senger almost immediately came in and Gzowski went to Forst's office with the stock. Forst was not there, but he had been there and had left instructions with his stenographer to refuse it. This she did. The stock was again formally tendered to Forst shortly after four o'clock, and was again refused by him. This was followed by the solicitor's letter, exhibit "6," but Forst stood his ground and refused to accept, whereupon the stock was sold upon the market for some $2,000 less than the contract called for.

Forst has really nothing to complain of as he suffered no damage by the delay, even if he is right in his contentions, because the stock could not have been dealt with upon the exchange after three o'clock.

There is much confusion upon the evidence as to what the rights of the parties were under the contract regarding the time that must elapse after a call before the vendor is in default. The conflict upon the evidence of the expert witnesses is extraordinary, although each of them is entirely reliable. I do not think that I am called upon to deal with the case upon the expert evidence, which, I must confess, I find great difficulty in understanding.

The rule produced and relied upon is said by Mr. Ferguson to apply only to dealing between brokers who are members of the exchange, and I think he is right; for it provides for notification in case of default. This refers to the provisions found in the rules at page 29, *et seq,* requiring notice to be given in case of default and providing a remedy to the members.

Both the parties to the litigation agree that the vendor has twenty-four hours from the call before being in default, and I think it not unreasonable to hold them to this at any rate unless there is clear evidence that they were wrong. No such evidence is forthcoming.

If upon the true construction of the contract the real test is found to be the reasonableness of the time, then I think the stock was tendered within a reasonable time.

If the question turned upon what took place between the parties I do not think the precise hour was fixed with such exactness as to place the vendor in default and to justify the purchaser in refusing to accept the stock when it was actually tendered.

Under these circumstances I think there should be judgment for the amount claimed, $2,082, with interest thereon, from the 29th of June, 1909, to this date, and costs.

No costs former trial or appeal to D. Ct.