RECENT IMPORTANT DECISIONS.

ATTACHMENT—CONFLICTING ATTACHMENTS.—Writs of attachment were issued out of a small-cause court and levied by a constable. Two days later a writ of attachment was issued out of a circuit court and placed in the hands of a sheriff, who seized possession of the property held by the constable under the prior small-cause court writs. By the law of New Jersey a writ of attachment becomes a lien from the time of its levy. *Held,* the small-cause court writs were prior liens and the wrongful dispossession by the sheriff did not affect such priority. *Woodward et al.* v. *Lishman* (1911), — N. J. L. —, 78 Atl. 701.

It is a well-settled rule in this country that a lawful levy of a writ of attachment brings the attached property in custodia legis. DRAKE, ATTACHMENTS, § 267. Thus goods being once attached cannot be lawfully seized by another officer. *Taylor* v. *Carryl,* 20 How. 583; *Thompson* v. *Marsh,* 14 Mass. 269. Especially is this the rule when as in the principal case the second officer is acting under a conflicting jurisdiction. *Hagan* v. *Lucas,* 10 Pet. 400; for the most unseemly confusion and conflict of jurisdiction would follow the adoption of a different rule. But according to respectable authority the foregoing statement should not be taken as preventing an officer acting under a writ of another court, by giving notice to the officer in possession, from obtaining a lien on the surplus, if there is any. *Bates et al.* v. *Days,* 5 McCrary 342, 17 Fed. 167; but contra, see dictum of Justice MCLEAN in *Hagan* v. *Lucas,* supra. It would seem that, as the only apparent reasons for the rule preventing one officer from levying on goods seized by another is the necessary conflict of jurisdiction which would be produced by two officers contending for the custody of the same property, then if there was no conflict of jurisdiction or no disturbance of possession the rule should have no application to the levy of a second attachment. *Patterson* v. *Stephenson,* 77 Mo. 329. To permit subsequent attaching creditors to avail themselves of any surplus is certainly just and, as the means to such an end, to allow them to levy on the attached property is, if the prior custodianship is not disturbed, in harmony with liberal ideas of court procedure. *Gumbel* v. *Pitkin,* 124 U. S. 131. A constructive levy by the second officer is sufficient because the property is already in the hands of the law. *Leach* v. *Pine,* 41 Ill. 65. Most arguments advanced against the legality of such second levy fail to note the practical fact that there may be an effectual imposition of another writ without an actual seizure or appropriation of the property. *Watson* v .*Todd,* 5 Mass. 271; *Vinton* v. *Bradford,* 13 Mass. 114. Therefore the decision in the principal case would seem to be sound on principle and authority.

BILLS AND NOTES—LIABILITY OF ASSIGNEE OF BILL OF LADING, ATTACHED TO DRAFT, TO CONSIGNEE FOR DEFECTS IN THE GOODS.—Paul, of Muskogee, Oklahoma, shipped two cars of potatoes to plaintiff, the Central Mercantile Co., of Hutchinson, Kansas, and drew upon the consignee for the agreed price,

making two drafts, payable to the Oklahoma State Bank, of Muskogee. Relying upon a guaranty of payment, namely, of "draft bill of lading attached, two cars choice potatoes," wired to it by the Citizens' Bank, of Hutchinson, the Oklahoma bank paid the price of the potatoes to Paul, and received, in return, the drafts on the consignee, with the bill of lading attached, and sent them to the Citizens' Bank, its agent, for collection and remittance. The consignee paid the drafts and received the potatoes, but, before the proceeds were remitted, sued Paul, principally on account of the quantity of dirt found in the potatoes. The Citizens' Bank was summoned as garnishee, and the Oklahoma bank was made a party, claiming the fund. *Held,* that, its agent having received payment of the drafts, the Oklahoma bank was not liable for the return of any portion of the proceeds on account of any defect in the quality of the goods. *Central Mercantile Co.* v. *Oklahoma State Bank* (1910), — Kan. —, 112 Pac. 114.

