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# Libel -- Negotiable Instruments -- Injury to Business Reputation by Altering Check

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prima facie meritorious defense, which cannot be controverted by counter-affidavits.<sup>14</sup> It might be argued that the judge having found no meritorious defense is presumed to have had before him facts sufficient to negative it.<sup>15</sup> The answer, however, speaks for itself as a part of the record of which the court will take judicial notice<sup>16</sup> and from which the court will review the conclusions of the judge.<sup>17</sup>

The cases cited in the dissent on this point are all cases in which no answer had been filed or no facts at all were found relative to the negligence.<sup>18</sup> While good practice may require the judge to set out findings relative to a meritorious defense, any other holding, it is submitted, would have been over technical and not in harmony with the highly remedial purpose of §600.<sup>19</sup>

SUSIE SHARP.

### Libel—Negotiable Instruments—Injury to Business Reputation by Altering Check

Plaintiff, a corporation operating a general merchandise store, gave defendant, a wholesale meat packing corporation, a post-dated check for \$54.99 to settle an account, as agreed. Defendant sent the check in for collection with the date altered, making it payable at once. The check was returned by the bank due to insufficient funds. The plaintiff, having deposited enough to pay the check, sued the defendant for damage to its credit and business reputation caused by defendant's negligent, wanton, and willful premature presentation of the check causing the bank to give false information that the plaintiff had drawn a check without funds. A jury verdict of \$2,000 was affirmed, the plaintiff being entitled to such substantial damages as would compensate for the injury as well as such punitive damages as were proper punishment for such willful wrong.<sup>1</sup>

This case is without precedent or direct authority and was decided by analogy to suits against banks for the wrongful dishonor of customers' checks. The situations, while generally similar, are different

Salogar *et al*, 71 Cal. App. 290, 235 Pac. 86 (1925). 1 FREEMAN, JUDGMENTS (1925) §286.

<sup>1</sup> 1 FREEMAN, JUDGMENTS, §289; 34 C. J. Judgements, §571 (3).

<sup>15</sup> Holcomb v. Holcomb, 192 N. C. 505, 135 S. E. 332 (1926).

<sup>16</sup> 23 C. J., Evidence, §1918; N. C. ANN. CODE (Michie, 1927) §1412; Wilson v. Beaufort County Lumber Co., 131 N. C. 164, 42 S. E. 565 (1902).

<sup>17</sup> Norton v. McLaurin, 125 N. C. 185, 34 S. E. 269 (1898).

<sup>18</sup> Sutherland v. McLean, *supra* note 7, at page 352.

<sup>19</sup> (1927) 5 N. C. L. REV. 269.

<sup>1</sup> St. Charles Mercantile Co. v. Armour & Co., 153 S. E. 473 (S. C. 1930).

in the respect that the latter cases are usually brought for injury to plaintiff's credit with the company taking the check in payment while here the injury is a loss of credit principally with the bank. The wrongful act of the defendant resulted in a tort<sup>2</sup> similar to slander of title or disparagement of goods, in that it injured business reputation by injuring credit. The bank was an innocent agent, and the defendant's act was the proximate cause of the false information.

The plaintiff was blameless in issuing a post-dated check.<sup>3</sup> Although it is held by some jurisdictions that a post-dated check is the same as if it hadn't been issued until the date thereof,<sup>4</sup> the weight of authority is that a post-dated check is not only a valid but a negotiable instrument before its date.<sup>5</sup> A post-dated check raises a presumption that the maker has an inadequate fund in the bank at the time of giving the check but that he will have a sufficient deposit at the date of presentation.<sup>6</sup>

A merchant or trader having a check wrongfully dishonored by a bank is entitled to substantial damages<sup>7</sup> without proof of actual loss or damage, the injury to the credit and commercial standing of the former being presumed.<sup>8</sup> Where the non-payment is actuated by fraud, gross negligence, or oppression, punitive damages also may be

<sup>2</sup> *Winthrop v. Allen*, 116 S. C. 388, 108 S. E. 153 (1921); *Jackson v. Chambers*, 24 Ga. App. 285, 100 S. E. 659 (1919); *Rich v. New York Cent. & H. R. R. R.*, 87 N. Y. 382 (1882); *Oliver v. Perkins et al.*, 92 Mich. 304, 52 N. W. 609 (1892).

<sup>3</sup> *State v. Winter*, 98 S. C. 294, 82 S. E. 419 (1914); *State v. Crawford*, 198 N. C. 522, 152 S. E. 504 (1930); *Neidlinger v. State*, 17 Ga. App. 811, 88 S. E. 687 (1916). *Contra*: *People v. Bercovitz*, 163 Cal. 636, 126 Pac. 479, 43 L. R. A. (N. S.) 667 (1912); *State v. Avery*, 111 Kan. 588, 207 Pac. 838, 23 A. L. R. 453 (1922); *People v. Westerdahl*, 316 Ill. 86, 146 N. E. 737 (1925).

