Value and the Doctrine of Bona Fide Purchase

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FROM time to time statutes have been enacted in New York State for the protection of the bona fide purchaser. In all of them except the Debtor and Creditor Law relating to fraudulent conveyances and the Lien Law relating to the filing of chattel mortgages, it is required that he have given "value" or "valuable consideration." But with the excep-


2 General Business Law §94 (making warehouseman issuing non-negotiable receipt not plainly marked "non-negotiable" liable to "a holder" of the receipt who purchased it for value supposing it to be negotiable), §132 (declaring that subsequent negotiation of a negotiable warehouse receipt by a seller left in possession of the same "to any person receiving the same in good faith, for value and without notice of the previous sale" of the goods covered by the receipt "shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation"), §133 ("where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, etc.").

Personal Property Law §32 (requiring transfers and mortgages of interests in decedents' estates to be in writing and recorded in order to be valid against "any subsequent purchaser or mortgagee of the same interest, or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded"), §40 (declaring that the fact a transfer of personal property was made with intent to hinder, delay or defraud creditors shall not impair the title of a purchaser for a valuable consideration unless it appear that such purchaser had previous notice, etc.), §67 (declaring that a conditional sale of fixtures is void after they are affixed "as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract" shall be filed before such purchase, etc.), §101 (4) (declaring that where seller sends bill of lading with draft attached, directly to buyer "one who purchases in good faith, for value, the bill of lading or goods from the buyer will obtain the property in the goods,
tion of the statutes relating to negotiable instruments, the transfer of negotiable warehouse receipts and the transfer

although the bill of exchange has not been honored, etc.

§105 ("where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title"), §106 (declaring that where a seller continues in possession of goods already sold, the delivery of the same by him "to any person paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery were expressly authorized by the owner of the goods to make the same"), §119 (declaring that the negotiation of a negotiable document of title is not impaired by fraud, mistake, breach of duty or duress, "if the person to whom the document was negotiated for value therefor, without notice of the breach of duty, or fraud, mistake or duress"), §143 (declaring that if a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, etc.), §168 (declaring that a transfer of a stock certificate may be rescinded for certain enumerated reasons, "unless the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the wrongful, etc."). §169 (declaring that such rescission will not invalidate a subsequent transfer of the certificate "to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, etc."). §192 (forbidding the issuance of bills of lading in sets, and declaring that "if so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, etc."). §193 (declaring that when more than one negotiable bill is issued for the same goods, a carrier failing to mark "duplicate" on those not intended as the original, shall be liable for damages caused thereby "to any one who has purchased the bill for value in good faith as an original, etc."). §200 (providing that if a carrier fails to take up and cancel a negotiable bill when delivering the goods, it shall be liable "to any one who for value and in good faith subsequently purchases the bill"). §201 (b) (declaring that if a carrier delivers part of the goods without noting such fact on the negotiable bill of lading, it shall be liable for failure to deliver all the goods specified in the bill "to any one who for value and in good faith subsequently purchases it, etc."). §209 (declaring that the carrier shall be liable for non-receipt or misdescription of goods to anyone "who has given value in good faith relying on the receipt or description of the goods in the bill, etc."). §224 (declaring that the negotiation of a negotiable bill of lading is not impaired by fraud, mistake, breach of duty, or duress "if the person to whom the bill was negotiated for value therefor, in good faith, without notice of the breach of duty, or fraud, etc."). §225 (declaring that where a seller of goods in carrier's possession or of a negotiable bill of lading covering them "continues in possession of the negotiable bill, the subsequent negotiation thereof by that person—to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation"). §226 (d) (same as §101 [4] supra), §228 (declaring that where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, etc.).

REAL PROPERTY LAW §95 ("an implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust"), §245 ("a greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent and as against a subsequent purchaser or incumbrancer from such grantor, or
of corporate stock, none of them, not even the Recording Acts, define “value” or “valuable consideration.” Indeed from such heirs claiming as such, other than a subsequent purchaser or incumbrancer in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded,”), §266 (declaring that the provisions of Article 10 of the Real Property Law do “not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor”), §291 (providing for the recording of conveyances and declaring that “every such conveyance so not subsequently is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property whose conveyance is first duly recorded”).

Stock Corporation Law §17 (providing that whenever the officers of any corporation shall have made and filed and recorded a certificate that the execution of the mortgage has been duly consented to by stockholders, “such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase for value, any obligation purporting to be secured by such mortgage”).

But the Debtor and Creditor Law instead of employing the term “value” or “valuable consideration” uses the term “fair consideration.” §273 declares that “every conveyance made * * * by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made * * * without ‘fair consideration.’” §274 declares that every conveyance made without fair consideration when the person making it is engaged in a business for which the property remaining in his hands after the conveyance, is unreasonably small capital, is fraudulent to the creditors, etc. §278 declares that “where a conveyance * * * is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase * * * have the conveyance set aside, etc.” The term fair consideration is defined in §272 of the Debtor and Creditor Law as follows: “Fair consideration is given for property, or obligation. (a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or, (b) when such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.”

Lien Law §§230 and 235, providing for the filing and refiling of chattel mortgages, declares that unless the mortgage is accompanied by immediate delivery of the thing mortgaged, it is absolutely void as against subsequent purchasers and mortgagees in good faith, unless the mortgage is filed. Nothing is said about value or valuable consideration but merely good faith. The Lien Law does not define the term “good faith.”

General Business Law §142, relating to transfers of negotiable warehouse receipts, defines value as “any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof, or as security therefor.”

Personal Property Law §183, relating to transfers of corporate stock, defines “value” as “any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof, or as security therefor.”

Negotiable Instruments Law §51 defines value as “any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.”
in adopting two Uniform Acts, drafted by the Commissioners of Uniform State Laws, our legislature "expressly" omitted therefrom the definitions of value.\textsuperscript{4} The result is, that under all the Recording Acts and other statutes of this state designed for the protection of the \textit{bona fide} purchaser both in respect to real property and personal property, the common law conception of "value" still governs with the exception of those relating to negotiable instruments, warehouse receipts, corporate stock, and conveyances fraudulent as to creditors under the debtor and creditor law.

It is the purpose of this article to review the common law decisions of this state on the subject of "value" as applied to the doctrine of \textit{bona fide} purchase. But before doing so, a few words as to the origin and early development of the doctrine may serve to explain and clarify such decisions.

