AGENCY

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During the survey period there were no statutory changes in the law of agency in Georgia. Some new principles were enunciated by the courts, while established doctrines were followed in other instances.

In a case of first impression, *Studebaker Corp. v. Nail,*[1] the Court of Appeals, where an automobile purchaser had sued the automobile manufacturer direct on an express warranty, said that where manufacturer's warranty of new automobile was delivered to dealer with automobile for purpose of delivery to buyer, an agency for that purpose existed and that the suit would lie. The court pointed out, however, that no suit on an implied warranty could be brought under the circumstances as there would be no privity of contract.

Abercrombie v. Ford Motor Co.[2] presented a question of first impression to the Supreme Court. This case was previously before the Court of Appeals,[3] which decided that an international union which authorized a strike by a local union in another state was not such agent of its local union in Georgia as would prevent unemployment insurance being paid the Georgia members on the ground that they had authorized their unemployment. The Georgia plant wherein the members of the Georgia local were employed was forced to close due to a shortage of parts caused by the strike in the other state. The Court of Appeals said the Georgia local lacked the power to prevent the strike in the other state. However, the Supreme Court reversed on the ground that the international union was such an agent of the Georgia local as would charge the Georgia members with authorizing their own unemployment.

In *State Construction Co. v. Johnson,*[4] the court held that a contractor working on public highways and bridges of the state under contract with the state is not immune from liability for tort actions arising against it in connection with such construction. Defendant construction company contended that it had governmental immunity since it was working under contract with the state.

The court held in *Atlantic Coast Line R. Co. v. Heyward,*[5] where an employee brought suit against the railroad employer for injuries sustained because of act of a fellow servant, that liability depended on whether or not the act of fellow servant was negligent, and if so, whether or not it was committed while he was acting within the scope of his employment, and then said that the test as to the scope of employment is whether the purpose of the fellow servant in performing the act was to further the

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1. 82 Ga. App. 779, 62 S.E.2d 198 (1950).
2. 207 Ga. 464, 62 S.E.2d 209 (1950).
3. 81 Ga. App. 690, 59 S.E.2d 664 (1950), discussed, 2 MERCER L. REV. 12 (1950).
4. 82 Ga. App. 698, 62 S.E.2d 413 (1950).
5. 82 Ga. App. 337, 60 S.E.2d 641 (1950).

master's business, rather than whether or not it deviated to some degree from his normal course of conduct.

The rule that an agent may be sued in trover if he has taken property of another without the latter's consent, and may also be sued in trover even after delivery to his principal, or may be sued jointly with the principal was restated in *Graham v. Frazier.*[6]

Notice to the agent of any matter connected with the agency shall be notice to the principal but if the notice is on a matter in no wise connected with the agency, no implication that the principal has received such notice arises, was reiterated in the case of *Cloud v. Bagwell.*[7]

The old principle that agency cannot be proven by statements of agent outside of court though part of the *res gestae,* unless a prima facie case has first been made or ratification has been shown; whereupon such declarations are admissible in corroboration of other evidence to prove agency, was restated in the case of *Bell v. Washam.*[8]

Cases involving the point that the responsibility of a master for acts of his servant only extend to acts performed within the scope of employment of the servant were those of *Ruff v. Gazaway,*[9] and *Atlantic Coast Line R. Co. v. Heyward, supra.*

That an agent cannot later be said to be acting for an undisclosed principal when the contract in question was under seal was again held in *Yearwood v. State.*[10]

The well-known doctrine that a servant assumes the ordinary risks of employment though there be dangers attendant thereto, especially where the dangers are obvious, was followed in *Self v. West.*[11]

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6. 82 Ga. App. 185, 60 S.E.2d 833 (1950).
7. 83 Ga. App. 769, 64 S.E.2d 921 (1951).
8. 82 Ga. App. 63, 60 S.E.2d 408 (1950).
9. 82 Ga. App. 151, 60 S.E.2d 467 (1950).
10. 82 Ga. App. 789, 62 S.E.2d 462 (1950).
11. 82 Ga. App. 708, 62 S.E.2d 424 (1950).