BUSINESS ASSOCIATIONS

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Although there were no great changes in the law relating to business associations during the survey period, some of the cases are deserving of mention. It was not considered within the scope of this article to mention cases involving torts of corporations where the cases contained no principles peculiar to the law of corporations. These cases are treated in the survey article on torts.

THE CORPORATE ENTITY

Jolles v. Holiday Builders, Inc.[1] was a suit for specific performance of a land sales contract where the defendant corporation's president executed the contract in the following form: "Holiday Builders, Inc., By: James L. Wiggins, Pres." Under the contract it was the corporation which undertook to sell the land, but title, unknown to the plaintiff buyer, was actually in the president. The petition prayed that the corporation or its president as an individual be compelled to convey title in accordance with the contract. The Georgia Supreme Court held that neither could be compelled to perform the contract since the president was not a party to it, and the corporation did not own the land. This result, based on the concept of a corporation as a separate entity, seems technically correct. However, there might have been merit in using a different approach to the suit. Might the result have been different if it had been alleged that the corporation acted on behalf of Wiggins, the undisclosed principle?

During the period under survey, the Georgia Court of Appeals manifested a disposition to require strict compliance with GA. CODE ANN. section 114-201 (1956 Rev.) which sets out the requirements for rejection of the provisions of the workmen's compensation statute. In *Thoni Oil Magic Benzol Gas Stations, Inc. v. Kimzey*[2] a notice of rejection was posted on the corporate premises and filed with the board apparently in an attempt to comply with the above-mentioned code section. The notice contained no mention of the corporate employer and was signed by an individual (probably the sole owner). The court applied the concept of a corporation as an entity separate from its owner and held that there was no rejection of the terms of the Workmen's Compensation Act.[3]

CORPORATE POWERS

Bryant Realty Corp. v. Lorberbaum[4] was a review of a judgment overruling a general demurrer to a petition by minority shareholders to enjoin

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1. 222 Ga. 358, 149 S.E.2d 814 (1966).
2. 114 Ga. App. 638, 152 S.E.2d 576 (1966).
3. GA. CODE ANN. tit. 114 (1956 Rev.)
4. 221 Ga. 820, 147 S.E.2d 420 (1966).

the corporation from signing, as an accommodation endorser, obligations of another corporation where the defendant corporation had no interest in the transactions giving rise to such obligations. In reversing, the Georgia Supreme Court held that the petition showed that the defendant corporation had received the authority to enter into such surety relationships by a proper amendment to its charter, and that it would not enjoin the carrying out of an unwise corporate policy in the absence of a showing of fraud or lack of charter power.

FOREIGN CORPORATIONS

Some of the cases treated in this section could have been placed in the section on venue and jurisdiction below, but the special problems involved with foreign corporations seemed to warrant separate classification.

In a recent case[5] the court of appeals held that the Civil Court of Clayton County had jurisdiction[6] over a foreign corporation which had no agent for service in Clayton County where the injury bringing about the suit occurred in that county, and service was had upon an agent in another county which agent was designated to accept service under GA. CODE ANN. section 22-1507 (1966 Rev.). As to another defendant however, the court decided[7] that the jurisdiction of the foreign corporation would not authorize the joining of a Georgia resident in an action in Clayton County where the Georgian did not reside in that county.

In *City Trade & Industries, Ltd. v. Allahabad Bank, Ltd.*[8] a judgment in favor of the plaintiffs in attachment was affirmed in part and reversed in part. The Georgia Court of Appeals held that there could be no in personam jurisdiction where there was no service of the declaration in attachment and no conduct of the foreign corporation amounting to a waiver or acknowledgment of such service. The court further held,[9] however, that there was in rem jurisdiction over the proceeds of a sale of property which had been held subject to the attachment, but which was released to a garnishee for disposition in accordance with an agreement between the parties.

