NEGOTIABLE INSTRUMENTS

By CHARLES L. CETTI*

CASES

PAYMENT BY SURETY AND SUBROGATION

Betts v. Brown[1] was a case of first impression in Georgia. In a well-reasoned opinion the Supreme Court held that where a security deed indebtedness was paid with the proceeds of creditor life insurance on the life of the original debtor, the insured's widow was subrogated to all the creditor's rights against the insured's grantee who had agreed to assume the indebtedness.[2]

The key issue was whether such payment was payment *by the insured,* so as to give the insured's representative subrogation rights. The court correctly reasoned that in creditor life insurance cases it is usually the debtor who in substance furnishes the insurance, being required to do so by the terms of the credit agreement. It is given to the creditor as additional security for the debt and is to be contrasted with the case of an unsecured creditor insuring the life of the debtor. Payment from the proceeds of the policy was therefore payment by the insured.

Having decided the above, the court then applied GA. CODE sections 103-501[3] and 502 (1933), subrogating the surety to all the rights of the creditor,[4] and gave the insured's widow the note, security papers, and a money judgment against the defendant.

HOLDERS IN DUE COURSE

In *Commercial Credit Equip. Corp. v. Reeves,*[5] the plaintiff-assignee of negotiable promissory notes sued the makers thereof who had executed the notes as payment for farm equipment. The makers contended that the consideration for the notes had failed, which contention was upheld in the trial court. In reversing, the Court of Appeals held that the plaintiff was a

*Associate, McClain, Thompson, Turbiville, White & Davis, Tampa, Florida. LL.B., Walter F. George School of Law, Mercer University, 1965.

1. 219 Ga. 782, 136 S.E.2d 365 (1964)
2. The creditor bank had interpleaded Betts, the insured, and Brown, the grantee.
3. Compare UNIFORM COMMERCIAL CODE §3-415 (5).
4. When the insured sold the property to Brown, who agreed to assume the indebtedness, the insured became a surety by operation of law. The subsequent execution of a note by the insured and defendant as co-makers in lieu of the surety arrangement did not change the relationship of the insured as a surety because accommodation parties can always show their accommodation nature by parol evidence as between the parties. GA. CODE sections 103-501 and 103-502 (1933) were therefore applicable.
5. 110 Ga. App. 701, 139 S.E.2d 784 (1964).

holder in due course and therefore took free of the defense of failure of consideration. The fact that the plaintiff had financed the transaction between the manufacturer and seller and between the seller and defendants was held not to be inconsistent with good faith.[6] The case arose under the UNIFORM NEGOTIABLE INSTRUMENTS LAW, formally codified in GA. CODE section 14-502 (1933). This section was repealed by GA. CODE ANN. section 109A-10—103 (1962).

In *Murry v. Lett*,[7] the court held that where a purchaser acquired a note by paying the transferor thereof the full amount due including payments in default, such purchaser was not a holder in due course because it took the instrument with notice of its dishonor. Defendant was therefore subject to the defense that the due date for payments had been modified through practice of the original parties; the transferee should have given notice to the debtor that strict compliance with the terms of the original agreement would be required in the future.

VARYING TERMS BY MARGINAL NOTATION

Watson v. Planters & Citizens Bank[8] involved the question of varying the terms of a negotiable instrument under the UNIFORM NEGOTIABLE INSTRUMENTS LAW by marginal notation. The body of the note recited that the principal and the interest were due October 1, 1960. A marginal notation stated, "To pay $2,000 on or before March 24, 1960." The court stated that the UNIFORM NEGOTIABLE INSTRUMENTS LAW did not resolve this ambiguity; therefore the general rule was invoked, that "the construction put on the instrument by the parties including contemporaneous marginal notations intended to be a part of the instrument will govern."[9] In reversing the judgment, the court stated that the intention of the parties as to the effect of the marginal notation created an issue of fact to be disposed of in the subsequent trial of the case.

PRESENTMENT AND NOTICE OF DISHONOR

In the pre-UNIFORM COMMERCIAL CODE case of *McCarroll v. First Inv. Co.*,[10] the court reached the correct result, but the reader should caution himself against the somewhat imprecise language of the opinion. McCarroll signed his name on the back of a note executed by a corporation of which he was the principal stockholder. In so doing he did not indicate the ca-

6. See BRITTON, BILLS AND NOTES §100, at 407 (1961).
7. 219 Ga. 809, 136 S.E.2d 348 (1964).
8. 110 Ga. App. 725, 140 S.E.2d 30 (1964).
9. *Id.* at 729, 140 S.E.2d at 33. The rule was codified in GA. CODE §14-906 (1933), *repealed* GA. LAWS, 1962, pp 156, 427.
10. 109 Ga. App. 748, 137 S.E.2d 319 (1964).

