

of the shares and that such fall had not taken place. Taking the issue as presented by the plea, I, however, still find no satisfactory evidence of facts tending to prove that the plaintiff agreed to subject his recourse to fluctuations in the market price of the shares in the way pretended.

"Thus far, in considering the legal inference to be drawn from the facts and circumstances, I have assumed in favour of the defendant that Bilsky was the agent of the plaintiff. It cannot be said that proof of such agency has been satisfactorily made. What the real relation of the plaintiff to Bilsky was, and which one of them provided the balance of the money which went to pay off the brokers, are not clearly made out.

"It is however clear that the defendant gave the plaintiff his promissory note for Lubin's accommodation and received the plaintiff's cheque for the discount of it.

"Defendant's position towards the plaintiff is not helped by the fact that he at first was unwilling to take the cheque. He finally did accept and endorse it apparently relying on futile assurance of Bilsky or Lubin that there would be "no trouble". There would have been some plausibility in the defendant's contention if the plaintiff had paid over the money directly to Lubin, but instead of doing that he was careful to put it in the shape of a discount of the defendant's note and to obtain a voucher from the defendant establishing receipt by the latter of the proceeds of the discount.

"It appears to me that any plausibility of inference favourable to the defendant's pretension which could be asserted, could not extend beyond the inference that it was understood that if Lubin had redeemed or realized upon the shares before the note fell due so as to recoup