The Georgia Court of Appeals applied a narrow construction of the term "doing business" in a case[10] in which jurisdiction over the defendant foreign corporation was sought under Georgia's long-arm statute.[11] Under this statute a Pennsylvania corporation engaged in the business of making commercial loans and buying various forms of receivables including secured

5. Horton v. Western Contracting Corp., 113 Ga. App. 613, 149 S.E.2d 542 (1966).
6. Apparently under GA. CODE ANN. §22-1509 (1966 Rev.).
7. Horton v. Western Contracting Corp., 113 Ga. App. 613, 614, 149 S.E.2d 542, 543 (1966).
8. 114 Ga. App. 12, 150 S.E.2d 182 (1966).
9. *Id.*, 150 S.E.2d at 186.
10. Buckhead Doctor's Bldg., Inc. v. Oxford Fin. Co., 115 Ga. App. 52, 153 S.E.2d 650 (1967).
11. GA. CODE ANN. §22-1507 (1966 Rev.).

commercial paper was sought to be made a co-defendant with a Georgia corporation which had acted for the plaintiff as a broker in procuring a loan committment with the Pennsylvania corporation. This loan commitment was the only one the foreign corporation had ever issued to a person in this state. It was negotiated mainly by mail and telephone, but officers of the foreign corporation had come to Georgia twice to discuss revision of the loan commitment. Although there was no continuing contractual relationship between the broker and the Pennsylvania corporation, during 1963 and 1964 the corporation had bought from the Georgia broker about twenty-five notes secured by Georgia real estate. It had also bought similar commercial paper from another Georgia corporation.

The trial judge sustained a plea to the jurisdiction. In affirming this disposition, the Georgia Court of Appeals rejected the plaintiff's argument that the doing business concept of the Georgia statute is as broad as is allowed by the due process clause of the United States Constitution. The court held[12] that the foreign corporation was not doing business in Georgia within the meaning of the statute. As a passing thought, it is submitted that the court would not have made an unreasonable judgment had it decided the issue in the plaintiff's favor by placing greater emphasis on the notes (more than twenty-five) which the foreign corporation had purchased during 1963 and 1964.

Partnership and Joint Venture

In *Chambliss v. Hall*[13] the defendant, agent of a real estate brokerage partnership, had allegedly entered into a contract for the sharing of a brokerage fee, the contract being composed mainly of correspondence on partnership stationery. In a suit on the contract against the agent individually, the trial judge instructed the jury that it could not return a verdict for the plaintiff unless the jurors found that the defendant had received the commission on the sale. On appeal the court, reversing a judgment for the defendant, held that the evidence would have authorized a verdict for the plaintiff on any of three theories: that the agent became individually liable (1) by holding himself out as a partner thereby inducing the plaintiff to rely on the partnership to his detriment, (2) by failing to disclose his status as agent, or (3) by agreeing to be bound individually.

The contract sued upon in *Jenkins v. Tastee-Freez of Georgia*[14] was signed by the defendant and her husband who were designated as the lessee. In an action brought against the wife, the trial court directed a verdict for the plaintiff on the theory that the defendant signed with her husband as a partner (or joint venturer). The evidence presented by the

12. Buckhead Doctor's Bldg., Inc. v. Oxford Fin. Co., 115 Ga. App. 52, 56, 153 S.E.2d 650, 653 (1967).
13. 113 Ga. App. 96, 147 S.E.2d 334 (1966).
14. 114 Ga. App. 849, 152 S.E.2d 909 (1966).

defendant showed that the president of the plaintiff corporation had told the defendant and her husband that they both had to sign the contract because the property was all in the name of the wife. The defendant testified that she was not a partner in the business operated by her husband. In reversing the lower court, the court of appeals considered this evidence to be sufficient to prevent a directed verdict even though the evidence was subject to varying interpretations. The defendant was thus allowed an opportunity to try to convince a jury that she actually signed as a surety and could, therefore, plead the defense of coverture allowed by GA. CODE ANN. section 53-503 (1961 Rev.).[15]

Murphy, Taylor & Ellis, Inc. v. Williams[16] was a suit by a real estate broker to recover its commission from the defendants, a father and son. The petition was in three counts, the third of which is within the scope of this section of the survey. The son had engaged the broker to procure a lease of certain property in his shopping center to Piggly Wiggly. After the first lease procured by the broker turned out to be ineffective (for reasons not important here), the son conveyed the property to his father. The third count alleged that Piggly Wiggly would not lease from the father without also acquiring rights in the parking area of the shopping center owned by the son. It was further alleged that the co-defendants formed a joint enterprise pursuant to which they joined, as lessors, in the second lease of the building and parking area procured with Piggly Wiggly by the plaintiff. The case was tried on this third count. At the conclusion of the evidence, the trial judge directed a verdict for the defendants. The Georgia Supreme Court held that the issue of the establishment of a joint enterprise under which the father would be bound by the terms of his son's contract should have gone to the jury.

