the same may have been
deposited in the name or for account of said appearer.” (3) B drew
an accommodation check in favor of C on a bank in which A then had
no funds. C transferred the check to the Crescent Bank; the plain-
tiff herein. (4) A claimed that B had no authority to draw accom-
modation checks on banks where A then had no funds, or to draw
checks for larger sums than the amount at that time on deposit. But,
held (for the bank), that the defense was bad. Interstate Electric Co.
Vogt and Herpoisheimer, 90 Mich. 125, 51 N. W. 150 (1892), Baker v.
Chicago Great Western Ry. Co., 91 Minn. 118, 97 N. W. 650 (1903),
Sails v. Miller 95 Mo. 475 (1889), Porter v. Woods, 133 Mo. 535, 33
S. W. 794 (1897), Ball v. Allis-Chalmers, Topeka, and Santa Fe Railroad
Co., 141 Mo. 122, 42 S. W. 675 (1897) (an unknown limitation on the
authority of a general counsel of a railroad, viz., that he should not
agree to pay annual salaries, held not binding on local lawyers whom
he employed), Higbee v. Billick, 244 Mo. 411, 148 S. W. 879 (1912),
Maryland Casualty Co., 82 N. H. 171, 131 Atl. 352 (1925), Michigan
Idaho Lumber Co. v. Northern Fire and Marine Insurance Co., 35 N. D.
244, 160 N. W. 130 (1916). The A Insurance Co. insured a saw mill
property in Idaho through its general agents in Chicago. A fire
occurred and the Chicago agents adjusted the loss. A sent a draft for
the amount of the adjustment to the agents, but prior to its delivery
ordered that delivery be held up pending investigation. The agents
went ahead and delivered it. Held, that the delivery of the draft was
good. Query: How can this be? The principal had absolutely pro-
hibited the agent from doing what he did. He disobeyed his positive
orders, and yet delivery was held good. Perhaps the answer is that
the case is just as if his authority had been revoked. Nevertheless he
could still bind his principal to third parties who had no notice. West-
ern Homestead and Irrigation Co. v. First National Bank of Albuquer-
que, 9 N. M. 1, 47 Pac. 721 (1897) (by-laws of a corporation held not bind-
ing on a general manager). Mason v. Commission Co., 15 Johns. 44, 8
Am. Dec. 219 (1818). The Commission Company provided in its by-
laws for the appointment of an agent, his powers and duties being
defined therein. A committee of the directors also drew up regulations
governing the agent. The agent accepted a bill of exchange for rum
not yet deposited with the company. When sued on the draft the
company contended that the authority of the agent was limited to
acceptance on goods already deposited. But, held that the agent was a
general one and the limitation was not binding. Cohen v. Goldstein,
123 N. Y. S. 69 (1911). A authorized B to employ and discharge em-
ployees of A. Held that B was a general agent for hiring. A had per-
haps limited B’s authority to hirings from week to week. Held that
evidence of a hiring of the plaintiff by B for A, for a year period,
should have been admitted. National Surety Co. v. Miozrancy, 53 Okla.
322, 156 Pac. 651 (1916). Here B was the general agent of the A
Surety Co. of New York with authority to execute judicial bonds. Mis-
understanding a telegram from the company which directed him not
"secret" or "private" instructions. Both yield equally to the application of the rule.\textsuperscript{147}

Occasionally, by a deviation from the norm, courts have held that the doctrine of the non-binding quality of limitations of authority applied to both classes of agents, special as well as general\textsuperscript{148} but subsequent decisions in such jurisdictions have brought these juristic units back to the norm of judicial process as exemplified in the numerous decisions cited in notes 137 to 146, \textit{supra}. Now and then, a court will hold that a general agent's silence concerning limitations on his authority cannot render such limitations ineffective,\textsuperscript{149} but on the whole, the cases show that there is very little peril in dealing with a general agent.

