

## Province of Manitoba.

### KING'S BENCH.

Dubuc, C.J.] VON DUSEN-HARRINGTON CO. v. MORTON. [Nov. 11, 1903.  
*Principal and agent—Purchase of shares on margin—Sale by broker without notice—Acquiescence.*

Action to recover the amount of the plaintiff's loss on the purchase and sale of a number of shares on the New York stock exchange bought by them for defendant on a margin of three per cent. The contract between plaintiff's agent at Winnipeg and defendant was a verbal one, but the next day defendant received the usual notice in writing of the transaction in which some of its terms and conditions were thus stated. "All transactions for your account contemplate the actual receipt and delivery of the property and the payment therefor. On all marginal business we reserve the right to close transaction when margins are running out without further notice. We also reserve the right of substituting other responsible parties as principals with you in above trades at any time until closed in accordance with the rules of the Board of Trade or the Chamber of Commerce where the trades are made," which notice had at the foot the printed signature of the plaintiff's company. Shortly after the purchase the price of the shares began to fall and the margin became so small that the plaintiff's manager at Winnipeg telegraphed the defendant at Gladstone to send \$500 additional margin, and later on the same day the margin being entirely lost, he telegraphed defendant to put up \$1,000 further margin. Defendant replied to these telegrams, "Will attend message, down to morrow." The manager waited until delivery of the mail from Gladstone the next morning when, not having heard from defendant, he telegraphed to have the shares sold which was done at a loss of \$1,150. The original order for purchase was telegraphed to the plaintiff's head office in Minneapolis. From there it was telegraphed to the plaintiff's agents at Chicago who forwarded it to their agents in New York. These last telephoned the order to a firm of stock brokers who transmitted it to their agent on the floor of the stock exchange when the shares were purchased. The defendant was advised of the purchase and the price within an hour. The sale of the stock was made through the same agencies and defendant was verbally notified of it on the day after it took place.

*Held, 1.* There was an actual purchase of the shares for him, as it was shewn that the plaintiff's agents in New York from the time of the purchase until the sale, always had on hand the number of shares of that particular stock ready to deliver on payment of the full price, and it was not necessary that the shares should have been actually transferred on the books of the company either to the defendant or to the plaintiffs. It could not have