

SPECIAL AGENCY.

innocent men, and a special agent would be nothing more nor less than a man sent out, with a roving commission, to perpetrate continuous frauds upon the community.

It is also now well established, that a special agent, even acting without authority, may in certain cases bind his principal. This is true in case of a bank teller who certifies checks when the drawer has in fact no funds on deposit. This principle has been twice decided by the New York Court of Appeals, and each time elaborately argued and discussed. In the first case, *Farmers' and Mechanics' Bank of Kent Co. v. Butchers' and Drovers' Bank*, 14 New York 627, the court say that although the plaintiff was chargeable with knowledge that the power of the teller to certify checks was confined to such as should be drawn by parties having money on deposit, the teller having been appointed by the bank to create evidence on their behalf of that fact, and authorized to hold out to parties inquiring for the existence of such funds, the bank should be held liable. In the same case as reported in 16 New York, Judge Samuel L. Selden, in delivering the opinion of the court, and treating the case as one of an agency specially restricted, said, p. 133, that the principle assumed by the defence, that principals are bound only by the authorized acts of their agents, except where the agent has been apparently clothed with an authority beyond that actually conferred, is too broad to be sustained; that principals have repeatedly been held responsible for the false representations of their agents, not on the ground that the agents had any authority, either real or apparent, to make such representations, but for reasons entirely different; citing with approval Lord Holt's remark in *Hern v. Nichols*, 1 Salkeld 289: "Seeing somebody must be a loser by this deceit, it is more reasonable that he who employs and puts a confidence in the deceiver should be a loser, than a stranger." And on page 135 Judge Selden lays down the further rule, that where the party dealing with an agent has ascertained that the act of the agent corresponds in every particular, in regard to which such party has or is presumed to have any knowledge, with the terms of the power, he may take the re-

presentation of the agent as to any extrinsic fact which rests peculiarly within the knowledge of the agent, and which cannot be ascertained by a comparison of the power with the act done under it. This case is expressly affirmed in *N. Y. & N. H. R. R. Co. v. Schuyler et al.*, 34 New York 30, where the question of the liability of the principal is elaborately discussed, and the special rules above stated are distinctly re-affirmed.

Elaborate as have been the discussions, both judicial and by the text writers, of the questions relating to special agents, it is much to be regretted that they have not been more definitely and authoritatively settled. But the general tendency seems to be in favor of protecting innocent third parties who have acted upon the confidence of an authority which in the ordinary course of business they were justified in believing that the agent possessed, leaving the principal to settle with the agent for any departure from the strict letter of his instructions.

JOSIAH H. BISSELL.
Chicago.

The philanthropists who are exerting their influence toward the utter abolition of capital punishment may, if they cannot secure this, endeavor to mitigate the rigors of the death penalty. Hanging has some features which might be eliminated by a change in the method. Thus beheading would probably be less painful, as it is much quicker, although there is a great prejudice against mutilating the body of even a criminal. We shall not expect to see hanging displaced by decapitation. The same is true in respect to blowing the criminal to pieces at the mouth of a cannon. Poisoning, by certain quick and deadly poisons, would be much easier for the doomed man, and much less disgraceful, than hanging. If the condemned should choose a slow and yet painless poison, he might be allured, like Socrates, to discourse on immortality, and counsel with relatives and friends, pending dissolution. Of course, few modern criminals would be expected to illustrate the domain of philosophy by the production of the materials for a *Phaedon* at the point of death. But one cannot but wonder what philological revelations Ruloff might have made, had he been al-