The argument apparently has never been advanced that a general agent might act and thereby bind his principal in spite of known limitations on his authority. Such a theory has no support in the law, yet two mid-western decisions lend some

to execute a bond running to C, B did execute such a bond. \textit{Held} (for C), that the rule now under discussion applied. (This is correct. The principal should be liable for his agent's mistakes. \textit{Southwestern Surety Insurance Co. v. Marlow}, 78 Okla. 313, 190 Pac. 672 (1920), \textit{Daniel v. Pappas}, 93 Okla. 165, 220 Pac. 355 (1923), \textit{Jackson v. Emmens}, 119 Pa. 356, 13 Atl. 210 (1888), \textit{Williams v. Getty}, 31 Pa. 461, 72 Am. Dec. 757 (1858), \textit{Thompson, Executrix v. Barrow}, 81 Pa. Super Ct. 216 (1923), \textit{Rice v. Jackson}, 16 Pa. C. C. R. 15 (1894). Here the general agent of a railway promotion syndicate was held to have authority to employ an engineer even though the members of the syndicate had previously agreed among themselves that the general agent should not employ the engineer except on certain conditions which were never fulfilled. \textit{A striking instance of a real limitation of authority being held not binding on a third party dealing with a general agent.}

\textsuperscript{146}An examination of the cases cited, \textit{supra} in the notes under this heading will show at once that this is so.

\textsuperscript{147}\textit{Bryant v. Moore}, 26 Me. 84, 45 Am. Dec. 96 (1846), \textit{Mars v. Mars}, 27 S. C. 132, 3 S. E. 60 (1887). "There are two classes of agents, general and special, and their powers, when properly analyzed, are governed by the same general principle, to-wit: they can do anything within the scope of their agency so as to bind the principal, notwithstanding there may be some secret instructions limiting the powers."

\textsuperscript{148}\textit{Mitrovich v. Fresno Fruit, etc.}, 123 Calif. 379, 55 Pac. 1064 (1899). The court instructed the jury that: "if you should find from the evidence that Dunlap was employed by D and the partnership as an agent to represent them in dealing with the plaintiff and that said Dunlap did not disclose to the plaintiff any limitations on his authority to contract with the plaintiff, and the plaintiff did not know that he was not authorized to contract with reference to the purchase of the figs, and you should find from the evidence that said Dunlap did make contract for the purchase of the figs on behalf of the partnership of the defendant, then you should find for the plaintiff." \textit{Held}, the above instruction was clearly erroneous.
countenance to this argument.\textsuperscript{150} We may confidently assert that such is not, and will not ever be, the law.\textsuperscript{151}

We have hitherto seen that the rule of dealing at one's peril applies with particular severity to special agents who act for their own benefit or that of a third party, rather than for the benefit of their principal. Similarly, the rule of freedom from limitations of authority can have no application to a general agent who, to the knowledge of the other party, perpetrates a fraud on his principal,\textsuperscript{152} or acts for his own benefit or that of a third party.\textsuperscript{153}

It is sometimes argued that "the master at his peril, ought to take care what servant he employs."\textsuperscript{154}

This argument assumes that the principal gives his agent a character when he sends him out into the world to deal with third parties, that he holds the agent out as worthy of credit, as honorable, honest and competent.\textsuperscript{155}


\textsuperscript{151} Hutson v. Prudential Insurance Co., 122 Ga. 847, 50 S. E. 1000 (1904), United States v. Williams, 1 Ware 173, Fed. Cas. No. 16724 (D. C. Maine) (1830).

\textsuperscript{152} The Town of Canaan v. De Rush, 47 N. H. 212 (1866). A civil war bounty case. The Selectmen of the town (general agents presumably) knowingly permitted an inhabitant to conceal a hernia and thereby to pass the medical examination and receive the bounty. A few days later he was rejected. Held (for the Town), in an action to recover the bounty, that the Selectmen had exceeded their authority. They had really perpetrated a fraud on their principal.


