Vanderbilt Law Review

Volume 9
Issue 5 *Issue 5 - August 1956*

Article 2

8-1956

Agency -- 1956 Tennessee Survey

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AGENCY—1956 TENNESSEE SURVEY

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The appellate courts of Tennessee and the United States Court of Appeals for the Sixth Circuit handed down during the survey period a considerable number of interesting and significant cases dealing with the Tennessee law of agency. This article groups the cases and arranges them under topic headings. In most instances, the discussion of the case or cases under a topic heading is preceded by brief background material designed to place the cases in their proper setting and aid the reader in evaluating them.

Scope of Employment: For two hundred and fifty years or more the rule that a master is liable for the torts of his servant within the scope of his employment has been settled law.[1] The rule enjoys universal acceptance; the difficulty arises in the application of the rule. Often it is not easy to determine whether a particular act of a servant falls within the ambit of activities that impose liability on the master. The *Restatement*[2] sets forth the following factors to consider in making the determination: (a) whether the act is one commonly done by such servants; (b) the time, place and purpose of the act; (c) the previous relations between the master and the servant; (d) the extent to which the business of the master is apportioned between different servants; (e) whether the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant; (f) whether the master has reason to expect that such an act will be done; (g) the similarity in quality of the act done to the act authorized; (h) whether the instrumentality by which the harm is done has been furnished by the master to the servant; (i) the extent of departure from the normal method of accomplishing an authorized result; and (j) whether the act is seriously criminal.[3]

Most of the authorities indicate that for an act to be within the scope of employment it (1) must have been performed at least in part with an intent to serve the master,[4] (2) must be of the same general kind of conduct as that the servant is employed to perform, and (3) must occur substantially within authorized time and space limits.[5]

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1. MECHEM, OUTLINE OF AGENCY § 349 (4th ed. 1952). See also Comment, 24 TENN. L. REV. 241 (1956).
2. RESTATEMENT, AGENCY § 229(2) (1933).
3. FERSON, PRINCIPLES OF AGENCY §§ 56-76 (1954) discusses these factors and typical fact situations that give trouble.
4. Anderson v. Covert, 193 Tenn. 238, 245 S.W.2d 770 (1952); Terry v. Burford, 131 Tenn. 451, 468, 175 S.W. 538, 542 (1915).
5. RESTATEMENT, AGENCY § 228 (1933).

In *Southern Ry. v. Jones*,[6] the widow of a worker who had been killed while engaged in unloading a railway car brought suit in the federal district court against the railroad, alleging that the accident resulted from the negligence of one of the railroad's employees in "spotting" railroad cars. At the time of the accident, the deceased was engaged in unloading pipe for his employer, a subcontractor participating in the construction of a pipe line. The subcontractor had notified the railroad that it intended to unload pipe on Sunday and had requested the railroad to place on a specified unloading spur a sufficient number of cars to keep the subcontractor's men busy. The railroad had replied that a switch engine and crew would not be available for spotting service on Sunday. The subcontractor thereupon conferred with the local station agent of the railroad, and the agent stated that "we will help you any way we can" and pointed out the way to the home of a railroad employee by the name of Lauderback, indicating that Lauderback knew a great deal about practices around the depot and yards and would help in any way he could. Lauderback agreed to move the cars, and while moving them (by releasing the airbrakes and using a railroad jack to start them rolling down the track), he let one get out of control and it crashed into the car in which the deceased was working.

The railroad's defense was that Lauderback was not acting "within either the actual or the apparent scope of his employment." The testimony showed that the railroad had three employees at the local station—the station agent, an operator, and Lauderback who was classified as a "trucker"; that Lauderback had been with the railroad for thirty-five years; that he checked cars, unloaded baggage, occasionally spotted cars at the station, and in general did a "little of everything that was to be done." The United States Court of Appeals for the Sixth Circuit held, in the light of this testimony, that the railroad was not entitled to a directed verdict and that the district court had properly submitted to the jury the question of whether Lauderback was acting "within the scope of his actual or apparent authority."

