

"An act is said to be within the scope of the servant's employment when, although itself unauthorized, it is so directly incidental to some act or class of acts which the servant was authorized to do, that it may be said to be a mode, though no doubt an improper mode, of performing them. For an impropriety or excess on the part of the servant in the course of doing something which was authorized the master will be responsible, but not for an act wholly unconnected with the class of acts which the servant was authorized to do:" Clerk & Lindsell's Law of Torts, 3rd ed., p. 70; *Beard v. London General Omnibus Co.*, [1900] 2 Q. B. 530. "The master's liability for the unauthorized torts of his servant is limited to unauthorized modes of doing authorized acts:" *Gracey v. Belfast Tramway Co.*, [1901] 2 I. R. 322; and it will make no difference that the servant has express orders not to commit the impropriety. The master cannot discharge himself from liability by giving instructions to the servant as to the manner in which his duty shall be performed: *Limpus v. London General Omnibus Co.*, 1 H. & C. 526, 538.

I am of opinion that the findings of the jury in answer to questions 1, 2, 3, and 4 and the undisputed facts of the case, if there were nothing more, entitled plaintiffs to judgment against defendant company.

It was argued by counsel that defendant company were not liable because a corporation, it was said, is not liable in an action of slander, citing *Marshall v. Central Ontario R. W. Co.*, 28 O. R. 241; *Odgers*, 3rd ed., p. 435. However that may be, I do not think the present action is one of slander. It is, in my opinion, an action on the case, although the pleadings take very largely the form of an action of slander. . . .

[Reference to *Ratcliffe v. Evans*, [1892] 2 Q. B. 524, and *Riding v. Smith*, 1 Ex. D. 91.]

The present action is, in my judgment, not slander, but an action on the case for false and malicious statements made in reference to plaintiffs' business, and resulting in loss to plaintiffs. I can see no reason, in principle, why a corporation should not be held liable in such a case for the acts of its servant or agent, acting within the scope of his authority.

It was urged, however, that plaintiffs must elect against which of the defendants they will take judgment—if entitled against either—but that they cannot have it against both.