

the complainants, or from suing thereon, to recover the amount thereof, was not granted upon the alleged fraud charged to have been practised by Baughman, upon the complainants in obtaining the note; because it was not charged that the defendant had any knowledge of such fraud or imposition, at the time he received it; but upon the ground, as I understood the bill, that it was pledged with the defendant to secure a pre-existing debt, due from Baughman, Nicholson and Cannon to him, the allegation being, that it was placed with the defendant by those parties, to secure the payment of a large sum of money which they *had borrowed* from him; which language was understood by me to mean, which they had borrowed prior to the pledge, and, with that understanding, I thought he might not be entitled to all the rights which attach to a party who had taken a negotiable security, bona fide, and without notice, and in the usual course of business. *Story on Promissory Notes, sec. 195, note 1.*

If Baughman committed a fraud, or practiced an imposition upon the complainants, that was a matter between him and them, with which the defendant, Lee, had nothing to do, and for which he could be in no way responsible, unless he had notice thereof when he received the note. Baughman was trusted by, and made the agent of, the complainants, and if he abused their confidence, surely they, and not third parties, ignorant of the fraud, must bear the consequences, and this claim to the protection of the court, was the weaker, seeing that after they discovered the imposition, they did not take the usual and proper course to warn the public by advertisement, or in some other way.

Unquestionably, as between them and innocent third parties, who might obtain their note before its maturity, and in the ordinary course of business, there could not be a doubt as to who should bear the loss.

There can be no doubt that a bona fide holder of a negotiable instrument for a valuable consideration, without any notice of facts which affect its validity as between the antecedent parties, if he takes it by indorsement before it comes due, acquires