BUSINESS ASSOCIATIONS

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During the survey period the cases decided covered many areas of the topic. The questions presented for decision included: validity of service upon a dissolved foreign corporation,[1] contract of married woman wherein she "guarantees the payment" of corporate indebtedness,[2] period of existence of joint adventure,[3] dissolution of partnership,[4] venue of action against foreign corporation,[5] service of garnishment summons upon corporation.[6] There were other cases dealing with pleading and practice and general principles of law in which the topic was only incidently involved. The cases will be classified by the major subject matter and the isolated cases will be dealt with separately.

CORPORATIONS

JURISDICTION, VENUE AND SERVICE

The Supreme Court dealt with the difficult problem of venue of a foreign corporation in three cases during the survey period. In two of the cases, equitable relief was prayed for. In the first case, *Modern Homes Constr. Co. v. Mack*,[7] cancellation of a deed to secure debt and injunction was sought against a foreign corporation. An exhibit attached to the petition disclosed an address of the defendant corporation in a county in Georgia other than the county in which suit was brought. The petition failed to allege that the defendant has an agent in the county in which suit was brought upon whom service can be perfected, nor was it alleged that the defendant corporation does not maintain a place of business in this State and an agent in this State upon whom service can be perfected. Absent such allegations, it was held that there was failure to allege necessary jurisdictional facts. The court pointed out that the statute[8] relied upon provides

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1. Taylor v. R. O. A. Motors, Inc,, 108 Ga. App. 635, 134 S.E.2d 486 (1963).
2. Bearden v. Ebcap Supply Co., 108 Ga. App. 375, 133 S.E.2d 62 (1963).
3. King v. Fryer, 107 Ga. App. 715, 131 S.E.2d 203 (1963).
4. Henderson v. Henderson, 219 Ga. 310, 133 S.E.2d 251 (1963).
5. Modern Homes Constr. Co. v. Mack, 218 Ga. 795, 130 S.E.2d 725 (1963); Gold v. Pioneer Fund, Inc., 107 Ga. App. 855, 132 S.E.2d 144 (1963); Rossville Crushed Stone, Inc. v. Massey, 219 Ga. 467, 133 S.E.2d 874 (1963).
6. Redwood Restaurant & Bars, Inc. v. Sprull, 108 Ga. App. 95, 132 S.E.2d 235 (1963).
7. *Supra* n. 5.
8. GA. CODE ANN. §22-1101 (1933).

the manner of service of process upon a corporation but does not fix the venue. Where it appears that a foreign corporation does have a place of business, or agent upon whom service can be perfected, in this State the venue is fixed in the county of such place of business or the residence of such agent.[9] The same question was presented in *Rossville Crushed Stone, Inc. v. Massey*[10] wherein damages and injunction were sought against a foreign corporation. It was alleged that the defendant corporation had a place of business in the county in which suit was brought but failed to allege that it does not have in such county an agent upon whom service could be perfected. Service was made upon an agent designated for service residing in another county. It was held that the petition was fatally defective in that it failed to allege necessary jurisdictional facts. Had the petition alleged that the defendant corporation had a place of business in the county in which suit was brought and in which the cause of action originated, but no agent therein upon whom service could be perfected but had an agent designated for service in another county, would the provisions of CODE section 22-1509[11] give the court jurisdiction and could service have been perfected by serving such designated agent with second original and copy in another county?

In another case, *Gold v. Pioneer Fund, Inc.*,[12] dealing with the aftermath of the Pruett and Co. brokerage failure, in which forged stock powers had been honored by a foreign corporation, it was held that the designation of an agent for service in the registration of the stock of such foreign corporation with the Secretary of State as Commissioner of Securities, was limited to those actions arising out of the

9. Saffold v. Scottish Am. Mort. Co., 98 Ga. 785, 787, 27 S.E. 208 (1896); Louisville & Nashville R. R. v. Meredith, 194 Ga. 106, 108, 21 S.E.2d 101 (1942).

10. *Supra* n. 5.

