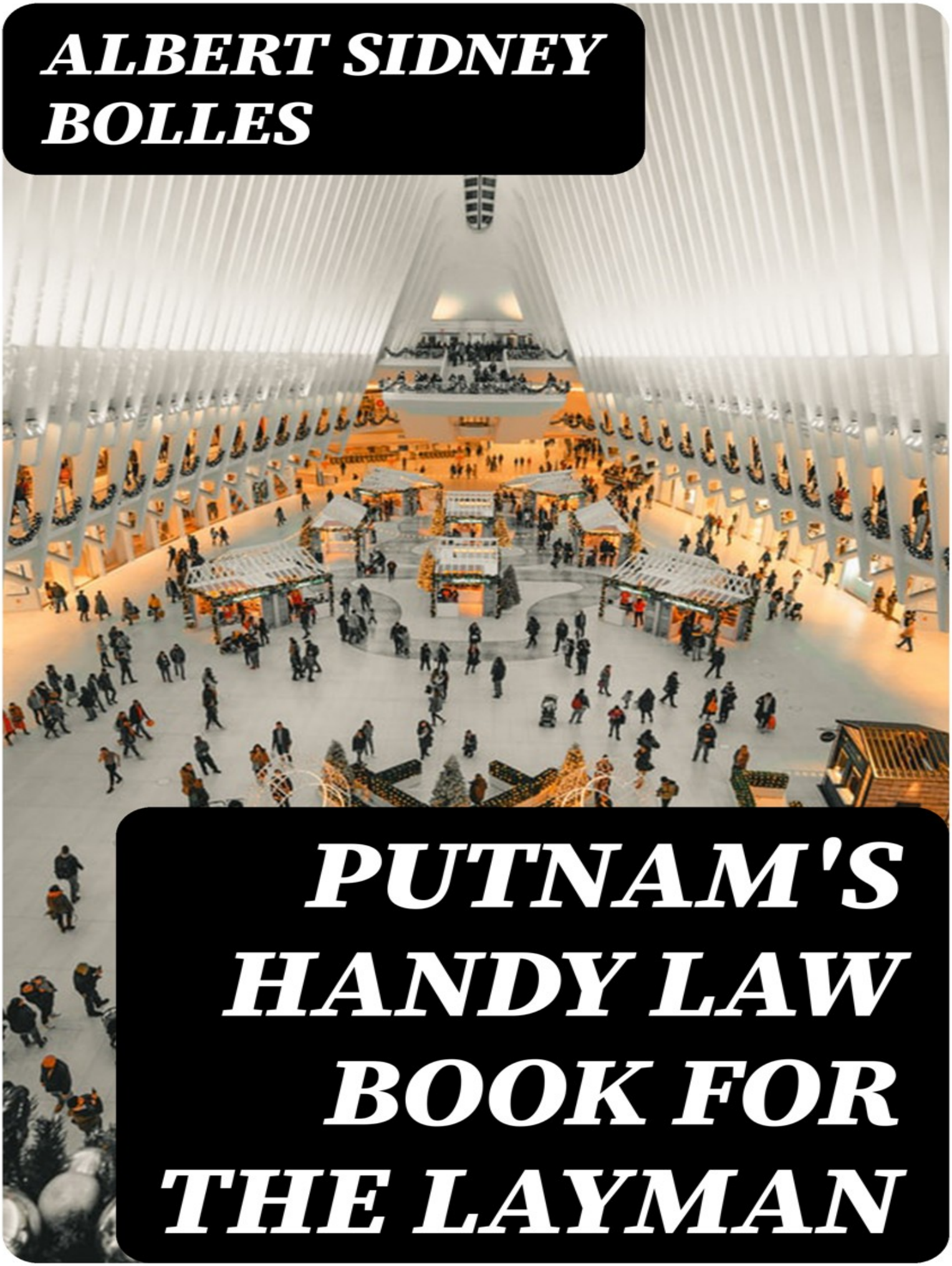
ALBERT SIDNEY BOLLES



PUTNAM'S HANDY LAW BOOK FOR THE LAYMAN

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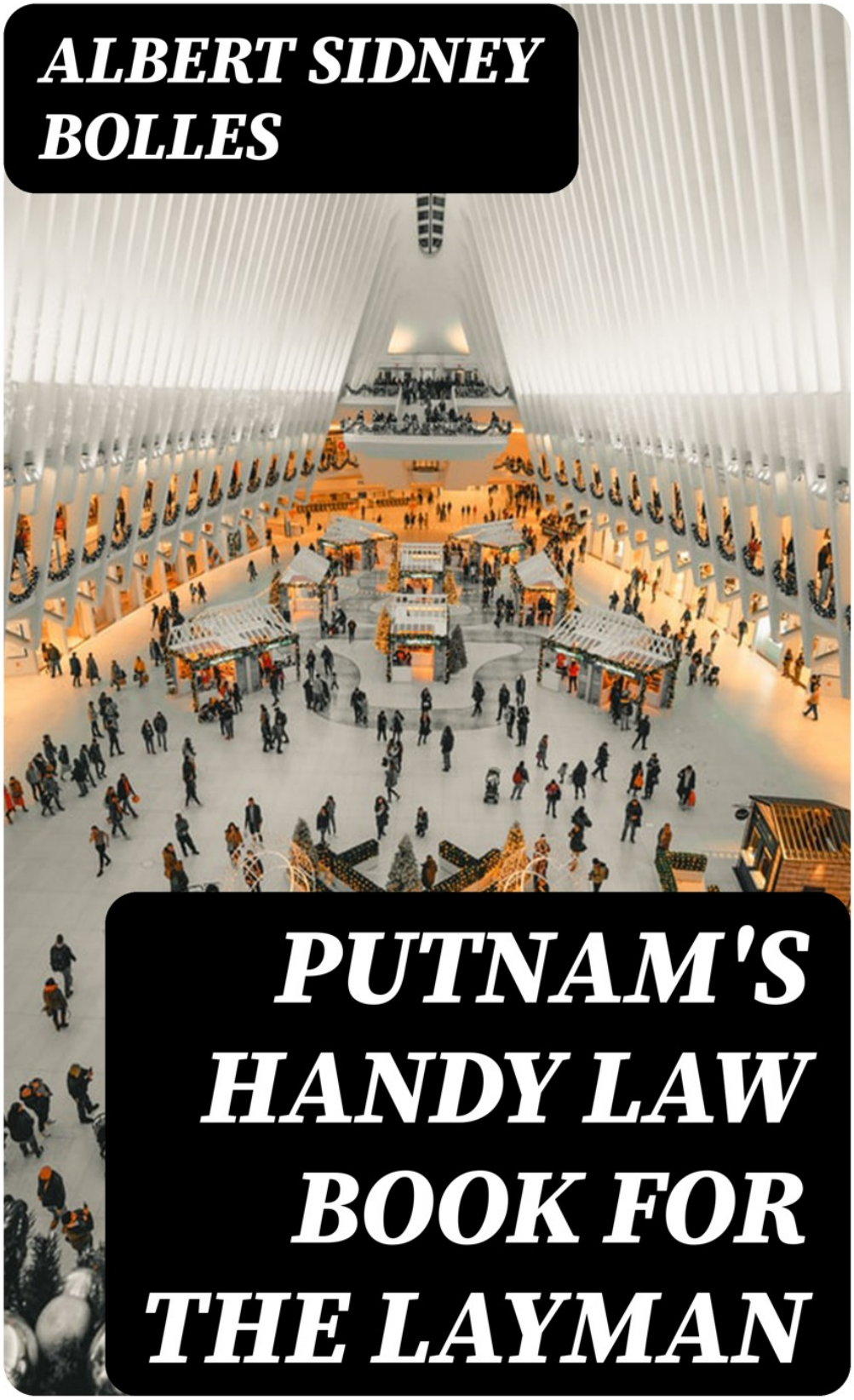

PUTNAM'S HANDY LAW BOOK FOR THE LAYMAN

Albert Sidney Bolles

Putnam's Handy Law Book for the Layman

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Table of Contents

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FOREWORD

Table of Contents

What useful purpose can this book serve? Most of the laws under which we live are kept, not from knowing them, but because the good sense of individuals leads them along legal ways. Yet in many cases their good sense fails to discover the right way. Thus, the receiver of a check on a bank must present it within a reasonable time after receiving it, and if he keeps it longer the risk of loss, should the bank fail, is his own. What is this reasonable time? One man says three days, another a week, another a month. So one's common sense fails to establish a definite reasonable time. It is needful to have the time fixed, and the law therefore has established a reasonable time. There are many cases like this in which one's common sense fails to furnish a correct, yet needful guide.

This little book contains many of the legal principles that are in most frequent use, as readers will learn who carefully read it. Again, if they do not always find an answer to their

questions, it is believed that in many cases they will find enough law of a general nature from which they can safely solve their questions. They are therefore besought to do something more than merely consult this book for the purpose of finding ready and complete answers to their questions, to read it and become familiar with its contents.

