

He claims from Bennett \$655.40 balance due on the purchase price of four thousand shares of the "Union Pacific Cobalt Mines." He alleges that Bennett instructed him to buy these shares at 21 cents payable 20 per cent. cash, and the balance in thirty days. He also claims $\frac{1}{2}$ cent per share as commission. At the time of the purchase Bennett paid 20 per cent., *i.e.*, \$172, and his percentage of commission. Estes offers to deliver the four thousand shares against payment of the balance due. Bennett states that an agent of the broker, one Gourlay, called on him about November 5th and requested him to buy shares in this mine under brilliant representations of a handsome profit; that this agent assured him he would not be obliged to pay the entire amount, but only a margin; that the transaction between them was not a serious one; that it was a gaining contract and therefore illegal; that he paid, it is true, at the time of the alleged sale, \$172 and another amount of \$40 in December, 1909, but that he never intended buying and Gourlay never intended selling these four thousand shares.

"After the hearing of witnesses, Estes obtained permission to amend his declaration. He had alleged a purchase through his agency on the Stock Exchange, but as the proof disclosed a sale pure and simple from Estes to Bennett, the declaration was amended in this sense by the first court

"Bennett complains first of all of this amendment which, according to him, changes the nature of the action. The original declaration alleged a sale made by Estes as broker, whereas the amendment sets him up merely as an ordinary vendor.

"Certain cases may arise where an amendment of this kind should not be allowed without giving the adverse party the opportunity of pleading *de novo* and where