BILLS AND NOTES

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There were no statutory changes in the law of bills and notes during the survey period. The cases decided by our appellate courts during the period involved decisions as to form and interpretation, consideration or lack of it, defenses to suits on notes, as well as a few miscellaneous decisions involving directly or indirectly questions relating to negotiable instruments.

Three cases dealt with questions of form and interpretation of bills and notes. In *Cadow v. Dixon Company*,[1] the court followed the well recognized but often overlooked rule that an agent's authority to execute for his principal a promissory note which is *not* a sealed instrument, need *not* be in writing. See Georgia Code section 14-219. *Cannon and Co. v. Collier*[2] involves the application of section 14-214 of the N.I.L., which gives prima facie authority to the person in possession of an instrument to complete any blanks in the instrument. A gave a check to Mrs. B with the amount left blank. Mrs. B, in the presence of C, filled in the blank for a larger amount. The court quoted the above code section, particularly the following sentence: "In order, however, that such instrument may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time." The court held, therefore, that C was put on inquiry as to Mrs. B's authority relative to the amount of the check and took the check at its peril. Judgment was denied. *Morgan v. Crowley*[3] is an interesting case involving numerous rulings on questions of pleadings. In so far as the law of negotiable instruments is concerned, however, the case held: (1) Where a note is undated, it will be considered to be dated as of the time it was issued, and parole evidence may be introduced to show the date of issue. See Georgia Code section 14-217. (2) In an action against the maker of a promissory note, it is not necessary to plead and prove a demand. (3) The plea and answer of a defendant alleging false and fraudulent misrepresentations relied upon by the plaintiff and inducing him to enter into the

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1. 90 Ga. App. 717, 84 S.E.2d 130 (1954).
2. 91 Ga. App. 40, 84 S.E.2d 482 (1954).
3. 91 Ga. App. 58, 85 S.E.2d 40 (1954).

purchase of realty for which the note of the defendant was given in part payment of the purchase price, was not sufficient as a plea of recision because it did not tender back what was received by the defendant but it was sufficient as a plea to partially abate the purchase price agreed to be paid as represented in part by the note sued upon.

Two cases dealt with the question of consideration. In *Horne v. Harris Motor Co.*[4] the defendant, who executed two promissory notes to the plaintiff, sought to interpose a plea of no consideration to the notes signed by the defendant. He sought to show that the notes were executed by him at the request of his employer, who represented to him that the notes were required for bookkeeping purposes only, and that it was necessary to have some written memorandum that said amounts had been paid to the defendant pending a final accounting between the parties for salary and commissions due the defendant. The court held that the plea that the notes were fraudulently obtained had been abandoned by the defendant and that in the absence of an allegation of fraud, accident, or mistake, the defendant could not by parole evidence dispute the promises of the notes, which were absolute and unconditional. Since the allegations showed that the employer was not indebted to him in any amount whatever, but had overpaid the defendant to the extent of the sums which had been advanced to him, such antecedent debt constituted a valid consideration for the notes. See Georgia Code section 14-302. *In Southern Cotton Oil Company v. Hammond,*[5] an action was brought on a series of promissory notes against the maker and endorser. The court held that even though the endorsement was prima facie one of guaranty the plaintiff could nevertheless amend its petition to show that the endorsement was in fact one of surety, the endorser being an accommodation endorser to whom no independent consideration flowed. Thus, the petition, as amended, stated a cause of action against the maker.

Only one case dealt with negotiation. *McCullough v. Stepp*[6] presented the question as to the character of the indorsement of a note, whether it was a special indorsement (so as to deny the introduction of parole evidence) or whether it was a qualified indorsement. The payee indorsed the note to the plaintiff as follows: "I hereby transfer my right to this note over to W. E. McCullough." The defendant sought to show by parole evidence that both plaintiff and defendant intended this indorsement to be without recourse. The court held

4. 91 Ga. App. 844, 87 S.E.2d 350 (1955).
5. 92 Ga. App. 11, 87 S.E.2d 426 (1955).
6. 91 Ga. App. 103, 85 S.E.2d 159 (1954).

that the indorsement which named the indorsee was a special indorsement in full and that, therefore, the defendant could not contradict the terms thereof by parole evidence, in the absence of fraud or mistake. The court further said that the words of the transfer plainly did not import words similar to "without recourse," so as to make it a qualified indorsement under Code section 14-409.

