

THE HYPOTHESIS.

The Boston Piano & Music Co. in the course of its business discounts negotiable promissory notes received by it in part payment of goods sold to dealers in various jurisdictions of the United States. As these notes severally mature they are presented for payment by the endorsee for value, in due course of business and without notice of any infirmities, to the respective makers through a bank or other collecting agency at the place where the maker resides or does business. In the event of non-payment at maturity suit is immediately brought to enforce payment. The question then arises, the conditions of the discount being as premised above, and, of course, before maturity of the notes, "how can the plaintiff, the last endorsee, or for that matter, any endorsee equally innocent move for a judgment on the pleadings after his evidence of ownership of the note and the note itself is offered; or, any defense to payment being interposed by the maker, how can plaintiff still move for judgment as above unless the defendant maker carries the burden of proving the genuineness of his defense to completion?" The answer to the first alternative in the query is found in the second alternative; i. e., the genuineness of such a note as is herein contemplated not being disputed, any affirmative defense to its payment by the maker **PUTS THE BURDEN OF PROOF ON THE MAKER** to overcome the innocence of the holder, its purchase by him before maturity for value and without notice of any equities that the maker may allege exist between the latter and the payee. If the evidence offered is not sufficient, under the rule just stated it is demurrable and a motion by plaintiff for judgment is in order and must be granted; and equally so where the answer by the defendant does not disclose any contravention of the innocence of the plaintiff, his purchase of the note before maturity for value and without notice, supported by an allegation of such facts, subject to HIS PROOF, entitles plaintiff to a judgment on the pleadings and the evidence found in the note itself, whose signature is undisputed. In short, plaintiff's petition supported by the note in evidence, makes a *prima facie* case against the maker, which he can defend only, not by any defense he may have against the payee in the note, but by disputing and **PROVING** that the plaintiff endorsee did **NOT** acquire the paper before maturity, for value and without notice of any defense the maker might have against its payment to the payee in the note. In the brief of authorities that follows those cases are cited in which the various defenses usually interposed by makers to the payment of notes in the hands of innocent endorsees are considered by the appellate courts of the various jurisdictions in the U. S. Parenthetically it may be stated at this point that an occasional jurisdiction—Massachusetts for example—provides that a mere allegation by the maker in his answer denying the bona fides of the plaintiff endorsee or holder may, under some circumstances put the **BURDEN** on the holder to prove his innocence, but, it is believed that no state has required that such endorsee carry the burden to the extent that he must prove that the payee in the note has a valid claim to its payment by the maker. The limit of his burden, where statute regulates it, is, that he establish his innocence of possession; this being done, no matter how valid the defense of the maker against the payee—failure of consideration, fraud, misrepresentation or anything short of forgery of the maker's name—entitle him to recover. But all the jurisdictions are agreed that the production of a genuine note by the endorsee under the circumstances herein contemplated makes a *prima facie* case on behalf of such endorsee which entitles him to a judgment on the pleadings unless his innocence is controverted by sufficient allegations and, in most of the jurisdictions substantive facts set out in the answer which proven by the maker will overcome such innocence. This is of the very essence of negotiability as established by the **LAW MERCHANT** which is engrafted in the jurisprudence of every state in the Union.

DEFENSE OF USURY.

"The fact that the endorsements of a note were without consideration or were procured by fraud or that the notes were misapplied by the maker, constitute no defense where plaintiff was a bona fide purchaser without notice of such facts though the purchase was at **USURIOUS** rates."

Bunzel v. Maas., 116 Ala. 68, 22 So. 568.

"Purchase of a note at a discount greater than the legal rate does not affect the bona fides of