N. J. Court of Errors & Appeals

~~In Chancery of N. J.~~

Jennie M. Flagg
~~ABRAM H. BALDWIN~~ Appellant

and

Abram H. Baldwin
~~JENNIE M. FLAGG &c AN~~ Appellee

Defendant's Argument and Points.

1.

The mortgage in this action was executed and delivered by Mrs. Flagg to Baldwin, August 26, 1880, and was intended to be security for past and future credits of margin, which Baldwin had given in a speculative stock account then being run in the name of Mrs. Flagg, with Baldwin as stock broker (pp. 39, 40, 70, 78, 121).

2.

The account for which Mrs. Flagg loaned her name, and in which said mortgage was intended as security for such credits of margin showed in Baldwin's books "difference losses" of $4,370.43, when the mortgage was given, but it was made to cover $3,192.05 more, to wit.: "difference losses" in two joint accounts

Baldwin had opened with Mr. Flagg on his books, which "difference losses" were charged in the account in which Mrs. Flagg gave the security of the mortgage November 4, 1880, nearly three months after the giving of the mortgage. Mrs. Flagg never heard of the existence of such joint accounts (pp. 46, 112, 107, 38).

3.

The mortgage states that $4,000 of the sum it was given to secure is for future advances. It was given and taken with the express object and consideration of enabling Mr. Flagg to speculate further upon the further credit of margin to extent of $4,000, which Baldwin gave thereon.

See Baldwin's Testimony, pp. 39, 40.

Q. "How did it (mortgage) happen to be for $11,563 and some cents?"

A. "Well, Mr. Flagg was very anxious to speculate "further, and so after he could not pay the loss that "he had made for the different accounts, I, at his re- "quest, gave him a credit for $4,000, or I gave Mrs. "Flagg credit for that, which amount appears credited "to her or her account."

"Q. $4,000 was to be advanced by you, was it?

"A. It was for future advances."

At line 29, p. 64:

"Q. What was your idea when you took the mort- "gage from his wife?

"A. My idea was to give him a show to make up "his losses: Mr. Flagg said he was anxious to make "up his losses, and I gave him his last chance."

Mr. Flagg's testimony, p. 121:

"Q. What was the agreement between you and Mr. "Baldwin, at the time he wrote the letter 'Exhibit "D 1,' and this mortgage was given as to future ad- "vances?

"A. Mr. Baldwin stated to me that if I would get

" my wife to make this mortgage for the amount for
" which it is made, that he would go on with the spec-
" ulations upon my order until he had advanced for
" 'difference losses' in the account, the $4,000 pro-
" vided for as future advances in that agreement; that
" was the sole consideration; that is, Mr. Baldwin's
" agreement to do that was the sole consideration for
" changing the security from a note to a mortgage, and
" the only reason why I consented to have Mrs. Flagg
" give the mortgage."

4.

Baldwin agreed, in consideration of getting the security of the mortgage, *to hold the same as security, and not assign or dispose of the same until his advances in the account equalled the* $4,000 *credit additional margin he made therein.*

See Defendant's Exhibit " D 1," p. 333

5.

Before this action was brought, Mrs. Flagg had brought an action in the Court of Common Pleas in the City of New York, against Baldwin, for an accounting, and asking for a return and cancellation of this mortgage, on the ground that such accounting will show that all advances for losses in the account the mortgage was given to secure have been made up in the account.

That action is pending, and defendant's counsel in the trial of this case have not thought it necessary for Mrs. Flagg to go to the great expense of an accounting before a Master in New Jersey, when, by Baldwin's own admissions and his exhibits in evidence, it appears that when this action was brought he had not advanced the $4,000, but only $3,000 upon the additional credit of margin.

6.

On the 17th day of March, 1881, the day this suit was commenced, as shown by Complainant's Exhibit "C 10," p. 307, with interest reckoned up to that time, Baldwin does not claim to have advanced more than $3,346.07 upon his said credit of margin, after receiving the said mortgage; *of that sum* $346.07 *cannot be considered an advance, as it was made subsequent to the service, by Baldwin, of defendants'* "*Exhibit No.* 2" *when he took control of the account away from defendants,* so that by his own exhibits he commenced this foreclosure at a time when his advances were only $3,000 upon his margin credit of $4,000.

7.

There is nowhere in the evidence a scintilla of a reason shown by Baldwin to excuse his attempt to foreclose this mortgage before he had performed the condition precedent to his right to so dispose of it. On the contrary, he tries to make it appear that he *had* performed this condition precedent.

These advances were to be on a margin credit, *i. e.,* a credit to be affected only by "differences" for the avowed purpose of enabling Mr. Flagg to recoup losses, yet Baldwin says to this court that the very first transaction satisfied his agreement to adavnce $4,000. (If that was so, how was the giving of the mortgage to help Mr. Flagg recoup his losses.)

Here follows his testimony:

P. 40.

"Q. Mr. Baldwin, this advance that you spoke of "as $8,000 and odd, was the price of 100 shares of "stock, was it?

"A. Yes, sir; it was $8,400.

"Q. The first transaction after getting the mort-"gage?

"A. Yes, sir.

"Q. Do you mean to say that that advance was any "part of the sum of $4,000 which you agreed to ad- "vance for the purposes of that account, or such an "advance as would satisfy your agreement to advance "the $4,000?

"A. I don't know why it was not (p. 42).

"Q. Do you consider that upon that very first "transaction after taking this mortgage, you had a "right to dispose of the mortgage?

"A. *I do.*

"Q. *Have you always thought so?*

"A. *I have always thought so.*"

That transaction was on *August* 30, 1880; *March* 10, 1881, Baldwin stipulated in the Common Pleas case as follows:

"It is stipulated on the part of the defendant in "this action that he will not assign or dispose of the "bond and mortgage * * * until the sum of four "thousand dollars of future advances referred to in "said bond and mortgage have actually been made.

"ABRAM H. BALDWIN."

See Defendant's Exhibit No. 5, p. 337.

After this we are prepared for almost any kind of statement in Baldwin's testimony. Contrast, for instance, page 95:

"Q. This paper (Defendant's Exhibit No. 2, p. 334) "appears to be dated February 24, 1881; how much "had you advanced on account of the $4,000 in "this mortgage to pay losses in the account on the "day this paper bears date?

"A. *I had advanced it all; more than all.*

With p. 71:

"Q. * * State how much of the $4,000 referred "to in that mortgage is due at the present time, or "was at the time the account was made up; * * "I mean on March 17th?

"A. $3,346.07.

"Q. That amount had been paid out by you?
"A. Yes, sir."

Counsel respectfully call attention of the court to the many other contradictions of the witness by himself in the testimony, and to his record in this court in the suits, "McCoon v. Flagg" and "Davis v. Flagg;" in both these case *he swore he had nothing to do with, and virtually knew nothing about*, the assignment of the first mortgage he had bought and put in the names, respectively, of "McCoon" and "Davis," but after evidence taken, the Chancellor restrained foreclosure upon that mortgage as being an improper use of the process of the court to carry out *the designs of Baldwin.*

8.

By Baldwin's books the account had $1,000 of margin credit; that *owing to the very nature of the transactions was of vital importance to the defendant.*

The mortgage had been made on demand as it was impossible to tell when the fluctuations of the market might make it due, the game might oscillate in twenty-four hours either to the accomplishment of the object for which the mortgage was given, *the recoupment of the losses*, or to the *exhaustion of the margin credit.* Even if there were no writing to express the understanding between the parties it would be absurd to hold that Mrs. Flagg's mortgage, put up to secure the stakes, was to be foreclosed *before the game was through.*

Points of Law

The mortgage debt was not due when the bill was filed, hence this foreclosure is premature and must be dismissed.

"Where condition precedent to maturity of debt is not performed no foreclosure can be had."

Weaver v. *Wilson*, 48 Ill., p. 125.

In *Maryott* v. *Renton*, 6 C. E. Green, p. 381.

Bill was dismissed because debt secured by mortgage sought to be foreclosed was not due.

There was a $6,000 mortgage payable on demand, and the note it was given to secure was past due.

Parties met and it was agreed in writing that a new mortgage to run a year was to be given to take up the old mortgage and to cover $9,000 more which M. agreed to advance. In order to save revenue stamp the old mortgage was left to stand as it was, and a new mortgage for $9,000 made. M. then refused to advance more than three thousand of the nine, and before end of year began foreclosure of the $6,000 mortgage.

The Chief Justice said:

"The fact is, at the time the bill of complaint was "filed, the money secured by the mortgage was not "payable."

"A mortgagee will be estopped from foreclosing his mortgage by a parol agreement with the mortgagor upon which the latter has acted."

Faxton v. *Faxton*, 28 Mich., 109.

[The speculations went on in this case after the mortgage was given for months, and a computation from the complainant's exhibits will show that previous fluctuations had by his books brought the account nearer the limit of margin credit than it was February 24, 1880.]

"If time for payment of a mortgage is extended, right of foreclosure is suspended; this has effect of modifying original mortgage to same extent as though the agreement were incorporated in the condition."

Jones on Mortgages, vol. 2, p. 223.

Union Cent. Life Ins. Co. v. *Rumrill*, 35 Ohio State, 365.

"The time specified for the payment of a mortgage may be extended by parol."

Tompkins v. *Tompkins*, 21 N. J. Eq., p. 338.

Loomis v. *Donovan*, 17 Ind., p. 198.

"In case of parol agreement to extend time of payment of mortgage foreclosure suit brought before expiration of such time is premature."

53 *Vt.*, 92.

"Mortgagee is not entitled to have sale before debt is due or debtor in default."

Campbell v. *McComb*, 4 Johns. Ch., 534.

"It may be shown by agreement of parties at time of execution that bond payable on demand was not to be paid till a future specified time."

Jones on Mortgages, Vol. 2, *p.* 207.

Hall v. *Pach*, 10 W. Va., 145.

The stipulation contained in Baldwin's agreement, "Defendant's Exhibit No. 1" p. 333 :

> "*I agree not to assign or dispose of said bond and*
> "*mortgage before said* $4,000 *of future advances*
> "*have been made,*"

does not include the word "foreclose," but it is just as strong as though it did. Surely *foreclosing* a mortgage is *disposing* of it to all intents and purposes ; but if construed to mean "sell" the only object of his not selling is to prevent the mortgage coming into hands which might foreclose. Again, stipulating not to dispose of, "before said $4,000 of future advances have been made" IMPLIES THAT HE UNDERSTANDS THAT IT IS TO REMAIN A THING CAPABLE OF BEING ASSIGNED, &C., UNTIL $4,000 HAS BEEN ADVANCED, WHICH IT WOULD NOT BE IF IT WAS FORECLOSED.

"Court of Equity will never decree foreclosure of a mortgage until period limited for payment has expired."

Henshaw v. *McKesson*, 4 N. Carolina, p. 266; 4 Johns. Ch., 534.

"An agreement forbidding a mortgagee to maintain an action may arise by implication from writings executed with it and showing intention of the parties."

Clay v. *Wren*, Maine Reports, Vol. 34, p. 187.

In this case hay of average quality, with that grown on the farm covered by the mortgage, was to be delivered yearly for 10 years.

Court held implication was that mortgagor was to retain possession.

SECOND DIVISION OF DEFENCE.

As against this complainant, who has received the security of a mortgage upon her home to provide margin credits to her husband, and then violates the agreement upon which he received it, Mrs. Flagg invokes *the statute of the State of New Jersey, which stamps the transactions in the said accounts as gaming transactions, and declares that this mortgage, which was given to secure advances made upon such gaming transactions, absolutely void.*

Statutes of N. J. Revision, p. 456 :

Section 1. "All wagers, bets, or stakes made to "depend upon any race or game, or upon any gaming "by lot or chance, or upon any lot, chance, casualty, or "unknown or contingent event, shall be unlawful.

Section 3. "All promises agreements, notes, bills, "bonds, contracts, judgments, *mortgages*, leases, "or other securities or conveyances which shall "be made, given, entered into or executed by any "person where the whole or any part of the considera- "tion thereof shall be for money, property, or thing in "action whatsoever laid, won, or betted, in violation of "the first section of this act. or for reimbursing or re- "paying money knowingly lent or advanced to help "or facilitate such violation, shall be utterly void and "of no effect."

FACTS.

The CONCEDED facts in this case are identical with the material facts upon which the decision stands in

Ruchizky v. *DeHaven*, 97 Pa., p. 202,

decided in 1881. Please compare.

1. Customer dealt with broker on margins.

2. Value of stocks dealt in, p. 60, $450,000; p. 69, $700,000, total; $1,150,000; cash margin deposited p. 60, $1,300 (in Ruchizky *v.* DeHaven, the proportion was—value of stocks $472,419.55 margin, $7,024.46).

3. No stocks (in Ruchizky *v.* De Haven there were a few) were ever delivered to the customer (pp. 60, 61).

4. All of the stocks were held by the broker as security for purchase money, and sold on customers' orders.

5. Customer had no property except what was deposited with broker, page 46, testimony, Baldwin.

Q. "It was a special account with you?

A. "It was special with me for this reason, *that* "*Mr. Flagg said he was speculating for all Mrs.* "*Flagg and he had in the world.* * * * *

Q. "You knew then, or say now, that Mr. Flagg "told you that you had as security for the loss "on this account all the property which he and "his wife had?

A. "He told me about the substance of that."

6. The deposits made with the broker were "held and used as collateral security against loss made by or on account of the purchases or sales made."

Baldwin's testimony, pp. 34–5 :

Q. "Did you expect the note?
A. "Yes, sir.
Q. "What did you take it as?
A. "*I took it as collateral.*"

Then on pages 46–7 :

Q. "Was the indebtedness in Mrs. Flagg's name
" secured by the note?
A. "*The mortgage took the place of the note.*"

Then on page 57 :

Q. "What was the object of the placing with
" you of that margin (original $1,000)?
A. "To secure me against loss.
Q. "How would that occur?
A. "If the prices went down," etc.

Opinion of Court in Ruchizky v. De Haven.

" When, under the case stated, the court below as-
" sumes the defendants (brokers) must be considered
" the agents of Ruchizky in buying and selling of
" stocks—in other words, as the mere hand or medium
" through which he acted in the transactions with
" other parties—*it committed an error.* An assumption
" of this kind is in the very face of the statement be-
" fore us. The parties were dealing *not in stocks, but*
" *in margins,* and Ruchizky knew no principals but
" De Haven and Townsend. It was with them and no
" one else he was dealing, and with them alone he had
" to account. If any shares were bought, they were
" bought *without the remotest intention of passing them to*
" *Ruchizky.* The idleness of such a supposition as
" this is made manifest by *the fact that the pretended*
" *stock purchases amounted to* $472,419.55, *on an advance-*
" *ment of* $7,024.96, *nor could the credit of Ruchizky have*
" *amounted to anything.* * * * * But the case

" stated itself settles the matter, for by it we are in-
" formed that the several advancements made by Ru-
" chizky *were to be held and used by the brokers as* COL-
" LATERAL SECURITY *to them against loss by or on account*
" *of purchases or sales made by them for him.* It is
" therefore certain that the money paid by Ruchizky
" was not merely passed by them for him to some
" third person for whom he was dealing, but was re-
" tained by them from first to last, first as collateral
" security and last as margins, percentages, &c., which
" fell to them. *Admittedly, then, this was a gambling con-*
" *tract, as has been ruled twice, so late as* ' FARIERA *v.*
" GABELL,' *and* ' NORTH *v.* PHILLIPS.' Transactions in
" stocks by way of margins, settlement of differences
" and payment of gain and loss without intention to
" deliver the stocks, are mere wagers, and cannot and
" will not be sustained."

In " *North* v. *Phillips*," 89 Pa., 250 :

Court held, *in spite of the customer's testimony that he intended his margin to be for purchase money, and expected to pay for the stocks,* " That, in reality, the stock was *not his.* The stock was of the value of $52,000, and the customer was not worth half that sum. That brokers were carrying the stocks that customers *might have advantage of rise in the price,* or to make good any fall. And that this dealing was in ' differences ' and ' margins,' and the purchase a mere pretense."

" *Fareira* v. *Gabell,* 89 Pa., p. 89 :

This was a case where Fareira, a stockbroker, sued to recover upon $12,000 notes, one of which was given to settle a past account and another for margins.

Language of HARE, *P. J.*, in charging jury :

" Was this a gambling or wagering operation which
" the law does not sanction, or will not carry into
" effect. * * * & * *
" A question arises in this case for consideration of
" the jury, to wit, whether the *intention was that the de-*

"*fendant should become an actual buyer and vendor of* "*stocks* through the agency of plaintiff, or whether the "plaintiff expressly or *impliedly* agreed to act as de- "fendant's agent in gambling sales and purchases of "stocks, which the defendant *had not the means to de-* "*liver, and which it was no part of his intention to re-* "*ceive.* If the jury find that the transaction was a "gambling one on Gabell's part, and that the services "and advances which constituted the cause of action "were made or rendered in carrying it into effect, their "verdict should be for the defendant."

"*And it does not necessarily vary the legal aspect of the* "*case that some or a greater part of the persons with* "*whom Fareira dealt on Gabell's account, were actual* "*buyers and sellers of stocks, and did not intend to* "*gamble.*

"I am clearly of opinion that one who should "undertake to make a bet or wager for another, and "advance the money staked, would have no right of "action against his principal in event of loss."

Judgment rendered for defendant.

On appeal judgment was affirmed, and court said above charge *was full and accurate.*

JJ. Sharswood, Mercur, Gordon, Paxson, Woodward, Trunkey, Sterrett.

In "*Gheen* v. *Morgan*, 90 Pa., p. 38:

The same doctrines are expressly stated in a case very strongly put by Justice Gordon.

"*Dickson's Exor.* v. *Thomas*," reported in 97 Pa., p. 278, is even later than "*Ruchizky* v. *De Haven*," and again affirms these principles.

Facts in the case disclose the case of a "short" sale of stocks exactly like those disclosed by the *conceded* facts of this case.

Broker brought suit to recover amount expended in

the transaction—held, a mere gambling contract, and broker not entitled to recover.

Opinion of the court refers to cases: "*Smith* v. *Bouvier*," 20 P. F. Smith, 325; "*Brua's Appeal*," 5 P. F. Smith, 294; "*Fareira* v. *Gabell*," 8 Norris, 89; "*North* v. *Phillips*," 8 Norris, 250; "*Gheen* v. *Morgan*," 9 Norris, 38; *Ruchizky* v. *De Haven*," 97 Pa., 202, and further referring to the British cases, says that *the English decisions are in entire harmony with their own*, adding quotation from Mr. Justice Sargeant:

"*It is fortunate for Pennsylvania that there is no de-*
"*cision in its highest tribunal favorable to the recovery of*
"*a wager.*"

The New York cases all adhere to the doctrine laid down in "Bigelow *v.* Benedict," which says:

> "Form of contract of sale may be resorted to as mere cover for betting on future price. If this is the real meaning of the transaction the contract is illegal and will not be enforced."
>
> Collard *v.* Hinman, 1 Bosw., 207.

"Transaction to settle in differences only utterly void."

Rev. Stat. N. Y., p. 662.

"*Storey* v. *Salomon*," 71 N. Y., p. 420.

Yerkes v. *Salomon.*

Plaintiff was asked in stock transaction if he intended at time of making contract to deliver stock; held proper question as showing whether transaction was real or one of "differences."

11 Hun, p. 471.

Statute of Massachusetts, chap. 105, par. 6:

Forbids the sale of stocks by persons who are not owners thereof.

In the case of *Thacker* v. *Hardy*, Eng. Law. Rep., Q. B. Div., vol 4, p. 685, the broker was allowed to re-

cover indemnity for liability he incurred to "Jobber" on customer's orders.

But there is no intervention of a "Jobber" in stock transactions in this country, and besides the court expressly found in that case that

> "The agreement between the customer and "broker is such that the *customer knew* that he "incurred the risk of having to accept or deliver, "as the case might be, and was content to run "that risk."

A very different case from this.

Lindley, *J.*, said on the trial of that case as follows:

> "If gaming and wagering were illegal, I should "be of opinion that the illegality of the transac- "tions in which plaintiff and defendant were en- "gaged would have tainted, as between them- "selves, whatever plaintiff had done in furtherance "of their illegal designs, *and would have precluded "him from claiming in a court of law indemnity in "respect of liabilities he had incurred.*"

But gaming and wagering *are illegal in New Jersey.*

On appeal, Brett, *J.*, said:

"It was suggested in 'Cooper *v.* Neil,' that the "agreement was, that although the plaintiff being "broker to the defendant, but contracting in his own "person as principal, should enter into real bargains, "yet the defendant should be called upon only to pay "the loss if the market should be unfavorable, and "should receive only the profit if it should be "favorable, and no further liability should accrue to "the principal, whatever might become of the broker "upon the Stock Exchange, so that as regarded the "real principal, it should be a mere gambling opera- "tion."

"I then considered that a transaction of that kind "might fall within the provisions of 8 and 9 Vic., c.

" 109, sec. 18. I retract nothing of what I said " in that case."

Though the finding in "Thacker *v.* Hardy," that the customer agreed to run the risk of having to receive or deliver stocks, was held to take that case out of operation of gambling act, that decision, since the coming in of the report of the Royal Commission appointed to investigate the London Stock Exchange, has been rigorously questioned.