The court of appeals also approved the charge of the district court, which contained the following statements: "The ultimate and decisive facts necessary to liability have been stated, namely, performance of a service for the benefit of his employer and a service within the general nature of the work he was hired to do."[7] "I charge you that a master will be liable for the acts of the servant, within the scope of the employment, whether the acts are expressly or impliedly authorized, and whether his authority is real or merely

6. 228 F.2d 203 (6th Cir. 1955).
7. *Id.* at 213.

apparent, and whether the servant receives compensation for his activities, or not, is not controlling."[8]

The approved charge, it is to be noted, does not set forth as a condition to the master's liability a requirement that the act causing the injury must have been committed at a place and time authorized by the master; and none of the testimony quoted in the opinion mentions whether or not Lauderback worked on Sundays or indicates how far the spur track was from Lauderback's usual place of work. Further, apparently little attention was given either by counsel or the courts to the authority of the station agent and to the possibility that he might have had power to enlarge the scope of Lauderback's employment beyond the usual limits. Finally, the repeated references of the court of appeals to "apparent authority" and its statement that the issue in the case was whether "Lauderback acted within the scope of his actual or apparent authority" are somewhat puzzling. When courts are determining what tortious acts of a servant will impose liability on the master, they almost invariably state the standard as "scope of employment" or "course of employment." Inquiry is made into an agent's "authority" or "apparent authority" to determine whether the agent has power to bind the principal in contract, not to determine whether the employer is liable in tort. In determining a master's liability, the servant's apparent authority seems to be relevant only if the injured party has in some way relied on the appearance of authority and as a result of that reliance has increased the risk that the injury would result.

In *Kinnard v. Rock City Constr. Co.*,[9] the superintendent on defendant's construction project brought to the attention of one of the common laborers on the job there that his (the laborer's) car, which was parked across the street, was interfering with the ingress of a truck bringing in material and asked him to move it. In the process of doing so, the laborer negligently injured plaintiffs. The trial judge directed verdicts for defendant. On appeal, the Court of Appeals of Tennessee, Middle Section, reversed the trial judge, holding that a master may be liable for his servant's act if the act was commanded by him, even though the act was not within the usual scope of the servant's employment. The court concluded that the jury could well have found that what the superintendent said to the worker was intended as a command and that in moving the car the worker was doing an act commanded by his employer.

The master, of course, has power to broaden temporarily the scope of a servant's employment. Perhaps, however, the court in the *Kinnard* case should have given a little more attention to whether the superintendent had authority to command the worker to render

8. *Id.* at 211.
9. 286 S.W.2d 352 (Tenn. App. M.S. 1955), 24 TENN. L. REV. 595 (1956).

services for the employer outside the usual scope of the servant's employment.

Respondeat Superior—Effect on Master's Liability of Verdict Exonerating Servant: When a person injured by an alleged tort of a servant brings suit against both the master and the servant, the jury not uncommonly finds for the servant but against the master. The weight of authority is that such a verdict is inconsistent and must be reversed.[10] As the master's liability (if any) is vicarious, being based entirely on the doctrine of *respondeat superior,* the freeing of the servant from liability, which is in effect to say that he has not committed a tort, is inconsistent with imposing liability on the master. The majority view on this question has been accepted by Tennessee.[11] On the other hand, a substantial minority of courts refuse to set aside a verdict against the master solely because it exonerates the servant.[12] The minority view is sometimes based on the theory that the master and the servant are joint tortfeasors and that therefore judgment may be rendered against either or both of them.[13] Another line of argument is that the plaintiff is entitled to the verdict he has gotten against the master and that he (not the master) is aggrieved by the failure of the jury also to give a verdict against the servant.[14] Some courts accepting the majority view have been diligent to find a basis for the master's liability in some tortious act of other servants or of the master himself, and thus they have often been able to avoid a finding of inconsistency.

In *Howard v. Haven,*[15] an electrical contractor brought suit against a labor union, its business agent and another electric company for inducing a general contractor to breach an agreement with the complainant. The jury held the union had unlawfully procured a breach

10. New Orleans & N.E.R.R. v. Jopes, 142 U.S. 18, (1891); Pollard v. Coulter, 238 Ala. 421, 191 So. 231 (1939); McGinnis v. Chicago, R. I. & Pac. Ry., 200 Mo. 347, 98 S.W. 590 (1906). A number of cases are listed and discussed in D. B. Loveman Co. v. Bayless, 128 Tenn. 307, 160 S.W. 841 (1913). See also 78 U. PA. L. REV. 904 (1930).

11. "When the master is sued solely for misfeasance, or nonfeasance, on the part of his servants, being liable for their conduct only under the doctrine of *respondeat superior,* a verdict, permitted to stand in favor of such servants, either in an action where they are sued with the master, or in a prior action, entitles the master to a discharge from such claimed liability. This rule is supported by the great weight of authority." D. B. Loveman Co. v. Bayless, 128 Tenn. 307, 312-13, 160 S.W. 841, 842 (1913).

