

"This is true even in the case of a non negotiable note received by indorsement from the payee for value before maturity."

Whims v. Grove, 1 O. C. D. (Ohio) 59.

And a fortiori of a negotiable note.

Lillie v. Bates, 3 Ohio Cir. Ct. 93.

Bank Co. v. Morris, 2 Tenn. Chan. 236.

Henderson v. Johnson, 22 Tex. Civ. App. 381, 55 S. W. 35.

"An endorsement of a note by the payee entitles the endorsee to sue thereon in his own name as legal owner irrespective of considerations for the endorsement."

Scribner V. Hanke, 116 Cal. 613, 48 Pac. 714.

#### THE DEFENSE OF BREACH OF WARRANTY BY THE PAYEE.

"In an action on a note given in part payment for an organ which defendant admitted and gave the note therefor and there was other evidence fully substantiating that fact verdict should have been DIRECTED for plaintiff although defendant might have been over-persuaded to make the purchase and it might have been an improvident one for him to make."

Powell v. Price, 111 Mo. App. 320, 85 S. W. 924.

"Short of fraud and entire failure of consideration the maker cannot defend."

Hodges v. Truax, 19 Ind. App. 651, 49 N. E. 1079.

Shiretzki v. Kessler Co. 147 Ala. 678, 37 So. 422.

New Haven Mfg. Co. v. Pulp Co. 76 Conn. 126, 55 A. 604.

Clayton v. Cavender, 1 Marv. (Del.) 191, 40 A. 956.

Am. Car Co. v. Ry. Co. 100 Ga. 254, 28 S. E. 40.

Daniel v. Learned, 188 Mass. 294, 74 N. E. 322.

"After receipt of the goods alleged to be unsound it is too late to defend on the notes given after such receipt and an opportunity to examine the mdse. has been given."

Rouse v. Sarrat, 74 S. C. 575, 54 S. E. 757.

See St. Paul Grain Co. v. Rudd, 102 Ia. 748, 71 N. W. 417.

All of the foregoing citations cover substantially the possible defenses that may be interposed by the defendant maker when he is sued on his note by the bona fide endorsee. As is to be observed all the jurisdictions are at one on the proposition that such defenses are not available. The question then arises as to the procedure to be adopted by plaintiff's counsel when defendant by his counsel offers such inhibited defenses. Generally speaking they should be met by demurrer to the legally objectionable pleading and defendant electing to stand on his pleading, issue is then joined on the question of law thus raised when plaintiff may, nay must establish his demurrer by citation of the foregoing authorities. At times the objectionable pleading must be met by motion which, being contested by defendant issue again is joined on the question of law thus raised, to be determined again by the citation of the authorities herein applicable governing the particular defense. For example:

Plaintiff sues on the note; defendant answers that it was obtained from him by the payee by the latter's fraud. The defense by virtue of all the authorities is demurrable which demurrer is interposed by plaintiff, and must be sustained by the court. If then defendant have no valid defense against the bona fides of the purchaser plaintiff the court must give judgment for him, the merits of the case, defendant not filing any further answer after decision against him on the demurrer, involving purely and solely a question of law with which the jury have nothing to do. If however defendant then files an answer alleging merely that plaintiff is not a bona fide purchaser, plaintiff's counsel must move that defendant be required to show by recital of provable facts in his answer wherein plaintiff is not such bona fide holder. Defendant failing to allege such facts the answer thereupon becomes again demurrable with the foregoing result. It is important in the last contingency that plaintiff do not join issue with defendant by his (plaintiff's) reply on the question of plaintiff's bona fides unless defendant has alleged facts and not a mere conclusion in his answer. Otherwise plaintiff admits that there may be such facts and will have the burden of controverting them. Compelling defendant to allege the specific facts upon which he predicates his defense puts the burden of their proof upon him the plaintiff having already made a *prima facie* case by production of defendant's note in evidence.

The citations that follow confirm the propriety of this procedure. The first citations will show what is necessary to be alleged by plaintiff to raise a legal presumption of bona fides in his favor which being raised the further burden of proof passes to the defendant maker.

#### PLAINTIFF'S ACTION.

"A petition in an action on a note by a bank alleging that it had been discounted by the bank while it was alive and before maturity was sufficient without further allegations as to how the note was discounted or the consideration paid therefor."

Davis v. Bank, 25 Ky. Law Rep. 2078, 80 S.W. 161.