The problem does not seem to have vexed the early common law. It rarely, if ever, had to decide between the real owner and the innocent purchaser for value either of real or personal property. Both the law and feudal society frowned on trading in land, and when alienation became possible, it was so set about with formalities, such as livery of seisin, etc., that it was almost impossible for one who did not have the title to make a conveyance of land. In respect to transfers of personal property the cardinal rule of \textit{caveat emptor} applied in all cases, except to purchases in market overt.

It was the fixed policy of the common law to protect one in the ownership of his property. As late as 1838 we find it laid down as "the universal and fundamental principle of our law of personal property that no man can be

\textsuperscript{4} Section 76 of the Uniform Sales Act defines value as "any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of title are taken either in satisfaction thereof or as security therefor." But this definition was omitted by the New York legislature when it adopted the Sales Act (\textit{Pers. Prop. Law} §§82-158). Section 53 of the Uniform Bills of Lading Act defines value as "any consideration sufficient to support a single contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor." But this definition was omitted by the New York legislature when it adopted the Uniform Bills of Lading Act (\textit{Pers. Prop. Law} §§187-247).
divested of his property without his own consent; and, consequently, that even the honest purchaser under a defective title cannot hold against the true proprietor." And even as late as 1878 our Court of Appeals said: "The purchaser buys at his risk of the title, and, if he would be safe, must make inquiry. He may not with certainty stop at the fact of possession, but must learn how the possession has been acquired."

In accordance with this general rule it is held that a bona fide purchaser for value from a thief cannot keep the goods as against the owner. And that one who buys goods for value and without notice from one who acquired possession of them by fraud but without any intention on the part of the owner to transfer title to him cannot keep them as against the owner. So also, one having possession of personal property as a bailee can give no title to a purchaser, although the latter acts in good faith and parts with value and is without notice of the want of title in his seller. As a further instance of the disposition of the common law to protect ownership even against a bona fide purchaser, neither a conditional sale contract nor a chattel mortgage had to be filed or recorded in order to preserve the interest of the conditional vendor or chattel mortgagee as against an innocent purchaser for value.

The doctrine of bona fide purchase seems to have developed from two sources: from the law merchant and from equity. The earliest known application of the doctrine to personal property seems to have been in reference to a purchase in market overt. Under the law merchant a pur-

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6 Farmers, etc. Bank v. Logan, 74 N. Y. 568 (1878), per Folger, J., "A purchaser of chattels takes them, as a general rule, subject to whatever may turn out to be infirmities in the title." Barnard v. Campbell, 55 N. Y. 456 (1874), per Allen, J., "The general rule is that a purchaser of property takes only such title as his seller has, and is authorized to transfer; that he acquires precisely the interest which the seller owns, and no other or greater."
11 Case of Market Overt, 5 Co. 83b (1595).
chaser in market overt was protected though his seller had no title whatsoever. This principle of the common law is carried into section twenty-two of the English Sales of Goods Act. But in this country the exception in favor of sales in market overt has never been recognized.12

Another exception was made in the case of a bona fide purchaser for value of money, bank-bills, and negotiable paper payable to bearer or transferable by delivery in the ordinary course of business. This, like the first exception, was made as a concession to trade and commerce in that it tended to sustain the credit and circulation of the currency.13 Both exceptions marked an invasion of the common law by the law merchant.

Still another exception, known to the common law in the case of a bona fide purchaser, is that where the owner has conferred indicia of title upon another or clothed him with apparent authority to sell, he will be estopped to assert his ownership in the goods as against an innocent purchaser for value.14 This exception being based upon estoppel had its origin in equity.15 The real owner is precluded from

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12 Wheelwright v. De Peyster, 1 Johns. 471 (N. Y. 1806); Mowrey v. Walsh, 8 Cow. 238 (N. Y. 1828).
13 Anon., [1795] 1 Salk. 126; Miller v. Race, 1 Burr. 452 (1758); Knox v. Eden Musee etc. Co., 148 N. Y. 441, 42 N. E. 988 (1896).
14 This exception is recognized and stated in Saltus v. Everett, supra note 5, and Barnard v. Campbell, supra note 6.
15 "The protection given to the bona fide purchaser had its origin exclusively in equity, and is based upon the conception that a court of chancery acts solely upon the conscience of litigant parties, by compelling the defendant to do what, and only what, in foro conscientiae, he is bound to do. The protection given to the bona fide purchaser simply means, therefore, that from the relations subsisting between the two parties, especially that which is involved in the innocent position of the purchaser, equity refuses to interfere and to aid the plaintiff in what he is seeking to obtain because it would be unconscientious and inequitable to do so." 2 Pomeroy, EQUITY JURISPRUDENCE (4th ed. 1918) §738.

"When the original legal owner has done or omitted something by which it was made possible that his property should come into the hands of a bona fide holder by an apparently valid title, it may be just to regard him as estopped from asserting his ownership, and thus to protect the subsequent purchaser. But when the prior legal owner is wholly innocent, has done and omitted nothing, it certainly transcends, even if it does not violate, the principles of equity, to sustain the claims of a subsequent and even bona fide purchaser." 2 Pomeroy, EQUITY JURISPRUDENCE (4th ed. 1918) §735.

WALSH, ON EQUITY (1930) 86: "That doctrine [of bona fide purchase] was created by equity as a limitation upon equitable ownership in the latter part of the fifteenth century, in connection with and as part of the process of creating uses as estates in land. Having made the legal title of the trustee an empty
disputing, as against the *bona fide* purchaser, the existence of the title or power which through negligence or mistaken confidence he caused or allowed to appear to be vested in the person making the transfer. This exception extended to and covered the case where a purchaser of goods allowed them to remain in the possession of the seller who subsequently sold and delivered them to an innocent purchaser for value. It seems to have been based upon the equitable maxim that where one of two innocent persons must suffer loss by reason of the fraud or deceit of another, the loss should fall on him by whose act or omission the wrong-doer has been enabled to commit the fraud.

