

NEGOTIABLE INSTRUMENTS LAW

By HAROLD I. LINDSEY*

There were only five decisions pertaining to promissory notes reviewed by the courts during the survey period. No unusual questions of law were decided.

The first case¹ involved an action by an endorsee bank against the maker of two notes. Over a defense of failure of consideration, the trial court granted summary judgment for the plaintiff. Reversing the trial court, the Court of Appeals observed that the pleadings and affidavits in the case presented an issue of fact as to whether the bank was a holder in due course, or had possession of the notes for collection, hence the granting of the plaintiff's motion for summary judgment was error. The court said that if the bank held the instruments as holder in due course, the defense of failure of consideration could not be asserted against the bank; while if the bank held the instruments merely for collection, the defense could be asserted against it. The court pointed out that a holder in due course holds a negotiable instrument in his own right and takes title thereto, whereas a holder for collection does not hold in his own right and is merely an agent of the true owner. The court continued that a transfer for collection is a mere power of attorney leaving title in the transferor, and where the instrument is held for collection it is subject to the same defenses as if it were held by the payee.

In another case² involving the defense of failure of consideration, the payee sued the maker on four promissory notes. The Court of Appeals, after reversing the lower court on other grounds, pointed out that in an action upon notes, plea and answer denying indebtedness because consideration for which the notes were given had totally failed raised issues of fact upon which the defendant was entitled to have a jury pass.

Maddox v. Dixie Feeds, Inc.,³ was decided by the Supreme Court of Georgia. In that case there was an action against the maker of a note by the plaintiff, who claimed to be a party in whom legal interest in the note was vested. The trial court overruled the defendant's

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1. *One In All Corp. v. Fulton Nat'l. Bank* 106 Ga. App. 255, 126 S.E.2d 636, (1962).
2. *Abe Gellman & Co. v. Jaco Pants, Inc.*, 107 Ga. App 1, 129 S.E.2d 199 (1962).
3. 218 Ga. 378, 127 S.E.2d 918 (1962).

demurrers to the action, and was affirmed by the Supreme Court. The court held that the plaintiff had a right to proceed against the defendant, and he was not only a proper, but a necessary, party to the action. The court repeated the familiar rule that equity has jurisdiction to avoid a multiplicity of suits by establishing a right in favor of or against several persons which is likely to be the subject of legal controversy. The court concluded that the plaintiff's action against the maker of the note would not fail because other party defendants necessary to establish the plaintiff's contentions were joined in the action.

General Acceptance Corporation v. Nix Ford, Inc.,⁴ was an action by the payee on a note against the maker wherein the defendant asserted a counterclaim. The trial court entered judgment unsatisfactory in part to the plaintiff, and the plaintiff brought error. Affirming the lower court, the Court of Appeals stated that mere denial of indebtedness in an action on a note, unsupported by facts showing an issuable defense, is insufficient to present a jury question. The court held, however, that a defendant may admit indebtedness on a note and affirmatively set up other matter by way of setoff or counterclaim, and such matter, if properly pleaded, is sufficient to raise an issuable defense.

The last case⁵ decided during the survey period was an action by a successor trustee on a note payable to a named decedent trustee. The Court of Appeals reversed the trial court, which had overruled a demurrer to the petition on the ground that the plaintiff did not show legal title in himself to the note, and held that legal title to a note made payable to a designated individual as trustee vested in him individually and not in his representative capacity, and upon his death the right to collect it in a law action accrued to his personal representative and not to his successor in trust. The court pointed out that while the successor trustee could have brought the action in the name of the personal representative for the use of the plaintiff as trustee, he could not bring it in his representative capacity as successor trustee.

There were no statutory changes during the period in review. Although the UNIFORM COMMERCIAL CODE was enacted by the General Assembly, it does not become effective until January 1, 1964.

4. 107 Ga. App. 32, 129 S.E.2d 202 (1962).

5. *Hardwick v. Avary*, 107 Ga. App. 79, 129 S.E.2d 379 (1962).