AGENCY.—A SUMMARY OF RECENT DECISIONS RELATING TO RIGHTS AND LIABILITIES ARISING OUT OF THE CONTRACT.

[By Wm. Evans, in London *Law Times.*]

The following recent cases illustrate the rights and liabilities arising out of the contract of agency:

In all the cases in which an agent has been held personally liable for misrepresentation, it will be found that there was a misrepresentation in point of fact as to the agent having power to bind his principal, and there appears to be no doubt, in the words of Lord Justice Mellish (Beattie *v.* Lord Ebury, 27 L. T. Rep. N. S., 398; L. Rep. 7 Ch., 777; 41 L. J., 804, Ch.), that "it would be held that if there is no misrepresentation in point of fact, but merely a mistake or misrepresentation in point of law, that is to say, if the person who deals with the agent is fully aware in point of fact what the extent of the authority of the agent is to bind his principal, but makes a mistake as to whether that authority is sufficient in point of law or not; under these circumstances I have no doubt that it would be held that the agent is not liable." Hence, when three directors of a railway company, by a letter to the company's bankers, requested them to honor the cheques of the company, signed by two of the directors and countersigned by the secretary of the company, and cheques were accordingly drawn signed in the above manner, and were paid by the bank, the court held that the letter did not amount to a representation that the directors had more than the ordinary authority of railway directors: Ib.

The next case illustrates the liability of agents upon their contracts. In Weidner *v.* Hoggett (1 C. P. Div. 533), which was decided in 1876, the plaintiff had refused to sign a charter-party without an undertaking from the charterers that there should be no undue detention of his ship. The defendant, who was a clerk employed to arrange the terms for loading, accordingly gave the following undertaking: "I undertake to load the ship in ten colliery working days, on account of Bebside Colliery. W. S. Hoggett." Upon a claim being made by the captain for demurrage, the defendant denied liability, but offered a sum in satisfaction. The jury found that the contract was between the captain and the defendant, that there was sufficient consideration for it, and that the contract was with the defendant personally. The court held that the admission and contract fully sustained the findings of the jury.

A surveyor of highways, appointed by the vestry of a parish, may be liable for accidents due to the condition of such highways: Pendlebury *v.* Greenhalgh, 1 Q. B. Div., 36. Apparently, the 56th section of 5 & 6 Vict., c. 50, which imposes a penalty on a surveyor who causes any heap of stones or other matter to be laid on the highway, and allows it to remain there at night without proper precautions, does not apply to cases where the road itself is dangerous and not the materials.—Ib.

A cab proprietor is liable for the acts of the driver, while the latter is acting within the scope of the purpose for which the cab is intrusted to him.—Venables *v.* Smith, 2 Q. B. Div., 270.

Premiums paid in respect of an illegal insurance cannot be recovered back, for the whole transaction is void, and the law will not aid any of the parties.—Allkins *v.* Jupe, 2 C. P. Div., 375.

In an action for negligence, negligence must be proved. In Pearson *v.* Cox, 2 C. P. Div., 369, decided in 1877, the defendants were builders and contractors, who, after the outside of a house was finished, had removed the outer boarding, and had employed a sub-contractor to do the internal plastering. One of the men employed by the sub-contractor shook a plank which caused a tool to fall out of a window of the house, and the tool in falling injured the plaintiff who was passing along the highway. The jury found that the boarding had been properly removed, but that the injury was caused by the negligence of the defendants in not providing some other protection for the public. The court held that the defendants were entitled to judgment, as there was no negligence.

The principle of Great Western Insurance Company *v.* Cunliffe, L. Rep., 9 Ch., 525, was applied in 1877 to the case of Baring *v.* Stanton, 3 Ch. Div., 502; 35 L. T. Rep., N. S., 652; 35 W. R., 237, and the custom was held binding upon a foreigner. The Court of Appeal again