

## IMPLIED AUTHORITY OF AGENT TO PURCHASE PERSONAL PROPERTY.\*

Sec. I. WHEN AUTHORITY EXISTS.—As in the case of an agency to sell, an authority to purchase personal property need not be conferred in any particular manner. Where it is expressly conferred there is, of course, ordinarily very little room for doubt. The question here is rather, whether any, and if so, what power to buy personal property is properly to be deduced from the words and conduct of the parties, or from a conceded power to do some other act. Where the principal has authorized an agent to do an act for the doing of which the purchase of personal property is practically essential, or has put him in a situation in which a power to buy it is usually exercised, or has in any wise held him out as possessing such a power, the principal will be bound by purchases made within the apparent scope of the authority from sellers in ignorance of any limitations upon it.<sup>1</sup> Thus the manager of a store, the superintendent of a railway or a mine, or the foreman of a farm may have the power to buy stock or supplies as a usual or necessary incident of the business in his charge.<sup>2</sup>

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1. But where defendant's general agent, after being instructed not to add to defendant's stock by purchasing more goods, agreed with plaintiffs, who had knowledge of such instructions, to purchase a quantity of goods from them for defendants, and surreptitiously put them among the stock and sell them, and procure payment from defendants, as he might be able to do without their knowledge, and the goods were so furnished and sold, the proceeds going to defendant, it was *held* that plaintiffs cannot sue for goods sold and delivered, as there was no valid sale: *Schutz v. Jordan*, 141 U. S. 213, 11 Sup. Ct. 906.

2. A superintendent of a mine has the right to purchase necessary supplies and materials for the usual working of the mine without express authority: *Stuart v. Adams*, 89 Cal. 367, 26 Pac. 970; *Jones v. Clark*, 42 Cal. 180. Or to buy provisions for a boarding house necessary to be maintained for the boarding of the miners; *Heald v. Hendy*, 89 Cal. 632, 27 Pac. 67. So the manager of waterworks may buy a necessary pump: *Goss v. Helbing*, 77 Cal. 190, 19 Pac. 277. So of a quarry: *Dorsey v. Pike*, 10 N. Y. Supp. 268. Manager of a farm may buy fertilizers: *Jeffords v. Alword*, 151 Mass. 94, 23 N. E. 734.

Sec. 2. SAME SUBJECT.—As has been pointed out, moreover, it is not essential that there should be express authority. It is sufficient that there has been a course of dealing or a line of conduct from which the authority can reasonably be inferred.<sup>3</sup> An open and notorious exercise of the power without objection, the receipt and payment for goods purchased by the alleged agent, the turning over to the alleged agent of a business and permitting him to conduct it as the business of the principal—these are but a few of the many illustrations of the cases in which it has been held that the power to purchase may reasonably be inferred.<sup>4</sup>

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An agent placed in charge of a lumber yard, and who has, for over a year, bought supplies for it with the knowledge and acquiescence of the principal, will be presumed to have authority to purchase further supplies of the same sort: *Witcher v. Gibson*, 15 Colo. App. 163, 61 Pac. 292.

Defendant and one C. were joint owners of a farm, and one H., who resided thereon, had immediate charge of their interests. C., who had general supervision of the property sold his interest to defendant, but continued to exercise general supervision as before, and H. remained in possession. A few months after the sale, C. and H., the latter being acknowledged agent of defendant, purchased feed from plaintiff which was hauled away by H. and fed to defendant's stock on the farm. *Held*, sufficient to sustain a finding that C. was defendant's agent in making the purchase: *Gregg v. Berkshire*, 10 Kan. App. 579, 62 Pac. 550.

Where the owner of a warehouse placed an agent in charge of it and the agent held himself out as having general control of the principal's business at that place, of which fact the principal had knowledge, the agent had implied authority to contract for the purchase of certain grain placed in the warehouse: *Nash v. Classon*, 55 Ill. App. 356.

3. *Wilson v. Wyandance Spring Imp. Co.*, 4 N. Y. Misc. 605, 24 N. Y. Supp. 557; *Lamb v. Hirschberg*, 1 N. Y. Misc. 108.

4. Where W., who was employed as general engineer of a road to be constructed by defendant company, was, for several months, openly and notoriously purchasing supplies, employing men, and letting contracts for defendant, and defendant's officers knew of his actions, and paid for a portion of the supplies on W's representation that he could obtain no more until they were paid for, defendant is liable for such supplies: *Hirschmann v. Iron Range and H. B. R. Co.*, 97 Mich. 384, 56 N. W. 842. Where a person purchases a stock of goods at a sheriff's sale, and permits the former owner to continue the business in the name of himself as agent, and the agent, with his principal's knowledge, secures goods on the faith of the latter's credit, the principal is liable for their price: *McKinney v. Stephens*, 17 Pa. Super. Ct. 125.