Besides the law presented here the reader should learn to be cautious, and not trust too much his own judgment when no rule can be found for his guidance. Many a person has written his own will, as he has a right to do, and after giving a legacy to a relative or friend has nullified the gift by having the legatee, through the testator's ignorance, sign as a witness. The writer knew a railway president who had the temerity to draw the writing containing an important contract between his railroad and another, and who, by unintentionally putting a comma in the wrong place, made his road instead of the other responsible for large losses. If this book shall make the reader cautious concerning the legality of his undertakings, it will be worth to him many times its price.

A.S.B.

Putnam's Handy Law Book for the Layman

Table of Contents

Explanation of Terms.—At the outset the explanation of a few terms, often used, may be helpful to the reader. Among these are the terms statute and common law. Statute law or statutes mean the laws enacted by the state legislature and by the federal congress. Common law means the decisions made by the state and federal courts. These decisions may relate to the interpretation and application of statutes, or to the application of former decisions or precedents, or to the qualification and application of them, or to the making and application of new rules or principles where none exist that are needed to decide the case in hand.

It is a rule of the most general application that legal decisions are precedents which are to be followed in other cases of the same character. The decisions of the highest court in each state must be followed by the lower courts, but no courts in any state are obliged to follow the decisions of the courts in any other state. The courts in every state must also follow the decisions of the federal courts in all matters of a national character. Thus if a federal court decides the meaning or interpretation of a federal statute, a state court must follow the interpretation in a case requiring the application of that statute.

Again, common law decisions are not binding on the courts that make them like statutes or legislative commands. A decision may be modified or set aside when it is regarded as no longer applicable to the present condition of things. It may also be set aside or changed by legislative action. The common law is therefore always slowly changing like the ocean and is never at rest.

The common law forms much the largest part of the great body of law under which we live. This book is a collection chiefly of common law principles; a few statutes are interwoven here and there to complete the subjects presented.

The distinction also between civil and criminal law requires explanation. Nearly all criminal law is founded on statutes, in other words the statutes, state and federal, define nearly all legal crimes known to society. It is therefore true that the field of crime is not fixed, is in truth always changing. Thus formerly if a man bought goods on credit of another on the statement that he was worth fifty thousand dollars and the seller afterward learned that he was not worth fifty cents, the seller could sue the buyer to recover the value of the goods and for any additional loss, but could do no more. Many, perhaps all the states, now declare by statute that such an act is a crime, and the offender can be prosecuted by the state and fined or imprisoned or both. And the wrongdoer may still be sued in a civil action for the loss to the seller as before.

All crimes are prosecuted by the officers of the state chosen or appointed for that purpose. Again, as in the case mentioned, the wrongful act has a double aspect. An

individual who has been wronged may proceed against the wrongdoer to recover his loss; the state also has been wronged and may also proceed against him. A good illustration is a bank defaulter. The bank may proceed through a court of law to recover the money lost by him, or from those who have promised to make the bank good should he wrongfully take anything; the state may also proceed against him as a criminal for breaking a statute that forbids him from doing such a thing. Furthermore, should the bank, as often happens, agree to accept a sum from the defaulter and not trouble him further, the agreement would be no bar to an action by the state against him.

The terms law and equity are frequently used in the law books and require explanation. Formerly there was no such term as equity in the common law. It came to be used as a supplement to the law to indicate ways of doing things unknown to the law, which ought to be done. Thus if a man threatened to fill up your well because it stood, as he claimed, on his land, you had no preventive remedy at law. You could use some force to prevent him, you could not kill him, or put out his eyes, or treat him roughly. The law only gave you the right to proceed against him to recover money damages for the legal injury. A court of equity has a preventive remedy. If one threatens to fill up your well you can petition or pray the court to order that he shall refrain until there has been a legal hearing to determine whether he has any right to do so and the court will order him to desist until it has heard the case, and will enforce its order with a fine or penalty should he disobey.

The term equity contains a larger element of justice than law; and the courts often say that an act is just or equitable, meaning that an act which is just or equitable may not always be a legal act. Equity therefore is a broader term, and is in constant use in legal proceedings.

Another word frequently used in this book is action. When a person has wronged another, for example, has not paid a promissory note that is due, and the wronged party wishes to collect it through the courts, he brings an action, so called, against the wrongdoer for that purpose. Sometimes the word suit is used. Suit, or case in court, is a common expression.

Finally something should be said about courts of law. Every state has three kinds or classes of courts. First a court in which suits are brought and tried relating to small matters, the recovery of money, for example, for one or two hundred dollars or less, also for small petty criminal offenses. Next is a higher court in which suits for all larger matters are begun and tried, as well as appeals from the lower court. Lastly is a third court of review, usually called the supreme court, composed in most of the states of five, or more often, seven judges, who review the decisions of the court below whenever application is made founded on erroneous matters, the wrongful admission of, or refusal to admit, evidence and the like, and their decisions form the great body of the common law.

