

of the defendant and Lubin that the object or purpose for which the note had been given was to serve as a guarantee against depreciation in the market price of the shares and that in view of the period for redemption having expired without the price having fallen below \$2.80 per share (and consequently not below the price named in the deed), concluded thereupon that "as a consequence, the note given to the plaintiff by the defendant Thomas Jones has no longer any *raison d'être*, and had expended its object".

"With much deference, I consider that that inference is founded upon a misapprehension, and that the effect of what happened was the opposite of that indicated.

"We have seen that the plaintiff at the outset advanced approximately \$4,000.00 more than he was willing to risk on these shares and took this note for the excess. Now it resulted from Lubin's failure to redeem or sell the shares that the deed took final effect upon them so that, without any further act on the plaintiff's part, they stand as having cost him \$2.75 per share, namely, about \$4,000.00 more than the \$2.00 per share. That result instead of establishing that the note had spent its purpose, established the happening of the very thing which (even according to the defendant's pretensions) placed the defendant under obligation to pay the \$4,000.00 and upon that footing this action would have had to be maintained even if it had been Bilsky who had been plaintiff.

"It is true that the defendant may not be committed to the consequences of this misapprehension — such as, with due deference, I consider it to be — because his plea was that the action — taken before expiry of the time for redemption was premature, and that plea would have been well founded if it had been proved that the note had been given only as security against a fall in the market price