The various Recording Acts have largely extended the application of the doctrine of *bona fide* purchase. It is, however, interesting to learn that the earliest English Recording Act made the prior unrecorded deed wholly void as against the subsequent grantee, without reference to the question of notice, or the payment of value. But the Court of Chancery sought to relieve the earlier grantee from the hardship which the enforcement of the letter of the law might inflict, and, while respecting the command of the statute, which made his deed void at law, it invested him with an equitable title, which it declared should prevail over the legal title of the subsequent purchaser if it appeared that he had notice of its existence, or did not part with value at the time of the purchase. This rule of judicial construction was incorporated into the subsequent Recording Acts in almost the identical words in which it had been phrased by courts of equity.

*Common Law Conception of Value Stated Generally.* Pomeroy says that as used in the doctrine of *bona fide* purchase the term “valuable consideration” has no relation to the general law of contracts and binding promises. Professor Vold of the University of Nebraska Law School has well said: “‘Value’ within the meaning of the rule pro-

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**notes:**

16 *Per Maynard, J., in Ten Eyck v. Witbeck, 135 N. Y. 40, 48, 31 N. E. 994 (1892).*

17 *2 Pomeroy, Equity Jurisprudence (4th ed.) §746.*
tecting purchasers for value without notice is not at all points the same as the value which will constitute sufficient consideration to support a contract. A promise to pay constitutes sufficient consideration to support a counterpromise, thereby making a binding contract. Within the meaning of the rule here discussed, however, *not value promised, but value actually rendered* is required.” (Italics mine.)

At common law valuable consideration means and necessarily requires something of actual value, capable of pecuniary measurement—parting with money, or money's worth, or by surrendering, cancelling or extinguishing some existing legal right in such a way as to leave him in a worse position than he was in before if the property is taken from him. In general, it is requisite that the money be paid or advanced, the property transferred or the right surrendered, at the time of the conveyance, and as a part of the transaction, in order that it may be the valuable consideration which can protect the purchaser.

**A Donee is Not a Taker for Value.** No person who has acquired the property as a mere volunteer, whether by gift, devise or inheritance, can be a *bona fide* purchaser.

**An Assignee for Benefit of Creditors is Not a Bona Fide Purchaser.** An assignee for the benefit of creditors merely succeeds to the rights of his assignors and is not entitled to the protection afforded a *bona fide* purchaser for value. Judge Denio gives the reason for this as follows: “When the act respecting the filing of chattel mortgages was passed, the term *bona fide* purchaser had acquired a settled meaning, which did not include a person whose purchase was on account of an existing debt, and who parted

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18 VOLD, ON SALES (1931) 381.
19 Webster v. Van Steenbergh, 46 Barb. 211 (N. Y. 1864); Pickett v. Barron, 29 Barb. 505 (N. Y. 1859); Dickerson v. Tillinghast, 4 Paige 215 (N. Y. 1833); Penfield v. Dunbar, 64 Barb. 239 (N. Y. 1864); Weaver v. Barden, 49 N. Y. 286 (1872).
21 Frost v. Beekman, 1 Johns. Ch. 288 (N. Y. 1814); Ten Eyck v. Witbeck, supra note 16; Baker v. Lever, 67 N. Y. 304 (1876), holding that one to whom a bond and mortgage, given to secure the price of property upon a fraudulent sale, is assigned without any pecuniary consideration being paid, but simply as a gift, does not occupy the position of a *bona fide* purchaser.
with no property or right to obtain his conveyance. The case of a conveyance of a debtor's property to trustees, to enable him to make preferences among his creditors, does not stand on a better footing than a transfer to a single creditor as security for his debt. From the nature of the case, the creditors part with nothing. They are not necessarily or usually consulted. They take precisely what the conveyance gives them, and they part with no existing rights. The property is subject to the same equities, in the hands of the trustees, which existed against it immediately before the execution of the assignment.  

23 The assignee takes no property in the ordinary sense under the assignment but is merely the representative of the assignor in the payment of his debts.

A Trustee in Bankruptcy is Not a Bona Fide Purchaser. Under both the earlier and the late federal bankruptcy statutes, the trustee in bankruptcy is not entitled to the protection afforded bona fide purchasers for value.  

24 He cannot in any case take property that is not the property of the bankrupt.

A Judgment-Creditor Buying at the Judgment Execution Sale does not become a bona fide purchaser of goods fraudulently purchased by his judgment-debtor where the judgment debt is merely credited with the purchase price. Such proceeding gives him no better title than a mere delivery would from the fraudulent vendee in payment of an antecedent debt.  

25 But where a creditor by virtue of proceedings under the Revised Statutes for the sale of the property of absent and absconding debtors in order to collect the debt, purchases his debtor's land at such a sale, he is a purchaser for a valuable consideration within the recording act, although the entire purchase price, except so much as is required to satisfy the expenses of the proceedings is applied in payment of the debt.  

26 The legal expenses

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23 Van Hensen v. Radcliff, 17 N. Y. 580 (1858); Smith v. Felton, 43 N. Y. 419 (1871); Young v. Heermans, 66 N. Y. 374 (1876).
24 Gibson v. Warden, 14 Wall. 244 (U. S. 1871); In re Steiner's Improved Dye Works, Inc., 44 F. (2d) 557 (C. C. A. 7th, 1930).
necessarily incurred, which have to be advanced by the party promoting the proceedings, are something in addition to the existing debt, which the purchaser had parted with as a consideration for the conveyance which he receives.

A purchaser from one who is protected by the recording act against a prior unrecorded conveyance is himself entitled to such protection, notwithstanding he purchased with notice of the prior conveyance, or without parting with a valuable consideration.27

As examples of what clearly amount to valuable consideration Pomeroy gives the following: a contemporaneous advance or loan of money, or a sale, transfer, or exchange of property, made at the time of the purchase.28

Consideration Must be Paid Before Notice. Not only must there be a valuable consideration in fact, but it must be paid before notice of the prior claim. Notice after the agreement for the purchase is made, but before any payment, will destroy the character of a bona fide purchaser.29 Where a part only of the price or consideration has been paid before notice, either the defendant should be entitled to the position and protection of a bona fide purchaser pro tanto,30 or the plaintiff should be permitted to enforce his claim to the property only upon condition of his doing equity by refunding to the defendant the amount already paid before receiving the notice.31

The Amount of Consideration is Generally Not Material. If property of an actual value is paid, the amount is not material if the transaction is otherwise in good faith.32 The amount if grossly small and inadequate would not be a valuable consideration so as to protect the purchaser because it

27 Wood v. Chapin, supra note 26; Webster v. Van Steenbergh, supra note 19.
29 Jewett v. Palmer, 7 Johns. Ch. 65 (N. Y. 1823); Penfield v. Dunbar, supra note 19.
30 Sargent v. Eureka Spund Apparatus Co., 46 Hun 19, 11 N. Y. St. Rep. 68 (1887); Pickett v. Barron, supra note 19; Frost v. Beekman, supra note 21; Farmers Loan Co. v. Maltby, 8 Paige 361 (N. Y. 1840); dictum in Ten Eyck v. Witbeck, supra note 16.
would show bad faith. The consideration must not only be good, but valuable in the sense that a fair equivalent is given for the property granted in order to constitute the grantee a purchaser for value.

