AGENCY

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The very nature of the relationship between the principal and the agent is often determinative of the so-called "law of agency". That relationship often varies with the particular factual situation and makes many of the cases decided during the survey period worthy of comment. The year produced more than the usual number of noteworthy decisions involving unique and interesting problems created by changing circumstances, which will be treated fully in this article.

LEGISLATION

During its January-February 1957 Session, the General Assembly enacted several statutes relating to the field of agency. Perhaps the most important was the amendment to the Georgia Nonresident Motorist Act.[1] It accomplished two main objectives: Firstly, any person, firm or corporation who shall be involved in an accident upon the public highway, streets or roads of this state, and who was a resident at the time of such accident, but *ceases* to be a resident prior to the service of a summons of process is now subject to suit under the Act. Secondly, before this amendment, in those instances where a non-resident motorist died, was insane, became insane, or was not sui juris, service could not be effected. Section 3 of this amendment is intended to cure this defect, providing that service may be made upon the administrator, executor, guardian or personal representative of the nonresident in the same manner as heretofore prescribed for service on other nonresident motorists. The amendment provides that Section 3 shall apply to all causes of action, whether now in existence or arising after its passage (approved March 13, 1957), since it affects matters of procedure only. A question may be raised as to its retroactive effect. It is interesting to note that the legislature was apparently concerned about this and took care to state that it affected matters of procedure only. If it were to be interpreted as having dealt with substantive matters, it could not be applied retroactively.

Another statute of significance[2] is the amendment to GEORGIA CODE

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1. Ga. Laws 1957, p. 649.
2. *Ibid.*, p. 645.

§ 56-601, providing that in those instances where any claim or demand against an insurance company is in the principal amount of $3,000 or less, suit may be instituted against the company in any county where the property on which the action is brought is located, or where the person covered by the insurance maintains his legal residence. Formerly, an insurance company was amenable to service of summons of process only . . . "in the county where the principal office of the company is located, or in any county where the company shall have an agent or place of doing business, or in any county where such agent or place of doing business was located at the time the cause of action accrued or the contract was made out of which the cause of action arose . . . ", notwithstanding that the company had since abandoned its agency.[3]

Other statutes of more limited importance are: carnivals, circuses, road shows, tent shows and other itinerant shows before appearing publicly in this state are required to file with the ordinary of each county where such show is to be held a copy of a bond or insurance policy which shall be subject to damages caused by the show, and to designate a resident of this state as its agent to receive service of process; and upon their failure to do so, the Secretary of State shall become such agent;[4] all tax collectors and tax commissioners of their respective counties are made agents of the State Revenue Commissioner for the purpose of accepting applications for the registration of motor vehicles and issuance of license plates;[5] and the licensing of insurance agents is further regulated.[6]

Decisions

I. *Liability of Principal as to Third Parties*

1. The Agent's Personal Mission

Young v. Kicklighter is noteworthy because of the opposite conclusions reached by the supreme court and the court of appeals. It was a suit for damages, brought jointly against the owner and the borrower of an automobile. The trial court granted a nonsuit as to the owner, finding that the evidence was not sufficient to show that the borrower and the owner were agent and principal, or if they had such relationship, that the borrower was driving the automobile as an agent

3. Guarantee Trust Life Insurance Co. v. Ricker, 93 Ga. App. 554, 93 S.E.2d 323 (1956).
4. Ga. Laws 1957, p. 406.
5. *Ibid.*, p. 197.
6. *Ibid.*, p. 269.

