Callander, 1 Russ. 293. *Cf. Flight* v. *Reed*, 1 H & C. 703. The same is true when the defense is lack of consideration. *Commonwealth Ins. Co.* v. *Whitney*, 1 Metc. (Mass.) 21; *First National Bank* v. *Black*, 108 Ga. 538, 34 S. E 143. As between the immediate parties to the instrument, these are absolute defenses. Other defenses, however, may be waived. Thus giving a renewal note with knowledge of the defense of fraud operates as a waiver of that defense. *Edison General Electric Co.* v. *Blount*, 96 Ga. 272, 23 S. E. 306; *White* v. *Sutherland*, 64 Ill. 181. The authorities also generally recognize that the execution of a renewal note, with knowledge of the defense, will operate as a waiver of the defendant's right to refuse full performance on his side of the contract because of the defective performance rendered by the other party. *American Car Co.* v. *Atlanta City St. Ry. Co.*, 100 Ga. 254, 28 S. E. 40; *Archer* v. *Bamford*, 3 Stark. 175; *cf. Kirkpatrick* v. *Muirhead*, 16 Pa. 117. The right of recoupment is a defense of this nature; and a waiver of it is therefore effective. See WILLISTON, SALES, § 605. This waiver alone, however, should not deprive the defendant of his affirmative cross-action or counterclaim for breach of contract. See WILLISTON, SALES, § 485. But the fact that the defense of recoupment has been waived becomes very material, when, as in the principal case, the Statute of Limitations has run against the affirmative right.

CARRIERS — BILLS OF LADING — LIABILITY ON BILL AFTER DELIVERY OF GOODS.— A short shipment was made under an order bill of lading. The plaintiff bank discounted a draft with the bill attached, although the bill was then three months old and had already been deposited with the bank on four successive occasions as security for drafts subsequently dishonored and taken up by the shipper. Prior to the last discount, the consignee had secured the goods from the carrier without surrendering the bill, and had paid the shipper. The bank sues the carrier. *Held*, that it cannot recover. *Fourth National Bank* v. *Nashville, C. & St. L. Ry. Co.*, 161 S. W. 1144 (Tenn.).

A carrier which issues an order bill of lading and then delivers the goods to one not the holder of the bill, is liable as a converter. *Boatman's Saving Bank* v. *Western & A. R. Co.*, 81 Ga. 221, 7 S. E. 125. Even if delivery is to the holder, failure to take up an order bill makes the carrier liable to a subsequent innocent purchaser. *Ratzer* v. *Burlington C. R. & N. Ry. Co.*, 64 Minn. 245, 66 N. W. 988; *Walters* v. *Western & A. R. Co.*, 56 Fed. 369. The reason for this liability is that the carrier has represented by leaving the bill outstanding that it is still backed by goods and should therefore reimburse an innocent purchaser of it for value. In the principal case in view of the short shipment, the long time the bill was outstanding and the dishonored drafts, the court seems right in saying there could have been no honest reliance on the carrier's representation. Estoppel therefore could not be invoked and the plaintiff could only rely on the consignor's right which, as he had received payment, amounted to nothing at the time of discount.

CARRIERS — DISCRIMINATION AND OVERCHARGE: WHETHER EXTENSION OF CREDIT TO SOME BUT NOT ALL SHIPPERS CONSTITUTES DISCRIMINATION. — The defendant railway company, departing from its regular course of business, did not require a regular monthly settlement from a coal company for the carriage of coal, but accepted notes. The railway renewed the notes and finally accepted in exchange three year debenture bonds. The railway was indicted: (1) for violating Sec. 6 of the Interstate Commerce Act in accepting a different compensation from the published rate; (2) for violating Sec. 2 of the Elkins Act which prohibits discrimination. *Held*, that the railway was properly convicted, at least as to the second count of the indictment. *Hocking Valley* v. *United States*, 210 Fed. 735 (C. C. A., 6th Circ.).

The case seems clearly right on the facts, since here the shipper was getting a