Where an agent had been acting for his principal in a locality for several months, buying cattle, and drafts drawn by him in payment thereof were honored and paid by his principal, and he had the apparent authority of a general agent, his act in purchasing cattle to be consigned to his principal, and giving a draft on him to one who had no knowledge of his limited

Sec. 3. SAME SUBJECT.—It cannot be too strongly emphasized, however, that the conduct or relation from which the inference is sought to be deduced must be such as fairly and reasonably to warrant the inference of authority to buy; because it is clear that one may be authorized to sell, but not to buy, or to care for, manage, or control, but not to purchase.<sup>5</sup> And where the authority to purchase is inferred, its operation must be confined to the purchase of goods for the principal's benefit and on his account and be limited to those reasonably adapted to or customarily used in a business, or under circumstances, of the kind in question.<sup>6</sup>

Sec. 4. POWERS AND LIMITATIONS INCIDENT TO POWER TO PURCHASE.—Having thus seen something concerning the existence of

authority, will bind the principal: *Greer v. First Nat. Bank*, (Tex. Civ. App.), 47 S. W. 1045.

B., the owner of a store, turned the business over to G., who was to run it in the interest of B., at a definite wage, which was to be determined by the success or failure of the enterprise, conducted under a new name. Held, that the business remained B's., who was liable for debts incurred in the purchase of goods, unless he relieved himself by definite notice to the persons with whom the store commonly dealt, or such information was brought home to the vendors of the goods in such a way as to render it inequitable to hold B. therefor: *Bice v. Hover*, 2 Colo. App. 172, 29 Pac. 1042. See also, *Mahoney v. Butte Hardware Co.*, 19 Mont. 377, 48 Pac. 545; *C. & C. Electric Motor Co. v. Frisbie*, 66 Conn. 67, 33 Atl. 604.

5. The relation of master and coachman does not clothe the latter with ostensible authority to pledge his master's credit for feed supplied for his horses: *Wright v. Glyn*, [1902] 1 K. B. 745.

A mortgagor who is allowed to retain possession of goods, and has power to sell them and apply the proceeds in the payment of the mortgage, has no implied authority to bind the mortgagee by a purchase of new goods: *Kelly v. Tracy and Avery Co.*, 71 Ohio St. 220, 13 N. E. 455. See also *Herd v. Bank of Buffalo*, 66 Mo. App. 643; *Bentby v. Snyder*, 101 Ia. 1, 69 N. W. 1023. A clerk who sells goods, keeps books, and assists generally, under the supervision of his employer, has not, from the fact of his employment, authority to purchase goods abroad, on the credit and account of his principal: *Doan v. Duncan*, 18 Ill. 96. The full power of a foreman to employ workmen for the construction of a mill, and pay them for their services does not include or imply the power to purchase lumber or enter into contracts respecting it: *Rankin v. New England and Nevada Silver Mining Co.*, 4 Nev. 78. The general agent of a manufacturing company, whose business is to manufacture and sell mining machinery, has no apparent authority to buy such machinery for his principal: *Gates Iron Works v. Denver Eng. Works Co.*, 17 Colo. App. 15, 67 Pac. 173.

6. *Wallis v. Tobacco Co. v. Jackson*, 99 Ala. 460, 13 So. 120. One who managed a farm for another, with authority to purchase mules, implements and supplies for the farm, was not thereby authorized to buy goods for the laborers on the farm; and his representations to that effect were not binding on his principal: *Carter v. Burnham*, 31 Ark. 212.

the main power, that is, the power to purchase, it is next necessary to determine what powers, if any, are incident to it, whether it be expressly given or arise by implication, and what limitations, if any, attend its exercise.

Sec. 5. MAY NOT BUY ON CREDIT, WHEN FURNISHED WITH FUNDS.—An agent authorized to purchase goods for his principal, who has not been held out as having a more general authority, and who is supplied with funds for that purpose, has no implied authority to bind his principal by a purchase on the principal's credit; and in such a case the principal will not be bound by a purchase on credit, although the goods come in fact to his use, unless he has knowledge of the fact and does something in ratification of it, or unless it be shown that it is the custom of the trade to buy on the principal's credit.<sup>7</sup> A mere authority to buy does not imply power to buy on

