

a valid title, and may recover upon it, although, as between the antecedent parties, the transaction may be invalid. This is a doctrine, Mr. Justice Story says, so long and so well established, and so essential to the security of negotiable paper, that it is laid up among the fundamentals of the law. And as little doubt is there, that the holder of such paper before it is due, is not bound to prove that he is a bona fide holder for a valuable consideration without notice; for the law will presume that, in the absence of rebutting proofs.

It is true, if the other party has established the want, or failure, or illegality of the consideration, or that the note has been lost or stolen, before it came to the possession of the holder, it may then become incumbent on him, to show that he has given value for it; for, under such circumstances, he ought not to be placed in a better situation than the prior parties, through whom he obtained it. *Story on Promissory Notes, sections 195, 196, and the notes to those sections.*

The question then, is, has the defendant, Lee, shown, for the purposes of this motion, that he has given value for this note? The answer says, speaking responsively to the bill, that upon the security of this note before it became due, and of other notes, a list of which is given, he, at the time he received it, loaned the holders twenty-one thousand dollars, and that he is a fair and bona fide holder, for a full and valuable consideration without notice.

The argument of the complainants' council is, that as the charge of usury has not been answered, it must, upon this motion, be assumed to be true, and that consequently the defendant cannot be regarded as a bona fide holder for value, and the note being stated in the bill to have been procured by fraud, which statement must also, as it is said, at this stage of the cause be treated as true, the defendant is in no better situation than the prior party from whom he obtained it.

The defendant, it is true, does not deny the usury charged against him, insisting that he is under no obligation to do so, but he says he gave value for the note, and that he is now ready and willing, to surrender the securities in his hands, including