11. GA. LAWS, 1946, pp. 687, 689. A foreign corporation, doing business in this State, and which does not maintain a place or agent in this State upon whom service may be perfected, shall be suable hereunder in any county of this State in which the contract sued upon or any part or modification thereof was made or to be performed, or in which the tort sued for or any part thereof was committed, or in any county in this State wherein the person or persons designated by such corporation under section 22-1507 to accept service shall reside. In the event suit is brought in a county in which the contract sued upon or any part or modification thereof was made or to be performed or in which the tort sued for or any part thereof was committed, and in which the person or persons designated by such corporation under the provisions of section 22-1507 to accept service shall not reside, service of said summons or process may be perfected upon such corporation by a second original served upon such person or persons in any other county of this State designated by such corporation as its agent to receive service of summons and process under section 22-1507 and in the absence of a person or persons designated by the corporation to receive service as provided in section 22-1507 summons and process may be served upon the Secretary of State as provided in section 22-1508.

12. *Supra* n. 5.

sale of such registered stock and would not extend to a suit seeking recovery of securities alleged to have been transferred on the books of the corporation under forged stock powers. It was further held that a Georgia dealer broker in such securities under a dealer contract with a foreign underwriter of such stock would not be an agent of the issuing corporation upon whom service could be perfected. It appears that legislation is needed to correct this situation so that the registration of foreign securities would give the courts of this State jurisdiction of any cause of action growing out of the sale or *transfer* of such securities and permitting service to be perfected by service upon the designated agent.

In a decision[13] dealing with service of summons of garnishment upon a domestic corporation wherein service was made upon an employee of the corporation who was alone at the place of business of the corporation and was "in charge of the business there at that particular time," it appeared that the corporation had its office and principal place of business also in the same county. The court held that such employee was not an agent upon whom service could be perfected. The decision in this case raises many interesting questions. Would the service have been held good if the garnishee had been a foreign corporation, or a domestic corporation with its principal office in another county? What if the place of business where service was perfected on the employee had been the principal place of business of the corporation? The decision in this case overlooks the accepted criteria for determining whether an employee is an agent upon whom service can be perfected, *i.e.* is such employee "in charge" or "Managing agent."[14]

MINORITY STOCKHOLDERS ACTIONS

The only case decided during the survey period touching upon minority stockholders' rights was that of *Krenson v. Jos. N. Neel Co.*[15] It was there held that in the absence of allegations of fraud or unwise management in the leasing of property for corporate use, no cause of action was stated. It was further held that failure to pay dividends for one year due to expenditure of funds for expansion would not constitute mismanagement.

13. *Supra* n. 6.
14. See NADLER, GEORGIA CORPORATION LAW 48, §83 (1962 Supp.). Annot., 71 A.L.R.2d 180 (1960).
15. 219 Ga. 487, 134 S.E.2d 43 (1963).

CORPORATIONS - MISCELLANEOUS

Where the bylaws of a corporation provide that the right to sell stock is subject to the offering of such stock to the other stockholders pro rata, it was held[16] that an offer to the stockholders in accordance with such bylaws provided all the stock was purchased, was not an offer of all the stock to any one stockholder and the failure of some or all of the other stockholders to accept the offer to sell to them their pro rata shares of the stock did not give any right to any one of the stockholders to accept for himself the offer to sell. Moreover, such accepting stockholder had no right to a pro rata share of the offering stockholder's shares for the reason that the offer was limited by the provision of the offer that all the stock be purchased. It was further held that an injunction against the offering stockholder was unnecessary for the reason that a purchaser of the stock would have notice of the bylaw by the statement printed on the certificates and would therefore purchase subject to the rights of the other stockholders.