\textsuperscript{154} Thus argued the learned colonial barrister in 1 Virginia Colonial Decisions R. 70 (1723-1741) (Barrett v. Gibson).

\textsuperscript{155} Kilborn v. Prudential Insurance Co., 99 Minn. 176, 108 N. W. 881 (1906) (an erroneous decision on the facts). The Farmers' and Mechanics' Bank of Kent County, Maryland v. The Butchers' and Drovers' Bank, 16 N. Y. 125, 69 Am. Dec. 673 (1857). "The bank selects its teller and places him in a position of great responsibility. The trust and confidence thus reposed in him by the bank leads others to confide in his integrity. Persons having no voice in his selection are obliged to deal with the bank through him. If, therefore, while acting in the business of the bank, and within the scope of his em-
In view of the relatively small number of decisions on the point, it is somewhat hard to say whether this idea represents general law. Perhaps such decisions are merely a line of last resource for a court which desires to reach a particular result in the interests of justice on a state of facts rendering such result difficult of attainment.

(b) **Apparent Authority as Related to General Agency.**

Apparent authority, of course, may create a general agency, but this is a distinction as to the origin of the particular general agency under observation, not as to the legal effect thereof. Apparent authority and general agency may also be treated as synonymous by a court, and apparent authority assumed to exist where there is really nothing more than employment, so far as is known or can be seen by the party dealing with him, he is guilty of misrepresentation, ought not the bank be held responsible? This case probably overrules the *President, Directors and Co. of the Mechanics Bank v. The New York and New Haven Railroad Co.*, 15 N. Y. 599 (1856), wherein the opposite view was expressed. The *Massachusetts Life Insurance Co. v. Eshelman*, 30 Oh. St. 647 (1876). The soliciting agent of the A Insurance Company accepted an application for insurance from C and then forwarded to the company a spurious, forged application, thereby concealing from his principal the true state of the health of the assured. Unaware of the fraud practiced upon it, the company issued a policy, based, of course, on the forged application. But, held (for the deceased assured), that the fraud of the solicitor must be borne by his principal. Note: A truly astonishing decision. The fraud was not for the benefit of the assured, it was hardly an act of the authorized class, it was malodorous with evidence of collusion. It benefited only the third party. This result was reached by erroneously applying the doctrine now under discussion. The court talks of notice to the company through the solicitor, but clearly their interests were adverse. The solicitor was out to get “his,” no matter what happened to the insurance company. The *Pennsylvania Company v. The Franklin Fire Insurance Company, of Philadelphia*, 181 Pa. 40, 37 Atl. 191, 37 L. R. A. 780 (1897), *The Bank of Kentucky v. The Schuylkill Bank*, 1 Pars. Eq. Cas. 180 (1846).


eral agency, and, lastly, apparent authority may be genuinely super-added to a general agency.

The number of decisions in which the courts have talked about apparent authority, when there was really nothing more than general agency, is astonishing.

With some diffidence, in view of the great stress laid on apparent authority by the courts and law schools, the suggestion is made that the term is a much over-used and much over-emphasized phrase. It is used with extreme frequency where another equally good explanation is that of general agency. It is submitted that "general agency" is less vague and has a more definite content than "apparent authority", which is likely to become a "catch-all" like the phrases "res gestae", "estoppel", "as between two innocent parties", "caveat emptor", etc.

To be sure, general agency need not be known to the third party, whereas apparent authority must be, from which it follows that there are some cases in which the two are not the same and the term apparent authority serves a real purpose.

(c) A General Agent May Become a Special Agent "Ad Hoc."

It is easy to conceive the proposition that a special agent for one purpose may become a special agent of the same principal for a different purpose, without thereby changing the classification of his agency. This situation tends to become quite complicated, however, when a general agent becomes also a special agent of the same principal.

