Vol 13 1861-62

NEW JERSEY

Court of Errors and Appeals.

ALEXANDER DUNCAN and others,
Plaintiffs in Error,
vs.
HIRAM GILBERT,
Defendant in Error.

Points and Brief of
WALTER RUTHERFURD
for Plaintiffs in Error.

This is an action brought on two notes made by Gilbert, payable to David Rowland; one for $918 07, the other for $1,464 28. They were accommodation notes borrowed by Rowland from Gilbert. The $918 was deposited with the plaintiffs as a pledge for a letter of credit when $4000 of other notes were withdrawn, the $1,464 28 note was left with them when another note of Gilbert's was withdrawn.

Judge Whelpley who delivered the opinion of a majority of the Court, among other things held:

1st. That these notes were misappropriated. Page 28, fol. 95.

2d. That the plaintiffs hold the affirmative of this issue, and must prove that they were bona fide holders of these notes for a valuable consideration. Page 31, fol. 103.

3d. That the law of New York must control this transaction.

4th. That by the law of New York the plaintiffs were not bona fide holders of these notes for a valuable consideration. We claim,

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1st. That the notes were not misappropriated.

2d. That the onus of proof does not rest upon Duncan & Sherman. That they were bona fide holders for a valuable consideration.

3d. That Duncan & Sherman are bona fide holders of these notes for a valuable consideration.

I.—These notes were not misappropriated. Judge Whelpley, p. 28, fol. 96, says, a party loaning his notes to another without consideration, has a right to prescribe the use which shall be made of it, and limit its negotiability to certain persons, if he sees fit, and any departure from the mode and manner of transfer prescribed, or any transfer of it not in accordance with the agreement between the lender and borrower, is a misappropriation of the note, which renders it invalid in the hands of one who takes it with notice of the agreement as to the use to be made of it, or if without notice, is not a bona fide holder for a valuable consideration. The facts in this case are as follows, viz.: Rowland's testimony, p. 6, fol. 12.

"All notes borrowed from Mr. Gilbert, including these two, were obtained from him for me, with the understanding that I should get them discounted at the Grocers' Bank and at the Citizens' Bank in this city, *for my own benefit : he had no interest in the manner in which the moneys should be used, which was obtained by the discount.* George's testimony, p. 9, fol. 20. Mr. Rowland was in the habit of obtaining notes made by Mr. Gilbert for Mr. Rowland's accommodation. George's testimony, p. 9, fol. 27. I went to Mr. Gilbert, and told him that the $918 note was coming due, and that Mr. Rowland had instructed me to obtain from him another note to take it up with, for a larger amount. The jury found that it was for another note of Gilbert's. P. 10, fol. 30.

In the case of Powell *vs.* Waters, 17 John, 177,

decided in 1819, which is the leading case in New York, and has been followed and quoted as sound law to the present time; the note was made to be discounted at the Bank of *Newburgh;* they refused to discount it; it was taken to Henry Parish, of the firm of J. & T. Powell & Co., who was at the time *informed by the witness of the special purpose for which the note was made, yet he discounted it.* Spencer, C. J., p. 180, says, it did not alter or increase the responsibility of the endorser: the money to be raised was intended to be for the benefit of Wood, and he did receive the money for which the first note was discounted. *If the plaintiff knew when they received the note, that it was intended to be discounted at the Bank of Newburgh, and had been refused, it would not affect them or establish any fraud.*

In the case of Bank of Chenango, in Hyde vs. Whiting, 4 Cowen 567, decided 1825. The note was drawn to be discounted in the Chenango Bank, they refused to discount it; Birdsall an attorney, advanced the money for it. Sutherland, J. p. 573, says, *nor is the validity of* the note *affected by the circumstance, that it* was *drawn for the purpose of being* discounted at *the Bank of Oswego.*

It was made to raise money on. It did not change the responsibility of any of the parties to it that the money was advanced by *Birdsall instead of the Bank.* The *case of Powell vs. Waters,* 17 John 176, *is decisive upon this point.* Had it been discounted on the terms originally proposed by *another bank or an individual,* the transaction would not have been questioned. In the case of the Bank of Rutland vs. Buck, 5 Wend. 66, decided 1830. The note was made to enable Spear & Everest to raise money for their own accommodation; it was delivered over by Spear & Everest to E. House and two others, *as collateral security* for their payment in their favor against Spear & Everest for an amount exceeding $1200.

