

are good or bad. Defendant's rights in such premises of casting the burden are governed again by statute, viz, Par. 2732. Sec. 61: "Every holder is deemed PRIMA FACIE to be a HOLDER IN DUE COURSE: BUT WHEN IT IS shown THAT THE TITLE OF ANY PERSON WHO HAS NEGOTIATED THE INSTRUMENT WAS DEFECTIVE, THE BURDEN IS KEEP ON THE HOLDER TO PROVE THAT HE ETC. ACQUIRED THE TITLE AS A HOLDER IN DUE COURSE."

So that it follows that the holder having proved that he did acquire the paper as commanded by the statute, that, whatever the defence against the payee, it is unavailing against such holder, of course.

So that, in order to discover whether plaintiff must carry the burden of showing his innocence, it must first be discovered what the "defective title" means as referred to in Par. 2732. It is defined in Par. 2728 and is made up of a variety of elements. The elements, DURESS, Force and Fear may be dismissed herefrom since defendant's letters acknowledge that he signed the instrument voluntarily. (See letter, Nov. 23, 1914, a very important piece of testimony as will hereafter herein be developed.) The Elements, "When he negotiates it in breach of faith or under circumstances amounting to fraud", may likewise be dismissed, since it is of the essence of negotiability that it be NEGOTIATED, and the breach of faith and fraud alluded to must necessarily refer to a negotiation with the plaintiff, the burden of showing which of course, in the very nature of an allegation charging such breach or fraud must be carried by the one making it. THIS leaves the elements, FRAUD, or other UNLAWFUL MEANS, or FOR AN ILLEGAL CONSIDERATION as all those remaining to make up the DEFECTIVE TITLE referred to. The last element may be dismissed, since there is obviously no ILLEGALITY in the consideration, viz? merchandise recognized as lawful and so in fact. There is left then to impugn the negotiant's title, to consider whether he acquired the note by FRAUD or other UNLAWFUL MEANS/ He acquired the instrument by FRAUD, which may be said to embrace UNLAWFUL MEANS, since it is the result of which the latter is the genesis, if he deceived the maker about something in consideration of which the note was given. Whether the negotiant did so deceive the maker about the consideration will depend upon the reason for which the note was given; and this reason being found in the Contract of Sale executed by the defendant, if is in this contract of sale that such FRAUD must be found. FRAUD is an element of so various and diversified a character that it can never definitely be defined without the constituents which defendant will allege constituted it. However that may be, if