dent for allowing the appeal in the instant case was, in a later case,[13] used to illustrate the proposition that the Court recognizes as a legal interest "the legitimate interest of public officials and administrative commissions, federal and state, to resist the endeavor to prevent the enforcement of statutes in relation to which they have official duties."[14] Yet, in the instant case, respondent was not an official charged with the enforcement of any law; it was merely a private person who might suffer financial injury.

The real basis for the Court's holding, and the real significance of this extension of the doctrine of legal interest, is probably to be found in that portion of the original opinion deleted by the Court when it denied the Commission a rehearing:[15] "In this view, while the injury to such person would not be the subject of redress, *the person might be the instrument, upon an appeal, of redressing an injury to the public service* which would otherwise remain without remedy."[16] This novel basis for allowing an appeal from an administrative agency when the term "person aggrieved" is used in the governing statute may prove to be of great importance. Other statutes contain the term and future legislation may incorporate it.[17]

T. B.

AGENCY—SCOPE OF EMPLOYMENT—LIABILITY OF PRINCIPAL FOR NEGLIGENCE OF AGENT COMMANDEERED BY POLICE—[District of Columbia].—The driver of defendant's truck was commandeered by a policeman to chase a traffic violator, and, while driving under the officer's direction, negligently injured plaintiff. *Held*, one judge dissenting, that the principal was not liable for its agent's negligence, since the agent was acting outside the scope of his employment. *Balinovic v. Evening Star Newspaper Co.*[1]

The case is interesting as an expression of two different philosophies, both somewhat obscured by the legal verbiage "scope of employment." This term stands for a legal concept which is stretched, on occasion, to cover situations in which the court, for reasons of policy, feels that the principal should bear the loss.[2] Thus, the principal has been held liable in numerous

13. Coleman v. Miller (1938) 307 U. S. 433.
14. Id. at 442.
15. See 8 U. S. L. Week (1940) 668 (rehearing denied and opinion amended).
16. Federal Communications Comm. v. Sanders Bros. Radio Station (1940) 60 S. Ct. 693, 698 (italics supplied).
17. E. g.: Bituminous Coal Act (1937) 50 Stat. 85, c. 127, sec. 6 (b), 15 U. S. C. A. (1939) sec. 836 (b); Fair Labor Standards Act of 1938, 52 Stat. 1065, sec. 10 (a), 29 U. S. C. A. (Supp. 1939) sec. 210.

1. (App. D. C. 1940) 113 F. (2d) 505.
2. See Gleason v. Seaboard Air Line Railway Co. (1929) 278 U. S. 349, 356, where the court stated: "But few doctrines of the law are more firmly established or more in harmony with notions of social policy than that of the liability of the principal without fault of his own." In Robards v. Bannon Sewer Pipe Co. (1908) 130 Ky. 380, 387, 113 S. W. 429, 18 L. R. A. (N. S.) 923, 132 Am. St. Rep. 394, the court said that the law will not "undertake to make any nice distinctions, fixing with precision the line that separates the act of the servant from the act of the individual. When

cases where the agent was acting in violation of his agency,[3] and even where the agent's act constituted a crime.[4]

In the instant case, the problem centers around the question of whether the doctrine of "scope of employment" should be expanded to cover the case of a principal whose agent has been commandeered to aid in law enforcement. There are arguments of policy available on both sides of the issue. The majority of the court refused to take the position that it should be so expanded, whereas Judge Rutledge, dissenting, felt that it should be, and that liability arose because the agent was discharging a duty imposed by law upon the defendant as an obligation owed to the community by a corporate citizen.[5] The basis for this argument is that a citizen owes a duty to aid in law enforcement,[6] and that an individual would be liable for his own negligence in executing this duty.[7] A corporation owes the same duties to the community as an individual,[8] but unlike the individual, it must fulfill these personal obligations through its agents. Consequently, situations may arise where the agent is fulfilling a duty personal to his corporate principal. Then the latter should be liable.

Judge Rutledge points out that the burden which industry would have to bear would not be great, since such accidents are rare. Moreover, the principal is generally in a position to transfer the cost to the community. If we assume that by reason of this accident the innocent victim might, if unrecompensed, become a burden upon the community, the community would thus bear the burden in any event.[9] In a workmen's compensation proceed-

---

there is doubt, it will be resolved against the master, upon the ground that he set in motion the servant who committed the wrong." In Higgins v. Watervliet Turnpike Co. (1871) 46 N. Y. 23, 26, 7 Am. Rep. 293, the court said: "In most cases where the master has been held liable for the negligence of his servant, not only was there an absence of authority to commit the wrong, but it was committed in violation of the duty which the servant owed to the master."