12. See, *e.g.,* Bennett v. Eagleke, 8 N.J. Misc. 61, 148 Atl. 197 (Sup. Ct. 1930).

13. Illinois Cent. Ry. v. Murphy's Adm'r, 123 Ky. 787, 97 S.W. 729 (1906).

14. Texas & Pac. Ry. v. Huber, 95 S.W. 568 (Tex. Civ. App. 1906). "If the plaintiff is entitled to his verdict against two tortfeasors, but the jury are able to agree only as to one of them, and gives a verdict accordingly, we know of no law that prevents the plaintiff from having at least what the jury has given him. If he failed to get the verdict against another also liable, the plaintiff may be aggrieved, but not the defendant." Illinois Cent. Ry. v. Murphy's Adm'r, 123 Ky. 787, 97 S.W. 729, 732 (1906).

15. 281 S.W.2d 480 (Tenn. 1955).

of the contract but exonerated the agent and the other defendant. The Supreme Court of Tennessee sustained the verdict. Its decision was based primarily on the conclusion that the defendants were conspirators and held a common purpose and design to cause a breach of contract, and that the union "did not occupy the relationship of master to its co-defendants as servants." The court pointed out that persons identified with the union other than the business agent had taken part in the controversy. In this part of the decision, the court seems to be saying that the jury's verdict was not inconsistent because there had been acts by the union, independent of the business agent's activities, on which the union's liability might be based. Some of the language in the decision, however, indicates that the court might be ready to abandon the majority rule discussed above and adopt that of the minority jurisdictions.[16]

On petition to rehear, the union contended that there was not a scintilla of evidence in the record to support the verdict other than the actions on behalf of the union by the business agent. The court summarily disposed of this contention, characterizing it as a "gratuitous statement" and one that reargued a question that had been fully covered in the original opinion.

Servant or Independent Contractor: One of the most difficult questions to answer in practice is whether a particular person doing work for another is a servant, for whose torts within the scope of the work the employer usually is responsible, or an independent contractor, for whose torts the employer generally is not liable. The authorities purport to apply a "control" test. The *Restatement,*[17] for instance, defines a servant as "a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control." However, the *Restatement* admits that the master-servant relationship is one that is not capable of exact definition, and sets forth the following matters of fact[18] to be considered, among others, in determining whether one acting for another is a servant or an independent contractor: (a) the extent of control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for

16. *Id.* at 484-85.
17. RESTATEMENT, AGENCY § 220(1) (1933).
18. *Id.* § 220(2).

which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is a part of the regular business of the employer; and (i) whether or not the parties believe they are creating the relationship of master and servant.[19]

In *Terry v. Memphis Stone and Gravel Co.*,[20] the United States Court of Appeals for the Sixth Circuit approved as a correct statement of the law of Tennessee a definition of an independent contrator as "one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer, or others, except as to the end results of his work."[21] That case was an action by persons injured by the negligent operation of a gravel truck. The action was based on the theory that the operator of the truck was a servant of the defendant. The court of appeals, without going into the details of the relationship between defendant and the owner of the truck or the defendant and the operator of the truck, simply stated that the truck owner was manifestly an independent contractor in the operation of the truck, and that neither the owner nor his driver was subject at the time of the accident to control by the defendant of the means and methods used in performing a contract (which the truck owner apparently had with the defendant) to haul gravel. The court further held that even if the driver had been the servant of defendant, a covenant by plaintiffs not to sue the truck owner or the truck driver necessarily released defendant from liability, as his responsibility would have rested solely on the doctrine of *respondeat superior*.

In *Bush Bros. and Co. v. Hickey*,[22] plaintiff brought suit in the federal district court for injuries sustained in a collision with a truck hauling beans for defendant. The evidence showed that defendant had three regular trucks engaged in hauling beans and from time to time hired other trucks and drivers to do extra hauling. The truck involved in the accident was owned and operated by one of the extras. The defendant exercised no control over the manner in which the driver operated the truck, and there was no agreement between defendant and the extra for the hauling of any specified amount of beans or for continuing the hauling for any stated period of time. The defendant moved for a directed verdict on the ground that the driver of the truck was an independent contractor. The district court overruled the motion and the jury returned a verdict for plaintiff. On appeal,

19. For penetrating comments on the independent contrator concept, see Douglas, *Vicarious Liability and Administration of Risk I*, 38 YALE L.J. 584 (1929); Morris, *The Torts of an Independent Contractor*, 29 ILL. L. REV. 339 (1934); Steffen, *Independent Contractor and the Good Life*, 2 U. CHI. L. REV. 501 (1935).