See Law Magazine and Review, Vol. 5, 4th Series, p. 401.

Other English cases:

Cooper v. *Neil*, W. N. 1, June 1878.
Steers v. *Lashley*, 6 Durn. and East.
Grizewood v. *Blaine*, 11 Com. P. 2, J. Scott, 526.

But the evidence in this cause presents a stronger case under the statute than any reported, and discloses transactions stripped to the bone of any pretension of reality as between the parties involved.

Beside the *conceded* facts, which tally fully with those in the cases cited, Mr. Flagg testified to a *positive agreement* with Baldwin, that there should be no question of the receipt or the delivery of stocks by him (Test., pp. 104 and 105).

Baldwin denies this in a general way (p. 182), but his *acts*, as shown by the Exhibits, prove that such was the agreement.

1. The paper the complainant required Mr. Flagg to sign, near the opening of the transactions (see testimony, p. 103), shows that the *understanding* was, that he was not to take stocks, but to protect a marginal account.

2. The testimony and exhibits show that Baldwin knew that where he held stocks understood to

belong to a customer, he must give him notice to pay his debit balance before he could dispose of them ; but defendant's Exhibit No. 3, p. 335, shows that he does not hold the stocks in defendant's account in that way, *but that any stocks he holds therein are held with reference only to a margin, and disposable of by him accordingly.*

3. He was in consultation with his lawyer (Root) when he served Defendants' *Exhibit No.* 4, *p.* 36, see test., p. 260 (now called a mistake) ; by that notice he *does not claim a debit balance* as condition of selling stocks, but he does claim THE PRICE WITH INTEREST AT WHICH THE STOCKS ARE CHARGED IN THE ACCOUNT (a sum much larger than the debit balance) on pain of the stocks being taken out of the account ; *could there be a plainer proof that Baldwin understood (and his lawyer understood) that the defendant had nothing to do with stocks*, and that, in view of litigation, they were endeavoring to get SOME ACKNOWLEDGMENT (*by admitting responsibility for price*) to take the case out of the gambling statute.

Mr. White, one of the complainant's witnesses, testifies as follows (p. 238) :

" Q. If a broker served a notice purporting to
" require the closing of an account on a cus-
" tomer, and instead of asking him to pay the
" debit balance—asking him to pay a much larger
" sum—a sum representing the price at which the
" account had been charged with the stocks he
" proposed to sell, what would you then con-
" clude?

" A. *I should conclude he had kept a false account,*
" *and was not to be trusted.*"

After such proofs the court will hardly be influenced by cross-examinations upon inconsequential points, and matter not pertinent to the real question.

For instance, Mr. Flagg describes the way these gambling accounts are conducted between customer and broker, on pp. 126 and 127; the matter involves nothing outside of the relations between a broker and customer. Mr. Root put Mr. White—a broker—on the stand, who, though he was not prepared to swear there were no such accounts in "Wall street" (p. 231), says that he never knew of a member of the Stock Exchange having such an account, and that such transactions are not allowed by the rules of the Stock Exchange (pp. 232–233).. (How the Stock Exchange could make brokers amenable to it for their private arrangements with customers, does not appear.) But if it was intended to prove anything by this witness, it was that gambling accounts could not exist in Wall street, a rather hopeless attempt, as the courts *find almost daily that they do exist*, and Mr. White himself testifies as follows, p. 234:

"Q. You do not mean to say that such trans-
"actions would be impossible?
"A. No, sir; I do not mean to say that.
"Q. They would be possible as between a broker
"and a customer?
"A. Yes, sir."

Mr. Flagg having testified that he had had an account with John H. Davis & Co., Wall street brokers, of the same kind; Davis, who came without his books, and showed that he was absent in Europe, with his business in charge of a deceased partner, testifies after Mr. Flagg's testimony, pp. 126, 127, was read to him, and he was asked if he had had transactions with him such as he defines as transactions on margins:

"A. He has not defined it quite" (p. 252).

Further on he testifies as follows (pp. 257–258):

"Q. If you had an account with a customer
"and his financial condition was such that, to

"secure you for advances to pay losses, his wife "had given a mortgage on her home; would you "consider that that customer intended to take "up and pay for hundreds of thousands of dollars "worth of stock?

"A. *I would not, because, from the character of "the account, it would not be intended by the customer "to do so.*"

Baldwin puts his bookkeeper on the stand to show that he made purchases and sales on the Stock Exchange—an utterly impertinent fact—as Mr. Flagg testified that the broker on such an account "could buy or not as he chooses," and as distinctly stated in "Fareira *v.* Gabell," 89 Pa., 89, before quoted as follows:

"*And it does not necessarily vary the legal aspect "of the case that some or a greater part of the per- "sons with whom Fariera dealt on Gabell's account "were actual buyers and sellers of stock.*"

In none of the cases where brokers have been refused advances for "differences" by the courts has it ever appeared that the broker did not actually buy the stocks, *the point is, such purchases are not by the broker as the agent* of the customer (see Ruchizky *v.* De Haven), *but as an incident to the carrying out of a gambling operation.*

The defendant produced the testimony of Mr. Howell, *a customer* of brokers on the New York Exchange for *twelve years*, and Mr. Julian, who has been a member of said Exchange for *ten years*, both testify unqualifiedly to the existence of these gambling accounts in broker's offices in Wall street, and each that they have been engaged in them. See their direct testimony, Howell's on pages 264 and 265, Julian's on pages 282 and 283.

Mr. Howell testifies to two cases where it came to

his knowledge that the brokers did not buy the stocks.

He objected to the accounts being charged as they were, and on investigotion ascertained from the official report of transactions on the board that no such prices were reached, thus proving the incorrect charge and incidently the fact that the brokers had not bought (pp. 274, 275, 276, 277).

Conclusion.

This mortgage was given and taken to secure money knowingly advanced to facilitate a gaming contract in violation of the statute of the State of New Jersey, and is utterly void and of no effect.

A. Q. Keasbey,
Solicitor and of Counsel for Defendant
Jennie M. Flagg.

BURGOYNE (Law Tel. 587), 57, 59 & 61 Park St.

COURT OF ERRORS AND APPEALS

OF THE STATE OF NEW JERSEY,

On Appeal from the Court of Chancery.

Jennie M. Flagg et al.,
Appellants,

vs.

Abram H. Baldwin,
Respondent.

Respondent's Argument and Points.

1.

Facts.

The appeal is taken from a decree of the Chancellor on a bill filed for the foreclosure of a second mortgage. No statement of facts could be more fair, clear and concise than that given by the Chancellor:

"The bill is filed to foreclose a mortgage dated August 26th, 1880, given by the defendants to the complainant on land in Summit Township, Union County, and made to secure the payment of a bond of the same date given by the defendants to the complainant in the penalty of $23,126.88, and conditioned for the payment of $11,563.44 and interest on demand. The mortgage recites that the defendants were at the date thereof justly indebted to the complainant in the sum of $11,563.44 mentioned in the condition of the bond; that its payment was secured by the bond, and that of that sum $7,563.44 were due from the defendant to the complainant and the balance $4,000 was security for future advances. The title to the

mortgaged premises was, when the mortgage was given and still is, in Mrs. Flagg, and she alone has answered.

By the answer she admits the giving of the bond and mortgage, and sets up several defenses. One is that the bond and mortgage were in fact executed by her at the solicitation of her husband for his accommodation and as surety for him, and that all the promises and covenants contained in them were promises to pay his debts and to answer for his defaults and liabilities, and were, as she insists, consequently invalid and created no lawful obligation against her under the laws of this State, where she resided when these instruments were made and where the mortgaged premises are.

Another defense is that as to $3,193.01 of the $7,563.44 mentioned in the mortgage, they were for the amount of alleged losses incurred by her husband in two partnership stock speculations, in one of which he and the complainant (the latter acting as broker as well as being partner in both) were jointly interested, and in the other he and one D. M. Ripley, the complainant's confidential agent, and the complainant were the parties in interest, and that she never intended, as the complainant well knew, that the mortgage should cover those losses which accrued in transactions in which she had no interest, and of which, as she alleges, she had no information. A third defense is that the bond and mortgage were obtained from her husband, on a special understanding to the effect that the complainant, who is and was a resident of the City of New York and a stockbroker, carrying on the business of buying and selling stocks and other securities on commission at the New York Stock Exchange, should, on the order of her husband, buy and sell stocks and other securities in a speculative stock account which the complainant had, previously to the giving of the bond and mortgage, been carrying on as a stockbroker for him; and that the complainant should in no case claim more than the difference arising out of such purchases and sales; that is to say, that the complainant, in consideration of brokerage, commissions on purchases and sales and interest on money furnished by him to carry the stock and securities bought, should buy and sell stocks and other securities for the speculative account on the orders of Mr. Flagg upon the condition and with the special provision and agreement that in no case was Mrs. Flagg as nominal principal or her husband as the real principal, to be under any obligation to take delivery or transfer of any of the stock or securities, and when the differences between the purchases and sales were favorable to the account it should be credited therewith, and whenever the complainant advanced money to pay differences on purchases and sales which showed a loss the amount of the differences should be charged against the account, the complainant agreeing, in consideration of receiving the security of the bond and mortgage and the commissions and interest, to make purchases and sales on speculation on the account in accordance with Mr. Flagg's orders until he should have advanced over and above the profit differences to be credited to the account for differences, losses, cash, drafts, commissions and interest, the whole amount of the bond

and mortgage; and no part of the amount of the bond and mortgage was to be due or payable at any time during the progress of the speculations, unless the amount of the complainant's advances to cover differences, losses, drafts, commissions, and interest should equal the amount of the bond and mortgage over and above all profit differences. Mrs. Flagg insists that this was a wagering contract, and, therefore, illegal and void, and that hence the payment of the bond and mortgage cannot be enforced.

Still, another defense is, that this suit was prematurely brought, inasmuch as she insists the complainant, having agreed to make advances to the amount of $4,000, did not perform his agreement, but refused to make advances, and buy and sell stocks or other securities for her husband, while as yet the difference in the account in the complainant's favor did not amount to the $4,000; and she insists that the mortgage is not due or payable until advances to that amount shall have been made. Another defense is that the complainant has made illegal charges for interest and commissions.

The history of the transactions involved is as follows: Flagg opened an account with the complainant, January 28th, 1880, and bought and sold stocks on it on his own account, up to the time when he began to make such sales and purchases in the name and for the account of his wife, which was June 15th, 1880. He was interested also as partner in the two accounts before mentioned. One (called the Flagg & Baldwin account) of himself and the complainant began May 6th, 1880, and closed on the 13th day of July following. The other (called the Flagg & Ripley account) of himself and Ripley and the complainant, began May 21st, 1880, and was closed on the 7th of June following. On the 15th of June, 1880, Mrs. Flagg wrote the complainant a letter, inclosing therein her note for $4,500, in which she said she sent the note as margin in a speculation stock account, which she wished to open with him, and requested him to transfer to her name the personal account of her husband on his books, and to follow the latter's directions in all matters connected with her account. The account was continued, and the transactions conducted accordingly, in her name and for her account, under the control and direction of her husband, until August following, when the complainant, in view of the losses which had been incurred, was unwilling to go further without further security than was afforded by the note. The bond and mortgage were then given.

As before stated, they are dated August 26th, 1880. By her letter of that date to the complainant Mrs. Flagg acknowledges the receipt from him of a statement showing the condition of her account, from which it appeared that at that day's prices she was indebted to him in the sum of $4,370.43, and she acknowledged the correctness of the statement and agreed that it should be an account stated. She also thereby ratified and confirmed everything her husband had done with or through the complainant for her. She also, by that letter, authorized and empowered her husband to act for her in the future as her agent and attorney in the control and management of her account with the complainant, and in the purchase and sale by

and through him of any and all stocks, bonds and other securities, and agreed to ratify and confirm and adopt as her own every such transaction.

Her husband, by another letter of the same date to the complainant, acknowledged that he had received a statement of the joint accounts before mentioned, that it was correct, and that there was due to the complainant from him on the one (Flagg & Baldwin's) $2.863.05, and on the other (Flagg & Ripley's) $329.96 (altogether $3,193.01), and agreed that the statement should be an account stated. By letter of the same date to Mr. and Mrs. Flagg the complainant acknowledged the receipt of the bond and mortgage and stated that of the $11,563.44 which it was made to secure, $7,563.44 were for the amount of their indebtedness to him, and that the rest, $4,000, was to cover future advances. And he thereby agreed that he would not assign or dispose of the bond and mortgage, before the $4,000 of future advances had been made, and added that those advances were to be charged to the personal account of Mrs. Flagg only, and that no future losses in the joint accounts before mentioned were to be considered as part of the $4,000 of advances, and that it was understood and agreed that he should have the sole and absolute control of those joint accounts, and that all orders given by Mrs. Flagg or by Mr. Flagg for her after that date were to be charged to her personal account. The whole sum mentioned in the mortgage, $11,563.44, was credited to Mrs. Flagg in her account under date of November 4th, 1880. The account continued until March, 1881. On the fourteenth of that month the complainant demanded of Mrs. Flagg the payment of $2,975.07, as the amount due him on her account (the amount of the mortgage had as before stated been credited), and notified her that on payment of that sum he would deliver to her order one hundred shares of the first preferred stock of the Chesapeake and Ohio Railroad Company, then in his office and standing to the credit of her account, and that on failure to pay the money demanded he would sell the stock at auction on the 16th of March.

The money not being paid the stock was sold accordingly, and the sale produced such a sum of money as that, when it was credited to Mrs. Flagg, there was a balance of account in her favor (crediting the mortgage) of $653.93. The difference, $10,909.51, between the amount of the mortgage and that sum is the amount which, with interest thereon from March 17th, 1881, is claimed to be due on the mortgage. The note for $4,500 has been given up to Mrs. Flagg."

2.

(*a*) Defense that the bond and mortgage are promises to pay the husband's debt.

Opinion, page 343, fol. 30:

"This defense must have reference to his (Flagg's) share of the losses on the joint accounts, for the other indebtedness was her own, and the advances were to be made not for him but for her. It is enough to say on this head that it is established in this State that a mortgage made by a married woman on her own property to secure the debt of her husband is valid. (Campbell vs. Tompkins, 5 Stew., 170, affirmed on appeal, 6 Stew., 362)."

(*b*) Defense based on the assertion that part of the losses were made in the partnership accounts.

The defendaut contended that $3,193.01 of the original principal of the mortgage were moneys lost in the partnership accounts, and that she never intended, "as the complainant well knew," that the mortgage should cover those losses, and that she had no information of those losses. The Chancellor did not find this to be the fact. He says (Opinion, page 344, line 5):

"That Mr. and Mrs. Flagg were, when the mortgage was given, indebted to the complainant in the sum mentioned in the mortgage in that behalf, $7,563.44, is proved clearly. By his letter of the same date as the mortgage, Flagg acknowledged that he owed the complainant $3,193.01, and Mrs. Flagg, by her letter of that date, acknowledged that she herself owed him on her own account $4,370.43, which two sums together make the amount, $7,563.44, mentioned in the mortgage as being then due from both of them. It appears by the complainants's letter to them of the same date that it was understood that no future losses in the joint accounts, called the Flagg and Baldwin and Flagg and Ripley accounts, should be considered any part of the $4,000 advances to be made. The three letters just referred to were all part of the same transaction, and were written and signed to witness the matters stated in them. It appears from them that Flagg's share of the losses on the joint accounts was understood to be secured by the bond, but that future losses by him on those accounts or either of them were not to be.

Mrs. Flagg is bound by the statements of those instruments; moreover, Flagg testifies that he told her that the mortgage was given to secure losses incurred in the joint accounts. It may be observed that she was not defrauded by the complainant in the matter in any way, and her husband, who acted for her, is a lawyer and had then been practicing in New York as such for many years.

He testifies also that he is an expert (and he has given his evidence in this suit as such in her behalf) in the matter of stock transactions in Wall street as conducted at the present day, having made them, as

he says, a study as a lawyer, and having, when the mortgage was given, been conversant with them practically for four or five years."

(*c*) At page 117 is found this testimony:

"Q. By Mr. Parker: In all these matters you had entire confidence in Mr. Flagg and trusted to his management, and were willing that your property should be bound for whate ver might befall, was it not so?

"A. I did what Mr. Flagg asked me to.

"Q. From confidence in him?

"A. Yes, sir.

"Q. Not from any other reason?

"A. No, sir.

"Q. And you were willing to let this property, so far as you were interested in it, be security for it, were you not?

"A. Yes, sir.

"Further Re-direct:"

(A question asked by Mr. Keasby to Mrs. Flagg was as follows):

"Then you intended that this property should be security for your husband's stock speculations with Mr. Baldwin?

"A. Yes, sir."

3.

"Illegal" charges for interest and commissions.

(*a*) No attempt was made on the trial to support this defense by proof.

(*b*) Any attempt to maintain this defense in argument will be met by conclusive proof that there was a full understanding between Baldwin and Mrs. Flagg on the subject of the charges to be made for interest.

The letter of January 20, 1881, to Baldwin, (Exhibit C, 17, page 321), is as follows:

"I authorize you to charge to my account interest and commissions you pay for money used to carry whatever stock you have or shall hereafter have for me at such rates as you pay for the same. I agree to pay you this interest, this authority to inctude the premium you pay for the money above legal interest."

See authority given Flagg, Complainant's Exhibit C, 15, page 320.

(c) "Baldwin swears that he charged only what he paid and that he finds but two charges for extra interest in the accounts: one of $23.75 in Mr. Flagg's account, under date of April 9, 1880, and the other of $111.42 in Mrs. Flagg's account, under date of February 28, 1881" (Opinion, page 345).

(d) In the face of so much proof it is hardly worth while to cite authorities.

But it is well-settled law in New York and law which has never been questioned elsewhere, that a broker pays money as extra interest as a mere agent of the customer; that his general employment is sufficient to authorize these payments; that the customer must repay the interest, although above the legal rate, which the broker has been compelled to pay to borrow money in order to carry stocks for him; and that such moneys are not lent to the customer, but paid out for him, and that as to them no question of usury arises between the broker and the client.

Robinson vs. Norris, 51 How. Prac. (N. Y.), 442; affirmed, 6 Hun (N. Y. Supreme), 233.
Smith vs. Heath, 4 Daly (N. Y.), 123.

4.

Legality of the Stock Transactions.

(a) The main defense, the only one that has the appearance of being made seriously, begins at the foot of page 11 and occupies all of page 12 and page 13 to fol. 20. It is set up that Baldwin acted as the broker for Mrs. Flagg under her special agreement that she was to be under no obligation to take delivery or transfer of any of the stock, and that when differences were favorable to her she should be

credited with them, and when money was advanced to pay losses she should be charged, and that the contract was a wagering contract, and was illegal and void.

(*b*) The Chancellor disposes of this defense as follows (Opin., page 345, fol. 10):

"To consider the defense made on the ground that the transactions as indemnity in which the mortgage was given, were illegal. Part of the money secured was, as already stated, the amount of Flagg's share of the losses in the joint account. The transactions in which those losses were incurred, as well as those on individual account, were legal. The complainant swears that every transaction in which Mr. and Mrs. Flagg were concerned, and every one in the joint accounts, was an actual *bona fide* transaction, that the stocks bought were paid for and received, and the stocks sold delivered, and the checks therefor received and deposited by him in bank. And in this connection it may be stated that the Flagg and Ripley account appears to have been a speculation in 100 shares of Western Union Telegraph Company stock, and not only is the stock entered on the account 'long,' but the complainant swears that he, at the request of Flagg, on beginning the account bought it and paid for it, and carried it for the joint account. The complainant's testimony, as to his purchases and sales of the stock bought and sold for the defendants, whether on one account or the other, is in itself decisive as to the legality of the transactions in question. He swears that they were all actual transactions, and not mere agreements to pay differences, that they were *bona fide* purchases and sales, and not mere wagering contracts. And he brings into Court the checks given by him on the purchase of the stocks. It is urged, however, that as to the transactions for the account of the defendants alone, they were evidently, notwithstanding the testimony of the complainant concerning their character, in fact, 'short' and therefore were gaming transactions; substantially wagers upon the price which the stocks would bear in the market at a future day, and that an actual sale or purchase was not contemplated in any case, but all the transactions of apparent purchase and sale were only colorable and fictitious and therefore illegal and within our statute against gaming. Here it may be remarked that while Mr. Flagg says that none of the transactions involved represented a real transaction in stocks, it is quite clear that he speaks merely of his own views on the subject, for he says the accounts represent what are called 'long' and 'short' transactions (and he explains that by 'long transactions' he means those where an order is given to a broker to buy or in the case of these accounts, where the broker receives an order to credit the account with certain stocks) and he does not deny that the complainant in fact bought the stocks when he was ordered by him to do so. He says he never inquired and did not care whether the complainant bought or sold on the Stock Exchange in accordance with his orders or not. He speaks of the in-

tention of the parties and not as to what was in fact done; and so far as he speaks of the complainant's intentions on the subject he is contradicted by the latter. A 'short' sale of stock is a sale before purchase usually with a view of purchasing at a future time at a lower price for delivery. The *modus operandi* of such a sale through a broker is as follows: On recept of the order to sell short from the customer the broker sells the stock and notifies the customer of the sale giving him the name of the purchaser.