The federal government also has three courts corresponding somewhat to the courts established by the states. First is a court existing in every state called the district court, while some states, like New York, are divided

into several districts. An appeal lies from its decision to the court of appeals consisting of three judges. There are nine of these courts, one for each circuit into which the United States is divided. Lastly appeals may be taken from their decisions and also from the decisions of the supreme courts of the states to the supreme court of the United States consisting of nine judges. An appeal does not lie in every case decided by a state court or by the federal courts of appeal; only such cases as the highest court shall decide after application, made in proper form, may be appealed and heard by that tribunal.

We have already explained the term equity. Formerly there were courts to try and decide equity cases. England still maintains such courts and a few exist in the United States; New Jersey and Delaware are two of these states. The chief official of the court is called a chancellor, the others vice chancellors. Instead of an action, as in a court of law, the preliminary proceeding is called a petition or bill, and while in substance it is similar to an action or complaint, used in a court of law, the form is quite different. The modern tendency of the law, considered in the most general way, is to fuse law and equity, and to endow law judges with equity powers. For further explanation see *Legal Remedies and Equitable Remedies*.

Adopted Child.—Children are sometimes adopted. By doing so the natural parents lose all personal rights and are relieved from all legal duties. The adopted parents acquire the right to the adopted child's custody and control, to his services and earnings, and they must maintain and educate

him. In some states he becomes the heir of the adopted parent like a natural child, with some limitations. Who can inherit an adopted child's property is not clearly settled. He can also inherit from his natural parent and kindred as if he had not been adopted. In Massachusetts the courts hold that an adopted child will take like a natural child under a residuary clause in an adopted father's will giving all the property not otherwise devised to his child or children. See *Parent and Child*.

Agency.—Much of the business of our day is done by agents or persons who represent others. The most general division is into general and special agents. A general agent is one who has authority to act for his principal or person he represents in all matters, quite as the principal himself could do; or in some of his matters. Thus if a principal had a farm he might have a general agent to act as his farmer; if he owned a mill, another general agent who had charge of it. If he had two mills, he might have a general agent for each, and so on.

A special agent is authorized to do a specific thing, to sell a home, buy a horse, or effect some particular end or purpose. While this distinction is plain enough in many cases, in others the lines run so close together that it is difficult to decide whether one is a general or special agent.

Whenever one acts as a general agent he is supposed to have all the authority that general agents possess who thus act for their principals, unless the person who is dealing with him knows of the restriction on his authority. Suppose one goes to the office of a general insurance agent to get

insurance on his home. A policy is taken and afterwards the house burns up. The company declines to pay because the agent made a lower rate than was authorized by his company. The insured however knew nothing about the restriction, and supposed that the agent had the same authority as other insurance agents have concerning rates. The company would be obliged to pay. But if the insured knew that restrictions had been put on the agent and that he was violating them in giving him the lower rate, the company would not be liable.

One who deals with a special agent must find out what authority he possesses; therefore more care is needful in dealing with a special than with a general agent. His authority must be strictly pursued. Thus it is said that a person dealing with him "acts at his own peril," is "put upon inquiry," "is chargeable with notice of the extent of his authority," "it is his duty to ascertain," "he is bound to inquire," "and if he does not he must suffer the consequences."

In some cases the law creates an agency. Thus an unpaid vendor of goods sometimes has authority to sell them, so has a pledgee of goods outside the authority conferred by the contract pledging them. A married woman whose husband does not supply her has a limited power to buy necessaries on her husband's credit, which prevails notwithstanding any objection he may make. A minor sometimes has the same power.

A person can act as an agent for another who cannot act for himself. Minors therefore can thus act. Besides individuals, corporations often act for others.

The authority of an agent may be given in writing, a power of attorney so called, or he may act, and often does, without written authority, especially a general agent. To this rule there is one well understood exception. If an agent is required in executing his authority to sign a deed or other writing, especially a sealed writing, his authority must also be equally great. In executing a deed therefore his authority must be in writing under seal, and when the deed is recorded, the agent's written authority should also be recorded; this is the usual practice. If this is not done, some person who afterward wished to purchase the land might object because the recorded title was defective.

A particular usage or custom also affects an agent's powers. If the principal confers on him authority to transact business of a well-defined nature, bounded by well-defined usage and customs, the law presumes the agency was created with reference to them. This protection affects agents and third persons alike, the latter therefore who act in good faith in such dealings are protected against secret limitations of which they had no notice.