at the time of the collision. The court of appeals[7] reversed the trial court, finding that an agency relationship did exist and that the car was being used to do errands which came within the scope of the agency. The supreme court disagreed.[8] The facts are important. The owner, Young, was an entertainer who at the time of the collision was temporarily in the military service. The driver, Farmer, had been attempting to promote Young's success by keeping his name before the public. Farmer had moved away from the state and had not seen Young in 5 or 6 months. On the day of the collision, Farmer prevailed upon Young's wife to lend him the automobile. She asked that he carry Young's laundry to the cleaners. He did so. He also called upon a radio station and took a disc jockey out to lunch and gave him one of Young's photographs. He also testified that he had other photographs of Young and hoped to give some of them out later in the day if an occasion presented itself. All of this was done without Young's knowledge or consent. After delivering Young's laundry and giving one of his photographs to the disc jockey, Farmer then went a distance of several miles to purchase a tape recorder for his own personal use, and with which Young had no connection. Neither did Young or his wife have any knowledge that Farmer intended to use the automobile to secure a tape recorder for his own use. The supreme court held that these circumstances showed that Farmer was on a purely personal mission of his own and entirely without the scope of his agency, if such agency had ever in fact existed, and the owner was not liable.

The accident in the *Young* case, *supra,* occurred on July 27, 1954, and prior to the enactment of that 1955 Georgia Law, page 454, codified in GA. CODE ANN. § 68-301 (Supp. 1955), providing that liability will attach to the owner of a vehicle when it is being operated for the "benefit" of the owner. In *Shropshire v. Caylor,*[9] it was held that the bailment of an automobile to a service station for washing and lubrication was for the benefit of the owner as well as for the benefit of the service station and, while being returned to the owner by the service station attendant, the vehicle was being operated for the "benefit of such owner". This recent 1955 statute was applied, making an owner liable for injuries inflicted by a motor vehicle if it was being operated for his benefit.[10]

An interesting query is whether the holding expressed in the

7. 94 Ga. App. 442; 95 S.E.2d 333 (1956).
8. 213 Ga. 42, 96 S.E.2d 605 (1957).
9. 94 Ga. App. 37; 93 S.E.2d 586 (1956).
10. Ga. Laws 1955, p. 454, GA. CODE ANN. § 68-301 (Supp. 1955).

Young case would be analogous if the accident had occurred subsequent to the enactment of the 1955 "benefit" statute. If the distribution of the photographs constituted a "benefit" within the statute, would the fact that the driver had already given out the photographs, as in the *Young* case, and branched out on a mission personal to himself preclude liability as against the owner, even under the 1955 statute? The author ventures that the analogy should apply.

A traveling salesman who had gone on a purely personal mission of his own to do a friend a courtesy and had an accident on the return trip while heading back to the hotel to check his mail and make phone calls and had not transacted any business of any nature on his trip, does not make his employer liable for any negligence in the operation of the automobile.[11] Holding that the trial court erred in denying the employer's motion for judgment notwithstanding the verdict where a judgment had been returned against both the salesman and the employer, the court of appeals pointed out that while it was true that a traveling salesman away from home or headquarters is in continuous employment under certain circumstances, such is not the case where the agent is on a totally personal matter which has no connection with his employment. Also recognized by the court, although not found applicable, is the rule that where a servant has made a temporary departure and has begun his return trip and resumed his duties of employment, a collision occurring under such circumstances would subject the employer to liability. In the instant case, the employee had not yet resumed the duties of his employment and his return was still considered to involve his own personal matters.

2. Existence of an Agency

A vitally significant decision on whether a commission agent selling a firm's products is its agent upon whom service of suit papers may be had or an independent contractor is *Swift and Company v. Lawson*[12]. Suit was brought for damages arising out of a collision against Swift and Company and its driver Wood in Emanuel County. Swift and Company had no office or place of business in the county. Service of petition and process was made on Hall, a resident of the county and a commission agent who had a contract for the handling and sale of Swift and Company's products. Swift and Company contended that under the contract Hall was an independent contractor and not an agent. This contention was decided adversely to Swift

11. Fulton Bag & Cotton Mills v. Eudally, 95 Ga. App. 644, 98 S.E.2d 235 (1957).
12. 95 Ga. App. 35, 97 S.E.2d 168 (1957).

and Company and the point affirmed on appeal, although the case was reversed on other grounds. Several important questions in connection with agency are dealt with in this case: (1) Does a nonresident corporation have to maintain an office or place of business in the county, besides the agent? (2) Was jurisdiction conferred upon the court when service was made on Hall—was he agent or an independent contractor? (3) Were declarations of the driver, if not made while engaged in a business transaction or while otherwise acting for the company, admissible in establishing such agency?

