

SPECIAL AGENCY.

he has the implied power to warrant his soundness; that is reasonable and proper. He may also sell him for a fair price. But if the agent were to offer a valuable horse for twenty-five dollars, the purchaser should be at once put upon inquiry as to his agency, and whether he had the right to sell him at such a sacrifice; or, if he warrants him to trot in 2.30, the principal would not be bound, unless he had given proper authority for such a warranty, as that would be an extraordinary warranty, and the purchaser should be at once put upon inquiry.

In both cases of general and special agency, the authority of the agent, whether conferred in writing or by parol, includes all the necessary and usual means of executing it with effect: Story on Agency, § 58; 1 Parsons on Contracts, 57; Paley on Agency, 189; 2 Kent, 618; 1 Chitty on Contracts, note to page 286.

If, then, the agent be prohibited by his principal from using certain of these means, which would ordinarily be necessary and usual, what will be the effect upon third parties dealing with the agent in ignorance of this prohibition? In the case of a general agent the principal would certainly be bound, and in the case of a special agent, although this precise point is by no means settled in the books, it would seem that he should also be bound; otherwise innocent third parties would only know the existence of the limitation after the injury had been done. When too late they would discover that the liability of the professedly contracting party was but a myth and a hallucination. Suppose, for example, that a merchant should intrust a note to a broker for negotiation, with the direction "not to go to a National Bank with it," but the broker should sell it to a National Bank, who hold it till maturity. If the merchant has received the proceeds, he would of course be liable on that ground, but if the broker had converted them, could the merchant successfully defend against the note in the hands of the bank on the ground of his prohibition? It would certainly seem that in reason and justice, and by analogy, he could not, whether the broker be considered as a general or a special agent; otherwise there can be no safety in dealing with an agent.

In *Anderson v. Coonley*, 21 Wendell 280, it is distinctly stated, "The authority of the agent being limited to a particular business, does not make it *special*; it may be *general* in regard to that, as if the range of it was unlimited."

Nor can the distinction between a general and special agency be established by inquiring whether this was the first time that the agent had acted as such, for an agency is established either by the authority actually conferred upon the agent, or by the manner in which he is held out to the world as possessing authority, and either of these may be the same in a first as in a subsequent employment or act. If a man appoints another to do all his business in a particular line, he becomes forthwith general agent within that line, and his first act in that capacity binds his principal precisely as though he had acted during a term of years.

In *Barber v. Brittan & Hall*, 26 Vermont 112, which was a case of first employment, Bennett, J., in delivering the opinion of the court, states the case and the law briefly and clearly: "The defendants sent their own agent for the plaintiff (a physician), and clothed him with authority to employ plaintiff to visit the boy, and though the agent was told to inform the plaintiff that the defendants would pay him for the first visit, yet this the agent for some cause neglected to do, and employed the plaintiff generally to attend the boy so long as he might need medical aid. The law is well settled that if an injury is to result to one man from the omissions or neglect of an agent of another, the principal must be held liable. In this cause the defendants, through the neglect of their agent, caused the services to be rendered upon their credit, and the case is within the above principle." And Judge Story tells us in § 131 of his work on Agency, it makes no difference in the case of a factor who from the nature of his business possesses a general authority to sell, whether he has been ordinarily employed by the principal to sell or whether it is the first and only instance of his being so employed by the principal; for still being a known factor, he is held out by the principal as possessing in effect all the ordinary general authority of a factor in relation to the particular sale. And again, § 133, "So far as the agent, whether he is a general or special