When the time for delivery arrives he delivers the stock but in the interest of and for the customer (since the latter sold the stock without owning it) borrows it to deliver, giving his check for it (he pays for the use of the stock for the transaction), and delivers the stock to the buyer and receives the money for it. If to replace the stock borrowed a loss is met it is of course the customer's loss and the broker looks to the 'margin' in his hands for indemnity in that regard as well as for his commissions, &c. So that there is in every such transaction provision for an actual delivery of the stock. Such transactions have in actions by and against the brokers, been held to be legal in New York, and elsewhere. (*Knowlton vs. Fitch*, 52 *N. Y.*, 289; *White vs. Smith* 54 *N. Y.*, 522; *Smith vs. Bouvier*, 70 *Pa. St.*, 325; *Thacker vs. Hardy, L. R.*, 4 *Q. B. Div.*, 685; *Ex parte Rogers, L. R.*, 15 *Ch. Div.*, 207; *Maxton vs. Gheen*, 75 *Pa. St.*, 166. and see, also, *Lehmann vs. Strassberger*, 2 *Wood's C. C.*, 554, and *Bigelow vs. Benedict*, 70 *N. Y.*, 202.) In the transactions now under consideration the complainant was acting as a broker and not at all as a principal. The speculations were not his, but Mrs. Flagg's. The gain and the loss were hers not his. On her order and for her he actually bought stocks and became responsible to the seller for the value thereof, and looked to her for the indemnity to which, under the circumstances, he as an agent obviously was entitled from his principal. Not only is *bona fide* dealing in stocks lawful in New York, but it is lawful here and elsewhere. Where the broker buys or sells the stock, in fact, the transaction is, so far as he is concerned, legitimate, whether his principal takes or intends to take the stock ultimately or not. It is otherwise, however, of course, where he is the agent of his customer in making agreements which are mere bets on the market value of stock at a future day, and which therefore neither involve nor contemplate any purchase or sale. To treat the broker as a principal in either case would be contrary to the facts, but while in the latter case he is, of course, chargeable with the knowledge that the transaction is a mere illegal, wagering contract which the law will not countenance and in respect to which and his dealings therein it will give him no aid, in the former his own action being a matter of legitimate business, he is not responsible either for the intention or future action of his principal in the premises and cannot be affected thereby."

(c) These findings of the Chancellor are more than supported by the evidence. It is not easy to condense that testimony, which occupies a large

part of the case, but we may attempt to summarize a part of it and shall quote from some of the witnesses:

Baldwin says that he never entered into any such agreement, and he says that upon every order which he received from Flagg for Mrs. Flagg's account or for any of the other accounts, if it were an order to purchase, he immediately went to the exchange, or sent there and bought the stock and in all cases the stock was delivered, actually handled and the money actually paid; and he has produced and put in evidence before the Master in Chancery a check for every transaction which he claims has been made (Complainant's Exhibits 23 to 233 both inclusive). A single sample check is printed on page 323. The remainder of the checks are in the hands of his counsel and for brevity have not been printed.

This would seem fatal to that defense. Much other testimony, however, was taken upon that subject. On page 126, Flagg is questioned by Mr. Keasbey, and answers as follows:

"Q. You have spoken in your testimony of the nature of the account with Mr. Baldwin and of the 'long' and 'short' sales, and their meaning and effect; will you explain more fully and clearly what you mean by that?

"A. I mean this: That there are transactions in Wall street that are real transactions, where there is a dealing in stocks and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase, or to the transaction; and that there are also transactions in Wall street—and they are the majority, in my opinion—which are not for investment, and are mere transactions in margins. My transactions with Mr. Baldwin were all of the latter kind. By the phrases 'buy' and 'sell,' as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. A transaction for what is called a 'long' account is an order to the broker (on a marginal transaction, like this) to credit his account with stock, at a certain price, and if the fluctuations of the price on the Stock Exchange mark the figure indicated by the customer the broker is obliged to credit the account according to the order; the broker is not obliged to actually buy the stock, and there is no question of the delivery of the stock to the customer, and no intention of delivery. The broker may, if he pleases—and he very often does, in fact—credit a customer's account without insuring himself in the transaction by buying the stock. If he does buy the stock he borrows money on it to

represent what he has given for it, and then, without delivering it to the customer, delivers the stock to another broker when the customer orders a sale. If he does not actually purchase the stock, and a sale is made on the order of a customer, at a higher price than the order was given to purchase. the broker pays it out of his own pocket. And, so far as the 'short' transactions are concerned, the customer gives an order to the broker to sell stocks when the prices on the Stock Exchange reach the figure he names; neither party has the stock in possession, or any arrangement to have it. The broker, in such a case, credits the account with a sale at the price named in the order. He can then either make a sale himself on the Stock Exchange or not, as he chooses. If he does, he takes the money which he gets on the transaction to purchase in the contract when the customer orders a purchase on a "short" sale. This is done with another broker. If he did not he would stand the loss in the account himself.

The transactions of course are intricate, and are difficult to be understood by the oldest speculators themselves."

He thus places himself upon the record as testifying as an expert and attempting to establish a custom of trade well known in Wall street. He is cross-examined on this subject on page 133, beginning at folio 30, and his cross-examination ends on page 180.

To that cross-examination (particularly pages 133 to 152) attention is called, and without repeating it here it is urged that Flagg himself, upon his cross-examination, entirely fails to establish his proposition that such transactions as he described are known in Wall street.

We call attention to the testimony of Benjamin B. Talbert, on page 221, and of S. V. White, on page 229.

At page 134 Mr. Flagg is asked by Mr. Root this question:

"Have you carried any other accounts with any other broker which you would call 'a transaction in margins,' as you have defined your transactions with Mr. Baldwin?

"A. I have.

"Q. With whom?

"A. With John H. Davis & Co."

Now, Mr. John H. Davis is called, and on page 252 he was asked this question:

"Has he (meaning Mr. Flagg) made transactions with you or your firm which he properly describes when he defines transactions in margins?

"A. No, sir."

On the question of Mr. Flagg's credibility, the attention of the Chancellor is respectfully called to page 149 of the printed case, where Mr. Flagg is asked, upon cross-examination, this question:

"Q. Didn't you ever tell Mr. Cecil, as a broker, there under Mr. Baldwin: 'I wish you would go and sell me so much stock, or I wish you would go and buy it on the Exchange?

"A. I never gave an order to Mr. Cecil in my life."

Mr. Cecil's testimony will be found on page 241.

"Q. Have you ever executed orders on the Exchange for Mr. Flagg's account?

"A. I have.

"Q. Have you ever received orders from him personally to go there and execute orders?

"A. I have.

"Q. On many occasions?

"A. Yes, sir.

"Q. Has it ever happened that you have received an order from Mr. Flagg to go to the Stock Exchange and buy or sell a certain number of shares of stock, and you have returned and reported to him that you could not buy or sell owing to the condition of the market when you reached there?

"A. Yes, sir.

"Q. Has that happened more than once?

"A. Oh my, yes.

"Q. How many times, as near as you can judge?

"A. That I cannot tell.

"Q. Should you say 10 or 20, or 50 or 100?

"A. Well, I should say fully 50."

Now the testimony of Mr. Flagg's experts will be found from pages 264 to 283. Inasmuch as that testimony is very brief a *résumé* of it will not be made here, but attention is very specially called to the cross-examination of Mr. Howell and Mr. Julian.

(*d*) Time contracts and speculations on margin carried on under such rules as those of the New York Stock Exchange have been upheld by the Courts of highest authority.

The brokers' right to recover for advances made, and commissions earned in actual transactions, has not been denied in any well-considered case.

See cases cited above from the opinion and also:

Rosewarne vs. Billing, 15 C. B. (N. S.), 316.

Sawyer vs. Taggart, 14 Bush, (Ky.), 727.

Warren vs Hewitt, 45 Ga., 201.

Mewbern vs. Eaton, 20 L. T. (N. S.), 449.

Thacker vs. Hardy, English Law Reports, 4 Q. B. Div., 685 (*supra*):

"Plaintiff, a broker, was employed by the defendant to speculate for him upon the stock exchange; to the knowledge of the plaintiff, the defendant did not intend to accept the stock bought for him, or to deliver the stock sold for him, but expected that the plaintiff would so arrange matters that nothing but differences should be payable by him; the plaintiff knew that unless he could arrange matters for the defendant as the latter expected, the defendant would be unable to meet the engagements which the plaintiff might enter into for him. The plaintiff accordingly entered into contracts on behalf of the defendant, upon which the plaintiff became personally liable; and he sued the defendant for indemnity against the liability incurred by him and for commissions as broker:—Held that the plaintiff was entitled to recover; for the employment of the plaintiff by the defendant was not against public policy, and was not illegal at common law, and *further was not in the nature of a gaming and wagering contract* against the provisions of 8 and 9 Victoria, c. 109."

Syllabus of the case from new digest of of the Law Reports ('65 to '80), 1882, of inc. council of law reporting).

In that case Lindley, J., said (page 687):

"The plaintiff did not agree to buy or sell from or to the defendant. * * * The agreement between the plaintiff and defendant rendered it necessary that the plaintiff should himself, as principal, enter into real contracts of purchase and sale with jobbers, and the plaintiff accordingly did so. * * * It was, however, suggested that independently of the statute the gambling here was of so pernicious a nature as to be illegal on grounds of public policy. That the defendant was a reckless speculator, and that the plaintiff knew it I consider to be beyond all doubt, but it does not follow that what they did or aimed at was illegal. In one sense they were both gamblers, but care must be taken not to be misled by an epithet" (688).

And Bramwell, L.J.:

"The question is not between the jobbers in the house and the broker.

The bargains made by the plaintiff upon behalf of the defendant were what they purported to be; they gave the jobbers a right to call upon the broker or the principal to take the stock, and they gave the broker the right to call upon the jobber to deliver it.

See also Cooper vs. Neil, 13 Weekly Notes, 128.

See the full discussion of this subject in the recent work of Dos Passos on Stockbrokers (pages 420–444).

Thacker vs. Hardy has never been judicially questioned, criticized or distinguished; and the criticism of that case furnished to 5 Law Magazine and Review, by a correspondent of that journal, is well answered by Dos Passos on page 437 of his work. In that case an elaborate judgment of Lindley, J., was unanimously sustained by the appellate Court—Bramwell, Cotton and Brett delivering well-considered opinions and holding the case to be so clear that they declined to hear counsel for the respondent.

(*e*) When stock is regularly carried for a customer, it is actually bought, and belongs, not to the broker, but to the customer, and is regarded by the law as pledged to the broker to secure his advances.

Baker vs. Drake, 53 N. Y., 211, 216.

(*f*) "Short sales" are actual and legal transactions, and as between the broker and his customer have no feature of gaming contracts.

Knowlton vs. Fitch, 52 N. Y., 288.

Here the plaintiff sought to repudiate his liability for loss on the sale of 100 shares of Michigan Southern stock, and recover on that ground a balance that had previously been in his broker's hands. The loss was incurred on a short sale, made on his order, and covered on his order.

RAPALLO, J., explained a short sale fully:

"It is proven to be a sale before purchase, with a view of purchasing at a future time at a lower price. * * *The plaintiff did not furnish the stock to deliver, but only margins.* The defendants furnished the stock. They sold in the regular way, which is, deliverable the next day, and then borrowed the stock of other parties to deliver."

"So long as these transactions are not prohibited by law, there is no reason for relieving either party from the responsibilities which he incurs by engaging in them."

Judgment for plaintiff reversed.

In Knowlton vs. Fitch, the Court merely refused to relieve from a loss properly incurred.

In White vs. Smith, 54 N. Y., 522, the Court enforced the contract and awarded damages.

(g) The Philadelphia Cases.

do not

The Philadelphia cases ~~alone~~ uphold the defense of wager in such a case as this. They are so confused and contradictory, and have been so severely criticised, that they could have no weight, even if one could say which is the one that lays down the Pennsylvania rule.

Brua's Appeal, 55 Pa. St., 294.

Here a mere bet on prices was held illegal. There was no actual sale or delivery by any one. Yet Thompson, J. (70 Pa. St., 330), says: In Brua's appeal, "we held that stock-brokerage was not neces-
"sarily gambling. We said, 'the *bona fide* pur-
"chase of stocks no doubt can be conducted law-
"fully,' and is generally so conducted, without,
"in the least, trenching on the *gamblers'* prov-
"ince."

Smith vs. Bouvier, 70 Pa. St., 325.

Here a broker recovered for advances, &c., on an ordinary short sale in the New York Stock Exchange for a Philadelphia client, who was speculating on a margin. The Judge charged: "If the transaction was a speculation founded on a real sale and purchase of stocks *by the plaintiffs for*

the defendants, which were actually sold and bought, and delivered, then it is not a gambling transaction."

The Court, on appeal, approved this, and said that a different rule "would make a great inroad into what has, for an indefinite period, been regarded as a legitimate business, and would either destroy it altogether, or, if continued, put the brokers at the mercy of those for whom they transact such business. * * There will be found enough persons whose easy consciences would throw their losses upon the shoulders of those who advanced the money and received commissions in their service."

Maxton vs. Gheen, 75 Pa. St., 166. Assumpsit by brokers against client for balance due on stock speculation—short sales *on margin*. Verdict for plaintiffs.

AGNEW, J.: "This was not a transaction in stocks by way of margin, settlement of differences and payment of the gain or loss, without any intention to deliver the stock. * It will not do to say * * that every sale 'short' * * is *ipso facto* a wager."

Fareira vs. Gabell, 89 Pa. St., 89. "A wagering contract is one in which the parties stipulate that they shall gain or lose upon * * an event in which they have no interest except that arising from the possibility of such gain or loss." The question of wager was left to the jury who found against the broker.

North vs. Phillips, 89 Pa. St., 250. Here a broker sold without authority stock carried for his client on a margin. Gordon, J., held it to be a gambling transaction.

Ruchizky vs. DeHaven (97 Pa. St., 201). Gordon, J., here held that money received by brokers as margin could be recovered back, the transaction being void *ab initio*.

Dickson vs. Thomas, 97 Pa. St., 278 (elsewhere cited as Smith vs. Thomas).

Here Gordon, J., held a short sale to be a gambling transaction.

Criticism of Philadelphia cases:

"The highest tribunal in that State has laid down the doctrine in favor of sustaining the defense (of wager) with such manifest rigidity and so inconsistantly with leading decisions of England and the States of the Union as to draw forth sharp criticisms, both from the bench and the bar of its own State. An analysis of the cases, we think, fully sustains these criticisms; and the present condition of the law of the State makes the business of buying and selling stocks so hazardous, both to the broker and client, as to call for an immediate change in the law."

Dos Passos on Stock Brokers, 423, 424.

Lewis, Law Relating to Stocks, Phila., 1881, pages 111, 112.

"The Law of Pennsylvania upon this question is "unique, and opposed to all the authorities."

After referring with respect to the opinion overruled in Smith vs. Thomas, he says: "The Penn-"sylvania stock broker * * is thrown back en-"entirely upon the honor of his principal, and must "needs be over-cautious in protecting himself. It is is much to be hoped that at an early day some means, "judicial or legislative, may be found to assimilate "the law upon this subject in Pennsylvania to the "more reasonable rule prevailing in the other States "and in England."

The criticism of Judge Briggs on Smith vs. Thomas, in 38 Legal Intelligencer (Phila.), 116, is remarkable not only as a complete and destructive criticism of the decision, but as a strong expression of the Judge's dissatisfaction with the ruling of his own Court.

Biddle, Law of Stock-Brokers (Phil., 1882):

"It is clear from the language used by the Supreme Court (in Dickson vs. Thomas) that it failed

entirely to understand the nature and *modus operandi* of the Clearing House" (61).

"The Pennsylvania cases alone oppose the universal doctrine." In Ruchizkey vs. DeHaven, and Smith vs. Thomas, "the jury found both the contracts *bona fide*, and the Supreme Court only held them to be gambling on an apparent misconception of the real facts (115)."

" The Pennsylvania cases seem to lay down different principles on this subject from those of England or any other State. * * * Several of these are open to the criticism of an apparent misapprehension of the transactions they attempt to discuss. In Dickson vs. Thomas the Court profess to follow the English authorities in adopting a view which would render invalid almost all the transactions through jobbers on the London Stock Exchange—transactions which, it is needless to say, have been repeatedly upheld by the English Courts."

In Philadelphia the stock brokers do all their business through a clearing house. It is described fully by Biddle: .

The Clearing House is "the common agent" of the brokers, "both in balancing their respective accounts in their several transactions in stock maturing during each day and the prices for the same, and also in accepting and making for each broker a symbolical, actual and legal delivery of the shares of stock sold by each respectively, together with the payments therefor; by setting off the number of shares of stock due to and from each stock broker, as shown by their respective accounts" (56).

" The Clearing House is the agent of both parties * * the sheets sent to the Clearing House * * are nothing but bills of sale" (61, 62).

Smith vs. Thomas was put expressly on the ground that the transactions were made through the Clearing House, and were therefore fictitious. This was obviously wrong (See Lewis and Biddle, and Criticism of Judge Briggs, *supra*). But, right or wrong, no Philadelphia case can be a precedent in deter-

mining a New York case, for all Philadelphia cases are Clearing House cases, while in New York the brokers have no Clearing House.

Smith vs. Bouvier was a New York transaction; there the transaction was upheld. That case is approved in Smith vs. Thomas, the latest of Philadelphia cases, and, therefore, Smith vs. Bouvier, which is in accordance with the New York cases, is the only case in point.

It can be objected that it does not expressly appear in the reports that the transactions in North vs. Phillips and Ruchizky vs. De Haven were made in the Clearing House, and that the language of the Court in those cases recognizes no distinction between speculating on a margin and gaming. We will therefore notice more particularly some of the peculiarities which have brought this chain of cases into contempt.

(*a*) Judge Gordon, who is the author of this novel law of stocks, claims that he follows the English decisions (Smith vs. Thomas). This statement alone deprives his opinion of weight.

(*b*) Judge Gordon decided Maxton vs. Gheen, upholding short sales on margin; and later, North vs. Phillips, declaring that speculating on a margin was gambling, without so much as mentioning the former case.

Judge Sharswood sat in both Smith vs. Bouvier and Smith vs. Thomas. If the latter case is in point at all, the two are exactly opposed, and yet the latter cited and approved the former.

(*c*) In Smith vs. Bouvier, Maxton vs. Gheen, Fareira vs. Gabell, the question of wager was left to the jury. These followed the well-settled rule that the question as to whether a particular transaction constitutes a wager is for the jury; but in North vs. Phillips, Ruchizky vs. De Haven, and Smith vs. Thomas, the Court ruthlessly violated this rule, without overruling

and indeed while approving the former cases, and upset each verdict on an assumed state of facts which did not appear in the evidence.

(*d*) In North vs. Phillips, Judge Gordon founded himself on the argument that the stock carried by the broker for the client could not belong to the latter, because the stock was worth $50,000 and the client worth only $25,000.

In Ruchizky vs. De Haven, Judge Gordon animadverted most severely, but without the slightest foundation in fact, upon the conduct of the brokers—using this language: "They did not know (that the client was an infant), because they did not choose to inquire. They were getting his money, and, like all other persons engaged in unlawful dealings, they cared not whether that money came from man, woman or child—whether their victim was young or old."

In Smith vs. Thomas, Judge Gordon's opinion shows, to say the least, an unjudicial frame of mind, and personal hostility to the trial Judge, in strong contrast to the respectful and temperate tone of Judge Brigg's discussion of the case in the "Intelligencer" (38 Leg. Int.):

(*e*) "The fundamental error into which the Pennsylvania Court has fallen, arises from the fact that the decisions have proceeded upon the assumption that the dealings were merely between the *broker* and his *client*, without the intervention of any third person; in fine, of treating a transaction in stocks, conducted through the medium of the Stock Exchange, as one, in effect, between a vendor and vendee bargaining for mere differences. This is very far from the fact. * * * The Court does a manifest injustice to the stock-broker when it treats him as one *deriving a benefit from his client's losses.* This, with great respect, is as absurd as it is unfair. The broker has no inter-

est in the business except to the extent of his commissions, when he makes actual sales, or purchases with third persons on account of his client, which was clearly shown in the cases in question (the Philadelphia cases). The version of the transaction given by Mr. Justice Gordon is that of a sharper fleecing his innocent victim; and in that case (Ruchizky vs. De Haven), upon such erroneous premises, the broker was compelled to lose a considerable sum of money, which he proved he had actually paid out for his clients" (Dos Passos on Stock Brokers, 432).

(*h*) **The intent of the speculator has no effect on the rights of the broker.**

Lehman vs. Strassberger, Woods' U. S. Circ. Ct. Rep., 554, 563; Woods, J. (now of the U. S. Supreme Court):

"It was the understanding between Strassberger and Lehman Brothers, that in all sales or purchases of cotton by them for him for future delivery, no cotton should be actually received or delivered, but only the differences paid, except when special instructions were given to receive or deliver cotton; and the record shows that he did, on more than one occasion, elect to deliver cotton. If he reserved the option to receive or deliver, the contract was legal in all respects, even though he might have had a purpose in his own mind not to receive or deliver and *had communicated that purpose to his agents*..