Firstly, the court concluded that it was not necessary to maintain such an office or place of business; that this applied both to resident and nonresident corporations, except where the action is in contract, in which case resident corporations must also maintain an office in the county and have an agent transacting business.

Secondly, as to whether jurisdiction was conferred by serving Hall as agent for Swift and Company depended on the contract between the two, as well as their conduct and dealings. Hall was designated agent for the sale on commission and for the company's account of such quantities and brands of plant food as might be mutually agreed upon from time to time, and upon the terms and conditions specified. The contract even provided, ". . . (1) Agent Independent Contractor. It is understood and agreed that neither agent nor any employees of agent shall be deemed or construed to be an employee of the principal." Notwithstanding this expressed language of the contract, the court found that the restrictions, control and direction of the methods and operations exercised by Swift and Company over the agent Hall demanded the finding that Hall was an agent of Swift and Company of a fiduciary nature, entrusted with important discretion and judgment, and that he was not a mere employee or servant of Swift and Company. He was not an independent contractor, but such an agent as would protect the principal's interests by delivering to it the copy of petition and process served upon him.

Thirdly, it was held that the testimony of a witness as to statements made to him by the defendant Wood (the driver of Swift and Company's truck) at a club where the driver had been just before the accident was inadmissible and the trial court erred in permitting this testimony, requiring the granting of a new trial, it having been admitted as substantive evidence on the question of agency, and there being no evidence that he was on the business of Swift and Company at the time the statements were made. Although there was rebuttal presumption that Wood was acting within the scope of his

employment when he hit the plaintiff's husband on his way back to a motel from the club where he had talked to the witness, it was held that there is no such presumption that he was engaged in a business transaction or otherwise acting for Swift and Company when he was talking to the witness at the club; nor for the same reason was it admissible as part of the res gestae. Even if it could be said that such testimony should have been considered as impeaching testimony, the court pointed out that it was not originally admitted for that purpose, but as substantive and corroborating evidence on the question of agency and inadmissible for the reasons stated.

Again reiterating the rule that " . . . existence of an agency may be established by proof of circumstances, apparent relations and conduct of the parties . . . " is *Executive Committee of Baptist Convention v. Ferguson,*[13] in which a hospital was held liable for failure to erect side rails, allowing the plaintiff patient to fall from her hospital bed, and for which she brought suit for injuries. The fact that the nurse, wearing a uniform and carrying a chart, accompanied the doctor on his call to the patient in her hospital room, authorized a finding that the nurse was the hospital's agent and made admissible testimony that the doctor had directed the nurse to make arrangements for side rails on the patient's bed.

3. Who Is Liable?

Prime Contractor, Subcontractor, and/or Owner?

In four tort cases arising out of building construction and repairs, several of which were brought jointly against the contractor and subcontractor, three resulted in rulings favorable to the contractors. The sustaining of a general demurrer by the trial court was held proper in *Robbins Home Improvement Company v. Guthrie;*[14] the sustaining of the contractor's motion to dismiss was affirmed in *Peabody Manufacturing Company v. Smith, et al.;*[15] and the failure to plead enough accounted for the affirmance of the sustaining of the contractor's general demurrer in *Queen v. Craven.*[16] Yet in *Holland, et al. v. Phillips, et al.*[17] the petition was held to state a cause of action against both the prime contractor and the subcontractor, the general demurrers of both being overruled.