The trouble lies in the fact that it may amount to setting a trap for the unwary third party who, confidently and properly relying on the fact of general agency, assumes that the agent is also a general one with respect to the deal in which he is now representing his principal. This assumption is a perfectly natural one, yet the cases show beyond doubt, that a general

158 Roehl v. Volckmann, 103 Wis. 484, 79 N. W. 755 (1899).
160 Doan v. Duncan, 17 Ill. 272 (1855).
161 Restatement, Section 10.
162 Compare, Doan v. Duncan, 17 Ill. 272 (1855).
163 Russell and Co. v. Cox, 18 Ky. L. R. 1087, 38 S. W. 1087 (1897) (solicitor for other machinery authorized to sell an engine and boiler).
agent may become a special agent ad hoc, in which case the grant of specific power ordinarily overrules the charter of general authority.\(^\text{104}\)

Of course one may be a special agent in one transaction, even though ordinarily a general agent, where the transaction involved is entirely outside the scope of the general agency.\(^\text{105}\)

(d) A General Agent is Restricted to the Business of the Principal.

There are certain well-recognized limitations on the authority of a general agent. He is not an alter ego of his principal.

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\(^{104}\) McDermott v. Bancroft, 219 Ala. 205, 121 So. 735 (1929). Action by stage carpenter against a theater for wages. Defense: payment to business agent of stage employee's union. Reply (at trial) that the business agent had authority to collect only one account. Held (for plaintiff affirmed), that Pistole (Oh, Bard of Avon), the business agent, was not the general agent of the individual members of the union merely because of his position as local agent, thereof, as a matter of law, as contended for by defendant. Brutinel v. Nygren, 17 Ariz. 491, 154 Pac. 1042 (1916). Here one Dunn was the general agent of his mother-in-law (a French woman) to manage a drug store at Clifton. Later he became her special agent to find a purchaser for the business satisfactory to the lady-owner. (The Alabama case, supra, is weakened by the fact that the union is a sort of legal entity so that it could be said that there were two principals.) Ladd v. Town of Franklin, 37 Conn. 53 (1870) (selectmen, who are ordinarily general agents, became special agents under the particular facts of the case which involved a civil war bounty). Hakes v. Myrick, 69 Ia. 189, 28 N. W. 575 (1886) (general agent in charge of land given special authority to collect a note). Vigers v. Kilshan, 13 La. 438 (1839) (agent in entire charge of a tobacco business specifically directed to ship three hundred hogsheads of tobacco to London under certain circumstances). Collateral Loan Co. v. Sollinger, 135 Mass. 135, 80 N. E. 811 (1907) (stated, supra note 108). Scott v. McGrath, 7 Barb. 53 (1849) (stated supra note 37). Meggs v. Meggs, 15 Hun. 453 (1878). A residing in Peru, had, as a business correspondent in New York, one B. A wrote B two letters, the intent of which was that B should buy $100,000 in bonds and deliver them to C, the bonds to be held by C for A's children, provided only that A encountered a threatened pecuniary disaster, A intending otherwise to still retain a power over them. B bought the bonds and delivered them to C, taking a receipt therefor, in which it was stated that they were to be held in trust for A's children. Held, (for A, bonds returned to him), that B was a special agent and had exceeded his authority. Even though B was a general agent, he acted here under special authority and the defendants were donees. If bona fide purchasers had been involved, then a different result might have been reached. Interstate Securities Co. v. Third National Bank, 231 Pa. 422, 80 Atl. 888 (1911) (chief bond officer of a securities company given specific authority to pledge certain bonds. It appears, however, that the third party knew of the special authorization granted to the agent). Daniel v. Adams, Ambler, 495 (1764) (steward given special authority to sell two old houses at auction).

