

Whether plaintiff is a holder "in due course" depends on his answering the qualifications prescribed by Par. 2725, Sec. 54, as follows: "The holder "in due course" is a holder who takes the instrument under the following conditions;

1. That it is complete and regular on its face;
2. That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated he had no notice of any infirmity in the instrument or DEFECT IN THE TITLE OF THE PERSON NEGOTIATING IT.

The capitalized portion of condition 4 is the crucial one in this case as it is in most cases where the alleged INNOCENT holder sues as such to recover on the instrument. It is now seen that defendant by his request to interpose FRAUD as a defence to his liability on the note is alleging a DEFECT IN THE TITLE OF THE PERSON who negotiated it to the plaintiff herein, the alleged INNOCENT holder. So that the question is now resolved into this: What are the plaintiff's rights, assuming that defendant is attacking the INNOCENCY of plaintiff under condition 4, above. The statute-Par. 2728, Sec. 57 defines Defective Title of Negotiant

thus: "His title is defective when the person negotiating the instrument obtained it or the signature thereto by fraud, duress, or force and ~~or~~ ~~or~~ ~~or~~ ~~or~~ ~~or~~ fear or OTHER UNLAWFUL MEANS, or for an illegal consideration, or when he negotiated it in breach of faith or under circumstances as amount to fraud."

Coupled with this definition is that of Notice of Infirmitiy found in Par. 2729, Sec. 58, viz"/ To constitute Notice of Infirmitiy in the instrument or defect in title of the person negotiating it, the person to whom negotiated"- that is, plaintiff herein- "must have had ACTUAL KNOWLEDGE of the infirmitiy or defect, or knowledge of such defect that his action in making it amounted to bad faith."

Accordingly, the rights of the holder in due course are thus defined,

Par. 2730, Sec. 59, :"He holds the INSTRUMENT FREE FROM ANY DEFECT OF TITLE OF PRIOR PARTIES AND FROM DEFENCES AVAILABLE TO PRIOR PARTIES AND MAY ENFORCE PAYMENT OF THE INSTRUMENT FOR THE FULL AMOUNT AGAINST ALL PARTIES LIABLE THEREON". ( In this case the defendant.)

This last Par. is qualified by Par. 2731, Sec. 60, viz:"In the hands of a holder other than a holder in due course a negotiable instrument is subject to the same defences as if it were non-negotiable."

By this last paragraph it is seen that unless plaintiff is shown NOT to be a holder in due course defendant can set up no defence that he might have been enabled to set up against the payee. THAT is, under such circumstances defendant is unqualifiedly liable to plaintiff whatever validity his defence to such liability may have been when sued by the payee. What then, it may be pertinently asked, is the advantage to be gained by the plea of fraud (against the payee) which defendant now seeks to set up? By the very terms of the statutes above the plea will not avail him against plaintiff. For if it cannot be shown that plaintiff knew of the defect in title to the note which the statute says is created by such fraud, defendant's plea is vain, be the fraud never so palpable as between defendant and his payee the Boston Co., provided, of course the fraud do not approximate forgery of the note.

The answer to the query just submitted is this: Defendant's counsel by