

## SPECIAL AGENCY.

compared and copied by writers, the deeds are photographed, the printer gets the plates as his copy, and the originals, instead of being left to be thumbed and mauled and torn by persons who have to refer to them, are deposited at once in fire-proof safes. It appears that legislation will be necessary to make this wonderful invention available in the office, but surely this will not be long delayed."

## SELECTIONS.

## SPECIAL AGENCY.

Though the principles of law applicable to cases of general agency are well settled, and are laid down with great perspicuity by Story, Parsons and other text writers, the distinctions between general and special agencies, and the different rules governing the liabilities of principals, seem to be still involved in much uncertainty and confusion. How a special agent is to be distinguished from a general agent, becomes frequently a subject of much importance and great nicety, and there is often no certain criterion. Moreover, it is easier to lay down a rule than to determine its application in a particular instance, and there may be great subtlety and refinement in discussing the principles, without reaching a solution satisfactory to a candid mind in the case at bar.

A special agent is defined generally by Story as "a person appointed to act concerning some particular object;" by Parsons, as "one authorized to do one or two special things;" by Chitty, as "one appointed only for a particular purpose, and invested with limited powers;" by Kent, as "one constituted for a particular purpose and under a limited power;" though all these writers recognize these definitions as incomplete, and admit that the question whether the agent falls within them by no means always determines the rule of liability of the principal to third parties.

A most reasonable and proper rule, founded upon the soundest reason and clearest justice, is stated by Chitty in his excellent work on Contracts, though it seems to have been overlooked by most of the elementary writers. "If the agent being himself engaged in a particular trade or business, be employed by the principal to do certain acts for him in that trade or business, he will in each

case be held to be, with reference to his employment, a *general* agent, and the public having no means of knowing what are in any particular case within the general scope of the agent's powers—the wishes and directions of the principal—the latter will be liable even though his orders be violated. In such a case the principal having for his own convenience induced the public to consider that his agent was possessed of general powers, is bound by the exercise, on the agent's part, of the authority which he thus allowed him to assume," p. 284. This principle, so wise and salutary as to commend itself at once to every clear-thinking mind, is supplemented on p. 289 by the further rule: "Factors and brokers are both, it would appear, general agents, and hence it follows that—except in cases where it is known to be usual to limit their authority, although the actual limit be not known—all contracts made by them in the ordinary course of their employment, without notice by third parties of their private instructions, and without fraud or collusion, are binding on their principals."

These rules as thus laid down contain all the restrictions necessary to the safe conduct of business, and the protection of principals so far as they should be protected as against innocent third parties; for in cases of agency the universally recognized principle is to be applied that he who, even without intentional fraud, has enabled any person to do an act which must be injurious to himself, or to another innocent party, shall himself suffer the injury rather than the innocent party who has placed confidence in him. The principal who has appointed the agent, has clothed him with the *indicia* of agency and authority, and has thus in the furtherance of his own business, given him the power and position to do injury, should be the one to suffer for any abuses or misapplication of that power or authority. And the reason and justice of this is precisely the same in cases of general and of special agency. The principal of course should not be bound by any act of the special agent beyond what it was reasonable and proper or usual for the agent to do in the course of his agency.

If the owner sends another with a horse for sale, it is well established that