

Criminal Code says "Everyone is guilty of an indictable offence who with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company . . . makes any contract oral or written, purporting to be for the sale or purchase of any such shares of stock . . . in respect of which no delivery of the thing sold or purchased is made or received, and without the *bonâ fide* intention to make or receive such delivery." And that is followed by a protecting clause for the broker, that if the broker received the delivery of the thing sold there is no offence, although he retains or pledges the same as security for the advance of the purchase money. This Act is aimed at the exact contract which was made in this case. The law has made gaming and wagering contracts illegal, and the evidence of the plaintiffs discloses that no stock was ever delivered or intended to be delivered, and the intent was to make a profit from the fluctuations of the stock market. The Privy Council in *Forget v. Ostigny* (1895), A.C. 318 at p. 325, point out that the decisions of the English Courts are not authorities upon the construction of the Canadian Code, but throw light on what constitutes a gaming contract, and cite Lord Justice Cotton's view of what a gaming contract is. He says the essence of gaming and wagering is that one party is to gain and the other to lose upon a particular event which at the time of the contract is of an uncertain nature, that is to say, if the event turns out in one way A. will lose, if it turns out the other way he will win.

That is the fact here. As far as the defendant knew he was dealing with these plaintiffs. He put up a margin to cover them from loss if the stock rose. If the stock had fallen they would have paid him the difference. But the plaintiffs say they had no interest in the deal beyond their commission; but they have never asked for commission or charged commission, and no reference is made to it in their sold note. But even if they had I think that the transaction is so tainted with illegality that they cannot recover. This Court is not to be made use of for carrying out unlawful bargains; and as both parties are in the wrong, I give judgment for the defendant without costs.

See *Notes to Forget v. Ostigny*, and *Forget v. Barter*, *supra*.