The question is: Did he communicate that purpose to the parties not named with whom he contracted? There is no evidence that he did. On the face of his contract, he binds himself to deliver cotton, and the other party binds himself to receive it. Now what effect can the mental purpose of Strassberger to pay or to demand differences instead of delivering the cotton have upon the contract, when that purpose is unknown to the other contracting party? Here is no bet or wager. It cannot be a wager unless both parties are cognizant of the facts (Hibblewhite vs. McMorine, 5 Mees. and Wels., 462)." Held a valid contract.

Bigelow vs. Benedict, 70 N. Y., 202:

Seller's Option.—A contract whereby A, for a valuable consideration, agrees to purchase of B gold coin at a specified price, within a specified time, B having the option to deliver or not, is not upon its

face a wager contract. In the absence of evidence to the contrary, it will be presumed that the contract was made in good faith, with intent on the part of both parties to perform.

ANDREWS: "Where an optional contract for the sale of property is made, and there is no intention on the one side to sell or deliver the property, or on the other to buy or take it, but merely that the difference should be paid, according to the fluctuations in market values, the contract would be a wager within the statute. An executory contract for the sale of stocks * * at a fixed price, is valid, although the vendor neither owns them nor has them in possession when the contract is made. (Hibblewhite vs. McMorine.) * * * But the question is here, does the contract on its face disclose an illegal transaction? We are of the opinion that it does not."

(*i*) This is a New York contract.

The transactions in question are lawful here. But in New York their legality is beyond the pretense of serious question; and though this debt is secured by a New Jersey mortgage it is a New York debt, and the validity of it and of the transactions in which it accrued is to be determined by New York law.

De Wolf vs. Johnson, 10 Wheaton, 367, 383.

"In a contract for the loan of money the law of the place where the contract is made is to govern; and it is immaterial that the loan (is) secured by a mortgage on lands in another State. * * The security given is but the means of securing what (the bondsman) has contracted for, which, in the eye of the law, *is to pay where he borrows*, unless another place of payment be expressly designated by the contract." (383.)

S. P., Cope vs. Wheeler, 41 N. Y., 303, 309; more fully, 53 Barb., 550.

Williams vs. Fitzhugh, 37 N. Y., 444.

Appellant begs the question in answer to this proposition by citing Aymar vs. Sheldon, which smply holds that a contract of suretyship is an independent contract and governed by the *lex loci;* we expressly contend for that very point. Mrs. Flagg's contract is an independent contract, and De Wolf vs. Johnson (*supra*), decides that the place of a contract is not the place where it is signed or the place where

the collaterals lie, but the place of performance, and that the mortgagor contracts *to pay where she borrows.*

Mrs. Flagg is no surety. Her contract is not subsidiary or secondary. She has made the debt primarily her own. A part of it she herself contracted and the rest of it she adopted and assumed, so that she stands as to the whole in the position of an original borrower.

Nor is it correct to say that Baldwin entered into a new agreement to save a bad debt. He already held Mrs. Flagg's security. He had refused to deal further with her husband. He consented to deal with her, he forbore to press his claim and he dispensed with the usual margin; and she, on her part, made herself primarily liable for the whole debt.

Nor is it any answer to say that Mrs. Flagg resided in New Jersey.

It is *res judicata* in this suit, by the decision of the motion to vacate the attachment that the Flaggs are residents of New York (Case, p. 131).

Maffitt vs. Rynd, 69 Pa. St., 380, 387:
"It matters not whether the advances be for the use of the mortgagors or of a third person."

There is no authority for bringing this case within any exception to the almost universal rule of *lex loci*. When a contract by the law of its place is a gaming contract, this Court will not enforce it, even though by the law of its place gaming contracts are enforceable. But in determining the effect of the contract this Court will follow the law of its place, and if by that law the contract is valid and proper, this Court will enforce it.

We may cite:

Quarrier vs. Colston, 1 Ph., 147; 6 Jur., 959.
McIntyre vs. Parks, 3 Met., 207.
Kentucky vs. Bassford, 6 Hill, 526.

5.

This suit was not prematurely brought.

(*a*) (Opinion, page 348):

"To dispose of the remaining defense that this suit is prematurely brought. This is based on the claim that the complainant not only agreed to advance the $4,000 (which it is insisted he has not done), but agreed also that he would not take any steps to enforce payment of any of the money which the mortgage was given to secure until he dad done so. The agreement between the parties on those heads is to be found in the bond and mortgage, the complainant's letter of the same date (August 26th, 1880), and his 'stipulation' of March 10th, 1881, in a suit brought by Mrs. Flagg against him in that month in the Court of Common Pleas of the City of New York for the surrender to her of the bond and mortgage and the note of $4,500. The stipulation, however, does not differ in any way from the agreement which the letter evidences. The language is substantially the same. The parol testimony offered by the defendant to prove that the complainant before the mortgage was given agreed that in consideration of the giving of it he would advance the $4,000 is not competent. The complainant, however, swears that there was no agreement or understanding of any kind on the subject except that shown by his letter, which was merely that he would not 'assign or dispose of the bond and mortgage before the $4,000 of future advances had been made.' And it is noticeable that the stipulation drawn after litigation between these parties had commenced is not that the complainant will not seek to enforce the payment of the money which he claims is due on the bond and mortgage, but that he will not 'assign or dispose of' those instruments until the sum of $4,000 of future advances has 'actually been made.' What the agreement was is evidenced by the language of the letter and stipulation. It was that the complainant would not part with the ownership of the bond and mortgage until after the whole of the $4,000 had been advanced. The defendants' object in obtaining the agreement is plain. It was to keep the bond and mortgage in the complainant's hands and out of those of strangers to give the defendants opportunity to redeem them by means of their speculations through the complainant, until the $4,000 were all gone. The agreement did not bind the complainant to advance any money at all, and its language cannot be held to imply an agreement that he would do so or that he would not take any steps to enforce payment until after he had advanced all of the $4,000. Not only is there no necessary implication to that effect, but it would not be a reasonable inference. Had the parties intended to provide that there should be no enforcement of payment unless the whole amount had been advanced, they would

have done so. Mr. Flagg, it must be remembered, is a lawyer. The complainant would have been at liberty to enforce payment of the $7,563.44 and interest if he had not advanced any money at all. Where a mortgage is given to secure future advances by the mortgagee, and he stipulates that he will make advances to a certain amount, and he makes advances but not to the stipulated amount, he may enforce his claim for repayment by foreclosure for any amount he may have advanced.

Dart vs. McAdam, 27 Barb., 187.
Coleman vs. Galbraith, 53 Miss., 303.
Robinson vs. Cromelein, 15 Mich., 316.

The case of *Maryott vs. Renton*, 6 C. E. Gr., 381, cited by defendant's counsel, is not opposed to this doctrine. It merely holds that a foreclosure suit begun before the mortgage is due cannot be maintained. Though there was there an agreement to advance $9,000, which had been only partly performed (the mortgagee having advanced only $3,000 and refusing to advance any more), the decision was not put on that ground, but on the ground that the time when, according to the agreement of the parties, the mortgage was to become due had not arrived when the suit was begun. Not only was no stress laid on the fact that the mortgagee had refused to fullfil his agreement as to the amount of advances, but no reference was made to it. The facts of that case were as appears by the opinion as follows: Renton held two mortgages of different dates, both given by Maryott to him, on the same premises. The first one was made to secure the payment of $6,000. When the second was given the first was past due. After the maturity of the first and before the giving of the second mortgage, Renton agreed with Maryott to advance him $9,000 and take a new mortgage to secure the amount of the first mortgage and the advances he should make. To save the expense of revenue stamps the new mortgage was made to secure the advances only, and the first mortgage was let stand. The agreement was that $6,000 of the first mortgage was to run without interest and not be due until the maturity of the second mortgage which was February 1st, 1868. Renton, who as before stated, had advanced only $3,000 of the $9,000 under the second mortgage and refused to advance more, began his suit August 27th, 1867. It will be seen that the case rather supports than antagonizes the principle above enunciated. But further the complainant swears, and the evidence sustains his statement, that he has advanced under and on the security of the mortgage more than $4,000. When the sale of stock was made by him pursuant to notice on the 18th of March, 1881, there was a balance of about $3,000 due him on the account after crediting the amount of the mortgage, that is after crediting the whole of the $4,000. So that there was then due to him from Mrs. Flagg for advances, and commissions, and interest since the giving of the mortgage about $7,000. The proceeds of the sale were $3,629. Applying them to the account, there remain due to the complainant $10,909.51, for which with interest from March 17th, 1881, he is entitled to a decree."

(*b*) The parol testimony offered to prove that Baldwin agreed, before the mortgage was given, to advance $4,000, is clearly incompetent.

Such an agreement is, moreover, emphatically denied by Baldwin (page 192).

If, even, in the face of this contradiction of Mr. Flagg and corroboration of Mr. Baldwin, this agreement were found to be established, this defense is disposed of by Mr. Baldwin's testimony (page 197), to the effect that he did speculate for the account of Mrs. Flagg, on her husband's orders, until the entire $4,000 was actually exhausted. That testimony stands undisputed.

See also page 95, fol. 20:

"Q. This paper appears to be dated February 24th, 1881; how much had you advanced on account of the $4,000 in this mortgage to pay losses in the account on the day this paper bears date?

A. I had advanced it all, more than all."

In fact, on March 14, 1881, previous to the sale of the Chesapake and Ohio stock on March 16, Baldwin's advances to Mrs. Flagg over and above the $7,563.44 of the mortgage, and the $4,000 of advances which had been made in full made Mrs. Flagg his debtor to the amount of $2,957.07 (Defts. Ex. No 4, page 336). The fact that he held that stock as additional security makes no difference in the fact that he had made advances far beyond the sum named in the mortgage.

(*c*) Baldwin was under no legal duty to make advances.

In *Dart vs. McAdam*, 27 Barb., 187, the mortgagee expressly bound himself to advance $3,000. The mortgage was given on the sole consideration that he should do so. Smaller sums were accepted, but with each advance the mortgagee expressly renewed his agreement to advance the whole. Thus at the time of the foreclosure the mortgagor had the right, unimpaired, to demand the rest of the

stipulated advance. The Court held that these express stipulations and their breach did not change the question. Something more was needed to defeat the foreclosure. "*There was no special agreement that the bond and mortgage should not be a valid security*, until the whole sum was advanced" (190).

Coleman vs. Galbraith, 53 Miss., 303, was precisely the case that Mr. Keasbey claims this to be. Here the mortgagee bound himself to furnish supplies for a plantation *from time to time*. The borrower could not demand the whole advance at once; his needs would change from time to time with the season, and the state of the crops. No case can be imagined where a refusal to lend as agreed could be more disastrous to the mortgagor. The defense was that,

> "The furnishing of $10,000 of supplies was a condition precedent to the enforcement of any right under the deed." The decision was that the contract was not entire "but separable, and hence apportionable, so that the parties who furnished supplies under it are entitled to enforce their security *pro tanto*. * * * The contract to furnish supplies is a continuing one and *pari passu* with each amount advanced a liability accrues to the party advancing from him to whom it is made" (306).

The mortgage for future advances comes into existence as fast as a liability accrues and to that extent; subject only in this case to having its lien divested by Mrs. Flagg actually repaying the advances from the profits of the business. If there were no advances, the mortgage remained a security for $7,000.

Robinson vs. Cromelein, 15 Mich., 316. (Cooley, J.)

Defendants gave a mortgage for $5,500 on the sole consideration that the mortgagee should advance $3,000 and convey certain lots worth $2,500. He advanced only $2,450 and refused the conveyance. The mortgage was held enforceable for the amount actually advanced.

The Court will not make a contract for a party

which she has not chosen to make for herself. If she has neglected to make a special agreement that she shall owe nothing unless there is complete performance, her only remedy is to have a reduction of the demand by setting up her claim for damages.

Beach vs. Mullin and every case cited in the text books, at the passages quoted by Mr. Keasbey, fall under the following criticism made by Judge Marvin in *Dart. vs. McAdam:*

"The counsel of McAdam argue that the plaintiff cannot recover anything, he having failed to perform the agreement on his part; and they cite those authorities relating to special contracts for the sale and delivery of a specified quantity of any article, or for labor for a certain period, in which the vendor or the laborer must fully perform before he can recover the stipulated price. * * * The cases cited by the learned counsel have no application to this case." (27 Barb., 190).

(*d*) If Baldwin had bound himself to make the advances, his failure to do so would not bar the foreclosure.

There is no case in the books where a contract to lend money is held indivisible in such a sense that the person receiving a part of it can take the benefit without incurring the liability.

One cannot hold a contract as binding and rescinded at the same time. He cannot rescind without offering to restore what he has received and replacing the parties in their original situation.

Sumner vs. Parkes, 36 N. H., 449.

"The non-payment of the whole consideration is no excuse for the non-performance of a contract where a part is received unless it clearly appears that the payment of the whole consideration was a condition precedent." So even in a sale of goods.

Dox vs. Dey, 3 Wend., 357.

Williams' Saunders, 320 note 4, (Pordage vs. Cole):

"If a day be appointed for payment of money or part of it, or for doing any other act, and the day is to happen, *or may happen,* before the thing which is the consideration of the money or other act is to be performed, an action may be brought for the money or for not doing such other act before performance; for it appears that the party relied upon his remedy and did not intend to make the per-

formance a condition precedent; and so it is where *no time is fixed* for the performance of that which is the consideration of the money or other act.

"When a covenant goes only to part of the consideration on both sides, and a breach of such covenant may be paid for in damages, it is an independent covenant."

Ritchie vs. Atkinson, 10 East., 295, 308.

"All the cases of condition precedent have been where the thing to be done was a strict indivisible condition."

See also *Boone vs. Eyre*, 1 H. Blackstone, 273, note.
Neal vs. Ratcliff, 15 Ad. & E., 916, 927.
Odessa vs. Mendel, Eng. Law Rep. 8 Ch. Div., 235, 244.
Robert vs. Havelock, 3 B. & A., 404.
Scott vs. Parker, 1 A. & E., 809.
Leonard vs. Dyer, 26 Conn., 172.
Bruce vs. Carter, 7 Daly, 37.

On Mrs. Flagg's theory she might never have needed the advances; Baldwin would never have been able to perform the condition precedent, and his $7,000 could never have been collected.

Whether a contract is entire is a question of common sense.

2 Smith's L. C., 12.

(*e*) In this connection attention is called to page 103, where Mr. Flagg expressly authorizes the sale of all stocks when the margin should fall below 2 per cent. of the par value.

6.

Surrender of Mrs. Flagg's Note.

As to the averment (page 14, folio 20) that the note for $4,500 was to be surrendered upon the delivery of the bond and mortgage, Mr. Baldwin's

testimony is to the effect that the note was always kept in his safe subject to Flagg's order. It further appears by the testimony of Mr. Root (page 261, folio 40) that the note was delivered by him to Mr. Morgan, Mr. Flagg's attorney, in the Court of Common Pleas in New York, when a motion was made in the action that was begun in that Court, and that the note is still in Mr. Morgan's possession.

7.

The notice of Febuary 24.

The answer avers (page 15, folios 20 and 30) that Mr. Baldwin wrote a certain demand to Mrs. Flagg, which is there set out in full. That demand can have no bearing upon the case, because nothing was done under it, as appears by the testimony of Mr. Root at page 260 in folio 40, where he says in reference to that as follows:

"That notice was prepared hurriedly and by my "mistake the debit balance was not demanded; by "reason of that mistake a sale was not made under "that notice, &c." The sale of the 100 shares of Chesapeake and Ohio 1st preferred, the last 100 shares in the account, was made on March 16th, pursuant to the notice of March 15th. This notice (page 336) has been before referred to.

8.

The demand is admitted (page 73 folio 20).

9.

The decree should be affirmed with costs.

CORTLANDT & R. WAYNE PARKER.
Respondent's Solicitors.

CORTLANDT PARKER,
HENRY A. ROOT,
Of Counsel.

New Jersey State Library

INDEX.

PAGE.

Bill of Complaint 1
Answer of Jennie M. Flagg 8
Replication 18
Minutes of Proceedings before the Master 19

COMPLAINANT'S WITNESSES.

Abram H. Baldwin:
Direct 20
Cross 26
Further cross 30
Cross continued 31
Further cross 42
Further cross 52
Further cross 67
Re-Direct 70
Further cross 76
Cross continued 81
Cross continued 94
Re-direct 97
Recalled in rebuttal 181
Cross 200
Further cross 204
Further cross 205
Further cross 210
Cross—Resumed by Mr. Keasbey 216
Re-direct 219

Benjamin G. Talbert:
Direct 221
Cross 225
Re-direct 228
Re-cross 228
Further re-direct 228

Stephen V. White:
Direct 229
Cross 233
Re-direct 236
Re-cross 237

George W. Cecil:
Direct 240
Cross 242
Re-direct 243

Charles T. Hyde:
Direct 244

John H. Davis:
Direct 250
Cross 253
Re-direct 258

Henry A. Root:
Direct 260

DEFENDANTS' WITNESSES.

Jennie M. Flagg:
Direct 99
Cross 101
Re-direct 110
Re cross 112
Re-direct 116
Re-cross 117
Further re-direct 117
Further re-cross 117
Further re-direct 118

William L. Flagg:
Direct 102
Direct resumed 119
Direct resumed 128
Cross 133
Cross resumed 169

Called in rebuttal..... 259
Re-called on rebuttal..... 262
Cross..... 263

William H. Howell:
Direct..... 264
Cross..... 265
Re-direct..... 276
Re-cross..... 277
Further re-direct..... 281
Further re-cross..... 281

James Julian:
Direct..... 282
Cross..... 283

COMPLAINANT'S EXHIBITS.

C 1, Bond..... 294
C 2, Mortgage..... 294
C 3, Jennie M. Flagg to Baldwin, June 15, 1880 295
C 7, Account, Jennie M. Flagg with Baldwin.. 296
C 8, " " " " " 300
C 9, " " " " " 303
C 10, " " " " " 307
C 11, " " " " " 308
C 12, " " " " " 312
C 13, " " " " " 316
C 14, " " " " " 318
C 15, Jennie M. Flagg to Baldwin, Aug. 26, 1880 320
C 16, W. L. Flagg " " " " " 320
C 17, " " " 321
C 18, " and Baldwin to Ripley... .. 321
C 19, " to Baldwin, June 8, 1880... 322
C 20, " " " Nov. 1, 1880.... 322
C 21, " " " " " " 322
C 23, Check of Baldwin to Bouvier..... 323
C 234, Account, Jennie M. Flagg with Baldwin 324
C 235, " Flagg and Ripley " " 327
C 236, " Flagg and Baldwin with Ripley 329

DEFENDANTS' EXHIBITS.

No. 1, Baldwin to Mr. and Mrs. Flagg, Aug. 26, 1880 333
No. 2, Baldwin to Jennie M. Flagg, Feb. 24, 1881 334
No. 3, Baldwin to W. L. Flagg, Nov. 30, 1880 .. 335
No. 4, " " Jennie M. Flagg, Mch. 14, 1881 336
No. 5, Stipulation 337

TO THE HONORABLE THE CHANCELLOR OF THE STATE OF NEW JERSEY:

Humbly complaining, showeth unto your Honor your orator, Abram H. Baldwin, of the City of New York. in the County of New York, and State of New York, that on or about the 26th day of August, in the year one thousand eight hundred and eighty, Jennie M. Flagg and William L. Flagg, her husband, of the City of New York, in the County of New York, and State of New York, became and were justly indebted unto your orator in the sum of seven thousand five hundred and sixty-three dollars and forty-four cents, and being so indebted, the said Jennie M. Flagg and William L. Flagg, in order to secure the payment of the said sum of money, with interest, and also future advances by your orator to them to the amount of four thousand dollars with interest, did make and execute, under their hands and seals, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty-three thousand one hundred and twenty six dollars and eighty-eight cents, lawful money of the United States, with a condition thereunder written, that if the said Jennie M. Flagg and William L. Flagg, their heirs, executors, or administrators should well and truly pay, or cause to be paid, unto your orator, his executors, administrators or assigns, the just and full sum of eleven thousand five hundred and sixty-three dollars and forty-four cents, lawful money aforesaid, and interest on demand.

Then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your orator further shows,

that the said Jennie M. Flagg and William L. Flagg, in order to secure the payment of the said sum of money above mentioned, and said future advances, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Jennie M. Flagg and William L. Flagg of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto your orator said party of the second part, his heirs and assigns, all the following described tract or parcel of land and premises, situate, lying, and being in the township of Summit, in the County of Union, and State of New Jersey, with the buildings thereon erected, bounded and described as follows, to wit:

Beginning at a point at the intersection of the middle line of Kent Place Boulevard with the middle line of Kent Place avenue, measuring each way between the fences, and runs thence (1) with the middle line of Kent Place avenue north one degree, east two hundred and sixty-five feet; thence (2) with lands of Nicholas D. C. Moller, south eighty six degrees thirty minutes, east two hundred and nine feet three inches; thence (3) with lands of Nicholas D. C. Moller, and lands lately sold by said Moller to Mrs. Margaret North, south one degree, west three hundred and forty eight feet six inches to the middle line of Kent Place boulevard, measuring between the fences; thence (4) on the boulevard, north sixty-five degrees, west two hundred and thirty feet to the place of beginning. The last line in the middle of the distance curves twenty three feet to the right hand and is to follow the curves of the road beginning and ending with the last course and distance, containing one and forty-one hundredths acres of land, more or less, or 61,321 square feet; being the same premises conveyed to the said Jennie M. Flagg by Clementia H. Thebaud and Gustavus

J. Thebaud her husband, by deed dated May 11th, 1876, and recorded in the office of the Clerk of Union County, in Liber 117 of Deeds, page 144, on May 23d, 1877.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof ; and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances ; to have and to hold the therein above granted and described premises, with the appurtenances, unto said Abram H. Baldwin, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof for ever ; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Jennie M. Flagg and William L. Flagg, the said parties of the first part to the said indenture of mortgage, their heirs, executors or administrators, should well and truly pay, or cause to be paid, unto Abram H. Baldwin, or to his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Jennie M. Flagg and William L. Flagg, her husband, before Charles Edgar Mills, a commissioner of deeds for New Jersey, in New York, and duly recorded in the office of the Clerk in and for

the said County of Union in Book 50 of Mortgages, page 155, &c., on the fourth day of September, in the year one thousand eight hundred and eighty; as by the certificate of the Clerk of said county, indorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

Which said bond and mortgage are in your orator's possession ready to be produced and proven as your Honor shall direct.

