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A TREATISE

ON THE

LAW OF STOCK-BROKERS

AND

STOCK-EXCHANGES

BY

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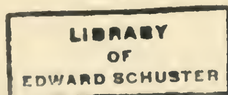
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of the stock. 8 and 9 Vict. c. 97 modified the above act, so that the only precaution the Bank had to take in dealing with executors was to require the probate of the will to be left at the Bank."

The leading case in England is Goodwin vs. Robarts.[1] There G. purchased, through his Broker, some Russian and Hungarian scrip; the undertaking in the scrip was to give to the bearer a bond for the money advanced, payable, with interest, in the way there stated. G. left the scrip (to be exchanged for bonds or sold, as he should direct) in the hands of his Broker, who fraudulently deposited it with a Banker as security for a loan to himself. Held, that the scrip was a negotiable instrument, transferable by mere delivery, and that the Banker, being a *bona fide* holder for value, was not liable to G., either in trover for the scrip itself, or in assumpsit for value received upon it. The Lord Chancellor (Cairns) also sustained the judgment upon the rule of estoppel; that, having placed the scrip with the Broker, and as it contained nothing on its face limiting him in disposing of it, it would pass with a good title to any one taking it in good faith and for value; and that the owner, having put it into the power of his agent to hand over the scrip with this representation, could not complain if the agent disposed of the same contrary to his secret instructions. The doctrine above laid down may now be regarded as definitely and permanently incorporated into the commercial jurisprudence of England and the United States. It was followed by Rumball vs. Metropolitan Bank.[2]

The leading case upon this subject in New York is Mc-

[1] L. R. 1 App. Cas. 476.

[2] L. R. 2 Q. B. Div. 191. And see Marshall vs. Bank, 66 L. T. 525.

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Neil vs. The Tenth National Bank.[1] In that case plaintiff was the owner of certain bank stock, the certificate of which he delivered to and left with his Stock-brokers to secure any balance of account. Upon the certificate was endorsed a blank assignment, and power of attorney to transfer, signed by the plaintiff, purporting on its face to have been executed "for value received." Plaintiff's indebtedness on the account was $3,000 and interest. The Brokers, without authority and without plaintiff's knowledge, pledged the scrip, with other securities, to secure an advance of a larger sum of money. Defendant, at their request, paid the last-named advance and received the securities. The other securities were sold, leaving a portion of the amount advanced by defendant unpaid. The court, after a very thorough discussion of the cases, held that defendant was entitled to hold the stock for the full amount remaining.[2] So where plaintiff delivered to his Broker a certificate of stock, with a blank power of attorney to transfer it endorsed thereon, and directed his Broker to procure a loan of money for him thereon, and the Broker, instead of so doing, through the aid and assistance of defendants (who were also Brokers, and who acted in good faith and without knowledge of who was the owner of the stock, or what the plaintiff's instructions to his Broker had been), sold it to a purchaser in good faith. Held, that the defendants were not liable for a conversion of the stock, and stood, being equally innocent, in the same position as the purchaser from them in good faith.[3]

[1] 46 N. Y. 325.

[2] See also Moore vs. Metropolitan Bank, 55 N. Y. 41; Leitch vs. Wells, 48 id. 585.

[3] Zulick vs. Markham, 6 Daly, 129; Dickinson vs. Dudley, 17 Hun, 569. See Garvin vs. Wiswall, 83 Ill. 215.

In Burton's Appeal[1] B. left with one P., a Stock-broker in the city of Philadelphia, certificates of stock for 100 shares of railroad stock, with instructions to sell if the stock reached $64\frac{1}{8}$; at the same time, he signed and left with P. a blank power of attorney to transfer, and a bill of sale of the stock in the usual Broker's form. The stock never reached $64\frac{1}{8}$, and several times during the year B. asked for the return of the certificates, but P. always made some excuse and did not return them. In fact, two days after their receipt, P. had pledged the stock to a life-insurance company for an advance made to him individually, and the stock remained with the company until P.'s death. The question involved was whether B. could recover from the life-insurance company the certificates, or the price thereof. The question was an original one in Pennsylvania, and the court held "that when the owner of stock, in the ordinary course of business, and in the method common to all mercantile communities, by his own act has armed another, his agent or attorney, with power to act for him, and when this agent or attorney deals with innocent third parties, who, without notice of other intervening equity, advance money upon the faith of the evidences of title in the possession of the attorney or agent, the owner takes every risk, and is bound by the acts of the person whom he sees fit to hold out to the world as his attorney or agent." The court distinguished the case from one where the owner, by accident or misfortune, parted or lost his certificate;[2] or where a name had been erased from a certificate and another one inserted.[3]

[1] 93 Pa. St. 214.

[2] Biddle vs. Bayard, 13 Pa. St. 152.

[3] Denny vs. Lyon, 38 Pa. St. 98. See also Pa. R. R. Co.'s Appeal, 5 Week. Notes Cas. 22; 86 Pa. St. 80.

But negligence cannot be imputed to trustees for leaving documents of title in the hands of one of their number, and allowing him to receive the income; and no authority to deal with the property (railway debentures) can be implied even in favor of a *bona fide* purchaser from such trustee.[1] And the mere intrusting, by the owner of stock, of his certificates to bankers for safe-keeping is not of itself such negligence as will prevent a reclamation even after the stock has passed into the hands of a *bona fide* purchaser by means of a forgery; because the mere possession of the certificates is not complete evidence of ownership. It is, however, such negligence as disentitles the owner who reclaims to costs.[2] So in Bank vs. Evans[3] trustees of an incorporated charity possessed stock in the public funds registered in the Bank of Ireland. The secretary of the incorporated trustees was allowed to have the seal in his possession. Five powers of attorney, sealed with the seal of the incorporated trustees, the due affixing of which seal was attested by witnesses, were presented to the bank, and the stock was transferred. By a power of attorney duly executed, the trustees then authorized C. to transfer the stock, but the bank refused to make the transfer. An action was brought by the trustees on this refusal; the judge who tried the case told the jury that if, under these circumstances, the trustees had so negligently conducted themselves as to contribute to the loss, the verdict must be given for the bank. On exception for this direction, held, that it was wrong.

[1] Cottam vs. Eastern Counties R. Co., 1 John. & H. 243. See Shropshire Union R. R. & C. Co. vs. The Queen, L. R. 7 H. L. 496, before cited.

[2] Johnston vs. Renton, L. R. 9 Eq. 181; same vs. Parsey, id.

[3] 5 H. L. Cas. 390.

How far the owner of stock may be estopped by his own acts from asserting his title, even as against one not having the equities of an innocent purchaser for value, is well illustrated in Calhoun vs. Richardson,[1] where the president of a company having made his affidavit that certain bonds belonging to defendant were assets of the company, the defendant signed a certificate as to the truth of the affidavit, but pretended he did not know the contents of the same, and it was held that it was a question for the jury whether the defendant was not guilty of such gross negligence as estopped him from asserting title to the bond as against a trustee appointed to wind up the affairs of the insolvent company.

(c.) *Forged Transfers.*

Very many questions arise out of the forgery of powers of attorney to transfer stocks, which will be best illustrated under the following heads:

1st. *The position of a corporation issuing a stock certificate to the real owner and to a party claiming title thereunder by forgery or otherwise.*

No person can be deprived of his property in the absence of assent or negligence on his part. Stock certificates being non-negotiable, and in no way different from other choses in action, it follows that the owner of a lost or stolen certificate which is put into circulation by the forgery of his name to a power, transfer, or assignment is not thereby prejudiced in his rights. A sale under such circumstances, even to a *bona fide* purchaser for a valuable consideration, vests no higher title in him than was possessed by the vendor.[2]

[1] 30 Conn. 210.

[2] Platt vs. Taunton Copper Mfg. Co., 123 Mass. 110; Same vs. Machinists' Nat. Bank, id.; Pollock vs.

If the corporation, misled by a forgery, cancels his certificate and issues a new one to an innocent person who derives title under the forged transfer, the owner is entitled to have his name restored to its books and to a new certificate.[1] This right, however, may be lost by negligence or culpable conduct on his part.[2]

Due care and diligence will be required on the part of the corporation to assure itself of the validity of the title of the person presenting the paper purporting to be a transfer and requesting to be recorded as a stockholder.[3]

Nat. Bank, 7 N. Y. 274; Johnston vs. Renton, L. R. 9 Eq. 181; Sloman vs. Bank of England, 14 Sim. 475; Cottam vs. Eastern Counties Ry. Co., 1 John. & H. 243; Prescott vs. De Forest, 16 Johns. 159.

[1] Western Union Tel. Co. vs. Davenport, 97 U. S. 369; Swan vs. North-British Australasian Co., 2 Hurl. & C. 175; Johnston vs. Renton, L. R. 9 Eq. 181; Johnson vs. Parsey, id.; Barton vs. R. Co., 38 Ch. D. 144, 458; Mayor vs. Governor, 56 L. T. 665; Pratt vs. Taunton Copper Mfg. Co., supra; American Tel. Co. vs. Day, 52 N. Y. Supr. Ct. 28; Wiechers vs. Central Trust Co., 80 Hun, 576; Brown vs. Howard Fire Ins. Co., 42 Md. 384; Pollock vs. Nat. Bank, 7 N. Y. 274; Hambleton vs. Central Ohio R. R. Co., 44 Md. 551; Pennsylvania Co. vs. Franklin, 181 Pa. St. 40. And see Richardson vs. Emmett, 61 A. D. 205. But see Hunter vs. Walters, L. R. 11 Eq. 292, 319-320; and compare Taylor vs. The Great Indian Peninsula Co., 4 De G. & J. 559.

To the same effect is Jennie-Clarkson Home vs. Chesapeake R. R. Co., 83 N. Y. Supp. 913, in which case it was also held that the Stock-broker, having witnessed the forged power of attorney, was liable over to the corporation. And see also Chicago Edison Co. vs. Fay, 164 Ill. 523. And the Stock-brokers in the last cited case having surrendered the certificates to the company, cannot in an action to shift their loss to the owner of the stock, make the latter liable for the acts of his bookkeeper who forged his signature to the transfers, and embezzled the moneys received from the Brokers. Fay vs. Slaughter, 194 Ill. 157.

[2] Friedlander vs. Slaughter House Co., 31 La. Ann. 523; Coles vs. Bank of England, 10 Ad. & E. 437; Pennsylvania R. R. Co.'s Appeal, 86 Pa. St. 80.

[3] Western Union Tel. Co. vs. Davenport, 97 U. S. 369; Salisbury Mills vs. Townsend, 109 Mass. 115; Loring vs. Salisbury Mills, 125 id. 138; Campbell vs. Morgan, 4 Brad. (Ill.) 100; Cleveland & Mahoning R. R. Co. vs. Tapett (Ohio S. Ct.), 22 Alb. L. J. 117; Bayard vs. Farmers &

And a failure on the part of the corporation to require a surrender of the certificate or proof of its loss, in conformity with the terms of the certificate, statute, or by-laws, renders it liable to an innocent transferee.[1]

In Chew vs. Bank of Baltimore[2] it was held that when a bank permits a transfer of its stock to be made under a power of attorney, it takes the risk of its validity; it is liable in case of a forged power, or of one executed by a feme covert, an infant, or a lunatic, and accordingly a transfer of stock under a bill of sale and power of attorney from a lunatic was avoided to the bank's loss, though there was no actual fault on the part of the bank; the legal conclusion resulting from the justice and expediency, in such transactions, of casting the loss on those who can best provide against it, because the bank might have refused to recognize the power of attorney, and required the personal attendance of the party for the purpose of determining such matters as might give rise to disputes.

And an assignee of certificates of shares of stock who leaves the certificates with the assignments unrecorded in the possession of the assignor is not thereby guilty of negligence so as to be estopped to set up his title against a person who claims title to the certificates through an alteration of the assignments by the assignor.[3] Nor can the owner of stock who has executed an assignment of a portion

Mechanics' Bank, 52 Pa. St. 232; Pennsylvania R. R. Co.'s Appeal, 86 id. 80; Williams vs. Greggs, 2 Strobh. (S. C.) Eq. 316.

[1] Brisbane vs. Del. Lack. & W. R. R. Co., N. Y. *Daily Reg.* Nov. 30, 1881; Bridgeport vs. N. Y. & N. H. R. R. Co., 30 Conn. 231–270; Bank vs. Lanier, 11 Wall. 369; Factors & T. Ins. Co. vs. Marine Dry Dock Co., 31 La. Ann. 149; Cleveland & Mahoning R. R. Co. vs. Robbins, 35 Ohio St. 483.

[2] 14 Md. 299.

[3] Eaton vs. New England Tel. Co., 68 Me. 63.

thereof, with ordinary care in the mode of filling up the blank form, be deprived of a greater portion by a subsequent fraudulent alteration which purports an assignment of the whole; and if the corporation acts on such altered assignment, it is liable in damages for transferring the excess.[1] Where the assignment was made in blank to be used for a particular purpose, and the person receiving it, after filling the blank with one name, erased it and inserted another, his authority to fill the blank was held to be exhausted by the first insertion.[2]

The decision of the Supreme Judicial Court of Massachusetts in a case in that State[3] will further illustrate the foregoing principles. Briefly, the facts were these: Plaintiff was the owner of shares of stock in the defendant company, for which she had a certificate. This certificate was taken from her house without her knowledge, and, together with a forged power of attorney in her name to the company, authorizing it to transfer the same, was delivered to a Stock-broker, who procured a new certificate, which was sold to an innocent purchaser, to whom the company issued another certificate. Plaintiff brought a bill in equity against the company and the purchaser, praying that the latter be compelled to surrender his certificate, and the former to issue a new certificate for the shares of stock held by her. The court held that the plaintiff could not be deprived of her stock without her consent or negligence on her part; and that, the power of attorney in her name be-

[1] Sewall vs. Boston Water Power Co., 86 Mass. 217.

[2] Denny vs. Lyon, 38 Pa. St. 98. See also Merchants' Bank vs. Livingston, 74 N. Y. 223, where the case of McNeil vs. Tenth Nat. Bank is distinguished.

[3] Pratt vs. Taunton Copper Mfg. Co., 123 Mass. 110.

ing forged, she might maintain the bill to compel the company to issue a certificate to her for her shares, and to pay her the dividends thereon.[1]

The owner of lost or stolen certificates of stock has the following remedies:[2] 1st. He may either bring suit against the corporation, when his right of ownership is denied and contested, to compel it to recognize him as a stockholder.[3] 2d. Or for cancelling a certificate and allowing a transfer in violation of a stockholder's rights, he may bring an action against the party who has possession of the certificate, and compel its surrender or delivery to him as never having legally parted with it, or damages as the case may be.[4] But it seems that he cannot pursue both remedies in the same action.[5]

[1] This holding is supported by the cases of Ashby vs. Blackwell, 2 Eden, 299; s. c. Amb. 503; Sloman vs. Bank of England, 14 Sim. 475; Midland Railway vs. Taylor, 8 H. L. C. 751; Pollock vs. Nat. Bank, 7 N. Y. 274; Sewall vs. Boston Water Power Co., 86 Mass. 277; Brown vs. Howard Ins. Co., 42 Md. 384; s. c. 20 Am. Rep. 90. See also Machinists' Nat. Bank vs. Field, 126 Mass. 345; Waterhouse vs. London Ry. Co., 41 L. T. (n. s.) 553; Hambleton vs. Central Ohio R. R. Co., 44 Md. 551; Western Union Tel. Co. vs. Davenport, 97 U. S. 369.

[2] Biddle vs. Bayard, 13 Pa. St. 152.

[3] McNeil vs. Tenth Nat. Bank, 46 N. Y. 325; Holbrook vs. New Jersey Zinc Co., 57 id. 616; Stinson vs. Thornton, 56 Ga. 377; Strange vs. Houston & T. C. R. R. Co., 10 Rep. 28; s. c. 53 Texas, 162; Loring vs. Salisbury Mills, 125 Mass. 138; Wood's Appeal, 10 Rep. 125; s. c. 92 Pa. St. 378.

[4] Davis vs. Bank of England, 2 Bing. 393; Sewell vs. Boston Water Power Co., 86 Mass. 277; Duncan vs. Luntley, 2 Macn. & G. 30; Pratt vs. Machinists' Nat. Bank, 123 Mass. 110; Marsh vs. Keating, 1 Bing. N. C. 198; Weaver vs. Barden, 3 Lans. 338, and 49 N. Y. 286. And in Monk vs. Graham, 8 Mod. 9, an action of trover was maintained by the owner against a *bona fide* purchaser.

[5] Pratt vs. Taunton Copper Mfg. Co., 123 Mass. 110; Same vs. Machinists' Nat. Bank, id.; Salisbury Mills vs. Townsend, 109 id. 115; Lowry vs. Commercial Bank, Taney (C. C.), 310; Bank vs. Lanier, 11 Wall. 369; In re Bahia & San Francisco Ry. Co., L. R. 3 Q. B. 584.

Should the corporation, however, issue a new certificate to the holder of a forged one, it would seem, from the case of Pratt vs. Machinists' National Bank, that his transferee or assignee in good faith will not be forced to surrender his certificate.[1] In this case it will be noticed the plaintiff's remedy against the corporation was clear and complete. But had she, in the first instance, brought her bill against the purchaser Dean alone, it is probable the practice in Weaver vs. Barden[2] would have been pursued, and the purchaser Dean compelled to restore the stock to her as never having legally parted with it, leaving him to his remedy, if any, against the corporation. And if the purchaser had claimed under a transfer which he knew, or was bound to know, to be forged or invalid, the owner's right of action would seem to be unquestioned.[3] In such a case, presenting considerations similar to those in Pratt vs. Taunton Copper Mfg. Co., where the relief given to the plaintiff does not require or involve the decision of any question between co-defendants, the court, unless by consent, does not and cannot decide such a question so as to bind the co-defendants as against each other, but leaves it to be settled in a proper suit between them.[4]

The question here arises, does the issuance of a certificate by the corporation to a person deriving title through a forged transfer estop the corporation from denying his title? Is it

[1] See also, on this point, cases cited in preceding note.

[2] 3 Lans. 338, and 49 N Y. 286.

[3] Cottam vs. Eastern Counties Ry. Co., 1 John. & H 243; Johnson vs. Renton, L. R. 9 Eq. 181; Taylor vs. Great Ind. P. Ry. Co., 4 De G. & J. 559; Denny vs. Lyon, 38 Pa. St. 98.

[4] Cottam vs. Eastern Counties Ry. Co., supra; Johnston vs. Renton, supra; Cottingham vs. Shrewsbury, 3 Hare Ch. 627; Fletcher vs. Green, 33 Beav. 426; Sewall vs. Boston Water Power Co., 86 Mass. 277, 283; Carlton vs. Jackson, 121 id. 591, 597; 16 Alb. L. J. 251.

the duty of the corporation to make inquiries? and do registry and the issuance of the certificate amount to an affirmation that the transfer is correct? It seems not.

The questions squarely arose in the case of Simm vs. Anglo-American Telegraph Co.[1] upon the following facts: B. & Co. purchased upon the Stock Exchange £5,000 stock in the defendant company. A transfer of the stock, purporting to be executed by C., the true owner, was lodged with the company by S. & Co., the nominees of B. & Co. The company, after sending the usual notice to C., registered S. & Co. as holders. B. & Co. then, to secure advances, obtained a transfer of the stock to the plaintiffs, who were in like manner registered as owners, the certificate being issued to them by the company. The advances being paid off, the plaintiffs continued to hold the stock as trustees for B. & Co. It was afterwards discovered that the transfer from C. was a forgery, and the company thereupon replaced C. upon the register, and refused to pay dividends to the plaintiffs or to acknowledge their title to the stock. Held, that B. & Co. being the real plaintiffs, the defendants were not estopped from denying the validity of the transfer to S. & Co.

There were three able opinions in that case, all assailing the theory of an estoppel and the duty of the company to make inquiries. Brett, L. J., used the following language: "Now, it is a practice of companies, before registering, to make inquiry of the transferror; but they are not bound to do this on behalf of the transferee—they do it for their own benefit; and, indeed, if the transferee does not put credit in the Broker, he can himself make inquiry of the transferror.

[1] 20 Am. Law Reg. (n. s.) 159.

All the facts which caused B. & Co. to be put upon the register, and entitled them to a certificate, are as much known to them as to the defendants, and some of them are more within their knowledge than the company's. They know, for instance, what the contract with the Broker was, and it is quite as much their duty to make inquiries as it is the company's. All the company do is to put the names on the register, which act of the transferror, if valid, makes B. & Co. holders of the stock; but the company do this on the statement of B. & Co. The certificate is merely a statement that the company have accepted B. & Co. as holders, but does not allege any fact known to the company and not known to B. & Co."[1]

Upon the acceptance and registration of a transfer of shares it is the practice of companies in England to "certify" the transfer.

This certification acknowledges the transferee's title to the shares transferred. It has been held that a company on giving such a certificate is liable to persons who have suffered damage by buying or loaning money relying thereupon, even although the transfer or the director's signature had been forged, or a prior transfer had been made.[2]

In the recent English case of Oliver vs. Bank of England[3]

[1] The following cases were distinguished in the opinion of Bramwell, L. J.: Knight vs. Wiffen, L. R. 5 Q. B. 660; In re Bahia and San Francisco R. R. Co., L. R. 3 Q. B. 584; Pickard vs. Sears, 6 Ad. & E. 469; Hart vs. Frontino Company, L. R. 5 Ex. 111. See also Brown vs. Howard Fire Ins. Co., 42 Md. 384.

[2] Balkis Co. vs. Tomkinson, (1893) A. C. 396; In re Ottos Mines, (1893) 1 Ch. 618; Shaw vs. Port Philip Mining Co., 13 Q. B. D. 103. But see Bishop vs. Co., 25 Q. B. D. 512.

[3] (1902) 1 Ch. Div. 610; aff'd *sub nom.* Starkey vs. Bank of England, (1903) A. C. 114. See Sheffield vs. Barclay, (1903) 2 K. B. 580, which is apparently contra, but the distinction between the two cases is

an important extension of the principle laid down in Collen vs. Wright[1] that a person who professes to have authority as an agent is liable on a contract made on behalf of his alleged principal, was affirmed, viz., that the rule extends to any case where a person professing to have authority as an agent induces another to act in a matter of business on the faith of his having that authority. So that a Stock-broker who "demanded to act" under a power of attorney to transfer consols at the Bank of England, was held liable to indemnify the bank, on its being obliged to repay to the owner of the consols, whose signature had been forged to the power of attorney, the amount drawn out by the Broker and paid over by him to the other signatory.

On the other hand a transferee under a forged transfer, who has the stock transferred to himself at his own request, and informs the corporation that he has paid the highest market value for the stock, cannot invoke estoppel against the corporation.[2]

2d. *Position of a bona fide purchaser of a certificate issued by a corporation in exchange for one whose power of attorney to transfer was forged.*

We have seen that the purchaser of a forged certificate of stock acquires but the title of his vendor; that he buys upon the faith of the forged transfer, and that the issuance to him of a new certificate by the company introduces no element which can alter his legal position. But what is the position of a *bona fide* purchaser of this new certif-

ably pointed out by Mr. Ames in an article on "Forged Transfers of Stock," in 17 Harvard Law Review, 543. See also Jennie Clarkson Home vs. Chesapeake R. R. Co., 83 N. Y. Supp. 913.

[1] 8 E. & B. 657. See also Firbank vs. Humphries, 18 Q. B. D. 60.

[2] Trimble vs. Bank, 71 Mo. App. 467.

icate issued by a corporation in exchange for a forged transfer? It is evident that he purchases upon the faith of the corporation's certificate, and that he is in a better position than the plaintiff was in Simm vs. Anglo-American Telegraph Company. The corporation has, in effect, made a representation in reliance upon which he has acted; and if, in so acting, he has suffered pecuniary damage, the corporation will be estopped from denying the truth of the bogus transfer.[1]

This subject was elaborately considered by the Circuit Court of the United States, District of Massachusetts.[2] In that case the facts were these: The defendant, the Massachusetts National Bank, loaned money to C., taking in good faith, as collateral security therefor, what purported to be a certificate of two hundred shares of the stock of a railroad company, issued by the company to the bank. The certificate, in reality, was a forgery by C. C. paying the loan, the cashier of the defendant bank, for the purpose of restoring the collateral to C., returned to him the certificate with his signature in blank as cashier to the printed form of transfer on the back. Subsequently C. obtained a loan from plaintiff, giving the said certificate as collateral. The forgery having been discovered, plaintiff brought action against defendant for the damages sustained by him. Held, that the signature of the cashier bound the bank, and that the bank so far warranted the genuineness of the certificate, as to be estopped from setting up the forgery as a defence.

The court said: "The certificate in this case, as it came

[1] Strange vs. Houston & T. C. R. R. Co., 10 Rep. 28; s. c. 53 Texas, 162; Holbrook vs. New Jersey Zinc Co., 57 N. Y. 616.

[2] Matthews vs. Mass. Nat. Bank, 10 Alb. L. J. 199; s. c. 14 Am. Law Reg. 153. See also cases cited ante, p. 732, n. 1.

from the bank, contained on the same piece of paper, and on the back of the certificate, a blank assignment, which was all that was necessary to transfer the title of the stock as between the parties. The defendant must therefore be held to have intended and agreed that whoever should present the certificate, so issued from the bank, with the assignment executed in blank, should be entitled to fill up the blanks with his own name, and to have a transfer of the stock made to himself on the books of the company. The certificate accompanied with the transfer, executed in blank, has a species of negotiability of a peculiar character, but one well recognized in commercial transactions and judicial decisions, and absolutely essential to the usages and necessities of modern commerce, to make such certificate available in commercial transactions. Even when such blank assignments, or powers of attorney to transfer stock, are under seal, the blanks may be filled up according to the agreement of the parties at the time.[1] The decisions to the contrary in the English courts have not been followed in this country, and they were influenced not merely by a rigid adherence to the technical rules of the common law in relation to instruments under seal, but by the policy of the stamp system. But the case of Walker vs. Bartlett,[2] and late English decisions, recognize the validity of blank transfers of stock, and that such transfers of stock impose upon the holder of them the obligation to pay calls upon the shares while they remain his property."

And the rule applies to a *bona fide* pledgee of the certificate.[3]

[1] Bridgeport Bank vs. N. Y. & N. H. R. R. Co., 30 Conn. 274, 275; Redfield on Railways, § 35, and cases cited.

[2] 36 Eng. L. & Eq. 368.

[3] Phila. Nat. Bank vs. Smith, 195 Pa. 38.

In Holbrook vs. The New Jersey Zinc Company the court held that a corporation having power to issue a stock certificate in which it affirms that a designated person is entitled to a certain number of shares of stock, thereby holds out to persons who may deal in good faith with the person named in the certificate that he is an owner and has capacity to transfer the shares. This proposition does not rest on any view of the negotiability of stock, but on general principles appertaining to the law of estoppel.[1]

The well-considered case of the Machinists' National Bank vs. Field[2] establishes with great clearness the status of a *bona fide* purchaser of certificate of stock issued by a corporation in exchange for a forged transfer, both as regards the corporation and the original owner upon whom the forgery was practised. The case presented the following facts: A certificate of shares in the capital stock of a corporation was taken without the owner's knowledge, and, together with a forged power of attorney, delivered to a Broker for sale. The Broker employed an auctioneer, who sold the stock to a purchaser. The Broker then sent the stolen certificate, with the forged power of attorney, to the corporation, requesting a new certificate in the name of the auctioneer. The corporation complied with the request, and a new certificate was sent to the auctioneer, who delivered it to the Broker with a power of attorney, who in turn delivered it to the purchaser, to whom the corporation afterwards issued a new certificate. The Broker, the auctioneer, the purchaser, and the corporation acted in good faith, and supposed the forged power of attorney to be genuine. The forgery being discovered, the original owner

[1] Supra.

[2] Machinists' Bank vs. Field, 126 Mass. 345.

brought her bill in equity[1] against the company and against the purchaser, praying that he be ordered to reconvey the shares or surrender her certificate. The court in that case[2] ruled upon this point as follows: "The individual defendant was a purchaser in good faith, for full consideration, without knowledge or notice of the plaintiff's title or of the forgery, and does not hold the certificate which she had. The immediate transfer to him was made by Hawes & Henshaw, who then held a new certificate of stock; and the corporation, upon surrender of that certificate, issued to him another one. His rights against the corporation depend upon the effect of *this certificate;* the plaintiff is clearly entitled to no decree against him."[3] And this ruling was affirmed in the case under consideration,[4] and it was held that a bill in equity could not be maintained by the corporation to compel the purchaser Dean to return his certificate, or compel the Broker and auctioneers to repay to Dean the amount he paid for the stock, and that the company had an adequate remedy against the Broker (who had presented the forged power upon which the new certificates were issued) by action at law.

It will be noticed that the company, in the last cited case, had been in some degree the author of its own misfortune; and the fact that the forgery was skilful and difficult of detection, that the company displayed a commendable diligence in adopting all reasonable precautions to assure itself of the genuineness of the certificate—as notice to the stock-

[1] Pratt vs. Machinists' National Bank, 123 Mass. 110.

[2] Id.

[3] Salisbury Mills vs. Townsend, 109 Mass. 115; Lowry vs. Commercial Bank, Taney (C. C.), 310; Bank vs. Lanier, 11 Wall. 369; In re Bahia & San Francisco R. R. Co., L. R. 3 Q. B. 584.

[4] Machinists' Bank vs. Field, 126 Mass. 345.

holder of record, etc.—are not sufficient grounds for visiting an equally blameless purchaser with the consequences of its mistake in regarding as a verity a transfer which was in fact sham. Justice demands that the company assume all consequential injuries flowing from its mistakes. Its position would not be different from a case in which its authorized agent issues false certificates of stock.[1] In both instances the *bona fide* purchaser of such stock has indisputably a right either to compensation for the fraud to which he has been subjected, or to be admitted as a corporator or stockholder.

But if a corporation has no remedy against a *bona fide* purchaser of a new certificate issued by it in exchange for a forged transfer, it has a right of action against the person who presented the forged transfer or power of attorney, and the measure of damages in such case will include, (1) the expenses of a suit brought by the true owner of the certificate against the corporation, (2) the amount paid by the corporation for stock to replace the stock transferred, and (3) the dividends which the corporation were obliged to pay to the person whose name was forged.[2]

3d. *Fraudulent or over-issue of stock by corporation.*

We have considered the status of a corporation which has been induced to act upon a forged transfer with regard to three classes of persons: (1.) The original and rightful owner. (2.) The person who derives title under the forged power of transfer. (3.) The purchaser of a genuine certificate issued by the corporation in exchange for a forged

[1] N. Y. & New Haven R. R. Co. vs. Schuyler, 34 N. Y. 30.

[2] Boston & Albany R. R. Co. vs. Richardson, 135 Mass. 473. See able comment on this decision by Mr. Ames in 17 Harvard Law Review, 543.

certificate. It now remains to notice the liabilities of a corporation in cases of a fraudulent or over-issue of stock by its directors or authorized agents. It is manifest that stock thus illegally created can never become part of the capital of the corporation. In the words of Davis, J., in the Schuyler case,[1] "a corporation with a fixed capital divided into a fixed number of shares can have no power of its own volition, or by any act of its officers or agents, to enlarge its capital or increase the number of shares into which it is divided. The supreme legislative power of the State can alone confer that authority and remove, or consent to the removal of, restrictions which are part of the fundamental law of the corporate being; and hence every attempt of the corporation to exert such a power before it is conferred, by any direct and express action of its officers, is void; and hence every indirect and fraudulent attempt to do so is void. For if such a result cannot be accomplished directly by the whole machinery of the corporate powers, it is absurd to suppose that it can be produced by the covert or fraudulent efforts of one or more of the agents of the corporation." But in this case the court considered the liability of a corporation for the consequences of its wrongful acts, however foreign to its nature *or beyond its granted powers* the wrongful transaction or act may be, as so distinctly settled by authority, and so clear upon principle, as to bear no more than mere enunciation.[2]

Where the transfer agent of the defendant's corporation was authorized to sign and issue certificates of stock on a

[1] N. Y. &c. R. R. Co. vs. Schuyler, supra.

[2] Lamm vs. Port Deposit Homestead Assoc., 49 Md. 233; Goodspeed vs. East Haddam Bank, 22 Conn. 541; Bissell vs. Michigan S. & N. I. R. Co., 22 N. Y. 305–309, per Selden, J.

transfer from one shareholder to another upon the books and on the surrender of the previous certificates, and the agent, for his own purposes, signed and issued certificates in form precisely similar to those genuine and authorized, and, trusting to their false appearance, the plaintiffs took one of them by transfer and advanced money upon it, held, that the acts of the agent were not within the *real* or *apparent* scope of the power delegated to him. And in the first stages of the litigation relating to the over-issue of the stock of the New York and New Haven Railroad Company by its president and transfer agent, Schuyler, the evidence went to establish that his agency was limited to an issue of certificates where there was a transfer of shares on the company's books accompanied by a surrender of the certificate of the previous owner. On this state of facts the court held that the corporation was not liable for the acts of its agent.[1]

But it appeared, in the later case of the New York and New Haven Railroad Company vs. Schuyler,[2] that, in addition to the power just stated, Schuyler's agency extended to the power of issuing certificates in precisely the same form to the original subscribers for the stock; that he had authority to dispose of the stock not taken by the original subscribers, and issue certificates in the same form to purchasers; that he had authority to dispose of certain forfeited shares, and in such case issue like certificates; that to him was intrusted the keeping of all the stock accounts of the company, and that these books were kept closed to dealers. These facts threw the responsibility of the agent's

[1] Henning vs. N. Y. & New Haven R. R. Co., 9 Bosw. 283; Mechanics' Bank vs. N. Y. & New Haven R. R. Co., 13 N. Y. 599; see also Farmers,' etc., Bank vs. Drovers' Bank, 16 id. 125, 150.

[2] 34 N. Y. 30.

acts upon the corporation, in obedience to the principle before alluded to.

The reasoning and result of the Schuyler case was fully confirmed in the opinion of Hare, C. J., in the case of Willis vs. Philadelphia Railroad Company.[1] It had been contended, upon the argument, that as neither the vote of the directors nor stockholders, nor both conjoined, could authorize an issue of stock in excess of the number the company's charter allowed, so as to bind the company to that which the company was powerless to perform, the agent could acquire no power through fraud which the principal did not possess and could not have conferred. The court, in passing upon this point, said: "This argument might be unanswerable if the power to give certificates was identical with the power to create stock, or if a certificate could not be legitimately issued to any one who claimed under a derivative title, because it would then be incumbent on third persons to take notice of the limited power and ascertain whether it had been strictly pursued. It is, however, plain that the Legislature did not intend to impose a rule contrary to the ordinary course of business, and which would have impaired the market value of the stock. Although the company could not issue a larger number of shares than that prescribed by its charter, it might well give a new certificate to a purchaser in lieu of that surrendered by the vendor, and repeat the act as often as occasion required. . . . That which a corporation is not authorized to do under any circumstances or which is absolutely forbidden by its charter, is so entirely void that nothing short of an act of assembly can render it valid; but that which it may do for certain purposes and

[1] 6 Week. Notes Cas. 461.

not for others, or on the happening of a particular event, is not necessarily within this rule, and may take effect although the prerequisites were not fulfilled."

In Tome vs. Parkersburgh R. R. Co.[1] the treasurer of the company was intrusted with the custody of the books relating to ownership and transfer of stock, and it was his duty to prepare and countersign all certificates of stock and scrip. He fraudulently issued certificates of stock for his private purposes, and the company was held liable for his acts to the purchasers of the spurious certificates.[2]

A stockholder, whose stock has been sold without his knowledge, under a forged power of attorney, may sustain an action for money had and received against the *innocent partners* of the forger who received the proceeds of the sale.[3]

If Stock-brokers in good faith receive from the transfer clerk of a corporation, for sale on his own account, a certificate of its stock apparently genuine, and they make inquiries as to its validity at the office of the corporation, they are entitled to indemnity from the corporation for the amount they have been obliged, under the rules of the Stock Exchange, to pay to the purchaser of the shares, it appearing that the certificate was fabricated by the transfer clerk, over the genuine signatures of the officers of the corporation.[4]

And a company is liable if it issues a certificate of shares as fully paid when such is not the fact.[5]

In concluding this subdivision we have again to remark

[1] 39 Md. 36.

[2] And see Madison, etc., R. R. Co. vs. Norwich Sav. Soc., 24 Ind. 457.

[3] Marsh vs. Keating, 1 Bing. N. C. 198.

[4] Jarvis vs. Manhattan Beach Co., 148 N. Y. 652.

[5] McKay's Case, (1896) 2 Ch. 757.

that in all questions in which stock certificates have been involved, the tendency of the courts is to protect the *bona fide* holder or purchaser; and from the mass of decisions upon this branch of the law, there now exists an exception to the general rule that an assignee of a chose in action takes no better title than his assignor, so definite and deeply rooted as to be incapable of change.

IV. Dealing With Apparent Owners; Fraud; Illegality.

Stock-brokers sometimes deal with apparent owners, or there may be an element of fraud or illegality in such transactions, but the question of negotiability or non-negotiability does not arise. It may be stated generally that the Broker is protected by want of knowledge of the real owner's title, although he may incur liability through negligence.

Thus where a Client deposits bonds with a Broker to secure him against losses which might occur in speculations upon the Exchange, and it turns out that the bonds belong to the wife of the Client, and have been pledged by her husband without her consent, the Stock-broker can, in the absence of actual or constructive knowledge of the wife's interest in the bonds, hold them for the purposes for which they were placed with him. And the fact that the Broker receives checks during the existence of the transaction, drawn to the order of the wife and by her endorsed, is not sufficient to charge him with notice of the wife's interest in the bonds.[1]

And in an action for the conversion of shares of mining stock which plaintiff alleged he had lost, against one who

[1] Macbryde vs. Eykyn, (1871) 6 Wkly. Notes 111; aff'd id. 175.

had found certificates of shares of the same stock which were claimed by another defendant, and which had been sold by defendant Stock-broker, the burden is upon plaintiff of identifying the shares lost, with those found.[1]

In Lamson vs. Beard[2] it was held that where the president of a bank, *as such*, sent drafts to commission merchants in Chicago to cover margins in Board of Trade transactions, they were bound to inquire of the directors as to his authority to send the drafts, and in default of their doing so, the bank was entitled to recover the proceeds which were the bank's property. To the same effect is Anderson vs. Kissam,[3] where a bank cashier speculated with the bank's funds through a firm of Stock-brokers.

It has, however, been held in the State of New York that, although when a banker was employed to loan moneys, the use of the word " trustee " in the check given by the lender, gave notice to the banker that the funds might not belong to the lender individually, yet the use of such word was not sufficient to notify the banker that the trust was of such

[1] McFadden vs. Goettert, 131 Cal. 333.

[2] 94 Fed. Rep. 30, and cases cited.

[3] 35 Fed. Rep. 699, rev'd on other grounds, 145 U. S. 435.

If a temporary administrator of an estate places trust funds with Brokers to speculate in stock transactions, the use of the words "as trustee" in a check received by the Brokers, was sufficient notice to put the Brokers upon inquiry, especially when a subterfuge was resorted to by the Brokers, viz., their giving their own check back to the trustee who at once placed the proceeds thereof with the Brokers, and inquiry of the trustee only was insufficient. Marshall vs. De Cordova, 26 A. D. 615.

And if money is deposited with an agent for a particular purpose, and the agent speculates the money in "bucket shop" transactions in Ohio and Illinois, such transactions being illegal under the laws of these States, the money so speculated being impressed with a trust is recoverable in equity, and so-called profits paid to the agent cannot be allowed as a set-off. Central &c. Exchange vs. Bendinger, 56 L. R. A. 875.

a character that the trustee was limited solely to legal investments, and if the banker lent the money to Stock-brokers on the security of stock collaterals, he was not liable as for a waste of the trust estate.[1]

If Stock-brokers have made extensive stock speculations for the cashier of a country bank, receiving from the cashier checks drawn upon its correspondent city bank, and the Brokers from time to time return to the city bank most of the sums so received, they are entitled, on the question of offset, to have it submitted to the jury whether the other officers of the country bank which had become insolvent, might not, by reasonable care, have ascertained that such deposits were so made and their purpose, and whether they would have considered such deposits as a return of the moneys to the bank.[2]

When in the beginning of transactions between a bank cashier and Stock-brokers, the transactions are *bona fide* between the latter and the former, on behalf of the bank, the Brokers are not liable for fraudulent misappropriations by the cashier, although some of the entries in the Broker's books showed dealings with the cashier as such, or with him individually.[3]

If a clerk was authorized by his employers to sell their notes, and to place the proceeds in his own bank to his own credit, the object of the employers being to obtain working capital, without letting their own bank know the method by which they acquired it, a firm of Stock-brokers is not liable to the employers for portions of such moneys lost by

[1] Isham vs. Post, 71 Hun, 184. rev'd on other grounds 141 N. Y. 110.

[2] Kissam vs. Anderson, 145 U. S. 435.

[3] Central Bank vs. White, 139 N. Y. 631.

the employee in speculating in stock transactions through the defendants.[1]

But if stock and grain Brokers receive the checks of the manager of a corporation organized to make jellies and fruit preserves, as margin in grain transactions, the company's blank checks being used, they are chargeable with notice that the drawing of such checks was not within the scope of the manager's business.[2]

Although a bank cashier is prohibited by statute in Pennsylvania from dealing in stocks, one who is not *particeps criminis* with him in such transactions, may recover money paid by him to the cashier. And, therefore, when the plaintiff had reason to believe that the cashier's stock was at the time of the sale of it to plaintiff, in the name of third persons, and that the cashier bought the stock as plaintiff's agent (in which capacity the cashier might lawfully act) he was not in *pari delicto* with the cashier, who was in reality the owner of the stock, and who was engaged in speculating in stocks—buying for the mere purpose of making profit by a rise in the market price—in violation of the statute.[3]

When an employee of Stock-brokers delivered to plaintiff raised or forged certificates, instead of the genuine certificates purchased for plaintiff, and received from the latter a large sum of money alleged by him to be due to defendant Brokers, when in fact there was nothing due, the defendants are liable, when by the exercise of ordinary diligence, the loss to plaintiff would not have occurred.[4]

[1] Smyth vs. Glendenning, 194 Pa. St. 550.

[2] Hine vs. Allen, 87 Hun, 516.

[3] Burkholder vs. Beetem, 65 Pa. St. 496. See Com. vs. Quay, 7 Pa. Dist. Rep. 723.

[4] Andrews vs. Clark, 72 Md. 396.

In Clinton National Bank vs. National Park Bank[1] it appeared that a firm of New York Stock-brokers obtained a loan from plaintiff bank (through defendant bank, its New York correspondent) on the security of certain bonds which proved to be spurious, and it was held that defendant was only obliged to give such examination to the securities as is customary with bankers, especially when it appeared that such loans are largely made upon confidence, and on account of the number of such transactions, no more than a cursory examination was practicable.

But it was held in Isham vs. Post[2] that bankers, even though rendering gratuitous services, should use ordinary diligence in examining securities offered as collateral for a loan, to verify their genuineness, and when it appeared that such had been forged by raising the numbers thereon, it was held that defendant was liable to repay plaintiff the amount which had been intrusted to defendant to loan, and which defendant had lent to a firm of Stock-brokers on the security of the forged collateral.

[1] 37 A. D. 601, aff'd 165 N. Y. 629.

[2] 51 A. D. 605, aff'd 167 N. Y. 531.

Chapter VII.

REMEDIES.

I. Remedies of Stock-brokers and Clients against Each Other.

- (*a.*) *Relation of Brokers to Each Other.*
- (*b.*) " *of Clients to Each Other.*
- (*c.*) *Liability of Brokers to Undisclosed Clients.*
- (*d.*) " *of Undisclosed Clients to Brokers.*
- (*e.*) " *of Brokers to their Own Clients.*
- (*f.*) " *of Clients to their Own Brokers.*
    1. *General Indemnity.*
    2. *Banker's Lien.*
    3. *Stock-broker's Lien.*

II. Specific Performance of Contracts for Sale of Stock.

- (*a.*) *Preliminary Observations.*
- (*b.*) *General Rule.*
- (*c.*) *When Specific Performance Refused in England.*
- (*d.*) *In Cases Involving "Calls" when Relief Refused.*
- (*e.*) *In Cases of a Miscellaneous Character.*
- (*f.*) *When Specific Performance Decreed in England.*

III. Specific Performance in the United States.

- (*a.*) *Preliminary Observations.*
- (*b.*) *When Relief Refused.*
- (*c.*) *When Decreed as to Railway Shares.*

IV. Mandamus.

V. The Effect of Usury upon Stock Transactions.

VI. Statute of Frauds.

I. Remedies of Stock-brokers and Clients against Each Other.

(a.) *Relation of Brokers to Each Other.*

There exist a great many elements in a transaction on the Stock Exchange which are not found in the simple and ordinary relation of principal and agent. An agent instructed by his principal to sell or buy personal property would, ordinarily, find a purchaser or seller, disclose his relation, bring the parties together, and receive his commissions. Not so with a Stock-broker in carrying out a speculative transaction in stocks through the Stock Exchange; for he not only does not disclose his principal, but jealously conceals his name. He acts, and by the rules of the Exchange is regarded, as principal; and in consummating the transaction uses his own money, receives and holds the property, and merely obtains from his Client a margin sufficient to protect him against the fluctuations of the market. Yet the only interest the Broker has in the transaction is a brokerage or commission.[1]

What the respective relations of all the parties to each other are in such dealings will be best seen by considering the position of the different parties separately.

As we have seen, Stock-brokers, in their dealings with each other, are, by the rules of the Exchange, regarded as principals. These rules are binding, because the members of the Exchange, upon becoming members, agree to abide by them;[2] and it is only when these rules conflict with

[1] See article in Harvard Law Review, vol. VIII. p. 435, by Mr. Eliot Norton, entitled "A simple purchase and sale by a Stock-broker."

[2] See pp. 57, 424.

Thus where a customer sent stolen bonds, as collateral, to Stock-brokers, the latter cannot claim that they fulfilled their contract on

the law,[1] or are unreasonable, or against public policy, that the courts will interfere with them. This leaves the Stock Exchange with jurisdiction to enforce all contracts between its members, and the courts can only be called upon in

credit of the bonds, giving them the right, as against the owner of the bonds, of bona fide holders for value, as, although the verbal contract made by them on the Exchange was void under the Statute of Frauds, they were bound by the rules of the Exchange making such a contract obligatory, and therefore they must be deemed to have completed their purchase because of their personal obligation under the contract. Brownson vs. Chapman, 63 N. Y. 625.

[1] In Ryers vs. Tuska, 14 N. Y. Supp. 926, where the assignee of an insolvent Stock-broker sued another Broker (both Brokers being members of the New York Consolidated Exchange), to recover money alleged to be due in a stock transaction, it was held that as there was no memorandum in writing, the contract was invalid, notwithstanding the rule of the Exchange making contracts between its members binding, and suspending members who failed to comply with their contracts. In that case it was also held that even if the rule of the Exchange that "all offers to buy and sell securities shall be binding," had been introduced in evidence, it would not have availed the plaintiff, as a party could not, in advance, make a valid promise that a statute, founded in public policy, should be inoperative, citing Shapley vs. Abbott, 42 N. Y. 443.

It was held in Ex parte Ward, 20 Ch. Div. 356, that it was not necessary to obtain the consents required by rule 54 of the London Stock Exchange, in order to enable one member of the London Stock Exchange to sue another for a debt due to him by the latter. In that case a Broker had purchased, for a Client, from stock and share dealers, certain shares, and his Client failing to supply him with the purchase price, he was declared a defaulter, his accounts were closed, and the assets collected were distributed amongst his Stock Exchange creditors. The share dealers obtained, under rule 54, the consent of the Stock Exchange creditors to institute bankruptcy proceedings against the Broker, and it was held, per Jessel, M. R., that even if they had not done so, the debt due to them was not destroyed, as the payment received by them from the committee only discharged the debt to the amount of that payment, and did not release the defaulter from payment of the balance.

But see as to the effect of the rules of the New Orleans Cotton Exchange on contracts between its members, in modifying the principles of law applicable to such contracts, Paton vs. Newman, 51 La. Ann. 1428.

exceptional cases to interfere with that domestic forum. And this rule holding the Brokers liable to each other as principals is not only reasonable, but it arises out of the necessities of the case. For Brokers, in making their transactions, do not disclose the names of their Clients; indeed, by what may be termed the *esprit de corps* of Brokers, it is regarded as an abuse of confidence to reveal the names of the persons for whom they act. Besides, Stock-brokers habitually make operations for their own account, and it is utterly impossible to discriminate in their dealings upon the Exchange whether they are acting for their Clients or for themselves.

And this rule of the Exchange, making the Brokers primarily liable to each other, accords with the well-settled principle of law that an agent, in dealing with third persons, should disclose his agency, or he will be held personally responsible to them;[1] and that it is only where the agent makes a contract on behalf of a principal, whose name he discloses at the time, that he is not personally liable.[2] A vendor or purchaser dealing in his own name, without disclosing the name of his principal, is personally bound by his contract; and it makes no difference that he is known to the other party to be an auctioneer or Broker who is usually employed in selling or buying property as an agent.[3] And

[1] Walker's Am. Law (10th ed.), 301; Snelling vs. Howard, 51 N. Y. 373; Collins vs. Buckeye Ins. Co., 17 Ohio St. 215; Woodbridge vs. Blair, 18 Iowa, 572.

[2] Rathbon vs. Budlong, 15 Johns. 1; Ferris vs. Kilmer, 48 N. Y. 300; McClernan vs. Hall, 33 Md. 293; Tiller vs. Spradley, 39 Ga. 35.

If a Broker does not disclose his principal's name, and is, therefore, obliged to pay a balance of the purchase price of wheat bought by him for his principal, he may recover the amount from the latter. Knapp vs. Simon, 96 N. Y. 284. To same effect is Maitland vs. Martin, 86 Pa. St. 120.

[3] Jones vs. Littledale, 1 Nev. & P. 677; Magee vs. Atkinson, 2 Mee. &

where a defendant was employed as agent to buy at an auction, but he did not disclose his agency either at the time of bidding or when paying the deposit, it was held that he was individually liable on his bid, and could not shelter himself by proving that he acted as agent.[1]

In view, therefore, of the jurisdiction of the Exchange to enforce all contracts made between its members on the Exchange, the cases necessarily must be rare in which the courts will or can be called upon to examine the transactions of Brokers as between themselves; although in most instances the bargains there made, being oral, could hardly be sustained under the Statute of Frauds, in those States where the 17th section of that statute,[2] requiring such agreements,

W. 440; Mills vs. Hunt, 20 Wend. 431.

It was held in Wildy vs. Stephenson, 1 C. & E. 3, that where by the course of dealing between plaintiff Stock-broker, a member of the London Stock Exchange, and defendant, a Liverpool Stock-broker, and by express agreement between them, the plaintiff was to be personally liable to defendant when the name of the principal was not disclosed by the former, the defendant might counterclaim for the price of shares sold for him by plaintiff, who did not disclose the name of the principal in the advice notes, in an action brought by plaintiff to recover the price of shares bought for defendant. The latter also attempted to prove a custom of the London Exchange rendering the Broker personally liable where he does not disclose his principal's name, but the jury were unable to agree as to the existence of the custom.

And in Smith vs. Reynolds, 66 L. T. N. S. 808, a Broker not a member of the Stock Exchange, was held bound to indemnify a Broker, a member of the London Stock Exchange, who, under the rules of the Exchange, was obliged to make good to another member's Client a loss which the latter had suffered in a transaction on the Stock Exchange.

But in Glenn vs. Garth, 133 N. Y. 18, it was held that, in dealings between Stock-brokers, there can be no implication of authority in the Broker selling stock to make the transfer thereof to the purchasing Broker on the company's books, as each knows the other to be merely an agent for third persons.

[1] McComb vs. Wright, 4 Johns. Ch. 659.

[2] See p. 884.

where more than fifty dollars are involved, to be in writing, is in force.[1]

(b) Relation of Clients to Each Other.

The relation to each other of principals who authorize transactions to be made upon the Exchange is not so simple as the one to which we have just alluded; and yet, if the principles of the law of agency are applicable to the transactions—and there would seem to be no good reason to the contrary—the question is comparatively plain and free from difficulty. But the position of the parties should be thoroughly understood. In the first place, the principals not only never meet, but they are never known. A Client ordering his Broker to purchase shares upon the Exchange knows and expects that the Broker will buy them of a fellow-Broker, who may be acting for himself or an undisclosed selling Client. And it is the uniform usage of Stock-brokers, upon making a purchase or sale for their Clients, immediately to make out and deliver to the latter a report containing the description and price of the securities dealt in, and the *name* of the opposite Broker with whom the transaction has been made.[2] What, if any, effect this circumstance would have upon the relation of the principals to each other has seemingly never been considered. There is, in fact, no communication between the Clients whatever, as appears from the following detailed account of the transaction:

A, desiring to purchase one hundred shares of stock, em-

[1] Brownson vs. Chapman, 63 N. Y. 625; Ryers vs. Tuska, supra.

[2] The effect of the omission of the Broker to deliver this note to his Client on his right to recover commissions was considered in the case of Hoffman vs. Livingtson, 14 J. & S. (N. Y.) 552.

ploys B, a Stock-broker. The latter goes upon the Exchange and finds C, a fellow-Broker, who will sell the shares; whereupon the bargain is made. C, in fact, represents D, who has ordered him to sell. B, upon the consummation of the bargain, sends a *report* to his Client, A, of the purchase from C, the Broker; and C likewise sends a report to D of the sale. The shares are in due course delivered by C to B, and the latter pays for them. B and D never meet, their names are never mentioned, and they neither sign nor deliver any paper relating to the bargain. Nor is there any communication between A and C or B and D in respect to the business. Is there any privity in such a transaction between A and D? Is there a contract between them? Have they reciprocal rights and duties?

Before referring to the adjudications upon this subject, we should advert to a well-established principle of law that, in case of a simple contract, an undisclosed principal may show that the apparent party was his agent, and may put himself in the place of the latter, but not in such a way as to affect injuriously the rights of the other party. Where an agent, in dealing for his principal, acquires rights for him, the principal may sue in his own name to enforce them, notwithstanding he was a resident abroad, and the agency was concealed from defendant.[1] If there is nothing on the face of the written contract to indicate agency, but one of the contracting parties is in reality an agent, contracting on behalf of an unknown and undisclosed principal, the latter may, at any subsequent period, so long as the contract remains executory, come forward and claim the benefit of it; but he is, of course, bound by all the equities raised by his

[1] Taintor vs. Prendergrast, 3 Hill, 72.

agent while dealing apparently as a principal, and can take such rights of action only as the latter possesses at the time that he, the principal, discloses himself.[1]

This doctrine has been most extensively applied to all kinds of executory contracts in writing not under seal, it being uniformly held that such contracts may be enforced by principals, although executed in the name of the agent, and this whether he describes himself as agent or not.[2]

Now, if this doctrine is applicable to the transactions of the Stock Exchange, there is no doubt but that the law will, in the transaction which we have described, substitute the principals in the place of their respective Brokers. And this seems to be firmly settled by the cases.

In our analysis of a transaction in securities on the London Stock Exchange, this subject is extensively considered in respect to the liability of principals for "calls"[3] upon

[1] Girard vs. Taggart, 5 Serg. & R. 27; Taintor vs. Prendergrast, 3 Hill, 72; Edwards vs. Goulding, 20 Vern. 30; Commercial Bank vs. French, 21 Pick. 486; Huntington vs. Knox, 7 Cush. 71; Carr vs. Hinckcliff, 4 B. & C. 547; Fish vs. Kempton, 7 C. B. 692; Kelly vs. Munson, 7 Mass. 324; Wait vs. Johnson, 24 Vern. 112; Violet vs. Powell, 10 B. Mon. 347; Gardner vs. Allen, 6 Ala. 187; Wharton on Agency, § 403; Huffcut on Agency (2d ed.), § 164, and cases cited in footnotes; Story on Agency (4th ed.), § 1600; Mechem, Ag. §§ 695-700.

[2] Briggs vs. Partridge, 64 N. Y. 357; Nicoll vs. Burke, 78 id. 581. There is a well-recognized exception to the above rule, however, in the case of notes and bills of exchange, resting upon the law-merchant. Persons dealing with negotiable instruments are presumed to take them on the credit of the parties whose names appear upon them; and a person not a party cannot be charged upon proof that the ostensible party signed or endorsed as his agent (Briggs vs. Partridge, supra).

[3] Ch. X. p. 987 et seq.

See also the following cases: Roots vs. Williamson, 38 Ch. Div. 485 (where a married woman was held to have established her title to shares held by defendant W. as her trustee and by him transferred to the defendants H. & A. who attempted, through their Brokers, to complete the transfer by registration in the company's books); Loring vs. Davis, 32 Ch. Div. 625

shares purchased through Brokers; and it will be seen that the English courts, with entire unanimity, have held that there was a perfect and enforceable contract, both in law and equity, between the vendor and vendee. As these cases are fully reviewed in Chapter X., it is unnecessary to do more than mention them in this connection. The question of privity has been rigorously disputed; but, after a full consideration of the subject, the courts have found no difficulty in reaching the conclusion that the principals should be substituted in the place of the Brokers.[1]

(where a purchaser of shares sold on the Stock Exchange was held to be the equitable owner of the shares although the name of the vendor was not given in the bought note as required by Lehman's Act, and bound to indemnify the vendor). See also London Founders Association vs. Clarke, 20 Q. B. D. 576 (money paid for shares sold in the Stock Exchange cannot be recovered back by the vendee from the vendor although the company refuses to register the vendee as the owner); Crabb vs. Miller, 24 L. T. 892 (a vendee of shares must indemnify his vendor although he might under the rules of the Exchange have repudiated the purchase); De Waal vs. Adler, 12 App. Cas. 141 (a vendee of shares is not bound to accept when there is unreasonable delay by the vendor in tendering them). And see Anderson vs. Beard, (1900) 2 Q. B. 260; Scott vs. Ernest, 16 T. L. R. 498; Stoneham vs. Wyman, 6 Com. Cas. 174.

[1] The precise moment when the privity of contract is created is when the ticket containing the purchaser's name has been handed to the vendor, and he indicates his acceptance of the name to the purchaser. Lindley on Companies (6th ed.), p. 695, and cases cited; Brodhurst's Law of the Stock Exchange, p. 146, 147 et seq., and cases cited. As a result of the privity of contract, the right of set-off exists between the principals. Carr vs. Hinchliff, 4 B. & C. 547.

But where cotton Brokers, members of the Liverpool Cotton Exchange, sold cotton for future delivery to other members of the Exchange, in their own names, but really on behalf of an undisclosed principal, the vendees could not, in an action by the principal to recover the purchase price, set off a debt due to them by the principal's Brokers, when they had no belief as to whether the latter were selling on their own account, or for a principal, Cooke vs. Eshelby, 12 App. Cas. 271, but if they had been induced to believe the Brokers were acting for themselves they had the

As by the method of dealing upon the London Stock Exchange, the representative character of a Stock-broker is entirely submerged, and he deals and is regarded only as principal, there would seem to be no good reason why this class of decisions should not be followed as precedents in this country. And accordingly it has been held by the Supreme Court of the United States that there is privity of contract between undisclosed principals of Brokers in transactions on the Stock Exchange, although it was doubtful if there might be such privity, if there were contracts, on the part of one of the Brokers, for other dealers in the same stock, not to be closed on the same day, still unclosed, but if these other contracts had been settled, it was held that there was sufficient privity between the undisclosed principals to maintain the action. It will be perceived by reference to the English decisions that the courts of that country have gone further, and held that there may be privity, although the Broker lumps his Client's orders together and executes them by means of one contract.[1]

right of set-off. Id. In transactions on the Stock Exchange, however, where a jobber knows that a Broker is probably selling for a principal, he cannot take advantage of this rule, as he is bound to make inquiry from the Broker as to whether he is selling as agent or principal.

And where London Stock-brokers sold stock on the instructions of a country Broker for an undisclosed principal they cannot set off a debt due to them by the country Broker as against the proceeds, unless they prove that the principal had knowledge of a custom of the Exchange to treat country Brokers as principals and agreed to be bound by it. Blackburn vs. Mason, 9 T. L. R. 286.

The remedy of each principal against the other may be at law. Street vs. Morgan, not reported, cited in Davis vs. Haycock, L. R. 4. Ex. 373. Or in equity, Sheppard vs. Murphy, 16 W. Rep. 948.

[1] See chs. III, p. 205, and X, and Scott vs. Godfrey, 70 L. J. K. B. 954. See contra, Beckhusen vs. Hamblett, (1900) 2 Q. B. 18; aff'd 70 L. J. K. B. 600, but in that case the usage of the Stock Exchange had not been proved.

There is one circumstance, however, which should be mentioned in applying the English cases to dealings in the United States—viz., that by the rules of the London Stock Exchange the Brokers and Jobbers are two different characters, and they cannot act in both capacities in the same transaction. The Broker is known to be dealing for a principal in the transaction which he makes, whereas the Jobber always acts on his own account. But we do not attach much importance to this fact, because at most it amounts to but a breach of the rules of the Exchange; and, notwithstanding its breach, the members would still, by the same rules, be liable primarily to each other upon their contract.[1]

In one case[2] in the United States in which a principal sued the opposite principal for breach of a contract concluded on the Stock Exchange between their respective Brokers, it was held that although a principal may elect to sue the ostensible principal, or the actual and undisclosed principal, yet there are not two contracts, one between the Brokers, and the other between the principals, and therefore when the opposite Stock-broker's liability had been extinguished by an award of the arbitration committee of the Stock Exchange, and the award had been performed by the plaintiff, such award is a complete

[1] Consult, as to effect of violating rules, Royal Exchange Ins. Co. vs. Moore, 11 Week. Reporter, 592.

See also the following cases: Lisset vs. Reave, 2 Atk. 394 (where it was held that although stocks are often transferred by Brokers without the principal's name being mentioned, yet the vendor may maintain action against the purchaser); Jackson vs. Jacob, 6 L. J. C. P. 315 (a tender of the purchase price of shares to the Brokers of the vendor, when ratified by the principal, is good).

[2] Orvis vs. Wells, Fargo & Co., 73 Fed. Rep. 110.

bar to a suit upon the original cause of action, by the plaintiff against the opposite principal.

We therefore conclude that both in England and in the United States, in a transaction made through the Exchange by Brokers, the vendees or vendors are liable to each other, subject, of course, to intervening equities to the same extent and in the same manner as if the contracts had been made by agents for unknown principals in the ordinary course of business. But the usage of Brokers has been an important factor is establishing this result, and it might in certain cases operate as an exception to the principle.

(c.) *Liability of Brokers to Undisclosed Clients.*

The relation of a Client to the Broker or Jobber, who makes the contract on the Exchange with his own representative, suggests an important and interesting question. In the illustration heretofore given,[1] this involves the relation between A, the vendor or purchaser, and the Broker, C, who deals with the Broker of the vendor. As has been described, upon the completion of the order to purchase or sell, B, the Broker of A, immediately makes out and delivers to A a report or notice containing a statement of the kind of securities dealt in, the price paid or received, and the name of C, the Broker with whom the transaction has been made, and who appears in the business as principal. If there is a privity between the purchasing and selling Clients, A and D, as in the preceding section we have seen there clearly is, the reasons are still more cogent to establish a legal relation between A and C, because the name of the latter is reported to A as the principal, and, to all

[1] P. 753.

intents and purposes, C is the real contracting party. By a well-understood and frequently applied rule of the law of agency, an agent may in certain cases become liable as principal; for although ordinarily he is exempt from personal liability if he act within the scope of his authority and properly discloses his principal's name, yet an agent is at liberty to incur a personal liability, if he chooses to do so, by his own act or contract, or where from his own conduct or the form of the act or contract it is necessarily implied or created by operation of law. Hence, in the following instances, an agent will be liable to third persons:

1st. When the agent makes the contract in his own name;[1] and parol evidence is not admissible in such case to show that the agent is not the real party.[2]

2d. Where he voluntarily incurs a personal responsibility either express or implied.[3]

3d. Where he does not disclose the name of his principal, and ordinarily, when the principal is discovered, either the agent or principal may be held.[4] And where a bought or sold note expressly states that the transaction is made for

[1] Benjamin on Sales (3d Am. ed.), 209; Wharton on Agency, §§ 280, 504; Huffcut on Agency (2d ed.), p. 158; Snelling vs. Howard, 51 N. Y. 373; Briggs vs. Partridge, 64 id. 357.

[2] Id.

[3] Wharton on Agency, § 490.

[4] Id. § 496, and cases heretofore cited.

A Broker is personally liable to the purchaser of worthless bonds, where he does not disclose his principal. Pugh vs. Moore, 44 La. Ann. 209.

When a Stock-broker does not disclose his principal he is personally liable for calls on shares paid by the opposite principal. Lichten vs. Verner, 8 Pa. Dist. Rep. 218.

If Brokers claim to act for an undisclosed principal and make a contract for the purchase of bonds, and thereon secure immunity for themselves as to the payment of the purchase money, they cannot sue for the breach of such contract when it appeared they were acting for themselves and not for any principal. Paine vs. Loeb, 96 Fed. Rep. 164.

a principal, but whose name is not disclosed therein, evidence of usage is admissible to show that the Broker is personally liable when the name of the principal is not disclosed at the time of the contract.[1]

4th. Where he exceeds his authority.[2]

5th. Agents or factors acting for foreign principals are personally liable upon all contracts made by them for their employers.[3] But this rule does not apply to the extra-territorial relations of the States of the Union; and it has accordingly been held that agents or factors acting for merchants residing in another State are not personally liable for contracts made by them for their employers.[4]

6th. Where the agent does not possess any authority, or exceeds it, he is personally liable.[5]

7th. So an agent is held personally responsible where there is no other responsible principal to whom resort can be had.[6]

8th. He is also liable when he is guilty of fraud or deceit.[7]

[1] Humfrey vs. Dale, 7 El. & Bl. 266; El. B. & E. 1004; 26 L. J Q. B 137; 27 id. 390; Fleet vs. Murton, L. R 7 Q B 126; Te ley vs. Shand, 20 W. R. 206. Consult also Mollett vs. Robinson, L. R. 5 C. P. 648; 7 C. P. 84; H. L. Cas. 802.

[2] Baltzen vs. Nicolay, 53 N. Y. 467; Dung vs. Parker, 52 id. 494.

[3] Story on Agency (8th ed.), § 268; Wharton on Agency, § 514. The fact however that a principal was residing in Canada did not entitle the defendants (London Stock-brokers) to regard a country Broker, from whom they received instructions, as their principal, when they held a power of attorney from the real principal, resident in Canada, empowering them to sell consols. So held in Crossley vs. Magniac (1893), 1 Ch. 394, where it was also held that the defendants could not apply the purchase money as against a balance due to them by the country Broker, and a usage to that effect would be invalid.

[4] Vawter vs. Baker, 23 Ind. 63.

[5] Story on Agency (8th ed.), § 264.

[6] Id. § 280.

[7] Wharton on Agency, §§ 541, 542.

There are other instances in which an agent may be held liable; but for the purposes of this discussion it is not necessary to enlarge the present enumeration. But an important exception to these general rules arises in those cases where *no credit is given to the agent*, in which event he is not personally liable;[1] the rule of the law being that he to whom the credit is knowingly and exclusively given is the proper person who incurs liability, whether he be the principal or the agent.[2]

Confining our observations, in the application of the above general principles, to those cases which have arisen out of transactions on the Stock Exchange, we find in England it has been repeatedly held that the Jobber or Broker purchasing from the Broker of a vendor is personally liable to indemnify the latter for "calls" made upon shares sold, and that there is a direct contract between such parties; although by the rules of the Exchange, before alluded to, the members of the latter body are principally liable to each other for the fulfilment of their contracts. It is true that by the usages of the London Exchange the Jobber may substitute another in his stead in the contract before the settling-day, and in certain cases the vendor will be bound thereby; but this does not touch the question of the liability of the original Jobber to the vendor.

But it is not only in cases involving the liability for "calls" that the courts have adjudged that there was a legal privity between an undisclosed Client and a Jobber

[1] Buck vs. Amidon, 41 How. (N. Y.) Pr. 370; Scrace vs. Whittington, 2 B. & Cress. 11; Iveson vs. Connington, id. 160; Cunningham vs. Soules, 7 Wend. 106.

[2] Story on Agency (8th ed.), § 288 and note, where a full collection of cases will be found.

or Broker dealing with his representative, but in the cases which we shall now proceed to notice the same result was reached.

In Royal Exchange Insurance Co. vs. Moore[1] the plaintiffs authorized S., a Stock-broker, to purchase for them certain debentures. On the same day, S. reported that he had bought the debentures of the defendants, M. & C., who were also Stock-brokers. It being the usage of the Stock Exchange that no principal is named on either side, S. was ignorant of the name of the person for whom M. & C. were acting; but as they were Brokers, and not Jobbers, he knew that they were dealing, not on their own account, but for an unknown principal. M. & C., however, gave a sold note signed with their own names. They were, however, acting in the transaction for one A., who subsequently delivered to them a deed of transfer of the debentures, which was forged. This in time was delivered to S., who handed it to plaintiffs; and the latter was afterwards compelled to deliver it to the true owner, together with the dividends collected thereon, by virtue of a decree of court. The plaintiffs thereupon brought suit against the defendants, who were held liable on the ground that they had signed the sales note and were concluded thereby.

Considering that defendants were acting as conceded Brokers in the transaction, and that the sold note was made out in accordance with a known usage not to disclose the principal, this case, while apparently not open to question, is one of the most stringent applications of the rule.[2]

[1] 11 Week. Reporter, 592.

[2] The court cited and relied upon Higgins vs. Senior, 8 Mee. & W. 834; Jones vs. Littledale, 6 Ad. & E. 486; Trueman vs. Loder, 11 id. 595. See also Humfrey vs. Dale, 7 El. & Bl.

In Nickalls vs. Merry[1] a Jobber who had agreed with the Broker of an undisclosed principal to purchase certain shares, and who had given the name of an infant as the transferee, by reason of which the principal was compelled to pay certain calls, was held liable to pay the same in an action brought against him by such undisclosed principal; although, by the rules of the Stock Exchange, all the members of the latter body were regarded as principals to each other. Lord Hatherley, in this case, said: "Nobody denies that when a Broker sells shares for his principal (who is what is called an 'outsider,' and who has employed him to sell the shares) to anybody in the market, whether a Jobber or a Broker, there is a good and valid contract made between those parties—that is to say, between the person whose shares are to be sold and the Jobber who purchases those shares from the vendor's Broker."[2]

And the same result was reached in a later case,[3] in which it was held that where defendant, a Share-broker, had purchased shares of the plaintiff without at the time disclosing any principal, he was liable to indemnify plaintiff for all

266; Eng. C. L. 90; Thomson vs. Davenport, 9 B. & C. 78; Pennell vs. Alexander, 3 El. & Bl. 283.

[1] 1875, L. R. 7 H. L. E. & Ir. App. Cas. 530, rev'g L. R. 7 Ch. App. 733.

[2] See also Coles vs. Bristowe, L. R. 4 Ch. App. 3; Booth vs. Fielding, 1 W. N. 245.

[3] Watson vs. Miller, 11 Week. Notes, 18 (1876).

And a Jobber is liable when he passes as the purchaser the name of one resident abroad to whom the vendor might reasonably object. Allen vs. Graves, L. R. 5 Q. B. 478. Since the passing of the Married Woman's Property Act, 1893, c. 63, § 1, providing that contracts by a married woman shall bind her separate property whether she is possessed thereof or not at the time of the contract, the name of a married woman furnished by a Jobber can hardly be objected to by the principal, as he is no longer under the obligation of proving that she had separate estate at the contract, as was held necessary in Stogden vs. Lee, (1891) 1 Q. B. 661.

calls made, and which plaintiff had been compelled to pay by reason of the shares being, at the request of defendant, registered in the name of an infant.

So in Stray vs. Russell[1] an action was brought by a vendee, who had ordered his Broker to buy shares on the Stock Exchange, against the Jobber who had sold the shares to the vendee's Broker; and, although the action was not sustained, the decision was not placed on the ground of any want of privity between the parties, notwithstanding the vendee's name had not been disclosed in the transaction.

(*d.*) *Liability of Undisclosed Clients to Stock-brokers.*

If the undisclosed Clients have enforceable rights against the Brokers contracting with the representatives of the former, it follows by parity of reason that the Brokers have similar rights against the principals when they are discovered, and that they may elect which of the two to hold—the Brokers with whom they contract, or their principals. And, as will be seen, the English courts have very consistently enforced this liability in several cases, which are fully reviewed in Chapter X. of this work.[2]

As oral evidence is admissible to show that the contracting party was an agent, so as to give the benefit of the contract to the unnamed principal, it is also admissible to fix the principal as the party really interested in the matter, and make him liable upon the contract. This evidence "does not deny that it is binding on those whom, on the face of it, it purports to bind, but shows that it also binds another, by reason that the act of the agent, in signing the agree-

[1] 1 El. & El. 888. [2] P. 981 et seq.

ment in pursuance of his authority, is in law the act of the principal."[1]

In the case of Mocatta vs. Bell[2] the defendant left certain Spanish bonds, passing by delivery, with his Stock-broker to borrow money upon. The latter borrowed money from the plaintiff, also a member of the Stock Exchange, and deposited a part of the bonds; this was done without disclosing, as is the custom, the name of the principal. On others of the bonds the Stock-broker, without the knowledge of his principal, obtained a further sum of money, which he applied to his own use. The defendant afterwards gave notice that he should settle his account, and on the settling day he sent a check to his Stock-broker for the principal and interest then remaining due, and the Stock-broker applied this money to redeem the bonds deposited to secure the money he had applied to his own use, and a part of the bonds deposited to secure the loan obtained for the defendant; and, on delivering the redeemed bonds to the defendant, the Stock-broker informed him that his assets were not sufficient to redeem the other bonds, and that he had postponed the further settlement to the following settling-day. The Stock-broker on that day informed the defendant that his assets were still insufficient. It was then arranged between the Stock-broker and the defendant that the former should give his check to the plaintiff for the sum due, and that the defendant, on receiving the bonds, should give him his check for a sum sufficient to enable the

[1] Higgins vs. Senior, 8 Mee. & W. 844; Beckham vs. Drake, 9 id. 96; 11 id. 317; Beebe vs. Robert, 12 Wend. 413; Taintor vs. Prendergrast, 3 Hill, 72; Upton vs. Gray, 2 Greenl. 373; Hyde vs. Wolf, 4 La. Rep. 234; Clealand vs. Walker, 11 Ala. 1064.

[2] 27 L. J. Ch. 237. See also Willard vs. White, 10 N. Y. Supp. 170.

Stock-broker to meet the check he was to give to the plaintiff. Accordingly, the bonds were obtained by the Stock-broker on his crossed check, and delivered to the defendant, but the latter refused to give his check for the sum required, and the Stock-broker's crossed check, in passing through the Clearing-house, was dishonored. In a suit praying that the defendant might be ordered to deliver up the bonds or to pay the plaintiff the amount of his advances thereon, and for an injunction restraining the defendant from parting with the same in the interim, it was held that the plaintiff was entitled to judgment; that he was not deficient in caution in taking the crossed check, and that he was not bound to inquire whether it would be honored before delivering the bonds; and that the defendant's conduct amounted to an *ex post facto* fraud at least, from the consequences of which he could not escape.

(e.) *Liability of Brokers to their Own Clients.*

We have already discussed and stated the liability of Brokers to their Clients in the third chapter of this work,[1] and it will be sufficient to notice in this connection the form of the actions by which this remedy may be enforced.

In *equity* the best-known remedy to enforce a liability where there have been numerous transactions between the Client and Broker is by bill for an accounting. It is one of the settled principles of equity jurisprudence that where the relation of principal and agent, or Broker, exists, a bill in equity will lie to compel an accounting. And the liability to do this follows, as a matter of course, from the admission or establishment of the agency.[2] By means of a

[1] P. 218 et seq.

[2] 1 Daniel's Ch. Pr. & Pl. (4th Am. ed.) 856; Palmer vs. Palmer, 13 How. (N. Y.) Pr. 363; Wiggins vs.

bill filed by the principal, or Client, against the agent, or Broker, all of the transactions may be investigated, and a fuller and more satisfactory result reached than by any other means.

The rule of practice in bills for an accounting under the old chancery system, which has not been substantially modified by a codification of the methods of practice, or by the abolition of legal and equitable actions into one general remedy,[1] was well stated in the case of Wiggins vs. Gans,[2] as follows: "An accounting party, however, does not stand in the situation of a mere witness. The rendering of the account is a duty which he is required to perform. He is to furnish materials which are to be the subjects of examination and proofs of the witnesses—materials which, in most cases, can be furnished by him alone. The decree to account implies that he has failed in obligations which he owed to his principal, and is a mode of compelling him to do that which he ought to have done voluntarily. There is, moreover, a manifest propriety in requiring a party who has acted in a fiduciary capacity for another as factor, agent, or trustee, who in that capacity has received and disbursed

Gans, 4 Sandf. 646; Story vs. Brown, 4 Paige Ch. 111. For general principles of actions against agents for accounting, see 1 Jac. & Walk. 135; 14 Ves. 500, 510; 8 id. 49, 13 id. 47, 53; 4 Madd. 373; 1 Chit. Gen. Pr. 509, 868, 869; Ketchum vs. Clark, 22 Barb. 319.

A court of equity rightly compelled an account by a Broker in foreign stocks on the ground that the latter stood in a situation of advantage. Rothschild vs. Brookman, 2 D. & C. 188.

[1] Id.

[2] 4 Sandf. 646. In an action for an accounting, an order for the inspection of the agent's books and vouchers will be made, to enable plaintiff to frame his complaint. Manley vs. Bonnell, 11 W. N. C. 123; Drake vs. Weinman, 33 N. Y. Supp. 177. See also Harding vs. Field, 46 St. Rep. 625. And a discovery of the Broker's books will be had to enable the plaintiff to prepare for trial. Duff vs. Hutchinson, 19 N. Y. W. Dig. 20; N. Y. *Daily Reg.* Nov. 27, 1882; Miller vs. Kent, 50 How. Pr. R. 321.

moneys, not only to furnish a full and true account of his receipts and disbursements, but to do so under the solemnity of an oath."

But where, on a bill filed for an accounting, there is no admission in the answer of the agency, the burden is on the plaintiff, in the first place, to establish that fact.[1] After the fact is established, the usual course in a court of chancery is to refer the matter to a master to state the account; but, in those States where codes of procedure exist, the general course of practice would be to refer the whole case to a master or referee in the first instance, although this disposition rests largely in the discretion of the courts.

The bill in equity for an accounting, however, would only be necessary where the Client sought to review the whole or a large portion of the transactions of the account between himself and his Broker; for if the objectionable transactions, matters, or items were few and isolated, the better and perhaps the only remedy would be by action at law.

The Broker has a well-established answer or defence to the bill for an accounting if he has already furnished an account, and the transactions between himself and his Client have been adjusted and settled; for it is a well-recognized principle of equity pleading that an account stated furnishes a complete and full answer to a bill for an accounting, unless fraud or mistake can be shown, which is now universally regarded as sufficient to set aside, at least *pro tanto*, an account stated.[2] But a failure to object or dissent to a Brokers'

[1] 1 Daniel's Ch. Pr. & Pl. (4th Am. ed.) 856.

[2] Weed vs. Small, 7 Paige, 573; Leycraft vs. Dempsey, 15 Wend. 83; Stoughton vs. Lynch, 2 Johns. Ch. 209; Lockwood vs. Thorne, 11 N. Y. 170, rev'g s. c. 12 Barb. 487. As to how an account stated should be pleaded to a bill for an accounting, see 3 Daniel's Ch. Pr. & Pl. (4th ed.)

account does not always constitute an account stated.[1] An account rendered becomes an account stated if not objected to in a reasonable time. Four months held to be in this case such an unreasonable time as to amount to an estoppel.[2] And where the complainant files a bill for a general account, and the defendant sets forth a stated account, the complainant must amend, for the account stated is a bar *prima facie* until the particular errors are assigned.[3] And where, to such a bill, the *defence* set up is that there has been an "account stated" between the parties, the onus is upon the plaintiff to show that there is fraud or mistake involved in the account;[4] and he is compelled to allege and prove specifically the particular items of the account which he claims should be stricken out as fraudulent or the result of a mistake.[5]

The stating of an account is in the nature of a new promise;[6] and such an account will not be opened on probable testimony. It requires strong and very conclusive evidence of fraud or mistake to justify the court in awarding such a

2, 101; Curtis's Eq. Prac. 169, 170; Willis, Eq. 550; Emery vs. Pease, N. Y. 62, 64.

See as to opening and reviewing the accounts of Stock-brokers, Porter vs. Wormser, 94 N. Y. 431.

[1] Quincy vs. White, 63 N. Y. 370. Burhorn vs. Lockwood, 75 N. Y. Supp. 828.

If, however, a customer accepts the Broker's account and promises to pay the balance on it, he ratifies the Broker's purchase. Gillett vs. Whiting, 55 N. Y. Super. Ct. 187, aff'd 141 N. Y. 71.

[2] Colket vs. Ellis, 10 Phila. 375. See also Bennett vs. Covington, 22 Fed. Rep. 816, where a delay of 72 days was held to render the account binding on the Client.

[3] Quincey vs. White, 63 N. Y. 370.

[4] Id. To same effect is Coit vs. Goodhart, 5 A. D. (N. Y.) 444. The plaintiff must furnish a bill of particulars specifying the erroneous items. Id.

[5] Id.; McIntyre vs. Warren, 3 Ab. Ct. App. Dec. (N. Y.) 99, where form of bill to set aside an account stated will be found; Drew vs. Power, 1 Sch. & Lef. 192.

[6] Holmes vs. D'Camp, 1 Johns. 34; Allen vs. Stevens, 1 N. Y. Leg. Obs. 359.

result.[1] But where an agent has made a mistake in an account, he will not be bound by the account as given, although his principal has acted upon the presumption of its correctness in his dealings with third parties, as where the principal was a Stock-broker, and the mistake in the account was one which the knowledge of the usage of the stock market might have enabled him to detect.[2]

In respect to other equitable actions, it has been held that a court of equity has no general jurisdiction over actions to redeem personal property — i. e., stocks — pledged with Brokers as margins, without some other circumstances rendering its interference necessary. The remedy at law is ample, by tender of the amount due and a possessory action to recover the articles pledged, or damages for their detention. The only ground of equitable jurisdiction over an action for the redemption of personal property pledged, besides the necessity of a *discovery*, and perhaps *an assignment of the property pledged*, is the necessity of *taking an account.* Accordingly, where an action is brought to redeem certain securities in the hands of defendants, as Stock-brokers, upon paying the amount due thereon, and for an injunction order restraining the defendants from selling such securities until an account can be taken of the amount due the defendants, it cannot be sustained where it appears that the claim on the part of the defendants can only consist of one item—

[1] Wilde vs. Jenkins, 4 Paige, 481. See also Lockwood vs. Thorne, 11 N. Y. 170. But see Barrow vs. Rhinelander, 1 Johns. Ch. 550; 3 id. 614, rev'd on other points, 17 Johns. 538, where an account was opened on the ground that one of the parties had taken advantage of a confidential relation. See also Phillips vs. Belden, 2 Edw. Ch. 1.

[2] Dails vs. Lloyd, 12 Q. B. 531. As to a claim against the assignee of an insolvent Broker, see In re Vermilye, 43 N. J. Eq. 146.

the original advances by them, or so much of them as remain unpaid.[1]

So the court will not interfere by injunction to relieve in respect of a speculative transaction upon the Stock Exchange where the claim to relief amounts in effect to this, that the plaintiff has been misled by the trick of some fellow-speculators to enter into a transaction which has not turned out so profitable as he expected.[2] But courts of equity will assume jurisdiction to restrain the enforcement of unexecuted contracts founded on wages or bets prohibited by law.[3] Nor will a court of equity issue an injunction to restrain a Stock-broker from selling stocks held by him on margin for his Client, without showing insolvency on the part of the Broker and irreparable injury.[4]

In respect to the actions at law which may be brought

[1] Durant vs. Einstein, 35 How. (N. Y.) Pr. 223. But in Fowle vs. Ward (113 Mass. 548), where the pledgor sought the specific equitable remedy of being replaced in his original position, the court held that all the defendant pledgee could have lawfully done was to hold the shares and have them forthcoming for the true owner on demand; that, instead of so doing, he by his own fault, had caused the plaintiff to lose them, and therefore the "only equitable remedy was to replace them or enable the plaintiff so to do for himself," by paying him the value of the stock at the time of the filing of the bill.

[2] Rees vs. Fernie, 13 W. R. 6.

[3] Petillon vs. Hipple, 90 Ill. 420. As to when a suit in equity is the proper remedy to recover funds deposited with the governing committee of the Stock Exchange in trust, see Clews vs. Jamieson, 182 U. S. 461.

[4] Park vs. Musgrave, 2 T. & C. (N. Y.) 571.

When a Broker bought shares for a Client and then sold them at a profit, the Client was held not entitled to prove against the Broker's estate, on the latter's insolvency, for the profit made on the transaction. Norton, Ex parte, 11 Jur. 699.

In a creditor's suit against the estate of a deceased defaulting Broker, it was held that the corporation of London held the amount of a bond for the due performance of the Broker's duties, in trust for all the creditors, and not exclusively for the defrauded creditors. Nash vs. Bryant, 25 Beav. 533.

against the Broker, we have seen, in the third chapter,[1] that for all illegal acts of omission or commission on the part of the Broker by which the Client is damaged, the latter has a remedy for damages against the former, either *ex delicto* by the common-law action on the case for violation of his duty, or by action of assumpsit for breach of the Broker's implied or express contract properly to transact his Client's business.[2] The general rule is that the action of assumpsit will lie for the breach of all parol or simple contracts, whether verbal or written, or express or implied,

[1] P. 218 et seq.

[2] For forms and general principles relating to actions in assumpsit by principals against agents or Brokers, see 2 Chit. Pl.; and see also Ch. III. p. 218 et seq., where decisions are collected in actions against Stock-brokers. A Stock-broker selling stock on credit, that act being contrary to the usual course of business, is liable in assumpsit to his principal (Wiltshire vs. Sims, 1 Campb. 258).

And when a Broker sells stock without giving the name of the purchaser as required by Lehman's Act, an action against him for damages for breach of duty was sustained. Neilson vs. James, 9 Q. B. D. 546.

In an action by a Client against the trustee in bankruptcy of his Broker and others, another customer may take out a summons to have a fund to the credit of the Broker's current account in his bank applied in payment of moneys due to him by the Broker. Mutton vs. Peat (1899), 2 Ch. 556.

If damages are sought for failure of the Stock-broker to execute the customer's orders, the complaint should allege either (1) that the Broker agreed to advance the purchase money for stocks purchased, or that he agreed to sell stocks which the plaintiff did not possess, or furnish for delivery, or (2) that the plaintiff furnished the Broker with the purchase money of stocks bought, or delivered to him stocks directed to be sold. Ryder vs. Sistare, 15 Daly (N. Y.), 90. As to insufficiency of the allegations in an answer as to a pool transaction, in an action brought by a Stock-broker, see Myers vs. Paine, 13 A. D. (N. Y.) 332. Before a Client can counterclaim for a deposit left with a Broker he must make a demand therefor. Ennis vs. Ross, 37 Misc. (N. Y.) 160. See also Johnson vs. Trask, 116 N. Y. 136; Isham vs. Post, 141 N. Y. 100; Wolff vs. Lockwood, 75 N. Y. Supp. 605; Burhorn vs. Lockwood, 75 N. Y. Supp. 828.

or for the performance or omission of any other act arising out of the relation of principal and agent.[1]

It is well established that the action *ex delicto* on the case lies against all species of agents or bailees for breach of duty or misfeasance in the conduct or transaction of business committed to them.[2] It lies concurrently with assumpsit, although there be an express contract, if a common-law *duty* results from the facts; and the party may be sued in tort for any neglect or misfeasance in the execution of the contract.[3] For money held by the Broker and belonging to

[1] 1 Chit. Pl. title "Assumpsit."

Where a party making purchases of grain disobeys instructions, he loses all lien upon margins, which may be recovered by the customer under the common counts in assumpsit, and it is not necessary to declare on the special contract which was violated by the Broker. Jones vs. Marks, 40 Ill. 313; Larminie vs. Carley, 114 Ill. 205.

If a Broker wrongfully invests the customer's money, the latter has his election to sue either ex contractu, or ex delicto. Spreeve vs. Adams, 6 Phila. (Pa.) 260.

[2] 2 Chit. Pl. title "Case." For declaration against Share-broker for not purchasing shares for the plaintiff at the market price according to order, see Williams vs. The London Com. Exch. Co., 10 Ex. 569. Also against a Broker for not giving his principal a true account of the purchases which he has effected for him. Thom vs. Bigland, 8 Ex. 725.

A Client may counterclaim for damages occasioned by his Broker only partially closing his account, in an action by the Broker to recover differences. Samuel vs. Rowe, 8 T. L. R. 488. See also Murray vs. Hewitt, 2 T. L. R. 872 (action for damages for unauthorized sale of securities by Broker); See also the following cases: Erskine vs. Sachs, 70 L. J. K. B. 978; Michael vs. Hart, 71 L. J. K. B. 265; Ellis vs. Pond, 67 L. J. Q. B. 345; Scott vs. Godfrey, 70 L. J. K. B. 954. See also Speyer vs. Colgate, 4 Hun (N. Y.), 622.

[3] Id. For forms and general principles relating to this species of action against a Broker, see 2 Chit. Pl. title "Case."

When a complaint alleged two causes of action, one based upon a rescission of a contract by which defendant as plaintiff's agent agreed to purchase certain mining stock, by reason of the fraudulent performance thereof, and the other was based upon an affirmance of the contract, and demanded damages by reason of fraudulent representations, it was held that the two claims were inconsistent, and the plaintiff could not recover upon both, but he had the right to elect

the Client, the ordinary action for money had and received would lie.[1] But where a Broker is sued for profits, a recovery cannot be had for damages for violating orders.[2] And payments made by the principal to the Broker, under false representations of the latter as to his having purchased the stock he was employed to purchase, may be recovered back.[3]

under which he should proceed, and the court could not elect for him. Mayo vs. Knowlton, 134 N. Y. 250.

[1] Fletcher vs. Marshall,15 Mee. & W. 763; Ch. III. p. 218, et seq.

Where the principal dealt with a Broker through an agent, and the Broker had notice that the agent was only to sell securities and receive the price; an action by the principal to recover from the Broker, a balance of the purchase price, as not having been paid to the agent in the mode he was authorized to receive it, will lie. Pierson vs. Scott, 47 L. J. Ch. 705.

When an answer admits the allegations of the complaint that the defendant Stock-brokers had received money and securities from plaintiff to secure purchases and sales of stock to be made by defendants for plaintiff, which purchases and sales the complaint alleged were not made, the complaint presents a sufficient cause of action for money had and received, and the mere fact that the complaint also contains allegations of fraud by defendant is immaterial, as such allegations will not disable the pleadings as a complaint on contract. Prout vs. Chisholm, 89 Hun, 108. Under the New York Code it is the better practise to pray for the precise relief to which the allegations entitle the plaintiff, but the form of the prayer for relief is immaterial when the defendant has answered, as the court will give the relief required by the allegations and proof. Id. See s. c. 21 A. D. 56.

See also Mellott vs. Downing, 64 Pac. Rep. (Ore.) 393, and cases cited, in which it was held that when a Broker lost his lien on money deposited to secure margins, by his failure to obey instructions, the Client was entitled to recover it as for money had and received. See also Bate vs. McDowell, 49 St. Rep. 106.

[2] Delevan vs. Simonson, 3 J. & S. (N. Y.) 243.

[3] Voris vs. McCredy, 16 How. (N. Y.) Pr. 87.

And a discovery may be granted. Talbot vs. Doran & Wright Co. 9 N. Y. Supp. 478; Allen vs. Stead, 11 N. Y. Supp. 536; Hardy vs. Peters, 30 Hun, 79; Dyett vs. Seymour, 2 N. Y. Supp. 841; s. c. id. 842; Buttlar vs. McLean, N. Y. L. J. June 8, 1904.

As to when examination of defendant Stock-brokers will not be allowed in order to enable customer

Where the defendant Stock-brokers are sued for the recovery from them of certain stock alleged to have been placed with them as margin to secure a stock speculation of plaintiff, the latter cannot recover as for a conversion of the stocks so bought for him. This would constitute a material variance even under the New York Code of Procedure.[1] In an action against Brokers for selling without authority stock which they had purchased for the plaintiff, if the complaint shows that they purchased the stock for the plaintiff, to be delivered to him at his option within a specified time, but sold it meanwhile against his express instructions, it need not allege a demand and tender on the part of the plaintiff. An allegation that defendants sold it may be deemed, on demurrer, to imply that they had perfected the sale by delivery.[2]

In the State of New York, in actions by Clients against Stock-brokers, the form of remedy which has been more frequently used is that of trover for the conversion of the securities of the Clients by the Brokers. It is now settled that an action of trover will lie to recover damages for the conversion of certificates of stock.[3] And, as we have

to frame her complaint, see Clarke vs. Ennis, 72 N. Y. Supp. 581; Leach vs. Haight, 4 A. D. 613; Lathrop vs. Brown, 5 Civ. Pr. R. 479; Kaufman vs. Herzfeld, 1 How. Pr. (N. S.) 444. As to when such examination will be permitted, see Judah vs. Marsh, 14 Daly (N. Y.) 308; Haynes vs. Hatch, 15 N. Y. Supp. 615.

A receiver may be appointed in such an action. Mark vs. Stanley, N. Y. *Law Jour.*, Nov. 6, 1902.

[1] Saltus vs. Genin, 3 Bosw. (N. Y.) 250.

[2] Clark vs. Meigs, 13 Ab. (N. Y.) Pr. 467; s. c. 22 How. 340, rev'g s. c. 12 Ab. Pr. 207, and 21 How. Pr. 187; Read vs. Lambert, 10 Ab. Pr. (n. s.) 428.

See also Cunningham vs. Stevenson, 20 N. Y. *Week. Dig.* 82.

[3] Payne vs. Elliott, 54 Cal. 339; McAllister vs. Kuhn, 96 U. S. 87; Narbring vs. Bank of Mobile, 58 Ala. 203; Anderson vs. Nicholas, 28 N. Y. 600; Boylan vs. Huguet, 8 Nev. 345; Aull vs. Colket, 2 Week. Notes Cas. 322; 33 Leg. Int. 44; Ayres vs. French, 41 Conn. 151;

shown,[1] it is well established that, upon the purchase of securities by the Broker on margin, the latter is entitled to hold the same as collateral security for the amount which he advances in their purchase, the relation of pledgor and pledgee being created between the parties. The question as to what acts of a Stock-broker may constitute a conversion will generally depend upon the circumstances of each case, and it has been, and will always be, one of great delicacy. The general result of the authorities seems to be that if the agent parts with the property in a way, or for a purpose not authorized, he is liable for a conversion; but if he parts with it in accordance with his authority, although at a less price, or if he misapplies the avails, or takes inadequate or insufficient security, he is not liable for a conversion of the property, but only in an action on the case for misconduct.[2] We have already in the third chapter referred to the different acts of Stock-brokers which constitute a conversion[3] of securities

Cousland vs. Davis, 4 Bosw. (N. Y.) 619; Monk vs. Graham, 8 Mod. 9; Tisdale vs. Harris, 37 Mass. 9; Maryland Fire Ins. Co. vs. Dalrymple, 25 Md. 242; Freeman vs. Harwood, 49 Me. 195; Fisher vs. Brown, 104 Mass. 259. But see Neiler vs. Kelly, 69 Pa. St. 403; Sewall vs. Lancaster Bank, 17 Serg. & R. 285; Biddle vs. Bayard, 13 Pa. St. 150; Acraman vs. Cooper, 10 Mee. & W. 585; Gorgier vs. Mieville, 4 D. & Ry. 641; Broadbent vs. Yarley, 12 C. B. (n. s.) 214.

The Client has the remedy of conversion if the Broker does not prove he kept sufficient stock on hand. Caswell vs. Putnam, 120 N. Y. 153. It is immaterial whether the action is in assumpsit, or for conversion, so far as regards the measure of damages. Brewster vs. Van Liew, 119 Ill. 554.

When Brokers pledge stocks purchased for a Client, in breach of their express contract not to alienate them, the action of trover and conversion may be maintained. Chew vs. Loucheim, 80 Fed. Rep. 500, and cases cited.

[1] Ch. III. p. 179 et seq.

[2] N. Y. Ct. App., Laverty vs. Snethan, 53 How. Pr. 152. See also Hayward vs. Nat. Bank, 96 U. S. 611.

[3] Pp. 218, 334 et seq. As to lia-

held by them on margin for their Clients, and we need not repeat them in this connection. But in Massachusetts, if a certificate of stock in a corporation, pledged as collateral security, is transferred by the pledgee to a creditor of his own, the pledgor may treat this as a conversion, and the fact that the pledgee had a greater number of shares standing to his credit on the books of the corporation is immaterial.[1]

In Read vs. Lambert[2] this principle was applied to United States government bonds; and it was held that, where such bonds were carried for a Client on margin, the relation of pledgor and pledgee arose, and a sale without authority and without notice was a conversion; and that in such case it was not necessary for the Client to tender the amount due before bringing suit, as it would be nugatory, though it would be otherwise if the Broker had only pledged the securities in good faith for the amount due him.[3]

A Client's right of action for conversion is not extinguished by his silence upon being informed of the unauthorized sale of his stock, nor by the receipt of a dividend under an assignment made by bankrupt Brokers, unless such dividend was received with the intent to extinguish the claim.[4] In

bility of Broker assisting in conversion of stock by Broker, Gulick vs. Markham, 6 Daly, 129.

Although customers obtain part payment of their claims out of the proceeds of specific stock, they may present claims against the estate of a deceased partner of the Stockbroking firm arising out of a wrongful pledge of stock by him. Matter of Pierson, 19 A. D. (N. Y.) 478.

[1] Fay vs. Gray, 124 Mass. 500. See also Hayward vs. Nat. Bank, 96 U. S. 611.

[2] 10 Ab. Pr. (n. s.) 428.

[3] See also, upon question of demand, cases cited p. 776, note 2.

[4] Minshall vs. Arthur, 2 Hun (N. Y.), 662. But one who has sued for the conversion of stock cannot afterwards sue for dividends subsequently declared thereon (Hughes vs. Vermont Copper Co., 7 Hun, 677). See Hansen vs. Boyd, 161 U. S. 397.

Massachusetts it has been held that a Broker to whom a certificate of shares has been intrusted with special instructions can make no disposition of them which these instructions do not permit; nor can evidence of a contrary usage be received.[1] But the transfer of stock held as collateral security to avoid liability as a stockholder does not constitute a conversion.[2]

An allegation of value in an action of trover to recover for the conversion of stocks by Stock-brokers is a material allegation, and if not denied need not be proven; and this value, if alleged in the complaint and not denied in the answer, is admitted.[3]

The question as to whether a particular use or disposition of securities by a Stock-broker is a conversion or a mere breach of contract is important in the consequences which flow from the result. For in the State of New York a defendant may be arrested in an action to recover damages for an injury to property, including "the wrongful taking, detention, or conversion of *personal* property;" or in an action to recover "damages for the conversion or misapplication of property, . . ." where such property is fraudulently misapplied by an "agent, Broker, or other person in a fiduciary capacity."[4]

[1] Parsons vs. Martin, 77 Mass. 111; Wood vs. Hayes, 81 id. 375.

[2] Heath vs. Griswold, 5 Fed. Rep. 573; Day vs. Holmes, 103 Mass. 306.

[3] Hixon vs. Pixley, 15 Nev. 475, 483.

[4] § 549, subd. 2, N. Y. Code of Civil Procedure. For cases construing a similar provision of the old Code, see Dubois vs. Thompson, 1 Daly (N. Y.), 309; s. c. 25 How. Pr. 417; Palmer vs. Hussey, 8 Alb. L. J. 206; Clark vs. Pinckney, 50 Barb. 226. But see McBurney vs. Martin, 6 Robt. 502, which is probably overruled by Markham vs. Jaudon, 41 N. Y. 235; Lambertson vs. Van Boskerk, 49 How. (N. Y.) Pr. 266; s. c. 4 Hun, 628. In Eckert vs. Belden (N. Y. Common Pleas, June, 1878, 1 N. Y. *Monthly Law Bulletin*, No. 8, p. 66) it ap-

So the question has arisen as to whether a Broker will be discharged in bankruptcy from such liabilities, and it has been held that a cause of action arising out of the conver-

peared that a check drawn by the Western Union Telegraph Co. upon the Bank of Commerce for the sum of $30,000, which was the property of the plaintiff, was deposited in his behalf with the defendants for the purpose of collection only. The plaintiff's affidavits declared that the defendants were to hold the proceeds as the property of the plaintiff; that they received the amount of the check in money from the bank, and, instead of paying it to the plaintiff, converted it to their own use.

Mr. Justice Daly denied the motion to vacate the order of arrest. He says that the proceeds of the check were to be held by the defendants as a special deposit, but that they did not so hold them, but converted them to their own use, giving the plaintiff credit for the amount with interest. "Money," says the court, "may be the subject of a special deposit, as much as a certificate of stock. . . . The custom among Brokers in this city could in no way affect the contract which the parties entered into for a special deposit. It cannot make a contract different from that which the parties entered into, or which the law would imply from the facts, especially where the plaintiff, as in this case, swears that he had no knowledge of such a custom; that he is not, and never has been, a Stock-broker, and does not know the custom of Stock-brokers in respect to money or securities deposited with them."

In Meyer vs. Belden (8 N. Y. Week. Dig. 344) it appeared that the defendant, in October, 1878, directed one of the members of the firm of H. & Co., Stock-brokers, to purchase on the following day all the gold he could obtain at or below 101⅝ and a large number of shares of stock; that the defendant was at the time a member of the firm of B. & Co., Stock-brokers, and stated to H. & Co. that he directed the purchase for the firm of B. & Co. H. & Co. followed the directions of defendant, and purchased a large amount of gold and stock. The price of the gold and stock did not rise, as was contemplated, but declined. The defendant afterwards claimed he did not order the purchase of the stock, refused to take same, and H. & Co. were obliged to fail, and made a general assignment to the plaintiff.

The affidavits of C. & G., at the time of said alleged order by Belden members of the firm of B. & Co., further showed that defendant stated to them, shortly after the purchase by H. & Co., that he directed H. to make the purchases, but did so on his individual account and not for the firm.

The court below denied the motion to vacate the order of arrest, upon the ground that the order by defendant to H. & Co. was outside the business of the firm and did not

sion of securities pledged as collateral security is barred by the defendant's discharge in bankruptcy. Such a cause of action is not a debt created by the "fraud . . . of the bankrupt, . . . or while acting in any fiduciary capacity" within the meaning of the provision of the Bankrupt Act, declaring that such debts shall not be discharged by proceedings in bankruptcy.[1]

Where the bankrupt was a stock and gold Broker, but not a member of the Stock Exchange, and took orders for the purchase and sale of stocks and gold, but conducted the business exclusively through the agency of other Brokers, who were members of the Exchange and divided the commissions with them, held that he was not a merchant or tradesman within the meaning of the Bankrupt Act, and as such disentitled to a discharge for failure to keep books of account.[2]

therefore bind the firm of B. & Co.; and the statement by the defendant that he was acting for his firm, when in fact he had no such authority, was a fraud upon the plaintiff's assignor, and sufficient facts appeared to uphold the order of arrest. Consult also in this connection the case of Carr vs. Thompson, N. Y. Ct. App. 25 Alb. L. J. 92, as to when an action against an agent is for fraud or on contract.

A deposit of margins does not constitute the fiduciary relation justifying an arrest. Mann vs. Sands, 2 City C. R. (N. Y.) 25. See also Decatur vs. Goodrich, 44 How. 3; Martin vs. Gross, 4 N. Y. Supp. 337.

[1] U. S. Rev. Stat. § 5117, now reenacted in amended form in the Bankruptcy Act, 1898, sec. 17; Hennequin vs. Clews, 111 U. S. 676, aff'g 77 N. Y. 427; s. c. 84 N. Y. 676; Rowe vs. Guillaume, 8 N. Y. Week. Dig. 502; Palmer vs. Hussey, 87 N. Y. 303; Stratford vs. Jones, 97 N. Y. 586. See Collier on Bankruptcy, p. 178, and cases cited; Brandenburg on Bankruptcy, p. 270, and cases cited. See also article on Fiduciary Capacity, 24 Alb. L. J. 424, where a number of cases are collected and reviewed. But bankruptcy and certificate are no bar to an action in tort against a Broker for selling out stock contrary to orders (Parker vs. Gale, 5 Bing. 63). See also Godefroi & Shortt on Railways, 10. When notice must be given to an assignee in bankruptcy before suing him for conversion of stock by the bankrupt, see Esmond vs. Apgar, 76 N. Y. 359.

[2] In re Moss, 19 Nat. Bank. Reg. 132. In England a Broker is not a

In respect to a discharge of a cause for conversion, it has been held, however, in an action by a Client against her Stock-brokers, that where the cause of action had once vested by the commission of an act of conversion by illegally selling her stocks without a previous demand of margin, such cause of action would not be discharged except by release under seal, or by payment of something in satisfaction; and that the subsequent acceptance by her of an account with the knowledge of the illegal act, and the payment of the balance apparently due thereon by her to the Brokers, for the purpose of obtaining her bonds which the Brokers held as security, was not a bar to an action to recover damages for such illegal conversion.[1] But the ordinary relation between a Stock-broker and his Client may, as we have seen,[2] be varied by special contract, and instead of pledgor and pledgee they may assume some other position towards each other, in which case the parties might

trader. In re Cleland, 2 Ch. App. 466; Colt vs. Netterville. 2 P. Wms. 308. See Br. Bkcy. 242.

When differences are due to a customer by a defaulting Broker the latter is simply a debtor, and not a trustee, and the Client cannot maintain action against the Stock Exchange assignee to recover the amount out of a surplus in the latter's hands. He must prove in bankruptcy against the estate of the Broker who had been adjudicated a bankrupt. King vs. Hutton, 69 L. J. Q. B. 86.

[1] Stenton vs. Jerome, 54 N. Y. 480. As to right of Broker to set off counter-claim or recoup in actions brought against him, see Ch. III. p. 351; also Work vs. Bennett, 70 Pa. St. 484. Compare White vs. Jaudon, 9 Bosw. 415, as to the right of third party to set off debt due from Stock-broker in action brought by principal.

When the Client chooses to sue in conversion rather than for an accounting, she will be confined to the practice incidental to the former remedy, and, when not necessary for the presentation of her case, she will be denied a discovery as to particulars of sales. Lyon vs. Bache, N. Y. L. J. Nov. 12, 1902; Adams vs. Clews, id., October 30, 1902.

[2] P. 306 et seq.

be compelled to bring the action for breach of such special contract.

The case of Commonwealth vs. Cooper[1] is one in which a criminal remedy was invoked against a Stock-broker, and it was there held that where a Client intrusts money to a Broker as a margin on the purchase of shares, and the Broker, instead of making the purchase, converts and applies the same to his own use, he is guilty of embezzlement, and it is no defence to the indictment that the money was to be used in gambling stock transactions.[2]

[1] 15 Am. Law Rev. 360; s. c. 130 Mass. 285.

[2] In this case the prosecutor intrusted a sum of money to the defendant, a Stock-broker in Boston, as a margin on the purchase of certain railway stock, and the Broker wrote that he had purchased it of a third party who was carrying the same, that the stock was going up, and advised the prosecutor not to sell; that the latter offered to take the stock and pay the balance of the purchase-money in excess of the margins; but that the defendant confessed that there was no such party; that he had not made any purchase of stock, and that when he received the margins from the prosecutor he was short and put the money with his own funds.

The defendant offered to prove that "upon receipt of an order by the buyer it is the custom for the Broker to assume it himself instead of making it with third parties." But the court refused to admit evidence of this description.

The defendant contended that the contract was a gambling contract, and was illegal under the statute; and that even if he had appropriated the margin he could not be convicted of embezzlement. The judge instructed the jury that if the money was sent to the defendant to be applied to a particular purpose, and the defendant fraudulently and deceitfully applied it to his own use, it would be embezzlement.

The defendant was found guilty. Upon appeal the verdict was sustained and the rulings of the trial court fully upheld. The court held that, even if there had been an order by the prosecutor to buy stocks on a margin, evidence of the custom contained in the second offer of defendant was inadmissible, and that it was no defence to an indictment for embezzlement to show that the property was intrusted in his hands for an illegal purpose. The court upon this last proposition cited Commonw. vs. Smith, 129 Mass. 104.

By Rev. Stat. Ill. 444 (1881), L. 1879, 113; Starr & Curtis's Ann. Ill. Stat. vol. 1, p. 1271; vol. 4, p. 600, it is provided that Bankers and

(*f.*) *Liability of Clients to their Own Brokers.*

1. *General Indemnity.*

We have also seen, in the third chapter,[1] that where a Stock-broker acts in pursuance or under the directions of his Client he is entitled to an indemnification from his principal the same as any other agent; and the different cases which illustrate this rule have been particularly noticed.[2] It is only necessary, in this connection, to consider the form of the remedy by which this liability of the Client to the Broker may be established and enforced.