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7. *Stubbing v. Heintz*, 1 Peake's N. P. Rep. 66; *Pearce v. Rogers*, 3 Esp. 214; *Rusby v. Scarlett*, 5 Esp. 76; *Boston Iron Co. v. Hale*, 8 N. H. 363; *Komorowski v. Krumdick*, 56 Wis. 23; *Jacques v. Todd*, 3 Wend. (N. Y.) 83; *Saugerties, etc., Co. v. Miller*, 76 App. Div. 167, 78 N. Y. Supp. 451; *Brittain v. Westall*, 137 N. Car. 30, 49 S. E. 54; *Wheeler v. McGuire*, 86 Ala. 398, 5 So. 190, 2 L. R. A. 808; *Proctor v. Tows*, 115 Ill. 138, 3 N. E. 569; *Americus Oil Co. v. Gurr*, 114 Ga. 624, 40 S. E. 780; *Chapman v. Americus Oil Co.*, 117 Ga. 881, 45 S. E. 268; *First Nat. Bank v. Pennington*, 75 Tex. 272, 12 S. W. 1114; (in the absence of ratification) *Patton v. Brittain*, 32 N. C. (10 Ired. L.) 8; *Brooks v. Mortimer*, 10 App. Div. 518, 42 N. Y. Supp. 299; *Taber v. Cannon*, 8 Metc. (Mass.) 456; *Fraser v. McPherson*, 3 Dessau. (S. C.) 393; *Parsons v. Armor*, 3 Pet. (U. S.) 413. An agent authorized to draw on his principal for amount of purchases is governed by the same rules that govern agents in whose hands funds are placed: *Parsons v. Armor*, 3 Peters (U. S.) 412. In an action for the price of goods sold on the defendant's credit to his agent, in which the defendant contends that the purchase of goods on credit was not within the scope of the agency, evidence is admissible to show that the agent was always in funds, either from the business itself, which was the subject of the agency, or from the defendant, sufficient to pay cash for all his purchases: *Taft v. Baker*, 100 Mass. 68.

An agent employed to take charge of a farm was authorized to employ, pay, and discharge farm laborers and to purchase goods on credit from certain merchants, not including the plaintiffs, with whom the defendant had personally made arrangements for the sale of such goods as the agent should desire to purchase for farm use. The agent purchased clothing of the plaintiffs for the men employed on the farm on credit of defendant. *Held*, that there was no implied authority to purchase the goods from plaintiffs on defendant's credit: *Eckart v. Roehm*, 43 Minn. 271, 45 N. W. 443.

Where the course of business between a merchant in the country and a merchant in town is such, that the country merchant transmits to his correspondent in town his produce and such articles as he has to sell, and the merchant in town, in return, supplies him with such merchandise as he deals

credit.<sup>8</sup> *A fortiori* is this true where the seller is expressly notified that the agent has no power to buy on credit.<sup>9</sup>

So authority to buy goods and pay for the same with funds furnished by the principal, does not authorize the agent to make advances of the money of his principal, nor to sell and guarantee the payment by the principal of unsettled accounts that have been received in satisfaction of such unauthorized advances.<sup>10</sup>

Sec. 6. SAME SUBJECT.—But where the principal, either expressly or by implication, authorizes a purchase upon his credit, the fact that the agent then had, or was afterwards supplied with funds with which to pay for the goods so purchased, will not relieve the principal from liability if the agent fails to pay.<sup>11</sup> The fact, moreover, that an agent authorized to make purchases is then, or soon after, supplied with funds with which to pay for them, does not necessarily lead to the conclusion that he was forbidden to purchase upon credit; the inference to be drawn is one of fact.<sup>12</sup> And

in, charges it to the merchant in the country, the latter is not liable to the seller for any articles thus procured, although he directs the purchase of an article which he knows the merchant in town does not deal in, and the seller is informed for whom the purchase is made, if the merchant in the country has funds in the hands of the merchant in the city, and has never authorized him to pledge his credit on the purchase of any articles thus ordered, or recognized such act: *Jacques v. Todd*, 3 Wend. (N. Y.) 83.

The fact that a wife knew that materials, purchased by her husband on credit from plaintiff, were used in her house does not amount to a ratification of the husband's acts, where it is shown that the wife furnished the husband with money to pay for all purchases made for her house, and had no knowledge that any were made on credit: *Young v. Swan*, 100 Ia. 323, 69 N. W. 566.

8. *Berry v. Barnes*, 23 Ark. 411.

9. *American Lead Pencil Co. v. Wolfe*, 30 Fla. 360, 1 So. 488.

10. *Bohari v. Oberne*, 36 Kans. 284.

