affected by a subsequent breach of contract by the indorser." Russ L. & M. Co. v. Water Co. 126 Cal. 521, 52 P. 995, 65 Am. S. 186.

In comparing this case with the Ga. case on p. 2 hereof,—Jenkins v. Jones—it will be discovered that counsel will frequently have to distinguish between a fraud that actually voids the note ab initio and what is too often erroneously styled a **FRAUDULENT** representation concerning the thing contracted about and for which the note was given. The general rule may safely be said to be that where the fraud(?) amounts only to a breach of warranty, the maker cannot defend on that ground against the bona fide holder of the note; where it is such fraud however that without its exercise by the payee the maker would not under any circumstances have entered into the contract and no opportunity had been given him to detect it, the defense is available. But, in either event the burden is on the maker to prove his contention.

"Want or failure of consideration **CANNOT BE AVERRED** against an innocent purchaser of a negotiable note before maturity."

Stratton v. Stone, 15 Cal. App. 237, 61 Pac. 481.
Beach v. Bennett, 66 Pac. 567, 16 Cal. App. 459.
Keith v. Fork, 105 Ga. 511, 31 S. E. 169.
Graham v. Campbell, 105 Ga. 839, 32 S. E. 118.
Trust Co. v. Hiers, 112 Ga. 823, 38 S. E. 103.
Wilensky v. Morrison, 122 Ga. 664, 50 S. E. 472.
Nat. Bank Am. v. Bank, 164 Ill. 503, 45 N. E. 968.
Yeatman v. Cullen, 5 Blackf. (Ind.) 240.
Steel Co. v. Bank, 34 Ind. Ap. 107, 72 N. E. 290.
Overhoff v. Trusdell, 5 Kan. App. 881, 49 P. 331.

"That there was no consideration for a note and that it was obtained by fraud is no defense to an action by a bona fide holder for value."

Toll v. Farmers Bank, 13 Ky. Law Rep. 682.
Black v. 1st. Nat. Bk. 96 Md. 399, 54 A. 88.

These jurisdictions, it will be noted, go the limit in protecting the bona fide purchaser. Perhaps the safer rule is to permit fraud to be a defense where it approximates the forgery of the maker's name. In such a case of course the maker is surely not liable since he is asked to meet a contract which he never made. What would constitute such a fraud short of forgery would necessarily depend upon the facts which the maker might offer and prove. But it is safe to say that in every case where the payee had a present intention to give and did give something in return for the note, no matter how deficient as guaged by the representations thereof it may be, the maker will be held liable to the innocent holder.

"Want of consideration is no defense to the obligation of the maker of a note in the hands of a bona fide purchaser for value."

Trust Co. v. Bierbach, 176 Mass. 557, 58 N. E. 162.

"It is not error for a court in an action on a note tried without a jury to 'refuse to permit a defendant to inquire into the consideration' of the note sued on and 'to contest the note in respect to the consideration thereof' where the evidence is distinct and clear and uncontradicted that the plaintiff is a bona fide purchaser."

Pohlemus v. Bank, 27 Mich. 44.

This case states the law in a nut shell. The maker can only attack the bona fides of the plaintiff and where the latter makes a prima facie case by offering the note, the burden immediately shifts to the maker to controvert the holder's innocency.

"The consideration of negotiable paper in the hands of a bona fide holder for value before maturity cannot be inquired into. Mala fides alone can open the door to such inquiry. Gross negligence even is not sufficient but **ACTUAL** notice of the facts which impeach the validity of the note must be brought home to the holder."

Mayes v. Robinson, 93 Mo. 114, 5 S. W. 611.
Bank v. Curtis, 55 Neb. 188, 75 N. W. 554.
Bank v. Curtis, 167 N. Y. 194, 60 N. E. 429, 52 L. R. A. 430.
Bank v. Penland, 101 Tenn. 445, 47 S. W. 693.
Raatz v. Gordon, 51 S. W. 651. (Tex.)
McNamara v. Jose, 28 Wash. 461, 68 Pac. 903.

THE DEFENSE OF MISTAKE

"Fraud or mistake in a settlement of an account cannot be set up against a bona fide purchaser of a note given for the amount found due in the settlement."

Lanier v. Trust Co. 40 S. W. 466, 64 Ark. 39.
Burrows v. Tel. Co. 86 Minn, 490, 90 N. W. 1111, 58 L. R. A. 433, 91 Am. S. 380.