Savage, C. J. I can see no well founded objection to a recovery upon the note. It was drawn for the purpose of raising money for the accommodation of the two makers, Spear & Everest, who have had the benefit of it. Had House & Co. advanced money on it to those two makers, the case would be precisely within the case of Powell vs. Waters. It was immaterial to the parties who advanced the money, provided Spear & Everest had the benefit of it. Here had the plaintiffs obtained a discount at the bank they might have paid the money to House & Co., and Buck's liability would have been the same : his situation is not changed, *nor is there any fraud.*

In the case of Wardell vs. Howell, 9 Wend. 172, Judge Sutherland says, where a note has effected the substantial purpose for which it was designed by the parties, an accommodation endorser cannot object that it was not effected in the precise manner contemplated at the time of its creation, upon that principle, the cases of Powell vs. Waters, 17 John R. 176. The Bank of Chenango vs. Hyde and others, 4 Cowen 567. The Bank of Rutland vs. Buck, 4 Wend. 66. 2 Gull 233. Payson vs. Coolidge, 2 Wheat 66.

In the case of Mohawk Bank vs. Corey, 1 Hills 513, decided 1841. The defendant Corey and Livermore endorsed the note for his, Borst's, accommodation, to enable him to get it discounted at the Albany City Bank, with a view of raising money to buy barley, the Bank refused and before it was due it was transferred by Borst to Voorheis, to be applied on a judgment which the latter held against Borst.

Bronson J. says the endorsers Corey & Livermore lent their names to Borst the maker, for the purpose of giving him credit, and he was at liberty to negotiate it any way he thought proper.

But here, although the endorsers had the curiosity to inquire what use the maker designed to make of the note, they had no interest in the question, and

so far as appears they would just as readily have lent their names, if the maker had told them he wished to take up his notes in the plaintiff's bank, the use he afterwards made of the paper.

Within the proper legal sense of the term there has been no diversion of the note from the purpose for which it was made and endorsed.

The endorsers lent their names for the purpose of giving the maker credit generally and without any concern with the case which should be made of that credit.

The Chancellor in the case of Stalker vs. McDonald, p. 110, referring to the case of Percival vs. Frampton, 2 Camp., says, so far the decision was in accordance with the case of The Bank of Rutland vs. Buck, 5 Wend. Rep. 66, *and other cases decided in this State.* For the object of the endorsement being to enable the maker of the note to raise money generally and not for any specific object in which the endorser had an interest, it was wholly immaterial to him whether the note was passed to the credit of the maker with his banker, or the banker advanced him the money on the note and then received it back to make good his account, or the maker received the money from any other person upon the note, and then paid it to the Plaintiffs for their debt.

In the case of Quellinger vs. Coffe, 5 Duer 94.

The Court said, they, sureties as all accommodation are, who entrust their names to parties for the purpose of a general accommodation without restriction, *though in a particular transaction.* and case of Powell vs. Waters, 17 John Rep. 176 ; Bank of Chenango vs. Hyde, 4 Cowen 567, and Bank of Rutland, of Rutland vs. Buck, 5 Wend. 66, show that where general accommodation is the object, even if it be received in a particular way, a strict adherence to that mode is not essential, nor a departure from it a misapplication of the paper.

In the case of Woodhul vs. Holmes, 10 John Rep' 240, to which J. Whelpley refers, the note was not for the benefit of the party who transferred it. The Judge says, page 241 : The maker probably intended to borrow money for *his own use*, from the bank on the credit of this note : and it is the same thing as if the third person had lost the note in going to the bank.

But where, as in this case, Gilbert lent his notes to Rowland, exclusively for Rowland's benefit, with a mere understanding, they were to be discounted in the Grocers' or Artizans' Bank, no agreement made by Rowland that he would not use them in any other way, Gilbert cannot object to any legal use of them by Rowland for his benefit, on the ground of a private restriction upon his authority, of which the party dealing with Rowland has no notice. It is no fraud upon Gilbert, no misappropriation of the notes according to the decision in New York, to have them discounted in another bank, or by individuals. These securities are as capable of being used to raise money by hypothecation as by direct note or discount. It makes no difference to Gilbert, whether they were left with Duncan, Sherman & Co. as security for a letter of credit, or whether he had them discounted, and taken the money and purchased the letter of credit.

II.—The onus of proof that they were bona fide holders for a valuable consideration, does not rest upon Duncan, Sherman & Co.