The supreme court's reversal in the *Robbins Home Improvement Company case, supra,* involved the application of GA. CODE §§ 105-501

13. 95 Ga. App. 393, 98 S.E.2d 50 (1957).
14. 213 Ga. 138, 97 S.E.2d 153 (1957).
15. 94 Ga. App. 240; 94 S.E.2d 156 (1956).
16. 95 Ga. App. 178; 97 S.E.2d 523 (1957).
17. 94 Ga. App. 361; 94 S.E.2d 503 (1956).

and 105-502. This was a claim for damages for a wrongful death caused by burns received in a flash fire when volatile and inflammable material came in contact with an open fire in a hearth in a bedroom in which the defendant contractor was to finish the floors with hardwood flooring. The negligence of the subcontractor allegedly caused the fire. The trial court's sustaining of the contractor's general demurrer was reversed by the court of appeals[18] on the ground that the prime contractor was liable for the negligent acts of a subcontractor where the contract with the owner did not authorize the employment of a subcontractor. Brushing aside this reasoning, the supreme court applied the holding in *Ridgeway v. Downing Co.*[19] to the effect that " . . . the only instances in which the employer of an independent contractor is liable for the negligence of such subcontractor are those therein [Code 105-501, 105-502] enumerated and defined . . . " The fatal weakness of the petition was that it alleged knowledge of the employer that applying volatile and inflammable material to a floor in a residence "near an open fire" (not when carefully done, as the statute says), is *inherently* dangerous, and the statute holds the employer liable only when the work to be done is inherently dangerous *"however carefully done."* The court points out that the allegations charge a danger which is not inherent, but present only when the work is done, as in this case, carelessly, in close proximity to an open fire.

Peabody Manufacturing Company v. Smith, supra, was a suit filed jointly against Smith, the contractor, and Mullins, the subcontractor, for damages to 69 bales of cotton waste caused by sparks and pieces of hot metal dropped by one of the welders employed by Mullins. The owner and Smith had contracted to expand the facilities. Certain of the work, including the welding, was subcontracted by Smith to Mullins. The contract provided that Smith or the architect was to secure bids from the subcontractors, with the determination of the best bid being subject to the owner's approval. The court decided that under these circumstances, Smith had no final control over the selection of subcontractors, and that he and the subcontractors occupied the same relationship to the owner. In considering the motion to dismiss made by the contractor Smith, the vital question was whether or not he was master of the welder. Applying the "right to control" test previously adopted by the supreme court in *Brown v. Smith & Kelly,*[20] the Court found that the contract did not give the contractor

18. 94 Ga. App. 578; 95 S.E.2d 737 (1956).
19. 109 Ga. 591 at p. 596; 34 S.E. 1028 (1900).
20. 86 Ga. 274; 12 S.E. 411 (1890).

authority over the welder, who was considered to be an employee of the subcontractor.

Plaintiff's pleading too little in a suit for damages against a building contractor resulted in the sustaining of a general demurrer in *Queen v. Craven, supra.* The defendant, a building contractor, had entered into a contract with the owner of a house to perform certain remodelling and to make repairs, and in carrying out the contract, his employees removed a porch across the entire back side of the house. Plaintiff lived in the house with his father, who rented from the owner. Plaintiff left for work early one morning without knowledge of any contemplated changes to be made in the porch, which was intact when he left. Thereafter, the defendant's employees removed the porch and plaintiff, on returning home that evening, stepped through his bedroom door and fell several feet where the porch had been removed to the ground below, sustaining injuries for which he brought suit. Defendant had not placed any barricade in the door leading from plaintiff's bedroom to the back porch to prevent anyone, including the plaintiff, from walking out and falling to the ground. Neither was the plaintiff notified of the removal of the porch, nor were any signs posted. The opinion of the court of appeals recognized the general rule that an independent contractor is liable for injuries caused by his own negligence or that of his servants in the course of his performance of his work, or to his failure to leave the premises in as safe a condition as they were found, but it pointed out that it was also a well-established rule " . . . that where the work of an independent contractor is completed, turned over to, and accepted by the owner, the contractor is not liable to third persons, even though he was negligent in carrying out the contract, at least if the defect is not hidden but readily observable on reasonable inspection." Although the plaintiff's petition was not sufficient to withstand a general demurrer, the court lends a helping hand to pleaders who may be confronted with similar cases in the future, saying the plaintiff could have readily viewed the state of the defect and alleged either that the removal of porch constituted a nuisance, or that the work was inherently or intrinsically dangerous, or that it was imminently dangerous to third persons, any of which would have been sufficient to bring the petition within the exceptions to these rules and to have shown a breach of duty owed by the defendant to the plaintiff.