pacity in which he signed. It was McCarroll's duty to see that the note was paid, due to his position in the corporation. On these facts the court held that McCarroll was an indorser. Plaintiff First Investment Company's petition, however, alleged neither that notice of presentment and dishonor had been given to McCarroll nor that presentment had been made to the corporate maker and the note dishonored by it. The court therefore stated that even if McCarroll's knowledge and duties in regard to corporate affairs excused the plaintiff's failure to allege notice of presentment and dishonor within the rule of *Hull v. Myers*[11] and *Murray v. Anderson*,[12] it did not excuse the failure to allege presentment to the maker and dishonor by same, for a condition precedent to suing even the maker is that either the note be presented to the maker and dishonored by same or that presentment be excused. Therefore, even equating McCarroll's position with that of the corporate maker here was unavailing. What is confusing about the opinion, however, is that instead of the court stating that it was plaintiff's failure to allege presentment to the corporate maker and dishonor by same which defeated the action, it stated that, "under these circumstances it cannot be said that . . . [McCarroll was] not entitled to *notice* of presentment . . . and *notice* of dishonor. . . . "[13] If McCarroll's position was equivalent to that of the maker under the *Hull* and *Murray* cases, he was not entitled to *notice* of presentment and dishonor, but just to presentment being made to the corporation. The language of the court leaves the reader uncertain as to whether the court is holding that the facts of the case failed to equate McCarroll's position with that of the corporate maker, or whether the court, while holding that presentment to the corporation would be presentment to McCarroll, simply used imprecise language.

MISCELLANEOUS

Kapplin v. Seiden[14] held only that a petition alleging that defendant executed a promissory note for $6,760.10 to plaintiff, a copy of which was attached, had paid a certain amount thereon and that a certain amount remained unpaid, stated a cause of action where defendant had sold the property upon the selling of which the note stated that same was to become payable.

STATUTES

During the legislative year the General Assembly enacted the Georgia Sale-of Checks Act,[15] which prohibits a person or entity, other than a bank

11. 90 Ga. 674, 16 S.E. 653 (1893).
12. 73 Ga. App. 771, 38 S.E.2d 131 (1946).
13. 109 Ga. App. at 753, 137 S.E.2d at 322. (Emphasis added.)
14. 109 Ga. App. 586, 137 S.E.2d 55 (1964).
15. GA. LAWS, 1965, p. 82.

or incorporated telegraph company, from selling or issuing checks without first having obtained a license according to procedures set out in the act. Criminal penalties are provided for violations.

GA. CODE section 13-2025.1 was enacted to amend GA. CODE ANN. chapter 13-20 (Supp. 1963),[16] and authorizes state banks and trust companies to issue capital notes and debentures, while exempting them from certain limitations on the aggregate amounts thereof. The new section provides that the banks and trust companies can, after approval of the Superintendent of Banks, issue and sell capital notes or debentures in an amount not in excess of fifty per cent of its capital and unimpaired surplus, but that such notes and debentures shall be subordinate to the claims of creditors and depositors, including claims in liquidation. The capital notes and debentures are not considered part of the capital or surplus, even for the purpose of determining the issuing bank's legal lending or investment limits.

GA. CODE section 13-1009 (1933) was amended by a proviso to the general rule that increases in bank stock be first offered to the stockholders.[17] The proviso allows capital stock to be issued without first being offered to the stockholders or the public if, with the approval of the Superintendent of Banks and two thirds of the stockholders, the stock is exchanged for substantially all of the properties of another bank or corporation.

GA. CODE ANN. section 13-901 (Supp. 1963) was repealed in its entirety and replaced by provisions noted below.[18] The new provisions will also be known as section 13-901.

The new legislation provides that five or more persons may form a banking corporation by filing in the Office of the Secretary of State a written application, signed by each of them, stating (1) the name of the prospective bank; (2) the location thereof; (3) the amount of its capital stock, which shall be at least $25,000 where the population of the city or town of location is 7,500 or less and at least $50,000 where the population exceeds 7,500; (4) the number of shares, provided that they shall be of at least $1.00 par value each, and where the par value of each share is other than $100.00, the par value shall be stated on the published reports of the bank; (5) the purpose and nature of the business proposed; (6) the number of directors, which shall be at least three and not more than twenty-five. The new section 13-901 also contains procedures for filing fees.

GA. CODE ANN. section 13-1001 (Supp. 1963) was amended in similar fashion in the same legislation, and provides that any bank may have its charter amended so as to change its corporate name, location, capital stock, or the number of shares to conform to the $1.00 minimum par value re-

16. GA. LAWS, 1965, p. 494.
17. GA. LAWS, 1965, p. 496.
18. GA. LAWS, 1965, p. 501.

quirement of section 13-901. Where the capital stock of the bank is at least $100,000.00, it may become a trust company.

GA. CODE ANN. section 13-2023 (Supp. 1963) was amended to allow a bank to purchase capital stock in a bank service corporation under certain circumstances,[19] and section 13-2006[20] was added to CODE chapter 13-20 requiring a report to the Superintendent of Banks of any change in control of a bank occasioned by a change in the outstanding capital stock. Control is defined as the power to direct the management or policies of a bank, either directly or indirectly.

19. GA. LAWS, 1965, p. 523.
20. GA. LAWS, 1965, p. 524.