As there is an implied contract that the principal will indemnify his agent for all losses sustained while acting for or in his behalf, it follows that the action of assumpsit furnishes a most appropriate remedy for the recovery from the Client of all losses which the Broker has paid out, suffered, or incurred in his Client's behalf. And this recovery may be had either in an action brought for violation of this implied agreement, in which case the loss suffered or the amount paid would furnish the measure of damages to be awarded,[3] or it may be had in the more popular form of money paid by the Broker at the request of the Client.[4]

Brokers receiving deposits of stocks, bonds, etc., when insolvent, shall be guilty of embezzlement.

[1] P. 218 et seq.

[2] Id. See also Stocking vs. Sage, 1 Conn. 522; Powell vs. Newburg, 19 Johns. 284; Adamson vs. Jarvis, 4 Bing. 66.

[3] Ante, p. 218 et seq.; Lacey vs. Hill (Crowley's Claim), 43 L. J. Ch. 551; 22 W. R. 586; L. R. 18 Eq. 182; Biederman vs. Stone, 36 L. J. C. P. 198; s. c. L. R. 2 C. P. 504. See also Hartas vs. Ribbons, 22 Q. B. D. 255; Harker vs. Edwards, 57 L. J. Q. B. 147; Macoun vs. Erskine, 70 L. J. K. B. 973; Ellis vs. Pond, L. R. Q. B. D. (1898) 426.

[4] Mortimer vs. M'Callan, 6 Mee. & W. 58; Hearne vs. Keene, 5 Bosw. 584; Whitehouse vs. Moore, 13 Ab. Pr. 142; Merwin vs. Hamilton, 6 Duer, 244.

Money advanced by Brokers is

To recover his commissions, the Broker may declare in assumpsit, on the indebitatus count, for work, labor, and services.[1]

2. *Banker's Lien.*

Stock-brokers frequently act as bankers, in which case they have an additional remedy through the instrumentality of what is known as a "banker's lien;" and, as will be seen

recoverable under the common money counts for money advanced at the principal's request. Perin vs. Parker, 18 N. E. Rep. (Ill.) 747. As to when a Broker may recover upon an account stated, see Knickerbocker vs. Gould, 115 N. Y. 533. See also Ellis vs. Pond, 67 L. J. Q. B. 345; Seymour vs. Bridge, 54 L. J. Q. B. 347; Skelton vs. Wood, 71 L. T. 616; Perry vs. Barnett, 54 L. J. Q. B. 466; Jones vs. Gallagher, 3 Utah, 54.

[1] Merwin vs. Hamilton, 6 Duer, 244; Knight vs. Chambers, 15 C. B. 562; Same vs. Fitch, id. 566; Gibson vs. Crick, 1 Hurl. & C. 142; Allan vs. Sundius, id. 123. Requisites of complaint in action by Gold-broker for money laid out, etc., in transactions in gold for account of Client, Schepeler vs. Eisner, 3 Daly (N. Y.), 11.

It was held in Barton, Ex parte, 10 Jur. 442, that a Broker might prove in bankruptcy against his insolvent Client's estate for a loss on the sale of shares sold on the Client's instructions.

If the Client dies, and the Broker commences an action on behalf of himself and other creditors against the administrator, he may apply, by summons in the action, to have his own claim allowed and paid. Haas vs. Durant, (1900) 1 Ch. Div. 209.

In Michigan a defendant may, in an action by a Broker on the common counts in assumpsit, plead the general issue, and give notice of set-off thereunder. Leahy vs. Lobdell, 80 Fed. Rep. 665.

When the Broker sues in assumpsit for loss on a re-sale and for commissions, the Client is entitled, on cross-examination, to inquire into the particulars of the transaction. Oldershaw vs. Knowles, 101 Ill. 117. When the complaint shows a substantial cause of action for services rendered and moneys paid as cotton Brokers, a misjoinder of causes of action is not available on error. Bibb vs. Allen, 149 U. S. 481. A Broker is not obliged to sell stock held as security for a debt before counter-claiming for the amount of the debt. Mattern vs. Sage, 16 Daly (N. Y.), 142.

As to a claim against the estate of a deceased client, see Horner's Est., 10 Pa. Dist. Rep. 729. Before a Broker can recover margins advanced by him he must call on his Client to take the stock purchased. Muller vs. Legendre, 47 La. Ann. 1017.

hereafter,[1] it appears by analogy that the Stock-broker, when he acts in that capacity singly, has also the right to invoke this lien for his protection.

We shall first examine the nature of a banker's lien, and then consider how far the principles upon which it rests apply to the relation of a Stock-broker.

The established rule is that bankers have a general lien upon all notes, bills, and other securities deposited with them by their depositors for the balance due to them on general account.[2] The true principle upon which all banker's liens

[1] P. 804.

[2] Story on Agency, § 380; Wharton on Agency, § 688; Morse on Banking, 42; id. ed. of 1888; Davis vs. Bowsher, 5 T. R. 488; Bolton vs. Puller, 1 Bos. & P. 539; Bolland vs. Bygrave, 1 Ry. & M. 271; Jourdaine vs. Lefevre, 1 Esp. 66; Scott vs. Franklin, 15 East, 428; Brandao vs. Barnett, 12 Cl. & F. 787. And the lien has been held to extend to moneys on deposit (Ford vs. Thornton, 3 Leigh, 695; State Bank vs. Armstrong, 4 Dev. (N. C.) 519). But the deposit of money with a bank creates the relation of debtor and creditor; the money is the money of the bank, and there would seem to be no place for the doctrine of lien (Dawson vs. Real Estate Bank, 5 Pike (Ark.), 283; Marsh vs. Oneida Bank, 34 Barb. 298; Fourth Nat. Bank of Chicago vs. City Nat. Bank of Grand Rapids, 68 Ill. 398). Pledged property cannot be held for general lien (Duncan vs. Brennan, 83 N. Y. 487).

See also the following cases upholding the general rule stated in the text. In re General Provident Assurance Company, L. R. 14 Eq. 507; Giles vs. Perkins, 9 East, 12; In re Williams, 3 Ir. Eq. R. 346; Re Bowes, 53 Ch. Div. 586; Jones vs. Montreal Bank, 29 U. C. Q. B. 448; London Bank vs. White, 4 App. Cas. 413; Alsager vs. Currie, 12 M. & W. 751; Schuler vs. Laclede Bank, 27 Fed. Rep. 424; Ex parte Howard Bank, 12 Fed. Cas. No. 6764; National Bank vs. Connecticut Mut. L. Ins. Co., 104 U. S. 54; Reynes vs. Dumont, 130 U. S. 354; In re Farnsworth, 5 Biss. 223; Falkland vs. St. Nicholas Nat. Bank, 84 N. Y. 145; Straus vs. Tradesman's Nat. Bank, 122 N. Y. 379; United States Bank vs. Macalester, 9 Pa. St. 475; Wood vs. Roylston Nat. Bank, 129 Mass. 358; Clark vs. Northampton Bank, 160 Mass. 26; Marysville Bank vs. Brewing Co., 50 Ohio, 251; Miller vs. Farmers' Bank, 30 Md. 392; Lehman vs. Mfg. Co., 64 Ala. 567; Union Bank vs. Tutt, 5 Mo. App. 342; Muench vs. Bank, 11 Mo. App. 144; Ehlermann vs. Bank, 14 Mo. App. 591; Cockrill vs. Joyce, 62 Ark. 216; Lafayette Bank vs. Hill,

must be sustained is that there must be credit given upon the credit of the securities, either in possession or in expectancy.[1] The term "securities," as used in respect to a banker's lien, is limited to promissory notes, bills of exchange, exchequer bills, coupons, bonds of foreign governments, etc.; and does not, in the absence of special agreement, apply to a deed of lands in the Banker's hands.[2] The general lien

76 Ind. 223; Buffalo County Nat. Bank vs. Hanson, 34 Neb. 455; Gibbons vs. Hecox, 105 Mich. 509; McEwen vs. Davis, 39 Ind. 109; Fort Dearborn National Bank vs. Blumenthal, 46 Ill. App. 297; Bank vs. Shreiner, 110 Pa. St. 188; Commercial Bank vs. Henninger, 105 Pa. St. 496; German Bank vs. Foreman, 138 Pa. St. 474; Mechanics' Bank vs. Seitz, 150 Pa. St. 632; First Nat. Bank vs. Peltz, 176 Pa. St. 513; Merchants' Bank vs. Meyer, 56 Ark. 499; Fourth Nat. Bank vs. Grand Rapids Bank, 68 Ill. 398; Home Bank vs. Newton, 8 Ill. App. 563; Hayden vs. Bank, 29 Ill. App. 458; Lamb vs. Morris, 118 Ind. 179; Citizens' Bank vs. Bowen, 21 Kansas, 354; Baltimore Ry. Co. vs. Wheeler, 18 Md. 372; National Bank vs. Peck, 127 Mass. 298; Mount Sterling Bank vs. Green, 99 Ky. 262; Lawrence vs. Bank, 3 Rob. (N. Y.) 142; Hakman vs. Schaaf, 8 Ohio Dec. Rep. 127; Slack vs. Bank, 103 Wis. 57; Johnson vs. Humphrey, 91 Wis. 76; Re Meyer, 107 Fed. Rep. 86.

Contra, Bloodworth vs. Jacobs, 2 La. Ann. 24; Breed vs. Purvis, 7 id. 53; Bogert vs. Egerton, 11 id. 73; Morgan vs. Lathrop, 12 id. 257; Murdock vs. Bank, 23 id. 113; Hancock vs. Bank, 32 id. 590; Gordon vs. Müchler, 34 La. Ann. 604.

As to when the lien will not attach, see Farmers' Bank vs. Farwell, 58 Fed. Rep. 633; Tobey vs. Bank, 9 R. I. 236; Brown vs. Leckie, 43 Ill. 497.

[1] Russell vs. Hadduck, 3 Gilm. 233.

For the rights of a bank when it claims a lien on its shares under its articles of association, see Ex parte Manchester Bank, 45 L. J. K. B. 149; Horsfall vs. Halifax Bank, 52 L. J. Ch. 599.

As to a bank's rights with reference to stolen bonds, see Symons vs. Mulkern, 46 L. T. 763.

[2] Hylde vs. Radford, 33 L. J. Ch. 51.

To same effect is In re Williams, 3 Ir. R. Eq. 346, where, however, it was held that an endorsement on a deed "Lodged to cover overdrafts" included as well bills indorsed by the customer not then due, as moneys drawn by check.

As to a warehouse receipt for cotton, see Ala. Bk. vs. Barnes, 82 Ala. 607. See also In re Non-magnetic Watch Co. of America, 34 N. Y. Supp. 1014; Neill vs. Rogers, 23 S. E. Rep. (W. Va.) 702.

of bankers is part of the law-merchant, and will be judicially noticed by the courts without proof of the usage upon which the same is founded.[1]

The general rule is that the lien extends to all the securities deposited with the banker where they are not so deposited for some specific purpose. But this rule is subject to modification by certain circumstances, and the cases cited in the notes fully illustrate this proposition.[2]

[1] Brandao vs. Barnett, 12 Cl. & F. 787; Story on Agency, § 375; Jones vs. Peppercorne, 5 Jur. (n. s.) 140.

If there are circumstances existing inconsistent with an alleged right of lien, there is no lien. Grant vs. Taylor, 35 N. Y. Supr. Ct. 338.

[2] Where the course of dealing between bankers and their depositor was that the customer lodged bills payable at a future day with the bankers from time to time, and drew upon them for any money he wanted in advance, and the bankers used to select out of the bills in their hands such as they pleased and were nearest to the sum advanced, and discounted these bills, debiting the depositor with the amount of such discount in his account, it was held that the bankers had a lien on all the bills so deposited with them, and that they might hold the bills that were not discounted until the general balance was paid (Davis vs. Bowsher, 5 T. R. 488). And the bills and notes so deposited may be held until other bills not yet due, and upon which the banker is liable, are paid (id.; Bolland vs. Bygrave, 1 Ry. & M. 271; Jourdaine vs. Lefevre, 1 Esp. 66). And even where the balance is in favor of the depositor, if that balance does not equal in amount any one of the bills or other securities held by the bank, the bank may retain all (Bolland vs. Bygrave, supra). And where the banker sues on any one of such securities, the customer cannot set off such balance, for the court cannot say that any one acceptance in particular shall have the benefit of this surplus (id.). It makes no difference that the banker keeps a cash and discount account; both are regarded as parts of the general account, for which the banker has his lien (Jourdaine vs. Lefevre, 1 Esp. 66).

When bankers do not, on appeal to the Supreme Court, object to a finding that securities left with them were in respect to specific sums, they cannot raise the question in the Privy Council, and, as against a mortgagee, they are only entitled to simple interest on such specific amount. London Bank vs. White, 4 App. Cas. 413.

When a security is deposited by a partner to cover a temporary advance to the firm, the bank cannot apply the surplus of the proceeds as against the firm's general account.

The rights of a banker in respect to securities in his hands have been held to go even beyond the mere right of lien ; for when his acceptances exceed the cash balance he is a holder of such securities for value,[1] and, as endorsee of the bill or other security, may bring an action on the same.[2]

So where a check payable to bearer is paid in by a depositor on his general account, although not credited to him as cash, the banker takes the legal as well as equitable title to the check, and may sue upon the same.[3] But where the party sued and sought to be made liable on the bill or other security defends the action on behalf of the depositor, then the banker can only recover on the instrument the amount of the balance in his favor on the account, and not the face of the bill or other security.[4] So where a banker, in the course of dealings with a depositor who has become bankrupt, makes advances to the latter, and accepts and discounts bills for him, and the depositor remits bills to the banker from time to time, any acceptances of the banker not due at the time of the bankruptcy are a good consideration, and give the banker a right to prove upon the bills deposited, but not due till after the bankruptcy. The proof must be upon the bills, and not as a cash balance.[5]

So where bankers allowed the firm of M. & W., their depositors, to overdraw their account, and M. gave the

Wolstenholm vs. The Sheffield Bank, 54 L. T. 746.

As to when a bank may claim a lien on securities deposited by an executor, notwithstanding objection of his co-executor, see Child vs. Thorley, 16 Ch. Div. 151. See also Armstrong vs. Chemical Nat. Bank, 41 Fed. Rep. 234; Duncan vs. Brennan, 83 N. Y. 487; Continental Bank vs. Weems, 69 Tex. 489.

[1] Bosanquet vs. Dudman, 1 Stark. 1.

[2] Id.

[3] Scott vs. Franklin, 15 East, 428.

[4] Id.

[5] Ex parte Bloxham, 8 Ves. 531.

bankers his individual note for £2,000 as collateral security, and W. gave his individual note for £1,000 to M., who transferred it to the bankers, it was held that the bankers might sue and recover on the note of W.[1]

A bank discounted a note for a depositor for his accommodation, who died before the note matured—held, that the bank might retain sufficient of his cash deposit to meet the maturing note. The bank is a debtor to the depositor's estate only to the extent of the balance of the deposit in excess of the note; and this is so although there are debts against the depositor's estate of superior dignity which are not paid.[2] And if the depositor in his lifetime sues the bank to recover his deposit, though he could not set off at law because his note was not due, yet, upon showing in a court of equity that the depositor and his endorsers were insolvent, there can be no question of the right of the bank to stop the amount in its own hands.[3]

Where, however, a bank retains a cash balance in its hands in respect to any claim which it has against its depositor, it is more properly an appropriation of payments than an exercise of a right of lien. If the claim against the depositor is so connected with the balance appearing due on open account that both are items in a continued dealing,

[1] Heywood vs. Watson, 4 Bing. 496. See also cases cited in Swift vs. Tyson, 16 Pet. 21, 22.

[2] Ford vs. Thornton, 3 Leigh, 695.

[3] Id. As to a bank's lien on collections, see Commercial Bank vs. Rowland, 31 Neb. 483; In re Armstrong, 41 Fed. Rep. 381; Greene vs. Jackson Bank, 18 R. I. 779; Vickry vs. State Sav. Assn., 21 Fed. Rep. 773; First Nat. Bank vs. Armstrong, 39 Fed. Rep. 231; Corn Exchange Bank vs. Farmers' Nat. Bank, 25 Weekly Digest (N. Y.), 593; Peck vs. Bank, 43 Fed. Rep. 377; Minier vs. Bank, 13 N. Y. St. Rep. 222; Hutchinson vs. Manhattan Co., 9 Misc. (N. Y.) 343; Hackett vs. Reynolds, 114 Pa. St. 328; Sherman vs. Weiss, 67 Tex. 371; Thuemmler vs. Barth, 89 Wis. 381; Stark vs. Bank, 41 Hun, 506; Carrall vs. Exchange Bank, 30 W. Va. 518; Bank vs. Wisconsin Co., 12 N. Y. Supp. 952.

then the retention of the cash balance is rightful, because in truth there is nothing due. If, however, the mutual claims of bank and depositor are unconnected, then the bank may refuse to pay over the cash balance, because it is a proper subject of set-off.[1]

The cash balance created is still the money of the bank, and it may apply it at its election to any claim against the depositor which it may have; and it is not the right of the depositor to make the appropriation.[2] But where the maker of a note has funds in the bank on general deposit after the note falls due, the bank is bound to apply them in payment of the note, or the endorser is discharged.[3] Where money paid into a bank is passed generally to the credit of the owner, the bank does not hold it as bailee, but as owner; and it may appropriate the deposit to any claim it may have against the depositor.[4] There would seem to be no lien in such cases. But if a bank receive a deposit of funds for the special purpose of paying certain coupons, it cannot apply such funds to the payment of another account which the depositor has overdrawn, and thus defeat the right of the holders of such coupons to receive payment of the same.[5] A bank cannot apply the balance of deposit to the payment of a note maturing in its hands, where it makes such appropriation of payment after the depositor has made an assignment for the benefit of creditors. Upon the execution

[1] State Bank vs. Armstrong, 4 Dev. (N. C.) 519. See also Citizens' Bank vs. Kendrick, 92 Tenn. 437.

[2] Id.

[3] McDowell vs. Bank of Wilmington, 1 Harr. 369.

[4] Commercial Bank vs. Hughes, 17 Wend. 94.

A bank may appropriate trust moneys deposited by a customer to a separate account, as against a balance due on his general account, when it has no notice of the trust Union Bank of Australia vs. Murray-Aynsley, 67 L. J. P. C. 123.

[5] Bank of U. S. vs. Macalester, 9 Pa. St. 475.

of the assignment the balance due the depositor becomes the money of the assignee, and it is then too late to apply it to the payment of the maturing bill.[1]

The rule as laid down by Morse on Banks, "that the bank has a general lien on all moneys and funds of a depositor in its possession for the balance of the general account," is too broadly stated, and needs the limitation that the balance of that account must be due and payable.[2] Thus a bank has no right to retain the balance of a deposit to apply the same to the payment of a note not yet matured.[3] But the bank need not apply the deposit to the payment of a note in its hands for which the depositor is liable immediately upon the maturity of the note, but may prosecute the note to judgment,

[1] Beckwith vs. Union Bank, 4 Sandf. 604, 9 N. Y. 211. See also as to equitable appropriation, Chase vs. Petroleum Bank, 66 Pa. St. 169; Lamb vs. Morris, 118 Ind. 179; Clarke vs. Northampton National Bank, 160 Mass. 26.

[2] Jordan vs. National Shoe and Leather Bank, 74 N. Y. 467.

[3] Id. To same effect are Giles vs. Perkins, 9 East, 12; Bank vs. Ritzinger, 20 Ill. App. 29; Bank vs. Proctor, 98 Ill. 558; Zelle vs. Institution, 4 Mo. App. 601; Fourth Nat. Bk. of Chicago vs. City Nat. Bank, 68 Ill. 398; Van Allen vs. Bank, 3 Lans. (N. Y.) 517; Bradley vs. Angel, 3 N. Y. 475; Beckwith vs. Bank, 4 Sand. 604; 9 N. Y. 211; Martin vs. Kuntzmuller, 37 N. Y. 396; Newcomb vs. Almy, 96 N. Y. 308; Jordan vs. Bank, 74 N. Y. 467; Richards vs. La Tourette, 119 N. Y. 54; Lockwood vs. Beckwith, 6 Mich. 168; State vs. Beach, 43 N. E. Rep. (Ind.) 949; Oatman vs. Bank, 77 Wis. 501; Fuller vs. Steiglitz, 27 Ohio, 355.

But it may, if so agreed. Heidelbach vs. National Bank, 87 Hun, 117. And if the depositor becomes insolvent, it may. Skunk vs. Merchant's Bank, 16 Wkly. L. Bul. (Ohio) 353; Greene vs. Security Bank, 13 Phila. 146; Chipman vs. Bank, 21 Wkly. Notes Cas. 184; Georgia Seed Co. vs. Talmadge, 96 Ga. 254. Contra, Kortjohn vs. Continental Bank, 1 Mo. App. 794; Manufacturers' Bank vs. Jones, 2 Penny. (Pa.) 371; Oatman vs. Batavian Bank, 77 Wis. 501. And see Beckwith vs. Union Bank, supra. As to the rights of a bank where an endorser is concerned, see Nat. Bank vs. Gormley, 2 Walk. (Pa.) 493. Where the bank is itself endorser, see Newbold vs. Patrick, 25 Pitts. L. J. (N. S.) 299.

See also to same effect, Birmingham Nat. Bank vs. Mayer, 104 Ala. 634.

and then make the application. And if the depositor sue for his deposit, the bank may then set off the judgment.[1]

Where a banker holds a note of a depositor who has on deposit with the latter sufficient funds to pay it, and the banker makes an assignment for the benefit of creditors before the note matures, the depositor, in an action brought on the note by the assignee, may set off the sum due him against such note.[2]

Where a bank holds a note of a depositor which has been protested for non-payment, and subsequently the depositor makes a general deposit of money sufficient to pay the note, such deposit, without regard to the note, does not operate as payment. It is optional with the bank whether it shall apply such deposit to the payment of the note or not; and its failure to do so does not discharge the endorser.[3]

In the case of Duncan vs. North and South Wales Bank[4] one of a firm deposited with the firm's bankers securities belonging to himself, to secure the general balance of the firm for the time being. The firm subsequently accepted certain bills in favor of the plaintiffs, who procured the bankers to discount them. Upon the insolvency of the firm the plaintiffs claimed that the securities held by the bankers must be applied in discharge of the sums due on the bills. The plaintiffs claimed that they were mere sureties (the firm being the principal debtors), and were entitled to contribution, and the vice-chancellor sustained this claim. The Court of Appeals reversed this decision, holding that it could not be tolerated that without the consent of the bankers, or their knowledge of the real position of the other parties, the plaintiffs should

[1] Marsh vs. Oneida Central Bank, 34 Barb. 298.

[2] McCagg vs. Woodman, 28 Ill. 84.

[3] National Bank vs. Smith, 66 N. Y. 271.

[4] 27 W. R. 521.

be treated as sureties, so as to prevent the bank from dealing in their own way with the securities they held. "No bank," said the Master of the Rolls, "which held a security, either by way of suretyship or by way of deposit from its customers, could venture to discount a bill with eight or ten names on it, without examining carefully to see if any one of the names was the name of a debtor to the bank who had given them security; and, if they did, they might be put in the position of being incapacitated from carrying on their dealings with their customers by varying the securities given by that customer to the bank. It shows at once that to extend the doctrine to such a case would paralyze the business of discounting bills of exchange, and that it would be unwise, as far as this court is concerned, to extend for the first time the doctrine of principal and surety, which for certain purposes extends to bills of exchange, to such a transaction as this. On this ground alone I think the decision cannot be supported."[1]

Where securities are deposited with a banker to secure a specific sum, he cannot hold them to secure his general balance.[2] The depositor, or his representatives, may redeem

[1] Compare Gilbert vs. Marsh, 12 Hun, 519; Cory vs. Leonard, 56 N. Y. 494, aff'g 1 Sup. Ct. (T. & C.) 183; Meehan vs. Forrester, 52 N. Y. 277; Hazard vs. Wells, 2 Ab. New Cas. 144; Wood vs. Sheehan, 68 N. Y. 365; also, Gray vs. Green, 12 Hun, 598, rev'd 77 N. Y. 615. See also the following cases: Third National Bank vs. Harrison, 10 Fed. Rep. 243; Armstrong vs. Helm, 13 Ky. L. Rep. 460; People's Bank vs. Legrand, 103 Pa. St. 309; Commercial Bank vs. Henninger, 105 Pa. St. 496; First Nat. Bank vs. Shreiner, 110 Pa. St. 188; Faulkner vs. Cumberland Val. Bank, 14 Ky. L. Rep. 923; Armstrong vs. Warner, 49 Ohio, 376; Pursifull vs. Pineville Banking Co., 17 Ky. L. Rep. 38; First National Bank vs. Peltz, 176 Pa. St. 513; Flournoy vs. First Nat. Bank, 79 Ga. 810; Van Winkle Co. v. Citizens' Bank, 89 Tex. 147; Gardner vs. First National Bank, 10 Mont. 149; Mechanics' Bank vs. Seitz, 155 Pa. St. 191.

[2] Duncan vs. Brennan, 83 N. Y. 487. See also Farmers' Bank vs. McFarran, 11 Ky. Law Rep. 183;

the securities by paying the special sum which they were given to secure.[1] The general rule of law relative to pledges is that a former debt due to the pledgee, or a subsequent debt contracted by the pledgor, does not authorize the pledgee to retain a pledge given for another demand, unless, from all the circumstances, there is just ground of presumption that this was the intention of the parties.[2] And if securities upon which a banker has declined to loan money are casually left at his banking-house, they cannot be retained by him as security for his general balance.[3]

Security given by a depositor to his bankers to cover a balance than existing against him is not to be deemed a security for a floating balance. Accordingly, where a depositor kept three several accounts with his bankers—a private account, a partnership account, and an executorship account—which were all overdrawn, and to secure the same

Ex parte Pease, 19 Ves. Jr. 25; Vanderzee vs. Willis, 3 Bro. C. R. 20; National Bank vs. Speight, 47 N. Y. 668; Wyckoff vs. Anthony, 90 N. Y. 442; U. S. Bank vs. Macalester, 9 Pa. St. 475; German Bank vs. Foreman, 138 Pa. St. 474; Neponset Bank vs. Leland, 5 Met. (Mass.) 259; Brown vs. Institute, 137 Mass 262; Armstrong vs. Bank, 41 Fed. Rep. 234; Reynes vs. Dumont, 130 U. S. 391; Woolley vs. Bank, 81 Ky. 527; Masonic Bank vs. Bangs, 84 Ky. 137; Teutonia Bk. vs. Loeb, 27 La. Ann. 110; Wilson vs. Dawson, 52 Ind. 513; Bundy vs. Monticello, 84 Ind. 119; Continental Bank vs. Weems, 69 Tex. 489; Dawson vs. Bank, 5 Ark. 283; Carroll vs. Exchange Bank, 30 W. Va. 518; Hathaway vs. Bank, 131 Mass. 14; Lane vs. Bailey, 47 Barb. (N. Y.) 395; National Bank vs. Peck, 127 Mass. 298; Biebenger vs. Bank, 99 U. S. 143; Bank of Commerce's Appeal, 44 Pa. St. 423; Robinson vs. Frost, 14 Barb. (N.Y.) 536; Stowe vs. Hamilton Bank, 1 Ohio C. C. 524; Liggett Co.'s Appeal, 111 Pa. St. 291; Grant vs. Taylor, 35 N. Y. Super. Ct. 338; First Nat. Bank vs. Peltz, 176 Pa. St. 513; Stowe vs. Bank, 1 Ohio Ct. C. R. 524.

[1] Vanderzee vs. Willis, 1 Bro. C. C. 21; Gould vs. Farmers' Loan & Trust Co., 23 Hun, 322; Same vs. Central Trust Co., 6 Ab. New Cas. 381.

[2] Story on Bailments, 304, and cases there cited; Duncan vs. Brennan, supra.

[3] Lucas vs. Dorrein, 7 Taunt. 279; Mountford vs. Scott, 1 Turn. & R. 274.

charged his estate with the payment "of the three several sums of money which shall or may be found due on the balance of the said several accounts," it was not a security for "such balance which shall from time to time become due."[1]

Where the deposit of a deed of conveyance was for the special purpose of giving a security upon one of the pieces of property described in such deed, it was held that the bankers could claim no general lien, by the custom of bankers, upon another piece of property described therein.[2]

"As between banker and customer, whatever number of accounts are kept in the books, the whole is really but one account, and it is not open to the customer, in the absence of some special contract, to say that the securities which he deposits are only applicable to one account." Thus, where the O. C. Bank had three accounts with the A. and M. Bank —namely, a loan account, a discount account, and a general account—and the O. C. Bank were in the habit of applying to the A. and M. Bank for accommodation loans of considerable amount, which were entered in the loan account, and they from time to time deposited securities to meet these loans, and, having drawn upon the A. and M. Bank for a large sum, deposited with them three accommodation acceptances of the E. Bank by way of collateral security, the A. and M. Bank claimed a lien on these acceptances, so far as they were not required to cover the balance of the loan account, for the deficiency in the general account—which

[1] Re Medewe's Trust, 26 Beav. 588.

[2] Wylde vs. Radford, 33 L. J. Ch. 51. This decision was followed in Strathmore vs. Vane, 56 L. J. Ch. 143, where a bank was held not entitled to have a general lien on the proceeds of a policy deposited with them by a customer, accompanied with a memorandum of agreement signed by the customer, that the policy was to secure moneys due and to become due by him to a specified amount.

was allowed against the E. Bank in the winding-up of the same.[1]

But if a depositor keep two separate accounts with his banker, but not in a separate character, he may offset one account against the other. The corporation of P. kept three separate accounts with plaintiff's banking-house—viz., the "corporation account," the Board of Health account, and the bath and washhouse account. The corporation was debtor on the corporation account, but a creditor on the last two accounts, and sought to set off the same. The court held that the corporation of P. was the same person who owed the money and to whom the money was owing, and therefore the set-off was allowed.[2]

Where the securities are placed in the hands of the banker for some special and particular purpose, the lien does not attach. Thus where B., who acted as agent for a foreign correspondent, took certain exchequer-bills from a tin box which he kept at his bankers, and gave them to the bankers to be exchanged for other bills and to collect the interest, which they were in the habit of doing in respect to such bills, and, before B. came to take back the exchequer-bills and return them to his box, the bankers paid certain acceptances of B. which exceeded the balance of his account, and he subsequently became bankrupt, it was held that the bankers had no lien on the exchequer-bills for their balance of account, and that the owner of the bills, the principal of B., could recover.[3]

[1] In re European Bank, L. R. 8 Ch. App. 41.

[2] Pedder vs. Preston, 9 Jur. (n. s.) 496.

A bank cannot set off a claim against its depositor, who, as its cashier, mismanaged its affairs, as against the deposit. Irvine vs. Dean, 93 Tenn. 346.

[3] Brandao vs. Barnett, 12 Cl. & F. 787. See also Judy vs. Farmers' Bank, 81 Mo. 404; Boettcher vs.

Securities given to the bank for a fixed and definite sum are not to be treated as securities for the balances of the banking account which may become due from time to time. And the account in respect to such securities must be kept separate from the general banking account, and interest cannot be compounded as in the general account.[1]

Where a depositor keeps a private account with his bankers, and also a trust account, and he pays moneys into his separate account from the trust account, with knowledge of the bankers, the bankers cannot retain such moneys against the parties entitled to the same.[2] The rule is, that where the security deposited by the depositor to cover any balance against him is subject to a trust, such trust must prevail as against the banker's lien, although the banker had no notice of such trust being attached to the security;[3]

Col. Nat. Bank, 15 Colo. 16; Straus vs. Tradesman's Bank, 13 N. Y. St. Rep. 407. As to when an agent's debt may be set-off against his principal's money deposited in the agent's name, see Douglas vs. Bank, 17 Minn. 35.

[1] Mosse vs. Salt, 32 Beav. 269; Grant vs. Taylor, 3 J. & S. (N. Y.) 338.

[2] Bodenham vs. Hoskyns, 2 De G. M. & G. 903. And see Clemmer vs. Drovers' Nat. Bank, 157 Ill. 206; First Nat. Bank vs. Peisert, 2 Penny. (Pa.) 277; Bundy vs. Monticello, 84 Ind. 119; Johnson vs. Payne & Williams Bank, 56 Mo. App. 257.

See also United States vs. National Bank of Ashville, 73 Fed. Rep. 379. A bank cannot apply moneys deposited by plaintiff as "deputy treasurer," as against a balance due by the County Treasurer who kept his account at the same bank, even though the moneys deposited by the former were county funds. Citizens' Bank vs. Alexander, 120 Pa. St. 476.

[3] Manningford vs. Toleman, 1 Coll. 670. See also Murray vs. Pinkett, 12 Cl. & T. 785; Locke vs. Prescott, 32 Beav. 261; Pennell vs. Deffell, 4 De G. M. & G. 23; L. J. Ch. 115; Frith vs. Cartland, 34 L. J. Ch. 301; Ex parte Kingston, 25 L. T. R. N. S. 250; Adair vs. Shaw, 1 S. & L. 262; Bridgman vs. Gill, 24 Beav. 302; Cook vs. Fuller, 18 Wall. (U. S.) 332; Veil vs. Mitchell, 28 Fed. Cas. No. 16,908; Baltimore Central Nat. Bank vs. Conn. Ins. Co., 104 U. S. 54; Union Stock Yards Bank vs. Gillespie, 137 U. S. 411; Manhattan Bank vs. Walker, 130 U. S. 267; Van Alen vs. Ameri-

but the consent or acquiescence of the *cestui que* trust might alter the case.[1]

And where a trustee, holding certain shares in trust, enters into an agreement with a bank to transfer to it such shares as collateral security for a loan, the equity of the *cestui que* trust will prevail over that of the bank, and it cannot retain the same to cover its advances.[2]

If the trustees sell the original trust shares, and subsequently to such sale deals in the same kind of shares on his own account, and if at any time when he is called upon to account for such shares he is found in possession of similar shares, although not the original trust shares, he will be considered as trustee to the extent of the number of shares he is bound to have in his possession as such trustee; and he will be so held against the claim or lien of the bank.[3]

So where a trustee deposits with his bankers mortgage deeds which he holds in trust to secure a loan to him individually, the bankers have no lien on the same, unless the *cestui*

can Nat. Bank, 52 N. Y. 1; Baker vs. Bank, 100 N. Y. 31; Merrill vs. Norfolk Bank, 19 Pick. (Mass.) 32; Bethlehem First Nat. Bank vs. Peisert, 2 Penny. (Pa.) 277; Johnson vs. Bank, 56 Mo. App. 257; Clarke vs. Bank, 57 Mo. App. 277; Whitley vs. Foy, 59 N. C. 34; Greensboro Bank vs. Clapp, 76 N. C. 482; Wood vs. Stafford, 50 Miss. 370; St. Paul Third Nat. Bank vs. Stillwater Gas Co., 36 Minn. 75; Overseers of Poor vs. State Bank, 2 Gratt. (Va.) 534; Neely vs. Rood, 54 Mich. 134; Bundy vs. Monticello, 84 Ind. 119; Commercial Bank vs. Jones, 18 Tex. 811; Armstrong vs. Bank, 53 Iowa, 752; Munnerlyn vs. Bank, 88 Ga. 333.

Some cases, however, hold that if the bank has no notice of the trust, its lien is not destroyed. See Justh vs. Bank, 56 N. Y. 478; Stephens vs. Board, 79 N. Y. 183; Hatch vs. Bank, 147 N. Y. 184; Greenfield School vs. Bank, 102 Mass. 174. And see Erisman vs. Delaware County Nat. Bank, 1 Pa. Super. Ct. (Pa.) 144; Thomson vs. Clydesdale Bank, (1893) App. Cas. 282.

[1] See cases cited in last note. See also Lord Bolingbroke's Case, 1 Sch. & Lef. 346. And see Sayre vs. Weil, 94 Ala. 466.

[2] Murray vs. Pinkett, 12 Cl. & F. 764.

[3] Id.

que trust have been guilty of negligence. And where a trustee invested trust funds in a mortgage which he took in his own name, and in which mortgage other moneys were invested not included in the trust fund in question, the court held that it was not negligence in the *cestui que* trust to leave the mortgage deed in the hands of the trustee, they holding a written declaration of trust outside of the mortgage. The trustee, as such, probably had a right to hold the deed, especially as the mortgage covered some of his own money.[1]

In the case of Jones vs. Peppercorne[2] Vice-chancellor Wood held that where securities were left with a banker for safe custody, and he fraudulently deposited them with his Broker as security for advances made to him, the Broker might hold them as against the true owners until their lien for a general balance of account was satisfied. In this case, however, the bonds were payable to order.[3]

Where a depositor of a bank authorizes a trustee of a fund of which he is *cestui que* trust to pay to the credit of his account with the bank moneys that are coming to him from the trust, the bank acquires a good lien, which is not countermandable.[4]

And a country banker sending bills to his London agent, endorsed generally to receive payment of them, the bills, on the bankruptcy of the country banker, are not lost to the owners of them, but the London banker has a lien upon them for any balance due from the country banker.[5]

[1] Stackhouse vs. Countess of Jersey, 30 L. J. Ch. 421. See also Roberts vs. Croft, 24 Beav. 223.

[2] 5 Jur. (n. s.) 140.

[3] The following cases illustrate this question still further: Frazer vs. Jones, 17 L. J. Ch. 353; Joyce vs. De Moleyns, 2 Jo. & Lat. 374.

[4] Ex parte Stewart, 3 Mont. D. & D. 265.

[5] Ex parte Froggatt, 3 Mont. D. & D. 322. To same effect, Zinck vs.

And a depositor, remitting bills to his bankers to meet acceptances which the bankers fail to pay, may recover the bills or their proceeds from the bankers or their assignee, subject to any lien upon the same which the bankers may have.[1]

A bank receiving a bill for collection, so endorsed that they have notice that the parties sending it only held it for collection, cannot retain out of the proceeds for a general balance due the bank from the party from whom they so receive the same. And an endorsement, "Pay J. L. & Co., or order, for collection," is sufficient notice.[2]

Whether deposits are intended as security for a general balance must be, to a great extent, a matter of evidence. Previous dealings between the parties is of importance as showing the true intent.[3]

Where there is an account between a firm and the bank, and another account with one particular member of the firm, the bank has no lien upon the balance due upon the separate account of the individual partner for a balance due to the bank from the firm.[4] And where a firm is sued by the bank to recover a balance due it, the firm cannot set off a balance

Walker, 2 W. Bl. 1154 (note), 9 East, 13.

As to the right of a bank to apply deposits to debts due to it, see also Schuler vs. Laclede Bank, 27 Fed. Rep. 424; Merchants' Bank vs. Meyer, 56 Ark. 499; Hayden vs. Alton Nat. Bank, 29 Ill. App. 458; Bedford Bank vs. Acoam, 125 Ind. 584; Knapp vs. Cowell, 77 Iowa, 528; Clarke vs. Northampton Nat. Bank, 160 Mass. 26; Green vs. Camden Nat. Bank, 46 N. J. Eq. 607; Mechanics' Bank vs. Seitz, 30 Wkly. Notes Cas 261; Georgia Seed Co. vs. Talmadge, 96 Ga. 254; Nichols vs. State, 46 Neb. 715.

[1] Zinck vs. Walker, supra.

[2] Cecil Bank vs. Farmers' Bank of Maryland, 22 Md. 148.

[3] See Grant vs. Taylor, 3 J. & S. (N. Y.) 349.

[4] Watts vs. Christie, 11 Beav. 546. But when authorized by statute it of course possesses the lien. Owsley vs. Bank, 66 S. W. Rep. (Ky.) 33. See also Coote vs. Bank, 6 Fed. Cas. No. 3204; International Bank vs. Jones, 119 Ill. 407; Adams vs. First National Bank, 113 N. C.

of account due from the bank to an individual partner.[1] And although the individual partner, between the time of the suspension of the bank and its bankruptcy, assigns his balance of account to his firm, and directs the bank to place such balance to the account of the firm, such assignment will not enlarge or change the right of lien or set-off.[2]

So if an individual member of a firm deposits securities with the bank to secure his separate indebtedness to it, and transfers such securities to his firm subsequent to their bankruptcy, the bank has no lien upon the securities for a debt due it from the firm.[3] Although bankers may safely advance money upon the security of stock or shares deposited with them by any one, where the bankers have not notice or reasonable cause to believe that the stock or shares belong to another, yet when they receive notice that such stock or shares belong to another person, the stock or shares can then only be a security for the balance due to them at that period. Thus, where the person making the deposit of the stock upon which the bankers made a loan wrote to the bankers that they had been requested by their "principal" to extend the time of the loan on the stock, it was held that this gave the bankers notice that the stock belonged to another.[4]

332; Richardson vs. International Bank, 11 Ill. App. 582; Raymond vs. Palmer, 41 La. Ann. 425. Contra, Eyrich vs. Capital State Bank, 67 Miss. 60; Addis vs. Knight, 2 Meriv. 117; Manhattan Bank vs. Walker, 130 U. S. 267; Coates vs. Preston, 105 Ill. 470; Dawson vs. Wilson, 55 Ind. 216.

[1] Watts vs. Christie, supra. But when authorized by statute it may do so. Owsley vs. Bank, 66 S. W. Rep. (Ky.) 33.

[2] Watts vs. Christie, supra.

[3] Ex parte M'Kenna, 30 L. J. Bank, 20.

[4] Locke vs. Prescott, 32 Beav. 261. And when a bank knew that a money dealer, from whom it received securities, was a pledgee thereof for a specified sum, it could not hold them as against a general

Where a special contract is made inconsistent with a right of lien, as where a solicitor takes time-notes for his services, the lien is not good.[1] "If a security is taken for the debt for which the party has a lien upon property of the debtor, such security being payable at a distant day, the lien is gone."[2]

Where one having a lien upon a chattel in his possession, upon its being demanded by the owner, does not disclose his lien, but claims to be the owner, he is estopped from setting up his lien in an action to recover possession.[3]

balance due it, after payment of such sum, as if it had made inquiries from the money dealer it would probably have been told that he exceeded his authority in pledging them for his own indebtedness. Sheffield vs. Bank, 13 App. Cas. 533.

When, however, a bank takes negotiable securities from a Stock-broker, it acquires a good title thereto, although the Broker pledged them in fraud of his Client. The bank having no reason to suspect the Broker's good faith, was not put upon inquiry. Simmonds vs. London & Joint Stock Bank, (1892) App. Cas. 201.

And in Bentinck vs. London &c. Bank, (1893) 2 Ch. 120, it was held that the practice by Stock-brokers of taking in "securities," or carrying them over as principals instead of dealing with them as agents, was sufficiently general to warrant a bank in supposing that the Broker had absolute power to deal with them, and it was entitled to retain them as against the sum due it by the Broker, although it much exceeded the amount lent by the Broker to the Client. When Stock-brokers fraudulently deposited with a bank a non-negotiable security left with them by their Clients (executors under a will) for sale, and the bank consented not to sell the stock pending an action by the Clients, it was held that they were liable in damages to the plaintiffs for the difference in the value of the stock which had fallen considerably, they having abandoned all claim to the security. Williams vs. Peel River Co., 55 L. T. 693.

See also Armour Co. vs. Bank, 69 Miss. 700; Davis vs. Bank, 29 S. W. Rep. 926; Anderson vs. Bank, 48 Hun (N. Y.), 620; Union Bank vs. Gillespie, 137 U. S. 411; Baker vs. New York Nat. Ex. Bank, 100 N. Y. 31; Cady vs. South Omaha Nat. Bank, 46 Neb. 756; Walker vs. Manhattan Bank, 25 Fed. Rep. 247; O'Connor vs. Mechanics' Bank, 124 N. Y. 324; Hatch vs. Fourth National Bank, 147 N. Y. 184.

[1] Cowell vs. Simpson, 16 Ves. 275. On the above point, see the cases cited in note to this case.

[2] Hewison vs. Guthrie, 3 Scott, 311.

[3] Maynard vs. Anderson, 54 N. Y. 641.

3. *Stock-broker's Lien.*

An agent generally has a lien upon the property committed to his care for all his commissions, expenditures, advances, and services made and performed in and about the property so intrusted to his agency; and Stock-brokers, being a well-known class of agents, come within the operation of this rule.[1] The position of a Stock-broker buying stocks on a margin is very similar to that of a factor who holds property consigned to him for sale, and upon which he makes advances. He is in possession of the property of his principal, he has all the *indicia* of title, he can sell the stock in his own name, and when he sells he can retain his advances from the proceeds. The relation of pledgor and pledgee exists, as in the case of factors. He may sell upon notice to secure his advances, where the margin is not made good. And he may even repledge the stock for his own debt to a third person.[2] So that a Client may often invest a Broker with the office of a factor. And if an analogy between the many rights and duties of a Stock-broker, purchasing stock on margin, and an ordinary factor, were sufficient to establish the right of a general lien, then it would seem that it might well be allowed to exist. But where the Broker advances the money to pay for the stock which he is employed to purchase, he stands in the position of pledgee of the stock so purchased, and may hold the same till his advances are paid, as we have seen in another connection. And in such a case he would have a lien for his commission also.[3] Mr.

[1] Story on Agency, §§ 373–375.

[2] Wood vs. Hayes, 81 Mass. 375.

[3] Hoy vs. Reade, 1 Sweeny, 626. As a lien merely gives the right to hold securities or other personal property as security for the payment of a debt, and therefore no sale can be made thereof (except in

Story, on this subject, says: "When a Broker is intrusted with negotiable notes endorsed in blank, for sale, he becomes rather a factor than a Broker; for he is then intrusted with the disposal and control of them and may, by his negotiation, pass a good title to them. A Broker is often both a factor and a Broker. When a Broker becomes possessed of the thing about which he is employed, he acquires, equally with a factor, a lien for his commissions—as, for example, an insurance Broker having possession of a policy."[1]

Liens are either particular or general; the former being limited to what is due in respect to services performed in some particular matter, the latter extending to what is due on a general balance of account.[2] Particular liens arise either by operation of law or by express contract, or by an implied contract growing out of the usage of trade, or from the previous dealings between the parties. General liens are not favored in law, and consequently only arise out of either of the two last-mentioned sources—viz., special contract or usage.[3] The instances in which liens arise by operation of law are special, and very few in number.

the case of property held by factors) unless in pursuance of the authority of a judgment in equity, statutory authority, or custom, it is important in the interests of Stock-Brokers that the lien of Stock-brokers should be classed with that of factors, especially as the rights of the latter are also protected in several of the States by statute. Jones on Liens (2d ed.), §§ 431 et seq. Schouler's Personal Property (3d ed.), § 387.

[1] Story on Agency, § 34, n. 3. See also McKenzie vs. Nevius, 22 Me. 138; 2 Chit. on Com. and Manf. 210, 211, 541; Blount's Com. Dig. ch. 15, p. 230; 1 Bell Comm. 386 (see 409, 4th ed.); id. 478 (5th ed.).

See also as to money Brokers, Peterson vs. Hall, 61 Minn. 268; Mechem on Agency, § 977.

[2] Story on Agency, § 354.

[3] Id. 355. In Carpenter vs. Momsen, 92 Wis. 449, it was held that a money Broker has only a particular, and not a general, lien.

Liens at common law were first allowed where some duty was imposed by law to receive the goods upon which the lien is claimed, as in the case of carriers or innkeepers; or where the lienee had at his peril, labor, and expense, rescued the goods from loss at sea, as in the case of salvors.[1] Thus auctioneers have been allowed to have a lien for their charges, because of their duty to take the goods into their possession.[2]

Liens at common law were afterwards extended to the case of tradesmen and artisans to whom goods were delivered to perform some service upon them for their alteration or improvement.[3] And the benefit of this right has been claimed and allowed by many trades which were unknown to the common law.[4] And if Stock-brokers have a lien at common law for their commissions, it must be by extending this tradesman's or artisan's lien to their business.[5]

But, irrespective of apparent exceptions, the prevailing doctrine appears to be that no lien attaches except where work is to be done on a chattel to *improve it*, or to *increase its value;* but where it is merely delivered to a person to do anything with it or in respect of it, the lien cannot be supported.[6]

[1] 3 Parsons on Contracts, 235; Hutchins vs. Olcutt, 4 Vt. 549; Grinnell vs. Cook, 3 Hill, 485; Rivara vs. Ghio, 3 E. D. Smith, 264.

[2] Williams vs. Millington, 1 H. Bl. 81; commented upon and explained in Steadman vs. Hockley, 15 M. & W. 553.

[3] Story on Agency, 353; Bevan vs. Waters, 3 C. & P. 520; Scarfe vs. Morgan, 4 Mee. & W. 270; Jackson vs. Cummings, 5 id. 342; Judson vs. Etheridge, 3 Tyrw. 954; Hutchins vs. Olcutt, 4 Vt. 549; Grinnell vs. Cook, 3 Hill, 485.

[4] Hutchins vs. Olcutt, supra.

[5] See cases cited supra, note 3, and Morgan vs. Congdon, 4 N. Y. 552; Wilson vs. Martin, 40 N. H. 88; Steadman vs. Hockley, 15 M. & W. 553; Sanderson vs. Bell, 2 Cromp. & M. 304; Pinney vs. Wells, 10 Conn. 115; Blake vs. Nicholson, 3 Mau. & S. 168; Crawshay vs. Homfray, 4 Barn. & Ald. 50.

[6] This is well illustrated in the

In the case of Steinman vs. Wilkins[1] a much more liberal view of the scope and application of the law of particular liens was taken than in any of the above cases; and the restricted doctrine, that the service or disbursement must be such as to add to the value of the thing in respect to which the right of lien is claimed, is criticised and disapproved. In the above case it was held that a warehouseman has a specific, not a general, lien; but he may deliver a part and retain the residue for the price chargeable on all the goods received by him under the same bailment, provided the ownership of the whole is in the same person.

But where Brokers act as bankers and make advances on securities deposited with them, they not only have a lien on such securities for the money advanced, but also for a general balance of account. Such, at least, is the practice among Brokers on the London Stock Exchange.[2]

In the last-mentioned case the testimony of a Broker to the Court of Chancery in respect to the practice among Brokers on the London Stock Exchange in relation to the subject of lien was as follows: "Where lenders or other Brokers hold securities deposited by the same borrowers at several times and on distinct occasions, and choose to close their account, or their account is closed by circumstances, such as the borrowers stopping payment, the lenders have

case of Sanderson vs. Bell, supra. A general agent who exchanges stock for railroad bonds, has a lien on the latter for his services, either as a bailee who has improved the property, or as a factor. Chappell vs Cady, 10 Wis. 111.

[1] 7 W & S 466.

[2] Jones vs. Peppercorne, 5 Jur. (n. s.) 140. This decision was recently followed in London and Globe Finance Corporation, In re, 71 L. J. Ch. 893, where it was held that, in the absence of any special agreement to the contrary, a Stock-broker has a general lien on securities in his hands belonging to a customer, for the balance due by the latter to the Broker.

a lien upon all the borrowers' securities in their possession until the balance due to them from the borrowers on every account is paid, and they have the right to sell a sufficient portion of the securities to cover any such balance. In fact, all securities in the hands of the lender at the time of closing an account are applicable not only to the particular sum advanced at the time of the deposit of particular securities, but to whatever balance may be due from the borrower to the lender at the time that the account is closed." Similar evidence was given in the same case by other eminent Brokers. And the court said: "Indeed, it would appear that the court would require no evidence of the practice of Brokers in this respect, considering it as settled."

A party who holds stock of the bankrupt as collateral for a certain debt, which was over-due at the commencement of the proceedings in bankruptcy, may, if he has the power to sell the stock, retain the surplus by way of set-off on another claim which he holds against the bankrupt. When one partner pledges his property as security for a firm debt, the creditor may prove his full claim against the firm without a valuation of the securities.[1]

In the case of Jones vs. Peppercorne the court seems to place a Broker who also acts as a banker for his Client in loaning money on securities in the same category with bankers themselves in respect to the right of lien.

In the case, however, of Grant vs. Taylor, in the Superior Court of the City of New York,[2] it was held that only

[1] Ex parte Whiting, 14 Nat. Bank Reg. 307.

[2] 3 J. & S. 338. In South Carolina, however, a bill Broker has a general lien Bank vs. Levy, 1 McMullan (S. C.), 431; McMull. (S. C.) 283.

If a Broker sells securities belonging to himself to his Client, and gives credit for the balance of the purchase money after the payment by the Client of a deposit, he has a vendor's lien on the securities sold

"bankers" who are strictly such, and who are dealers in money, have a general lien for a balance of account; and that where a firm of bankers and Brokers, who, as in that case, advanced money to their Clients on bills of exchange, claimed a general lien, it must be proved.

So where a Broker has obtained a loan for his principal, and holds certain chattels as security therefor, he cannot, in the absence of a special agreement, appropriate the proceeds of said chattel to the payment of a debt due to him by the principal.[1]

In conclusion, it will be observed that there are very few, if any, direct cases where the naked question has arisen as to whether a Stock-broker has a lien for his commissions or general balances, where he has done nothing more than purchase the securities with the money of his Clients; but the tendency of the decisions has been to extend this general lien rather than to restrict it. Where he advances his own money in the purchase of securities, it is clear that the Broker has such lien.[2]

(and which are retained by him) for the balance of the purchase money. The mere fact that he has, in other transactions, merely acted as a Broker, does not also give him a lien on the securities so sold for the general balance of his account. Leahy vs. Lobdell, 80 Fed. Rep. 665.

[1] James's Appeal, 89 Pa. St. 54.

[2] London and Globe Finance Corporation, In re, 71 L. J. Ch. 893, supra, may be taken as settling that Stock-brokers, in the absence of contrary agreement, have a general lien for any balance due them irrespective of whether they themselves advanced money for their Clients or not.

In Jones vs. Gallagher, 3 Utah, 54, it was held that a banker, who buys and sells stock with his own moneys for his Client, has a special property in such stocks, and, whilst any moneys are due to him, he is not obliged, on his Client's instructions, to sell out same, and reinvest the proceeds in other securities.

And when bonds are deposited with grain Brokers as collateral, the latter may recover judgment for a general balance due them, without allowing the value of the bonds,

II. Specific Performance.

(*a.*) *Preliminary Observations.*

We shall confine our consideration of this topic to those cases which arise out of transactions in securities. The cases rarely, if ever, occur between Broker and Client, but generally between parties who bear towards each other the relation of vendor and vendee, and perhaps more frequently between the latter party and corporations in which he may have purchased shares. In considering this class of decisions, we naturally look to the English adjudications, as they contain the earliest rules and enunciations of courts of equity upon the subject.

During a period of over a century and a half, these courts have made numerous and important rulings as to the specific execution of contracts for the sale or transfer of stock and shares, some of which, however, it is difficult at times to reconcile with the later cases.

The difference between the English and American courts upon this branch of the law, especially in its application to stock and shares, would seem to be based mainly upon several considerations, which it may not be amiss to notice

which they may hold as security for the ultimate payment of the judgment. Eggleston vs. Woolsey, 14 N. Y. St. Rep. 241. On the other hand if a certificate of deposit is left with grain Brokers to secure advances and commissions, and the Brokers disobeyed instructions by entering into fictitious transactions, they have no lien on the money deposited to secure them for advances on such fictitious transactions. Mellott vs. Downing, 64 Pac. Rep. (Ore.) 593; Jones vs. Marks, 40 Ill. 313; Denton vs. Jackson, 106 Ill. 433; Larminie vs. Carley, 114 Ill. 196; Gregory vs. Wendell, 39 Mich. 337.

Stock-brokers in New York have a lien on securities held by them for advances made by them in executing the orders of Brokers in Syracuse, and this lien must be satisfied in priority to the claims of the country Broker's clients. Willard vs. White, 10 N. Y. Supp. 170.

—and first, upon the fact that stock transactions in the mother-country are regulated by a system or custom among Brokers of doing business on the Stock Exchange, which system, as has been already shown, is entirely different from that prevailing among Stock-brokers in the United States, and which is directly involved when questions arise as to the liability of stockholders in corporations or joint-stock companies for "calls" or assessments;[1] second, in England a radical distinction exists between "stock" and "shares;" and while the specific performance of contracts embracing the latter class may and will be decreed by the courts in a proper case, a different rule generally applies to the former kind of securities, as to which it has been and is the constant practice of courts of equity to send an aggrieved party to courts of law for pecuniary damages.[2]

The distinction which is made between "stock" and "shares"[3] in England is this: the former term is held to apply to government and other public securities, which, being numerous, are of course always easily to be procured in the open market; while the term "shares" is said to include the stock of private corporations, chartered companies, joint-stock associations, and railways, the stock of which is often, if not generally, limited in quantity, and is in consequence more difficult to be obtained.[4] Hence the necessity

[1] Most of these bodies are created under the Companies Acts (1862–1900). See these laws in full, as also the Companies Clauses Acts (1845–1889), with notes of decisions thereon, in Rawlins & Macnaghten on Companies. See also Lindley on Companies (6th ed.).

[2] Duncuft vs. Albrecht, 12 Sim. 189; Colt vs. Nettervill, 2 P. Wms. 305.

[3] See Ross vs. Union Pac. R. R. Co., 1 Woolw. (U. S. Circuit Ct.) 26, 32.

[4] See this distinction stated in Cavanagh's Law of Money Securities, 2d ed. p. 486, et seq.

sometimes arises for equitable interference where the latter class of securities is concerned.[1]

(*b*.) *General Rule.*

The general rule is that this remedy is not obtainable in equity where damages at law will afford adequate or just relief. In England this rule has been generally applied to government and other public stocks, as we have already stated, from the earliest times.[2] When the subject is fairly considered, there can be no substantial reason why the principle should not be held in this country to apply to (and such appears to be the best rule) all securities and shares indiscriminately, whether governmental, public, or private, so long as they are commonly dealt in, and are always easily to be had at the usual public marts—the various Stock Exchanges of the country. In such instances the decisions

[1] Duncuft vs. Albrecht, supra. See Ashe vs. Johnson, 2 Jones Eq. 169, where the like rule seems to be laid down. But a bill will lie for specific performance of an agreement to purchase foreign government stock when it *prays delivery of the certificates* which give legal title to the stock (Doloret vs. Rothschild, 1 Sim. & S. 590; s. c. 2 L. J. Ch. 125). The rule appears to be applied in California (Hardenbergh vs. Bacon, 33 Cal. 356). But see Nutbrown vs. Thornton, 10 Ves. 161; Mason vs. Armitage, 13 id. 37.

[2] Chit. Pr. (1st Am. ed.) 853; Story Eq. Jur. 13th ed. § 724; Adderly vs. Dixon, 1 Sim. & St. 610; Brunswick Co. vs. Muggeridge, 4 Drew. 698; Addison on Contr. 10th ed. p. 271; Harnett vs. Yielding, 2 Sch. & Lef. 552, 553; Buxton vs. Lister, 3 Atk. 383; Swift's Dig., 17; Cud vs. Rutter, supra; Willard's Eq. p. 272; Ross vs. Union Pacific R. R. Co., supra.

Story says (Eq. Jur. 13th ed. § 717a): "And the true reason why a contract for stock is not specifically decreed is that it is ordinarily capable of such an exact compensation. But cases of a peculiar stock may easily be supposed where courts of equity might still feel themselves bound to decree a specific performance upon the ground that from its nature it has a peculiar value, and is incapable of compensation by damages." See also Fry on "Specific Performance," 4th ed. p. 31 et seq.

nearly all agree that a party is fully and amply compensated in damages with which he can purchase other stock or shares of the same description as those contracted for; or he can, immediately upon a failure to deliver shares pursuant to agreement, purchase other shares of the same kind, and charge the seller in an action at law with the difference or damages sustained.

But, as will be seen hereafter, the English courts have established exceptions to this rule in four distinct cases:

1. Where the contract relates to shares in railway companies.

2. Where the question involves a liability for calls and there is no adequate remedy at law.

4. Where there is a trust involved in relation to the shares or stock.

3. Where the bill prays *delivery of certificates* giving the legal title to stock of a foreign government.

(c.) *When Specific Performance Refused in England.*

Beginning with the cases in which specific performance has been refused, we find that the remedy was denied upon the general rule above stated in the second reported case that came before an English court.

In Cud vs. Rutter,[1] to which we refer, the defendant contracted to transfer certain South Sea stock. On a bill to compel performance of the contract, it was objected that

1 P. Wms. 570; s. c. *nom.* Cuddee vs. Rutter, 5 Vin. Abr. 538, pl. 21, where the case (p. 539) is fully reported, also in 20 Vin. Abr., title 'Stocks," pl. 9; cited in Prac. in Ch. 534, by *nom.* Scould vs. Butter, 2 Eq. Ca. Abr. 18, pl. 8; 1 Madd. Pr. Ch. (3d Am. ed.) 402. See also White & Tudor's Leading Cases in Eq. 6th ed. Vol. 2, p. *907, where the case is reported with a full note upon the subject; Campbell's English Ruling Cases, Vol. 6, p. 610; also Mason vs. Armitage, 13 Ves. 37.

there was no instance or precedent where execution had been decreed in such a case, and that defendant was willing to pay the difference, and that with the money the plaintiff could obtain the same amount of stock upon the Exchange. Sir J. Jekyll, M. R., held, however, that the execution of such an agreement was beating down and preventing stock-jobbing, and decreed that the stock be transferred. On appeal, Lord Chancellor Parker (the Earl of Macclesfield) reversed the decision, delivering his opinion, it is said, with great clearness that a court of equity ought not to execute any of these contracts, but to leave them to law, where the party is to recover damages, and with the money may, if he pleases, buy the quantity of stock agreed to be transferred to him, for there can be no difference between one man's stock and another's. "It is true," said the lord chancellor, "one parcel of land may vary from and be more commodious, pleasant, or convenient than another parcel of land; but £1000 South Sea stock, whether it be A, B, C, or D's, is the same thing, and in no sort variant; and therefore let the plaintiff, if he has a right, recover damages, with which, when received, he may buy the stock himself."[1] Although it was objected that Cud vs. Rutter was without precedent, yet such was not the fact, as appears by the case of Gardener vs. Pullen,[2] wherein the court decreed specific performance of the contract to trans-

[1] A note to this case says: "In this case it is to be observed that although specific performance of the agreement was refused, yet the lord chancellor declared that the defendant not having acted fairly, but having given occasion to the plaintiff to hope that he would transfer the stock, should not only lose his costs, which he otherwise would be entitled to, but that he should pay the plaintiff the difference of the stock, not only as it was on the day when the defendant was to deliver the stock, but as it was on a subsequent day, when the plaintiff purchased his stock."

[2] 2 Vern. 394, decided in 1700.

fer certain *East India stock.* It is therefore a matter of curiosity that the latter case was not noticed by Lord Parker, for they were only a few years apart.

And the same views have since been repeatedly enforced in England in relation to contracts for the transfer or sale of stock; though, as will be seen, there have been peculiar cases where courts of equity have decreed performance of even those contracts.[1] In Buxton vs. Lister[2] Lord Hardwicke said: "In general, this court will not entertain a bill for a specific performance of contracts of stock, corn, hops, etc.; for, as those are contracts which relate to merchandise, that vary according to the different times and circumstances, if a court of equity should admit such bills it might drive on parties to the execution of a contract to the ruin of one side, when, upon an action, that party might not have paid perhaps above a shilling damage."[3] So in Adderly vs. Dixon[4] the rule was correctly stated to be that a court of equity will not generally decree performance of a contract for the sale of stock or goods, not because of their personal nature, but because damages at law, calculated upon the market price of the stock or goods,

[1] See Harnett vs. Yeilding, per Lord Redesdale, 2 Sch. & Lef. 552, 553; Capper vs. Harris, (1723) Bunb. 135, where Baron Gilbert, in relation to South Sea stock, laid down these rules: 1st. If a contract be executed, a court of equity will not unravel or break into it. 2d. If executory, the plaintiff must seek his remedy at law. Adderly vs. Dixon, 1 Sim. & St. 510.

[2] 3 Atk. 384.

[3] Shaw vs. Fisher, 5 De G. M. & G. 596; Nutbrown vs. Thornton, 10 Ves. 161, where Lord Eldon said: "It is now perfectly settled, that this court will not enforce the specific performance of an agreement for a transfer of stock; but in a book I have of Mr. Brown's I see Lord Hardwicke did that." See comments upon above in note to Gardener vs. Pullen, 2 Vern. 394; Newb. Cont. 90, 91; Thompson vs. Harcourt, 2 Bro. P. C. 415; Toml. ed. Vol. 1, p. 193.

[4] 1 Sim. & St. 610.

are as complete a remedy to the purchaser as the delivery of the stock or goods contracted for, inasmuch as with the damages the party may purchase the same quantity of the like stock or goods.

Upon the same theory was based the decision of Lord Macclesfield with reference to certain York Building stock;[1] though the decision in that case would seem to be decidedly in conflict with an earlier case,[2] decided in 1725, where Lord Chancellor King decreed specific performance of a contract involving exactly the same kind of stock, in opposition to Cud vs. Rutter, which was cited on the argument.

(d.) Cases Involving "Calls" when Relief Refused.

But it is apparent that the great majority of the English cases in which specific performance has been decreed have grown out of contests respecting liability for "calls," and which will be fully alluded to in the tenth chapter of this work.[3] In some of that class of cases,[4] however, this relief has been refused. Thus in one of them it appeared that the defendant was, on the 5th of March, 1859, the allottee of 150 shares of the stock of plaintiff's company, and his name was duly entered upon the latter's books. He agreed to pay all calls when due, and to sign the articles of association when required. Subsequently calls were made upon the stock, but he paid none of them, and refused to sign the articles of association and any form of acceptance of his shares. The bill prayed that he might be decreed to sign the articles in respect of the shares, and to sign

[1] Dorison vs. Westbrook, 5 Vin. Abr. 540, pl. 22.

[2] Colt vs. Netterville, 2 P. Wms. 304.

[3] P. 1011 et seq.

[4] Oriental Co. vs. Briggs, 2 John & H. 623.

such other written acceptance as the court should think necessary, and to pay the calls with interest—to which the defendant demurred. In sustaining the demurrer, Vice-chancellor Wood said: "Cases may well arise in which specific performance of a contract to take shares may be properly decreed, though, with the exception of Shaw vs. Fisher, there is no example of a decree to this effect. The rule is clear and simple that where the court perceives that justice cannot be done at law, it will interfere by decreeing specific performance, or otherwise giving complete relief; or, under other circumstances, will supply the defects of the legal remedy, and enable the plaintiff to proceed effectually at law. The present case is put upon that ground, and it is easy to suggest possible cases where no adequate relief could be obtained at law, and where specific performance would be the proper course." After considering another aspect of the case, the vice-chancellor continued: "Independently of these observations, I should hesitate much, in the absence of authority, before decreeing specific performance of a contract to take shares, without some special grounds (which, no doubt, may easily exist in particular cases) to show the inadequacy of the remedy at law." The defendants relied, among other cases, upon The Sheffield Gas Co. vs. Harrison [1] and The New Brunswick Co. vs. Muggeridge,[2] but the plaintiff claimed that those cases were overruled by Shaw vs. Fisher.[3] The vice-chancellor held, however, after a thorough review of the cases, that there was no variance between the two former decisions, and the demurrer was allowed.[4] In the

[1] 17 Beav. 294.

[2] 4 Drew. 686.

[3] 2 De G. & S. 11.

[4] Compare this case with Odessa Tramway Co. vs. Mendel, 37 L. T. (n. s.) 275.

case of Shaw vs. Fisher[1] the relief sought was in the first instance refused, because it appeared that the plaintiff could not make title to the shares. There a vendor by public auction of shares in a railway company incorporated by act of Parliament, at the request of the purchaser (who had paid his purchase-money), executed a transfer to a third party, who did not accept the transfer or register himself as shareholder. On a bill filed by the vendor against the purchaser for specific performance, it appearing that the title to the shares had not been accepted, the usual reference was ordered to a master, with directions to inquire as to what calls had been made; but the plaintiff subsequently[2] failed to obtain a decree for the reason that he had already conveyed the stock to the defendant's vendor, in ignorance that the defendant was purchaser; and the matter having lain by for a whole year, it now seemed impossible to say that the plaintiff had made, or could make, good title to the stock, which is always an insuperable barrier to a decree for specific performance. The bill was accordingly dismissed, the privity of contract, by reason of the transfer to the third party, no longer existing between plaintiff and defendant.

In still another important case[3] the plaintiff likewise failed to obtain a decree. The facts of this case are reported in the tenth chapter,[4] and most of the important cases involving these questions will be found in the same connection.[5]

[1] 2 De G. & S. 11; s. c. 12 Jur. Ch. 152.

[2] S. c. 5 De G. M. & G. 596.

[3] Hawkins vs. Maltby, L. R. 3 Ch. App. 188, rev'g s. c. L. R. 4 Eq. 572; 37 L. J. Ch. 58, 2d action, L. R. 6 Eq. 505, where plaintiff obtained a decree.

[4] P. 1011 et seq.

[5] See Jackson vs. Cocker, 4 Beav. 59, where it was held that a holder of "scrip certificates" in a pro-

(*c.*) *Cases of a Miscellaneous Character.*

Relief has also been refused in cases of a miscellaneous character. Thus a decree for specific performance was denied where a defendant agreed in writing to take shares in a joint-stock company, which were transferable, "and to execute the deed of settlement when required," when the decree would in effect enforce an agreement to enter into a copartnership.[1]

So where a defendant agreed to purchase from the plaintiff some shares in a company, and he paid the price, but the directors (having the power) refused to assent, so that the purchaser's name could not be placed on the register, the court refused to compel the assent, and refused to decree the specific performance of the contract.[2]

posed railway was not bound to take corresponding shares from his vendor or to indemnify for calls. See also Columbine vs. Chichester, 2 Phillips Ch. 27; but see Becket vs. Bilbrough, 8 Hare, 188, where specific performance was granted of a contract entered into for the sale of scrip certificates in a proposed railway company before its incorporation by act of Parliament; Harris vs. N. D. Railway Co., 20 Beav. 384, where the court refused to compel directors to perform contract to relieve plaintiff from payment of calls. For a case where specific performance was under peculiar circumstances refused, see Ex parte London Bank of Scotland, L. R. 12 Eq. 268. And see also Corcallis vs. Grand Canal Co., 3 Ir. Eq. Rep. 29, where specific performance of the terms contained in certain resolutions of the defendant company was refused on the ground of estoppel.

[1] Sheffield Gas Co. vs. Harrison, 17 Beav. 294; but see this case criticised in 4 Drew. 701.

[2] Bermingham vs. Sheridan, 33 Beav. 660; 33 L. J. Ch. 571. But it seems this decision is not to be relied on; see remarks of judge who decided the case, Lind. on Part. 714, note (u), and L. R. 3 Ch. 393. Also Poole vs. Middleton, 9 W. R. 758, where specific performance was decreed of a contract by a shareholder to sell shares in a joint-stock company, although the directors of the company objected to the transfer of the shares being made to the person with whom the contract was entered into; see Pinkett vs. Wright, 2 Hare, 120.

Where the defendant purchased, through a Stock-broker, certain

And it has been held that directors cannot be compelled to assent where they have the option to refuse.[1] Such power of the directors must, however, be exercised reasonably, and would be controlled by a court of equity.[2] And a refusal to make any transfer at all to anybody would not be a reasonable answer.[3]

The court will not enforce an agreement to purchase shares made after the presentation of a petition to wind up the company, but before advertisement, by making the purchaser a contributory when both parties were ignorant of the pending petition at the time of the agreement.[4] A person who has, subsequently to an order for winding up a company, agreed to transfer shares in it, has been, however,

shares in an unlimited company, and according to the practice of the Stock Exchange paid the purchase money upon delivery of the share certificates and the transfer deed, it was held in Casey vs. Bentley, (1902) 1 Ir. Rep. 376, that, as the company refused, as it had power to do under one of its regulations, to register the purchaser, the vendor could not compel the purchaser to obtain registration either in the name of himself or some other person, nor could she obtain rescission of the contract. In that case Lord Ashbourne, C., quoted from Fry on Specific Performance (4th ed.), p. 627, to the effect that there is a difference between a sale of shares not made on the Stock Exchange, and where the contract is made on the Stock Exchange, in cases where the directors are empowered to decline registration of the transfer. In the former case, the purchaser is relieved from the contract, and may recover back the purchase money. In the latter case, as the vendor, by the delivery of the transfer and certificates, has fully performed his part of the contract, the vendee acquires the right to registration, if the directors so chose. In a sale on the Stock Exchange it is no part of the vendor's duty, irrespective of express contract, to procure registration. See Fry on Specific Performance, 4th ed. p. 636 et seq. and cases cited.

[1] Hunt vs. Gunn, 13 C. B. (n. s.) 226.

[2] Robinson vs. Chartered Bank, L. R. 1 Eq. 32.

[3] Evans vs. Wood, L. R. 5 Eq. 9.

[4] Ex parte Emmerson, L. R. 1 Ch. 433; 36 L. J. Ch. 177; 36 L. J. (n. s.) Ch. 652.

held liable in damages for refusing to execute a transfer of the shares.[1]

A company having power to purchase its own shares cannot, after it has become insolvent, be compelled to register a transfer of shares which it has contracted to purchase.[2] So where directors, who have agreed to allot shares to the plaintiff, allot all the shares to other persons, the plaintiff's proper remedy is an action for damages, and not for specific performance or indemnity.[3] And there appears to be no equity to prevent the transfer of shares to a nominee to increase voting power.[4]

When a Stock-broker acted both for buyer and seller of shares, and after receipt of the purchase money from the buyer which was paid to the Broker at the latter's request, became bankrupt, and was unable to pay the purchase price to the seller, the latter cannot be compelled by the buyer to specifically perform the contract, unless upon payment to him by the vendor of the purchase money.[5]

It was held by the House of Lords in South African Territories vs. Wallington[6] that specific performance of a con-

[1] Biederman vs. Stone, 15 W. R. 811.

[2] N. Mitchell vs. City of Glasgow Bank, L. R. 4 App. Cas. 244.

[3] Ferguson vs. Wilson, L. R. 2 Ch. 77.

[4] Pender vs. Lushington, L. R. 6 Ch. D. 70; Moffat vs. Farquhar, L. R. 7 Ch. D. 591.

It was held in The Tahiti Cotton Exchange Co., 43 L. J. Ch. 425, that the court had no power under the Companies Act, 1862, § 35, to grant specific performance where the title was equitable, but if legal, the company will be compelled to enter applicant's name on the register, although his title is disputed. See a number of other decisions under this section collected in last cited case.

[5] McDevitt vs. Connolly, 15 L. R. Ir. 500. In Bowler vs. Barberton Development Syndicate, (1897) 1 Q. B. 164, a writ of prohibition was directed to issue to the Mayor's Court, London, to restrain further proceedings in a suit for specific performance of the sale of mining shares, on the ground of want of jurisdiction, the company having been registered in Scotland.

[6] 67 L. J. Q. B. 470.

tract to lend money on the debentures of a company could not be enforced. The remedy is an action for damages.

(*f.*) *When Specific Performance Decreed in England.*

We now proceed to consider those cases, involving both stock and shares, in which the relief has been granted, keeping in mind meanwhile the important distinction heretofore stated between these different classes of securities.

One of the earliest cases in which a transfer of shares was decreed is a case that has been already noticed;[1] but, as has been observed, that case would seem to be in decided antagonism with a decision of Lord Macclesfield, where precisely the same kind of stock was in controversy,[2] and certainly conflicts with the earlier case of Cud vs. Rutter,[3] though it must be admitted it finds a precedent in a case of still earlier date than the latter adjudication.[4] These conflicting decisions seem to show, if anything, the wide discretion which courts of equity sometimes exercise, granting relief in one case and refusing it in another, and where there would seem to be but a shadow of difference between the facts.[5]

In the case in question[6] the defendant contracted with the plaintiff to deliver a certain quantity of York Building stock or the difference, and, on demurrer, Lord Chancellor King decreed specific performance, or at least retained the

[1] Colt vs. Netterville, 2 P. Wms. 304.

[2] Dorison vs. Westbrook, 5 Vin. Abr. 540, pl. 22.

[3] 1 P. Wms. 570.

[4] Gardener vs. Pullen (1700), 2 Vern. 374.

[5] Mr. Cox, in his note to Cud vs. Rutter, supra, says: "But cases of this kind depend so much on their peculiar circumstances that it seems no general rule can be laid down." See also Mitf. Eq. Pl. by Jeremy, 119, note (*q*); Story's Eq. Jur. § 724, note (2).

[6] Colt vs. Netterville, supra.

bill, upon the ground that at the hearing the case might appear to be attended with such circumstances as may make it just to decree the defendant either to transfer the stock according to his agreement, or at least to pay the difference, as the bill was in this alternative form.

So in Gardener vs. Pullen,[1] which would seem to be the earliest case upon the subject, where the contract was in the nature of a bond to transfer certain East India stock before a future day, the court granted the decree, though the stock had greatly risen, and compelled the plaintiff, who brought the bill, to determine upon what terms he should be relieved from the penalty of the bond, to transfer the stock in specie and to account for dividends.[2]

Although the courts will not generally decree specific performance of government stock, yet the specific delivery of certificates of stock of a foreign government has been decreed, which gave the plaintiff the legal title thereto.[3] In this case the bill was for the enforcement of a contract for the sale of certain Neapolitan stock. The bill prayed for the specific delivery of certificates relating to such stocks, giving the legal title thereto; and the vice-chancellor (Leach) was of opinion that, inasmuch as the bill prayed *a delivery of the certificates* which would constitute plaintiff the proprietor of a certain quantity of stock, the bill in equity would hold, because a court of law could not give the property, but could only give a remedy in damages, the beneficial effect of which would depend upon the personal responsibility of the party; and the vice-chancellor declared that he also considered that

[1] 2 Vern. 374.

[2] For when a court of equity decrees specific performance, it does so quite irrespective of any alteration which may have taken place in the price of the stock (Lightfoot vs. Creed, 2 Moo. 255).

[3] Doloret vs. Rothschild, 1 Sim. & St. 598; see also Chaler vs. San Francisco S. R. Co., 19 Cal. 219.

the plaintiff, not being the original holder of the scrip, but merely the bearer, might not be able to maintain any action at law upon the contract, and that if he had any title it must be in equity.

So where trusts are involved, specific performance is sometimes decreed of stock. As, for instance, if a trustee of stock sell it, a *cestui que* trust has an option to have it replaced either in stock or the money produced by it with interest.[1]

Specific performance has likewise been decreed of a contract for the sale of an annuity payable out of dividends of stock. It was contended that, as the contract related to the sale of dividends of stock, the same principle applied which guides the court in refusing specific performance of an agreement for the sale of the stock, but the court declined to take this view. The court, per Sir John Leach, said: "There can be no doubt that the defendant, who is the purchaser of this annuity, might have filed a bill for the specific performance of the agreement for sale to him, because a court of law could not give him the subject of his contract, and the remedy here must be mutual for purchaser and vendor."[2]

In another very important case,[3] where the court made, for the first time, a plain distinction between stocks and shares, a defendant was decreed to transfer certain railway shares

[1] Forrest vs. Ellwes, 4 Ves. 497; see also Jackson vs. Cocker, 4 Beav. 50; Duncuft vs. Albrecht, 12 Sim. 189; Fyfe vs. Swaby, 8 Eng. L. & Eq. 184, where a company held to be a trustee of certain shares was compelled to transfer sealed certificates thereof to an equitable owner of the same; see also Stanton vs. Percival, 5 H. L. Cas. 257, where the apparent owner of government stock declared himself to be a trustee merely of certain stock, and the court ordered him to transfer that stock to the person beneficially entitled. This is likewise the American rule; see cases cited infra.

[2] Withy vs. Cottle, 1 Sim. & St. 174; 1 Turn. & R. 78; Adams vs. Blackwall R. Co., 13 Jur. 620; s. c. 2 Macn. & G. 118; Clifford vs. Turrill, 1 You. & Coll. (C. C.) 138.

[3] Duncuft vs. Albrecht, 12 Sim. 198, aff'd 199.

which he had contracted to deliver to plaintiff. It was urged that specific performance of such a contract would not be decreed, and the case of Nutbrown vs. Thornton[1] was cited to sustain that argument, and Doloret vs. Rothschild[2] was sought to be distinguished. In deciding the case, the vice-chancellor (Sir Launcelot Shadwell) said: "Then the only question is whether there has been any decision from whence you can extract a conclusion that the court will not decree a specific performance of an agreement for the sale of such shares? Now, I agree that it has been long since decided that you cannot have a bill for the specific performance of an agreement to transfer a certain quantity of stock. But, in my opinion, there is not any sort of analogy between a quantity of three-per-cents., or any other stock of that description (which is always to be had by any person who chooses to apply for it in the market), and a certain number of railway shares of a particular description, which railway shares are limited in number, and which, as has been observed, are not always to be had on the market. And, as no decision has been produced to the contrary, my opinion is that they are a subject with respect to which an agreement may be made which this court will enforce."[3]

Lord Chelmsford, in a subsequent decision upon this subject,[4] holds that an agreement to accept a transfer of rail-

[1] 10 Ves. 161.

[2] 1 Sim. & St. 598.

[3] And this view was subsequently affirmed by the lord chancellor. See Shaw vs. Fisher, 5 De G. M. & G. 596; Wynne vs. Price, 3 De G. & Sm. 310; Wilson vs. Keating, 7 W. R. 484; Cheale vs. Kenward, 3 De G. & Sm. 27; Oriental Co. vs. Briggs, 2 J. & H. 625; Paine vs. Hutchinson, L. R. 3 Eq. 257; Shepherd vs. Gillespie, L. R. 5 Eq. 293.

[4] Cheale vs. Kenward, 3 De G. & J. 27.

It was held in Turner vs. Moy, 32 L. T. R. 56, that specific performance of a contract to give plaintiff certain shares of a proposed company would be enforced by allotting to him shares out of a second com-

way shares on which nothing had been paid is not *nudum pactum*, but a contract which may be specifically enforced in equity. In quoting from Duncuft vs. Albrecht,[1] the lord chancellor said: "Now, there is no doubt that a bill will lie for specific performance of an agreement to transfer railway shares. This was set at rest by that case."

The majority of stock cases in England in which equity has interfered, as heretofore observed, have been those involving principally the question as to the liability between transferror and transferee or intermediaries for "calls," or assessments imposed upon the shares of certain companies organized under the peculiar system of English laws pertaining to such bodies. It may not be amiss in this connection to briefly refer to some important features as regards the liability in equity of different persons to pay these assessments.

At law the payment of "calls," when made, would seem primarily to fall upon the registered owner of the shares, for it is to him that the company look, and to no one else; but the English courts of equity, in relieving at times the harsh rule of law, hold that when the registered owner sells his shares, or makes a contract for that purpose, the title to the shares thereupon vests in the purchaser or transferee before the deed of transfer is registered upon the books of the company; and as to the payment of "calls" thereafter imposed, the vendor becomes his trustee merely for the

pany formed by the promoters of the intended first company, the scheme of which was abandoned.

And so will a contract giving plaintiff a certain number of shares in a newspaper publishing company, although defendant, after action commenced, transferred all the shares of the corporation to his stepson as a gift. Graham vs. O'Connor, 73 L. T. R. 712.

[1] 12 Sim. 189, 199.

number of shares so sold, and there his liability ceases—at least as between the immediate parties.

It often happens, however, that for some reason the final purchaser or transferee fails or refuses to procure the transfer of the shares into his name, or to pay the calls thereon; and, if these are made after the sale, the registered owner at once becomes liable to the company for them, as his name still appears upon the books as a shareholder—and this liability continues until the purchaser sees fit to register himself, or is compelled so to do by decree of court.

At law, therefore, the vendor becomes almost remediless; for, in an action against him for the "calls," it is no answer that he has parted with the shares,[1] inasmuch as the company are not bound to look beyond the record of shareholders to fix the responsibility for "calls." Again, a court of law could not compel the purchaser to register; and even if the remedy at law be clear, it would be most intolerably unjust to compel the owner of record to sue the vendee upon each successive "call" that is made. Hence the vendor is compelled to resort to equity to compel the final purchaser or transferee to register, to pay the calls imposed, and to indemnify him for all expenditures that he may have made.[2] And where there are several purchasers, each will be bound

[1] If the vendor pays the intervening call himself, he has, it seems, no remedy at common-law for the recovery of the money from the purchaser (Humble vs. Langston, 7 Mee. & W. 517; Sayles vs. Blane, 19 L. J. Q. B. 19). But Humble vs. Langston is considered overruled. See Walker vs. Bartlett, 18 C. B. 845, 862; s. c. 36 Eng. L. & Eq. 368; Brown & Theobald's Law of Railways, 3d ed. 71, note.

[2] See, on this point, Ex parte Straffon, 22 L. J. Ch. 206; Wynne vs. Price, 3 De G. & Sm. 310; Shaw vs. Rowley, 16 Mee. & W. 815; Shaw vs. Fisher, 2 De G. & Sm. 11; Paine vs. Hutchinson, L. R. 3 Ch. 388; Hawkins vs. Maltby, L. R. 4 Ch. 200. Kellock vs. Enthoven, L. R. 8 Q. B. 458.

to indemnify the vendor to the extent of his interest. They will not be jointly and severally liable for the whole number of shares.[1] Doubts have been raised whether the original vendor is entitled to specific performance against the ultimate purchaser where, in accordance with the practice of the Stock Exchange, there have been intermediate sales without the execution of any transfer, and the name of the ultimate purchaser has been supplied to the Broker of the original vendor for the purpose of being inserted in the transfer deed to be executed by the latter.[2] But it would seem that specific performance will be decreed in such a case.[3] Finally, it is held that the decree may provide for both past and future "calls."[4]

III. Specific performance in the United States.

(*a*) *Preliminary Observations.*

In the United States the subject of specific performance of contracts for the sale of securities has been frequently before the courts, and they seem inclined not to decree performance of contracts concerning either stocks or shares un-

[1] Brown vs. Black, L. R. 8 Ch. 939.

[2] Hawkins vs. Maltby, L. R. 3 Ch. App. 188, rev'g L. R. 4 Eq. 572.

[3] In re Overend, Gurney & Co., Musgrave and Hart's Case, L. R. 5 Eq. 193; 37 L. J. Ch. 161. See Evans vs. Wood, 5 Eq. 9; Hodgkinson vs. Kelly, 6 Eq. 496; Sheppard vs. Murphy, Ir. Rep. 2 Eq. 544. Contra, Davis vs. Haycock, L. R. 3 Ex. 373. See Stutfield's Rules of the Stock Exchange, p. 83 et seq.

[4] Coles vs. Bristowe, L. R. 6 Eq. 149, and cases cited on p. 153 of that case; Wynne vs. Price, supra; Shepherd vs. Gillespie, L. R. 3 Ch. App. 764; s. c. L. R. 5 Eq. 293. The following are additional cases in which the courts have decreed specific performance: Poole vs. Middleton, 9 W. R. 758. Purchaser of shares in a company compelled to take same and to pay calls, Odessa Tramway Co. vs. Mendel, 37 L. T. (n. s.) 275; indemnity against future calls decreed, Wynne vs. Price, 3 De G. & Sm. 310; New Brunswick Co. vs. Muggeridge, 4 Drew. 687.

less damages at law are utterly inadequate, or the remedy there is doubtful. This results from the fact that nearly all kinds of stocks and shares are in this country easily to be procured at the Stock Exchange, and the difference, if any, recovered by an aggrieved party in damages at law; there being no difference generally between one share and another where the stock is numerous and has a market price. And a party is generally fully compensated by the latter remedy.[1] The rule, it has been declared by an able federal judge (Miller), should be applied indifferently to government stocks and to shares or stocks and bonds of railway companies.[2] It is to be observed, however, that where a trust has been created in relation to stocks, shares, or any other chattel, there is no doubt but that a bill in equity will lie to enforce the trust and to have a transfer of the property. Upon this point the authorities are agreed and the law seems to be settled.[3] And the English rule is the same in relation to

[1] Ross vs. Union Pacific R. R. Co. 1 Woolw. (U. S. C. Ct.) 26, 32. See the general rule ably stated per Welles, J., Jones vs. Newhall, 115 Mass. 248. See also Adams on Eq. 8th ed. 83; Seymour vs. Delancey, 3 Cow. 446, 505. As to when a contract for the sale of stock will be decreed, where real estate is concerned, see Burton vs. Shotwell, 13 Bush (Ky.), 271.

[2] Ross vs. Union Pacific R. R. Co. supra; see also Fallon vs. R. R. Co. 1 Dillon, 121. But see 3 Pars. on Cont. (6th ed.) 369, where it is said: "The question has not arisen in this country so frequently or so directly as to enable us to lay down what may be called an American rule of law in relation to it. Perhaps, however, from the wider meaning of the word 'stock' among us, and the greater complexity of the questions which occur in relation to the sale of it, we might expect a wider relaxation of the rule than in England, even if the rule itself be adopted."

[3] Ferguson vs. Paschall, 11 Mo. 267; Cowles vs. Whitman, 10 Conn. 121; Clark vs. Flint, 39 Mass. 231; Mechanics' Bank vs. Seton, 1 Pet. 299, where the subject is fully considered in a lengthy opinion in which the court decreed transfer of bank shares; Gram vs. Stebbins, 6 Paige, 124; Bissell vs. Farmers' Bank, 5 McLean, 495; Draper vs. Stone, 71 Me. (1 Sauld.) 175; Johnson vs. Brooks, 11 J. & S. 13; Anderson vs. Biddle, 10. Mo. 23.

such property where any trust is involved.[1] In a case in New York, specific performance was decreed of a contract to pay a shareholder dividends upon preferred stock which he held.[2]

(b.) When Relief Refused.

We begin, then, with a consideration of those cases in the United States which have refused to decree these contracts.

In so far as the decisions in this country have refused to decree performance of contracts involving public stocks—i. e., government bonds—they may be said to agree with the English rule upon the subject. However, so few cases have come before the courts upon this question that it cannot well be said that the law in respect thereto has as yet been definitely settled.

Only one case involving public securities or government bonds has thus far been dealt with by the courts, and it does not appear that this decision has ever seen the light of the highest appellate tribunal.

In Ross vs. Union Pacific Railroad Co.,[3] which is perhaps the only authority upon the subject, the plaintiff contracted with defendant to build for it a railroad, for which it agreed to pay in government bonds of the United States and in the bonds and stocks of the company. On a bill for a specific performance of the contract, it was held by Mr. Justice Miller, of the Supreme Court of the United States,[4] in the

See also Irvine vs. Dunham, 4 Sup. Ct. Rep. (U. S.) 501, in which a trust was enforced, and a transfer of shares decreed. The trustee in that case was held not entitled to recover assessments paid pending the appeal. Irvine vs. Angus, 84 Fed. Rep. 127. When the trustee is a mere depositary he is not a necessary party defendant. Baeck vs. Meinken, 68 N. Y. Supp. 428.

[1] See cases cited supra.

[2] Boardman vs. Lake Shore and M. S. R. R. Co., 84 N. Y. 158.

[3] 1 Woolw. (U. S. C. Ct.) 26, 34.

[4] Sitting in the 8th Cir. Ct.

course of an elaborate opinion, that the bonds of the United States were stocks within any definition which could be given of that term, and that they were public stocks—government stocks. The court said, in referring to the English cases upon the subject of public stocks, that the decisions were clear and uniform that a covenant for their delivery will not be specifically enforced in equity, and no case could be found to the contrary. As to the shares of the railroad company, the court applied the same rule, and could perceive no sound distinction between them and government stocks. "They belong to a class of securities which are generally called stocks; they are the subject of everyday sale in the market, and the rates at which they are selling are quoted in the public commercial reports, so that their value is as readily and certainly ascertained as that of government stocks. No special value attaches to one share over another, and the money which will pay for one will as readily purchase another. The damages, then, for failure to deliver any such shares may be awarded at law, and be an adequate compensation for the injury sustained."[1] On this point the court cited, among others, the well-known case of Cud vs. Rutter, and quoted extensively from the opinion of Lord Chancellor Parker in that case. "In England, by recent decisions, the jurisdiction seems to have been extended beyond the early cases. In them it has been said that there is no analogy between government stocks and railroad shares, because the latter are limited in amount, and are not always to be had in the market." Whether the distinction taken in these cases shall be held finally to prevail in this country, and, if it be established,

[1] See Sears vs. Boston, 33 Mass. 357; Woodward vs. Harris, 2 Barb. 943.

whether it shall be held applicable in principle to cases like this, the court did not determine.

It will be noticed, however, that while, as to the government bonds, the court adopted the English rule, and classed them as public stocks, as to the railroad shares, contracts for which have frequently been decreed in England, the court did not follow the well-known English rule, but appears to have taken the ground that they should be classed in the same category with stocks, and that there was no substantial difference between them.[1] So, in another case in the United States Circuit Court,[2] the court refused to decree specific execution of a contract for the construction of a railroad, where payment was to be made in bonds and stocks of the company.[3]

[1] See Duncuft vs. Albrecht, 12 Sim. 189; Shaw vs. Fisher, 5 Railw. Cas. 159.

[2] Fallon vs. Railroad Co., 1 Dillon (U. S. C. Ct.), 125.

[3] See also Mississippi, etc., R. R. Co. vs. Cromwell, 91 U. S. 643.

In the following case specific performance as to railroad shares was also held not enforceable: Mundy vs. Davis, 20 Fed. Rep. (Ky.) 353 (delay and changed condition of the parties).

It was held in the following cases that the corporation is an indispensable party when a transfer is sought to be made on its books. St. Louis & San Francisco Ry. Co. vs. Wilson, 114 U. S. 60; Crump vs. Thurber, 115 U. S. 56. See contra Sayward vs. Houghton, 82 Cal. 628.

In the following cases in the Federal courts, contracts for the sale of the stock or shares of mining, water and other miscellaneous corporations have been held not enforceable. Moline Plow Co. vs. Carson, 72 Fed. Rep. 387 (fraudulent misrepresentation); Summerlin vs. Fronteriza Silver Mining & Milling Co., 41 Fed. Rep. (Tex.) 249 (adequate remedy at law); Wescott vs. Mulvane, 58 Fed. Rep. 305 (where the vendee has not performed one of the conditions of the contract); York vs. Passaic Rolling-Mill Co., 30 Fed. Rep. 471 (where there was a voluntary surrender and rescission of the contract).

And a preliminary injunction to restrain the sale of mining stock by defendant will be granted in a suit for specific performance of a contract for the sale thereof to plaintiff, when the result of the suit is doubtful. McLure vs. Sherman, 70 Fed. Rep. (Mont.) 190.

And, in a case in New Jersey, specific performance was refused of a contract to build and equip a railroad, although the price was to be paid in the stocks and bonds of the company. The bill was dismissed, however, owing to the inability of the defendant to fulfil its contract, by reason of its failure to comply with the requirements of a general law under which it was incorporated, by which its charter was forfeited. In the course of his opinion the chancellor made the following remarks: "There are several considerations which forbid the granting of the relief prayed for in this suit. If this court could undertake the performance of such a contract as that stated in the bill . . . (and the current and great weight of authority is decidedly against it . . .[1]) the disability of the defendants would be a sufficient reason for refusing."[2]

Perhaps one of the most interesting cases upon the subject of specific performance of contracts for sale of shares that has yet been before the courts of this country is that of Foll's Appeal,[3] decided by the Supreme Court of the State of Pennsylvania. The court appears to have given

[1] Citing Story's Eq. Jur. § 726; Ross vs. Union Pacific R. R. Co., 1 Woolw. 20; Fallon vs. Railroad Co., supra.

[2] Danforth vs. Philadelphia, etc., R. R. Co., 30 N. J. Eq. 15.

A contract to issue stock of a railroad fraudulently made by a director is not enforceable in equity. Sargent vs. Kansas Midland R. R. Co., 48 Kan. 672.

[3] 91 Pa. St. 434; s. c. 36 Leg. Int. (Pa.) 495; see form of bill in this action, and see, in connection with this case, 3 Parsons on Cont. (8th ed.) 373.

This decision was followed in a similar state of circumstances, in Ryan vs. McLane, 91 Md. 175.

But the owners of the entire stock of a corporation may make an agreement to control the stock. Scruggs vs. Cotterill, 73 N. Y. Supp. 882. However, if the stockholders agree that none of them shall sell their shares without first giving a preference to the others, specific performance will only be enforced when the plaintiff shows that he has been damaged by the breach of the contract. Brown vs. Britton, 58 N. Y. Supp. 351.

the case most attentive consideration in all of its aspects. The bill was filed to compel the specific performance of an agreement to sell certain stock in a national bank. It appeared in the case that the purchase had been made to enable complainant, with what stock he already had, to get control of the bank, and that such was the understanding between the two, and that defendant's shares would give him such control; that that was his object in making the purchase of the same, without which, as he alleged, his own stock would be of little value; that if Foll's stock were transferred to one W., complainant would lose control of the bank, and an injunction was asked to restrain such transfer. By a supplemental bill, it was alleged that there was no stock in the market; that none could be purchased; and that damages would not compensate. On appeal from a decree in complainant's favor, Paxson, J., in reciting the facts, stated that the case presented some extraordinary features, and that there had been nothing like it in the State since equity powers were conferred upon the courts. But the bill was dismissed upon the ground that it was against public policy. Upon this branch of the case the court said: "A person who is attempting to make a 'corner' in stock, or in any article of merchandise, who had made his contracts with that end in view, might with equal propriety call upon us to decree specific performance. But the decree of a chancellor is the exercise of a sound discretion. It is of grace, not of right, and will never be made where the equity and justice of a case are not clear."

Whether the court would have decreed performance of the contract had it been fair and honest was not decided, but it was held in a recent case in Pennsylvania[1] that

[1] Rigg vs. Railway Co., 191 Pa. St. 298.

one or more stockholders in a corporation may agree to stand together in carrying out an honest business policy consistent with what they believe to be the best interests of all the stockholders, and therefore an arrangement by which plaintiff purchased certain of the stock of a railroad company with a view to promote the interests of both the plaintiff and two of the officers of the company who advanced the purchase money, part of which had been repaid to them by plaintiff, was held by the Supreme Court, under the circumstances, not a pooling agreement to yield the control of the corporation to a few who might dominate, regardless of the interests of the many, and not violative of the law or contrary to public policy. In that case specific performance of a written contract for the sale of the shares by plaintiff to one R. was refused, plaintiff having by a verbal contract disposed of them about nine days previously to the officers with whom he had made the pooling agreement. Other cases in Pennsylvania in which specific performance of contracts for the sale of stocks and bonds has been refused are set out in the footnote.[1]

Upon the ground of the decision in Foll's Appeal the Supreme Court of Massachusetts,[2] was inclined to refuse to decree specific performance of a contract to buy shares in a corporation.[3]

Specific performance of a contract to transfer stock in an insurance company has been refused in Missouri upon the

[1] Dull vs. Culver, 24 Pitts. L. J. 86; Engelhardt vs. Heck, 36 Pitts. L. J. 204; Dungan vs. Dohnert, 11 W. N. C. 330; Strasburg R. Co. vs. Engelhardt, 21 Pa. St. 220; Reynolds vs. Roland, 7 Lack. 189; 202 Pa. St. 642; Rommel vs. Coal Co., 18 Super. Ct. Rep. 482.

[2] Noyes vs. Marsh, 123 Mass. 287.

[3] See also Railroad Co. vs. Echternacht, 21 Pa. St. 220.

ground that the remedy at law was adequate.[1] "It seems to be now settled," said the court in this case, "though it was once held otherwise, that, in general, a specific performance of a contract for the transfer of stock will not be decreed. In this case the contract has already been executed."[2]

[1] Ferguson vs. Paschall, 11 Mo. 267.

[2] The general rule is likewise recognized in the following American cases: Carpenter vs. Ins. Co., 4 Sandf. Ch. 408; Brown vs. Galliland, 3 Desau. 539; Phillips vs. Berger, 2 Barb. 608; 8 id. 527; Sullivan vs. Tuck, 1 Md. Ch. 59; Walters vs. Howard, id. 112. See also Clark vs. Flint, 39 Mass. 231; Lowry vs. Muldrow, 8 Rich. (S. C.) Eq. 241; McGowan vs. Remington, 12 Pa. St. 56; Moulton vs. Warren Manufacturing Co., 83 N. W. Rep. 1082.

And specific performance will not be granted when it is impossible, as when defendant's partners owned the stock jointly with him, Jones vs. Times, 37 S. E. Rep. (Va.) 841; (when bonds have been cancelled and new bonds issued) Roanoke St. Ry. Co. vs. Hicks, 32 S. E. Rep. (Va.) 295; (when the agreement by defendants is too general) Brehm vs. Sperry, 48 Atl. Rep. (Md.) 368; (when owing to foreclosure proceedings, specific performance would be impossible, and plaintiffs, having intervened in the foreclosure proceedings, and allowed the property to be sold, should be relegated to the tribunal which adjudged the foreclosure, so that they might participate in the proceeds of sale) Rommel vs. Coal Co., 18 Pa. Super. Ct. 482; (when plaintiff is not a bona fide purchaser) Shinkle vs. Vickery, 55 S. W. Rep. 456; (when part only of the contract is sought to be enforced, the contract being an entire one) Colwes vs. Miller, 50 Atl. Rep. (Conn.) 728; (when there is not a sufficient part performance to take the case out of the statute of frauds) Reynolds vs. Scriber, 69 Pac. Rep. (Ore.) 48; (when the plaintiff does not come into court with clean hands) Reynolds vs. Boland, 52 Atl. Rep. (Pa.) 19; (when the allegations of the complaint are defective) Burk vs. Mead, 64 N. E. Rep. (Ind.) 880.

In the following cases specific performance of contracts to sell shares and stock of corporations, has been refused on the ground of laches: Rogers vs. Van Nortwick, 87 Wis. 414 (three years' delay, defendant's fraud being known to plaintiff); York vs. Passaic Rolling-Mills Co., 30 Fed. Rep. 471 (seven years' delay).

If a corporation has issued its full capital stock, specific performance of an agreement to issue further shares, cannot be compelled. Finlay & Co. vs. Kurtz, 34 Mich. 89. A corporation which absorbs another corporation is not necessarily bound to issue stock to subscribers

A bill in equity to enforce specific performance of a contract to exchange stock, must aver that the defendant was the owner of the stock at the time of making the contract, or it is demurrable.[1]

When an alleged oral contract for the transfer of mining stock is not established by satisfactory evidence, and, even if so established, was without adequate consideration, specific performance of it will not be enforced.[2] Nor of an alleged contract for the sale of certain shares in a town company, when the issues involved had been previously settled in another action.[3]

When through the refusal of one, not a party to the contract, to sell portion of the common stock of a hotel corporation, held by him, to one of the parties to the contract, held that the latter could not enforce the specific performance of an agreement by the other party to deliver certain bonds of the corporation, as the understanding of the parties (viz., to have entire control of the corporation) could not be carried out.[4]

In a suit for specific performance of a contract to transfer

to the latter corporation. Conant vs. National Ice Co., 40 N. Y. Super. Ct. 83.

When stock is not fully paid up, the issuance of a certificate by the corporation cannot be compelled. Baltimore Ry. vs. Hambleton, 77 Md. 341; Babcock vs. Schuylkill Ry. Co., 133 N. Y. 420.

Even when a plaintiff might have a right of election to enforce specific performance, he will not have relief in equity, when his remedy at law is adequate. Eckstein vs. Downing, 64 N. H. 248. And when a necessary party is not joined with plaintiff, a judgment declaring defendant to be trustee for plaintiff of an interest in a mining claim will be reversed, and a new trial ordered. It was also held that, although the trustee obtained the patent in his own name, equity would control the legal title. O'Connor vs. Irvine, 74 Cal. 435.

[1] Manton vs. Ray, 18 R. I. 672.

[2] Hibbert vs. MacKinnon, 79 Wis. 673.

[3] Shepard vs. Stockham, 45 Kan. 244.

[4] Stokes vs. Stokes, 148 N. Y. 708.

shares of a mining company, it is error to award damages against the contractee's wife to whom the shares were transferred, without showing participation by her in the fraud.[1]

In Delaware it was held that specific performance of a contract for the sale of the stock of an iron company would not be decreed, when the contract is too vague, and when the one seeking performance was the secretary of the company, he will be left to a suit at law to recover any damages incurred by breach of the contract.[2] And when the plaintiff has put it out of his power to perform his part of the contract, specific performance will be refused.[3]

It has been also held in the State of New York that when bonds of a village have been invalidly issued, a contract to purchase them from the village will not be enforced, and the village will be compelled to return a deposit on account of the purchase money made by defendants.[4] And although stock of a brewing company, a close family corporation, may not be bought or sold in the market, and in a clear case specific performance of a contract for the sale of part thereof might be enforced, yet when plaintiff has delayed nearly three years in bringing his action, and does not come into court with clean hands, his bill for specific performance will be dismissed.[5]

[1] Eastman vs. Reid, 101 Ala. 320. See also Johnson vs. Kirby, 65 Cal. 482 (as to misjoinder of causes of action). Specific performance will not be granted after a delay of ten years, when the contractor has died, and her estate in the hands of her administrator is insolvent, although if solvent, performance would be enforced, as a trust was involved. Chaffee vs. Sprague, 16 R. I. 189.

Nor when the contract is not a complete one. Topliff vs. McKendree, 88 Mich. 148.

[2] Todd vs. Diamond State Co., 8 Hous. Del. R. 372.

[3] Kolsky vs. Enslen, 103 Ala. 97.

[4] Village of Hempstead vs. Seymour, 69 N. Y. Supp. 462.

[5] Ringler vs. Jetter, 72 N. Y.

And specific performance of a contract to transfer stock of a street railway corporation in payment of a Brokers' commission, will not be enforced, when the plaintiff puts a valuation on the stock, the defendants are not alleged to be insolvent, a trust relation is not established, and the plaintiff may bring an action for damages in the State.[1]

It has been held in Maine that specific performance of a contract to sell land of an improvement company will not be enforced, when payment of the greater part of the purchase money is offered in stock of the company of little value, the payment in stock being attempted to be justified under a by-law of the company, which it would be inequitable to enforce.[2]

(c.) *When Decreed as to Railway Shares.*

In the following cases concerning railroad shares specific performance was decreed:

In Austin vs. Gillespie [3] A had agreed conditionally with others to subscribe a certain amount to the stock of an unincorporated railway company; and B and C agreed with him in writing that if he would do so unconditionally they would each take one fourth of such stock off his hands by subscribing for it in their own names; and A afterwards made such subscription absolutely: it was held that equity would decree the performance of such agreement. The defendant objected that there was a complete remedy at law in damages. "This objection," said the court, "might avail when applied to a contract for the sale and transfer

Supp. 362. See also Bateman vs. Straus, 83 N. Y. Supp. 785.

[1] Avery vs. Ryan, 74 Wis. 791.

[2] Kelley vs. York Cliff Co., 47 Atl. Rep. (Me.) 898.

[3] 1 Jones (N. C.) Eq. 261

of stock in a company already in existence and whose stock had in market a certain, or nearly certain, value. But the slightest reflection will convince any one who turns his attention to the subject that this is a very different case. Here the company was just struggling into life, and the subscribers for its stock were taking upon themselves very heavy burdens with a dim prospect of future advantage. It would therefore be manifestly impossible to give to the plaintiff in a suit at law damages at all commensurate with the injury which he might sustain by the failure of the defendants to fulfil their engagement with him." But the decision in that case does not seem to be reconcilable with one cited,[1] where the court refused to decree performance of an agreement or subscription to take stock in an unchartered railway company.

Again, in the same State,[2] to the objection that the remedy was complete at law, the court said that might be so in England in reference to government stock, which, like corn or flour, may be bought for the money in market at any time. But the doctrine had no application to railroad stock.

So, in a case in Massachusetts,[3] plaintiff bought of a member of a firm shares of stock in a railway company, and took from the firm a power of attorney authorizing him to procure a transfer of the shares on the books of the corporation. The firm had at the time a large number of shares to its credit on the books of the corporation. The plaintiff delayed for some months to present his

[1] Railroad Co. vs. Echternacht, 21 Pa. St. 220.

[2] Ashe vs. Johnson, 2 Jones Eq. (N. C.) 155.

[3] Wonson vs. Fenno, 129 Mass. 407.

power of attorney to the latter body, and in the meantime the firm sold all of its shares to other persons, who obtained certificates from the corporation. The bill was dismissed as against the railroad company; and it was held that the plaintiff was not entitled in equity, as against a partner who had no knowledge of the transactions, to a decree for the delivery to him of a certificate of the shares of the stock, which had risen in value, but was entitled to a decree for the money which he had paid, with interest. The court said: "The bill should not be dismissed, because the plaintiff might recover this sum in an action at law; for a court of equity, while denying the specific relief prayed, may give to a plaintiff the compensation to which he appears to be entitled."

In Leach vs. Forbes[1] the parties compromised, by agreement in writing, a controversy over a will involving real estate and stocks. It was objected, on a bill to enforce the agreement, that the case presented no equity; but the court enforced the bill upon the ground that the agreement was not only for the transfer of shares, but also for the conveyance of real estate; and as the court considered it proper to give relief for this part of the agreement, it also entertained jurisdiction of the whole; and accordingly, without deciding whether a suit in equity could be supported for the sole purpose of enforcing a contract for the sale of the shares, the court enforced that part relating to them. In the course of his opinion Bigelow, J., said: "The more recent authorities are quite decisive as to the authority of a Court of Chancery to decree the specific performance of a contract for the transfer of shares in joint

[1] 77 Mass. 506. See Treasurer vs. Commercial Co., 23 Cal. 390.

stock companies or corporations, in cases in which it appears that the capital stock is fixed at a certain amount and the number of shares is limited."[1] Subsequently, the same court held[2] that a bill would lie to enforce a transfer of shares in a corporation. There the agreement was to transfer the shares upon the payment of a note without grace at maturity given for the price thereof.[3]

The subject has also received some consideration in the State of New York, though no case has apparently yet arisen there involving the transfer of railroad shares.[4] Performance of a contract for the transfer of stock of an association has been there decreed[5] for the following reasons: 1st. Because the parties evidently contemplated and especially contracted for a reconveyance of the stock. 2d. Because, as well on account of the uncertain value of the stock in the market and the infrequent sales of it[6] as the varying char-

[1] A case much like this is Burton vs. Shotwell, 13 W. Bush (Ky.), 271, where the court took the same view and decreed the transfer, etc.