Judge Whelpley p. 30, fol. 103 & 104, says :

This presents the question, who held the affirmative on this issue. It must be borne in mind, that in

determining this, we must assume that the notes had been transferred, without right to do so, by Rowland to the plaintiffs, and they can only hold them so far as they are bona fide purchasers, for a valuable consideration ; they are such pro tanto only.

The production of the notes upon the trial was prima facie evidence of their title, but when it was proved that they had been misappropriated, and, as to Gilbert, were without consideration, then it became necessary to prove their title, on bona fide purchasers for a valuable consideration, without notice of the misappropriation. This is based on the assumption that the notes were misappropriated, but if they were, were as consideration notes.

Such a determination would shake paper credit to its foundation and destroy its negotiability. But this is not the law of New York. In the case of Brown agt. Mott, 7 John Rep. 361, decided in 1811, per Curiam. "The defendant here is regularly "charged as an endorser of a negotiable note ; there "is no question made but that he has been duly fixed "by a demand upon the maker and notice to him ; "but the defence is that he endorsed the note for the "accommodation of the maker, and that this fact was "known to the plaintiff when he subsequently en- "dorsed the note. This, however, is not of itself a "defence." In the case of Vallett vs. Parker, 6 Wend. 621, decided in 1831. Savage C. J. referring to the English cases on p. 621, says, "the rule is the "same in this Court." The holder of a bill or note need not in the first instance show a consideration : possession proves property, but if there are any suspicious circumstances as to the bona fide of his possession, and the defendant has a good defence against the payee, then he must show that he paid value for it. For instance, if the note has been lost or stolen, or fraudulently put into circulation, then the plaintiff

must show that he came lawfully and fairly by it, and paid interest for it.

3 John, case 260.

In the case of Case *vs.* the Mechanics' Banking Association, 4 Comstock, 168, decided in the Court of Appeals, in the year 1850. Pratt, J. says, until therefore the plaintiff had shown that some fraud had been committed upon him by his agent in negotiating the paper, the bank was not called upon to shew that it had received the paper bona fide and for a valuable consideration. The presumption in such cases always arises out of the negotiation of that kind of paper that it was so received, unless the contrary be shown. 6 Wend, 615.

In the case of Ross *vs.* Bedell, 5 Duer, 467, J. Duer, 1856, says, the presumption of law in all cases is, that the indorsee of a negotiable bill or note is a holder for value, and it is a mistake to suppose (although the mistake is frequently made) that this presumption in favor of the holder is repelled merely by proof, that the bill or note as between the immediate parties was without consideration, and was made, accepted or endorsed, by one for the sole accommodation of the other. When no other proof is given, we hold it to be certain that the holder is not bound to prove a valuable consideration. Charles *vs.* Marsden, 1 Taunt. 224. Grant *vs.* Elliott, 7 Wend, 229. Corn Bank *vs.* Norton, 1 Hill, 571. Harvey *vs.* Town, 4 Eng. Law and Equity, 531, and Berry *vs.* Alderman, 24, 318. But the law is equally clear, that when it is proved that the bill or note in respect to the defendant in the action, was fraudulently put into circulation or negotiated, the plaintiff is not entitled to recover without proof that he parted with value when it came into his hand. The decisions in New York, from the earliest times to the present, show that Rowland having obtained these notes from Gilbert for his accommodation, with the understanding to be

discounted in the Grocers' or Artizans' Bank, can use them in any lawful way for the purpose of his accommodation, without committing any fraud upon Gilbert, and therefore the onus of proof does not rest upon Duncan, Sherman & Co. to show that they are bona fide holders for value. These notes were passed to Duncan, Sherman & Co., in the usual course of their business, before they were due, without notice of any fraud and for valuable consideration, and therefore they are entitled to recover.

1. By the testimony of Gouge and Leet, the notes were passed to Duncan, Sherman & Co., before they were due.

2. The notes were transferred in the usual course of business. It was their regular, legitimate business to give letters of credit as bankers, and receive money or securities for the same. All persons dealing with them are presumed to know their custom and mode of doing business, and are bound by the proper ordinary rules of regulating their business.