11. The plaintiff sold goods to the defendants through F., their general agent, who was fully authorized to make the purchase. Afterwards, upon the representation of F. to the plaintiffs that it was necessary to send a receipted bill to defendants in order to obtain payment of it, the plaintiff receipted the bill of the goods and delivered it to F. F. presented the bill thus receipted to defendants, who paid the amount to him, they having no knowledge of the circumstances under which the receipt was given. The money so received by F. was never paid to the plaintiff. *Held*, in an action of *assumpsit*, brought against the defendants for the amount of the bill, that the plaintiff was entitled to recover: *Willard v. Buckingham*, 36 Conn. 395.

12. T. was the owner of a building that needed extensive repairs and employed H., her brother, to procure them to be made, giving him full authority to act according to his own judgment, but directing him not to expend over \$500, which sum she soon after placed in his hands. H., without disclosing

where an agent, who has general authority to buy, is instructed not to buy more goods than the funds at his command will enable him to pay for, the principal will, nevertheless, be bound to one who relies upon his apparent authority in ignorance of such instructions.<sup>13</sup> And so where the usual course of business is to buy upon credit, a private direction to the agent not to buy in that way will not save the principal from liability to those who, in good faith, sell in ignorance of the limitation.<sup>14</sup>

Sec. 7. And even where the agent is supplied with funds and is forbidden to purchase upon the principal's credit, it does not necessarily follow that he is expected to pay at the very instant he receives the property. It may well be that it was fairly within the contemplation of the parties, that he was to pay at the termination of the transaction, or at the end of the day, or when the seller presented himself for payment, and the like; and if the agent should not pay when so expected, the principal might still be liable.<sup>15</sup>

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his agency, employed the plaintiffs to furnish materials which they did to the amount of \$372, supposing him to be the owner. After they had furnished the materials they learned that T. was the owner and elected to make her their debtor and filed a certificate of lien upon the building. H. had paid out \$350 on other bills, but had paid the plaintiffs nothing. *Held, inter alia*, on the defendant's appeal, that it did not appear that H., in contracting for the amount of materials furnished by the plaintiffs, was exceeding his authority, since the purchase of materials would ordinarily precede the procuring of labor to use them, and the amount purchased was within the \$500. That as every reasonable intendment was to be made to support the judgment, and it appearing that the whole repairs cost considerably over \$500, it might be assumed that T., knowing of the progress of the work, and making no objection, had assented to the increased expenditure, and that the finding that H. had authority to do what he did might be regarded as a finding of fact. H. was not expressly forbidden to purchase on credit. The prohibition, if it existed, could only be inferred from the fact that T. placed \$500 in his hands. But the inference was one of fact and not of law: *Paine v. Tillinghast*, 52 Conn. 532. Compare *Proctor v. Tows*, 115 Ill. 138, 3 N. E. 569.

13. *Liddell v. Sahline*, 55 Ark. 627, 17 S. W. 705; *Wheeler v. McGuire*, 86 Ala. 398, 5 So. 190, 2 L. R. A. 808; *Pacific Biscuit Co. v. Dugger*, 40 Oreg. 302, 67 Pac. 32.

The fact that the principal was undisclosed does not alter the rule: *Hubbard v. Tenbrook*, 124 Pa. St. 291, 16 Atl. 817, 10 Am. St. Rep. 585, 2 L. R. A. 823; *Watteau v. Fenwick*, [1993] 1 Q. B. 346; *Steel-Smith Grocery Co. v. Potthast*, 109 Iowa 413, 80 N. W. 517. See also *Fees v. Shadel*, 20 Pa. Super. 193.

14. *Watts v. Devor*, 1 Grant (Pa.) 267.

15. Where an agent is furnished with money to pay for property which he is authorized to purchase, there is no such limitation on his authority to buy on credit, as to require him to pay the instant, or on the same day, for

Sec. 8. SAME SUBJECT.—Moreover, the seller upon a cash sale, who has delivered the goods upon condition of immediate payment and without waiving his right thereto, may, if payment be not made, recover the goods from the agent or from the principal himself, if they have come into his possession, the principal in such a case not being a *bona fide* purchaser.<sup>16</sup> And so, where the agent supplied with cash wrongfully purchases upon the principal's credit, the principal, though he may not be liable upon the contract, must usually, if he repudiates it, return the goods; and if he does not, or cannot do so, he may be liable in trover or in quasi contract for their value.<sup>17</sup>

Sec. 9. MAY BUY ON CREDIT WHEN NOT SUPPLIED WITH FUNDS.—An agent, however, who is directed to purchase goods, but is not supplied with the necessary funds, and who is not expected to buy upon his own credit,<sup>18</sup> has ordinarily implied power to purchase such goods on the credit of his principal, for otherwise, he cannot execute his authority.<sup>19</sup> And it has been held that an agent

