"A note in the hands of a bona fide purchaser is not affected by fraud of the payee in procuring it."

Taylor v. Cribb, 26 S. E. 468. (Ga.)
David v. Bank, 103 Ky. 586, 45 S. W. 878.
Corby v. Butler, 55 Mo. 398.
Clark v. Porter, 90 Mo. App. 143.

"The fraud necessary to defeat a recovery by a bona fide assignee of a promissory note before maturity MUST RELATE TO THE EXECUTION and NOT to the consideration upon which the note is based."

Gray v. Goode, 72 Ill. App. 504.

"The fraud in the execution must be such that the party was deceived as to the effect of his act."

Metcalf v. Draper, 98 Ill. App. 399.

These two citations are illuminative of the whole subject of fraud as a defense and amplify what was said on p. 3 hereof with reference to "fraud" approximating forgery to be thus available. The citations mean that if the maker did not intend to sign a note in any event but thought he was signing something else the effect is as if his signature was forged in which case of course the note never had any legal existence and was uncollectible in whosoever's hands. With this distinction in mind counsel can always reconcile the apparently (and only apparent) conflicting decisions on this proposition. The cases are actually all at one on the subject.

"One who carelessly and negligently executes a note fraudulently procured is liable therefor if it falls into the hands of a bona fide purchaser for value before maturity."

Woolen v. Ulrich, 64 Ind. 120.
Kimble v. Christie, 55 Ind. 120.
Nebeker v. Catsinger, 48 Ind. 436.
Fisher v. Von Behren, 70 Ind. 19, 36 Am. R. 163.
Bank v. Hill, 165 Ind. 226, 74 N. E. 1086.
Potter v. Belden, 105 Mass. 11.
Fuller v. Percival, 126 Mass. 381.

"Though the maker of a note obtained by fraud may avoid the same in the hands of the payee yet the latter may, before the maker has taken those steps, transfer a perfect title to a bona fide purchaser for value."

White v. Dodge, 187 Mass. 449, 73 N. E. 549.

"When the maker is unable to read a note signed by him thinking it a receipt, it is not enforceable."

Bank v. Gravotte, 95 N. W. 694. (Neb).

"If the signer did not know the true nature of the instrument it is not enforceable against him."

Hutkopf v. Moje, 46 N. Y. S. 905.

THE DEFENSE OF DURESS.

"The defense of duress is not available to the maker where the note is sued upon by a bona fide purchaser."

Wilson v. Neu, 1 Neb. 42, 95 N. W. 502.
Keller v. Schmidt, 104 Wisc. 596, 80 N. W. 935.

"And when such a defense is offered it is demurrable."

Pate v. Allison, 114 Ga. 651, 40 S. E. 715.

THE DEFENSE OF ALTERATION.

The cases are unanimous that where alteration is made possible by the carelessness or negligence of the maker the defense is not available. Naturally if the purchaser has made it and the maker can prove it the former is not a bona fide holder and any defense would be available to the maker.

THE DEFENSE OF SET-OFF OR COUNTERCLAIM.

"The maker of a promissory note cannot as against an endorsee before maturity for value and without knowledge or notice of any defense thereto by the maker recoup the damages by him sustained in consequence of a breach of warranty by the payee in the sale of mdse. to him in payment for which the note was given."

Holden v. Rattan Co. 168 Mass. 570, 47 N. E. 241.

"A maker of a note when sued by the indorsee under an indorsement before maturity and without notice cannot set up a claim against the payee purchased the day the note was given, but subsequent thereto, and before the endorsement, as a counter claim."

Weeks v. Pryor, 27 Barb. (N. Y.) 79.

"The maker of a note transferred to a third party before due cannot interpose a counter claim