20. 222 F.2d 652 (6th Cir. 1955).

21. *Id.* at 653.

22. 223 F.2d 425 (6th Cir. 1955).

the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the district court. The court stated the law of Tennessee to be: (1) if employment exists, the burden is upon the employer to establish that the status of the employee is that of an independent contractor,[23] (2) the failure of the employer to exercise control as to the manner or method by which the work is done is not determinative, because the test is whether the employer has a right to control the work, not whether he exercises that right;[24] and (3) the right of the employer to terminate employment at any time is a circumstance tending strongly to show subserviency of the employee and a master-servant relationship between the employer and employee.[25] The court pointed to testimony which it felt was at least sufficient to take to the jury the question of whether defendant had the right to discharge the driver at any time and concluded the defendant had not discharged its burden of establishing that the driver was an independent contractor.[26]

The dissenting judge differed sharply, concluding that the defendant could not have terminated the services of the driver at any time for any reason. Viewing each contract of hauling as a separate transaction, he argued that although defendant was not obligated to enter into a new contract on the completion of the previous one, nevertheless defendant did not have a right to terminate a contract for a specific job of hauling before completion of that job. The dissenting judge also emphasized the following factors, all of which he felt tended to indicate that the driver was an independent contractor: (1) the defendant did not supply the truck, or the oil and gas for it; (2) he did not exercise any control over the way the hauling was done; (3) he paid for the hauling by the job; and (4) he did not prescribe the route the driver was to take or fix the time he was to leave or to arrive at his destination.

A considerable amount of litigation has centered around the status of gasoline and oil distributors and the status of retail filling station operators,[27] *i.e.*, whether those two groups are servants of the oil companies or independent contractors. If the distributors and service station operators are held to be independent contractors, the oil company is generally not held liable to persons injured by torts committed by them or their employees. A number of exceptions, however, have been recognized to the normal non-liability of the employer of an independent contractor, including one that is particularly applica-

23. D. M. Rose & Co. v. Snyder, 185 Tenn. 499, 206 S.W.2d 897 (1947).
24. Brademeyer v. Chickasaw Bldg. Co., 190 Tenn. 239, 229 S.W.2d 323 (1950).
25. Weeks v. McConnell, 196 Tenn. 110, 264 S.W.2d 573 (1954).
26. The majority opinion (223 F.2d at 427) distinguished Conasauga River Lumber Co. v. Wade, 221 F.2d 312 (6th Cir. 1955).
27. Some of the cases are collected in Annot., 116 A.L.R. 457 (1938).

ble to an oil company's operations, namely, that the employer is not insulated from liability if the work done is "inherently dangerous" or "dangerous in the absence of special precautions."[28] The employer's duty to conduct such work with due care is said to be non-delegable. If the distributors and operators are determined to be servants, on the other hand, the oil company employer is usually held responsible for their torts and for those of their employees (if the distributors and operators are viewed as "appointive agents" for the company with power to create a master-servant relationship between the company and those employees).[29] The distinction between servants and independent contractors is also important in determining the responsibility of the oil companies under workmen's compensation laws and the applicability of certain tax statutes.

Perhaps a majority of the decisions hold that the gasoline and oil distributors and retailers are servants.[30] A considerable number of cases, however, have held them to be independent contractors.[31] Of course, the contracts between the oil company and its distributor or filling station operator may differ somewhat from case to case and those variations may in part explain the differences in judicial treatment; but, if the nomenclature of the contracts is disregarded and the relationship between the parties is viewed realisticly, it is believed that the relationship will be substantially the same in a considerable number of the cases.

A decision handed down during the survey period by the United States Court of Appeals for the Sixth Circuit, *Pure Oil Co. v. Lassing*,[32] dealt with an oil company's responsibility for the negligence of a distributor's employee. In that case, the owner of a service station, which had been leased to Pure Oil and in turn sublet by it to the retail operator, brought suit against Pure Oil for damages to the station caused by the negligence of an employee of Pure Oil's area distributor. The employee, who had been sent to the service station at the opera-

28. See MECHEM, OUTLINES OF AGENCY § 487 (4th ed. 1952).

29. "Here the record shows beyond any doubt the impossibility that one agent could have had the physical ability to operate the oil station of the principal. It is clear that there must have been an assistant, and, in fact, various clauses in the contract show clearly that the parties contemplated that such an assistant, or possibly more, should be employed. Why, then, should the principal, desiring to have its oil station operated efficiently and realizing the necessity for other employees, be permitted to maintain, by an agency contract, full supervision over the station, and yet through provisions in that same contract, escape liability for the acts of the employees engaged in carrying on the very purposes for which the station was established?" Monetti v. Standard Oil Co., 195 So. 89, 92 (La. App. 1940).