[2] Todd vs. Taft, 89 Mass. 371.

[3] But see Noyes vs. Marsh, 123 Mass. 286, where the court refused to decree performance of a contract involving the sale of shares, upon the ground that the remedy at law was adequate. See Suter vs. Matthews, id. 255; Wonson vs. Fenno, 129 Mass. 407.

[4] Pollock vs. National Bank, 7 N. Y. 274; Purchase vs. Bank, 3 Robt. (N. Y.) 364; see, however, a peculiar case—Johnson vs. Albany & S. R. R. Co., 54 N. Y. 417—where the court refused to decree a transfer of railway shares, but upon other grounds. And as to what must be alleged in complaint for delivery of railroad stock, see Burrall vs. Bushwick R. R. Co., 75 N. Y. 211.

[5] White vs. Schuyler, 1 Ab. (n. s.) 300; s. c. 31 How. 38. See also Meyer vs. Blair, 109 N. Y. 600; id. 59 Hun, 347, where a contract to repurchase stock of an iron company at the price paid for it was held enforceable, but there must be a tender of the shares. Tender, however, is not necessary if the vendor repudiates the contract. Maguire vs. Halstead, 18 App. Div. (N. Y.) 228. Hanson vs. Slaven, 98 Cal. 377 (there must be tender of the purchase money, before an option contract to purchase shares can be enforced).

[6] On this point, see Hardenburgh vs. Bacon, 33 Cal. 356.

acter and success of the business which the stock represented, it was difficult, if not impossible, to do justice between the parties in an award of damages. These are controlling reasons in equity for a specific performance.

Upon the same ground was based a decision in the Court of Appeals of that State,[1] where the court gave the subject a most thorough examination, and decreed the transfer upon its books by a manufacturing corporation of shares of its capital stock to the owner of the same. The court, while admitting that the transfer of stock will not generally be decreed, held that the rule was limited to cases where a compensation in damages would furnish a complete and satisfactory remedy. In this case Judge Miller, in the course of an able opinion, said: "It is easy to see that a party may become the owner or purchaser of stock in a corporation which he desires to hold as a permanent investment which may be at the time of but little value—in fact, without any market value whatever—and its real worth may consist in the prospective rise which the owner has reason to anticipate will follow from facts within his knowledge. To say that the holder shall not be entitled to the stock because the corporation, without any just reason, refuses to transfer it, and that he shall be left to pursue the remedy of an action for damages, in which he can recover only a nom-

[1] Cushman vs. Thayer Mfg. Co., 76 N. Y. (35 Sick.) 365.

A stockholder to whom a certificate has not been issued, may compel a corporation to specifically perform its contract. Thorp vs. Woodhull, 1 Sandf. Ch. (N. Y.) 411; Rowley's Appeal, 115 Pa. St. 150; Bailey vs. Champlain, 77 Wis. 453; Birmingham National Bank vs. Roden, 97 Ala. 404; Wells vs. Green Bay Co., 90 Wis. 442; Bedford County vs. Nashville Ry., 14 Lea (Tenn.), 525; Kobogum vs. Jackson Iron Co., 76 Mich. 498; O'Meara vs. North American Min. Co., 2 Nev. 112; State vs. Crescent City Co., 24 La. Ann. 318; Wallace vs. Townsend, 43 Ohio, 537.

inal amount, would establish a rule which would work great injustice in many cases, and confer a power on corporate bodies which has no sanction in the law." And this decision was followed in Johnson vs. Brooks[1] as to shares in a mining company.

And in the same State it has been held, following the Thayer Co. case, that when the owners of nearly all the stock of a dry goods corporation agree that on the death of one, the other may purchase the decedent's share, the contract is enforceable.[2]

And a contract to bequeath property to an adopted child will be specifically enforced as against his estate, and testator's executrix will be compelled to surrender such property, including the stock of a corporation, to the contractee.[3]

So also when the owner of stock transfers it in fraud of creditors, the purchaser thereof, after execution sale, is entitled to have such fraudulent transfer cancelled, and the stock specifically delivered to him, as he could not maintain an action at law against the fraudulent transferee for possession, and his remedy at law is otherwise inadequate.[4]

When the court gives judgment for the return of stock of a corporation which plaintiff alleged was loaned by her to the corporation, it is error to give the corporation the option of returning the money value of the stock, when the company had sufficient stock in its treasury to satisfy the claim.[5]

The same kind of argument as was used in Cushman

[1] 93 N. Y. 337.

[2] Scruggs vs. Cotterill, 73 N. Y. Supp. 882.

[3] Brantingham vs. Huff, 73 N. Y. Supp. 643.

[4] Beckwith vs. Burrough, 14 R. I. 366.

[5] Clipper Mining Co. vs. Eli Mining Co., 68 Pac. Rep. (Col.) 286.

vs. Thayer, *supra*, seems to have been successfully advanced in a case in California, where the court, in upholding a decree to transfer the stock, said: "In the peculiar condition of business and mining operations within this State, where numerous mining and other corporations are in existence, whose stock is often of fluctuating[1] and uncertain value, and where certain kinds of stock have a peculiar value to those acquainted with their affairs—where the market value of stocks, if any they have, is often difficult to substantiate by competent evidence, and where the risk of the personal responsibility of individuals is so great—courts should be liberal in extending the full, adequate, and complete relief afforded by a decree of specific performance."[2]

[1] Specific performance will not be refused as inequitable because of the fluctuation of values, where the court has no means of knowing what bearing the terms of the contract had on the negotiations of the parties (Nims vs. Vaughn, 40 Mich. 356).

[2] Treasurer vs. Commercial Co., 23 Cal. 391.

When a railway corporation is authorized to increase its stock, and its shareholders are privileged to subscribe to the new stock, a transferee of a shareholder who availed of such privilege, is not entitled to have transferred to him by the corporation, such additional stock, payment therefor, as demanded by the company, being necessary to entitle him to a certificate of such additional shares. Baltimore City Railway Co. vs. Hambleton, 77 Md. 341. But the owner of gold mines who, under a contract with persons who furnished the capital ($20,000) to work them, was to receive half the stock of a corporation to be formed for the purpose, is entitled to specific performance by the corporation of this agreement to give him one half the stock, although by mistake the whole issue of stock was fixed at only $20,000 instead of $40,000, when the stockholders subsequently assented to a resolution of the board of directors to increase the stock to $40,000. Bailey vs. Champlain Mining Co., 77 Wis. 453. In a like case plaintiffs were held entitled to specific performance, although the claims were unpatented. Philes vs. Hickies, 18 Pac. Rep. (Ariz.) 295.

In the following cases in the Federal courts specific performance of contracts as to stock was held enforceable: Wood vs. Perkins, 57

And where an act of the legislature of a State authorized the sale of certain turnpike-road stock held by the State, and a sale of the same was effected, but afterwards the law authorizing the sale was repealed, and the commissioners refused to carry out their contract, it was held that the plaintiff was entitled to the specific transfer of the stock as if the act had not been repealed.[1]

Where the stock of a corporation cannot be procured elsewhere, or the value of the stock is uncertain and not easily ascertainable, equity will enforce specific performance.[2] And will also decree such performance when there is a trust involved, or the remedy at law would be impracticable.[3]

And when a contract provides for the conveyance of two incorporated distilleries, the real estate and plant connected therewith, and all the capital stock of the two corporations, specific performance will be enforced, as the clause of the contract for the conveyance of the capital stock was evidently adopted as an expedient to secure the transfer of the real estate.[4] Equity will also enforce the performance of a contract for the transfer of an interest in the stock of a bridge corporation, when a trust is involved.[5] An agreement to transfer stock in a close trading corporation is also enforceable, the stock not being bought or sold in the market.[6]

A suit in equity may also be maintained by a receiver

Fed. Rep. 258 (where a trust was created. Although the stock had been sold by defendant, the equitable remedy would extend to the purchase money). See also Ryan vs. Seaboard & R. R. Co., 83 Fed. Rep. 889 (as to when a bill states an equitable cause of action).

[1] Baldwin vs. Commonwealth, 11 W. Bush (Ky.), 417.

[2] Manton vs. Ray, 18 R. I. 672; True vs. Houghton, 6 Colo. 318.

[3] Goodwin Gas Stove and Meter Co.'s Appeal, 117 Pa. 514.

[4] Megibben vs. Perin, 49 Fed. Rep. 188; aff'd 53 Fed. Rep. 86.

[5] Williamson vs. Krohn, 66 Fed. Rep. 655.

[6] Jones vs. Brown, 50 N. E. Rep. (Mass.) 648.

against a stockholder of a bank corporation who has fraudulently transferred his stock, for the cancellation of such transfer, and for a money decree against the stockholder for the amount of an assessment against such stock, as the relief demanded, although of only technical advantage to complainant, could not be granted at law.[1]

A contract for the sale of promissory notes will be specifically enforced, and an injunction will issue to restrain the defendant from collecting their amount.[2] And specific performance of a contract to transfer to complainant sufficient stock to entitle him to one half of the stock of an ice corporation will be enforced, where the money value is not in question, but the power and influence it will give complainant in the management of the corporation.[3] In this case the plaintiff and defendant had owned the stock between them in nearly equal shares, and plaintiff had transferred his stock to defendant to secure advances, the contract providing that when defendant was repaid, he should transfer to plaintiff one half of the stock. In this respect, the case is distinguishable from Foll's Appeal, *supra*,[4] where complainant sought control of a bank to the possible detriment of numerous small stockholders and depositors, and of the general public.[5]

A contract between two railroad companies whose lines are not parallel or competing, for the purchase of the stock of one company by the other, is enforceable in equity as not being against public policy, or as wanting mutuality.[6]

[1] Hedland vs. Dewey, 105 Fed. Rep. 541.

[2] Gottischalc vs. Stein, 69 Md. 51.

[3] O'Neill vs. Webb, 78 Mo. App. 1.

[4] 91 Pa. St. 434.

[5] See also Gas Stove & Meter Co.'s Appeal, 117 Pa. St. 514; Rumsey vs. Ry. Co., 53 Atl. Rep. (Pa.) 495.

[6] Northern Central R. R. Co. vs. Walworth, 193 Pa. St. 207

And so is an agreement by which plaintiff was to have certain shares on the death of the owner, to whom she was to act as maid and companion for life, when plaintiff has performed her part of the contract.[1] Specific performance will also be enforced, although there was no mutuality, when plaintiff has performed his part of the agreement.[2] And damages will, in certain circumstances, be given for that part of a contract which is not enforceable.[3]

In conclusion, it may be said that the general rule recognized in all the cases, both in this country and England, is that where it appears the aggrieved party can be fully compensated in damages in an action at law, a bill to enforce the specific performance of contracts for the sale of securities will not lie; but that this rule has many exceptions is apparent from the foregoing summary, some of which arise out of the character of the parties to the transaction, and most of them out of the nature of the stock itself.[4]

IV. Mandamus.

The question whether a party can procure, by means of the prerogative writ of mandamus, a transfer of shares upon the books of a corporation which wrongfully refuses to make the transfer has been settled both in this country and in England, and it is held that the courts will not issue the writ where it appears that the party seeking the same has an adequate, ample, and specific remedy at law in damages;

[1] Le Vie vs. Fenlon, 79 N. Y. Supp. 496.

[2] French vs. Boston Bank, 60 N. E. Rep. (Mass.) 793.

[3] Lyle vs. Addicks, 49 Atl. Rep. (N. J.) 1121.

[4] See 26 Am. & Eng. Enc. of Law, p. 122–3 and cases cited; Cook on Corporations, 5th ed. §§ 337–8, and cases cited; 3 Pomeroy's Eq. Juris. p. 2153 et seq.

and where the relator merely seeks to be put into possession of corporate shares which have an ascertained market value, and can be bought in the market, there would seem to be no occasion to resort to the remedy.[1]

Courts will not exercise their extraordinary power, by means of this writ, to effect purposes as well effected by the ordinary remedies; and, accordingly, to obtain relief by mandamus the applicant must not only show a specific legal right, but there must be no other specific remedy to enforce that right.[2] This rule has been steadily enforced by the English courts since the well-known case of The King vs. Bank of England,[3] which has been followed in most instances by the courts of this country.

The decisions upon this subject in relation to contracts for the transfer of stock and shares are not numerous; but the rule seems to be clear that the remedy cannot be procured to compel a transfer or issuance of such securities if it appear that the applicant has any adequate remedy by action at law. It cannot be doubted, however, that mandamus will and ought to issue where the remedy at law is inadequate or doubtful, or where some public trust or interest is connected with the duty to transfer or issue the shares; and there are cases which go this far.[4] Generally, however, a party is deemed to have an adequate remedy against a corporation by an action on the case for damages in wrongfully refusing to transfer the shares, or in as-

[1] Murray vs. Stevens, 110 Mass. 95.

[2] Ang. & Ames on Corp. (10th ed.) § 710; Lindley on Company Law, 813. But in Illinois a party may, by statute, have mandamus, although he has another legal remedy. Ohio Ry Co. vs. People, 121 Ill. 483.

[3] 2 Doug. 523. See also Queen vs. Shropshire Union Railways, L. R. 7 H. L. 496, rev'g s. c. L. R. 8 Q. B. 420.

[4] See Townsend vs. McIver, 2 So. Ca. (n. s.) 25.

sumpsit, which has been held to be the proper remedy where mandamus does not lie.[1] It seems, however, pretty well settled that either remedy may be pursued; and assumpsit lies against such corporations on the ground that all duties imposed upon them by law raise an *implied promise of performance*.[2]

In England the somewhat inflexible rule which has prevailed since the decision of Lord Mansfield has apparently given birth to a statute,[3] by which it seems mandamus will issue in cases where at common law it would have been refused; and it has been used to compel the registry of shares.[4]

[1] King vs. Bank of England, 2 Doug. 523; Kortright vs. Buffalo Bank, 20 Wend. 91; State vs. Rombauer, 46 Mo. 155. See also People ex rel. Content vs. Metropolitan R. R. Co., 26 Hun, 82.

In Rex vs. London Assurance Co., 1 D. & R. 510; 5 B. & Ald. 899, it was held that mandamus would not issue to compel a transfer of shares in a bankrupt's name to his assignee. And in Law Guarantee, &c., Society vs. Bank of England, 24 Q. B. D. 406, it was held that the bank could not be compelled by mandamus to register a transfer of consols in the joint names of a corporation and an individual. The decision of the court was based on the ground that a joint tenancy could not be legally created, and that the bank should not be required to register the parties (who were trustees) as tenants in common, as the bank would then be put upon inquiry as to what share each one had, whereas by its uniform practice, and by statute, the bank was exonerated from having regard to trusts of any kind.

When there is no question of public duty involved, or when the applicant can have specific performance or adequate compensation in an action for damages, the writ will not issue. Tobey vs. Hakes, 54 Conn. 274.

[2] Kortright vs. Buffalo Bank, 20 Wend. 91, aff'd 22 id. 348; Ex parte Fireman's Ins. Co., 6 Hill, 243; Shipley vs. Mechanics' Bank, 10 Johns. 484; see also Ellis vs. Essex Bridge Co., 19 Mass. 253.

[3] 17 and 18 Vict. c. 125, § 68. This section has been repealed, but is replaced by Order 53 of the Rules of the Supreme Court, 1883, rule 4 of which provides that no writ of mandamus shall issue in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. Under the Supreme Court of Judicature Act, 1873, 36 and 37 Vict. c. 66, § 25 (8), a mandamus may be granted by an interlocutory order of the court.

[4] See Norris vs. Irish Land Co., 8 El. & Bl. 511; Ward vs. Southeast-

So in the State of Louisiana, under the Code, mandamus will lie to compel the transfer of railway shares, but not, however, where the issuance of the writ would compel a violation of the charter of a corporation.[1]

It seems, however, that where a corporation arbitrarily refuses to register shares without sufficient reasons therefor, there ought to be a speedier and more specific remedy than that by action of assumpsit, or upon the case; for very often mere damages do not compensate a party for the loss of his shares, and a suit at law against a corporation is generally a tedious undertaking, involving perhaps many trials and much expense.[2]

In the case of The King vs. Bank of England,[3] the application was for a writ of mandamus to the defendants, commanding them to permit the prosecutor to transfer certain of the stock of the defendant as having been the property of their testator. The facts showed that one L., being possessed of considerable of the stock of the bank, which stood in his name, by his will gave his executors, as a legacy, £1000 thereof. The executor who proved the will, but never transferred the stock to his own name, by his own

ern Ry. Co., 29 L. J. (Q. B.) 177; 2 El. & El. 812.

See also Webb vs. Commissioners of Herne Bay, 5 L. R. Q. B. 642, in which the defendants were, in an action of mandamus, compelled to pay interest on debentures, illegally issued, in the hands of an innocent holder for value. In Reg. vs. Carnatic Ry., 8 L. R. Q. B. 299, the company was compelled to register (on the applicant showing a good title) under the provisions of the Married Women's Property Act 1870. In Reg. vs. Shropshire U. R. Co., 8 L. R. Q. B. 420, the company was compelled to register, on account of the fraud of their trustee. But in Reg. vs. Charnwood Ry. Co., 1 C. & E. 419, the writ was refused, when there were two claimants, the applicant being the later. In the two last cited cases, a prerogative writ was sought.

[1] State vs. N. O. & C. R. Co., 30 La. Ann. 308.

[2] See Townsend vs. McIver, 2 So. Ca. (n. s.) 25.

[3] 2 Doug. 523.

will, of which the prosecutors were the executors, bequeathed the £1000 stock to a kinswoman. His will was proved, and application made to the bank for a transfer of the stock, which was refused unless proof was made of the death of the executor's legatee by certificate of the governors of the hospital where she had been placed and was supposed to have died. This they were unable to procure, and the bank refused to transfer. It was there held that where there is no specific remedy the court will grant the writ that justice may be done; but where an action will lie for complete satisfaction equivalent to a specific relief, and the right of the party applying is not clear, the court will not interpose the extraordinary remedy of mandamus. Lord Mansfield said he did not think this to be a clear case, and the writ was refused. Afterwards an action of assumpsit was brought, in which the plaintiffs were successful.[1]

[1] To same effect are Shipley vs. Bank, 10 Johns. 484; Ex parte Firemen's Ins. Co., 6 Hill, 243; Bank of Attica vs. Manufacturers', etc., Bank, 20 N. Y. 501; Asylum vs. Phenix Bank, 4 Conn. 172; People vs. Parker Vein Coal Co., 10 How. Pr. 543; id. 186; Gray vs. Portland Bank, 69 Mass. 364; Pinkerton vs. Manchester, etc., R. Co., 42 N. H. 424; Eastern R. Co. vs. Benedict, 76 Mass. 21; German Union Bldg., etc., vs. Scudmeyer, 50 Pa. St. 67.

When, before a writ of attachment, under which relator purchased shares, was issued, the owner of the latter assigned them to his son-in-law and had them transferred in the company's books, mandamus will not issue to compel a transfer to relator, as a clear legal obligation on the company's part is not shown. State vs. Warren Foundry Co., 32 N. J. L. J. 439.

Nor will mandamus lie to compel a corporation to issue to a stockholder several certificates of stock covering the same number owned by him, instead of one certificate as then held by him, unless it is shown that a legal duty is imposed on the defendant to do so, and that a pecuniary injury which could not be compensated in damages resulted from its refusal to do so. State vs. St. Louis Paint Mfg. Co., 21 Mo. App. 526.

See also Galbraith vs. Peoples' Building Assn., 43 N. J. L. 389; Morton vs. Timken, 46 id. 87 (writ refused there being an adequate remedy at law). When the right is

In State vs. Rombaner,[1] where a corporation refused to transfer stock upon its books, the court said, in refusing an application for the writ: "It is very clear that the relator has misconceived his remedy, and that he may obtain adequate and ample redress without resorting to a proceeding by mandamus. If he has good title to the stock, he can recover the market value in an ordinary action. There can be no necessity for his possessing the identical shares in question. A controversy might spring up in regard to the ownership, and that would require an adjudication at law. Courts will not venture on determining such matters by proceedings on mandamus."

So in a case in Massachusetts, in which the language of the court is much like that just quoted,[2] the court said that, without laying down any invariable rule upon the subject, the remedy was not well adapted for the trial of mere questions of property. "When the relator merely seeks to be put into possession of corporate shares which have an ascertainable market value, or which can be bought in the market, and where the incidental rights of ownership (such as eligibility to corporate offices, or the right to vote at corporation meetings) do not depend upon the ownership of the specific shares which are the subject of dispute, but

a private one, wholly dependent on contract, mandamus will not be granted. Rosenfeld vs. Einstein, 46 N. J. L. 479. See also the following cases in which mandamus was refused on the ground that the remedy at law or equity was adequate. Freon vs. Carriage Co., 42 Ohio St. 30; State vs. Carriage Co., 9 Ohio Dec. Rep. 152; Wilkinson vs. Providence Bank, 3 R. I. 22; Asylum vs. Bank, 4 Conn. 173; Richardson vs. Mining Co., 7 Ohio Dec. R. 133; People vs. Miller, 39 Hun (N. Y.), 557, aff'd 114 N. Y. 636; Baker vs. Marshall, 15 Minn. 171; Durfee vs. Harper, 22 Mont. 354.

[1] 46 Mo. 155.

[2] Murray vs. Stevens, 110 Mass. 95.

could be as well and fully enjoyed by virtue of the ownership of an equal number of other shares, there would seem to be no occasion to resort to the extraordinary remedy of mandamus."[1]

The remarks of the court in Wilkinson vs. Providence Bank,[2] where bank stock was concerned, are interesting in this connection. It was there contended that the remedy by action was not specific, and could not give the petitioner the stock and the corporate rights which he would have as the recognized holder of the stock, and therefore he claimed to be entitled to the specific relief afforded by mandamus. The court said: "But the law regards bank stock as a subject of pecuniary value only, capable of being fully compensated for in damages. The corporate rights are merely incidental to the stock, and of no value except in connection with it. It is not necessary that the remedy should be specific; it is sufficient if it be adequate. This, the court concludes, is the settled law both of the English and American courts."

The question has been also fully considered in a case in Pennsylvania, and the law stated to be as above set forth. In that case[3] it was said that if the courts were inclined to enlarge the remedy by mandamus, it could not be done in a case where the right is disputed, where no public interest is involved, where no specific reason is shown for a transfer of a specific and favored thing, and where the remedy by action is fully complete. It was accordingly held that the purchaser of stock in a corporation, at a sale under execution against the owner, was not entitled to mandamus against

[1] See also 12 Kan. 147; 44 Cal. 173; 17 Ad. & E. (Q. B.) 645; Stackeplo vs. Seymour, 127 Mass. 104.

[2] 3 R. I. 22, 25.

[3] Birmingham Ins. Co. vs. Commonwealth, 92 Pa. St. 72–77.

the officers of the corporation who refused to transfer the stock to him on the books of the company.[1]

In a case in New York, where the applicant for a peremptory writ of mandamus sought to compel a railway company to issue to him certain certificates of stock—to conform to certificates which he had previously surrendered, containing the statement of a guaranty by another corporation of certain interest—the applicant contending that the shares which the company offered to deliver to him in exchange for those surrendered were illegal, the court refused to grant the writ, upon the ground that the stock had not only been previously declared legal and binding, but upon the further ground that the applicant, if ag-

[1] In Iowa, however, it has been held that in such a case mandamus is the appropriate remedy under the Code of 1897, § 4341; Hair vs. Burnell, 106 Fed. Rep. 280. See also to same effect: Bailey vs. Strohecker, 38 Ga. 259; People vs. Co., 99 Ill. 355; State vs. First National Bank of Jefferson, 89 Ind. 302; Memphis Appeal Pub. Co. vs. Pike, 9 Heisk. (Tenn.) 697. But in Georgia the writ will not issue to an officer of a corporation to transfer stock, except where it has been sold judicially, and the sheriff's certificate of the sale has been produced to the officer, as then the latter is pro hac vice a public officer under the Code charged with an official duty. Bank vs. Harrison, 66 Ga. 696; Terrell vs. Georgia R. R. Co , 115 Ga. 104.

But, notwithstanding the Code provision, the writ will not issue, unless the applicant's right to the shares is clear, or where there is an adequate remedy at law. Durham vs. Monumental Mining Co., 9 Ore. 41. If, however, the corporation has fraudulently conveyed away its property, the writ will issue. Slemmons vs. Thompson, 23 Ore. 215.

In North Carolina it was held in Morehead vs. Western North Carolina R. R. Co., 96 N. E. Rep. 362, that in a civil action to compel a railroad company to transfer to plaintiff certain of its shares purchased by plaintiff under an attachment, the plaintiff was entitled to the relief demanded. And in Wisconsin it is provided by the Rev. Stats. § 1752, that the transfer of stock may be compelled by order of the circuit court. In In re Klaus, 67 Wis. 401, an order was made to compel the secretary of a corporation to transfer on its books a share of its stock which had been assigned to petitioner.

grieved, had an adequate remedy for any damages which he may have sustained, and that upon familiar principles the writ should not issue in such a case.[1]

But the writ is sometimes granted especially when authorized by statute, and the two English cases heretofore cited[2] are instances in which the courts have granted the writ to compel corporations to transfer shares. In the Norris case stress was laid on the fact that the company were established by royal charter, which made it their duty to keep the register, and insert the names of the proprietors, in which, it was said, the public are largely interested.[3]

And such appears to be the view which was taken of the matter by a decision in South Carolina.[4] There it was held

[1] People ex rel. Content vs. Metropolitan R. R. Co., 26 Hun, 82.

See also to same effect State vs. Carpenter, 51 Ohio St. 83. Nor will the writ be granted if the petitioner's right is not clear. Townes vs. Nichols, 73 Me. 515; State of Nevada vs. Guerrero, 12 Nev. 105.

But in South Carolina, when an act of the legislature provided that a county should receive from a railroad company preferred stock to the amount of bonds which the act authorized the county to issue, it was held that a writ of mandamus might prescribe a form of certificate in accordance with the act. State vs. Cheraw, 16 S. C. 524.

[2] Norris vs. Irish Land Co., 8 El. & Bl. 511; Ward vs. Southeastern Ry. Co., 29 L. J. (Q. B.) 177; 2 El. & El. 812. See also Reg. vs. Midland Ry. Co., 9 L. T. R. N. S. 151.

[3] See 7 Alb. L. J. 135 (Feb. 14. 1880).

[4] Townsend vs. McIver, 2 So. Car. (n. s.) 25.

In some of the other States also, mandamus has been issued to compel the transfer of shares. Thus in People vs. Crockett, 6 Cal. 112, a railroad company was compelled to enter a transfer of its stock by a stockholder to the applicant, its charter providing that transfers should not be valid, except as between the parties, until entered in the book of stockholders.

And in Indiana mandamus has issued in several instances to compel such a transfer. Greenmount Turnpike Co. vs. Bulla, 45 Ind. 1 (the statute providing that a corporation could be compelled to perform an act which the law specially enjoins); State vs. Bank, 89 Ind. 302 (compelling the registration of

that while mandamus to compel a transfer of stock will not be granted where there has been no demand and refusal to make the transfer, yet, where the rules of the company required that the certificate of stock should be transferred "in person or by attorney," at the office of the company, and it appeared that a demand had been made by letter, and that the officers of the company had peremptorily refused to permit the transfer to be made, it was not necessary to show that the useless ceremony of appearing at the office, and there demanding the transfer, had been observed. It was further held that where the stock sought to be transferred is owned by a corporation, whose directors, being vested with the necessary power to that end, authorize its president to sell it, a contract of sale by him shows a sufficient legal and equitable title in the purchaser to entitle him to the writ of mandamus to compel the officers to transfer the stock to him. It is no ground of objection to the issuing of a writ of mandamus to compel the transfer of stock that the purchasers have joined with the sellers in the application for the writ. Though it be true that mandamus will not lie unless the duty to be performed is one in which the public have an interest, and not even then when the party demanding the writ has another plain and adequate remedy, yet the duty of the officers of a railroad corporation to permit the transfer of its stock, is one in

shares sold under execution). But if one has only an equitable interest in the shares, mandamus will not issue. Burnsville Turnpike Co. vs. The State, 119 Ind. 382. And see Helm vs. Swiggett, 12 Ind. 104; State vs. Canal, 4 Ind. 495. So also in Louisiana, mandamus will issue to compel a transfer of railroad shares, when the right of the applicant has been fully established. State vs. Orleans R. R. Co., 38 La. Ann. 312. See 19 Am & Eng. Enc. of Law, 2d ed. pp. 881–2, and cases cited; Spelling on Injunctions and other Ex. Leg. Rem. 2d ed. §§ 1615–17.

which the public have a sufficient interest to warrant the court in issuing the writ of mandamus to compel its performance; and the remedy by action against the officers of the corporation to recover damages for their refusal to permit the transfer is too doubtful and uncertain in its character to supersede the specific and speedier remedy by mandamus.

V. The Effect of Usury upon Stock Transactions.

In England usury was at a very early period made a penal offence by statute. The earliest of these acts was passed to prevent Brokers loaning money at exorbitant or usurious rates; and, if we may be permitted to judge from the severity of these enactments, it would appear that the offence must have been a very common one. By statute 8 Hen. VII. c. 6, Brokers of such bargains were to be set in the pillory, imprisoned half a year, and fined twenty pounds. This statute likewise disabled offending Brokers from ever acting again. But different views have at length prevailed in England as to the propriety of regulating usury by such severe methods, and, in consequence, all laws relating thereto have been properly repealed and abrogated.[1] But in this country usury is still prohibited by the statutes of the various States,[2] and it becomes an important element to consider in connection with the business of Stock-brokers, because in the transaction of their business enormous sums of money are daily loaned, and perhaps in no other business is the utter futility of usury laws so glaringly demonstrated.

Usury is nothing more than the charging of a rate for

[1] Stat. 17 & 18 Vict. c. 90.

[2] Except Maine, which repealed its usury law in 1870. And except in the States which have enacted laws enabling the parties by special contract to agree upon any rate of interest, thus practically abolishing the usury law. See page, 860.

the use of money in excess of the sum fixed by the legislature, which latter is called interest; but it is manifest that the rate for the loan of money cannot be successfully fixed by a rule of law, because the charges for money, just as for other commodities, are constantly varying in accordance with the demand and supply.[1] If there is a surplus of capital in the market, the rate for the loan of money will be low; if, on the other hand, capital is scarce, the rate will naturally rise. Consequently, the usury laws are daily evaded and broken, and will continue to be until the legislatures of the different States abolish them altogether.[2] As

[1] Usury has been aptly defined "to be the taking or contracting for exorbitant interest for the forbearance of the principal. Sometimes the *thing* taken or contracted for is so-called, in which sense *usury* and *interest* are nearly synonymous, and differ only in the *quantity* of the compensation which is to be paid for the use of the principal; the former implying that it is *exorbitant*, the latter that it is *lawful*" (Ord. on Usury, 1). See Tyler on Usury, 92; also Chitty on Cont. (6th Am. ed.) 701.

A few historical suggestions in reference to this subject, as it bears upon Brokers, may not be uninteresting. Addison says: "The taking of hire or reward for the use of money is denominated, in Scripture and in the Roman and Continental law, usury. Usury appears to have been prohibited at Rome in the first ages of the commonwealth, but it was afterwards sanctioned by the law, as appears from numerous passages in the Code and Digest (Cod. lib. 3, tit. 1; lib. 4, tit. 32, lex 27; lib. 12, tit. 6, lex 26; lib. 50, tit. 16, lex 121). In common law whatever exceeded the legal rate of interest was termed usury, and not the mere act or contract of lending out the money for hire" (Addison on Cont. [2d Am. from 4th Eng. ed.] 417). But there was no such offence as usury at common law, Tyler on Usury, 64; see, however, Ord. on Usury, 17. See the early usury laws in England set forth and commented upon in an interesting work, Murray's Hist. of Usury (Phila. 1866), 44–62. Brokers were likewise punished for usury by stat. 13 Eliz. c. 8, § 4; and by stat. 12 Anne, st. 2, c. 16, they were to suffer imprisonment for half a year for the offence. As to the policy and object of this statute, see per Lord Redesdale, Drew vs. Power, 1 Sch. & Lef. 194, 195; per Best, C. J., Anonymous, 3 Bing. 196; Murray Hist. of Usury; Loyd vs. Williams, 3 Wils. 259.

[2] The States and Territories which have statutes against the taking of unlawful interest are Alabama,

the laws against usury still exist in many of the States, it will be our duty briefly to set forth some of the general rules and decisions of the English and American courts

Delaware, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Virginia (when the contract is in writing), Washington, Wisconsin and Wyoming. In Connecticut, Georgia, Maryland, Michigan, Mississippi, New Hampshire, Ohio, Pennsylvania, Vermont, Virginia, West Virginia and Alaska, the rate of interest is prescribed by statute, with a provision that if more is agreed to be taken, the excess shall be forfeited. A similar statute exists in Tennessee.

In some of the States and Territories the rate may be agreed upon by the parties up to seven, eight, ten or twelve per cent. This is so of Arkansas, Georgia, Idaho, Illinois, Indiana, Indian Territory, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Wisconsin, and Wyoming, also of the District of Columbia.

In several of the States, and the Territory of Arizona, the rate by law is fixed, but the parties may agree by special contract as to any rate whatever. This is so of California, Colorado, Florida, Massachusetts (except as to loans under $1,000 when eighteen per cent may be charged), Montana, Nevada, Rhode Island and Utah.

In New York usury vitiates and destroys the entire contract, and both principal and interest are lost thereby; and one of the severest cases upon the subject is Knickerbocker Life Ins. Co. vs. Nelson, 87 N. Y. 154. In that State the prohibition against usury was formerly enforced by a provision that any person violating the law should be deemed guilty of a misdemeanor, and, on conviction thereof, should be punished by fine not exceeding $1,000, or imprisonment not exceeding six months, or both. Law of 1837, c. 430, § 6. But this section was repealed by L. 1886, c. 593, § 1, subd. 12.

And a statute similar to the New York statute has been passed in Minnesota. It was, however, provided by statute in New York (L. 1882, c. 409, §§ 68, 69), that private bankers should be exempt from the usury laws. See Perkins vs. Smith, 116 N. Y. 441; Carley vs. Todd, 83 Hun, 53; Hawley vs. Kountze, 16 Misc. 249. But this statute was repealed by L. 1896, c. 548, and, by the Banking Law, § 55, such banks cannot recover interest if more than the legal rate is reserved, and twice the amount of interest paid may be recovered by the borrower. Double the amount of interest paid may be recovered under this statute, notwithstanding decisions to the contrary of the Federal courts, under a similar Federal statute of June 3, 1864; Caponigri vs. Altieri, 21 Misc. (N. Y.) 510; but only in a direct action, and not on a counter-

upon the subject, so far as they concern transactions in stocks and securities by Brokers.

It is a fundamental doctrine governing the law of usury that to establish usury, a loan or forbearance of money, or its equivalent, is in the contemplation of the parties. If neither of these elements exists, there can be no usury, however unconscionable the contract may be.[1] In Orvis vs. Curtis[2] it appeared that plaintiff, a member of a firm of

claim. S. c. 29 App. Div. (N. Y.) 304.

It is also provided by statute in New York (L. 1882, c. 237, and The Banking Law, § 56), that on advances, repayable on demand, of not less than $5,000, on certificates of stock and deposit, and other securities particularized, pledged as collateral for such repayment, such compensation for making same may be paid as may be agreed upon between the parties.

This statute was held to apply to all of the securities mentioned in the act, although all of these (except bills of exchange) might not be strictly negotiable. Frost vs. Stokes, 23 (J. & S.) N. Y. Super. Ct. 76, aff'd 122 N. Y. 637. And the mere deposit of certificates of stock with trustees does not make them non-negotiable. Id. And in Hawley vs. Kountze, 6 App. Div. 217, it was held that the effect of the statute was to remove transactions of the kind mentioned in it from the operation of the Usury Law of the State.

The New York Code of Civil Procedure, § 1911, also provides for the transfer of a cause of action for usury. A transferee may, under this section, sue in equity for the delivery of a note and stocks assigned as collateral. Dickson vs. Valentine, 6 N. Y. Supp. 540.

Special provisions as to building and loan associations have been made in Alabama, California, Florida, Kansas, Kentucky, Missouri, Montana, Nebraska, Oregon, and Vermont.

In Delaware also, any one suing may recover from the usurious lender, one half the amount lent, for his own use, and one half for the use of the State.

In Maine, six per cent was the legal rate of interest in the absence of an agreement in writing (Rev. Stats. c. 45), but this statute was repealed in 1870.

Congress has provided by statute as to what interest shall be allowed national banks, and as to forfeitures for usury.

[1] Orvis vs. Curtiss, 157 N. Y. 657; Meaker vs. Fiero, 145 N. Y. 165; Struthers vs. Drexel, 122 U. S. 487; State Bank vs. Coquillard, 6 Ind. 232; Webb on Usury, § 20.

[2] 157 N. Y. 657.

Stock-brokers, and defendant, entered into a written agreement for the purpose of purchasing in the market, and carrying, 500 shares of the capital stock of the American Cotton Oil Company. This agreement was, it further appeared, in substance a joint partnership between the parties to deal in the stock in question in order to make a profit. The plaintiff's purpose was to buy stock at defendant's risk, securing to his firm the brokerage commissions, and interest on the investment, and that he was to be guaranteed from all loss, and that, in any event, he should have a profit of $5000 out of the transactions, which were to be closed in six months, and the agreement so provided. There was a large loss, and, in settlement thereof, defendant gave plaintiff a note for $4000. It also appeared that there was no proof that plaintiff intended to loan money to defendant. It was held that the contract was one of partnership, and that the defence of usury was not applicable.

In relation to contracts affected by any usurious consideration, the general rule is that they are void in whatever form or garb the vice may appear. Sometimes the interest is lost, and sometimes the entire principal, but this mainly depends upon the severity of the laws in force where the parties happen to contract. There appears to be some conflict among the writers as to whether usury did not exist at common law, but upon the merits of that contention it is unnecessary for the purposes of this work to pass any opinion, further than to say that the law in this country and in England has always found its strongest sanction in positive legislative enactments. It has been decided, however, that unless there is a law which limits the rate of interest to be charged for the use of money,

there can be no usury.[1] Owing to the fact that the existence of usurious contracts is, as a general thing, zealously concealed by the parties under the guise of *bona fide* transactions, the courts have always been compelled to show the utmost ingenuity in tracing them out; but the principle upon which such contracts are sifted by the courts is to consider whether the particular transaction is really a sale of goods or stocks, or a corrupt loan of money irrespective of the form under which it may appear. As was said by the late Judge Allen,[2] "The shifts and devices of usurers to evade the statutes against usury have taken every shape and form that the wit of man could devise; but none have been allowed to prevail. Courts have been astute in getting at the true intent of the parties and giving effect to the statute."

The rule is established that where a party loans another stock at its face value, and the stock is selling then below that figure, or sells the stock for less than its face value, and loans the produce thereof for the face value of the same, or for more than its real value at the time, reserving interest thereon, the contract is clearly a loan of money, and is usurious and void.

Thus, to cite an early case, where the defendant lent the

[1] Newton vs. Wilson, 31 Ark. 484. See also Hagood vs. Atkin, 57 Tex. 511; Exchange Bank vs. Swepson, 1 Lea (Tenn.), 355; Fisher vs. Bidwell, 27 Conn. 363; Ballard vs. Bank, 61 Ga. 458; Davis vs. Hoy, 2 Aik. (Vt.) 303; Reynolds vs. Neal, 91 Ga. 609; Coleman vs. Commins, 77 Cal. 548. The following cases hold that usury was unlawful at common law. Houghton vs. Page, 2 N. H. 42; Gray vs. Bennett, 2 Metc. (Mass.) 522. See also Parmalee vs. Lawrence, 48 Ill. 331; Fayetteville Bank vs. Lutterloh, 81 N. C. 142; Lowe vs. Waller, 2 Doug. 736; Whitworth vs. Adams, 5 Rand. 333; Lloyd vs. Scott, 4 Pet. (U. S.) 221.

[2] Quackenbos vs. Sayre, 62 N. Y. 346.

plaintiff a sum of money by selling out £1000 South Sea annuities which at that time were under par, and sold at a loss of £76 upon the whole, and paid the plaintiff the money and took a mortgage from him for £1000, at 5 per cent interest, all of which plaintiff paid, the court, on a bill subsequently brought *inter alia* to recover the £76, etc., held the transaction to be a shift within the statute of usury, and directed the defendant to repay the difference between the price at which the stock was sold and its face value.[1]

So if several securities be given upon a usurious contract, one for the *principal* and a different one for the *interest*, both are void;[2] and promissory notes given upon a loan of stock above its real value are void.[3]

And, in Parker vs. Ramsbottom,[4] Bayley, J., laid down the rule as follows: "The original contract was for the return of the stock lent. That was a legal bargain. The stock, when originally sold, produced £10,083; but in September, 1815, it was worth only £8437, and therefore, when the new bargain was made, P. lent a thing of the value of £8437, and stipulated for a return of $10,083, with 5 per cent interest on the latter sum. That was clearly usurious."

Perhaps one of the best-known cases on this subject is Doe vs. Barnard. There the mortgagee, in an action of ejectment, was called, and stated that, when he applied to plaintiff's testator for the loan, the latter stated that all his money was in the funds, and that to sell out his stock then

[1] Moore vs. Battie, Amb. 371.

[2] Roberts vs. Trenayne, Cro. Jac. 508; White vs. Wright, 4 B. & C. 273.

[3] Archer vs. Putnam, 12 Smed. & M. (Miss.) 286.

[4] 5 B. & C. 257; s. c. 3 D. & R. 138.

at 73 would result in considerable loss ; but that if the mortgagor would take it at 75 he should have the sum wanted ; and thereupon the latter received £1500 on those terms in stock valued at 75, which he sold on the same day at 72½, at a loss of nearly £60 ; and it was held by Lord Kenyon that the transaction was usurious.[1]

So in a case in the State of New York,[2] which the Court of Appeals held was not distinguishable, in its minutest circumstances, from that of Doe vs. Barnard, where, upon application to one for a loan of money, he declined, but offered

[1] Doe vs. Barnard, Esp. N. P. Cas. 11. See also Eagleson vs. Shotwell, 1 Johns. Ch. 536; Smart vs. Mechanics' Bank, 19 Johns. 496; Valley Bank vs. Stribling, 7 Leigh, 26; Parker vs. Ramsbottom, 3 Barn. & C. 267; Powney vs. Blomberg, 14 Sim. 179; Boldero vs. Jackson, 11 East, 612; Johnson vs. Williamhurst, 1 L. J. Ch. 112; Rose vs. Dickson, 7 Johns. 196; Little vs. Barker, 1 Hoff. (N. Y.) 487; Black vs. Ryder, 5 Daly, 304; Cleveland vs. Loder, 7 Paige, 557; Hawley vs. Kountz, 6 App. Div. 217; Stribbling vs. Bank, 5 Rand. 132; Bull vs. Douglass, 4 Munf. 303; Greenhow vs. Harris, 6 Munf. 472; City Loan Co. vs. Cheney, 61 Minn. 83; Kelley vs. Lewis, 4 W. Va. 461.

[2] Quackenbos vs. Sayre, 62 N. Y. 344.

But when an agreement contained an option to buy back stock at the price paid for it by plaintiffs, with one per cent per month added, the defense of usury is not sustained, in the absence of evidence outside the agreement itself. Phillips vs. Mason, 21 Supp. (N. Y.) 842.

As to what constitutes usury in the sale of bonds, see also Moncure vs. Dermott, 19 Pet. (U. S.) 345; Miller vs. Coates, 4 T. & C. (N. Y.) 429; Townsend vs. Corning, 1 Barb. 627; Mumford vs. Insurance Co., 4 N. Y. 463; Curtis vs. Leavitt, 15 N. Y. 9; Brown vs. Champlin, 66 N. Y. 214; Holmes vs. Manning, 150 Mass. 211; Shermerhorn vs. Trust Co., 14 Barb. 131; Downington vs. Meeker, 11 N. J. Eq. 362; England vs. Moore, 4 Hous. (Del.) 289; Moore vs. Woodworth, 83 N. C. 531; Hausbrough vs. Baylor, 2 Munf. (Va.) 36; Catney vs. Blair, 1 Rich. Eq. (S. C.) 41; Gibson vs. Fristoe, 1 Call. (Va.) 62; Bell vs. Calhoun, 8 Grat. (Va.) 22; Swanson vs. White, 5 Humph. (Tenn.) 373; Campbells vs. Patterson, 11 Leigh (Va.), 113; Butler vs. Co., 94 Ga. 562; Chase vs. Co., 49 Minn. 111; Memphis vs. Bethel, 17 S. W. Rep. 191; Orchard vs. School District, 14 Neb. 378; Danville vs. Sutherlin, 29 Grat. (Va.) 555; Clark vs. Des Moines, 19 Iowa, 199; Kelley vs. Louis, 4 W. Va. 461.

to and did nominally sell to the applicant, upon a credit, certain railroad bonds at an exorbitant price, which he knew the latter did not want and could only use as a substitute for and as a means of raising the money, the transaction was considered not as a *bona fide* sale, but as a usurious loan. The court strongly condemned the whole transaction as a plain and most palpable attempt to evade the statute of usury by an old and worn-out contrivance.

And where the directors of a bank proposed to sell defendant 100 shares of bank stock at par ($100 each), for the price whereof they agreed to renew and discount his note for $10,000, secured not by a pledge of the stock, as defendant had offered, but by other persons joining him in the note as makers, etc., the note to be regularly renewed every 60 days, and the discounts paid according to the custom of the bank for and during the term of 18 months; and also that S. should have a loan of $2500 for the same term, etc.; to which defendant assents, and the notes are accordingly made and discounted, defendant and the directors both knowing that the utmost value of the stock in the market at the time was but $80 per share—held, this was a sale of the stock at an exorbitant price, coupled with a loan of money, arising out of a proposition to borrow money; the sale and the loan one entire contract, inseparably connected with each other, and the one made dependent on the other; and the transaction and defendant's notes made and discounted by the bank in pursuance of the agreement were usurious.[1]

In Barnard vs. Young[2] the M. R. said: "The case of Forrest vs. Elwes[3] differs from this in the very point in which

[1] Valley Bank vs. Stribling, 7 Leigh, 26.

[2] 17 Ves. 44.

[3] 4 Ves. 492.

I conceive the usury to consist. In that case the objection, though at first made, was properly given up; as though it is true, if the stock had risen, the lender might have had more than principal and legal interest; yet on the other hand, if it had fallen, he would have had less, as he had no option to have stock or money; but the borrower could have discharged himself by merely replacing the stock. Here the security is of this kind. The lender is, at his election, to have his principal and interest, or to have a given quantity of stock transferred to him. His principal never was at any hazard, as he was at all events sure of having that with legal interest, and had the chance of an advantage if the stock rose. *It was usurious to stipulate for that chance.* In fact, the stock did rise, and if the contract had been performed he would have had principal and interest and a very large premium. Though not probably so intended, this is, in fact, an usurious contract."[1]

So in White vs. Wright,[2] the lender of stock, besides reserving to himself the dividends by way of interest, took the option of deciding at a future day whether he would have the stock replaced, or the sum produced by the sale of it repaid to him in money, with five per cent interest; and it was held that this bargain was usurious, and that it made no difference whether the whole of the agreement was contained in one instrument, or whether the lender procured the execution of two instruments, by one of which he might compel the replacing of the stock, by the other the payment of the money and the interest. Bayley, J., and his associates, were clearly of the opinion that the case fell

[1] See also Chippendale vs. Thurston, 1 Moody & M. 411; Cleveland vs. Loder, 7 Paige, 557.

[2] 4 B. & C. 273.

within the statute. "A party," said he, "may lawfully lend stock to be replaced, or he may lend the produce of it as money, or he may give the borrower the option to repay it either in the one way or the other. But he cannot legally reserve to himself a right to determine in future which it shall be. It is not illegal to reserve the dividends by way of interest for stock lent, although they may amount to more than five per cent on the produce of it, for the price of stock may fall, and then the borrower would be a gainer."[1]

In Smedley vs. Roberts,[2] decided in 1811, it appeared that plaintiff owed the defendant Stock-brokers £8237 on the 13th of December, and defendants proposed to continue the loan of this money till the 10th of January following, on plaintiffs pledging £10,000 omnium with them, which he did, they advancing him £1000, and agreeing to return the scrip receipts on receiving three-eighths higher than the price on the 13th of December. It was held that as the three-eighths increase was more than £5 per cent per annum for the money foreborne, the transaction was undoubtedly usurious. Owing, however, to the unsatisfactory character of the plaintiff's testimony, the jury found for the defendants.

But a loan at more than the legal rate of interest is not usurious if by the repayment of the principal the borrower may avoid the interest.[3] Nor is a mere loan of stock usuri-

[1] See Boldero vs. Jackson, 11 East, 611; Robbins vs. Dillaye, 4 Ab. (N. Y.) Ct. App. Dec. 71.

[2] 2 Camp. Nisi P. R. 606.

[3] Roberts vs. Trenayne, Cro. Jac. 508.

An agreement to take for a loan of 142 shares of bank stock for a year, 172 shares of the same stock, is not usurious, as the 172 shares, with dividends, may not be worth more than the 142 lent. Steptoe vs. Harvey, 7 Leigh, 501. See also Pike vs. Ledwell, 5 Esp. N. P. G.

ous, nor the payment of the dividends in the meantime, though they exceed the legal rate of interest.[1] Nor is the loan of money usurious produced by the sale of stocks, on an agreement that the borrower shall replace that stock on a certain day, *or repay money* on a subsequent day, with such interest in the meantime as the stock itself would have produced, though the interest *exceed five per cent*, unless the transaction be colorable, and a mere device to obtain more than legal interest, which in this case was negatived by the finding of the jury.[2] So a loan of chattels is not within the usury laws unless contrived as a disguise for loan of money; and on such a loan, if *bona fide*, it is immaterial what compensation is reserved.[3]

So an agreement for the purchase of stock, to be transferred at a future day, at a price below the then value, is not usurious.[4] Lord Ellenborough said that, whatever remedy

164; Tate vs. Wellings, 3 T. R. 531 (bottom paging); Lowry vs. Bank, 1 Clarke Ch. 67; Hamlin vs. Fitch, Kirby (Conn.), 260; Thomas vs. Murray, 32 N. Y. 605; Maddock vs. Rumbull, 8 East, 304; Partlow vs. Williams, 19 Ill. 132.

The loan must not be made with a view to usury. Tate vs. Wellings, 3 Term Rep. 531 (bottom paging); Willoughby vs. Comstock, 3 Edw. Ch. 424; Rockwell vs. Charles, 2 Hill, 499; Western Bank vs. Potter, 1 Cl. Ch. 432; Marshall vs. Rice, 85 Tenn. 502.

[1] Tate vs. Wellings, 3 T. R. 531 (bottom paging).

A mortgage is not tainted with usury by the fact that, after the money had been lent, the mortgagee had received certain shares of the stock of the mortgagor company as a gift from one who had received such stock for his services in promoting the loan. Short vs. Post, 42 Atl. Rep. 569.

[2] Tate vs. Wellings, supra. See also Maddock vs. Rumball, 8 East, 303. In this case the court agreed there was no usury, as the amount of the sum to be paid by the defendant depended upon a contingency; that this was no more usury than an agreement to replace stock lent, which, though once contended to be usury if more than the principal and legal interest were thereby obtained, had been long settled to be legal. See Pike vs. Ledwell, 5 Esp. 164.

[3] Brell vs. Rice, 5 N. Y. (1 Seld.) 315.

[4] Pike vs. Ledwell, 5 Esp. 164. As to when transfers of stocks and

the defendant might have in equity on the ground of this being a catching bargain, he had none at law ; contingency on the thing purchased was incompatible with the idea of usury, in which the principal must always be certain. It was admitted that if the stock, when transferred to the plaintiff, would be worth but £160, it would not be usury; that the stock would suffer that most extraordinary depreciation was very improbable, but still it was within the reach of possibility. He therefore could not say that there was

mortgages, although expressed to be collateral to bonds made by transferor, are sales instead of security for a loan, and therefore, not usurious, see Standen vs. Brown, 64 Am. St. Rep. (N. Y.) 170.

To hold a contract to purchase the bonds of a foreign government to be usurious, it should appear by the bill that the payment of the bonds was not to be made abroad. Thompson vs. Powles, 2 Sim. 194. In that case it appeared that plaintiff had been fraudulently induced to purchase bonds bearing interest at 6 per cent, issued by the Guatemala government (then in revolt with Spain, and not recognized by England), at 72 per cent; so that he would thus receive £6 for interest upon £72, being more than 5 per cent, the legal rate. The moneys received having been misappropriated by the defendants, the Guatemalan government refused to be bound by the obligation, and plaintiff sought to recover from the defendants the amount he had paid them. The court, on demurrer to the bill, declined to hold the contract usurious, as it did not appear that payment was to be made in England. The demurrer was, however, sustained on the ground that, as the Guatamalan government was not recognized by Great Britain, the contract made by the plaintiff could not be recognized by the courts. Id. See also the following cases: Atty. Gen. vs. Hollingworth, 27 L. J. Ch. 102; Goddard vs. Lethbridge, 16 Beav. 529; Clark vs. Giraud, 1 Madd. 511; Skipworth vs. Gibson, 4 H. & M. 490; Kelly vs. Sprague, 58 Hun, 611; Leavitt vs. Pell, 27 Barb. 322; Willoughby vs. Edwards, 3 Edw. Ch. R. (N. Y.) 424; Struthers vs. Drexel, 7 Sup. Ct. R. (U. S.) 1293 (holding that a sale of, and a contract to repurchase, stock, with 7 per cent interest, was not a loan of money, and therefore not usurious within the New York statute); Mumford vs. American Ins. Co., 4 N. Y. 463; Selby vs. Morgan, 3 Leigh (Va.), 577; Brockenbrough vs. Spindle, 17 Gratt. 21. But in the following cases of sales of stock, the transactions were held usurious. Heath vs. Page, 48 Pa. St. 130; Anon., 2 Des. (S. C.) 334. See Barnard vs. Young, 17 Ves. 44.

not some contingency in the transaction; and if so, the contract was not usurious. Where there was a transfer of stock by way of loan upon bond, with condition to replace the stock six months after date, and in the meantime to pay interest at *five per cent*, the stock not being replaced, and being depreciated, the obligee is entitled to the value of the same at the time of the transfer, with interest at five per cent.[1] A loan of certificates of deposit worth in market much less than par, on an engagement to repay the face with interest, is usurious.[2] But a transaction by which a loan was procured by A through B from C and D, on pledges of stock transferred to B, was held separable, so that usury on the part of C did not affect the transaction as to D.[3]

So it is held that a *bona fide* charge by a banker or a Stock-broker of a commission or extra sum for expense or trouble is not usurious. To render a transaction usurious, there must be an unlawful or corrupt intent confessed or proved.[4] And a transfer of stock as a lawful commission for services in procuring it, not as a bonus for a loan, is not usurious.[5] And it has been held in New York that a Stock-broker can recover from his Client usurious interest which the Broker was compelled to pay for money borrowed in

[1] Forrest vs. Elwes, 4 Ves. 492.

[2] Farmers' Loan & Trust Co. vs. Carroll, 5 Barb. 613; see Schermerhorn vs. Talman, 14 N. Y. 93.

[3] Little vs. Baker, Hoffm. (N. Y.) Ch. 487.

A transaction originally usurious (viz., the giving of a note, securing a loan, by which the lender had an option to take certain stock in addition to the interest) is freed from the usurious taint by the making of a renewal note excluding the option. Vermuele vs. Vermuele, 95 Me. 138. The giving of certificates of deposit subsequently to a loan made at legal interest, even if given as additional interest, does not void the loan. But the lender must credit them as against it. Bill vs. Fish, 1 St. Rep. (N. Y.) 473.

[4] Nourse vs. Prime, 7 Johns. Ch. 69; Woodruff vs. Hurson, 33 Barb. 557.

[5] David vs. Illius, 9 How. Pr. 450.

order to carry the Client's stocks, and which the latter agreed to pay; and that, as between the parties, the transaction did not amount to an exaction of usury so as to avoid the same. In such a case the Broker merely acts as an agent of the Client, and not as a principal.[1] So the custom of Brokers to debit and credit interest monthly on balances does not infect a contract to purchase and sell stocks with usury.[2] And the custom of bankers, on discounting paper, to exact payment of interest in advance does not render the paper usurious.[3]

A corrupt agreement for the forbearance of money must be strictly pleaded according to the fact.[4] And the question whether the transaction is fair and honest, or whether it is a colorable payment of usury upon a loan, etc., or to obtain unlawful interest, is a question for the jury.[5] Where usury is not proved by direct evidence, it can be proved by inferences from the evidence given; and it seems to be the province of the jury to draw the proper inferences from the

[1] Smith vs. Heath, 4 Daly (N. Y.), 123. See also Robinson vs. Norris, 51 How. Pr. 442. As to when the court will continue an injunction where the contracts made by the Broker in relation to commissions on the loan of stocks are alleged to be mere covers for usury, see Caldwell vs. Warehouse Co., 1 Hun. (N. Y.), 718.

[2] Hatch vs. Douglas, 16 Am. Law Rev. 181.

A corporation which makes loans upon securities deposited as collateral, may charge a commission for selling the collaterals. Righter vs. Philadelphia Warehouse Co., 90 Pa. St. 289.

[3] Manhattan Co. vs. Osgood, 15 Johns. 162; Ins. Co. vs. Sturges, 2 Cow. 664; Bank vs. Wager, id. 712, 766. See also Webb on Usury, § 111, and cases cited in footnote.

[4] Tate vs. Wellings, 3 T. R. 531, supra; National Bank vs. Lewis, 75 N. Y. 516; Banks vs. Van Antwerp, 15 How. Pr. 29; Mosier vs. Norton, 83 Ill. 519.

[5] Tyler on Usury, 92; Tate vs. Wellings, supra; Carstairs vs. Stein, 4 Mau. & S. 192; Rose vs. Dickson, 7 Johns. 196. When jury may infer usury in a note given for sale of stock, see Black vs. Ryder, 5 Daly, 304.

evidence. In other words, it is their duty to decide not only on *proved*, but *inferred*, facts.[1] So where the facts in regard to an alleged usurious transaction do not show usury, but are such that the jury could infer that they were intended as a cover for usury, it is competent to ask the lender whether he intended to take usury.[2] So parol evidence against the face of a bond to prove a usurious agreement has been held admissible.[3]

[1] Valley Bank vs. Stribling, 7 Leigh, 57.

[2] Black vs. Ryder, 5 Daly (N. Y.), 304.

[3] Atkinson vs. Scott, 1 Bay (S. C.), 307. As to when evidence outside the contract is necessary to establish usury, see Slosson vs. Duff, 1 Barb. 432; Codd vs. Rathbone, 19 N. Y. 37; Robbins vs. Dillaye, 4 Ab. App. (N. Y.) 71; Sizer vs. Miller, 1 Hill (N. Y.), 227; Lowry vs. Bank, Clarke Ch. (N. Y.) 67; Hayward vs. Le Baron, 4 Fla. 404; Gale vs. Grannis, 9 Ind. 140. As to what constitutes usury in sale of uncurrent bank-notes and bills, see Pratt vs. Adams, 7 Paige, 615; Smart vs. Mechanics', etc., Bank, 19 Johns. 496; Cleveland vs. Loder, 7 Paige, 357; Slosson vs. Duff, 1 Barb. 432; Codd vs. Rathbone, 19 N. Y. 37; Tyng vs. Commercial Warehouse Co., 58 N. Y. 308; Cook vs. Bank, 16 Mass. 543; Bondurant vs. Bank, 16 Mass. 533; Collins vs. Secreh, 77 B. Monr. R. (Ky.) 335; Burnham vs. Gentry, ib. 354; Brown vs. Nevitt, 27 Miss. 801; Weatherhead vs. Boyers, 7 Yer. (Tenn.) 545; Southall vs. Farish, 85 Va. 403; Moore vs. Vance, 3 Dana (Ky.), 361; Warfield vs. Boswell, 2 ib. 224; Austin vs. Walker, 45 Iowa, 527; Bank vs. Owens, 2 Pet. (U. S.) 527; Turney vs. Bank, 5 Hump. (Tenn.) 407; Scofield vs. McNaught, 52 Ga. 69; State Bank vs. Cowan, 8 Leigh (Va.), 238; Archer vs. Putnam, 20 Miss. 286; Maury vs. Ingraham, 28 Miss. 171; Helm vs. Jesse, 5 J. J. Marsh. (Ky.) 428; Gates vs. Hackenthal, 57 Ill. 434.

As to when such transactions are not usurious, see Stuart vs. Bank, 19 Johns. 508; Stockwell vs. Holmes, 33 N. Y. 53; Slosson vs. Duff, 1 Barb. 432; Wilson vs. Kilburn, 1 Marsh. (Ky.) 494; Fleming vs. Thomas, 4 ib. 48; Turpin vs. Turpin, 7 ib. 33; Talbot vs. Warfield, 3 ib. 83; Dock vs. Snapp, 1 Cold. (Tenn.) 180; Hamilton vs. Moore, 7 Hump. (Tenn.) 35; Gregory vs. Bewley, 9 Ark. 22; Caton vs. Shaw, 2 Har. & G. (Md.) 13; Rhodes vs. Fullenwider, 3 Ired. Law (N. C.) 415; Finley vs. McCormick, 6 Heisk. (Tenn.) 392; Phelps vs. Riley, 3 Conn. 266; Stevenson vs. Unfeker, 14 Ill. 103. When use of proceeds of collaterals constitutes usury, see Morgan vs. Mechanics', etc., Banking Assoc., 19 Barb. 584.

The court will continue an injunction granted to restrain a party from selling securities pledged as collateral to a loan, the complaint averring and the answer denying that the contracts in relation to commissions were designed to be, and were, mere covers for usury, when it appears that, in addition to seven per cent for interest and all expenses, and disbursements attending the care and custody of the collaterals, and eight per cent on the gross proceeds of a sale, if one was made, a sum equal to twenty-four per cent per annum on the loan is charged for the care and custody of the bonds and stock certificates pledged, and this under an agreement which devolves all risk of loss on the borrower. It is impossible to say that the jury would not be justified in finding that this transaction was a cover for usury.[1] And although there may be a defence to an action at law in a matter of usury, yet a bill will hold to compel the giving up of securities—certificates of deposit—left as collateral security for the usurious debt, and an injunction will be a consequence to stay the action.[2] Finally, when a usurious loan has been made, a transfer of valid securities to the lender, as collateral security for the payment of such loan, is void; and he cannot enforce them even against the maker of them.[3] But a valid security is not tainted by being hy-

[1] Caldwell vs. Warehouse Co., 1 Hun (N. Y.), 718. See also Tyng vs. Commercial Warehouse Co., 58 N. Y. 358.

[2] Peters vs. Mortimer, 4 Edw. Ch. 279.

But to enable an assignee in bankruptcy of a borrower to compel the surrender of collaterals given to secure an usurious loan, he must first pay or tender the amount of the loan with legal interest. Wheelock vs. Lee, 64 N. Y. 243. He is not a "borrower" within the meaning of L. 1837, c. 430. Id. The statute does not, however, bind a court of equity out of the State. Matthews vs. Warner, 6 Fed. Rep. 461.

[3] Western Reserve Bank vs. Potter, Clarke (N. Y.), 432.

pothecated by its owner for a usurious loan; and, were it otherwise, redeeming it purges the taint.[1]

VI. Statute of Frauds.

(a.) *Contracts for Sale of Stocks not within English Statute.*

In the latter part of the seventeenth century, a statute was passed in England which, with certain modifications and amendments, has in the course of time become a component part of the law of England and of a majority of the States of the Union. This is the celebrated statute of Charles the Second passed in 1677, and entitled "An Act for the Prevention of Frauds and Perjuries."[2]

The objects which the statute of Charles had in view are perhaps too well known to require any comments. Hence, in the present work, we shall merely concern ourselves with decisions arising under the act as to the validity of contracts for the purchase and sale of stocks and shares. And the question presents itself, Do such contracts come within the 17th section of this important enactment? That section reads as follows: "And be it enacted that from and after the 24th day of June, 1677, no contract for the *sale of goods, wares and merchandise* for the price of £10 sterling or upwards shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorized."[3]

[1] Warner vs. Gouverneur, 1 Barb. (N. Y.) 36.

[2] 29 Car. II. c. 3.

[3] This section was repealed by the

Question has also arisen as to whether these contracts were within the 4th section of the statute concerning lands, the decisions relating to which will be referred to hereafter.

In England it seems that the law is now settled, as a matter of judicial history beyond all cavil, that contracts for the sale of stocks are not within the Statute of Frauds, and consequently are not required to be in writing; and this, in brief, is based upon the fact that the English courts do not consider that the terms "stock" and "shares" come within the meaning or spirit of the words "goods, wares, and merchandise," and that they are mere *choses in action*, of which there cannot be a part delivery.[1] As the law is so well settled in that country, it is only deemed necessary to refer to a few of the most prominent cases where the question has been considered.

The earliest case in England in which the question arose is that of Pickering vs. Appleby,[2] decided about 1720, where the point was elaborately discussed and not decided, there being an equal division of the court. The action was one of assumpsit upon a contract to sell shares of stock in a copper mining company alleged to have been transferred and sold to the defendant, who pleaded non assumpsit. On

Sale of Goods Act, 1893, and substantially reënacted by § 4, subs. 1, of that act.

[1] The question is now definitely settled by statutory enactment. The word "goods" in the 4th sec., subs. 1, of the Sale of Goods Act, 1893, is defined by § 62 (1) of that act to include all chattels personal, other than things in action and money, and the words "personal chattels" do not (Bills of Sale Act, 1878, sec. 4) include shares or interests in the stock or funds of any government, or in the capital or property of incorporated or joint-stock companies. The effect of the exception in sec. 62 (1) of the Sale of Goods Act is also to exclude negotiable instruments and securities for money from the operation of the statute (sec. 4).

[2] 1 Com. 354; s. c. 2 Eq. Abr. 50, pl. 27.

the trial it appeared that there was no memorandum in writing of the contract or any earnest paid; and it was doubted by King, C. J., whether such shares were within the purview and intent of the act, and whether plaintiff could recover. Although the arguments of counsel were most elaborate, both pro and con, the books fail to show what the views of the judges were, save that they were divided in opinion, and the case was adjourned.

About five years after, Colt vs. Nettervill[1] came before the Lord Chancellor, involving precisely the same question. There a bill was brought to compel the defendant to perform an agreement to take certain stock, and he pleaded the Statute of Frauds; but the Lord Chancellor said the point had already been before all the judges, who were equally divided—six against six—and that therefore it was too difficult for determination upon demurrer. Counsel insisted that the word "goods" in the statute was extensive enough to cover the contract, and that at least it was within merchandise; for every vendible thing was said to be merchandise, and that stock was a thing vendible, and in the year 1720 was the most usual merchandise which people dealt in. It was further contended that Lord Cowper had already determined such a contract to be within the statute. The point, however, was not decided.

About the same time occurred the case of Mussell vs. Cooke,[2] which was likewise a bill for specific performance of a contract for the sale of stock. There A agreed with B's Broker for £5000 South Sea stock; the Broker, according to usage, made an entry of this agreement in his pocket-book; and the court held that it was within

[1] 2 P. Wms. 304.

[2] Prec. Ch. 533.

the statute. The plea was, however, overruled for not stating that the agreement had not been reduced to writing.

Following this, we find a like decision in Crull vs. Dodson;[1] but it does not appear there that the Statute of Frauds came before the court but incidentally; for in a note to the case[2] it is said that, "independently of this consideration [the Statute of Frauds], the case could not have been decided on any other grounds than that of public policy." The facts showed that the defendant, a Broker, had certain stock in his hands belonging to the plaintiff, who said he would sell when it reached £200. The defendant, when the stock had gone beyond that price, told plaintiff that he sold £1000 of it to one at £200, and £500 to another, who was his partner and the rest he had taken himself at that price, which was clearly a breach of trust on his part; and entries were made in his books accordingly, but in such a manner that it looked as if done after the use of the stock, and only designed as an evidence in case of dispute. The plaintiff had a decree, which was affirmed upon the ground that the transaction was a fraudulent one; and the court said: "On the sale, if any, he [the Broker] should have taken earnest; for it has been determined here that such a bargain is within the Statute of Frauds, and without earnest only *nudum pactum*."

Both of these cases are, however, disregarded as authorities in England; and they are clearly overruled by the great mass of subsequent decisions to the contrary, some of which

[1] Macn. Sel. Cas. Ch. 108. See also Calvin vs. Williams, 3 Har. & J., 38, where it was decided in Maryland, in which State the statute prevails, that the sale of bank stock is within the statute of 29 Car. II. c. 3.

[2] Macn. Sel. Cas. Ch. 109.

we will give, as they conflict with the weight of authority in the United States upon this subject.

In Humble vs. Mitchell,[1] which is one of the leading cases upon the subject, the plaintiff brought assumpsit for not transferring shares in a joint-stock banking company, and the defendant interposed the Statute of Frauds. But it was held that a contract for the sale of such shares of £10 value is not a contract for the sale of goods, wares, and merchandise, so as to require a written memorandum within the 17th section of the statute. Lord Denman, C. J., said: "It appears that no case has been found directly in point; but it is contended that the decisions upon reputed ownership are applicable, and that there is no material distinction between the words used in the Statute of Frauds and in the Bankrupt Act. I think that both the language and the intention of the two acts are distinguishable, and that the decisions upon that act cannot be reasonably extended to the Statute of Frauds. Shares in a joint-stock company like this are *mere choses in action*, incapable of delivery, and not within the scope of the 17th section. A contract in writing was therefore unnecessary."[2]

The same views were expressed in another well-known case, where the subject involved was railway shares.[3] The action was specific performance to compel a transfer of the shares. The vice-chancellor said: "In my opinion, this is a case to which the 17th section of the Statute of Frauds does not apply, because it is impressed upon my mind that in the decisions which have been made with respect to the

[1] 3 Per. & Dav. 141; s. c. 11 Adol. & El. 205.

[2] See also, to same effect, Haseltine vs. Siggers, 1 Wels. & Hurl. & Gord. 856.

[3] Duncuft vs. Albrecht, 12 Sim. 189.

17th section it has been held to apply only to goods, wares, and merchandise, which are capable of being in part delivered. If there is an agreement to sell a quantity of tallow or of hemp, you may deliver a part; but the delivery of a part is not a transaction applicable, as I apprehend, to such a subject as railway shares. They have been decided not to be land. They have been decided to be in effect personal estate, but not personal estate of the quality of goods, wares, and merchandise, within the meaning of the 17th section."

So in another case, where it was decided that a sale of railway scrip was not a sale of goods, wares, and merchandise, within the meaning of the exemption in the Stamp Act,[1] the defendant contended that shares of that description had been held to be goods and chattels under the Bankrupt Act; but Pollock, C. B., stated that under that act all the rights of the bankrupt passed under the word "chattels" (which the Statute of Frauds does not contain). The court said: "Scrip and shares are not merchandise; they are merely bought and sold by parties who wish to speculate upon their right to obtain shares in the companies as soon as the latter are formed."[2]

It has likewise been held in England that these contracts do not come within the 4th section of the statute relating to contracts concerning lands. Stocks or shares have consequently been held not to be an interest in lands or within the Mortmain Act.

[1] 53 Geo. III. c. 184.

[2] Knight vs. Barber, 16 L. J. Ex. 18; 16 Mee. & W. 66; Watson vs. Spratley, 10 Ex. 222. See also, as to railway shares, Hargreaves vs. Persons, 13 Mee. & W. 561; Bowlby vs. Bell, 3 C. B. 284, 291; Tempest vs. Kilner, id. 249. As to scrip, see Goodwin vs. Robarts, 45 L. J. Ex. Div. 748; Marten vs. Gibbon, 33 L. T. (n. s.) 561. See also Calvin vs. Williams, 3 Har. & J. 38.

In Watson vs. Spratley,[1] which is perhaps the leading case upon the subject, the plaintiff contracted to sell defendant certain shares in a joint-stock mining company. The plaintiff, it appears, made a memorandum of the sale, but there was no note in writing signed by the defendant. The mode of transferring shares was by a certificate of sale, which authorized the substitution of the vendee's name upon the books of the company in the place of the vendor. It was decided that the shares were not an interest in land within the 4th section of the act, and that there was no difference in this respect between an incorporated and an unincorporated company. The court said that the interest which the holder of the shares in such a company had was not a legal title to the lands which were vested in the company, but merely the right to receive the dividends payable on his shares—a right to his just proportion of the profits arising from the employment of the joint stock, consisting, indeed, partly of land; but while he holds his shares he has no interest or separate right to the land or any part of it. The court based its decision upon the cases cited in the note,[2] and upon the decision per Lord Langdale in Sparling vs. Parker,[3] upon the Mortmain Act,[4] prohibiting the devise of land, etc., to charitable uses, where the court held that a devise of shares was good, as they were not an interest in land within that act: "Now, this case seems to me to be in point; for if a share in an unincorporated joint-stock dock company is not an interest in land

[1] 10 Ex. 222.

[2] Bligh vs. Brent, 2 Y. & C. 294; Duncuft vs. Albrecht, 12 Sim. 189; Myer vs. Perigal, 2 De G. M. & G. 599. See also Walker vs. Bartlett, 18 C. B. 845.

[3] 9 Beav. 450. See also Hilton vs. Giraud, 1 De G. & Sm. 183.

[4] 9 Geo. II. c. 36.

for the purpose of a devise to a charitable use, neither it nor a share in a joint-stock mining company can be an interest in land for the purpose of a contract within the 4th section of the Statute of Frauds."[1]

It was, however, subsequently held in England[2] that debentures issued by a company, charging all its undertakings and property (a portion of which consisted of land) with the payment of the principal money therein contracted to be paid, created a charge on land, and a contract for the sale of them was within the 4th section of the Statute of Frauds. In that case the contract was not made through a Broker. It is submitted, however, that if it had been, the entry in the Broker's books might be sufficient to take the case out of the statute. In the case of shares which are deliverable by an instrument in writing, the execution of such would make the contract enforceable as against one or both of the parties, according as the instrument had been executed, by one only, or by both vendor and vendee. But as to "bearer" shares in a company similar to that mentioned in Driver vs. Bond, *supra*, the only hope of a party seeking enforcement of a sale of such securities on the Stock Exchange would seem to be the sufficiency of the entry in the note book of the defendant's Broker.

It has been also decided in Sutton vs. Grey[3] that the 4th section does not apply to an agreement between Stock-brokers, and one introducing Clients, to share commissions,

[1] Railway shares are not an interest in land within the 4th section (Bradley vs. Holdsworth, 3 Mee. & W. 422; Bligh vs. Brent, 2 Y. & C. 268). See also Powell vs. Jessop, 36 Eng. Law & Eq. 274, decided upon authority of Watson vs. Spratley, 10 Ex. 222. See, however, a contrary decision in Ireland as to mining shares being real estate, Boyce vs. Green, Batty, 608.

[2] Driver vs. Bond, (1893) 1 Q. B. 744.

[3] 1894, 1 Q. B. 285.

etc., on stock transactions with such Clients, as the contract was not "a special promise to answer for the debt of another person."

And it does not lie in the mouth of a Client to interpose the Statute of Frauds to transactions which he has authorized his Broker to make for him.[1] Thus where plaintiff had at defendant's request entered into a contract for the purchase of Spanish bonds, to be delivered at a future day, and had afterwards paid the price, it was held that the defendant could not, in answer to an action for money paid to his use, object that the contract was not in writing.[2]

So a Client who gives a verbal order to his Broker to purchase certain stock, in pursuance of which the Broker purchases the stock, and the same is on the following day delivered to and paid for by him, cannot insist that the contract is void, on the ground that no part of the stock was delivered and no money paid at the time of giving the order. The delivery by the seller, and the acceptance by the Broker acting as the agent of the buyer, render the contract valid and binding.[3]

(b.) *Contracts for Sale of Stock Held to be within Statute of Frauds in the United States.*

If the English decisions are so decided upon this question, the American cases, in some of those States which have reenacted or adopted the 17th section, seem to be equally decisive that verbal contracts for the sale of stocks are within the Statute of Frauds; and in this respect do not follow,

[1] Genin vs. Isaacson, 6 N. Y. Leg. Obs. 215.

[2] Pawle vs. Gunn, 4 Bing. N. C. 445.

[3] Rogers vs. Gould, 6 Hun (N. Y.), 229.

but rather oppose, the English authorities. There is, however, some conflict among the decisions in this country. The 17th section of the statute of Charles the Second has been introduced into about two thirds of the States and territories,[1] but in some of them the original language of the statute has been so modified as expressly to include stocks and shares. This, for example, is the case with the statutes in force in the States of New York, Florida and the other States mentioned in the footnotes below. The New York statute[2] speaks of the words "chattels or things in

[1] The provisions of the 17th section have been re-enacted with modifications by the following States and Territories: Alabama (but the Code provision was repealed in 1862, and has not been re-enacted), Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Indian Territory, Indiana, (sale of stocks not within, Vawter vs. Griffin, 40 Ind. 593), Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Oklahoma, South Carolina, South Dakota, Vermont, Utah, Wisconsin, Washington and Wyoming.

And in Maryland the provisions of the English Statute of Frauds are considered in force (subscription to stock of a company not within § 17, Webb vs. B. & E. S. R. Co., 77 Md. 92, overruling Colvin vs. Williams, 3 H. & J. 38).

The provisions of the 17th section have not been re-enacted in, or adopted by, the following states: Arizona, Delaware (the statute of which provides that the oath of the vendor and the production of an account book shall suffice to charge the vendee of goods, wares, and merchandise, and things proper to be charged in an account), Illinois, Kansas, Kentucky, Louisiana, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and West Virginia.

In some of these States the courts have expressly affirmed that the provisions of the 17th section have never been in force within their respective jurisdictions, viz., Delaware, Alderdice vs. Truss, 2 Hous. 268; Illinois, Rhea vs. Rhiner, 21 Ill. 526; Pennsylvania (Anon., 1 Dall. 1), and the 17th section has not been re-enacted therein (see Wily vs. Pearson, 2 Woodw. 424). See also as to Rhode Island, Hunt vs. Jones, 12 R. I. 265. And see the Appendix to the 4th ed. of Browne on Stat. of Frauds.

[2] 2 Rev. Stat. 136, (1st ed.), repealed by and re-enacted in the Personal Property Law (§ 21).

action," which would clearly include stock and shares of any kind; while the statute of Florida, in addition to the words "goods, wares, and merchandise," uses the words "personal property," which it has been held is comprehensive enough to include shares of stock in an incorporated company.[1] In some few of the States the old statute remains in full force and effect, either by adoption, or as re-enacted.[2]

The statutes of California, Colorado, Montana, Minnesota, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Utah, Wisconsin, and Wyoming, also use the words "things in action."

[1] Ins. & Trust Co. vs. Cole, 4 Fla. 360.

Section 1090 of the Gen. Stat. of Connecticut contains similar words, and it has been similarly construed. North vs. Forest, 15 Conn. 400; Reed vs. Copeland, 50 Conn. 491.

The statutes of Iowa, Mississippi, and Oregon, also use the words "personal property."

[2] Such as Maryland (by adoption), Georgia, Indiana, Massachusetts, Michigan and South Carolina, by re-enactment, save that the Indiana statute uses the word "goods" only.

The following is a brief recapitulation of the effect of legislation, and of the decisions of the courts:

It will be seen from the text and from the footnotes, supra, that in eighteen of the States contracts for the sale of stocks must of necessity be held to be within the statute by reason of the use of the words "things in action" or "personal property," whilst of the remaining nineteen States and Territories which have re-enacted or adopted the 17th section, the courts of seven of them, viz., Massachusetts, Maine, Vermont, Missouri, New Jersey, South Carolina and District of Columbia, have decided that sales of stocks and notes are within the statute, whilst in five of them, viz., Alabama, New Hampshire, Georgia, Indiana and Maryland, the contrary doctrine has been affirmed. In less than half of the States and Territories can a contract for the sale of securities be held to be within the statute, unless the seven States and Territories which have re-enacted the 17th section, but the courts of which have not yet pronounced upon this question, viz., Alaska, Arkansas, Idaho, Indian Territory, Michigan, North Carolina and Washington, should follow the principle of the decision of Tisdale vs. Harris. In view of recent English legislation, and of the trend of decisions, such is improbable. This is important in the interests of Stock-brokers whose transactions in the Stock Exchange are nearly all verbal. The other sections of the statute of frauds which are dealt with in the subsequent

One of the earliest cases in the United States upon the subject is Tisdale vs. Harris,[1] where the Supreme Court of Massachusetts, in 1838, made a thorough examination of the question, and came to the conclusion that contracts for the sale of stocks were within the Statute of Frauds of that State. In that case the action was assumpsit on a contract by which defendant agreed to sell plaintiff 200 shares in the stock of a Connecticut corporation at $10.80 per share. The object of the suit was to recover $300, the amount of a dividend declared on the shares. The court held that the contract was within the statute, which was copied precisely from the English statute. The court, per Shaw, C. J., considered it somewhat remarkable that the question had not been definitely settled in England, and cited the early English cases[2] as showing that the better opinion seemed to be in that country that shares in incorporated companies were within the statute as goods or merchandise, and it was considered that the weight of authority in modern times was that such contracts are not valid unless evidenced by some writing properly subscribed. The court said: "Supposing this a new question now for the first time calling for a construction of the statute, the court are of opinion that, as well by its terms as its general policy, stocks are fairly within its operation. The words 'goods' and 'merchandise' are both of very large signification. *Bona*, as used in the civil law, is almost as extensive as personal property itself, and in many respect it has nearly as large a signification in the common-law. The word 'merchandise,'

part of this chapter, have been re-enacted in most of the States and Territories.

[1] 37 Mass. 13.

[2] Pickering vs. Appleby, 1 Com. 354; Mussel vs. Cooke, Prec. Ch. 533; Crull vs. Dobson, Macn. Sel Cas. Ch. 108.

also including, in general, objects of traffic and commerce, is broad enough to include stocks or shares in incorporated companies." The court considered that the English cases which decided that buying and selling stocks did not subject a person to the operation of the bankrupt law did not bear much upon the general question, as the bankrupt acts were deemed to be highly penal and coercive, and tended to deprive a man in trade of all his property: the construction in question only decided that by taking such shares merely as an investment a man should not be deemed a merchant within the act. The court considered the argument, that the statute only applied to goods a part of which may be delivered, to be a rather narrow and forced construction. In conclusion, it was said: "There is nothing in the nature of stocks or shares in companies which in reason or sound policy should exempt contracts in respect to them from these reasonable restrictions, designed by the statute to prevent frauds in the sale of other commodities."

We have quoted from this decision at length, as it has been followed by the courts of several other States as a settled authority, and in opposition to the prevailing rule in England. The case of Humble vs. Mitchell,[1] holding the contrary, was not decided until 1839; but it is safe to predict that had it been before the court in Tisdale vs. Harris the decision there might have been different, especially when it is considered that the statute under consideration by that court was precisely similar to that of Charles the Second. Baldwin vs. Williams,[2] where a sale of a promis-

[1] 3 Per. & Dav. 16.

[2] 44 Mass. 363. To the contrary on this point are Hudson vs. Weir, 29 Ala. 294, and Whittemore vs. Gibbs, 24 N. H. 484, where the court refused to follow the Massachusetts case.

sory note was subsequently held to be within the Statute of Frauds, was decided upon the authority of the latter case, although Humble vs. Mitchell was then known to the court and recognized as an opposing authority.[1]

Subsequently, in Massachusetts, however, the court had occasion to re-examine the authorities somewhat closely and more critically than heretofore, in a case where it was contended that an agreement for the sale of a mere interest in an invention, before letters patent were obtained, was a contract for the sale of goods, wares, and merchandise within the statute.[2] But the court decided that it was not within the statute, and clearly limited the doctrine laid down in the early cases. Gray, C. J., after referring to the early English cases and to Tisdale vs. Harris, said: "But the modern decisions in England are the other way, and the decisions in other States are at variance.[3] The words of the statute have never yet been extended by any court beyond securities which are subjects of common sale and barter, and which have a visible and palpable form. To include in them an incorporeal right or franchise granted by the government . . . *would be unreasonably to extend the meaning and effect of words which have already been carried quite far enough.*"

Again, in a still later case,[4] Ames, J., in upholding the objection, upon the above authorities, that a verbal contract for the sale of shares was within the statute, referred to the

[1] See also North vs. Forrest, 15 Conn. 400, and Pray vs. Mitchell, 60 Me. 430, where it was decided that a contract for the sale of shares of a joint-stock company is within the statute, following Tisdale vs. Harris, supra.

[2] Somerby vs. Buntin, 118 Mass. 279.

[3] Citing Browne on Stat. of Frauds, § 296–298; 1 Chit. Cont. (11th Am. ed.) 541, note.

[4] Boardman vs. Culter, 128 Mass. 388.

conflict of the decisions of other courts upon this point, and specially referred to Somerby vs. Buntin:[1] but said, "We do not feel called upon to overrule the two decisions above cited."[2]

In Beers vs. Crowell[3] the court said: "If there be any doubt whether stocks, forming so large and valuable a part of the personal property of the country as they do, and subject as they are to such frequent contracts and transfers, be within the statute, there can be, it should seem, little doubt but that bills, notes, and checks, which are mere securities, evidences of debt, and choses in action, are not included."

Other cases upon this subject will be found in the notes.[4]

There are some cases which have arisen under the statute

[1] 118 Mass. 279.

[2] Referring to Tisdale vs. Harris, 37 Mass. 9, and Baldwin vs. Williams, 44 Mass. 365.

[3] Dudley, 28.

[4] See Weightman vs. Caldwell, 4 Wheat. 89, note; Walker vs. Supple, 54 Ga. 178; Riggs vs. Magruder, 2 Cranch, 143. Bank stock held within statute, Colvin vs. Williams, 3 Har. & J. 38. Shares in turnpike company, Welles vs. Cowles, 2 Conn. 567, 577. Shares in railroad company held to be personal property, Johns vs. Johns, 1 Ohio St. 350; Railroad Co. vs. Benedict, 76 Mass. 212.

In the following cases the decision in Tisdale vs. Harris, supra, was also followed: Baltzer vs. Nicolay, 53 N. Y. 467; Fine vs. Hornsby, 2 Mo. App. 61; Sherwood vs. Tradesman's Nat. Bank, 16 N. Y. W. Dig. 522; French vs. Sanger, New Y. Law J., July 22, 1892; Hagar vs. King, 38 Barb. 200; Hinchman vs. Lincoln, 124 U. S. 38; Bernhard vs. Walls, 29 Mo. App. 206; Sears vs. Ames, 117 Mass. 413; Gooch vs. Holmes, 41 Me. 523; Smith vs. Bouck, 33 Wis. 19; Greenwald vs. Law, 29 Atl. Rep. (N. J.) 134.

Contra, are: Vawter vs. Griffin, 40 Ind. 602; Webb vs. Baltimore, R. R. Co., 77 Md. 92, overruling Colvin vs. Williams, 3 H. & J. 38; Rogers vs. Burr, 105 Ga. 432.

Although the last cited case does not mention Dinkler vs. Baer, 92 Ga. 432, it may be considered as overruling that case, which held that there was a sufficient delivery of stock sold to take the case out of the statute, thus by implication holding that stocks were goods, wares and merchandize, within the statute.

of New York State which, however, by reason of their importance to Stock-brokers, deserve special attention. Thus it has been held that the Statute of Frauds of that State cannot be raised by a Client to defeat the claim of his Broker for moneys advanced in the purchase of the stock merely because the contract was a verbal one, and that the statute had no application to such a case.[1] So where a purchaser signs and delivers to the seller an agreement to buy certain stock upon terms specified, and the latter agrees by parol to sell upon the terms stated, there is a binding contract, which may be enforced against the purchaser.[2] So where the rules of the Stock Exchange make all verbal agreements or contracts between its members binding, it was held that the defendants' Stock-brokers, being bound by such rules, could not interpose the Statute of Frauds as a defence to an action brought against them to recover cer-

[1] Rogers vs. Gould, 6 Hun (N. Y.), 229; Genin vs. Isaacson, 6 N. Y. Leg. Obs. 215; see also Pawle vs. Gunn, 4 Bing. New Cas. 445. But a contract for the sale of gold is within the statute, and must be made in compliance therewith (Peabody vs. Speyers, 56 N. Y. 230).

The statute cannot be set up against an executed contract. McCarthy vs. Weare Co., 91 S. W. Rep. (Minn.) 33. In that case the plaintiff sued upon an account stated between him and defendant Stock-brokers whom he employed to buy and sell stocks for him, and it was held that the statute of frauds had no application. Id. To the same effect is Walker vs. Bamberger, 17 Utah, 239, where an option contract to take shares of stock, which had been carried out, was held not within the statute.

[2] Mason vs. Decker, 72 N. Y. 595; aff'g 10 J. & S. 115; Justice vs. Lang, 42 N. Y. 493. In the recent case of Lydig vs. Braman, 177 Mass. 212, it appeared that defendant Stock-broker made a written offer to sell plaintiff $25,000 of railroad bonds, and it was held that plaintiff's oral acceptance of the offer, coupled with other letters of defendant, by which he agreed to let plaintiff have bonds of the same kind up to $25,000, constituted a sufficient written memorandum of a parol contract for the purchase of $20,000 of the bonds. Contra, it seems, is Johnson vs. Mulry, 4 Robt. (N. Y.) 401.

tain bonds stolen from plaintiffs and deposited with defendants as margin.[1]

In Tomlinson vs. Miller[2] the plaintiff and defendant agreed verbally with a third person to exchange bonds of a railroad company for its stock, it being understood between the plaintiff and defendant that they should furnish the bonds to be given, and share the stock to be received in a certain proportion; and that the defendant should attend to making the exchange, and should furnish all the bonds in the first instance, plaintiff subsequently to replace his share so advanced. Held, that though the agreement was void under the Statute of Frauds, for want of a written memorandum, yet, after the defendant had made the exchange on behalf of himself and plaintiff, in pursuance of the agreement, the Statute of Frauds had no application to the claim of the plaintiff on tendering the share of bonds to be furnished by him, to recover from the defendant the shares of the stock which defendant had received for him.

The court said: "This being the case, I am unable to see that the Statute of Frauds has any application to the case in hand. As between vendor and vendee, no writing is necessary to transfer the title to bonds or stock. Delivery of the bonds or of the certificate of stock under a parol contract of sale is sufficient to that end. Suppose that the verbal contract of exchange had been between P. and the plaintiff solely, and the plaintiff had requested the defendant, as his agent, to advance the bonds and complete the exchange, and the defendant had, in the name of the plain-

[1] Brownson vs. Chapman, 63 N. Y. 625; see, however, Henderson vs. Barnewell, 1 Y. & J. 387; Ryers vs. Tuska, 14 N. Y. Supp. 926.

[2] 7 Ab. (N. Y.) n. s. 364.

tiff, and avowedly as his agent, made the exchange with Patchin pursuant to the contract, advancing his own bonds for that purpose, what application could the Statute of Frauds have to the case?"

The question has also been considered as to what is not a sufficient memorandum to take the contract out of the statute. Thus, in Johnson vs. Mulry,[1] it was held that a mere entry in a book, by the clerk of the Stock-brokers of a vendor by whom a sale of choses in action has been made, of such sale, although assented to verbally by the buyers as correct, is not a sufficient reduction of the contract to writing, or written memorandum, or note thereof, signed by the parties, within the statute. It was also held in this case that the necessity of having such contract in writing was not dispensed with by the Stock-jobbing Act,[2] providing that contracts for the sale of stock shall not be void or voidable by reason of a want of consideration, or the non-payment of a consideration, or the non-possession or ownership by the vendor, at the time of making such contracts, of the certificates or other evidence of such shares.[3] But the court seemed to be of opinion that if the purchase-money was to be deemed the consideration, or a part of the consideration, then the third subdivision of the statute had no application to the case, the payment having been rendered unnecessary by the act last cited.

But upon the point that there was no sufficient memorandum signed and subscribed by the parties, it would seem that this case cannot be considered as good law in New York, for, as we have seen, a contract for the sale of stock

[1] 4 Robt. (N. Y.) 401.

[2] Laws N. Y. 1858, ch. 134, now § 22 of the Personal Property Law.

[3] See Thompson vs. Alger, 53 Mass. 428, 436.

is sufficiently binding if signed by one party and accepted by the other.[1]

The New York statute was also construed, in the case of Thompson vs. Alger,[2] as to what is a sufficient part payment. There an oral contract was made in New York for the purchase of railroad stock, and afterwards the buyer paid a part of the agreed price to the seller, but finally refused to pay the balance and take the stock. In a suit to recover the residue of the agreed price, or damages for not performing the contract, it was contended by the defendant that the contract was void within that provision of the statute which provides that contracts or things in action shall be void "unless the buyer shall *at the time* pay some part of the purchase-money." The court, per Dewey, J., in repudiating this argument, said: "These payments were part of the purchase-money for the stock which Alger contracted to buy and Stone contracted to sell, and will take the case out of the operation of the Statute of Frauds unless the court sanction the ground taken by the defendant, that in order to take the case out of the statute such payment must have been made at the precise point of time when the parties made their original verbal agreement. No such doctrine has ever been applied to the English Statute of Frauds, nor to that of Massachusetts; nor could it seriously be urged as to either. It is only upon the peculiar language of the statute of New York that this point is relied upon in the defence." And this interpretation of the statute appears to have received the sanction of the courts of New York State in several subsequent cases.[3]

[1] See Mason vs. Decker, 72 N. Y. 595; Justice vs. Lang, 42 id. 493; Lydig vs. Braman, 177 Mass. 212. See also Hibbard vs. Hatch Co., 54 N. E. Rep. (Mass.) 658.

[2] 53 Mass. 428, 436.

[3] See the decision commented up-

Where B, the owner of shares, agreed with A that he, B, in consideration of A's discharging B from his contract to sell such shares to A for the sum of $3000, promised to pay A one half of the excess of such sum as he, B, should sell said shares for to a third party over $3000, and B sold them to a third person for $3200, in an action brought by A against B on such promise, it was held that the contract was not exempted from the operation of the Statute of Frauds on the ground of a part performance.[1]

So where there was a part performance of the contract by the payment of the money and delivery of the stock, after the action brought, these acts cannot be relied on to show a cause of action when the action was commenced.[2]

In a case in New York[3] it was held that the furnishing

on in Hunter vs. Wetsell, 57 N. Y. 375; also s. c. 84 N. Y. 549, where it was held that where, after the making of an oral contract for the sale of goods, void under the Statute of Frauds, a payment is made thereon, and at the time of such payment the essential terms of the contract are restated, this takes the case out of the operation of the statute, and validates the contract. And where a check is delivered and received as a payment, which is good when drawn and is paid on presentation, this is a *payment at the time* within the meaning of said statute (2 Rev. Stat. 136, § 3 (1st ed.), now subd. 6, § 21, of the Personal Property Law), and satisfies its requirements.

It was held in McLure vs. Sherman, 70 Fed. Rep. 190, that if the consideration is partly paid by check, the transaction is not within the statute.

[1] North vs. Forest, 15 Conn. 400.

[2] Tisdale vs. Harris, 37 Mass. 13. As to when a delivery of certificates of stock and notes is not a sufficient part performance to take the case out of the statute, see Reynolds vs. Scriber, 69 Pac. Rep. (Ore.) 48.

[3] White vs. Drew, 56 How. Pr. (Sp. T.) 53.

Payment of part of the purchase money to an agent authorized to make a sale of shares takes the case out of the statute: Jones vs. Wattles, 92 N. W. Rep. (Neb.) 765. When a contract was in effect one for the exchange of plaintiff's share of the stock of a corporation for goods of the corporation, plaintiff and his father and brother resigning their position as officers of the corporation, it was held that although such resignations were made a few days after an oral agreement for the exchange was made, there

of reliable information as to facts upon which the future price of a stock will depend was a sufficient consideration to uphold a verbal agreement or contract in relation to such stock; and that the information, being concededly of great value, was just as effective to take the case out of the Statute of Frauds as if a cash payment had been made. No authority was cited for this proposition, but it appears to have been based by the learned judge upon the principle that one who offers a reward for information is bound by his contract to the person who responds to his offer: then the contract was considered by the court as having been executed by the fact that the defendant assented to the same, and acted upon it by purchasing the stocks.

And where the plaintiff purchased certain shares of stock at a given price of the defendant, the latter agreeing to take it back and repay the plaintiff for the same on request—held, that the plaintiff having tendered back the stock and demanded repayment, the contract for the repayment was not within the Statute of Frauds, though not in writing. The court based its decision upon the fact that the contract sued upon was not an independent one for the resale of the stock from plaintiff to defendant but was rather a part of the one by which plaintiff purchased the stock, and by which the purchase became a qualified and not an absolute one. The original contract was taken from the operation of the statute by a part performance, by the delivery of the stock, and by the payment of the money.[1]

was not a reaffirmance of the contract sufficient to take it out of the New York statute. Raymond vs. Colton, 104 Fed. Rep. 219.

[1] Fay vs. Wheeler, 44 Vt. 292. To the same effect, Allen vs. Aguirre, 7 N. Y. 543.

Where a purchase is made of securities upon a representation as to value inducing the purchase, and

It was also held in Seddon vs. Rosenbaum[1] that an optional contract to buy stock within three years was not within the section of the state statute, corresponding to a similar provision in the fourth section of the English Statute of Frauds, as the vendee might choose to buy within one year.

A contract to convey land in consideration of the payment of cash, and transfer of stock, is not within the Statute of Frauds, if not signed by the vendee, the vendor's sig-

a promise to return the purchase money paid if the purchaser becomes dissatisfied, the contract is not within the statute. When the option to repurchase is not limited, it must be exercised within a reasonable time. Wooster vs. Sage, 67 N. Y. 67; Allen vs. Eghmie, 79 id. 632; Johnson vs. Trask, 116 N. Y. 136; Fitzpatrick vs. Woodruff, 96 N. Y. 561. As to what is a "reasonable time," see last cited case. See also, Lydig vs. Braman, 177 Mass. 212.

Where, however, a contract to repurchase shares, or a guaranty of payment, is not part of the contract of sale, it is not enforceable if not in writing. Hagar vs. King, 38 Barb. 200; Chamberlain vs. Jones, 32 App. Div. (N. Y.) 237.

A promissory note given in fulfilment of an oral promise to repurchase mining stock, which had been sold two months previously, is void. Cameron vs. Tompkins, 72 Hun, 113. In that case the note and correspondence between the parties did not constitute "a note or memorandum" under the statute. Id.

A parol agreement for the sale of 200 shares is, however, within the statute, although there was an agreement by the same party to buy a larger number of shares in the same company, which latter shares were delivered and the price thereof paid, the contract for the 200 shares being distinct from the other. Tompkins vs. Sheehan, 158 N. Y. 617.

In Alabama it has been held that a married woman may convey shares in a corporation with her husband's written assent without complying with a statute requiring attestation and acknowledgment. Flowers vs. Sterner, 103 Ala. 440. When plaintiff brought an action against defendant Stock-brokers to impeach the latter's account on grounds which implied the existence of a formal contract to purchase of defendants $1,000,000 United States bonds, and question of the want of a note or memorandum was only raised for the first time in the requests for findings, he cannot question the validity of the contract under the statute. Porter vs. Wormser, 94 N. Y. 431.

[1] 85 Va. 928.

nature being sufficient.[1] And if the performance of the verbal contract depends on a contingency which may or may not happen within a year, it is nevertheless valid, unless it appears that the contract was to be performed after the expiration of a year.[2]

And a contract for the sale of stock not yet in existence (the corporation not having been organized) is not within the statute.[3]

In California it was held that a verbal promise by the stockholder of a corporation to the purchaser of stock therein, to refund the price, if the stock should become worthless, is not within the Statute of Frauds, as it is an original contract, and not a guaranty.[4]

And in the case of Moorehouse vs. Crangle[5] it was held in Ohio that an oral promise by the president of, and a large stockholder in, a corporation, to plaintiff, that if the latter would subscribe to stock of the company, he would, within a year, receive a large dividend, was not a contract within the sections of the Statute of Frauds requiring a contract to answer for another's debt, default or miscarriage, to be in writing.[6]

The New York Statute of Frauds (Rev. Stats.[7] Part 2, ch. VII, title 2, § 2) provided that the consideration in the contracts therein mentioned should be expressed, but by

[1] Burk vs. Mead, 64 N. E. Rep. (Ind.) 889.

[2] Gadsden vs. Lance, McMul. S. C. Eq. 91. See also Moore vs. Vosburgh, 66 A. D. (N. Y.) 223; Dupignac vs. Bernstrom, 78 N. Y. Supp. 705; Thompson vs. Whitney, 20 Utah, 1.

[3] Gadsden vs. Lance, McMul. Eq. C. (S. C.) 91.

[4] Kilbride vs. Moss, 113 Cal. 432.

[5] 36 Ohio St. 130.

[6] To same effect is Crook vs. Scott, 65 A. D. 139; See also Merchant vs. O'Rourke, 82 N. W. Rep. (Iowa) 759; Crawford vs. Pile & Brown, 190 Pa. St. 272; Conner vs. Bramble, 6 Ohio N. P. 195.

[7] 5th ed.

L. 1863, ch. 464, these words were omitted. Notwithstanding this amendment, however, the consideration must either be expressed in words or be fairly inferable from the contract.[1] In Wisconsin, under the Statute of that State, the consideration must be expressed.[2] So also in Alabama.[3] In Indiana the consideration need not be set forth, but may be proved. Parol evidence is admissible to show what the consideration was, if it is ambiguously expressed.[4]

In Missouri it has been held that a contract for the exchange of lands for bank stock is within the statute and must be in writing[5] and entry into possession of the land (unless with the vendor's consent) does not take the case out of the statute.[6]

And it has been held in Minnesota that a parol contract for personal services, as president of a corporation, whereby part of the compensation was to be paid in stock of the corporation, was not a contract for the sale of such stock, and therefore not within the Statute of Frauds, although the stock to be transferred was over the value of $50.[7] Although such a contract being for the rendition of such services for a period of three years was not enforceable, it was not absolutely void, and plaintiff was entitled to the value of the stock actually earned by him when he was discharged during the term without fault on his part,[8] but this decision was on the ground that defendant had received a benefit

[1] Union Bank vs. Leary, 79 N. Y. Supp. 217.

[2] Commercial Bank vs. Smith, 107 Wis. 574.

[3] Strouse vs. Elting, 20 So. Rep. (Ala.) 123.

[4] Burk vs. Mead, 64 N. E. Rep. (Ind.) 889.

[5] Beckmann vs. Mepham, 70 S. W. Rep. 1094. See also Crafton vs. Carmichael, 64 N. E. Rep. (Ind.) 627.

[6] Cockrell vs. McIntyre, 161 Mo. 59.

[7] Spinney vs. Hill, 81 Minn. 316.

[8] Id.

for the services rendered, and where defendant receives no benefit, he is not liable. So held in Gazzam vs. Simpson,[1] where it was held that defendants (stockholders in a corporation) were not liable to repay to plaintiff stockholders moneys advanced by the latter to the corporation, when the defendants were not benefited by such advance.

(c.) *When Statute must be Pleaded.*

In England, by statute,[2] where a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether in reference to the Statute of Frauds or otherwise; and it has been decided that the statute must be pleaded,[3] and that a defence founded thereon cannot be raised by demurrer.[4]

It has been held in Vermont that the defence under the statute may be shown under the general issue or pleaded specially.[5] And the same rule prevails in New York,[6] save that, if the defendant admits the making of the contract in his pleading, he must specially allege the Statute of Frauds

[1] 114 Fed. Rep. 71.

[2] Sup. Ct. Judicature Act Amendment, 1873; 38 and 39 Vict. c. 77, order xix, 20 Snow's Annual Practice (1901), vol. 1, 266; Browne on Stat. of Frauds (4th ed.), 560.

[3] Towle vs. Topham, 37 L. T. (n. s.) 308. See also Mussell vs. Cooke, Prec. Ch. 533; Clarke vs. Callow, 46 L. J. Q. B. 53; Dawkins vs. Penrhyn, 48 L. J. Ch. 304; Pullen vs. Snelus, 48 L. J. C. P. 394; Jones vs. Smith, (1891) 1 Ch. 384.

[4] Catling vs. King, L. R. 5 Ch. Div. 660; Futcher vs. Futcher, 58 L. J. Ch. 735; Morgan vs. Worthington, 38 L. T. 443.

[5] Hotchkiss vs. Ladd, 36 Vt. 593. In Alabama the statute must be pleaded. Strouse vs. Elting, 20 So. Rep. 123.

[6] Harris vs. Knickerbocker, 5 Wend. 644; Duffy vs. O'Donovan, 46 N. Y. 223; Haight vs. Child, 34 Barb. 186; Morrill vs. Cooper, 65 id. 512; Amburger vs. Marvin, 4 E. D. Smith, 393.

as a defence.[1] The objection to the statute may be taken in equity by answer to the bill denying the fact of the agreement.[2]

But where complainant sold defendant 200 shares of railway stock at a stipulated price, deliverable at a future day, and, to secure performance of the contract, each party deposited 100 shares of similar stock with Brokers, and when the contract matured defendant declared that he would not receive the stock, and no tender or offer of it was made to him, whereupon plaintiff filed a bill that the 100 shares pledged might be sold and his damages paid out of the proceeds—the defendant answered, substantially admitting the making of the contract, but alleged "that the contract was void in law and not binding upon him." It was held that the answer was not sufficient to enable him to avail himself of the Statute of Frauds or put complainant on proof of a contract in writing.[3]

[1] Alger vs. Johnson, 4 Hun, 412. The general rule is that the defense of the statute must be pleaded, except where the complaint shows on its face that the case is within the statute. Porter vs. Wormser, 94 N. Y. 31.

When on the face of a contract for the purchase of bonds declared on, the statute has been complied with, but, as found by the court, the statute was not complied with, the objection of the statute may be raised at the trial without having been pleaded, but the defence is not open if not raised at the trial. Lydig vs. Braman, 177 Mass. 212.

See also Beckmann vs. Mepham, 70 S. W. Rep. 1094.

[2] Brown on Stat. of Frauds (4th ed.), 565.

[3] Vaupell vs. Woodward, 2 Sandf. Ch. 143.

Chapter VIII.

MEASURE OF DAMAGES.

I. General Rule in the United States in Actions relating to Personal Property.
- (*a.*) *In Actions by Vendee against Vendor.*
- (*b.*) *By Vendor against Vendee.*
- (*c.*) *In Actions for Conversion of Personal Property.*
- (*d.*) *Refusal to Return Borrowed Stocks.*

II. In Actions between Clients and Stock-brokers.
- (*a.*) *By Clients against Stock-broker for Failure to Buy as per Instructions.*
- (*b.*) *Clients against Brokers for Failure to Sell Stocks.*
- (*c.*) *For Conversion of Stocks by Broker.*
- (*d.*) *Exceptions to Rule laid down in Baker vs. Drake.*
- (*e.*) *Reasonable Time.*
- (*f.*) *Market Value.*

III. Measure of Damage in Actions by Stock-broker against Client.

It is not within the limits of this work to discuss extensively the measure of damages in actions for the non-performance of contracts relative to the sale or purchase or for the conversion of personal property. This more properly belongs to a separate treatise on damages, and it has been ably performed by Mr. Sedgwick in his well-known work.[1] The object of this book will be fulfilled by strictly

[1] See also the treatises of Mr. Sutherland (3d ed.), and of the Messrs. Joyce.

confining the present chapter to the principles of the law of damages immediately growing out of transactions in stocks and other securities dealt in by Brokers on the Stock Exchange, prefacing it with a mere statement of the general principles applicable to other kinds of personal property.

I. General Rule in the United States in Actions Relating to Personal Property.

(*a.*) *In Actions by Vendee against Vendor.*

In an action for the breach of a contract to deliver personal property, the measure of damages seems to be the difference between the contract and the market price at the time and place where it should have been delivered.[1] If the price has been paid in advance, the purchaser is entitled to any rise in the value of the article which may have taken place down to the time of trial ;[2] but the rule is modified where extraordinary circumstances have occurred to produce extreme prices in the article, or other circumstances attending the transaction which would render it inequitable to allow, as a measure of damages, the highest price of the article after default in delivery.[3] And it seems to be settled that the above general proposition is not altered when stocks are the subject-matter of the contract,[4] but if

[1] 1 Sedgwick on Damages (7th ed.), 552 et seq.; ib. (8th ed.), vol. 2, § 743 et seq., and cases cited; Randon vs. Barton, 4 Tex. 289.

[2] Id.

[3] Calvit vs. McFadden, 13 Tex. 324.

[4] 1 Sedgwick on Damages, 577; ib. (8th ed.), vol. 2, § 736; North vs. Phillips, 89 Pa. 250; Rand vs. White Mountain R. R., 40 N. H. 79; Currie vs. White, 45 N. Y. 822; 1 Sweeny, 166; Shaw vs. Holland, 15 Mee. & W. 136; Pott vs. Flather, 5 Eng. Ry. & Can. Cas. 85; Tempest vs. Kilner, 3 C. B. 249–253; Huntington & Broad Top R. R. Co. vs. Eng, 86 Pa. 247. But compare Kent vs.

the purchaser has paid for the property in advance, it has been held in some jurisdictions that the measure of damages is the value of the stock at the time it ought to have been delivered,[1] whilst in other States the highest intermediate value of the stock between the time at which it should have been delivered and the trial, is allowed.[2]

In England the price of the stock at the time of the trial appears to be the measure of damages.[3]

Ginter, 23 Ind. 1; Musgrave vs. Beckendorff, 53 Pa. St. 310.