3. This is a question of great importance to the mercantile community. The notes were received by Duncan, Sherman & Co., for a valuable consideration.

    a. The letter of credit given by Duncan, Sherman & Co., for £2,000, ten thousand dollars, to Rowland, was granted on the pledge of bills receivable, satisfactory in character and amount. They incurred this responsibility upon the faith of those securities, and therefore they are holders for value.

    b. Considerations founded upon reciprocal promises of the parties are of common oc-

currence in business, and bills and notes supported by such considerations have always been held valid. It is upon this principle that cross notes or acceptances, for the mutual accommodation, have been upheld whenever they have come before the Court.

c. Where a valid existing obligation is assigned as collateral securitiy for a debt to be contracted the security assigned is entirely distinct from, and in no manner dependent upon or modified by the contract by which it is pledged as security, or that by which the debt to be secured is subsequently created. They constitute separate and independent contracts and not different parts of one and the same contract. As to the time of its enforcement, and the amount to be collected or recovered upon it, the obligation assigned is governed exclusively by its terms.

The policy of the law is, and has been, to make the negotiability of these instruments, which constitute the principal medium for the transaction of business, free and untrammeled. Mercantile Law is a system of jurisprudence acknowledged by all commercial nations, and upon no subject is it of more importance that there should be, as far as practicable, uniformity of decisions throughout the world than upon the subject of negotiable instruments.

By the law of the United States, as declared in the case of Swift *vs.* Tyson, 16 Peters, page 1, and by the law of New Jersey, as laid down in Allaire *vs.* Hartshorne, 1, Zub. 671. Any valuable consideration sufficient to support an agreement to prevent its being nudum pactu will be sufficient to uphold the title of the indorser of a note if he takes it in

the usual course of business and without notice. But according to Judge Whelpley, p. 29, fol. 99, the Courts of New York hold that the true owner of a *misappropriated* note may reclaim his property in it unless the actual holder has parted with something of value on its transfer to him. These being New Jersey notes given on their face for value, New Jersey Courts, against their own law and policy, will not give a larger construction to the decisions in New York than the facts and the legal conclusions from those facts actually require. Every lawyer knows that beyond this it is not a decision but a mere obiter. In the leading case in New York, Coddington *vs.* Bay, 20, John, Rep. 648, the respondent being the owner of a schooner, employed Randolph & Savage to sell her. They made a sale under an authorization from the respondent, and took negotiable notes payable to themselves from the purchasers for 3,875 dollars. Before the respondent could get possession of these notes, Randolph & Savage became entirely insolvent and assigned to the appellants, without any request or solicitation on their part, the notes in question with other debts to secure the appellant for certain endorsements and responsibilities they were under for them, there being no other indebtedness on the part of Randolph & Savage to the appellants, nor had they then paid or been called upon to discharge any of their collateral liabilities. It stands conceded that no new credit was given by the appellants to Randolph & Savage in consequence of the delivery to them of the notes in question, Nor was there any other consideration paid or given for the notes except the antecedent responsibilities which the appellants had entered into for them, Chancellor Kent says, in 5 John Ch. Rep., the holders were not entitled to the benefit of the rule because it was not negotiated to them in the usual course of business or trade, nor in payment of any antecedent and existing debt, nor

for cash or property, advanced debt created, or responsibility incurred on the strength of, and credit of the notes. This doctrine was affirmed in the Court of Errors.

20 John R. where Judge Woodworth, p. 645, says. It is enough if the holder be secure when he advances his funds or makes himself liable on the credit of the paper he receives. In coincidence with this principle it appears to me all the cases have decided. Senator Viele in the same case, on p. 687, says, the true text I take to be that when the holder is left in as good a condition after a re-transfer takes place, then the title of the owner shall prevail. In the case of Stalker vs. McDonald, 6 Hill 93. The notes were transferredin fraud of the rights of the owners under the following circumstances: Stalker held a note against Gillespie & Edwards, not endorsed by any person, for $2044 08 falling due Oct. 3, 1839, which had been deposited for collection in a bank. On the morning of that day Gillespie finding that his firm would not be able to meet the note, and fearing the consequences of suffering it to lie over in the bank, prevailed upon Stalker to withdraw it, promising to pay the amount in a short time and delivering to Stalker the notes in question as security. Walworth, Chancellor, on p. 95 says. In Coddington vs. Bay, this Court did not so far as I have been able to discover, run counter to any decision which had ever been made in this State or in England previous to that time. For the decision admits that the bona fide holder of negotiable paper who has received it for a valuable consideration, without notice, or reasonable ground to suspect a defect in the title of the person from whom it was taken in the usual course of business or trade, is entitled to full protection. But that where he has received it for an antecedent debt, either as nominal payment or as security for payment without giving up any security for such