In a suit against a dissolved foreign corporation with service upon the statutory agent designated for service to which plea in abatement was filed, it was held[17] that as to foreign corporations the provisions of the Corporation Act of 1938[18] providing for continuation for period of three years after dissolution in which to bring suit, does not apply but rather the Act of 1918,[19] providing no period of limitation, applies, thus allowing the prosecution of suits at any time within the applicable period of limitation of the cause of action. The court applied the rule that a statute is not repealed by implication by a later statute unless generally inconsistent or the later statute covers the entire field of the former act.[20]

Frye v. Commonwealth Inv. Co.,[21] another case growing out of the Pruett & Company's fraudulent handling of customers' funds and securities, involved the transfer of stock certificates under a forged stock power. The Court of Appeals there held that title to stock in the corporation does not pass under a forged stock power[22] and further that the period of limitation runs only from the time of the discovery of the forgery.[23] The issuing corporation here purchased its own certificates and because of the fiduciary relationship between the corpor-

16. Hemby v. Schultz, 219 Ga. 201, 131 S.E.2d 924 (1963).
17. Taylor v. R. O. A. Motors, Inc., 108 Ga. App. 635, 134 S.E.2d 486 (1963).
18. GA. LAWS, 1937-38, p. 214; GA. CODE ANN. ch. 22-18 (1933).
19. GA. LAWS, 1918, pp. 136-37; GA. CODE §§22-1210, 1211 (1933).
20. Fairfax Bldg. Co. v. Oldknow, 46 Ga. App. 281, 167 S.E. 538 (1932).
21. 107 Ga. App. 739, 131 S.E.2d 569 (1963).
22. Buena Vista Loan and Sav. Bank v. Stockdale, 56 Ga. App. 168, 192 S.E. 246 (1937).
23. GA. CODE §3-807 (1933).

ation and its stockholders, it was held not to be a bona fide purchaser, and thus title to the stock did not ripen by prescription. Had the stock been transferred to a bona fide purchaser for value, the court indicated that prescriptive title would have ripened.

It was held[24] that a purported answer signed by an individual designated as "vice president," it not appearing that such document is an answer of the corporation filed by an officer on its behalf, was properly stricken upon demurrer. The Supreme Court granted certiorari[25] but upon further consideration affirmed the judgment and decision of the Court of Appeals.

The contract of a married woman, sole stockholder of a debtor corporation, wherein she "guarantees the payment of the herein described note according to its terms and conditions [and] the payment of any and all indebtedness Peoples Plumbing Co., Inc. may hereafter incur to Ebcap Supply Co. . . . created hereafter but prior to the due date of said note or any extension thereof," was held not to be an enforceable contract of guaranty for lack of consideration flowing directly to guarantor.[26] As a suretyship agreement it was not enforceable against a married woman. The court refused to "pierce the corporate veil" and consider the indirect benefits flowing to the guarantor by virtue of her sole ownership of the corporate stock.[27]

The duty of a corporation, under a policy of automobile liability insurance, to "immediately forward to the company every demand, notice, summons or other process received by it or its representative" in connection with the hazards insured against, was held[28] to be a condition of the policy and failure to comply therewith relieved the insurer of liability. The evidence was that the process was served upon an employee "who was then and there solely in charge of the plaintiff's place of business" and such was held to constitute the employee a "representative" of the corporation within the meaning of the policy.[29] The decision in the related case of *Clements v. Sims T. V. Inc.,* was held not to be res judicata, there being no identity of parties nor causes of action.

A finality clause in an employment contract was held[30] to be against

24. Conley Millwork Co. v. Epler, 107 Ga. App. 644, 131 S.E.2d 133 (1963).
25. 219 Ga. 189, 132 S.E.2d 25 (1963).
26. GA. CODE §103-101 (1933); GA. CODE §20-107 (1933); Guggenheimer & Co. v. Gilmore, 29 Ga. App. 540, 116 S.E. 67 (1922).
27. Durham v. Greenwold, 188 Ga. 165, 3 S.E.2d 585 (1939).
28. Sims T.V., Inc. v. Fireman's Fund Inc., 108 Ga. App. 41, 131 S.E.2d 790 (1963); see related case, Clements v. Sims T.V., Inc., 105 Ga. App. 769, 125 S.E.2d 705 (1962).
29. *Compare*: Redwood Restaurant and Bars, Inc. v. Sprull, 108 Ga. App. 95, 132 S.E.2d 235 (1963).
30. Gettys v. Mack Truck, Inc., 107 Ga. App. 694, 131 S.E.2d 205 (1963).