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property which he purchases without any understanding or agreement that credit is to be given therefor: *Adams v. Boies*, 24 Ia. 96. The facts were that Walker (a resident of Muscatine) acted in that place and throughout the adjacent country as the agent of defendants (grain and cattle dealers, residing in Washington, Iowa), in making purchases and shipments of stock for them. Defendants furnished Walker with money to pay for his purchases, and particularly made arrangements with a bank in Muscatine to cash checks drawn upon it by Walker. Walker had acted as the agent of the defendants some eight or ten months, making purchases of stock for them. During that period he had bought hogs of the plaintiff at six different times. When he wished to buy in order to fill up a car he would come in person or send a wagon to plaintiff, get hogs, and then, or very soon afterwards, settle for them. He acted as agent for no other person, and there was no testimony in the case, showing that he bought stock on his own account. The two lots for which this action was brought were sold in the same way that the others had been. On the first of these two lots Walker paid \$125. In three or four days after the delivery of the second lot the plaintiff went to Muscatine and asked Walker for his pay, but did not get it. Shortly after that Walker ran away. *Held*, that defendants were liable.

16. See Mechem on Sales, Sections 554, 555.

17. See *Patton v. Brittain*, 32 N. Car. (10 Ired. L.) 8.

18. In *Bank of Indiana v. Bugbee*, 3 Keyes (N. Y.) 461, 1 Abb. App. Dec. 86, it was said that authority to a broker to buy goods not supplied with funds contemplated that he should buy them on his own credit or with his own funds.

19. *Witcher v. Gibson*, 15 Colo. App. 163, 61 Pac. 192. The owner of a pleasure launch, who sent one of the crew to purchase supplies, in some instances not furnishing him with funds to pay for the same, but paying him the money on his rendering an account thereafter, must be held to have intended that the agent should buy on his credit, or that of his vessel, and is liable for supplies so furnished by a dealer, and which were delivered to and used on the vessel, but were not paid for by the agent: *Spear and Tietjen Supply Co. v. Van Riper*, 103 Fed. 689.

who has general authority to buy and sell goods for his principal, may buy on credit or for cash at his discretion.<sup>20</sup>

SEC. 10. HAS POWER TO AGREE UPON PRICE AND TERMS OF PURCHASE.—An agent invested with general authority to purchase goods for his principal has, in the absence of contrary limitations upon his authority, implied power to settle upon the usual incidents of the purchase.<sup>21</sup> Thus, in general, he may select the seller; he

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A. and B., joint owners of part of a vessel, authorized C., another owner, to purchase their proportion of the outfits of the vessel, but did not furnish him with funds. C. purchased the outfits on a credit of six months, and gave a note therefor, as agent of A. and B., payable in six months: A. and B., not knowing that C. had purchased on credit, paid him the amount of the purchase in two months after it was made: C. did not pay the note at maturity, and the vendor of the outfits sued A. and B. therefor in an action for goods sold and delivered. *Held*, that he was entitled to recover. Wilde, J., said: "The defence is, that the agent was not authorized to make the purchase on a credit. That he was not in terms expressly so authorized is admitted; but he was authorized to make the purchase, and no funds were advanced to him, to enable him to purchase for cash. This, by implication, unquestionably authorized him to make the purchase on the defendant's credit. When an agent is authorized to do an act for his employer, all the means necessary for the accomplishment of the act are impliedly included in the authority, unless the agent be in some particular expressly restricted." *Sprague v. Gillett*, 9 Metc. (Mass.) 91.

20. *Ruffin v. Mebane*, 6 Ired. (N. C.) Eq. 507.

21. An agent authorized to purchase a scale, and to whom the principal refers the seller to make the contract, is impliedly authorized to arrange the details of the contract and may agree to make the necessary excavation, fix the term of credit and stipulate that title shall not pass until the scale is paid for: *Wishard v. McNeill*, 85 Ia. 474, 52 N. W. 484. Compare *Elder v. Stuart*, 85 Ia. 690, 52 N. W. 660. An agent authorized to purchase window screens held to have implied power to agree that the window sash should be so arranged that the screens could be properly put in place: *Hogg v. Jackson and Sharp Co.*, (Md.) 26 Atl. 869. An agent with authority to buy logs has authority to agree that the measurement of the logs shall be ascertained by a scale to be made in the usual and ordinary way and that they shall be paid for according to that scale: *Watts v. Howard*, 70 Minn. 122, 72 N. W. 840. Principals wrote to the seller a letter in the following terms: "R. comes to see you to purchase your cattle in M. County, adjoining our pasture, or any purchase he may make of you on this trip for joint account for us and himself, we have authorized him to do so, and have agreed to make any reasonable advance on delivery of contract at any bank in this city, as an advance on contract, and as to fulfilment of the same." *Held*, that the letter authorized R., in the contract for purchase of the cattle, to stipulate for liquidated damages, in event of its breach by the purchasers: *Halff v. O'Connor*, 14 Tex. Civ. App. 191, 37 S. W. 238. An agent placed at an elevator to buy and receive grain, and who contracts for future delivery,



