CONTRACTS

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The contract cases decided during the survey period make no significant contribution to the general law on the subject. The relatively few cases which involved contract principles were decided by the application of well established rules. However, a number of the cases deserve mention as illustrations of accepted principles applied to varying factual situations.

Several cases were concerned with problems of consideration. In four cases[1] the Court of Appeals held that a subsequent oral agreement modified an earlier written contract. This result is reached even though the prior written contract provides that it may be modified only by written agreement. Since parties to a contract always have the power to modify their agreement, they can change any provision, including the requirement that modifications be in writing. Of course, any such modifications must have the mutual assent of the parties and consideration.

In *Jenks v. F. C. Liepman Contracting Company*,[2] the court ruled that the defendant could be held liable for work he engaged the plaintiff to do even though the work was on property not belonging to the defendant. The court relied on the well established proposition that a contract may be supported by adequate consideration even though the consideration flows to one other than the promisor.

Langford v. Milwaukee Insurance Company[3] was an action on an oral contract wherein the defendant company agreed to pay plaintiff $4,000 if she would refrain from bringing an action against defendant's insured. The defendant filed a general demurrer, a plea of the statute of limitations and a plea of the statute of frauds. The trial judge sustained the general demurrer and dismissed the petition. The court in reversing the trial court pointed out that the plaintiff's refraining from bringing an action was sufficient consideration for the defendant's

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1. Bailey v. Martin, 101 Ga. App. 63, 112 S.E.2d 807 (1960); Commercial Trust Co., Inc. v. Mathis, 100 Ga. App. 620, 112 S.E.2d 291 (1959); Finn v. Carden, 100 Ga. App. 270, 110 S.E.2d 693 (1959); New Amsterdam Casualty Company v. Thompson, 100 Ga. App. 677, 112 S.E.2d 273 (1959).
2. 99 Ga. App. 823, 109 S.E.2d 610 (1959).
3. 101 Ga. App. 92, 113 S.E.2d 165 (1960).

promise of payment. The opinion further stated that plaintiff's refraining from bringing action on the original cause until after the statute of limitations had run constituted such part performance as to take the case out of the statute of frauds.

In *De Long v. Cobb*[4] the plaintiff sought reformation of a written instrument. In the course of the opinion the court pointed out that a written contract will not be reformed on ground of mistake unless the mistake is mutual or unless one party is mistaken and the other party is guilty of fraud. In order for the mistake to be mutual both parties must be laboring under the same misconception as to the terms of the written instrument.

The plaintiff in *Dr. Pepper Finance Corporation v. Cooper*[5] sought to recover an amount owing on a conditional sales contract. The defendant filed an affidavit of illegality seeking damages for fraud and misrepresentation in the procurement of the contract. The trial court overruled the demurrer to the affidavit of illegality and denied plaintiff's motion for a judgment notwithstanding the verdict in favor of the defendant. In reversing the lower court, Wyatt, P. J., held that representations and promises regarding the condition and quality of the goods made prior to the execution of the written contract could not be relied on as constituting fraud since the defendant signed the contract with full knowledge that it provided the seller made no warranty as to the quality or condition of the goods. In order to establish a defense of fraud and misrepresentation in the procurement of a contract, it must appear that the misrepresentations were intentionally made with knowledge of their falsity and that the defendant, in addition to relying on the representation, exercised due care to discover the fraud.

Hader v. Howard[6] was a suit to enjoin the defendant from practicing dentistry contrary to an agreement not to compete. The contract between the plaintiff and defendant which contained the provision against competition also provided for a six months' trial period. The plaintiff terminated the agreement within three months after its execution. The court held that the termination within the trial period ended the agreement not to compete the same as it did all other provisions of the contract.

In *Finn v. Carden*[7] the court held that plaintiff's action to recover on a building contract was premature because because the contract

4. 215 Ga. 500, 111 S.E.2d 89 (1959).
5. 215 Ga. 598, 112 S.E.2d 585 (1960).
6. 215 Ga. 252, 109 S.E.2d 589 (1959).
7. 100 Ga. App. 270, 110 S.E.2d 693 (1959).

provided that plaintiff's work must be approved by a certain architect or any dispute settled by arbitration before he was entitled to payment and plaintiff failed to show that this condition precedent had been complied with.

The court in *Wheeler v. Jones County*[8] reaffirmed the well established principle that no construction is required or permissible when language in a contract is plain, unambiguous and capable of only one reasonable interpretation.

8. 101 Ga. App. 234, 113 S.E.2d 238 (1960).