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The only case decided by the Supreme Court during the review period in the field of Agency was *Johnson v. Life Insurance Company of Georgia,*[1] but that case is of considerable academic interest in that a minority of the Court sought, almost successfully, to limit sharply the *respondeat superior* liability of employers in the field of slander. The difference between the two groups of Justices lay in whether, in the rule that for a corporation to be liable for slander uttered by its agent, "it must appear that the latter was at the time acting within the scope of his employment and in the actual performance of the duties of the corporation touching the matter in question", the phrase "the matter in question" having reference to the subject matter of what is uttered or to the occasion of the uttering.

In the *Johnson* case, the plaintiff had made claim under policies issued by the defendant insurance company for the accidental loss of a leg. An industrial insurance agent of the company, in soliciting business from friends of the plaintiff, was asked why the plaintiff's claim had not been paid and replied that the plaintiff had shot off his leg on purpose — that he "had stolen the insurance money from the other companies, but he wasn't going to steal it from this company." The agent making these statements had had nothing to do with handling the plaintiff's claim. As a matter of fact, the claim had been paid prior to this conversation. In the slander suit which ensued, a substantial verdict was returned against both the insurance company and the agent, but the Circuit Court granted the insurance company's motion for a judgment *n.o.v.* on the ground that there was no evidence from which the jury could reasonably have concluded that the agent, in making the slanderous statements, was acting within the scope of his employment.

In the opinion of Mr. Justice Legge, the Circuit Court was correct in this holding because the agent, to create liability against his principal, must have been "in the actual performance of the duties of the corporation touching the matter in question" and the "matter in question" here was the denial of the Johnson accident claim with which

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1. 227 S.C. 351, 88 S.E. 2d 260 (1955).

the agent admittedly had nothing to do. Mr. Justice Legge discusses virtually every South Carolina decision allowing recovery against an employer for slander spoken by an employee in an effort to show that in all of them the employee's remarks pertained to something which he had been authorized to handle for the employer — the investigation of a theft or the settlement of an account with an ex-employee. He points out how frequently the Court, in sustaining verdicts or overruling demurrers, had emphasized that the employee was expressing the position of the employer as to matters which the employee was then charged with handling. He draws the conclusion that unless an employee is handling a matter for his employer, his statements in regard to it cannot be in the performance of his duties.

Chief Justice Baker concurred with the whole of Justice Legge's opinion, but the view of Justices Stukes, Taylor and Oxner that the judgment against the corporate defendant had been improperly set aside prevailed. The majority of the Court held that the *respondeat superior* rule in respect to slander is no different from that in other torts, and that if the utterance itself is made in the furtherance of the master's business, the master is responsible regardless of whether the agent who speaks is speaking from his own experience with the master or whether he is correctly stating the master's position in the matter. According to the majority, it was for the jury to say whether the insurance company's agent was endeavoring to promote its business in explaining to a prospective customer why a certain claim had not been paid.

It would seem that Mr. Justice Legge's view of the proper application of the *respondeat superior* rule in slander cases, although expressed persuasively and with great regard for the precedents, is without real support in the authorities. In addition to the general authorities from other jurisdictions cited by the majority, see Section 247 of the Restatement of the Law of Agency. It is true that in most cases the employee who speaks the slander has been in charge of investigating the matter for his employer and the courts do frequently advert to that fact in their discussions, but we can find no case in which the liability is actually rested upon the scope of the agent's employment in investigating the facts rather than the scope of his employment in making the statement concerning the facts. It would also seem that the rule advocated by Mr. Justice Legge could lead to these illogical results: (1) a corporation could never be responsible for slander if the only employees who spread it were those who knew nothing of the facts they were discussing; (2) an employee who had

investigated the facts in the scope of his employment might subject his employer to liability by publishing them on an occasion not in the scope of his employment; and (3) a corporation could not be responsible for slandering a competitor or any other person who had not had a contractual relationship with the corporation which could be the subject of an investigation by corporate agents.