may determine upon the particular goods to be supplied; he may agree upon the price and terms of payment;<sup>22</sup> he may determine upon the time and method of delivery;<sup>23</sup> he may acknowledge the receipt of the goods and the amount of indebtedness therefor;<sup>24</sup> and may in general do those things, not inconsistent with his authority, which are proper and usual to do in such cases.<sup>25</sup> When employed in a capacity, or to deal in a market, affected by a particular custom, he is presumptively authorized to comply with such custom in making the purchase.<sup>26</sup>

In this case, however, as in others, limitations may lawfully be imposed upon the agent's authority, which will be binding upon the agent, and upon third persons having knowledge or charged with notice of them.<sup>27</sup>

SEC. II. MAY NOT EXCEED LIMITS AS TO QUANTITY.—It is the duty of an agent, commissioned to buy goods to a certain quantity, to confine his purchase within the limits given.<sup>28</sup> And he has no more implied power to purchase a smaller than a greater quantity.<sup>29</sup> If no limits are fixed, a reasonable discretion may be exercised. An agent, however, having general power to buy would, in many cases, bind his principal in accordance with rules already discussed, even

and attends generally to his principal's business there, has an implied authority to rescind a contract for the delivery of grain: *Middle Division Elevator Co. v. Vandeventer*, 80 Ill. App. 669.

22. *Boulder Invest. Co. v. Fries*, 2 Colo. App. 373, 31 Pac. 174. But as between the principal and the agent, the principal is not bound, where the agent, in making the contract, has departed materially from the terms authorized. *Ross v. Clark*, 18 Colo. 90, 31 Pac. 497.

23. *Owen v. Brockschmidt*, 54 Mo. 285.

24. *Stothard v. Aull*, 7 Mo. 318.

25. An agent authorized to purchase property is authorized to receive it: *Callahan v. Crow*, 91 Hun, 346, 36 N. Y. Supp. 225; affirmed 157 N. Y. 695, 51 N. E. 1089.

26. *Van Dusen-Harrington Co. v. Jungeblut*, 75 Minn. 298, 77 N. W. 970.

27. *Bryant v. Moore*, 26 Me. 84, 45 Am. Dec. 96.

28. *Olyphant v. McNair*, 41 Barb. (N. Y.) 446; *White v. Cooper*, 3 Pa. St. 130. When a corporation carries on the business of buying and shipping grain through an agent, and the authority of such agent to purchase grain in wagon-load lots is conceded, it is competent to introduce evidence to show the inspection and purchase of grain by such agent, to determine the scope and authority of his agency, and to ascertain whether the purchase of certain grain sued for was within the fair scope of his authority as the agent of such corporation: *Cain v. Wallace*, 46 Kans. 138, 26 Pac. 445.

29. *Olyphant v. McNair*, 41 Barb. (N. Y.) 446.

An agent authorized to purchase one-sixteenth of a ship at \$40 per ton does not bind his principal by purchasing two-sixteenths at \$44 per ton, one-sixteenth being on his own account: *Starbird v. Curtis*, 43 Me. 352.

although he exceeded the instructions given him or bought more than his actual authority would justify, if his purchases were within the limits of his apparent powers.<sup>30</sup>

Sec. 12. MUST OBSERVE LIMITS AS TO QUALITY OR SPECIES.—An agent authorized generally to buy chattels without limitation as to kind or quality may undoubtedly exercise a fair and reasonable discretion. But where he is expressly limited to the purchase of a specific thing, he cannot purchase another. And where he is instructed to buy goods only of a given quality or of a certain kind, he must observe the limits fixed.<sup>31</sup>

These rules, however, must be limited as in the preceding section; for it is clear that an agent, having general power to buy, would, in many cases, bind his principal, though he departed from instructions as to quality or species, and an agent, having apparent power to buy according to his own discretion, might often bind his principal, though his actual authority were otherwise.<sup>32</sup>

Sec 13. MUST OBSERVE LIMITS AS TO PRICE.—As stated in the preceding section, an agent authorized to buy without restrictions has implied authority to agree upon the price which shall be paid. This discretion, however, even in such a case, is not an unlimited one and should be regulated by the customary or market price, where there is one, and, at all events, by a fair and reasonable price. The principal may, however, limit the price which the agent is to pay, and while private instructions cannot prevail against apparent authority the seller who has actual knowledge or is charged with notice of the restrictions cannot bind the principal by a contract in violation of them.<sup>33</sup>

30. *Hermann Saw Mill Co. v. Bailey*, 22 Ky. Law Rep. 552, 58 S. W. 449.

