

When the maker defends the payment of his note in such wise and alleges that plaintiff, the endorsee knew of such defense, it becomes immediately demurrable and must not be replied to by plaintiff.

"In an action on negotiable paper plaintiff is presumed in the first instance to be an innocent and bona fide holder."

Tolamn v. Johnson, 106 Ia. 455, 76 N. W. 732.

Hillard v. Taylor, 114 La. 883, 38 So. 594.

Clark v. Loker, 11 Mo. 97.

Strickland v. Henry, 73 N. Y. S. 12.

"The holder of a negotiable note endorsed in blank is presumed to have taken it in good faith for value before maturity in the usual course of business and without notice."

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

Mann v. Loan Co. 100 Ill. App. 224.

Keim v. Vette, 167 Mo. 389, 67 S. W. 223.

"The defendant must furnish proof to the contrary."

Pickens Tsp. v. Post, 99 Fed. 659, 41 C. C. A. (U. S.) 1.

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

Gelbach v. Bank, 83 Ill. App. 129.

Mcayear v. Gullett, 105 Ill. App. 155.

Parker v. Gilmore, 10 Kan. App. 527, 63 Pac. 20.

"The prima facie case arising from the mere possession of a note negotiable at bank that the holder is a bona fide holder for value and before maturity is not overcome by a showing of a failure of consideration so as to require the holder to introduce evidence to prove himself a bona fide holder."

McCarty v. Bank, 100 Ky. 4, 37 S. W. 144.

"The burden is on the defendant to prove that the plaintiff is not a bona fide holder."

Bank v. Nelson, 58 Kan. 815, 49 Pac. 155.

Bank v. Miller, 57 Neb. 156, 70 N. W. 933.

Freittenberg v. Rubel, 123 Ia. 154, 98 N. W. 624.

Bank v. Cook, 125 Ia. 111, 100 N. W. 72.

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

Langford v. Varner, 65 Mo. App. 370.

Malsch v. Heller, 37 S. W. 384 (Tex.)

King v. Mecklenburg, 17 Col. App. 312.

Arnold v. Lane, 71 Conn. 61, 40 A. 921.

CONCLUSION.

The citations contained under the substantive portions of the brief cover every variety of facts from every jurisdiction which the maker might offer in defense of his liability to payment on his note now in the hands of an innocent holder for value. These citations however variegated as to facts show the underlying principle which governs the circulation of the paper under consideration as running through all of them. It is highly important that counsel in the various jurisdictions where actions may become necessary become familiar with the essential ingredients of negotiability as set forth in the cases herein. This being done the procedure whereby the innocent holder's rights are amply protected becomes a simple matter. Nevertheless the citations under the procedure portion of the brief will give ample instructions no matter how diverse the facts involved. It should always be kept in mind that the action is solely between the endorsee and the maker. The latter can never defend the obligation on account of any difference between him and his payee; it must be against the endorsee or no one. And that defense can only comprise "the innocency of the latter", "the acquisition by him of the paper before maturity", "for value" and "without notice of any equities that the maker might have a right to allege against the payee." Any defense that does not go to one of the foregoing quotations is instanter demurrable and subject to reply only if any or all such defenses are alleged so specifically as to facts as to put the maker on his proof of such facts as would constitute a legal defense when proved. Hence the importance of watching the pleadings as filed by the defendant after plaintiff has filed an equally well guarded and not too amplified a petition. A careful study of the cases under the procedure citations herein will put counsel on the right path in this latter respect.

In the event of a particularly troublesome case the undersigned will be glad to offer such counsel as may help to clarify the matter.

All of which is respectfully submitted by

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