

the defendants by the plaintiff on account of the price of the shares, with interest, and for damages for non-delivery.

G. H. Watson, K.C., for the plaintiff.

R. S. Cassels, K.C., for the defendants.

LENNOX, J.:—There is no ground for the contention that the plaintiff is entitled to recover back the money he paid to the defendants, with interest. That might be his right—if he so elected—if the defendants had failed to execute their contract to purchase Rock Island Railroad stock for him. The default here was failure to deliver to the plaintiff forty shares of this stock upon demand made therefor and upon the offer of the plaintiff to pay the balance owing to the defendants.

On the other hand, there is no ground for the pretence set up in the statement of defence that the defendants submitted to the plaintiff the names of three firms of brokers doing business on the New York Stock Exchange, employed by the defendants as correspondents, and the plaintiff thereupon "selected the said R. B. Lyman & Company as the firm through whom the purchase was to be made for him and by whom the shares were to be carried on his account." Not only would this statement have been grossly misleading as to the commercial status of Lyman & Co., if it were made—for they were not members of the New York Stock Exchange—but, more than this, the attempt to substitute a contract with Lyman & Co. for a contract with the defendants cannot in any way be reconciled with Mr. Lamont's examination for discovery or his examination or cross-examination in Court.

I leave out of account a half-hearted attempt to set up this contention on re-examination. It is inconsistent, too, with the terms upon which Lyman & Co. and the defendants dealt with each other; the bought note in each case notifying the defendants: "We have this day on your order and for *your account* and for your risk bought," etc. The meaning of the phrase "for your account" is put beyond controversy by *Gadd v. Houghton*, 1 Ex. D. 357.

I accept the plaintiff's evidence as furnishing a substantially accurate account of what took place between him and Mr. Lamont, representing the defendants, when this first order was placed; and the two subsequent orders were upon the same terms. It was the ordinary every-day arrangement with a broker to buy stock upon margin.