

were not signed by him in the book, but that is the way they made all their entries.

Delmarle says in his evidence that he prepared the bought and sold notes according to the usual terms in the New York market under such a contract, and forwarded to Aspegren & Co. and Polly & White each for acceptance, merely as a protection to himself and to each of the parties, but they are not the contract, as he considered the contract complete by the correspondence and without the notes; that by these bought and sold notes he was not attempting to incorporate any new condition in the contract, but merely putting in detail what the terms of the contract really were, that had been made according to the custom of the New York market and as customary between brokers and contracting parties. As a fact the plaintiffs accepted the bought notes in writing, the defendants received the sold note with the knowledge of acceptance by the plaintiffs, held the notes, and the only reply made was they supplied a car of apples to the plaintiffs.

It seems very clear to me that both plaintiffs and defendants considered that they had made a contract, because the defendants in their letter of 22nd October, after some differences had arisen between the parties, say: "We sold you two cars of apples; a car capacity is 24,000; we made it 500 cases; we are shipping you another car of the same capacity." Then in the statement of defence I notice that while the defendants deny such a contract as the plaintiffs set up, yet in paragraphs 4, 5, and 6 there seems clearly an admission that there was some agreement between the plaintiffs and defendants, and then I notice also that Mr. Polly, one of the defendants, in his examination for discovery (questions 4, 5, and 6) clearly says that they shipped a car of apples in pursuance of the bought and sold notes. In his examination at the trial, however, he modifies that by saying that they had not anything to do with the bought and sold notes, but there is nowhere a denial on the part of the defendants that they shipped the one car in pursuance of some contract they had with the plaintiffs; in fact, everything points the other way, and in no place, whether in the pleadings or in the evidence, do the defendants deny that they shipped the one car in pursuance of the contract as made by the letters and telegrams, so that I feel quite satisfied that in the minds of both parties at least they had contracted for the purchase and sale of certain apples. Were their minds at one in