

the defendant. The defendant admits that he got \$2,000 from the plaintiff at this time but says it was not a loan, it was a dividend on bookmaking transactions.

The decision, to my mind, does not hover so close over the boundary line of uncertainty as to invite a critical tracing out of the shifting positions of the onus of proof. Nor is it necessary for me to weigh carefully who comes nearest the facts as regards the discount of the two promissory notes, save as hereinafter referred to. It is enough for me that, upon the main question, the evidence, the manner in which it was given, and the surrounding circumstances, force a clear conviction upon my mind that the plaintiff is telling the truth when he swears that he loaned the defendant \$2,000 on the 28th day of September, 1908, and that at that time, whether truthfully or merely as a means of obtaining a share of money which he says had been made through timely information given the plaintiff, the defendant obtained this money by representing himself as being hard pressed.

The receipt of the money is admitted, but the defendant says he had loaned the plaintiff \$1,000 in the fall of 1907, and the letter enclosing the cheque speaks of it as a loan, but the defendant admits that this letter was inaccurate and was worded to conceal his partnership with the plaintiff from his office staff and legal partners. He says he was to get a share of profits proportioned to his investment and was guaranteed against loss. The guarantee is denied. The plaintiff swears that this money, and \$1,500 with it, was lost in the fall of 1907 on the Woodbine and at Hamilton, and that the transaction was thus at an end.

The plaintiff swears that the loan was made in the defendant's office and that defendant then insisted upon giving a receipt. The receipt produced is upon a form printed by Grand & Toy, from whom defendant's firm bought some of their forms.

It is the testimony of both sides that the plaintiff made large gains at the Woodbine Autumn Meeting of 1908, and that the defendant, through the plaintiff, individually made some \$3,800 which the plaintiff paid him on the 26th of September, 1908.

The defendant's account of the payment of the \$2,000 and the giving of the receipt is that two days afterwards, that is, on the 28th, he went to plaintiff's bedroom in the