

"The fact that the purchaser of a note purchased the same from the payee at a discount at a greater rate than the statute permitted did not deprive him of protection against defenses existing between the maker and payee on the ground that he was not a bona fide purchaser."

King v. Peoples Bank, 127 Ala. 266, 28 So. 658.

"The fact that the purchaser of a note discounted it together with others at 10 per cent—a higher rate than the statute permitted—is not sufficient to show that he had notice of defenses to the note."

Kent v. Barnes 72 Ill. App. 617.

"When one executes his note and delivers it to the payee as an accommodation and the payee endorses it to his creditor in payment of a usurious note the maker of the accommodation note cannot interpose as a defense the usurious contract between the creditor and debtor."

Palmer v. Carpenter, 53 Neb. 394, 73 N. W. 690.

"A bank is none the less a bona fide holder of a note because it discounted it at the rate of 7 per cent when the legal rate is 6 per cent."

Bank v. Weston, 172 N. Y. 259, 64 N. E. 946.

Do. 172 N. Y. 250, 64 N. E. 949.

### THE GENERAL PROPOSITION OF INNOCENCY.

"The fact that where one purchased paper he was informed that the person who signed it claimed not to be personally liable therefor cannot avail the latter when sued thereon, where such purchaser's assignee had the right to enforce such personal liability."

Riegel v. Ormsby, 111 Ia. 10, 82 N. W. 432.

"The indorsee of a check after maturity with notice of defenses is protected when he received it from the party who received it before maturity and without knowledge."

Symmonds v. Riley, 188 Mass. 470, 74 N. E. 926.

"A bona fide holder for value of a negotiable instrument not VOID, taken in due course of business, takes the same free from all equities existing between the maker and payee of which he has no notice."

Morrison v. Bank, 9 Okl. 697, 60 P. 273.

Hulburt v. Straub, 54 W. Va. 303, 46 S. E. 163.

"A bona fide purchaser for value of a genuine negotiable promissory note who received the same before maturity and without notice of any defect is entitled to have JUDGMENT thereon against the makers though the latter as against the payee may have good defense unless it is shown that the note was founded on a gaming or immoral and illegal consideration or there was fraud in its procurement."

Jenkins v. Jones 108 Ga. 556, 34 S. E. 149.

The phrase in this case, "it is shown", means that the defendant maker must prove the facts recited in the opinion upon which he relies as a defense to payment by him. But he must first make out a prima facie case in his answer on one of the grounds stated before he can offer the proof in corroboration thereof. The theory of allowing such defenses is that being established and of course by the maker, who always carries the burden after the plaintiff has offered the note and proved the signature, the note NEVER had any legal existence, was absolutely void from the beginning and hence could not be the subject of any valid contract between and among any persons whatsoever. But "fraud in its procurement" means actual not constructive fraud and what is or is not fraud is a legal question to be determined by the court after the maker has offered his testimony thereon. If the evidence merely shows misrepresentation by the payee or breach of a warranty or like failure of consideration, the court is bound upon motion to rule out the defense and, if this is the sole ground upon which payment is refused must, upon motion give instructions to the jury to bring in a verdict for the plaintiff.

### DEFENSE OF WANT OR FAILURE OF CONSIDERATION.

"Failure of consideration is no defense as against a bona fide purchaser for value."

Parsons v. Parsons, 17 Cal. App. 154, 67 Pac. 345.

Post v. Abbeyville Co., 99 Ga. 232, 25 S. E. 405.

Clark v. Porter, 90 Mo. App. 143.

Brown v. Feldwert, 46 Or. 363, 80 Pac. 414.

"A bona fide holder of a negotiable note purchased before maturity is protected against a defense that it was without consideration."

Parr v. Erickson, 115 Ga. 873, 42 S. E. 240.

Glenn v. Porter, 49 Ind. 500.

Rahm v. King, 16 Kan. 530.

Wright v. Fillingham, 85 Mo. App. 534.

Hist. Pub. Co. v. Hartranft, 3 Pa. Sup. Ct. 59.

King v. Peoples Bank, 127 Ala. 266, 28 So. 658.