Where, however, the sellers know of the limitation they deal at their peril: *Thrall v. Wilson*, 17 Pa. Super Ct. 376.

31. *Davies v. Lyon*, 36 Minn. 427, 31 N. W. Rep. 688; *White v. Cooper*, 3 Pa. St. 130; *Hopkins v. Blane*, 1 Call (Va.) 361; *Killough v. Cleveland*, (Tex. Civ. App.) 33 S. W. 1040; *Theile v. Chicago Brick Co.*, 60 Ill. App. 559; *Hackett v. Van Frank*, 105 Mo. App. 384, 79 S. W. 1013.

32. *South. Ry. Co. v. Raney*, 117 Ala. 270, 23 So. 29. An agent was authorized to purchase peanuts, but only with the approval of his principal. A contract was made for the purchase of "re-cleaned peanuts" which the principal approved. The agent allowed the contract to be modified by accepting from seller peanuts bought from other growers. He examined the peanuts purchased and accepted them as in compliance with the terms of the contract. The peanuts were not, in fact, of as high a grade as the contract called for. The seller had no knowledge of the limitation of the authority of the agent and there was nothing to put him upon notice. Held, that the principal was bound: *Nunnely v. Goodwin*, (Tenn. Ch. App.) 39 S. W. 855.

33. *Burks v. Stam*, 65 Mo. App. 455.

Sec. 14. MAY BE RESTRICTED AS TO PERSONS WITH WHOM TO DEAL.—As has been seen above, an agent authorized to buy without restrictions, may buy from any one who has such goods for sale. The principal, however, may lawfully restrict the agent as to the persons with whom he shall deal in the execution of his authority, and where such restrictions are actually or constructively known, the principal cannot be bound by a purchase from other persons than those designated.<sup>34</sup>

Sec. 15. MAY MAKE REPRESENTATIONS AS TO PRINCIPAL'S CREDIT.—An agent expressly authorized to purchase goods upon his principal's credit, has implied authority to make the necessary representations as to the solvency and credit of his principal, without which the seller would not sell the goods.<sup>35</sup> This rule is based upon the principle that the agent has implied power to do those things which are necessary and usual to accomplish the object sought to be attained, and must, in reason, be limited by that necessity. Thus, if the principal's credit is already established, or if the seller does not require a representation, the principal ought not to be bound by the mere voluntary and gratuitous representations of his agent, nor in any event, for excessive or unusual pledges of responsibility.

Sec. 16. MAY NOT BORROW MONEY TO PAY FOR GOODS.—Even though it should be conceded that the agent, not supplied with funds, may buy upon the principal's credit, no authority will be implied to borrow money on the principal's credit with which to pay for the goods unless such borrowing was authorized by the course of dealing, or was practically indispensable to the execution of the authority.<sup>36</sup>

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34. *Peckham v. Lyon*, 4 McLean, (U. S. C. C.) 45; *Thrall v. Wilson*, 17 Pa. Super. 376. A special commission to buy certain property at a certain place, from men named, cannot be construed into an agency to buy at another and different locality, from other people, even if the property was of equal quality and value: *Robinson v. Thompson*, 74 Miss. 847, 21 So. 794.

35. *Hunter v. Hudson River Co.*, 20 Barb. (N. Y.) 493; *Morris v. Possner*, 111 Ia. 335, 82 N. W. 755.

36. *Bickford v. Menier*, 107 N. Y. 490, 14 N. E. 438. Authority to buy stock does not justify an inference that the agent may borrow money on the principal's credit to pay for it: *Martin v. Peters*, 27 N. Y. Superior (4 Robt.) 434. In *Bank of Indiana v. Bugbee*, 3 Keyes (N. Y.) 461, 1 Abb. N. Y. App. Dec. 86, it was held that an authority to a broker to buy and load upon a vessel a cargo of produce, does not, by implication, and in the absence of any sufficient custom, give to the agent the power to borrow, upon the credit of the principal, the money with which to make the purchase. In *Bryant v. La Banque Du Peuple*, [1893] App. Cas. 170, it was held that an agent who

Sec. 17. MAY NOT EXECUTE NEGOTIABLE PAPERS.—So authority to bind his principal by a note or bill for the price of the goods bought is not implied from mere authority to purchase. Such an agent, therefore, has no authority to bind his principal by a promissory note or bill of exchange, unless that authority be expressly given, or unless the giving of such note or bill is indispensable to the discharge of the duties to be performed.<sup>37</sup>

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was authorized by his power to make contracts of sale and purchase, charter vessels, and employ servants, and as incidental thereto to do certain specified acts, including indorsement of bills and other acts for the purposes therein aforesaid, but not including the borrowing of money, cannot borrow on behalf of his principal or bind him by contract of loan, such acts not being necessary for the declared purposes of the power.