Holland v. Phillips, et al., supra, stating that a joint cause of action was set forth as against both the contractor and the subcontractor, appears to be out of harmony, unless the court's holding is construed to have been predicated solely on the particular terms of the contract

pleaded, though not freeing the decision from ambiguity. In that case, plaintiff's son was killed while riding in an automobile which fell into a creek bed on approaching a bridge under construction. Both the prime contractor and the subcontractor filed general demurrers, which were overruled and affirmed on appeal. The prime contractor was held liable by virtue of the contract, under which it was to assume control of the area for the purpose of putting up barricades or other warnings, notwithstanding that it subcontracted the building of the bridge. The court found that even though the prime contractor may in general direct and supervise the work in accordance with the terms of its contract with the State Highway Department, the subcontractor who is actively engaged in erecting the bridge must be considered to be in control of the construction to the extent of exercising ordinary care to avoid injuries to others. The court, after having so rationalized, then concluded that the general contractor had a general duty respecting the entire project to warn the public of dangers incident thereto while the subcontractor had the duty to avoid injuring others in the construction work actually undertaken.

4. Scope of Employment

The court of appeals in two reversals refused to condone the defendants' contentions that the acts complained of were in no way connected with the business of the servant. In *Chadwick v. Stewart*[21] the court distinguished *Gay v. Healan,*[22] holding that a sheriff was not liable for the acts of his deputy when the injuries were done to a person who was in no way connected with the official act of the deputy. In the *Chadwick case,* a deputy sheriff was transporting a prisoner who was injured, allegedly because of the negligent acts of the deputy. Suit was brought against both the deputy and the sheriff. The sheriff's general demurrer was sustained but reversed on appeal, the court of appeals holding that the petition having stated a cause of action against the deputy, it likewise set forth a cause of action against the sheriff who directed the deputy to transport the prisoner, on the theory that such acts are done by virtute officii or colore officii. It was held error in *Newton v. Candace, Inc.*[23] for the trial court to have entered a nonsuit as to the hotel employer on the theory that the hotel night clerk was not acting within the scope of his employment nor in the prosecution of the hotel's business when he allegedly

21. 94 Ga. App. 329; 94 S.E.2d 502 (1956).
22. 88 Ga. App. 533; 77 S.E.2d 47 (1953).
23. 94 Ga. App. 385; 94 S.E.2d 739 (1956).

and without provocation committed a violent assault upon a hotel patron.

II. *Relations Between Principal and Agent*

Transporting an employee to and from her work in bad weather or when she worked at night was found to constitute a part of her compensation, and being beneficial to the employer as well as to the employee, the employer owed a duty to the employee to exercise ordinary care for her safety.[24] The employer's contention that he owed only slight care for the safety of an employee, an invited guest in his automobile, was of no avail; neither did the fact that she was the servant excuse the employer from exercising ordinary care under the circumstances.

