

"Considering that plaintiff made out on November 5th a confirmation notice of said sale of the following tenor:—

"I have this day sold to you as undernoted.

"4000 shares U. P. Cobalt at  $21\frac{1}{2}$  c. nett \$860.00.

"*Delivery* 30 days.

"Terms 20% deposit due.

"Considering that whereas it appears that said confirmation notice was not delivered to defendant before the middle of December 1909, apparently on the 13th of December on which date he paid a further sum of \$40.00, yet defendant did not, between its receipt and the service of this action on April 22nd, 1910, ever make any objection to the terms thereof, which terms expressly set forth an absolute sale of the stock.

"Considering that monthly statements of the account were sent to defendant; and that the detailed statement sent on April 7th 1910 (copy whereof is P2) again clearly sets forth the absolute sale of said stock;

"Considering that defendant has failed to prove that the transaction was a gaming transaction;

"Considering as to interest previous to action that plaintiff instructed his book-keeper not to charge interest:

"Doth condemn defendant to pay plaintiff the sum of \$648.00; doth grant acte of said tender of certificate of said 4000 shares; doth order that said certificate be delivered up to defendant on his payment of said sum of \$648.00 and of interest therefrom, April 22nd, 1910, date of service and doth further condemn defendant in costs of action."

The Court of Appeal has unanimously confirmed this judgment.

*Carroll, J.*:—"Estes is a broker and is more especially engaged in mining transactions on the Stock Exchange.