

O.A. Byington,
Plaintiff,
-Vs-
J. Karl Malcolm,
Defendant.

IN THE COURT OF A JUSTICE OF THE PEACE
ANN ARBOR, MICH.

Trial Brief for plaintiff's counsel.

THE FACTS.

The plaintiff bought from the payee, the Boston Piano & Music Co. a promissory note executed by the defendant, in due course of business, before maturity, for value and without notice of any infirmity or defect in title re the said instrument. At its maturity, the defendant refused to pay, whence this action by the holder of said note. The defendant received permission from the justice to file written notice of fraud as a defence, the nature of which is not yet disclosed to this department.

The Question.

What are the plaintiff's rights as the alleged innocent holder of the said note, which it is now presumed the defendant will allege the payee fraudulently acquired?

THE ANSWER.

The plaintiff's rights are governed by the Negotiable Instrument Act of Mich. which is Title XI, Chap. 36 of Howell's Mich. Statutes, 1913. The note answers the definition of Negotiability as defined by Par. 2857, Sec. 186 of the above Statutes, which counsel will carefull read. By Par. 2718, Sec. 47, the "negotiation is deemed PRIMA FACIE to have been effected before the instrument was overdue."

So that the burden is ~~now~~ on the defendant to overcome the prima facie fact should he contest its payment on that ground. That is, counsel understands, the defendant must show by a preponderance of the testimony that he must offer on that ground that the plaintiff did not buy the paper until after its maturity. Offering no testimony, or it being incompetent, immaterial or irrelevant to the purpose for which it is offered, defendant must fail on that ground. And such irrelevant testimony on such ground is any negotiation between defendant and the payee or its agent on account the contract because of which the note was given. "The holder may sue in his own name." Par. 2724, Sec. 53, Statutes above.