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, 1924, sec. 78. 1912, 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; Shpritz *v.* Balto. Trust Co., 151 Md. 508; Dean *v.* Eastern Shore Tr. Co., 159 Md. 220.

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.

One may be holder in due course though he has knowledge of executory contract between original parties; in order not to be, there must be breach of contract known to holder when he purchases note and pays out money. Home Credit Co. *v.* Fouch, 155 Md. 393.

Appellee not required to offer testimony that he is holder in due course if proof offered by its opponent is sufficient. Blacher *v.* Natl. Bank of Balto., 151 Md. 523.

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

CHAPTER VI.—Liabilities of Parties.

An. Code, 1924, sec. 79. 1912, 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.

This section applied to checks drawn on bank where drawer had no funds and cashed by collusion of cashier. Bradford *v.* Harford Bank, 148 Md. 18.

An. Code, 1924, sec. 80. 1912, 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 presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

If check is dishonored, holder in due course may recover from maker amount paid to payee. Dean *v.* Eastern Shore Trust Co., 159 Md. 216.

An. Code, 1924, sec. 81. 1912, sec. 81. 1904, sec. 81. 1898, ch. 119.

81. The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

The drawer of a check cannot recover for over-payment to innocent payee. U. S. *v.* Natl. Exchange Bank, 270 U. S. 528, 70 L. Ed. 717 (affirming 1 Fed. [2nd], 888).