And your orator further shows, that since the execution of said mortgage he has made advances thereon to the amount of thirty-three hundred forty-six dollars and seven cents, which said amount with lawful interest thereon is due on said mortgage in addition to the said sum of seven thousand five hundred and sixty-three dollars and forty-four cents first above mentioned.

That said William L. Flagg, as the husband of Jennie M. Flagg, claims or may claim the right of tenancy by the courtesy initiate in said premises, but your orator shows and insists that said right is subject to your orator's mortgage.

And your orator further shows, that ten thousand nine hundred and nine dollars and fifty-one cents of the principal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your orator and his heirs.

And your orator further shows, that the said defendants, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have al-

ways received, and still do receive, the rents, issues and profits thereof. And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons for him has frequently and in a friendly manner applied to the said defendants or one of them, and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth; and your orator well hoped that they would have complied with such reasonable requests of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now, so it is, may it please your Honor, that the said defendants combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned, sometimes give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other incumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover. Whereas, your orator charges

and insists, that if any such pretended incumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve your orator, and ought to be delivered up to be canceled, or declared to be of no effect against your orator, who had no notice of any such pretended incumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree of this Honorable Court.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrrogated, according to the best of their respective knowledge, information, remembrance and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to him on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this Honorable Court; and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of

them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances. and may deliver over unto your orator all deeds, demises and writings whatever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this Honorable Court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, and that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out and under the seal of this Honorable Court, to be directed to the said Jennie M. Flagg and William L. Flagg her husband, defendants, therein and thereby commanding them and each of them, on a ceriain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

TITSWORTH & MARSH,
Solicitors for and of Counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAHAM H. BALDWIN,
Complainant,

AND

JENNIE M. FLAGG AND WILLIAM L. FLAGG, her husband,
Defendants.

On Bill to foreclose, &c.

The separate answer of Jennie M. Flagg, one of the defendants, to the bill of complaint of Abraham H. Baldwin, complainant.

This defendant, now and at all times hereafter saving and reserving to herself all and all manner of benefit and advantage of exception to the many errors and insufficiences in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for her to make answer unto, answers and says that she admits it to be true that on the twenty-sixth day of August, eighteen hundred and eighty, she, with her husband, executed a bond or obligation, in the penal sum of twenty-three thousand one hunnred and twenty-six dollars, conditioned for the payment unto the said Abraham H. Baldwin of the sum of eleven thousand, five hundred and sixty-three dollars forty-four cents, and interest on demand; but this defendant denies that she was in fact lawfully indebted to the said Abraham H. Baldwin at the time of the execution of said bond in the sum of seven thousand five hundred and sixty-seven dollars forty-four cents, or any other sum; and she admits that at the same time she, with her husband, executed an indenture of mortgage upon property described in said bill, conditioned for the payment of the sum of money mentioned in the said bond, and that the

said mortgage was acknowledged and recorded as stated in said bill, but this defandent denies the validity of said mortgage for the reasons hereinafter set forth.

And this defendant further denies that the said complainant has made any advance of money upon the said mortgage which she is lawfully bound to pay, and she denies that any sum of money is due thereon.

And this defendant, further answering, says that at the time of executing the said bond and mortgage and during all the time covered by the transactions hereinafter set forth, she was a married woman and the wife of the said William L. Flagg, one of the above named defendants, and that the complainant is and was, during all the time covered by the said transactions, a resident of the city of New York and a stock-broker carrying on the business of buying and selling and other securities on commission, at the New York Stock Exchange, and that at the time of the execution of the said mortgage this defendant was the owner and occupant of the premises described in the said bill and in the said mortgage, which she used as her only place of residence; that for some months prior to the execution of the said bond and mortgage the said complainant had been engaged as a stock broker in carrying on a speculative stock account for her husband, and on or about the fifteenth day of June, eighteen hundred and eighty, this defendant's husband, at the request of the said complainant, as she is informed, solicited her to assist him in his said speculation stock business with the said complainant, and prevailed upon her for that purpose to send to the complainant her promissory note for forty-five hundred dollars with a letter written by her at the dictation of her husband, of which the following is a copy:

June 15th, 1880.

"A. H. BALDWIN, ESQ.:

"Dear Sir—I inclose my note for $4,500, as "margin in a speculation stock account which I

"wish to open with you. Please transfer to my "name the personal account of W. L. Flagg, now "in his name on your books. You are authorized "to follow my husband's directions in all matters "connected with my account.

"JENNIE M. FLAGG,
"Summit, N. J."

That on or about the sixteenth day of August, eighteen hundred and eighty, this defendant's husband also at the request of the said complainant, as she is informed, solicited her, in order to further assist her in the said speculation account with the said complainant, to execute the bond and mortgage set forth in the complainant's bill on her homestead, situated at Summit, Union County, New Jersey, where she was then living, and prevailed upon her to execute the same and to deliver the same to him to be used with said complainant for the purpose of his speculation; that this defendant relied entirely upon what her husband told her in the matter, and did not read the said bond and mortgage nor any paper signed by her in connection with the transaction, but executed the said bond and mortgage relying upon the representations of her husband that the same were to be used to enable him to take up the above-mentioned note, and upon his assurance that the said bond and mortgage would be held by said Baldwin only as security for the said account carried on in her name in pursuance of the letter which she had been before prevailed upon to send to the complainant for whatever sum might be then due upon the said speculative account, and for future advances up to the full amount of the said bond and mortgage, which advances her husband informed her the said complainant had agreed to make either in cash or to cover losses in his stock transaction carried on in this defendant's name in accordance with his orders; that this defendant never had any personal dealings or conversation with the said complainant in connection with

the said account, or anything whatever to do with the same, except to sign whatever papers were presented to her by her husband for her signature in relation thereto, and that the execution of the said bond and mortgage by her, as well as all acts and things done by her in relation to the said speculative stock account, were all done at her husband's solicitation, and to secure said complainant as her husband's stock broker for such amounts as her husband might become liable to pay in the course of said speculative transactions; and that the said complainant was well aware at the time of the execution of the said note and of the said bond and mortgage that this defendant had no actual knowledge of or personal interest in the said transactions, but was only acting as a cover for her husband, and in order to enable him to carry on through the agency of the complainant a series of speculative transaction in stocks in the New York Stock Exchange, and she alleges and charges that the whole of the transactions and dealings in reference to which the bond and mortgage were executed were in fact the dealings and transactions of her husband, and as claims of the said Abraham H. Baldwin arising out of the same were in fact claims against her husband, and not in any sense her personal debts, and she insists that all contracts made by her, including the said bond and mortgage, were in fact executed by her for the accommodation of her husband and as surety for him, and that all promises and covenants contained in the said bond and mortgage were promises to pay the debts and answer for the defaults and liabilities of her husband, and were consequently invalid and created no lawful obligation against her under the laws of New Jersey where she then resided and where the property covered by the said mortgage was situated.

And this defendant further answering says that she is informed and believes and charges the fact to be that the said complainant acted in the said stock

speculation and obtained from her said bond and mortgage upon a special understanding and agreement with her husband to this effect, that the said complainant should buy and sell stocks and other securities in the said account, upon the order of the said William L. Flagg, her husband, and that he should in no case claim more than the difference arising out of such purchases and sales, that is to say, that said complainant in consideration of brokerage commissions on purchases and sales and interest on money furnished by him to carry the stock and securities bought, should buy and sell stocks and other securities for the said speculative account only upon the orders of this defendant's husband, upon the condition and with the special provision and agreement that in no case was this defendant, as nominal principal, or her husband, as the real principal, to be under any obligation to take delivery or transfer of any of said stock or securities, and that when the difference between such purchase and sales were favorable to the said account the same should be credited therewith; and that whenever the said complainant advanced money to pay differences on purchases and sales which showed loss, the same should be charged against the said account, the said complainant agreeing, in consideration of receiving the security of the said bond and mortgage and commission and interest, as aforesaid, to make purchases and sales on speculation on the said account, in accordance with the orders of this defendant's husband, until he had advanced, over and above the profit, differences to be credited to said account for difference, losses, cash drafts, commission and interest, the whole amount of the said bond and mortgage, and that the said complainant agreed that no part of the said bond and mortgage should be due or payable at any time during the progress of the said speculations, when the amount of his advances to cover such difference, losses, drafts, commission and interest, should not equal the amount of the said bond

and mortgage over and above all profit differences; and this defendant charges and insists that the said contract was a wagering contract and was illegal and void, and that the said bond and mortgage given by her as aforesaid, in pursuance thereof, created no obligation against her personally, and that the same ought to be declared void, and delivered up to be canceled.

And this defendant, further answering, says that the sum of seven thousand five hundred and sixty-three dollars forty-four cents specified in the said bond and mortgage as the amount of the present indebtedness, at the time of the execution of the same, did not in fact exist as an indebtedness in said account carried on in her name, which was the only account of the existence of which she had any knowledge or which she ever authorized, or to secure which she executed the said bond and mortgage. but that if any indebtedness to this complainant then existed on the said account, which she denies, the same did not exceed four thousand three hundred and seventy dollars forty-three cents, and that thirty-one hundred and ninety-three dollars and one cent of the said sum of seventy-five hundred and sixty-three dollars forty-four cents, stated in the said bond and mortgage as present indebtedness, was in fact made up of alleged losses of her husband in two partnership speculative stock accounts, carried on without the knowledge of this defendant, in one of which said complainant and her husband were jointly interested, the said complainant both as partner and broker, and in the other of which one D. M. Ripley, the confidential agent of the said complainant, the husband of this defendant and the said complainant, Abraham H. Baldwin, were jointly interested, the two former as partners and the latter as broker, and the said complainant well knew that this defendant never intended to give the note above mentioned, or the said bond and mortgage, as security for such joint accounts, in which she had no interest whatever, and of which she had received no information.

And this defendant further says, that she is informed and believes improper and illegal charges have been made by said Baldwin in the said accounts for interest and commissions.

And this defendant further answering, says, that at the time she executed the said bond and mortgage it was understood by her that the said Baldwin agreed the said promissory note for forty-five hundred dollars, previously given and held by the complainant as security for the said account, carried on in her name, which was the identical indebtedness, if any exists, specified as present indebtedness in the said bond and mortgage, was to be surrendered upon the delivery to the complainant of the said bond and mortgage, but she shows and charges that notwithstanding said agreement, the said promissory note was retained by the complainant after repeated demands therefor, and was never delivered up by him until after this suit brought by this defendant in the City of New York, hereinafter mentioned, to compel the surrender of the same, when he tendered it in open Court.

And this defendant further answering, says, that the said complainant has utterly failed to perform his agreement, in consideration of which he had received from this defendant the said bond and mortgage, and that the said complainant, at a period in the progress of said speculative stock account, when in fact on a proper and just accounting the profit differences properly applicable to the said account were more than equal to all charges for differences, losses, and other charges which could be made by him, and when by his own books all his charges for advances, commissions and interest over and above profit differences, did not amount to a sum equal to the amount of the said bond and mortgage by about one thousand dollars, refused to make any further advances in the said account, and refused to buy and sell stocks or other securities on the order of this defendant's husband in the said account, and has ever since so refused.

And that the said complainant did, on the twenty-fourth day of February, eighteen hundred and eighty-one, serve a notice on this defendant, of which the following is a copy:

NEW YORK, February 24, 1881.

MRS. J. M. FLAGG:

MADAM—I hereby demand payment forthwith of the balance of account, due by you to me, amounting to the sum of $3,400, with interest from March 8th, 1880, and $9,595, and interest from December 28th, 1880, aggregating $12,975, and interest, together with $25 commission.

In the event of your failure to pay the same on the 25th day of February, 1881, by 3 P. M., I hereby give you notice that I shall sell the stock and securities, of which a list is hereto annexed, marked Exhibit A, held by me, at Exchange Sales Room, No. 111 Broadway, in the City of New York, on the 26th day of February, 1881, at 12:30 P. M., through Messrs. Scott & Meyer, auctioners, and shall apply the net proceeds of such sale as far as the same will go towards payment of the balance of such account and shall hold you responsible for any deficiency remaining due by you to me after such application.

Yours, &c.,

ABRAHAM H. BALDWIN.

Exhibit A.

100 shares of the first preferred stock of the Chesapeake and Ohio Rail Road Co.

100 shares of the stock of the Central Pacific Rail Road Company.

And that the said complainant has, without any orders whatever from this defendant's husband sold out of the said account a large quantity of stocks and securities purchased for the same under the orders of her husband, the profit difference in which, if properly accounted for by said complainant in the said account, will exceed, by more than the whole amount of the said bond and mortgage, the amount

of all charges for differences, losses, commissions, interest, and other charges the said complainant can rightfully make thereon, if the said transactions, carried on in the name of this defendant by the complainant, can be held to create any valid obligation against her, which she denies.

And this defendant further answering says that in view of the facts hereinafter stated, and with the purpose of invalidating all the said transactions, and obtain a surrender of the said bond and mortgage, she did, on or about the fourth day of March last, and before the commencement of this suit, bring a suit against the said complainant in the Court of Common Pleas of the City of New York, for an accounting setting forth the nature of the said transactions, and the situation of this defendant concerning the same, and praying that an accounting might be had between the said complainant and this defendant of the matters connected with the said transaction, and that the said complainant be directed to surrender said bond and mortgage to this defendant, canceled, and that, until such surrender, that he should be restrained by injunction from commencing any foreclosure proceedings, or from assigning, or in any manner transferring said bond and mortgage, and that upon commencing the said suit process was duly served upon the said complainant, and appearance entered for him, which suit is still pending and undetermined, and this defendant prays the same advantage from the pendency of such prior suit, as if the same had been pleaded in this cause.

And this defendant further answering says: that if the said bond and mortgage can be held to create any valid obligation against her or lien upon her property, under the circumstances above set forth, this suit to foreclose the same was prematurely brought, inasmuch as by the terms of the said bond and mortgage it was provided that future advances to the amount of four thousand dollars over and above the said alleged present indebtedness of seventy

five hundred and sixty-three dollars, forty-four cents, were to be made by the said complainant before the amount of eleven thousand five hundred and sixty-three dollars, forty-four cents, mentioned in the condition thereof as payable on demand would be reached, and this defendant claims and insists that if the said bond and mortgage were valid the said sum could not be deemed payable nor any demand therefore made until the full amount of four thousand dollars agreed to be advanced had been in fact advanced by the said complainant, and applied to the purpose of the said transactions; that the said sum of four thousand dollars was never in fact advanced, but that the said complainant wholly refused to advance the same, and therefore this defendant claims and insists that the said suit to foreclose the said mortgage before such advances were fully made was prematurely brought, and that the complainant's bill should be dismissed.

And this defendant denies all unlawful combinations and confederacy in said bill charged without that; that any other matter or thing material for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove as this honorable Court shall direct, and honorably prays to be hence dismissed with the costs and charges in this behalf sustained.

A. Q. Keasbey & Sons,

Solicitors and of Counsel with Defendant Jennie M. Flagg.

New Jersey, }
Essex County, } ss.:

Jennie M. Flagg, the above named defendant, being duly sworn on her oath, saith, that the matters and things set forth in the above answer, so far as they relate to her own acts, are true, and so far as

relates to the acts of others, she believes them to be true.

JENNIE M. FLAGG.

Sworn and subscribed this 26th day of May, A. D. 1881, before me,

ROB. JOHN CASTLE,
Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY.

Between
ABRAM H. BALDWIN,
Complainant,

and

JENNIE M. FLAGG, ET AL.,
Defendants.

On Bill, etc.

This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of Jennie M. Flagg, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient, in the law, to be answered unto, and that the said answer of the said defendant, Jennie M. Flagg, is uncertain, untrue and insufficient to be replied unto by this repliant, without that that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue. All which matters and things this repliant is and will be ready to aver and prove, as this honorable Court shall direct, and humbly prays, as in and by his said bill, he has already prayed.

TITSWORTH & MARSH,
Solicitors for and of Counsel with Complaint.

IN CHANCERY OF NEW JERSEY.

Between ABRAM H. BALDWIN,
Complainant,

AND

JENNIE M. FLAGG ET AL.,
Defendants.

On Bill, &c.

Examination of witnesses, etc., taken in the above stated cause, at my office, No. 721 Broad street, in the City of Newark, New Jersey, on Monday, the thirty-first day of October, A. D. 1881, before me, William T. Day, one of the Masters of the Court of Chancery, the solicitors of the complainant and defendants, respectively, consenting and agreeing that the said examination be taken by me.

Newell Martin, Esq., of New York (representing Titsworth & Marsh, complainant's solicitors), appearing for complainant, and Mr. A. O. Keasley for the defendant.

On part of complainant.

Complainant's counsel offers in evidence the bond and mortgage mentioned and set forth in the complainant's bill of complaint which are thereupon marked as complainant's Exhibits C 1 and C 2, respectively.

Complainant's counsel here closes the examination for this date, and requests an adjournment, on the ground that the New York counsel for the complainant, Mr. Henry A. Root, has been obliged on account of the illness of a relative, to go to Stamford, Connecticut.

Complainant's counsel requests that the examination be adjourned until Saturday, November 5th prox., at two o'clock, P. M.

Counsel for defendant gives notice to complainant's counsel, that since the mortgage produced on the part of the complainant—C 2—is, on the face of

it, a mortgage given to secure future advances, and the bill alleges such advances to have been made, he requests that at the next meeting the complainant will produce all of his books of account containing any entries of any transactions relating to such alleged advances, or to the indebtedness secured by the mortgage offered in evidence.

On Saturday, November 5th, 1881, at 2 o'clock, P. M., the time to which the examination in said cause had been adjourned, neither party, counsel or witnesses, appeared before the Master.

IN CHANCERY OF NEW JERSEY.

BETWEEN ABRAM H. BALDWIN, Complainant, AND JENNIE M. FLAGG ET AL, Defendants.	On Bill, &c.

Transcript of testimony taken this twenty-sixth day of November, 1881, before William T. Day, one of the Masters of said Court, pursuant to an order of reference in the above stated cause, on adjournment to this date.

Present: Cortlandt Parker, Esq., and H. A. Root, Esq., of counsel with complainant, A. Q. Keasbey, Esq., of counsel with defendants.

ABRAM H. BALDWIN, a witness produced by the solicitors of the complainant, being duly sworn, deposes and says, in answer to questions by Mr. Parker.

Q. Mr. Baldwin, where do you reside?

A. In the City of New York.

Q. What is your business?

A. Banker.

Q. Any other business ?

A. No, sir.

By Mr. Root—Broker ?

A. Banker and broker.

Q. You know the defendants in this cause ?

A. Yes, sir.

Q. You are yourself the complainant ?

A. Yes, sir.

Q. State, if you please, what, if any, advances you made for or on account of the defendants after the execution of the bond and mortgage already offered in evidence ?

A. After the execution of the bond and mortgage?

Q. State what advances you made, and when ?

A. Well, I advanced on the 30th August $8,000.

Q. Of what year ?

A. 1880.

Q. For what purpose ?

A. For the purchase of 100 shares of Delaware and Hudson—of 100 shares of stock.

Q. Of the Delaware and Hudson Canal Co.?

A. Yes, sir.

Q. Upon whose order did you purchase the stock?

A. The order of Mr. Flagg.

Q. On what account ?

A. Mrs. Jennie M. Flagg.

Q. What amount of money did you say ?

A. $8,000.

Q. Does any, and if so, how much of that advance still remain due ?

A. It all remains due.

Q. We are speaking of the $8,000; that does not remain due?

A. No.

Q. Please state how much of that advance does remain due?

A. I cannot tell.

Q. Cannot you, by examination of those accounts?

A. No, sir.

By Mr. Parker: Q. How much, if any, is now due you from Mrs. Jennie M. Flagg and Mr. Wm. L. Flagg for adances subsequent to the making of this mortgage?

A. Somewhere about $4,000.

Q. Name the amount correctly?

A. I am not able to do so.

Q. By examining any handwriting of your own, can you refresh your memory so as to state the precise amount?

A. I can look at these accounts.

Q. Are they in your own handwriting?

A. No, sir.

Q. Whose is it?

A. One of my clerks.

Q. Handwriting of your clerk?

A. Yes, sir.

Q. Made for the purpose of exhibiting your account with the defendants?

A. Yes, sir.

Q. Then I put the question again: Looking at the paper to which you have referred, and refreshing your memory, state what amount is due, if any, at this time for advances subsequent to the making of this mortgage by Jennie M. Flagg and William L. Flagg?