debt, which he previously had, or paying any money, or giving any new consideration, he is not a holder of the note for a valuable consideration, so as to give him any equitable right to detain it from its lawful owner. Lott, Senator, on p. 113, approves of the opinion of Senator Viele. The true test I take to be, that when the holder is left in as good a condition after a re-transfer as he would have been had no transfer taken place, then the title of the owner shall prevail. It appears that the note of Gillespie & Edwards was merely lodged in the bank for collection, and there were no endorsers to be charged; there was no stipulation on withdrawing his note from the bank, that he would not enforce payment of it; on the contrary he had still a perfect right to demand its immediate payment and to enforce his demand by action. In the late case of Prentis vs. Graves, 33 Barbour, 624, Judge Campbell says. In the case of Coddington vs. Bay, Senator Viele said, and his language is quoted approvingly by Senator Lott, who is now a Justice of this Court. The true test I take to be that when the holder is left in as good a condition after a re-transfer as he would have been had no transfer taken place, then the title of the owner shall prevail.

Under these cases, we claim that Duncan, Sherman & Co. received these notes for a valuable consideration.

The letter of credit was given by Duncan, Sherman & Co. for £200 : ten thousand dollars was granted on the pledge of bills receivable, satisfactory in character and amount. It was upon the faith of those securities that the credit was granted. This was the agreement which Rowland made. Take from Duncan, Sherman & Co. these securities, upon the faith of which they gave the letter of credit, would they be left in as good a condition after a re-transfer as they would have been had no transfer

taken place. In order to decide this, the Court must determine that the letter of credit was given merely on Rowland's promise to pay ; that Duncan, Sherman & Co. incurred no responsibility on the faith of a pledge of bills receivable, satisfactory in character and amount, which they actually require as a condition precedent of giving the letter, and which Rowland agreed to give. Every person at all acquainted with this kind of business, knows that a banker in granting a letter of credit always demands as security, stock, bonds or notes, equivalent to cash, because their letters of credit are like cash to them ; they appropriate so much of their money in the hands of their agents, the bankers in Europe, to the person for whose credit they draw the letter.

In Bosanquet vs. Dudman, 1 Stark, Rep. 1, Lord Ellenborough held that if a banker be under acceptances to an amount beyond the cash balance in his hands, every bill he holds of that customer, bona fide, he is considered as holding for value, and it makes no difference though he hold other collateral securities more than sufficient to cover the excess of his acceptances. The same doctrine was affirmed by Lord Eldon in ex parte Bloxam 8 ves. 531, as equally applicable to past and to future acceptances ; also, Heywood vs. Watson, 4 Bing., Rep. 496 ; Chancellor Walworth in Stalker vs. McDonald, 6 Hill, p. 105, says, in reference to Lord Ellenborough's opinion : in other words, that it was immaterial how much the collateral securities amounted to. For if the acceptances which had thus been made on the faith of them exceeded at any time the cash in hand to meet such acceptances, the bankers were holders of all the collateral securities for value to secure the payment of the deficiency, and neither the depositors nor their assignees in bankruptcy could claim a return of any part of such securities, *or prevent the bankers from collecting the* money on them to meet such deficiency. This was unquestionably good law, and is not a de-

cision that when a bill is fraudulently deposited with a banker in payment or security of a pre-existing debt, he is a bona fide holder thereof for value, as against the party defrauded.

The Revised Statutes of New York, 1 R. S. 768, Sec. 8. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of any person, who upon the faith thereof, shall have received the bill for valuable consideration, is in accordance with the decisions in England and in the United States.

In the case of Pillow & Rose *vs.* Van Microp, Hopkins, 3 Burr, 1663. The credit on which the bill was drawn was given before the promise to accept was made. The Court of King's Bench, all the judges being present, and concurring in opinion, considered the promise to accept as an acceptance.

Mason *vs.* Hunt, Doug. 296, Lord Mansfield said: There is no doubt but an agreement to accept may amount to an acceptance; and it may be couched in such words as to put a third person in a better condition than the drawer.

Cooledge *vs.* Payson, 2 Wheat. 75. Chief Justice Marshall. The prevailing inducement for considering a promise to accept as an acceptance is, that credit is thereby given to the bill. Now this credit is given as entirely by a letter written before the date of the bill as by one written afterwards.