Surrender Or Relinquishment of an Existing Legal Right, except extinguishment of a past debt, is a valuable consideration as for example, parting with the equitable title to land or giving the overdue note of a third person or the surrender to a party of his own past due promissory note in return for goods delivered.

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Assumption of a New Legal Obligation is Not Value as Long as the Obligation is Revocable Or Rescindable. At common law, not value promised but value actually rendered is required. Where the purchaser who has not as yet paid but merely given his executory promise to pay, is required to surrender to the original defrauded seller the goods he has acquired from the fraudulent buyer, he can generally be at least substantially compensated for the loss of the goods by the cancellation of his obligation to pay for them—for upon failure of the consideration he can be relieved from such obligations in equity even if not at law. Where his obligation was not of an irrevocable nature or has not become irrevocable, practical justice is accomplished by returning the goods to the defrauded owner, leaving the purchaser from the fraudulent vendee, his remedy of rescinding or revoking the obligation he had assumed. Practical considerations have prevented the decision of this question by the mere syllogistic application of the test of consideration sufficient to support a simple contract. It follows, therefore, that his own executory promise, contract, bond, covenant, bond and mortgage, or other non-negotiable security for the price, will not render the party a bona fide purchaser of the goods represented by the receipt.

The Court said: "The facts in regard to the consideration paid by the defendant are, that he held the promissory note of the alleged fraudulent purchaser, given to him for money loaned, equal in amount to the value of the flour. He purchased the flour and gave up the note in payment of the price. This payment made the purchase by the defendant valid against the plaintiff so far as the consideration bears upon the bona fide character of the transaction."

39 A portion of the definition of value given in §76 of the Uniform Sales Act is that value is "any consideration sufficient to support a simple contract." But as that was not in accord with the common law conception of value in this state (see note 39, infra), our legislature, in adopting the Sales Act, omitted that definition.

38 In Weaver v. Barden, supra note 19, after an exhaustive review of the authorities, Allen, J., said: "Something more than a good consideration, a consideration which would be sufficient as between the parties to the transaction, was necessary to shield him against the claim of the plaintiff." (Italics mine.)

40 Williston says: "Upon principle there seems no good reason why a purchaser should be deprived of the benefit of his bargain because his obligation to pay is executory. The original owner or claimant of the goods should not have the right to deprive the innocent purchaser of the goods, but should be obliged to get relief from the enforcement for his advantage, of the obligation, of the purchaser to pay the price. This doctrine is perhaps opposed to the general legal understanding, but is not unsupported by authority." 41 WILLISTON, SALES §620.

41 VOLD, ON SALES (1931) 382.
purchaser, nor entitle him to protection, and it has so been held under the common law decisions of this state. Generally the doctrine of bona fide purchase applies to the situation where one has bought for value and without notice from another who had falsely represented by silence or otherwise that he had a good title to convey. In such cases the bona fide purchaser's promise to pay for the goods is not binding on him since he can revoke or rescind it for the fraud, and hence he has not parted with value in the sense that he has irretrievably lost something if the goods are taken from him and restored to the original defrauded owner.

Assumption of a New Legal Obligation Which is in its Nature Irrevocable, clearly amounts to a valuable consideration. Payment of actual cash is not indispensable. The assumption of an irrevocable obligation, from which the purchaser could not be relieved even by a failure of the consideration arising from the title being invalid may be sufficient. There are many forms of such obligation: One of these occurs where the purchaser has given his own negotiable notes for the whole or part of the price. In some jurisdictions it is held that as long as the negotiable instrument remains unnegotiated in the hands of the fraudulent vendee, the purchaser is not a bona fide purchaser for value, but where the negotiable instrument has been actu-

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43 Moore v. Ryder, 65 N. Y. 438 (1875), per Earl, C., "I am also of the opinion that the mere promise of the transferee of such paper does not make him a holder for value for the reason that the promise is not binding, and cannot, therefore, in a legal sense, subject him to loss. The promise is no more binding than it would have been if it had been made to pay a certain sum of money at some future time to the fraudulent negotiator of the paper. That such a promise made the transferee a holder for value within the meaning of the rule, no one would claim." Partridge v. Rubin, 15 Daly 344, 6 N. Y. Supp. 657 (1889), where it was held that one who purchased on credit goods which had been fraudulently obtained, and paid nothing on account, was not a purchaser for value, and the original vendor could recover them from him, even though he had no knowledge of the fraud. The Court said: "It is preposterous to argue that the charge made against her in the books of Epstein is the giving of a thing of value by the defendant. * * * The purchase money must be actually paid in order to make the purchaser, a purchaser for value." See, also, Spicer v. Waters, 65 Barb. 227 (N. Y. 1866); Harris v. Norton, 16 Barb. 264 (N. Y. 1853); Eells v. Tousley, 1 Paige 280 (N. Y. 1828); De Mott v. Starkey, 3 Barb. Ch. 403 (N. Y. 1848).
ally negotiated, so as to render him liable thereon to a holder in due course before receiving notice of a prior lien, he is treated as a bona fide purchaser for value and entitled to protection as such. But in New York State, at common law, the fact that the purchaser has given his own checks or promissory notes will not make him a bona fide purchaser for value while they are still unpaid even though they may have been negotiated to a holder in due course. Another form would be the undertaking by the purchaser to pay a debt due from the vendor to a third person in such a manner that he was absolutely substituted as the debtor in the place of his vendor.

