The maker of a negotiable note given without consideration and procured by means of fraudulent representations of the payee is not liable thereon to a purchaser thereof **UNLESS SUCH PURCHASER IS A BONA FIDE HOLDER.**''

Bomar v. Rosser, 123 Ala. 641, 26 So. 510.
Cunningham v. Potter, 64 S. W. 493 (Ky.)

''The maker of a negotiable note relying on want or failure of consideration as against an endorsee must allege in his answer that the indorsee had notice of the same at the time of his purchase.''

Bradbury v. Van Pelt 4 Kan. Ap. 571, 45 Pac. 105.
Malsch v. Hiller, 37 S. W. 384.
Pyron v. Ruohs, 120 Ga. 1060, 48 S. E. 342.
Woolen v. Van Kirk, 61 Ind. 497.

''And the mere allegation without facts to support it that indorsee is **NOT** a bona fide holder for value is insufficient.''

Rogers v. Morton, 95 N. Y. S. 49.
Allen v. Johnson, 20 Ohio Cir. Ct. R. 8.

''The execution of a note when not denied by the pleadings is admitted and the burden of establishing a defense is on the defendant.''

Wilson v. Tucker, 64 Ind. 41.
Fay v. Hunt, 190 Mass. 378, 77 N. E. 502.

''The law presumes that the defendant read the notes signed by him.''

Thorson v. Sauly, 68 Minn. 166, 70 N. W. 1083.

''When a note sued on is set out in the complaint and the maker does not deny its execution in his answer but sets up an affirmative defense the production of the note is sufficient to make out plaintiff's case and put the defendant to his affirmative defense.''

Mut. Loan Assn. v. Lesser, 78 N. Y. S. 629, 76 Ap. D. 614.

''The note is prima facie evidence of sufficient consideration.''

Brown v. Johnson, 135 Ala. 608, 33 So. 683.
Fowles v. Tanier, 21 App. D. C. 530.
McMicken v. Stafford, 197 Ill. 540, 64 N. E. 540.

''The production of negotiable paper sued on by an endorsee makes a prima facie case.''

Harding v. Jenkins, 54 N. Y. S. 1090, affmd. 56 Id. 1086.
Bank v. McWilliams, 9 Ok. 493, 60 Pac. 229.
Brooks v. James, 16 Wash. 335, 47 Pac. 751.
Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009.

''Evidence of an agreement between the maker and the agent of the payee of a note that it was not to be delivered to the payee until the happening of a certain condition is **NOT** admissible in an action by a bona fide holder for value against the maker.''

Cooper v. Bank, 25 Ind. Ap. 341, 57 N. E. 569.

In truth it may be said that the execution not being denied no evidence is admissible under the contingency herein that does not relate solely to the bona fides of the purchaser's ownership of the note. When such testimony is offered it should be objected to as going to the very crux of plaintiff's rights and, the objection being overruled should be formally demurred to and carried up to the appellate tribunal. Of course, under a properly guarded pleading no such testimony could be offered so that it is important that defendant's answer be jealously watched to avoid the possibility of his tendering proof to support an allegation which he has no right to make in his answer.

''When a note is sued on by the holder to whom it has been unconditionally assigned a complete defense on the ground that plaintiff is not the real party in interest can be established only by proof of facts that a payment to him would not be a protection to the defendant against further liability on the note.''

Green v. McAuly 70 Kan. 601, 79 Pac. 133.

That is, a frivolous defense cannot prejudice the plaintiff.

''When a note is indorsed by the payee or by an endorsement from the payee to another for collection only, the indorsee has such legal title as would authorize him to sue on the note in his own name and maker cannot defend on that ground.''

Neal v. Gray, 124 Ga. 510, 52 S. E. 622.

That would be true in every case except where the endorsee turns the note over to the payee as his agent for collection. In such a case the payee while having the legal title could not avoid the equities that the maker might assert against the payee, the legal though not the titular plaintiff in the action he is bringing for his endorsee. Hence my admonition in the letter of April the 19th not to hold yourself out as agent for the endorsee in an action on the note. For defendant could legally require your name to be substituted as plaintiff in the action with the result above set forth. You may reconcile your offer to pay counsel fees for the endorsee in the event of suit with the latter's innocency, but in holding yourself out as his agent, which you are not, you lay yourself open to defenses against the note which could not be asserted against the purchaser.

See Lehman v. Press, 106 Ia. 389, 76 N. W. 818.