See also as exemplifying the general rule so far as regards shares, Powell vs. Jessop, 18 C. B. 336. In an action against a company for withholding shares after tender of calls and interest, the measure of damages is the market price on the day of tender, less calls and interest, Van Dieman's Land Co. vs. Cockerill, 1 C. B. (n. s.) 732. See s. c. 5 C. B. 318.

Where the vendee has an option to return stock sold to him and receive back the price paid, the measure of damages is the purchase price paid with interest. Laubach vs. Laubach, 71 Pa. St. 387.

If the stock has no actual or market value only nominal damages can be recovered. Barnes vs. Brown, 130 N. Y. 372. The rule applies to a breach of contract to deliver land certificates. Randon vs. Barton, 4 Tex. 289. See also Van Allen vs. Illinois C. R. R. Co., 7 Bosw. 515; Vance vs. Tourné, 13 La. 225; Jones vs. Chamberlain, 30 Vt. 196; Long vs. Conklin, 75 Ill. 32; Belden vs. Nicolay, 4 E. D. Smith (N. Y.), 14; Sutherland on Damages (3d ed.), § 657.

[1] Orange & A. R. R. Co. vs. Fulberg, 17 Grattan, 366; Dyer vs. Rich, 1 Met. (Mass.) 180; Gray vs. Portland Bank, 3 Mass. 364; 2 Sedgwick on Damages (8th ed.), § 746 et seq. In other States the same rule has been held to apply to personal property other than stocks—viz., in Vermont, Kentucky and Pennsylvania, although in the latter State the rule is different as to stocks. See next footnote.

[2] Kent vs. Ginter, 23 Ind. 1; Bank vs. Reese, 26 Pa. St. 143; 2 Sedg. on Damages (8th ed.), § 744 et seq. The same rule has been held to apply to personal property, other than stocks, in New York (Clark vs. Pinney, 7 Cow. 681), Connecticut, Texas, Iowa and California. 2 Sedg. on Damages (8th ed.), § 744 et seq.

[3] Mayne on Damages (6th ed.), p. 195. In an early English case (Dutch vs. Warren, cited in 2 Burr, 1010) it was held that, where the purchase price of mining shares was paid by plaintiff, and the shares were to be transferred to plaintiff as soon as the books were open, but the defendant refused to carry out the contract four days later when

In an action on a guarantee that the sold shares shall yield certain annual dividends for a certain period, the measure of damages is the difference between the actual value of the shares and their value if they had proved to be of the stipulated quality.[1] And a party subscribing for shares at the request of another, who agrees to take them and in-

the books were opened, plaintiff could not, in an action on the case for money had and received, recover £262: 10: 0, the consideration paid by him, but only £175, the value of the shares on the day they were agreed to be delivered. See this case criticised in Mayne on Damages (6th ed.), p. 193, and note (*l*) appended. The learned author doubts whether the case is good law now. See p. 192 of that work as to the conflict between the American decisions in such a case, i. e., where the purchase money has been paid, and the property not delivered by the vendor.

[1] Struthers vs. Clark, 30 Pa. St. 210. See also to same effect, Callanan vs. Brown, 31 Iowa, 333, and cases cited at id. p. 340. The same rule applies to worthless stock fraudulently sold. Hubbell vs. Meigs, 50 N. Y. 480; Miller vs. Barber, 66 N. Y. 558, and to shares fraudulently issued; Peek vs. Derry, 37 Ch. Div. 541; Allen vs. South Boston R. R. Co., 4 L. R. A. 716. When one is induced by fraud to purchase stock of a corporation, he may recover the difference between the value of the stock and the price he paid for it, and if the corporation is insolvent, the intrinsic value of its stock may be shown as a basis for the assessment of damages. Redding vs. Godwin, 46 N. W. Rep. (Minn.) 563.

And it was held in Smith vs. Bolles, 132 U. S. 125, that when plaintiff was fraudulently induced to purchase the stock of a corporation, the defendant was liable to make good the loss sustained, such as the moneys the plaintiff had paid out and interest, and any other outlay, legitimately attributable to defendant's conduct, but this liability did not include the expected fruits of an unrealized speculation.

In Massachusetts it was held in Allen vs. South Boston R. R. Co., 150 Mass. 200; 22 N. E. Rep. 917, that the measure of damages against a corporation for a fraudulent overissue of stock was the market value of the stock when the corporation (the fraud having been discovered) refused to redeem it, or permit a transfer of it.

And where part of the consideration of a contract is $25,000 worth of the stock of a company to be organized by defendant, but which was never in fact organized by him, the measure of damages is what, from the best evidence procurable, might be the reasonable value of such stock if the corporation had been formed. Huse & Loomis Ice Co. vs. Heinze, 14 S. W. Rep. (Mo.) 756.

demnify him, is not limited to the amount paid less the market value at the time of the refusal, but he may recover of the person so agreeing the amount advanced, with interest, on his refusal to fulfil the agreement.[1] But on a breach of contract to pay in certain State stocks, it was held that the measure of damages is not the value of the State stocks at the place of delivery, as in contracts to deliver private property, but the market value of such stocks in the principal cities, at the time the contract was broken, deducting the necessary expense in converting the stocks into money.[2]

In an action between Stock-brokers upon a contract for the purchase and sale of shares of stock of a railroad corporation at a specified price, "payable and deliverable, seller's option, in this year, with interest at the rate of six per cent per annum," it was held that a sale *in præsenti* was effected—the vendor becoming a quasi trustee for the purchaser; and that the latter was entitled to recover all dividends accruing thereafter on such shares, together with the difference between the contract price and interest and the market value of the shares of stock on the day when the vendor fixes the time for the delivery of the same.[3] And where there was a guarantee that stocks sold should be worth a certain sum, market value, within one year from date, the correct measure of damages is the difference between said sum and the highest value the stock reached in the market during the year.[4]

And where defendant had agreed to deliver a certificate of ten shares of the corporate stock of a manufacturing

[1] Orr vs. Bigelow, 14 N. Y. 556.

[2] Doak vs. Snapp, 1 Coldw. (Tenn.) 180.

[3] Currie vs. White, 45 N. Y. 822.

[4] Woodward vs. Powers, 105 Mass. 108.

company, whose capital was to be $100,000, divided into not more than two hundred shares, and instead thereof made a tender of a certificate of ten shares of the stock of the company, of which $34,000 only was paid, divided into seventy shares, the court held that the measure of damages was the value of ten shares in the full capital stock if it had been made up at the time stipulated, and the company had then been ready in good faith to operate upon the capital pursuant to its charter.[1] But in an action for not delivering stock according to an order which specifies no time of delivery, the measure of damages is the value of the stock when demanded.[2]

In Iowa, in the case of Cannon vs. Folsom,[3] it was held that where the price of the commodity contracted for has been paid prior to the time of delivery, the plaintiff may recover the highest market price between the day for delivery and the time suit is brought, provided the plaintiff does not unreasonably delay the institution of his suit.

But in England, in an action by a purchaser on a contract for the sale of railway shares, it was held that the measure of damages was the difference between the market price of the shares at the time of making the contract and the day on which it was broken; allowing the purchaser, however, a reasonable time to go into the market to buy fresh shares.[4]

[1] Dyer vs. Rick, 42 Mass. 180. See also Struthers vs. Clark, 30 Pa St. 210.

[2] Eastern R. R. Co. vs. Benedict, 76 Mass. 212.

[3] 2 Iowa, 101.

[4] Shaw vs. Holland, 15 Mee. & W. 136; 4 Railw. Cas. 150; 15 L. J. Ex. 87. For the measure of damages against a corporation wrongfully refusing to issue certificate of shares see Hussey vs. Manufacturers & Mechanics' Bank, 27 Mass. 415; Sewall vs. Boston Water Power Co., 86 id. 277; Wyman vs. American Powder Co., 62 id. 168; Baltimore City Pass. R. Co. vs. Sewall, 35 Md. 238; Baltimore Marine Ins. Co. vs. Dalrymple,

When shares alleged to be fully paid up are given as payment on a contract, the damages will be the market value at the time of the receipt of the certificates by the vendee, but if they have no market value, the damages will be assessed by the court on the amount of the calls made, or to be made, thereon.[1]

And when one covenants under seal to pay the covenantee $100 in Georgia, Tennessee, or Alabama bank notes, or notes of good men, the measure of damages is the specie value of the notes in which payment might have been made most favorably to the covenantor's interest.[2]

25 Md. 269–304; Pinkerton vs. Manchester & L. R. Co., 42 N. H. 424.

In re Ottos Kopje Diamond Mines, (1893) 1 L. R. Ch. Div. 618, it was held that a stock-jobber was entitled to recover damages from a company for refusing to register a transfer of shares purchased by him on the Stock Exchange, from another jobber, as a certificate of ownership given by the company to the vendor, although fraudulently obtained, acted as an estoppel against the company, and the measure of damages was the value of the shares at the time of the refusal to register.

If a corporation issues a new certificate of stock to one who presents to it a forged power of attorney for the transfer of stock, it may recover from such person, the amount paid by it to replace such stock, and dividends paid to the person whose name was forged, and the costs of an action brought by the latter against the corporation. Boston & Albany R. R. Co. vs. Richardson, 135 Mass. 473.

As to the admissibility in evidence of a deceased Stock-broker's day book in an action for an indemnity in respect of shares transferred to plaintiff as an alleged trustee, see Massey vs. Allen, 13 Ch. Div. 558.

[1] Mudford's Claim, 14 Ch. Div. 634; Ex parte Appleyard, 18 Ch. Div. 587. See also Dow vs. Chamberlain, 33 Ver. 196; Savannah & Charlestown R. R. Co. vs. Callahan, 56 Ga. 331; Memphis & Little Rock R. R. Co. vs. Wacker, 2 Head (Tenn.), 467; Canton vs. Smith, 65 Me. 203.

[2] Hixon vs. Hixon, 7 Humph. (Tenn.) 33.

(b.) By Vendor against Vendee.

Where the goods have been delivered, the measure of damages is the contract price.[1] Where the goods have not been delivered, and the vendee refuses to carry out the contract, the vendor is entitled to recover the contract price if the title has passed, but if the title has not passed, he may recover the difference between the contract price and the market price at the time when delivery should take place.[2] If no price has been agreed on, the vendor is entitled to recover the market value of the subject-matter of the contract on the day when it should have been received.[3]

In stock cases, the value of the subject-matter of the contract is to be determined by its value in the best market for the sale of the particular or similar stock in this country, according to the ordinary course of dealing in such stocks.[4]

So, in England, in a suit brought for the non-acceptance of railway shares pursuant to a contract of sale entered into by two parties through the medium of Brokers, the proper measure of damages is the difference of the prices of the

[1] Terwilliger vs. Knapp, 2 E. D. Smith (N. Y.), 86; Thurman vs. Wilson, 7 Brad. (Ill.) 312; 1 Sedgwick on Damages (7th ed.), 593; 2 ib. (8th ed.) § 750.

[2] Id. 593 et seq.; id. vol. 2 (8th ed.), § 750, and cases cited in footnote *c* to § 753; Thompson vs. Alger, 53 Mass. 428; Thorndike vs. Locke, 98 id. 340.

[3] 1 Sedgwick on Damages, 592 et seq.; 2 ib. (8th ed.) § 750; Henckley vs. Hendrickson, 5 McLean C. Ct. 170.

If shares have been sold and delivered without any stipulated price being fixed, the vendee agreeing to pay their reasonable worth, the measure of damages is the market value; and the shares have a market value if they have been occasionally sold or exchanged, but the jury should, in the instructions of the court, be limited to the market value at the time of sale. It is error to permit the jury to measure the damages by the value of the stock a year subsequently, when its price had become enhanced. Deck vs. Feld, 38 Mo. App. 674.

[4] Henegar vs. Isabella Copper Co., 1 Coldw. (Tenn.) 241.

shares on the day when they ought to have been accepted and on the day when they were resold by the vendor, such resale being within a reasonable time.[1]

And in a similar case[2] it was held that the measure of damages was to be obtained by ascertaining the value of the shares on the day when the contract was broken, or on the earliest subsequent day when the shares could be sold. And generally the measure of damages for breach of contract to purchase or deliver stock is the difference between the contract price and the market value at the time of the breach.[3]

Ordinarily the vendor has three methods in which to indemnify himself:

1st. He may retain the property for the vendee, and sue him for the full purchase price.

2d. He may sell the property, acting as agent for this purpose of the vendee, and recover the difference between the contract price and the price realized on the sale.

3d. He may keep the property as his own, and recover the difference between the market price at the time and place of delivery and the contract price.[4]

But there are important elements which should be borne in mind in a case where a vendor elects to sell and charge the vendee with the difference: 1st. That such resale does not furnish the measure of damage if it does not take place

[1] Stewart vs. Cauty, 8 Mee. & W. 160; 2 Railw. Cas. 616.

[2] Pott vs. Flather, 5 Railw. & Can. Cas. 85.

[3] Rand vs. White Mountain R. R. Co., 40 N. H. 79; Currie vs. White, 45 N. Y. 822; 1 Sweeny, 166; Shaw vs. Holland, 15 Mee. & W. 136; Pott vs. Flather, 5 Eng. Ry. & Can. Cas. 85; Tempest vs. Kilner, 3 C. B. 249–253.

[4] Dustan vs. McAndrew, 44 N. Y. 572; Hayden vs. Demets, 53 id. 426; Sedgwick on Damages (8th ed), § 753.

within a reasonable time;[1] and, 2d, it seems that such a resale need not be at a public auction, it being enough to show that the property was sold for a fair price.[2] And the vendor is entitled to recover not merely the difference between the contract price and the price realized from the resale, but he is entitled to recover such difference, *plus* the Broker's charges and other expenses of such resale.[3]

(*c*) *In Actions for Conversion of Personal Property.*

In actions for the conversion of personal property the general rule of the measure of damages is the full value of the chattel at the time of conversion. But if special damage has been sustained, it is recoverable.[4] The rule formerly

[1] Four months held not to be a reasonable time, Smith vs. Pettee, 7 Hun (N. Y.), 334.

[2] 1 Sedgw. on Damages (7th ed.), 594, 595; 2 ib. (8th ed.) § 750; White vs. Kearney, 2 La. Ann. 639; Crooks vs. Moore, 1 Sandf. (N. Y.) 297.

[3] Whitney vs. Boardman, 18 Mass. 242; 1 Sedgw. on Damages (7th ed.), 593, note b; 2 ib. (8th ed.) § 755.

When an option to return purchased stock is held enforceable, and the plaintiff has been obliged to pay an assessment, it may be recovered as proximate damages under the Code of California, § 3300. Gay vs. Dare, 103 Cal. 454.

As to when only nominal damages can be recovered against a company for refusing to register a transfer of shares, see Skinner vs. City of London Marine Insurance Corporation, 14 Q. B. D. 882.

[4] Wood vs. Morewood, 3 Q. B. 440, n.; Finch vs. Blount, 7 Car. & P. 478; Ewbank vs. Nutting, 7 C. B. 809. It has been held that the measure of the liability of the pledgee to the pledgor upon a conversion of the pledge is its value at the time of the conversion. Robinson vs. Hurley, 11 Iowa, 410. Under § 3336 of the Civil Code of California, as amended Jan. 22, 1878, the damages which a pledgor is entitled to from a pledgee who has converted pledged stock is the highest market value of the stock at any time between the conversion and the verdict (Dent vs. Holbrook, 54 Cal. 145).

The measure of damages in trover for the conversion of a bond, check, note and the like, prima facie, is the face value, although if the collectible value is less, the latter will be the true measure. Hayes vs. Massachusetts Life Ins. Co., 125 Ill. 626;

was, in the United States, that in such an action, where the value of the property converted was of a fluctuating character, the measure of damages is the highest price of the article between the time of the conversion and the trial.[1]

The main reason, if there be any reason for it, which seems to have been assigned for distinguishing the measure

Cothran vs. Bank, 8 J. & S. (N. Y.) 401; Murray vs. Pate, 6 Dana, 335; Garvin vs. Wiswell, 83 Ill. 215. See also First Nat. Bank vs. Strang, 28 Ill. App. 325 (where it was held that a demand by plaintiff and a refusal by defendant to deliver up bonds, constituted the conversion, or afforded presumptive evidence of it, and the time of the demand and refusal was the time for estimating the value).

But if Californian bonds have no market value, yet, if in that state, they are treated as payable in gold, their value may be estimated by that standard (Simpkins vs. Lane, 54 N. Y. 179) and when bonds without market value are secured by mortgage, the amount of the latter may be the measure of damages. Murray vs. Stanton, 99 Mass. 345. See as to special value, Griffith vs. Burden, 35 Ia. 138. As further illustrating the rule, see Ormsby vs. Vermont Copper Mining Co., 56 N. Y. 623.

When there was a conversion of gold coin by attachment, the measure of damages, in an action of trover, is the value of the gold at the time of the conversion. Frothingham vs. Morse, 45 N. H. 545. In that case the value of the gold had increased much above par, and the plaintiff, in an action for money had and received, sought to recover the value of the gold on the day of the verdict, but it was held that, in that form of action, he could only recover, as damages, the amount of money received, with interest, and he could not recover the increased value of the gold. Id.

When a Stock-broker agrees with his Client to keep his account open till the end of the month, and wrongfully closes the account on the 14th, 15th and 16th of the month, the measure of damages is the highest price which the stocks would have sold at between the conversion and the day on which the stocks were to be carried over. Michael vs. Hart, 70 L. J. K. B. (1901) 1000.

[1] 2 Sedgw. on Damages (8th ed.), § 509 et seq. But in Matthews vs. Coe, 49 N. Y. 57, the court said: "An unqualified rule giving a plaintiff in all cases of conversion the benefit of the highest price to the time of trial, I am persuaded, cannot be upheld upon any sound principle of reason or justice. Nor does the qualification suggested in some of the opinions, that the action must be commenced within a reasonable time, and prosecuted with reasonable diligence, relieve it of its objectionable character."

of damages where the subject of the suit was of a fluctuating nature, and where its value was uniform and ascertained, is, that in the former case the owner is deprived of the use of his property to the time of the trial;[1] and if his goods had not been detained the plaintiff might have had a good opportunity of selling the same.[2]

(*d.*) *Refusal to Return Borrowed Stocks.*

In this connection should also be considered those cases where a borrower, pledgee, or other person refuses to return stock. This refusal generally constitutes a conversion, and the measure of damages would ordinarily be the same as in that class of actions—viz., the value at the time of conversion, together with all dividends, interest, or accretions which may have accrued on the stock.[3] The measure of damages for not returning borrowed stocks at the time agreed, is the market price at the time when they should have been returned,[4] or the highest price intermediate that time and the suit.[5] In one case the pledgee of stock wrongfully sold it; and when the pledgor offered to pay the debt

[1] 2 Sedgw. on Damages (8th ed.), 509 et seq.

[2] Greening vs. Wilkinson, 1 Car. & P. 625. For rule in the different States as to measure of damages in actions for conversion of property, see Sedg. on Damages (8th ed.), where the cases are collected.

As to allegations in the complaint, see R. L. Blair Co. vs. Rose, 60 N. E. Rep. 10.

[3] 2 Sedgw. on Damages (8th ed.), § 497.

[4] Day vs. Perkins, 2 Sandf. Ch. 359; 2 Sedgw. on Damages (8th ed.), § 519. See also to same effect, Huntingdon vs. English, 86 Pa. St. 247.

In Gainsford vs. Carroll, 2 B. & C. 624, the distinction between the damages suffered owing to the non-return of stock lent, and that by a breach of contract to deliver goods, is pointed out.

In Ohio the measure of damages is the market value of the stock at the time the cause of action accrued, and if, at that time, it is worthless, the plaintiff is only entitled to nominal damages. Fosdick vs. Green, 27 Ohio St. 481.

[5] 2 Sedg. on Dam. (8th ed.) § 509.

and requested a return, he was put off from time to time by the pledgee with promises to replace it, and in the meantime it rose in value. Held, in an action for wrongfully selling the stock, that the pledgor might recover the enhanced value.[1] The measure of damage for breach of a contract to return borrowed bank stock on demand is the value of the stock on the day of the demand, with interest for the delay. An increase in value cannot be taken into account.[2] But there may be cases where a plaintiff has been "deprived of some special use of the property anticipated by the wrongdoer;" in which event, and in some other special instances, a different rule of damages may prevail.[3] In Pennsylvania the measure of damages for the breach of contract to replace borrowed stock is its highest price between the breach and the trial.[4] But this rule only applies where, by the refusal to perform, the plaintiff has suffered the loss of the advanced price of the stock.[5]

There have also been several English decisions in actions growing out of failures to return borrowed stocks which should be noticed. It has been held that the true measure of damages in an action for not redelivering shares lent to the defendant upon a contract to return them on a given day is not the market price at the time of the breach, but the market price at the time of the trial, provided the shares have risen in value,[6] but if the price has depreciated, the

[1] Wilson vs. Little, 2 N. Y. 443, aff'g 1 Sandf. 351; compare Roberts vs. Berdell, 61 Barb. 37, where the value at time of demand, with interest, was allowed.

[2] McKenny vs. Haines, 63 Me. 74.

[3] 2 Sedgw. on Damages (7th ed.), 391. See also 8th ed., vol. 2, ch. xiv et seq.

[4] Musgrave vs. Beckendorf, 53 Pa. St. 310; Richardson vs. Sewing-machine Co., 17 Pitts. L. J. 1.

[5] Phillips's Appeal, 68 Pa. St. 130.

[6] Owen vs. Routh, 14 C. B. 327; Shepherd vs. Johnson, 2 East, 211; McArthur vs. Seaforth, 2 Taunt. 257; Downes vs. Black, 1 Stark. 318;

true measure of damages would appear to be their value at the time at which they were to be returned,[1] although in the case cited in the next paragraph a different rule was adopted.

In Forrest vs. Elwes,[2] where there was a transfer of stock by way of loan upon bond, with condition to replace the stock six months after the date, and in the meantime to pay interest at five per cent, the stock not being replaced, and having depreciated, the obligee was held to be entitled to the value of the stock at the time of the transfer, with interest at five per cent to the date of the report, credit being given for some payments on account of the principal. In that case, a period of thirty-three years had elapsed since the breach of the agreement, for the performance of which the borrower had given a bond with a penalty of double the value of the money, and the payments on account showed that the parties had contemplated that the money value of the stocks at the time of the transfer was the sum upon which the payments were to be credited.

In Forest vs. Peel River Company [3] it was held that where a bank was enjoined from selling stock wrongfully deposited with it by plaintiff's Brokers who had been instructed to sell the stock as opportunity offered, and, after the lapse of some months, the bank voluntarily gave up the certificate, the plaintiffs were entitled to substantial damages for the unlawful detention, as the injunction had been obtained to prevent a wrongful sale by the bank. But where a bank sells securities wrongfully deposited with it by a Broker,

Harrison vs. Harrison, 1 C. & P. 412.

[1] Saunders vs. Kentish, 8 T. R. 162.

[2] 4 Ves. Jr. 492.

[3] 55 L. T. 689.

the measure of damages is not the highest price which had been attained since the unlawful detention, but the price realized by the bank with four per cent interest.[1]

In McArthur vs. Seaforth[2] the plaintiff gave a bond conditioned to replace five per cent stock on a given day. After that day the government gave the holders of that stock an option to be paid off at par or to commute their stock for three per cents. The plaintiff expressed to the defendant a wish to have the stock replaced, that he might be paid at par, but no wish to take three per cent stock; but it was held that he was entitled to recover the price of so much three per cent stock as he might have obtained in exchange for the five per cents.[3]

And in an action for the detention of scrip shares, where it appeared, after action brought and before verdict, the scrip had been delivered up, it was held that the jury might, as a measure of damages, take into consideration the difference in value of the scrip shares between the time of the demand and refusal and the time of the delivery of them.[4]

[1] Simmons vs. London Joint Stock Bank, (1891) 1 Ch. Div. 270.

[2] 2 Taunt. 257.

[3] As to measure of damages in actions for non-delivery of railway shares pursuant to contract, as distinguished from actions for not replacing borrowed stock, see Barned vs. Hamilton, 2 Railw. Cas. 624; Shaw vs. Holland, 15 Mee. & W. 136; Tempest vs. Kilner, 2 C. B. 300; 3 id. 249.

[4] Williams vs. Archer, 2 Railw. Cas. 289; 5 C. B. 318; 17 L. J. C. P. 82. In the same case it was held in the court below (Archer vs. Williams, 2 C. & K. 25) that one branch of plaintiff's claim could not be sustained on account of the remoteness of the damage, viz., that by reason of defendant's non-return of the scrip, plaintiff was unable in due time to pay deposits thereon, which payments would have entitled him to one hundred additional shares, the value of which plaintiff claimed as damages.

II. In Actions between Clients and Stock-brokers.

(*a.*) *By Clients against Stock-brokers for Failure to Buy as per Instructions.*

The true rule upon this subject is clearly stated by Story[1] as follows: "From what has been already said, it is sufficiently clear that wherever an agent violates his duties or obligations to his principal, whether it be by exceeding his authority, or by positive misconduct, or by mere negligence or omission in the proper functions of his agency, or in any other manner, and any loss or damage falls on his principal, he is responsible therefor, and bound to make a full indemnity."[2]

In the outset it is safe to lay down this general proposition, drawn from the analogous relation of principal and agent[3]—that a Client, in an action against his Broker for not obeying instructions, can recover only the actual loss he has sustained.[4] And, accordingly, if the Client suffer no loss by the failure of his Broker to obey instructions in reference to purchasing or selling stocks, upon general principles it is *injuria sine damno:* the former can recover

[1] Agency (9th ed.), p. 259.

[2] See this principle as applied to Stock-brokers in Fowler vs. N. Y. Gold Exchange Bank, 67 N. Y. 138, 143.

When a Broker purchases shares in a company other than that covered by his instructions, he is liable in damages, for breach of warranty of authority, to the official liquidator (the Client's name having been removed from the list of contributories), and, the shares being unsaleable in the market, the damages were fixed at the whole sum paid by the Client for the shares. Ex parte Panmure, 24 Ch. Div. 367.

[3] 2 Sedgw. on Damages (7th ed.), 53; 8th ed. § 828; 3 Joyce on Damages, § 2047.

[4] Cameron vs. Durkheim, 55 N. Y. 425; Fowler vs. N. Y. Gold Exchange Bank, 67 N. Y. 138, 143; Hope vs. Lawrence, 50 Barb. (N. Y.) 258; White vs. Smith, 54 N. Y. 522; Farmer's Co. vs. Floyd, 47 Ohio St. 525; Soudieu vs. Faures, 12 La. Ann. 746; and consult particularly cases cited in Ch. III. p. 218 et seq.

nothing beyond nominal damages for the mere breach of duty on the part of the Broker.[1]

In the case of White vs. Smith [2] the question directly arose as to the proper measure of damages in an action by a Client against a Stock-broker for the failure of the latter to buy stocks as per order, the object of the purchase being to cover a "short" sale; and it was held, after a full citation of general authorities by counsel, that the plaintiff was entitled to recover the *profits* which he necessarily would have made if his order had been executed—viz., the difference between the price at which the stock was sold short and the market price upon the day when the order was received by the Broker to "buy in" or purchase, with interest after deducting commissions. In that case the Stock-broker sold for plaintiff's account 300 shares of stock "short" at 186, and subsequently, without the plaintiff's order or knowledge, and when his margin was unimpaired, "closed" the transaction by "buying in," or purchasing, the stock. The plaintiff, a few days subsequently, ordered the stock to be purchased to close the transaction, which was disregarded. Mr. Commissioner Earl, who delivered the opinion of the court, said: "If the defendants had not disabled themselves from obeying the order, and had obeyed it, the plaintiff would have made the precise sum which the jury awarded him. The loss of this profit was the direct and proximate consequence of the defendant's breach of duty to the plaintiff, and I know of no rule of law that was violated by the measure of damages adopted."

But a Client cannot recover from his Broker the market price of gold on the day that he demands it to be bought

[1] 1 Sedgw. on Damages (7th ed.), 40, 580; 8th ed., vol. 2, § 812.

[2] 54 N. Y. 522. See also Rogers vs. Wiley, 131 N. Y. 527.

in to cover a short sale, where it appears that he failed to put up margin after demand, and in consequence of which the Broker made a settlement with the lender, which was the customary method of closing such transactions.[1] Nor can principals recover from their agents, doing business as a clearing-house to make exchanges between Gold-brokers, where they neglect to execute properly the principals' business, any sum greater than the actual loss suffered by the latter, or any more than the principals would have made by performing the contract in person.[2]

This last-mentioned case grew out of what was known as the "Black Friday" excitement. It appeared that plaintiffs contracted to sell $50,000 of gold at 141¼ currency, to be delivered September 24, 1869; defendant was the common agent for dealers in gold, employed in the settlement of their contracts. Plaintiffs did not furnish the gold and fulfil their contract, but defendant furnished and delivered it, receiving the currency agreed to be paid therefor. Plaintiffs thereafter tendered to defendant the amount of gold so delivered, and demanded the currency received, which the latter refused to pay. In an action to recover the same, held, that while defendant was not bound to perform the contract on behalf of plaintiffs, as they did not furnish the gold, yet, having done so, it was estopped from denying plaintiff's right to the benefit of the contract; that plaintiffs, by asserting their claim to the moneys received, adopted and ratified the acts of defendant, and the rights and obligation of the parties were to be determined by the rules governing the relation of principal and agent; that while defendant could not make a profit to itself, yet, having

[1] Cameron vs. Durkheim, 55 N. Y. 425.

[2] Fowler vs. N. Y. Gold Exchange Bank, 67 N. Y. 138.

acted in good faith, it could not be compelled to suffer a loss; that the gold furnished would not be treated as a loan, but defendant was entitled to retain, as an indemnity for furnishing it, so much of the currency received as the gold was actually worth at the time, and plaintiffs were only entitled to the surplus.

As we have fully set forth in the third chapter the cases in which Clients have recovered against their Brokers for violation of instructions, it is only necessary to refer to them in this connection.[1]

(b.) *Client against Broker for Failure to Sell Stocks.*

The rule would seem to be the same where the Client directs his Broker to sell stocks, for if the former is the actual owner of the stocks, or is "long" of them, he suffers an actual and easily ascertainable loss by the failure of the Broker to make the sale at the price and time at which he is directed.[2]

If the Broker cannot make the sale at the time and place directed, the very nice question arises, whether he will be justified in selling at the next lowest or at the market price, as the case may be. This will, in a measure, depend upon the course of dealing between the parties, or perhaps, in some cases, it is to be determined by the usage of Stockbrokers. The general principle of the law is, however, that an agent who is instructed to sell at a specific price is not justified in selling at a different price, or upon terms other than those prescribed in his instructions. He is held rigidly to a compliance with the orders he has received.[3]

[1] Ch. III. p. 218 et seq.

[2] White vs. Smith, 54 N. Y. 522.

[3] See these questions discussed in Ch. III. p. 205 et seq. and p. 297 et seq.

Where, however, a principal gives his Broker orders to sell gold for him if it reach a certain price, and that price is reached and the Broker does not sell, but holds on, hoping in good faith to realize a still higher price for his principal, but, owing to a sudden fall, a sale at a lower price is finally made, the Broker is liable only for the actual loss sustained. He cannot be charged with any loss from a neglect to sell at the highest point reached.[1]

Another interesting question arises in cases where the Client orders the Broker to sell stock which he does not possess—viz., for the purposes of a "short" sale. In this event, what will be the measure of such damages? If the Broker make the sale at a lower price than he was directed, the damage, it is reasonably clear, would be the difference between that price and the price at which he was ordered to sell, or could have made the sale, for this is a direct loss to his Client. But the difficulty will arise in case, where the Broker wholly neglects or disregards the order, and makes no sale at all. What is the measure of damages in such a case? To answer this question two propositions must be solved—i. e., first, the price at which the Broker should be held for neglect or refusal to sell for the short account. This is readily answered by charging him with the stocks at the price at which he was ordered to sell. But as a "short" sale involves two operations—viz., a selling and a buying-in, or "covering," of the stocks—a second and more difficult question arises—viz., as to the time and price at which the Broker should be charged for the stock which is necessary to be brought in to complete the transaction. In other words, the whole question rests upon un-

[1] Hope vs. Lawrence, 50 Barb. (N. Y.) 258.

certainty, and must be left to the peculiar circumstances of each case.[1]

A fair rule might be established by confining the measure of damage to the difference between the price at which the Broker could have sold the stock short and at which it could have been bought in within a *reasonable time* thereafter, or a reasonable time after the Client had received notice that the stocks had not been sold short according to direction. The adoption of such a rule would tend to prevent the operation of a speculative result, which was so emphatically condemned in the well-known case of Baker vs. Drake.[2]

(c.) Measure of Damages for Conversion of Securities by Broker.

Formerly, in an action against a Stock-broker for the conversion of stocks, the same rule of damages was applied which existed in actions for the conversion of ordinary personal property—viz., the highest price of the same between the date of the conversion and the time of the trial. Thus, in New York, this rule was applied in an action by a Client against his Stock-broker in the well known case of Markham vs. Jaudon.[3] This rule was attacked by Mr. Sedgwick in his learned treatise on the law of damages,[4] when applied to actions for the non-performance of contracts to deliver merchandise or stocks, as being purely conjectural, and based on the highly improbable assumption that the plaintiff

[1] See for definition of "short sale," Ch. III. p. 323.

[2] 53 N. Y. 211.

[3] 41 N. Y. 435; Lawrence vs. Maxwell, 6 Lans (N. Y.) 169; Nauman vs. Caldwell, 2 Sweeny (N. Y.), 212; Romaine vs. Allen, 26 N. Y. 309. Burt vs. Dutcher, 34 N. Y. 493, reaffirms the rule laid down in Romaine vs. Allen in an action for the conversion of grain.

[4] 1 Sedgw. on Damages (7th ed.), 578, and note (*a*); 8th ed., vol. 2, p. 112 et seq.

would have retained the property, if the contract had been complied with, till the period of its highest value, and have thus realized the latter price.

But, despite its glaring injustice, the rule remained in full force in the State of New York until the year 1873, when it was overturned by the widely known case of Baker vs. Drake,[1] after an elaborate and close examination of the subject and cases by Mr. Justice Rapallo.

The theory of the old rule was, that when a Broker had sold the stock of his Client without notice, and thus committed a conversion, the latter might, within a reasonable time after notice of the act, begin suit; and that he was entitled to avail himself of the extremest fluctuations of the stock market, and select the date, at any time between the time of the conversion and the end of the trial, at which the converted stock had reached its highest point, and that the law would fix the latter as the measure of damages to which he was entitled.

The consequence of applying such a rule to the transactions of Wall Street was most alarming and unjust; and it

[1] 53 N. Y. 211; also 66 id. 518. The old rule is still applied in England. See Murray vs. Hewitt, 2 T. L. R. 872, where the measure of damages was held to be the difference between the sum realized by the sale of the stocks and the value which they had at the time the action was brought. But in Samuel vs. Rowe, 8 T. L. R. 488, a ruling similar to that in Baker vs. Drake was made. In that case a Stock-broker wrongfully closed a portion of an account on Feb. 19th, the shares sold realizing £787, and it was held that the Client was entitled to the difference between that sum and £900, their value on February 24th, being the earliest date that the plaintiff, who was abroad at the time, could have brought the shares in the market. But in the case of shares bought with the Client's money, and which, after their wrongful sale by the Brokers, rose and then fell in value, both facts will be taken into account by the court, and a sum about representing the average value will be given as damages. Id.

seemed only necessary to present the question in its full aspect and extent to an intelligent court to have it reversed; and Mr. Justice Rapallo, in the case just alluded to, has most ably shown that such a rule has no just foundation in the law of damages. He declared that it was immaterial in what form of action this question arose, as the answer would inevitably be the same. "The rule of damage should not depend upon the form of the action. In civil actions the law awards to the party injured a just indemnity for the wrong which has been done him, and no more, whether the action be in contract or tort, except in those special cases where punitory damages are allowed." In the case of Baker vs. Drake it appeared that the plaintiff had bought stocks on speculation through the defendants, who acted as his Brokers, to an extent of over $66,000, and had advanced as margin the sum of $4240; and at the time of the conversion by the illegal sale there was, at the market price of the stocks on that day, a surplus of only $558 due the plaintiff. At the time the plaintiff began his action against the defendants—viz., on November 24, 1868—the shares would have brought some $5500 more than the sum for which they had been sold; but after the commencement of the action, and before the trial, the stock underwent alternate elevation and depression, and reached its maximum point in August, 1869. It afterwards, and before the trial, declined. The jury, in obedience to the rule laid down by the court, found a verdict for the plaintiff, basing it upon the highest price of the stock before the trial; so that more than two thirds of the supposed damage arose after the bringing of the suit. Mr. Justice Rapallo reasoned that this enormous profit could only have been arrived at upon the unfounded supposition that plaintiff would not only have carried the

stock through all its fluctuations until it reached its highest point, but that he would have fortunately seized upon the precise moment to sell, and escaped the subsequent decline by a sort of "supernatural power of prescience."

The learned judge distinguished the case from one where the stock *had been purchased as an investment*, and held that if, when the plaintiff was informed of the sale of his stock, and conversion, he desired further to prosecute the adventure, it was his duty to require the defendants to replace the stock; and, if they refused to do so, his remedy was to do it himself, and charge them the loss reasonably sustained in doing so. "*The advance in the market price of the stock from the sale up to a reasonable time to replace it, after the plaintiff received notice of the sale, would afford a complete indemnity.*" The learned justice, after a full review of the cases, held that the latter statement contained the true measure of damages, and reversed the judgment.

Upon a retrial of this case, the jury were charged that the plaintiffs were "entitled to recover as damages what it would have cost to replace the stock—that is, the price of the stock, on a day within a reasonable time after the wrongful sale" (i. e. conversion); and a recovery based upon the market value of the stock on a day between the sale and the commencement of the action was held correct.[1] In Brass vs. Worth[2] it was held, in an action for conversion of stocks, that as to a portion thereof its *value on the day when the plaintiff* demanded a return of it was the proper measure of damages; and as to stock which had not been demanded, that the rule was the difference between its market value on a certain day which was a reasonable time and the cost

[1] Baker vs. Drake, 66 N. Y. 518. [2] 40 Barb. (N. Y.) 648.

price of the defendant's purchase thereof, with interest. This case was mentioned with approval by Rapallo, J., in Baker vs. Drake. The doctrine there so strongly laid down has been frequently confirmed since the decisions above referred to.

The rule of Baker vs. Drake was again applied in the later case of Gruman vs. Smith,[1] where the court held that, although a Broker would be guilty of a technical conversion in selling a Client's stocks without notice, the latter could only insist upon a full indemnity for his loss or injury; and that such indemnity consisted of any advance in price within a reasonable time after notice of the illegal sale.[2]

In the case of Colt vs. Owens[3] it appeared that defendants, who were Stock-brokers, in consideration of the guarantee of a third person against loss, agreed with plaintiff to buy and hold for him, subject to his order, two hundred shares of Michigan Central Stock. The shares were bought at 71, and held until the guarantor notified defendants that he withdrew his guarantee. Defendants notified plaintiff of the withdrawal, and that they would sell the shares unless he put up margin. Plaintiff denied defendants' right to assent to the withdrawal of the guarantee, and claimed that they should continue to hold the shares until he should direct their sale. Defendants thereupon sold the stock under circumstances that were admitted on the trial to have been unauthorized. The testimony showed that defendants sold the stock on November 15, 1878, at 69½, and gave plaintiff notice thereof; and that for thirty days thereafter it could

[1] 81 N. Y. 25.

[2] See also Burridge vs. Anthony, N. Y. Marine Court, N. Y. *Daily Reg.* May 4, 1880, where the rule is again happily applied by McAdam, J.

[3] See 13 N. Y. Week. Dig. 40.

have been bought in the market for that price or less. In January, 1879, plaintiff gave an order that the stock be sold. Its market value was then 80, and plaintiff claimed that he was entitled to recover the difference between the purchase price and the value in January. The court held that he was entitled to the difference between the purchase price and the price he would have been obliged to pay in the market within a reasonable time after the unauthorized sale, and directed a verdict for nominal damages. The General Term held this no error;[1] that the thirty days within which the plaintiff might have regained the stock in the market without loss was the reasonable time within which he should have acted; that the fact that the defendants had security in the shape of a guarantee did not distinguish the case from

[1] 13 N. Y. Week. Dig. 40; affirmed by Court of Appeals, 15 N. Y. W. D. 439; 90 N. Y. 368.

The principle of this decision was also followed in Wright vs. Bank of the Metropolis, 110 N. Y. 237, where it was held that the rule was the same whether the pledgee was a Stock-broker carrying stock on a margin, or whether the owner had paid its value in full. And also in Smith vs. Savin, 141 N. Y. 315, where defendant Stock-brokers, who had unlawfully sold stock pledged with them by plaintiff's Stock-brokers, were held liable to pay as damages the highest price which the stock reached within a reasonable time after its illegal sale.

What is a reasonable time when the facts are undisputed and different inferences cannot be drawn, is a question of law. Colt vs. Owens and Wright vs. Bank of Metropolis, supra; Hedges vs. R. R. Co., 49 N. Y. 223.

The rule of damages as enunciated in Baker vs. Drake, supra, has likewise been followed in several later cases in New York. Griggs vs. Day, 158 N. Y. 122; Wolff vs. Lockwood, 75 N. Y. Supp. 605; Burnhorn vs. Lockwood, 71 A. D. (N. Y.) 303. And see cases cited in note 2, p. 3280, 4 Suth. on Damages (3d ed.). See also McKinley vs. Williams, 74 Fed. Rep. 94, 103, where it was also held that this measure of damages was as applicable to actions upon contracts, as to those upon torts, citing and following Barnes vs. Brown, 130 N. Y. 372, 382; Maynard vs. Pease, 99 Mass. 555. Replacing the stock is not a condition precedent to the customer's right to recover damages. Smith vs. Savin, 141 N. Y. 315.

Baker vs. Drake; that there was nothing to show that the withdrawal of the guarantee or the arrangement between plaintiff and the guarantor had taken any part of plaintiff's means of buying the stock on his own account. After the withdrawal, he had the same facilities for buying that he possessed before it was given. It was proven that he had nothing for the guarantee, and was liable to pay nothing.[1]

The rule of Baker vs. Drake has also received the sanction and approval of the Supreme Court of the United States, in Galigher vs. Jones.[2] The court cited the English cases usually referred to on the subject[3] wherein it was laid down that where there has been a loan of stock and a conversion, the measure of damages is the highest price on or before

[1] See also, in this connection, Waddell vs. Blockley, 27 Week. Reporter, 931; s. c. 21 Alb. L. J. 78; White vs. Smith, 54 N. Y. 522, aff'g 6 Lans. 464; Fowler vs. Gold Exchange Bank, 67 N. Y. 138. But Brokers may settle at a certain price which will be adopted as a proper measure of damages, id. See also Cameron vs. Durkheim, 55 N. Y. 425. And in an action for the value of stock converted by the defendant, where the plaintiff waives the tort and sues in assumpsit, the measure of damages is the value of the stock at the time of the conversion (Wagner vs. Peterson, 34 Leg. Int. 48; 83 Pa. St. 238).

Loss of dividends may be included as part of the damages for wrongful conversion. Briggs vs. Kennett, 28 N. Y. Supp. 540.

Where a Broker at first refuses to deliver shares, but afterwards delivers them to his Client, and meanwhile the shares had depreciated, it was held that the conversion was constructive merely, and the delivery up of the shares should go in mitigation of damages. Boomer vs. Flagler, 21 N. Y. W. D. 152.

The rule of damages stated in Galigher vs. Jones, 129 U. S. 193, was followed in In re Swifte, 114 Fed. Rep. 947. See also Hutchinson vs. Dee, 112 Fed. Rep. 315; See also Quinlan vs. Raymond, 3 N. Y. St. Rep. 573; Eldridge vs. Metropolitan Bank, N. Y. Daily Regr. Jan. 31, 1887.

[2] 129 U. S. 193.

[3] Cud vs. Rutter, 1 P. Wms. 572; Owens vs. Routh, 14 C. B. 327; Loder vs. Kekulé, 3 C. B. (n. s.) 128; France vs. Gaudet, L. R. 6 Q. B. 199.

the day of trial, and after observing that the rule had been adopted by some of the States of this country, but that in others it had not obtained, said: "It would be a herculean task to review all the various and conflicting opinions that have been delivered on this subject. On the whole it seems to us that the New York rule, as finally settled by the Court of Appeals, has the most reasons in its favor, and we adopt it as a correct view of the law."

In Pennsylvania it was held that where a party is liable to account for stock as trustee, he is chargeable with the highest market value on his refusal to account.[1]

It has also been laid down in the same State that where bank stock had been wrongfully withheld from a party entitled to it, the measure of damages, if the consideration of the stock had been paid, is the highest market value between the breach and the trial, together with the bonus and dividends which have been received in the meantime; but if the consideration had not been paid, the plaintiff should be allowed the difference between it and the value of the stock, together with the difference between the interest on the consideration and the dividends on the stock.[2]

In a subsequent case, the same court, upon the authority of the preceding case, laid down the rule as follows: "The stocks were still a mere pledge; their dividends and accretions belonged to the pledgor. After the unauthorized sale of them to third persons, they are also in equity chargeable with what would have been received had they retained them, as they ought to have done, until the equity of redemption in the complainant was foreclosed by a sale after notice in the manner prescribed by law. It follows that

[1] Reitenbaugh vs. Ludwick, 31 Pa. St. 131.

[2] Bank of Montgomery vs. Reese, 26 Pa. St. 143.

they must account to the plaintiff and appellant for the value of the stock at the highest rate which it has at any time since attained in the market."[1]

The rule of damages, however, as stated in the two last-cited cases, does not apply to ordinary stock contracts, but only to trusts and cases where justice could not be reached by the usual measure of damages.[2]

In the case of North vs. Phillips,[3] which was an action in assumpsit, although it should have more properly been an action for conversion, the court, through Mr. Justice Gordon, in discussing the question of the measure of damages, said : "Where parties, as in the present case, stand in *equali jure*, there cannot be two different rules of compensation for the breach of an agreement—one for the buyer and another for the seller. Were North & Co. suing on a breach of the alleged contract by Phillips, their damages would be measured by the market price of the stock on the day fixed for its delivery compared with the contract price. If we reverse the parties, the same rule applies. If North & Co. refused to execute the contract, then Phillips was entitled to the difference in the prices as above stated, but nothing more, unless fraud was practiced upon him, and then his damages might be exemplary. In fine, the rule governing damages in contracts for stocks is the same as that in contracts for any other marketable commodity."[4]

In California, in the case of Douglass vs. Kraft,[5] the "highest value" rule was adopted; but in Hamer vs. Hathaway[6]

[1] Cunningham's Appeal, 57 Pa. St. 481.

[2] North vs. Phillips, supra.

[3] 89 Pa. St 250.

[4] See also 4 Suth. on Damages (3d ed.), § 1121, and cases cited in notes.

[5] 9 Cal. 562.

[6] 33 Cal. 117.

it was admitted that "some qualification of the rule may be found necessary where there has been an unreasonable delay in bringing suit, or under certain special circumstances." And in the later case of Page vs. Fowler[1] the fluctuating rule was pronounced as "of American origin," and that if unqualified it would be unjust. The court finally held that the correct measure of damages, in the class of cases in which it has been applied, is the highest market value within what, under the circumstances of each case, is a reasonable time after the property is taken, with interest from the time when the value was estimated.

But in the case of Dent vs. Holbrook[2] it was held that an unauthorized sale by a Stock-broker of certificates of shares of stock in a mining corporation, on which the Broker has a lien for payment of part of the purchase-money, is a conversion, for which the owner of the certificates is entitled to recover as damages the highest market value of the stock at any time between the conversion and the verdict, without interest.[3]

The reasons for rejecting the old rule in actions against Brokers for conversion of stock are very strong, and have been so ably summarized by Mr. Justice Rapallo that it is unnecessary to repeat them.

The theory upon which damages are awarded is to furnish an indemnity to the party wronged. Where a rule goes beyond it and entitles the party injured to speculate in an action, it should not be adopted.

[1] 39 Cal. 412.

[2] 54 Cal. 145.

[3] Cal. Cod. Civ. Proc. § 3336, as amended Jan. 22, 1878. See also Tully vs. Tranor, 53 Cal. 274, where it appears that the measure of damages is the value of the property at the time of conversion, with interest from that time. See 4 Suth. on Damages (3d ed.), p. 3281, and cases cited.

But the reasons assigned for sustaining the old rule[1]—that equity would decree a specific execution of a contract for replacing stock, and that, when such a decree is made to enable the defendant to perform it, he must of necessity purchase the stock at its then market price, and therefore he can have no right to complain when he is compelled to pay the same sum as damages by the judgment of a court of law; and, secondly, that as stock is usually held not for sale, but as a permanent investment, it is a reasonable presumption that plaintiff would have retained its possession until the day of trial, and hence its price at that time is no more than an indemnity—are no longer tenable.

In respect to the first of these grounds, it is now settled that, as a general rule, a court of equity will not decree the specific execution of a contract for the sale of stock.[2] Stock generally has no ear-mark; one share is of equal value with every other share of the same stock, and the plaintiff can obtain full redress in a court of law. As to the second ground, it is now a question of evidence whether the stocks are held speculatively or for investment, and one not determinable by any presumption.[3]

(*d*.) *Exceptions to Rule Laid Down in Baker vs. Drake.*

1. *Where Stocks are Held for Investment.*

The ruling in the case of Baker vs. Drake[4] was in express terms confined to those cases where the Client had purchased

[1] Suydam vs. Jenkins, 3 Sandf. 614.

[2] Ante, p. 812 et seq.; 2 Sedgwick on Damages (7th ed.), 379, note (*b*), and cases cited; 8th ed., p. 110, note *a*, and cases cited.

[3] See on this subject generally, 4 Suth. on Damages (3d ed.), §§ 1118–25.

[4] 53 N. Y. 211; 66 N. Y. 518.

stocks for "speculative" purposes. And it was very strongly intimated that the old rule, allowing a recovery against one who converted personal property of the highest market price between the conversion and the time of the trial, would be applicable to a case where it appeared that the principal had advanced the money to pay for the stock, and had bought and held the same for purposes of investment. This distinction had also been previously recognized in the dissenting opinions in the case of Markham vs. Jaudon.[1] It is true that in cases of stocks held for investment there is a great probability that the owner would have continued to hold them if they had not been converted; but still, in awarding him the highest price of the property between the time of its conversion and the trial, speculation and uncertainty to a considerable degree enter into the result. Yet all the presumptions should be against the wrong-doer, and there seems to be no unreasonable hardship in the supposed case in awarding against such wrong-doer the highest possible damages, where he has knowingly and deliberately dealt with property belonging wholly to his Client upon which he had not even a lien except to the extent of his commissions. In the case of Wright vs. Bank of the Metropolis,[2] decided in 1888, the New York Court of Appeals, however, held that, even in the case of stock held for investment which was wholly the property of the pledgor, and which had been sold, without authority, by the defendant bank, in good faith, believing it had been authorized by the

[1] 41 N. Y. 247, 257.

[2] 110 N. Y. 237. For the proper measure of damages in the case of a Broker who hypothecates the securities or stocks of his Client, and is unable to return them by reason of his insolvency, see Chamberlain vs. Greenleaf, 4 Ab. New Cas. (N. Y.) 92, 178.

pledgor so to do, the measure of damages was the value of the stock within a reasonable time after notice of the conversion, and not the highest value up to the time of trial. Peckham, J., said (p. 247): "The loss of a sale of the stock at the highest price down to trial would seem to be a less natural and proximate result of the wrongful act of the defendant in selling it when the plaintiff had the stock for an investment than when he had it for a speculation, for the intent to keep it as an investment is at war with any intent to sell it at any price, even the highest."

2. *Where the Broker Realizes a Profit from his Wrong-doing.*

Another distinction which is shadowed in the cases, and which may form an exception to the rule of Baker vs. Drake, is that even where stocks are held speculatively, and it can be shown that they have been converted or illegally disposed of by the Broker, and by such act, or from the stocks in question, the Broker has derived a profit or advantage, the rule would seem to be that the principal may recover the same either in addition to or as the regular measure of damages, as the case may be.[1] The Client has the option, where an illegal disposition has been made of his stocks, either to treat the sale as a conversion and recover damages, or he can affirm the sale and recover the profits realized therefrom.[2] Or in certain cases—as, for instance, where the Broker has himself become the purchaser of the securities—he can claim that the sale is void, and that his securities are undisposed of to the same extent as if no sale had been made at all.[3] The rule of law is invariable that an agent

[1] Taussig vs. Hart, 49 N. Y. 301; Same vs. Same, 58 id. 425.

[2] Id.

[3] See authorities for this proposition, Ch. III. p. 382.

can never derive any benefit from his position, and that all advantages and profits belong to the principal.[1]

(e.) *Reasonable Time.*

If the doctrine laid down by the New York Court of Appeals in the case of Baker vs. Drake is sound, and there seems to be no good reason for questioning the decision, it becomes essential to know what time the law would regard as "reasonable," and within which it would compel a principal to go into the market and purchase his stocks after he has been notified that his Broker has made a conversion or illegal disposition of them. Upon a second trial of that case the court left the question of "reasonable time" to the jury, charging, in substance, that if the right of action was established, the plaintiff was entitled to recover as damages what it would have cost him to replace the stocks on a day within a reasonable time after the sale, i. e., the conversion;[2] and it is manifest that this is the safest disposition of the question. As a general rule, the question of what constitutes a "reasonable time" is left with the jury; but it would seem that a Client is not obliged to buy on the same day that he receives notice of the conversion.[3] In the

[1] Fowler vs. N. Y. Gold Exchange Bank, 67 N. Y. 138. See also 3 Suth. on Damages (3d ed.), §§ 773, 778–87.

[2] Baker vs. Drake, 66 N. Y. 518.

[3] Stevens vs. Hurlbut Bank, 31 Conn. 146. When evidence of what is a "reasonable time" may be given relative to transactions on the Stock Exchange, see Stewart vs. Cauty, 8 Mee. & W. 160; Field vs. Lelean, 6 H. & N. 617.

The New York Court of Appeals has held that what is a reasonable time when the facts are undisputed, and different inferences cannot be reasonably drawn from the same facts, is a question of law for the court. Colt vs. Owens, 90 N. Y. 368; Hedges vs. H. R. R. Co., 49 id. 223; Wright vs. Bank of the Metropolis, 110 N. Y. at 249.

case of stock transactions, an extraordinary condition of the market, or the time, place, circumstances, or situation of the parties, renders any precise definition of the phrase "reasonable time" impracticable and unsafe; and the question should properly be submitted to the jury, with such explanation or qualification as the circumstances of the case demand.

The question as to what constituted a "reasonable time" within the rule laid down in Baker vs. Drake directly arose in the case of Burridge vs. Anthony et al.[1] In that case there was a sale of the Client's securities without authority. He did not, after notice of the sale, promptly disaffirm the same, nor require the Brokers to replace the stocks, and did not buy back or replace the stocks himself. Down to and including ten days after the Client had notice of the sale, he could have repurchased at a price less than they were sold for by the Brokers. The court held that ten days, under the circumstances, was a reasonable time, and that, as the Client had suffered no real loss by the acts of which he complained, he was not entitled to any recovery.

In a recent case[2] the court held that, in the absence of evidence of special circumstances showing other elements of necessity for further time, it might be stated as a general rule that the customer was entitled to a reasonable opportunity to consult counsel, or employ other Brokers, and to watch the market for the purpose of determining whether it is advisable to purchase on a particular day, or when the stock reaches a particular quotation, and to raise funds if he

[1] 1 City Court Rep. (N. Y.) 244. See also cases cited in next subdivision (*f*.).

[2] Burnhorn vs. Lockwood, 71 A. D. at 304. See also Smith vs. Savin, 141 N. Y. 315; Randall vs. Bank, 1 N. Y. St. Repr. 592; Griggs vs. Day, 158 N. Y. at 22.

decide to repurchase. In that case the court held that a reasonable time to repurchase was within thirty days after the unauthorized sale.

(*f.*) *Market Value.*

It is of very great importance, in suits in which the price of stocks and other securities is to be determined, to know definitely what the exact meaning is of the phrase "market value." Stocks fluctuate so widely in a day that it may be of the gravest concern to litigating parties to fix the price at a certain hour, or even minute. The few cases that in any wise bear upon this topic leave it in a condition of great indefiniteness and uncertainty; but the true rule would seem to be to leave the question to the determination of a jury. It is certainly competent for the plaintiff to prove the range of prices during a particular day, and it would consequently follow that the jury may arrive at its conclusion by averaging or taking the lowest or highest price of the stock during the day.[1]

In the case of Fowler vs. N. Y. Gold Exchange Bank,[2] in an action by principals against their agent for profits made by the latter in carrying out a contract by which plaintiffs had agreed to sell a certain amount of gold coin to a third person, it was held that the plaintiffs were entitled to recover all that they would have made by performing the contract in person and with their own gold —viz., by "taking the price of the gold as it appears by the record to have been at the *hour* of the performance of this contract."

[1] See 1 Sedgwick on Damages (7th ed.), 585, and cases cited; 8th ed., vol. 1, § 257, and cases cited.

[2] 67 N. Y. 138.

In that case the evidence showed that the day on which the contract was to be performed was one of uncommon excitement among gold-dealers, and very great and rapid fluctuations in prices were made.

The case of Cameron vs. Durkheim[1] also illustrates the present question of fixing the loss or measure of damages at a certain hour of the day. That was an action against Gold-brokers for a breach of duty where it appeared that defendants sold a large quantity of gold "short" for plaintiff, and, in accordance with the custom, borrowed gold to deliver; and an extraordinary rise taking place in gold, defendants called upon plaintiff to furnish immediately additional margin, who, according to the evidence of the former, said that he was ruined and defendants must take care of themselves. It was decided that evidence was competent on the part of defendants to show that, in a case where a Client refused to advance sufficient margin, the custom of Brokers authorized the defendant to make a settlement with the lender of the gold at the then market price; and that the language of the plaintiff above referred to was sufficient to authorize defendants to settle in accordance with such custom, if the jury should find that it was made in good faith and was a discreet and judicious exercise of the power conferred. The market value may be proved by prices current contained in a file of newspapers published at the time of the prices referred to, for public information.[2]

When there is no evidence upon which the value of the stock can properly be determined within a reasonable time

[1] 55 N. Y. 422.

[2] Clicquot's Claim, 3 Wall. 117; Terry vs. McNeil, 58 Barb. 241; but see Whelan vs. Lynch, 60 N. Y. 469; 65 Barb. 326; Court of Appeals, Harris vs. Ely, Seld. Notes, No. 1, 35; s. c. 1 Liv. Law. Mag. 145.

after its conversion, nominal damages only can be awarded.[1] And when stock has not been issued, although paid up, and it has no market value, nominal damages only can be recovered, although it would have cost the plaintiff its par value to replace it.[2]

Before closing this branch of the chapter, it should be stated that where a Broker or pledgee is sued for converting stocks or pledges, he may recoup the amount of any debt due to him from the principal or pledgor.[3]

III. In Actions by Stock-broker against his Client.

The general rule of law is that there is an implied obligation on the part of the principal to indemnify an innocent agent for obeying his orders.[4] "It is well settled that if an agent, without default, incurs losses or damages in the course of transacting the business of his agency, or in following the instructions of his principal, he will be entitled to full compensation therefor."[5]

In analogy to this rule, it has been frequently held that a principal, by employing a Stock-broker to buy or sell stocks, etc., becomes bound to indemnify him against any losses which he may incur by reason of his having contracted in his own behalf, and of being afterwards, without any default of his own, unable duly to complete his contract.

[1] Griggs vs. Day, 158 N. Y. at 23.

[2] Barnes vs. Brown, 29 N. E. Rep. at 763.

[3] 2 Sedgw. on Damages (7th ed.), 392, 393; 8th ed., vol. 3, § 1069; Gruman vs. Smith, 81 N. Y. 25, rev'g 41 N. Y. Superior Ct. 389. Also ante, p. 351.

[4] Story on Agency, § 339, 340; 1 Lindley on Partnerships (4th ed.), 731; Howe vs. Buffalo, N. Y. & Erie R. R. Co., 37 N. Y. 297.

[5] 2 Sedgw. on Damages (7th ed.), 86; 8th ed., vol. 2, § 834. See Balkis Co. vs. Tomkinson, (1893) A. C. 396.

We have already, in the third chapter, fully set forth these cases in such a way as to render their statement in this connection supererogatory, and an examination of them will fully bear out the general proposition here laid down as to the right of the Stock-broker to full indemnity.[1] The following American case, not heretofore cited, fully illustrates the extent to which the rule is carried. In that case the plaintiffs, who were Brokers, having been ordered to buy stock, did so, paid for it, taking the certificate in their own name, offered to transfer it, and demanded of their principal payment, which he did not make, and the stock declined in value. The court held that they could recover the price paid by them, and not merely the difference between that price and the market value on the day of their demand.[2]

And the cases above referred to establish as a general doctrine that whatever a Broker, employed in buying and selling shares for another person, is compelled by the rules of the Stock Exchange to pay, in consequence of the non-performance by his employer of the contract entered into on his behalf, is recoverable from him by the Broker. The principle of the decisions in question does not, however, extend further than this—viz., that Brokers are impliedly authorized by those who employ them to do what is usual and customary among Brokers in matters about which they are employed.[3] We have also considered, in the third chapter, the subject of the right of the Stock-broker

[1] Ante, p. 218 et seq.

[2] Giddings vs. Sears, 103 Mass. 311.

[3] When Brokers have under the rules of the Exchange, been obliged to refund the purchase price of shares of a corporation (fraudulently issued in excess of the authorized capital by their principal, who was a clerk of the corporation) they may recover from the corporation, which, by its acts, was es-

to his commissions,[1] so as to render a mere reference to it only necessary.

topped from denying the validity of the share certificates, the amount received from the purchaser of the shares, and paid over by them to their principal. Jarvis vs. Manhattan Beach Co., 53 Hun (N. Y.), 362; s. c. 148 N. Y. 652.

[1] P. 394.

Chapter IX.

STOCK-BROKERS IN ENGLAND.

I. Statutes relating to Stock-brokers.
II. Decisions under statutes.
III. Commissions and remuneration of Brokers.
IV. Origin and History of London Stock Exchange, and Rules and Regulations thereof.

I. Statutes relating to Stock-brokers in England.

In England, as in the United States, transactions in stocks are carried on through the instrumentality of Stock-brokers. Some of these Brokers are members of the Stock Exchange; others are not. We shall first touch upon the law as applicable to Stock-brokers in general, and then consider the legal status of Brokers as members of the Exchange, with which subject we are principally concerned in this treatise.

For a period of six hundred years prior to the year 1884, beginning with the statute of 13 Edw. I, passed in the year 1285,[1] Brokers in the city of London were under the control of that municipality, but, although the supervision of the city has been terminated,[2] it is desirable that some of the more important statutes enacted in that behalf should be set forth, and reference had to the numerous decisions made by the Courts thereunder.

By an act passed in the year 1707, which is given in full in

[1] See chap. I. [2] See post, p. 950.

the notes,[1] all persons acting as Brokers in the city of London and liberties thereof, shall from time to time be admitted to do so by the Court of the Mayor and Aldermen of the said

[1] 6 Anne, c. 16, 1707, entitled "*An Act for Repealing the Act of the first year of King James the First, intituled 'An Act for the Well garbling of Spices,' and for Granting an Equivalent to the City of London by Admitting Brokers.*

"1. Whereas by an Act of Parliament made in the first year of the Reign of King James the First, intituled 'An Act for the Well garbling of Spices,' several Drugs, wares, spices, and Merchandize are to be garbled within the city of London and the liberties thereof, as therein is mentioned, under the penalties and forfeitures therein specified, and several powers are thereby given to the garbler for the time being for that purpose; which act for the garbling of spices and other wares and merchandizes in many cases has now become useless, and in other cases would be prejudicial and to the Damage of several wares and merchandizes so to be garbled, to the obstruction and discouragement of the Trade of this Kingdom, and the Foreign Exportation, and to the vexation of the subjects by . . . unnecessary Prosecutions in her Majesty's Court of *Exchequer;* Be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said Act shall be and from henceforth stands repealed, and all powers, penalties, and forfeitures therein mentioned or given shall from henceforth be null and void.

"II. And be it further enacted that by authority aforesaid, That all suits and informations now depending in her Majesty's Court of Exchequer or in any other Court, or which shall at any time hereafter be brought or prosecuted upon the said Act under pretence of any seizure or forfeiture or penalty incurred for breach of the said Act, or for any offence committed or supposed to be committed against the same, shall be and are hereby declared to be discharged, discontinued, and determined, and that no proceedings shall be had thereupon; and all seizures upon the said Act made or to be made are hereby declared to be discharged, released, null and void.

"III. Provided always that it shall and may be lawful for the Lord Mayor and Court of Aldermen and Common Council of the City of London for the time being to appoint from time to time a fit and able person to execute the office of Garbler in the City of *London* and the liberties thereof, who at the request of any person or persons, owner or owners of any Spices, drugs, or other wares or merchandizes garbleable and not otherwise, shall garble the same; and such Garbler shall have and

city, under such restrictions and limitations for their honest and good behavior as that court shall think fit and reasonable ; and shall upon their admission be compelled to pay

receive for his pains and trouble therein as the said Lord Mayor, Court of Aldermen, and Common Council shall appoint and no more.

"IV. And whereas the profits of the said office are part of the Revenues and Incomes of the City of *London*, and are now let by Lease to *William Stewart*, under the rent of three hundred pounds per annum, the profits of which office and the Right of the said William Stewart to the same by repealing the said Act will be very much diminished. Be it enacted by the authority aforesaid, That from and after the Determination of this present session of Parliament, all persons that shall act as Brokers within the City of London and liberties thereof shall from time to time be admitted to so do by the Court of Mayor and Aldermen of the said City for the time being under such restrictions and limitations for their honest and good behavior as that Court shall think fit and reasonable, and shall upon such, their admission, pay to the Chamberlain of the said city for the time being, for the uses hereinafter mentioned, the sum of forty shillings, and shall also yearly pay to the said uses the sum of forty shillings upon the nine-and-twentieth day of *September* in every year, all which moneys shall in the first place be applied for and towards the paying and satisfying to the said *William Stewart* the sum of nine hundred sixty-seven pounds and ten shillings for the compensation for his interest in the said office ; and that from and after the full payment of the said sum of nine hundred sixty-seven pounds and ten shillings to the said William Stewart, all the moneys arising by such admissions and yearly payments shall go to and be enjoyed by the said Mayor and Commonalty and Citizens of the City of London; and that from and after the determination of this present sessions of Parliament, the said lease to the said *William Stewart* and every clause therein contained shall cease, determine, and be absolutely void.

"V. And be it further enacted by the authority aforesaid, That if any person or persons from and after the determination of this present session of Parliament shall take upon him to act as a Broker or employ any other under him to act as such, within the said City and liberties, not being admitted as aforesaid, every such person so offending, shall forfeit and pay to the use of the said Mayor and Commonalty and Citizens of the said City, for every such offence, the sum of five-and-twenty pounds, to be recovered by action of debt in the name of the Chamberlain of the said City, in any of her Majesty's Courts of Record, in which no Protection, Essoin, or wager of Law shall be

forty shillings, and a like sum yearly thereafter; and it was also provided by the last section of the act that if any person shall take upon himself to act as Broker, or employ any person under him to act as such, in the said city, without being admitted as aforesaid, said person should forfeit and pay to the use of the Mayor, of said city, for every such offence, the sum of five-and-twenty pounds, to be recovered by action of debt.

By statute of 7 Geo. II. c. 8, § 9, every Broker or other person who shall negotiate or act as a Broker, receiving brokerage in the buying or disposing of stocks, shall keep a Broker's book, in which he shall enter all contracts that he shall make on the day of the making of such contract, with the names of the principal parties; and such Broker who shall not keep such book, or shall wilfully omit to enter any such contract, shall forfeit £50.

In the year 1708, after the passing of the statute of Anne above referred to, the Court of Mayor and Alderman of the City of London made certain rules and regulations for the government of Brokers.

The bond of the Broker was as follows;[1] "That the said A. B., for and during such time as he shall and doth continue in the said office and employment, shall and do well and faithfully execute and perform the same without fraud, or covin, or deceit; and shall, upon every contract, bargain, or agreement by him made, declare and make known to such person or persons with whom such agreement is made, the name or names of his principal or principals, either buyer or seller, if thereunto required, and shall keep a book or register, and therein truly and fairly enter all such contracts,

allowed, or any more than one Imparlance."

[1] Ex parte Dyster, 1 Mer. 156.

bargains, and agreements within three days at the farthest, after making thereof, together with the names of all the respective principals for whom he buys or sells, and shall, upon demand made by any, or either of the parties, buyer or seller, concerned therein, produce and show such entry to them, or either of them, to manifest and prove the truth and certainty of such contracts, and agreements, and for satisfaction of all such persons as shall doubt whether he is a lawful and sworn Broker or not, shall, upon request, produce a medal of silver with his Majesty's arms engraven on one side, and the arms of this city, with his name, on the other, and shall not directly, or indirectly, by himself or any other, deal for himself or any other Broker in the exchange or remittance of money, or in buying any tally or tallies, order or orders, bill or bills, share or shares, or interest in any joint stock to be transferred or assigned to himself or any Broker, or to any other in trust for him or them, or in buying any goods, wares, or merchandises to barter and sell again upon his own account, or for his own or any other Broker's benefit or advantage, or to make any gain or profit in buying or selling any goods over and above the usual brokerage; and shall and do discover and make known to the said court of Mayor and Aldermen, in writing, the names and places of abode of all and every person or persons, as he shall know to use and exercise the said office or employment, not being thereunto duly authorized and empowered as foresaid, within thirty days after his knowledge thereof, and shall not employ any person under him to act as a Broker within the said city and liberties thereof, not being duly admitted as aforesaid, and shall not presume to meet and assemble in Exchange-Alley, or other public passage or passages within this city and liberties thereof, other than upon the Royal Ex-

change, to negotiate his business and affairs of exchange, to the annoyance or destruction of any of his Majesty's subjects, or any other in their business or passage about their occasions." The oath administered was as follows: "You shall sincerely promise and swear that you will truly and faithfully execute and perform the office and employment of a Broker, between party and party, in all things appertaining to the duty of the said office or employment, without fraud or collusion, to the best of your skill and knowledge."

The penalty of £25 under the act of Anne was subsequently, by act of 57 Geo. III. c. 60, raised to £100.

By statute of 7 and 8 Will. III. c. 19, § 6, Brokers were prohibited from buying or selling bullion; but that statute was repealed by 59 Geo. III. c. 49, § 12.

The commission of Brokers on contracts for any stock erected by act of Parliament or letters patent is limited by 10 Anne, c. 19, § 121, to 2*s.* 9*d.* per cent. Both the acts of Anne and George were amended in the year 1870,[1] which amendatory law we give in the notes.

[1] 33 and 34 Vict. c. 60:

"*An Act to Relieve the Brokers of the City of London from the Supervision of the Court of Mayor and Aldermen of the said City* (9th Aug. 1870).

"Whereas, by an act of Parliament made in the sixth year of the reign of Queen Anne, intituled 'An Act for Repealing the Act of the First Year of King James the First,' intituled 'An Act for the Well Garbling of Spices and for Granting an Equivalent to the City of London by Admitting "Brokers," ' it was, amongst other things, enacted that from and after the determination of the then session of Parliament, all persons that should act as Brokers within the City of London and liberties thereof should from time to time be admitted so to do by the Court of Mayor and Aldermen of the said City for the time being, under such restrictions and limitations for their honest and good behavior as the said Court should think fit and reasonable; and should upon such their admission, pay to the Chamberlain of the said City for the time being, for the uses thereinafter mentioned, the sum of forty shillings, and should also yearly pay to the

The practical effect of the statute of 1870 was to allow almost any person to become a stock-broker by tak-

said uses the sum of forty shillings upon the 29th day of September in every year. And it was further enacted that if any person or persons from and after the then session of Parliament should take upon him to act as a Broker or employ any other under him to act as such within the said City and liberties, not being admitted as aforesaid, every such person so offending should forfeit and pay to the use of the said Mayor and Commonalty and citizens of the said City for every such offence, the sum of twenty-five pounds to be recovered as in the said act is mentioned. And whereas, by an act (local and personal) made and passed in the fifty-seventh year of the reign of King George the Third, intituled 'An Act for Granting an Equivalent for the Diminution of the Profits of the Office of Gauger of the City of London, and Increasing the Payments to be made by Brokers,'" after reciting among other things the beforementioned act, it was among other thing enacted, "That all persons that from and after the first day of July next after the passing of that act should be admitted to act as Brokers within the City of London and liberties thereof by the said court in pursuance of the said recited act of Parliament, should, upon such their admission, over and above the sum of forty shillings required to be paid by the said recited act, pay to the Chamberlain of the said City for the time being, the sum of three pounds; and should also yearly pay to the said Chamberlain, over and above the said yearly sum of forty shillings required to be paid by the said recited act, the sum of three pounds, on the 29th day of September in every year. And it was, amongst other things, further enacted that so much of the said recited act as imposed a penalty of twenty-five pounds upon any person who should take upon him to act as a Broker, or employ any person under him to act as such, not being admitted in pursuance of the said recited act, should be and the same was thereby repealed; and that from and after the passing of the now reciting act, if any person should take upon him to act as a Broker, or employ, or cause, permit, or suffer any person or persons to be employed with, under, or for him, to act as such within the said City and liberties, not being admitted in pursuance of the said recited act, every such person so offending should forfeit and pay to the use of the Mayor and Commonalty and citizens of the said City for every such offense the sum of One hundred pounds, to be recovered as in the now reciting act is mentioned.

"And, whereas, the said Court of Mayor and Aldermen of the said city (hereinafter called 'the Court'), acting by virtue of the powers conferred upon them by the said recited acts or one of them, or by virtue of some other

ing a few preliminary and purely formal steps,[1] the result of which was much regretted.

authority, have from time to time made and established rules and regulations for the admission of Brokers within the City of London and liberties thereof, and have imposed restrictions and limitations on the manner in which the persons whom they have admitted into the office and employment of a Broker within the said City and liberties thereof were and are to carry on their business as Brokers, and have exercised, and claim the right to exercise, jurisdiction and control over such Brokers for the purpose of enforcing the observance of the said regulations, restrictions, and limitations:

"And, whereas, the said Court have also required every Broker admitted by them to find two sureties to be approved of by the said Court to enter into a bond for the due and just execution by the Broker of his said office and employment, or in place of such sureties have required such Broker to transfer into the joint names of himself and the Chamberlain of the said City stock in the public funds to the nominal amount of One thousand pounds:

"And, whereas, the said Court have also required each Broker admitted by them to enter into his own bond in the penal sum of One thousand pounds, to secure the due performance of his duties as a Broker, and also to secure the annual payment of the sums of two pounds and three pounds to the Chamberlain of the City pursuant to the provisions of the said Acts of the sixth year of the reign of Queen Anne, and of the fifty-seventh year of the reign of King George the Third.

"And, whereas, it is expedient to relieve the said Brokers from the necessity of providing such sureties, or entering into such personal bond, and from the jurisdiction and supervision exercised by the said court over the Brokers in manner hereinafter provided: May it therefore please your Ma-

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[1] London Stock Exchange Commission, 1878, which reported upon this subject as follows: "It has been proved to us by the Town-clerk of the City of London that for five hundred or six hundred years the law provided for a complete control over the office of a Broker in the city of London by requiring all persons following that vocation to take out a license, under heavy penalties for acting as Broker without it. The granting this license, and its withdrawal in case of misconduct, was one of the ancient duties and privileges of the corporation of the city of London. In the year 1870, however, an act of Parliament was passed under which the license was retained, and with it the duty of making inquiries into the fitness of the applicant upon the grant of a license, or of punishing misconduct by withdrawing it."

It was objected that many persons were able to obtain a fictitious credit from what had become an empty formality,

jesty that it may be enacted; and

"Be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

"I. This act may be recited as the 'London Brokers' Relief Act, 1870.'

"II. After the passing of this act, the Court shall not require a Broker, by himself or sureties, to give any bond on his admission as Broker, and the jurisdiction, supervision, and control of the said Court over Brokers in the said city of London and the liberties thereof shall cease, and the said Court shall not have power to make, or enforce any rules, orders, regulations, restrictions, limitations or penalties affecting, except as hereinafter mentioned, the admission of such Brokers or the manner in which the business of such Brokers shall be carried on.

"III. No bond or declaration of trust executed by any Broker, in pursuance of any rules, orders or regulations heretofore enforced shall after the passing of this act be put in suit on enforced, and all sums of stock transferred by way of security as aforesaid shall, before and after the passing of this act, be held in trust for the Broker transferring the same and upon no other trust.

"IV. Nothing in this act contained shall prejudice any proceedings actually commenced before the passing of this act upon any such bond or declaration of trust.

"V. Except as herein expressly enacted, this act shall not extend to take away from the said court such right as they now have under the recited acts to require Brokers to be admitted, or to repeal the penalty of one hundred pounds imposed by the said act of the 57 Geo. III., in the case therein mentioned, or affect the liability of Brokers, when admitted to pay to the Chamberlain of the said city, for the uses mentioned in the said recited acts respectively, the sums of forty shillings and three pounds on admission, and the yearly sums of forty shillings and three pounds, which are made payable by the said recited acts respectively; and the said yearly sums of two pounds and three pounds may be recovered by the Chamberlain of the said city for the time being, in the Mayor's Court of the City of London, or in the City of London Court.

"VI. The court shall keep a list containing the names and addresses of all Brokers who shall from time to time have been admitted; and if any such Broker shall be convicted in any criminal court of felony or fraud, or if a judge of any of the superior courts of law or equity, or a judge in bankruptcy, shall in any action, suit, or other proceeding prosecuted or depending before such judge, and to

the Court of Aldermen no longer having the power to refuse admission to any one who applied.[1] By a statute of 1884, referred to *supra*,[2] admission by the Court of Aldermen and payment by Brokers was abolished, and so much of the second section of the act of 57 Geo. III. c. 60, as provided for the payment of £100 penalty, was repealed, as was also the sixth section of the act of 1870, disqualifying fraudulent Brokers. The only control now exercised over the London Stock-brokers and Jobbers is that by the Stock Exchange.[3]

There is also an act[4] relating to Stock-brokers in Ireland

which such Broker shall be a party, certify (as he is hereby empowered to do) that such Broker has been guilty of fraud, and that he ought to be disqualified from acting as a Broker altogether, or for such period as such judge shall name in the certificate, such Broker shall accordingly be disqualified, as from the date of such conviction or certificate, and his name shall thereupon be removed by the Court of Aldermen from the list of Brokers either absolutely or for the time mentioned in such certificate."

[1] Brodhurst's Law of the Stock Exchange, p. 12.

[2] 47 Vict. c. 3; Lely's Chitty's Statutes, vol. 1, p. 733.

[3] Brodhurst's Law of the Stock Exchange, p. 12.

[4] 39 Geo. III. c. 60, 1799; 19 Irish Stat. at Large, 402 (Irish Parliament).

"*An Act for the Better Regulation of Stock-brokers.*

"*Preamble.*— Whereas, the establishing of regulations by which proper persons only will be permitted to act as Stock-brokers, for the selling and buying of government stock and government securities, and by which the prices at which such stock and securities shall be bought and sold shall be known to the sellers and buyers of such stock and securities, will be beneficial to the proprietors and purchasers of such stock and securities. Wherefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the twenty-fourth day of June, one thousand seven hundred and ninety-nine, a Stock Exchange shall be established in the city of Dublin, at such convenient place and subject to such rules and regulations as shall be approved of by the Lords of his Majesty's Treasury; and that no person shall act in the capacity of a Stock-broker, in the selling or buy-

which we give in this connection. This act, among other things, establishes a regular Stock Exchange in the city of Dublin, and the amount of commission which Brokers are authorized to charge is regulated at 2*s.* 6*d.* per cent.

ing of any government stock or government securities on commission, without having taken out a license for that purpose, under the hands of two or more of the Commissioners of his Majesty's Treasury; and no such license shall be granted unless the Commissioners of his Majesty's Treasury shall think that the person applying for the same is a proper person to be licensed.

"II. And be it enacted, That every such person shall, before such license be granted, enter into a bond to his Majesty, in the penalty of two thousand pounds, for himself, and two securities of five hundred pounds each, conditioned that he will not, during the time he shall continue to be licensed, buy or sell such stock or securities for himself or on his own account, when employed by any person not being a Broker, to purchase or sell such stock or securities, and that he will keep a book to contain entries of all such stock and securities as shall be sold and bought by him, describing the the names of the persons to whom he shall sell such stock and securities, and the amount of every sale to every person, and the price at which the same shall be sold.

"III. And be it enacted, That it shall and may be lawful for the Commissioners of his Majesty's Treasury, or any three or more of them, whenever it shall appear to their satisfaction that any person to whom any such license shall be granted is unfit to be licensed, by order under their hands, to annul such license; and from thenceforth such license shall be null and void.

"IV. And be it enacted, That every person who, after the twenty-fourth day of June aforesaid, shall act as a Stock-broker, in selling or buying any government stock or government securities on commission, without having taken out such license, or having a license for the purpose of force, every such person shall forfeit the sum of five hundred pounds; and every person acting as Broker in the selling and buying of any such stock or securities on commission, who shall advertise, or cause to be advertised, the sale or buying thereof, or shall affix to any part of his house any notification that any such stock or securities are to be sold or bought by him, and who shall sell or buy the same on commission, and shall not have a license for that purpose of force, shall forfeit the sum of five hundred pounds.

"V. And be it enacted, That every person who shall be so licensed as aforesaid shall, every time that he shall sell to any person any government stock or any government security either in debentures or exchequer or treasury bills, give

Besides the London and Dublin Stock Exchanges, there are similar organizations in the other large cities. Manchester, Liverpool, Leeds, Birmingham, Bristol, Edinburgh,

to the person for whom he sold the same an account in writing, signed with his name, of the quantity of such stock or government security so sold, to whom the same was sold, and true rate of purchase or price paid for the same, and shall enter into the said book to be kept by him a like account, together with the name of the person for whom he sold the same, and shall, at the request of the person for whom such stock or securities shall have been sold, show to him or her the entry therein relative to the stock sold for such person. And if any person who shall be so licensed shall sell for any person any such stock or securities, and shall not give such account in writing, as aforesaid, to the person for whom he shall have sold the same, or shall not keep such book, and make such entries therein as aforesaid, or shall not at such request, as aforesaid, permit the person for whom he shall have sold such stock or securities to inspect the entries herein of the account of stock so sold, or shall insert in said account or in the said book any false account of the price at which such stock or securities were sold or bought, every such person shall, for every such offense, forfeit the sum of one hundred pounds, and be disqualified from ever after acting as a Stock-broker in this kingdom.

"VI. And be it enacted, That it shall and may be lawful for every such Broker as aforesaid to demand and take from every person for whom he shall sell any such stock or securities, and from every person to whom he shall sell the same, a fee at the rate of two shillings and sixpence for each one hundred pounds of such stock or securities, and no more, for brokerage or commission; and if any person so licensed as aforesaid shall take or receive, directly or indirectly, any money or other reward or thing for brokerage or commission for the selling or buying any such stock as aforesaid above the rate aforesaid, every such person shall, for every offence, forfeit the sum of one hundred pounds.

"VII. And be it enacted, That all penalties imposed by this act may be recovered by any person who shall sue for the same by action of debt, bill, plaint or information, in any of his Majesty's Courts of Record at Dublin in which no essoign, protection, or wager of law, or more than one imparlance shall be allowed.

"VIII. And be it enacted, That this act shall be deemed and considered as a public act, and shall be judicially taken notice of as such without the same being specially pleaded."

No such bond to be registered, etc., until breach of condition (31 and 32 Vict. c. 31, amending 39 Geo. III. c. 60).

Glasgow and Belfast, and other important centres, have their stock exchanges,[1] with rules and regulations modelled on those of the London Exchange, but, save in Dublin, a license or bond is not required, and any person may exercise the business of a Stock-broker, the only supervision exercised over him being that of the Stock Exchange in which he may obtain membership.

By the Larceny Consolidation Act (1861) 24 and 25 Vict. c. 96, § 76, any banker, merchant, *Broker*, attorney or agent, intrusted for safe custody with the property of other persons, who shall appropriate the same to his own use, shall be guilty of misdemeanor. This statute was repealed by the Larceny Act of 1901 (1 Edw. VII. c. 10), and re-enacted by the latter statute in such form as to be of general application, and to render the offender liable for fraudulent misappropriation of property.[2]

II. Decisions under Foregoing Statutes.

It appears that the first adjudication made under the earliest of the statutes above referred to was the case of Bosworth vs. Machado,[3] decided in 1745, wherein it was held that a person who sold South Sea stock was a Broker within the meaning of the act of 6 Anne, c. 16. But before that decision, in the year 1737, it seems that Lord Hardwicke had declared that a person dealing in stock was a Broker,[4] although the particular point there was as to whether a *pawnbroker* was a *trader* within the bankruptcy laws.

[1] Chamber's Enc., title "Stock Exchange."

[2] For cases under the repealed statute, see Archibold's Criminal Pleadings (22d ed.), by Craies, p. 547. See also Chitty's English Statutes, Supp. (1895–1900) p. 195.

[3] Cited in Wilkes vs. Ellis, 2 H. Bl. 556.

[4] Highmore vs. Malloy, 1 Atk. 206.

In Janssen vs. Green, decided in 1767,[1] it was held that a person who, in the words of 7 Geo. II. c. 8, for brokerage and hire, negotiates and concludes bargains for stocks, is a Broker in point of law.

In that case the action was brought to recover the penalty or forfeiture under 6 Anne for acting as a Broker without a license, and Lord Mansfield held that the act against Stock-jobbers, known as Sir John Barnard's act, was decisive of the question as to who was a Broker. After reciting the act, he asks, 'Can any words more strongly express what the Parliament meant by a Broker?" Mr. Justice Yates said, "The court will follow the parliamentary idea of a Broker," and he agreed with Lord Mansfield that Sir John Barnard's act was conclusive "as to their idea of a Broker."

That a Stock-broker is a Broker within the statute was however, directly decided in 1833 by the Court of King's Bench.[2] There the action was likewise brought to recover the penalty of £100 for having acted as Broker without the license acquired by the act of Anne. In approving the case of Janssen vs. Green,[3] the court, per Littledale, J., in the course of an exhaustive opinion upon the subject, said: "Considering the provisions of these statutes, recently before and after the passing of the statute of the 6 Anne, it appears to us that persons buying and selling government stocks and securities for others were considered as Brokers at that time, and must fall under that description in the statute in question. If Brokers dealing in government stock and securities then existing were so, *it does not admit of a doubt* that those who dealt in all subsequently created stock and securities of the

[1] 4 Burr. 2104.

[2] Clark vs. Powell, 1 N. & Man. 492; 4 B. & Ad. 864.

[3] Supra.

like description would be so just as much as merchant Brokers who bought or sold a new description of merchandises." The same judge, in alluding to the act, said: "That act . . . had in view the regulation of Brokers, and to have secured and enforced the *ancient right* of the city to admit brokers which, by the *Statuta Civitatis Londini*, 13 Edw. I., it appears to have possessed in the earliest times." It was accordingly held that the defendant was liable to pay the penalties imposed for acting as Broker without a license.

There has been, however, some doubt as to the precise meaning of the term "Broker" as used in the statutes.[1] For, in the year 1858, in a much-litigated case,[2] Crowder, J., said: "We must look at the term 'Broker' in the 6 Anne, c. 16, as having been used in its general, popular sense. It is difficult for us at this day to determine, with any degree of accuracy, what Brokers were at that time; there must be many things now dealt with by Brokers that were wholly unknown."

A Shipbroker, or one who obtains on commission freight and passengers for vessels, is, however, not a Broker within the statute;[3] and one of the judges, in this very case, appears to have been of the decided opinion that the term "Stock-broker" was only used after the passage of the act of 8 and 9 Will. III. c. 20, by which the first government loan was raised, and he speaks of a new description of Brokers then existing who were employed in buying and selling tallies—to wit, Stock-brokers.

It has been further held that an auctioneer is not a Broker

[1] See, on this subject, Paley on Ag. 13, note *a*.

[2] Smith vs. Lindo, 4 C. B. (n. s.) 406.

[3] Gibbons vs. Rule, 12 Moo. 539; 4 Bing. 301; s. c. 5 L. J. C. P. 176.

within the statute of Anne.[1] Nor is a person a Broker who hires or procures, for another, persons to be employed by him in the laying and surveying of a line of railway.

"To make a man a Broker," says Alderson, J., "he must intermediate, and be the agent through whom the contract is made."[2] But the dealing in, or buying and selling for reward, of shares in English or foreign joint-stock banks or companies, or the debts, stock, or securities of foreign governments, is an acting, and assuming to act, as a Broker within 57 Geo. III. c. 60.[3] This was decided upon the authority of Smith vs. Lindo.[4]

Slight evidence has been held sufficient to charge a person as having acted as Broker. Thus, where a witness stated that he took S. to an office in the city of London used by the defendant, and upon that occasion four memoranda were made by the defendant, each of the sale by S. of stock to a person whose name did not transpire; that nothing was handed over at the time; and that he did not see any money pass,—held, evidence for the jury of an acting by the defendant as a Broker within 6 Anne, c. 16, and 57 Geo. III. c. 60.[5]

So where A. was an officer of a company formed for the purpose of carrying on the business of Stock-broking, under the name of "Open Stock Exchange," and in the course of business bought some stock for a Client, and signed the bought and sold notes, the principals not seeing one another, and no one else acting as a Broker in the transaction, it was

[1] Wilkes vs. Ellis, 2 H. Bl. 555.

[2] Milford vs. Hughes, 16 M. & W. 174; 16 L. J. Exch. 40. In the note to this case will be found the case of *Andrewe de Vyne*, A. D. 1455, 34 Hen. VI., from the Liber Dunthorn.

[3] Scott vs. Jackson, 19 C. B. (n. s.) 134.

[4] Supra.

[5] Scott vs. North, 2 L. R. C. P. 270; 15 L. T. (n. s.) 508.

held that A., who had no license to act as a Broker, was liable to the penalty of £100, imposed by 57 Geo.[1] In one case, it was held by Lord Ellenborough that a London Broker might refuse to allow his employer to inspect his contract book; and it is no breach of his bond if it shall be produced at the proper time, and the Broker does produce it afterwards before a Court of Aldermen.[2] It was also there held that it was no breach of his bond to employ a person who is not a sworn Broker. But a person who holds himself out as a Broker of the city of London, and is employed by a person who believes him to be such, cannot, when sued by his principal for an account of his transactions as such Broker, protect himself from discovery, in a suit in equity, upon the ground that it may render him liable to penalties for having acted as a Broker without having been duly admitted as such. In this case the M. R. said: "A person holding himself out and acting as a Broker asserts that he is duly qualified to act."[3] And a Broker in the city of London must answer a bill of discovery in aid of an action brought against him by his employer for misconduct, although the discovery will subject him to the penalty of a bond given by him to the corporation on his admission.[4] In this case it was held, first, that the policy of the law not only requires that a Broker or agent should act with fidelity to his employer, and should be ready at all times to render

[1] Scott vs. Cousins; same vs. Inglis, 4 L. R. C. P. 177, 179; 38 L. J. C. P. 156.

[2] Mayor of London vs. Brandon, Holt, 438, note; 2 Stark. 14.

[3] Robinson vs. Kitchin, 2 Jur. (n. s.) 294; 25 L. J. Chanc. 441; L. J., aff'g decision of Romilly, M. R., 21 Beav. 365, 2 Jur. (n. s.) 57; 25 L. J. Chanc. 354. Whether it would make any difference that the principal, at the time of employing the Broker, knew that he was not duly admitted, *quære?*

[4] Green vs. Weaver, 1 Sm. 404; s. c. 6 L. J. Ch. 1.

a full and clear account of his transaction; but, secondly, from the nature of the case the defendant exclusively possessed the means of stating that account, which the policy of the law entitled the plaintiff to demand.[1]

A sworn Broker of the city of London is in the nature of a public agent; and therefore, in an action against him for negligence in making a contract, the court will compel him to produce his books for the purpose of enabling the plaintiff to inspect them and take a copy of the contract.[2] A defendant has been allowed to amend his plea, after notice of trial served and set up, that the plaintiff was not a Broker duly licensed under the 6 Anne, c. 16.[3]

In Dunbar vs. Wilson,[4] the Lord Chancellor, considering that one Sylva, a Broker, and a respondent in that case, "had grossly misbehaved himself in the business of a Broker in not keeping books of the contracts made by him pursuant to the act of 7 Geo. II. c. 8, ordered that it should be recommended to the Court of the Lord Mayor and Aldermen, to cause the bond given by him for performance of his duty as a Broker to be put in suit against him for his misbehavior; and, further, to censure him for the same, as they were enabled and ought to do, consistently with law and justice. If a Broker make a contract contrary to the regulations of the city of London, and in violation of the bond into which he has entered with the mayor and aldermen, he is not therefore precluded or disqualified from bringing an action on a contract so made in contravention of his duties under the bond.[5] The remedy against him is an action for the

[1] 1 Sim. 404–424.

[2] Browning vs. Aylwin, 9 D. & R. 801; 7 B. & C. 204.

[3] Field vs. Sawyer, 5 C. B. 844.

[4] 6 Brown, P. C. 231 (1773).

[5] Kemble vs. Atkins, 1 Moo. 6; 7 Taunt. 260; Holt, 427.

penalty of the bond, and the contract is not *ipso facto* void.[1]

So it has been held[2] that a London Broker could maintain an action on a contract or sustain a proof of a debt arising out of transactions as a merchant, although such transactions are in contravention of the bond which he executes and to the oath which he takes on his appointment; not, however, if the debt or contract arises out of a transaction in which he has acted both as Broker and principal, that being void upon principles of common law.

But it was the duty of a sworn Broker of the city of London to charge his Client only the cost price of articles purchased for him, in addition to his commission; and the Client having averred in an action of assumpsit that the Broker had charged him an amount greater than the cost price, which the plaintiff had paid, it was held that it was sufficient proof of such averment to produce a running unsettled account between the parties, by which it appeared that the Client had paid more than the amount of the overcharges; although on the whole account, and when the balance at a subsequent period was struck, the Client was indebted to the Broker in a sum far exceeding such over-charges.[3] It seems that a Stock-broker was liable to pay to the Chamberlain of London, for the benefit of the corporation, the annual duty of 40*s*., directed by statute 6 Anne, c. 16, to be received by the Chamberlain from any Broker. It was accordingly held that a mandamus

[1] In this case (Holt, 431, note) is given in full the bond which Brokers were required to execute under the statute of Anne, also the official oath taken by them upon being licensed. See also Green vs. Weaver (supra), where the bond and oath are also given in full.

[2] Ex parte Dyster, in the Matter of Moline, 1 Mer. 155; s. c. 2 Rose, B. C. 349.

[3] Proctor vs. Brain, 2 Moo. & P. 284; 3 C. & P. 536.

would issue to compel the Commissioners of the Court of Requests to proceed in such an action on behalf of the Chamberlain.[1]

III. Commissions and Remuneration of Brokers.

But the question that appears to have been most earnestly litigated in England under the statute of Anne, was as to whether an *unlicensed* Broker could sustain an action to recover his commissions, and for moneys paid and expended by him in the purchase and sale of stocks for his Client.[2]

[1] Rex vs. Com'rs Ct. of Requests, 7 East, 292, and note *a*.

[2] The commission of Brokers on contracts for any stock erected by act of Parliament or letters patent is limited by 10 Anne, c. 19, § 121, to 2*s*. 9*d*. per cent. By statute 29, Geo. III. c. 60 (Irish Parliament), the amount of commissions allowed to be charged by Stock-brokers in Ireland is regulated at 2*s*. 6*d*. per cent. The commissions to which Brokers are entitled for their services are stated as follows:

On transactions in British or foreign funds	2*s*. 6*d*. per ct.
Exchange bills	1*s*. 0*d*. " "
Colonial, government, and American stock and Railway bonds	1*s*. 0*d*. " "
On shares under £5	1*s*. 0*d*. per sh.
Between £5 and £10	1*s*. 6*d*. " "
Between £10 and £25	2*s*. 0*d*. " "
Between £25 and £50	5*s*. 0*d*. " "
£50 and upwards	10*s*. per ct.

—on the consideration money (Royle on the Law of Stocks, etc., p. 41). The amount of the commission in London now varies from one-sixteenth to one-half per cent, according to the market and the security dealt in. Brodhurst's "Stock Exchange Law," 19.

As to right of Broker to receive double commission, the London Stock Exchange Commission reported as follows:

"In the one case a Broker receiving orders from two Clients at the same time to buy and sell sets-off, the one against the other, directly, without going to a dealer on the market, divides the turn which is thereby saved between his Clients, and charges brokerage to each. In such a case, the Broker undoubtedly acts for two Clients in the same transaction, and thereby gets two commissions; yet it is obvious that had he gone into the market and sold and bought again the same stock with a dealer, he would have had to pay the dealer's turn in addition. It is hardly possible, therefore, to object to the course of the Broker, though it is open to this possibility, that he might, under this system of executing the orders he had received, have charged to his Clients the market price for buy-

Upon the subject of commissions, the English courts appear to be unanimous in deciding that such Broker could not, prior to the repeal of the statute, recover them, although the statute imposes a penalty for his illegal action ; and the decisions upon this point seem to be based partly upon the ground that the Broker forfeited his compensation by acting in an illegal capacity ; for, if he were permitted to recover, it is obvious that the entire object and purport of the statutes would be frustrated, however strongly it might be urged that he would still be liable to pay the heavy fines imposed.[1]

The first case in which this subject came before the English courts was Cope vs. Rowlands.[2] It was there held that a Broker could not maintain an action for *work*, *labor*, and *commissions* for buying and selling stock unless duly licensed by the Mayor and Alderman of the City of London under the statute of Anne. In an opinion rendered in the case, Parke, B., gave abundant reason for sustaining the judgment when he said : "The question for us now to determine is whether the enactment of the statute of 6 Anne, c. 16, . . . is merely meant to secure a revenue to the city, and for that purpose to render the person acting as a Broker liable to a penalty if he does not pay it ; or whether one of its objects be the protection of the public, and *the prevention of improper persons acting as Brokers.* On the former supposition, the contract with a Broker for his brokerage is not prohibited by the statute ; on the latter it is, *for it cannot be permitted*

ing and selling, and have kept the turn of the market for himself" (Report of London Stock Exchange Commission, July, 1878).

[1] As to when Broker will forfeit his right to recover commissions by acting dishonestly or in bad faith, see ante, p. 396 et seq.

[2] 2 M. & W. 149 ; 2 Gale, 231 ; s. c. 6 L. J. (n. s.) Exch. 63.

to a person to recover a compensation for an act which the law interdicts him from doing."

But as to whether the unlicensed Broker could recover *the moneys expended* and laid out at the Client's request in the purchase of stocks, the courts have held that he could: and that he was not precluded from so doing by the mere fact that he acted in an *illegal capacity*, it being held that he recovered quite independently of that character. As was decided in Smith vs. Lindo,[1] he could recover the moneys paid for shares, there being nothing to show that the payment was made in pursuance of any *illegal contract*, or that it was a necessary part of the duty of a Broker *as such* to pay the money.

The following cases fully explain the principle:

To a declaration in assumpsit on two bills of exchange by drawer against acceptor and on an account stated, the defendant pleaded generally to the whole declaration that he retained the plaintiff to act as his Broker in the city of London, and as such to enter into contracts there for the purchase of stocks and shares, and to pay certain moneys therefor, and that the plaintiff undertook such employment and did pay certain moneys in the purchase of said stock and shares; and that at the times mentioned the plaintiff was not a duly licensed Broker within the city of London, and that such bills were accepted by defendant and received by plaintiff on account of moneys due plaintiff by defendant for having acted as such Broker, etc., held bad on demurrer; and although plaintiff could not recover recompense for his services as Broker, yet he was entitled to recover money paid

[1] 5 C. B. (n. s.) 587. See also Wicker vs. Gordon, 2 B. & Ald. 335.

at defendant's request; and the court held that the contract was not void.[1]

The distinction laid down in this case was subsequently fully recognized in the case of Jessopp vs. Lutwyche,[2] where the court held that the statute of Anne did not prevent an unlicensed Broker from recovering money paid at the request of his employer, or for money due on accounts stated with his employer. Parke, B., said: "Pidgeon vs. Burslem cannot be surmounted. The statute relating to Brokers only precludes them from recovering remuneration for their services as such."[3] The same judge further said: "That case shows that the disability to act as a Broker only disentitles a person *to any recompense for his services as a Broker*, and affords no reason why he should not recover from his employer money he has paid at the employer's request, express or implied."[4]

And the doctrine as laid down in the former cases[5] was subsequently in all respects fully reiterated and sustained.[6] As was said by Lord Loughborough:[7] "So upon stock transactions, though the court would not execute the contract; yet where the parties have been settling stock dealings and paying differences, I must bring those into the account."[8]

Since the passage of the act of 1884, *supra*, rendering it unnecessary for a London Broker to obtain a license from

[1] Pidgeon vs. Burslem, 3 Ex. 465; 18 L. J. Ex. 193.

[2] 10 Ex. 614; 24 L. J. Ex. 65; 3 C. L. R. 359.

[3] 10 Ex. 616.

[4] 3 C. L. R. 361.

[5] Smith vs. Lindo, 4 C. B. (n. s.) 395; 27 L. J. C. P. 196; aff'd on appeal, 5 C. B. (n. s.) 587; 4 Jur. (n. s.) 974.

[6] See also Taylor vs. Stray, 2 C. B. (n. s.) 197, 195; 3 Jur. (n. s.) 964; 26 L. J. C. P. 287.

[7] Watts vs. Brooks, 3 Ves. 612.

[8] See also Kemble vs. Atkins, 1 Moo. 6; 7 Taunt. 260; Holt, 427; Ex parte Dyster, 1 Mer. 155; s. c. 2 Rose, B. C. 349.

the City, a Stock-broker may, unless the contract be illegal, or is a wagering transaction,[1] or incorporates an unreasonable custom,[2] or the broker acts outside the scope of his agency, or is negligent, recover the usual commissions, on carrying out his principal's instructions by making a valid and binding contract.[3]

If a Stock-broker should be prevented by the act of his Customer from earning the whole of his commissions, he will be entitled, as damages, to a proportion of the amount agreed to be paid. Thus where a Broker agreed to dispose of the shares of a company upon being paid £100 down and £400 on final allotment, and, after he had disposed of some of the shares, the company was, without any default by the Broker, wound up by the directors, it was held that the Broker was entitled, as damages, to a portion of the £400.[4]

Where the Broker acts in illegal transactions—in most cases transactions contrary to law or public policy—it has been held that he cannot recover from the Client either commissions or money expended by him at the Client's request in the sale or purchase of stocks in such *illegal transactions;* nor can the Client recover back moneys paid to the Broker therefor.

Hence where B., being employed by A. to purchase certain

[1] See Chap. V "Stockjobbing."

[2] See chapter on Usages.

[3] Learoyd vs. Bracken, 1 Q. B. D. (1894) 174. By statute a Broker must also send a note to his principal advising him of the transaction, or he is liable to a fine of $20. 33 & 34 Vict. ch. 97, § 69; 41 Vict. ch. 15, § 26; 54 & 55 Vict. ch. 39. § 52, subd. 1. But his failure to send this note does not deprive him of commissions, Learoyd vs. Bracken, supra, although if he sent the note without stamping it, he cannot recover commissions, and is liable to a similar fine. 54 & 55 Vict. c. 39, § 53, subd. 1 and 2.

[4] Inchbald vs. Neilgherry Coffee Co., 17 C. B. (N. S.) 733.

transferable shares in an unincorporated company, charged and received from him £25 beyond the market price of such shares at the time, it was held that an action would not lie to recover back this sum, the company being within 6 Geo. I. c. 18, and the parties *in pari delicto.*[1] So in an action of assumpsit by a Broker for work and labor and money expended in the purchase of shares in a concern called the "Equitable Loan Bank Company," it appeared that the company professed to have a capital of £2,000,000 in shares of £50 each; that a deposit of £1 per share was required on the delivery of certificates for shares to the holders; that the shares were to be transferred without any restriction; and that the holders were to be subjected to such regulations as might be contained in any act of Parliament passed for the government of the society, and, in the meantime, to such regulations as might be made by a committee of management, it was held—no evidence being given as to the particular objects or tendency of the company—*that the company was to be considered illegal* within the act of 6 Geo. I. c. 18; and that the plaintiff consequently could not maintain his action, as it arose out of an *illegal transaction.* Abbott, C. J., said: "We say, therefore, that dealing in these shares was an illegal transaction; and this being our opinion, every one must observe that the signs of the times require us to declare it without delay. There is another point which I shall notice very briefly, as it was not touched upon on the argument—viz., that trafficking in these shares may very possibly have been illegal at common-law, inasmuch as it was bargaining and wagering about an act of Parliament to be obtained in future. Upon the whole, I am satisfied that

[1] Buck vs. Buck, 1 Campb. 547.

the plaintiff was not in law entitled to maintain his action."[1]

But in an action of assumpsit for money had and received, the defendant pleaded, as to £94, that, after the passing of the 7 and 8 Vict. c. 110, and after the 1st of November, 1844, the defendant, as the Broker and agent of the plaintiff, sold on account of the plaintiff, fifteen scrip shares in a certain joint-stock company for £94—the formation of which company was commenced after the 1st of November, 1844, and which, at the time of such sale, was a joint-stock company within the provisions of the said act; that is to say, a partnership whereof the capital was agreed and intended to be divided into shares, etc., and not being a banking company[2]—and that the £94 was money received by defendant as proceeds of such sale; it was nevertheless held bad, on demurrer, for not showing that the company was a railway company, the execution of whose works could be carried into effect without the assistance of Parliament, and therefore not within the provisions of the end of the 7 and 8 Vict. c. 110, § 2, *which is in legal effect an exception.* It seems that if the sale *had* been illegal, the defendant, the Broker who negotiated the sale and received the money, had no right to set up the *illegality* of the transaction in answer to an action for money had and received, the purchaser not having insisted on such illegality.[3]

This case, it appears, is to be distinguished from the preceding cases, as the facts did not bring it within the statute,

[1] Josephs vs. Pebrer, 3 Barn. & C. 639; s. c. 1 C. & P. 341, 507.

[2] Negativing the excepted cases mentioned in the enacting part of 7 & 8 Vict. c. 110, § 2.

[3] Bonsfield vs. Wilson, 16 M. & W. 185. On the latter point, see Tenant vs. Elliot, 1 Bos. & P. 3; Farmer vs. Russel, id. 296.

the court expressly deciding it to be an exception. But an allotter of shares in a completely registered joint-stock company, who has not executed the deed of settlement of the company, cannot, under the provisions of the 26th section of the Joint-stock Companies' Registration Act,[1] *enter into a contract for the sale of his shares.* Hence, where W. E. was the allotter of shares in such a company, *but had not executed the deed of settlement*, his brother, acting under the authority of a power of attorney, desired Messrs. N., Stock-brokers, to sell these shares; and they entered into contracts with purchasers accordingly, but, before the transfers were registered, W. E. became a bankrupt, and the Brokers were obliged, at their own cost, to complete the contract with the purchasers—the court held, dismissing a petition by the Brokers, claiming to have the bankrupt's shares transferred to them, that, under the terms of the 26th section, the contracts were null and void, and that the assignees of the bankrupt were entitled to the shares as part of his estate and effects.[2]

So also a Stock-broker is not entitled to commissions, if, when he has been instructed to buy stock, he appropriates his own stocks to his Client, and does not purchase from a third party, and the Client, in such case, need not bring into account sums already received from the Broker.[3] And he

[1] 7 & 8 Vict. c. 110.

[2] Ex parte Neilson, 3 DeG. M. & G. 556. For cases in which defence was set up that the transactions were against the statutes of betting and gaming, or contrary to the statutes against "Stock-jobbing," see chapter on "Stock-jobbing." And as to contracts incorporating an unreasonable custom, see Chapter on "Usages."

[3] Skelton vs. Wood, 71 L. T. 616; 15 R. 130. Nor can the broker recover difference when he has bought stocks on his client's instructions, and without the latter's knowledge, has resold them, and afterwards bought them back again. Id.

is not entitled to commissions, if he acts as a principal by carrying over his principal's securities.[1]

Besides the purchase and sale of stocks for a Client on the Stock Exchange, Brokers render other services, and they are entitled to make the stipulated or customary charges for such services, although it was at one time doubted whether a company could legally pay a Broker for "placing" or "underwriting" its shares. There is a distinction between placing and underwriting. In the former case the Broker is paid a commission for inducing persons to subscribe for the shares, while in the latter case, a sum is paid to the Broker in consideration of his undertaking to himself take a certain number of shares in case the public do not subscribe for them. The distinction is important, as, in the latter case, the Broker may become liable for calls, whilst in the former case he is only liable to an action for damages for breach of contract, and he has many defenses open to him which he would not have if he had become a shareholder.[2]

In the earliest case on the question of a Broker's right to commission for placing shares, the court decided that, under the circumstances, the payments were illegal as they constituted a fraud upon the company,[3] but it was subsequently held that such payment was legal, and the former case was distinguished.[4] A Broker, however, is not entitled to commission if the shares have not in fact been placed by him.[5]

[1] Sachs vs. Spielman, 37 Ch. Div. 295.