An agent has no authority to purchase his principal's property. To do this, in a sense, would be to purchase of himself. The temptation to do this is sometimes very great, too great for him to withstand, and so he resorts to a crooked method for accomplishing his end. He sells the property to another party who afterward sells it back to him. The worst violators of this principle have been railway receivers, who have taken advantage of their position to get control of the property entrusted to them at a sum much less than its real value. Such sales can be set aside by

proper legal procedure. By the modern rule they are not void but are voidable, that is, can be set aside if the creditors or other interested parties wish to do so.

Whenever therefore one deals with a general agent and his authority is disputed, unless there be restrictions known to the person dealing with him, the liability of his principal turns on the answer to the general question, what authority do general agents like himself have. This is simply a question of fact, to be determined like every other question of fact by the court in which the controversy is pending.

Another way of rendering a principal liable for the act of his agent is by ratifying it. Suppose A professed to be the agent of B in building a house for C, and built it so badly that C sued B to recover damages, whose defense was, that A was not his agent. Suppose, however, that B accepted payment for the house, this would be a ratification of A's authority to act for B even if he did not have proper authority in the beginning. Suppose A had authority to sell goods for B but not to collect payment, and someone should pay him and he ran off with the money, could his principal still collect the money of the buyer of the goods? This is a hard case, and has happened many times. The buyer usually is required to pay the second time. But if B, notwithstanding his direction to his agent not to collect payment, should receive it such conduct would operate as a ratification.

Whether the authorized act arises from a contract or from a wrong or tort, whoever with knowledge of all the facts adopts it as his own, or knowingly appropriates the benefits, which another has assumed to do in his behalf, will

be deemed to have assumed responsibility for the act. Of course, such action does not render an act valid that was invalid before; its character in this respect is not changed by anything the ratifier may do.

Can a forgery be ratified? The right of the state to pursue the forger cannot be defeated by its ratification, but so far as the act may be regarded merely as the act of an unauthorized agent, it may be ratified like any other. Mechem says that if at the time of signing, the person doing so purported to act as agent, the act might be ratified.

Again, a principal cannot accept part of an agent's act and reject the remainder. The acceptance or rejection must be complete.

In appointing an agent the principal has in mind the qualifications of the person appointed, he cannot therefore without his principal's consent, designate or substitute another person for himself. This rule though does not prevent him from employing other persons for a minor service. Indeed, in many cases a general agency requires the employment of many persons to execute the business. How far one may go in thus employing others to execute the details, and how much ought to be done by the general agent himself, depends on the nature of the business. The inquiry would be one of fact, to what extent is a general agent in his particular business expected or assumed to do the things himself.

One rule to guide an agent is this: when the act to be done is purely mechanical or ministerial, requiring no direction or personal skill, an agent may appoint a subagent. Thus an agent who is appointed to execute a

promissory note, or to sign a subscription agreement, or to execute a deed, may appoint another to do these things. Likewise an agent who is authorized to sell real estate with discretionary power to fix the price and other terms, may employ a subagent to look up a purchaser, or to show the land to one who is desirous of purchasing.

When a person is really acting as an agent, but this is not known by the persons with whom he is doing business, he is liable to them as if he were the principal. It often happens for various reasons that agents do not disclose their principals. Suppose a dealer finds out that the agent presumably acting for himself was, in truth, acting for another, could the real principal be held responsible and the agent escape, or could both be held? The answer is, after discovering the real principal, both can be held, or either of them. The failure of an agent to disclose his agency will not make him individually liable if the other party knew that he was dealing with a principal with whom he had had dealings through the agent's predecessor. Notice of the agency to one member of a firm is not sufficient notice to the firm to release the agent from personal responsibility in subsequent transactions with another member who did not know and was not informed of the agency. Again, the liability must be determined by the conditions existing at the time of the contract, his subsequent disclosure will not relieve the agent. Finally, while the agent may be held in such a case, the principal also is liable, except on instruments negotiable and under seal, on the discovery of his relationship as principal.

While secret instructions to an agent that are unknown to persons dealing with him do not bind them, the principal is liable for any acts within the scope of his agent's authority connected with the business conducted by his agent for him. Some very difficult questions arise in applying this rule. A car conductor is instructed to treat passengers civilly and to use no harsh means with them, save in extreme cases. How far may a conductor go with a disorderly passenger? Very likely he would be justified in putting him off; suppose the conductor was angry and administered hard and needless kicks in the operation? His principal surely would not be liable, though the conductor doubtless would be. Suppose in buying a railway ticket the agent loses his temper and calls you a liar and a thief, you would have an action against him for slander, unless you happened to be one, but you would have no action against his principal for the company did not employ him to slander its patrons; to do this was clearly not in the scope of his employment.