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46 Donalson v. Thomason, 137 Ga. 848, 74 S. E. 762 (1912).
47 Jewett v. Palmer, supra note 29, where at the time of the delivery of a deed the defendant paid part of the consideration therefor by the transfer of promissory notes, but the cash balance was not paid until after notice of the fraud. It was held that he was not a bona fide purchaser. Chancellor Kent said: "A plea of a purchase for a valuable consideration, without notice, must be with the money actually paid; or else, according to Lord Hardwicke, you are not hurt. The averment must be, not only that the purchaser had no notice, at or before the time of the execution of the deeds, that the purchase money was paid before notice. There must not only be a denial of notice before the purchase, but a denial of notice before payment of the money. Even if the purchase money be secured to be paid, yet if it be not in fact paid, before notice, the pleas of a purchase for a valuable consideration will be overruled."

In Freeman v. Deming, 3 Sand. Ch. 327 (N. Y. 1846), it was held that the giving of negotiable promissory notes for the price is not of itself such a payment as will constitute one a bona fide purchaser in equity.

In Crandall v. Vickery, 45 Barb. 156 (N. Y. 1865), the plaintiff gave his checks for the amount of some notes, but before the checks had been presented or exchanged and before any of them were paid, he learned of the fraud. It was held he was not a bona fide holder for value of the notes.

48 In Barnard v. Campbell, supra note 6, one Jeffries contracted to sell defendant's 1,800 bags of linseed which he did not then own, or had even contracted to buy. On the same day defendants mailed to him their notes for the amount of the purchase price. Subsequently Jeffries fraudulently obtained possession of the linseed from the plaintiffs and shipped it to defendants. It was held that the plaintiffs were entitled to recover the linseed from the defendants as the latter were not bona fide purchasers for value even though it appeared that Jeffries had pledged their notes as collateral for a loan before they had notice of the fraud. The Court said the defendants had parted with no value. It should be observed, however, that the notes were not given at the time the goods were received, but some days before, perhaps so that Jeffries could at once negotiate them for a loan. If that was the purpose, then it might be said that Jeffries was indebted to the defendants by way of a loan by them of their credit to him prior to the time the linseed was delivered, in which case the defendants may be said to have taken the linseed in payment of an antecedent debt. But even if we adopt this view it would not constitute the defendant's bona fide purchasers for value.

49 In Jackson v. Winslow, 9 Cow. 13 (N. Y. 1828), it was held that a grantee, assuming the payment of a debt due from his grantor, is a sufficient consideration to make a purchase or mortgage of land valid within the registry acts as against an unrecorded deed.
Taking Property in Payment or Discharge of an Antecedent Debt. If the question were to be answered merely from the standpoint of whether there were sufficient consideration to support a contract, it would seem that a creditor who takes goods in satisfaction of an antecedent debt is a purchaser for value. But as has been said, a valuable consideration in such cases means something more than the discharge of a debt that revives when the consideration for its discharge fails. It means the parting with some value that cannot be actually restored, by operation of law, leaving the purchaser in a changed condition so that he may lose something besides his bargain. Accordingly, even in jurisdictions holding at common law that one taking negotiable instruments in satisfaction of a pre-existing debt was a holder for value, the courts refused to so hold in reference to such purchasers of chattels, on the ground that the law that compels the restoration of the goods to the original defrauded seller, can also by the same process reinstate the original debt. Although the parties may thus be restored to their original positions as far as legal liabilities are concerned, the innocent purchaser frequently cannot be put back to his original position so far as its business aspects are concerned, for the debt may have been collectible and have been col-

In Williams v. Shelley, 37 N. Y. 375 (1867, M and D agreed for the purchase of a large amount of goods; some of the sellers refused to deliver the goods without security; the plaintiff became the surety of M and D for the price of the goods, which were thereupon delivered to M and D. M and D later transferred to the plaintiff all their interest in the goods for which the plaintiff had become surety, and plaintiff agreed to pay for said goods and to indemnify M and D against their liability therefor. Plaintiff took possession of the goods. Later defendant, a sheriff acting on behalf of one of the creditors of M and D, seized the goods under an execution against M and D. Held, plaintiff was a bona fide purchaser for value. The plaintiff thus assumed a new liability; he became the principal debtor instead of a surety for others.


24 RULING CASE LAW 384.

Sleeper v. Davis, 64 N. H. 59, 6 Atl. 201 (1886); Eaton v. Davidson, 46 Ohio St. 355, 21 N. E. 442 (1889): "If the consideration of the purchase from the fraudulent vendee is the release of a pre-existing debt, the purchaser will be restored to what he may have yielded up, if the original owner who has been defrauded reclaims and recovers the property. The consideration having failed, it will be adequate to furnish him the needed relief, even though, as in the present case, there may have been a surrender of a promissory note. The purchaser will not, therefore, be materially affected in his legal rights, by the retaining of the goods by the original owner."

Hurd v. Bickford, supra note 50: "While the discharge of a pre-existing debt is in one sense a valuable consideration, yet, if the title of the vendee fails, the discharge of the debt fails also, and he has lost nothing by the transaction."
lected had it not been settled for by the transfer of the goods. When that transfer is later rescinded by operation of law and the goods restored to the original defrauded party, the fraudulent buyer may have become insolvent, or have concealed his assets. In such a case the loss is thrown from the original innocent victim of the fraud to another equally innocent party, who has an equal stake in the outcome. Moreover, the general social effect of the rule that antecedent debt is not value, is evil since it impairs the security of transactions. For these reasons in some states and in the Federal Courts it is held, even in the absence of a statute, that where goods are transferred by a fraudulent buyer in satisfaction of a pre-existing debt, the innocent transferee is protected against their being reclaimed by the original defrauded seller.

In New York State at common law it has been repeatedly held that one who takes chattels, land or mortgage in payment or discharge of a pre-existing debt, is not a purchaser for value unless, at the same time, and as part of the same transaction he gives some new consideration, such as surrendering some security or evidence of indebtedness, or in some other manner changes his legal status to his detriment. Merely extending credit upon a pre-existing debt is not sufficient.