[2] Re Monarch Co., 42 L. J. Ch. 864. See also Shaw vs. Bentley, 68 L. T. 812; Ex parte Audain, 42 Ch. Div. 1; Carmichael's Case, (1896) 2 Ch. Div. 643; Re Bentley, (1894) 69 L. T. 204; Ormerod's Case, (1894) 2 Ch. Div. 474.

[3] Re Faure Electric Accumulator Co., 40 Ch. Div. 141.

[4] Metropolitan Co. vs. Scrimgeour, (1895) 2 Q. B. 604.

[5] West of England Paper Mills vs. Gilbert (1891), 61 L. J. Ch. 92.

It has been held[1] that an agreement to pay 15 per cent "discount" to a stock-broker to "underwrite" a certain number of shares in a company was valid, as the word "discount" should be construed as "commission."

And now by the Companies Act, 1900 (63 and 64 Vict. c. 48, § 8) companies may pay commissions to persons subscribing or procuring subscriptions, upon any offer of its shares to the public, if authorized by its articles and disclosed in its prospectus, but otherwise such payments are unlawful, except where theretofore held lawful.

So also, in the case of transfers of stock at the Bank of England, an executor was allowed a charge of one sixteenth per cent paid by him to a Broker for identifying a legatee to whom the executor made a transfer of stock.[2] And in another case an executor was also allowed a charge of one shilling and three pence per cent paid to a Broker for a similar identification in making a transfer of stock into Court.[3]

IV. Origin and History of the London Stock Exchange, and Rules and Regulations thereof.

I. The London Stock Exchange is a voluntary unincorporated association of persons who deal in securities. It has been in existence about one hundred years, and numbers over three thousand members.

On the 9th of May, 1877, a royal commission was appointed by her late Majesty Queen Victoria to inquire into the origin and methods of the Stock Exchange. At the head of the commission was Baron Penzance. It consisted of

[1] Ex parte Audain, 42 Ch. Div. 1.

[2] Jones vs. Powell, 6 Beav. 488.

[3] Davenport vs. Powell, 14 Sm. 275, overruling in effect Hopkinson vs. Roe, 1 Beav. 183, which only allowed £1 : 1 : 0 for such an identification.

twelve members, prominent among whom was Lord Blackburn. This commission held a large number of meetings, and examined many witnesses, including some of the most experienced Brokers and jobbers in the Exchange. The commission made a full and interesting report on the 31st of July, 1878, and from the report made to the commission of the origin of the Exchange, by the secretary of the Committee for General Purposes,[1] and from the works of the writers stated in the note,[2] the following particulars are given in this connection as the most authentic history of that body.

As stated in chapter I,[3] speculation in the funds, and of the shares of the East India Company became general immediately after the creation of the national debt by William III., in 1692; and many persons assuming the title of Broker quickly availed themselves of the opportunities thus afforded to make money in negotiating these transactions. It is to a time between the years 1692 and 1698, that Mr. Francis refers to in his "Chronicles and Characters of the Stock Exchange," when he says (p. 24): "At this time the Broker had a walk upon the Royal Exchange devoted to the funds of the East India and other great Corporations; and many of the terms now in vogue amongst the initiated arose from their dealing with the stock of the East India Company. Jobbing in the great chartered corporations was thoroughly understood. Reports and rumors were as plentiful then as now. . . . If, at the present day (about the year 1850) a banker condescends to raise a railway

[1] Mr. Francis Levien (see pp. 3 and 4 of Minutes of Evidence attached to Report of Royal Stock Exchange Commission).

[2] Francis' Characters and Chronicles of the Stock Exchange; Brodhursts' Law of the Stock Exchange.

[3] Page 3.

bubble 50 per cent, the Broker of that period understood his craft sufficiently to cause a variation in the price of East India stock of 263 per cent." Owing to the outcry raised against the Brokers and jobbers, as they were contemptuously termed, by these practices, a statute (8 and 9 William IV. c. 20) was passed in the year 1696, which limited the amount chargeable for brokerage to two shillings and six pence per cent, and a statute (8 and 9 William III. c. 32) of the following year, after reciting that "divers Brokers and Stock-jobbers or pretended Brokers" had conspired to raise and depress the price of tallies, bank stock, and bank bills, provided that no person should act as a Broker of tallies, Exchequer tickets, Bank of England stock, or stock of the East India Company, or other chartered corporation, without being licensed by the city of London. The number of such licensed Brokers was limited to one hundred, and their names and addresses were to be posted on the Royal Exchange, and the Guildhall. These statutes therefore gave legislative recognition to the business of a Stock broker, and the walk upon the Royal Exchange may be regarded as the germ of the present Stock Exchange.

In 1698 the Brokers and jobbers, in consequence of the severe criticism to which they had been subjected, removed their quarters from the Royal Exchange, to Jonathan's Coffee House, Change Alley, where they continued to do business till 1801. On the 15th of July, 1773, a newspaper of the day announced that, on the previous day, the Brokers had resolved to change the name of the House from "New Jonathan's" to that of the "Stock Exchange."

The rooms of the Stock Exchange Coffee House afforded a ready market for the operations of the bankers, merchants, and capitalists connected with the floating of the

numerous loans raised at that period for the service of the state.

At a later period the directors of the Bank of England set apart a room of the rotunda of the bank for the convenience of the Brokers and jobbers in affecting small transactions in the public funds for the general public, and in connection with the transfer of stocks in the books of the bank.

The earliest minutes of the Stock Exchange, as to its origin, do not, however, begin till December, 1798, and these records refer to the existence of the Stock Exchange in 1773, and to the transaction of business at the rooms of the Stock Exchange (to which any person was admitted on payment of six pence), and at the rotunda.

It is on record that these rooms were under the control of a "Committee for general purposes," the expenses of the management being defrayed by the voluntary subscriptions of the frequenters; and that the functions of this committee were then, as now, judicial as regards the settlement of disputed bargains, and administrative as regards rules for the general conduct of business and for the liquidation of defaulters' accounts. Early in 1801 it became apparent that the rooms did not afford sufficient accommodation for the transaction of the greatly increased business arising out of the creation of loans hitherto unprecedented in amount, and, moreover, that the indiscriminate admission of the public was calculated to expose the dealers to the loss of valuable property. Under these circumstances, Mr. William Hammond and other gentlemen, who had acquired a site in Capel Court, or its immediate neighborhood (described as a central situation), succeeded in raising a capital of £20,000 in 400 shares of £50 each, and in founding a new undertaking, to which the affairs of the old

rooms were ultimately transferred. The first stone of the new building was laid in May, 1801. A Committee for General Purposes, consisting of the nine promoters of the scheme and twenty-one other proprietors, was formed; and this body, whose meetings *pro tem.* were held at the "Antwerp" and other taverns in the neighborhood of the Royal Exchange, proceeded to elect members by ballot at a subscription of ten guineas each. A deed of settlement—which, however, was not executed until the 27th of March, 1802—was drawn up; and in this document it was formally recited that "Whereas the Stock Exchange in Threadneedle Street, where the Stockbrokers lately met for the transaction of their business, having been found to be inconvenient," William Hammond and others had upon the site referred to "caused to be erected a spacious building for the transacting of buying and selling the public stocks and funds of this kingdom; and the same is now nearly finished, and is called the Stock Exchange, and is intended to go under that appellation."

It will be further found in that deed that the management, regulations, and direction of all the concerns of the undertaking were vested in a committee, consisting of thirty members or subscribers, to be chosen annually by ballot upon the 25th of March; while the treasuryship and management of the building were placed under the sole direction of nine trustees and managers (separate from the committee) as representatives of the proprietors.

Under these conditions, the new Stock Exchange was opened in March, 1802, with a list of about 500 subscribers.[1]

[1] In 1853 the building erected in 1801 was found to be too small for the transaction of business, and it was accordingly pulled down, and a new building erected in its stead to which various additions have been made.

A new deed of settlement was executed in 1875, in which the principles of the original deed have been substantially adhered to.

The Exchange, as at present constituted, consists of two distinct bodies, composed in some degree of the same members, but having different interests.

There are (1) the shareholders, or proprietors, and (2) the subscribers, these latter being generally described as members of the Stock Exchange, or members of the "House." To the shareholders the Stock Exchange is a joint-stock undertaking, the profit arising from the management of which accrues to them as a dividend. They have no rights as *shareholders* to enter the building; and with this class we have no concern in this book.[1]

The Stock Exchange is governed by two distinct bodies: The Board of Managers[2] and "The Committee for General Purposes," who are elected by the members. The latter body consists of thirty members, who are elected annually. They appoint their own officers and the official assignees, and exercise a general control over the mode in which business is transacted in the house and the conduct of its members.

[1] Rep. of Royal Stock Exch. Com. 5. The deed of settlement of 1875 proposed to ultimately amalgamate the two bodies. See Watson vs. Black, 16 Q. B. D. 271, where the provisions of the deeds of settlement are fully set out. It was held in that case that the shareholders had not the right to exercise the franchise as freeholders as they had no equitable interest in the land itself, but only to a share in the profits of the Exchange.

[2] The Board of Managers, consisting of nine persons, as representatives of the shareholders, have control of the building of the Exchange and its financial affairs. The managers appoint all the officials, except the official assignees, and the secretary of the Committee for General Purposes. They also fix the admission and annual fees payable by the members and their clerks.

A member of the Exchange pays at the present time an admission fee of £525 (except when he has served four years as a clerk, when the entrance fee is reduced to £157; 10*s.*; 0*d.*) and a renewal subscription of £31; 10*s.*; 0*d.* An authorized clerk pays an entrance fee of £52; 10*s.*; 0*d.* and an additional fee of £42; 10*s.*; 0*d.* and renewal subscriptions of £31; 10*s.*; 0*d.* and £18; 18*s.*; 0*d.* An unauthorized clerk pays an entrance fee of £10; 10*s.*; 0*d.* and a subscription fee of £12; 12*s.*; 0*d.* A sum of £31; 10*s.*; 0*d.* is also payable for a seat in the House, and small sums are also charged for the use of settling rooms, frame boxes, drawers and lockers. The Committee for General Purposes have no funds at their disposal, the entrance fees and subscriptions of members being substantially a rent paid to the shareholders for the use of the building.[1]

The rules and regulations of the Exchange are made and altered from time to time by the Committee for General Purposes; and a full copy of the same will be found in the Appendix, to which reference should be had. A synopsis of some of these rules should here be given. The right of entry into the building is strictly confined to members and their clerks. Candidates for admission have originally to be recommended by three members of not less than four years' standing, who each guarantee the sum of £500 in case the new member be declared a defaulter within four years from his admission, but in the case of a clerk of four years' standing, who has not previously been employed in any other business, recommendation by two members of four years' standing is sufficient; each of such members engaging to pay to the applicant's creditors a sum of £300, in case

[1] Rep. of Com. 6.

he is declared a defaulter within four years of his admission;[1] and these are balloted for by the Committee for General Purposes. All members of the Exchange, as between themselves, stand in the position of principals;[2] but they can act in the capacity of Dealers and Brokers at pleasure, not being allowed, however, to act in the double capacity at the same time.[3]

The two classes—Dealers and Brokers—in number are about equal. There was but one class originally, viz., the Brokers, and the creation of the second class, the "jobbers," was probably owing to the fact that the law forbade the Broker to deal with his customer as a principal.[4] This division corresponds with that of the New York Stock Exchange, the difference being that the "room traders" of the latter Exchange, whose functions are similar to that of the dealers on the London Exchange, constitute only a small fraction of the membership of the New York Exchange, and no rule of the latter Exchange prevents a Broker from acting at the same time as a Dealer if he chooses, although of course he may not legally act in the double capacity in the same transaction. The jobbers are peculiar to the London Stock Exchange, the provincial and continental Exchanges having only the first-named class, viz., the Brokers. Clerks cannot do business on their own account.[5] An authorized clerk may deal on behalf of his employer, but he cannot transact business as a jobber, except in those securities in which his employer is at the time dealing.[6] An unauthorized clerk possesses simply the functions of an

[1] Rule 22.

[2] Rule 53.

[3] Rule 43.

[4] Brookman vs. Rothschild, 3 Sim. 153; Robinson vs. Mollett, L. R. 7 H. L. 802.

[5] Rules 50, 57.

[6] Rule 44.

office clerk, save that he has the right of admission to the Exchange. The dealer remains in the house ready to deal with any one who comes to him. The Broker comes into the house only when he has business to transact.[1] Some of the rules of the London Stock Exchange have been before the courts, and those we shall hereafter specially notice.

As to the power of the association to make rules for the government of its members, it seems to be undoubted ; and although there appears to be no direct precedent in England arising out of a contest between the Exchange and one of its members, it is safe to affirm that there will be no difference in this respect between the courts of England and those of the United States ; and that all rules and regulations that are reasonable, and not contrary to public policy or the law of the land, are valid, and will be enforced by the courts.[2] But if a member of an association invokes the courts to defend him

[1] Rep. 7.

[2] See authorities cited under ch. 2, § VIII. So far as our researches are concerned, the only case that we have found in which a direct contest has arisen in the courts between a member of the Exchange and the general body is that contained in the report of Mr. Scott, one of the members of the London Stock Exchange Commission (p. 30 of Rep.), which is as follows: "Recently the committee of the Stock Exchange were assailed at law by a member whom they had expelled on a charge of dishonorable conduct, the lawsuit being based on the ground that the action of the committee was not justified in law. The trial lasted seven days and proved abortive." In Robertson vs. Heffar, 9 T. L. R. 622, a firm of jobbers sought to restrain a bank from enforcing (through its Brokers) certain contracts made on the Stock Exchange, by invoking the authority of the Stock Exchange over its members, on the ground that they were illegal (the plaintiffs claiming that the market had been "rigged"), and the court refused to grant the injunction unless the amount due to the bank was paid or secured pending the result of the action. The court said that, even if the contracts were illegal, it ought not to interpose to prevent their being enforced. See Belton vs. Hatch, 109 N. Y. 593, cited with approval by Mr. Brodhurst in his work on the "Law of the Stock Exchange," p. 35.

against a rule which is shown to be contrary to law, or against public policy, or unreasonable, he will undoubtedly be protected, as is shown by the authorities heretofore referred to.[1]

In respect to suits which may be brought against the London Stock Exchange, there would appear to be no difficulty since the enactment of the Judicature Acts of 1873 and 1875 and subsequent amendments, and the rules issued under their authority. So far as the form is concerned, in a suit against the "Committee for General Purposes," the proceedings of the association could be reviewed.[2]

But the rules of the Exchange are much more limited in their operation when applied to the rights of third persons not members of the Exchange than when they are used to control the acts of members *inter se.*

This proposition is sustained and illustrated by a case in the House of Lords, in which the rules of the Exchange were sought to be used to distribute the property of an insolvent member contrary to the Bankrupt Law.[3] In that case, a member of the Exchange who had been declared a defaulter attended the usual meeting of the Stock Exchange creditors, and gave to the official assignees for distribution among his Stock Exchange creditors a check on his bankers for £5000, being about five eighths of his assets, stating at the same time that he had none but Stock Exchange creditors. On the day after this sum had been distributed, the debtor informed the Stock Exchange creditors that his father-in-law claimed to be a creditor for a large amount of money

[1] Ch. 2, § VIII, sub. (*a*).

[2] 1 Lindley on Part. (4th ed.) 466, 500. See also Lindley on Company Law, 5th ed. 270, 559.

[3] Ex parte Saffery, In re Cooke, L. R. 4 Ch. Div. 555; Tomkins vs. Saffery, L. R. 3 App. Cas. 213. See also Scott vs. Ernst, 16 T. L. R. 498.

lent. It did not appear that up to this time the debtor had committed any act of bankruptcy, but soon afterwards he filed a liquidation petition, and was adjudged a bankrupt. Upon this state of facts, the House of Lords held that the trustee in bankruptcy was entitled to recover the £5000 from the official assignees of the Stock Exchange. The lord chancellor, in his opinion, held that the rules of the Stock Exchange were rules which, from the very nature of the case, are and must be subject to one infirmity—namely, that if they are to be effectual, they must be applicable to the case of a person who not merely is a defaulter upon the Stock Exchange, but who has no creditors outside the Stock Exchange; because if such a person has outside creditors the general law of the country will step in and give to those creditors rights which those rules cannot take away from them. Therefore, although everything done in the domestic forum of the Stock Exchange may be done according to the rules, and may be most wholesome in its operation for the members of the Stock Exchange, still what is done must be subject to the rights of those who are not amenable to the jurisdiction of the Stock Exchange; and when those higher rights come into conflict with such rules, the latter must give way to the former. It was also held by James, L. J., in the lower court, that any scheme made for the distribution of the assets of insolvents otherwise than according to the bankrupt law is a fraud on such law, and a palpable fraud upon creditors.

But where a Broker becomes a defaulter in accordance with Rule 142 of the Stock Exchange, and thereupon the official assignee fixes the market price, and collects differences due to the defaulter from other members, to be set off and paid to those members to whom, on the same footing, differences are due from the defaulter, it was held that the trustee in

liquidation could not recover the sum collected from the official assignee.[1] The court distinguished the case from Tomkins vs. Saffery, Baggallay, L. J., saying: "As far as regards any losing contracts, entered into by Plumbly [the defaulting Broker], the trustee in bankruptcy or in liquidation is relieved from that; and if, on the other hand, it is said that there may be some winning contracts, the answer as far as regards them is, that it would be impossible to realize on them, because, when the time arrived for the completion of the contract, Plumbly could not and would not have been ready to perform them."[2]

The question as to how far the rules of the Stock Exchange enter into contracts made for a principal through its members is discussed in the chapter on "Usages;" and as there seem to be no direct precedents which are peculiarly applicable to Stock-brokers in England, the reader is referred to the second chapter, where the rules, regulations, and general character of unincorporated Stock Exchanges are considered.

[1] In re Plumbly, 42 L. T. (n. s.) 387.

[2] See also, in this connection, Nicholson vs. Gooch, 5 El. & Bl. 999. Also Ch. II. § VIII. for American decisions.

Chapter X.

ANALYSIS OF TRANSACTION BETWEEN BROKER AND CLIENT UPON PURCHASE OR SALE OF STOCKS ON LONDON STOCK EXCHANGE.

I. *Definitions.*
II. *Trading "for Money."*
III. *Trading "for the Account."*
IV. *Relation of Broker to Client.*
 (a.) *Ownership and Disposition of Securities when Purchased.*
 (b.) *Summarily Closing Transaction.*
 (c.) *Other Incidents of Relation.*
V. *Relation between Client and Jobber.*
 (a.) *General Liability of Jobber to Client.*
 (b.) *Special Contract between Jobber and Client Guaranteeing Registration.*
 (c.) *Liability of Client to Jobber.*
VI. *Relation of Client to Undisclosed and Intermediate Purchasers.*
VII. *Relation between Selling Client, or Vendor, and Ultimate Purchaser; Transferror and Transferee.*

Analysis of Transaction Between Broker and Client Upon Purchase or Sale of Stocks on London Stock Exchange.

We propose now to analyze an ordinary transaction in stocks, as carried on through the London Stock Exchange.

There are Stock-brokers who are not members of the Exchange,[1] but it is not of that class that we here mean to

[1] Rep. of London Stock Exchange Com. 1878.

speak, except to remark incidentally that a sale or purchase of securities through a Stock-broker, effected and consummated outside of the Exchange, would ordinarily be in nowise different in its legal aspect from a sale or purchase of any other kind of property through an agent or Broker.

As we have already seen, operations in the Exchange are conducted through two classes of its members—viz., "Brokers," and "Dealers" or "Jobbers."

Brokers are those members who buy and sell securities for the public for a compensation called a commission.

Dealers or Jobbers are those who deal, make terms, or speculate in the "House" for their own account.

But these characters of Brokers and Jobbers are not invariable and uniform. The members of the Exchange may change them at pleasure, and a Broker may become a Jobber, and *vice versa;* but it seems that they cannot act in a double capacity in the same transaction.[1]

I. Definitions.

In the outset, it will be well to define some phrases that are peculiarly applicable to the dealings on the London Exchange, referring the reader for others to another part of the work,[2] where those terms are defined which are alike applicable to England and the United States. The terms "bull," "bear," "put," "call," and "options" are used as substantially synonymous in both countries.[3]

A "lame duck" is one who cannot meet his engagements. Frequently an arrangement is made to continue shares, i. e., postpone delivery or payment until the next settling-day,

[1] Rule 43, London Stock Exchange.

[2] P. 200.

[3] See p. 200. A "straddle" is known as a double option" on the London Stock Exchange.

which is performed by the payment of a premium called, in the case of a seller, "backwardation;" in that of a buyer, "contango." The terms "contango" and "backwardation" have been fully explained in several adjudications, as well as before the royal commission to which allusion has already been made.

These latter terms grow out of an indisposition on the part of persons entering into transactions on the Exchange to close the same on the account-day for which they are made. The market may be unfavorable, or some other cause may arise rendering it desirable to carry the operation over to the next account-days, in which event the transactions are continued by the operation of "contango" or "backwardation," as the case may be. The manner in which this is done is given in detail in the notes.[1]

[1] The following extract is taken from an excellent practical treatise on the law and customs of the London Stock Exchange, by Melsheimer and Laurence, London, 1879, p. 10: "If, however, the market should tend unfavorably, or if for any other reason it should be found desirable, an arrangement may be made to postpone the completion of the contract until the following settling-day. This is called 'continuation' or 'carrying over,' and is practically effected, we will suppose, by the bull or speculative buyer as follows: The vendor of the stock (in consideration of a payment made to him by the buyer) enters into two contracts with the buyer—one a contract for the purchase of the same amount of stock as he has contracted to sell (such contract to be completed on the settling-day, so as to cancel the subsisting contract), and the other a fresh contract for the sale of the same amount of stock, to be completed on the subsequent settling-day. The result is, that the vendor and purchaser stand in precisely the same position as if there had been no previous contract (except as regards payment of the consideration), because the difference between the original contract price and the price at which the carrying-over is effected must be paid at once—that is to say, on the settling-day. The nominal price of the security at which the carrying-over is effected would obviously be quite immaterial to the parties, since the two contracts balance one another, were it not that this difference is payable immediately. Being payable immediately, more bargaining would become nec-

But, practically, the terms "backwardation" and "contango" mean that a new operation is begun each settling-day,

essary to fix the price for the new contracts; but this is obviated by the publication of a list of 'making-up prices,' which are, in round figures, the approximate values of all the recognized securities on that day, as settled by the clerks of the house in the various markets, and are usually based upon the average price of the first two or three hours of the day. In case of any dispute as to the making-up prices, or of any omission in fixing them, the clerk acts upon the decision of two members of the committee. All continuations must be effected at these prices, or, where no such prices have been fixed, at the then existing market price.

"The consideration thus paid by the buyer, for which the vendor agrees to postpone the delivery of the stock he has sold to a future specified date, is called a 'contango;' on the other hand, a 'backwardation' is the premium paid by a seller of stock for the privilege of postponing his delivery of such stock from and to a specified date.

"Inasmuch as the vendor and purchaser stand in the same position after the continuation as if there had been no previous contract, the continuation may equally be effected between persons other than the parties to the previous contract, and this is frequently the case. Let us suppose that a 'bull account' exists in the particular stock with which we have to deal—that is, that the amount of stock bought for the settlement is greater than the buyers are prepared to take up (we may here premise that every bargain in the stock must be and is settled on the account-day); a person who has bought stock for which he is unable or unwilling to pay must then find some one who for a consideration, is willing to stand in his place by taking up such stock at the making-up price, and holding it for a specified time, charging a rate of interest for the money employed, and holding the stock as security; the real buyer engaging, at the end of that time, to take possession of the stock by repayment of the money.

"The continuation may, of course, be effected outside the Stock Exchange; but, for its more easy explanation, we will suppose that a purchaser has given his Broker instructions to continue the stock for which he is liable to pay, and that the Broker carries out the transaction with a member of the House. This carrying-over is, as we have seen, not necessarily effected with the dealer from whom the original purchase was made, though this is very generally the case; but the Broker finds some dealer in this stock who has money to employ, or who is out of the stock, and agrees with him for the accommodation at the market rate. The Broker then renders a contract to his Client, showing the sale of his stock at the making-up price for the current account, and its repurchase for the

because the loss is settled and paid by the Client on each of those periods.[1]

next account at the same price, but with an addition representing the value of the money practically borrowed by his Client, together with the monetary consideration, if any, for the accommodation; and, in the case of registered securities, if the lender of the money is obliged to take them into his own name, this will include the cost of stamps and transfer-fees, from the payment of which the Client is *pro tempore* relieved. It is this difference between the price of sale for the current account and the actual buying price for the next account which is called a 'contango;' and this, as will be easily seen, will be regulated partly by the nature of the security, partly by the value of money, and partly by the demand existing for such accommodation; and will also be affected by the individual credit of the person seeking the accommodation.

"Conversely, let us suppose a 'bear account' to exist in the stock; here the amount of stock sold for the settlement is greater than the sellers are able to deliver, and the bear will have to find some one who, for a consideration, is willing to supply the stock which will enable him to complete his bargain. There are three classes of persons who will be able to render the bear this assistance; first, the speculative buyer, who is unable to complete his bargain, and is therefore anxious to continue; secondly, the buyer who, though able to complete his bargain, is willing, for a consideration, to defer such completion to a future day; and, thirdly, in the last resort, the genuine holder of stock, who is willing to accept a premium for the loan of his stock for a specified time. In these cases, the Broker, having similarly effected the continuation, renders a contract to his bear Client, showing the purchase of his stock at the making-up price for the current account, and its resale for the next account at a lower price. The difference between these prices is called 'backwardation,' and represents the premium paid by the bear for the loan of the stock, *less* the value of the money which is here supposed to be advanced by the bear; and here again this amount may include the cost of stamps and transfer-fees, which will be payable by the holder who lends his stock, on its retransfer to him.

"It will be observed, therefore, that it does not necessarily follow either that the buyer will have to pay contango, or the seller backwardation, when they are desirous of carrying over their stock; for if the former has bought for an account at which it is found that more of the stock has been sold than can be delivered, he will be in a position to postpone payment, and at the

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[1] See "Glossary" in Brodhurst's "Law of the Stock Exchange," p. 14.

II. Trading for "Money."

Sales or contracts on the Exchange are either made "for money" or "for the account."

A contract "for money" or a "cash bargain" is one for execution before noon of the ensuing day; the securities are delivered by the selling Broker by a transfer to a designated name, and the Jobber or Broker for the buyer thereupon pays for the same.

These contracts are not numerous, and are generally confined to consols.[1] In this transaction, in respect to both the selling and purchasing Brokers, the relation they bear to their Clients is that of pure agents. And the agent is entitled to full indemnity for any act which he does in the business of his Client, provided there is no fraud or neglect on his part. For instance, if the former order the Broker to sell securities, which he does, and the Client neglects or refuses to furnish the same for delivery, and by reason of such failure the Broker is compelled to make good the difference, in this case the Client is bound to indemnify him.[2] So where a Broker, being instructed to buy certain shares, bought letters of allotment, and it was in evidence that these passed on the Stock Exchange as shares, it was held that the jury might find the order to have been fulfilled,[3]

same time to receive backwardation for the temporary loan of the stock which he has bought; and, conversely, in the case of a bull account, the latter may receive contango for postponing the delivery of stock sold."

Consult also, in this connection, Sheppard vs. Murphy, 16 W. R. 948; see also evidence attached to Report of London Stock Exchange Commission, where full explanation of the operations of "contango" and "backwardation" are given.

[1] See Rep. of Stock Exchange Com.

[2] Child vs. Morley, 8 T. R. 610; Lightfoot vs. Creed, 8 Taunt. 268; Pollock vs. Stables, 12 Q. B. 765; Smith vs. Reynolds, 66 L. T. 808.

[3] Mitchell vs. Newhall, 15 M. & W. 308.

and that the Broker had fully performed his duty by buying what passed on the Exchange as shares.

Again, if the Broker advances from his own funds all or any portion of the money to pay for the securities, he has a lien upon them to that extent, and the relation of pledgor and pledgee is added to the previous one of Broker and Client.[1] In a word, the relation of principal and agent being once established, it follows that the Broker is clothed with all of the attributes of that character ; and as all of the decisions in which contests have arisen between Stockbrokers and their Clients, both in England and in the United States, have been already set forth, it is only necessary in this connection to direct a reference to that part of the work where they are collected.[2]

III. Trading "for the Account."

But by far the most numerous transactions on the London Stock Exchange are those "for the account," and it is in such tradings that the Broker seems to lose the attributes of an agent and to assume the garb of a principal.

The following history of an ordinary stock transaction "for the account" is substantially taken from a leading case, and it illustrates with great detail the whole course of the business.[3]

When a Broker is instructed by his Client to sell shares on his own account, he goes on the Stock Exchange and deals with either a Jobber or another Broker, as the case may be. In case a Broker deals with a Jobber, he asks the Jobber for the price ("to make a price") of a particular class of shares,

[1] Brookman vs. Rothschild, 3 Sim. 153; aff'd 5 Bli. (n. s.) 165.

[2] Ch. III.

[3] Maxted vs. Paine, L. R. 4 Ex. 205.

without saying whether he (the Broker) desires to sell or buy. The Jobber then names two prices to the Broker—the one that at which he will buy, the other that at which he will sell.

If the Broker be willing to sell at the price named, he declares to sell, and accepts the offer of the Jobber to buy at that price.[1] Thereupon the bargain is concluded between them.[2]

The bargain is made for a certain specified day, which is known on the Stock Exchange as the "account-day;" and on the day preceding the account-day (which latter day is known as the "name-day") the Jobber is bound to pass to the Broker the name of a person or persons (as the case may be) as the ultimate purchaser or respective purchasers of the said shares; but the Jobber may in lieu thereof give his own name to the Broker as the ultimate purchaser of the shares; or, in the event of his having had no dealing with the shares subsequent to the original bargain, then as the purchaser of the shares, in which latter case he is bound himself to take the same.

[1] The Broker is not bound to disclose his principal (Child vs. Morlay, 8 T. R. 610; Magee vs. Atkinson, 2 M. & W. 440).

[2] A bought or sold note is then given to the principal, on which the name of the Jobber is occasionally inserted, though this is by no means a universal custom. The names of the Jobbers purchasing were inserted in the notice contained in the case of Torrington vs. Lowe, L. R. 4 C. P. 26.

The bought and sold notes are in the following form, *mutatis mutandis:*

Bought for William Murphy, Esq.,
100 Overend Gurney shares

at $1\frac{3}{8}$ discount.	£1387 10*s*. 0*d*.
(£15 paid) stamps. . . .	7 2*s*. 6*d*.
Brokerage.	12 10*s*. 0*d*.
	£1407 2*s*. 6*d*.

For 27th April.
No. 7 Finch Lane, E. C., 21st April, 1866.
For Lowndes, Surgey, & Wooley, Brokers.
(Signed) J. S. BYWATER.

(Sheppard vs. Murphy, 16 W. R. 948.) The sold note is as follows:

2 Royal Exchange Building. May 24, 1866.
Sold by order and for account of E. P. Maxted, Esq., 100 Overend, Gurney, & Co. shares at 17 discount. For the 30th inst.
SANDEMAN, DOBREE, & Co.

This name is passed upon a document called a "ticket," which is in the following form, *mutatis mutandis:*

£15 paid, 1 13-16 discount..................	£131 17*s.* 6*d.*
Stamp....................................	0 15*s.* 0*d.*
	£132 12*s.* 6*d.*

Ten shares Overend, Gurney, & Co.

Francis Peppercorn, of West Street, Hertford.

30 May, 1868.

Watson, Cowell, & Co. pay.

The dealings in the shares after the concluding of the first bargain may have been either many or few, but in all cases the ticket is endorsed, either in pencil or ink, with the names of the members of the Stock Exchange, whether acting as principals or Brokers, through whose hands the ticket has passed. In addition to his obligation to give the name or names aforesaid, the Jobber is also liable to the Broker for the price of the shares as agreed upon; and the Broker can either apply for the price to the Jobbers, or can apply to the Broker of the ultimate purchaser for the amount of the purchase-money which he is to pay for the shares, looking to the Jobber for the difference, if any. But the usual practice is to make application in the first instance to the Broker of the ultimate purchaser whose name appears on the ticket as the person to pay, as shown on the above form of ticket.[1]

(Maxted vs. Paine [2d action], L. R. 4 Ex. 203, 210.) But usually no document passes between the Broker and Jobber; each one, however, makes a memorandum of the transaction in his own book.

[1] The payment of the stock is made by the paying Broker in notes of the Bank of England or coin, if notice is given to him to that effect before eleven o'clock on the day of settlement; in the absence of such notice, a member is bound to accept the crossed check of another member (Mocatta vs. Bell, 27 L. J. Ch. 237).

In the event of the Jobber failing to give a name by two-thirty o'clock on the name-day, the Broker has the right, up to three o'clock, to sell out the shares as against him by auction on the Stock Exchange through the Official Broker.[1] The Jobber then becomes liable to the Broker for the difference (if any) between the price at which the shares are so sold and the price originally bargained for between the Broker and Jobber.[2] At any time within ten days[3] the Broker may object to any name or names given by the Jobber; and in the event of the Jobber and Broker failing to agree, the Broker may appeal to the committee of the Stock Exchange, who on such appeal have the power to require the Jobber to give to the Broker a better name, in case they consider the Broker to be thereunto entitled.[4]

So if the Broker wishes to secure the registration of the shares and the exoneration of his Client from all future liablity in respect of the same, he makes a special bargain with the Jobber in express terms to that effect; but in that case the price offered by the Jobber is often considerably below the price which he would otherwise have offered. But this guaranteeing of registration is of rare occurrence.[5]

It also appears in accordance with the usages of the Stock Exchange that the Broker may, in executing the order of a Client, enter into a contract for the specific amount of stock ordered to be bought or sold, or may include such order with others he may have received in a

[1] Rule 71.

[2] Rules 103, 94.

[3] By Rule 105, registered shares or stock, if not delivered within ten days, may be bought in against the seller.

[4] Maxted vs. Paine, L. R. 4 Ex. 205.

[5] Maxted vs. Paine, id.; Cruse vs. Paine, L. R. 4 Ch. App. 441; Coles vs. Bristowe, id. 3.

contract for the entire quantity, or in quantities at his convenience.

Neither in Stock Exchange contracts is there any real appropriation to any particular Client of any particular stock in any transaction entered into with the Jobber. Each transaction only forms an item in an account with that Jobber, or, more correctly, with the house generally—that is to say, specific delivery or acceptance of that amount of stock is not necessarily made; but the transaction is liable to be balanced at any time during that account by a counter-transaction by the same Broker on behalf of the same or any Client, or even on his own behalf, so that the balance only of all purchases and sales of that particular stock made by the Broker in the house generally is to be finally accepted or delivered by him, and this through the instrumentality of the clearing-house and the system of tickets.

On the usual settling-days, the members of the house balance between themselves the purchases and sales so made, and make or receive deliveries to or from their principals; or if their principals refuse to accept or deliver, then sell or buy against them, as the case may be, and charge them with the loss, if any; or if delivery is not required on either side, then any difference which may result from a rise or fall in the market is paid by the one to the other.[1]

[1] "An important extension of the clearing principle was effected by the establishment in 1874 of the London Stock Exchange Clearing-house, which undertakes to clear, not sums of money, but quantities of stock. As Stock-brokers settle their transactions only once a fortnight, or in consols once a month, it naturally arises that in the intervals the same Broker will usually have bought the same kind of stock for one Client and sold it for another. The very same stock may have passed through several different hands, and the same Brokers may have had reciprocal dealings with each other. Instead, then, of actually making transfers of stock for each transaction and paying by

The following extract from the report of the London Stock Exchange Commission in 1878, which is based upon the testimony of many experienced Brokers, is confirmatory of the transaction as described in the cases before referred to: "As soon as the contract is made, it is usual, but not universal, for each party to make a note of it in his own note-book; but no written contract passes between them." The Broker who has acted for his Client in making such a contract sends a written note of it to the Client; but as a rule he

checks, which greatly swell the business of the Lombard Street Clearing-house on settling-days, a plan has been arranged according to which each member of the clearing-house prepares a statement of the net amount of each stock which he has to receive from or deliver to each other member. The manager of the house, after verifying these accounts, which should balance in the aggregate, directs the debtor members to transfer quantities of stock to the creditor members in such a way as to close all the transactions. It will be noticed that for pretty obvious reasons the transfers are made in the Stock Exchange directly from Broker to Broker, and not to the manager of the clearing-house, as in banking transactions. A separate clearing has, of course, to be made in each kind of stock. It is found that the quantities actually transferred do not exceed 10 per cent. of the whole transactions cleared, and the checks drawn are diminished on settling-days as much as ten millions sterling" (Jevons's Money and the Mechanism of Exchange, pp. 281, 282). See also, as to method of transacting business on the London Stock Exchange, an article on The Legal Relations between a Stock-broker and his Customer in the 5 *Law Mag. and Rev.* 401 (Aug. 1880, 4th series), and the following cases: Lacey vs. Hill (Scrimgeour's Claim), L. R. 8 Ch. App. 922; Maxted vs. Paine, L. R. 4 Ex. 203, and 6 id. 132; Bowring vs. Shepherd, L. R. 6 Q. B. 309; Grissell vs. Bristowe, L. R. 4 C. P. 36, and 3 id. 112; Coles vs. Bristowe, L. R. 4 Ch. App. 3, and L. R. 6 Eq. 149; Sheppard vs. Murphy, 16 W. R. 948; Rennie vs. Morris, L. R. 13 Eq. 203; overruled by Merry vs. Nickalls, L. R. 7 Ch. App. 733, and L. R. 7 H. L. Cas. 530; Nicholson vs. Gooch, 5 El. & B. 999; also Lindley on Company Law (6th ed.), pp. 688–709 (which contains a valuable summary of the law upon the subject of sales on the Stock Exchange); Bishop vs. Balkis Co., 25 Q. B. D. 512; Ellis vs. Pond (1898), 1 Q. B. 426; Cavanagh's Law of Money Securities, 513 et seq.; Brodhurst's Law of the Stock Exchange, pp. 51–73.

does not mention the name of the dealer with whom he has dealt.

There are two fixed days, called account-days, in every month, for stocks other than government stocks, these latter being settled only once a month.

When the account-day arrives, the securities are delivered and paid for, unless some fresh bargain is made by which the execution of the contract is annulled or practically deferred until the next account-day.

If the bargain, however, is completed on the original account-day, it is not necessarily carried out between the original parties to it; for the seller may have bought similar stock from some third person, and he in like manner from another, and so on through several hands, so that the whole series of bargains is settled by the ultimate seller delivering to the ultimate buyer.

If, when the account-day arrives, the seller is not able to deliver the stock which he has sold, the buyer is entitled after a certain lapse of time, to "buy the stock in" against him. This proceeding consists in an official Broker announcing in the market that he wants the given quantity of stock, together with the purpose for which he wants it. The original seller has to pay the difference in price. Similar practice prevails with regard to "selling out" in the case of non-acceptance by the buyer.

All disputes or charges of unfairness between Brokers are referred at once to arbitration, but if the arbitrators cannot agree, or they cannot be found, the Committee for General Purposes will dispose of the matters in controversy with the utmost promptitude.[1]

[1] Rule 65.

The Dealers constitute a class which is a distinctive feature of the London Stock Exchange. They are ready, at a moment's notice, and, in cases where required, even to pay for at a moment's notice, almost any quantity of a current security, with the knowledge that they can perhaps within the same day, or, at any rate, before the next account-day, sell the same again at a margin of profit which is involved in the difference between the two prices that they named, and they act without hesitation upon this facility.

The securities dealt in on the Exchange are distinguished into "current" and "non-current." It is only in the "current" securities that the dealer can "make a price;" in the other class the sale is effected by bargains between the members, generally conducted through a middleman also a member.

IV. Relation of Broker to Client.

In the above transaction, the identity of the Client seems to be entirely lost sight of, and the settlement of the contract by the payment of differences, by which the delivery of stocks is avoided, renders the transaction radically and wholly different from the ordinary case of a Broker acting in the purchase or sale of merchandise.

But, notwithstanding this dissimilarity, the rule in England is, as in the United States, to hold the Stock-broker to all the responsibilities, and to invest him, on the other hand, with all of the privileges, of an agent.[1]

For it appears in all of these transactions that the fundamental elements of agency exist—viz., that the Broker makes the contract or enters into the business for his Client, and not for his own account; and the fact that his own

[1] Thacker vs. Hardy, L. R. 4 Q. B. Div. 685.

money or credit is used in the business, and his principal's name concealed or disregarded, is of no importance. These, and all of the other incidents of the trading, exist mainly by virtue of the rules of the Stock Exchange, and are mere ramifications of the business, and do not affect the ultimate relation which the parties bear to each other.[1]

But the position has been taken extra-judicially in England,[2] that the Stock-broker was a principal, and that he should be regarded as agreeing himself with the Client as principal, from the inception to the close of the transaction, it being argued that the transactions would then assume their real shapes—viz., as mere contracts for differences, and consequently void as gaming contracts.

But, in the absence of some express agreement between the Broker and Client (and in stock transactions on the London Exchange such an agreement has never been shown to exist), this view cannot be maintained, and is very strongly repudiated in the interesting case of Robinson vs. Mollett,[3] which holds that a Broker cannot be a principal in a transaction where he is employed to act as Broker. The facts in that case were these: A merchant gave two certain orders to the defendants, tallow-brokers, to buy tallow; the first of the orders was "to buy for him 50 tons of tallow, June delivery, at 46*s.* 6*d.*;" the second was, "Buy 200 tons of tallow for June, best terms." Upon the receipt of these orders, the Brokers immediately sent notes, saying, "We have this day bought for your account," and signed them with the addition of the words "M. B. & U.,

[1] Mortimer vs. McCallan, 6 M. & W. 58; 4 Jur. 172; Lacey vs. Hill, L. R. 8 Ch. App. 921.

[2] 5 *Law Mag. and Rev.* (Aug. 1880) 401, 4th series.

[3] L. R. 7 H. L. Eng. & I. App. Cas. 802.

sworn Brokers." The price of tallow fell in the market between the dates of the orders and the time for the June delivery.

On the trial, it appeared that the Brokers did not buy, and had not, at the time of sending the notes to their principal, bought, the specified quantities from any person; but, both before and after the order, had bought from various persons, in their own name, larger quantities of tallow, proposing to allot to their principal the quantities he had desired to be bought. The principal refusing to accept the tallow which the Brokers tendered, the latter brought suit to recover the difference. The Brokers had judgment in the Common Pleas, which judgment stood affirmed, through an equal division of opinion among the judges in the Exchequer chamber.

On the trial they rested their right to recover upon a custom which they proved to exist in London, for tallow-Brokers, where they receive and order from a principal for the purchase of tallow, to make a contract or contracts in their own names without disclosing their principals, and also to make such contracts either for the specific quantity of tallow so ordered, or to include such order with others they may have received in a contract for the entire quantity, or in any quantities at their convenience, at the same time exchanging bought and sold notes with the selling Brokers, as above described in the present case, and passing to their principals a bought note for the specific quantity ordered by them as before described in this case; and that when a Broker so purchases in his own name, he is personally bound by the contract; and that on the usual settling-days the Brokers balance between themselves the purchases and sales so made, and make or receive deliveries to or from their principals,

as the case may be; or, if the latter refuse to accept or deliver them, to sell or buy against them, as the case may be, and charge them with the loss, if any; or if delivery is not required on either side, then any difference which may arise from a rise or fall in the market is paid by the one to the other. This custom does not exist at Liverpool, and was unknown to the defendant. But the whole of the transactions and dealings in the present case were carried out in accordance with this custom.

The House of Lords reversed the judgment of the court below, and opinions were delivered by several judges, the novelty and importance of the question justifying extracts therefrom.

Mr. Justice Mellor said, adopting the language of the court below: "It appears to me to amount to a custom for a Broker in the tallow-trade in London to do something entirely inconsistent with the character of a Broker—viz., to convert himself from an agent to buy for his employer into a principal to sell to him. . . . It is an axiom of the law of principal and agent that a Broker employed to sell cannot himself become the buyer; nor can a Broker employed to buy become himself the seller without distinct notice to the principal, so that the latter may object if he think proper. A different rule would give the Broker an interest against his duty. . . . Although a custom of trade may control the mode of performance of a contract, it cannot change its intrinsic nature."

Mr. Justice Brett, in the course of his opinion, said that a custom, so long as it did not infringe some fundamental principle of right or wrong, may prevail; but if it is found to be fundamentally unjust to the other side, if sought to be enforced against a person in fact ignorant, it is unreasonable,

contrary to law, and void. "The relation between the plaintiffs and defendant, established by these orders of the defendant (in error) and their acceptance by the plaintiffs (in error), was that of principal and agent—a merchant principal and a Broker agent. . . .And whatever view may be taken of the effect of the custom if allowed, it must go to the extent either of making a contract of purchase and sale between the plaintiffs and defendant, or of absolving the plaintiffs from an obligation to make a contract for the defendant—that is to say, to make a contract for the purchase of tallow to which he should be a party as purchaser, and some person or firm bound by the plaintiffs should be a party seller." In conclusion, he said: "I fail to see any advantage to the merchants who employ the Brokers adequate to the loss of a carefully selected principal. It is a custom, therefore, invented by the body of Brokers for their own exclusive advantage."

Mr Baron Cleasby, another of the prevailing judges, said: "The vice of the usage set up in the present case cannot be appreciated by examining its parts separately. It must be looked at as a whole, and its vice consists, I apprehend, in this: that the Broker is to make the contract of purchase for another, whose interest as buyer it is to have the advantage of every turn of the market; but if the Broker may eventually have to provide the goods as principal, then it becomes his interest as seller that the price which he is to receive should have been as much in favor of the seller as the state of the market would admit. Thus the two positions are opposed."

The reasoning of this case cannot but fail to meet the approval of the profession; and the adoption of any other rule would leave in the hand of the Broker untold means of fraud upon a person who was paying him a commission

for the exercise of his disinterested skill, diligence, and zeal.[1]

The case of Merry vs. Nickalls[2] should also be referred to in this connection, where it was held that upon a sale of shares on the Stock Exchange the ultimate contract is not between the vendor's Broker and the purchaser's Broker, but between the vendor and the purchaser named on the ticket who are brought together by the means of the Jobber.

Another class of cases may also be profitably referred to as confirming the view that, in all stock transactions where a Broker is acting under a commission, the courts hold the relation to be that of agency.

The cases we allude to are those in which the question arises as to the respective liability of persons buying or selling through the Stock Exchange for "calls;" for when the ticket containing the name of the ultimate purchaser issued by his Brokers is delivered to the vendor (by his Broker), and he has executed a transfer of his shares, and that transfer has been accepted by the purchaser, and he has paid the price, the purchaser is bound to indemnify the vendor against all liability in respect of the shares,[3] although the purchaser has not executed the transfer,[4] and where the registration of the transfer cannot take place by reason of the stoppage of the company[5]—it being held that a privity exists between the vendor and the ultimate purchaser the moment the

[1] See also, in this connection, Story on Ag. § 210; also Thacker vs. Hardy, L. R. 4 Q. B. Div. 685; Ex parte Rogers, 15 Ch. Div. 207; May vs. Angeli, 13 T. L. R. 568.

[2] L. R. 7 Ch. App. 733; aff'd L. R. H. L. 7 Eng. & I. App. Cas. 530.

[3] Paine vs. Hutchinson, L. R. 3 Eq. 257, and L. R. 3 Ch. App. 388; Hodgkinson vs. Kelly, L. R. 6 Eq. 496; Hawkins vs. Maltby, 6 id. 505, and L. R. 4 Ch. App. 200; Shepherd vs. Gillespie, L. R. 5 Eq. 293; Sheppard vs. Murphy, I. R. 2 Eq. 544, and 16 W. R. 948; Wynne vs. Price, 3 De G. & Sm. 310.

[4] Wynne vs. Price, supra.

[5] Evans vs. Wood, L. R. 5 Eq. 9;

ticket containing the purchaser's name has been handed by his authority to the vendor, and he has accepted the name and indicated the acceptance to the purchaser.[1] It has also been held that undisclosed principals are liable—viz., that if the first purchaser is a Broker buying for a principal, the liabilities of such principal are the same as the liabilities of a purchasing Broker or Jobber.[2]

To sum up this proposition, we find: First, that the Broker is ordered to buy or sell by his Client on the Stock Exchange. The Broker does not offer, or profess to offer, his own securities for sale. Second, the Broker goes into the Stock Exchange, and there makes the transaction with a Jobber or fellow-Broker. Third, the loss or profit of the transaction is the Client's. Fourth, the Broker acts for a commission. Fifth, he renders a statement of the business in his capacity as Broker to his Client.

So far as the Broker's relation to his Client is concerned, there would seem to be no difference between a trading "for money" or "for the account;" and altogether there appears to be nothing in a speculative transaction in securities which authorizes the position that the Broker is a principal.[3]

(a.) Ownership and Disposition of Securities when Purchased.

This brings us to another phase in the transaction—viz., that, although the Client orders particular securities to be

Hodgkinson vs. Kelly, 6 id. 496; Holmes vs. Symons, 13 id. 66; comp. Bermingham vs. Sheridan, 33 Beav. 660, which, however, cannot be relied on (as to which see L. R. 3 Ch. App. 393).

[1] See cases heretofore cited: Bowring vs. Shepherd, L. R. 6 Q. B. 309–328; Davis vs. Haycock, L. R. 4 Exch. 373, 384, 386; Maxted vs. Paine, L. R. 6 Ex. 132, 166.

[2] See Lord Blackburn's opinion in Maxted vs. Paine, supra.

[3] For further consideration of this subject, see chap. on "Stock-jobbing" under title of "Wagers."

bought for him upon the Exchange, and a contract is accordingly made for them by his Broker, there is no immediate delivery, and in fact they do not become the property of the Client until the transaction is closed by the delivery of the securities to the Broker.

This point was involved in Lacey vs. Hill,[1] where a Broker summarily closed an account of his Client before the settling-day, and sought to recover the loss made by so doing from the latter's estate.

In that case it was stated upon this point that "when a Broker, on the instructions of his principal, agrees to buy, or actually buys, a certain amount of stock or shares, the stock or shares so bought *are in nowise identified as the stock or shares so ordered to be purchased, but remain, by the practice of the Stock Exchange, the property of the Brokers and at their disposition*, not at that of their principal. When the transaction as between the Brokers and the principal is completed by payment by the latter and by delivery of the stock, the particular stock becomes the principal's property, and is treated and considered as the subject of the bargain, and the Brokers, according to the practice, are thereupon bound to hold the particular stock or shares at the disposal of the principal.[2]

When, however, the stock has been paid for by the Client, but remains in the custody of the Broker; or where the Broker advances the purchase-money, or a portion of the same, as was done in Brookman vs. Rothschild,[3] it would seem that all of the law applicable to the ownership of the property

[1] Scrimgeour's Claim, L. R. 8 Ch. App. 921, 922.

[2] See also Lacey vs. Hill (Crowley's Claim), L. R. 18 Eq. 182.

[3] 3 Sim. 153, aff'd in H. L. 5 Bli. 165.

attaches. The Broker can make no disposition of it without the consent of the owner ; he is bound to retain the actual stock or shares transferred, and not to transfer other stocks or shares bought at a lower price, and thus make a profit out of them.[1] And although Brokers are within the list of traders in the Bankruptcy Act of 1861, and the first schedule to the act of 1869,[2] yet in the event of such bankruptcy a sum of stock or shares which the Broker has bought for his principal and taken into his own name are not in his order and disposition so as to pass to his assignees or trustee.[3] The court held in the last-cited case that the property of a principal intrusted by him to his factor or Broker for any special purpose belongs to the principal, notwithstanding any change which that property may have undergone in point of form, so long as such property is capable of being identified and distinguished from all other property ; and that all property thus circumstanced is equally recoverable from the assignees of the factor, in the event of his becoming a bankrupt, as it was from the factor himself before his bankruptcy.

[1] This was so held in the case of a mortgage of stocks (Langton vs. Waite, L. R. 6 Eq. 165). But, after the mortgagor has discovered the fact, he may deprive himself of any remedy by dealing with the property so retransferred to him (id. L. R. 4 Ch. App. 402). As to the custom in the United States of Brokers using securities held for account of their Clients, see Ch. III. p. 250 et seq.

[2] Taylor vs. Plumer, 3 Mau. & S. 562.

[3] Id. On the other hand debentures of a stock company, transferred in blank to a Stock-broker to secure a debt, are not choses in action within the meaning of the Bankruptcy Act, 1869, and the Broker can hold them as against the trustee of the pledgor. In re Pryce, 4 Ch. Div. 685. It was held in Colonial Bank vs. Whinney, 11 A. C. 426, that shares purchased by a Stock-broker for his firm and pledged to secure a loan to the firm were "things in action" (Bankruptcy Act, 1883, § 44, subsec. 3), and that the pledgee had a valid charge thereon for the amount of the loan. See also In re Jenkinson, 15 Q. B. D. 441.

And the court further laid down the general principle that if the property, in its original state and form, was covered with a trust in favor of the Client, no change of that state and form can divest it of such trust, or give the factor or agent, or those who represent him in right, any other more valid claim in respect to it than they respectively had before such change. An abuse of trust can confer no rights on the party abusing it, nor on those who claim in privity with him. The case of Taylor vs. Plumer was directly endorsed in the case of Ex parte Cooke.[1] In that case, C., a trustee, employed a Stock-broker, who had notice of the trust, to sell out consols and invest the proceeds in railway stock. The Broker sold the consols for cash, bought railway stock to the same amount for the settling-day, and received the price of the consols in a check, which he paid into his account at his bankers. He stopped payment before the settling-day, and went into liquidation. The trustee claimed so much of the Broker's balance at his bankers as was attributable to the price of the consols. This was refused by the registrar, on the ground that the transaction constituted the relation of debtor and creditor between C. and the Stock-broker, and not that of trustee and cestui que trust.

But this decision was reversed on appeal, the appellate court holding that the Stock-broker had notice that the money belonged to a trust fund, and that the money could be traced.

And the court also expressly said that, even if there had been no notice, the relation of the Stock-broker and C. was of a fiduciary character, so as to make the case undistinguishable from Taylor vs. Plumer.[2]

[1] In re Strachan, L. R. 4 Ch. Div. 123.

[2] See further on the subject of commingling proceeds, and right of

(b.) Summarily Closing Transaction.

The case of Lacey vs. Hill[1] established another proposition which should be touched upon—viz., that when it appears to the Brokers that their Client is, from insolvency, bankruptcy, or death, unable to carry out his contracts, the Brokers may summarily close the account before the next settling-day has arrived, taking their chances, nevertheless, that the price of the securities will be as unfavorable to their Client on the settling-day as it was on the day they closed the transaction.

In that case Messrs. S. were Brokers on the London Stock Exchange, and had been employed as such by H., a banker at Norwich. In the year 1870 they had bought for him £204,000 Spanish stock and £150,000 Italian stock. The Brokers paid the purchase-money, having borrowed money for that purpose from their bankers on the security of the stock. In their accounts they treated it as a loan to H. They were in the habit of sending H. fortnightly accounts after each settling-day. On the first settling-day in June, 1870, the stock had risen in price, and his accounts showed a balance in his favor of £8794. The Brokers paid £6700 to him, and, under verbal instructions from him, carried over or continued the stocks to the next settling-day. On the next settling-day, the 28th of June, these stocks had fallen, and there was on this account a balance of £292 against H. The stocks were again carried over or continued for the next settling-day, the 4th of July, on which day the stocks had fallen heavily, and the balance against H. was £15,988. He had on that day directed them to sell half the stock, which they did, and credited him with the price. The amount was sent

cestui que trust or principal to follow trust property, elaborate note to Hooley vs. Gieve, 9 Ab. (N. Y). New Cas. 8, at 41.

[1] Scrimgeour's Claim, supra.

to him on the 14th. On the following day he shot himself, and died on the 19th of July. On the 16th H.'s bank at Norwich stopped payment. Messrs. S. being, as they stated, apprehensive of a further fall in the market, sold on the 16th, 18th, and 19th of July the remainder of the stock. The result of these transactions was that the balance against H. in the books of Messrs. S. was (after deducting their commission on the sales) £26,346. .

A suit was instituted by creditors for the administration of the estate of H., and Messrs. S. carried in a claim against the estate for this sum. In support of their claim, they produced evidence from members of the Stock Exchange that, with very few exceptions, all bargains and transactions on the Stock Exchange are made for certain periodical days called "settling-days;" that when it becomes notorious that a principal is, by reason of bankruptcy or death, unable to receive and pay for, or to deliver, the stock or shares which he has ordered to be purchased or sold, and that no one is authorized to deal with the account, or able and willing to take the responsibility thereof—then and in such case it is usual for the Broker, who is responsible to the members of the Stock Exchange for the transactions entered into for his principal, to proceed at the earliest practicable period to close the account of such principal by selling, on the best terms, amounts of all stocks or shares equivalent to those he may have contracted to deliver.

The court, in delivering the opinion, said: "The rules of the Stock Exchange are very reasonable, and would apply. Those rules are that when a Broker, making a contract in his own name, has made for his principal a contract by way of speculation whether certain stocks will, during the next fortnight, rise or fall, and the principal dies or becomes a

bankrupt, or falls into such a state of insolvency that it is manifest the Brokers cannot depend on him to protect them against any loss that may occur, then the Broker may at once terminate the transaction, so as *to make the profit or loss*, whichever it is, depend upon the state of things on that day, and not to run the risk of any further fall in the market. That appears to me a most reasonable rule." [1]

But it seems that the Brokers, before acting in this summary manner, should have some evidence of the insolvency or inability of their Client to perform his contract, and that they should be prepared, if the transaction be questioned, to furnish the same. It does not appear from Lacey vs. Hill what evidence of the inability of his Client to meet his engagements would be sufficient, but it would seem that each case must rest upon its own peculiar circumstances.

In the subsequent case, Crowley's Claim,[2] the Master of the Rolls, Sir G. Jessel, held that the meaning of insolvency, under the Stock Exchange rules, was the simple meaning of the word as between business men; and that where a bank "put up its shutters" and did not pay, such act constituted good evidence of that condition. It should also be borne in mind that the Brokers who act thus summarily are liable for the consequences of their own conduct; for, if a Client's account should be closed before the settling-day, the Brokers must take the risk of the subsequent fluctuations of the market; and stress was laid upon this point, in the case above referred to, in this language: "If it had resulted in any loss to him, possibly it would have been a very good set-off.

[1] See also, upon this point, Lacey vs. Hill (Crowley's Claim), L. R. 18 Eq. 182; Thacker vs. Hardy, L. R. 4 Q. B. Div. 685, 689.

[2] Lacey vs. Hill, L. R. 18 Eq. 182.

The executors would have said, 'We owed you money, but you closed the account earlier than you ought to have done, and the result is, you have exposed us to loss.'"[1] Sir G. Mellish, L. J., also said upon this point: "But the principal would have a counter-claim against him for damage, if any, which might have resulted from the fact of selling a fortnight earlier than he ought to have done. But if it turned out that the market kept continually falling during the fortnight, so that the sale was in fact a gain to the principal's estate, in that case there would be nothing to recover."

The effect of the rule thus indicated is quite unsatisfactory, for, while it permits the Broker to terminate summarily a transaction, under the circumstances mentioned, it at the same time holds him for such act, if the market should turn in favor of his Client at the account day. Thus the whole efficacy of the rule is destroyed. It may be said, however, that this question was not involved in the case, and that the above remarks are mere *dicta*.[2]

So also a Broker may, when he has been instructed by his Client to "carry over" to the next settlement, although he has not settled for differences on the pay-day of the current settlement, close the account, and recover any balance from his customer.[3] But the fact that a dealer reserves the right to close the account without notice, on the exhaustion

[1] Per Sir W. M. James, L. J., L. R. 8 Ch. App. 923.

[2] See also Pearson vs. Scott, L. R. 9 Ch. Div. 198; Melsheimer & Laurence's Law and Customs of the Stock Exchange, 47. And compare also the rule in the United States (where it is held that a Broker cannot close a speculative transaction in stocks without notice to his Client), Ch. III. p. 334.

[3] Murray vs. Hewitt, 2 T. L. R. 872; Lilly vs. Rankin, 56 L. J. Q. B. 248; Davis vs. Howard, 24 Q. B. D. 691; Druce vs. Levy, 7 T. L. R. 259.

of the margin, does not close the account "automatically" when the stock has fallen below the margin. If the stock again rises the Broker cannot close the account.[1] If the Broker improperly closes a continuation account, the Client's damages are measured by the price of the stock on the day when the account should have been closed under the contract, and not by the price on the day the Broker unlawfully closed it.[2] In that case the stock had risen after the sale, but afterwards fell, the price, however, on the settlement day, being greater than on the day of sale, but the court did not, owing to a compromise between the parties, decide whether the Client would have been entitled to the benefit of the highest price.

A Broker is not entitled to close a portion only of his Client's account.[3]

(c.) *Other Incidents of the Relation.*

Another important question has been raised,[4] as to the authority of a Stock-broker to continue the account to the next settling-day. The vice-chancellor in that case held that the Broker had *virtute officii* such authority; but, on appeal, the court did not put the decision upon that ground, preferring to rest it upon the fact that an order for the continuation had been given; and it seems that the Broker has no such authority.[5]

[1] Hogan vs. Shaw, 5 T. L. R. 613.

[2] Samuel vs. Rowe, 8 T. L. R. 488.

[3] Michael vs. Hart (1902), 1 K. B. 482.

[4] Sheppard vs. Murphy, Ir. Rep. 2 Eq. 544.

[5] Maxted vs. Paine, L. R. 4 Ex. 81. Nor is there any legal obligation, in the absence of agreement, on the Broker to carry over. Newton vs. Cribbes (1884), 11 Court Sess. Cas. (4th series) 554. Nor has a Stock-broker authority to fill in a deed executed by a vendor in blank (Taylor vs. Great Indian

The case of Duncan vs. Hill[1] should be here mentioned as illustrating a dealing between Stock-brokers and their Clients. In that case the plaintiffs, Brokers on the London Stock Exchange, bought for their Client, defendant (who was not a member of the Exchange), certain shares for the account of the 15th of July; and on that day, by his instructions, carried them over to the account of the 29th of July, and paid differences amounting to £1688. On the 18th of July the plaintiffs, being unable to meet their engagements, by reason of various persons for whom they had effected contracts (and, among others, the defendant) failing to make their due payments, were declared defaulters, and, according to the rules of the Exchange, all their transactions were closed at the prices current on that day. The result was to make the Brokers liable to pay a further sum for differences, upon the stocks and shares so carried over by them for the defendant, and they sought to recover this difference, together with the £1688, from their Client. As to the latter claim, there was no contest; but, in respect to the former, the court gave judgment for the Client, holding that, as the loss incurred by the Brokers arose from their own default by reason of their insolvency, brought on by want of means to meet their other primary obligations, and that there was no evidence that such insolvency was occasioned by reason of their having entered into the contracts for their Client, the latter was not liable. If, however, the Brokers' losses accrued solely by reason of the failure of their Clients to make payments, it would

Peninsular Co., 4 De G. & J. 559; Hawkins vs. Maltby, L. R. 3 Ch. App. 194). See, as to when a deed executed in blank, as to the name of a purchaser, is void, Hibblethwaite vs. McMorine, 6 M. & W. 200.

[1] Same vs. Beeson, L. R. 8 Ex. 242, rev'g L. R. 6 Exch. 255.

seem that a different question would arise, as appears by the case of Lacey vs. Hill,[1] where the court held that the Stock-broker could recover a full indemnity for the loss occasioned by the act of his Client; though it appeared that the Stock-brokers, after having become defaulters, had settled with their Stock Exchange creditors at the rate of 6*s.* 8*d.* on the pound. Upon this point the court said:

"Then, it is said the Brokers made default, and that they have not paid for the stock they purchased for Sir H.; but if he has had the stock sold for him, and is credited with the proceeds, what difference can it make to him whether the Brokers paid for it, or whether the persons who sold it have chosen to give them credit for the amount? He has had the stock and has had it sold for him; that is, he has been credited with the proceeds. . . . It appears to me that that is the true view of the present transaction, and it is utterly immaterial whether the Broker, who has become personally liable for the amount, has paid at all."

A very interesting question arose in the case of Mewburn vs. Eaton,[2] between a Broker and his Clients. In that case the Broker had sold certain shares for his Client on the Stock Exchange, and the latter had executed the transfers and received the purchase price. Subsequently, however, the transfers were returned to the Broker by the ultimate purchaser for some trifling corrections in the spelling of names, who delivered the same to his Client for that purpose. The Client, however, refused to "initial" the correc-

[1] Crowley's Claim, L. R. 18 Eq. 182. See also, as to right to indemnity, ante, p. 218 et seq.

[2] 20 L. T. (n. s.) 449. And if the Broker, although in default, gives his Client the choice of having the account closed, or of having it completed through another Broker, the Broker may recover, if his Client adopts the former method. Hartas vs. Ribbons, 24 Q. B. Div. 254.

tions unless the Broker paid him the price mentioned in the transfers to the ultimate purchaser, which was higher than the price at which his shares were originally sold. In consequence the shares were bought in, and the Broker, under the rules of the Stock Exchange, was compelled to pay the differences to the Jobber. And the court held, that the Broker was entitled to recover the sum which he had so paid by reason of the conduct of the Client. The court did not pass upon the question as to whether a vendor was bound to sign a transfer to the ultimate purchaser in which the consideration was stated at a price greater than that which he had received for the shares; but the intimations were that he would not be so compelled. The court held that this objection had been waived by the Client in originally signing the transfers.[1] In respect to the manner, etc., in which the Broker should execute the business of his Client in the different stages of a stock transaction, and of his general liability and duty, as well as his right to indemnity for losses incurred on behalf of his Client—these questions have all been considered in a previous chapter, and need not be set forth here.[2]

V. Relation between Client and Jobber.

(*a.*) *General Liability of Jobber to Vendor.*

In England nearly all of the cases in which there has arisen a discussion as to the nature of transactions on the

[1] In Hawkins vs. Maltby, L. R. 6 Eq. 505, L. R. 4 Ch. App. 200, the specific performance of a contract was refused on the ground that the bill called for the enforcement of a contract for different consideration than that actually agreed upon. See also Case vs. McClellan, 25 L. T. (n. s.) 753.

[2] See Ch. III. p. 179. In respect to usage of Brokers, see chapter on "Usages."

Stock Exchange, have grown out of questions involving the liability of different persons for "calls."

A large, if not the principal, number of joint-stock companies are formed with their capital in part unpaid; and as "calls" for further payments upon the capital are liable to be made, it concerns the seller of the shares of such companies to ascertain that the ultimate buyer is a responsible person.[1] In the discussion of this question as to where the liability for "calls" rests, the nature and effect of a sale on the Stock Exchange have been fully examined on both the law and equity sides of the English courts, and the relations of the different parties to the transaction analyzed and defined.[2] Inasmuch as all dealings in securities upon the Stock Exchange are made between members of that body, who, under its rules, are regarded as principals to each other, and an outside person desirous of purchasing or selling, being therefore compelled to transact his business through a Broker, who does not disclose his principal's name, on the very threshold of an action by the latter against the jobber it was natural to encounter the objection that the action could not be maintained for want of privity between the parties.

This objection was urged in the first reported case, in an action brought by a vendor against a Jobber,[3] and in several

[1] Per Kelly, C. B., Grissell vs. Bristowe, L. R. 4 C. P. 36, at 52, rev'g 3 id. 122; Sheppard vs. Murphy, 16 W. R. 948.

[2] Maxted vs. Morris, 21 L. T. (n. s.) 535; Nickalls vs. Eaton, 23 id. 689; Dent vs. Nickalls, 29 id. 536 (testimony of Mr. De Zoete, Chairman of Stock Exchange, 536); Peppercorne vs. Clench, 26 id. 656; Fenwick vs. Buck, 19 W. R. 597; Hodgkinson vs. Kelly, L. R. 6 Eq. 496; Nickalls vs. Merry, L. R. 7 Eng. & I. App. Cas. 530, and cases there cited and discussed; Capper's Case, cited in Cast case, p. 545; see also L. R. 3 Ch. App. 458.

[3] Grissell vs. Bristowe (Jan. 1868), L. R. 3 C. P. 112.

subsequent cases; but, however divergent the views of the courts may have been respecting the liability of the Jobber in other respects, they are unanimous in the judgment that there is a clear and enforceable contract between the vendor and the Jobber.

It must be borne in mind, however, that as the rules of the Stock Exchange[1] prohibit a member from dealing in the double character of Broker and Jobber, it is and was assumed in the case just referred to, that the Jobber deals with the Broker as one acting for a principal; but it is doubtful, even if this fact did not exist, whether the general rule which permits the real principal to enforce a contract would be altered.

The effect of such a transaction, according to the rules and usages of the Stock Exchange, and especially by Rules 54 and 69 of the printed rules, is to render Broker and Jobber personally responsible to each other for the fulfilment of the contract of sale, but at the same time leaving it entirely open to the undisclosed principals to intervene. These rules also aim at the prevention of litigation between principals, or between members of the Exchange, or between a member and the principal of another member. But these rules are powerless to oust the jurisdiction of the courts except in so far as they relate to dealings between the members, or as they may become incorporated into the contract, or when a non-member consents to the arbitration of his claim by the Stock Exchange as provided by Rule 57. Furthermore, the Broker and Jobber are at liberty to adopt any remedies against their principals that their own protection may demand.[2]

[1] Rule 43.

[2] Dent vs. Nickalls, 29 L. T. (n. s.) 536; Grissell vs. Bristowe, L. R. 4 Ch. P. 36.

The purchasing Jobber may therefore be said to be the party primarily liable to the vendor, the Broker of the latter selling directly to him in the first instance; but as the transaction is not to be closed immediately, the Jobber in turn selling the securities again, the elements of an ordinary sale are modified or displaced by the usages of the Stock Exchange.

These usages have been characterized by the courts as reasonable and binding upon the vendor, who, by authorizing a transaction to be made on the Stock Exchange, adopts and ratifies the methods of doing business which prevail there.

It is quite important to see what these usages are, and as they have been detailed in a leading case in the House of Lords,[1] by a prominent official of the Stock Exchange, we transcribe the account in full from that report: "Mr. De Zoete has been appealed to as the exponent of the rules of the Stock Exchange, and I will now refer to his evidence. He states: 'In the case supposed, where the Jobber would stand as purchaser, he would, on the day preceding such account-day (which was usually called the "name-day"), be bound to pass to the Broker a ticket containing the name of a person, or of several persons, as the purchaser or purchasers of the said shares; or he might, if he pleased, pass his own name as such purchaser, in which latter case only would he have been bound himself to take the shares. If the Jobber had failed to pass to the Broker such a name or names by the name-day, the selling Broker could have sold out the shares against him, and have compelled him to pay any loss thereon. Until the name-day it was not seen who

[1] Nickalls vs. Merry, L. R. 7 H. L. Eng. & I. App. Cas. 530, 539.

might stand ultimately either as purchasers or sellers, or, in other words, who might be the persons to transfer or to take transfers of shares, and until then a Jobber might have had a great many transactions both of buying and selling with the same Brokers or Jobbers, or with various Brokers or Jobbers. On the name-day, in the case supposed, if the Jobber, having purchased, had sold again, a ticket containing the name of the person to whom the shares were to be transferred would have been issued by and passed on from the ultimate purchasing Broker to his seller, and so on through the hands of the other intermediate sellers and buyers in succession, who, whether acting as Jobbers or as Brokers, had dealt in the shares, until it reached the hands of the original selling Broker. Every member passing a ticket was required to write on the back of it the name of the member to whom it was passed; such ticket would also have contained the amount of purchase-money agreed to be given for the shares by the ultimate purchasing Broker, and also a note that he would pay the same. So many transactions of this kind took place during the account that on the name-day the ticket, of necessity, only remained in the possession of an intermediate Jobber or Broker for the time required to take the particulars of it. It sometimes happened that the same ticket passed through the same member's hands several times in fulfilment of bargains made with other members, and, as a matter of fact, he had neither the opportunity, time, nor the means for making inquiries respecting the name so passed. The original selling Broker would not have been bound to deliver a transfer of the shares to the ultimate purchasing Broker until the expiration of ten days after the account-day, and during these ten days the said pur-

chasing Broker could not have bought in the shares against the seller. During this time it was open to the original selling Broker to object to the name passed by his buyer, in which case such buyer would, of course, have passed on the objection to the person from whom he received the name as hereinbefore mentioned, and, practically, such buyer would have had no liability or interest in the question, as whatever grounds there might have been for objecting to the name would have had to be met by the person from whom it emanated, and who had originally issued the ticket; and the committee of the said Stock Exchange would, if appealed to by the selling Broker, have decided as to the validity of any such objection, and would have required another name to be given in case they had considered it right to do so. But after the lapse of these ten days, the selling Broker was required to deliver the certificates and transfer of the shares to the said ultimate purchasing Broker, or, in default thereof, the latter could have bought in the shares against the seller. The usual course of business was for the selling Broker to deliver the transfer, together with the corresponding ticket, to the said ultimate purchasing Broker from whom he received the purchase-money. The said ultimate purchasing Broker did not know to whom his ticket had been ultimately passed until the delivery of the transfer. According to the long-recognized and well-established rules and usages of the said Exchange, if the original selling Broker did not deliver his transfer and certificates, and obtain payment of the purchase-money, within fifteen clear days from the name-day, his immediate buyer was released from all loss caused by the default of the ultimate purchasing Broker to pay for the shares, and the latter would alone remain re-

main responsible; in like manner, if the member who issued the ticket containing the name of the intended transferee of the shares did not buy in, or attempt to buy in, the same shares within fifteen days from the account-day, his immediate seller was released from all loss caused by the failure of any member through whose default the shares were not delivered to, and the purchase-money paid by, the ultimate purchasing Broker. The Jobber had fulfilled all the obligations required of him by the rules and usages of the said Stock Exchange in respect of his contract.' "[1]

As we have seen, the above usage came before the English courts for the first time in 1868 in the case of Grissell vs. Bristowe.[2] In that case the plaintiff, through his Brokers, sold certain shares on the Stock Exchange, and the defendants were the Jobbers with whom plaintiff's Brokers dealt. There was no direct dealing between the plaintiff and the defendant, nor was the former's name disclosed. The names passed by the defendants as transferees were accepted by plaintiff's Brokers, and the transfers executed, but not registered. The plaintiff, in consequence, was compelled to pay a call; and the transferees not being solvent, the plaintiff instituted the action against defendants, the Jobbers. The court held that the latter were bound to reimburse the plaintiff in the amount of such calls. On appeal,[3] however, this judgment was reversed; and it was decided that under the usages of the Stock Exchange, which the court adjudged reasonable, and with reference to which the contract was made, the defendants—the first buyers—were to be at liberty to transfer the contract, with all of its rights and obli-

[1] See also opinion of Byles, J., in Grissell vs. Bristowe, L. R. 3 C. P. 137.

[2] L. R. 3 C. P. 112.

[3] L. R. 4 id. 36.

gations, to any responsible buyers who would take it upon them with all of its incidents; that as the plaintiff had transferred the shares to the defendant's nominees, and the latter had accepted and paid for them, though they had not executed or registered the transfers, the defendants were released from all further liability on their contract to the plaintiff.

Cockburn, C. J., said: "We are of opinion that the statement of the usage in this case must receive a reasonable intendment, and be understood as claiming for the Jobber a right to transfer the contract, and claim exemption from liability in respect of it, only on his giving a name of a buyer to whom the seller has no reasonable ground to object. And we are further of opinion, from the particulars of the usage as stated in the case, that it is only when the nominees of the Jobber have paid for the shares—in other words, have accepted the transfer and placed themselves in the position of buyers, and taken upon themselves the obligations of the contract—that the Jobber is held to be released." In interpreting the usage the same learned judge said: "The sum and substance of the usage, as we collect it, after a careful consideration of the statement in the case, may be thus stated: It appears that in transactions between members of the Stock Exchange there is an implied understanding that on the purchase of stock the Jobber shall be at liberty by a given day, commonly called the 'name-day,' to substitute, if he is able to do so, another party or parties as buyers, and so relieve himself from further liability on the contract, provided that such party or parties be persons to whom the seller cannot reasonably except, and that such party or parties accept the transfer of the shares and pay the price agreed on between the seller and the Jobber—in

other words, become the buyer of the shares at the price originally agreed on."

Contemporaneous with this litigation was that of Coles vs. Bristowe,[1] which arose out of a dealing in the shares of the same company.

In that case the plaintiff, through his Brokers, sold 200 shares to the defendants, who were Stock-jobbers, for settlement on the 15th of May. On the 10th the company stopped payment, and the petition for winding-up was presented on the 11th of May. The purchase money was paid by the defendants on the 15th, and the certificates of the shares were then delivered by the plaintiff, and transfers were executed by him to seventeen persons as nominees of the defendants. The transfers could not be registered in consequence of the winding-up of the company. Upon a bill for a specific performance, Vice-chancellor Malins held that the defendants were bound to fulfil the contract, to repay the amount of calls paid by the plaintiff, and to indemnify him against future calls. Upon appeal, however, this decree was reversed.[2] The Lord Chancellor said: "If this were an ordinary case of a sale and purchase of shares, in which the plaintiff was vendor and the defendants purchaser in the usual acceptation of these terms, the right of the plaintiff to relief would be clear."

But the court held that the case would have to be decided according to the usage and course of business of the Stock Exchange; and that, "according to this, the contract of the Jobber is that at the settling-day he will either take the shares himself—in which case he would, of course, be bound

[1] L. R. 6 Eq. 149. See also Heritage vs. Paine, 34 L. T. (n. s.) 947; 2 L. R. Ch. Div. 594.

[2] L. R. 4 Ch. App. 3.

to accept and register a transfer, and to indemnify—or he will give the name of one or more transferees (names to which no reasonable objection can be made) who will accept and pay for the shares. The Jobber may perform either alternative; and, if electing to perform the latter alternative, he sends in names which are accepted and to which transfers are executed, and those transfers are taken and paid for by the transferees or their Brokers: the Jobber is then, at that stage, relieved from further liability, and the liability to register and indemnify is shifted to the transferees."[1]

The subsequent case of Maxted vs. Paine[2] extended the principle still further, because it was there held that the Jobber discharged his contract by passing the name of any person answering the description of an "ultimate buyer," where it is used without fraud and is accepted; although it turn out that the person whose name is presented is a man of straw and irresponsible, and has allowed his name to be used as a transferee for a consideration paid by the real purchaser. Bramwell, B., said: "I think the plaintiff would have had a right, according to these rules and practice, to object to Goss's name. I think Goss was a person he could not have been compelled to accept as a transferee. If I am wrong in this, the plaintiff has clearly no case. If I am right, then, had he objected, the defendant must have found a fresh name. He [the defendant] might then have objected to F. & Co., and they must have found a fresh name. But the plaintiff did not, nor did his Brokers, object, but he executed the transfer to Goss. . . . By the

[1] Evans vs. Wood, L. R. 5 Eq. 9; Mayhew's Case, 5 De G. M. & G. 849, 850.

[2] L. R. 4 Ex. 203 (2d action).

rules, the seller has ten days to make the transfer. During these ten days he can make inquiries as to the proposed transferee. The Jobber or other middleman has not a moment, for on the day he receives the name he must pass it on." But the Jobber is by no means, under the decisions, relieved from liability by merely passing a name, receiving the money, and executing transfers. The name passed must be that of a person legally compellable to take the shares.

This proposition is illustrated in the last-named case.[1] In that case the shares had been "continued" or carried over for another account-day, without the consent of the intended buyer, so that he was not bound to take the shares; and the court held that the Jobber was not discharged by passing such a name, but remained liable to the vendor. The court said: "When his name was passed, he had ceased to be a person who could be called upon to take the shares."

And, as was decided in a case before the English Chancery Appeals,[2] if the Jobber or Broker give the name of an infant as the transferee, he does not absolve himself from liability. And the same rule applies to an ultimate purchaser who gives such a name; he cannot escape the consequences of his contract except by supplying a name capable of accepting the transfer and paying for the shares. This duty is not performed by giving the name of a person absolutely incapable of accepting the transfer.[3]

So where the name of an infant was given by the Jobber,[4]

[1] Maxted vs. Paine, L. R. 4 Ex. 81 (1st action).

[2] Maynard vs. Eaton, L. R. 9 Ch. App. 414.

[3] Id. per Sir R. Malins, V. C., rev'd on other grounds.

[4] Nickalls vs. Eaton, 23 L. T. (n. s.) 689. Since the passing of the Married Woman's Property Act, 1893 (56 & 57 Vict. c. 63), sec. 1 of which provides that contracts by a married woman shall bind her sep-

he was held liable for calls paid by the vendor, although another person might also be liable to pay the money, and might be the person who ultimately would have to pay. This principle was also subsequently affirmed.[1]

Nor is the Jobber relieved of his responsibility, if the name which he passes is that of a foreigner domiciled abroad.[2] What the effect would be of the Jobber giving the name of a foreigner otherwise unobjectionable, i. e., having property in England which could be applied to satisfy any liability which might accrue in respect of the shares, has not yet been determined.

The question of the liability of the Jobber finally reached the House of Lords,[3] where it was elaborately argued and considered. It appeared in that case that M., not a member of the Stock Exchange, directed his Broker to sell certain shares. The latter sold them to a Jobber, who, according to the known practice on the Exchange, sold them again (and in a similar way they passed through several hands), and the Jobber (without fraud) received from his purchaser and passed to M.'s Broker the name of L. as the ultimate purchaser. M. executed a transfer to L. and received payment for the shares. L. turned out to be a minor legally incapable of accepting the shares. M.'s name, with-

arate property whether she was possessed of same or not at the time of the contract, it is doubtful if the name of a married woman could be objected to, as that provision reverses Stogden vs. Lee, 1 Q. B. 661, by which, in an action against a married woman, a plaintiff was required to prove that she had separate estate at the date of the contract.

[1] Dent vs. Nickalls, 29 L. T. (n. s.) 537; Peppercorne vs. Clench, 26 id. 656; Queensland Co. vs. O'Connell, 12 T. L. R. 502.

[2] Goldschmidt vs. Jones, 22 L. T. (n. s.) 220; Allan vs. Graves, 39 L. J. Q. B. 157.

[3] Nickalls vs. Merry, L. R. 7 H. L. Eng. & Ir. App. Cas. 530.

out his knowledge, remained on the registry of the company. Subsequent calls being made, which were not paid by L., M. was compelled to pay them.

The court decided that the Jobber was liable to make good to M. the amount he had paid on such calls; that the contract of a purchasing Jobber is to accept the shares, or to furnish the name of a person able and willing to accept them; and that the time (ten days) limited by the rules of the Stock Exchange for the approval or rejection of the name of the ultimate purchaser applies only to the *responsibility*, and not to the *personal capacity and willingness* of the person whose name is given. In reaching this result the case of Rennie vs. Morris[1] was overruled. The Lord Chancellor (Cairns) said: "It cannot be disputed that a valid contract was made between the respondent (the vendor) through his Broker and the appellant (the Jobber), and that this contract continued for some time to be binding upon both." Upon the question as to the character of the name which the Jobber could substitute, the Lord Chancellor added: "The words . . . clearly imply the name of a person who can and will purchase, and would have no application to the name of a non-existing person, a lunatic, an infant, a married woman, or a person who has given no authority to use his name. . . . In fact, the contract which, both from the nature of the case and the evidence of Mr. De Zoete, I understand the Jobber to make, may be thus expressed: 'I (the Jobber) agree with you (the seller) that on the account-day I will either myself take and pay for the shares, or else I will on that day furnish you with the name of another person who will agree with you to take a

[1] L. R. 13 Eq. 203.

transfer of and pay for the shares; and if you desire to inquire into the responsibility of that other person, you shall have a limited number of days to do so.'"

The argument of *ab inconvenienti* was strongly pressed upon the court, in reply to which the Lord Chancellor said: "I will only add that it does not appear to me that this view of the effect of a contract of this kind ought to cause any inconvenience in the transactions on the Stock Exchange. The gentlemen forming that body have facilities, through the medium of their rules and their domestic jurisdiction to take security that no member of the Exchange shall pass to another a name which is not real, i. e., which does not describe a person competent and willing to contract."[1]

Stray vs. Russell[2] illustrates still further the extent and limit of the Jobber's responsibility. In that case the Client had ordered his Broker to buy certain shares for the next settling-day. The Broker purchased the required number from a Jobber, who, in due season, delivered certificates in proper form to the Broker, with the Client's name inserted therein as purchaser. The company having previously stopped payment, and the directors refusing to make any transfers upon the books of the company, the Client attempted to repudiate, whereupon the Broker, who had, under the rules of the Exchange, paid the purchase-price to the Jobber, brought suit and recovered judgment against his Client. The latter in turn sued the Jobber for the amount he had been compelled to pay his Broker, contending that it was the duty of the Jobber to have procured a

[1] The foregoing cases were followed in Pender vs. Fox, Week. Notes (1872), 151.

[2] 1 El. & E. 888.

transfer of the shares upon the books of the company, and that the sale was incomplete without it. But the court gave judgment for the Jobber, holding that his duty in the premises had been fully performed when he handed to the Client's Broker the transfers and certificates, and that it was not his duty to get the transfer registered. It seemed to be assumed in the case that there was a privity between a vendee and a selling Jobber.

The case of Nickalls vs. Merry, and the cases heretofore referred to, determine definitely the position of a Jobber, freeing him from responsibility only upon his passing the name of a person legally compellable to take the securities, and leaving the circumstances of any case to be affected by fraud as in any other contract.[1]

In a recent case[2] it was held that if, on the Broker's default, the Client elects to complete the contract, he is not entitled to require the Jobber to pass a name to a nominee of the Client as an incident to "making down" the shares with the nominee, as the effect would be to substitute the nominee as principal.

A Jobber cannot set off a debt due to him by the Broker as against the purchase-money due from the Jobber to the principal,[3] and a custom to that effect would be unreasonable, and would not bind the principal unless he consented to be bound by it.[4]

[1] See also Bermingham vs. Sheridan, 33 Beav. 660.

[2] Currie vs. Booth, 7 Com. Cas. 77, rev'g s. c. 6 Com. Cas. 74.

[3] Cooke vs. Eshelby, 12 App. Cas. 271.

[4] Blackburn vs. Mason, 9 T. L. R. 286; Crossley vs. Magniac (1893), 1 Ch. 594.

(b.) Special Contract between Jobber and Client—Guaranteeing Registration.

The liability of the Jobber may, however, be extended by special agreement. We have seen that the Jobber sometimes guarantees registration, and the effect of such a guarantee was considered in the case of Cruse vs. Paine.[1] In that case the plaintiff sold through his Brokers certain shares to the defendants, who were Stock-jobbers. The sale note was as follows:

22 THREADNEEDLE STREET,
LONDON, E. C., 2d Nov., 1865.

Sold by order and for account and risk of A. Cruse, Esq. (subject to the rules of the London Stock Exchange),

To H. Paine & Co.,

100 Contract Corporation Shares at 7 dis.		£300 00
	(With registration guaranteed.)	
V. & W.	Stamp fees	
		£300 00
Brokerage		1 05
		£298 15

VERTUE & WHITING.

Payment 15th Nov.

Shortly before the 15th of November the defendants sent to the plaintiff's Brokers the name of H. as transferee, with the purchase-money, and the transfers were executed by the plaintiff to H. and delivered to his Brokers. The transfers were not, however, registered; and the defendants, in December, 1866, obtained a decree for specific performance by H. of the contract with them, and for indemnity. Meanwhile the company had been wound up, and the plaintiff's name, being still on the register, was settled on the list of

[1] L. R. 6 Eq. 641.

contributories. He filed a bill against the defendants for specific performance and indemnity.

The court held that the Jobbers were simply principals, and were personally liable upon the contract into which they had entered ; that the mere fact of the plaintiff having executed, at the instance of the defendants, a transfer, did not alter the liabilities of the parties under the special contract; that it did not in any sense release the defendants from their obligation to get a complete registration, so that the vendors should by their acts be actually released from liability in respect of the shares. The court further decided that the plaintiff having died, and his executor having been placed upon the list of contributories, the executor was entitled to all the rights to which his testator, if living, would have been entitled; and that the right to indemnity was not limited to the amount of dividends which the estate would be sufficient to pay.

Upon appeal[1] this result was sustained. The appellate court was of opinion that the introduction of the words "registration guaranteed" took the case out of an ordinary sale to a Jobber, and the terms were not merely that the Jobber should find a purchaser who would pay for the shares and accept the transfer, but that the Jobber should find a purchaser who would do that and would also register the transfer; and until that was done the Jobber was not discharged from his engagement.

(c.) *Liability of Client to Jobber.*

Inasmuch as the law regards a Jobber as the principal, he has rights which can be enforced against the principal

[1] L. R. 4 Ch. App. 441.

of the Broker with whom he contracts, when the former is discovered, to the same extent as the principal can enforce his claims against the Jobber. This position is established by the case of Paine vs. Hutchinson.[1] There the plaintiffs, Jobbers on the Stock Exchange, contracted to sell to the Brokers of the defendant, shares which they had purchased from, and which remained registered in the name of, one C. On the settling-day the Brokers of the defendant gave his name as principal for insertion in the deeds of transfer. Transfers executed by C. to the defendant were delivered to defendant's Brokers, who paid for the shares out of the money given to them by the defendant. The defendant refused to execute the deeds and to procure their registration, on the grounds that he had told his Brokers that he intended to resell without taking a transfer, and that they had given his name without authority. Some months after the sale the company was ordered to be wound up; and on a bill for specific performance and indemnity (filed before the winding-up), to which C. was not a party, the court held that the contract was very plain in its terms, and was binding upon the defendant; that, as he had not supplied the name of a transferee, the Brokers were entitled to give that of the defendant; that the plaintiffs were entitled to a decree for specific performance; that C. should execute the deeds of transfer to defendant, and that the latter should procure the registration in his name upon the company's books. Upon appeal this decree was affirmed.[2]

The case of Mortimer vs. McCallan[3] is instructive in this connection. This was an action in assumpsit in £5000, for certain £3 per cent stock alleged to be sold and caused to be

[1] L. R. 3 Eq. 257.

[2] L. R. 3 Ch. App. 388.

[3] 6 M. & W. 58.

transferred by the plaintiff to the defendant, and by the defendant duly accepted. Pleas—1st, non-assumpsit; 2d, that the defendant did not accept the stock from the plaintiff. At the trial it appeared that one T., a Stock-broker, had applied to the plaintiff, a Stock-jobber, for the purchase of certain stock for the defendant. The plaintiff not having stock of his own, applied to W., who agreed to transfer, and did accordingly transfer, stock standing in his name to the defendant. It further appeared that T. gave his own check for the purchase-money, requesting that the same should not be presented until the following day; although, after the transfer, the plaintiff had requested T. to give him the check of his principal. The check of T. was dishonored. It was also shown that T. had for a long time owed the defendant £5000 worth of stock which the defendant had allowed to remain in his hands, on receiving an undertaking that he would replace it within a certain time.

Evidence was given that it was the usage on the Stock Exchange to give credit to the Broker even though the principal were disclosed; though credit is sometimes given to the principal, and his check taken, where the Broker's credit is not thought sufficient. The trial judge instructed the jury that although, by the regulation of the Stock Exchange, the Broker was the party considered liable, it did not follow that the principal might not be liable also, and he left it to them to say whether the plaintiff had ever given credit to or taken the responsibility of T., or even consented to release the defendant as principal.

Upon appeal from a verdict in favor of the plaintiff, the court recognized the question as one of great importance, involving the practice of the Stock Exchange generally.

The court also conceded that on the Stock Exchange there was an understanding between the parties that *inter se* they hold the Broker liable; and, while not denying that that understanding would have a very great influence on the question in individual cases, in the case in question the evidence left it in doubt whether the Jobber meant to hold the Broker alone responsible, or to have also the security of the principal; that the rules of the Stock Exchange would not make any difference as to the right of a party who sells stock to choose to what person he would give credit; and that the question as to whom the Jobber or plaintiff intended to give credit was for the jury to determine. And the verdict was accordingly sustained.

And that there is privity between the dealer and the customer was also held in Beckhuson vs. Hamblet,[1] although in that case the fact that the Broker had lumped the customer's orders with others was held fatal to the Jobber's claim. And the principle of that decision was followed in Anderson vs. Beard,[2] where it was also held that the Jobber was entitled to recover the difference between the sum at which he had sold the shares and the carrying over price, and not merely the difference between the "hammer" price (fixed on the Broker's default) and the carrying over price. In Levitt vs. Hamblet[3] it was held that the Client was not entitled to close his contract at the "hammer" price without the Jobber's consent. And although, after the Client's Broker has defaulted, the Jobber is paid

[1] (1900) 2 Q. B. 18. On appeal the judgment was affirmed on the ground that the evidence did not establish the existence of a special usage of the exchange that privity of contract in the case of lumping shares was created between the different customers and the Jobber, but the principle stated in the text was not contravened.

[2] (1900) 2 Q. B. 260.

[3] 5 Com. Cas. 326.

the difference between the contract and "hammer" price, he may nevertheless recover damages from the customer in the event of the latter failing to complete with him, but, if the damages exceed the sum received by the Jobber, he must account to the Broker's estate for the latter sum.[1]

VI. Relation of Client to Undisclosed and Intermediate Purchasers.

As will be perceived from a review of the course of business on the Stock Exchange, in an ordinary transaction, the only persons who are brought into contact with each other are the Broker of the selling Client, or vendor, and the purchasing Jobber, or Broker, and in the end the ultimate purchaser. As between the selling Client, or vendor, and the purchasing Jobber, there is, as we have shown, a clear and direct contract. Or if the vendee is a Broker purchasing on account of a principal, the liabilities of the latter are the same as those of a purchasing Jobber.

There is no difference in the rules and usages of the Stock Exchange as to the liability of a Broker member and that of a Jobber member. On the contrary, it seems that their contracts and their duties towards those with whom they contract are identical, though the motives inducing them to enter into the transaction are different.[2]

Before considering the relation of selling Client, or vendor, to the ultimate purchaser, let us examine the position of the intermediate or undisclosed purchasers, if there be any. We have already seen that by the rules of the Stock Exchange the ticket containing the name of the ultimate purchaser,

[1] Stoneham vs. Wyman, 6 Com. Cas. 174.

[2] Per Blackburn, J., Maxted vs. Paine, L. R. 6 Ex. 132, 170.

or his nominee, as the case may be, is endorsed by each Jobber or Broker through whose hands it passes; but, as Cockburn, C. J.,[1] puts it: "In the end the transaction becomes one which is to be carried out between the vendee (the issuer of the ticket) and the original seller, as though such vendee had purchased immediately of such seller." The question is then presented, whether there is any liability between the holder of such a ticket and the purchasers intervening after the commencement of the transaction, but before the final termination of the same? Is there any privity between such parties? Does there arise from the nature of the transaction an implied contract between these persons? Is there any liability on the part of undisclosed purchasers who introduce the names of other persons to represent them in the transaction?

These questions were to some extent involved in the case of Torrington vs. Lowe.[2] There the plaintiff sold through his Brokers, on the Stock Exchange, certain shares in an incorporated association to one P., a Jobber. The defendant, in the same month, purchased through his Brokers on the Stock Exchange an equal number of shares in the same company. Both the above sale and purchase were made for the same settling-day. The defendant's Brokers, on the name-day, instructed P., the Jobber, to pass the name of one C. as the transferee of the shares so purchased, which was accordingly done, and a transfer was duly executed by both plaintiff and C. in the proper form prescribed by the articles of association, and the purchase price duly paid to the plaintiff through his Brokers. A petition for winding up the company having been afterwards presented, the

[1] Grissell vs. Bristowe, L. R. 4 C. P. 43.

[2] L. R. 4 C. P. 26.

liquidators refused to register the transfer, and placed the plaintiff on the list of contributories, and he was consequently obliged to pay certain calls. To recover the amount he had been compelled to pay, he brought an action at law against the defendant.

The court decided against the plaintiff on the ground that there was no contract between him and defendant; that the contract between the plaintiff and the Jobber had been fulfilled by the latter's presenting a name which the plaintiff had accepted; and that the fact that C., the transferee, was an agent of the defendant made no difference in the result, the rule of law being that a principal cannot be sued on a deed to which he is not a party. The court seemed to think that even in equity there would be no remedy. The original contract of sale was between plaintiff and P., the Jobber; and, in pursuance of the usage of the Stock Exchange, P. at the proper time gave the name of C. as the purchaser of the shares, and that plaintiff had accepted him and executed a transfer to him.

Nor would it seem, under the case of Grissell vs. Bristowe,[1] that the plaintiff could hold the Jobber liable in such a case, for the latter was released upon giving the name of a proper party as a transferee.

Lord Blackburn, in his elaborate opinion in the case of Maxted vs. Paine,[2] dissents from the conclusion of the court in Torrington vs. Lowe, and maintains that the plaintiff had a remedy at law as well as in equity against the defendant.

This view of Lord Blackburn seems to have been adopted in a subsequent case,[3] where the facts were substantially

[1] L. R. 4 C. P. 36.
[2] L. R. 6 Ex. 132, 167.
[3] Castellan vs. Hobson, L. R. 10 Eq. 47.

similar to those of Torrington vs. Lowe.[1] The court overruled the defence of want of privity; and held that where A, through his Broker, sold shares to a Jobber, from whom B had agreed to purchase the same number of shares—giving the name of C, one of his workmen, as the person to whom the shares were to be transferred—and in consequence of the winding-up of the company the transfer could not be registered, and the shares still remained in the name of A, an action would lie by the latter against B, as the real purchaser and equitable owner, to indemnify A against calls in respect of the shares. The court said: ". . . It is not a question of vendor and purchaser; it is not a question of specific performance at all: it is a question of trustee and *cestui que trust*." The court held that C, the workman, was not the owner of the shares, but a mere agent, and that it could pass over to the real owner, B; and that C, the intermediate trustee of a mere equity, could be disregarded altogether.

Torrington vs. Lowe[2] was not referred to in the opinion. The same principle was applied in a case[3] where the name of an infant was given as transferee. About two years afterwards, an order was made to wind up the company, and it being found that the transferee was an infant, the plaintiff's name was restored to the register. The court held that he was entitled to indemnity from the real owner of the shares.[4]

The better view, therefore, would seem to be that an undisclosed or intermediate purchaser of securities on the

[1] L. R. 4 C. P. 26.

[2] Id.

[3] Brown vs. Black, L. R. 8 Ch. App. 939.

[4] See also, in this connection, s. c. L. R. 15 Eq. 363.

Stock Exchange is liable, upon being discovered, to the same extent and upon the same principle as an ultimate purchaser.[1]

This view is not affected by the case of Sayles vs. Blane.[2] There S. sold certain railway shares, of which B., after intermediate sales, and without any privity with S., became purchaser. S. transferred them to B. by deed. B. not having registered the transfer, S. was obliged to pay a subsequent call. The court held that for such payment S. could not maintain an action against B. as for money paid to his use. The sale did not appear to have been made through the Stock Exchange, and its rules and usages were not noticed, the case being disposed of on the form of the action—the court intimating that the plaintiff had a cause of action against the defendant for a failure in the performance of a duty on the part of the defendant in not getting the transfer deed registered.

Another case, in the Queen's Bench,[3] should also be mentioned in this connection. In that case it was held that a Stock-jobber who had agreed to "take in" shares purchased by a fellow Stock-jobber from a Broker acting for a principal, and who had failed to deliver the name and address of a person into whose name the shares were to be transferred, was directly liable to the vendor for calls which the latter was compelled to pay by reason of the shares remaining in his name. But it will be noticed that the Brokers of the vendor were actually brought in contact with the in-

[1] Per Blackburn, J., Maxted vs. Paine (2d action), L. R. 6 Ex. 132, 167; see also Humble vs. Langston, 7 M. & W. 517; Walker vs. Bartlett, 17 C. B. 446.

[2] 14 Q. B. 205.

[3] Allan vs. Graves, 39 L. J. (n. s.) 157.

termediate purchaser—the second Jobber—and negotiated with him concerning the shares.

VII. Relation between Selling Client, or Vendor, and Ultimate Purchaser, or Transferror, and Transferee.

The last step in the transaction is the actual delivery of the stock or securities by the original seller to the ultimate purchaser. This portion of the business most powerfully illustrates the influence and scope of the usages of the Stock Exchange upon the contract.

Ordinarily, in the sale of property, the buyer and the seller meet and consummate the transaction in person, or they are brought into contact with each other by means of Brokers authorized by, and acting directly for, their respective principals.

The usages of the Stock Exchange produce the legal paradox of a vendor selling to a vendee with whom he does not have any dealings, either personally or through his immediate Brokers, and who frequently is not in existence in his character of purchaser when the vendor makes the sale.

Again, ordinarily, to make a binding contract in law, there must be a meeting of minds, mutuality, with reference to the same subject-matter, upon the same terms and price; yet a Stock Exchange transaction frequently exhibits a sale made *in præsenti* which takes effect *in futuro*, the place of the first vendee being frequently filled by another person or persons who may purchase at a price different from that at which the first vendor originally sold.

All of these seeming incongruities result from the usages of the Stock Exchange and the peculiar course of dealing

carried on there. But it will be observed that the rights of a vendor are not in any way infringed or diminished by these ramifications of business.

We have seen that a sale may be made either for money or for the account. If for money, the transaction is concluded at once; if for the account, a vendor who launches a sale upon the Exchange knows, or is presumed to know, that his vendee is not necessarily the person to whom his Broker originally makes the sale, but may be a different person purchasing from some intermediate Jobber at a subsequent date, and to whom delivery is to be ultimately made. The legal elucidations of the relation between the original vendor and the ultimate purchaser have grown out of contests as to where the responsibility for "calls" rested. In this connection it is proposed to set forth the principal cases that have arisen between these persons, remarking that in the case of the sale of securities, where the capital is fully paid in, no such contests would arise—the purchaser in such event merely receiving the security, and the seller the money, there being nothing in such a transaction necessarily different from what might occur in the sale of any other kind of personal property.

The leading authority in England upon this subject is Hodgkinson vs. Kelly.[1] There A bought of a Jobber on the Stock Exchange shares in a certain company; and afterwards, the company in the meantime having stopped payment, B sold to another Jobber shares in the same company at a lower price for the same settling-day. On the name-day A's name was given to B as the purchaser of B's shares.

[1] L. R. 6 Eq. 496. As to a 118. See also Loring vs. Davis, 32
trustee's right to indemnity, see Ch. Div. 625.
Hardoon vs. Belilios, (1901) A. C.

B executed a transfer of the shares to A, and delivered the transfer and certificate to A's Broker, who paid the price for which A purchased the shares; A afterwards repaid his own Broker and took away the transfer and certificates, but did not execute the transfer, and it was never registered, in consequence of which B was compelled to pay certain "calls." B brought action against A to indemnify him against all consequences flowing from the ownership of the shares subsequent to the execution of the transfer.

The court, per Romilly, M. R., sustained the action, and a decree was entered for the plaintiff. The court held that contracts for the sale of shares on the Stock Exchange were not like, and could not be made to depend on exactly the same principles as were applicable to, contracts for the sale and purchase of other matters—sales of houses and the like; but when a man sold or bought shares through his Broker on the Stock Exchange, he entered into an implied contract to sell or buy according to the customs or usages prevalent in that body; that there was nothing illegal or immoral in these usages; that a person by ordering a transaction to be consummated at that place entered into a contract, not with a specified person, but with a person whose name is to be disclosed afterwards, when the transaction is complete. Lord Romilly said: "It is not, as has been supposed, that the seller of shares constitutes an agent to find out and enter into a contract with some particular buyer, or, on the other hand, that the buyer does the same as to the seller, but both parties agree to be bound by the usage of the Stock Exchange, which binds both parties from the beginning, but which leaves each of the parties to the eventual contract ignorant of the other until the day arrives and the instrument of transfer is executed. It was put in argument

as resembling a contract by which A sells to B, B to C, C to D, and D to E; and, at the request of B, C, and D, A executes the transfer to E; but, in truth, this does not appear to me to put the case sufficiently high. It is, in my opinion, an engagement entered into by A on one side, and E on the other, that through the instrumentality of certain other persons, whoever they may be, certain shares shall be sold and bought, and they undertake to complete the contract with the person, whoever he may be, who buys on one hand, and sells on the other." The court held that these usages were founded on common-sense and common honesty, and that it was of no importance to A to know to whom his shares are to be transferred, nor is it to B to know from whence the shares come. The court based this result on the cases cited in the notes.[1] In Sheppard vs. Murphy,[2] which was an action in equity, brought by a vendor against an ultimate purchaser, the court held, in answer to the argument that there was no privity between the plaintiff and the defendant, that the nature of a transaction on the Stock Exchange by which a vendor of securities was brought into contact with an ultimate purchaser was not a contract between the possessor of a thing at the time and another party for the delivery of a specific thing, but a contract that the person who enters into it shall, upon the day on which it is to be performed, procure persons to do a thing that he undertakes shall be done, and that upon that occasion the person who is to receive this thing, and not until that day, shall pay these persons, and not the person who

[1] Grissell vs. Bristowe, L. R. 3 Ch. App. 112; Hawkins vs. Maltby, L. R. 3 id. 188; Evans vs. Wood, L. R. 5 Eq. 9, and the Irish case, Sheppard vs. Murphy, Ir. Rep. 1 Eq. 490; s. c. on appeal, 16 W. R. 948.

[2] 16 W. R. 948, overruling Ir. Rep. 1 Eq. 490.

has made the bargain at all. In other words, if A had bought one hundred shares from one hundred different persons, he could have walked to the office of the vendee's Broker with his hundred men at his back, each with a transfer of one share in his pocket, and he could have said to the vendee's Brokers, "Here are the shares, now pay to each man his aliquot portion of this sum; that is, buy every share just at that price I am willing to sell it to you for, from the persons who have come here to deliver them." But upon the Stock Exchange a symbolical mode of proceeding has been adopted to prevent the necessity of the above course—viz., giving a "name;" and, when the name is given, transfers of the shares are made to the vendee, and, without occupying the time of all these parties, the whole thing is done by this simple process, which is not open to any charge of illegality or objection.

In one case[1] A sold to a Stock-jobber, and B purchased from N, five shares in a joint-stock company. According to the practice of the Stock Exchange, N gave to A, the original vendor, the name of B as the purchaser, and the transfer of the shares from A to B was executed by A and B, and the purchase-money paid by B to A; but B was prevented, by accidental absence from home, from sending the transfer for registration until after the company had stopped payment. B's name was not registered, and, A's name appearing on the books, the latter was compelled to pay certain calls. B was held liable for these calls and to indemnify A against future liability in respect to the shares.

This question was again directly in issue in a case[2] in which a bill was filed by a vendor, to compel an ultimate

[1] Evans vs. Wood, L. R. 5 Eq. 9.

[2] Hawkins vs. Maltby, L. R. 4 id. 572.

purchaser to take shares which he had bought through the vendor's Broker, and upon which a call had been made.

The action was resisted on the ground that the Jobber had had no dealings with the vendor, and that there was no privity between them. The court overruled this objection, saying: "The defendant first insists that there is no privity between himself and the plaintiffs, the original vendors. Undoubtedly, upon the original transaction, there was not; but . . . though the plaintiffs did not in the first instance agree to sell to the defendant, nor the defendant to purchase from the plaintiffs, yet when afterwards they were brought together, and the defendant agreed to take the transfer and carried away the certificates, he adopted the whole contract and became the purchaser."

This view was sustained upon appeal,[1] Lord Chelmsford, L. C., saying that "he [defendant] knew that shares frequently passed through several hands before they came into possession of the actual purchaser, to whom the transfer would be made; and he knew that the transfer would not be made by the person from whom he purchased, but by the holder of the shares."

In Davis vs. Haycock [2] the defendant had, on the 14th day of April, 1866, bought, through his Broker, of one G., a Jobber, fifty shares in O. G. & Co. The shares were bought for the 27th, but were afterwards carried over to the next account-day, the 15th of May, G. paying backwardation. On the 16th of May, the plaintiff, through his Broker, sold to G. for immediate delivery thirty shares in the same company. On the 10th of May the company stopped payment, and the next day a winding-up petition was presented. On

[1] L. R. 3 Ch. App. 188.

[2] L. R. 4 Ex. 373.

the 14th of May (the name-day) the defendant's Brokers, as purchasing Brokers, issued a ticket for the shares in his name to the selling Jobber. The Jobber, in conformity with the usages of the Stock Exchange, divided the defendant's ticket, and handed to the plaintiff's Broker, in part performance of his contract, a ticket containing defendant's name as purchaser of ten shares. The transfer of the shares was duly executed by the plaintiff, and, together with the certificates, were finally delivered to the defendant, who retained the same.

After the company stopped payment, the directors refused to register any transfer. Two calls were made after the stoppage, which plaintiff, whose name remained on the register, was compelled to pay. An action at law was brought to recover the amount of these calls. The defendant contended that there was no privity of contract between the parties, and that the contracts made with the Jobber by each of the parties were entirely separate and independent, had never been consolidated, and sought to distinguish the cases of Hodgkinson vs. Kelly and Hawkins vs. Maltby from that action.

There was a division of the court, two of the judges, Kelly, C. B., and Pigott, B., holding that plaintiff was entitled to judgment, and Cleasby and Channel, BB., dissenting from that view on the ground that the plaintiff had no remedy at law, but not denying that the plaintiff was entitled to relief in equity.

As the usages of the Stock Exchange are expressly incorporated into all transactions which take place there, the better view would seem to be that advanced in the opinion of Kelly, C. B.