During the survey period, a series of cases dealing with real estate brokers were again considered. A suit by a broker against the principal for commissions for finding a purchaser for seller's business was dismissed on general demurrer. The contract here provided for a commission to be paid if the property were sold for $10,000.00 for cash or upon terms satisfactory to the seller; the failure of the petition to allege that the offer of the prospective purchaser was for cash, or if not, that it was upon terms satisfactory to the seller, failed to show compliance with the contract.[25] A judgment for a broker was reversed where the listing contract provided that the commission would be paid "on the date formal transfer is made", the broker's right to a commission being conditioned upon actual transfer of the property, the seller under such special contract of listment not being liable for payment of the commission where the sale is not effected in the absence of a showing that such failure was due to the owner's bad faith in failing to effectuate it.[26] The sustaining of a general demurrer to a petition for a broker's commission was affirmed where it appeared that the broker and the owner had abandoned the listing contract; the owner had given a six months listing contract in 1953, providing that if the property were sold within 3 months from the termination to a purchaser to whom it had been submitted during the life of the contract, the broker would be entitled to his commission. The broker had entered into negotiations with the prospective purchaser when the owner, during the lifetime of the contract, withdrew the property. In 1955, the property was sold to the same purchaser with whom the broker had been negotiating. The petition was held

24. Harris v. Price, 95 Ga. App. 521; 98 S.E.2d 118 (1957).
25. Atlanta Realty Co. v. Campion, 94 Ga. App. 136; 93 S.E.2d 781 (1956).
26. Blount v. Freeman, 94 Ga. App. 110; 93 S.E.2d 820 (1956).

to be fatal, it not appearing that the broker continued negotiations with the prospective customer or in any other way tried to conclude the sale in accordance with the terms of the contract.[27] Even where a broker is made an exclusive agent for the sale of property, this will not preclude the owner from selling without incurring liability to the broker for payment of commissions where the agreement does not stipulate that the owner can not sell without incurring liability for such commissions.[28]

III. *Workmen's Compensation—Servant or Independent Contractor?*

The ever-important question as to whether the relationship is one of master-servant or independent contractor has been considered during the period in several cases dealing with workmen's compensation. Those decisions wherein the factual situations are pertinent to this query have been selected for review and comment.

The well-followed rule that the right to control the time and manner of a contract's performance, whether or not that right is actually exercised, determines whether the relationship is one of master-servant or independent contractor is again recognized.[29] A contract whereby the claimant was to perform certain construction work and service and providing that claimant would "carry out and complete" the constructions "as" and "when" directed by the contractor and others, is sufficient to show that contractual right to control the time and manner of claimant's performance of the contract was retained, claimant being an employee and not an independent contractor under these circumstances.

Recognizing the retention of control test, but reaching a different result is *Brewer v. Pacific Employers' Insurance Company*.[30] A bricklayer was there found to be an independent contractor. He was laying brick at an agreed price per unit, being required only to do his work in accordance with specifications, hiring and paying his own help. Noting that the line of demarcation between the employee and the independent contractor is often so close that each case must be determined upon its own particular facts, the court pointed out that in the present case it was shown that the right retained was not the right to control the time, manner and method of executing the work, but rather merely to require certain definite results in con-

27. Dowling v. Southwell, 95 Ga. App. 29; 96 S.E.2d 903 (1957).
28. Bradbury v. Morrison, 93 Ga. App. 704; 92 S.E.2d 607 (1956).
29. Old Republic Ins. Co. v. Pruitt, 95 Ga. App. 235; 97 S.E.2d 521 (1957).
30. 95 Ga. App. 270; 97 S.E.2d 643 (1957).

formity to the contract. The latter was the distinguishing factor in determining that claimant was an independent contractor and not a servant.