30. Gulf Refining Co. v. Brown, 93 F.2d 870 (4th Cir. 1938); Texas Co. v. Mills, 171 Miss. 231, 156 So. 866 (1934); Gulf Refining Co. v. Huffman & Weakley, 155 Tenn. 580, 297 S.W. 199 (1927); Annot., 116 A.L.R. 457, 462-63 (1938).

31. Arkansas Fuel Oil Co. v. Scaletta, 220 Ark. 645, 140 S.W.2d 684 (1940); Wheat v. Texas Co., 159 S.W.2d 238 (Tex. Civ. App. 1942).

32. 222 F.2d 886 (6th Cir. 1955).

tor's request to repair a defective gasoline pump, negligently threw a cigarette into a gasoline fill pipe while it was being used by another employee of the distributor (who happened to be on the premises at the same time) to unload gasoline from one of the distributor's tank trucks. The ensuing fire destroyed the station.

By the terms of Pure Oil's agreement with its distributor, the latter paid all license fees and taxes for the distributorship, furnished his own trucks, hired and paid all his employees, and exercised complete control over the work of the employees. The distributor was paid commissions based on the quantity of products sold. On the basis of this contract, the district court concluded that the distributor was an independent contractor, but refused Pure Oil's motion for a directed verdict on the ground that distributor's independant contractor status was ineffective to insulate Pure Oil from liability for accidents ensuing from the handling of a dangerous article.[33] On appeal, the case was remanded to the district court with instructions to dismiss the complaint. The court of appeals agreed with the district court that the distributor was an independent contractor when engaged in distributing Pure Oil products, because Pure Oil neither exercised nor had the right to exercise any control over the manner or method of performance of that work. The court of appeals, however, pointed out that in repairing the pump, the distributor was neither the agent nor independent contractor of Pure Oil. Although Pure Oil owned the pump, the operator of the station had by contract undertaken to keep it in repair; therefore, the distributor in repairing it was doing work for the operator. The fire had been caused by an employee repairing the pump, not by an employee distributing gasoline. By analyzing the case in this way, the court of appeals did not have to decide whether the delivery of gasoline is so inherently dangerous an operation as to make the duty of ordinary care a non-delegable one under Tennessee law.[34]

Pulaski Housing Authority v. Smith[35] emphasized the point that an employer may become liable for injuries caused by a defect in a building constructed by an independent contractor if the employer

33. See McHarge v. M. M. Newcomer & Co., 117 Tenn. 595, 100 S.W. 700 (1907).

34. Investors Syndicate, Inc. v. Allen, 279 S.W.2d 497 (Tenn. 1955), is another case decided during the survey period which to some extent involved the distinction between a servant and an independent contractor. In that case, the court held, among other things, that a contract between two affiliated foreign corporations designating the same parent company of the two an independent contractor to act for the subsidiary in Tennessee did not preclude the state from showing that the parent was actually acting as an agent of the subsidiary and carrying on an investment business for it in Tennessee within the meaning of the special privilege tax on investment companies. The case is discussed in some detail in O'Neal, *Business Associations—1956 Tennessee Survey*, 9 VAND. L. REV. 934 (1956).

35. 282 S.W.2d 213 (Tenn. App. M.S. 1955).

accepts the building and the defect thereafter causes injuries. In that case, a landlord had employed a general contractor to build apartments for it. The general contractor in turn employed a subcontractor to install the interior plumbing and the appliances. After the apartments had been built, the lessor accepted them and leased one to the plaintiffs. While the apartment was being serviced by the subcontractor, who had been called to do that job by the landlord's tenant manager, an explosion occurred which injured the plaintiffs. The court permitted the plaintiffs to recover from the landlord. By taking charge of the premises and leasing them to the plaintiffs, the landlord took the place of the contractor as the party responsible to tenants for the condition of the premises, and the landlord owed tenants a duty of reasonable care and diligence to see that the premises were turned over to them in a reasonably safe condition. The court concluded that there was evidence to support a finding by the jury that the landlord had failed to use reasonable care to inspect the premises. Further, the court concluded that the jury could find that the subcontractor, servicing the apartment, was acting as the landlord's servant.

