

HON. MR. JUSTICE LENNOX:—The plaintiff is well within the mark in saying that he is not a good business man.

Grundy was instructed to borrow upon the security of the stock in question, and he had no instructions or authority to sell the stock. The defendant knew that Grundy was an agent, knew for whom he was acting, and knew that what the plaintiff was asking for was a loan. He knew, too, that the plaintiff was in straitened circumstances, a dilatory debtor, and unlikely to be able to comply with rigid conditions. He must have thought, he must have known in fact, that the plaintiff's note was of some value, for already he had in his hands mining stock of the plaintiff considerably in excess of the balance of his claim against it. He did not know the law—the legal effect of the agreement he entered into.

The defendant is an exceptionally alert and capable business man, and there is no doubt at all that he was persuaded—not by the urgency of Mr. Grundy, as this witness assumes, but by his knowledge of the plaintiff's helplessness—that a short-time loan upon the drastic conditions incorporated in the signed memorandum of agreement would be a good business investment, and would almost inevitably, as he naturally assumed, give him an automatic and absolute transfer of the stock immediately upon default. Of course he thought that a tender of repayment would be ineffective if made a day or an hour after the maturity of the note, and so did the plaintiff, and so would anyone not learned in the law, and this accounts for his dealings with the stock after the limited time had expired and for the plaintiff's suppliant letters and long delay. But it does not affect the legal status of the parties; “once a mortgage always a mortgage.” It was intended as a loan, upon a condition of forfeiture. I am satisfied from the whole surroundings, as well before as after the transaction, including the retention of the note, the treatment of it as a debt, and the specific counterclaim for the amount of it “with interest” from the date it was made, that this was the sense in which the defendant agreed to furnish the money, in which Grundy at the defendant's dictation drew up the agreement and in which the defendant signed it and issued his cheque.