

YOUNG *v.* PEOPLE'S LOAN & INVESTMENT COMPANY.

Opinion delivered July 1, 1929.

1. CORPORATIONS—PAROL PROOF OF EXISTENCE.—Parol proof is admissible to show the corporate existence of plaintiff.
2. APPEAL AND ERROR—QUESTION NOT RAISED BELOW.—Where defendant in the lower court raised no question as to plaintiff's corporate existence, and throughout the trial treated plaintiff as a corporation, he cannot raise the question on appeal.
3. BILLS AND NOTES—INNOCENT PURCHASER—BURDEN OF PROOF.—Before the fraudulent character of a transaction will defeat negotiable paper in the hands of a third person who purchased for value before maturity, evidence must first be introduced to show that such person was not an innocent purchaser.

Appeal from Newton Circuit Court; *J. F. Koone*, Judge; affirmed.

## STATEMENT OF FACTS.

This is an action in replevin by the People's Loan & Investment Company against Argus Young to recover

a motor truck or the balance due on the purchase price of the same, alleged to be \$530.

On the 29th day of June, 1928, General Auto Company of Fort Smith, Arkansas, sold to Argus Young of the same place a motor truck for \$1,191.60. A cash payment of \$615.60 was made, and the balance of \$576 was to be paid in installments of \$48 each, the first installment being due one month after date and each remaining installment being due one month after the date of the preceding one. The conditional sales agreement was in writing, and the installment note was attached to it.

According to the testimony of Lee Sims, he was secretary-treasurer of the People's Loan & Investment Company, and had held that office ever since the incorporation of the company, which was about five years before he testified. A few days after the conditional sales agreement was made, plaintiff purchased the installment note involved in this suit for a good consideration, and Young paid the first installment note of \$48. The conditional sales agreement on the reverse side contains the following, which was signed by the seller, the General Auto Company:

"For value received, the agreement (on the reverse side thereof) and the note therein mentioned between the buyer mentioned therein and the undersigned, the seller, and the property therein described, and all the right, title and interest therein of the undersigned, the seller, are hereby sold, assigned and transferred to the People's Loan & Investment Company, its successors or assigns."

According to the testimony of Argus Young, certain false representations as to the condition of the truck were made to him which induced him to execute the conditional sales agreement, but, for the reasons stated in the opinion, it will be unnecessary to abstract this testimony.

The court directed a verdict for the plaintiff, and from the judgment rendered the defendant has appealed.

*J. M. Shinn*, for appellant.

*Pryor, Miles & Pryor*, for appellee.

HART, C. J., (after stating the facts). It is first contended that the judgment should be reversed because there is not sufficient evidence that the plaintiff is a corporation. According to the testimony of Lee Sims, he had been secretary-treasurer of the company ever since its incorporation, about five years ago. It is well settled in this State that parol evidence is admissible to show corporate existence. *Kelley v. Stern Publishing & Novelty Co.*, 147 Ark. 383, 227 S. W. 609, and *Edwards v. State*, 171 Ark. 778, 84 S. W. 1041, and cases cited. Besides this, no effort was made to contradict the testimony of Lee Sims in this respect, and the plaintiff was treated throughout the trial as a corporation. Having ignored the matter in the court below, it is too late to raise the question now. *Allen West Commission Co. v. People's Bank*, 74 Ark. 41, 84 S. W. 1041.

According to the evidence for the plaintiff, it purchased the note two or three days after the execution of the conditional sales agreement and the note given for the balance of the purchase price of the automobile. Plaintiff purchased the note two or three days after its execution, and paid a valuable consideration therefor. The defendant paid the first installment of the note, and there is nothing whatever in the record to show that the plaintiff had any sort of knowledge of facts that would lead to knowledge of any defect in the paper sued on. Before the fraudulent character of a transaction may defeat negotiable paper in the hands of a third person, a purchaser for value, evidence must first be introduced to show that the person was not an innocent purchaser. *McClain v. Patterson*, 177 Ark. 544, 7 S. W. (2d) 8. It is plain, from the testimony of Lee Sims, that when he said "good consideration," he meant "valuable consideration." There was no effort whatever made to show that the plaintiff was not an innocent purchaser, and the evidence for the plaintiff showed that it was an innocent purchaser for value before maturity of the note. Therefore we are of the opinion that the court did not err in direct-

ing a verdict for the plaintiff. It follows that the judgment must be affirmed.

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