

An. Code, sec. 76. 1904, sec. 76. 1898, ch. 119.

76. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

See notes to secs. 71 and 75.

An. Code, sec. 77. 1904, sec. 77. 1898, ch. 119.

77. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument; has all the rights of such former holder in respect of all parties prior to the latter.

In view of this section and sec. 47, a total or partial failure of consideration is a defense to a note as between the maker and payee and against any person not a holder in due course. Hence the parties may show all the facts and circumstances surrounding the execution of the note and relating to the existence of a consideration. *Herrman v. Combs*, 119 Md. 43.

This section applied. *Black v. Bank of Westminster*, 96 Md. 417. See also *Cover v. Myers*, 75 Md. 418.

This section referred to in construing secs. 14 and 138—see notes thereto. *Jamesson v. Citizens Bank*, 130 Md. 85.

See notes to sec. 47.

An. Code, sec. 78. 1904, sec. 78. 1898, ch. 119.

78. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims, acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Under this section and secs. 71 and 75, a bank held to have acquired notes without knowledge of their having been obtained by fraud, or of such facts as impute bad faith. Inquiry of bank at which note is payable not required. Burden of proof. *Prayers. Evidence. Edelen v. First Nat. Bank*, 139 Md. 417.

When the maker or acceptor of a negotiable instrument produces evidence to show that his signature was obtained by fraud, the burden of proof is upon the plaintiff to show that he is a *bona fide* holder for value. *Stouffer v. Alford*, 114 Md. 110; *Wilson v. Kelso*, 115 Md. 172.

Cited but not construed in *Weant v. Southern Trust Co.*, 112 Md. 471.

CHAPTER VI.—Liabilities of Parties.

An. Code, sec. 79. 1904, sec. 79. 1898, ch. 119.

79. The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

An. Code, sec. 80. 1904, sec. 80. 1898, ch. 119.

80. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due pre-