53 Vold, On Sales (1931) 382, 383.
54 Pelham v. Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12 (1906); Butters v. Haughwout, 42 Ill. 18, 89 Am. Dec. 401 (1886); City Bank v. Easton Boot & Shoe Co., 187 Pa. 30, 40 Atl. 1026 (1898).
56 Padgett v. Lawrence, 10 Paige 170 (N. Y. 1843) (purchase of real property merely upon the consideration of a prior indebtedness of the grantor); Root v. French, 13 Wend. 570 (N. Y. 1835) (transfer of goods in payment of a pre-existing debt); Cary v. White, 52 N. Y. 141 (1873) (mortgage received in payment of a pre-existing debt); Stevens v. Brennan, 79 N. Y. 258 (1879) (goods taken in payment of a pre-existing debt); Duffus v. Furnace Co., 15 Misc. 169, 37 N. Y. Supp. 19 (1896), rev'd on other grounds in 8 App. Div. 567, 40 N. Y. Supp. 925 (4th Dept. 1896) (mortgage given for a pre-existing debt); Gowing v. Warner, 29 Misc. 593, 61 N. Y. Supp. 500 (1899), aff'd, 30 Misc. 593, 62 N. Y. Supp. 797 (1900) (transfer of goods for a pre-existing debt).
57 Weaver v. Barden, supra note 19 (receipt of shares of stock merely crediting prior indebtedness therewith. Per Allen, J.: "It is generally admitted that the mere existence of a precedent debt is not sufficient consideration to support a conveyance as against prior equities; but in some states it is held that when made in absolute payment and satisfaction of an antecedent debt, the purchase will be regarded as a purchase for value. But that is not the rule in
The same rule applied in New York State to one who took negotiable instruments in payment or discharge of an antecedent debt. But, by section 51 of the Negotiable Instruments Law, enacted in 1897, an antecedent or pre-existing debt constitutes value.

**Taking Property as Security for Antecedent Debt.** A conveyance of real or personal property as security for an antecedent debt does not, upon principle, render the transferee a *bona fide* purchaser, since the creditor parts with no value, surrenders no right, and places himself in no worse legal position than before. Where goods are taken by a creditor as security for a pre-existing debt merely on the debtor's hope of receiving indulgence thereby, without giving any binding extension of time, the weight of common law authority in this country regarded the transfer as not a transfer for value. It is well settled at common law in New York that the mere taking of property real or personal as security for a pre-existing debt, without surrendering up or cancelling some written security or without any additional agreement is not a valuable consideration.

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The authoritative effect of Coddington v. Bay, *ibid.*, was not definitely overruled until Kelso & Co. v. Ellis, 224 N. Y. 528, 121 N. E. 364 (1918).


2 Vold, *On Sales* (1931) 383 and cases there cited.

Wood v. Robinson, 22 N. Y. 564 (1860) (mortgage taken to secure a precedent debt. Per Denio, J.: "But the mortgage was taken as collateral security for an antecedent debt, nothing being advanced at the time, and no security given up. It is not found that there was any definite contract for extending the credit on the demands which the bank held against Mann; but for anything which appears, these demands might have been prosecuted imme-diately, notwithstanding the execution of the mortgage. Where a conveyance is made, or a security taken, the consideration of which was an antecedent debt, the grantee or party taking the security is not looked upon as a bona fide purchaser"); Taft v. Chapman, 50 N. Y. 445 (1872), holding that one who takes stolen bonds as a margin on the purchase price of stock purchased by him for the thief is not a bona fide holder for value, even though he subsequently fulfilled the contract for the purchase of the stock by paying therefor; in making such payments, they (the defendants) simply performed their contract with their vendors; the obligation to make this payment existed before the bonds were received, and was not in any way induced or affected thereby; Cary v. White, 32 N. Y. 141 (1873) (mortgage taken as security for an existing debt); De Lancey v. Stearns, 66 N. Y. 102 (1876) (mortgage of land as security for an existing debt is not sufficient to bring the mortgage within the protection of
The same rule applied in New York to the transfer of negotiable instruments. In this respect the rule in this state was different from that in the United States Supreme Court and the majority of states. But by section 51 of the Negotiable Instruments Law, enacted in 1897, antecedent or pre-existing debt constitutes value. However, some of our courts continued to hold section 51 merely declaratory of the common law rule and that a creditor receiving a negotiable instrument as security only, did not give value. It was not until 1918, over twenty years after the passage of the Negotiable Instruments Law, that our Court of Appeals overruled Coddington v. Bay and held that taking negotiable instruments as security for an antecedent debt constitutes value.

However, at common law in this state, if, in addition to taking property as collateral security for a pre-existing debt, the creditor at the same time agreed either to forbear suing on or to extend the time of payment of the original debt or at the same time and as part of the agreement surrendered up or cancelled the written evidence of such

the Recording Act); Stevens v. Brennan, 79 N. Y. 258 (1879) (goods taken as security for a precedent debt); Young v. Guy, 87 N. Y. 457 (1882), holding that one who takes a mortgage on real estate as security for past due promissory notes of the mortgagor is not a mortgagee for value within the protection of the Recording Act.

Supra note 58.

Brooklyn City, etc., R. Co. v. Nat. Bank, 102 U. S. 14 (1880).


Kelso Co. v. Ellis, supra note 59.

O'Brien v. Fleckenstein, 180 N. Y. 350, 73 N. E. 30 (1905), holding that one who takes a mortgage as security for a precedent debt, and gives a valid extension of the time of payment of that debt, is a bona fide purchaser within the meaning of the Recording Act; Berner v. Kaye, 14 Misc. 1, 35 N. Y. Supp. 181 (1895), motion for rearraignment or for leave to appeal to the Court of Appeals denied in 35 N. Y. Supp. 1103 (1895), holding that one who takes a mortgage and in return agrees not to sue on the mortgagor's overdue notes, is a mortgagee for value as against the vendor in an unfiled conditional sale, though such forbearance was not to endure for any fixed time, forbearance for a reasonable time being implied under the circumstances of the case.

In Durkee v. Nat. Bank, 36 Hun 565 (N. Y. 1885), a bank took a mortgage as security for a mortgagor's notes discounted by the bank, and agreed to refrain from suing him on such notes for a certain time. It was held that the bank was a holder for value of the mortgage so as to entitle it, as against a prior unrecorded mortgage, to the benefit of the statute.
antecedent he was regarded as a *bona fide* purchaser for value.