In the case of the Ulster County Bank *vs.* McFarlan, 5 Hill, 434, J. Bronson says: The letter of credit conferred an absolute authority upon Deforest & Co. to draw bills, and must, I think, be regarded as an unconditional promise to accept within the meaning of the statute. 1 R. S. 768, sec. 8. Bank of Michigan *vs.* Ely, 12 Wen. 508. And see Parker *vs.* Grule, 2, id. 545 and S. C. in Error, 5, id. 414. These cases show also that the written promise to accept need not contain a particular description or identification of

the bill to be drawn. It is enough that it be drawn in pursuance of the authority. The plaintiffs received and discounted the bill upon the faith of the letter, and if it was drawn in pursuance of the authority, the judge was right in holding that there was a sufficient acceptance.

Duncan, Sherman & Co. having accepted the drafts of Rowland for any sums not exceeding £2000, held for a valuable consideration, all the collateral securities left by Rowland, and could collect them.

b. Considerations founded upon reciprocal promises of the parties, are of common occurrence in business, and bills and notes supported by such considerations have, always been held valid. It is upon this principle that cross notes or acceptances for the mutual accommodation have been upheld whenever they have come before the courts.

Judge Haines on the trial held that reciprocal promises constitute a consideration. This has been held from the time of Rolfe *vs.* Caslan, 2 H. B. p. 570, in the year 1795, where the notes were given purely as accommodation notes, precisely alike in the dates, sums of money contained in them, and times of payment, in which case Le Brand Levy on the other side was stopped by the Court, who were clearly of opinion that the two bills were mutual engagements, constituting on equal part a debt, the one being a consideration for the other.

Reed *vs.* Mather, 3 Wendell, 62.
Byles on Bills of Ex., 62.
Cameron *vs.* Chappell, 24 Wen., 94.
Dowe *vs.* Schutt, 2 Denis, 621.
Davis *vs.* McCready, 17 N. Y. Rep. 232.

In Depau *vs.* Waddington, 6 Wharton, p. 233, the judge says : If a man giveshis acceptance to another, that will be a good consideration for a promise on another bill, though such acceptance is unpaid.

E.—Duncan, Sherman & Co. are holders for value, because other securities were given up.

This brings them within the exception of the cases decided in New York.

In Coddington *vs.* Bay, 20 John R. 636. No securities were given up.

In Rosa *vs.* Brotherson, 10 Wend. 85. No securities wore given up.

In the case of the Bank of Salina *vs.* Babcock, 21 Wen. 499, Chief Justice Nelson says, that the proceeds of the note were placed to the credit of Trowbridge Grant, for whom it was discounted, and were drawn out, not, I admit, by checking for the money, but by the *cancellation* of securities held by the plaintiffs, which was the same thing in legal effect. It is enough that the plaintiffs in good faith *charged over and canceled* them according to usage, and held them merely to be sent home. *This is parting with value in the strictest sense of the term.*

In Mohawk Bank *vs.* Corey, 1 Hill, 515, Judge Brownson says: They not only took the note in payment of two other notes, which they then held against Borst, indorsed by Voorhies, but they gave up their securities.

In Stalker *vs.* McDonald, 6 Hill, they relinquished no previous security.

In Spear *vs.* Myers, 6 Barbour, 445, the Judges put the decision upon the ground that no securities were surrendered up.

In the case of Young *vs.* Lev, 2 Kernan R., 553, Johnson J. says: "The general question as to what consti-
"tutes a holding of a note or bill in good faith, and for
"value, has so often been discussed, that argument upon
"it is needless. Stalker *vs.* McDonald (6 Hill 93). The
"Bank of Salina *vs.* Babcock (21 Wend. 499), Bank of
"Sandusky, *vs.* Scoville (24 Wend. 115) (1 Hill 573), and
"White *vs.* Springfield Bank (3 Sandf. S. C. 222), discuss
"all the cases, and present all the views which belong to
"the subject. Stalker *vs.* McDonald determines that one
"is not a holder for value in good faith, who receives pa-

" per as security for a precedent debt, upon no new con-
" sideration passing at the time; but does not decide that
" a receipt in extinguishment of a precedent demand not
" at the time over due, does not constitute the receiver a
" holder for value in good faith. In the case before us,
" the note was received in extinguishment of a demand
" upon a note not yet due, and the vote was delivered up."
The surrender upon a consideration of a security not due, extinguishes the security. The plaintiffs therefore became holders for value, and are entitled to recover.