SHAREHOLDER'S RIGHT TO INSPECT THE CORPORATE BOOKS

The familiar principle that a stockholder has a right to inspect the books of the corporation was reiterated in a case[17] decided during the period under survey. In Georgia this right is based on the common law,[18] the leading case being *Winter v. Southern Securities Co.*[19] (cited by the court). The relief is obtained by injunction rather than by mandamus[20] and is in addition to relief that may be available under GA. CODE ANN. section 22-711 (1966 Rev.).[21]

15. This section provides in part as follows: "[W]hile the wife may contract, she may not bind her separate estate by any contract of suretyship nor by any assumption of the debts of her husband, and any sale of her separate estate, made to a creditor of her husband in extinguishment of his debts, shall be absolutely void."
16. 223 Ga. 99, 153 S.E.2d 542 (1967).
17. Southern Acceptance Corp. v. Nally, 222 Ga. 534, 150 S.E.2d 653 (1966).
18. G. S. & M. Co. v. Dixon, 220 Ga. 329, 332, 138 S.E.2d 662, 665 (1964); C. NADLER, GEORGIA CORPORATION LAW §410 (1950).
19. 155 Ga. 590, 118 S.E. 214 (1923).
20. Standard Factor & Fin. Co. v. Fincher, 112 Ga. App. 205, 144 S.E.2d 554 (1965).
21. G. S. & M. Co. v. Dixon, 220 Ga. 329, 138 S.E.2d 662 (1964).

VENUE AND JURISDICTION

Some of the cases included in the section on foreign corporations should also be read in conjunction with the case included in this section.

In Chatham County a Georgia corporation was sued for damages by one who had sustained injuries in a hotel allegedly owned by the corporation. The corporation filed a plea to the jurisdiction alleging that the proper venue was in Fulton County, and that it had no officer, agent or place of business in Chatham County and was not doing business in that county. In an appeal from the sustaining of this plea, the Georgia Court of Appeals reversed, holding[22] that the legal residence of a domestic corporation for venue purposes is its principal place of business *as fixed by its charter.* That the corporation had ceased doing business in Chatham County was deemed immaterial since the defendant's charter specified Chatham County as its principal place of business.

MISCELLANEOUS

In *Parker v. Schochat*[23] the defendant employer failed in his contention that the evidence demanded a finding by the trial judge sitting without a jury that the plaintiff employee accepted the employer's change in their contract deleting the provision for a guaranteed annual salary and weekly draw and putting the plaintiff on a straight commission basis. The court of appeals held that the change by the employer constituted an exercise of his right to terminate the contract upon the giving of thirty days notice, and that the plaintiff was therefore entitled to recover according to the terms of the original contract.

In an action brought in DeKalb County, the distinction between a contract of indemnity and a contract of suretyship resulted in liability for a married woman notwithstanding her plea of coverture.[24] The defendants, husband and wife, with the plaintiff and his wife had been the sole stockholders of a close corporation which had given its note bearing the personal endorsements of both husbands. The plaintiff and his wife then sold all their stock in the corporation to the defendants who agreed "to assume and pay all outstanding debts and obligations of the corporation . . . [and] to hold harmless and release Robert W. Rankin and Jane M. Rankin from any and all liability and obligations resulting from their association as stockholders and/or officers of said Rankin-Smith, Inc." A renewal note with the same endorsements as the above-mentioned note was executed, but neither the corporation nor the plaintiff's co-endorser could pay it at maturity. After paying off the note and having it transferred to himself, the

22. Singuefield v. General Oglethorpe Hotel Co., 113 Ga. App. 326, 148 S.E.2d 92 (1966).
23. 113 Ga. App. 13, 147 S.E.2d 58 (1966).
24. GA. CODE ANN. §103-101 (1955 Rev.) defines a contract of suretyship. For an example of a contract construed to be one of indemnity, see Walton County Bank v. Stanton, 38 Ga. App. 591, 144 S.E. 815 (1928) in addition to the case now under discussion.

plaintiff brought an action against the defendant husband and wife on the contract set out above. A verdict was directed against the husband but in favor of the wife, who had filed a plea of coverture under GA. CODE ANN. section 53-503 (1961 Rev.)[25] contending that the contract was one of suretyship.

