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## Agency—Agent's Inuring Immunities

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### Agent's Inuring Immunities

The Court of Appeals in *Berger v. 34th Street Garage, Inc.*<sup>10</sup> reaffirmed the rule allowing for the extension of a principal's non-personal immunities to his agent.<sup>11</sup> Where an expressman's liability is limited and he stores his truck and contents overnight in a garage, with the shipper's knowledge and consent, the garageman may enjoy the same limited liability.

## CIVIL PROCEDURE

### Capacity of Incompetent to Sue

In *Sengstack v. Sengstack*, a suit for legal separation between New York residents, plaintiff wife alleged her own mental incompetence in anticipation of her husband's defense of abandonment. She had had a long history of mental disorders and treatment when in 1952 she left her husband's abode in New York and went to live in Minneapolis with a son. In 1953, a Minnesota probate court appointed her son as general guardian over her estate and person after having received her signed application alleging her own incompetence. A guardian ad litem brought a suit for separation shortly thereafter but her husband successfully defended on the ground that she had to bring it in person as there had been no adjudication of incompetency and therefore the court was without power to appoint a guardian ad litem. This was not appealed.

This suit was commenced in her own name by attorney. The trial court upheld her capacity to sue and also appointed a special guardian to look into the facts of the situation and make recommendations for the protection of her interests.<sup>2</sup> The Appellate Division<sup>3</sup> affirmed as did the Court of Appeals,<sup>4</sup> despite the arguments of the husband that she had no capacity to sue and that the trial court had no power to appoint a special guardian in this case.

The Court of Appeals took the view that the Minnesota decree was not binding upon New York courts inasmuch as plaintiff was a resident of New York and there had been no actual adjudication of incompetence, the order having been issued *ex parte*. In effect, this establishes a converse rule to *In re Curtiss*<sup>5</sup>

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10. 3 N.Y.2d 701, 171 N.Y.S.2d 824 (1958).

11. RESTATEMENT, SECOND, AGENCY §347; *Schoeffler v. United Parcel Service of New York*, 277 App. Div. 569, 101 N.Y.S.2d 451 (1st Dep't 1950).

1. 4 N.Y.2d 502, 176 N.Y.S.2d 337 (1958).

2. 7 Misc.2d 1012, 166 N.Y.S.2d 576 (Sup.Ct. 1957).

3. 4 A.D.2d 1035, 169 N.Y.S.2d 487 (1st Dep't 1957).

4. *Supra* note 1.

5. *In re Curtiss*, 134 App.Div. 547, 119 N.Y.Supp. 556 (1st Dep't 1909), *aff'd*, 197 N.Y. 583, 91 N.E. 1111 (1910).