The claimant, a fashion model, was held to be an employee and not an independent contractor when injured while riding in another model's personal automobile en route from Atlanta to the Cloister Hotel on Sea Island to put on a fashion show that night with others from Davison-Paxon Company, the employer.[31] Company owned automobiles were provided to transport 6 models, among them the claimant. They were to report at the store in Atlanta to leave together, 2 to each car. The claimant had been told the amount of luggage to take, where and when she was to begin work, where she was to eat her meals, what clothes to wear, and the time and place of the show. When she joined the others to make the trip, she was invited to drive down with another model in the latter's personal automobile. The person in charge of the motorcade made no objection. The change was made with her knowledge. The company paid no expenses for the operation of the friend's automobile. The test applied to this set of facts in determining whether the claimant was an employee or an independent contractor, in the words of the court, " . . . is whether the person employed to perform the work was, under the contract, to be free from the control of his employer as to the manner in which he performed the details of the work . . . ". Taking note that a professional baseball player had been found to be an employee, not an independent contractor, within the meaning of the Workmen's Compensation Act,[32] the court concluded that the claimant's actions were controlled as to the details of her work even more so than those of a baseball player. The employer's argument that in electing to ride with her friend instead of in a company car she had withdrawn from her employment was rejected, the court instead holding that she was actively discharging her duties en route under the particular circumstances at the time she was injured.

IV. *Miscellaneous*

Schulte v. Pyle[33] is an interesting decision. The purchaser of a soft drink became violently ill after consuming a portion and complained that it was contaminated and contained impure, unwholesome and deleterious matter. He brought suit jointly against the

31. Davison-Paxon Co. v. Ferguson, 94 Ga. App. 501; 95 S.E.2d 306 (1956).
32. Metropolitan Casualty Insurance Co. of N. Y., et al. v. Huhn; The Same v. Reigen, 165 Ga. 667; 142 S.E. 121 (1928).
33. 95 Ga. App. 229; 97 S.E.2d 558 (1957).

owner of the bottling firm and the agent in charge whose duties were those of an executive and administrative head of the company and who did the hiring and firing. The negligence charged was as to an underservant in respect to the inspection of bottles. The jury returned a verdict against both defendants, that is, the owner of the bottling firm and the agent in charge. The underservant was not named as a defendant. The decision was reversed in part insofar as the trial court denied the motion for new trial by the defendant agent. The court of appeals held that in the absence of a showing that the agent in charge had been negligent in the selection or retention of an incompetent employee, he could not be held liable for the neglignce of an underservant hired for the benefit of the principal and not the agent.

In *Griffin v. Hardware Mutual Insurance Company*,[34] which appears to be a case of first impression in this state, the main question involved the determination of what constitutes the relationship of employer-employee or master-servant in Georgia. It was an action for declaratory judgment, brought to determine whether a garage keeper's liability insurance policy excluded coverage to a person injured while gratuitously helping around the garage at the request of the garage owner. The policy afforded no coverage if the injured person was considered an "employee" of the garage. There was such an exclusion in the policy. The court of appeals, in reversing the trial court, found that he was not an employee, as it did not appear that the garage owner had the right to control the time, method or manner in which the mechanic was to render the assistance.

Recognizing that notice to an agent may be notice to a principal, the court of appeals in *Ball v. Murray*[35] found that in order to establish this notice, there must be proof of the agency; that even if one is shown to be the agent of another, in order for notice to be operative, the subject matter of the notice must be shown to be connected with the agency. In the *Ball* case, although it was shown that a Mr. Newsome was an employee of the landlord and that he had been notified of the alleged defective condition of the steps, this was held not to be sufficient evidence from which the jury could fairly and reasonably infer that notice of the defect had been given to the landlord, there being no evidence that he was an agent of the defendant landlord, or, if he could have been said to have been such an agent, that

34. 93 Ga. App. 801; 92 S.E.2d 871 (1956).
35. 93 Ga. App. 682; 92 S.E.2d 562 (1956).

the condition of the premises was a matter connected with his agency. Such notice will not be presumed.

A mother who sustained a fall at the home of her daughter and son-in-law, where she had gone at their request for the purpose of assisting in preparations for a party on the premises and to help her daughter in dressing for the party, was held not to be a servant or a mere social guest or licensee, but an invitee.[36]

36. Martin v. Henson, 95 Ga. App. 715; 99 S.E.2d 251 (1957).