

Otte & Otto

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Ralph Otto

Joseph M. Otto

Mr. W. F. Main,

Iowa City, Iowa

Dear Sir:-

By way of reply to your letter of yesterday, permit me to state that commercial paper is distinguished from all other contracts for the payment of money by the quality of negotiability. This means the quality attached to bills of exchange and promissory notes which renders them transferrable from one person to another, and it also means that the assignee may sue upon the instrument in his own name, that he takes it, where he does so as a bona fide holder for a valuable consideration before maturity, free from defenses that may exist between prior parties, and clothed with the well established rights and liabilities that are created by the law merchant.

A bona fide holder for value of negotiable paper is one who has acquired the title in the usual course of business, for a valuable consideration, in good faith, from one capable of transferring it; or, from one in possession of the paper with an apparent right to transfer it and without notice or knowledge of defenses or circumstances which should put him on inquiry.

In order to constitute a person a bona fide holder, he must be a purchaser in the usual course of business; which is defined as one who in good faith in the ordinary course of business and for value before its apparent maturity and without any knowledge of its actual dishonor acquires a negotiable instrument endorsed to him.

One who receives a promissory note merely as collateral security is regarded in law as taking the same in the usual course of business and is considered a holder for value. The possession of such paper carries the title with it to the holder. The possession and title are one and inseparable. The party who takes it before due, for a valuable consideration, without any knowledge of any defect of title and in good faith, holds it by a title valid as against all the world. Suspicion of defect of title or knowledge of the circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, will not defeat his title. That result can only be produced by bad faith on his part.