Holding for the plaintiff on his appeal, the court of appeals, in *Rankin v. Smith*,[26] held the contract to be one of indemnity rather than suretyship since the promise ran to the obligor rather than to the obligee, and the promisor agreed to save the promisee-obligor harmless. The wife was therefore precluded from pleading coverture since, under the above-mentioned code section, this defense is available against contracts of suretyship but not against contracts of indemnity. The court further held that the contract was not one of a married woman to pay the debts of her husband. The court considered the debt as that of the corporation even though her husband could be held on his endorsement.

In Georgia membership in a labor organization and payment of fees to a labor organization are prohibited as conditions of employment.[27] In *Martell v. Atlanta Biltmore Hotel Corp.*[28] the court of appeals rejected the contention that these conditions in a contract between an entertainer and the defendant rendered the whole contract void and unenforceable. In deciding the case the court relied on the distinction between entire and severable contracts set out in GA. CODE ANN. section 20-112 (1965 Rev.).

In *J. & C. Ornamental Iron Co. v. Watkins*[29] the court of appeals affirmed the sustaining of general demurrers to a petition alleging, among other things, a conspiracy to destroy the corporation's business and to acquire all of the corporation's assets. The case is a lesson in pleading and does not turn on points of corporate law.

LEGISLATION

A few enactments during the survey period deal with banks and banking. One rather brief act[30] amends the Banking Law[31] by limiting the places that a bank may carry on business to the premises of a banking house operated under a permit from the Superintendent of Banks. This act will appear in the Code as section 13-204.1.

The Banking Law was further amended by the enactment of a new subsection (c) of subsection 13-203.1.[32] Subsection (c) places limitations on the number of bank offices and bank facilities of parent banks that the Superintendent of Banks may approve in the particular city, town, or village

25. For the pertinent text of this section, see note 15 *supra*.
26. 113 Ga. App. 204, 147 S.E.2d 649 (1966).
27. GA. CODE ANN. §§54-902 to -903 (1961 Rev.).
28. 114 Ga. App. 646, 152 S.E.2d 579 (1966).
29. 114 Ga. App. 688, 152 S.E.2d 613 (1966).
30. Ga. Laws 1967, p. 105.
31. GA. CODE ANN. tit. 13 (1967 Rev.)
32. GA. CODE ANN. §13-203.1 (1967 Rev.).

in which the parent is located. The former subsection exempted banks in cities, towns, and villages having a population of 80,000 or more and allowed the approval of no more than one of either a bank office or bank facility for each unit of 40,000 people or any fraction of such unit. The new subsection (c)[33] exempts banks in cities, towns and villages having a population of 60,000, allows the approval of not more than one office or facility for each parent or branch located in a city, town, or village having a population of not more than 40,000 and allows the approval of not more than two bank offices or facilities or one office and one facility for any parent or branch bank located in a city, town, or village having a population of between 40,000 and 60,000. The net effect seems to be to exempt banks or branch banks in cities, towns, or villages in the 60,000 to 80,000 population group.

Another act[34] amends section 13-2027 and 13-2028[35] relating to the keeping of bank reserves.

Credit unions were also the subject of legislative attention during the survey period. One act[36] in this area provides for regulation of requirements and procedures for the incorporation of credit unions and, upon the death of an interstate depositor, would authorize payment by the credit union of up to $1,000 of the amount on deposit to certain persons in the following order of preference: spouse, children, father, mother, brothers or sisters.

Section 25-119[37] was repealed and replaced by an act[38] providing for liquidation of credit unions. The act should be consulted for further information on this area.

Another enactment[39] during the period provides for a presumption in favor of corporations that securities recorded on their books as being the subject of a joint tenancy are owned in joint tenancy with a right of survivorship. Corporations, domestic and foreign, are provided with immunity for transferring on their books any such securities to the surviving joint tenants.

33. Ga. Laws 1967, p. 555.
34. Ga. Laws 1967, p. 798.
35. GA. CODE ANN. §§13-2027 to -2028 (1967 Rev.).
36. Ga. Laws 1967, p. 595.
37. GA. CODE ANN. §25-119 (1959 Rev.).
38. Ga. Laws 1967, p. 597.
39. Ga. Laws 1967, p. 647.