Without giving any more cases in detail, the result

of the decisions seems to establish the following propositions:

First. A contract between the vendor and the ultimate purchaser is complete when a ticket containing the name of the purchaser has been delivered by his authority to the vendor, and he has accepted the name, indicated that acceptance by receiving the purchase-money, or in some other definite manner.

Second. Although, in the case of Stephens vs. Medina,[1] it was decided that where registered shares are transferable only by deed it is the duty of the purchaser to tender to the vendor a transfer-deed, duly executed, as a condition precedent to enforcing the contract, yet it is the usage of the Stock Exchange for the seller to prepare a deed at the expense of the purchaser. A tender of this deed, duly executed, must be made before the purchase-money can be demanded.

Third. The transferror is not bound to procure the consent of the directors (if required) to the registration of the transfers, because the contract of sale is not made conditional on the insertion of the purchaser's name on the list of shareholders.[2]

Fourth. The transferror is liable to account to the transferee for all dividends or any bonus or new shares which he may have received, or which may have been issued to him

[1] 4 Q. B. 422; followed by Bowlby vs. Bell, 3 C. B. 284.

[2] Lindley on Company Law (6th ed.), 696; Stray vs. Russell, El. & B. E. 888; Paine vs. Hutchinson, 3 Ch. App. 388; Evans vs. Wood, L. R. 5 Eq. 9; Hodgkinson vs. Kelly, L. R. 6 id. 496; Holmes vs. Symons, L. R. 13 id. 66, although this was not formerly thought to be the rule (Bermingham vs. Sheridan, 32 Beav. 660); this case cannot, however, be relied on in determining contracts on the Stock Exchange, as has been admitted by the judge who decided it. See also London Founders Association vs. Clarke, 20 Q. B. D. 576.

in right of the shares which he has contracted to sell while his name remained on the register.[1] The principle upon which the courts act is, that from the time a contract is entered into the transferror becomes a trustee of the security for the immediate buyer or his vendee or nominee, and therefore, until registration is completed, occupies the technical position of legal owner, without any beneficial interest in the subject-matter of the trust.

Fifth. As a result of the principle just alluded to, the transferee is bound to pay all calls and to assume all other liabilities accruing after the contract is made,[2] although the transfer-deeds are never executed by the transferee, it being, as we have seen, the duty of the transferee to have the transfer-deeds executed and registered.[3]

Sixth. We have already seen that the real buyer of the shares is, when discovered, liable to indemnify the seller although his name has not been passed as the ultimate purchaser, but, instead thereof, the name of some real or fictitious person being inserted.

[1] Black vs. Homersham, 4 L. R. Ex. Div. 24; Stewart vs. Lupton, 22 W. R. 855.

[2] Evans vs. Wood, L. R. 5 Eq. 9; Hawkins vs. Maltby, 3 Ch. App. 188 on appeal from 4 L. R. Eq. 572.

[3] Id. and cases heretofore cited; Morris vs. Cannan, 4 De G. F. & J. 581; Cheale vs. Kenward, 3 De G. & J. 27; Wynne vs. Price, 3 De G. & S. 310.

Chapter XI.

THE PARIS BOURSE.

I. History of the Bourse.
II. Agents de Change.
III. Coulissiers.
IV. Nature of Transactions.

I. History of the Bourse.

The Paris Bourse is an association whose history can be traced back for several centuries; and one can find in the early authors of France many complaints of the noisy and turbulent gatherings of the money-changers and Brokers in different streets of Paris, until finally, in the beginning of the fourteenth century, public convenience demanded that these public assemblages, which interfered with the orderly traffic of the capital, should be confined to a certain locality. Accordingly, in February, 1304, it was ordered that the "Change de Paris," the nucleus of to-day's Bourse, be established at the Grand Pont, on the side of La Grève, between the Great Arch and the Church of St. Leufroy.[1] From the Grand Pont it was first transferred to the large court of the Palais de Justice, before the Galerie Dauphiné; but, as transactions grew in volume, every space assigned to the Broker had to make place for a larger one.[2]

[1] Bédarride, Droit Commercial, 6, 133.

[2] Or, "chassée d'un local public, la spéculation déploya sa tente dans la rue; sur les bords fangeux des ruisseaux ou chercha un refuge dans

The history of the Bourse shows many successive struggles against hostile decrees of changing governments, all impelled by a general public sentiment which appeared to regard its doings as noxious and immoral. The speculative excitement created by John Law in 1720 attracted such hosts of stock speculators to the Bourse that the Brokers had to go from the narrow Rue Quincampoix, where they then were, to the Place Vendôme, and soon after to the gardens of the Hôtel de Soissons.[1] It appears that owing to these frequent changes of locality the Brokers, instead of having fixed offices, occupied temporary booths or stands in these gardens, for which 500 francs monthly rent was asked,[2] and the demands even at that figure could not be supplied.

In consequence of the condition of the country caused by the schemes of Law in 1720, an *arrêt du conseil* ordered the suppression of the Bourse, then situated in the Hôtel de Soissons.[3] But this suppression, caused, as we have seen, by the collapse of the Law bubble in stocks, lasted only four years; for in September, 1724, by an *arrêt du conseil*, the Bourse was given a legal character, and it was decreed that an Exchange should be established with its official quarters at the Hôtel de Nevers,[4] where transactions in stocks and merchandise might be made through sixty *agents de change*, to be appointed by the King, according to the provisions of an edict previously made in the month of January, 1723.[5] And it was especially prohibited to hold

les repaires obscurs des bouges et des cabarets environnants."—M. Jeannotte Bozérain, La Bourse, t. 1, p. 16, No. 18.

[1] Buchère, Opérations de la Bourse, 7.

[2] Bédarride, Droit Comm. 6.

[3] Id. 9.

[4] Buchère, Opérations de la Bourse, 7.

[5] Bédarride, Droit Comm. 9, 10.

any gathering for stock dealings at any place other than the regular Bourse under penalty of a heavy fine. It was also forbidden to announce by voice or sign the price of any security with a view of putting its quotation up or down; and every Broker violating this provision was to be liable to a fine of 6000 livres, while private persons were to be punished by being forever excluded from the Bourse.[1] The alleged object of this strange regulation was "to maintain the order and tranquillity of the Bourse, so that every one might transact his affairs uninterruptedly."[2] But these and other hostile provisions proved inoperative, and were subsequenty repealed.

The Bourse continued its location at the Hôtel de Nevers until the year 1793, when it was closed by a decree of the 27th of June of that year.[3] Its suppression, however, caused by the turmoils of the Revolution, was of but short duration, for by a decree of the very same year it was re-established. By the terms of the latter all persons in Paris, as well as in other cities where there were Bourses, were prohibited from making operations of a designated character in any places except those where the authorized Bourses were held. After these decrees the Paris Bourse was temporarily installed in the Church of the Little Fathers, whence it was removed first to that part of the Palais Royal now occupied by the Galerie d'Orléans, and subsequently to the Convent of the Daughters of St. Thomas. Here it remained until it obtained possession of its present building, of which Napoleon I. laid the corner-stone, but which was not finished till the end of 1826.[4] The

[1] Bédarride, Droit Comm. 32.
[2] Id.
[3] Buchère, Opérations de la Bourse, 7.
[4] Id. 8.

State furnished the ground for the building, while the city of Paris partly paid for the cost of its erection, which was over 8,000,000 francs,[1] of which sum the Compagnie des Agents de Change contributed 3,000,000 francs.[2]

II. Agents de Change.

The functions of the Stock-broker in France are principally regulated by the 76th article of the Commercial Code of that country. We give the article in full in the notes. By this article the legally constituted *agents de change* have the sole right[3] to negotiate public and other securities susceptible of quotation, and also bills of exchange and other commercial instruments. Concurrently with merchandise Brokers, they were also empowered to negotiate for the sale or purchase of metallic values, but by usage the dealings were confined to gold and silver in coin or bars.[4] The legal status of the *agent de change* is quite unique. He is a government officer in one sense of the word, and, though a public functionary, he is yet mainly amenable to the discipline of the Governors (Chambre Syndicale) of the Bourse, whose powers appear to be almost, if not quite, as autocratic

[1] P. Larousse, Dictionnaire Universel, 1145.

[2] See article entitled "The Paris Bourse," by E. Friend in the Forum, October, 1901.

[3] Except in so far as this exclusive right has been curtailed as to the *conliessiers* by the compromise arrangement of 1901, see post, p. 1058.

[4] Bédarride, Droit Comm. 202. "Art. 76. Les agents de change, constitues de la manière prescrite par la loi, ont seuls le droit de faire les négociations des effets publics et autres susceptibles d'être cotés; de faire pour le compte d'autrui les négociations des lettres de change ou billets, et de tous papiers commerçables, et d'en constater le cours. Les agents de change pourront faire, concurremment avec les courtiers de marchandises, les négociations, et le courtage des ventes ou achats de matières métalliques. Ils ont seuls le droit d'en constater le cours."

as those of the Governors of the London or the New York Stock Exchange.[1] And the government has a supervising authority to see that the proceedings of the Bourse are carried on in conformity with the requirements of the law and good order; but in all disputes and questions affecting the rights and interests of the Brokers, the decisions of the *Chambre Syndicale*, or Governing Committee, chosen by the Bourse, are generally final.[2] The number of *agents de change* in each city is regulated by a decree of the State upon the proposition of the Minister of Finance. At Paris this number was fixed at sixty by a royal ordinance of the 29th of May, 1816, which has never since been modified.[3] The *agents de change* are nominated by the chief executive power. They are obliged to reside in the place where they exercise their functions, which becomes their legal domicile.[4] The rules of admission require that the *agent de change* must be a French citizen, or a naturalized foreigner, twenty-five years of age, and that he must produce a certificate of ability and integrity signed by the chief members of several banking and commercial houses in good standing. In Paris the presentation of the candidate by the Chambre Syndicale is addressed directly to the Minister of Finance.[5] The *agents de change* can present their successors, with the approval of the nominating power; but the government has expressly reserved the right to augment or reduce their number. In the event, however, of their number being increased, the new members would be obliged to pay a

[1] Buchère, Opérations de la Bourse; Goirand's Fr. Com. Law, 131. See Rules of Paris Bourse in Appendix.

[2] Id.

[3] Buchère, Opérations de la Bourse, 30.

[4] Id. 31.

[5] Id. 31; Goirand's French Commercial Law, 117.

sum to be determined by the minister, to be distributed among the old members as an indemnity for the diminution of the value of their offices. On the other hand, if the number is decreased, it is the usage to fix an indemnification sum which shall be paid by the other members to their associate or associates who may retire at the instance of the government.[1] The *agents de change* are governed by seven of their members, elected annually, who are called syndics, and constitute the Chambre Syndicale. Before entering on his functions, the Broker must take an oath before the Tribunal of Commerce, in due form, and he must also pay into the treasury of the Bourse his *cautionment*, or guarantee, of 250,000 francs. Previous to 1862 this was only 125,000 francs, having been raised to that figure gradually in the course of time from very small amounts. In Lyons the cautionment is only 40,000 francs; in Marseilles and Bordeaux, 30,000 francs; in Toulouse and Lille, 12,000 francs; and in the smallest Bourses as low as 4000 francs. The object of the cautionment is to secure the Clients of the Broker.[2] It is a pledge of the Broker's good conduct, and for the Clients' indemnification for any loss occasioned by the error or fault of the *agent de change*. It is, in fine, a fund held for any judgments that may be pronounced against him.[3] The cautionment must be kept intact.[4] Thus, for instance, if it should be adjudged that a Broker owed a Client 100,000 francs, and the Chambre Syndicale paid over that amount to the aggrieved party, the *agent de change* in question would be compelled, in order to retain

[1] Buchère, Opérations de la Bourse, 31.

[2] Buchère, Opérations de la Bourse, 40, 41.

[3] Bédarride, Droit Comm. 173.

[4] Id. 174.

his membership, to bring his cautionment again up to the full amount of 250,000 francs.

The *agent de change* is also required to contribute 50,000 francs to a common fund, which is called *caisse commune*, and which the Bourse employs in aiding and extricating from their difficulties such of its members as may, through no fault or wrong-doing of their own, find themselves in a temporarily embarrassed financial position.[1] And it seems that millions of francs have been spent by the Paris Bourse in this manner, only a portion of which has ever been repaid by the *agents de change.* This common fund, which was first instituted in 1819, has grown to be very considerable in amount; and, when not in use for its actual purposes, it is profitably employed by the governors, in their discretion, in time loans, effected through "turns" in stocks, by which it yields a very large interest to the Bourse.[2] The Chambre Syndicale, which administers the funds, makes a report twice a year to the Bourse as to the results of its operations, and a dividend from the profits is usually declared in July and December of every year.[3]

The Chambre Syndicale presides over the fortnightly settlements through two of its delegates appointed for the purpose.[4] Under a law enacted in 1816, the Chambre Syndicale has power to suspend a member pending their investigation into any charges which may have been brought against him, to impose a fine, or propose his expulsion, if they regard his offence as one of sufficient gravity for such an extreme measure. Its decisions, in cases of dispute between members, or between members and their Clients, are subject to appeal to the Tribunal de Commerce, if the

[1] Bédarride, Droit Comm. 174, 175.
[2] Id. 175.
[3] Id. 176.
[4] Rules in Appendix.

question is one of civil jurisdiction, and to the action of the police authorities if a criminal offence is involved.

In a case decided in 1827, in which a Broker—Sandrié-Vincourt by name—had been expelled for having failed (his doubtful financial position having been brought to the attention of the Chambre Syndicale as early as 1822), the Cour de Paris decided that the Chambre Syndicale could not be held liable for not having suspended him sooner, and the court rejected the claim that the *agents de change* collectively, and the members of the Chambre Syndicale individually, were legally responsible for the loss inflicted upon the bankrupt Broker's creditors.[1]

Expulsion alone can deprive a member of his own right to present the name of his successor, and thus practically to sell his "seat."[2]

As must have been inferred from the above, the *agent de change* has a vested interest in the Bourse, of which, as already stated, only an expulsion for moral delinquency can deprive him. As there are only sixty of these functionaries, they are generally men of large capital, doing a most extensive and valuable business.

In case of the Broker's failure, the creditors are entitled to present the name of his successor; and if the latter be approved by the Bourse and confirmed by the government, it is to him the creditors must look for their indemnification.

The same rule holds good in the case of the death of a member, where either the heirs or creditors, as the case may be, have the right to present a successor to the vacant seat; and the latter, if accepted, reimburses those presenting him

[1] Bédarride, Droit Comm. 188, 189, 190.

[2] Id. 151.

for its value by the payment of such a sum as they may agree upon.

Proper caution is expected to be used by the Chambre Syndicale in placing new securities on the list; and in order that the Bourse may not be committed to the soundness of any new security, it is generally placed on the so-called "non-official" list until it shall have received the approval of the Ministry of Finance as being worthy of official quotation.[1]

Owing to the enormous growth of financial operations, it was found indispensable to increase the number of persons allowed to exercise the functions of *agents de change;* and hence, by a decree made in October, 1859, each of these sixty functionaries was permitted to have one or two clerks, who, under the rules established by the Chambre Syndicale, might exercise the power of his employer at the Bourse.[2]

The *agents de change* may also associate with themselves capitalists as partners to share in the profits and losses arising from the exercise of their functions, and the sale of their offices, and such partners are usually interested to the extent of from one-fourth to one-tenth of the invested capital. The *agent de change* must himself be the owner of one-fourth of the property value of "*charge*" or "*seat,*" and the amount of the *cautionment.* These partnerships are only permitted in Bourses provided with a *parquet* (or space specially appropriated to the *agents de change*), a crier, and an official list. Besides that of Paris, there are only four or five other Bourses in France provided with a *parquet.*[3]

[1] Bédarride, Droit Comm. 185, 186.

[2] Id. 109.

[3] Goirand's French Com. Law, 118.

The commissions of the *agents de change* are fixed by the Chambre Syndicale. In the absence of a law, local custom or special agreement, the buyer and seller pay the commission in equal shares. *Agents de change* are prohibited from receiving more than the established rates, under the penalties attaching to extortion, or to charge a lower sum under pain of censure, suspension or expulsion.[1] For the rates at present allowed see Rules of the Paris Bourse, in the Appendix.

III. The Coulissiers.

The entirely inadequate number of *agents de change* for the immense transactions in stocks, led to the formation of the *Coulisse*, comprising a vast number of unauthorized, or "curbstone," Brokers, as they are called in New York.[2] The word *coulisse*, in its ordinary theatrical sense, means the wings of the theatre hidden from the spectator's view, where the actors stand before coming on the stage.[3] Its curious application in designating the part of the Bourse unauthorized by law was, according to Frémery, derived in this manner: In one of the ancient places of reunion assigned to the Bourse, there was a passage separated by a partition from the space where the *commerçants* assembled. This passage extended to the very enclosure of the Brokers; and the men who made transactions with each other, without the intervention of the regular Brokers, habitually occupied it. It was called the *Coulisse*, and those frequenting

[1] Goirand's Fr. Com. Law, 130.

[2] "On appelle coulisse la réunion de spéculateurs qui négocient entre eux, ou par l'intermédiare d'agents de change non-commissionnés, de nombreuses et souvent fort importantes opérations en effets publics et rentes sur l'état" (Bédarride, Droit Comm. 104).

[3] Littré, Dictionnaire de la Langue Française, 841.

it *coulissiers.*[1] The development of the Coulisse, which is as ancient as the Bourse itself, was at first strenuously combated by the regular Brokers. An edict of 1716 sought its suppression, followed by another several years later, which instituted the functions of the *agents de change.* Ten years later another royal decree was hurled against "the individuals without authority," to translate its language, "who introduce themselves in the Bourse under the title of *agents de change*, and make transactions between each other which are prejudicial to the integrity of commerce and the public safety."[2] But the Coulisse struggled with wonderful persistency against the attacks of the Bourse; and neither fines nor imprisonment, nor repeated prohibitions of its meetings by the government, could vanquish the irrepressible *coulissier.* The Revolution, with its destruction of monopolies, made the profession of *agent de change* free,[3] and the Coulisse then disappeared for a time; but as soon as the monopoly was re-established in the year 1801, it reappeared. The struggles of the *agents de change* against their unauthorized rival—the Coulisse—were so unavailing for many years that down to 1859, when by a legal decision it was suppressed, it may be said to have enjoyed an almost official, though certainly somewhat troubled, existence. The government always took its severest measures against the Coulisse, and seemed to hold it responsible, when disastrous events produced a panicky decline in the public funds. Thus, in 1819, when, owing to legislative changes of a radical character and a deficit of one hundred millions in the budget, the five per cent rente declined in a few days from 71 francs 50 centimes to 65 francs 10 centimes,

[1] Larousse, Dictionnaire Universel, 307.

[2] Bédarride, Droit Comm. 105.

[3] Decree of March 17, 1791.

the assemblages of the Coulisse, which then held its reunions in the Passage des Panoramas, were at once prohibited. The Coulisse then migrated to the Boulevard de Gand and to the Café Tortoni, and was allowed to remain unmolested for four years; but in 1823, when, owing to threatening political clouds, the five per cent rente fell in eight days from 87 francs 65 centimes to 78 francs 30 centimes, the Coulisse was again held responsible, and visited with the severity of the Tribunals. In October, 1840, when the bombardment of Beyrout by the English fleet was commenced, the five per cent rente fell from 106 francs to 101 francs, and the reunions at the Café Tortoni were again prohibited. A few days after a recovery began, and the Coulisse resumed its operations.[1]

In 1842 the Bourse formally instituted proceedings against the Coulisse before the Préfet de Police, who reported, however, to the Ministry of Finance that the Coulisse did not encroach upon the domain of the Bourse, because no stocks actually changed hands through their transactions, which were simply bets on what the price of a security at the Bourse would be on a given day.[2] In 1850, on the publication of an apocryphal message by the then President of the Republic, subsequently the Emperor Louis Napoleon, the rente fell, in the dealings of the Coulisse, 3 francs before the meeting of the Bourse, and once more the Coulisse was proscribed. But only eight days elapsed when it again reassembled in the Casino de la Chaussée d'Antin. From this asylum it was driven in 1853, when a fall of 3 francs in the dealings on the Coulisse greeted the first news of the departure of the French fleet

[1] Larousse, Dictionnaire, Universel, 307, 308.

[2] Bédarride, Droit Comm. 106.

for the East. Thence, until 1859, Paris beheld the spectacle of the Coulisse in full blast, in the mornings from 11 to 1, and in the evenings from 8 to 10, before the Passage de l'Opéra.[1]

This brings us to the critical year of 1859, when the Coulisse was suppressed by law; and it should be remembered that during all this time its transactions invariably required the co-operation of the regular *agents* if an actual transfer of stocks was to be effected. Every *agent de change* had his *coulissier*; and it was said to be a custom among the *agents de change*, if they received orders from their Clients which they regarded as ill-judged, to direct their *coulissiers* to purchase what they had sold, or to sell what they had bought, for their Clients.[2]

In 1859, through the instrumentality of the Chambre Syndicale, not less than twenty-six *coulissiers* were convicted of usurping the functions of the *agents de change*, and condemned to pay a fine of 10,500 francs each, and their appeal was rejected by the Cour de Cassation.[3] This was a very serious blow to the Coulisse, the history of which will always be one of the most interesting features of the record of the Paris Bourse. It had its own rules and usages, though these were of a far more informal character than those of the Bourse, and admission to its ranks was obtained by presentation by some of the older members, and the tacit consent to the reception of the new-comer by the others. At the time of the decision of 1859 above alluded to, it included the members of two hundred banking-houses

[1] Larousse, Dictionnaire Universel, 308.

[2] M. Jeannotte Bozérain, De la Bourse, No. 145. In New York this proceeding is called "discounting" or "coppering" a Client.

[3] Bédarride, Droit Comm. 108, 109.

of great solidity, and sixty of these occupied themselves solely with operations in rentes. The smaller commissions charged by the *coulissiers*, and their quicker mode of operating, had caused their transactions to grow so enormously as to overshadow those of the regular Brokers, and notwithstanding the severity of the punishment inflicted upon them, the *coulissiers* reorganized themselves, and continued their unauthorized operations in the open market till 1898, when by a bill introduced by M. Fleury-Ranvarin, which became law, foreigners were prohibited from acting as jobbers, and any person not an *agent de change* was forbidden to deal in officially quoted securities except French rentes. Every person acting as an intermediary in such securities was obliged to produce a stamped document from an *agent de change*, on whose behalf he was obliged to act. The result was that the *coulissier* became a mere agent of the recognized Broker, and in consequence many of them emigrated to Brussels, London and Berlin. This caused a serious falling off in the business done on "Change," and in February, 1901, a new arrangment was effected by which the *coulissier* was legally recognized, and given a special space inside the Bourse. The functions of the *coulissiers* are to solicit business for the *agents de change*, and to act as intermediaries between the public and the *agents de change*, who share their commissions with the *coulissiers.* Applications for admission to the new body are carefully examined. A cash possession of 100,000 francs is required in the intended dealer in bonds, and a further sum of 500,000 francs if he wishes to operate in stocks.[1]

[1] See interesting articles by E. Friend in "The Forum" for October, 1901, and by G. Francois in 6 "Journal of Political Economy," p. 536 (September, 1898).

IV. Nature of Transactions.

The transactions of the Paris Bourse are substantially similar to the dealings on the London Stock Exchange, except that the operations are more diversified. There are two settling-days each month.[1]

There are two principal species of securities dealt in on the Bourse—*les nominatifs* and *les porteurs*—viz., either registered or to bearer. The delivery of the security to bearer is a sufficient transfer of the property. For the registered securities the seller must sign a declaration which transfers the property to the buyer, whose name is mentioned on the declaration. These declarations, called "transfer-sheets," are furnished by the companies, and can generally be sent to the seller for signature when he does not live in Paris, with the words "good for transfer," written in his own hand-writing, preceding his signature. But in those securities which require that the transfer should be signed on the books of the company, the seller must sign at the chief office or headquarters; or, if he does not live in Paris, he must send a power of attorney, with his securities, authorizing the person to whom they are sent to effect the transfer.

There is in French bonds a third species of security which partakes of the nature of the two former, and which, for that reason, is called "mixed securities." They are registered, and the title to them can only be transferred by a declaration signed by the seller; but they are furnished with coupons to bearer which can be detached from the security, and on the presentation of which the sum therein mentioned (*arrérages*) will be paid.

The transactions of the French Bourse are either for

[1] See rules in Appendix.

money or for the account, and in respect to the settlement or adjustment of the contracts do not substantially vary from the course of the London Exchange.

The most numerous dealings on the Bourse are for the account, and are settled by the payment of differences. These transactions are known under the general designation of "*des opérations à terme.*" To sell or buy securities "*à terme*" indicates on the part of those who make the operation the intention to delay the execution of the contract until a determinate period. The time when contracts of this nature mature and are settled is known on the Bourse as "*liquidation.*"

Ordinarily, in the past, there has been but one liquidation, which occurred at the end of the month. But when the financial or political situation is such to create very active movements on the Bourse, two settling-days are resorted to for the greater number of securities, and this seems to have been the case for a long time past. These liquidations are had on the 1st and 16th of each month.

The operations *à terme* may be made at the option of the Client either for the ensuing liquidation or for any following. And these operations can be made for a term longer than is embraced within the next ensuing settling-days: thus, in the case of securities for which monthly settling-days are fixed, the liquidation can be deferred beyond that period, while the same holds good with reference to those securities for which two settling-days per month are allowed.

The operations *à terme*, or for the account, are of two species—"*les marchés à ferme*" and "*les marchés à prime.*"

To buy or sell *ferme* is where one binds himself to receive or deliver, upon a certain day, a designated number

of shares at a fixed price. In this species of operations the loss is not limited, but is subject to the extremest fluctuations of the market.[1]

The operations *à prime*, on the other hand, are those where the loss is limited to a fixed sum. The contract is *à prime* whenever the price is followed by the word *dont.* For instance, A buys fifty shares *à terme* at the price of 1055 francs each, "*dont* 10." This means that A's loss is limited to 10 francs per share; for if, at the expiration of the contract, the shares should be worth only say 1030 francs each, A can abandon the *prime* at a loss of 500 francs; whereas, if the operation had been *ferme*, he would have lost 1250 francs.[2]

The "*réponse des primes*" is the declaration by the buyer of his intention, or not, to avail himself of his option. If the transaction is maintained, the purchase becomes fixed, "*un achat ferme.*" On the Paris Bourse, however, there is no formal declaration, as the official quotations are regarded as indicating of themselves the intention of the buyer.[3]

These contracts are mere options, and this entire system of dealings has been assailed as illegal and pernicious. It is related that when Napoleon I. had before him one of the governors (syndic) of the Bourse, this functionary, in defending its operations, said: "Sire, if my water-carrier is at my door, would he commit a wrong in selling me two barrels of water instead of only the one which he has with him? Of course not, because he is always certain to find another barrel of water in the river. Well, sire, at the Bourse there is a river

[1] Bédarride, Droit Comm. 101; 102; Goirand's Fr. Com. Law, Goirand's Fr. Com. Law, 122, 132, 133
133.

[2] Bédarride, Droit Comm. 101,

[3] Bédarride, Droit Comm. 103.

of *rentes*."[1] But, notwithstanding the attacks upon these option contracts, the Cour de Cassation, in 1860, finally decided that the dealings on the Bourse for future delivery are valid, provided that an actual delivery of the securities is contemplated, and they are not made as mere pretexts for gambling operations. And in this respect the French law agrees with the doctrine laid down by the courts of England and the United States.[2]

There are various other operations, a full description of which would, however, exceed the space assigned to this chapter. One of the most popular is the *report*. The *report* indicates an operation which consists of a simultaneous purchase and sale for different periods of time, and assimilates itself to what is commonly known in New York as the "turning" of stocks. Thus a capitalist who on the same day buys rente for 69 francs, cash, and sells it at 69 francs 45 centimes, payable at the end of the month, will gain the difference between the two amounts as the interest on his money. Again, speculators often desire to prolong their operations beyond the settling-day, and then the Brokers, who make this branch of operations a specialty, will renew or carry over the contract on the payment by the operator of a certain difference called *report*.[3] In the latter sense, the *report* would seem to correspond to what in England is known as the "carrying rate" for stocks.[4]

As the *cours moyen*, or average market price, of any security on a given day is of great importance in adjusting settlements, the rule has been established that the average

[1] Bédarride, Droit Comm. 81.

[2] Id. 108; Goirand's Fr. Com. Law, 125.

[3] Dictionnaire de la Conversation, 604.

[4] See Goirand's Fr. Com. Law, 122.

between the highest and lowest prices of the day shall be considered the *cours moyen.*[1]

In concluding this work the author may be again permitted to remark that, in the determination of contests between Stock-brokers and their Clients, the courts have in most instances drawn largely upon the rules of law governing the relation of principal and agent. Those rules, however, will not always apply; for cases will doubtless arise out of transactions in stocks, so anomalous and novel, when contrasted with the ordinary dealings of principal and agent, as to render it incongruous and impossible to apply the principles of law which govern the latter relation. From this condition of affairs there will gradually, in process of time, grow up a body of law *sui generis* in its nature, and into which will be incorporated many of the usages of Stock-brokers and Stock Exchanges.

[1] Larousse, Dictionnaire Universel, 1144.

APPENDIX

CONSTITUTION

OF THE

NEW YORK STOCK EXCHANGE

WITH SOME

RESOLUTIONS ADOPTED BY

THE

GOVERNING COMMITTEE

AMENDED AND ADOPTED MARCH, 1902, WITH FURTHER AMENDMENTS TO APRIL, 1903

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CONSTITUTION.

RULES FOR THE GOVERNMENT OF THE EXCHANGE.

ARTICLE I.

TITLE, OBJECTS.

Title. The title of this Association shall be the "NEW YORK STOCK EXCHANGE."

Objects. Its object shall be to furnish Exchange rooms and other facilities for the convenient transaction of their business by its members. as brokers; to maintain high standards of commercial honor and integrity among its members; and to promote and inculcate just and equitable principles of trade and business.

ARTICLE II.

GOVERNMENT.

How vested. The government of the Exchange shall be vested in a Governing Committee, composed of the President and the Treasurer of the Exchange, and of forty Members, elected in the manner hereinafter provided. The members of the Governing Committee, and the Secretary, shall be the officers of the Exchange.

ARTICLE III.

GOVERNING COMMITTEE.

Classification. SECTION 1. The Members of the Governing Committee shall be divided into four classes, each class consisting of ten members, as follows: first class, to hold office

for one year; second class, for two years; third class, for three years; fourth class, for four years.

Powers.

SEC. 2. The Governing Committee shall determine the manner and form by which its proceedings shall be conducted; appoint and dissolve all Standing or other Committees; define, alter and regulate their jurisdiction as stated in this instrument; have original and supervisory jurisdiction over any and all subjects and matters referred to said Committees; it may direct and control their actions or proceedings at any stage thereof, and shall try all charges against members of the Exchange and punish such as may be found guilty. It shall have entire control of the finances of the Exchange and fix the amount of fees and compensation to be paid to members of Committees, to Officers of the Exchange and to appointees of the Governing Committee. It may require of all officers or appointees of the Exchange a good and sufficient bond to secure the faithful performance of their duties. The Governing Committee shall be vested with all other powers necessary for the government of the Exchange, the regulation of the business conduct of its members, and the promotion of its welfare, objects and purposes.

Removals for absence.

SEC. 3. A Member, who shall be absent from three consecutive regular meetings of the Governing Committee, without having been excused by the President, may be declared by a two-thirds vote of the existing members of the Committee, to be no longer a Member.

Vacancies been filled.

SEC. 4. All vacancies occurring in the Governing Committee shall be filled by said Committee until the ensuing annual election.

Disabilities.

SEC. 5. No member of the Governing Committee shall be disqualified from participating in any meeting, action or proceeding of any kind whatever of said Committee, by reason of being or having been a member of a Standing Committee or Special Committee which has made prior inquiry, examination or investigation of the subject under consideration. Nor shall any member of any Standing or Special Committee be

disqualified, by reason of such membership, from acting as a member of the Governing Committee upon any appeal from any decision of such Standing or Special Committee. But no member shall participate in the adjudication of any case in which he is personally interested.

Quorum.

SEC. 6. A majority of all the existing member of the Governing Committee shall be necessary to constitute a quorum.

Ajourned meetings.

SEC. 7. Any hearing or trial may be adjourned, from time to time, by the Governing Committee in its discretion; but no member thereof, who shall not have been present at every meeting of said Committee at which evidence is taken, or at which an accused member, or a member whose conduct is involved in the hearing, is heard, shall participate in the final decision.

Calling meetings in absence of the President and Vice-President.

SEC. 8. In the absence of both the President and Vice-President, any ten members of the Governing Committee may call a meeting thereof by written announcement from the rostrum.

May choose Acting President.

SEC. 9. In the case of the temporary absence, or inability to act, of both the President and Vice-President, the Governing Committee may choose an Acting President of the Exchange *pro tem*.

Shall designate counsel.

SEC. 10. The Governing Committee shall at its first regular meeting in June of each year, designate counsel for the Exchange; such counsel to be employed at the pleasure of said Committee.

ARTICLE IV.

PRESIDENT.

Executive Power of Exchange.

SECTION 1. The executive power of the Exchange shall be vested in the President, who shall direct the enforcement of the rules and regulations and have the care

of all its interests. He may preside over the Exchange whenever he shall so elect, and shall be the presiding officer of the Governing Committee.

May call special meetings.

SEC. 2. The President may call special meetings of the Exchange, and of the Governing Committee. He shall call special meetings of the Exchange, upon the written request of one hundred members, and special meetings of the Governing Committee, upon the written request of ten members of said Committee.

May appoint Committees ad interim.

SEC. 3. Should special exigencies require, the President may appoint committees *ad interim*, to act until the regular appointments are made.

ARTICLE V.

VICE-PRESIDENT.

How Chosen.

SECTION 1. The Governing Committee, at its first meeting after every annual election, shall choose from its Members a Vice-President of the Exchange.

Powers and duties.

SEC. 2. The Vice-President shall, in the absence of the President, assume all the functions and powers, and discharge all the duties of the President.

ARTICLE VI.

TREASURER.

Duties.

SECTION 1. It shall be the duty of the Treasurer to receive, and acting under instructions from the Finance Committee, to take charge of and disburse moneys of the Exchange. He shall present to the Governing Committee at its first regular meeting in May of each year a report of the finances of the Exchange for the twelve months ending April 30 preceding. He shall be a member of the Finance Committee, and a Trustee of the Gratuity Fund.

Treasurer pro tem.

SEC. 2. In the event of failure, neglect or inability of the Treasurer, for any reason, to execute the duties of his office, the Finance Committee shall appoint one of its members, who, together with either the President or Vice-President, shall act as Treasurer *pro tem.*

ARTICLE VII.

SECRETARY.

Duties.

SECTION 1. It shall be the duty of the Secretary to record in a book of minutes, the proceedings of the Exchange, and take charge of the book and papers of the Association. He shall be the Secretary of the Governing Committee and of the Standing Committees. He shall conduct the correspondence of the Exchange and shall keep a ledger containing the names of all the members with dates of their admission and transfer of membership. He shall be the Accountant of the Exchange, and shall perform such other duties as the Governing Committee may direct.

ARTICLE VIII.

CHAIRMAN AND ASSISTANT CHAIRMAN.

Chairman.

SECTION 1. The Governing Committee may appoint a Chairman, who shall hold his position subject to the pleasure of said Committee. It shall be his duty to preside over the Exchange during business hours, maintain order, enforce the rules, impose fines, and perform such other duties as the Committee of arrangements may direct.

Shall not deal in securities.

SEC. 2. The Chairman shall not be permitted personally to buy or sell securities upon the floor of the Exchange.

Assistant Chairman.

SEC. 3. The Committee of Arrangements may appoint an Assistant Chairman, who shall hold his position subject to the pleasure of said Committee, and perform such duties as said Committee may direct.

ARTICLE IX.

ELECTIONS.

Annual election.

SECTION 1. The annual election of the Exchange shall be held on the second Monday of May; at which time there shall be elected by ballot a President, a Treasurer, and a Secretary, each for the term of one year; a Trustee of the Gratuity Fund for the term of five years; and ten Members of the Governing Committee for the term of four years; also members to fill any vacancies which may have occurred during the preceding year either in the Trustees of the Gratuity Fund or in the Governing Committee.

In each case the member receiving the highest number of votes for any office or position shall be declared elected thereto.

Nominating Committee.

SEC. 2. At said election there shall also be chosen a Nominating Committee to consist of five members, not officers of the Exchange. It shall prepare and report to the Exchange, on or before the second Monday of April in the following year, nominations for all the offices or positions which are to be filled at the ensuing annual election. They shall hold office for one year, and any vacancy in the Committee shall be promptly filled by the remaining members.

Right to vote.

SEC. 3. Any member of the Exchange, in good standing, shall be entitled to vote at any election or meeting of the Exchange.

Quorum.

SEC. 4. When the Exchange shall be assembled for the transaction of business other than dealing in securities, a majority of all the members shall constitute a quorum.

ARTICLE X.

ELIGIBILITY—VACANCY IN OFFICE.

Eligibility to office or position.

SECTION 1. No person shall be eligible to any office in the Exchange, or to the position of Chairman or Assistant Chairman, who shall not be, at the time of his election or appointment, a member in good standing.

SEC. 2. The expulsion, suspension or transfer of membership of a member holding any office or position, to which he has been either elected or appointed, shall create a vacancy therein which shall be filled as provided in these rules.

Suspension of members holding office or position.

SEC. 3. In the event of the refusal, failure, neglect or inability, of an officer of the Exchange, to discharge the duties of his office, or for any good cause, of the sufficiency of which the Governing Committee shall be the sole judge, said Committee shall have power, by a two-thirds vote of all its existing members, to remove said officer and declare the position held by him to be vacant.

Removal of officers.

SEC. 4. In case a vacancy shall occur in the office either of President, Treasurer or Secretary, a new election by ballot shall be held forthwith to fill such vacancy for the unexpired term.

Filling vacancies by election.

SEC. 5. In case of vacancy in the office of Vice-President, the same shall be filled by the Governing Committee at its next meeting after the vacancy occurs.

Filling vacancies by appointment.

SEC. 6. Every appointee, clerk or employee of the Exchange shall hold his office, place or position only during the pleasure of the authority by which he was appointed; and he may be, at any time, removed, dismissed or discharged by a majority vote of the Committee by which he was appointed, or by a like vote of the Governing Committee.

Removal of Appointees.

ARTICLE XI.

STANDING COMMITTEES.

SECTION 1. Promptly after each annual election, the Governing Committee shall appoint from its Members the following Standing Committees:

Standing Committees.

First.—A Committee of Arrangements, to consist of seven

members. It shall have the general care and supervision of the Exchange, enforce all rules and regulations necessary to the conduct of business, to good order and the comfort of the members, and consider all complaints of violation of said rules. It shall control and regulate the quotation service and all telegraph or telephone connection with the Exchange. It shall, except as herein otherwise expressly provided, appoint, dismiss and determine the number, duty and pay, of all employees, and provide all supplies for the Exchange and make all necessary repairs to its building.

Committee of Arrangements.

Duties.

Second.—A Committee on Admissions, to consist of fifteen members. All applications for membership, and all applications of suspended members for reinstatement to their privileges, shall be referred to this Committee.

Committee on Admissions.

Duties.

The affirmative vote of two-thirds of the entire Committee shall be necessary to elect to membership, or to reinstate a suspended member.

No application for readmission of a person who has ceased to be a member of the Exchange through violation of its Constitution, or for the reinstatement of a member who has been suspended under Sec. 2, Article XVI, shall be considered by this Committee, unless said person has obtained the consent of two-thirds of the members of the Governing Committee present, when such application is considered.

Application for readmission.

Third.—An Arbitration Committee to consist of nine members. It shall investigate and decide, when properly brought before it, all claims and matters of difference, arising from contracts subject to the rules of the Exchange, between members of the Exchange or, at the instance of a non-member, between members and non-members. The Committee may dismiss any case, and refer the parties to their remedies at law, and it shall so refer them upon the joint request of the contestants. The decision of this Committee shall be final in all cases, unless an appeal shall be taken by a member of the Committee, as in these rules provided, or in cases

Arbitration Committee.

Duties.

involving a sum of $2,500 or over, when either party may appeal within ten days to the Governing Committee; upon such appeal, the Governing Committee may finally adjudicate the case, relegate the parties to their remedies at law, or direct a rehearing by the Arbitration Committee.

Claims preferred by non-members.

A non-member making a claim shall execute an agreement to abide by the rules of the Exchange, and also a full release of said claim, and shall deliver them to the Chairman of the Arbitration Committee, who shall keep them in trust to abide the result of said arbitration and deliver them to the defendant in any of the following cases:

Release to be delivered to defendant.

(*a.*) In case the plaintiff shall fail to appear before the Arbitration Committee within such time as said Committee shall designate.

(*b.*) In case judgment shall be rendered for said defendant by the Arbitration Committee.

(*c.*) In case the defendant shall pay, or offer to pay, to the claimant the amount of judgment rendered in his favor, and shall have filed with the Chairman satisfactory evidence of such payment or proffered payment.

Release to be delivered to plaintiff.

In case judgment shall be rendered against any member of the Exchange, which he neglects to pay, or if the case be dismissed, then such release shall be canceled and returned to the plaintiff.

Committee on Clearing-House.

Fourth.—A Committee on Clearing-House to consist of five members. It shall have general charge of the Clearing-House of the Exchange and the business thereof, and shall from time to time designate the securities to be cleared. It may determine the amount of salary or compensation to be paid to officers and employees of the Clearing-House and make expenditures from its funds for the conduct of its business. It shall make monthly financial reports to the Finance Committee.

Committee on Commissions.

Fifth.—A Committee on Commissions to consist of five members. It shall enforce the rules relating to commissions, partnerships and branch offices, and shall report to the Governing Committee any undesirable partnership or branch office or any violation of said rules.

Sixth.—A Committee on Constitution to consist of five members, to which shall be referred all additions, alterations, or amendments to the Constitution. It shall report them back to the Governing Committee, but only at regular meetings or at special meetings called solely for the purpose of considering them.

Committee on Constitution.

Seventh.—A Finance Committee to consist of seven members. It shall meet prior to the first regular meeting of the Governing Committee in each month and examine the various accounts and vouchers; and, acting as a Board of Audit, the Committee shall report its examination to the Governing Committee. It shall also make examinations of the condition of the Gratuity Fund as provided in Article XIX hereof.

Finance Committee.

Eighth.—A Committee on Insolvencies to consist of three members selected from the Committee on Admissions. It shall investigate every case of insolvency immediately after the announcement thereof to the Exchange. It shall ascertain the cause of failure and promptly report the result of its examination to the Committee on Admissions.

Committee on Insolvencies.

Ninth.—A Law Committee to consist of five members, to which shall be referred all questions of law affecting the interests of the Exchange.

Law Committee.

Tenth.—A Committee on Securities to consist of five members. It shall make rules defining the requirements for regularity in delivery of securities dealt in at the Exchange; and decide all questions relating to the settlement of contracts subject to the rules of the Exchange, of due bills, of irregularities in securities, or in deliveries thereof, and all questions relating to reclamations therefor.

Committee on Securities.

Eleventh.—A Committee on Stock List to consist of five members. It shall receive and consider all applications for placing securities upon the list of the Exchange, and make report and recommendation thereon to the Governing Committee, giving full statement concerning organization, capi-

Committee on Stock List.

talization, resources and indebtedness. It shall have charge of the arrangement and revision of the regular list of securities.

Twelfth.—A Committee on Unlisted Securities composed of one member each from the Committees of Arrangements, Securities and Stock List. It shall have general charge of the Unlisted Department of the Exchange.

Committee on Unlisted Securities.

SEC. 2. The Standing Committees of the Exchange, and all Special Committees, shall determine the manner and form by which their proceedings shall be conducted; shall make such regulations for their government as they shall deem proper, and may fill any vacancies occurring in their membership, subject always to the control and supervision of the Governing Committee.

Powers and duties of Committees.

SEC. 3. A majority of the members of any Committee shall be necessary to constitute a quorum.

Quorum.

ARTICLE XII.

APPEALS.

SECTION 1. An appeal to the Governing Committee, from any decision of a Standing Committee, may be taken by a member of the Exchange, interested therein, if made in writing to the President within two days after said decision has been rendered: but nothing herein contained shall authorize an appeal from a decision of the Committee on Admissions, except as provided in Section 4, Article XVI, of these Rules, nor from a decision of the Arbitration Committee, except as provided in the third subdivision of Section 1, Article XI, of these Rules.

Appeals made by members.

SEC. 2. A member of a Standing Committee, present at the hearing of a case, may, within two days after a decision has been made thereon, appeal therefrom to the Governing Committee by writing, addressed to the President.

Appeal by member of Committee.

SEC. 3. All appeals to the Governing Committee shall be submitted upon a printed transcript of the record before the Standing Committee and such printed arguments as the parties to the appeal may desire to submit.

Form of appeal.

ARTICLE XIII.

APPLICATIONS FOR MEMBERSHIP—ELIGIBILITY—INITIATION FEE.

SECTION 1. Every applicant for membership must be at least twenty-one years of age, and a citizen of the United States.

Application for membership.

SEC. 2. The membership of the Exchange shall not be increased[1] except by action of the Governing Committee, which shall prescribe the number of increase and the terms of admission. Such action shall be submitted to the Exchange on the same conditions as those prescribed for amendments to the Constitution.

Membership, how increased.

SEC. 3. Members admitted by transfer shall pay to the Exchange an initiation fee of Two Thousand Dollars.

Initiation fee.

SEC. 4. If the initiation fee of an applicant for admission to membership is not paid on the day of his election and notification by Secretary, such election shall be void.

Initiation fee when payable.

SEC. 5. No person, elected to membership, shall be admitted to the privileges thereof until he shall have signed the Constitution of the Exchange. By such signature he pledges himself to abide by the same and by all subsequent amendments thereto.

Members to sign Constitution.

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[1] Most Stock Exchanges place a limit on the number of members. In the New York Stock Exchange the limit is 1100, a number reached after a considerable increase in 1869, when a successful rival, The Open Board of Brokers, was absorbed by consolidation of membership. Johnson's Universal Enc., Title, "Stock Exchange."

ARTICLE XIV.

DUES AND FINES—PENALTY FOR NON-PAYMENT.

SECTION 1. The dues of all members of the Exchange shall be payable on May 1st and November 1st of each year, and shall be fifty dollars semiannually, exclusive of fines, and of assessments under Article XVIII of the Constitution.

Dues and fines.

SEC. 2. Any member who shall neglect to pay his fines, dues or any assessment for the Gratuity Fund for three months after they become payable, shall be reported by the Treasurer to the President, who shall, after due notice to the delinquent, suspend said delinquent until said dues are paid.

Penalty for non-payment.

If the fines, dues or assessments of any suspended member, are not paid at the end of one year after they become payable, the membership of said suspended member may be disposed of by the Committee on Admissions.

ARTICLE XV.

TRANSFER OF MEMBERSHIP.

SECTION 1. A transfer of membership may be made upon submission of the name of the candidate to the Committee on Admissions, and the approval of the transfer by two-thirds of the entire Committee. Notice of the proposed transfer shall be posted on the bulletin in the Exchange for at least ten days prior to transfer.

Transfer of membership.

SEC. 2. All contracts subject to the rules of the Exchange, made by a member proposing to transfer his membership, shall mature on the tenth day of the posting of notice of the proposed transfer; and said member shall not be permitted, thereafter, to make any contracts subject to the rules of the Exchange, pending the approval of the proposed transfer by the Committee on Admissions.

Maturity of contracts.

This rule shall also apply in cases where a membership is disposed of by the Committee on Admissions.

Sec. 3. Upon any transfer of membership, whether made by a member voluntarily, or by the Governing Committee or the Committee on Admissions in pursuance of the provisions of the Constitution, the proceeds thereof shall be applied to the following purposes and in the following order of priority, viz:

Disposition of proceeds of a transfer of membership.

First.—The payment of all fines, dues, assessments and charges of the Exchange, or any department thereof, against a member whose membership is transferred.

Second.—The payment of creditors, members of the Exchange, or firms registered thereon, of all filed claims arising from contracts subject to the rules of the Exchange, if, and to the extent that, the same shall be allowed by the Committee on Admissions. If said proceeds shall be insufficient to pay said claims, as so allowed, in full, the same shall be applied to the payment thereof *pro rata.*

Third.—The surplus, if any, of said proceeds shall be paid to the person whose membership is transferred, or to his legal representatives, upon the execution by him or them of a release or releases satisfactory to the Committee on Admissions.

The Committee on Admissions shall have power, by rule or otherwise, to secure the observance of the provisions of this Article.

Sec. 4. All unmatured debts or other obligations of a member, arising out of contracts subject to the rules of the Exchange, shall become due and payable immediately prior to the transfer of his membership; and all claims filed with the Committee on Admissions, founded upon contracts subject to the rules of the Exchange, shall, if, and to the extent that the same are, allowed by said Committee, be liquidated, and paid, pro rata, out of the proceeds of said membership upon consummation of the transfer.

Unmatured debts.

Sec. 5. A member shall forfeit all right to share in the proceeds of a membership, unless he file a statement of his claim with the Committee on Admissions prior to

Failure to file claim.

the transfer of such membership; but such claim, as allowed by the Committee on Admissions, may be paid out of any surplus remaining after all other claims, allowed by said Committee, have been paid in full.

Sec. 6. Claims growing out of transactions between partners, who are members of the Exchange, shall not share in the proceeds of the membership of one of such partners, until after all other claims, as allowed by the Committee on Admissions, have been paid in full.

Claims of partners.

Sec. 7. When a member dies, his membership may be disposed of by the Committee on Admissions.

Deceased member.

Sec. 8. When a member is expelled, or becomes ineligible for reinstatement, his membership may be disposed of forthwith by the Committee on Admissions.

Expelled member.

Sec. 9. The expulsion or suspension of a member shall not affect the rights of creditors, members of the Exchange or of firms registered thereon.

Rights of creditors.

ARTICLE XVI.

INSOLVENT MEMBERS—SUSPENSION—REINSTATEMENT.

Section 1. A member who fails to comply with his contracts, or is insolvent, or who is a partner in a firm, registered upon the Exchange, which fails to comply with its contracts, or is insolvent, shall immediately inform the President, in writing, that he or his firm, is unable to meet their engagements, and prompt notice thereof shall be given to the Exchange. He shall thereby become suspended from membership until, after having settled with his creditors, or the creditors of his firm, he has been reinstated by the Committee on Admissions.

Insolvency and suspension.

Sec. 2. Whenever the President shall ascertain that a member has failed to meet his engagements, or is insolvent, or that a firm registered upon the Exchange has

Suspension by President.

failed to meets its engagements, or is insolvent, and that such member, or such firm, has neglected to comply with the requirements of the proceeding section, he shall announce to the Exchange the insolvency and suspension of such member or such firm.

Sec. 3. If a member, suspended under this Article, fails to settle with his creditors and apply for reinstatement, within one year from the time of his suspension, his membership shall be disposed of by the Committee on Admissions. The Governing Committee may, by a two-thirds vote of the members present, extend the time of settlement for periods not exceeding one year each. At the expiration of the time granted, the membership of said suspended member shall be disposed of as above provided.

Time of settlement.

Extension of time.

Sec. 4. When a suspended member applies for reinstatement he shall furnish to the Chairman of the Committee on Admissions a list of his creditors, a statement of the amounts originally owing, and the nature of the settlement in each case. Notice of the proposed consideration of the application shall be given through the Chairman of the Exchange on three consecutive days, and said notice shall also be posted upon the bulletin. Upon the applicant presenting satisfactory proof of settlement with all his creditors, the Committee shall proceed to ballot for him in accordance with its rules and regulations. Failing to receive the approving vote of two-thirds of the entire Committee, the applicant shall be entitled to be balloted for at any five subsequent regular meetings of the Committee, to be designated by himself: provided however, that the six ballotings to which the applicant shall be entitled shall be within one year from the date of his suspension, or within such further extended time for settlement as may have been granted by the Governing Committee.

Reinstatement.

If on the sixth ballot the applicant be rejected, he may appeal within ten days thereafter to the Governing Committee, who may by an affirmative vote of not less than twenty-five of its members reinstate the applicant.

Appeal to Governing Committee.

If he fails to make applications to the Committee on Admissions, to be ballotted for as above provided, or if rejected by the Governing Committee, his membership shall be disposed of by the Committee on Admissions.

Forfeit of membership.

SEC. 5. Whenever the Governing Committee shall determine, upon the report of the Committee on Admissions, that the failure of a member or of a firm registered upon the Exchange, has been caused by reckless or unbusinesslike dealing, said member, or the partner or partners in such firm who are members of the Exchange may, by a two-thirds vote of the existing members of the Governing Committee, be declared ineligible for reinstatement.

Failure due to unbusinesslike dealings.

SEC. 6. Every suspended member shall file with the Secretary of the Exchange, within thirty days after his suspension, a written statement containing a complete list of his creditors and of the amount owing to each.

File list of creditors.

ARTICLE XVII.

EXPULSION AND SUSPENSION FROM MEMBERSHIP.

SECTION 1. Unless otherwise specially provided, the penalty of suspension from membership may be inflicted, and the period of suspension determined, by the vote of a majority of the existing members of the Governing Committee; and the penalty of expulsion from membership or of ineligibility of a suspended member for readmission may be inflicted by the vote of two-thirds of the existing members of said Committee.

Suspension or expulsion.

SEC. 2. A member who shall be adjudged, by a two-thirds vote of all the existing members of the Governing Committee, to be guilty of fraud or of fraudulent acts, shall be expelled and the President shall so declare; public announcement of the expulsion shall be made to the Exchange and the membership shall be forthwith disposed of by the Committee on Admissions.

Fraud or fraudulent acts.

Misstatements to Committee on Admissions.

Sec. 3. Whenever it shall appear to a majority of the Committee on Admissions that a misstatement upon a material point has been made to it by a member, upon his application either for membership or reinstatement or extension of time, it shall report the case to the Governing Committee, who by a two-thirds vote of all the existing members of the Committee may expel the member.

Connection with other Exchanges.

Sec. 4. Any member, who shall be connected directly, or by a partner, or otherwise, with any organization in the City of New York which permits dealings in any securities or other property, admitted to dealing in any department of this Exchange, shall be liable to suspension for a period not exceeding one year, or to expulsion, as the Governing Committee may determine.

Dealing with non-members.

Sec. 5. A member making a transaction with a non-member in the rooms of the Exchange, either purchase, sale or loan, in any security or property admitted to dealings in any department of the Exchange, or in money, shall be subject to suspension for such period not exceeding one year as the Governing Committee may deem proper.

Violation of Constitution.

Sec. 6. A member who shall have been adjudged, by a majority vote of all the existing members of the Governing Committee, guilty of wilful violation of the Constitution of the Exchange, or of any resolution of the Governing Committee regulating the conduct or business of members, or of any conduct or proceeding inconsistent with just and equitable principles of trade, may be suspended or expelled as the said Committee may determine, unless some other penalty is expressly provided for such offense.

Production of required evidence.

Sec. 7. The Governing Committee may, by a two-thirds vote of its members present, require that a member of the Exchange shall submit to the Governing Committee or any Standing or Special Committee, for examination, such portion of his books or papers as are material and relevant to any matter under investigation by said Committee or by any Stand-

ing or Special Committee. Any member who shall refuse or neglect to comply with such requirement, or shall wilfully destroy any such required evidence, or who, being duly summoned, shall refuse or neglect to appear before the Governing Committee or any Standing or Special Committee, as a witness, or refuse to testify before any such Committee, may be adjudged guilty of an act detrimental to the interest or welfare of the Exchange.

Acts detrimental to welfare of the Exchange.

SEC. 8. The Governing Committee may, by a vote of a majority of all its existing members, suspend from the Exchange for a period not exceeding one year, any member who may be adjudged guilty of any act which may be determined by said Committee to be detrimental to the interest or welfare of the Exchange.

Method of procedure.

SEC. 9. An accusation, charging a member before the Governing Committee with having committed an offense, or having violated the laws or regulations of the Exchange, shall be in writing: it shall specify the charge or charges against such member with reasonable detail, and shall be signed by the person or persons making the charge or charges. A copy of such charge or charges shall be served upon the accused member either personally, or by leaving the same at his office address during business hours, or by mailing it to him at his place of residence. He shall have ten days from the date of such service to answer the same, or such further time as the Governing Committee in its discretion may deem proper. The answer shall be in writing, signed by the accused member, and filed with the Secretary of the Exchange. Upon the answer being filed, or if the accused shall refuse or neglect to make answer as hereinbefore required, the Governing Committee shall, at a regular or special meeting thereafter, proceed to consider the charge or charges; if such meeting be a special meeting, notice of the object thereof shall be sent to the members of the Committee. Notice of such meeting shall be sent to the accused; he shall be entitled to be personally present thereat, and shall be permitted in person to examine and cross-examine all the witnesses produced before the Committee, and also to present such testimony, defense or explanation as he may deem proper. After hearing

all the witnesses and the member accused, if he desires to be heard, the Governing Committee shall determine whether said member is guilty of the offense or offenses charged. If it determines that the accused is guilty, the Governing Committee shall expel such member, or may suspend him, as the case may be; the result shall be announced to the Exchange by the President, and a written notice thereof served upon said member in the manner hereinbefore provided. The finding of the Governing Committee shall be final and conclusive.

Governing Committee may proceed summarily.

SEC. 10. Should a member be accused before the Governing Committee of misconduct, or of having committed an offense the penalty for which is limited to suspension for a period not exceeding sixty days, said Committee may proceed summarily, and the method of procedure required by the preceding section shall not apply. The accused shall be summoned before the Committee, informed of the nature of the accusation against him and afforded an opportunity for explanation by personal or other testimony. If the Committee shall determine by a majority vote of all its existing members that the accused is guilty, it may, by a similar vote, suspend him from membership for such period as the Constitution provides.

Suspended members deprived of privileges.

SEC. 11. Whenever a member is suspended by the Governing Committee, announcement thereof shall be made to the Exchange, and such member shall be deprived during the term of his suspension of all rights and privileges of membership, except those pertaining to the Gratuity Fund.

Counsel excluded.

SEC. 12. No member of the Exchange shall be allowed to be represented by professional counsel in any investigation or hearing before the Governing Committee or any Standing or Special Committee.

THE GRATUITY FUND AND ITS TRUSTEES.

ARTICLE XVIII.

THE GRATUITY FUND.

Declaration.

Every member of the Exchange shall be subject to the conditions and entitled to partake of the benefits of the plan providing for the families of deceased members as hereinafter set forth.

Original assessment.

SECTION 1. Every person who shall become a member of the Exchange shall pay to the Trustees of the Gratuity Fund the sum of Ten dollars before he shall be admitted to the privilege of membership.

Assessment for deaths.

SEC. 2. Upon the death of a member of the Exchange there shall be levied and assessed against every other member the sum of Ten dollars, which shall thereupon become a due from him to the Exchange, and which shall be charged and collected as other dues and fines are or may be then charged and collected.

Assessments equally made.

SEC. 3. Assessments under the provisions of this Article shall be made equally against all members, either living or deceased, until the date of the transfer of their memberships.

Amount of gratuity.

SEC. 4. The faith of the Exchange is hereby pledged to pay, within one year after proof of death of any member, out of the money collected under the provisions of this Article, the sum of Ten thousand dollars, or so much thereof as may have been collected, to the persons named in the next Section, as therein provided, which money shall be paid as a

gratuity from the other members of the Exchange, free from all debts, charges or demands whatever.

Sec. 5. Should the member die leaving a widow and no descendant, then the whole sum shall be paid to such widow for her own use.

Distribution to beneficiaries.

Should the member die leaving a widow and descendants, then one-half shall be paid to the widow for her separate use and one-half to the children for their use, share and share alike, provided that the share of minor children shall be paid to their guardian, and that the issue of any deceased child shall be entitled to receive the share which said child would have received if living, if of age directly, or if minors, through his, her or their guardian or guardians.

Should the member die leaving descendants and no widow, then the whole sum shall be paid to the children as directed in the preceding paragraph to be done with the moiety; but no adopted child shall share in the gratuity if the member leaves a widow or descendants.

Should the member die leaving neither widow nor descendant, but an adopted child or children, then the whole sum shall be paid to such adopted child or children, the issue of any deceased adopted child to take the share which the parent would have taken if living; provided that such adoption shall have been in such manner and form as to be valid under the laws of the State of New York.

Should the member die leaving neither widow, descendant, adopted child nor issue of a deceased adopted child, then the whole sum shall be paid to the same persons who would, under the laws of the State of New York, take the same by reason of relationship to the deceased member had he owned the same at the time of his death; and if there be no such person, then the assessment levied in such case shall be credited to those members of the Exchange against whom it shall have been charged, in reduction of their payments under this Article.

In all cases a certified copy of the proceedings before a Surrogate or Judge of Probate shall be accepted as proof of the rights of the claimants, be deemed ample authority to the Exchange to pay over the money, shall protect the Exchange in so doing, and

shall release the Exchange forever from all further claim or liability whatsoever.

Sec. 6. Nothing herein contained shall ever be taken or construed as a joint liability of the Exchange or its members for the payment of any sum whatever; the liability of each member, at law or in equity, being limited to the payment of Ten dollars only on the death of any other member, and the liability of the Exchange being limited to the payment of the sum of ten thousand dollars, or such part thereof as may be collected, after it shall have been collected from the members, and not otherwise.

Limitation of liability.

Sec. 7. Nothing herein contained shall be construed as constituting any estate *in esse* which can be mortgaged or pledged for the payment of any debts; but it shall be construed as the solemn agreement of every member of the Exchange to make a voluntary gift to the family of each deceased member, and of the Exchange, to the best of its ability, to collect and pay over to such family the said voluntary gift.

Gratuity not assignable.

Sec. 8. There shall be credited annually to each member of the Exchange, in reduction of his payments under this Article, his proportion of the surplus income of the Exchange, after setting apart such sum as the Governing Committee shall determine to be necessary for conducting the business of the Exchange.

Reduction in amounts to be paid by members.

Whenever the number of deaths of members of the Exchange shall exceed fifteen in any one year, the Trustees of the Gratuity Fund shall pay over to the Treasurer of the Exchange the net income which has been received as interest on the Fund during said year, less the necessary expenses of management and distribution, and each member of the Exchange shall be credited with his proportion of the amount, in reduction of his payments under this Article.

Sec. 9. The provisions of this Article shall not extend to any member whose connection with the Exchange shall have been severed by the transfer of his membership, whether the same is made voluntarily or involuntarily,

Benefits to members only.

nor to any member who now is or hereafter may be expelled by the Governing Committee, but shall extend to suspended members.

ARTICLE XIX.

THE TRUSTEES OF THE GRATUITY FUND.

Board of Trustees.

SECTION 1. The execution of the provisions of the preceding article, and the management and distribution of the Fund created thereunder shall be under the charge of a Board of Trustees, to be known as "The Trustees of the Gratuity Fund," and to consist of the President and the Treasurer of the Exchange, and of five other Trustees chosen for the term of five years.

In case of a vacancy occurring among the five chosen Trustees, the Governing Committee, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange.

Investment of funds.

SEC. 2. It shall be the duty of the Trustees to invest and keep securely invested, in accordance with the laws of the State of New York regulating Trust Funds, all moneys paid to them for the Fund, together with the interest and accretions arising therefrom.

All stock shall be registered in the name of "The Trustees of the Gratuity Fund of the New York Stock Exchange," but without specifying the individual names of such Trustees, and may be disposed of and assigned by any four of said Trustees.

Organization of Board.

SEC. 3. On the first Monday after the annual election of the Exchange, or as soon thereafter as may be practicable, the Trustees of the Gratuity Fund shall organize by electing a Chairman, and a Secretary and Treasurer of the Gratuity Fund, who shall serve for one year or until their successors shall be chosen. The offices of Secretary and Treasurer may be held by the same person.

Meetings of Board.

SEC. 4. There shall be a regular meeting of the Trustees on the third Monday in each month. The chairman may call a special meeting at any time; he shall call a

meeting at the request of two Trustees. At a meeting four Trustees shall constitute a quorum.

Duties of Chairman.

SEC. 5. It shall be the duty of the Chairman to preside at meetings; he shall vote on all questions; he shall, on the Monday preceding the annual election of the Exchange, make a report to the President of the Exchange of the condition of the Fund, with a statement by the Treasurer of receipts and disbursements.

Duties of Secretary.

SEC. 6. It shall be the duty of the Secretary to keep regular minutes of the proceedings of the Trustees, and to give notice of meetings.

Duties of Treasurer.

SEC. 7. It shall be the duty of the Treasurer to receive and sign vouchers for all moneys paid to the Trustees, which he shall deposit in such institutions as they may direct, to his credit as "Treasurer of the Gratuity Fund of the New York Stock Exchange."

He shall have the custody of all securities belonging to the Fund, subject to the examination and control of the Trustees.

He shall keep, or cause to be kept, proper books of account.

He shall receive and keep a record of all claims for payment under Article XVIII of the Constitution of the Exchange, and present the same to the Trustees for their action; when allowed and approved by the Trustees, he shall pay the same; but no such payment shall be made until directed by the Trustees.

He shall make such investments for the Fund as may be ordered by the Trustees.

His books shall always be open to the inspection of any Trustee, and he shall make to the Chairman an annual statement of receipts and disbursements.

He shall receive out of the Fund such compensation per annum as may be fixed by the Trustees and approved by the Governing Committee of the Exchange.

Gratuities to minors.

SEC. 8. In case any person entitled to any gratuity shall be under age and have no guardian entitled to receive payment at the maturity thereof, the Trustees may,

in their discretion, deposit such money with the New York Life Insurance and Trust Company or the United States Trust Company, as the property of, and in trust for, such minor; and in like manner if any person apparently entitled to any payment fails to claim, or has disappeared or cannot be found after reasonable inquiry the Trustees may deposit the presumptive share of such person in either of said Trust Companies to the credit of "The Trustees of the Gratuity Fund of the New York Stock Exchange, in trust," to the end that it may be paid to such person, if afterwards found, or otherwise to the parties who may subsequently establish their right thereto; a similar discretion shall apply in the case of any dispute between claimants for a gratuity or a portion thereof.

Trustees may employ Counsel and make expenditures.

SEC. 9. The Trustees shall have power at their discretion to consult and employ legal counsel; they shall be authorized to make disbursements out of the Fund to defray necessary expenses, but no such disbursements shall be allowed without a resolution specifying the nature and amount of the same, being entered at large upon the Book of Minutes of the Secretary. Each Trustee shall receive from the Fund five dollars for every meeting at which he shall be present.

Vacancy in office.

SEC. 10. In case of a vacancy occurring in the office of Chairman, or Secretary and Treasurer, the Trustees shall forthwith proceed to fill the same for the unexpired term. In case of the temporary absence or inability to act of either the Chairman, or Secretary and Treasurer, the Trustees shall have power to appoint one of their number to act in his stead *pro tem.*

Examination of the fund.

SEC. 11. The Governing Committee of the Exchange shall, at all times, have the right to direct the production before it of the securities belonging to the Fund, the Secretary's Book of Minutes and the Treasurer's books of account.

It shall be the duty of the Finance Committee of the Exchange to make an annual examination of the condition of the Fund: and it shall have the right at any time to make such additional examination thereof as it may deem proper.

SEC. 12. The Governing Committee of the Exchange shall have power to try charges against any Trustee for malfeasance or negligence in office, and by a vote of two-thirds of all its existing members, to suspend him from his functions or to remove him and declare the office vacant.

Removal of Trustees.

SEC. 13. It shall be the duty of the Treasurer of the Exchange to pay over, semi-monthly, all assessments collected under Article XVIII of the Constitution, to the Treasurer of the Gratuity Fund.

Payments to Treasurer of the fund.

RULES FOR THE TRANSACTION OR CONDUCT OF BUSINESS.

ARTICLE XX.

HOURS OF BUSINESS.

Hours for business.

SECTION 1. The Exchange shall be opened for the entrance of members upon every business day at thirty minutes after nine o'clock a. m.

At ten o'clock the Chairman shall announce that the Exchange is open for the transaction of business, and it shall so remain until three o'clock p. m., when he shall announce it to be closed. On half holidays the closing shall be at twelve o'clock, noon.

Closing by order of Governing Committee.

SEC. 2. The Exchange shall not be closed at any time between the hours named in the preceding Section, except by order of the Governing Committee.

Penalty for dealing in other than official hours.

SEC. 3. Dealings upon the Exchange shall be limited to the interval between the hours above named; and a fine of fifty dollars for each offense shall be imposed by the Chairman, upon any member who shall make any bid, offer or transaction before or after those hours. Loans of money or securities may be made after the official closing of the Exchange.

Dealing elsewhere forbidden.

SEC. 4. Dealing upon any other Exchange in the City of New York or publicly outside of the Exchange, either directly or indirectly, in securities listed or quoted on the Exchange, is forbidden; any violation of this rule shall be deemed to be an act detrimental to the interest or welfare of the Exchange.

ARTICLE XXI.

CALLS.

The appointment and arrangement of Calls of Stocks or Bonds shall be under the control and direction of the Committee of Arrangements.

ARTICLE XXII.

CONTRACTS SUBJECT TO THE RULES OF THE EXCHANGE.

All contracts of a member of the Exchange, or of a firm having a member of the Exchange as a general partner, with any other member of the Exchange, or with any other firm having a member of the Exchange as a general partner, for the purchase, sale, borrowing, loaning or hypothecation of securities, or for the borrowing, loaning, or payment of money, whether occurring upon the floor of the Exchange or elsewhere, are contracts subject to the rules of the Exchange.

ARTICLE XXIII.

BIDS AND OFFERS.

SECTION 1. All bids and offers made and accepted in accordance with these rules shall be binding.

Offers binding.

SEC. 2. All offers to buy or sell securities, shall be for 100 shares of stock or for $10,000 par value of bonds, unless otherwise stated.

Amount of bid or offer.

Offers to buy or sell specific amounts, other than as above stated, may be made at the same time and may be independently accepted.

SEC. 3. Bids and offers may be made only as follows:

Bids and offers.

(*a*.) "Cash," *i. e.*, for delivery upon the day of contract;

(*b*.) "Regular Way" *i. e.*, for delivery upon the business day following the contract;

(*c.*) "At three days," *i. e.*, for delivery upon the third day following the contract.

(*d.*) "Buyer's" or "Seller's" options for not less than four days nor more than sixty days.

Bids and offers under each of these specifications may be made simultaneously, as being essentially different propositions, and may be separately accepted without precedence of one over another.

Bids and offers made without stated conditions shall be considered to be in the "Regular Way."

Regular way.

Exchange of written contracts.

On transactions for more than three days written contracts shall be exchanged on the day following the transaction, and shall carry interest at the legal rate, unless otherwise agreed; on such contracts one day's notice shall be given, at or before 2.15 p. m., before the securities shall be deliverable prior to the maturity of the contract.

Precedence of options.

On offers to buy "Seller's Option" or to sell "Buyer's Option," the longest option shall have precedence. On offers to buy "Buyer's Option" or to sell "Seller's Option," the shortest option shall have precedence.

Contracts maturing on holidays.

SEC. 4. All contracts falling due on holidays or half holidays observed by the Exchange, shall be settled on the preceding business day, except that when two or more consecutive days are holidays or half holidays, contracts falling due on other than the first of such days shall be settled on the next business day.

Loans of money or securities made on the day preceding a holiday or half-holiday observed by the Exchange, shall mature on the succeeding business day, unless otherwise specified.

Variation in bids.

SEC. 5. Bids or offers shall not be made at a less variation than one-eighth of one per cent.

Basis of bids or offers.

SEC. 6. Bids and offers shall be made on the basis of a percentage of the par value of the securities dealt in; except that in securities of a par value of Ten Dol-

lars or less per share the bid and offer shall be in dollars or fractions thereof.

Sec. 7. Any member violating any of the above provisions of this Article shall be fined by the Chairman in an amount not exceeding twenty dollars; for a repetition of the offense, he shall be liable to suspension for a period not exceeding ten days.

Penalty.

Sec. 8. Fictitious transactions are forbidden. Any member violating this rule shall be liable to suspension for a period not exceeding twelve months.

Fictitious transactions.

Sec. 9. No offers to buy or sell privileges to receive or deliver securities, shall be made publicly at the Exchange, under penalty of a fine of twenty-five dollars for each offense.

Bids for privileges.

ARTICLE XXIV.

COMPARISONS—LIABILITY ON CONTRACTS.

Section 1. It shall be the duty of every member to report each of his transactions as promptly as possible at his office, where he shall furnish opportunity for prompt comparison.

Duty to report transactions.

Sec. 2. It shall be the duty of the Seller to compare, or to endeavor to compare, each transaction at the office of the Buyer, not later than one hour after the closing of the Exchange. Nothing in this Article shall be construed to justify a refusal to compare before the closing of the Exchange.

Seller to compare.

Sec. 3. It shall be the duty of the Buyer to investigate, before 10 o'clock a. m., of the day after the purchase, each transaction which has not been compared by the Seller.

Buyer to investigate.

Sec. 4. Neglect of a member to comply with the provisions of Sections 1 or 2 hereof shall render him liable to a fine not exceeding fifty dollars, to be imposed by the Committee of Arrangements.

Penalty.

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SEC. 5. Comparison shall be made by an exchange of an original and a duplicate comparison ticket; the party to whom the comparison ticket is presented shall retain the original, if it be correct, and immediately return the duplicate duly signed.

Comparison how made.

An exchange of Clearing-House tickets shall constitute a comparison.

SEC. 6. Should a difference be discovered in an attempt to compare, the exact liability of the disputants shall be promptly established by purchase, sale or mutual agreement.

Adjustment of differences.

SEC. 7. If an original party to a transaction gives up his principal, the latter shall have the same duties in the matter of comparison as the original party.

Principal shall compare.

SEC. 8. No comparison or failure to compare, and no notification, or acceptance of notification, shall have the effect of creating or of canceling a contract, or of changing the terms thereof, or of releasing the original parties from liability.

Inviolability of contracts.

SEC. 9. No party to a contract shall be compelled to accept a substitute principal, unless the name proposed to be substituted shall be declared in making the offer and as a part thereof.

Substitution of principal.

Orders for the receipt or delivery of securities, issued by the Clearing-House, shall however, be binding and enforceable upon members or firms using the facilities of the Clearing-House.

SEC. 10. When written contracts shall have been exchanged the signers thereof only are liable.

Liability on written contracts.

ARTICLE XXV.

PAYMENT AND DELIVERY.

SECTION 1. In all deliveries of securities, the party delivering shall have the right to require the purchase money to be paid upon delivery; if delivery is made by

Payment upon delivery.

transfer, payment may be required at the time and place of transfer.

Sec. 2. The Receiver of shares of stock shall have the option of requiring the delivery to be made either in certificates therefor or by transfer thereof; except that in cases where personal liability attaches to ownership, the Seller shall have the right to make delivery by transfer.

Delivery by certificate or transfer.

The right to require receipt or delivery by transfer shall not obtain while the transfer books are closed.

Sec. 3. Deliveries of securities on contracts subject to the rules of the Exchange shall in all cases conform to the requirements for regularity which may be made, from time to time, by the Committee on Securities.

Regularity of delivery.

Sec. 4. The Buyer must, not later than two-fifteen o'clock p. m., accept and pay for all, or any portion of a lot of stock contracted for, which may be tendered in lots of one hundred shares or multiples thereof; and he may buy in "under the rule" the undelivered portion, in accordance with the provisions of Article XXVIII.

Limit of time for payment.

This rule shall also apply to contracts for bonds when tender is made in lots of ten thousand dollars or multiples thereof.

ARTICLE XXVI.

SETTLEMENT OF CONTRACTS.

Section 1. All deliveries of Securities must be made before quarter after two o'clock p. m., and when deliveries are not made by that time the contract may be closed "under the rule" in the manner provided in Article XXVIII of these Rules. In the absence of any notice or agreement the contract shall continue without interest until the following business day; but in every case of non-delivery of securities the party in default shall be liable for any damages which may accrue thereby; and all claims for such damages must be made before three o'clock p. m., on the business day following the default.

Limit of time for delivery.

Damage for default.

Sec. 2. The neglect or failure of a member or firm to exchange Clearing-House tickets on a contract, in conformity with the "Rules for Clearing," shall constitute a default; and such defaulted contract may be closed as provided in Article XXVIII; except that the limit of time for delivery of notice of intention to close such contract shall be ten thirty o'clock a. m. of the following business day, and the time for closing shall not be before eleven o'clock a. m.

Failure to exchange Clearing-House tickets.

Sec. 3. Parties receiving securities shall not deduct, from the purchase price, any damages claimed for non-delivery, except by the consent of the party delivering the same.

Damages not to be deducted.

Sec. 4. Notice for the return of loans of money, or of securities not admitted to the Clearing-House, must be given before one o'clock p. m. Notice for the return of loans of securities admitted to the Clearing-House must be given before three-thirty o'clock p. m., except on half-holidays observed by the Exchange, when such notice must be given before twelve-thirty o'clock p. m. All such notices shall be considered as in full force until delivery is made.

Notice of return of loans.

Sec. 5. On half-holidays observed by the Exchange, securities sold specifically for "Cash" must be delivered and received at or before eleven-thirty o'clock a. m. In case of default the contract may be closed after eleven-forty o'clock a. m. under the rule, in manner provided in Article XXVIII.

Delivery on half-holiday.

ARTICLE XXVII.

CLEARING-HOUSE.

Section 1. There shall be a Clearing-House for the purpose of acting as the common agent of the members of the Exchange in receiving and delivering such securities as may from time to time be designated by the Clearing-House Committee.

Clearing-House.

Limitation of liability.

SEC. 2. Nothing in the conduct of the business of clearing shall attach any liability to the Exchange, or to any member of the Clearing-House Committee, and delays on the part of the Clearing-House shall not attach any liability to members who are clearing.

Securities to be cleared.

SEC. 3. The Clearing-House Committee shall designate from time to time the securities which shall be cleared, and, in all transactions in such securities, the deliveries shall be made through the Clearing-House, unless otherwise specially stipulated in the bid or offer, or otherwise agreed upon.

Clearing-House rules binding upon members.

SEC. 4. The "Rules for Clearing" and the "Rules for Dealing" adopted by the Governing Committee, and all amendments thereto shall be binding upon the members of the Exchange equally with the laws included in the Constitution.

Amendments to "Rules for Clearing" or to "Rules for Dealing" may be adopted by a vote of two-thirds of all the existing members of the Governing Committee and need not be submitted to the members of the Exchange for approval.

ARTICLE XXVIII.

CLOSING CONTRACTS "UNDER THE RULE."

Closing contracts of insolvent members.

SECTION 1. When the insolvency of a member or firm is announced to the Exchange, members, having contracts subject to the rules of the Exchange with the member or firm, shall without unnecessary delay proceed to close the same. If the contracts involve securities admitted to quotation upon the Exchange the closing must be in the Exchange, either officially by the Chairman, or by personal purchase or sale. If the contracts involve securities not dealt in on the Exchange, the purchase or sale of such securities must be promptly made in the best available market. Should a contract not be closed, as above provided, the price of settlement shall be fixed by the price current at the time when such contract should have been closed under this rule.

Closing contracts because of non-fulfillment.

SEC. 2. A contract which has not been fulfilled according to the terms thereof may be officially closed " under the rule " by the Chairman, as herein provided.

Notice of intention to close.

Notice of intention to make such closing of a contract must be delivered, at or before two-thirty o'clock p. m., at the registered office address of the member or firm in default. And the Chairman shall not close such contract before two-thirty-five o'clock p. m.

Form of notice.

SEC. 3. Every notice of intention to close a contract " under the rule," because of non-delivery, shall be in writing; and shall state the name of the member or firm by whom the order is given, also for whose account—all of which shall be announced by the Chairman before closing the contract.

Liability of succeeding parties.

The closing of a contract " under the rule," made in conformity with such notice, shall be also for the account and liability of each succeeding party in interest.

Whole or portion of a contract may be closed.

SEC. 4. Notice of intention to close a contract " under the rule " may be given upon the entire amount in default or upon any portion thereof, but in this latter case for not less than one hundred shares of stock or ten thousand dollars of bonds.

Re-establishment of contract closed " under the rule."

SEC. 5. When notice that a contract will be closed " under the rule " is received too late for transmission to other members or firms interested in such contract, within the times stated therefor, the notified member or firm who is unable to so transmit said notice may, immediately after the official closing " under the rule," re-establish such contract by a new purchase or sale in the " regular way ; " and any loss arising therefrom shall be a valid claim against the successive party or parties in interest.

Payment after notice of intention to close a contract.

SEC. 6. When a member has issued a notice of intention to close a contract " under the rule," for default in delivery, he must receive and pay for securities due upon such contract if tendered at his office within five minutes of the official time for closing ; or thereafter,

if tendered at the rostrum of the Exchange, before the Chairman has closed the contract.

Notification of closing.

SEC. 7. When a contract has been closed "under the rule," the member or firm who gave the order must give prompt notice of such closing to the member or firm in default.

Notification to successive parties.

Notification to successive parties in interest must be transmitted without delay, and claims for damages, arising therefrom, must be made prior to three o'clock p. m. of the business day following the closing of the contract.

Record of closing and payment of difference.

SEC. 8. When a contract has been closed "under the rule," the Chairman shall endorse upon the order therefor the name of the purchaser or seller, the price and the hour at which such contract is closed, and deliver the order to the Secretary of the Exchange, who shall ascertain whether the money difference, if any, has been paid. If such difference shall not be paid within twenty-four hours after the closing of the contract, the Secretary shall report such default to the President.

Failure to fulfill contract "under the rule."

SEC. 9. When a contract is closed "under the rule," any member or firm accepting the bid or offer, as made by the Chairman, and not complying promptly therewith, shall be liable for any damages resulting therefrom.

Party in default shall not renew contract "under the rule."

The member or firm, for whose account a contract is being closed "under the rule," shall not be permitted to accept the bid or offer made by the Chairman.

Default in payment of money loans.

SEC. 10. When a loan of money is not paid at or before two-fifteen o'clock p. m. of the day upon which it becomes due, the borrower shall be considered as in default. and the lender may sell "under the rule" the securities pledged therefor, or so much thereof as may be necessary to liquidate the loan, in the manner prescribed in the foregoing Sections of this Article.

ARTICLE XXIX.

IRREGULARITY IN SECURITIES.

Reclamation for irregularity in securities must be made within ten days from the date of delivery.

ARTICLE XXX.

DISAGREEMENT ON TERMS OF CONTRACT.

When a disagreement arising from a transaction in securities shall be discovered, the money difference shall forthwith be established by purchase or sale by the Chairman, or by mutual agreement.

ARTICLE XXXI.

DEPOSITS ON CONTRACTS.

Mutual deposits on contracts.

SEC. 1. Mutual cash deposits of not exceeding ten per cent may be required at any time by either party to a contract. Whenever the margin of either party becomes reduced to five per cent. by reason of changes in the market value of the securities, further deposits may be called, from time to time, sufficient to restore the impaired margin.

Deposit on due-bills.

SEC. 2. The holder of a due-bill issued for the dividend on stock contracted for, may require the maker of the due-bill to deposit the full amount due thereon, in a Trust Company, payable to the joint order of both parties.

Time for making deposits.

SEC. 3. When deposits are called before two o'clock p. m., they must be made at or before two-thirty o'clock of the same day; if called after two o'clock p. m. they must be made at or before ten thirty o'clock a. m. of the following business day.

Calls for deposit on half-holidays.

On half-holidays observed by the Exchange, deposits called before eleven o'clock a. m. must be made at or before eleven-thirty o'clock a. m. ; if called after eleven o'clock a. m. they must be made at or before ten-thirty o'clock a. m. of the next business day.

SEC. 4. Failure of either party to a contract to comply with a demand for a deposit shall constitute a default; and the other party to the contract may report such default to the Chairman, and instruct him to re-establish the contract forthwith, by a new purchase or sale "under the rule," and any difference arising therefrom shall be paid to the party entitled thereto.

Default in making deposit.

Written notice of intention to re-establish the contract shall be sent to the office of the party in default.

SEC. 5. Unless otherwise mutually agreed, deposits on contracts shall be made in the New York Life Insurance and Trust Company.

Place of deposit.

ARTICLE XXXII.

DIVIDENDS—INTEREST—PREMIUM.

SECTION 1. On the day of closing of the transfer books of a corporation for a dividend upon its shares all transactions therein for "Cash" shall be "dividend on" up to the time officially designated for the closing of transfers; all transactions on that day other than for "Cash" shall be "ex-dividend."

Closing of transfers for dividends.

Should the closing of transfers occur upon a holiday or half-holiday, observed by the Exchange, transactions on the preceding business day, other than for "Cash," shall be "ex-dividend."

SEC. 2. The Buyer shall be entitled to receive all interest, dividends, rights and privileges, except voting power, which may pertain to the securities contracted for, and for which the transfer books shall close during the pendency of the contract.

Buyer entitled to dividends.

When such contract shall mature before the official date for payment of such interest, dividend, right or privilege, the Seller shall deliver a due-bill therefor signed or endorsed by him.

SEC. 3. A charge of one per cent. may be made for collecting dividends. For scrip or stock dividends the charge shall be computed upon the market value of such scrip or stock.

Charge for collection.

No charge shall be made for collecting dividends accruing on securities deliverable on a contract.

Offers to buy dividends.

SEC. 4. Offers to buy or sell dividends shall not be made publicly on the Exchange. The Chairman shall impose a fine of twenty-five dollars for each violation of this rule.

Payment of agreed interest or premium.

SEC. 5. When securities are borrowed or loaned, the sum agreed upon, either as interest for carrying, or as premium for use, shall be paid whether such securities are delivered or not.

Premium for one day only.

SEC. 6. When money or securities are loaned at a premium, said premium shall apply only to the day for which the loan is made.

ARTICLE XXXIII.

TRANSFER AND REGISTRY.

Transfer agent and Registrar.

SECTION 1. Corporations whose shares are admitted to dealings upon the Exchange will be required to maintain a Transfer Agency and a Registry office in the City of New York, Borough of Manhattan. Both the Transfer Agency and the Registrar must be acceptable to the Committee on Stock List, and the Registrar must file with the Secretary of the Exchange an agreement to comply with the requirements of the Exchange in regard to registration.

Increase of capital stock.

SEC. 2. When a corporation purposes to increase its authorized capital stock, thirty days' notice of such proposed increase must be officially given to the Exchange, before such increase may be admitted to dealings.

Convertible bonds.

SEC. 3. When the capital stock of a corporation is increased through conversion of convertible bonds, already listed, the issuing corporation shall give immediate notice to the Exchange and the Committee on Stock List may, thereupon, authorize the registration of such shares and add them to the list.

SEC. 4. The Governing Committee may suspend dealings in the securities of any corporation previously admitted to quotation upon the Exchange, or it may summarily remove any securities from the list.

Dealings suspended.

SEC. 5. After the admission of a security to dealings upon the Exchange, no change in the form of certificate, or of the Transfer Agency or the Registrar of Shares, or of the Trustee of Bonds shall be made without the approval of the Committee on Stock List.

Change in form of certificate.

ARTICLE XXXIV.

COMMISSIONS.

SEC. 1. Commissions shall be charged and paid, under all circumstances, upon all purchases or sales of securities dealt in upon the Exchange; and shall be absolutely net, and free from all or any rebatement, return, discount or allowance in any shape or manner whatsoever, or by any method or arrangement, direct or indirect; and no bonus, nor any percentage or portion of the commission, shall be given, paid or allowed, directly or indirectly, or as a salary, or portion of a salary, to any clerk or person, for business sought or procured for any member of the Exchange.

Obligation.

SEC. 2. All commissions shall be calculated upon the par value of securities and the rates shall be as follows:

(*a.*) On business for parties not members of the Exchange, including joint account transactions in which a non-member is interested, transactions for partners not members of the Exchange, and for firms of which the Exchange member or members are special partners only, the commission shall be not less than one-eighth of one per cent.

Rates of commission.

(*b.*) On business for members of the Exchange, the commission shall be not less than one-thirty second of one per cent. except when a principal is given up, in which case the commission shall be not less than one-fiftieth of one per cent.

(*c.*) On Mining Shares and Subscription Rights, such rates,

to members and non-members as may be determined, from time to time, by the Committee on Commissions, with the approval of the Governing Committee.

(*d.*) Government and Municipal Securities are exempted from the provisions of this Article.

Rates to firms.

SEC. 3. A firm having as a general partner a member of the Exchange, shall be entitled to have its business transacted at the rates of commission hereinbefore prescribed for members. A member of the Exchange cannot confer this privilege upon more than one firm at any one time.

Proposed violation.

SEC. 4. A proposition for the transaction of business, at less than the minimum rates of commission herein provided, shall constitute a violation of this Article.

Suspended members.

SEC. 5. A member suspended by the Governing Committee shall not, during the time of his suspension, be entitled to have his business transacted at member's rates of commission.

A member who is in suspension by reason of insolvency may have his business transacted at member's rates.

Penalty.

SEC. 6. If the Governing Committee shall, by a majority vote of all its existing members, determine that a member of the Exchange has violated the provisions of this Article, it shall suspend such member, for the first offense, for such period not less than one year nor more than five years, as a majority of the members of said Committee present may determine. A member adjudged guilty of a second offense, by a majority vote of all the existing members of the Governing Committee, shall be expelled by a like vote.

ARTICLE XXXV.

OFFICE ADDRESS—PARTNERSHIPS—BRANCH OFFICES.

Address of members.

SECTION 1. Every member shall register with the Secretary an address, and subsequent changes thereof, where notices may be served. The registered address of

every member, transacting business upon the Exchange, must be in its vicinity.

Notice of partnership.

SEC. 2. When a member shall form a partnership he shall immediately register the same with the Secretary; official announcement thereof shall be made to the Exchange and notice posted upon the bulletin for ten days. Notice of dissolution of partnership must be given in like manner.

Eligibility to partnership.

SEC. 3. No person shall be eligible to either general or special partnership in more than one registered firm at the same time.

Stated partnerships forbidden.

SEC. 4. A member shall not form a partnership with a suspended member of the Exchange, nor with any person who has been expelled therefrom; nor with any insolvent person, or with any person who may have previously been a member of the Exchange, and against whom any member holds a claim, arising out of transactions made during the time of such membership, and which has not been released, or settled in accordance with the laws of the Exchange.

Special partner.

A member, who is a special partner in a firm, does not thereby confer any of the privileges of the Exchange on such firm.

General partner.

SEC. 5. A member of the Exchange who is a general partner in a firm represented thereon is liable to the same discipline and penalties for any act or omission of said firm, as if the same were committed by him personally; but the Governing Committee may in its discretion by a vote of not less than thirty members relieve him from the penalty therefor.

Branch offices.

SEC. 6. Members may, by the consent and approval of the Committee on Commissions, establish Branch Offices. Such offices must be in charge of either a partner, or of a manager or clerk acceptable to said Committee.

Liability.

The member or firm establishing a Branch Office shall register it with the Secretary of the Exchange, and shall be directly responsible for the conduct of its business.

Clerks and employees.

The managing clerk and all other employees must be paid fixed salaries, not varying with the business.

Agents.

No agents, for the solicitation of business, shall be employed on any other than the foregoing basis.

Disapproval by governing Committee.

SEC. 7. Whenever it shall appear to the Governing Committee that a member has formed a partnership, or established a branch office, whereby the interest or good repute of the Exchange may suffer, the Committee may require the dissolution of such partnership, or the discontinuance of such branch office, as the case may be.

Penalty.

SEC. 8. Any member failing to comply with any requirement of this Article, or with any requirement of the Governing Committee in regard thereto, shall be liable to suspension for a period not exceeding one year.

ARTICLE XXXVI.

DISORDERLY CONDUCT.

Disorder.

SECTION 1. Indecorous language, or an act subversive of good order and decorum, or serious interference with the personal comfort or safety of another person is forbidden. Any member who shall violate this rule, within the limits of any department of the Exchange, may be fined by the Chairman, or by the Committee of Arrangements, in a sum not exceeding fifty dollars; or upon complaint made may be summoned before the Governing Committee and suspended for a period not exceeding sixty days.

Rules to govern conduct.

SEC. 2. The Committee of Arrangements may make rules to govern the conduct of members upon the Exchange; it may impose a fine, not exceeding fifty dollars, for each violation thereof, or may report the delinquent to the Governing Committee, who may suspend him for a period not exceeding sixty days.

Betting forbidden.

SEC. 3. Betting or offering to bet, upon the floor of the Exchange, is forbidden. A member violating this rule shall be subject to the penalties prescribed in the preceding Section of this Article.

ARTICLE XXXVII.

MINUTES—VISITORS—COMMUNICATIONS.

Minutes.

SECTION 1. Members shall have access to the minutes of the Exchange.

Visitors.

SEC. 2. Visitors shall not be admitted to the floor of the Exchange except by permission of the President or the Committee of Arrangements.

Communications.

SEC. 3. Communications shall not be read to the Exchange without the consent of the President or the Committee of Arrangements.

ARTICLE XXXVIII.

ALTERATIONS OF THE CONSTITUTION.

Amendment of Constitution.

The Governing Committee may make additions, alterations or amendments to the Constitution by a majority vote of all its existing members. Every proposed addition, alteration or amendment must be presented, in writing, at a regular meeting of the Governing Committee and referred to the Committee on Constitution, which shall report thereon at the next regular meeting of the Governing Committee, or at a special meeting called for the sole purpose of considering it. Action thereon may be postponed to a fixed date by a vote of two-thirds of the members of the Governing Committee present. Such alterations when adopted by the Governing Committee shall be submitted to tho Exchange and shall stand as the law of the Exchange, if not disapproved within one week by a majority vote of the entire membership.

Amendment of Article XVIII.

No alteration of Article XVIII shall ever be made which will impair, in an essential particular, the obligation of each member to contribute, as therein provided, to the provision for the families of deceased members.

RESOLUTIONS ADOPTED BY THE GOVERNING COMMITTEE.[1]

Advertising.

February 9, 1898.

"Resolved, that in future the publication of an advertisement of other than a strictly legitimate business character, by a member of the Exchange, shall be deemed an act detrimental to the interest and welfare of the Exchange."

Arbitrage Dealings.

January 26, 1898.

"Whereas, the so-called Arbitrage business or trading between this Exchange and that of any other city in the United States, based upon quotations from the floor of this Exchange, has resulted in practically ignoring the commission law; therefore

"Resolved, that in the judgment of this Committee the sending of continuous quotations or quotations at frequent intervals by members of this Exchange, from the floor of the Exchange, is detrimental to the interest and welfare of the Exchange, and that any member engaging in such business or trading, shall be proceeded against under Section 8 of Article XVIII of the Constitution.

"Resolved, that the Committee of Arrangements be and they hereby are authorized and instructed to prevent the transaction of any such business or trading by any member of this Exchange, and to prefer charges against any member engaging therein."

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[1] NOTE. References to Articles and Sections of the Constitution have been altered to conform to the Constitution as Revised March, 1902.

Bids and Offers.

December 14, 1898.

"That where parties have orders to buy and orders to sell the same security, said parties must offer said security, whether it be stock or bonds at one-eighth per cent higher than their bid before making transactions with themselves."

Branch Offices.

February 13, 1901.

"That the Governing Committee rules, that the privileges provided for under Section 3, of Article XXXIV, of the Constitution, can only be conferred upon a Branch House when established under the same name as the parent firm and in which the partners and their respective interests are identical with those of parent firm."

Bucket Shops.

March 11, 1896.

"Any member of this Exchange who is interested in, or associated in business with, or whose office is connected directly or indirectly by wire or other method or contrivance with, any organization, firm or individual engaged in the business of dealing in differences or quotations on the fluctuations in the market price of any commodity or security without a bona-fide purchase or sale of said commodity or security in a regular market or Exchange, shall on conviction thereof be deemed to have committed an act or acts detrimental to the interest and welfare of this Exchange."

Commissions.

Resolution of the Governing Committee, Nov. 23, 1881:

"That in transactions where orders are received from a non-member, wherein the broker filing the order is directed to give up another broker or Clearing-House, the responsibility of collecting the full commission of $\frac{1}{8}$% shall rest with the Broker or Clearing-House settling the transaction."

Resolution of the Governing Committee, Oct. 24, 1894:

"Resolved, That in transactions where orders are received from a member, on which a clearing firm is given up by said member or by his order, the responsibility of collecting the full commission of $\frac{1}{32}$ of 1% shall rest with said clearing firm; and it shall be the duty of the broker who executes such orders to report the transactions to the clearing firm and render to them and collect his bill therefor at the rate of $\frac{1}{50}$ of 1% and also that where a broker executes an order for a member and clears the security himself, he must charge $\frac{1}{32}$ of 1%."

April 14, 1897.

"Resolved, that transacting or offering to transact business in grain, produce, cotton or other commodities, without commission or for a nominal commission, by any member of this Exchange or firm represented therein, for a customer dealing in securities dealt in at the Exchange, is a method or arrangement for rebatement of commissions, and is a violation of the commission law.

"Resolved, that giving or offering to give reciprocal business in grain, produce, cotton or other commodities dependent upon the amount of Stock Exchange business received is a method or arrangement for rebatement of commissions and is a violation of the commission law."

June 22, 1898.

"That in the judgment of the Governing Committee, any member of the Exchange, who by agreement or otherwise, directly or indirectly assumes or bears for his own account, or relieves his principal from any part of the stamp taxes imposed by the Act of Congress passed June 13, 1898, upon any sales or agreements for the sale of any stocks, sold or agreed to be sold for account of such principal, is guilty of a violation of Article XXXIV of the Constitution of the Exchange relating to commissions."

January 23, 1901.

"That the employment of a clerk or clerks in a nominal position because of the business obtained by such clerk or clerks for

their employer, is a violation of the rules;" Articles XXXIV and XXXV of the Constitution.

March 26, 1902.

"Resolved, that any agreement or arrangement entered into between a member or his firm, and his or their customer, whereby special and unusual rates of interest are stipulated for, or money-advances upon unusual terms are made a condition, in connection with the conducting of an account, with intent thereby to give special or unusual advantages to such customer, for the purpose of securing his business, shall be deemed to be a violation of Article XXXIV of the Constitution, commonly known as the Commission Law."

Consolidated Exchange.

January 11, 1888.

"Resolved, that in the judgment of this Committee, any connection direct or indirect, by means of telephone, ticker, telegraph wire, or any electrical or other contrivance or device, or pneumatic tube, or other apparatus or device whatsoever, between the New York Stock Exchange Building or any part thereof, and the new building of the Consolidated Stock and Petroleum Exchange, or any part thereof, or any room, place, hallway or space thereof or therein, or any transmission direct or indirect, of information from said Stock Exchange Building to said new Consolidated Stock and Petroleum Exchange, through any such means, apparatus, device or contrivance as above mentioned, is detrimental to the interest, and welfare of this Exchange, and is hereby prohibited."

February 25, 1891.

"Resolved, that all communication between this Exchange and the Consolidated Stock and Petroleum Exchange, or any part of the building thereof, by means of messengers or clerks, or in any other manner directly or indirectly is detrimental to the interest and welfare of this Exchange and is hereby prohibited.

"Resolved, that the Committee of Arrangements be authorized and instructed to enforce this rule."

Dealing for Employés.

June 23, 1897.

"That the taking or carrying of an account of an employé of a member of the Exchange, by a member, or firm, members of the Exchange, without the written consent of his employer, is an act detrimental to the interest and welfare of the Exchange."

October 25, 1899.

"Resolved, When a member has contracted to borrow money on collateral, the simple payment of the interest by the borrower to the lender, after three o'clock p. m., without actually effecting or properly endeavoring to effect a loan, shall be held to be an evasion of the contract and an act detrimental to the interest and welfare of the Exchange and the offending member may be proceeded against under Section 8, Article XVII, of the Constitution."

Stock List.

March 27, 1895.

"Whenever it shall appear to the Committee on Stock List that the outstanding amount of any security listed upon the Stock Exchange has become so reduced as to make inadvisable further dealings therein upon the Exchange, the said Committee may direct that such security shall be taken from the list and further dealings therein prohibited."

Wire Connections.

May 9, 1900.

(To take effect on June 1, 1900.)

"*First.*—That hereafter no member of the Stock Exchange and no firm of which such member is a partner, shall establish telephonic or telegraphic wire connection between the office of such member or firm and the office of any firm or individual not a member of the Stock Exchange transacting a banking or brokerage business, unless application therefor shall first be made to the Committee of Arrangements, and shall have been approved by them.

"*Second*—Every such telephonic or telegraphic wire connection which shall be so authorized by the Committee of Arrangements as well as all existing telephonic or telegraphic wire connections of the same character, shall be registered with the Committee of Arrangements, who shall make such regulations governing the matter as they shall deem necessary.

"*Third*—That the Committee of Arrangements shall have power, at any time, in their discretion, to order any connection of the character described in these resolutions to be discontinued.

"*Fourth.*—While members of the Stock Exchange may connect their offices by wire with the offices of non-members, in accordance with the provisions of these resolutions, and to pay for such wire connection, nevertheless no such member shall directly or indirectly, by himself, or through his firm, pay the cost of telegraph operators or any other expense pertaining to non-members' offices.

Fifth.—No office in the city of New York of any member of the Stock Exchange, or of any firm of which such member is a partner, shall be connected by telegraphic or telephonic wire with any point outside of the city of New York unless such wire shall be furnished by a telegraph or telephone company approved by the Committee of Arrangements. Said Committee shall from time to time, formulate a list of such approved companies.

"*Sixth.* Any member violating any provision of these resolutions, or any regulation made by the Committee of Arrangements in pursuance thereof, shall be deemed to be guilty of an act detrimental to the interest and welfare of the Exchange."

RULES AND REGULATIONS

FOR THE CONDUCT OF BUSINESS ON

THE LONDON STOCK EXCHANGE

AS AMENDED TO 8th JUNE, 1903

No Member of The Stock Exchange is allowed to advertise for business purposes or to issue circulars to persons other than his own principals.

Persons who advertise as Brokers or Share Dealers are not Members of The Stock Exchange, or under the control of the Committee.

A List of Members of The Stock Exchange who are Stock and Share Brokers may be seen at the Bartholomew Lane entrance to the Bank of England, or obtained on application to

EDWARD SATTERTHWAITE,
Secretary to the Committee of The Stock Exchange.

Committee Room,
The Stock Exchange, E. C.

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COMMITTEE.

Election of the Committee for General Purposes.

1. On the 20th day of March in every year, or if that day should be a Sunday or Bank Holiday, then on the following business day, a ballot by the Members shall be held for the appointment of a Committee of thirty Members who shall be called the "Committee for General Purposes," and shall hold office for twelve months from the 25th of March next following the date of their election but shall be re-eligible. Notice of such ballot shall be publicly exhibited in The Stock Exchange during Fourteen days previous to the same being held, and a further notice containing the names of the persons on the existing Committee willing to serve again, and of all new candidates, their proposers and seconders, shall be publicly exhibited in like manner during Three business days previously to such ballot being held. The Members on the said Committee retiring shall remain in office until the 25th of the same month of March in which their successors shall have been elected, and in case no election shall be made at any such ballot as aforesaid, the Members retiring shall remain in office until the 25th day of March in the following year, or until a valid election shall have taken place under Clause 92 (*Deed of Settlement*). Four business days' notice previous to any ballot of intention to propose any person not already on the Committee and eligible for re-election must be given to the Secretary of the Committee in writing signed by two Members, and the ballot shall be by printed lists containing the names of the persons willing to serve again and of all persons so proposed, distinguishing the former from the latter. In case no valid election be made on the day hereinbefore appointed for that object, the Committee may forthwith, or at any time thereafter, prior to the next ordinary yearly ballot, cause a ballot to be held for such election, on a day to be fixed by the

Committee for that purpose, and in all respects, as lastly hereinbefore provided; and the Committee to be appointed by such ballot shall remain in office until the 25th day of March then next following. Every ballot for the election of the Committee for General Purposes or for supplying vacancies in the Committee shall be held at The Stock Exchange, and except as specially provided by these presents shall be conducted in accordance with the existing practice and usage in reference to such elections. In case of dispute as to what such practice and usage has been in any particular, the Committee shall from time to time determine the same by Resolution.—*Deed of Settlement*, sect. xii., cl. 90.

Qualification of Members of the Committee and of Voters.

2. No person shall be elected to the said Committee for General Purposes who shall not for the space of Five years immediately preceding the day of election have been a Member, and every person on ceasing to be a Member shall *ipso facto* vacate his seat on the Committee.—*Deed of Settlement*, sect. xii., cl. 91.

Every Member is entitled to vote although he may not have paid his subscription.

Occasional vacancy in Committee.

3. Any occasional vacancy in the said Committee for General Purposes shall be filled up by a ballot of Members to be held for the purpose on a day to be fixed by the Committee for General Purposes, and of which Seven days' previous notice shall be given by the same being publicly exhibited in The Stock Exchange. Similar notice of nomination shall be given as provided by Clause 90. The surviving, or continuing Members on the Committee, notwithstanding any vacancy in their number, may act until the same shall be filled up.

Any person elected to supply an occasional vacancy in the said Committee shall hold office for the residue of the year in which he shall be elected, and shall then retire with the other Members of the said Committee.—*Deed of Settlement*, sect. xii., cls. 92, 93.

Procedure of the Committee.

4. The said Committee for General Purposes shall meet at such times as they may from time to time appoint, and shall determine their own quorum (the same to be not

less than Seven Members actually present) and the mode of procedure.

Until otherwise determined, the quorum of the said Committee shall be Seven Members personally present.—*Deed of Settlement*, sect. xii., cls. 98, 99.

Quorum.

5. The said Committee for General Purposes shall regulate the transaction of business on The Stock Exchange, and may make rules and regulations not inconsistent with the provisions of these presents respecting the mode of conducting the ballot for the election of the Committee and respecting the admission, expulsion or suspension of Members and their clerks, and the mode and conditions in and subject to which the business on The Stock Exchange shall be transacted, and the conduct of the persons transacting the same, and generally for the good order and government of the Members of The Stock Exchange, and may from time to time amend, alter or repeal such Rules and Regulations, or any of them, and may make any new, amended or additional rules and regulations for the purposes aforesaid.—*Deed of Settlement*, sect. xii., cl. 95.

Committee to regulate business on The Stock Exchange and make rules.

6. At their first ordinary Meeting after the Annual Election, the Committee shall elect, from amongst themselves, a Chairman and Deputy-Chairman, who shall respectively hold office till the 25th of March next ensuing. In case either appointment shall become vacant, it shall be filled up as soon afterwards as possible. When the Chairman and Deputy-Chairman are absent, the Meeting shall appoint a Chairman.

Election of Chairman and Deputy-Chairman.

In all cases, when, on a division, the votes are equal, the Chairman shall have a second or casting vote.

Chairman has casting vote.

7. At the first Meeting of the Committee, one of the Members of The Stock Exchange shall be chosen Secretary, who shall hold his office during their pleasure; and three other Members shall be appointed to act as Scrutineers at elections, who shall report the result of the ballot to the Committee, and to The Stock Exchange.

Election of Secretary and Scrutineers.

8. The Ordinary Meetings of the Committee shall be held every Monday at 1.15 o'clock, commencing on the first Monday after each annual election. But a Special Meeting of the Committee may at any time be called by the Chairman or Deputy-Chairman, or (in their absence. or in case of their refusal) by any three Members of the Committee. One hour's notice, at least, shall be posted in The Stock Exchange.

Meetings.

Special Meetings.

9. If a quorum be not assembled within a quarter of an hour after the time appointed for meeting, the Chairman, or Deputy-Chairman, may adjourn such meeting.

Absence of Quorum.

10. The business of the Committee shall be divided into two classes, viz :—

Business :— Routine and Special.

Routine.
Special.

The first, to comprehend the reading of Minutes for the purpose of confirmation or otherwise, the admission of Members and Clerks, fixing Settling Days, &c.

Minutes.

The second, the investigation of claims and other matters relating to the interests of the Members, or of the public.

The printed notices of the Meetings of the Committee posted in the House shall contain the words on "Routine" or "Special" Business.

Notices of Meeting.

11. No resolution of the Committee shall be valid or put in force, until confirmed, unless it relate to the shutting of the House, the admission of Members, the re-admission of defaulters, the fixing of ordinary settling days, or the granting or refusing of special settlements and official quotations. In cases which do not admit of delay, two-thirds of the Committee present must concur in favour of the immediate confirmation of the Resolution, and the urgency of the case must be stated on the Minutes. If a Resolution be not confirmed, and another Resolution be substituted, the substituted Resolution shall also require confirmation at a subsequent Meeting. In all cases brought under the consideration of the Committee. their decision,

Confirmation of Resolution.

Urgent confirmation.

Decisions final.

when confirmed, is final, and shall be carried out forthwith by every Member concerned.

Notice of New Rules.

12. Notice shall be given in writing of any alteration of, or addition to, the Rules, and a copy of such alteration of a Rule, or proposed new Rule, shall be sent to each Member of the Committee.

Precedence of Business.

After the reading of the Minutes, the consideration of any alteration of a Rule, or proposed new Rule, shall take precedence of all other business, except the re-admission of Defaulters and cases of urgency.

Communications.

13. All communications to the Committee shall be made in writing; and no anonymous letter shall be acted upon.

Attendance of Members and Clerks when required.

14. Members and their Clerks shall attend the Committee when required; and shall give such information as may be in their possession relative to any matter under investigation.

Expulsion of Members of Committee.