An agent must not act for both parties in any transaction unless this is understood by both of them. Nor can an agent receive any personal profit from a transaction. Whatever profit there may be should be given to the principal. Thus if an agent is authorized to buy a piece of property for his principal and buys it for himself, or hides the transaction under the name of another, the principal, after discovering what his agent has done, can proceed to obtain the property.

An agent must be faithful and exercise reasonable skill and diligence. Money belonging to the principal should be deposited in the principal's name, or, if in the agent's name,

his agency should be added; otherwise if the bank failed the agent would be responsible for the loss. Again, if the agent deposited the money in his own name the true owner could proceed against the bank to recover it.

A principal is liable for the statements and representations of his agent that have been expressly authorized. He is also liable even for false and fraudulent representations made in the course of the agent's employment, especially those resulting in a contract from which the principal reaped a benefit. Even though the statements may not have been expressly authorized, such authority may be implied by law because they are the natural and ordinary incidents of the agent's position. Thus the position of a business manager often calls for a great variety of acts, orders, notices, and the like, and statements made while performing them are regarded as within the line of his duty.

An agency may end at a fixed time, or when the particular object for creating it has been accomplished, or by agreement of the parties. In many cases an agency is created for an indefinite period, and in these either party can terminate it whenever he desires. There are some limitations to this principle. Neither party can wantonly sever the relation at the loss of the other; and if one of them did he would be liable for the damage sustained by the other. Likewise if the agent has an interest of his own in the undertaking the principal cannot terminate it before its completion without the agent's consent. Such a rule is needful for his security. The bankruptcy of a business agent operates as a revocation of his authority, but not when the

act to be done is of a personal nature like the execution of a deed.

If the principal becomes insane and unable to exercise an intelligent direction of his business, his condition operates as a revocation or suspension for the time being of his agent's authority. If on recovering, he manifests no will to terminate his agent's authority, it may be considered as a mere suspension, and his assent to acts done during the suspension may be inferred from his forbearing to express dissent when they come to his knowledge. Likewise an agent's insanity terminates or suspends the agency for the time being unless he has an interest of his own in the matter. Partial derangement or monomania will not have that effect unless the mania relates to the agency, or destroys the agent's ability to perform it.

Again, the marriage of a principal in some cases, unless a statute has changed the common law, will revoke the power previously given, especially when its execution will defeat or impair rights acquired by marriage. Thus should a man give a power of attorney to another to sell his homestead, but before effecting a sale the principal should marry, his marriage would revoke the power. By marrying the wife acquires an interest in the property which cannot be taken away from her without her consent by joining in a deed of conveyance with her husband. Likewise the marriage of a woman would operate to revoke a power of attorney previously given by her whenever its execution would defeat the rights acquired by her husband. An agent's marriage usually will not affect the continuance of his agency.

When an agency is terminated it is often needful for the principal to notify all customers for his protection, otherwise they might continue to do business with the agent, supposing he was thus acting, and involve him perhaps in heavy loss. This rule applies especially to partnerships, each member of which is an agent with general authority to do the kind of business in which it is engaged.

If the authority of an agent in writing is revoked, but is still left with him and is shown to a third person who, having no knowledge of the revocation, makes a contract with him, the principal will be held for its execution.

Another rule of law may be given. The law assumes that any knowledge acquired by an agent concerning his principal's business, will be communicated to his principal, who is bound thereby. This rule though is often difficult to apply. Thus, if a cashier of a bank should learn that a note was defective, which was afterward discounted by his bank, it would be regarded as having knowledge of the defect, because it was the cashier's duty to inform the proper officials before they discounted it.

The death of either agent or principal terminates the agency except in cases of personal interest. And when an agent has appointed a substitute or subagent without direct authority, and for his own convenience, the agent's death annuls the authority of the subagent or substitute, even though the agent was given the right of substitution. But if the subagent's authority is derived directly from the principal, it is not affected by the agent's death.

Agreement to Purchase Land.—An agreement to purchase land must be in writing to be valid. Oral or parol agreements may be made to do many things, but everywhere the law makes an exception of agreements relating to land purchases. A statute that is quite similar in the states requires this agreement to be in writing and signed by the party against whom it is to be enforced. Thus if the seller wishes to enforce such an agreement, he must produce a writing signed by the purchaser; if the latter wishes to hold the seller, he must do the same thing. The better way is to have the writing signed by both parties.