Liability of Bank Cashing Check Drawn by Agent on Principal Payable to Agent: Nashville Trust Co. v. Southern Buyers,[36] reaffirmed the proposition laid down in a previous Tennessee case[37] that a depositing bank is not liable to the principal if it accepts for deposit to the account of the agent a check drawn by the agent on the principal's bank account, payable to the agent, the mere form of the transaction not being sufficient to put the bank on notice of the agent's fraud. In the *Southern Buyers* case, the principal, a one-man corporation, entrusted its bookkeeping, collecting, and the handling of receipts and disbursements to the agent, and gave to its bank a signature card authorizing checks on its account to be signed in its name by the agent. It placed no limitation on the authority of the agent to sign checks. Soon after the agent assumed his duties, he opened an account with complainant, another bank, and over a period of two years from time to time deposited to his account or cashed with complainant checks drawn by him on the principal's account, payable to himself. Ultimately, the agent, having misappropriated large amounts of the principal's funds, absconded. The court held that the form of the checks and the other circumstances of the case were not sufficient to put the complainant on notice of the agent's fraud, and that the strict rule of liability on depositing banks in the case of trust funds of administrators, guardians and other conventional trustees

36. 288 S.W.2d 469 (Tenn. App. M.S. 1956).

37. New York Life Ins. Co. v. Bank of Commerce and Trust Co., 172 Tenn. 226, 111 S.W.2d 371 (1937). See also Litchfield Shuttle Co. v. Cumberland Valley Nat'l Bank, 134 Tenn. 379, 183 S.W. 1006 (1916); Tennessee Products Corp. v. Broadway Nat'l Bank, 25 Tenn. App. 405, 158 S.W.2d 361 (M.S. 1941).

does not extend to business agencies in which the agent's authority is fixed by private contract. Further, the court held that the principal was precluded from challenging the agent's authority to issue the checks because it had allowed him to issue and the complainant to cash checks for a period of two years.

Notice to Third Persons of Termination of Agent's Authority: A principal's revocation of his agent's authority to act for him does not necessarily destroy the power of the agent to bind the principal to contracts the agent enters into with third persons. If the agent was a general agent of the principal or if he otherwise had an apparent authority to bind the principal, notice of the termination of the agent's authority must be given to third persons in order to destroy the agent's apparent authority to act.[38] Fairness to those who rely on his appearance of authority require that they be advised when his authority is revoked. Persons who have dealt with the agent must be given actual notice.[39] Presumably the principal has access to the names of "prior dealers," and usually he is not subjected to any great hardship if he is required to notify each of them of the termination of the agent's authority. The principal, however, is permitted to give notice to persons other than prior dealers by publication of the termination of authority in a paper of general circulation or by giving publicity by some other method reasonably calculated to bring the fact of termination home to persons likely to deal with the agent.[40]

In *Tucker v. American Aviation and Gen. Ins. Co.*,[41] an agent of the insurance company had sold the insured a fire policy which ordinarily would have been renewable yearly for four additional years upon payment of premium. Before the expiration of the policy, the insured paid the agent the premium necessary to renew it, not knowing that in the meantime the insurance company had revoked the agent's authority. Some time thereafter the insured property was destroyed by fire. The insurance company defended against suit on the policy, claiming that it had revoked the authority of its former agent and that its communication of that fact to the Commissioner of Insurance in accordance with statutorily prescribed procedures[42] constituted constructive notice of the insured of the termination of

38. RESTATEMENT, AGENCY § 136 (1933); FERSON, PRINCIPLES OF AGENCY § 194 (1954); MECHEM, OUTLINES OF AGENCY §§ 282-84 (4th ed. 1952).

39. "It is a familiar principle of law that when one has constituted and accredited another his agent to carry on a business, the authority of the agent to bind his principal continues, even after an actual revocation, until notice of the revocation is given; and, as to persons who have been accustomed to deal with such agent, until notice of the revocation is brought home to them." Claflin v. Lenheim, 66 N.Y. (21 Sick.) 301, 305 (1876).

40. RESTATEMENT, AGENCY § 136(3) (1933).

41. 278 S.W.2d 677 (Tenn. 1955).

42. TENN. CODE ANN. § 56-701 (1956).

the agent's authority. The court held: (1) that in the absence of a statute providing for constructive notice, an insurance company must give actual notice to customers of the termination of an agent's authority; and (2) that the statute setting up a procedure for notifying the Commissioner of the termination of an insurance agent's authority was designed solely for the benefit of the Commissioner and was not intended to establish a method of giving constructive notice to policy holders.