15. The Committee may expel any of their own Members from the Committee who may be guilty of improper conduct. The Resolution for expulsion must be carried by a majority of two-thirds in a Committee specially summoned for the purpose, and consisting of not less than Twelve Members, and must be confirmed by a majority of the Committee, at a subsequent Meeting specially summoned.

Expulsion or suspension of Members.

16. Clause 1.—The Committee may expel or suspend any member who may violate any of the Rules or Regulations.

Clause 2.—The Committee may expel or suspend any Member who may fail to comply with any of the Committee's decisions.

Clause 3. The Committee may expel or suspend any Member who may be guilty of dishonourable or disgraceful conduct.

Special Committee.

A Resolution for expulsion or suspension must be carried by a majority of three-fourths of a Committee present at a meeting specially summoned, and consisting of not less than Twelve Members, and must be confirmed by a ma-

jority of a Committee present at a subsequent Meeting specially summoned.

17. The Committee may censure or suspend any Member of The Stock Exchange who may conduct himself in an improper or disorderly manner, or who may wilfully obstruct the business of the House.

Improper or disorderly conduct.

A Resolution for suspension must be carried by a majority of three-fourths of a Committee present at a Meeting specially summoned, and consisting of not less than Twelve Members, and must be confirmed by a majority of a Committee present at a subsequent Meeting specially summoned.

18. The Committee for General Purposes for the time being may, in their absolute discretion, and in such manner as they may think fit, notify, or cause to be notified to the public that any Member has been expelled, or has become a Defaulter, or has been suspended, or has ceased to be a Member, and the name of such Member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this Rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly.

Publication of names, &c.

19. The Committee may dispense with the strict enforcement of any of the Rules and Regulations; but such power shall only be exercised by a Committee especially convened for that purpose; and consisting of not less than Twelve Members, three-fourths of whom must concur in the Resolution for such dispensation. The Resolution must be confirmed by a majority of the Committee, at a subsequent Meeting specially summoned.

Suspension of Rules and Regulations.

ADMISSIONS, RE-ELECTIONS AND RE-ADMISSIONS.

Application for re-election.

20. Every Member desirous of being re-elected shall, on or before the 15th of February in each year, address to the Secretary a letter, of the form inserted in the Appendix.

Each member of a Partnership is required to sign a separate letter.

Admission and re-election.

21. The Committee shall, on the first Monday in March, proceed to admit and re-elect such persons, as they shall deem eligible to be members of The Stock Exchange, for one year, commencing on the 25th of March then instant, or last preceding the admission of such Subscriber, at the amount fixed by the Trustees and Managers for such admission.

Qualification.

22. Every applicant for admission must have served as a Clerk in the House or the Settling Rooms for Two years (with a minimum service in the House of One year) previously to being balloted for, and must be recommended by Three Members of not less than Four years' standing, who have fulfilled all their engagements and are not indemnified. Each recommender must engage to pay Five hundred pounds to the creditors of the applicant, in case the latter shall be declared a defaulter within Four years from the date of his admission.

Sureties.

When Two sureties required.

If the applicant has served as a Clerk in the House or the Settling Rooms for Four years (with a minimum service in the House of Three years), previously to his application, Two recommenders only shall be required, who must each enter into a similar engagement for Three hundred

pounds, but any Clerk, who previously to his employment in The Stock Exchange shall have been engaged as Principal in any business, shall only be eligible for admission as a Member with three sureties for Five hundred pounds each.

Candidate previously engaged in business.

The election of new Members must be carried by a majority of three-fourths in a Committee consisting of not less than Twelve Members.

No member shall be surety for more than Two new Members at the same time unless he take up an unexpired suretyship, when the limit shall be Three.

Limitation as to Recommendation.

23. No Foreigner shall be admissible, unless he shall have been naturalised for a period of Two years, and shall have been a resident in this country for Seven years.

Foreigners.

24. A notice of each application, with the names of the recommenders, stating that they are not, and do not expect to be, indemnified, shall be posted in The Stock Exchange, at least Eight days before the applicant can be balloted for.

Notice of application.

25. Members are required to have such personal knowledge of applicants whom they recommend, and of their past and present circumstances, as shall satisfy the Committee as to their eligibility.

Personal knowledge of applicant by sureties.

26. Any recommender of a New Member, who at the time of such Member's admission shall have avowed that he was not, and that he did not expect to be indemnified, and who shall subsequently receive any indemnity, shall in the event of the New Member failing within the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

Subsequent indemnification of sureties.

27. An applicant may be recommended by a firm, but not by Two members of the same firm, nor by a Member who is an Authorised or Unauthorised Clerk, nor by a Member whose Authorised Clerk the applicant may be, nor by a Member whose sureties are still liable.

Ineligibility of sureties.

28. If a Member enter into partnership with, or become Authorised Clerk to, any one of his sureties, or if any one of his sureties cease to be a Member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to The Stock Exchange.

New sureties when required.

29. No applicant is admissible, if he be engaged as Principal or Clerk in any business other than that of The Stock Exchange, or if his wife be engaged in business, or if he be a member of, or subscriber to, any other institution where dealings in Stocks or Shares are carried on; and if subsequently to his admission he shall render himself subject to either of those objections, he shall thereby cease to be a Member.

Applicants engaged in other businesses.

30. [1] No applicant for admission, who has been a bankrupt, or against whom a Receiving Order in Bankruptcy has been made, or who has been proved to be insolvent, or who has compounded with his creditors, shall be eligible, unless he shall have paid 20s. in the £, and obtained a full discharge.

Bankruptcy.

No applicant, having more than once been a bankrupt or insolvent, or compounded with his creditors, shall be eligible for admission.

31. A Member, intending to object to the admission, or re-admission of an applicant, or to the re-election of a Member, is required to communicate the grounds of his objection to the Committee by letter, previously to the ballot or re-election.

Objections to be in writing.

32. If any applicant for admission, re-admission or re-election, be rejected, he shall not be ballotted for again before the 25th of March then next ensuing. Defaulters declared within Four years of their admission as Members, and Defaulters who have been rejected upon Two ballots, can only be re-admitted by a majority of three-fourths in a Committee specially summoned, and consisting of not less than Twelve Members.

Rejected applications.

Special Committee on Defaulters when required.

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[1] This Rule does not apply to the re-admission of Members of The Stock Exchange.

33. Any former Member, who, not having resigned, and not having been a Defaulter, bankrupt or insolvent, shall have discontinued his Subscription for one year, must be recommended for re-election by Two Members, but without security. If he shall have discontinued his subscription for Two years, he will be considered a new applicant, and must apply for admission in the usual way.

Discontinuance of subscriptions.

34. Any Member wishing to resign his Membership must forward to the Secretary a letter tendering such resignation, and a copy of this letter shall be posted in The Stock Exchange for at least four weeks before the matter is entertained by the Committee.

Resignation of Members.

35. A notice of every Defaulter, applying for re-admission, shall, at the discretion of the Committee, be posted (without recommenders) in The Stock Exchange, at least Twenty-one days, and the Committee shall then take the application into consideration, upon the report of the Sub-Committee, appointed according to Rule 173. If, however, the Committee think fit, a Defaulter may be re-admitted without the above notice, upon a report of the Sub-Committee, and a certificate signed by such a number of the creditors as may be satisfactory to the Committee, that all liabilities have been *bona fide* discharged in full. In all such cases, after the Defaulter has been re-admitted by ballot it shall be decided by show of hands, whether his name shall be posted in the Stock Exchange as having paid 20s. in the £; or whether it shall be placed in one of the two classes mentioned in Rule 174.

Re-admission of Defaulters.

Any member, not a Defaulter, who shall have ceased to be a Member under Rule 153, and who shall have paid 20s. in the £, may be allowed to apply for re-admission with Two sureties of £300 each.

Re-admission of Bankrupts or Insolvents.

36. The re-admission of Defaulters shall take precedence of all other business.

Precedence of Defaulters' re-admission.

37. The Chairman of the Committee, in addition to any other questions that may appear to be necessary, shall to each of the recommenders of an applicant, put the following:—

Questions put to sureties.

Has the Applicant ever been a bankrupt, or has he ever compounded with his creditors? and if so, within what time, and what amount of dividend has been paid?

Would you take his cheque for Three thousand pounds in the ordinary way of business?

Do you consider he may be safely dealt with in securities for the account?

Questions put to new applicants.

38. The Chairman shall require every new applicant to acknowledge his signature to the form of application, and shall ask such questions as may be deemed necessary.

APPENDIX TO ADMISSIONS AND RE-ELECTIONS.

1. Form of letter to be signed by persons desirous of becoming Members of The Stock Exchange:—

To the Secretary of the Committee for General Purposes.

Form of Application for Admission.

SIR.—You will please to acquaint the Committee for General Purposes that I am desirous of being admitted a Member of The Stock Exchange, for the year commencing on the 25th of March, 190 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be, for the time being in force. I have read the Rules and Regulations of The Stock Exchange.
I have read the Resolution at the back of this letter.
I am a British subject, and of age.
I am (state whether married or unmarried).
My Residence is
My office is
My Bankers are
I am not engaged in any business, except such as is transacted at The Stock Exchange, nor am I Clerk in any public or private Establishment unconnected with The Stock Exchange, nor a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, Yours faithfully,

We recommend Mr. as a fit person to be admitted a Member of The Stock Exchange; and in case he shall be publicly declared a Defaulter within four years from the date of his admission, we each of us hereby engage to pay to his creditors, upon application, the sum of Five hundred pounds [1] to be applied in discharge of the said Defaulter's debts, in The Stock Exchange.

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[1] Three hundred pounds when two Sureties only are required. The Sureties must state opposite to their signatures that they are not, and do not expect to be, indemnified for the security they give, and must attend, together with the person recommended, at such time

☞ It is requested that all the names be written at full length.

The following Rule is to be printed on the back of the letters of application:—

28. If a Member enter into partnership with, or become authorised Clerk to, any one of his Sureties, or, if any one of his Sureties cease to be a Member during his liability, he shall find a new Surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to The Stock Exchange.

The Secretary shall send to every Member, on his admission, a letter to the following effect:—

Letter to be sent to new Members.

SIR.—I am directed to inform you that you are elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 190 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be, for the time being in force.

I am, Sir, &c., &c.,

EDWARD SATTERTHWAITE,

Secretary to the Committee for General Purposes.

2. Form of letter to be signed by persons desirous of being re-elected Members of The Stock Exchange:—

APPLICATION FOR RE-ELECTION.

To the Secretary of the Committee for General Purposes.

Form of Application for Re-election.

SIR.—You will please to acquaint the Committee for General Purposes, that I am desirous of being re-elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 190 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of The Stock Exchange which now are, or hereafter may be, for the time being in force.

My Residence is

My Office Address is

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as the Committee may require; and they are required to have such personal knowledge of the applicant and of his past and present circumstances, as may enable them to give a satisfactory account of the same to the Committee. The Subscription is to be paid to the credit of the Managers.

My Bankers are
I am engaged in Partnership with
I carry on business as a [1]
I am not engaged in any business, except such as is transacted at The Stock Exchange, nor am I Clerk in any public or private Establishment unconnected with The Stock Exchange, nor a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.
The under-named will continue to act as Clerk.

A Member who may part with a Clerk, or be desirous of withdrawing from an Authorised Clerk the permission to transact business on his account, shall give notice in writing to the Secretary, who shall forthwith communicate the same to The Stock Exchange in the usual manner.

N. B. Applications for the admission of new Clerks, or for the authorisation of Clerks hitherto unauthorised, must be made on Special Forms, to be obtained at the office of the Secretary.

Name of Clerk.	Here state whether the clerk is authorised or not to transact business, or to be admitted to the Settling Room only, and if he is a Member, it is to be so stated.

(Signature in full)..
The Subscription is to be paid to the credit of the Managers, within twenty-one days from the 25th March.

3. Form of the letter to be signed by persons desirous of being re-admitted Members of The Stock Exchange:—

(Re-admission.)

TO THE
SECRETARY OF THE COMMITTEE
FOR
GENERAL PURPOSES.

Sir.—You will please to acquaint the Committee for General Purposes, that I am desirous of being re-admitted a Member of The Stock Exchange, for the year commencing on the 25th of March, 190 , upon

[1] Members who desire their names to appear in the published "Lists of Broker who are Members of the Stock Exchange," must here state whether they act as Brokers.

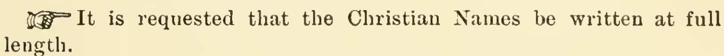
the terms of, and under and subject in all respects to, the Rules and Regulations of the Stock Exchange which now are, or hereafter may be, for the time being in force.

My Residence is

My Bankers are

I am not engaged in any business except such as is transacted at The Stock Exchange, nor am I clerk in any public or private establishment unconnected with The Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in Stocks or Shares are carried on.

I am, sir, yours faithfully,



It is requested that the Christian Names be written at full length.

4. The Secretary shall furnish each applicant with a book of the Rules and Regulations, which must be carefully read by him previous to his admission.

Rules to be given to Applicants.

The Secretary shall send to every Member, on his re-election, a letter to the following effect:—

Letter to Members re-elected.

SIR.—I am directed to inform you, that you are elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 190 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will please to pay your subscription to the credit of the Managers.

I am, sir, &c., &c.,
EDWARD SATTERTHWAITE,
Secretary to the Committee for General Purposes.

5. Regulations as to Clerk's Badges.

1. No Unauthorised Clerk will be allowed to enter the House or the Settling or Checking Rooms without a Blue Badge worn in the lapel of the coat, and no Settling Room Clerk will be allowed to enter the Settling or Checking Rooms without a Red Badge worn in the same manner.

2. The only Badges authorised are those issued from the Secretary's Office, and Members are held responsible that the loss of any one of them is notified to the Secretary.

3. A fine of 10s., to be paid to the Trustees and Managers, will be imposed for the loss of the Badge. No temporary Badges will be issued.

4. A Member withdrawing a Clerk is to return the Badge to the Secretary's Office at the date when the withdrawal takes effect.

5. A Member authorising a Clerk, or applying to promote a Settling Room Clerk to the House, is to return the Clerk's Badge as soon as the change is passed by the Committee.

PARTNERSHIPS.

Notice of partnerships.

39. In every year, as soon as possible after the general election, a list of partnerships shall be made out by the Secretary. In case of a new, or alteration in an old, partnership, the same shall be communicated to the Committee; and no partnership shall be considered as altered or dissolved until such communication be made.

To be posted.

All notices relative to partnerships must, unless otherwise ordered by a Committee specially summoned for that purpose, be signed by the parties, countersigned by the Secretary, and posted in The Stock Exchange.

Partnerships dissolved by failure.

40. The failure of a firm dissolves the partnership, and, should the members of such firm, when re-admitted, desire to renew the partnership, notice thereof must be given to the Committee, in the usual way.

Partnership with Non-Members prohibited.

Consent of sureties.

41. No Member of The Stock Exchange shall be allowed to enter into partnership with any person who is not a Member: nor shall any Member form a partnership during the liability of his recommenders, without their written consent; such consent to be communicated to the Committee.

Joint dealing.

42. Members dealing generally together in any particular Stock or Shares, and participating in the result, shall be held responsible for the liabilities of each other, not only in the Shares or Stock in which they are jointly interested, but also in any other description of Securities in which either of them may transact business, unless they forward a written notice to the Secretary, specifying the particular Shares or Stock in which they deal on joint account.

No Limited Partnership shall consist of more than two Members, or Firms, nor shall such Partnership be carried on in any other Markets than those in which both parties are dealing.

Limited Partnership.

All Limited Partnerships must be notified to the Secretary and posted in The Stock Exchange.

This Rule to be applicable also to Members allowing others to deal with their Shares, Stock or capital, and participating in the result.

FORM OF NOTICE.

Form of notice.

We, the undersigned, beg to inform the Committee for General Purposes that, from this day until further notice, we hold ourselves jointly responsible to The Stock Exchange for all transactions entered into by either of us in

{ ______________________
{ ______________________

We are, Sir, &c.

43. The Committee will not allow Members or their authorised Clerks to act in the double capacity of Brokers and Dealers; nor will they sanction partnerships between Brokers and Dealers.

Brokers and Dealers, and their Clerks. Partnership between Brokers and Dealers.

CLERKS.

44. No Clerk shall be admitted to the House or the Settling Rooms without the permission of the Committee; nor unless he be Seventeen years of age.

Admission.

A Member applying for the admission of a Clerk must satisfy the Committee that he would be in all respects eligible as a Member except as regards age and qualification of service.

Eligibility.

A Member may apply for the admission of a Defaulter as his Clerk, Authorised, or Unauthorized, though the Defaulter may not have complied with Rule 166. A notice of such application shall be posted in The Stock Exchange for at least Fourteen days, and the Committee shall then, at a Special Meeting convened for that purpose and consisting of not less than Twelve Members, take the application into consideration upon the report of the Sub-Committee appointed according to Rule 173, and a Resolution allowing such application must be carried by a majority of three-fourths of those present.

Defaulters.

The resolution must be confirmed by a majority present at a subsequent meeting specially summoned. Clerks so allowed are not thereby admissible as Members.

A Member applying for the Admission as his Clerk of a Defaulter who has been previously admitted under Clause III of this Rule need only apply in the usual way.

No Clerk shall be authorised to transact business until he is Twenty-one years of age and has been admitted to the House or the Settling Rooms for Two years, with a minimum service in the House of one year.

Authority to deal.

No authorised Clerk shall transact business as a dealer in any securities other than those in which his employer deals.

45. The maximum number of Clerks permissible, but not necessarily allowed, is, for an

Maximum number allowed.

	Authorised.	Unauthorised.	Settling Room.
Individual Member....	1	2	2
For a Firm...........	2	3	4

but Members may be employed as Unauthorised Clerks in excess of the numbers above allowed.

In the event of a Member or Firm not employing the maximum number of Authorised Clerks, they may be allowed an additional Unauthorized Clerk, so as not to exceed in any case Three Unauthorised Clerks for an individual or Five for a firm.

46. A Member desirous of obtaining the admission of a Clerk shall make application in writing to the Committee, and state whether such Clerk is to be authorised or not authorised to transact business, or is to be admitted to the Settling Rooms only.

Application for admission as Clerk.

A Member desirous of employing another Member as his Clerk, whether or not employed in the House, shall make application in writing to the Committee and state if such Clerk is to be authorised or not to transact business.

Member as Clerk.

All Unauthorized and Settling Room Clerks, not being Members who may be admitted to The Stock Exchange, shall, when exercising this privilege, wear a distinctive Badge in the lapel of their coats, and the Member applying for their admission shall be responsible for the Badge being worn.

Badges.

When application is made for the admission of a Clerk who has previously been engaged in business out of The Stock Exchange, the name and address of such person, together with the name of the Member applying for his admission, shall be posted in The Stock Exchange Eight days prior to the application being considered by the Committee.

Previous occupation of applicants.

The Committee require that a Member shall have obtained a satisfactory reference from the last employer of any Clerk he may desire to introduce.

Reference.

No Clerk shall enter The Stock Exchange until his employer has received from the Secretary notice of his admission.

Notice of admission.

47. A Member, applying for the admission of an Authorized Clerk, must first obtain the consent of his Sureties in writing, if the term of their liability be not expired.

Consent of Sureties of a New Member to his Employment of an Authorised Clerk.

48. A Member who may part with a Clerk, or be desirous of withdrawing from an Authorised Clerk, the permission to transact business on his account, shall give notice in writing to the Secretary, who shall forthwith communicate the same to The Stock Exchange, in the usual manner.

Dismissal of a Clerk, or withdrawal of authority to deal, &c.

49. A list of Authorised Clerks (distinguishing those who are also Members) and the names of their employers, shall be posted in The Stock Exchange, and the authority shall be considered to continue until revoked by letter to the Committee.

List of Authorised Clerks.

50. A Member authorising a Clerk to transact business shall not be held answerable for money borrowed by the Clerk, without security, unless he shall have given special authority for that purpose.

Responsibility of Members employing Authorised Clerks.

51. A Member employed as Clerk, whether Authorised or Unauthorised, shall not make any bargain in his own name; nor, after the termination of his Clerkship, if the same arises from the default of his employer, until he has first obtained the permission of the Committee.

Members as Clerks.

52. No Clerk shall be allowed to apply for an allotment in Loans or Shares, without the sanction of his employer, who shall be responsible for the payment of the deposit on the Shares or Stock so applied for.

Application for allotments by Clerks.

53. Clerks of Defaulters are excluded from The Stock Exchange. Clerks of deceased Members may, by permission of Two Members of the Committee, attend to adjust unsettled accounts.

Exclusion of Clerks of Defaulters and deceased Members.

GENERAL RULES APPLICABLE TO STOCK EXCHANGE TRANSACTIONS.

Fulfilment of bargains.

54. The Stock Exchange does not recognise in its dealings any other parties than its own Members; every bargain therefore, whether for account of the Member effecting it, or for account of a principal, must be fulfilled according to the Rules, Regulations and usages of The Stock Exchange.

Contract note.

Bargains with Non-Member.

Brokerage.

55. Any Member issuing a contract for the purchase or sale of Stock or Shares effected with a Non-Member shall explicitly notify this fact on the face of the contract, which must also explicitly state when a Brokerage is receivable from both buyer and seller.

Legal proceedings by Members.

56. No Member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a Member or Defaulter, or against the principal of a Member or Defaulter, without the consent of such Member, of the creditors of the Defaulter, or of the Committee.

Legal proceedings against Members.

The Committee have power to intervene in cases where the principal of a Member shall attempt to enforce by law a claim which is not in accordance with the Rules, Regulations and usages of The Stock Exchange, and will deal with such cases as the circumstances may require.

Complaints by non-Members against Members.

57. If a Non-member shall make any complaint against a Member, the Committee shall in the first place consider whether the complaint is fitting for their adjudication, and in the event of the Committee deciding in the affirmative, the Non-Member shall previously to the

case being heard by the Committee sign a consent in writing as follows :—

To the Committee for General Purposes of The Stock Exchange, London ;

In the Matter of a Complaint between
and

GENTLEMEN,

I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith to carry into effect your Award, Resolution or decision in this matter, in the same manner as if I were a Member of The Stock Exchange; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in, proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the Members of the Committee present vary during the enquiry, or that any of them may not have heard the whole of the evidence, and any Award or Resolution of the Committee, signed by the Chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the Committee. And I hereby agree that this letter shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1889.

Form of consent to decision of Committee.

Agreement Stamp.

58. If a Member shall do a private bargain, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being *wilfully* concealed from the firm, both Members shall be expelled.

Private dealing with individuals of a firm prohibited.

A Resolution bringing a Member under the operation of this Rule must be carried by a majority of three-fourths of a Committee consisting of not less than Twelve Members, and must be confirmed by a majority of a Committee present at a subsequent meeting specially summoned.

59. If any Member or Authorised Clerk shall do a bargain, either for money or time, with an Authorised or Unauthorised Clerk, for account of such Clerk, they shall be liable to expulsion.

Bargains with or for Clerks.

A Resolution for expulsion or suspension must be carried by a majority of three-fourths of a Committee present at a Meeting specially summoned, and consisting of not less than Twelve Members, and must be confirmed by a majority of a Committee present at a subsequent Meeting specially summoned.

60. Members are not allowed to transact speculative business directly or indirectly, for or with Officials or Clerks in public or private establishments, without the knowledge of their employers.

Speculative business for Officials or Clerks prohibited.

Members disregarding this Rule are liable to be dealt with in such manner as the Committee may deem advisable.

Penalty.

A Resolution for expulsion or suspension must be carried by a majority of three-fourths of a Committee present at a Meeting specially summoned, and consisting of not less than Twelve Members, and must be confirmed by a majority of a Committee present at a subsequent Meeting specially summoned.

61. No application which has for its object to annul any bargain in The Stock Exchange shall be entertained by the Committee, unless upon a specific allegation of fraud or wilful misrepresentation.

Inviolability of bargains.

62. A Member applying for Shares or Stock of Loans or public companies, and neglecting to pay the deposit on the same, shall be considered to have violated a contract, and shall be compelled to fulfil his engagement.

Payment of deposits by allottees.

63. The Committee will not recognise New Bonds, Stock, or other Securities, issued by any Foreign Government that has violated the conditions of any previous Public Loan raised in this country, unless it shall appear to the Committee that a settlement of existing claims has been assented to by the general body of Bondholders.

New Bonds of Foreign Governments violating conditions of previous Public Loans.

Companies issuing such Securities will be liable to be excluded from the Official List.

64. The Committee will not, after the restoration of peace, recognise, or allow the quotation of, any Loan raised by a Power whilst at war with Great Britain.

Loans raised by Powers while at war with Great Britain.

65. No Member shall enter into bargains in prospective dividends on Shares or Stock of railway or other companies.

Bargains in dividends forbidden.

66. All disputes between Members, not affecting the general interests of the Stock Exchange, shall be referred to arbitration; and the Committee will not take into consideration such disputes, unless arbitrators cannot be found, or are unable to come to a decision.

Arbitration.

N. B. The Committee strongly recommend that all bargains be checked on the following day.

Bargains to be checked.

67. No Member shall be obliged to take a reference for payment to a Non-Member; nor shall he be obliged to pay a Non-Member for Securities bought in The Stock Exchange.

Reference for payment to non-Members not sanctioned.

68. Cheques must be passed through the Clearing House, unless the drawer consent to their being otherwise presented. But if a Member require Bank Notes in payment for Securities sold, without having made such stipulation at the time of making the bargain, he must give notice to that effect before Half-past Eleven o'clock on the day of delivery, and payment shall be made upon delivery of the Securities, or the Bank receipt.

Cheques for clearing.

Demand for Bank Notes.

69. A Seller, having transferred or delivered Stock or other Securities, has a right to demand payment from the Member who passed him the Ticket; and in case the Seller apply to the issuer of the Ticket, and fail to obtain payment, or receive a cheque which is dishonoured, the Member from whom he received the Ticket shall make immediate payment.

Seller may require payment of purchase money of his buyer.

Dishonoured cheques.

Difference between price marked on ticket tendered and that at which sold may be demanded.

70. A Seller may require payment of the difference between the price marked on the Ticket, and the making-up price of the day on which the Ticket is tendered, but if such making-up price be above the price of sale, he shall only be entitled to claim the difference up to the price of sale.

Loans, dealing with the security.

71. In cases of Loans, the lender is not entitled to place beyond his control Shares or Stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the Loan was originally made, be required to return the identical Bonds, or to re-transfer the Shares or Stock given as security for such loan. But this liability does not apply to a Member who has taken in Shares or Stock upon continuation.

Security to be returned when required.

Continuation.

All continuations shall be effected at the making-up price, or at the then existing market price.

Employment of officials in buying-in or selling-out, &c.

72. Buying-in or Selling-out must be effected publicly by the officials of the Buying-in and Selling-out Department appointed by the Committee for General Purposes, who shall trace the transaction to the responsible party and claim the difference thereon.

When securities may not be bought in.

73. Bonds, Shares or other Securities, shall not be bought in while they are known to be out of the control of the Seller for the payment of calls, or the receipt of interest, dividend or bonus; and the Committee, on being applied to, will fix a day on which they may be bought in.

How dividends are to be accounted for.

74. In the settlement of all bargains, dividends are to be accounted for at the net amount receivable after deduction of Income Tax.

Fixing price of Foreign Coupons.

In the case of dividends payable only abroad, the Secretary to the Share and Loan Department shall fix a price for the Coupons in sterling money, which shall be posted in The Stock Exchange, and at which the dividends shall be accounted for.

Securities to bearer are not deliverable on the Settling-day without the current Coupon.

Current Coupon.

Securities to bearer, with Coupon payable on the Settling-day, shall be delivered ex-Coupon.

When deliverable ex-Coupon.

When the dividend is payable after the Settling-day, outstanding bargains in Securities to Bearer shall be settled with the current coupon, otherwise the Buyer shall have the right to demand the market value of the Coupon, which, in case of dispute, shall be fixed by the Secretary to the Share and Loan Department.

When Dividend payable after Settling-Day.

75. Thirteen clear days between delivery and the closing of the Books of the Company shall be allowed by the Seller to the Buyer of Shares of American Railway Companies, in order to afford time for transmission of the Certificates to New York and Philadelphia.

Time allowed for transmission of American Certificates for Registration.

76. Six weeks between delivery and the closing of the Books of the Company shall be allowed by the Seller to the Buyer of shares of South African Companies having Registration offices in South Africa only, in order to afford time for transmission of the Certificates thereto.

Time allowed for transmission of South African Certificates for Registration.

77. All optional bargains for the Consols Account shall be declared at a Quarter before Three o'clock Two days before the Account-day.

Options.

Optional bargains made for a Foreign Settlement shall be declared at a Quarter before Three o'clock on the day before the First Making-up day, or at a Quarter before One o'clock should that day fall on a Saturday.

Options for any other day must be declared at a Quarter before Three o'clock, or on Saturdays at a Quarter before One o'clock.

78. When Shares or Stock on which Options are open are quoted "Ex Rights" an official price will on application to the Secretary of the Share and Loan Department be fixed for the Rights.

Rights on Option Stock.

All Rights in respect of Options shall be settled by the allowance of such valuation in the option price, unless the Member who has given for the call or taken for the put shall give notice in writing on or before the day the Shares or Stock are quoted "Ex Rights" that he will claim the new Shares or Stock and accept delivery if the Option is exercised.

Valuation.

79. The hours of business in The Stock Exchange are from Eleven until Three o'clock. On Saturdays business will close at One o'clock.

Hours of business.

When the Ticket-day is fixed for a Saturday, the House will be kept open until THREE o'clock, for the purpose of the Settlement only, the regulations for which shall be the same as on ordinary Ticket-days.

Ticket-day on Saturdays.

The Stock Exchange will be closed on the following days, viz.:—

Holidays.

1st January,
Easter Monday,
1st May,
Whit Monday,
The First Monday in August,
1st November,
26th December,

unless specially ordered otherwise by the Committee.

When either the 1st January, 1st May, 1st November, or 26th December falls on a Sunday, the House will be closed on the day following.

RULES APPLICABLE TO ENGLISH, INDIA, CORPORATION AND COLONIAL GOVERNMENT INSCRIBED STOCKS, &c.

Bargains when no time specified.

80. All bargains, when no time is specified, shall be considered as made for the existing Consols Account, except bargains in Colonial Government Stocks, which shall be for the Foreign Settling-day.

Dealing for future accounts.

81. Any claim arising from a bargain effected for a future Account more than eight days previously to the close of the pending Account will not be allowed to rank against a Defaulter's estate until all other Creditors have been paid in full.

Offers to buy or sell.

82. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof; and an offer to buy or sell Stock, when no amount is named, is binding to the amount of £1,000 Stock.

Transfer Fees.

83. If the Seller of English, India, or Corporation Stock shall not receive from the purchaser a Transfer-Ticket by Ten minutes before One o'clock, he may demand two shillings and sixpence for each transfer-fee, which may be paid for the actual transfer of such Stock. On a Settling-day, if the Transfer-Ticket is not delivered by a Quarter before One o'clock, the Seller may claim of the purchaser, two shillings and sixpence for every £1,000 Stock.

Time for Selling-out.

If the Seller shall not receive a Transfer-Ticket before Half-past One o'clock on the day it was contracted to deliver the said Stock, he may sell out the same and

claim of the person who held the Ticket at Half-past One o'clock any loss or charge incurred.

Liability on late passed Tickets.

Time for Selling-out on Saturdays.

If the ticket has not been issued before Half-past Twelve o'clock, any loss or charge incurred shall fall on the Issuer of the Ticket. On Saturdays Stock may be sold out at a Quarter-past Twelve o'clock.

Time for issue of Tickets.

Selling-out.

84. The Buyer of Colonial Government Inscribed Stocks for the Account must issue Tickets before Two o'clock on the Ticket-day, and the deliverer of Colonial Government Inscribed Stocks who shall not receive a Ticket by Three o'clock on the Ticket-day, may sell out on the Settling-day, or on any following day.

If a Ticket shall not have been regularly issued before Two o'clock on the Ticket day, the issuer thereof shall be responsible for any loss occasioned by such selling-out. Should a Ticket have been regularly put into circulation, the holder at Three o'clock on the Ticket-day shall be liable. In case of selling-out on any subsequent day, the holder of the Ticket at Three o'clock on the previous day, or at One o'clock on Saturdays, shall be liable. Should, however, undue delay in passing the Ticket be proved, the Member causing such delay will be held responsible.

Buying-in.

Fine.

85. Stock bought for a specified day, and not then delivered, may be bought in on the following day at Eleven o'clock, and the Member causing the default shall pay any loss incurred, and also in the case of English and India Stocks dealt in for the Settling-day one-eighth per cent. for the non-delivery of the Stock. This fine shall attach to all Stock not delivered whether it shall have been bought in or not.

Time for delivery of Stock receipts.

86. Stock receipts must be delivered by Half-past Three o'clock; but if a deliverer elect (under Rule 69) to deliver a Stock receipt to the Member with whom he has dealt (such Member not being the issuer of the Ticket) he shall deliver such receipt by a Quarter-past Three o'clock.

Stock receipts must be delivered by half-past Twelve o'clock on Saturdays.

English and India Government, and Corporation Securities to Bearer must be delivered before Three o'clock, or before Twelve o'clock on Saturdays.

Bearer Securities.

87. When Stock is borrowed without any stipulation as to its return, the borrower or lender may be called upon to deliver or take it on the following day, whether a regular Transfer-day or not.

Borrowed Stock.

88. In cases of Loans on the deposit of Stock, when the striking of the balances for dividend takes place before repayment of the Loan, the lender shall allow the dividend, deducting interest thereon till the day of payment of, and at the same rate as, the Loan.

Loans on Stock.

Dividend allowed.

89. Purchasers of Bank Stock may require, at the seller's expense, as many transfers as there are even thousand pounds Stock in the sum bargained for.

Limit as to number of transfers.

90. The Clerk of the House shall fix the making-up prices, by taking the average price between Eleven and One o'clock on each of the two days preceding the Account, and in the case of English, India and Corporation Stocks between Eleven and a Quarter before One o'clock on the Settling-day; and no making-up shall be binding unless at such fixed prices.

Fixing making-up prices.

RULES APPLICABLE TO SECURITIES DELIVERABLE BY DEED OF TRANSFER.

Bargains when no time is specified.

91. Bargains in Stocks and Shares, when no time is specified, shall be considered as made for the existing Account; but those made after One o'clock on the first Making-up day, shall, unless otherwise specified, be for the ensuing Account.

Dealing for future Accounts.

92. Any claim arising from a bargain effected for a period beyond the ensuing two Accounts will not be allowed to rank against a Defaulter's estate until all other Creditors have been paid in full.

Offers to buy or sell.

93. An offer to buy or sell an amount of Shares or Stock at a price named, is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell Shares or Stock, when no amount is named, is binding to the amount of £1,000 stock, or to the amount of Fifty Shares. If, however, the market value of the Shares is above £15 each, then an offer is binding only to the extent of 10 Shares, and if the market value is not over £1 each, an offer is binding to the extent of 100 Shares.

Responsibility of Seller for regularity of documents and for dividend.

94. The Seller of Shares or Stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed to the transferee to execute and duly lodge such documents for verification and registration. When an official Certificate of registration of such Shares or Stock has been issued, the Committee will not (unless bad faith is alleged against the Seller) take cognizance of any subsequent dispute as to title, until the

Disputed title after registration.

legal issue has been decided, the reasonable expenses of which legal proceedings shall be borne by the Seller.

Transfers in blank.

95. The Committee will not (except under special circumstances) interfere in any question arising from the delivery of Shares, Stock, Bonds or Debentures by transfer in blank.

Mode of procedure on Ticket-days.

96. The Buyer who takes up Securities deliverable by deed of transfer shall, before Twelve o'clock on the Ticket-day, or in the case of Securities dealt in in the Mining Markets, before Two o'clock on the preceding day, issue a Ticket, with his own name as payer of the purchase-money, which Ticket shall contain the amount and denomination of the Stock or security to be transferred; the name, address and description of the transferee in full; the price, the date and the name of the Member to whom the Ticket is issued. Each intermediate Seller, in succession, to whom such Ticket shall be passed, shall endorse thereon the name of his Seller.

Tickets to contain full particulars.

Endorsement.

Tickets for stocks arranged by the Settlement Department.

All Tickets representing Stock or Shares which, at the time, are subject to arrangement by the Settlement Department, shall be passed through the accounts at the Making-up Price of the first Making-up day, and the Stock or Shares paid for at that price; but the consideration money in the deed must be at the price on the Ticket.

Notification of time of passing.

A Member receiving a ticket from the issuer after Twelve o'clock on the Ticket-day, or for Securities dealt in in the Mining Markets after Two o'clock on the preceding day, shall note the fact on the back of the Ticket; and a Member receiving a Ticket after Three o'clock on the Ticket-day, or for Securities dealt in in the Mining Markets after Six o'clock on the day before the Ticket-day, or at any time on any subsequent day, shall mark the exact time at which such Ticket is received.

It is also required that the holder of a Ticket at

1 o'clock
1.30 "
2 "
and 2.30 " on the Ticket-day, or for Se-

curities dealt in in the Mining Markets at Two o'clock and at every half-hour up to 5.30 o'clock on the day before the Ticket-day, shall endorse such times on the back of the Ticket.

Members omitting to note the times thus fixed may become liable for losses occasioned by selling-out in case undue delay is proved under the provisions of Rules 105 and 106.

Splitting Tickets.

A Member splitting a Ticket shall pay any increased expense caused by such splitting, and shall retain the Original Ticket. Split Tickets must bear the name of the issuer of the Original Ticket.

Time for Claiming.

No claim for loss on a Split Ticket shall be valid unless made by the Original Claimant within Three Months after the date of the Ticket, but the Member splitting the Ticket shall be liable to intermediate Claimants for a period of Four Months.

The liability of Members to the Settlement Department for Splits collected by the Department shall extend for a period of Six Months from the date of the Ticket.

Selling-out.

A Member failing to keep the Original Ticket will be required to trace it in case of selling-out.

Time for commencement of passing.

The passing of Tickets shall commence at Ten o'clock.

Time for leaving Tickets at offices.

Tickets may be left at the office of the Seller up to Twelve o'clock on Ticket-days and for Securities dealt in in the Mining Markets up to Two o'clock on the preceding day. After these hours all Tickets must be passed in the Settlement Rooms.

Tickets may be issued and passed on the day before the Ticket-day, but the buying-in upon Tickets so issued shall not be allowed until the Eleventh Day after the Ticket-day.

Shares consolidated into Stock.

97. When shares have been converted into consolidated Stock and are so quoted in the Official List, Buyers are required to pass Tickets for Stock, and not for Shares.

Antedated or undated Tickets.

98. A Member not refusing an Antedated Ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary Ticket, the liabilities re-

main with the Member putting such Ticket again into circulation; and any Member holding an undated Ticket shall not be liable for any loss arising from the Shares or Stock having been bought in, unless such Ticket has been Seven days in his possession.

99. A Member who makes an alteration in, or improperly detains, a Ticket, shall make good any loss that may occur thereby.

Alteration or detention of Ticket.

100. The deliverer shall cause the Shares or Stock to be transferred at the price marked upon the Ticket; but no Member shall be compelled to take a Ticket at a price not quoted in the Official List during the Account, unless the bargain represented by such Ticket shall have been made within the two preceding Accounts.

Prices marked on Ticket.

101. The deliverer may, previous to delivery, pay any call made on registered Shares, although not due, and claim the amount of the issuer of the Ticket.

Pending call.

102. The Buyer of Shares or Stock shall pay the *ad valorem* duty and registration fee, and shall state on the Ticket the amounts in which he may desire to have the Shares or Stock transferred, (provided no such amounts require a higher stamp than £50).

Payment of stamps.

In cases of Loans the borrower shall pay the nominal consideration stamps of Ten shillings, the registration fees, and the mortgage stamp.

Stamps on Loans.

103. The Buyer shall, in the event of his Ticket being split, pay for any portion of Shares or Stock which may be presented, provided the number be not less than Ten Shares, or the value less than £200.

Portions to be paid for.

104. The buyer of Shares or Stock may refuse to pay for a transfer deed unaccompanied by Coupons or Certificates, unless it be officially certified thereon that the Coupons or Certificates are at the office of the com-

Coupons or Certificates with transfer deed.

pany. But if the transfer deed be perfect in all other respects, the Shares or Stock must not be bought in until reasonable time has been allowed to the Seller to obtain the verification required. If the Seller have a larger Coupon than the amount of Stock conveyed, or only one Coupon representing Stock conveyed by two or more transfer deeds, the Coupon may be deposited with the Secretary of the Share and Loan Department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfer deeds, which shall then be a valid delivery. No person is to look to the Managers or Committee of The Stock Exchange, as being liable for the due or accurate performance of those duties, the Managers and Committee holding themselves, and being held, entirely irresponsible in respect of the execution, or of any misexecution, or non-execution, of the duties in question.

Division Coupons.

To be certified by Secretary of Share and Loan Department.

105. The deliverer of Shares or Stock who shall not receive a Ticket by half-past Two o'clock on the Ticket-day, may sell out such Securities up to Three o'clock; but if the Securities be one of those undertaken by the Settlement Department, written notice stating from whom a Ticket is required must be given to the Department at least one hour before such selling-out.

Selling-out.

This notice must be given by all Members wishing to sell out Securities undertaken by the Department, and in no case shall such Securities be sold out before twelve o'clock.

If a Ticket, except for Securities dealt in in the Mining Markets, shall not have been regularly issued before Twelve o'clock, the issuer thereof shall be responsible for any loss occasioned by such selling-out. Should, however, a Ticket have been regularly put into circulation, the holder thereof at Two o'clock shall be responsible for any selling-out on the Ticket-day. If the selling-out take place on the Pay-day, the holder of the Ticket at Three o'clock on the Ticket-day shall be liable;—unless such Ticket was in the Settlement Department at Three o'clock, in which case the holder of such Ticket at Five o'clock shall be liable. In case of selling-out on any subsequent day, the holder of the Ticket at Three o'clock on the previous day, or at one o'clock on Satur-

days, shall be liable, unless he can prove undue delay in passing the Ticket.

Should the deliverer allow Two clear days from Three o'clock on the Ticket-day to elapse without availing himself of his right to sell out, his Buyer shall be relieved from all loss in cases where the Ticket has not been passed in consequence of the public declaration of any Member as a Defaulter. If a seller does not deliver Shares or Stock within Thirteen clear days from the date of the Ticket, the intermediate Buyer from whom he received the Ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase money.

Release of Intermediaries.

106. The deliverer of Shares or Stock dealt in in the Mining Markets, who shall not receive a Ticket by Half-past Two o'clock on the Ticket-day, may sell out such Securities up to Three o'clock; but if the Security be one of those undertaken by the Settlement Department, written notice stating from whom a Ticket is required must be given to the Department at least one hour before such selling-out.

Selling-out Mining Securities.

This notice must be given by all Members wishing to sell out Securities undertaken by the Department and in no case shall such Securities be sold out before Twelve o'clock.

If a Ticket for such Securities shall not have been regularly issued before Two o'clock on the day before the Ticket-day, the issuer thereof shall be responsible for any loss occasioned by such selling-out. Should, however, a Ticket have been regularly put into circulation, the holder thereof at Two o'clock on the Ticket-day shall be responsible for any selling-out on that day; and the holder of the Ticket at Six o'clock on the day before the Ticket-day shall be responsible for any selling-out on the Pay-day, unless the Ticket was in the Settlement Department at Six o'clock on the day before the Ticket-day, in which case the holder of the Ticket at One o'clock on the Ticket-day shall be liable.

In the case of selling-out on any day after the Pay-day, the holder of the Ticket at Three o'clock on the previous day, or One o'clock on Saturdays, shall be liable, unless he can prove undue delay in passing the ticket.

Should the deliverer allow Two clear days from Three o'clock on the Ticket-day to elapse without availing himself of his right to sell out, his Buyer shall be released from all loss in cases where the Ticket has not been passed in consequence of the public declaration of any Member as a Defaulter. If a Seller does not deliver Shares or Stock within fourteen clear days from the date of the Ticket, the intermediate Buyer from whom he received the Ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase money.

Release of Intermediaries.

107. When shares or Stock are sold out, if a Ticket be not given within half an hour after the time of sale, the transfer may be made into the name of the Buyer.

Tickets for sold out shares.

108. If Shares or Stock are not delivered within Ten days, the issuer of the Ticket may buy in the same against the Seller at or after Half-past One o'clock on the Eleventh or any subsequent day after the date of the Ticket, or, in the case of Mining Securities, for which Tickets have been issued on the day before the Ticket-day, on the Twelfth or any subsequent day after the date of the Ticket.

Buying-in.

In the case of Companies which prepare their own transfers, Shares or Stock may be bought-in on the Eleventh, or any subsequent, day after the earliest date on which a transfer can be procured.

One hour's public notice of such buying-in must be posted in The Stock Exchange; the notices to be posted not later than Half-past Twelve o'clock. On Saturdays notices shall be posted by Half-past Eleven o'clock, and no buying-in shall take place before a Quarter-past Twelve o'clock. The name into which the Shares or Stock are to be transferred must be stated in the order to buy-in, if required by the Manager of the Buying-in and Selling out Department. The loss occasioned by such buying-in shall be borne by the ultimate Seller, unless he can prove that there has been undue delay in the passing of the Ticket on the part of any Member, who shall in that case be liable.

Notice of Buying-in.

Shares or Stock thus bought-in and not delivered by One o'clock on the following day, or by Twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the Member causing such re-purchase.

Non-delivery of bought-in Stock, &c.

In case the Official shall not succeed in executing an order to buy-in, the notice of such buying-in shall remain on the General Notice Board, and the Official may buy-in Shares or Stock, if not delivered, on any subsequent day without further notice, but not before Two o'clock, or on Saturdays before a Quarter-past Twelve o'clock.

109. The issuer of a Ticket who shall allow Thirteen, or, in the case of Mining Securities for which Tickets have been issued on the day before the Ticket-day, Fourteen clear days from the date of his Ticket, or, in the case of Companies which prepare their own transfers, Thirteen clear days after the earliest day a transfer can be procured, to elapse without buying-in or attempting to buy-in Shares or Stock, shall release his Seller from all liability in respect of the non-delivery of the Securities, unless he shall have waived his right to buy-in at the request, or with the consent of his seller; and the holder of the Ticket shall alone remain responsible to such issuer for the delivery of the Securities.

Time for Buying-in.

Release of Intermediaries.

110. The Buyer is entitled to new Shares or Stock issued in right of old, provided that he specially claim the same in writing from the Seller not later than Four o'clock (One o'clock on Saturdays) on the day preceding the latest day fixed for the receipt of applications. Claims should be entered as bargains, and as such be checked in the usual manner.

Right to new Shares.

Claims.

Notwithstanding the provisions of the above Clause, the Seller shall be responsible to the Buyer for the new Shares or Stock, although claimed later than Four p. m. on the above-named day, if he be in possession of the same: and should he not be in possession of the new Shares or Stock he is bound to render every assistance to the Buyer in tracing the same.

Responsibility.

When practicable, claims are required to be settled by Letters of Renunciation. No Member shall be required to accept Letters of Renunciation after Half-past Two (Twelve o'clock on Saturdays) on the latest day fixed for the receipt of applications.

Letters of Renunciation.

Delivery hour.

Where no Renunciation Letters are issued, all payments as and when required by the Company are to be advanced to the Seller by the Buyer, who may demand a receipt for the same, such payments being considered as for delivery of Stock open for the Special Settlement.

If the new Shares or Stock cannot be obtained by Letters of Renunciation, the Secretary of the Share and Loan Department, subject to the approval of the Chairman or Deputy-Chairman or Two Members of the Committee for General Purposes shall fix a price at which the new Securities may be temporarily settled and which may be deducted by the Buyer from the purchase money of the old Securities until the Special Settlement.

Fixing price for temporary settlement.

The Committee will not entertain any dispute relating to unchecked claims, unless brought before them within Ten days after the Special Settling-day.

Unchecked Claims.

111. On the day before the Ticket-day, and on the Ticket-day, the Clerk of the House shall, at Twelve o'clock, fix the Making-up prices by taking the then actual market prices, and no Making-up shall be binding unless at such fixed prices. A Making-up price shall also be fixed for Securities dealt in in the Mining Markets on the second day before the Ticket-day, and when the Ticket-day falls on a Tuesday, on the preceding Friday. In case of dispute as to the Making-up price, or of any omission in fixing the same, the Clerk of the House shall act upon the decision of Two Members of the Committee.

Making-up prices.

112. On the morning of the Settling-day all unsettled bargains shall be brought down and temporarily adjusted at the Making-up price of the Ticket-day, except bargains in Stocks and Shares, subject to arrangement by the Settlement Department, which shall be brought down and

Making-up prices for unsettled accounts.

temporarily adjusted at the Making-up price of the day before the Ticket-day.

Time for requiring payment.

113. No Member shall be required to pay for Shares or Stock presented after Half-past Two o'clock; or after Twelve o'clock on Saturdays.

If a deliverer elect to settle with his immediate buyer, under the provisions of Rule 69, he shall deliver his Securities before Half-past Twelve o'clock, but Intermediaries on the trace are bound to pay their Sellers up to Two o'clock.

RULES APPLICABLE TO SECURITIES TO BEARER.

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114. Bargains, when no time is specified, shall be considered as made for the existing Account; but those made after One o'clock on the day before the Ticket-day, shall, unless otherwise specified, be for the ensuing Account.

Bargains when no time specified.

115. Any claim arising from a bargain effected for a period beyond the ensuing two Accounts will not be allowed to rank against a Defaulter's estate until all other Creditors have been paid in full.

Dealing for future accounts.

116. An offer to buy or sell a sum of Stock, at a price named, is binding as to any part thereof, not less than the under-mentioned sums, and divisible by the same, viz.,—

Offers to buy or sell.

£1,000 Stock or Scrip.
Fcs. 750 French Rentes.
10 Shares.

An offer to buy or sell United States Bonds or Shares, when no amount is named, is binding to the amount of $5,000 Bonds or 100 Shares.

117. No Member shall be required to accept the delivery of a Certificate of American Shares of a larger amount than 10 Shares of $100 each nominal capital, or 20 Shares of $50 each, nor an American Bond of a larger amount than $1,000, except upon special contract.

American Bonds and Shares, amount deliverable.

Smaller Certificates or Bonds must be of such denominations as to be deliverable in the above amounts.

118. The Seller of Securities for a particular day, which the Buyer is not prepared to pay for by Half-past Two o'clock on that day (or Twelve o'clock on Saturdays), may sell out the same, and claim of the Buyer any loss incurred.

Selling-out.

119. On the Ticket-day between Ten and One o'clock, Tickets shall be passed without any price thereon, and the accounts made up therewith are to be settled at the Making-up price of the day before.

Tickets shall be passed.

Tickets must bear distinctive numbers and be for the following amounts, viz:—

Tickets must bear numbers.

Amounts deliverable.

£1,000 Stock, or multiples of £1,000, up to £5,000.

£1,000 Italian Stock, or multiples thereof, up to £5,000. Also £800, or multiples thereof, up to £4,800.

$5,000 American Stocks, or multiples thereof, up to $25,000.

Fcs. 1,500 French 3 per cent. Rentes, or multiples thereof, up to fcs. 6,000.

10 Shares, or multiples thereof, up to 100.

Tickets for £500 Stock may be passed for bargains or balances of that amount.

Smaller amounts must be settled without Tickets.

Tickets shall not be issued later than Half-past Twelve on the Ticket-day.

Time of issue.

Tickets shall not be split, except in the Settlement Department in cases where the Sub-Committee appointed to control that Department may consider it necessary.

Splitting.

Every Member is required to endorse on the Ticket the name of the Member to whom it is passed.

To be endorsed.

On the Settling-day, and on the day after the Settling-day, the delivery of Securities shall commence at Ten o'clock.

Time for commencement of delivery.

Sellers shall accept Tickets. If a deliverer elect to settle with his immediate Buyer, under the provisions of Rule 69, he shall deliver his Securities before Half-past Twelve o'clock, but Intermediaries on the trace are bound to pay their Sellers up to Two o'clock.

The holder of Tickets passed under this Rule, and of Tickets passed by the Settlement Department, may deliver Securities up to Two o'clock on Settling days.

A Member not issuing a Ticket shall be required to pay for Stock up to Half-past Two o'clock.

Portions to be paid for.

Buyers shall pay for such portion of Securities as may be delivered within the prescribed times.

Time for requiring payments.

120. A Member shall not be required to pay for Securities presented until half-past Two o'clock on any day other than Settling-days. On Saturdays, he shall not be required to pay for Securities after Twelve o'clock.

Buying-in.

121. Securities bought for any period, except the Settling-day, which shall not be delivered by Half-past Two o'clock, or by Twelve o'clock on Saturdays, may be bought in on the same, or any subsequent day, and any loss occasioned by such re-purchase shall be borne by the Seller.

Notice.

But Securities bought for the Settling-day, and not delivered by Half-past Two o'clock, may be bought in on the following, or any subsequent day, after one hour's notice has been posted in the market announcing the intended purchase; the notices to be posted not later than Half-past Twelve o'clock. The buying-in shall not take place before Half-past One o'clock, nor before Quarter-past Twelve o'clock on Saturdays, on which days public notice shall be posted by Half-past Eleven o'clock. The loss shall be borne by the Member who shall not have delivered the Shares or Stock by Half-past Two o'clock on the previous day, or by One o'clock on Saturdays.

Non-delivery of Stock bought in.

Stock thus bought in, and not delivered by One o'clock on the following day, or by Twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the Member causing such re-purchase.

In case the Official shall not succeed in executing an order to buy in, the notice of such buying-in shall remain on the General Notice Board, and the Official may buy in such Stock, if not delivered, on any subsequent day without further notice, but not

before Two o'clock, or on Saturdays before a Quarter-past Twelve o'clock.

Neglecting to take numbers.

A Member neglecting to take the numbers of Securities delivered after time, shall be required to trace out the Member responsible for the loss.

Limit of time for buying-in.

Release of Intermediaries.

122. A Member who shall allow Two clear days to elapse without availing himself of his right to buy-in, or without attempting to buy-in Securities, releases his Seller from any loss in consequence of the public declaration of any Member as a defaulter, unless he shall have waived such right at the request, or with the consent, of the Seller. The holder of a Ticket who shall allow two clear days to elapse without delivering the Stock releases his Buyer from any loss in consequence of the declaration of any Member as a Defaulter.

Making up prices.

123. The Clerk of the House shall, at Twelve o'clock on each of the two days preceding each Settling, fix the Making-up prices of all Securities by taking the then actual market prices; and no Making-up shall be binding unless at such fixed prices.

Adjustment of Unsettled Accounts.

124. On Settling-days, all unsettled bargains shall be brought down and temporarily adjusted, at prices to be fixed by the Clerk of the House at Half-past Two o'clock, and the differences shall be paid in the usual manner.

Exchequer Bonds, &c.

125. Bargains in Exchequer Bonds and in Stock Certificates are for Bonds and Stock Certificates not filled up to order.

French Rentes.

126. Bargains in French Rentes, unless otherwise specified, shall be settled in Certificates to Bearer, and at a fixed exchange of fcs. 25 per pound sterling.

Foreign Coupons when returnable.

127. Foreign Coupons sold at the exchange of the day, and no paid, are returnable with all reasonable expenses.

128. The Buyer of Bonds or other Securities subject to periodical drawing shall not be entitled to claim delivery thereof previous to the day for which they were bought. Bargains must be settled in Securities which have not been drawn.

Subject to Drawing.

In case of the erroneous delivery of any drawn securities, the Buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) shall deliver such Securities back to the person who held them at the time of the drawing, or shall pay to him any proceeds received from such drawing, provided the said Securities or the proceeds thereof be traced to, and remain in the possession and under the control of, such Buyer, all intermediate Members being released from liability.

Drawn Bonds.

No claim by the Seller in respect of the erroneous delivery of Drawn Securities will be entertained by the Committee unless made within nine calendar months.

129. The Buyer is entitled to new Securities issued in right of old, provided that within reasonable time, he specially claim the same in writing from the Seller, who may after due notice require the Buyer to complete the bargain in old Securities. Claims should be entered as bargains, and as such be checked in the usual manner.

Buyer entitled to new Securities.

The Secretary of the Share and Loan Department, subject to the approval of the Chairman or Deputy-Chairman or Two Members of the Committee for General Purposes, shall fix a price at which the new Securities may be temporarily settled, and which may be deducted by the Buyer from the purchase money of the old Securities, until the Special Settlement.

The Committee will not entertain any dispute relating to unchecked claims, unless brought before them within Ten days after the Special Settling-day.

130. The deliverer is responsible for the genuineness of Securities delivered, and in case of his death, failure, or retirement from The Stock Exchange, such responsibility shall attach to each Member in succession, through whose account the Ticket for such Securities shall have passed.

Genuineness of Securities.

The deliverer of Securities on Tickets is required to apportion such Securities to each Ticket at the time of delivery, and takers of Securities, in order to secure their right under this Rule, shall keep such Tickets and the numbers of the Securities to which they were respectively apportioned, or, in the case of Settlement Department Tickets, the numbers of such Tickets.

Stopped Bonds.

French and Egyptian Securities to Bearer, which, under French or Egyptian Law, have been officially notified as stopped, are returnable to the deliverer.

Torn or damaged Bonds.

131. Every Bond or Scrip Share is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognisance of any complaint in respect of Bonds or Shares alleged to have been delivered in a damaged condition, or deficient in, or with irregular, Coupons, should such Bonds or Shares be detained by the Buyer more than Eight days after the delivery, unless it can be proved that the Member passing them was aware of their being imperfect.

Irregular Coupons.

The Committee will not take cognisance of any complaint in respect of the irregularity in the endorsement of American Share Certificates, should such certificates be detained by the Buyer more than Three Months after delivery, unless it can be proved that the Member passing them was aware of the irregularity.

Railway Debentures.

132. Bonds and Debentures of railways in Great Britain, Ireland, and the East Indies, shall be dealt in so that the accrued interest, up to the day for which the bargain was done, be paid by the Buyer; but bargains in Bonds and Debentures of Colonial and Foreign railways shall include the accrued interest in the price.

Colonial and Foreign Railway Debentures.

SPECIAL SETTLING-DAYS.

Bargains in new Loans and Shares, &c.

133. Bargains in the Scrip or Bonds of a new Loan, or the Shares or other Securities of a new Company, shall be considered as made for Special Settlement.

Claims arising from bargains for a date previous to that fixed for the Special Settlement will not be admitted against a defaulter's estate until all other claims have been paid in full.

Appointment of Special Settling-day.

134. The Secretary of the Share and Loan Department shall give three days' public notice of any application for a Special Settling-day in the Scrip or Bonds of a new Loan previously to its being submitted to the Committee, who will appoint a special Settling-day, provided that sufficient Scrip or Bonds are ready for delivery, as vouched for by a Certificate verified by the Statutory Declaration of the Contractors or Agents stating the amount allotted; and that the Scrip and Bonds are in reasonable amounts.

Documents.

Settling-day in Foreign or Colonial Loans.

135. Bargains in Foreign Loans which are officially quoted in the country to which they belong shall be for the Ordinary Settlement.

Special Settling-days in Shares of New Companies.

136. The Secretary of the Share and Loan Department shall give three days' public notice of any application for a Special Settling-day in the Shares or other Securities of a new Company previously to such application being submitted to the Committee, who will appoint a Special Settling-day provided that sufficient Scrip or Shares are ready for delivery.

The Committee will not fix a Special Settling-Day for bar-

gains in Shares or Securities issued to the Vendors, credited as fully or partly paid, until six months after the date fixed for the Special Settlement in the Shares or Securities subscribed for by the public.[1]

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[1] This paragraph does not necessarily, apply to reorganisations or amalgamations of existing Companies, or to cases where no Public Shares are issued, or to cases where the Vendors take the whole of the Shares issued, for cash.

OFFICIAL QUOTATIONS.

Quotation of Scrip or Bonds of New Loans.

137. The Committee may order the Quotation of the Scrip or bonds of any Loan, the dividends of which are payable in this country, provided that the application, of which three days' public notice must be given, is accompanied by the Prospectus, by notarial copies or translations, or other satisfactory evidence of the powers under which the Loan is contracted; that the Loan has been publicly negotiated by tender, contract, or otherwise; that the Bonds specify the amount and conditions of the Loan, the powers under which it has been contracted, and the numbers and denominations of the Bonds issued, and that they bear the autographic signature of the Contractor or properly authorised Agent.

Bonds will not be admitted to Quotation until a specimen has been submitted to the Committee.

Quotation of Bond, with dividend payable abroad.

135. Bonds, the dividends of which are payable abroad, may be quoted upon satisfactory proof of the amount created and issued, and of the Official Quotation in the country where issued.

Quotation of New Companies.

139. The Committee may order the quotation in the Official List of any class of the Shares or Securities of a new Company, provided—

Magnitude and importance.

(I.) That the Company is of sufficient magnitude and importance:

Notice.

(II.) That three days' public notice of the application has been given:

Documents.

(III.) That the following documents have been deposited with the Secretary of the Share and Loan Department:

(*a*) The Prospectus;

(*b*) The Certificate of Incorporation, Act of Parliament, or other similar document;

(*c*) The Certificate that the Company is entitled to commence business;

(*d*) The Articles of Association;

(*e*) The original applications for Shares or securities;

(*f*) The Allotment Book for Shares or Securities, with a Summary signed by the Chairman and Secretary of the Company;

(*g*) A copy of the Letter of Allotment for Shares or Securities;

(*h*) A specimen of the Certificate or Bond;

(*i*) Certified copies of Contracts and Agreements;

(*k*) Notarially certified translations of Concessions, Deeds and Agreements;

(*l*) A Certificate, verified by the statutory declaration of the Chairman and Secretary, stating:—

Statutory Declaration.

(1) That the Prospectus complies with the provisions of the Companies Acts;

(2) That all documents required by the Companies Acts have been duly filed, and the dates of filing the same;

(3) The number of Shares and amount of Securities applied for by, and unconditionally allotted to, the public, and the distinctive numbers of the same;

(4) The number of Shares and amount of Securities allotted in whole or in part for a consideration other than cash and the distinctive numbers of the same;

(5) The amount of deposits paid;

(6) That such deposits are absolutely free from any lien;

(7) That the Certificates or Bonds are ready for delivery;

(8) That the purchase of the properties has been completed, and the purchase-money paid;

(9) That no impediment exists to the settlement of the account;

Documents.

(*m*) The Banker's Pass Book;

(*n*) A Certificate from the Bankers, stating the amount of deposits received;

(*o*) In the case of an issue of Debentures or Debenture Stock—

Debentures.

(1) The Trust Deed, if any;

(2) The Official Certificate of the Registration of the mortgage or charge;

Documents.

Prospectus. (IV.) That the Prospectus—

(*a*) Shall have been publicly advertised;

(*b*) Agrees substantially with the Act of Parliament or Articles of Association;

(*c*) Provides—

(1) For the issue of not less than one-half of the Authorised Capital;

(2) For the payment of 10 per cent. upon the amount subscribed;

(*d*) If offering Debentures or Debenture Stocks, however designated or described, states all terms, conditions and circumstances under which such are or may become redeemable or repayable.

Proportion Public Allotment to issue. (V.) That two-thirds of the amount proposed to be issued of any such class of the Shares or Securities (whether such issue be the whole or part of the authorised amount) shall have been applied for by, and unconditionally allotted to, the public (Shares or Securities reserved or granted in lieu of money payments to concessionaires, owners of property or others not being considered to form part of such public allotment):

Articles of Association. (VI.) That the Articles of Association restrain the Directors from employing the funds of the Company in the purchase of, or in Loans upon the Security of, its own Shares:

Debentures. (VII.) That every Debenture or Debenture Stock Certificate shall contain the information required in Clause IV. (*d*); and when any of such are allotted to vendors in lieu of money payments, the Certificates shall be enfaced "issued to Vendors."

Broker. (VIII.) That a Broker, a Member of the Stock Exchange, is authorised to give full information as to the formation of the undertaking, and be able to furnish the Committee with all particulars they may require.

140. Foreign Companies partly subscribed for and allotted in

this country, shall not, unless under special circumstances, be allowed a Quotation in the Official List, until they have been officially quoted in the country to which they belong.

Quotation of Foreign Shares.

141. The Committee may order the quotation of Shares or Securities issued to Vendors credited as fully or partly paid, six months after the date fixed for the Special Settlement of the Shares or Securities of the same class subscribed for by the public, provided a quotation for the latter is also granted.

Quotation of Vendors' Shares.

ORDINARY SETTLING DAYS AND OFFICIAL QUOTATION OF PRICES.

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142. The Committee shall fix the Settling-day for English Stock at least Eight days previous to the settlement of the pending Account, and at their first meeting in each month they shall fix the Ticket-day and Settling-days for Foreign Stocks, Shares, &c., of the second succeeding month.

Settling-days and Ticket-days.

The Secretary shall give notice of the days thus appointed.

143. The Settling-day in English Omnium and Scrip shall be two days prior to the respective days of payment of each of the several instalments, unless the payment falls on a Tuesday, in which case the Settling-day shall be on the previous Monday.

Settling-day in Omnium, &c.

In case the payment of an instalment on Foreign or other Scrip falls on a Settling-day, the settlement of such Scrip shall take place the day previous to the payment.

Instalment on Scrip.

144. A List of prices of English and Foreign Stocks, Shares and other Securities, permitted to be quoted, shall be published under the authority of the Committee; and no list shall be published and sold by a Member without the sanction of the Committee.

Price List under the control of Committee.

145. The prices of all bargains may be quoted in the Official List, but no price shall be inserted unless the bargain shall have been made in the Stock Exchange between Members at the market-price; nor on the authority of one of them, if he refuse, when required by a Member of the Committee, to give up the name of the Member with whom he has dealt.

Quotation of prices.

146. Bargains at special prices by reason of their exceptional amounts may only be quoted with distinguishing marks.

Exceptional amounts.

147. Bargains in English Stock for the next transfer day, or in Foreign or other Stocks for the following day, may be marked in the Official List of money prices.

Quotation of money prices, &c.

Bargains in all Stocks made during the shutting, for the opening, may be quoted in the Official List.

Of Stock during shutting.

Bargains in Foreign Bonds may be quoted in the Official List, with or without over-due Coupons.

Of Bonds with over-due Coupons.

Omnium may be quoted for the issue of the receipts, for money and for the next succeeding payment.

Omnium.

148. All dealings in British and India Stocks shall be quoted ex-dividend on the morning of the day after that on which the Books close for dividend.

Quotations of Stock ex-dividend.

149. Bargains in transferable Shares or Stock, except Securities dealt in in the Mining Markets, shall be quoted ex-interest from the beginning of the Account in which the interest may become payable; and ex-dividend from the beginning of the Account following that in which the dividend may have been declared, provided the dividend be made payable to the holders then registered; but in case of a subsequent shutting of a Company's books for payment of the dividend, then, from the beginning of the Account following that in which such shutting occurs.

Quotations of Shares ex-dividend or ex-interest.

Securities dealt in in the Mining Markets shall be quoted ex-dividend from the beginning of the Account following that in which the dividend shall have been paid.

Bargains in Securities to Bearer shall be quoted ex-dividend on the day when the dividend is payable.

Dividends on Securities to bearer.

Shares in Foreign Railways shall, when practicable, be quoted ex-dividend, or ex-interest, at a period in accordance with the practice of Foreign Bourses.

150. Bargains should be quoted in the order in which they are made; but the Clerks of the House may, with the concurrence of a Member of the Committee, quote omitted bargains, if notified before One o'clock, in the order in which they occurred, upon a written application from the Buyer and the Seller, stating the amount, the time when, and the price at which, such bargains were made; and such application shall be filed, and laid before the Committee at their next meeting. The above regulation applies likewise to all bargains done between One and Three o'clock.

Bargains omitted to be marked.

151. A price inserted in the Official List shall not be expunged, without the authority of the Chairman, Deputy-Chairman, or two Members of the Committee.

Prices not to be expunged without authority.

FAILURES.

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152. A Member unable to fulfil his engagements shall be publicly declared a Defaulter by direction of the Chairman, Deputy-Chairman, or any two Members of the Committee.

Public declaration of Defaulters.

153. A Member declared a Defaulter in The Stock Exchange, or a Member who may become a bankrupt, or be proved to be insolvent, or against whom a Receiving Order in Bankruptcy may have been made, although he may not be at the same time a Defaulter in The Stock Exchange, ceases to be a Member.

Defaulters, Bankrupts, &c., cease to be Members.

154. When a Member shall give private intimation to his creditors of his inability to fulfil his engagements, the creditors shall not make any compromise with such Defaulter, but shall immediately communicate with the Chairman, Deputy-Chairman, or Two Members of the Committee, in order that the Member in default may be immediately declared; and in case the Committee shall obtain knowledge of any private failure, the name of the Defaulter shall be publicly declared.

Private failures.

155. A Member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or Securities received from such Defaulter, provided he shall be declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the subsequent creditors. Any arrangement for settlement of claims, in lieu of *bona fide* money payment on the day when such claims become due, shall be considered as a compromise, subject to the provisions of this rule.

Liability of persons who connive at a private failure.

Receiving prospectively claims upon a Defaulter.

156. A Member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase or sale of Stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, shall (in case of the failure of the Member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any Member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place.

Equality of right between Difference creditors.

157. A creditor receiving, under any circumstances, a larger proportion of differences on a Defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others.

Priority of claim by Difference creditors.

158. Creditors for differences shall have a prior claim on all differences received by, or due to, a Defaulter's estate.

Claims for securities delivered and not paid for.

159. Members not receiving due payment for Securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid *pro rata*, and preferentially out of assets resulting in any manner from such Securities, or derived from the Defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the Defaulter.

Loans on Securities valued below the market-price.

160. In the case of loans of money made upon Securities valued at less than the market-price, the lender shall realise his Securities within Three clear days, (unless the creditors consent to a longer delay), or take

them at a price to be fixed by the Official Assignees (with appeal to any Two Members of the Committee). Should the Security be insufficient, the difference may be proved against the Defaulter's estate.

Loans without Security.

161. No loan without Security shall be admitted as a claim on the differences of a Defaulter's estate; nor shall any such loan, when of longer duration than two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a Member on the day of his default, such payment being made out of assets not belonging to the Defaulter previously to that day, he shall refund the amount so received for the benefit of the Defaulter's estate.

Differences on old transactions.

162. Differences allowed to remain unpaid for more than Two business days beyond the day on which they become due, cannot be proved against a Defaulter's estate, or set off against any difference due to a Defaulter at the time of his failure. Differences overdue and paid previous to the day of default are not to be refunded.

Claims not on Stock Exchange transactions.

163. The Committee will not recognise any claim on a Defaulter's account that does not arise from a Stock Exchange transaction.

Surrender of books and names of principals.

164. No Defaulter shall be re-admitted, who shall not, if required, give up the name of any principal indebted to him, or who, within Fourteen days from the date of his failure, shall not have delivered to the Official Assignees, or to his creditors, his original books and accounts, and a statement of the sums owing to, and by him, in The Stock Exchange, at the time of his failure.

Composition previous to Failure.

Release of sureties.

165. A Member, having compounded with his creditors, and being subsequently declared a Defaulter, shall not be eligible for re-admission for Six months, and should he be declared in consequence of his having so compounded, his sureties shall not be called upon to pay their security money.

166. A Defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

Payment to creditors before re-admission of 6s. 8d. in the £ on balance loss.

167. A Member who passes or retains a Ticket for Shares or Stock whereby loss is incurred or increased, and who shall be declared a Defaulter in that Account, shall not be eligible for re-admission for at least One year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of passing or retaining the Ticket.

Defaulter passing or retaining Tickets.

168. No Member shall carry on business for a Defaulter for his benefit, without the consent of the creditors, and the sanction of the Committee. No Member shall deal with a Defaulter on his own account before his re-admission to The Stock Exchange.

Business for a Defaulter.

Business with a Defaulter.

169. No Member shall transact business for a principal who, to his knowledge is in default to another Member, unless such person shall have made a satisfactory arrangement with his creditors.

Business for principals who are Defaulters to other Members.

170. Non-Members shall be allowed to participate in Defaulters' estates, provided their claims be admitted by the creditors, or, in case of dispute, by the Committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any Member whom he may select.

Claims of Non-Members admitted against Defaulters.

171. No Member, being a creditor upon a Defaulter's estate, shall sell, assign, or pledge his claim on such estate, to a Non-Member, without the concurrence of the Committee; and such assignment shall be immediately communicated to the Official Assignees.

Claims not to be sold to Non-Members.

172. If a creditor of a Defaulter be dead, the dividend due to him shall be paid to his legal representatives; but if the creditor himself be a Defaulter, the dividend due to him shall be paid to his creditors.

Dividends due to deceased creditors.

173. Upon any application for the re-admission of a Defaulter, a Sub-Committee, of not more than three Members, to be chosen in alphabetical rotation, shall investigate his conduct and accounts; and no further proceedings shall be taken by the Committee with regard to his re-admission, until the Report of such Sub-Committee shall have been submitted, together with a balance sheet of the Defaulter's estate, signed by himself.

Duties of Sub-Committee.

The attention of the Sub-Committee shall be directed.

1st.—To ascertain the amount of the greatest balance of Shares or Stock open at any time during the Account, the current balance at his bankers, as well as the balance of Shares or Stock open at the time of failure; and whether the transactions were on his own account, or an account of principals, specifying the amount of each respectively.

2nd.—To ascertain the total amount of money paid by him; specifying the sums collected in The Stock Exchange; and those received from principals; and the money or other property brought forward by himself.

3rd.—To ascertain the conduct of the Defaulter preceding and subsequent to his failure; and to enquire of the Official Assignees whether any matter, prejudicial or otherwise to the Defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th.—To ascertain whether the Defaulter has violated Rule 167.

174. The re-admission of Defaulters shall be in two distinct Classes:—

The *First* Class to be for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the Regulations of the House has been practised; where the operations have been in reasonable proportion to the Defaulter's means or

Classes under which Defaulters are re-admitted.

resources, and where his general conduct has been irreproachable.

The *Second* Class, for cases marked by indiscretion, and by the absence of reasonable caution.

The decision of the Committee on the re-admission of a Defaulter shall remain posted in The Stock Exchange for Thirty days.

Defaulters to furnish information.

175. Every Defaulter, bankrupt, or insolvent (applying for re-admission) shall furnish the Sub-Committee with every information they may require.

OFFICIAL ASSIGNEES.

Appointment of Official Assignees.

176. Two or more Members shall be appointed annually by the Committee, to act as Official Assignees, whose duty it shall be to obtain from a Defaulter his original books of account, and a statement of the sums owing to and by him, to attend Meetings of creditors, to summon the Defaulter before such Meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the Rules, Regulations, and usages of The Stock Exchange.

Official Assignees to give security.

177. Each Official Assignee shall find security amounting to £1,000 from two or more Members of The Stock Exchange. In the event of any default or misappropriation by either Assignee of funds or property entrusted to his care, or of any other act of dishonesty on his part, each of his Sureties shall pay, under direction of the Committee, such sum as he shall have guaranteed.

Division of Assets Amongst Creditors.

178. The Assignees shall collect and pay the assets into such Bank, and in such names, as the Committee may from time to time direct, and the same shall be distributed as soon as possible.

Assignees to fix prices.

179. In every case of failure, the Official Assignee shall publicly fix the prices current in the Market immediately before the declaration, at which prices all Members having accounts open with the Defaulter shall close their transactions by buying of or selling to him such Stocks, Shares or other Securities as he may have contracted to take or deliver, the differences arising from the Defaulter's transactions being paid to, or claimed from the Official Assignee. In the event of a dis-

pute as to the prices named, they shall be fixed by Two Members of the Committee, but no objection will be entertained unless written application is made to the Official Assignee within two business days of the time when the list was posted in The Stock Exchange.

Differences not to be claimed until due.

180. The Official Assignees shall not claim differences on a Defaulter's estate, until they become due.

Claims not admitted.

181. The Official Assignees shall not admit any claims upon a Defaulter's estate arising out of transactions which are stated in the Rules as not recognised until all other claims have been paid in full, but they shall forthwith collect and distribute amongst the creditors all assets arising from such transactions.

Statements to be furnished to the Committee by Assignees.

182. Once in every month, the Official Assignees shall lay before the Committee an account of the balances in their hands belonging to Defaulters' estates, and the Committee shall order such balances as they think fit to be paid over to the account of the Trustees of The Stock Exchange Benevolent Fund, subject to recall by the Committee for distribution amongst creditors, or for payments by or to the Official Assignees which have been authorised by the Committee.

A statement of all sums so paid over, and of the amount remaining in the hands of the Trustees of The Stock Exchange Benevolent Fund on the 31st of December in every year, shall be furnished by the Official Assignees, and deposited in the Committee Room for the inspection of the Members of The Stock Exchange.

On the first of March, in each year, the Official Assignees shall lay before the Committee a statement of all dividends paid during the last year on each Defaulter's estate.

A register of Defaulter's accounts to be kept.

Every Defaulter's estate shall be registered in a book, to be kept by the Official Assignees.

Deduction for legal expenses.

183. Legal Expenses incurred on account of a Defaulter's estate shall be deducted from the sum available for distribution among the Creditors.

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SYNOPTIC TABLES

OF THE

THREE REGULATIONS

OF THE

STOCK EXCHANGE COMPANY OF PARIS

PUBLISHED ACCORDING TO THE LAST MODIFICATIONS MADE IN 1899.

1221–22

DECREE OF OCTOBER 7, 1890

COMPRISING THE

REGULATION EMBODIED IN LAW

For the Execution of Article 90 of the Code of Commerce and of the Law of March 28, 1885, in regard to Time-Bargains,

Modified by the Decree of June 29, 1898.

PRIVATE REGULATION

Approved by the Minister of Finance December 3, 1891,

Modified June 29, 1898, and January 30, 1899.

INSIDE REGULATION

Voted by the Company in Session assembled December 16, 1891,

Modified December 26, 1898.

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FIRST DIVISION.

ORGANIZATION.

PROPOSAL FOR MEMBERSHIP—NOMINATION—ADMISSION.

DECREE.

ARTICLE 1.

No one is eligible to become a member of the stock exchange, unless:

1°. He is a Frenchman;

2°. He is twenty-five years of age;

3°. He is in enjoyment of his civil and political rights, and has satisfied all legal obligations in regard to military service.

ART. 2.

Brokers are nominated by decree countersigned either by the Minister of Finance or the Minister of Commerce and Industry, according to circumstances, as they may exercise their functions over a stock-exchange having a floor (or "pit"), or one not having such floor.

ART. 3.

Proposals for membership made in accordance with Article 91 of the law of April 28, 1816, must be accompanied:

1°. By a certificate setting forth that the candidate has worked at least four years with a broker, at a bank, or commercial establishment, or in a notary's office.

2°. By a contract subscribed to by him, which contract is to

be endorsed, if need be, by the formal renunciation of the original incumbent; by the declaration, bearing the signatures of the different parties interested, that no pecuniary advantage accrues outside of the price indicated in the contract; and in the case of a stock-exchange not having a "pit" or floor, by a memorandum of the lump proceeds of the office during the last five years.

3°. If need be, by the usual clause in regard to taking on sleeping partners.

Proposals of membership, as well as the contracts and documents accompanying them, are to be submitted to the approval of the Syndical Chamber; if there is no Syndical Chamber, the brokers carrying on business in the same city, in convention assembled, must report upon the matter. Proposals are referred to the proper Minister by the Syndical Chamber directly, in Paris; in the departments, by the prefect, who adds his own opinion in the matter.

ART. 4.

In cases where there is a delay of four months after the time for a proposal of membership, and the right of proposal is not exercised, it may be officially provided for by the nomination from a triple list of candidates fulfilling the conditions specified in Article 3, No. 1. The list is drawn up by the Syndical Chamber, or, if there is no such Chamber, by the Tribunal of Commerce. The fee required from the new incumbent is fixed by the decree of nomination, and is to be turned into the Treasury of the Contingent Funds.

ART. 5.

Brokers cannot do business in the Exchange until they have made good the amount of their bonds, and have taken an oath before the Tribunal of Commerce, or, failing that, before the civil authorities, to fulfil their obligations faithfully and honestly.

INSIDE REGULATION.

ARTICLE 1.

The right to propose a new member belongs to a retiring broker.

In case of decease, this right is exercised according to Article 91 of the law of April 28, 1816, and the ordinance of May 29 following.

ART. 2.

The document setting forth the withdrawal of a broker is made up of the following papers which must be delivered to the Syndical Chamber:

1°. Letter of resignation addressed to the Minister of Finance.

2°. Letter proposing a successor addressed to the Trustee (Syndic) of the Exchange.

3°. Private deed of sale, in three copies.

4°. Declaration signed by both parties that the price stated in the deed is honest and in good faith.

5°. Declaration, in three copies, signed by both parties, in regard to the regulation and winding up of such operations as may be under way.

6°. Declaration, signed by both parties, in regard to the relinquishment of all rights in the common funds.

7°. Birth-certificate, in two copies.

8°. Statement, in two copies, that the candidate enjoys his civil and political rights.

9°. Statement that he has satisfied the legal requirements in regard to military service.

10°. Certificate, in two copies, of capacity and honorable character, signed by the heads of banking or commercial houses, of which signatures there must be not less than six.

11°. Certificate, in two copies, setting forth that the candidate has worked at least four years in a broker's office, in a banking or commercial house, or with a notary.

12°. Proposed conditions of contract with any possible future sleeping partners.

13°. Instrument declaring the relinquishment of his functions.

All these papers must be drawn upon the blank forms furnished by the Syndical Chamber.

The forms numbered 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 must be made out on stamped paper.

ART. 3.

On receiving the foregoing documents, the Trustee (Syndic) appoints an examiner and the Syndical Chamber, after the report of the examiner, proceeds to vote, by secret ballot, on the provisional admission or rejection of the candidate. Four black balls are required for rejection.

ART. 4.

The candidate provisionally admitted pledges himself in writing, before the Syndical Chamber to observe faithfully all the Company's regulations, and declares his full knowledge of the same. The name is then posted in the office of the Exchange for fifteen days. In addition to the announcement of the transference of the seat, the proclamation, signed by the Trustee (Syndic), must contain the full names of all the candidates' sleeping partners with the amount to which each of them is interested. By this means all the members of the Company are incited to investigate about the candidate, and, the period of two weeks having elapsed, they are required to express their opinion by secret ballot, the result of which shall be known to the Syndical Chamber alone.

The Syndical Chamber then votes, in secret ballot, on the admission or rejection of the candidate. Four black balls are required for rejection.

ART. 5.

Any one who has meddled with the affairs or duties of members of the Company, cannot, under any circumstances, become a broker.

ART. 6.

The contract in regard to the transmission of the office of broker does not become binding between the parties until it has received the provisional approval of the Syndical Chamber and final approval of the Minister of Finance.

ART. 7.

Each newly nominated broker pays into the Company's treas-

ury the sum of 2,500 francs to meet the expenses of his admission.

ART. 8.

The admission of a new broker takes place in the following manner:

The Company being assembled, the Trustee (Syndic) invites the two members of the company designated as sponsors for the newcomer to introduce him in the meeting.

The member-elect, having been introduced, remains standing in front of the desk while the trustee reads:

1°. The official letter from the Minister of Finance containing the decree of nomination.

2°. The decree of nomination.

3°. The Public Treasurer's receipt certifying that the new broker has made a deposit of his bonds.

4°. A deposition of taking oath before the Tribunal of Commerce, or a letter from the court recorder stating that he was present when said oath was taken.

5°. The pledge taken by him in writing to faithfully observe the regulations governing the company, of which he has been given a copy, as well as all the decisions of the Syndical Chamber that have been made or may hereafter be made.

The trustee then declares in the name of the company, that all formalities being complied with, the member-elect is received as a broker, and he orders that his name be inscribed on the register of the members of the Company.

ART. 9.

After the admission, the Syndical Chamber proceeds to make a valuation of the common funds, and the figures ascertained are communicated to the new broker and his predecessor.

ART. 17.

Every broker who has ceased to belong to the company is debarred from entering it again.

If, however, as a result of some exceptional circumstances, a former broker should find himself impelled to take again the

charge once incumbent upon him, his admissibility would be submitted to the consideration of the Company in session assembled, and it would require the votes of three quarters of the members present to re-elect him.

In this case the years formerly passed by him in the company would be reckoned as so many years of honorary membership.

BONDS AND SECURITY.

DECREE.

ART. 5.

Brokers cannot do business in the Exchange until they have made good the amount of their bonds and have taken an oath before the Tribunal of Commerce, or, failing that, before the civil authorities, to fulfill their obligations faithfully and honestly.

INSIDE REGULATION.

ART. 10.

A broker who withdraws, posts, in the exchange, a notice of his withdrawal, for three months, starting from the period when his functions cease.

He likewise declares his withdrawal before the Recorder of the Tribunal of Commerce, and this declaration remains posted for three months in one of the halls of the Tribunal.

ART. 11.

This period having elapsed, he gets a certificate from the Trustee (Syndic) and another from the Recorder countersigned by the President of the Tribunal of Commerce, setting forth that the said notices have remained posted for three months. The Recorder's certificate states in addition that there is no opposition so far as the bonds are concerned.

When these two papers are produced, the Treasurer shall return the bonds, which will continue to bear interest up to the day when they are ordered cashed.

SLEEPING PARTNERS.

DECREE.

Art. 6.

Acts or documents in regard to the taking on of sleeping partners in the course of business are submitted to the approval of the Syndical Chamber, and communicated to the Minister of Finance, in the manner specified in Article 3.

The same applies to acts in regard to any modifications that may be made in the personnel of sleeping partners, or in the distribution of amounts accrued.

INSIDE REGULATION.

Art. 20.

Acts which declare the taking on of sleeping partners must be drawn up according to the model laid down by the Syndical Chamber. The same applies to acts in regard to modifications introduced in the make-up of the capital of the office, in the personnel of the sleeping partners interested, or in the distribution of the amounts accrued.

These acts must be registered, filed and published by abstract according to law.

The time allowed for registering acts and for the cession of shares is one month from their date.

Art. 21.

Acts which are drawn up between the holder and the sleeping partners interested need not be legally sworn to, but they must be made on paper bearing the government stamp, in as many originals as there are parties concerned, in addition to one to be

filed at the Syndical Chamber, another for the Recorder of the Tribunal of Commerce and a third for the Recorder of the Justice of the Peace in the ward where the broker's offices are located.

Each of the original copies must be signed by all parties; the one that is filed in the archives of the Syndical Chamber, and which bears mention of the registry, must not be removed under any circumstances.

ART. 22.

Acts declaring the taking on of sleeping partners must mention that in case of any question arising about the articles of the contract, the Syndical Chamber alone is the last supreme authority to decide the matter; both sides must beforehand renounce all appeal or any recourse to tribunals, or even to arbiters, and must promise to abide faithfully by the decisions of the Syndical Chamber.

ART. 23.

A sleeping partner interested who, in defiance of the terms of his contract, attempts to override the same, cannot thereafter be introduced or admitted under the same auspices to any other community of interests.

ART. 24.

Any one who, as a sleeping partner, is interested in the business of a broker, cannot, without that broker's authorization, become a sleeping partner in another business.

ART. 25.

A firm name cannot figure as an interested sleeping partner in a broker's community of interests.

ART. 26.

The Syndical Chamber has always a right to oppose the taking on of any given person as an interested sleeping partner.

ART. 27.

In the absence of any provision to the contrary, the interested

sleeping partner remains responsible for operations accomplished or in progress at the time of his withdrawal.

Art. 28.

A register is kept containing, in addition to the names of the brokers, those of their sleeping partners interested, with details as to their share of interest. This register is kept in the place of meeting of the Syndical Chamber; all changes that may take place are recorded in the register.

Every broker has a right to consult the register for information.

RETIREMENT—SUSPENSION—EXPULSION—DISAPPEARANCE —ABSENCE—DECEASE.

DECREE.

ART. 7.

In case of suspension, expulsion, decease, disappearance or any other circumstance of a nature to cause an office to be regarded as vacant, the broker is replaced, both in his operations and in the certifications specified in Article 76, by one of his fellow-members appointed by the Syndical Chamber, and, if there is no Syndical Chamber, by the President of the Civil Tribunal.

The President of the Civil Tribunal in all cases appoints a temporary incumbent on the request of the first party taking action in the matter.

ART. 8.

The obligatory books of brokers, including those in which they inscribe the numbers of stock being negotiated, in compliance with the law of June 15, 1872, are, in case of a change, left in the successor's hands; and, in case of the office being abolished, they are filed with the Syndical Chamber, or, if there is no Syndical Chamber, with the Recorder of the Tribunal of Commerce.

INSIDE REGULATION.

ART. 16.

A broker compelled to be absent is required to notify the Trustee (Syndic) to that effect in writing. His representative must not, under any pretext, do business directly with a broker.

When there is any operation to undertake, he applies to a member of the company, who executes the orders in the name of his absent colleague.

So far as the certification of the absent broker's transfers is concerned, on written request addressed to the Syndical Chamber by one clothed with power from the said broker, the certification can be made by a deputy appointed for that purpose, and involves turning over to the common treasury a duty equal to the cash price of the memorandum of delivery, the amount of which, however, cannot under any circumstances be less than fifty centimes.

The request for certification of transfers must be accompanied by a letter of instructions and a memorandum setting forth the nature of the stock, the name of the holders and the amount of the capital; everything in accordance with the model form furnished by the Syndical Chamber.

The broker on his return shall give the Syndical Chamber a discharge for the certification performed on his account.

In case of the decease of a broker the temporary incumbent of his place shall, in the same manner and under the same conditions, have the transfers certified by one of the deputies. It is understood that, for this special case, the Syndical Chamber shall have a right to cause the memorandum to be examined by its transfer bureau.

ART. 17.

Every broker who has ceased to belong to the company is debarred from entering it again.

If, however, as a result of some exceptional circumstances, a former broker should find himself impelled to take again the charge once incumbent upon him, his admissibility would be submitted to the consideration of the Company in session assembled, and it would require the votes of three quarters of the members present to re-elect him.

In this case the years formerly passed by him in the company would be reckoned as so many years of honorary membership.

ART. 18.

When a broker dies during the exercise of his functions, the temporary administrator of his affairs shall take cognizance of

1°. The condition of his affairs.

2°. The inventory of the rentes or other registered securities which by transfer are found to be in the name of the deceased. This inventory, certified to be honest and genuine by the Trustee (Syndic), is produced at the registration office, whence it is returned with an endorsement stating the exemption from succession tax.

Art. 19.

In case of the death of a broker during the exercise of his functions, there shall be appointed a deputation of twelve members presided over by a member of the Syndical Chamber, to attend the funeral if it takes place in Paris.

In case of the death of a broker's wife, the deputation shall consist of six members.

In case of the death of the Trustee (Syndic), the deputation shall consist of fifteen members.

RESORT TO LAW.

INSIDE REGULATION.

ART. 12.

No broker can bring a suit at law without previously obtaining the authorization of the Syndical Chamber.

BOOKKEEPING—OFFICES.

DECREE.

Art. 8.

The obligatory books of brokers, including those in which they inscribe the numbers of the stock being negotiated, in compliance with the law of June 15, 1872, are, in case of a change, left in the successor's hands ; and, in case of the office being abolished, they are filed with the Syndical Chamber, or if there is no Syndical Chamber, with the Recorder of the Tribunal of Commerce.

INSIDE REGULATION.

Art. 13.

The accounts are determined by the Syndical Chamber, and they shall be kept in a uniform manner by all the brokers.

Art. 14.

Every broker shall have it printed on his letter-paper, that he holds himself responsible only for sums and stock that are sent directly to his own deposit, and that he is not pledged to anything in his correspondence, except when it is signed by him or by some one empowered by him.

Art. 15.

No broker can install his desks in a house already occupied by another broker.

This prohibition ceases only when two years have elapsed after the colleague's departure.

HONORARY MEMBERSHIP.

DECREE.

Art. 9.

A broker who retires after fifteen years' service may be made an honorary broker.

Years passed while on the Syndical Chamber are counted double.

Honorary membership is conferred by decree, on motion of the Syndical Chamber, or, if there is no Syndical Chamber, on motion of the Tribunal of Commerce.

Art. 10.

The honorary broker attends the annual general meetings of the Company, with consultative power, as well as the other general meetings to which he is specially invited by the Syndical Chamber.

Art. 11.

Honorary membership is granted to brokers who had been invested with it by virtue of special regulations of their Company before the promulgation of the present decree.

Art. 12.

Dismissal from honorary membership may be pronounced, on motion of the Syndical Chamber or, if there is no Syndical Chamber, of the Tribunal of Commerce; this penalty to be visited by decree upon any broker who, after admission to honorary membership, shall be found financially insolvent, or against whom there may be charges compromising his honor or dignity.

INSIDE REGULATION.

Art. 29.

A broker who withdraws, and who fulfills the conditions laid down in Article 9 of the decree of October 7, 1890, in regard to honorary membership, must make application therefor in writing.

This application must be accompanied by the pledge taken by the said broker not to accept any position, and not to engage in any enterprise, or other undertaking, of a nature to compromise the interests or the dignity of the Company.

Art. 30.

No one can be proposed for honorary membership to the Minister of Finance by the Syndical Chamber without the consent of the Company expressed in secret ballot in session assembled, by a majority of two thirds of the votes.

Before balloting the Company receives for inspection a review of the services of the applicant.

Art. 31.

Brokers received in the session cannot under any circumstances take part in the balloting on honorary membership.

Art. 32.

Honorary members receive from the Company a gold medal on which are engraved their name and the date of their nomination; they are admitted to the private room of the Company during business hours; their names are inscribed on the official list of the Company.

They attend by right the general meetings at the end of the year, and the meetings called for receiving a broker. They may be invited to any other meetings by the Syndical Chamber, which will summon them whenever it deems fit.

Art. 33.

When honorary brokers attend a general meeting, they receive attendance-checks like the brokers engaged in operations.

In case of the death of an honorary member, after a written request has been made by the family, there is appointed a deputation of six members of the company according to the order of the official list ; presided over by a member of the Syndical Chamber, they shall attend the funeral if it is held in Paris.

Art. 17.

Every broker who has ceased to belong to the Company is debarred from entering it again.

If, however, as a result of exceptional circumstances, a former broker should find himself impelled to take up again the position that was once incumbent upon him, his admissibility would be submitted to the consideration of the company in session assembled, and three quarters of the votes of the members present would suffice to re-elect him.

In this case the years formerly passed by him in the company will be reckoned as so many years of honorary membership.

CREATION AND SUPPRESSION OF OFFICES—CREATION AND SUPPRESSION OF THE FLOOR OR "PIT."

DECREE.

ART. 13.

No broker's office (or seat) can be created save by virtue of a decree countersigned, according to the instructions specified in Article 2, by the Minister of Finance or by the Minister of Commerce and Industry, on motion of the Tribunal of Commerce, of the Chamber of Commerce and of the Syndical Chamber, or if there is no Syndical Chamber, on motion of brokers operating in the same city and meeting in session for this purpose.

ART. 14.

The formalities laid down in the foregoing article are applicable to the suppression of an existing office (or seat). When, however, the suppression of an office will have the effect of making the number of brokers less than six, action shall be taken according to the rules laid down in Article 13.

ART. 15.

In stock exchanges having at least six brokers' seats, there may be created a floor by virtue of a decree given at the instigation of the Minister of Finance and the Minister of Commerce and Industry, on motion of the brokers in session assembled, of the Municipal Council, of the Tribunal of Commerce, and of the Chamber of Commerce, or if there is no Chamber of Commerce, of the Consulting Chamber of Arts and Manufactures, the Deputy Prefect and the Prefect.

ART. 16.

The formalities laid down in the foregoing article are applicable to a floor (or "pit") already existing.

SYNDICAL CHAMBERS—NOMINATION—DUTIES—DISCIPLINARY POWERS.

DECREE.

Art. 17.

Brokers holding seats at an exchange provided with a floor, elect each year a Syndical Chamber composed of a Trustee or Syndic, and a number of associates, which number shall be determined according to the following rules: two when the number of brokers does not exceed nine; four when the number is not less than nine nor more than fourteen; six when the number is more than fourteen and less than sixty; eight when the number exceeds sixty.

Election is determined by a majority of the votes and by secret ballot, separately for the Trustee, and by the list ballot system for the associates.

The official report of the election is addressed to the Minister of Finance, to the Prefect of the Department, to the Prefect of police at Paris, to the Mayor in other cities, to the president of the Tribunal of Commerce and to the president of the Chamber of Commerce.

Art. 18.

The Syndical Chamber can hold valid deliberations only when a majority of its members are present. In case of the absence or non-competency of one or more of its members, it is authorized to make up the number by calling on the oldest members of the company according to the order of their names on the roster.

Art. 19.

The Syndical Chamber is presided over by the Trustee (Syndic). In case of a tie the vote of the president decides.

Art. 20.

The Syndical Chamber keeps minutes of its deliberation. Each record of the proceedings is signed by all members who were present at the session.

Art. 57.

Operations carried on by Syndical Chambers and transfers effected in their name are subject to the conditions laid down in this regulation.

Art. 21.

The general functions of the Syndical Chamber are:

1°. To announce, or to cause, as the case may be, the application of the disciplinary measures provided in Article 23;

2°. To prevent or harmonize all disputes that may arise among brokers in the discharge of their functions, whether between themselves or with a third party, and to deliver its opinion if need be in cases of non-agreement;

3°. To represent collectively all the members of the Company in order that their rights, privileges and common interests may be respected, and to have charge of the common treasury as specified in Article 26.

Art. 22.

The Syndical Chamber can order any broker to appear before it, can command him to produce his note-book and account-books, and prescribe to him such precautionary measures as it deems advisable, and in particular the establishment in the chamber treasury of a guaranty fund.

It cannot refuse to make this investigation when it is asked for by three members of the Company.

Art. 23.

The Syndical Chamber may, according to the gravity of the case, fix blame upon the members of the Company, reprimand them, forbid their entering the Exchange for a period not to exceed one month and cause their suspension or expulsion; these measures being taken of its own accord, upon the initiative of the

Trustee (Syndic) or one of his associates, or upon a formal complaint.

Suspension is effected by an order from the Minister of Finance. It cannot exceed two months. Revocation is effected by decree. These two penalties may be inflicted by the company itself, but not without first calling upon the Syndical Chamber to deliver its opinion.

Art. 24.

No disciplinary penalty can be proposed or inflicted by the Syndical Chamber, unless there is an absolute majority of the members present, and unless the accused broker has been heard and duly summoned to appear.

Art. 25.

In cases where a member of the Syndical Chamber happens to be directly interested in a matter submitted to the Chamber, he must abstain from deliberating on it.

Art. 26.

There is established, in Companies having a Syndical Chamber, a common treasury administered by the Chamber; the method of its management is fixed by the special regulations mentioned in Article 82. Levies on brokerage, various contributions, reserve funds or guaranty deposits provided by this regulation or special regulation, are turned into this treasury.

Art. 27.

The Trustee (Syndic) is empowered to put in execution the deliberations of the Syndical Chamber and of the Company.

He represents the Company in court and in the acts of civil life.

He cannot appear before a court, whether as plaintiff or defendant, unless expressly authorized so to do by the Syndical Chamber.

He can, however, without preliminary authorization, take any legal steps that are of a conservatory or defensive character. He can likewise, without authorization, lodge an appeal from all

judgment and make application for a reversal of decision. But he cannot begin proceedings to follow up his appeal nor can he follow up an application for reversal, save by virtue of a new authorization.

Art. 28.

In case of absence or inability, the Trustee (Syndic) is replaced in his various duties by an associate, in the order of the nominations at the last election.

Art. 29.

Syndical Chambers may delegate to one or more of their members, known as acting associates, certain discretionary and police powers as laid down in the regulations provided in Article 82.

Moreover, these associates may be called on to exercise, in place of the Trustee (Syndic), the special functions indicated in Articles 53 and 67 of the present decree.

Art. 30.

The method of procedure as laid down in the present chapter is applicable to mixed Syndical Chambers duly considered in the decree of January 5, 1867, with this reservation: that the functions conferred on the Minister of Finance by Articles 17 and 23 are exercised by the Minister of Commerce and Industry.

PRIVATE REGULATION.

Art. 17.

The Syndical Chamber appoints each month three associates of the Trustee (Syndic) known as acting associates, whose duties are to look out for the observance of the rules and the keeping of order in the Company; all matters of dispute arising between brokers and requiring a prompt settlement may be submitted to them.

They are charged to preside over the editing and verifying of the market quotations, to look out for the service of the general treasuries, to negotiate the official resales and repurchases and to fix the regular tariff of compensation.

A fourth associate presides over the Committee on Accounts.

INSIDE REGULATION.

Art. 35.

The Syndical Chamber of the brokers of the Paris stock exchange is composed of a Trustee or "Syndic" and eight associates.

It is nominated each year during the month of December by the Company in session assembled.

Art. 36.

In counting and sorting the ballots for the nomination of the members of the Syndical Chamber, the examiner cancels from the ticket all names in excess of the number which it must contain; this elimination is done starting with the last names inscribed.

In case of a tie vote between two candidates on the same ballot, the one longest in service has the preference.

All difficulties that may come up in connection with the election, in cases not provided for, are settled immediately by the general assembly.

Art. 37.

In the general meeting at the end of the year, after the reading of the minutes of the Syndical Chamber and the report of the committee on bookkeeping, the dean of the Company assumes the presidency of the session and causes a vote to be taken for the nomination of a Trustee (Syndic); the election having been held, the dean announces the result of it, and turns over the presidency to the new Trustee (Syndic).

When, on account of death or removal, or for any other reason, it becomes necessary to proceed to the election of a Trustee (Syndic), the presidency of the meeting shall fall to one of the Trustee's (Syndic's) associates, in the order of their election.

Art. 38.

In order to become a Trustee (Syndic) it is necessary to be a broker for at least five years, and to become an associate not less than two years are required.

A member elected Trustee (Syndic) or associate cannot refuse to serve unless he gives what the Company regards as valid reasons therefor.

ART. 39.

The Trustee (Syndic) may be re-elected for five successive years.

If, however, the Trustee (Syndic), who at the end of that period was not eligible for re-election, secures at the first ballot three fourths of the votes of the members present, he thereby becomes qualified for a new series of terms, the case being the same as if there had been an interruption of his incumbency, and so on for each period of five years.

In reckoning these periods of five years, the time occupied in a partial election shall not be counted.

ART. 40.

Associates can be re-elected for four years; two of them must be renewed every year.

The part of the period begun by an associate counts for the one appointed in his place in the regular succession.

Just before election the Trustee (Syndic) announces to the Company the names of those members whose term of office expires.

ART. 41.

Any member who has finished a term on the Syndical Chamber is eligible for re-election after an interval of one year, or at the first election resulting from one or more vacancies in the Chamber.

By exception, the Trustee (Syndic) not re-elected may immediately become a member of the Syndical Chamber.

ART. 42.

The Syndical Chamber holds a session whenever the Trustee (Syndic) requires it or whenever it is asked for by four associates.

The oldest member of the exchange may, with the consent of the Syndical Chamber, be present at its meetings with power of consultation.

Art. 43.

The Syndical Chamber judges supremely, and as a court of last resort, all matters of dispute that may come up between brokers in the exercise of their functions.

Art. 44.

Any infraction of the rules and usages of the Company may cause the summoning of the broker guilty of it before the Syndical Chamber, and eventually make necessary the application of the disciplinary penalties provided in Article 23 of the decree of October 7, 1890.

Art. 45.

The Syndical Chamber, having over the members of the Company the surveillance and authority of a disciplinary chamber, according to Article 3 of the ordinance of May 29, 1816, and Articles 22 and 23 of the decree of October 7, 1890, has a right, if abuses come to its knowledge, to demand account of each broker as to how he is conducting his business. Therefore it blames, censures, excludes from the Exchange, or designates to the Minister of Finance so as to cause suspension or expulsion, every broker who does not keep strictly within the limits of his proper functions, or who introduces into his operations or into the collection of his dues, innovations that are harmful to the interests of the public, to those of the Company, or to the dignity of its members; and, as it is impossible to foresee and define all the cases that may come up presenting such characteristics, the Syndical Chamber is invested with very ample power in this matter, and it must use this power to defend the common interest against enterprises of a private interest which are incompatible with professional duty.

Art. 46.

The members of the Syndical Chamber are sworn to secrecy in regard to their deliberations and the affairs of the company.

Art. 47.

The Trustee (Syndic), the Trustee's associates, the dean or

oldest member when he is present at the meetings, and the brokers when they are called on to serve as associates, as provided for in Article 18 of the decree of October 7, 1890, receive attendance markers (or counters) in accordance with the terms of Article 172.

GENERAL MEETINGS.

DECREE.

Art. 31.

Brokers meet together each year in general assembly for the election of the Syndical Chamber.

Outside of this regular annual meeting and the cases provided for in this regulation, or in the regulations mentioned in Article 82, they can meet in regular session only on an order from the Minister, or by virtue of a decision of the Syndical Chamber.

The Syndical Chamber cannot refuse to call a general meeting when the request for such meeting has been put in writing and justified by one more than half the members of the company.

Art. 32.

A general meeting is held when half the members, with one more, are present.

It is presided over by the Trustee (Syndic).

Art. 33.

The Syndical Chamber keeps minutes of the deliberations of the general meeting. The names of the members present are inscribed at the commencement of the record of minutes, which is signed by the president and by the members of the Syndical Chamber who have been present at the meeting.

PRIVATE REGULATION.

Article 18.

In addition to the general meeting at the end of the year and the

meetings in cases called for by Article 31 of the decree of October 7, 1890, the Company is summoned to meeting:

1°. For the installation of a new broker;

2°. To deliberate on modifications proposed in the regulations;

3°. Whenever the Syndical Chamber has occasion to consult with the company, whether on serious questions that concern it, or to put it in harmony with the requirements laid down in these regulations.

INSIDE REGULATION.

Art. 48.

Calls for a meeting of the general assembly must specify the day and hour of the meeting, and mention in addition the matters that are going to be discussed by the Company.

Art. 49.

In general meetings the Trustee (Syndic) and the members of the Chamber meet together in a room with the dean (or oldest member of the company).

The president of the meeting, who has authority over it, lays before the company the subjects to be considered and the arguments for or against.

After this preliminary explanation he opens the discussion; the discussion being finished, each member votes in secret ballot with white or black balls according as he prefers to accept or reject the proposition.

The voting may, however, be taken by a simple raising of hands on motion made by the president, unless a secret ballot is called for by twelve members of the assembly.

According to the gravity of the matters being deliberated on, and in accordance with the requirements of the regulation, the majority must be absolute, two thirds, or three fourths of the votes.

Art. 50.

Discussion must be confined to the subjects laid down in the order of business for the day.

ART. 51.

When a member desires to be heard he must address the president for permission.

ART. 52.

Decisions arrived at by the general meeting and duly incorporated become thereby law for the whole Company.

ART. 53.

The general meeting at the end of the year is held during the last fifteen days of the month of December.

At the said meeting the trustee reads the report of the labors of the Syndical Chamber during the year that has passed.

ART. 54.

At the general meetings each member receives metallic attendance-markers (or tokens) according to the provisions of Article 172.

BROKERS' AUXILIARIES.

DECREE.

ART. 34.

Every broker may appoint, for acts other than negotiation, the signing of inventories and the attestations provided for in Article 76, authorized representatives; this may be done by virtue of warrants which are submitted to the approval of the Syndical Chamber, if there is one, and a copy of which is filed at the Tribunal of Commerce and posted in the offices of the broker.

All papers emanating from the broker must bear, in the absence of his own signature, the signature of his authorized representatives, prefaced by the statement that they are acting by virtue of their warrant.

ART. 35.

Brokers at exchanges provided with a floor are permitted to have, under the name of "head-clerks," special proxies empowered to take part in negotiations, within the limits defined in their written warrant, this being done in the name and subject to the responsibility of their principals.

These proxies are forbidden to engage in any operation on their own account.

The number of head-clerks that each broker may take on is determined by the different floors, and by the regulations provided in Article 82.

ART. 36.

Head-clerks are subject to the disciplinary action of the Syndical Chamber, which regulates their admission and can proclaim *ex officio* their suspension or expulsion.

ART. 37.

Brokers and head-clerks are forbidden to sell or relinquish the functions of head-clerk for any price or consideration.

PRIVATE REGULATION.

Art. 19.

The broker who appoints one or more authorized representatives, empowered to act either collectively or separately, must file with the Syndical Chamber a copy of the warrant bearing in the margin the signature of the representative or representatives. He must, furthermore, address to all the brokers a circular notifying them of the warrant given and acquainting them with the signature of the representative or representatives.

Art. 20.

Brokers are authorized to take on head-clerks, the number of whom cannot be greater than six.

Art. 21.

No one is eligible to be a head-clerk unless he is a Frenchman, is fully twenty-five years of age, is in enjoyment of his civil and political rights and has satisfied all legal requirements in regard to military service.

Art. 22.

The list of head-clerks is posted in the inside of the Stock Exchange and in the Company's private room.

Art. 23.

Head-clerks keep a memorandum-book, an abstract of which is made every day, after the close of business, in the offices and on the books of the broker.

This memorandum-book is distributed by the Syndical Chamber at the broker's request.

All appointments, suspensions and dismissals of authorized representatives must be officially made known to the company.

INSIDE REGULATION.

Art. 55.

Each member of the company must, on receiving a formal re-

quest therefor sent to him at least once a year by the Syndical Chamber, deliver to the Chamber a complete list of the sleeping partners, clerks and employees of all kinds who are connected with him; this list must be signed by the broker and shall contain:

1°. The baptismal and family names and addresses;

2°. The special nature of the functions;

3°. In regard to the sleeping partners the extent to which they are interested in the broker's office (or seat).

