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Agency

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AGENCY

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No significant questions of agency law were decided by the Supreme Court during the survey period, although one or two of the decisions for the first time declare and apply in this State generally accepted principles of common law.

1. *Authority Express and Implied; Wife's Authority. Barber v. Carolina Auto Sales*¹ explored the authority of a wife to make contracts for her husband. In this case a Fort Jackson serviceman, temporarily assigned overseas, left in his wife's possession a car registered in his name. During his absence, and "without his knowledge or consent,"² she traded the car for a later model which she registered in her own name, but on his return, the husband repudiated the transaction. The husband then brought an action for conversion by the sales agency of the old car; the trial court non-suited his action, but the Supreme Court reversed. The wife concededly had no express authority to trade the car, nor could actual authority be implied "from necessity"³ or emergency. The Court then held, in accordance with prevailing law, that a wife is not her husband's agent merely by virtue of her marriage,⁴ although, of course, it may be shown that he in fact made her his agent. But mere absence does not create the agency, nor does the wife's possession, without more, of her husband's property empower her to sell.⁵ Finally, the

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1. 236 S. C. 594, 115 S. E. 2d 291 (1960).

2. *Id.* at 596, 115 S. E. 2d at 292.

3. *Id.* at 598-599, 115 S. E. 2d at 294.

4. *Cf. Moses v. Fogartie*, 2 Hill 335 (1834), where the husband was not liable for goods purchased by his wife without his knowledge or consent.

5. *But cf. Gore v. Whiteville Lumber Co.*, 110 S. C. 474, 96 S. E. 683 (1918), a suit for trespass on plaintiff's real property where the husband was owner of real estate, but had been absent for some twenty-three years, leaving his wife in possession of the land. Holding that she had such possession, the Court said, "The sole question is whether [the wife] had such interest in and possession, actual and constructive of the land." Holding that the wife had a sufficient possessory interest in the land to maintain trespass, the Court alternatively held (*semble*) that the husband's long absence would of itself, "raise such presumption of her agency as will enable her to maintain such actions as may be necessary or proper to protect it against the invasions of trespassers," so that "his possession . . . is her possession." 110 S. C. at 480. In *Barber*, the Court recognized this rule of law, but relied on *Corpus Juris* rather than *Gore* to sustain the proposition.

Court ruled that it is not usual and customary for a wife to be vested with such authority in her husband's absence. Since no special presumptions or rules are applicable, the agency relationship, if any, must be determined from the facts and circumstances of the case.⁶

2. *Apparent Authority. ZIV Television Program v. Associated Grocers of South Carolina*⁷ reversed a trial court's determination that, as a matter of law, the agent had apparent authority to bind her principal to sponsor a series of television programs, and ruled that the evidence was sufficiently conflicting to require a jury determination. Here some seventy or eighty retail grocers, in order to purchase large quantities of food at lower prices than individual retailers could obtain, formed a purchasing association which employed a Miss Burford. Some twenty or thirty member retailers also operated under a trade name, "Topper Stores," and jointly advertised bargains at their stores. From time to time, Miss Burford assisted them in an advertising program for which the Topper Stores paid her additional compensation. Negotiations between the TV sponsor and Miss Burford resulted in a claim that she had obligated the association to sponsor a TV series, although the association claimed that she had no authority to take such action and that she acted only for the Topper Stores. The Court ruled that there was evidence of apparent authority — testimony of general confusion between the two organizations, that advertising bills were paid by the association, and that the association had referred the TV producer to Miss Burford as the advertising manager. Contrary evidence disclosed no prior dealings between the association and the TV producer, and that the association was organized only to buy in bulk and did not advertise. Although the Court stressed estoppel as the basis of apparent authority, it is obvious that the estoppel element, even on the evidence most favorable to the plaintiff, is much attenuated in this case, and that the term is used loosely to justify letting the jury speculate on the evidence. Although estoppel features are often present, the real justification is

6. In *Hunter v. Hyder*, 236 S. C. 378, 114 S. E. 2d 493 (1960), the Court reaffirmed the rule established by previous cases that in contract cases the complaint need not allege that an agent executed the contract, since for this purpose the agent is identified with the principal and the agent's act within the scope of his authority, actual or apparent, is of itself enough to bind the principal.

7. 236 S. C. 448, 115 S. E. 2d 826 (1960).

broader and more basic — to give effect to the reasonable expectations and understandings of persons in their business and their transactions.

3. *Ratification.* Although in the *Barber* case,^{7a} the Court found no basis in the record for attributing to the wife authority to trade her husband's car, there was a "close" jury question as to ratification of the unauthorized transaction, and it was on this basis that the trial court's judgment of non-suit was reversed and the case remanded for new trial.⁸ Following his return from overseas, the husband demanded that his wife drive him to West Virginia to see his ill and apparently neglected children, and the new car was used on this trip. Since the trip was one almost of necessity, the new car was the only one available, and the husband started divorce proceedings against his wife in West Virginia, any "enjoyment" of the car, both in the lay and law sense, was absent, and consequently the husband's use of the car under these circumstances was not, as a matter of law, "acquiescence" in the wife's unauthorized trade. Thus it was for the jury to make the determination of ratification *vel non* as a matter of fact.⁹

4. *Duties of Agent to Principal; Discharge.* In *Freeman v. King Pontiac Co.*,¹⁰ primarily important for its rulings on corporation law, the president and chief shareholder of a close corporation discharged the vice-president for refusing to dismiss a suit filed by the latter in the name of the corporation. In holding that the discharge did not violate the vice-president's contract of employment, the Court applied the settled rule of agency law¹¹ that disobedience is a proper ground for firing an agent and that the president's demand that the suit be dismissed was authorized by the corporation's by-laws and was not unreasonable in view of the proven importance of the matter to the corporation.

5. *Master-Servant and Independent Contractor.* The only case involving master and servant during the survey period

7a. *Supra*, note 1.

8. 236 S. C. 594, 599, 115 S. E. 2d 291, 294-295 (1960).

9. The factual aspect of the *Barber* case is nicely highlighted by the Court's discerning distinction of a closely parallel Georgia decision in *Southern Motors of Savannah, Inc. v. Krieger*, 86 Ga. App. 574, 71 S. E. 2d 884 (1952) which inferred ratification as a matter of law from closely similar fact circumstances.

10. 236 S. C. 335, 114 S. E. 2d 478 (1960).

11. *Mitchell v. Toale*, 25 S. C. 238 (1886).

is *Hunter v. Hyder*,¹² in which the Supreme Court affirmed a verdict and judgment for the plaintiff in trespass against a defendant for cutting and removing timber from the plaintiff's land. The Court held that the pleadings sufficiently charged a tort committed by the defendant's servants, thereby passing the question whether proof of tortious conduct by defendant's servants fatally varies from a complaint alleging misconduct by the defendant himself,¹³ finding no variance between a complaint alleging tortious conduct by one servant and proof of misconduct by another.¹⁴ The Court also sustained the action of the trial court in sending to the jury the conflicting evidence as to whether the trespass was committed by defendant's servants or by an independent contractor.

12. 236 S. C. 378, 114 S. E. 2d 493 (1960).

13. See *Richey v. Southern Ry.*, 69 S. C. 387, 48 S. E. 285 (1904).

14. See note 6, *supra*, for the Court's recognition that a complaint in a contract case need not allege execution of the contract by an agent.