How complete must the writing be? It need not mention the sum to be paid for the land; it can be signed with a lead pencil: a stamp signature will suffice. The entire agreement need not be on one piece of paper. If it can be made out from written correspondence between the two parties this will be enough.

To this rule of law are some exceptions. Therefore if an oral agreement for the sale of land is followed by putting the buyer into possession, the law will compel the seller to give him a deed. The proceeding would consist of a petition addressed to a court of equity, which would inquire into the facts, and if they were true, would compel the seller to give the purchaser a deed of the land. The reason for making this exception is, the purchaser would be a trespasser had he no right to be there: to justify his possession the law permits him to prove, if he can, his purchase of the land; and if he has bought it, of course he ought to have a deed of his title.

Once, a purchaser who made an oral agreement and paid part of the purchase money could compel the seller to give

him a deed, and many still think such action is sufficient to bind the bargain. This is no longer the law. The practice gave rise to much fraud: A would assert that he gave money to B to pay for land when in truth it was given for some other purpose. So the courts abandoned the rule founded on the part payment of the purchase price. A can however get back his money.

An option to purchase land, contained in an agreement to sell, must be exercised within a reasonable time, if none is fixed in the agreement. See *Deed*.

Auctioneer.—An auctioneer, employed by a person to sell his property, is primarily the owner's agent only, and he remains his exclusive agent to the moment when he accepts the purchaser's bid and knocks down the property to him. On accepting the bid the auctioneer is deemed to be the agent of the purchaser also, so far as is needful to complete the sale; he may therefore bind the purchaser by entering his name to the sale and by signing the memorandum thereof. His signing is sufficient to satisfy the Statute of Frauds in any state conferring on an agent authority to make and contract for the sale of real and personal property without requiring his authority to be in writing. His agency may begin before the time of the sale and continue after it. Again, the entry of the purchaser's name must be made by the auctioneer or his clerk immediately on the acceptance of the bid and the striking down of the property at the place of sale. It cannot be made afterward. The auctioneer at the sale is the agent of the purchaser who by the act of bidding calls on him or his clerk to put down his name as the

purchaser. In such case there is little danger of fraud. If the auctioneer could afterward do this he might change the name, substitute another, and so perpetrate a fraud.

A sale by auction is complete by the Sales Act when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

Authority may be conferred on an auctioneer in the same manner as on any other agent for the sale of similar property, verbally or in writing. Even to make a contract for the sale of real estate, oral authority to the auctioneer is sufficient, in the absence of a statute to the contrary.

Authority to sell property does not of itself imply authority to sell it at auction, and the purchaser therefore who has notice of the agent's authority or knowledge sufficient to put him on inquiry, acquires no title to the property thus purchased. If goods are sent to an auction room to sell, this is deemed sufficient evidence of authority to sell them in that manner and to protect whoever buys them.

As an auctioneer is ordinarily a special agent, the purchaser is supposed to know the terms and conditions imposed by the seller on the agent. The seller or owner therefore is not bound by any terms stated by the auctioneer differing from those given to him. If the owner has imposed no terms on him, then he has the implied authority usually existing in such cases.

An auctioneer has authority to accept the bid most favorable to the seller when the sale is made without reserve and to strike down the property to the purchaser. He cannot therefore consistently with his duty to his principal refuse to accept bids, unless the bidder is irresponsible or refuses to comply with the terms of the sale. He is justified in rejecting the bids of insane persons, minors, drunken persons, trustees of the property, and perhaps in some cases of married women.

An auctioneer cannot transfer his duty to another. This rule does not prevent him from employing others to do incidental things connected with the keeping and the moving of the property. He cannot sell on credit contrary to his instructions or custom; nor would he be secure in following custom if instructed to do otherwise. After the bid has been accepted the bidder has no authority to withdraw it without the owner's consent, nor can he be permitted to do so by the auctioneer. Nor can he sell at private sale if his instruction is to sell publicly, nor can he justify himself even if he acted in good faith and sold the property for more than the minimum price fixed by the owners. Nor can he sell the property to himself, nor authorize any other person to bid and purchase for him either directly or indirectly. It is impossible with good faith to combine the inconsistent capacities of seller and buyer, crier and bidder, in one and the same transaction.

He has no authority to warrant the quality of property sold except custom or authority is expressly given to him. Nor is he an insurer of the safety of the goods entrusted to him for sale; he must however use ordinary and reasonable

care in keeping them. Lastly, an auctioneer should disclose his principal and contract in his name. If one bought property therefore supposing it belonged to A, when in fact it belonged to B, through any manipulation of the auctioneer, the bidder would not be bound.