\(^{105}\) Forman and Co., Proprietary, Ltd. v. The Ship Ludesdale, A. C. 190 (1900) (Privy Council).
and all general grants of authority or holdings out must be judged by the business with reference to which they are given.\textsuperscript{166}

In other words, general agency is to be restricted and limited to the business of the principal in which the agent is employed.\textsuperscript{167}


\textsuperscript{167} Gates Iron Works v. Denver Eng. Works Co., 17 Colo. App. 15, 67 Pac. 173 (1901). P sold mining machinery to the Gates Co. through the latter's agent, Berkey. The Gates Co. was located in Chicago and its business was the manufacturing of mining machinery. The Gates Co. furnished Berkey with letterheads and cards stating their business and the fact that B was their "manager," also giving B's Denver address. The Gates Co. knew that B advertised himself as manager of their Denver office. Held (for the Gates Co., reversed), that B was the general agent of the Gates Co. at Denver, but his authority was limited to selling. Such being the business of the Gates Co., even its general agent could not buy the articles which it itself sold. Stowe v. Wyse, 7 Conn. 214 (1828). The general agent of a manufacturing company is not authorized to transfer by deed the real estate of the company, without a special power; but this is explainable by another rule of agency, that of "equal dignity." Thomas v. Harding, 8 Me. 417 (1832). In a partnership composed of A, B, C and D, C was assigned the duty to "make sale of the paper and collect stock;" i.e., rags. C gave the firm's promissory note (it owned a paper mill) for a bale of factory cloth. Held (defendant not liable on the note, the others having defaulted). The cloth was no more suitable for the business of the firm than so much sugar, coffee, or tinware. Hence the act of the agent (partner), did not bind the firm. Davies v. Eastern Steamboat Co., 94 Me. 379, 47 Atl. 896, 53 L. R. A. 239 (1900). Even though the captain of a ship is a general agent, he cannot bind the owner by accepting a telegram addressed to a passenger on board ship. It was not part of the business on which he was employed. "A general agent." Odiorne v. Maxey, 13 Mass. 178 (1816) (general agency held not to confer authority to bind principal by an accommodation endorsement. "The authority of a general agent is not unlimited"). Cowan v. Sargent Manufacturing Co., 141 Mich. 87, 104 N. W. 377 (1905). Here the principal was a Michigan concern engaged in the manufacture of reclining and folding chairs, revolving bookcases, hospital supplies and invalid goods. The principal had a branch store in New York City, of which store the agent was in charge (general agency, place rule). The agent purchased bedroom and parlor furniture of the plaintiff in the name of the principal (defendant herein). Held (for the principal, affirmed), that the general agent went outside of the business of his principal. The Planters' Bank v. Cameron, 11 Miss. 609 (1844) (another case of an accommodation endorsement). The Mechanics' Bank v. Schaumberg and Hills, 33 Mo. 228 (1866) (agent holding powers of attorney from two principals cannot bind either of them by a joint act). Brosnahan v. Philip Best Brewing Co., 26 Mo. App. 336 (1887). A owned a saloon and fixtures and goods therein. Being called away by illness of his father, he left his brother B in charge. B, being pressed by C, for a debt due him from A, turned possession of the property over to C. A, returning, sues C in trover. Held (for A affirmed), "that B had no authority to dispose of A's business. It was not within the line of his agency." Brockway v. Mullin, 46 N. J. L. 448, 50 Am. R. 442 (1884). A general agent to manage a hotel cannot bind his principal by a contract for the safekeeping of hired horses. It is not part of the business of a hotel, and
It is also limited to the direct interest of the property of the principal.\textsuperscript{168}

In an Iowa case,\textsuperscript{169} it was held erroneous to instruct a jury "if a party hold out another as his general agent, he is bound by the agreement of such agent in regards to the business of the agency". The court thought that there was a great difference between the scope of authority of a general agent and the business of his agency. This distinction would appear to be an artificial one.