But such forbearance or extension of time must have been expressly bargained for and agreed upon, for the mere taking of collateral security on time is not *per se*, and in the absence of any agreement beyond it, an extension of time for the payment of the original debt. But, as Professor Vold very well points out, even though forbearance is not expressly bargained for, the effect of conveying goods as security is almost inevitably to cause the creditor to forbear or to relax his efforts to make present collection, thereby in fact producing the result that this line of credit is maintained a while longer on the strength of the new security when without the new security it would have been closed out.

Where a purchaser of chattels pays partly in cash and partly by the extinguishment of a pre-existing debt, the weight of authority seems to hold that he is a purchaser for value. However small may be the additional consideration paid by the creditor, besides discharging an antecedent debt, it will serve to constitute him a *bona fide* purchaser for value in the absence of fraudulent knowledge on his part. But it has been held that a sale and delivery of

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*2 Pomeroy, Equity Jurisprudence §747: “If one taking goods fraudulently purchased as security for a pre-existing debt, at the time releases security which he held for the debt, such as a surety or collateral security, this will place him in the position of a purchaser for value.”

*2 Cary v. White, supra note 62, disapproving of dictum to the contrary in Pratt v. Coman, 37 N. Y. 440 (1868). In Cary v. White, the Court said: “We are cited to several cases in which judges have said, in substance, that the taking of a collateral security on time is an extension of the time of payment of the principal debt; that is, that the right of action for the original debt or upon the original security is suspended until the collateral security shall become due. It is so said in Pratt v. Coman, and in the cases cited by the learned judge in that case. But the remark was not necessary to the decision, and is not supported by authority. In those cases in which the time for the payment of the original debt has been held to have been extended upon the receipt of a collateral security, there was an express agreement to that effect” (citing cases).

*7 Moyer v. McIntyre, 43 Hun 58 (N. Y. 1887), holding that where a purchaser of a wagon from a conditional vendee paid for the same with ten dollars in cash and applied fifty-five dollars of the balance of the price upon an old debt owing him by the conditional vendee, without notice of the unfiled conditional sale, he was a *bona fide* purchaser for value. Note (1926) 44 A. L. R. 488n, 493.

goods in consideration of an antecedent indebtedness amounting to $1600, and a cash consideration of $50 given as a legal guard, is not sufficient to constitute the sub-
purchaser a purchaser for value. 

Summary. Except in the case of transfers of negotiable instruments, negotiable warehouse receipts and certi-
ficates of stock, there is at present no statutory defini-
tion of value in New York State as applied to the doctrine of bona fide purchase. None of the Recording Acts con-
tain such a definition of value. Therefore, in the situa-
tions contemplated under the Recording Acts, and under 

Personal Property Law, sections 67, 101 (4), 105, 106, 119,

73 Victoria Paper Mills Co. v. N. Y. & P. Co., 27 Misc. 179, 57 N. Y. Supp. 397 (1899), aff'd, 28 Misc. 123, 58 N. Y. Supp. 1070 (1899). The fact that the small sum of money was paid on the advice of lawyers, that there might be no question as to the validity of the sale, was insufficient to make the second pur-
chaser a bona fide purchaser for value.

74 Supra note 3.

75 Lien Law §§230 and 235, relating to the filing and refiling of chattel mortgages, declares a failure to do so where there is no immediate delivery and change of possession of the mortgaged goods renders the mortgage void as to subsequent purchasers and mortgagees in good faith. But our Court of Appeals has said in Button v. Rathbone, Sard & Co., 126 N. Y. 187, 27 N. E. 266 (1891), that this statute is to be construed in analogy with the rule of conveyances of real estate under the Recording Act, and in Van Heusen v. Radcliff, 17 N. Y. 580 (1858), that "when the act respecting the filing of chattel mortgages was passed, the term bona fide purchaser had acquired a settled meaning which did not include a person whose purchase was on account of an existing debt and who parted with no property or right to obtain his conveyance." It has been held that one who takes a chattel mortgage to secure an antecedent debt is not a mortgagee in good faith within the meaning of Lien Law §230; Thompson v. Van Vechten, 27 N. Y. 568 (1863); Doig v. Haverly, 92 Hun 176, 37 N. Y. Supp. 455 (1895); Hof v. Mager, 168 App. Div. 318, 154 N. Y. Supp. 60 (2d Dept. 1915).

Real Property Law, art. 8 (§§240-275) relating to conveyances and mort-
gages, contains no definition of value, and art. 9 (§§290-334), relating to recording 
instruments affecting real property, contains no definition of value. But it has been held that the consideration which a grantee must have paid to entitle him to protection against a prior unrecorded deed or incumbrance must be such as the law denominates a valuable consideration. While it is not necessary that the consideration should be adequate in point of value, a merely nominal amount is not sufficient to satisfy the requirement of a valuable consideration. Ten Eyck v. Witbeck, supra note 16; Dunn v. Dunn, 151 App. Div. 800, 136 N. Y. Supp. 282 (3d Dept. 1912). In reference to §291 of the Real Property Law, the Court of Appeals has said that the phrase a "purchaser in good faith and for a valuable consideration" is not peculiar to the Recording Acts, but is one of frequent occurrence in the statutes and is "an expression which has been bor-
wed from the language of courts of equity, and should be interpreted in the sense in which it is there understood." Ten Eyck v. Witbeck, supra.

Personal Property Law §32, requiring transfers and mortgages of inter-
ests in decedent's estates to be recorded does not define a valuable consideration.

Stock Corporation Law §17, requiring filing of certificate of consent of 

stockholders to a corporate mortgage, does not define value.
143, 192, 193, 200, 201 (b), 209, 225, 226 (d) and 228; and Real Property Law, sections 95, 245 and 266, the common law conceptions of value as outlined in this article still apply.\textsuperscript{76}

But under Personal Property Law, sec. 40, relating to transfers of personal property fraudulent as to creditors, it has been held that an antecedent indebtedness is value sufficient to validate a transfer of property from a debtor to his creditor.\textsuperscript{77} This is in line with the provisions of the Debtor and Creditor Law relating to conveyances fraudulent as to creditors.\textsuperscript{78} A distinction is made between transfers and conveyances by an insolvent debtor to a creditor fraudulent as to other creditors and transfers and conveyances made by one who is not insolvent. A conveyance or mortgage by an insolvent debtor for a pre-existing debt amounts merely to a preference and the rights of a debtor, in the absence of any statute to the contrary to prefer any creditor, though the effect be to leave other creditors without means to collect their claims is clear. In the absence of statutory restrictions an insolvent debtor has the right to transfer all his property to one of his creditors in payment of or to secure his debts, when that is his honest purpose, although the effect of the transfer is to place his property beyond the reach of his other creditors and render their debts uncollectible. In another case the distinction between conveyances to creditors and those to strangers was drawn as follows: “When a transfer is made to a stranger, to bring himself within the provisions of the statute as to a purchaser, he must show that he has an equity which is paramount to that of his vendor, and this can only be done by showing he has parted with value, and is not chargeable with notice of the fraud. But where the transfer is to a creditor of the vendor a different principle prevails. It is not necessary to show a new consideration, as the transaction amounts to nothing more than the voluntary preference of one creditor over another.”\textsuperscript{79}

\textsuperscript{76} For brief statement as to contents of said sections of the Real and Personal Property Laws, see note 2, supra.

