

market value of the stock to insure him safety. Gzowski then agreed to sell to Forst a corresponding amount of stock at \$1.09, being the arbitrary price, plus the sum which Gzowski was to receive as profit in the transaction; be it called interest or not. This cross agreement for repurchase or re-sale protected Forst, as it entitled him to receive an equivalent amount of stock at the arbitrary price plus his profit.

I find against the contention made by Forst that the transaction was intended to be a loan. I take it that the intention was to sell, with a contemporaneous agreement for re-sale, not of the stock sold but of an equivalent amount of the same stock. Forst's rights and liabilities are, I think, to be found in the bought note signed by him, and not in the corresponding sold note.

By this bought note, exhibit "3," the stock was purchased upon what is known as a buyer's option 90 days; in the language of the exchange, a "spread." Under it the purchaser is bound to take the stock at the expiry of the 90 days, and is entitled at his option to call for it at any time earlier than that date. This enables him to take advantage of the market and to call for the stock at a time when he thinks it will be possible for him to do so. He is then bound to pay the price stipulated, even though the contract had run but one day. The vendor may "sell short," or at his discretion may at all times hold stock in readiness to answer a call. His obligation is to have the stock ready at any time when a call is made.

Thus far I have no hesitation in accepting the evidence of Gzowski as against that of Forst; and I entirely discredit the evidence of Miss Slough and of the witness Hogg. I do not attach any value to the evidence of the witnesses Crawford and Gamble. I do not think they intended to state anything untruthfully; but their memory is, I think, largely a statement of their recollection of the conversation with Forst. The book, exhibit "13," is, I think, absolutely discredited; and I find as a fact that the words "given for a loan on \$10,000" were not in the book when Gzowski signed or initialled the entry.

I can quite understand that at the time Forst may have regarded the transaction as a loan and may have spoke of it as such; not having present to his mind the real nature of the transaction he had entered into, nor at that time regarding it as in any way material. Like most borrowers, he was ready