Several cases dealt with defenses to suits on notes. In *McLendon v. Bowman, Inc.*,[7] the maker of notes was sued by the payee who filed a plea which was essentially a plea of *non est factum*. The defendant further contended that the notes sued on had been transferred to a third party and that title to said notes was not in the payee at the time of taking out the attachment against certain electrical equipment for which the notes were originally given. As to the plea of *non est factum*, the court held that as against such a plea slight evidence of the execution of the instrument would authorize the admission of such instrument into evidence; that the evidence was undisputed that the payee had repurchased the notes and was in possession of the same prior to the issuance of the attachment, and that this was sufficient evidence to authorize the court to admit the notes into evidence as against a plea of *non est factum*. *Galanty v. Kirk*[8] involved a plea of fraud. The defendant executed a note to R without consideration. R transferred it to the plaintiff to secure his debt to the plaintiff with full knowledge on the part of the plaintiff that the defendant's note was given without consideration. R then delivered merchandise and accounts receivable to plaintiff in full payment of all indebtedness to plaintiff. Subsequently, plaintiff falsely and fraudulently represented to the defendant that the note was unsatisfied and, relying thereon, defendant executed a new note. The court held that the plea and answer of the defendant was good, showing fraud in obtaining the new note sued upon. In so holding, the court distinguishes between accounts receivable delivered to a creditor by a debtor as collateral to be credited on the note, when and as paid, and accounts receivable, which are sold outright in payment, satisfaction and extinguishment of the debt, as alleged in the present case. *Kirk v. Shaeffer*[9] followed previous appellate decisions in holding insufficient a plea of payment of a note, which alleged by whom and to whom payment was made, but which failed to state with sufficient certainty when and how payment was made.

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7. 90 Ga. App. 438, 83 S.E.2d 236 (1954).
8. 91 Ga. App. 25, 84 S.E.2d 688 (1954).
9. 91 Ga. App. 358, 85 S.E.2d 629 (1955).

Three decisions dealt with miscellaneous questions involving directly or indirectly questions on bills and notes. *Nichols v. Miller*[10] provides an interesting example of the difference between a contract of guaranty and a contract of suretyship. Mrs. Miller owed the plaintiff $450.00 on a written instrument. Mr. Miller, the defendant, subsequently transferred and assigned a note of the face value of $2,000.00 to the plaintiff, "For the amount of $2,000.00 cash and for consideration of obligation of $450.00 of Mrs. Elinor Miller. . ." The court held the undertaking of the endorser was a primary obligation to pay the $450.00 and not a secondary one. The fact that an independent consideration moved to the creditor does not preclude the contract from being that of surety, nor is it necessary that the obligations of the principal and his surety be contained in the same instrument. *Cocke v. Truslow*[11] involved the use under a Maryland statute of a warrant of attorney contained in a promissory note, whereby the maker of the note waived process and authorized confession of judgment by the holder of the note. Although Georgia law does not authorize such a procedure the court of appeals held that Georgia courts would give full faith and credit to such a judgment obtained under Maryland law, since it did not contravene the public policy of this state. This was true even though at the time of the Maryland action the maker was a Georgia resident and the only service or notice was by registered mail after the entering of judgment in Maryland. *Pioneer Products, Inc., v. Sinclair*[12] presents a question of jurisdiction involving a joint suit against the drawer of a check and its indorsers. The court held that Code section 14-1803 ("In all cases the indorser may be sued in the same action and in the same county with the maker or drawer or acceptor") must be construed together with section 2-4905, which provides that suits against a maker, indorser, etc., residing in different counties shall be brought in the county where the maker or acceptor resides. Therefore, the court said the action against the drawer and endorser jointly must be brought in the county of the drawer's residence.

10. 91 Ga. App. 99, 84 S.E.2d 841 (1954).
11. 91 Ga. App. 645, 86 S.E.2d 686 (1955).
12. 92 Ga. App. 95, 88 S.E.2d 43 (1955).