BILLS AND NOTES

By ROBERT C. NORMAN*

There were few decisions by the courts on the above subject during the period reviewed. No unusual questions of law are included. Of the six cases reviewed, five concerned defenses interposed to actions brought on negotiable instruments.

Ramsey v. Langley[1] dealt with the question of proper pleading in a suit on a promissory note. The petitioner set forth the date of the note, the amount thereof, the amount of the monthly installments plus interest after maturity at the rate of eight per cent per annum, the date of the last monthly payment, the balance due and demand for payment. The court held that the provisions of the note were set forth in the petition and that it was, therefore, unnecessary to attach a copy of the note, as required under Code section 81-105, there being a substantial compliance with said section, citing *Edwards v. Camp*.[2]

In one quite interesting case reviewed, *Dollar v. Johnston*,[3] the Court of Appeals held that the evidence was insufficient to show collusion by plaintiff with defendant's estranged wife to defraud defendant by inducing him to execute and deliver a check to plaintiff in payment for a house to be conveyed to his estranged wife, in consideration of the wife's agreement to return to defendant, with knowledge on the part of the plaintiff that the wife did not intend to perform such agreement. The defendant stopped payment of the check delivered by him to the plaintiff, and, upon suit on the check by the payee-plaintiff, defended on the ground of collusion and fraud by the plaintiff and his estranged wife. Although the Court of Appeals ruled that the evidence failed to show any collusion on the part of the plaintiff in an effort to defraud the defendant, there was evidence that the plaintiff knew the purchase of the house was a part of a plan of reconciliation between the defendant and his estranged wife. In the final ruling of the court on the pleadings,[4] the defendant in his answer alleged a failure of consideration. It is interesting to speculate as to the outcome of the case with the defense of failure of consideration[5] developed more fully by the defendant.

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1. 86 Ga. App. 544, 71 S.E.2d 863 (1952).
2. 29 Ga. App. 556, 116 S.E. 210 (1923).
3. 87 Ga. App. 261, 73 S.E.2d 336 (1952).
4. 83 Ga. App. 219, 63 S.E.2d 408 (1951).
5. GA. CODE § 14-305 (1933).

Gainesville Feed & Poultry Co. v. Waters,[6] in so far as the purpose of this review is concerned, logically holds that a garnishee cannot defeat the lien of a garnishment proceeding by giving to the defendant to whom the garnishee was indebted a promissory note for the balance due on the purchase price of realty bought at auction, after service of summons of garnishment and, by way of dicta, the court adds that neither would the garnishee be protected should such note be acquired by a bona fide holder in due course.

In *Parker v. Vrooman,*[7] an accommodation endorser, who placed his signature on a series of notes in blank before delivery to payee, was sued by the payee for the balance due on said notes. The defendant-endorser defended on the grounds that he endorsed said notes as an accommodation to the payee and, therefore, he was not liable to the payee-plaintiff who still held the notes. There was a sharp conflict in the evidence as to whether the defendant-endorser affixed his signature for the accommodation of the payee-plaintiff or for the accommodation of the maker-corporation, of which defendant was an officer. The court, therefore, left the findings of the trial court undisturbed. After pointing out that under the N.I.L. in effect in Georgia,[8] an accommodation endorser is liable to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party, the court went on to state a principle of the law of negotiable instruments not heretofore fully set forth by our courts. Where a person not otherwise a party to an instrument signs it in blank before delivery *as accommodation to the payee,* he is liable to all parties subsequent to the payee *but not to the payee;*[9] but where the endorsement is *for the accommodation of the maker,* the accommodation endorser is liable to the one to whom the note is given for value, *including the payee who took with notice of the accommodation.* (Italics supplied.)

A plea of non est factum was interposed to a foreclosure of a conditional sale contract and note attached in *Howard v. Trusco Finance Company.*[10] The defendant-maker of the note contended that the note was blank at the time of his signature and that it had been filled out for an amount other than that agreed upon. The note, after being filled in by the payee, was negotiated for value to the plaintiff, who brought suit upon default. The court cited N. I. L. section 14-214, which provides, in part, that a signature on a blank piece of paper delivered by the person signing in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount.

6. 87 Ga. App. 354, 73 S.E.2d 771 (1952).
7. 87 Ga. App. 287, 73 S.E.2d 777 (1952).
8. GA. CODE § 14-306 (1933).
9. 51 Ga. App. 409, 180 S.E. 746 (1935).
10. 87 Ga. App. 509, 74 S.E.2d 379 (1953).

Furthermore, even though the contention that the note was improperly filled out for the wrong amount might be good as against the payee who committed the wrongful act, it is manifestly no defense, said the court, as against a bona fide holder for value, as in the present case, who took with no notice of such infirmity. The case likewise furnishes additional authority for the proposition that a note and a conditional sale contract on one piece of paper constitutes a negotiable instrument to the extent that a holder in due course is protected against defenses which might be urged between the original parties.

In *Mathews v. Simons*,[11] the archaic rule, still in effect in Georgia, that a married woman cannot act as surety for her husband's debt, was again interposed by the defendant, in a suit by the widow and sole heir at law of the payee of the note. The jury found for the plaintiff, and the court held that there was evidence to authorize a finding that the defendant and her husband ran a cafe, that this money was borrowed from the plaintiff's deceased husband for use in this business, and further that there was ample evidence for the jury to find that the note had not been paid. In the present case the distinction between the liability of a married woman as guarantor and as surety[12] saved the plaintiff from loss. Nevertheless, the defense accorded to a married woman who acts as surety for her husband's debt, in the present modern age of enlightened womanhood, is completely antiquated and continues to provide a snare for the lender who is offered what he believes at the time to be adequate security. Legislative action on the point should be forthcoming.

There were no statutory changes during the period in review.

11. 87 Ga. App. 735, 75 S.E.2d 272 (1953).
12. See GA. CODE § 103-101 (1953); Wilson v. Heard, 46 Ga. App. 497, 167 S.E. 913 (1933); Durham v. Greenwold, 188 Ga. 165, 3 S.E.2d 585 (1939).