

THE TITLE OF HOLDERS OF NEGOTIABLE INSTRUMENTS.

fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid (promissory notes, &c.), such fraud or circumvention may be pleaded in bar to any action to be brought by the party committing such fraud or circumvention, or any assignee of such instrument : " s. 10, ch. 98, Rev. Stat. 1874. In the cases of *Taylor v. Atchinson*, 54 Ill. 196, *Sims v. Bice*, 67 ib. 88, 2 Central L. J. 689, and *Comstock v. Hannah*, 7 Chicago L. N. 358, the defences were under that provision ; but the decisions arrived at possess an extrinsic interest sufficient to justify a detailed notice. *Taylor v. Atchinson* (like *Douglas v. Matting*, 29 Iowa, 498) was decided in the same month as *Foster v. Mackinnon*, but apparently without cognizance of that decision. The defendant was induced to sign the note by the fraudulent representations of the payee that it was a contract. Two papers of about the same size and appearance were signed. One of these papers was used by the payee of the note, at the request of the maker who could read, but not very well. A third party, in no way connected with the transaction, was present when the note was signed, and was a witness for the defendant on the trial. It does not appear that he was unable to read, or that he was requested to read the instruments signed. The Court conceded that at Common Law the defendant would have been liable, but placed its decision on the ground that the local statute authorized the defence. It then added : " It is, however, necessary that a person executing such an instrument, which is procured by fraud or circumvention, should use reasonable and ordinary precaution to avoid imposition, when the suit is by an indorsee before maturity. If able to read readily, he should examine the instrument, or procure it to be read by some one in whom he can place confidence. If he is unable to read readily, or does so with difficulty, then he may avail himself of the usual means of information by having it read by some person present. He cannot act recklessly, and disregard all the usual precautions, to learn the contents of the instrument, and then interpose the defence against an assignee." The Court then held, as a matter of law,

that the defendant used ordinary precaution. And the Court further held that the indorsee of the note was guilty of negligence in purchasing it of a stranger without first making inquiries of the maker as to its validity. In other words, it was negligent for one to buy a note from a stranger, although he knew the signature to be genuine, but not negligent for a party to sign a paper creating some kind of an obligation, trusting in the representations of the same stranger as to its contents. In *Sims v. Bice*, Jan. 1873, the defendant was procured to sign what turned out to be a promissory note, under the assurance that he was signing an agreement respecting his agency to sell machinery, he not being able to read writing readily, and the proof showed that he did not sign the same recklessly, but commenced to read the papers he signed, and was prevented by the restiveness of his team in the field where he was ploughing. The Court held that a verdict finding that the execution of the note was procured through fraud and circumvention, in a suit by an assignee before maturity, was not against the preponderance of the evidence. The following doctrines were laid down : 1st. Where a party is induced to sign a promissory note under the representation and belief that the same is an agreement appointing him agent for the sale of machines, and a statement of his ownership of property, and he cannot read writing readily, as between the parties it will be void, as having been executed through fraud and circumvention. 2nd. Where a person executes a note he must be diligent, and use all the reasonable means to prevent a fraud being practised upon him, or he will be liable to an innocent purchaser before maturity. He is not required to use every possible precaution, but only such as would be expected from men of ordinary prudence. 3rd. The assignee, equally with the maker of a note, is bound to use proper diligence ; and when agents for the sale of patent rights and such matters, who are strangers, offer to sell promissory notes taken by them, a prudent man would have his suspicions aroused, and in such case the purchaser ought to protect himself by inquiring of the apparent maker. From these deci-