

Rockingham
No. 84-811

ALFRED R. CHAMBERLAIN,
EXECUTOR OF THE ESTATE OF SCOTT CHAMBERLAIN

v.

TOWN OF KINGSTON

May 24, 1985

Flynn & McGee, of Portsmouth (*John P. McGee, Jr.*, on the brief and orally), for the plaintiff.

Kearns, Colliander, Donahue & Tucker P.A., of Exeter (*David S. Brown* on the brief and orally), for the defendant.

MEMORANDUM OPINION

This interlocutory transfer without ruling from the Superior Court (*Dalianis, J.*) raises the question whether an injured plaintiff, who has settled a claim with an employee tortfeasor and has covenanted not to sue the employee, may maintain an action against the employer where no independent fault of the employer is alleged. The sole basis of the employer's alleged liability is the doctrine of respondeat superior.

Our decision of this date in *Waters v. Hedberg*, 126 N.H. 546, 496 A.2d 333 (1985) presented the obverse of this case. The release in *Waters* was given to the employer, and the suit was then permitted to be maintained against the employee. The considerations are no different in this case, and the suit likewise is not barred.

Remanded.