

by counsel and by the court when the matter is presented to the latter, that, even though there had been FRAUD practiced by the payee- the negotiant-, in inducing defendant to sign the Contract of Sale, that he waived it by subsequently signing the notes and voluntarily transmitting them to the payee, who negotiating them in due course of trade, placed them in the hands of a purchaser, who, the law specifically says must not be called on to defend anything but their genuineness, which is not disputed. The only condition attached to the note by the defendant, as testified to by the Nov. 23rd. letter is, "that you are to reimburse me according to your contract", adding in the closing clause his own interpretation of what that reimbursement is, which may or may not be the rightful interpretation but which is of no consequence in these premises, since the holder of the note has nothing to do with that interpretation, unless, the obligation to reimburse having matured, the negotiant FRAUDULENTLY recinded his obligation, so to do as he promised. The subsequent letters sent by the defendant to the negotiant- the Boston Co., - (Dec. 17, Dec. 4. letters from Malcolm) shown beyond peradventure that the time for computing the negotiant's liability had not arrived, as that fact is shown by the very terms of the contract itself, and which, defendant by the letters just adverted to acknowledges he knew had not arrived. The notes given by him are not predicated on negotiant's liability to reimburse him for a falling off in trade or for a failure to increase it, but purely and solely on account the purchase by him of the advertising plan, printing and merchandise which the negotiant undertook to and did furnish him with in pursuance of his undertaking as set out in the contract. This consideration nowhere having been attacked by defendant- his signing of the notes evidencing the fact that the consideration was ample-, if, in truth, Par. 2697, Sec. 26 of the Nego Inst. Act herein does not stop him to allege its failure- and with which, unless it was an Unlawful Consideration, plaintiff holder has nothing to do-, is conclusive proof that he must rely for his showing of Fraud on negotiant's failure to respond to an obligation which had not yet matured, and which he does not and cannot show should not have been complied with pursuant with negotiant's undertaking. For, if he does not rely on this for his showing of Fraud, there is nothing left on which he can rely, having signed the notes as he did and voluntarily transmitting them for an obligation which, in his own letters he acknowledged he has assumed.

Accordingly, negotiant's obligation to reimburse defendant according to