Not only is general agency restricted to the business of the principal, but the general agent is also limited to his own department of the business,\textsuperscript{170} provided his authority extends no further.

would give a general agent unlimited authority. Cochran and Rathburn v. Newton, 5 Denio 482 (1848). Providence Machine Co. v. Browning, 72 S. C. 424, 52 S. E. 117 (1905). An agent appointed to rent land or manage it to suit himself has no authority to make his principal a member of a partnership. Compare, Tramel v. Turner, 52 S. W. 325 (1904) (Tex.—not reported elsewhere). Mauk v. Lee, 66 Wash. 184, 119 Pac. 185 (1911). A case where the language of the power of attorney was held to convey power to the agent to act in matters other than the business of the firm in which the principal was a member.\textsuperscript{175} Perry v. Jones, 18 Kan. 552 (1877). Compare, Blair v. National Shirt and Overalls Co., 137 Ill. App. 413 (1907).

\textsuperscript{122} Richmond v. Greeley, 38 Ia. 666 (1874). Pinkerton v. Gilbert, 22 Ill. App. 588 (1887). Here one Atkins was superintendent of the mills of a cotton company, one of the defendants herein. He had general oversight of the mills, hired and fired operatives, and bought and sold goods for the company. He employed Pinkerton, a detective agency, to institute and prosecute a replevin suit in which the plaintiff was arrested on body execution. Plaintiff now sues Pinkerton and the cotton company for false arrest.\textsuperscript{176} Held (for the cotton company, against Pinkerton, affirmed), that A's duties had nothing to do with the fiscal concerns of the cotton company such as the receipt or payment of money, or collection or enforcement of demands in favor of the company. Consequently, his employment of Pinkerton did not bind the company and,\textsuperscript{177} respondeat superior did not apply.\textsuperscript{178} C. C. C. and St. Louis Ry. Co. v. The Moline Flow Co., 13 Ind. App. 225, 41 N. E. 480 (1895) (stated, supra note 120). Compare, Adriance v. Roe, 52 Barb. 399 (1863). The rule applied here to the superintendent of the manufacturing company whose actual authority was "to have charge of the manufacturing department of the work, audit bills, for materials, and to appoint and discharge foremen and workmen."\textsuperscript{179} Held, that the superintendent had no authority to sell iron belonging to the company, or to borrow money on its account. Mundis v. Emig, 171 Pa. 417, 32 Atl. 1135 (1895). A general authority to procure contracts to dig artesian wells does not imply any authority to do the work or to engage workmen for that purpose. Such authority belongs to another department of the business. Cable v. Paine and Co., 8 Fed. 788 (C. C. Ia.) (1881). A general traveling agent for the sale of manufactured lumber has no authority to enter into a contract on behalf of his principal for the sale of timber in the rough.
General agency may also be restricted by the settled custom of the business. It is axiomatic that custom may enlarge an authority, but this point is outside the scope of this article. The effect of custom as restricting an authority occurs rather infrequently

GENERAL AGENCY—RESTRICTED TO THE USUAL—DOES NOT INCLUDE THE UNUSUAL

General agency seldom implies authority to perform an unusual or extraordinary act, not connected, in the ordinary course of events, with the business on which the agent is employed. For the most part it is limited to the usual and normal way of acting.

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171 *U. S. Life Insurance Co. v. Advance Co.*, 30 Ill. 549 (1875). Here one Green was general agent for the insurance company for the state of Illinois and contracted a bill for advertising. It seems that there was a general custom in the life insurance business not to allow their general agents any discretion in incurring debts for advertising (i.e., they could not charge the credit of the principal, insurance company, without its specific consent). Held (for the Insurance Company), that this custom restricted the authority of the general agent.