As to the effect of the words "choice potatoes" in the guaranty, the Court said, that, the drafts having been paid, there was no occasion to look to the guarantor; that this was not a suit on the guaranty, nor against the consignee upon an acceptance of the draft. The question was, had the consignee a valid cause of action against the Oklahoma bank? Or, in other words, is one who buys a draft, with bill of lading attached, and receives payment from the drawee liable for defects in the goods? The authorities are meager and in conflict. Note, 91 Am. St. Rep. 212. The following cases, contrary to the principal case, hold that such a liability is incurred: *Landa* v. *Lattin Bros.,* 19 Tex. Civ. App. 246, 46 S. W. 48; *Searles Bros.* v. *Smith Grain Co.,* 80 Miss. 688, 32 S. W. 287; *Finch* v. *Gregg,* 126 N. C. 176, 35 S. W. 251, 49 L. R. A. 679; *J. C. Haas & Co.* v. *Citizens' Bank,* 144 Ala. 562, 39 South. 129, 1 L. R. A. (N. S.) 242, 113 Am. St. Rep. 61. But the Supreme Court of Texas overruled *Landa* v. *Lattin,* supra, in *Blaisdell Co.* v. *National Bank,* 96 Tex. 626, 75 S. W. 292, 62 L. R. A. 968, 97 Am. St. Rep. 944. In North Carolina, eight years after the decision in *Finch* v. *Gregg,* supra, the Supreme Court of the State overruled that case, in *Mason* v. *Nelson Cotton Co.,* 148 N. C. 492, 62 S. E. 625, 18 L. R. A. (N. S.) 1221, 128 Am. St. Rep. 635. So, now, only Mississippi and Alabama hold contrary to the principal case, which, on the other hand, is supported by *Tolerton & S. Co.* v. *Anglo Cal. Bank,* 112 Iowa 706, 84 N. W. 930, 50 L. R. A. 777, and *Leonhardt* v. *Small,* 117 Tenn. 153, 96 S. W. 1051, 6 L. R. A. (N. S.) 887. See also *Hall* v. *Keller,* 64 Kan. 211, 67 Pac. 518, 62 L. R. A. 758, 91 Am. St. Rep. 209, and *Seattle Nat. Bank* v. *Powles,* 33 Wash. 21, 73 Pac. 887. The theory of the cases that support the principal case is this: they admit that the holder of a draft who takes an attached bill of lading, by assignment, or otherwise, as security for the amount advanced on the draft, becomes the owner of the goods, as against the acceptor, to an extent sufficient to protect his claim. *Williard Mfg. Co.* v. *Tierney,* 133 N. C. 630, 45 S. E. 1026; *Emery* v. *Irving Nat. Bank,* 25 Ohio St. 360, 18 Am. Rep. 299; DANIELS, NEG. INS., § 1734, a. But they say that the present Alabama and Mississippi doctrine not only makes the indorsee the owner of the goods, but imposes burdens and obligations of a contract, between consignor and consignee, in which the indorsee had no

part and of which he had no notice. *Mason* v. *Nelson,* supra. The cases on the other side, for example, *Haas* v. *Citizens' Bank,* supra, say that the bank becomes the owner of the debt and of the goods; in short, takes the contract of the shipper and stands in his shoes, with the same rights, no greater, no less. When these cases appeared, they were the subject of much adverse criticism, some critics fearing that such a rule would cause a revolution in commercial circles and would place a serious impediment in the way of shippers who need an advance on the price of their commodities. Notes, 49 L. R. A. 679; 91 Am. St. Rep. 212; 18 L. R. A. (N. S.) 1221. The principal case, however, with other recent cases, goes to show that the contrary rule is not likely to be followed in future cases.

BILLS AND NOTES—REFORMATION IN EQUITY TO BIND SIGNER OF SEPARATE COMMUNICATION.—The complainant, Gacking, notified his bank to let defendant Shaw have $125 of Gacking's money and to surrender to Shaw an old note for $125, signed by Shaw and defendant Petty, upon Shaw's bringing to the bank a new note, for $250, signed by Shaw and indorsed by Petty. Shaw signed the new note, and presented to the bank the following communication from Petty to the cashier: "Mr. P. A. Ball: I will sign Mr. John Shaw's note for $250.00 all right. 11-19-1902. Signed, E. B. Petty." Ball, acting for Gacking, upon the faith of that communication, turned over to Shaw $125 and surrendered the old Shaw and Petty note. Petty never actually signed the new note. Gacking filed a bill in equity against Petty, Shaw, the bank, and the cashier. *Held,* that, in equity, treating that done which ought to have been done, the transaction was the same in legal effect as if Petty had actually signed as he had promised, and that a judgment in favor of Gacking against Petty on the note should be affirmed. *Petty* v. *Gacking* (1911), — Ark. —, 133 S. W. 832.

It is frequently said that he who takes negotiable paper contracts with him, who, on its face, is a party thereto, and with no other. *Webster* v. *Wray,* 19 Neb. 558, 27 N. W. 644, 56 Am. Rep. 754; STORY, BILLS, § 76; 1 DANIELS, NEG. INS., Ed. 5, 311. Nevertheless, in equity an instrument may be reformed, even though it is a promissory note. *Ahlborn* v. *Wolff,* 118 Pa. St. 243. In the principal case, the court properly considered the case under the facts, as if it were a suit to reform the note so as to make it the note of Petty, as well as of Shaw, who had actually signed it. Looking at the intent rather than the form, equity is able to treat that as done which, in good conscience, ought to be done. *Spaulding Mfg. Co.* v. *Godbold,* 92 Ark. 63, 121 S. W. 1063; *Junction R. Co.* v. *Ruggles,* 7 Ohio St. 1. A familiar instance of the application of the same maxim is presented in the case of a drawee of a bill of exchange, who is bound by a separate, even previous, acceptance. *Vance* v. *Ward,* 32 Ky. (2 Dana) 95; BUNKER, NEG. INST. LAW, § 136.

CARRIERS—RIGHTS OF BONA FIDE ASSIGNEE OF A BILL OF LADING.—P. was a bona fide assignee of a bill of lading issued by the initial carrier. The goods represented by the bill of lading were routed over several lines and D. was the terminal carrier. There were no traffic arrangements between the