<sup>4</sup> *Merchants' & Farmers' Nat. Bank v. Clifton Mfg. Co.*, 56 S. C. 320, 33 S. E. 750 (1890); *In re Brown*, 4 Fed. Cas. No. 1985, 2 Story 502, 6 Law Rep. 508 (1843); *Symonds v. Riley*, 188 Mass. 470, 74 N. E. 926 (1905).

<sup>5</sup> *American Nat. Bank v. Wheeler*, 45 Cal. App. 118, 187 Pac. 128 (1920); *Wilson v. McEachern*, 9 Ga. App. 584, 71 S. E. 946 (1911); *Albert v. Hoffman*, 64 Misc. 87, 117 N. Y. Supp. 1043 (1909); *Breckenridge, Negotiability of Post-dated Checks* (1929) 38 YALE L. J. 1063; *Premature Payment of Post-dated Checks* (1930) 64 U. S. L. REV. 297.

<sup>6</sup> *Lovell v. Eaton*, 99 Vt. 255, 133 Atl. 742 (1925); *State v. Crawford*, *supra* note 3; *Clarke Nat. Bank v. Albion Bank*, 52 Barb. 592 (N. Y. 1868).

<sup>7</sup> *Wilson v. Palmetto Nat. Bank*, 113 S. C. 508, 101 S. E. 841 (1920). "The authorities agree that the plaintiff is entitled to something more than nominal damages; but that the recovery should be temperate in amount." *J. M. James Co. v. Bank*, 105 Tenn. 1, 58 S. W. 261, 51 L. R. A. 255, 80 Am. St. Rep. 857 (1900) "Substantial, though temperate, damages, measured by all the facts in the case"; *Svendson v. Bank*, 64 Minn. 40, 65 N. W. 1086, 58 Am. St. Rep. 522, 31 L. R. A. 552 (1896). "General compensatory damages."

<sup>8</sup> *Lorick v. Palmetto Bank & Trust Co.*, 74 S. C. 185, 54 S. E. 206 (1906); *Third Nat. Bank of St. Louis v. Ober*, 178 Fed. 678, 102 C. C. A. 178 (C. C. A. 8th, 1910); *Levin v. Savings Bank*, 133 La. 492, 63 So. 601 (1913).

awarded.<sup>9</sup> The facts of this case tend to show that some agent of the defendant acted with a fraudulent motive or else with such gross negligence as to display a reckless disregard for the plaintiff's rights. In view of the aggravated nature of the offense of altering the check and the fact that the altered instrument operated to charge plaintiff with the crime of issuing a check without funds, it is submitted that the jury verdict may be upheld, although the actual loss to the plaintiff through loss of credit and damage to business reputation probably was slight under the circumstances.<sup>10</sup>

TRAVIS BROWN.

### Marriage and Divorce—Annulment—Marriage in Jest

Infant plaintiff brought an equitable petition by her next friend for the purpose of annulling her marriage to the defendant. She alleged that she was fifteen years old and that the defendant was nineteen, and that both resided with and were dependent upon their respective parents. While attending a dinner dance, in a spirit of fun, braggadocio, and levity, the parties began to dare each other to get married. They drove across the state line into Alabama, procured a license from a probate judge by means of falsifications by the defendant as to their ages, and were married. Plaintiff alleged that she returned home and had never lived with the defendant. Defendant entered a general demurrer for want of equity and on the ground that the court of equity "was without jurisdiction or power to annul a marriage under any circumstances." *Held*, demurrer sustained.<sup>1</sup>

Two questions are presented in the case. The first, whether or not a court of equity has jurisdiction to annul a marriage, had never been adjudicated in Georgia and was left open by the court. There are many cases which have decided that equity has such jurisdiction.

<sup>9</sup> 2 MORSE, BANKS AND BANKING (5th ed., 1917) §458. See *Winkler v. Citizens' State Bank*, 89 Kan. 279, 131 Pac. 597, 598 (1913); *American Nat. Bank v. Morey*, 113 Ky. 857, 24 Ky. Law Rep. 658, 69 S. W. 759, 760, 101 Am. St. REP. 379, 58 L. R. A. 956 (1902); *McCormick, Some Phases of the Doctrine of Exemplary Damages* (1930) 8 N. C. L. REV. 129.

<sup>10</sup> The plaintiff was insolvent at the time of the alleged occurrences leading to the suit. It was not proved that the defendant's action contributed any substantial part to the plaintiff's going into bankruptcy thereafter.

<sup>1</sup> *Hand v. Berry*, 154 S. E. 239 (Ga. 1930).