Automobile.—The members of the public have a right to use the public avenues for the purpose of travel and of transporting property: nor has the driver of horses any right in the road superior to the right of the driver of an automobile. Each has the same rights, and each is equally restricted in exercising them by the corresponding rights of the other.

Again, the public ways are not confined to the original use of them, nor to horses and ordinary carriages. "The use to which the public thoroughfare may be put comprehends all modern means of carrying including the electric street railroad and automobile." It has been declared that the fact that motor vehicles may be novel and unusual in appearance and for that reason are likely to frighten horses which are unaccustomed to see them, is no reason why the courts should adopt the view of prohibiting such machines.

The general rule is that all travelers have equal rights to use the highways. An automobile therefore has the same rights and no more than those of a footman.

The mere fact that automobiles are run by motor power, and may be operated at a dangerous and high rate of speed, gives them no superior rights on the highway over other vehicles, any more so than would the driving of a race horse give the driver superior rights on the highway over his

less fortunate neighbor who is pursuing his journey behind a slower horse.

There is no authority or power in the state to exclude non-resident motorists from the public ways, nor have the states power to place greater restrictions or burdens on non-resident automobilists than those imposed on their own citizens.

A license to operate an automobile is merely a privilege. It does not constitute a contract, consequently it does not necessarily pass to a purchaser of the vehicle, and may, for a good reason, be revoked. Moreover the charge imposed for the privilege of operating a motor on the highway is not generally considered a tax, only a mere license or privilege fee.

An automobile may be hired from the owner. This is called in law a bailment. The bailor is not responsible generally for any negligence of the hirer in operating the car. Nor is the rule changed should the hirer be an unskilled person, unless he was an immature child or clearly lacking in mental capacity, or was intoxicated. Where the owner of an automobile delivered it to another by agreement, who was to pay the purchase price from the money derived from its use, and thereafter had complete control of the machine, his negligence could not be charged to the seller.

Again, where an automobile is hired and the chauffeur is also furnished by the owner, who pays him for operating the car, and the hirer has no authority over him except to direct his ways of going, the chauffeur is regarded as the servant of the owner. He, therefore, and not the hirer is responsible for the negligence of the chauffeur. Of course, the rule

would be changed if the hirer assumed the management of the car: then the hirer alone would be liable for the chauffeur's negligence.

A party who hires an automobile from another is bound to take only ordinary care of it and is not responsible for damage whenever ordinary prudence has been exercised while the car was in his custody. If lost through theft, or is injured as a result of violence, the hirer is only answerable when these consequences were clearly the result of his own imprudence or negligence. The hirer though must account for the loss or injury. Having done this, the proof of negligence or want of care is thrown on the bailor.

If the hirer should sell the automobile without authority to a third party, the owner or bailor may bring an action against even an innocent purchaser who believed that the hirer had the title and power to sell.

There is an implied obligation on the hirer's part to use the car only for the purpose and in the manner for which it was hired. And if it is used in a different way and for a longer time, the hirer may be responsible for a loss even though this was inevitable.

Suppose the hirer misuses the car, what can the owner do? He can repossess himself, if this can be done peaceably, otherwise he must bring an action for the purpose. As the hirer acquires a qualified title to the property, he can maintain an action against all persons except the owner, and even against him so far as the contract of letting may set forth the relations between them.

When an owner or hirer undertakes to convey a passenger to a specified place and, while on the way, the

car breaks down, if it cannot be properly mended at the time and the owner or hirer is able to furnish another, the law requires him to do so and thus fulfil his contract.

"The owner of a motor vehicle," says Huddy, "is of course entitled to compensation for the use of the machine. If a definite sum is not stated in the contract between the parties, there arises an implied undertaking that the hirer shall pay a reasonable amount. One who uses another's automobile without consent or knowledge of the owner, may be liable to pay a reasonable hire therefor. In case the hirer is a corporation, there may arise the question whether the agent of the company making the contract has authority to bind the company. Where a machine is hired for joy riding on Sunday, it has been held that the contract is illegal and the hirer cannot recover for the use of the automobile."

The speed of automobiles along the public highways may be regulated by law. A municipality may forbid the use of some kinds of motor vehicles on certain streets, but it cannot broadly exclude all of them from all the streets. The rules regulating travel on highways in this country are called, "the law of the road." The object of these rules is to prevent collisions and other accidents, which would be likely to occur if no regulations existed.

A pedestrian who is about to cross a street may rely on the law of the road that vehicles will approach on the proper side of the street. This rule however does not apply to travelers walking along a rural highway. Huddy says: "When overtaking or meeting such a person, it is the duty of both the pedestrian and the driver of the machine to exercise ordinary care to avoid a collision, but no rule is, as a general