4°. In regard to the head-clerks and others, their stipend or the method in which their services are remunerated.

These data are collected, classified and preserved among the papers of each broker at the office of the Company's general secretary.

Notice must be immediately given to the Syndical Chamber whenever there is any change in regard to the data above specified.

Art. 56.

No one is eligible to be an authorized representative unless he is a Frenchman, is fully twenty-five years or age, is in enjoyment of his civil and political rights and has satisfied all legal requirements in regard to military service.

Art. 57.

No broker can take the authorized representative, head-clerk or employee of one of his confreres without the latter's written permission, or, in the absence of that, the permission of the Syndical Chamber.

Art. 58.

The name of a head-clerk submitted by a broker to the Syndical Chamber shall be posted for eight days in the private room of the Company at the Exchange.

Art. 59.

This period having elapsed, the Syndical Chamber shall decide, by secret ballot, on the admission or rejection of his application.

ART. 60.

Head-clerks are authorized to settle negotiations between themselves in accordance with the conditions fixed by the Syndical Chamber.

These operations will necessarily create new obligations between the head-clerks just as such obligations exist between the brokers themselves.

ART. 61.

Head-clerks are subject to the regulations of the Company and to all the decisions of the Syndical Chamber.

ART. 64.

Every broker is forbidden to engage in any operation on the account of any person who in any way acts for any of their confreres or in the offices of the Syndical Chamber.

SECOND DIVISION.

TRANSACTIONS.

GENERAL REGULATIONS.

DECREE.

ART. 38.

Operations are effected by brokers by means of a system of brokerage the rate of which is fixed for each city by the Syndical Chamber, or, if there is no Syndical Chamber, by the Tribunal of Commerce, in accordance with the limitations of a maximum tariff laid down by the Syndical Chamber, and, on motion of the Chamber and the Tribunal of Commerce, by a decree duly given in the manner required by law and countersigned according to the regulations specified in Article 2 by the Minister of Finance or by the Minister of Commerce and Industry.

The brokerage tax thus fixed is obligatory on all brokers.

Until the brokerage fees thus settled on shall have been decisively fixed, the present rates shall be considered to be in force.[1]

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[1] In the absence of a law, local custom, or special agreement, the buyer and seller pay the commission (which is calculated upon the net proceeds of the transaction) in equal shares. Stockbrokers are prohibited from accepting more or less than the established tariff. Goirand's French Commercial Law, p. 129. That work which was published in 1898 states (p. 129, note) the rates as follows:

Commission of $\frac{1}{4}$ per cent. on all public and private securities the negotiation of which takes place by virtue of a judgment or decision of a *Conseil de famille*, etc.

Commission of $\frac{1}{8}$ per cent. on French rentes for cash, French Treas-

Art. 39.

Brokers are not permitted to establish between themselves private associations to carry on a special job of their own.

Art. 40.

Brokers must keep inviolably secret the names of the persons who entrust them with negotiations, unless the parties consent to be named, or the nature of the operation does not require such secrecy, without prejudice to the right of investigation as specified by the Syndical Chamber in Article 22, which right is only exercised under the seal of professional secrecy.

Art. 41.

Every operation carried out by a broker is set down, when it is done, in a memorandum according to a form fixed on by Syndical Chambers, and independent of the register provided for in Article 84 of the Code of Commerce.

The same is applicable to all negotiations carried on by head-clerks under the conditions specified in Article 35.

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ury Bonds for cash, Foreign Public Securities for cash, Loans of the Departments, Cities or Public Establishments, Shares or Bonds of Cities and Townships, French Railways (for cash and for time), Foreign Railways (for cash), and generally all other shares and obligations, the negotiation of which is authorized upon the Stock Exchange.

Commissions of $\frac{1}{10}$ per cent. for time bargains in all securities in which the settlement takes place twice a month.

Minimum of brokerage for time bargains: For operations in French Rentes; 20 francs per 1,500 francs of 3 per cent. Rentes; and per 2,250 francs of 4½ per cent. Rentes; 25 francs per 2,500 francs of 5 per cent. Rentes; and so on in the same proportion.

For Italians 5 per cent. Rentes (and other foreign 5 and 6 per cent. Rentes); 25 francs per 2,500 or 3,000 francs of Rentes; and so on in the same proportion.

Upon all securities negotiated by time bargains, whether liquidated once or twice a month, the minimum brokerage is 50 centimes per share or obligation.

The minimum rate of brokerage is 25 centimes per titre. For all transactions upon which the brokerage amounts to less than one franc, such brokerage is estimated at one franc as a minimum.

ART. 42.

Brokers are required to deliver a receipt for the funds or shares that have been put in their hands.

ART. 43.

When a Stock Exchange has been established, brokers meet at this Exchange in order to carry on negotiations among themselves at the hours fixed on by the city council on the advice of the Syndical Chamber, or if there is no Syndical Chamber, on the advice of the Tribunal of Commerce.

Prices offered or asked for are inscribed preliminarily on a special register, when they are for cash transactions. The regulations provided in Article 82 may fix the same rules for time operations. Prices offered and asked for are always announced aloud in all Stock Exchanges that are provided with a floor (or "pit").

The same procedure must be followed when it is a question of applying to a broker instructions contrary to those he has received. The broker, before acting on his instructions, must notify the Syndical Chamber, through one of its members, of the absence of more favorable offers.

ART. 44.

The regulations of the preceding article are not applicable to transactions made in accordance with opening rates, closing rates or medium rates.

ART. 45.

The Syndical Chamber, or, when there is no Syndical Chamber, the Tribunal of Commerce, is always authorized to use, in determining values, the method of procedure recorded in paragraph three of Article 70.

ART. 46.

These negotiations have no bearing save on the quantities, without any specification, either by numbers or otherwise, of the shares involved.

Art. 54.

Save specification to the contrary, any broker who carries out a transaction, is directly responsible for the fulfilment of the same to the broker with whom he has negotiated.

INSIDE REGULATION.

Art. 62.

The broker making an offer must specify at what price he offers; the broker who bids must specify, in answering, at what price he bids.

When a transaction has been made, each broker is entitled to demand by whom, and with whom, it has been made.

Art. 63.

When it is found that some mistake has occurred in a transaction between two brokers, the responsibility must be shared between them; but any transaction subscribed to by a broker, and not subscribed to by his confrere, implicates the subscriber alone.

Art. 64.

Brokers are forbidden to engage in any operation on behalf of a person who is personally interested in the office (or seat) of one of their confreres or in the offices of the Syndical Chamber.

DELIVERIES AND PAYMENT—GENERAL REGULATIONS.

DECREE.

ART. 47.

Brokers, in dealing with each other, handle only shares made out to bearer, except in the case of shares that, by provision of law, or by regulations made when they are enacted, are rendered "registered," and other shares that are specially determined by the regulations laid down in Article 82.

ART. 48.

A broker who has negotiated a stock that is irregular, amortized, having objectionable features about it or figuring in the *Official Bulletin of Protested Stock*, is under obligations, in addition to damages if they are established, to deliver other stock not less than three days after demand therefor has been made upon him.

ART. 50.

The starting-point of the holding by the buyer of stocks negotiated is determined, as the case may be, by the regulations laid down in Article 82, subject, however, to the modifications made by the Minister of Finance in regard to the negotiation of income funds and other state funds.

ART. 52.

Delays in delivery, in acceptation and in payment, whether affecting the brokers among themselves, or affecting the relations between the brokers and their commissioned agents, are settled by the regulations laid down in Article 82.

ART. 55.

If, in deliberate disregard of all right, the delivery or payment is not effected by the broker within the time allowed, the endorser

may, after taking the regular legal steps in the matter, serve due notice, within twenty-four hours, of his action to the Syndical Chamber.

On receiving this notification, the Syndical Chamber takes, so far as the member is concerned, such measures as are needed to complete the transaction. If need be, it executes, of its own initiative, the intentions of the endorser, on the account and at the risk and peril of the defaulting broker. It cannot take any other action, save by making formal declaration of the situation, within two weeks, before the president of the Tribunal of Commerce.

In Stock Exchanges having more than forty brokers, the Syndical Chamber cannot refuse to accept responsibility for a defaulting member, so far as there is any limitation placed by the total value of the Company's seats (or offices), reckoned according to the latest statistics, the common fund and the bonds.

Art. 56.

When the Syndical Chamber takes cognizance of the fact that a broker has stopped carrying out the contracts to which he is bound to his fellow-members, these contracts are executed in accordance with the conditions laid down in Article 82, taking as a basis the average listing of the day they are recorded. Any accruments which this liquidation may cause in favor of the defaulting broker cannot be levied on until he is square with his previous operations.

Endorsers are granted by the provisory administrator full discretionary power to take immediate action about the liquidation of their contracts in accordance with the conditions herein specified and the retention of their position with the defaulting broker, with such reservations as are specified, in the case of Exchanges having more than forty members, in the regulations of the third paragraph of Article 55.

PRIVATE REGULATION.

Art. 25.

All stocks, save registered ones, are negotiated between brokers in their own names, except French rentes.

ART. 26.

The client has always a right to demand a memorandum of sales.

ART. 27.

In regard to stock-exchange transactions where there is a demand for delivery between brokers as a result of cash sales, it must be on the same day.

For deliveries in liquidation, demand may be made during any part of the following day.

ART. 28.

Brokers may refuse to make any special deliveries, save in the case of stock that is provided for by Article 51 of the decree of October 7, 1890.

ART. 29.

In the case of stocks that are negotiated on a cash basis only, the coupon is to be detached on the day of payment at the stock exchange.

In the case of stocks that are negotiated on time, French government funds excepted, when the falling due of the coupon happens to coincide either with the day of *réponse* (buyer's declaration) or one of the settlement-days, the detachment of the coupon shall take place on the last of these settlement-days.

On the other hand, it occurs on the expiration day when the putting on sale happens to begin between two liquidations (or settling-days).

ART. 30.

At each detachment of a coupon representing value, for which the exchange varies, the Syndical Chamber fixes the price at which the coupons are to be reckoned, using as a basis the average rate of exchange that has prevailed during the eight days preceding the detachment of the coupon.

This scale being once settled on, a notice signed by the Trustee and setting forth the price agreed upon is posted in the private room of the company and in the interior of the stock exchange.

ART. 31.

Save by authorization of the Syndical Chamber, no stock can be negotiated unless it has at least one coupon attached.

ART. 32.

A coupon that has become due and remains unpaid, must stay attached to the stock unless the Syndical Chamber decides to the contrary.

ART. 33.

Stocks of which one or more coupons bear numbers different from the shares to which they are attached may be refused by the buyer.

ART. 34.

If, in a delivery of French stocks, the first coupon to mature has been detached, it may be replaced, but only in the month preceding its maturing, by its value in specie, with the reservation that the buyer is entitled to an indemnity in case he can demonstrate that this method of settlement has worked to his injury and detriment.

ART. 35.

Foreign stocks may be refused if they have not the proper coupon annexed.

ART. 36.

Payment must be made by the buying broker on delivery of the stock either to the bearer or to his representatives, even if the stock is turned over before the legal period has elapsed.

In default of payment on presentation of the shares, the resale of said shares may be effected on the same day, without posting, by the Trustee or an acting associate, on request of the selling broker.

ART. 38.

Delays resulting from the interpretation of Articles 37, 45, 59 and 60 of the present regulation must be extended one day when there is a question of delivery or payment demanded of a broker by his client.

Art. 39.

When a broker, as a result of embarrassment in his business, is compelled to leave the floor, the Trustee (Syndic) immediately notifies the Syndical Chamber and the Company of the fact, and enjoins upon all brokers who have had business dealings with the embarrassed confrere to send to the Syndical Chamber a statement of his relations with them.

They must without delay, liquidate all engagements entered upon, whether on time or on cash basis, and the written engagements are recorded as average quotations, time transactions or cash transactions, on the day settled by the decree of October 7, 1890.

If the defaulting broker is a purchaser of *primes* (options), they resell *primes* (options) as to the same kind of securities. These resale transactions are effected in accordance with the regular day's quotations of options as to the same kind of securities and maturing at the same time, it being understood, however, that such resales are not made under conditions inferior to what was originally specified. All options of which the defaulting broker is a buyer, and which are not resold under the conditions here laid down, are relinquished by him. For options resold, on the other hand, *réponse* (buyer's declaration to avail, or not, of option) takes place when they fall due.

If the defaulting broker is a seller of *primes* (options) they buy in options of the same kind, and falling due at the same time. These operations are carried out in accordance with the average market price of options for that day, and the *réponse* (buyer's declaration) is settled by paying or receiving differences at the maturity of the transactions.

If at the time of *réponse* (buyer's declaration) under the conditions provided for in the two preceding paragraphs, a part of the options are taken up and a part are relinquished, operations thus consolidated must be settled by one closing operation of the opposite kind, and these operations are subject to the average market price for closed bargains.

INSIDE REGULATION.

Art. 119.

The owner of a share that has come out at the drawing cannot deliver it on or after the day of the drawing.

Art. 120.

The broker who has satisfied the obligation imposed on him by article 48 of the decree of October 7, 1890, then proceeds to avail himself of his recourse against the person who delivered the share to him, and the latter does likewise, and so on until the original holder who first put the share on the market is reached.

Art. 121.

A broker who has been declared responsible to his colleague must indemnify the latter for all outlays he has made, including the fees. He is in this respect personally responsible; he exercises his recourse, at his risk and peril, against his own client.

DELIVERY AND PAYMENTS—REGISTERED SECURITIES AND TRANSFERS.

DECREE.

ART. 49.

Brokers may carry out in their own name, under the designation of "order transfers" provisional transfers. These transfers are to be regarded as provisional only for a period of ten days, and after that they are to be regarded as having been definitively negotiated by the broker.

If, before the expiration of this period, the buying broker has given due notice to the emitting establishment, by a formally recorded act, of the name of his client, the transfer effected in the name of this broker shall be regarded, from the moment when the transfer shall have been made in the name of the client thus designated, as never having occurred at all.

Transfers may be carried out even to the benefit of brokers who hold sellers' rights.

CASH SALES—OPERATIONS—DELIVERY—EXTENSION OF DELIVERY.

DECREE.

ART. 58.

A broker is entitled to demand that any one doing business with him shall pass over, before starting on negotiations, the stocks he is to dispose of, or the cash equivalent of them.

ART. 59.

In cases where, after notice in registered letter, the broker's client has not within three days after the sending of this letter, duly delivered either the stock accompanied by a declaration of transfer if need be, or else the funds sufficient to cover the amount of the operation and accompanied by his acknowledgment, the broker has a right to go ahead at the risk and peril of his customer and buy any similar shares or dispose of stocks of the same value.

PRIVATE REGULATION.

ART. 40.

Stocks made out to bearer or transmitted by endorsement, and negotiated on a cash basis, must be delivered by the selling agent before the tenth Bourse meeting following that of the negotiation.

If the delivery does not take place, the buying broker, before the eleventh Bourse (or stock-exchange meeting) must, under the penalties prescribed in Article 23 of the decree of October 7, 1890, post his selling agent.

This posting takes place in an open manner in a spot in the stock-exchange accessible to the public.

It remains posted for three stock-exchange meetings. At the fourteenth stock-exchange meeting following that of its negotiation, the Syndical Chamber takes steps for the official repurchase.

ART. 41.

All funds coming from the sale of stock to bearer, or transmissible by endorsement, must, when the stocks are delivered to the bearer or duly endorsed, be placed at the disposal of the endorsee the day after they are negotiated, or if they are not delivered until after negotiation, the day following when they are delivered to the broker.

Stocks accruing from the purchase of shares to the bearer, or transmissible by endorsement, must be in possession of the broker who has ordered them, on the day following delivery to the buying agent, and, at the very latest, not later than the fifteenth exchange meeting after that when the negotiation occurs.

These delays having elapsed, clients may take refuge in the provisions laid down in Article 55 of the decree of October 7, 1890.

ART. 42.

The negotiation of stock that is transmissible by transfer is subject to the following regulations :

A broker buying shares that are subject to transfer gives to the seller, before the fifth exchange meeting following the day when the transaction occurs, a memorandum setting forth the baptismal and family names of all parties concerned in the transfer, or the conditions in case there are any.

In case the names and conditions have not been duly recorded in the time allowed, the seller has a right to file before the Syndical Chamber the names of the shares and the transfer sheet, signed in due form by his buying partner, and the Chamber shall require of the latter an immediate delivery of the names or a special record of acceptation if necessary.

The sheet certifying acceptation must be delivered within twenty-four hours to the Syndical Chamber, which proceeds *ex officio* to the transfer and demands the amount involved, requiring the buying broker, however, to take the measures and avail himself of the recourses laid down in Article 49 of the decree of October 7, 1890.

Art. 43.

Transfer takes effect by the act of the selling broker.

It must be filed at the latest the next day after the record of names and takings, and the stock must be turned over to the buying broker the next day after the consummation of the transfer.

At the fifteenth bourse meeting following that when the negotiation is made, the buying broker may post the name of his selling confrere. The resale may take place at the third bourse meeting following that when the posting occurs, and if the paying of a note is postponed it must be attended to by the responsible broker at his risk and peril.

These postponements are extended eight days in the case of insurance company stocks, the new holders of which must, in accordance with the regulations, be duly admitted by the administration board.

In all cases where there is a transfer of stock the selling broker must deliver to his buying confrere the stock duly made out in the latter's name, at the very latest not three days after the transfer is made. Any violation of this rule is submitted to the Syndical Chamber, which may impose on the selling broker a fine.

Art. 44.

All funds from the sale of stock that is negotiable by means of transfer must be at the disposal of the person ordering that transfer, the day following that when the transfer is made.

Shares derived from the purchase of stock by transfer, must, unless it is a case of insurance company stock for which an additional delay of eight days is granted, be at the disposal of the person ordering the same the day following delivery to the buying broker, and, at the very latest, at the twentieth board meeting after the negotiation.

These periods having elapsed, clients may fall back on the measures provided in Article 55 of the decree of October 7, 1890.

INSIDE REGULATION.

Art. 71.

Brokers are required to give each other, in the execution of all

cash operations, engagements on unstamped paper (blue for sales and red for purchases) which are exchanged before the following bourse meeting.

ART. 72.

Deliveries of shares between brokers are accompanied by memorandums, which are subject to a slight stamp tax accruing to the benefit of the treasury of the Syndical Chamber.

The stock delivered must be designated by its nature, amount, value and period of falling due, all this being duly set forth in the memorandum of delivery, and payments are made on presentation of this memorandum duly signed.

ART. 73.

In cases where, at the same stock-exchange meeting, negotiation of stock of the same nature occurs at the same price between two different brokers but at different times, the seller can regulate each transaction separately if the parties have come to an agreement upon this point.

ART. 74.

Cash operations between brokers must be regulated by the exchange of green vouchers or clearance checks, and not by the payment of a simple difference.

ART. 122.

A broker who has sold a stock the transfer of which does not require acceptation may transfer it in the name of his buying confrere the next day after the negotiation.

A broker who sells transmissible shares by transfer has always a right, in order to expedite the settling of a transaction, to refuse to make any transference to names other than that of his selling partner.

ART. 123.

If a broker buying stocks that are transferable requests his selling confrere to accept, instead of the names and specifications furnished by him, names and specifications furnished by

another broker to whom he would in turn be obliged to transfer the same stock, the seller has a right to present the delivery and to demand payment directly of the broker with whom he has contracted.

He may, if he prefers, make the delivery to a broker who has been delegated to him, while preserving his right in regard to the payment of the price of the sale, against the direct buyer.

In this case the price that he receives is reckoned as partial compensation for intermediate transactions.

Art. 124.

Deliveries and payments between brokers occur on all bourse days between nine o'clock in the morning and one o'clock in the afternoon.

Art. 125.

All checks drawn by them on the Bank of France must be cashed there on the same day.

Art. 126.

Deliveries of specie, notes or checks on the Bank are forbidden between brokers unless they can be received personally by the one to whom they are made out or his authorized representative.

Art. 127.

In payment for cash deliveries, which occur every forenoon in the delivery hall of the Syndical Chamber, brokers render themselves responsible for the obligations that they or their representatives may have signed.

Art. 128.

These written obligations are delivered by the Syndical Chamber, and paid in the same way as the stamps of the common treasury. They must be made out in advance in a uniform style by each one of the three parties who subscribe to them.

They are turned over, as fast as they are delivered, to the ac-

count-current office, and this office duly records them to the credit and debit of each broker.

Art. 129.

The clearance-amount resulting from the balancing of each broker's account is formerly notified to the latter's representative, who, if he finds himself a debtor in his transactions, issues before the close of the meeting a check covering it drawn on the Bank of France.

The account-current office makes out a list of all brokers who are creditors ; this list is duly delivered by the Syndical Chamber to the Bank, backed up by a check for the whole amount, and the account of each broker is then credited directly by the Bank of France.

A special form of document, made out on yellow paper, and bearing the printed words " Common Treasury of the Syndical Chamber " has been created by the Bank of France for the exclusive carrying out of the foregoing operation.

Art. 130.

The account-current office delivers at the same time to every broker a copy of his account-current setting forth all the operations of the day.

It preserves all the vouchers in the case, so as to be able to check them off if need be, and turns them over on the following day duly stamped.

Art. 131.

The same office settles the general balance. It gets up two copies of it, one of which is filed in its archives after being signed by an acting associate; the other is taken to the bank the same day and returned by the bank the next day with a certification setting forth that the balance is in strict conformity with the yellow vouchers that were presented to it for the corresponding day.

Art. 132.

Errors duly discovered are rectified the same evening or on the following day by a certifying voucher.

Art. 133.

For deliveries to be made at residence, brokers must use blue clearing checks on the bank whenever the sum to be paid exceeds one hundred francs.

CASH SALES—STOCK THAT HAS A DRAWING PROVISION, OR ACCRUING SOME SPECIAL ADVANTAGE OR HAVING A FIXED CHARGE.

DECREE.

Art. 51.

The regulations provided in Aricle 82 establish the time from which, before each drawing of shares subject to a drawing provision, shares that are redeemable by such drawing are not, unless there is a special provision to the contrary, negotiable unless delivered after the drawing.

In the cases of shares the possession of which entails a special advantage, such as a private right to subscribe for the stock, or a special burden such as an assessment to be paid, the same regulations settle the periods after which all negotiations are valid, unless there is a special provision to the contrary formally expressed, only with stock that has benefited by the said advantage, or that has paid the assessments.

These regulations also settle the periods starting from which, in case of conversion it is understood that, save provision to the contrary, the subsequent negotiations are concerned with the new stock only.

PRIVATE REGULATION.

Art. 45.

Under exceptional circumstances and in derogation of the provisions of the first paragraph of Article 40, stocks made out to bearer redeemable at drawing by lottery, and negotiable before the five bourse meetings preceding the drawing, must be delivered over for drawing.

Under exceptional circumstances likewise, stock of nominal

value that has been negotiated before the seven bourse meetings preceding the drawing must be transferred for the drawing.

Stocks the possession of which would entail a special advantage or a fixed charge, and that would be negotiated before the five or six bourse meetings preceding the date announced as marking the close of the transaction, must be delivered and transferred for that date.

It is permissible, during the waits specified in the three preceding paragraphs, to make private arrangements agreeable to the parties concerned.

ART. 46.

Deliveries of stock that is subject to a drawing must be made between the brokers at the very latest not less than one hour before the drawing.

In the absence of the stock itself, brokers turn in their numbers duly certified.

The broker must, not later than the evening of the drawing, make formal notification to his client of the stocks bought on his account, or of the numbers of the stocks in his name.

The delivery of stocks subject to a drawing must be made by the purchaser at the broker's treasury, at the very latest before the day preceding the drawing at ten o'clock in the forenoon.

ART. 72.

Official buyings-in and sellings-out may be negotiated even at rates that are not officially listed; *the same is the case with negotiations of stock involving a special advantage or a fixed assessment, said negotiations being agreed on between the parties.*

CASH SALES—OFFICIAL REPURCHASES AND RESALES.

DECREE.

ART. 53.

In default either of the acceptation or of payment by a buying broker, or of delivery by a selling broker, the sale or purchase of the stock negotiated, may be, at the request of the broker who was concerned in the matter, carried out by the intermediation of the Trustee or by an acting associate, at the risk and peril of the defaulting broker.

All formalities and delays in this official selling-out or buying-in, which may be regulated by private agreement, are duly provided for by the regulations set forth in Article 82.

PRIVATE REGULATION.

ART. 40.

Stock made out to bearer or transmissible by endorsement, negotiated on a cash basis, must be delivered by the selling broker before the tenth bourse meeting following the transaction.

If delivery does not take place, the buying broker must, before the tenth bourse meeting, post the selling broker, under the penalty of the application of the measures specified in Article 23 *of the decree of October* 7, 1890.

This posting is done in a plain and unmistakable manner in a part of the stock exchange that is accessible to the public.

The posted notice stays there during three full bourse meetings. At the fourteenth bourse meeting following that of the negotiation, measures are taken by the Syndical Chamber for the official buying-in.

ART. 36.

Payment must be made by the buying broker in consideration of the delivery, either to the bearer or transferred to the name of the buyer, even when these shares are delivered before the expiration of the customary delays.

In default of payment on presentation of the shares, selling-out of them may take place that very day, without posting of the fact, by the trustee or an acting associate, at the request of the selling broker.

ART. 37.

Delivery of stocks resulting from an official buying-in must take place within twenty-four hours in the case of stocks made out to bearer.

When it is a case of nominal shares, these transferred shares must be delivered to the buying broker at the latest before the seventh board meeting following the buying-in.

ART. 72.

Official buyings-in and sellings-out may be negotiated even at rates that are not officially listed ; the same is the case with negotiations of stock involving a special advantage or a fixed assessment, said negotiations being agreed on between the parties.

INSIDE REGULATION.

ART. 88.

A broker who calls for repurchase is under obligations to accept from his selling confrere whatever partial deliveries the latter may make to him without demanding payment for them.

ART. 89.

Notice of repurchase or of resale is given the same evening by the Syndical Chamber to the three brokers interested in the matter; engagements must be entered upon by them the following day, as in the case of ordinary transactions.

A memorandum for each separate operation is drawn up by the Syndical Chamber. It includes the customary specifications and in addition a brokerage tax of one tenth per cent. to be turned into the common treasury. This memorandum is presented to the broker who presides over the Syndical Chamber, and who must make good the amount of the brokerage tax or look to his debtor for it.

Art. 90.

A broker who has sold out cannot in any case cause the selling out to involve a confrere who owes him stock of the same nature.

TIME-BARGAINS—OPERATIONS—DELIVERY—EXTENSION OF DELIVERY.

DECREE.

ART. 60.

Time negotiations are made under conditions of settlement and at the rates determined by the regulations provided in Article 82.

ART. 61.

The broker had a right to demand, before accepting any order, the delivery of security for it, to cover the account when it matures.

When this security itself consists of stocks, the broker has a right to transfer them, and apply the price towards settlement with his client, in the case of failure of delivery or payment when due.

ART. 62.

When the client has reserved to himself the privilege of abandoning the bargain in consideration of an option, the security demanded cannot be greater than the amount of the option, the broker, however, having a right to require that there be delivered to him on settlement-day, and not later than an hour agreed on beforehand, as stated in Article 64, some supplementary security. Should the client fail to meet this requirement, the broker has a right to liquidate the operation at the expiration of the time-allowance granted to the client.

ART. 69.

When the client has not, on the first day of liquidation of the various stocks, and before the exchange, delivered to the broker,

as the case may be, the shares accompanied by the declaration of transfer if that is needed, or the funds accompanied, if need be, by his acceptation, the broker may proceed to exercise towards the defaulting client the rights specified in Article 59, without making any preliminary requisition on him.

The rights of the broker are the same in regard to the client whose operations are wholly or partially on a time basis, if the client does not fulfil his obligations before making final liquidation.

ART. 59.

In cases where, after due notice by registered letter, the client has not, three days after the sending of this letter, delivered up either the stock accompanied by a declaration of transfer, if need be, or else the funds intended to make good the amount of the transaction, and accompanied, if need be, by his acceptance, *then the broker has a right to proceed without any further notice, at the risk and peril of his client, to buy similar stock or sell the shares in his possession.*

PRIVATE REGULATION.

ART. 47.

All time transactions must be settled in full once or twice a month, according to the amounts involved, at the dates and in the manner prescribed in this regulation.

The company designates, on motion of the Syndical Chamber, the shares that are liable to only one liquidation per month, and those that are liable to a double monthly liquidation.

ART. 48.

Time transactions cannot be extended over a longer period than the second liquidation, starting from the day when the bargain is concluded.

ART. 49.

Negotiations in options can be made for two weeks or the end of each month, but in principle must not exceed the term of the third liquidation reckoned from the day when the bargain is

struck, in the case of shares liable to the two-week liquidation, nor exceed the second liquidation reckoned from the day when the bargain is struck in the case of shares liable to the monthly liquidation.

The Syndical Chamber may at any time, according to the needs of the market, modify the conditions of option operations and extend the period when they fall due, keeping always within the limits that it regards necessary.

ART. 50.

On the last bourse day preceding settlement, at half past one, the brokers must make a formal declaration to each other stating whether the option operations have become valid bargains or the option has simply been paid.

ART. 51.

The Syndical Chamber decides the quotations and the multiples involved in negotiations of time-bargains.

ART. 64.

The broker must have at the disposal of the client, on the day after the closure of liquidation, either the funds or the stock itself, if the operations involve shares made out to bearer.

In the matter of stock that is negotiated only nominally, such stock must be put at the disposal of the client the day of the fourth bourse after the closure of liquidation.

INSIDE REGULATION.

ART. 75.

Time bargains are executed in sums of

2,500
2,250
2,000
1,500

etc., for every twenty-five shares of French or foreign securities.

ART. 76.

Brokers are required to give each other mutually, in the execution of time operations, pledges stamped by the board of the common fund and signed by a broker or by his representative. These pledges are exchanged before the bourse following that of the operations.

In the case of shares to the value of 100 francs or more, the pledges are simply printed on ordinary paper and do not require the stamp of the common treasury.

ART. 77.

Option bargains become binding bargains when the buyer declares that he intends to close the bargain.

ART. 78.

Immediately after the *réponse*, or buyer's declaration of options, brokers' head-clerks meet in their private room to check off all business that is affected by the *réponse.*

ART. 79.

Option transactions can be entered upon for the following day, as well as for two weeks or the end of the month, but must not extend beyond the term of the fourth liquidation starting from the day when the bargain is concluded, so far as concerns the stock submitted to the two-week liquidation nor beyond the second liquidation starting from the day when the bargain is concluded so far as concerns the stock submitted to the monthly liquidation.

The *réponse* of options takes place every day at two o'clock, except on the day before liquidation, when it takes place at half past one.

Other varieties of options, such as options on a fall, and put and call options are likewise authorized ; they may be listed in the second part of the Bulletin of Quotations under the heading used to designate time-bargains.

TIME-BARGAINS—STOCK THAT HAS A DRAWING PROVISION, OR ACCRUING SOME SPECIAL ADVANTAGE OR HAVING A FIXED CHARGE.

DECREE.

Art. 51.

The regulations provided in Article 82 determine the period after which, before each drawing, shares that are redeemable by being drawn by lot, are not, unless there is a formal agreement to that effect, negotiable save with the provision of delivery after the drawing.

In the case of stocks the possession of which involves a particular advantage such as the privileged right of subscription, or involves a fixed charge such as the levying of an assessment, the same regulations determine the periods after which there can be no negotiation, without formal agreement save in shares that have benefited by the advantage specified or have satisfied the obligations.

These regulations determine likewise the periods after which, in case of conversion, the negotiation cannot be carried on, unless there is a special agreement to the contrary, save with new stock.

PRIVATE REGULATION.

Art. 52.

In the matter of shares that are redeemable by means of a drawing by lot, if the drawing takes place on settlement-day, after the delivery of the shares to the Syndical Chamber, the recording of the titles of the shares in the broker's books, after the delivery made by the Syndical Chamber shall put the client in regular possession of his stock, and he will have a right to call immediately for the duly certified numbers of the shares. If he

does not avail himself of this privilege, these numbers shall be addressed to him on settlement-day.

If the drawing is to take place the next day or the following days, the broker must, on delivery day, and by all means before the drawing occurs, address to his client, in the absence of the shares themselves, the numbers of their titles.

In the matter of stock the possession of which involves a special advantage or a fixed charge, the Syndical Chamber shall determine, on the day after the operation has been announced, the conditions according to which the negotiations for conveying the stock shall be carried out.

TIME-BARGAINS—DISCOUNTS.

DECREE.

Art. 63.

The buyer has always the option to have delivered to him in advance, by means of discount, the stocks negotiated by him whether he has bought outright or on option. The discounts give rise to an anticipatory liquidation the conditions of which are fixed by the regulations provided in Article 82.

In no case can any one who had benefited by an advantage to make a delivery in backwardation use this permission to get a discount.

PRIVATE REGULATION.

Art. 53.

The buying broker who, in the terms of Article 63 of the decree of October 7, 1890, uses the right of discount, notifies the selling agent thereof, before the opening of the bourse, by means of a written notice certified to by the Trustee or one of his associates and posted on a blackboard in the company's private office. This notice determines the nature, the amounts concerned in the transaction and the date of the operation.

It must be made out in accordance with the blank form drawn up by the Syndical Chamber, and if not so made out visa is refused.

The discounter must be amply supplied in advance with the funds intended for the payment of the amounts discounted. He turns over the total amount into the common treasury which delivers to him a receipt for it and carries it to his credit in a special account.

The visa is not granted until the receipt is produced, accom-

panied if need be, by the acceptation sheets for the stocks transmissible by transfer and thus requiring the buyer's acceptance. The discount can take place after the fourth bourse following that of the liquidation of the stock.

Art. 54.

The discount posted may be transmitted from broker to broker in the smallest fractions authorized for time-bargains. This circulation lasts until half past two.

Art. 55.

Discount by posting is qualified as direct for the first party discounted; it becomes indirect in the case of the later parties discounted.

Art. 56.

All compensation accepted during bourse hours carries necessarily with it the right of indirect discount that same day.

Art. 57.

The broker who, as the result of the circulation specified in Articles 54 and 55, finds himself the last party discounted, must make the delivery of the stock to the discounting broker within the period provided in Article 60.

Art. 58.

The payment for the stock discounted is made by means of a check drawn by the discounter on the common treasury, to the profit of the broker making the delivery; it must be accompanied by the receipt, and it involves settlement from the funds that figure to the credit of the special account of the discounting broker.

Art. 59.

The differences resulting from the transmission of the discounts are demandable the next day after posting, before bourse hours.

Art. 60.

Stocks or securities discounted, whether to bearer or capable

of circulating by way of transfer, must be delivered within the following periods:

At the fifth bourse meeting at the latest, reckoned from that of the discount, in the case of all stock to bearer or capable of circulating by way of transfer without need of acceptance.

At the seventh bourse at the latest, reckoned from that of the discount, in the case of stock capable of circulating by way of transfer and that needs the buyer's acceptance.

At the sixth bourse or at the eighth bourse as the case may be, the discounted party may be posted and the repurchase may take place at the following bourse through the instrumentality of the acting associate, on the account and at the risk of the party discounted.

ART. 61.

In discounts of stocks the coupons of which have been detached since the negotiation, the amount of these coupons must be deducted from the figures regulating the transaction.

ART. 62.

In order to be entitled to the benefit of a drawing, subscription or advantage of any kind, the discounter must have posted the party discounted at the very latest:

1°. At the sixth bourse meeting preceding the day of the drawing, the closure of subscription, etc., when what are involved are stocks to bearer or transmissible by indorsement.

2°. At the eighth bourse preceding the day of drawing, closure of subscription, etc., when what are involved are stocks that can circulate by transfer only.

INSIDE REGULATION.

ART. 80.

The broker exercising the right of discount must cause to have indorsed by a member of the Syndical Chamber, at the same time as the posted notice, two tickets bearing his full name, one of them provisional and the other definitive, and each of them repeating the specification set forth in the posted notice.

These tickets can be made out only for the smallest quantity of stock authorized for time-bargains.

The provisional ticket must be delivered, on the same day as the posting, to the selling broker.

Art. 81.

Every day, after bourse hours, the broker's clerks meet in their private room to exchange with each other the provisional discount tickets, making upon them regularly the indorsement. Each of them preserves a memorandum of the prices, so as to be enabled to make memorandum-books of the difference in the rate of exchange, and duly to show these differences the following morning. Next day, before bourse hours, the last holder of the provisional discount tickets gives them to the discounting broker in exchange for the definitive name-tickets, which are handed over by the last holder at the same time as the acceptation-sheets of transfer, if there are any.

The definitive names alone must be inscribed in the memorandum-book of the delivery of stock.

As an exception to this rule, stocks to bearer or transmissible by endorsement may be delivered the next day after the discount, on presentation of the provisional names.

Art. 82.

When the clerk of a discounted broker is not present at the circulation of the provisional names or refuses to receive them, these names are deposited with the Syndical Chamber, which immediately notifies the last party discounted.

The broker who deposits must, on his side, give notice to his own discounted party, so that the latter may withdraw the definitive names before the next bourse.

Art. 83.

In case the definitive names are not demanded by the original discounting broker before the bourse following that of the discount, the latter gets information from the Syndical Chamber whether there has been a deposit made of provisional names, and

hands over the definitive names to the broker who made the deposit.

Art. 84.

In case the deposit has not been made at the Syndical Chamber, the original discounting broker, of whom the definitive names are not demanded, has them formally inspected by the acting associate so as to cause annulment of the provisional names circulating in unknown hands, and delivers them to the posted colleague, who is responsible for the delivery of the stock, save that he has recourse to his discount broker and so on.

A broker who has discounted indirectly has a right to give up the total amount of shares he holds that are discounted.

He cannot be required to deliver more than the quantity of stock that has been posted as discounted.

Art. 85.

When an account between brokers is found to be settled by notes, no demand can be made, by reason of differences resulting from discounts, for a sum in excess of the general settlement of the account.

Art. 86.

Repurchases on account of discount are laid at the door of the broker who holds the definitive names. If the latter is unknown, repurchase is effected against the party directly discounted, except that he has recourse against the one to whom he gave the discount, and so on.

Art. 87.

The Syndical Chamber draws up the repurchase memorandum-books that are due to discounts, in the smallest fractions of quantities negotiable on time.

TIME-BARGAINS—CLEARING-HOUSE.

DECREE.

ART. 64.

The regulations provided in Article 82 fix the days and the hours when declarations of settlement or the abandonment of option bargains must be made.

The moment a bargain is settled, the agreement is, save as provided in the exceptional cases in Article 82, subject to all the rules governing final and complete operations.

ART. 65.

At each of the expirations fixed as stated in Article 60, measures are taken, within the time-limits determined by the regulations provided in Article 82, for a general liquidation of all operations coming to maturity at this period.

ART. 66.

All operations entered into with each broker by one client are settled for in funds or in stock of the same nature.

Operations engaged in with several brokers by one or more clients may likewise be settled that way if the various parties interested consent.

ART. 67.

The compensations are fixed according to a uniform market price or rate, determined by the Trustee or an acting associate, according to the market quotations prevailing on the first day of the liquidation of the different stocks.

The rate thus fixed is likewise the one in accordance with which backwardation operations are carried on.

It is immediately posted at the stock exchange.

Art. 68.

All operations between brokers are subject to a central liquidation (or clearing-house operation) put into effect by the Syndical Chamber.

The effect of this liquidation is that all operations between brokers are balanced so as to show clearly the amount of compensation in funds or in shares each one has profited by or must make good; the different rates of compensation, to receive or to make good, are regulated by the action of the Syndical Chamber.

PRIVATE REGULATION.

Art. 63.

The liquidation or balancing of business engaged in on a time basis takes place twice a month.

The liquidation at the end of the month lasts five days and the fortnightly liquidation occupies four days.

MONTHLY LIQUIDATION.

At the bourse meeting of the last day of the month, or if this falls on a holiday, at the first bourse of the following month, backwardation operations and general settlement of operations in French government funds and other stock.

The fifth day of the liquidation, delivery of shares and the payment of capital between brokers are effected by the agency of the Syndical Chamber.

FORTNIGHTLY LIQUIDATION.

At the bourse meeting of the 15th, or if this falls on a holiday, at the first following bourse, backwardation operations and liquidation of all stock liable to the double monthly liquidation.

The fourth day of the liquidation, the delivery of shares and the payment of capital between brokers are effected by the agency of the Syndical Chamber.

The dispositions of the present article shall not go into effect

until after February 15, 1899, and they shall apply to operations engaged in at that date.

Art. 65.

The client whose account is in his favor at liquidation-time and who wishes to enter into operations with another broker, can enter into possession of his funds by means of a check drawn on his broker and certified to by the latter. This check is not valid unless it is drawn in favor of another broker.

Art. 66.

The Syndical Chamber may decide that deliveries in liquidation, for essentially registered securities, shall take place by provisional transfers in the names, and, for French rentes, they shall be duly recorded in the current account.

INSIDE REGULATION.

Art. 91.

The funds of the French Government, state funds guaranteed by France, loans of the city of Paris, Bank of France shares, shares and bonds of the Crédit Foncier of France, shares and bonds of the French railroads whose securities are placed on the time-quotation list, are liquidated once a month.

All other stocks are liquidated twice a month.

Art. 92.

The broker or their liquidating clerks must meet together in a private room appointed for this purpose, each settlement or checking-off day at the close of the bourse, for the purpose of checking off or balancing between themselves the operations accomplished.

Art. 93.

The acceptance of a compensation (or balancing) is never obligatory.

Art. 94.

The rates of compensation (or adjusting balances) are fixed by one of the acting associates and posted immediately at the exchange in the private room of the brokers and in the liquidation room.

Art. 95.

The next day after settlement-day in the liquidation of the end of the month and settlement-day in the mid-month liquidation, there is drawn up by each broker a tally-sheet containing an abstract, without mention of the capital involved, of the amounts of stock of which he is buyer or seller, on commission, for each one of his colleagues.

The broker who takes up registered shares in liquidation must deliver to the Syndical Chamber, at the same time as this tally-sheet, the names when French rentes or French Bank shares are concerned, and the acceptances when other securities are concerned. The names or acceptances must be furnished in such number that each of them represents the smallest fraction negotiable on account.

The sellers must deliver, with the same sheet, a table indicating the stock they have yet to turn in and the quantities of it. This table is returned to them in the morning next day with the names of the buyers to whom they will have to make the delivery.

Art. 96.

On the day of checking off the various amounts of capital, there is furnished a sheet giving only, without mentioning the stock, the compensation in capital of the broker with each of his colleagues.

Art. 97.

The capital compensation, represented by checks, is not put down on this sheet till after it has been certified by a visa, which alone renders them valid. These checks must always be, as the last indorsement to a broker's order, made up of sums ending in three ciphers at least, and drawn up on a uniform style of blank adopted and furnished by the Syndical Chamber. The

checks are announced and certified the evening of checking-off day and are cashed the following day.

ART. 98.

Brokers or their liquidating agents must, before checking off, assure each other reciprocally that the sums on the two sheets agree perfectly, and they must specify plainly the sum representing payment, whether credit or debit.

ART. 99.

The capital sheet of each broker is accompanied furthermore by a recapitulation table indicating the payments on this sheet, checks not included and the quantity of stocks sold or delivered, with their value calculated according to the market-rate of compensation.

An abstract of the cash payments resulting from them is drawn up by the general secretary and filed in the Company's private room.

ART. 100.

These various sheets and tables which thus comprise the complete list of all the payments in stock and in capital, are made on a uniform model or blank, and furnished by the Syndical Chamber; all changes of a nature to upset the established order are expressly forbidden.

ART. 101.

After all the sheets have been verified, checked off, balanced and paid, they are delivered the same day to the general secretary.

ART. 102.

The general secretary then causes four separate inventories to be made out:

The first comprises the stock to be delivered with the quantities and the names of the sellers;

The second, the stock to be taken up with the quantities and the names of the sellers;

The third, the amounts of capital to pay out with the names of the debtors;

The fourth, the amounts of capital to be received with the names of the creditors.

These tables after once being drawn up cannot be modified save with the authorization of the Syndical Chamber.

The last two are immediately communicated to the Bank of France.

ART. 103.

In exceptional cases where there is an error a broker's stock-sheet may be modified after the checking-off, to wit:

For registered shares, the day before the checking-off of the amounts of capital;

For shares to bearer, the day of the checking-off of the amounts of capital.

ART. 104.

Every request for a change of sheet must be made in a letter signed by the brokers requesting it and endorsed by one of the acting associates.

ART. 105.

It must be accompanied by a number of stamped contracts, the number to be double that of the quantity of shares involved in the change; unless there is provision to the contrary, the two brokers who sign the petition for a change of sheet share the cost of the stamps.

For special cases, for shares of 100 francs and less, which do not call for any stamped contracts, there shall be delivered under the foregoing conditions stamped contracts of the series required by shares between 100 and 250 francs.

ART. 106.

Brokers or their liquidating clerks must meet in the liquidation room at four o'clock, on the day fixed by Article 103, in order to take steps for the changes they have requested.

Notice of these changes is given the same evening to all brokers interested.

Art. 107.

All delivery in liquidation must be accompanied by a signed memorandum-book.

Art. 108.

The delivery of French rentes must be made in registered shares.

That of stock made out to bearer must always be divided into packages containing precisely the smallest quantity negotiable on account.

Several packages may be united together by a single memorandum slip.

Each delivery must be tied up and sealed with the private mark of the delivering broker.

Art. 109.

Brokers who are debtors in liquidation must have made, on the day of regulation, their deposit at the bank before twelve o'clock, so as to be able to have the ticket reach the general secretary at *sharp twelve at the very latest.*

All securities must have been delivered to him at the same hour.

The general secretary does not have the accounts credited at the bank until after all payments have been made and all securities passed in.

Art. 110.

The broker who is not able to deliver all the securities due by him in liquidation may, as a special favor, give to the colleague who has been indicated to him as the one to whom the delivery is to be made, a voucher for these securities permitting them to be delivered outside of liquidation.

In order that this voucher may be received purely and simply by the general secretary, as fully valid in lieu and place of the stock it represents, it is necessary:

1°. That it bear the acceptance of the buying broker or of his authorized representative, with specification of the days of grace permitted in the delivery;

2°. That it be accompanied by a warrant of transfer, in the

name of the said buyer, of a sum equal to the price of the undelivered stock, rated at the prevailing market quotations;

3°. That there be added to it a quantity of stamped contracts representing double the undelivered stock or securities.

For special cases, for shares of 100 francs and under, there shall be delivered under the foregoing conditions, stamped contracts of the series required by the shares between 100 and 250 francs.

Art. 111.

The broker to whom a voucher has been offered has always a right to refuse it.

In this case, the broker unable to deliver must immediately notify the general secretary of it and give him at the same time the unaccepted voucher, with the warrant and the stamped contracts, in the form and quantity above indicated.

The general secretary straightway refers the matter to the Trustee and the acting associates.

The latter immediately proceed to the official buying-in of the undelivered stock at the risk and peril of the procrastinating broker. This repurchase or buying-in takes place without formality of any kind.

Art. 112.

In case of non-delivery at the time agreed upon, the broker who has accepted a voucher can cause the repurchase of stock to take place, with no obligation to resort to any formality in the matter.

Art. 113.

The delivery of securities does not begin until the general secretary has certified that nothing is lacking. It occurs as a lump operation, that is to say, to each broker it is for the whole mass of securities that he has taken up.

This delivery must be made only into the hands of the broker himself or of a clerk furnished with a special authorization and understanding the details of the stock to be received and the certified specimen of the proxy's signature. It must be made alternately to each sharer (or recipient), who immediately assures himself that all the securities are delivered to him.

The broker or his proxy receipts in a special register provided for the purpose.

ART. 114.

Two brokers are appointed alternately by the trustee to oversee and close the liquidation.

They make a report to the Syndical Chamber setting forth all irregularities that may have been committed.

They receive an attendance-fee fixed by Article 172.

ART. 115.

Clerks who appear in the reports of the liquidating brokers are liable to fines imposed by the Syndical Chamber.

ART. 116.

The product of these fines constitutes a fund which is distributed each year by the Syndical Chamber for the benefit of those clerks employed in liquidation whose work has been most satisfactory.

ART. 117.

The Syndical Chamber may exclude from the clearing-house operations (or central liquidations) any clerk whose name has appeared several times on the report of the liquidating brokers.

ART. 118.

All infractions against these rules and all irregularities hampering the progress of liquidation, are punished by the Syndical Chamber with any penalty that it may deem fitting.

TRANSACTIONS IN NEGOTIABLE PAPER AND METALLIC SECURITIES.

DECREE.

ART. 74.

The official memorandums that are required on the negotiation of bills of exchange or notes must contain a statement of the quantity, nature, period of falling due and price of paper.

ART. 75.

The same rules apply to the negotiation by brokers of metal holdings.

INSIDE REGULATION.

ART. 70.

Brokers cannot engage in any stock-exchange operation on their own account.

When a broker has concluded between two bankers or tradesmen an operation involving negotiable paper or metallic securities, he gives to each of the parties a document stating the quantity, nature, period of maturity and prices of the said securities or paper, and specifying to the giver his taker and to the taker his giver; he immediately makes a copy of the said document on his memorandum-book.

JUDICIARY OR FORCED OPERATIONS, RELATING TO STOCK BELONGING TO MINORS, OR TO INHIBITED PERSONS.

DECREE.

Art. 70.

When a broker is commissioned judicially to carry on certain stock-operations, he must post, twenty-four hours at least before undertaking the same, a notice signed by him inside the stock exchange, this notice to be in his office or in any other place designated by the judge.

This notice specifies the nature of the stock to be negotiated, their quantity, the decision by virtue of which the negotiation takes place, the name of the broker charged with the negotiation and the days when it is to be carried on.

In the case of stock that does not figure in the official part of the market quotations, bids may be offered and received with the privilege of receiving higher bids during the period and under the conditions determined by the Syndical Chamber, or, if there is no Syndical Chamber, by the Tribunal of Commerce.

The Syndical Chamber, or, if there is no Syndical Chamber, the Tribunal of Commerce, is always at liberty to decide that this method of procedure will be applicable even to stock figuring in the official part of the market-quotations.

Art. 71.

The formalities prescribed by the first two paragraphs of the preceding article apply:

1°. To the negotiation of stock realized by virtue of Article 93 of the Code of Commerce, after the broker has shown proof of having complied with the formalities provided in that article;

2°. To the negotiation of stock realized on account of failure

to turn in the dividends called for, unless the statutes of the enactment that requires realization (or turning into cash) contain some special provisos on this point.

The Syndical Chamber, or, if there is no Syndical Chamber, the Tribunal of Commerce, is always at liberty, for these various negotiations, to authorize or command the use of the special procedure indicated in Paragraph 3 of the preceding article.

ART. 72.

Before proceeding to the negotiation of stocks belonging to minors or to inhibited persons, the broker must make sure that the negotiation has been authorized under the conditions laid down by the law of February 27, 1880.

ART. 73.

In the various cases provided for in Articles 70, 71, 72, the broker's memorandum-book is referred to for the itemized bill of sale. It contains a specification of the securities sold.

ART. 45.

The Syndical Chamber, or, when there is no Syndical Chamber, the Tribunal of Commerce, is always at liberty to use in determining values, the special mode of procedure indicated in Paragraph 3 of Article 70.

PRIVATE REGULATION.

ART. 67.

The bids provided for in Article 70 of the decree of October 7, 1890, are made on the broker's floor at the close of bourse-meeting on the days, at the hours and under the conditions settled by the Syndical Chamber, but at the latest within eight days after the request for negotiation is made.

No one can bid or outbid, save through the instrumentality of a broker.

Higher bids must be made after a minimum period of twenty-four hours.

A trustee's associate is appointed to police the hall.

INSIDE REGULATION.

Art. 65.

The posted notice provided by Article 70 of the decree of October 7, 1890, must mention the dates and hours of bidding. It specifies whether the sale shall be made in one or several lots, and in the latter case it fixes the value of each lot.

Besides the places designated in Article 70, the said notice must be posted in the private room of the company, at the stock-exchange.

Art. 66.

On the days fixed by the Syndical Chamber, the bids announced on the notices shall take place at half past three on the floor through the agency of brokers commissioned for this purpose assisted by one acting associate.

If there are several auctions the same day, the Syndical Chamber shall decide the order in which they are to take place.

Art. 67.

The provisional award shall be pronounced by the selling broker as soon as the bids are all in. The prevailing rates shall be shown, provisionally, on the official market-bulletin.

Art. 68.

The next day, at half past three, the highest bids shall be received, which must not be lower than the sixth.

If there are not recorded any higher bids within that time, the provisional award shall become definitive; if any are recorded, the selling-broker shall proceed to get new bids, taking as a basis the highest one recorded, and bidding shall go on as before. The award pronounced this time shall be definitive, and the price shall figure on the market-bulletin.

Art. 69.

For first bids and higher bids the brokerage is one quarter per cent. on the sale and one tenth per cent. on the purchase.

THIRD DIVISION.

CERTIFICATION AND LEGALIZATION.

DECREE.

ART. 76.

Brokers grant the certifications required for the transfer of registered bonds of the public debt under the conditions provided by the resolution of the consuls of Prairial 27, year X, the royal ordinance of April 14, 1819, and the decrees of July 12, 1883, and June 10, 1884.

They grant all other certifications provided by legal enactment or by regulations of public administration.

They may grant all certifications and legalizations, other than those above specified, which the various operations in regard to transferable securities will admit of, according to the regulations of the establishments emitting them.

The tariff applicable to certifications emanating from brokers who have not taken part in the negotiation is determined by the same conditions as the brokerage tax mentioned in Article 38.

INSIDE REGULATION.

ART. 16.

A broker compelled to be absent is required to notify the trustee to that effect in writing. His representative must not, under any pretext, undertake to do business directly with a broker.

When he has any operation to undertake he addresses one of the members of the company, who executes the orders in the name of his absent colleague.

So far as the certification of the absent broker's transfers is concerned, this can, on a written request addressed to the Syndical Chamber by one of the authorized representatives of the said broker, be done by one of the acting associates appointed for that purpose, and will involve turning into the common treasury a fee equal to the price of the note-book recording cash deliveries, and this amount cannot under any circumstances be less than fifty centimes.

The request for certification of transfers must be accompanied by a letter of instructions and a memorandum stating the nature of the shares, the names of the holders and the amount of capital; all according to the model furnished by the Syndical Chamber.

The broker on his return must give the Syndical Chamber a discharge for the certifications it has made on his account.

In case of the decease of a broker, the provisional administrator of his seat must, in the same manner and under the same conditions, have the transfers certified by one of the acting associates. It is understood that, for this special case, the Syndical Chamber shall have a right to have the documents examined by its transfer bureau.

FOURTH DIVISION.

MARKET QUOTATIONS AND EXCHANGE QUOTATIONS.

DECREE.

ART. 77.

The closing market rates successively determined by cash operations are, as fast as they are established, recorded on a special register. The regulations provided in Article 82 may prescribe the same procedure for operations on account.

In all cases, brokers gather together at the close of bourse meeting to verify and settle the closing rates for stocks, exchange and metallic values.

ART. 81.

So far as foreign stocks are concerned, there is no derogation of the existing regulations.

PRIVATE REGULATION.

ART. 70.

The quota of variations in the price-list, taking cash bargains and bargains on account, is determined by the deliberations of the company of brokers on motion of the Syndical Chamber.

ART. 71.

After the publication of the market rates no rectification can be made, except for closing rates that have been omitted. These rectifications must be authorized by the acting associates.

Rectifications cannot modify the average rates of the day to which they relate.

This average rate is definitive; it can only be modified in case there is a material error, after it has been submitted to the examination of the acting associates.

Art. 72.

Official repurchases and resales may be negotiated even at unlisted closing rates; the same is the case with operations in stocks involving either a special advantage or an assessment, which operations are carried out under special agreement.

Art. 73.

A commission appointed each year by the Syndical Chamber is specially charged, under its supervision, with the preparation of the market rates of exchange and to attend to matters relating to gold and silver.

INSIDE REGULATION.

Art. 138.

The variations in the prices of cash transactions can be expressed only: by the amount of 2½ centimes or its multiples for French or foreign rentes; by 50 centimes or its multiples for shares above 300 francs; by 25 centimes or its multiples for all bonds of any nature whatever or whatever their closing price, and for all shares whose closing price is 300 francs and less.

Art. 139.

The variations in the prices of transactions on account can be expressed only by the amount of 2½ centimes or its multiples for French or foreign rentes; by one franc or its multiples for shares and bonds quoted above 100 francs, and 50 centimes for shares and bonds quoted at 100 francs and less.

Art. 140.

The backwardation or rate for carrying over payment from

cash to the next settling-day or from one settling-day to another, must be inscribed in a special register at the time it is made. These rates are not definitive until thus inscribed.

Art. 141.

Variations in backwardation rates can be expressed only by the amount of one centime or its multiples for rentes; by 5 centimes or its multiples for shares and bonds.

Art. 142.

The president of the quotation committee can, in case of dispute, fix the first and last rates without resorting to vote.

Art. 143.

At the close of the editing of the quotation of account transactions in stock that figures in the official part, brokers who have negotiated on account stock listed in the second part of the quotation announce the closing rates that they have secured.

Art. 144.

Immediately after the closing of the floor, there is drawn up a table showing the average rates of all cash securities quoted during the bourse meeting.

Art. 145.

The committee on quotation of exchange is composed of four members of the company and two associates appointed each year by the Syndical Chamber. Two of its members are on duty in turn under the presidency of one of the two associates.

No member of this committee can serve on it for more than four consecutive years.

Art. 146.

The members of the committee meet in the company's private room after bourse hours and draw up the day's list of quotations. They sign the record of it in a special register. This register records at the same time their co-operation, for which they receive the attendance-fee fixed by Article 172.

ART. 147.

The members of the committee on quotation of exchange can alone certify the accounts returned. Their signature is legalized by two associates of the Trustee.

The brokerages due under this head are collected by the secretary for the company's account.

BULLETIN OF THE QUOTATIONS.

DECREE.

Art. 78.

As soon as the bulletin of the quotations has been formally drawn up under the conditions fixed in the second paragraph of the preceding article, it is signed by the Trustee, posted in the interior of the stock-exchange and published by the Syndical Chamber.

A copy of this bulletin is immediately addressed to the prefect as well as to the Minister of Finance or Minister of Commerce and Industry, according to the distinction specified in Article 2.

Art. 79.

The bulletin of quotations gives at least the opening and closing rates, as well as the highest and lowest rates at which bargains have been concluded.

It mentions, besides, other matters liable to interest the public, and in particular it makes known the stocks that are not made out to bearer and the dates when interest begins as set forth in Article 50.

It may also mention the average rates of securities quoted for cash. This average rate is established by taking the middle between the highest and the lowest rates.

Art. 80.

In stock exchanges provided with a floor the bulletin of quotations includes a permanent part called "official," comprising those stocks which are recognized by the Syndical Chamber as giving rise or capable of giving rise to an unlimited amount of transactions on the spot. The French Government Funds are by right in this category.

Stocks not included in this official part figure in the second part of the Bulletin of Quotations. The regulations provided in Article 82 decide whether these two parts shall be published separately or be incorporated in one publication.

ART. 81.

So far as foreign stocks are concerned, there is no derogation of the existing regulations.

PRIVATE REGULATION.

ART. 68.

The two parts of the Bulletin of Quotations provided for in Article 80 of the decree of October 7, 1890, are published separately.

ART. 69.

Deliberations of the Syndical Chamber determine the stocks which shall be quoted only for cash in the official part of the bulletin, and those which shall be quoted there for cash and on time.

INSIDE REGULATION.

ART. 134.

The Syndical Chamber, under the authority of the Minister of Finance and in accordance with the conditions of the first paragraph of Article 80 of the decree of October 7, 1890, grants, refuses, or suspends inscription, in the official quotations, of all stocks whether negotiated for cash or on time, save French Government Funds.

It can likewise, if it deem fitting, order to be struck off a stock already recorded on the official quotations.

ART. 135.

When it is recognized by the Syndical Chamber that the quota-

tion of a stock is imperatively called for by the general interest, it can *ex officio* declare its admission for cash or time operations.

It can refuse the striking off of a stock already recorded on the official bulletin.

Art. 136.

The Syndical Chamber decides the order in which stocks are to be mentioned in the Bulletin of Quotations.

Art. 137.

The Syndical Chamber decides likewise which are the stocks that, in the terms of the second paragraph of Article 80 of the decree of October 7, 1890, may be recorded in the second part of the Bulletin of Quotations.

FIFTH DIVISION.

COMMON TREASURY.

COMMON FUND—RESERVE FUND—THE COMPANY'S SILVER TOKENS (OR MARKERS).

DECREE.

ART. 26.

There is established, in companies having a Syndical Chamber, a common treasury (or common fund) administered by the Chamber, the method of management being laid down in the special regulations mentioned in Article 82. Into this treasury are turned all levies on brokerage, various contributions, reserve funds or guaranty deposits provided by this regulation or special regulation.

PRIVATE REGULATION.

ART. 1.

The common treasury comprises:

1°. A common fund fed by the following sources of income:

First. A part of the brokerages (or commissions) earned by each broker in the operations undertaken by him;

Second. The price of the note-books used by brokers and head-clerks;

Third. Incidental products such as dues on official resales and repurchases (selling-out or buying-in), reception dues, quotation certificates, etc.;

The schedule prices of the various levies enumerated above are determined by the deliberations of the company.

Fourth. The proceeds of the transferable and untransferable securities belonging to the company;

Fifth. The proceeds of commissions derived from the management of the general treasury.

2°. A special guaranty fund to guard against responsibilities that may fall on the Syndical Chamber as a result of buying and selling operations in French rentes, which are made through the instrumentality of the General Paying Treasurers and then concentrated in the Syndical Chamber to be looked out for by it.

In case this reserve fund has to be invaded, the amount taken from it must be made good as soon as possible in the mode fixed by the company's deliberations.

3°. A reserve fund for the account of each agent (the amount of this fund is fixed by the company in general session assembled).

Art. 2.

The benefits of the common treasury are shared by all brokers in the same proportion.

Art. 3.

Amounts for the common treasury, when paid in, must be duly receipted for by the trustee.

Expenses are paid on his order.

He may also, with the authorization of the Syndical Chamber, acquire and relinquish all transferable securities, give his consent to all transactions, compromises or non-suits, and all withdrawals or cancellations from the books, even gratuitously.

He may likewise, with the authorization of the company in general session assembled, contract all loans, acquire real estate, sell it, exchange it or mortgage it.

Finally, he may appoint proxies for one or more special purposes, using special warrants for the same.

Art. 4.

The Syndical Chamber can at any time put at a broker's dis-

posal his part of the reserve within a period which cannot exceed six months.

Art. 5.

When the Syndical Chamber or a majority of the company proposes to dispose of all or part of the common fund, this proposition, in order to be converted into a resolution of the company and thereby become binding on each of its members, must receive in general meeting the votes by secret ballot of two thirds of the members present at the session.

Art. 6.

As an exceptional case, the Syndical Chamber may, when it deems it advisable and without any preliminary bringing of the matter before the company, cause to be paid from the common treasury to brokers who ask for it: 1°, an advance of funds equal to the amount of his guaranty provided that he shall confer upon the company the privileges of a sleeping partner and a power of transfer; 2°, an advance of 100,000 francs on account of the value of his membership.

Such advances can be made only for six months.

Art. 7.

The broker who happens to be in the situation foreseen by Article 56 of the decree of October 7, 1890, ceases thereby to have any right to share in the common treasury from and after the day specified in the same article. His account is adjusted and settled; from that time he no longer shares in the disposals made of the common fund.

Art. 8.

Whenever there occurs a change of incumbent of a seat, or a change of sleeping partner, the Syndical Chamber makes a valuation of the reserve fund and of the share of benefits realized.

Art. 9.

The amount of this valuation is refunded by the new incumbent to the retiring broker or to authorized representatives, who

thenceforth have no interest in the assets of the common treasury.

If the retiring broker has ceased his functions and received his share of the reserve, the new incumbent makes his deposit into the Company's treasury.

This deposit may not, under any circumstances, be less than the amount of the reserve fund as is determined in accordance with the last paragraph of Article 1.

Art. 10.

In cases where, as a result of some action by the Company, the reserve fund happens to get reduced to a sum below that fixed, it must be brought up to the proper amount again, at the shortest possible notice, by ways and methods settled upon by the Company in general meeting assembled.

Art. 11.

There is established for the common treasury a supervisory committee known as the *Committee on Accounts.*

Art. 12.

It is presided over by an associate of the Trustee and composed of three brokers who are named by ballot of the general meeting for one year (the Trustee and associates being excluded from such nomination); one of them must be replaced by a new member each year.

Art. 13.

This committee must see to it that the statutes governing the common treasury are most strictly observed.

It is furthermore charged with the verification of the books, of the cash, and of the bills and acceptances.

Art. 14.

It meets as often as it deems necessary, and at least once a month.

It has a right to delegate one or more of its members to make such verifications as it deems advisable.

All account-books as well as all papers bearing on the cash accounts are placed at its disposal.

It records the results of its verifications in an itemized report, and adds thereto its observations.

ART. 15.

On November 10 of each year the Trustee verifies the cash balance, and causes to be drawn up a statement of all the assets and liabilities of the common treasury.

There is instituted an account of the management of the common treasury, from the 10th of the preceding November, setting forth the exact state of the securities on hand, the bills and acceptances, and an itemized report of the operations engaged in during the year last past.

These accounts are added to a report which the committee on accounts is required to present to the company at its general meeting in the month of December, on the subject of the administration of the common treasury during the year last past.

ART. 16.

The supervision of the common treasury being delegated to a special committee, any right to individual verification or control is forbidden to the members of the company.

INSIDE REGULATION.

COMMON FUND.

ART. 148.

The collection of the portion of brokerage which is the main source of revenue to the common treasury is effected by means of the application of the Company's stamp upon contracts and memorandum-books.

ART. 149.

These contracts, memorandum-books and note-books are granted by the common treasury on presentation of two applica-

tion-blanks, one of which is signed by the broker and the other by the general secretary after delivery of the contracts on deposit of price.

ART. 150.

The tariff of prices for time-contracts, memorandum-books recording cash delivery, and note-books, is fixed by the deliberations of the Company in general meeting assembled.

ART. 151.

The cash purchaser refunds half of the stamp-fee to the seller, who has advanced the amount of it in order to be enabled to draw up his memorandum of delivery.

ART. 152.

In the case of discount, memorandum-books recording delivery do not require the stamp-fee of the common treasury.

The same rule applies to deliveries made on settlement-day.

ART. 153.

The note-books to be used on the floor are all uniform; each one contains fifty leaves; each leaf is numbered and contains ten lines on the first side of the page and ten lines on the back. The first and last pages bear the imprint of the stamp of the Syndical Chamber.

Head-clerks' note-books are gotten up in the same general style, except that the outside color is different.

ART. 154.

No change of names can be made on note-books; every transaction recorded in them becomes thereby definitive between the contracting parties; *the instant it is inscribed in the book it gives rise to a contract, and consequently involves the payment of the stamp-fee.*

ART. 155.

Pensions, relief-payments, donations, etc., are paid by the

general secretary in accordance with the deliberations that have authorized them.

Art. 156.

The distribution of the proceeds of the common treasury takes place at the general liquidations of May 31 and November 30 of each year.

The amount of it is fixed by the Syndical Chamber.

Art. 157.

The portion of dividend accruing to each incumbent of a seat shall not be passed over to him until a deduction has been made and matters are squared up in regard to the advances made to him out of the common fund, inasmuch as the dividend to share as well as the debts to collect remain the privileged and exclusive pledge of the said advances.

RESERVE FUND.

Art. 158.

The reserve fund is fixed at one hundred thousand francs per broker.

DISPOSITION OF THE COMMON FUND AND OF THE RESERVE FUND.

Art. 159.

Temporary placings of the funds of the common treasury and of the reserve fund are effected through the agency of the associate who presides over the committee on accounts in accordance with the decisions of the Syndical Chamber.

Art. 160.

Advances made by the common treasury, according to Articles 5 and 6 of the private regulation, bear interest the rate of which is fixed by the Syndical Chamber.

Art. 161.

The sums that have been disposed of, as stated in the said ar-

ticles, must be paid back in accordance with the decisions referring to them and on the order of the Trustee.

Art. 162.

In cases where the arrangements about the reserve fund give rise to stipulations as to repayment, the Syndical Chamber must take all possible precautions to ensure the restitution being made within the time agreed upon.

Art. 163.

At the expiration of a term of six months fixed by Article 6 of the private regulation, the name of the assisted broker may be officially made known to the Company.

MARKERS OF THE COMPANY.

Art. 171.

The common treasury causes to be struck off metallic markers (or attendance-checks) in the name of the company.

These markers are of silver; their value is fixed at five francs.

Art. 172.

The markers are particularly intended for settling the attendance-fees incidental to the various forms of inside service of the Company.

These fees are fixed as follows:

1°. Each time the Syndical Chamber meets, the president receives four markers and each of the assistants two markers;

2°. The Trustee and the acting associates receive each four markers per day;

3°. At general meetings each member present receives two markers; for each admission of a new broker the fee is four markers.

The members of the bureau always receive double the allowance above specified and the president four times as many.

4°. Whenever the committee on accounts meets, the president receives eight markers and each of the assistants four markers.

5°. At each meeting of the committee on quotations and on rates of exchange and gold and silver, the president receives four markers and each of the assistants two markers.

6°. The two brokers on duty at each settlement-day receive each four markers.

ART. 173.

The Syndical Chamber, when it deems fit, grants markers by way of reward, as gratuities, for assistance, as an act of munificence, etc.

SIXTH DIVISION.

SPECIAL SERVICES OF THE SYNDICAL CHAMBER.

SERVICES OF THE GENERAL TREASURIES.

INSIDE REGULATION.

ART. 164.

There has been created at the Syndical Chamber, in obedience to a decision of the Minister of Finance of August 21, 1862, a bureau for the purpose of centralizing and executing all orders for purchases, sales, transfers, or conversions of stocks and French Government Funds, that may be entrusted to the General Paying Treasurers by the inhabitants of the departments.

ART. 165.

This bureau acts under the control of the Minister of Finance, and the settlement of all operations takes place at the treasury by means of the current accounts of the General Paying Treasurers who have transmitted the orders.

ART. 166.

The benefits of this arrangement have been extended to the inhabitants of the department of the Seine and the city of Paris, with the condition understood that they shall transmit their orders through the agency of the Central Paying Cashier of the Treasury, at whose office all operations are settled directly.

Art. 167.

The proceeds of the bureau of the General Treasuries are turned into the Common Treasury, and are thus distributed among all the liabilities.

SPECIAL GUARANTY FUND FOR THE SERVICE OF THE GENERAL TREASURIES.

Art. 168.

The special guaranty fund for the service of the General Treasuries, fixed at the minimum sum of $600,000 francs, has been formed by keeping back 20 per cent on the net earnings of this service.

Art. 169.

This sum is invested in French rentes, the income of which is added to the original endowment.

Art. 170.

Above the sum fixed by Article 168, any levy on the earnings ceases, and the reserve is not allowed to increase any further except by the interest on the rentes of said fund. This progressive increase by interest ceases as soon as the reserve fund has reached the sum of one million.

The interest-bearing would not be resumed unless the capital of the rentes of this fund were reduced to a sum below one million.

TREASURY FOR DEPOSITS.

Art. 174.

There is joined to the Common Treasury a special treasury for deposits.

This treasury is intended primarily to receive the securities that former sleeping partners of brokers may leave as a guaranty of their part in the risks that brokers have to incur in the negotiation and transfer of stocks.

Art. 175.

All deposits are attested by a declaration signed by the Trustee and the depositor, and recorded in a special register.

All withdrawals are attested on the same register in the margin, or after the declaration of deposit.

SERVICE OF DISPUTED PAYMENTS AND LITIGATION.

Art. 176.

A special bureau is charged to attend to warning notices, served on the Syndical Chamber by the sheriff in regard to shares made out to bearer that have been lost, stolen or destroyed, under the conditions specified in the law of June 15, 1872, and the legal enactment of April 10, 1873.

The procedure in this case is to inscribe the stock thus rendered contraband in the *Official Bulletin* published by the Syndical Chamber, according to the said law.

The bureau surrenders the certificates attesting the publication during the period of time allowed for the furnishing of the duplicates.

It then proceeds to cancel the stock and to examine the acts of withdrawal furnished in one of the forms prescribed by Article 6 of the legal enactment already cited.

Art. 177.

This bureau attends also to all complaints filed about irregular stock, about that inserted in the *Official Bulletin of Disputed Payments*, as amortized, spurious, etc., and it is charged with all matters of disputed payment which brokers bring before the Syndical Chamber officiously in the name of their clients; it follows these cases before the tribunals, at whatever risk and peril may result from them when the final upshot is anything but agreeable.

Art. 178.

This same bureau is enjoined furthermore to follow out all matters of litigation for brokers who request them to do so.

COUPON SERVICE.

Art. 179.

Brokers have authority to apply to the Syndical Chamber for cashing the coupons that come into their possession.

Art. 180.

All coupons presented to be cashed must be stamped on the back with the number of the broker depositing them, by means of a numbering-stamp furnished by the Syndical Chamber.

Art. 181.

A simple memorandum-book is sufficient in depositing coupons with the Syndical Chamber, and there is no need of classifying nor of a list of numbers.

A slip recapitulates the amount of all the memorandum-books handed over at the same time by the same broker, so that by adding up the slip the result agrees with the general voucher given by the Syndical Chamber.

Art. 182.

The payment of these coupons by the Syndical Chamber takes place in 48 hours after deposit, by means of pink drafts for compensation, made expressly for this service, all payment in specie being formally prohibited.

All errors must be corrected at the first requisition.

SERVICE OF BANK OF FRANCE DEPOSITS PAYABLE TO BEARER.

Art. 183.

In consequence of a treaty entered into between the Syndical Chamber and the Bank of France, the latter opens to brokers a special treasury for their deposits of stock made out to bearer.

Art. 184.

These deposits, as well as withdrawals, are always made directly at this treasury without the stock ever passing through the hands of the Syndical Chamber.

These deposits are attested by a receipt delivered in the name and on the account of the Syndical Chamber.

Art. 185.

Deposits must always and invariably be 25 shares for stocks and bonds, and for foreign rentes the smallest quantity negotiable on a time-transaction.

Art. 186.

In exchange for the receipt given by the Bank of France, the Syndical Chamber delivers a written acknowledgment bearing its stamp and endorsed with three signatures.

Art. 187.

In order to take out the shares, the beneficiary of the last endorsement, who must always be a broker, has only to send his own written acknowledgment in due form to the Syndical Chamber, which immediately gives in exchange the corresponding receipt of the Bank of France, after having itself signed it, so that the bearer has only to present this receipt at the Bank of France in order to get the shares.

Art. 188.

The Syndical Chamber undertakes to withdraw maturing coupons from the Bank of France at every period of maturity. Coupons for foreign stock are held by the Chamber at the disposal of the bearers of the corresponding endorsable receipts, the bearers having full power to choose between the withdrawal of the said maturing coupons or the payment of their value in money.

The Syndical Chamber cannot, however, be obliged to keep matured coupons more than fifteen days after their coming due.

Payments of coupons by the Syndical Chamber can be made only in compensation-drafts for brokers, and in orders on the Bank of France for their clients.

Art. 189.

The Syndical Chamber undertakes to secure from the Bank of France payments called for on shares not fully paid up, on the double condition:

1°. That the Syndical Chamber shall first be financially protected against loss;

2°. That the sum paid for this purpose shall be sufficient to clear all the shares included in the same receipt, no instalment method of doing business being admitted.

The same regulations are applicable to subscriptions, advantages or operations of any kind, in which no steps shall ever be taken except at the express request of the beneficiary of the endorsement.

Art. 190.

It is not incumbent on the Syndical Chamber to make a verification of shares which are subject to a drawing, nor to notify any one of the coming out of these shares.

Art. 191.

In cases where there may arise disputed payments, counterclaims, legal notices or any kind of difficulty in regard to such and such shares deposited, the Syndical Chamber, as soon as it knows of it itself, shall inform the broker who first made the deposit, and this latter shall take the place of the said Syndical Chamber, at his own risk, peril and expense, it being understood that the Chamber can never be personally responsible nor be put to loss or expense of any kind.

TABLE OF SOME FORMS

USED BY

STOCK, COTTON, AND PRODUCE BROKERS,

AND BY BANKERS

1333–34

TABLE OF SOME FORMS USED BY STOCK, COTTON, AND PRODUCE BROKERS, AND BY BANKERS.

Note. These forms have been in great part copied from the reports. One (No. 28) is given as an example to be avoided, rather than imitated.

No. 1.

Customer's Order to Brokers to Buy or Sell Stocks.

Banking House of Bunnell & Scranton.
New Haven, Conn. 18 .
Please for my account and risk shares .
Order good until countermanded. It is agreed that Bunnell & Scranton have the right to dispose of, without notice, all stocks, bonds, petroleum and grain purchased or sold on margin, whenever said margin is reduced to two per cent.

No. 2.

Bought Note sent by Broker to Customer on Execution of Latter's Order.

Office of Bunnell & Scranton, No. 108 Orange St., New Haven, Conn.
18 .
Mr. .
Dear Sir :
We have his day bought for your account and risk ——————
——————.

Yours respectfully,
(Sd.) Bunnell & Scranton.

No. 3.

Sold Note sent by Broker to Customer on Execution of Latter's Order.

Office of Bunnell & Scranton, No. 108 Orange St., New Haven, Conn.
Mr. .
Dear Sir:
We have this day sold for your account and risk ———————
———————.

Yours respectfully,
(Sd.) Bunnell & Scranton.

Note. The foregoing three forms are copied from the report of the decision in Skiff vs. Stoddard, 21 L. R. A. 107, in which case it was held that as the orders were to be executed in New York, there was implied authority given to the Brokers to repledge the stocks, as it was the custom of New York Brokers to repledge stocks carried on margin.

No. 4.

Bought or Sold Note of Stocks dealt in on the New York Stock Exchange.

Office of H. Jones & Co., 25 Broad St., New York, 1904.
Mr. .
Dear Sir :
We have this day bought from (or sold to) Messrs. J. Brown & Co. (opposite Brokers), subject to the rules and usages of the New York Stock Exchange.
Quantity and description of securities
Price paid (or received).
Please take notice that all orders for the purchase or sale of securities for future delivery are received and executed on the distinct understanding that actual delivery is contemplated, and the party giving the order so understands and agrees. It is further understood that on all marginal business the right is reserved to close transactions on the New York Stock Exchange, when margins are near exhaustion, without notice.

Yours respectfully,
(Sd.) Jones & Co.

Note. The above form gives the date of sale or purchase, the number and description of the securities bought or sold, the price received or paid and the names of the opposite Brokers. These particulars are

essential. See ante, p. 213 et seq. The buying and selling Brokers should keep books of account giving these particulars. (Id.) The paragraph as to delivery is added for the Broker's protection in case the customer secretly intends to gamble, or in case only differences are sometimes settled, although delivery is always intended. See chapter on Stock-jobbing, and Parker *vs.* Moore, 125 Fed. Rep. 807.

If the sentence as to sale on the Exchange without notice is not added, the Broker will be obliged to serve the notice of demand and of sale (see Forms 12 and 13), and the sale should be by public auction outside the Stock Exchange (ante, p. 357 et seq.), although a purchase to cover a short sale may be made on the Stock Exchange (ante, p. 357 et seq.). The provision "subject to the rules and usages of the New York Stock Exchange" imports into the contract such rules and usages, and the customer will be bound by same, except they are unreasonable, whether he knows of them or not, but if the Client knows of an unreasonable usage, and expressly or impliedly assents to it, he will be bound by it. See Chapter on Usages. The Broker should, therefore, bring any rule or usage as to the reasonableness of which there may be any doubt, under the notice of his Client, if he wishes it embodied in the contract.

No. 5.

"Slip Contract" prescribed by the rules of the New York Cotton Exchange.

New York, Nov. 10, 1886.

B. 10 % Albert
10 " Alexander
5 " Andrew
Seller,
Buyer, Zeraga & White.

On contract subject to rules and regulations of New York Cotton Exchange.

Twenty-five hundred bales cotton. Jan. 1, delivery. Price 8.99.

× Per Z. & White,
Seventy-five.

Note. This form of "slip contract" when made in duplicate, one copy signed by the purchaser having been delivered to the Broker, and the other signed by the Broker having been delivered to the purchaser, was held in Bibb *vs.* Allen, 149 U. S. 495, to constitute a bought and sold note sufficient to satisfy the requirements of the Statute of Frauds.

No. 6.

Bought note—Cotton.

day of 1903.

Mr. W. A. Moore.

Dear Sir:

Under your instructions we have this day bought for your account and risk in conformity with the rules and regulations of the New York Cotton Exchange

Quantity and description:

Price:

Please take notice that all orders for the purchase or sale of cotton, coffee, grain and provisions for future delivery, are received and executed with the distinct understanding that actual delivery is contemplated, and the party giving the order so understands and agrees. It is further understood that on all marginal business the right is reserved to close transactions, when margins are near exhaustion, without notice.

Note. This form was used by the plaintiffs (Brokers), in Parker *vs.* Moore, 125 Fed. Rep. 807, and it enabled them to recover advances. See also Robinson *vs.* Crawford, 31 A. D. N. Y. 228, where it was held that when memorandums containing a paragraph similar to the last paragraph in the above bought note, were sent to a customer on several prior occasions, the Broker might sell without notice.

No. 7.

Sales note of wool.

Boston, January 10, 1883.

Sold for account of Messrs. A. C. Bigelow & Co., Boston,

To Messrs. James Legg & Co., Mapleville, R. I.

30/35,000 lbs. Michigan × fleeced wool. Like 30 bags shipped January 8, 1883. Wool to be handled by Mills & Coffin, at 35½ c. p. lb.

Fare .

Terms net cash.

(Sd.) Mills & Coffin,
Brokers.

Note. It was held in Bigelow *vs.* Legg, 6 N. E. 107, that this sales note (if the persons signing it were in fact the Brokers of Bigelow & Co., and were authorized to make the agreement) constituted the contract between the parties, notwithstanding the custom of Brokers and dealers in wool to treat it as a mere memorandum which might be accepted or rejected by either side.

No. 8.

Bought and sold note of lard.

Chicago, Nov. 3, 1891.

Bought of J. M. Doud & Co., Boone, Iowa,

Care of Lamson Brothers, Board of Trade Bldg., Chicago.

Their entire production leaf, from date to January 1, 1892, at nine cents, Chicago delivery.

You are to receive the leaf f. o. b. teams at any city depot, or at any warehouse at Union Stock Yards, in such lots as they may ship. In the event that either party should become incapacitated in manufacturing by destruction of premises by fire, the sale to become null and void at such date. Goods to be in prime condition on arrival in Chicago. Terms cash.

(Sd.) L. M. Prentiss,

To J. J. Murray & Co., Chicago.

Chicago, Nov. 3, 1891.

Sold J. J. Murray & Co., your entire production of leaf lard from date to January 1, 1892, at nine cents, Chicago delivery. They are to take this leaf f. o. b. teams at any city depot, or at any warehouse at the Union Stock Yards, in such lots as you may ship. They would like, however, that you ship in lots of about 5,000 pounds, when convenient to do so. In the event that either party should become incapacitated in manufacturing by destruction of premises by fire, the sale to become null and void at such date. Goods to be in prime condition for butterine purposes on arrival in Chicago. Always notify me, as shipments start, and where consigned, with car number. Terms cash.

(Sd.) L. M. Prentiss,

To J. M. Doud & Co., Boone, Iowa.,

Care Lamson Bros., Chicago.

Note. It was held in Murray *vs.* Doud, 63 Ill. App. 247, that this bought and sold note (the bought note having been delivered to the purchaser, and the sold note delivered to the seller by the Broker) constituted the contract between the parties.

No. 9.

Trading cards exchanged between substituted buyers and sellers, on sales "for the account" on the Chicago Stock Exchange.

Chicago, Aug. 3, 1896.

M. Jamieson & Co.

We hereby confirm sales made by us for the account to-day under the rules of the Chicago Stock Exchange, also substitution trades.

Am't	Kind of property	Price
	Substitution trades—Sold	
1150	Match	$222
	Difference { Collect / Pay	$287.50

(Signed) Schwartz D. & Co.

Chicago Aug. 3, 1896.

M. Schwartz:

We hereby confirm purchases made by us for the account to-day, under the rules of the Chicago Stock Exchange, also substitution trades.

Am't	Kind of property	Price
	Substitution trades—Bought	
1150	D. Match	$222
	Difference { Collect / Pay	$287.50

(Signed) Jamieson & Co.

Note. These forms are taken from the report of the decision in Clews *vs.* Jamieson, 182 U. S. 472, in which case it was held that there was privity of contract between the substituted sellers and the substituted purchasers.

No. 10.

Authority to Stock-brokers to sell securities carried on margin, or buy to cover short sales, without notice, or previous demand, and to hypothecate, or otherwise use, Clients' securities.

Memorandum of Agreement made this   day of October, 1872.

Whereas I, John Norris, of Buffalo, N. Y., having opened and being in account with Robinson, Chase & Co., bankers, and brokers, in the City of New York; Now in consideration thereof, and for value received, I, John Norris, have agreed, and do hereby agree with said Robinson, Chase & Co., that in case they shall advance any sum or sums of money, from time to time, in and for payment of any stocks, securities or gold, purchased by them upon my order, and for my account, or for payment of checks or drafts made or drawn by me, or for loans or payments to me, or for my account or use, or in case I shall become indebted to Robinson, Chase & Co., for any deficiency arising out of contracts or transactions relating to stocks, securities or gold, then and in either event the said Robinson, Chase & Co., may sell, and I hereby authorize and empower then to sell, in their discretion at any of the Brokers' boards, long room, or elsewhere, or at public auction or private sale, with or without advertising the same, and without prior demand of any kind, or notice to me of the time and place of sale, all or any gold,

stock, property, things in action or collateral securities held by them and belonging to me, or in which I may be interested. And I authorize and empower the said Robinson, Chase & Co., to apply the proceeds of any such sales toward repayment of such advances or indebtedness, and the interest thereon, and commission and expense of sale or negotiations, holding myself responsible and liable for payment of any deficiency existing after such application. And I further authorize and empower the said Robinson, Chase & Co., to hypothecate, pledge or use in any other manner,[1] all or any gold, stocks, property, things in action, or collateral securities held by them and belonging to me.

And in case of short sales, or time contracts made on my behalf for the future sale or delivery of stocks, securities or gold, they may protect themselves by prompt purchase at such places, on such terms and at such times as they may deem expedient and proper, and without prior call or demand on or notice to me of any kind, holding myself liable in like manner, for any deficiency arising on such purchase or purchases, intending hereby to give them entire discretion to act in the premises as they may deem expedient for my interest, or to protect their own.

(Sd.) John Norris.

Note. The foregoing form was the usual customers' agreement of the plaintiff stockbrokers in the case of Robinson *vs.* Norris, 51 How. Pr. Rep. 442; aff'd 6 Hun, 233, and it enabled them to recover the balance of their account, although they sold stocks, without notice, in Broad Street, the Stock Exchange being, at the time, closed. This form is especially recommended to Stockbrokers, as, with the additions suggested, it seems to leave no avenue open for misunderstandings or disputes, and dispenses with the necessity of the notices given at pp. 1342–3. The words, "And I agree to be bound by the rules and usages of the Exchanges on which the said Robinson, Chase & Co. shall operate as aforesaid for me," might be added.

No. 11.

Authority to sell at public or private sale, without notice, stocks carried on margin.

New York, September 18, 1868.

I hereby authorize Messrs. W. T. Hatch & Son to sell, in their discretion, at public or private sale, and without notice to me or any notice whatever, the stocks, bonds or gold which they are or hereafter may

[1] The addition here of the words "either singly, or in conjunction with their other customers' securities" would seem to comply with the suggestion of Mr. E. Norton, in 5 Am. Law. 573. See *ante*, p. 258, n. 1.

be carrying for me, whenever my margin shall fall below five per cent.

(Signed) George A. Wicks,
For A. G. Wicks, Attorney.

Note. This form was used by the defendant stockholders in Wicks *vs.* Hatch, 62 N. Y. 537, and the Brokers were held justified in selling the stocks at the board of brokers, citing and following Milliken *vs.* Dehon, 27 N. Y. 364.

No. 12.

Notice demanding further margin, on exhaustion of marginal deposit on purchase or sale of stock.

Offices, 25 Broad St., New York City.

September 1, 1904.

To John Smith, Esq. (Customer), 2500 Fifth Avenue,
New York City, N. Y.

Dear Sir:

Your marginal deposit on the securities bought (or sold) by us for you, having become exhausted, or nearly so, we request that you will on or before o'clock in the forenoon of day the day of , 1904, furnish us with the sum of $, as further margin, or we shall be obliged, for our own protection, to sell the securities carried for you (or buy securities to cover "short" sale made for you).

Yours respectfully,
(Sd.) Thomas Jones & Co.,
(Brokers).

Note. Any form of notice will do, but it should specify the sum required, unless the Client's action obviates the necessity of such specification (see ante, pp. 336–7) and a "reasonable" time should be allowed the Client to furnish the margin (see ante, p. 340). An oral notice will suffice (ante, p. 337), and this notice must always be given in the absence of waiver by the Client (ante, p. 335).

No. 13.

Notice demanding further margin, and of intention to buy in to cover short sale of Stock.

Office of Henry Fitch & Co., 54 William Street, New York,

Nov. 5, 1865.

S. Knowlton, Esq.

Dear Sir:

The margins on your account with us are entirely used up by the rise

in the price of Michigan Southern. We must have more margins or we shall be under the necessity of buying in the stock, for your account, at such time as we may deem best for our own safety in the matter. The market is so uncertain that we cannot afford to take any risk in keeping you short without margin.

Yours truly,

(Sd.) Henry Fitch & Co.

Note. This form was used by the defendant Brokers in Knowlton *vs.* Fitch, 52 N. Y. 288.

In the case of a short sale, the relation between Broker and customer is not that of pledgor and pledgee, and therefore a Broker is not bound to buy at public auction outside of the Exchange to cover the short sale. His duty is discharged if he gives his Client reasonable notice to furnish more margin, or otherwise that he will buy in the stock to protect himself. See ante, p. 357 et seq.

No. 14.

Notice of sale, or of intention to buy in, to cover short sale, on non-compliance with notice demanding further margin.

Offices, 25 Broad St., New York City,

September 3, 1904.

To John Smith, Esq. (Customer).

Dear Sir:

As you have not complied with our request of the 1st inst. for further margin, we hereby give you notice that Messrs. , Auctioneers, will, in our behalf, proceed to sell by public auction at the New York Real Estate Salerooms, No. 161, Broadway, in the city, county, and State of New York, on the day of , 1904, at o'clock in the noon, the following securities carried for you, viz: (Specify securities) and apply the proceeds towards payment of the amount due by you to us, holding you accountable for the deficiency, if any, on such sale, (or that we shall on or after the day of , 1904, proceed to buy in, at the New York Stock Exchange, in the City of New York, the following [specify securities] to cover short sale made for us by you on the day of 190 , and we shall hold you accountable for any resulting loss to us).

Yours respectfully,

(Sd.) Thomas Jones & Co.,

(Brokers).

Note. Any form of notice (either written or oral) will do, but the time of sale or purchase, and, in the case of sale, the *place* of sale should

be given, and the *time* of sale or purchase should be reasonable (ante, pp. 347–8).

In the case of a "long" purchase, the sale must be by public auction, and cannot be made at the Stock Exchange, unless the Client has authorized a private sale (ante, p. 357 et seq.), as, although the Stock Exchange is the best possible place for an advantageous sale, the courts have not yet held that such a sale, (not being one to which the public are admitted) in the absence of a special agreement, would be legal. In the case of a "stop" order, however, the sale may be made either on the Stock Exchange or elsewhere (ante, p. 359).

In the case of a "short" sale, the "buying in" to "cover," may be made at the Stock Exchange (ante, p. 357).

This notice must be given unless waived by the customer.

The notice demanding margin, and the notice of sale, or to "buy in," may be combined in one notice (see ante, p. 348).

No. 15.

Notice demanding payment of the amount of a loan made by Brokers for which they hold stock as collateral, or that latter would be sold by public auction.

Offices of Jones & Co., 25 Broad St., New York,

August 1, 1904.

Mr. John Smith, No. 2500 Fifth Ave., New York.

Dear Sir:

We hereby demand from you payment of the sum of $115,487.60 and $ interest thereon from September 9, 1903, the amount of your indebtedness to us for which we hold as collateral the following securities: (Specify them).

In default of your paying us the said sum, and taking up your said securities, we shall on day, the 4th day of August, 1904, at 12 o'clock, noon, sell by public auction, by , Auctioneer, at the New York Real Estate Salesrooms, 161 Broadway, in the City, County and State of New York, the said securities, or so much thereof as may be necessary to pay your said indebtedness to us.

Yours respectfully,

Jones & Co.

Note. A form similar to this was used in the case of Cammann *vs.* Huntingdon, 89 A. D. N. Y. 99. See the record on file in the Law Institute Library, New York.

No. 16.

Notice to customer that securities, either carried on margin, or to secure a loan, have been sold at public auction, and giving name of purchaser.

Offices of H. Jones & Co., 25 Broad St., New York,

August 4, 1904.

Mr. John Smith, 2500 Fifth Ave., New York.

Dear Sir:

Please take notice that in pursuance of notice heretofore served on you, we have on this 4th day of August, 1904, at the New York Real Estate Exchange Rooms, No. 161, Broadway, New York City, by , auctioneers, sold at public auction the following securities to the following named persons at the following prices:

Securities sold	Name and address of purchaser	Price realized
	Total	$

Deduct expenses of sale $

Net proceeds of sale $

Leaving a balance due us of $ and interest for which we demand payment.

Yours respectfully,

(Sd.) H. Jones & Co.

Note. This notice is also similar to that used in Cammann *vs.* Huntingdon, supra (as per the record), with this important difference, that, in that case, the name of the purchaser was not given. In analogy to the case of a sale or purchase on the Exchange the name and address of the purchaser should always be given, to ensure the bona fides of the sale, and thus not have the issue raised, as it was in that case, that the purchase was indirectly made by the selling Broker.

No. 17.

Notice to customer that securities have been bought in to cover a short sale.

Office of H. Jones & Co., 25 Broad St., New York,

August 12, 1904.

Mr. John Smith, 2500 Fifth Ave., New York.

Dear Sir:

Pursuant to notice heretofore served on you on the 8th of August, 1904,

we, on the 11th instant, purchased from at the New York Stock Exchange, at 12.10 in the afternoon, the following securities (specify them) and that on this day we paid the purchase price thereof, viz., $ and received the said securities, which we thereupon delivered to to recoup him for similar securities lent by him to us to deliver to the purchaser on the occasion of short sale made by us for you on the 10th February last, and we hereby demand payment from you of the sum of $ with interest from this date, being the loss incurred by us on the foregoing transactions.

Yours respectfully,
(Sd.) H. Jones & Co.

Note. This notice should be sent to the customer to enable the Brokers to sue for the amount due to them.

No. 18.

Agreement of pledge of securities in the form of a promissory note authorizing sale of pledged property without notice.

$300,000. New York, March 1, 1884.

Six months after date, without grace, I promise to pay to the United States Trust Company of New York, at the office of said company in the City of New York, three hundred thousand dollars, for value received, with interest at the rate of 4 per cent per annum, having pledged to the said company as security (with authority to sell the same, or any securities that may be substituted in lieu thereof, on the non-performance of the promise, in such manner, as they, in their discretion, may deem proper, without notice, either at the New York Stock Exchange, or at public or private sale, and to apply the proceeds thereon to the payment of the amount remaining unpaid of this note) four hundred thousand dollars Louisville and Nashville R. R. Co., 1st Mtge. Bonds, N. C. and Mobile Division. In case of depreciation in the market value of the security hereby pledged, or which may hereafter be pledged for the loan, a payment is to be made on account, or additional approved security given, so that the said market value shall always be at least twenty per cent more than the amount unpaid of this note.

In case of failure to do so, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding, and the company may immediately reimburse itself by sale of the security.

(Sd.) W. S. Williams, 32 Broad St.,
Office V. S. & Co.

Note. This form was used by the defendant company in the case of Williams *vs.* Trust Co., 133 N. Y. 660, and its use enabled the company

to defeat the plaintiff stockbroker's action for unlawful conversion of the securities pledged by the sale thereof without notice.

No. 19.

The Same—Another form.

$15,000. Galveston, Texas, Dec. 3, 1894.

Sixty days after date, for value received, we, or either of us, promise to pay to Weekes, McCarthy & Co., or order, at their office in Galveston, Texas, fifteen thousand dollars, with interest from maturity at 8 per cent per annum, and ten per cent additional, if placed in the hands of an attorney for collection after maturity; having deposited with said Weekes, McCarthy & Co., as collateral security for payment of this or any other liability or liabilities of ourselves to them, due or to become due, or which may be thereafter contracted, the following property, viz., thirty thousand dollars ($30,000) first mortgage bonds of the San Antonio and Gulf Shore Railway, with full power and authority to said Weekes, McCarthy & Co., to sell, assign, and deliver the whole or any part thereof, or any substitutes therefor, or any additions thereto, at any public or private sale at their option, on the non-performance of this promise, or the non-payment of any of the liabilities above mentioned, or at any time thereafter, without advertisement or notice, which are hereby expressly waived, and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales to pay any or all of said liabilities to said Weekes, McCarthy & Co., or their assigns, as they shall deem proper, returning the overplus to the undersigned.

(Sd.) John Ireland,
Pres. S. A. & G. S. R. R.
John Ireland.
George Dullnig.
H. O. Engelke.

Note. This form was used by the plaintiffs (pledgees) in the case of Dullnig *vs.* Weekes, 40 S. W. (Tex.) at 179, and it enabled them to recover the balance due on the note.

No. 20.

The Same—Another form.

Six months after date, I promise to pay to Mr. M. Brayman, or order, twelve thousand dollars, for value received, at the Bank of New York, having deposited with Messrs. Schushardt & Gebhardt, as collateral

security, to sell the same at the Broker's Board or at public or private sale or otherwise, at their option, on the non-performance of this promise, and without notice, 125 mortgage bonds of $1,000 each of the Cairo & Fulton Railroad Company, and hereby authorize and empower said Messrs. Schushardt & Gebhardt to become the purchasers of said bonds in the case of default, to protect their interest.

(Sd.) M. Brayman,

President Cairo & Fulton Railroad Company, of Missouri.

Note. This form is taken from the report of the decision in Choteau *vs.* Allen, 70 Mo. 303. The pledgees were held justified in selling without notice or demand, and in buying in at their own sale.

No. 21.

Agreement of pledge authorizing sale without notice.

Messrs. Schushardt & Gebhardt, New York.

Gentlemen:

I acknowledge to have received your letter of credit dated April 20th, 1860, for $12,000, say twelve thousand dollars, to be availed of in any drafts on you at six months after sight, to be issued and presented prior to 1st May proximo. I accept this credit, and bind myself to place funds in your hands at least eight days prior to the maturity of any acceptance made by you in virtue of said credit, and as security I hereby hand you a stock note of the Cairo & Fulton Railroad Co., of Missouri, for $12,000, say twelve thousand dollars, dated April 12th, 1860, signed by me as president of the Cairo & Fulton Railroad Company, of Missouri, to my individual order, duly indorsed by me. As security attached to said note, are $125,000 first mortgage land grant bonds of the Cairo & Fulton Railroad Company, of Missouri, with full and complete power to sell the same in any manner you deem fit, without notice, and to purchase them youselves to protect your own interest, said credit being for account of the Cairo & Fulton Railroad Company, of Missouri. I further agree to pay over into your hands, in monthly installments, the net earnings of the Cairo & Fulton Railroad Company, which are to be credited on the note of said railroad company of $12,000 lodged in your hands as collateral security for this credit. I further agree to have a resolution of the board passed to the above effect, and to transmit you a certified copy of the same. I agree to pay you a commission of $2,000 on receiving your acceptance in virtue of this credit.

(Sd.) M. Brayman,

President Cairo & Fulton Railroad Company, of Missouri.

Note. This form was also used in Choteau *vs.* Allen, supra, with like effect.

No. 22.

Agreement of pledge, by a Stock-broker, of his Clients' securities deposited as margin, authorizing sale of pledge without notice.

Agreement dated the 2nd day of December, 1873.

We hereby agree with the St. Nicholas National Bank of New York, in the City of New York, that in case we shall become, or be, at any time indebted to said bank for money lent or paid to us, or for our account, or use, of for any overdraft, in any sum or amount then due and payable, the said bank may, in its discretion, sell at the Broker's Board, or at public auction or private sale, without advertising the same, and without notice to us, all, any and every collateral securities, things in action and property held by said bank for securing the payment of such debt, and apply the proceeds to the payment of such indebtedness, the interest thereon, and the expenses of the sale, holding ourselves responsible and liable for the payment of any deficiency that shall remain after such application.

(Sd.) Capron & Merriam.

Note. This form was used by the defendant bank in the case of Thompson *vs.* Bank, 47 Hun, 622; aff'd 113 N. Y. 328, in which case a judgment for the defendant was sustained as against the owner of certain of the securities deposited, viz., railroad bonds payable to bearer.

No. 23.

Option Contract—"Call."

New York, May 18, 1899.

For value received the bearer may call on me on one day's notice, except last day, when notice is not required, One hundred shares of the common stock of the American Sugar Refining Company, at one hundred and seventy-five per cent, at any time in fifteen days from date. All dividends for which transfer books close during said time, go with the stock. Expires June 2, 1899, at 3 P. M.

(Sd.) S. V. White.

Note. It was decided by the Supreme Court of the United States in Treat *vs.* White, 181 U. S. 264, that this form of "call" was an "agreement to sell," within the meaning of the U. S. statutes, and therefore liable to stamp duty, thus impliedly recognizing the validity of such instruments. See another form of "call" at p. 203, Note 4, ante.

No. 24.

Option Contract—"Put."

Note. See this form in full at p. 203, note 5, and p. 609.

No. 25.

Option Contract—"Straddle."

Note. See this form in full ante, p. 204, note 1, and p. 605.

No. 26.

Option contract to repurchase stock.

Whereas Christopher Meyer has purchased 600 shares of the stock of the Blair Iron and Steel Company, sold by A. S. Diven, trustee of said company, at the price of fifty dollars per share.

Now we, the undersigned, in consideration of one dollar to us in hand paid, the receipt whereof is hereby acknowledged, do hereby agree that if, at the end of one year from this date, the said Meyer shall desire to sell the said shares at the price paid for the same by him, we will purchase the same, and pay to him the amount paid by him on the same, with interest at the rate of seven per cent per annum.

New York, April 4, 1873.

(Sd.) Thomas S. Blair.
Thomas Struthers.

Note. The foregoing form is taken from the decision in Taylor *vs.* Blair, 36 N. Y. St. Rep. 528. To enforce such a contract, tender of the stock on the day fixed thereby, should be made. Id. For portion of such an option contract given by bankers and Brokers, see Barker *vs.* Weld, 153 Pa. St. 466. See ante, p. 311 et seq.

No. 27.

Pooling agreement (Valid Contract).

Whereas C. C. Higham, of St. Louis, Missouri, Arthur H. Green, of Rochester, N. Y., and Levi W. Green of the same place, are each the possessor of two hundred shares of the capital stock of the Consolidated Brake Adjuster Company, and

Whereas the said parties are desirous of forming a pool of said stock for their mutual advantage and benefit, and

Whereas, said C. C. Higham agrees to divert to said pool, the royalties and proceeds now received, or which may be received by him, from the American Brake Company, of St. Louis, Missouri, until such time as the said Consolidated Brake Adjuster Company shall begin paying regular dividends;

Now, therefore, be it known that we, the undersigned, do hereby form a pool consisting of six hundred shares of said capital stock of said Consolidated Brake Adjuster Company, of which we each shall stand possessed of two hundred shares, the understanding being that all benefits accruing under said pool shall be shared equally, including any sales of said stock, and that said royalties and proceeds also shall be equally shared, until such time as the said Consolidated Brake Adjuster Company shall pay dividends as aforesaid, when the said royalties shall revert to the sole use and benefit of said C. C. Higham.

Witness our hands and seals this twentieth day of February, 1892.

Note. This form is taken from the report of the decision in Green *vs.* Higham, 161 Mo. 336, in which case an accounting was directed as to the royalties.

No. 28.

Pooling agreement (Invalid Contract).

The undersigned, each for himself and not for the others, hereby agree to form a pool or combination for the purpose of buying or selling one hundred and twenty thousand tierces of lard, and to receive and pay for the amounts set opposite their respective names, to wit, Jas. R. Keene, forty thousand tierces; Washington Butcher's Sons, forty thousand tierces; D. & N. G. Miller, twenty thousand tierces; E. A. Kent & Co., twenty thousand tierces; and the said parties each for himself, authorizes and empowers E. A. Kent & Co., in consultation and with the approval of Jas. R. Keene, N. G. Miller, and Henry C. Butcher (parties hereto), to purchase and sell at their discretion, or that of a majority of them, the aforesaid quantity (one hundred and twenty thousand tierces) each agreeing to be responsible for the amount set opposite their respective names and no more; any profit or loss arising from said purchases and sales to be divided *pro rata,* among the subscribers hereto; and the said parties hereby agree to furnish, on demand, to E. A. Kent & Co., a margin of not less than one dollar per tierce for each and every tierce purchased, and further additional margins, if required, by any decline in the market value thereof. And, whereas, James Keene is the present owner of fifty thousand tierces of lard, Washington Butcher's Sons of forty thousand tierces and D. & N. G. Miller of sixteen thousand tierces. Now, for and in consideration of the sum of one dollar to each of the aforesaid parties paid by E. A. Kent & Co., and for other valuable

considerations, receipt of which is hereby acknowledged, the aforesaid James R. Keene, W. Butcher's Sons, and D. & N. G. Miller agree and bind themselves to hold, tie up, and effectually withdraw from market, so that same cannot be sold during the continuance of this agreement without the written consent of all the parties hereto, the afore-mentioned number of tierces of lard, to wit, James R. Keene, 50,000; W. Butcher's Sons, 40,000; D. & N. G. Miller, 16,000; and from time to time when demanded by E. A. Kent & Co., to furnish the said E. A. Kent & Co., with evidence satisfactory to them, that the said number of tierces of lard are withheld from market, and in possession of the aforesaid parties respectively; and it shall be the duty of said E. A. Kent & Co. to obtain such evidence of possession whenever required by either of the parties hereto. It is further understood and agreed that this agreement, in all its provisions and requirements, shall remain in full force and effect until the aforesaid one hundred and twenty thousand tierces of lard have been accumulated and sold, unless sooner dissolved by the consent in writing of all the parties hereto.

New York, August 13th, 1879.

(Sd.) James R. Keene........................40,000 tierces of lard
Washington Butcher's Sons................40,000 tierces of lard
D. & N. G. Miller........................20,000 tierces of lard
E. A. Kent & Co........................20,000 tierces of lard

Note. The foregoing form is copied from the report of the case of Leonard *vs*. Poole, 114 N. Y. 372. The scheme entered into was an indictable misdemeanor, and E. A. Kent & Co. could not be compelled to account, although they had defrauded their principals. Leonard *vs*. Poole, supra.

No. 29.

Special contract with Client—joint adventure in stocks.

New York, January 3d, 1887.

The following agreement is hereby made this 3d day of January, 1887, between William H. Curtiss and Charles E. Orvis, for the purpose of purchasing and carrying of five hundred shares of the stock of the American Cotton Oil Trust, viz:

First. A joint account shall be opened at Orvis Brothers & Co., known as the "account Japan" in which W. H. Curtiss and C. E. Orvis shall be equally interested.

Second. Upon joint order, or the order of W. H. Curtiss, the account may purchase and sell at any time any portion of (500) five hundred shares, but at no time in excess of five hundred (500) shares.

Third. W. H. Curtiss agrees to furnish at once to Orvis Brothers & Co., such sums of money as may be the difference between the said price

paid for the stock and forty-five per cent of the par value of the same.

Fourth. C. E. Orvis guarantees that the account shall be carried for a period of six months from this date, and agrees to furnish forty-five hundred dollars for each one hundred shares.

Fifth. It is hereby mutually agreed that this account shall be closed up and terminated and settled in full on or before July 3, 1887.

Sixth. Such net profits as shall accrue in this account shall be equally divided, and W. H. Curtiss hereby especially guarantees that the share of the profits of C. E. Orvis shall not be less than five thousand dollars, and agrees that when the account is closed, he (W. H. Curtiss) will pay over and make good to C. E. Orvis any deficiency that there may be, so that C. E. Orvis shall, within the period of six months from date, receive either from the account or from W. H. Curtiss, as guarantor, the sum of not less than five thousand dollars.

Seventh. C. E. Orvis has agreed this day with Orvis Brothers & Co., that they will set aside the necessary amount to pay for this stock whenever called upon, therefore, the account shall pay Orvis Brothers & Co., interest at 6 per cent from this date, and they shall receive the brokerage on each transaction made for this account.

Signed, sealed and delivered in the presence of E. W. Orvis, Jan. 3, 1887,

(Signed) W. H. Curtiss (L. S.)
(Signed) C. E. Orvis (L. S.)

Note. This form is taken from the report of the case of Orvis *vs.* Curtiss, 12 Misc. 435, and it was held by the Court of Appeals (157 N. Y. 657), reversing the order of the General Term, that the contract was one of partnership, and the guarantee given by one of the parties, did not convert it into an agreement for the loan of money at an illegal rate of interest, rendering the law against usury applicable thereto.

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