

he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

An. Code, 1924, sec. 74. 1912, sec. 74. 1904, sec. 74. 1898, ch. 119.

74. The title of a person who negotiates an instrument is defective within the meaning of this act, when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amounts to a fraud.

Title to note obtained by fraud, defective under this section—see notes to sec. 78. *Edelen v. First Natl. Bank*, 139 Md. 417.

Where the plaintiff takes a note with knowledge of the insolvency of the corporation which made it, and that it was issued by the company in part payment for its own capital stock (which the law prohibits it from buying), he is not a holder in due course. *Burke v. Smith*, 111 Md. 627.

See notes to secs. 49 and 78.

An. Code, 1924, sec. 75. 1912, sec. 75. 1904, sec. 75. 1898, ch. 119.

75. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

In a suit by the endorsee against the maker, pleas setting up fraud and breach of faith in the negotiation of a note, are bad unless they allege that the plaintiff took the note with a knowledge of the fraud or breach of faith. *Black v. Bank of Westminster*, 96 Md. 416.

This section applied. Instructions held contradictory. *Valley Savings Bank v. Mercer*, 97 Md. 479. See also *Weant v. Southern Trust Co.*, 112 Md. 471; *Cover v. Myers*, 75 Md. 418; *Wilson v. Kelso*, 115 Md. 173.

This section referred to in construing Art. 37A, Sec. 5. *Banking & Trust Co. v. Bender*, 175 Md. 630.

See notes to secs. 71 and 78 and art. 66, sec. 26.

An. Code, 1924, sec. 76. 1912, 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.

Drawer of check, while having right to stop payment to payee if check was procured by fraud, has no such right against holder in due course. *Dean v. Eastern Shore Trust Co.*, 159 Md. 219.

See notes to art. 66, sec. 26.

See notes to secs. 71 and 75.

An. Code, 1924, sec. 77. 1912, 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.