172 *Shaw v. Stone*, 1 Cush. 228 (1848). A cotton and woolen company appointed B and company “general agents in Boston for selling and buying and also for taking a general supervision and control of the affairs of the company.” Held, that B and Company could not resort to unusual and expensive means of raising money for its principal. Query: Suppose there be a panic or a depression; is not the agent supposed to do his utmost? *Bohannan v. Boston and Maine Railroad*, 70 N. H. 526, 41 Atl. 106 (1897). Here the claim agent of the railroad, B, obtained a release from the plaintiff in consideration of $600 and steady employment during good behaviour. Plaintiff sues for breach of this agreement. Held (for the defendant railroad), that even if B were a general agent of the defendant to settle claims, the plaintiff was not justified in believing that he had authority to make extraordinary and unusual contracts, such as an agreement to employ for life. Query: It seems that the claim agent could agree to give employment for a limited time with no specific limit being set. Where, then, is the dividing line? Is “for life” the only limit, and anything up to that all right? *Kipp v. East River Electric Light Co.*, 46 N. Y. St. Rep. 387, 19 N. Y. S. 387 (1892). The superintendent (general) of an electric light and power company has no implied authority to employ an undertaker to bury an employee of the company, where it does not appear that the death occurred in the service of the company or on its premises. *Thiel Detective Service Co. v. McClure* (C. C. A. Ky.), 142 Fed. 952, 4 L. R. A. (N. S.) 843 (1906). Construction of a power of attorney giving general authority. *Held*, not to confer authority to employ a detective agency to investigate the management of a corporation in which the principal was a stockholder. Compare, *Dunwoody v. Saunders*, 50 Fla. 202 39 So. 965 (1905). A hired a barge or lighter of B, which was subsequently lost, hence this suit. The hiring was done by A’s general agent, C, who had charge of A’s barge and tug-boat business. The question was whether A’s agent, C, had author-
CONCLUSION

I began by pointing out a seeming discrepancy between recent writers on Agency and the professional teachers of the subject, on the one hand, and our brothers practicing at the bar, on the other, with respect to the existence, usefulness and desirability of a distinction between general agents and special agents. After reading most, perhaps nearly all, of the cases in point, with some diffidence I challenged the position of the teachers. I have attempted to show that special agency may, it is true, be created by an appointment to perform a single act or transaction, but that this is not the only way in which special agency may be created. I have shown that a limitation of authority may create a special agency and that this is especially the case with respect to numerical limitations and that class of agents known as solicitors. We have seen that general agency may also be created in various ways, notably as an inference from a multitude of instances, or from the fact that the agent is the sole representative of his principal in a given territory, or from authority to handle all negotiations of a particular type, or to make many contracts under the one authorization, or by the invoking of a rule of evidence that known agents may ordinarily be presumed to be general ones.

We have examined not only the methods in which general and special agencies may be created, but also the legal consequences that flow from each class of agents. We discovered that third parties dealt at their peril with special agents, that the latter must strictly pursue their authority, and that third parties dealing with them were bound by limitations of authority imposed upon them, even though such limitations had not been disclosed. When we looked into general agency from this standpoint, however, we discovered that the legal consequences flowing therefrom were practically the antithesis of those flowing from special agency. The great principle of general agency, we soon found, was that third parties are not bound by undisclosed limitations placed by the employer upon his general agent. The limit of the general agent’s authority, we saw, was usually the

ity to agree that A should become an insurer during the voyage rather than an ordinary bailee. Held (for B, reversed), that C had authority to bind his principal as an insurer. Dictum: that he could have bought the barge outright.
business of the principal. Our study did not embrace cases of apparent authority, as such, but, in so far as they came up incidentally, in our study of cases decided on general or special agency, we concluded that apparent authority plays a very negligible part in special agency, and that "general agency" will explain many, if not most, cases covered by the loose term "apparent authority", the use of which is likely to lead us into a "jurisprudence of conceptions".

And so I have endeavored to portray a picture of the pertinent facts of the legal order, as expressed in the precedent element of law, faithfully and accurately. If my conception of the facts in the problem is correct, and should be substantiated by other investigators, then let us sincerely hope that this view will prevail, and that the "unhappy gulf" between the jurists and the judges will exist no more.

(To be concluded in November, 1933, issue of Kentucky Law Journal.)