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Agency

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One of the few cases decided by the Supreme Court during the period covered by this report which had any bearing upon the law of Agency was *Hall v. Walters, et al.*,[1] a case which aroused considerable public interest in the Columbia area because of the size of the verdict ($1,000 actual and $25,000 punitive damages) returned against a local union of the Textile Workers' Union of America (C.I.O.) for an assault committed by individual members of the union upon the plaintiff when he attempted to cross a picket line and return to work in a struck mill.

The suit was brought against the local union as an unincorporated association pursuant to Code of Laws of South Carolina, 1952 § 10-1516, which statute, among other things, permits a judgment obtained against an unincorporated association to be collected from the property of the individual members. No point as to the union not being subject to suit under this Code Section was made on the appeal, and the main contention of the union was that an unincorporated association has no legal existence apart from that of its members and it therefore cannot be a party to a conspiracy of the nature asserted by the plaintiff. The court held as to this that such an association as a union can act only through its officers and members and that "when a tortious act is committed in furtherance of the purpose of the union, the union is liable for all acts done pursuant to such conspiracy to which through its officers it is a party."

The union further complained of the submission to the jury of both its alleged liability as a conspirator and its liability, under *respondeat superior,* for the acts of its agents. The court pointed out, however, that there was no motion to require an election and no objection to the instruction given the jury by the trial court as to both theories of liability. The court really did not have for decision the question of the *respondeat superior* liability of the union under the particular facts of the case because no motion for directed verdict had been made by the union, but the court mentions several aspects of the testimony which would seem to sufficiently establish that the acts done by the individual defendants were within their "scope of employment" as representatives of the union. The assault

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1. 85 S.E. 2d 729 (S.C. 1955).

was committed by persons whom the officers of the union had placed upon the picket line, it carried out the obvious purpose of the union in attempting to keep employees out of the struck mill, and it was, the court held, ratified by the union as its act when the pickets who took part in the altercation with the plaintiff were retained in their representation of the union on the picket line and when officials of the union arranged the bond and paid the fine of the union member prosecuted in the criminal court for the assault.

Bolt v. Gibson[2] is the only other case decided during the review period which has any general interest from an Agency viewpoint. In that case, the plaintiff, a thirteen year old girl, was allowed to recover for her personal injuries in an automobile collision from the defendant whose automobile had struck from the rear the automobile in which the plaintiff's father was driving her to school. After holding that the plaintiff was clearly not guilty of contributory negligence as a matter of law in failing to warn her father against alleged careless driving on his part, the court turned to the defendant's contention that negligence of the plaintiff's father should be imputed to her because they were involved in a joint enterprise at the time of the collision. The court discusses the doctrine of joint enterprise in automobile cases in the light of its earlier decisions in *Funderburk v. Powell*[3] and *Padgett v. Southern Railway Co.*,[4] and states that the basic test as to whether the driver of an automobile and a passenger are engaged in a joint enterprise is whether each is acting as the agent of the other and each has the right to control the other in the details of the automobile trip. The court holds that it is obvious that the thirteen year old plaintiff had no right to direct and control her father in the operation of his automobile. The only argument which the defendant appears to have had on this point of imputed negligence was that the circuit judge in his order refusing a new trial refers to the plaintiff being carried to school by her father "as was his custom and *duty*." The court held that this argument was as unsound as it was ingenious, and that it was apparent that all the circuit court meant was that the father had the general moral and legal duty to get his daughter to school, not that the daughter had the right to compel him to take her in a manner dictated by her.

2. 225 S.C. 538, 83 S.E. 2d 191 (1954).
3. 181 S.C. 412, 187 S.E. 742 (1936).
4. 219 S.C. 353, 65 S.E. 2d 297 (1951).