By Mr. Keasbey: The question is objected to on the ground that the witness holds in his hands four papers, all of which he says are not in his handwriting, but are in the handwriting of his clerk, for the purpose of being exhibited in this cause, and are therefore not papers which the witness can use to refresh his memory.

By Mr. Parker: Without being answered, another question is put.

Q. These papers—state if you know from whence the writing upon them was derived?

A. Derived from my books.

Q. You say you know it; how do you know it?

A. I compared them.

Q. Are they correct; are they a copy of your books?

A. Yes, sir.

Q. Those books—what are they, your books of original entry, or what?

A. They are my ledger.

Q. Your ledger?

A. Yes, sir.

Q. That is founded upon your day-book?

A. No, sir; it is founded upon my blotter.

Q. Your blotter?

A. Yes, sir.

Q. And in keeping your accounts, in what book do you first keep the connected account of your customers?

A. My purchase and sales book.

Q. State the manner of your bookkeeping?

A. I am supplied with notes of the transactions which take place; they go on to my purchase and sales book; then they go from there to my blotter, and from there to my ledger.

Q. What is your blotter—a temporary day-book?

A. It is a sort of temporary day-book.

Q. What book contains your first permanent entry?

A. My purchase and sales book.

Q. And your ledger?

A. My ledger is an accumulation of the whole account spread in my ledger.

Q. And your accounts with customers are kept ledgerwise?

A. Entirely os.

Q. And in no other place?

A. No, sir.

Q. Repeat, if you have already stated, what is the first permanent connected book of account with your customers?

A. My ledger.

Q. In whose handwriting in this ledger--those entries I particulary refer to?

A. The handwriting in my ledger is the same handwring as the person who made this account.

Q. The handwriting of a clerk?

A. Yes, sir.

Q. What is your habit as regards rectifying the ledger, if rectification be necessary? do you oversee the work of the clerk in the ledger?

A. Yes, sir.

Q. The account as it appears in the ledger of this transaction, do you know whether it was true or not?

A. I did at the time; yes, sir.

Q. Was it true or not?

A. Yes, sir.

Q. It was true?

A. Yes, sir.

Q. And these papers you know to be a copy therefrom?

A. Yes, sir.

Q. Now then, I ask you again to refresh your memory from the papers you hold, and state what, if any, is the present indebtedness to you of Jennie M. Flagg and William L. Flagg for advances made subsequent to the execution and delivery of the mortgage in question in this suit?

By Mr. Keasbey: The question objected to because it appears from the statement of the witness that the entries of the stock transactions referred to were made in the blotter and purchase and sales book, and from there transferred to the ledger, and that these papers are simply an alleged copy from the ledger, made by a clerk who kept it, and are not such papers as are allowed to be referred to by a witness for the purpose of refreshing his memory, and that they are not competent evidence of those accounts.

I wish for this purpose to put this question to the witness:

Q. By Mr. Keasbey: Did you compare, figure by figure, and word by word, all the four papers that you have in your hand?

By Mr. Parker: The question is objected to.

A. I would not say that I compared every letter, but I compared it, and saw that it was right.

Q. Did you compare them, figure by figure, and word by word?

A. I figured the entire account—I compared the entire account.

Q. Did you hold in your hands one of the papers, and your clerk refer to the ledger, and then read them over?

A. I compared them with the books.

Q. Did you hold one paper, and the clerk the other, while you read from the ledger?

A. I did not compare them in that way.

Q. Did you compare them, strictly speaking, item by item, and figure by figure, from the ledger from which they were copied, so as to be able to swear that they are true copies of the ledger?

A. Yes, sir.

Q. You can swear that they are true copies of the ledger?

A. Yes, sir.

Q. Are they all from one ledger?

A. No, sir.

Q. What are they from?

A. Two ledgers.

By Mr. Parker: Q.—Question repeated. I ask you again to refresh your memory from the papers you hold, and state what, if any, is the present indebtedness to you of Jennie M. Flagg and William L. Flagg, for advances made subsequent to the execution and delivery of the mortgage in question in this suit?

A. Four thousand dollars.

CROSS-EXAMINED BY MR. KEASBEY:

Q. Were you present at the former examination in this cause before the master?

A. Where—in New York?

Q. No; here?

A. No, sir.

Q. Who appeared for you at that time?

A. I was not here.

Q. Whom did you send here for the purpose of representing you?

A. I did not send any one.

Q. Do you know what counsel appeared for you, or was sent from New York to appear for you, at the former examination?

A. I presume Mr. Parker appeared and Mr. Root.

Q. Had you then engaged Mr. Parker?

A. I think I had.

Q. Did Mr. Newell Martin appear for you?

A. Not that I am aware of.

Q. It appears by the minutes of the Master that Newell Martin, Esq., of New York, representing Titsworth & Marsh, the complainant's solicitors, appeared for you. At that examination the defendants' counsel gave notice to your counsel (Mr. Martin) that since the mortgage produced and exhibited then was, on the face of it, a mortgage given to secure future advances, and the bill alleges such advances to have been made, he requests that at the next meeting the complainant will produce all of his books of account containing any entries of any transactions relating to such alleged advances, or to the indebtedness secured by the mortgage offered in evidence. Did your counsel communicate to you that request?

A. Well, I did not understand the case exactly, whether the books would be required or not.

Q. Will you please answer the question? I asked you whether your counsel had informed you that you had been requested to produce the books on the next examination?

A. I would not swear that they did or did not.

Q. Have you produced your books containing your transactions with Mrs. Flagg?

A. No, sir.

Q. Why cannot you swear one way or the other as to whether your counsel informed you that your books were requested to be produced at the next examination?

A. Because I have had very little time to see Mr. Root—my time is almost wholly occupied in New York.

Q. Do you say that you forget whether Mr. Root or Mr. Martin told you that the books were required?—that you forget, or do not know whether any of them told you that the books were required?

A. I do not know.

Q. Do you mean that you don't know what they told you?

A. No, sir.

Q. Do you forget whether they did or did not?

A. I don't remember.

Q. Do you remember that they told you?

A. No, sir.

Q. Do you remember that they did not tell you?

A. No, sir; I don't know.

Q. Then had you no information or suggestion that the books containing your accounts with Mrs. Flagg would be requested at this examination here?

A. Well, I thought Mr. Flagg would do everything he could to annoy me; I thought they would be required finally—yes, sir.

Q. Did you think they would be required to-day?

A. I didn't know.

Q. Did you ask your counsel whether or not they would be required?

A. The books of account? I think I did.

Q. How were you advised upon the subject?

By Mr. Parker: I object to the question.

Q. Did they tell you to bring copies and not the books?

By Mr. Parker: Question objected to.

Q. Have you produced the books containing your accounts?

A. I have already answeerd that question.

Q. How large is your purchase and sales book?

A. It is quite a large book.

Q. Does it contain records of all your transactions with Mrs. Flagg in the purchase and sale of stock?

A. I think it does.

Q. Does your blotter contain the first entry of those transactions?

A. Yes, sir.

Q. Are they then transferred to the purchase and sales book?

A. No; they are taken from the purchase and sales book to the blotter.

Q. Is the purchase and sales book the first entry made?

A. Yes, sir.

Q. Well, then that book will contain the original records of your transactions with Mrs. Flagg, will it not?

A. Yes, sir.

Q. And are they afterwards transferred to the ledger and posted there?

A. It won't contain an order.

Q. I don't mean that; you have books that do correctly show all the transactions with Mrs. Flagg?

A. The account in the ledger shows that.

Q. Your ledger is a copy of the accounts as they appear from the other books, posted up, is it not?

A. Yes, sir.

Q. Then the ledger shows what is in the other books?

A. Yes, sir.

Q. And the other books show the original transactions?

A. Yes, sir; but the purchase and sales book is not the original entry of all that goes on in my business.

Q. Will you at the next meeting before the Master, produce those books here, in order that we may see the accounts of these stock transactions with Mrs. Flagg?

A. Well, I will, if I am advised to bring them by my counsel.

By Mr. Keasbey: I now request that you will do so. I made the request before, but you do not seem to know whether you were advised of it or not. You are now advised of the defendants' requirement that you will produce all your books containing records of the alleged advances at the next meeting. This examination will be suspended, it being nearly 5 o'clock P. M., for that purpose.

Mr. Parker offers Mr. Keasbey to produce the books referred to in New York for his (Mr. Keasbey's) examination.

Mr. Keasbey declined to accept offer, but required production before Master, pursuant to notice.

The four papers referred to in the direct examination, of Mr. Abram H. Baldwin are marked for identification, Ca., Cb., Cc., and Cd.

Examination adjourned by consent of counsel until Friday, December 2d, 1881, at 2 P.M.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM H. BALDWIN,
Complainant,

AND

JENNIE M. FLAGG ET AL.,
Defendants.

On Bill to Foreclose, &c.

Further examination of witnesses in the above stated cause, before William T. Day, Esq., Master in Chancery, at his office, 721 Broad street, Newark, Friday, December 2d, 1881, pursuant to adjournment. Present—CORTLANDT PARKER, ESQ., and H. A. ROOT, ESQ., of counsel for complainant; and A. Q. KEASBEY, ESQ., and WM. L. FLAGG, ESQ., for defendants.

ABRAM H. BALDWIN, the complainant, on further cross-examination by Mr. Keasbey, deposes and says, as follows:

Q. How long have you known William L. Flagg?

A. Nearly two years.

Q. Had you been engaged in business for him as a stock broker before this mortgage was made?

A. Yes, sir.

Q. What is called a speculative account—an account for the purpose of speculation?

A. Yes, sir.

Q. How long before the mortgage was made did you stop keeping his account?

A. About six months.

Q. Was it a large account? Pretty large transactions?

A. Not very; no.

Q. Is his account shown in the books which you have brought here to-day?

A. Yes, sir.

Q. Did you have a joint account in stock speculations in which you were mutually interested?

A. Yes, sir.

Q. Was that an account consisting of many transactions, or only of one?

A. Several, I guess.

Q. In what were you mutually and jointly speculating—what stocks?

A. I could not tell you now.

Q. In different stocks?

A. Yes, sir.

Q. Have you done the purchasing and selling?

A. Part of the time.

Q. How much was his loss or deficiency on that joint account?

A. I think it was something like $2,000; the papers will show.

Q. Was it not more than $3,000?

A. I could not say.

Q. What papers will show what he lost jointly with you in those transactions?

A. The books will show.

Q. These books? (referring to books brought to the Master's office by Mr. Baldwin).

A. Yes, sir.

Q. These contain that account?

A. Yes, sir.

CROSS-EXAMINATION CONTINUED BY MR. WM. L. FLAGG:

Q. What accounts are included in this mortgage?

A. All my dealings with Mr. & Mrs. Flagg.

Mr. Parker objects to the examination being carried on by anyone except the counsel in the cause.

Q. When was the joint account which is included in this mortgage commenced?

A. Some time early in the year 1880; I think along in January or February.

Q. Have you brought your books containing all those accounts, and have you them present here?

A. Yes, sir.

Q. Will your books exactly show when the first account commenced?

A. Yes, sir.

Q. Will you look at the books and state from them when the first account covered by the mortgage commenced?

A. It was January 28, 1880.

Q. How is that account designated in your book?

A. William L. Flagg.

Q. It was an account with Mr. W. L. Flagg?

A. Yes, sir.

Q. Were there large transactions in that account?

A. Not very large; there were several of them.

Q. You mean several transactions?

A. Yes, sir.

Q. Can you state how many transactions?

A. No, sir.

Q. How long did that account run?

A. It ran until June.

Q. June what?

A. June 15, 1880.

Q. Will you allow, for the purpose of cross-examination, that a copy be made from this book of this account, or will you furnish a copy yourself and allow us to compare it with this book?

A. I produced at the last examination, and I now again produce such copy of the account of Mrs. Flagg. I now produce a copy, which I believe to be correct, of the account of Mr. Flagg. The same are marked, for identification, C E and C F.

Q. Will you state exactly how this account is embraced in the mortgage?

A. Embraced in the mortgage?

Q. Yes, sir.

A. It is transferred from Mr. Flagg's account to Mrs. Flagg's.

Q. That does not explain how it is embraced in

the mortgage. Will you state how this account gets into the mortgage?

A. By the order of Mrs. Flagg.

Q. You had the order of Mrs. Flagg asking you to include this account in this mortgage?

A. Yes, sir.

Q. Was that a written order?

A. Yes, sir.

Q. Have you that order with you?

A. No, sir.

Counsel for the complainant says: "We have the order and will produce it." The paper is thereupon produced and handed to the examining counsel, who inspects it.

Counsel for the complainant then says that he understands the rule of evidence in New Jersey to be that when a written document is thus called for, produced and inspected, it must, if the other party require it, be regarded as evidence on the asking-parties' side, and counsel for the complainant requires that the paper be marked as an exhibit on the part of the defendants.

Counsel for the defendants does not admit any such obligation under the rule, but has no objection to the paper being marked as an exhibit for the complainant, if he desires it.

The paper is thereupon offered in evidence by complainant's counsel, and marked Exhibit C 3.

It is understood that the counsel admit the authenticity of the paper, and the same to be in Mrs. Flagg's handwriting.

At the request of Mr. Root, a copy of this paper is spread on the minutes of this examination.

"JUNE 18th, 1880.

"A. H. BALDWIN, Esq.:

"DEAR SIR—I enclose my note, four thousand and five hundred dollars, as margin on a stock

speculative account which I wish to open with you. Please transfer to my name the personal account of W. L. Flagg now in his name on your books. You are authorized to follow my husband's directions in all matters connected with my account.

" JENNIE M. FLAGG.

"Summit, N. J."

Q. When did you get this paper?

A. I got it about June 16, I think.

Q. Who gave it to you?

A. Mr. Flagg did, probably.

Q. Don't you know? It was probably from Mrs. Flagg?

A. No.

Q. Did you require it?

A. No.

Q. You did not ask Mr. Flagg to get such order?

A. My impression is that Mr. Flagg offered it.

Q. I asked if you did not ask Mr. Flagg to get that order.

A. You ask me if I did not ask you?

Q. If you did not request me? (Mr. Flagg).

A. My impression is that you suggested it, and that I made it the basis of additional credit. I know I made it a basis of additional credit.

Q. This letter?

A. Yes.

Q. On that ground?

A. Yes.

Q. Did anything accompany that order?

A. A note.

Q. How much was that note for?

A. $4,500; that is the amount stated there, is it not?

Q. What was the loss in that account, if any, at this time?

A. Something like $2,500, I think; $2,500 to $3,000.

Q. Did you expect the note?

A. Yes, sir.

Q. What did you take it as?

A. I took it as collateral.

Q. For what?

A. I took it as collateral for the balance due on Mr. Flagg's account and for a margin for future speculation on Mrs. Flagg's account. The account at that time was transferred from Mr. Flagg to Mrs. Flagg.

Q. The items of the one account ran into the other?

A. They were transferred.

Q. Did you suggest the form of the order that you required, and was that order in conformity with your request?

A. I would not be positive about that.

Q. Was the note required by you on account of the fact that Mr. Flagg's account showed a loss on your books?

A. Yes.

Q. Was the order also required by you because Mrs. Flagg's account showed this loss?

A. It was all one transaction.

Q. What do you mean by all one transaction?

A. The note, the order and the transfer.

Q. Were they all one transaction?

A. Yes.

Q. What did you do with that note?

A. Put it in the safe.

Q. You kept it?

A. Yes, sir.

Q. As security, did you?

A. Yes, sir.

Q. The account, after this order, ran on in Mrs. Flagg's name, did it?

A. Yes, sir.

Q. What was the object in getting this order?

A. To get the account in as good shape as I could.

Q. What was the object in getting the note?

A. That came with the order.

Q. As additional security?

A. Yes, sir.

Q. For what?

A. Additional security.

Q. Security for what?

A. Security for Mrs. Flagg's account, and for the debt already incurred by Mr. Flagg; the account then went on in Mrs. Flagg's name.

Q. Burdened with the loss which appeared on your books before this order was given?

A. Yes, sir.

Q. Why did you want the account transferred to Mrs. Flagg's name?

A. Because Mr. Flagg told me that Mrs. Flagg was worth more money than he was.

Q. Had you up to this ever seen Mrs. Flagg?

A. I could not answer.

Q. Did you ever have any conversation with her about the order or note?

A. I think not.

Q. Or the account?

A. I don't think I had.

Q. What other portion of these accounts, or any account on your books, are merged in this mortgage; I refer to the joint accounts?

A. There are two accounts—Flagg & Ripley account and the Flagg & Baldwin account.

Q. Have you not transposed the order (computing dates) of those accounts?

A. Yes, sir.

Q. The Flagg & Baldwin account was opened first?

A. Yes, sir.

Q. When was that opened?

A. That was opened May 6th.

Q. May 6th, what?

A. 1880.

Q. How long did it continue?

A. The transaction was on July 13, 1880.

Q. Was that a considerable account?

A. No, sir.

Q. Have you made a copy of that account?

A. No, sir.

Q. Is it in either of the books that you have present here?

A. Yes, sir.

Q. Will you make a copy of it, so that it may be compared with this book, to go with the other copies of accounts already presented?

Counsel for complainant agrees to make such copy, and to give defendant's counsel an opportunity to compare it with the books.

Q. What is the loss, if any, as shown by your books, of Mr. Flagg on that joint account?

A. Flagg & Baldwin?

Q. Yes.

A. $2,863.05.

Q. You were a partner with Mr. Flagg in that account, were you?

A. Yes, sir.

Q. At whose suggestion was it begun?

A. I don't know.

Q. Is it not a fact, that you bought one morning 500 shares of Jersey Central and came to Mr. Flagg, who before that time had no intimation of it, and stated that you had opened this joint account by the purchase of that stock?

A. No, sir.

Q. You don't remember the circumstance?

A. I remember I did not buy 500 shares of stock, because it is not here (referring to his book).

Q. I may be mistaken as to the number of shares of stock. Would you answer my question yes, if I had stated the correct number of shares?

A. No, sir.

Q. You don't remember the circumstances connected with the opening of that account?

A. Not particularly.

Q. Which one of the partners in that account conducted it?

A. Well, we both gave it our best efforts.

Q. Did you do the lion's share of it?

A. I did the buying and selling at the exchange, but not without consultation.

Q. As a broker?

A. I did the buying and selling at the exchange as the broker, but not without consultation.

Q. What other joint account went into this mortgage?

A. Flagg & Ripley. Mr. Flagg's proportion of the Flagg & Ripley, and I should have said before, Mr. Flagg's proportion of the Flagg & Baldwin account.

Q. When was that account opened and closed?

A. It was opened May 21, 1880, and the last transaction was on June 7, 1880.

Q. What was the loss on that account with which Mr. Flagg was charged?

A. $329.96.

Q. The transactions in these two joint accounts closed before the mortgage was given, did they?

A. The amount due was made up at that time; the amount of Mr. Flagg's indebtedness on such account was made up at that time and put in the mortgage.

Q. The transactions in them had closed—never have been any transactions since?

A. No, sir.

Q. Did Mrs. Flagg ever, to your knowledge, know anything about those joint accounts?

A. Yes, sir; she wrote me a letter acknowledging liability on her part.

Q. That was at the time she gave the mortgage, was it?

A. Yes, sir.

Q. Had she, to your knowledge, while those accounts were going on, any knowledge of them?

A. While the Flagg & Ripley and Flagg & Baldwin were going on? I don't know.

Q. Had she, to your knowledge?

A. I don't know.

Q. Don't you know whether you have any knowledge that she knew or was cognizant of them?

A. I don't know anything about it.

Q. You don't know that she knew anything about it?

A. I don't know whether she did or not.

Q. What was the next account that went into this mortgage?

A. Mrs. Flagg's account.

Q. That was the continuation of Mr. Flagg's account, was it?

A. Yes, sir.

Q. When did that end?

Question withdrawn and afterwards repeated.

A. That ended on March 16, 1881.

Q. What loss, if any, is shown on your books in that account at that time?

A. $3,346.07 and interest.

Q. At what time was this mortgage given?

A. This mortgage was given August 30, 1880, I think.

Q. How did it happen to be given?

A. Given for additional security and an acknowledgment of the amounts already due.

Q. Additional security for what?

A. For the amount of Mrs. Flagg's indebtedness. Mr. Flagg had got her further in debt on speculations for her account.

Q. The mortgage was for $11,563 and odd, and payable on demand, was it?

A. Yes, sir.

Q. Was the indebtedness in the accounts, in all the accounts which you have mentioned, equal to the face of this mortgage at that time, when the mortgage was given?

A. No.

Q. How did it happen to be for $11,563 and some cents?

A. Well, Mr. Flagg was very anxious to speculate further, and so after he could not pay the loss that he had made for the different accounts, I, at his request, gave him credit for $4,000, or I gave Mrs.

Flagg credit for that, which amount appears credited to her or her account.

Q. Then $7,563 was the sum shown on your book at the time of giving the mortgage as the loss due from Mr. Flagg on all the different accounts you have mentioned?