3. Robards v. Bannon Sewer Pipe Co. (1908) 130 Ky. 380, 113 S. W. 429, 18 L. R. A. (N. S.) 923, 132 Am. St. Rep. 394; Higgins v. Watervliet Turnpike Co. (1871) 46 N. Y. 23, 7 Am. Rep. 293. See 2 Mechem, *Agency* (2d ed. 1914) 1462, 1468, secs. 1881, 1882.

4. Panama R. Co. v. Toppin (1920) 252 U. S. 308; Great Southern Lumber Co. v. Williams (C. C. A. 5, 1927) 17 F. (2d) 468; Stinson v. Prevatt (1922) 84 Fla. 416, 94 So. 656; Coleman v. Nail (1934) 49 Ga. App. 51, 174 S. E. 178; McMillen v. Steele (1923) 275 Pa. 584, 119 Atl. 721; Davis v. Merrill (1922) 133 Va. 69, 112 S. E. 628.

5. Balinovic v. Evening Star Newspaper Co. (App. D. C. 1940) 113 F. (2d) 505, 507, citing Babington v. Yellow Taxi Corp. (1928) 250 N. Y. 14, 164 N. E. 726, 61 A. L. R. 1354.

6. Dougherty v. State (1895) 106 Ala. 63, 17 So. 393; Firestone v. Rice (1888) 71 Mich. 377, 38 N. W. 885, 15 Am. St. Rep. 266; Coyles v. Hurtin (N. Y. 1815) 10 Johns. 85; McMahan v. Green (1861) 34 Vt. 69, 80 Am. Dec. 665. That the duty is historical and statutory, see Babington v. Yellow Taxi Corp. (1928) 250 N. Y. 14, 164 N. E. 726, 61 A. L. R. 1354.

7. Jones v. Melvin (1936) 293 Mass. 9, 199 N. E. 392.

8. Babington v. Yellow Taxi Corp. (1928) 250 N. Y. 14, 164 N. E. 726, 61 A. L. R. 1354.

9. Assuming that the agent and the policeman are judgment proof, the only possible recovery would be against the municipality, which is exempt by law.

ceeding involving similar facts, this question of policy was decided in favor of the injured person.[10] There, however, the question arose under a statute whose whole philosophy indicated rather clearly the line of policy to be followed in doubtful cases, and which the court was compelled by tradition to interpret liberally. Perhaps in the instant case the court was correct in refusing to hold the principal liable by extending further the concept of scope of employment. Action to that end could better be taken by the legislature. In the jurisdiction of the principal case the legislature took action tending toward that result while the case was in litigation, passing a statute which imposes liability on the owner of a car for the act of any person who drives it with his consent.[11]

V. M.

APPELLATE PRACTICE—JURISDICTIONAL AMOUNT—INVESTMENT OF TRUST ESTATE FUNDS—[Missouri].—The life beneficiary of a trust estate requested the trustee under a will to invest $8,000 of the trust estate in preferred and common stock, and $8,000 in a common trust fund. It was intended thereby to increase the income from the trust estate by about $200 a year. The estate was, at the time, invested wholly in corporate bonds worth $38,000. The remaindermen of the trust estate contested the trustee's authority under the will to make the proposed change of investments. The circuit court held that the trustee did possess such power. An appeal was taken to the supreme court, both parties tacitly assuming that the appeal would lie, since the estate exceeded $7,500. *Held*, that the supreme court did not have jurisdiction, because the amount in dispute was insufficient; that, since the relief demanded was not primarily a money judgment but merely a determination of the trustee's right to make particular investments, the amount in dispute was to be determined by the value in money of relief to the plaintiff. Under this ruling, the contemplated increase in annual income would determine the amount in dispute, and it clearly did not exceed $7,500. *St. Louis Union Trust Co. v. Toberman.*[1]

The broad rule adhered to by the court in reaching this decision is that jurisdiction attaches when, and only when, the record of the trial court affirmatively shows that there is involved an amount in controversy, independent of all contingencies, exceeding $7,500.[2] It was under this rule that the court held that where there is involved no divestiture of the title of a trust estate, the value of the entire estate does not determine jurisdiction.

---

10. Babington v. Yellow Taxi Corp. (1928) 250 N. Y. 14, 164 N. E. 726, 61 A. L. R. 1354. But cf. Kennelly v. Salt & Lumber Co. (1916) 190 Mich. 629, 157 N. W. 378 (employee ordered by fire-warden to assist in extinguishing forest fire).

11. D. C. Code (Supp. V, 1939) tit. 6, sec. 255b. The statute would not, necessarily, apply to the facts of the principal case. Was the agent driving with the principal's consent after his services had been impressed by the police officer?

1. (Mo. 1939) 134 S. W. (2d) 45.

2. Hardt v. City Ice & Fuel Co. (1937) 340 Mo. 721, 102 S. W. (2d) 592.