Mercer Law Review

Volume 2
Number 1 *Annual Survey of Georgia Law*

Article 3

12-1950

Agency

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An examination of the acts of the General Assembly of Georgia for the survey period shows no legislative changes in the law of Agency, although a few new principles were enunciated by the courts.

The Court of Appeals, in the case of *Stiles v. Edwards*,[1] was the first Georgia court to hold that a real estate broker is an independent contractor. Therefore, the court said it follows that the owner of realty which a broker was attempting to sell would not be bound by or responsible for misrepresentations by the broker as to the title when the owner did not expressly authorize such representations and had no reason to believe that such representations would be made or acted upon.

Abercrombie v. Ford Motor Co.[2] presented a question of first impression to the Court of Appeals. The court held that an international union which had authorized a strike by a local union in another state was not such agent of its local union in Georgia as to prevent unemployment compensation 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 question turned on the ground that it was without the power of the Georgia local to prevent the strike in the other state.

In another case of first impression, *Mathis v. Nelson*,[3] the Court of Appeals held that the rule of respondeat superior applied where a public officer charged with ministerial duties was sought to be bound for the negligence of his subordinate employee when the officer had knowledge of the negligence of the subordinate who was working under the officer's direction. The ratio decidendi was that the officer did not use due care in selecting the subordinate employee.

The various methods of pleading the existence of an agency so as to make the alleged principal responsible for wrongful acts of the agent are grouped and discussed in the case of *Conney v. Atlantic Greyhound Corp.*[4]

The principle was reiterated in *Pierce v. Diech*[5] that a real estate broker has earned his commission when he arranges for his client to purchase property at a price and on terms satisfactory to the purchaser, though the purchase is not consummated due to the purchaser's failure to go through with the contract.

The Court of Appeals again held that a real estate broker with the exclusive right to sell earns his commission when a person is secured who is ready, willing and able to purchase property in accordance with the

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1. 79 Ga. App. 353, 53 S.E.2d 697 (1949).
2. 81 Ga. App. 690, 59 S.E.2d 664 (1950).
3. 79 Ga. App. 639, 54 S.E.2d 710 (1949).
4. 81 Ga. App. 276, 58 S.E.2d 559 (1950).
5. 81 Ga. App. 717, 59 S.E.2d 755 (1950).

terms of the listing agreement, but that the commission is not earned if the sale is to be on terms when the listing agreement requires cash.[6]

The family purpose doctrine as it exists in Georgia, which is succinctly summarized in the case of *Cohen v. Whiteman*,[7] was followed in the case of *Hirsh v. Andrews*.[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 *Delcher Brothers Storage Company v. Reynolds and Manley Lumber Co.*,[9] *Colonial Stores, Inc. v. Sasser*,[10] *Hicks v. Swift & Company*,[11] and *State Farm Mutual Auto Insurance Co. v. Cates*.[12]

An interesting point involved in the case of *Davison v. Harris, Inc.*[13] was that a master was not liable to a third person who was injured by a servant's negligently falling down stairs, thereby striking the third person. The servant fell during her lunch hour and the master had no knowledge or reason to believe that the servant would fall.[14]

The doctrine that an agent to sell has no power to delegate his authority to another, and that one dealing with an agent must inquire as to the extent of his authority was restated in the case of *Berger v. Noble*.[15]

That the relation of principal and agent is a fiduciary one was again held in the case of *Smith v. Merck*.[16]

The principle was again reviewed in the case of *Childs v. Hampton*[17] that one who signs a note in his representative capacity for a disclosed principal and was authorized so to sign is not personally liable on the note.

6. Selton v. Dowling, 79 Ga. App. 690, 54 S.E.2d 763 (1949).
7. 75 Ga. App. 286, 43 S.E.2d 184 (1947).
8. 81 Ga. App. 655, 59 S.E.2d 552 (1950).
9. 80 Ga. App. 288, 55 S.E.2d 864 (1949).
10. 79 Ga. App. 604, 54 S.E.2d 719 (1949).
11. 81 Ga. App. 145, 58 S.E.2d 256 (1950).
12. 81 Ga. App. 141, 58 S.E.2d 216 (1950).
13. 81 Ga. App. 665, 59 S.E.2d 551 (1950).
14. *See also*: Davision v. Harris, Inc. 79 Ga. App. 788, 54 S.E.2d 290 (1949).
15. 81 Ga. App. 34, 57 S.E.2d 844 (1950).
16. 206 Ga. 361, 57 S.E.2d 326 (1950).
17. 80 Ga. App. 748, 57 S.E.2d 291 (1950).