

2. *Where, after transactions between a broker and a customer which gave rise to a balance against the customer, were closed, the latter instructed the broker to enter into a further transaction in his behalf and acquiesced in the profit made thereby being placed to the credit of his general account, prescription was interrupted as to such balance.*

This was an appeal from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), rendered on the 27th of September, 1893, affirming (Mr. Justice Hall dissenting) a decision of Mr. Justice Pagnuelo.

LORD HERSCHELL, L. C. :—

The appellant is a member of the Montreal Stock Exchange.

The action which has given rise to this appeal was brought to recover a sum of \$1,926.87, the balance alleged to be due from the respondent in respect of certain contracts entered into by the appellant on his behalf and by his directions for the purchase and sale of the shares in various joint stock companies. The respondent pleaded first :—that the claim was prescribed by lapse of time, and secondly :—that the transactions which gave rise to it were gambling transactions on the rise and fall of shares, and that therefore the action could not be maintained.

In view of this latter defence it is necessary to state the facts with some particularity. The transactions between the parties commenced with the purchase by the appellant in December 1882, of 25 shares of the Montreal Street Railway Company. Additional shares were subsequently purchased in the same undertaking. Purchases were also made of the shares of other companies. The price paid for the shares purchased was debited to the respondent by the appellant with $\frac{1}{4}$ per cent. commission added. The shares so purchased were sold from time to time and the proceeds were credited to the respondent less a commission of $\frac{1}{4}$ per cent.

It is not in dispute that all these transactions were entered into at the instance and on behalf of the respondent. When a purchase of shares was to be made he furnished the appellant with a small portion of the purchase money which would be required : thus in the case of the first transaction to which allusion has been made he paid \$62.50. In every case delivery of the shares was obtained by the appellant from the member of the