

defendant had paid him \$27.14, leaving a balance of \$336.15, which he claimed.

The defendant pleaded that plaintiff never paid and never intended to pay for the said stock, or take delivery thereof, and no delivery was ever made, but the same was bought merely for speculative purposes on borrowed money, with a view to a re-sale as soon as a small profit could be realized, and the money to carry said stock was borrowed by defendant at his own risk, subject to the payment of interest and to his obligation to furnish and keep good to the lender a sufficient margin, to wit, 10 per cent. and upwards, as security for said loan, and plaintiff was bound to supply additional money to keep good the margin and protect defendant against loss on loans on said stock, which was liable to sudden fluctuations in price; that some time before the sale of said stock, plaintiff left his residence at Napanee and did not leave his address with defendant, or appoint any one to represent him. That, shortly after the departure of plaintiff, the stock began to decline until the margin had almost disappeared, and defendant was threatened with serious loss by continuing to carry the stock, and he sold the stock.

PER CURIAM. Our code, Art. 1927, says there is no right of action for the recovery of money or any other thing claimed under a gaming contract or bet. What was the nature of the transactions between plaintiff and defendant? They appear to have begun about the 8th February, 1881, when plaintiff addressed defendant as follows:—"I have been dealing in stocks for some three years in Montreal, and as I don't like the party who has been doing my business, and desire to make a change, I write you if you would act for me according to my instructions. I will give you my business as long as you do it satisfactorily. I note by the *Star* newspaper you are in the business. I will allow you same as I pay other brokers. I wish to deal in Montreal Telegraph stock only. My idea is to buy after a pretty smart decline in the stock and sell at a fair advance, not hold long. You may buy 20 shares at about 125 or better. Wire me when bought and I will remit you ten or fifteen per cent. margin as you like. If think safe you can buy 30 shares, but sell at a fair advance and send statement. I want you to use your

judgment, as I will place confidence in you." On the 16th March, plaintiff wrote: "Enclosed find \$65 as margin on 25 shares of Telegraph stock which you can purchase tomorrow if an opportunity offers, but don't go over 129 $\frac{3}{4}$; if you can buy less do so. You may buy 25 shares more if you think it advisable, but not over 129 $\frac{3}{4}$. I think it may drop lower. This will make 50 shares yet to buy as per order of to-day. I will remit you all the money you require to hold margins good should a break take place; you can sell it at about two cents advance unless market strong and advancing. If it shows a weakness after the advance takes place, then let them have it, and wire me as before." Some eight months afterwards, plaintiff, by letter of date 12th October, wrote as follows: "If Montreal Telegraph stock reaches 125, buy me fifty shares. You can buy 40 shares at 126, 10 at 127, 20 at 128, 15 at 129. I have lost so much I want to try and win some back if it is my luck. I want you to hold the order good, and act on it when the first opportunity offers. Hope you will be able to do something this time. Look sharp." On the 15th October plaintiff writes: "Gentlemen, enclosed find cheque to cover margin on stock bought, and provision in case of decline; make the interest as low as possible. If the stock goes to 33 sell it out and we'll buy again. Fill the balance of order if can at figures I gave you." On the 17th October defendant writes: "We have your favor of 15th inst., enclosing cheque for \$363. We note your order to sell, and will keep it before us. The rate for carrying is six per cent., and it is not likely to be increased unless the money market changes. We bought ten shares more, all we could get."

Looking at all the facts of the case, the Court has no difficulty in saying that plaintiff did not intend to pay for or take delivery of the stock in question. No delivery was made, and the same was bought for speculative purposes on borrowed money, with a view to a sale as soon as a small profit could be realized. No action lies under the circumstances. It may be added that the plaintiff was away from his residence when the stock fell, and defendant only sold to protect himself, and the remittance made by plaintiff for a margin was lost in consequence. The case of *The Bank of Montreal v.*