A power of attorney, authorizing an agent in England to purchase goods in connection with the business carried on by his principal in the colonies, and either for cash or on credit, and "where necessary in connection with my business or in connection with any purchases made on my behalf as aforesaid," to make, draw and accept bills of exchange, and to sign the name of the principal to any checks on the London banking account of the principal, does not confer on the agent a general borrowing power: *Jacobs v. Morris*, [1901] 1 Ch. Div. 261. See also *Weekes v. Hardware Co.*, 23 Tex. Civ. App. 577, 57 S. W. 67.

But an agent engaged in buying and shipping horses has implied authority to borrow money to purchase grain to feed the horses while awaiting shipment, since the exercise of such authority was necessary to the conduct of the business: *Rider v. Kirk*, 82 Mo. App. 120.

37. An agent employed to buy and sell has no authority to bind his principal by a negotiable note, given for goods bought, unless the giving of such notes be indispensable to carrying on the business in which he is employed. Evidence that one negotiable note, given to one person by an agent in behalf of his principal, was paid by the principal, under protest, and on receiving satisfactory indemnity from the agent is not sufficient evidence of the authority of the agent to bind the principal by a similar note to another person: *Temple v. Pomroy*, 4 Gray (Mass.) 128.

So it seems that an agent who is employed by the owners of a whale-ship to fit her for sea, and purchase the necessary supplies for her voyage, cannot bind the owners by making a negotiable note, or accepting a negotiable bill of exchange, in their names, as agent, in payment for such supplies: *Taber v. Cannon*, 8 Met. (Mass.) 456. A clerk employed by written agreement to "purchase goods and conduct a mercantile house upon the cash system," with a certain sum of money placed in his hands for that purpose, has no authority to bind his principals by notes given for goods purchased for the house: *Stoddard v. McIlwain*, 7 Rich. (S. Car. L.) 525; *Perrotin v. Cucullu*, 6 La. 587, is *contra*.

An agent was instructed by his principal not to purchase certain wool, but nevertheless purchased and procured plaintiff bank to discount a draft on his principal for the price. The plaintiff had no knowledge of the instruction to the agent not to buy and as evidence of the agent's authority to draw the draft, relied on the fact that once before the agent caused a

Sec. 18. MAY NOT GUARANTEE PAYMENT BY HIS VENDOR.—An agent authorized to buy goods has thereby no implied authority to bind his principal by a guaranty that the person of whom the agent bought will pay his own vendor.<sup>38</sup>

Sec. 19. MAY NOT SELL GOODS.—An agent authorized to buy goods has therefrom no implied authority to sell them.<sup>39</sup> And this result is, of course, not changed by the fact that the buyer relied on the agent's false assertion that the principal had permitted him to sell them.<sup>40</sup>

Sec. 20. POWER TO ALTER OR CANCEL CONTRACT.—An agent authorized to make a contract of purchase would ordinarily have no implied power to afterwards consent that the contract should be cancelled or altered; but where the agent has been given general power over the matter of purchase, with discretion in selecting the purchasers, agreeing upon the amounts, and fixing upon the terms of the sale, a modification or cancellation of a particular contract, done with a view to promote the principal's interests, would ordinarily be within his power.<sup>41</sup>

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similar draft to be discounted at the bank which the principal paid. *Held*, that plaintiff was not justified in relying upon the one transaction as establishing the agent's authority to draw the draft: *Trust Nat'l Bank v. Hall*, 8 Mont. 341, 20 Pac. 638.

38. *Oberne v. Burke*, 30 Neb. 581, 46 N. W. 838.

39. *Hogue v. Simonson*, 94 N. Y. App. Div. 139, 87 N. Y. Supp. 1065; *McIntosh-Huntington Co. v. Rice*, 13 Colo. App. 393, 58 Pac. 358.

40. *Sage v. Shepard and Morse Lumber Co.*, 4 N. Y. App. Div. 240, 39 N. Y. Supp. 449.

41. *Anderson v. Coonley*, 21 Wend. 278; *Spaulding Lumber Co. v. Stout*, 86 Wis. 89; *Middle Division Elevator Co. v. Vandeventer*, 80 Ill. App. 669.