\textsuperscript{77} Frank v. von Bayer, 236 N. Y. 473, 141 N. E. 920 (1923).

\textsuperscript{78} Lehrenkrauss v. Bonnell, 199 N. Y. 240, 92 N. E. 637 (1910), per Cullen, J.

\textsuperscript{79} Murphy v. Briggs, 89 N. Y. 446 (1882).
Conclusion.

Judge Cullen has said: "What may be an insufficient consideration to support a transaction of one character may be sufficient to support another of a different character." A person taking a promissory note merely as collateral for an antecedent debt has all the rights of a bona fide holder, yet a pre-existing debt does not constitute a bona fide holder for value as against instruments conveying real or personal property. One who takes a negotiable warehouse receipt as security for an antecedent debt is a bona fide purchaser for value, while one taking a negotiable bill of lading under the same circumstances is not. Under section 40, Personal Property Law, relating to transfers of Personal Property fraudulent as to creditors, an antecedent indebtedness is value sufficient to validate a transfer against the transferor's creditors, whereas one taking a conveyance in satisfaction of a pre-existing debt is not protected under the Recording Act against a prior unrecorded deed.

This confusion and contradiction in the conception of value is due chiefly to the fact that our legislature in enacting the five Uniform Acts dealing respectively with negotiable instruments, warehouse receipts, stock certificates, bills of lading and the sale of goods, adopted in the first three the definition of value common to all of them but omitted such definition in the last two. To some who have written on this subject it seems desirable to have a single rule for what constitutes valuable consideration and that mercantile convenience supports the one common to all five Uniform Acts as drafted by the Commissioners of Uniform State Laws. Therefore, it has been advocated that the

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80 Supra note 78.
81 Supra notes 3 and 4.
82 Williston says: "There seems no reason to distinguish what constitutes value where negotiable paper is purchased and where property of other sorts is purchased. The purchaser for value of negotiable paper may get greater rights than the purchaser of property of other kinds, but it seems an unnecessary and undesirable complication of the law to maintain a distinction as to what constitutes value. This is especially true so far as chattel property is concerned, since such property is frequently transferred by means of bills of lading or warehouse receipts. In view of the large degree of negotiability given such documents it would be unfortunate to distinguish them from negotiable paper in respect to the definition of value." WILLISTON, SALES §623.
Legislature, in order to put an end to the present confusion and contradiction should amend sections 156 and 239 of the Personal Property Law by expressly adopting the definitions of value contained in the Uniform Sales Act, section 76, and the Uniform Bills of Lading Act, section 53, respectively.\textsuperscript{84} That desired result may, however, be gradually brought about by judicial decision and interpretation alone without the aid of statute.\textsuperscript{56} But even if this change in the concept of value were accomplished with respect to the transfer of personal property, it would leave the present common law standard of value still in force as applied to transfers of real property.

It seems to the writer that it is erroneous to suppose that a single standard of value should be applied to all transfers of property, irrespective of the nature of the property. The basic question underlying the doctrine of *bona fide* purchase is whether it is more socially advantageous to protect the innocent purchaser than to restore the property to the original defrauded seller. If the property transferred is of such a nature that social and business needs require that it possess a high degree of negotiability, the standard of value necessary to protect the innocent purchaser should be correspondingly low. Hence it is that very little in the way of value need be given by the innocent purchaser of negotiable instruments in order to entitle him to the status of a holder for value. Indeed, value is often presumed in such cases. With respect to negotiable warehouse receipts and stock certificates, commercial necessities likewise require a high, though not perhaps as high, degree of negotiability and so it is quite proper that the value proceeding from the innocent purchaser should also be correspondingly low. The same should be true with respect to the transfers of negotiable bills of lading.

\textsuperscript{84}Creditors as Purchasers for Value in New York, appearing in the New York Law Journal, Dec. 17, 1903, by Professor Walter B. Kennedy of Fordham University School of Law.

\textsuperscript{56}"How far the rule in this state as to the meaning of 'value' has been changed by the revision of the statutes in cases not affected by the federal rule we do not now consider. If it survives, it has been subjected to many inroads," per Cardozo, J., in Baldwin v. Childs, 249 N. Y. 212, 216, 163 N. E. 737, 738 (1928).
It is obvious that chattels, as such, do not, and need not possess such a high degree of negotiability as negotiable instruments, negotiable warehouse receipts and negotiable stock certificates. Therefore where the transfer of chattels is effected without the use of negotiable documents of title, it would seem that there is not the same commercial necessity for protecting the innocent purchaser and hence the standard of value required from him should be somewhat higher in order to entitle him to keep the goods against the original defrauded owner. From this economic point of view the omission of our Legislature to adopt in the Sales Act the same definition of value as found in the other Uniform Acts relating to negotiable instruments and negotiable documents of title, seems defensible. But by the same economic test the omission of the definition of value contained in the Uniform Bills of Lading Act seems indefensible.

It is likewise obvious that economic needs do not require that real property, or interests in real property, possess as high a degree of negotiability and hence there is less commercial necessity for protecting the innocent purchaser and therefore it would seem proper to require a higher standard of value from him in order to entitle him to keep the property as against the original defrauded owner.

It would therefore seem that the present common and statutory law prevailing in New York State in reference to the standard of value required under the doctrine of *bona fide* purchase, differing as it does in respect to different classes of property, is in the main both economically sound and legally and equitably defensible.

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