A. Yes, about that sum.

Q. $4,000 was to be advanced by you, was it?

A. It was for future advances.

Q. When you opened on direct examination, you said you advanced $8,000 and some odd dollars; what did you mean by that?

A. I did not consult my books so closely at that time as I have to-day.

Q. Then you were mistaken, and do not intend to say here that you have made Mr. Flagg $8,000 and some odd dollars advances since that mortgage was given?

A. No, I was not mistaken; I did not understand what you meant. I advanced at one time in the purchase of 100 shares of Delaware and Hudson, after the execution of the mortgage, $8,400. At one time the debit balance of Mrs. Flagg was $76,000.

Q. Mr. Baldwin; this advance that you spoke of as $8,000 and odd, was the price of 100 share of stock, was it?

A. Yes, sir; it was $8,400.

Q. And was about the next day, or nearly the next day, after getting the mortgage?

A. A few days afterwards.

Q. The first transaction after getting the mortgage?

A. Yes, sir.

Q. Do you mean to say that that advance was any part of the sum of $4,000 which you agreed to advance for the purposes of that account, or such an advance as would satisfy your agreement to advance the $4,000?

Objection taken by complainant's counsel to this question as calling for an answer which

is to be settled by the mortgage contract between the parties.

A. I don't know why it was not.

It is agreed between counsel that the books, being two ledgers and the purchase and sales book brought to the Master's office by Mr. Baldwin may be returned to New York, and that the copies already furnished and to be given of accounts relating to the transactions may be used in their stead as evidence; provided, that the defendants to have liberty to verify the accounts by comparison with the books at Mr. Baldwin's office.

Counsel for complainant agrees to permit such comparison with the books, and a time is set for that purpose.

The books are here offered in evidence, and are marked Exhibit C 4, C 5 and C 6, for complainants.

Whereupon the examination was further adjourned until Friday afternoon next (December 9, 1881), at 2:30 o'clock.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM H. BALDWIN,
Complainant,

AND

JENNIE M. FLAGG ET AL.,
Defendants.

On Bill to Foreclose, &c.

Further examination of witnesses in the above stated cause, before William T. Day, Esq., Master in Chancery, at his office, 721 Broad street, Newark,

Friday, December 9th, 1881, pursuant to adjournment.

Present—CORTLANDT PARKER, ESQ., and H. A. ROOT, ESQ., of counsel for complainant, and A. Q. KEASBEY, ESQ., and WM. L. FLAGG, ESQ., for defendants.

ABRAM H. BALDWIN, the complainant, being further cross-examined by Mr. Wm. L. Flagg, deposes as follows :

Q. Do you consider that upon that very first transaction after taking this mortgage you had a right to dispose of the mortgage ?

BY MR. PARKER : The question is objected to as calling for an opinion as to a question of law.

A. I do.

Q. Have you always thought so ?

Objected to for the same reason as last stated.

A. I have always thought so.

Q. Witness is shown a papar, already marked for identification, C[a], containing the record of the purchase and sale of 100 shares of Delaware and Hudson, and is asked what he paid out in the account for the purchase of that Delaware and Hudson stock ?

A. Paid out $8,400.

Q. What date was that?

A. August 30th.

Q. Does that account show when that Delaware and Hudson was sold?

A. Sold on August 30th.

Q. On the same day?

A. Yes. These dates are the dates when the stock was received. If that 100 Delaware and Hudson was bought on August 29th regular, it would come in on the next day. These are the dates it came into the house and went out of the house.

Q. Then it appears from this account that this

Delaware and Hudson was bought and sold the same day—or bought one day and sold the next, as the transaction appears on your ledger?

A. I don't enter on my ledger in what manner they were bought; the date on which they were received or delivered appears on my ledger only. We have several ways of buying stocks, buying three, selling three, or regular for cash.

Q. I merely wish to show the different features of this one transaction. This stock was bought and sold according to your ledger on the same day?

A. Yes, sir; according to my ledger, as I have explained.

Q. What was that 100 shares sold for?

A. Sold for 85½.

Q. $8,550, was it?

A. Yes, sir.

Q. Did not the account receive then the credit of the difference between the purchase price and selling price?

A. It did, less commission and interest.

Q. Did that transaction then charge anything against the $4,000 provided for as advances in the mortgage?

A. I never provided to make any advance on the mortgage. The question of advance was entirely optional with me.

Q. I ask you for the fact, as to whether or not anything could have been charged by you against the $4,000 spoken of in the mortgage by reason of that transaction?

A. That was at my option. If Mr. Flagg gave the order on the account of Mrs. Flagg, I had the option to accept it or not. I never agreed to make the $4,000 advance.

Q. I ask you again if there was anything in that transaction, as to that 100 shares of Delaware & Hudson, which charged anything against this $4,000 provided for advance?

A. It did at my option. It did when I made the transaction, but I had the option to make the transaction or not.

Q. I am not asking you about your agreement now; I simply ask you if that transaction in 100 shares of Delaware & Hudson gave you the right to charge anything against that $4,000 provided for advances?

A. I made no agreement whatever as to the $4,000 future advances; but when I executed Mr. Flagg's order on account of Mrs. Elagg, it gave me a right, at my option, to charge it against their account.

Q. I ask you again, Mr. Baldwin, if the purchase and sale by you of this 100 Delaware & Hudson substracted anything from the $4,000 provided for in the mortgage as advances?

A. It did when I bought the stock, but I made no agreement for advances.

Q. I ask if the result of that transaction has charged anything against the $4,000 provided for advances in the mortgage?

A. There was no $4,000 provided for in the mortgage. There was a profit in that transaction, less commission and interest of $125.

Q. Then there was nothing in that transaction which charged anything against this $4,000?

A. When I bought the stock, you were in my debt some $8,400 on the advance which I made on the $4,000, but which I never agreed to make.

Q. I ask again if the result of that transaction charges anything against that $4,000; if it did not rather credit the account with $125?

A. The account made $125 on that transaction, but I never was under any obligation in any way to make——

Q. To make what?

A. The advance of $4,000.

Q. If this transaction had resulted in the sale of this Delaware & Hudson at 82½, would that have given you the right to have charged anything against the $4,000 provided for advances in the mortgage?

By Mr. Parker: Objected to as again asking the witness for his opinion.

A. Yes, sir; no future advances were agreed to in the mortgage.

Q. Is this transaction in Delaware & Hudson a sample of all the transactions in this account?

A. I don't know what you mean by sample.

Q. I mean the *modus operandi?*

A. Yes.

Q. All the purchases and sales were to be made upon the order of Mr. Flagg, were they?

A. Yes, sir; either verbal or written; most of them were made in writing, but some were verbal.

Q. The account could not be charged in any way, except upon the order of Mr. Flagg?

A. It could be charged with interest; interest is a matter of calculation—interest charged up.

Q. Mr. Flagg had sole charge of the account, did he?

A. Yes, sir, he did, until the last end.

Q. Why not then?

A. Because I had been foolish enough to let him lose this $4,000, and I sold him out at public auction on account of Mrs. Flagg.

Q. He protested against that, didn't he?

A. I never heard that he did. He was glad to get out at that time; he came into my office on one day and said he was ruined.

Q. This mortgage stood as security for this account, did it not—the account of Mrs. Flagg—until the difference losses, together with interest paid out and commissions, exceeded the difference profits by the sum of $4,000?

By Mr. Parker: The question is objected to as a question of law.

A. Well, it is all I had to look to for the losses made on the Ripley & Flagg, the Flagg & Baldwin, the W. L. Flagg and Mrs. Jennie Flagg account, by order of Mr. Flagg.

Q. After you took it, it stood as security, did it not, as I have asked you?

By Mr. Parker: Question objected to, and

witness advised not to answer, because it simply calls for an opinion on a point of law and on the construction of the instrument.

Q. Did you hold that mortgage as such security, as I have described?

BY MR. PARKER: The question objected to, as again calling for an opinion as to the legal construction of the instrument, and the witness is advised not to answer.

Q. Was your relation to this account, as broker, in accordance with your usual relation to such accounts?

BY MR. PARKER: Question objected to as immaterial and irrelevant.

A. Usually my customers put up the money and pay the losses. This is the only account where I had real estate security.

Q. It was then a special account with you?

A. It was special with me for this reason, that Mr. Flagg said he was speculating for all that Mrs. Flagg and he had in the world, and my sympaties led me to give him every chance to get out of it. That was the only way in which it was special.

Q. You knew then, or at least say now, that Mr. Flagg told you that you had, as security for the loss on this account, all the property both he and his wife had?

A. He told me about the substance of that, but said if I would give him a further chance he was sure he could get his losses all back.

Q. How was the sum of $7,563.44, specified in the mortgage as due at the time it was given, made up?

A. $4,370.43 was indebtedness of the account of Jennie M. Flagg at the time the mortgage was given. The Baldwin & Flagg account $2,863.05, and the Flagg & Ripley $329.96. I mean Mr. Flagg's proportion of the loss in the various accounts.

Q. Was the indebtedness in the account then in

Mrs. Flagg's name, which you say was $4,370.43, secured by her note at this time?

A. The mortgage took the place of the note, and the note when I took the mortgage was at the service of the parties—Mr. Flagg as the agent of Mrs. Flagg.

Q. I ask again for a direct answer. Was the $4,370.43 alleged indebtedness in the account in Mrs. Flagg's name, secured by a note at the time you made this mortgage?

A. The note had no figure in it whatever, I only kept it in my safe. It was never credited up to the parties in any way.

Q. Is it a fact that you held Mrs. Flagg's note as security for this alleged indebtedness, $4,370.43, at the time you took this mortgage?

A. It was in my safe, but it was merged in the security of the mortgage. The note was at the service of the parties at any time after I received the mortgage.

Q. You do not answer my question. Did you hold Mrs. Flagg's note for $4,500 as security for the indebtedness in the account in her name, which was at the time she gave the mortgage, as alleged, $4,370.43?

A. Yes, it is all I had at that time.

Q. Will you say yes or no to that question?

A. I have already answered the question.

Q. Was your answer yes or no?

A. My answer appears on the minutes.

Q. Question repeated—(The stenographer reads minutes of question and answer) and the witness is asked if he means by that answer yes or no?

A. I mean just what I have answered.

Q. Question is again repeated—Did you hold Mrs. Flagg's note for $4,500 as security for the indebtedness in the account in her name, which was at the time she gave the mortgage, as alleged, $4,370.43?

A. Yes.

Q. As a condition upon which you were to receive the mortgage, were you to surrender the note?

A. The note was in my safe, and it was at the service and subject to the order of the parties, and I don't think any thought was taken on it.

Q. Did you not agree to surrender that note?

A. I don't think anything was said about that note.

Q. Then you did not agree to surrender it?

A. I don't remember that anything was mentioned about it. I don't think it cut any figure at all; I regarded the mortgage security as a great deal better.

Q. I understand, then, that you do not remember that there was any agreement that that note was to be given up?

A. I don't think the note was mentioned.

Q. Did Mr. Flagg, on the same day you got the mortgage, ask you for the note?

A. I don't think he did. I don't think it was mentioned.

Q. Did he subsequently ask you to give him that note?

A. Not that I remember; the note was subsequently delivered in Court.

Q. You had this note in your possession, did you, when Mrs. Flagg brought suit against you for its surrender and the cancelation of this mortgage, in New York?

A. I had it in my possession only for safe keeping, because it had never been asked for.

Q. Well, you just now stated that you did not remember whether it had been asked for?

A. It never was asked for; if it had been asked for it would have been delivered. The mortgage took the place of the note.

Q. When and where did you offer to surrender that note?

A. My attorney offered it in Court, I think, or he may have offered it before. I am not positive as to that.

Q. It was after suit brought to compel it, was it not?

A. I don't know; I don't know what the suit was.

Q. What is your impression about it?

A. Well, I don't know much about it; my attorney took care of the case. If the parties had come into my office and asked for the note, they would have got it.

Q. With whom did you carry on the negotiations which resulted in your getting this mortgage?

A. With Mr. Flagg.

Q. Did you see Mrs. Flagg during the time at all?

A. No, sir.

Q. Was any draft of a bond and mortgage, other than the one actually sent, prepared for execution on the part of Mrs. Flagg?

A. I think not.

Q. Were not such drafts sent to you during your summer trip as proposed proper instruments?

A. There may have been, but I don't remember.

Q. Did Mr. Flagg during those negotiations object to the losses in the joint account being included in bond and mortgage?

A. I don't see how he could.

Q. Did he, or did he not?

A. I don't know that he did.

Q. You don't remember that Mr. Flagg objected to the losses in those joint accounts being included in the bond and mortgage?

A. Mr. Flagg was anxious to put anything in, if I would give him additional credit, he was so confident of future success.

Q. Did he object to the losses in those joint accounts being included?

A. No, sir.

Q. Were not the negotiations delayed for over two weeks because of Mr. Flagg's objections to presenting a mortgage, with those losses included, to his wife for signature?

A. I think not; Mr. Flagg said that his wife would sign anything that he presented.

Q. Have you any correspondence—that is, letters

written by you, or by Mr. Flagg, about this bond and mortgage, and the negotiations about them?

A. No, sir.

Q. Did you ever have any?

A. Yes; I had some.

Q. What did you do with them?

A. Well, I put them away—some of them, for safe keeping; some I gave to my counsel.

Q. Has your counsel any such communications or letters?

A. I don't know what he has got now.

By Mr. Keasbey: The counsel for the complainant is requested to produce at the next meeting all correspondence between the complainant and Mr. or Mrs. Flagg relating to the debt or advance referred to in the complainant's mortgage—whether before or after that mortgage was executed, or at the time it was executed.

By Mr. Parker: Counsel for the complainant says that they will produce all papers, if any, which were contemporaneous with the execution of the mortgage; but they regard papers containing the negotiations resulting in or anterior to the mortgage, as irrelevant testimony; and papers respecting it afterwards, also irrelevant. They will not, therefore, as at present advised, produce any correspondence respecting the mortgage—anterior or subsequent thereto.

By Mr. Keasbey: Counsel for the defendant states that since the mortgage is partially for future advances, and includes also a debt or debts incurred on two joint accounts, the correspondence relating to it becomes necessary, in order to show in what manner the advances were to be made, and to support the allegation of the defendant that the joint accounts were unlawfully included in the mortgage. The various copies of the accounts

marked C a, C b, C c, C d, C e, C f, C g, and C h, for identification, having been inspected by the defendants, and compared with the complainant's books, are admitted to be correct copies of Mr. Baldwin's ledger, already produced and offered in evidence, and said papers are now offered by the complainant as exhibits in the cause, and are marked Exhibits C 7, C 8, C 9, C 10, C 11, C 12, C 13, and C 14, respectively.

Whereupon the examination was further adjourned till Friday afternoon next (December 16, 1881) at 2:30 o'clock.

At which time and place Mr. Keasbey and Mr. W. L. Flagg were present to proceed with the examination, but neither the complainant or his counsel attended.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM H. BALDWIN,
Complainant,

AND

JENNIE M. FLAGG ET AL.,
Defendants.

On bill to foreclose.

Further examination of witnesses in the above stated cause, before William T. Day, Esq., at his office, 721 Broad street, Newark, N. J., on Friday, December 30, 1881, pursuant to adjournment.

Present—CORTLANDT PARKER, ESQ., and H. A. ROOT, ESQ., of Counsel for complainant, and A. Q. KEASBEY, ESQ., and JOHN R. DOS PASSOS, ESQ., of Counsel for defendants.

By Mr. Root : The defendants' counsel have given us notice to produce in evidence all correspondence between the complainant and Mr. and Mrs. Flagg, relating to the debt or advance referred to in the complainant's mortgage, whether before or after that mortgage was executed ; now the counsel for complainant produces :

1st. A letter from Mr. Flagg dated Aug. 26, 1880, addressed to A. H. Baldwin.

2d. Also a letter of William L. Flagg, dated the same day, addressed to Mr. A. H. Baldwin. I will say that no other papers were referred to by counsel at the last meeting as anterior to the mortgage, which the counsel for the complainant then declined to produce ; that I have no papers anterior to the mortgage referred to, and that the two papers which I have produced are the only papers which I have and which I could find or produce under the notice given us. I now call upon defendants to produce the letter addressed to Mrs. Flagg and signed by Mr. A. H. Baldwin, dated August 26, 1880, and which I have given defendants a written notice to produce at this meeting.

Counsel for the defendants say that they will produce whatever papers they have in their possession at the proper time.

By Mr. Root : I will offer these letters in evidence now and the same are marked Exhibit C 15 and C 16 for complainant.

A. H. Baldwin, a witness already sworn, being produced for further cross-examination, testifies as follows in answer to questions by Mr. Dos Passos :

Q. Mr. Baldwin, do you know Mrs. Flagg ?

A. Yes, sir.

Q. When did you meet her, and where ?

A. I think I saw her at the Grand Hotel.

Q. When ?

A. Early in 1879—no, early in 1880.

Q. You were introduced to her there ?

A. Yes, sir.

Q. By Mr. Flagg?
A. Yes, sir.
Q. When did you see her next?
A. I could not tell.
Q. Did you ever see her after that?
A. Yes, sir.
Q. About when?
A. I could not tell about when. I saw her several times.
Q. Did you see her six months after that?
A. In less time than that.
Q. Did you see her in 1880?
A. Yes, sir.
Q. When did you see her first in 1880?
A. I met her first in the early part of 1880.
Q. What do you mean by the early part of 1880?
A. I should say—well, I don't—the first six months.
Q. Cannot you say when you saw her with any more definiteness than you have just stated now?
A. I did not charge my mind.
Q. You would not call July early in 1880?
A. No, I don't call that early. I probably did meet her about the middle of the year, but I don't know exactly where I did meet her.
Q. Was it after these transactions had been opened with Mr. Flagg?
A. I think I met her before that, but I would not be sure.
Q. Did you meet her in January, 1880?
A. No, sir.
Q. You are positive of that?
A. Yes, sir.
Q. Did you meet her in February, 1880?
A. No, sir.
Q. Did you meet her in March, 1880?
A. No, sir.
Q. Did you meet her in April, 1880?
A. No.
Q. In May, 1880?
A. No.

Q. In June, 1880 ?

A. I would not be positive about that, whether I did or not.

Q. Did you meet her July, 1880 ?

A. I would not be positive about that.

Q. How about August, 1880?

A. I think I met her before that.

Q. Then you met her before August, 1880?

A. Yes, sir.

Q. Then you must have met her some time between June and August, 1880, according to your best recollection now?

A. Yes, sir.

Q. The first time you met her was at the Grand Hotel?

A. I think it was.

Q. In the city of New York?

A. Yes ; either there or at the Brunswick.

Q. Did you have any conversation with Mrs. Flagg, with reference to these transactions?

A. No, sir.

Q. Did you ever have any conversation with Mrs. Flagg, with reference to this cause?

A. Not of any importance.

Q. I ask you if you had any?

A. I think at one time she told me she was speculating, or something of that sort; nothing more than that.

Q. Did that have reference to speculations in your office, or some other office?

A. In my office.

Q. Did she say she was speculating in your office?

A. She said she was speculating, or made some remark of that sort.

Q. Have you had any business whatever with Mrs. Flagg with regard to these transactions, or any other that you are positive about now, excepting this remark that you say she made about speculating?

A. No, sir.

Q. When did you begin this account wlth Mrs. Flagg?

A. On January 28, 1880.

Q. Who gave the orders in this account?

A. In Mr. Flagg's account?

Q. Yes.

A. Mr. Flagg.

Q. To whom did he give the orders?

A. Gave them either to me or to the gentleman in my office.

Q. Who was the gentleman?

A. Mr. Ripley.

Q. How long did Mr. Ripley remain in charge of your business?

A. He remained in charge of my office until January, 1881.

Q. What was your special business, or rather what particular part of your business did you carry on?

A. I carried on—I had the general oversight.

Q. Are you a member of the Stock Exchange?

A. Yes, sir.

Q. Did you transact the business outside of the office?

A. Yes, sir.

Q. Did you have any partner at that time?

A. No, sir.

Q. When you received orders in the course of your business did you execute them in person?

A. Part of them.

Q. And when you were absent and from the office, who attended to the business?

A. Mr. Ripley.

Q. Was there any other person in the office at that time?

A. I had a friend there by the name of McCoon, who attended to the business at times, when I was absent.

Q. Was he connected with your business in any way?

A. He was a mere friend—he had been theretofore connected with my business.

Q. What part of the business did Mr. McCoon attend to?

A. He took a friendly oversight of the business—that's all.

Q. What part did he attend to? Did he receive orders?

A. Sometimes he did.

Q. What else did he do?

A. That is all.

Q. Did he sign checks?

A. Not at any time.

Q. When did he begin to sign checks?

A. In 1878, I think.

Q. Well, then, if he began signing checks in 1878, when did he discontinue signing them?

A. Along in the latter part of April, 1879. I closed the arrangement at that time.

Q. Did he sign any checks in 1880?

A. I don't think he did.

Q. Is he a partner of yours now, or in your house?

A. He is in my house.

Q. Was he a partner?

A. No.

Q. Has he been a partner of yours since these accounts were opened?

A. No, sir.

Q. Has he been a partner in these accounts?

A. No, sir.

Q. So that he has never been connected with you in business since the beginning of these accounts.

A. No, sir.

Q. Or interested in the business in any pecuniary way?

A. No, sir.

Q. You have testified in your examination before, how long a time you have known Mr. Flagg—for how long have you known him?