public policy and without legal effect where such provision covered "any dispute whatsoever" as such provision is an attempt to oust the courts of jurisdiction.[31]

PARTNERSHIPS AND JOINT ADVENTURES

Where an option is taken pursuant to a joint adventure agreement by which the parties thereto are to share in the profits of the purchase and sale, upon the expiration of the time limit contained in the option the joint adventure was held[32] to terminate simultaneously therewith, and a party to the joint adventure agreement is free thereafter to purchase the property for his own account. The question of breach of the joint adventure agreement was not raised by the pleadings. The plaintiff's case was laid for division of the alleged profits on the theory that the purchase and sale of the property by the defendant was for the benefit of both joint adventurers. It appears that, had the case been laid for damages for failing to comply with the joint adventure agreement to exercise the option prior to its expiration, a good cause of action could have been set forth.

In another case[33] decided by the Supreme Court, dissolution of a partnership agreement was sought. Upon demurrer it was held that allegations of a partnership agreement to purchase, operate and hold for resale a certain tract of land were sufficient to state a cause of action. The fact that the legal title was vested in the defendant partner allegedly for the purpose of facilitating the borrowing of money for partnership use, and to prevent the Internal Revenue Service from "thinking that plaintiff partner shares in the proceeds from the operation of the farm," would not divest the plaintiff partner of his equitable interest in the land, which was partnership property. The Statute of Frauds was urged upon demurrer but it not appearing from the petition whether the agreement was oral or partially oral and partially in writing, such ground of demurrer was held to be a speaking demurrer and was overruled. Laches was also urged on demurrer but it was held that there were no facts alleged in the petition that would make it inequitable to enforce the implied trust. A further ground of demurrer was that the plaintiff did not come into court with clean hands. The court disposed of this contention by holding that the question of income tax liability for plaintiff's one half of the annual

31. State Highway Dep't v. MacDougald Constr. Co., 189 Ga. 490, 504, 6 S.E.2d 570 (1939); Annot., 137 A.L.R. 520 (1942); Parsons v. Ambos, 121 Ga. 98, 48 S.E. 696 (1904).
32. King v. Fryer, 107 Ga. App. 715, 131 S.E.2d 133 (1963).
33. Henderson v. Henderson, 219 Ga. 310, 133 S.E.2d 251 (1963).

payment paid from partnership income need not be decided for it did not appear that the plaintiff failed to return the same for income tax.

In a suit on a foreign judgment obtained against a partnership in the partnership name, wherein it was alleged that named individuals constituted the partnership and who were made party defendants and against whom judgment individually was sought, it was held[34] that under the law of the State rendering the foreign judgment, a suit against a partnership binds only the partnership property,[35] and therefore such foreign judgment could not be made the basis of action brought in a Georgia court against the individual partners.

BANKRUPTCY

Where attachment is levied more than four months prior to bankruptcy of defendant in attachment, and bond with surety is given in the attachment case and the property released from the levy, plaintiff in attachment is entitled to proceed to judgment against the defendant in attachment and the surety on the bond, with perpetual stay of execution as to defendant.[36]

34. Losito v. Gingo, 107 Ga. App. 840, 131 S.E.2d 780 (1963).
35. ALA. CODE tit. 73141 (1940). "Two or more persons associated together as partners in any business or pursuit, who transact business under a common name, whether it comprise the names of such persons or not, may be sued by their common name, and the summons in such case being served on one or more of the associates, the judgment in the action binds the joint property of all the associates in the same manner as if all had been named defendants."; Woodfine v. Curry, 228 Ala. 436, 153 So. 620 (1934).
36. Rahal v. Titus, 107 Ga. App. 844, 131 S.E.2d 659 (1963).