A. Some little time previous to the opening of his account.

Q. How long previous?

A. About a week, I think.

Q. What was his business?

A. Do not think that he had any.

Q. What had been his business, so far as you know?

A. A lawyer.

Q. What was the beginning of that account so far as Mr. Flagg was concerned? Did he deposit any money with you?

A. He deposited $1,000, I think.

Q. What was that?

A. Check, I think.

Q. What was it deposited with you for?

A. Margin for his account.

Q. What is a margin?

A. A margin is a deposit subject to the loss of a customer.

Q. What was the first transaction that took place in Mr. Flagg's account?

A. The purchase of 200 shares of Reading.

Q. At what price?

A. 68.

Q. What was the object of the placing with you of that margin at the time he did, with reference to that Reading stock?.

A. To secure me against loss.

Q. What kind of loss?

A. Money loss.

Q. How would that occur?

A. If the prices went down.

Q. If the price went down, so that it appears from this account, that on January 28th, 1880, you purchased for him 200 shares at 67⅞; did that include commission, or does it exclude the commission?

A. It excludes commission.

Q. So that you purchased 200 shares of Reading at 68, including commission?

A. Yes, sir.

Q. Then if Reading depreciated 5% his margin would have been exhausted?

A. No, it would not have been.

Q. When would it have been exhausted?

A. When he lost it.

Q. It is half stock?

A. Yes, sir.

Q. What you mean by half stock is, that it is capitalized at $50 per share?

A. Yes, sir.

Q. Then if Reading had declined 10 per cent. the margin would have been exhausted?

A. Yes, sir.

Q. What would have been the ordinary course of your business, with respect to Mr. Flagg, if the stock had declined 10 per cent?

A. The ordinary course, that he would have ordered it sold.

Q. And you would have claimed the right to sell the stock if the 10 per cent. had become exhausted?

A. Yes, sir.

Q. Now, Mr. Baldwin, the transactions that Mr. Flagg had with you, were they numerous in the beginning?

A. Do you want me to count them all up?

Q. Generally—take the first commencement?

A. There were two transactions.

Q. Take the transactions for the succeeding month?

A. Two in the next month.

Q. In February?

A. Yes, sir.

Q. How many transactions were there in the next month?

A. Seven—these are the purchases.

Q. They were, of course, called the number of sales?

A. They were sales; in the month of January, one; in February, one; in the month of March, six —those are the sales.

Q. Are those sales for what is known as long sales, or long purchases, or was he long of stocks?

A. I think he was long.

Q. Define what you mean by a customer being long of stocks?

A. When he has bought them.

Q. For what purpose?

A. For a rise.

Q. Now, in the beginning of your examination, you have stated that this was a speculative transaction—that these were speculative transactions, did you not?

A. Yes, sir.

Q. What would you consider a short sale of stocks?

A. Short sales would be selling stocks which a party did not own.

Q. Now explain the process by which a person can sell stocks which he does not own, as conducted in your office?

A. If he ordered me to sell the stock, I sell it and deliver it—borrow it, and put up the money at market prices on my borrowed stock.

Q. What is the effect of that transaction if the stock declines?

A. Profit.

Q. To whom?

A. To the customer.

Q. And if the stocks advance in price, what is the effect?

A. On the short sale?

Q. Yes.

A. It is a loss.

Q. Was that when a person makes a short sale of stock, he sells that which he has not got possession of, and that it is well understood as a part of your business?

A. Yes, sir.

Q. Did the transactions which Mr. Flagg made represent long and short sales of stock?

A. Mostly long; sometimes there were some short.

Q. These were short sales, were they not?

A. Yes, sir.

Q. A good many running through the whole account, through the separate account of Mr. Flagg and through the joint account between Flagg & Baldwin, and the account of Ripley & Flagg?

A. I don't think there were any short sales in the account of Flagg & Ripley and Flagg & Baldwin.

Q. These accounts, do they exhibit on their face whether the sales were long sales or whether they were short sales—embracing both of them?

A. Yes, sir

Q. Then it is only necessary to look on the face of this account to ascertain the character of the sales, and the transactions in which they were engaged?

A. Yes, sir.

Q. When did Mr. Flagg make a further deposit of margin with you?

A. March 25th he gave me a check for $300.

Q. So that in all your transactions with Mr. Flagg, in his individual behalf, you received a margin of $1,500?

A. No, of $1,300.

Q. And that embraces the period from January 28th, 1880, to what time?

A. To June 16th, 1880.

Q. Will you be kind enough to turn to these accounts which you have produced here, and state what was the aggregate number of stocks in amount—the cash value of the aggregate amount of stocks purchased for Mr. Flagg during the period which you have indicated?

A. About $450,000.

Q. That sum would approximately represent the amounts which the stocks would reach during that period?

A. The purchases, yes, sir.

Q. Now, the Reading stock which is represented as the first item in this account, was there any transfer of that in the name of Mr. Flagg?

A. No.

Q. There was not?

A. No, sir.

Q. And will that answer apply to all the items of this account to which I have before alluded?

A. Yes, sir; it is not done on a margin.

Q. It is not done on a margin?

A. No, sir.

Q. And you make a distinction in these transactions, between those known as speculative transactions and those which are known as investment transactions?

A. No.

Q. You do not?

A. No.

Q. What do you mean by "That is never done on a margin"?

A. Because the party does not buy the stock and take it up.

Q. And the intention is, if there is a profit on such a transaction to realize it by the sale of the stock; did Mr. Flagg ever have possession of any of these stocks?

A. No, sir.

Q. Did you ever exhibit them to him when they were purchased?

A. No, sir; he never asked to see them.

Q. And you never exhibited them to him?

A. No, sir; never did that to anyone unless they asked for it.

Q. What books do you keep in your business as a stock broker?

A. I have answered that before in the early part of my examination.

Q. Please name them.

A. Purchases and sales book, blotter, cash book, ledger; and I keep a diary.

Q. Is that all?

A. Yes, sir.

Q. That includes all the books that you keep in your business as stock broker?

A. Yes, sir; I think it does.

Q. Now look at the first item of that account, and please say whether you received an order to make that transaction?

A. I couldn't say positively whether I received it or not.

Q. You could not?

A. No, sir.

Q. How were the orders given by Mr. Flagg?
A. Both verbal and in writing.
Q. You have been asked to produce those in writing; will you be kind enough to do so now?
A. I have not got them.
Q. Where are they?
A. I don't know where they are.
Q. How do you know that they are in writing?
A. I have seen some of them.
Q. Where?
A. In my office.
Q. When did you last see them?

By Mr. Dos Passos: I now call for the production of any orders given by Mr. Flagg in writing, embracing any or all of the transactions in this suit.

The witness produces five papers in response to the call, and through his counsel says that these are all the papers which are in their possession relating to the transactions.

The said papers ars marked Ci, Ck, Cl, Cm, and Cn, for identification, respectively.

Q. Are those all of the orders you had in writing relating to the transactions embraced within this controversy?
A. Well, they are all the general orders I have.
Q. Have you any special orders?
A. I may have but I don't know—I think I have.
Q. Will you produce them?
A. I have not got them.
Q. If you have not got them where are they?
A. I suppose they are in my office.

The witness is requested to produce any further special orders, or other orders that may have been given by Mr. Flagg to him

A. I may have a few orders to buy special lots; I don't know whether I have or not.
Q. Then I call upon the witness to produce, at

the next meeting, all further orders which he has relating to these transactions.

MR. ROOT says that he will produce them if he has them, but he says that he does not know that he has any such further orders.

Q. In whose handwriting is the body of that paper which I show you, being one of these orders marked for identification Ci?

A. It is in one of my clerk's.

Q. His name?

A. I think his name is Ely.

Q. Look at the second paper and state in whose handwriting that is, marked "Exhibit Ck;" in whose handwriting that is?

A. That is in mine.

Q. Now go on and state in whose handwriting the others are, Cl.?

A. That is printed.

Q. That is a printed form used in your business—is it?

A. Yes, sir.

Q. Now Cm.?

A. That is in my handwriting.

Q. Cn.?

A. That is in my handwriting.

Q. By whom were you introduced to Mr. Flagg?

A. By Mr. Ripley.

Q. For what purpose did he introduce you to him?

A. My impression is that he went up to the Grand Hotel and got acquainted with Mr. Flagg, and had a talk with him about the purchase of stocks, &c.

Q. And you soon after that was introduced to him?

A. Yes, sir.

Q. And after that he opened his account in your office?

A. It might be two weeks afterward, but I won't be positive.

Q. Now in making these transactions in stock you

look to the security of your margin, do you not, principally?

A. Well, usually there are a great many things to be considered—the man's honor and integrity.

Q. And the margin?

A. Yes, sir.

Q. You don't go on his honor and integrity after the margin is exhausted?

A. I did with Mr. Flagg.

Q. But the usual course of business of a broker is to rely upon the margin?

A. Yes, sir; our reliance is generally placed upon that, but I did not follow our ordinary course relative to Mr. Flagg during the time those transactions were being made.

Q. What did you know in respect to the reliability of Mr. Flagg?

A. I thought he was a good deal richer than I found out afterwards that he was.

Q. What was your idea when you took the mortgage from his wife?

A. My idea was to give him a show to make up his losses; Mr. Flagg said he was very anxious to make up his losses, and I gave him his last chance.

Q. By giving this mortgage, Mr. Flagg, as you have stated I think before, told you that it represented of the property that Mr. Flagg had at that time—either himself or his wife?

A. He told me so, I believe.

Q. And you believed it at that time?

A. I don't know of any reason why I should not.

Q. Had you any reason why you should not believe it at that time?

A. No, sir, not when he gave me the mortgage.

Q. Will you be kind enough to look at these papers marked Exhibits C15 and C16, and state in whose handwriting the body of the papers are?

A. Mr. Tilney.

Q. Who is Mr. Tilney?

A. He is an attorney in New York.

Q. And were those accounts closed at the time those papers were prepared?

A. Yes, sir.

Q. When was the last transaction in this account —the last transaction between Mr. Flagg and his family or anybody else?

A. March 16th, 1881.

Q. These papers bear date August 26th, 1880?

A. Yes, sir.

Q. And at the time you got Mr. Tilney to prepare these papers, this account was what you would term an active account—that is, it was not closed; that is, the accounts embraced in these transactions?

A. The accounts were all closed and transferred to Mrs. Flagg.

Q. Mrs. Flagg's account was not closed at that time?

A. It was continued.

Q. Why did you go to a lawyer to ask him to draw these papers?

A. I went to a lawyer for the same reason that anybody goes to a lawyer—for advice and to have the papers put in a proper business shape.

Q. What was the necessity; had you any suspicions that it was not all right at that time?

A. No.

Q. Then why did you go to a lawyer and ask him to draw up a formal paper, and have it signed by Mr. Flagg and his wife?

A. Because I wanted to have it in proper shape.

Q. And that was the only reason?

A. Yes, sir.

Q. Are you in the habit of doing that in all your business transactions with your customers?

A. Yes, sir.

Q. To go to a lawyer to prepare papers?

A. Yes, sir; whenever it is necessary---whenever accounts are transferred.

Q. Then, whenever accounts are transferred in your office from one person to another, you employ

a lawyer to draw papers similar to those which you have produced in evidence on this hearing?

A. In accounts of this kind I always do.

Q. What do you mean by accounts of this kind?

A. When there are several accounts embraced in one account and transferred to that account.

Q. What was the necessity of drawing such papers; why did you think there was a necessity of drawing such a paper as this?

A. To have it free from any dispute hereafter—just to avoid litigation and to have everything plain.

The above papers marked Ci, Ck, Cl, Cm and Cn for identification are offered in evidence, and marked C17, C18, C19, C20 and C21, respectively.

Examination adjourned until Friday, the 6th day of January, 1882, at the office of H. A. Root, Esq., No. 83 Cedar street, New York City, at 1 o'clock P. M.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM H. BALDWIN,
Complainant.

AND

JENNIE M. FLAGG ET AL.,
Defendants.

On Bill to foreclose, &c.

Further examination of witnesses taken at the office of H. A. Root, Esq., No. 83 Cedar street, New York City, on Friday, January 6, 1882, pursuant to adjournment.

Present—H. A. ROOT, ESQ., of counsel for the

complainant, and MR. DOS PASSOS and WILLIAM L. FLAGG, ESQ., of counsel for the defendants.

ABRAM H. BALDWIN, on his further cross-examination by Mr. Dos Passos, says:

Q. Since your last examination have you looked over your papers; have you searched for any special orders in writing from Mr. or Mrs. Flagg, or anybody else, concerning this account? In your last examination you referred to some special orders you received.

A. I have not been able to find any.

Q. You have not been able to find any?

A. Yes, sir.

Q. Have you any special orders or not?

A. I don't think I have any.

Q. Then, as I understand it, you have produced all the papers that you have pertaining to these various transactions?

A. Yes, sir.

Q. Will you be kind enough to look at the paper in your hands, marked Exhibit "Ca, Cb, Cc and Cd," being an account in the name of Mrs. Flagg, and say what is the balance you claim in this action, if it appears in that account?

A. $10,909.41, not calculating interest; that is about the amount.

Q. That includes interest up to the time of bringing this action?

A. That includes interest up to March 17th, 1881.

Q. Up to when?

A. March 17th, 1881.

Q. 1881?

A. Yes, sir; I think it is.

Q. Is that the amount you claim in this action?

A. I don't know the exact amount that I do claim, but that is making it up roughly.

Q. You don't know the amount that you do claim?

A. Not precisely.

Q. And you cannot tell the amount you claim in this action?

A. I claim the amount founded on the answer that I have given.

Q. Can you say definitely now what amount you claim to recover in this action against the defendants?

A. No, not exactly.

Q. Look at the account which was opened in the name of Mrs. Flagg, and state when the last transaction was made?

A. Made on March 16th, 1881.

Q. What was that transaction?

A. Sale of 100 shares of Chesapeake & Ohio first preferred.

Q. How did you come to make that transaction?

A. I made that transaction to close the account.

Q. Did you receive any order to make it from Mr. and Mrs. Flagg?

A. No.

Q. Please look at the account which was opened in the name of Mrs. Flagg, and state when that account was opened, and when it was closed?

A. It was opened June 16, 1880, and closed March 17, 1881.

Q. How much money was deposited as margin in that account?

A. Wasn't anything.

Q. No money?

A. No, sir.

Q. What was deposited as security or margins, or in any other form?

A. A mortgage on property in Summit.

Q. The mortgage in suit?

A. Yes, sir.

Q. Was there anything else?

A. No, sir.

Q. You are sure of that?

A. I think not.

Q. Was there not a note deposited with you?

A. There had been a note deposited as security in that account.

Q. What was that note?

A. The note was for $4,500.

Q. Well, now, when was it deposited?

A. Deposited when the account was opened in the name of Mrs. Flagg.

Q. What would the transactions aggregate in amount in the account opened in the name of Mrs. Flagg?

By Mr. Root: Do you call for the exact figures or approximately?

A. About six or seven hundred thousand dollars.

Q. About what was the amount (be kind enough to make this exact) in the aggregate of the transactions, up to the time of the opening of the account in the name of Mrs. Flagg—to the time that this mortgage was given?

By Mr. Root: Objected to on the ground that the accounts will show for themselves.

By Mr. Dos Passos: Counsel for the defendant denies that the account is in evidence.

A. It is $148,887.98, as near as I can figure it.

Q. When was this mortgage given to you?

A. On August 26th, 1881.

Q. By whom was it handed to you?

A. By Mr. Flagg.

Q. Where?

A. In my office.

Q. What was said at the time the mortgage was given to you?

A. The papers show all that was said.

Q. What papers?

A. The letters from Mrs. Flagg and Mr. Flagg, and my letter to them.

Q. Was there anything that took place between you and Mr. Flagg at that time—did you have any conversation in respect to the account?

A. Why, Mrs. Flagg admitted the correctness of the account.

Q. What was said in respect to the future?

A. There was nothing said especially.

Q. For what purpose were you given that mortgage?

A. To secure me.

Q. For what?

A. For losses already made, and for advances if I chose to make any in the future?

Q. What was the amount of the losses already made?

A. $7,563.44.

Q. And the balance was to be applicable to transactions that were to be made in the future?

A. Yes, sir; if they were made, and it was regarded as so much margin for future transactions.

By Mr. Root: The question objected to on the ground that counsel must ask the witness what conversation took place on the subject, and not the legal effect of the agreement between them.

Q. That was what took place?

A. Yes, sir.

Re-direct examination by Mr. Root:

Q. Mr. Baldwin in answer to a question by Mr. Dos. Passos, I understood you to say that the figures which you made, $10,909.41, were approximate figures and not the exact figures; will you please state whether or not those are the exact figures, with the exception of interest, from the time the account was made up?

A. With that exception they are the exact figures.

Q. Concerning this note of $4,500, which you have testified about, was the account of Mr. or Mrs. Flagg, or any account, ever given credit for that note?

A. No.

Q. For what reason?

A. It was merely held as collateral security.

Q. Was it or not ever paid?

A. It was never paid.

Q. Was it or was it not held by you as collateral security, and not credited in your account?

A. It was so held as collateral security.

Q. Look at the account of Mrs. Flagg and state whether or not if that account has ever been credited with the principal sum of this mortgage?

A. Yes, sir.

Q. On what date?

A. On November 4th.

Q. Please read the entry?

A. Bond and mortgage on real estate, Summit, New Jersey, credit $11,563.44.

Q. Now look at the close of the account, and say how that account stands?

A. Mrs. Flagg is credited with a balance on March 17, 1881, of $653.93.

Q. You have been asked, Mr. Baldwin, in regard to the clause in the mortgage which is to this effect: "the balance of said sum, $4,000, as security for future advances;" please state whether or not, after this mortgage was made, you did pay out on account of that mortgage that sum or some greater sum?

A. A very much larger sum.

Q. Now, Mr. Baldwin, if the account as credited with the $11,563.44, and $7,563.44 were had at the time the mortgage was given, state how much of the $4,000 referred to in that mortgage is due at the present time, or was at the time that the account was made up?

A. To Mr. Flagg?

Q. No, to you; what would be the difference between the $4,000—I mean on March 17?

By Mr. Dos Passos: Question objected to, as a conclusion.

A. $3,346.07.

Q. Then I understand you to say, that since the mortgage was made the account has suffered a loss of $3,346.07?

A. Yes, sir.

Q. And that amount has been paid out by you?

A. Yes, sir.

Q. And charged, together with the charges of commission and interest?

A. Yes, sir.

Q. Will you please state now, how long were the negotiations between you and Mr. or Mrs. Flagg previous to the making of the mortgage, upon the subject of the mortgage?

A. Oh; it was a very few days.

Q. You had conversations between yourself and Mr. Flagg?

A. Yes, sir.

Q. Did you employ a lawyer to search the title of the property?

A. Yes.

Q. Did the lawyer prepare the mortgage?

A. Yes, sir.

Q. And were there letters—did letters pass between you and Mr. and Mrs. Flagg, and from Mr. and Mrs. Flagg to you, on the subject of the mortgage and account?

A. Yes.

Q. The letter from Mr. and Mrs. Flagg, which has been put in evidence here?

A. Yes, sir.

Q. Will you please look at this letter, and state if it is or is not a letter which you at that time delivered to Mr. and Mrs. Flagg, or to one of them?

A. This is a copy of that letter.

BY MR. ROOT: The letter is offered in evidence and marked Exhibit C22.

BY MR. DOS. PASSOS: The counsel for the defendant objects to the letter being offered in evidence.

Q. What did all the various agreements which were made between you and Mr. or Mrs. Flagg upon this subject result in—were they incorporated in these papers?

A. Yes, sir.

Q. Entirely so?

A. Yes, sir.

Q. Are there any other agreements other than those contained in these various papers which passed between you and them ?

A. Nothing whatever.

Q. Now, Mr. Baldwin, will you please state whether or not Mr. and Mrs. Flagg were notified of the proposed sale of the Chesapeake & Ohio first preferred ?

A. They were, sir.

It is admitted on the part of the defendants that Mr. and Mrs. Flagg were notified of the proposed sale of the Chesapeake & Ohio first preferred, which was made at auction on the Exchange.

It is also admitted by the defendants that payment of the amount mentioned in the bond and mortgage was demanded.

Q. Are the books of account relating to the account of Mrs. Flagg accurate accounts of the transactions between you and them?

By Mr. Dos Passos: Objected to by the counsel for the defendant as not being the way to prove the account, and as being incompetent and illegal; and further on the ground that the witness is not shown to have kept the books.

Q. Mr. Baldwin, was Mr. Flagg notified of the various purchases and sales regarded in the account of Mrs. Flagg?

By. Mr. Dos Passoss: Objected to as being incompetent and illegal, and does not show that the witness knew whether Mrs. or Mr. Flagg were notified or not.

A. Yes, sir.

By Mr. Root: I call upon the counsel for the defendants to say whether they will produce the original letter of August 26th, written by Mr. Baldwin, or not.

By Mr. Dos Passos: Counsel for the defendants state that they will produce all letters in their possession.

By Mr. Root: Have you this one among them?

By Mr. Dos Passos: I don't know whether we have or not; we will produce everything.

By Mr. Root: I will now finish, reserving the right of Mr. Parker to ask any further questions. I am through with Mr. Baldwin, with the exception that if Mr. Parker desires to ask him a question I desire that he shall have liberty to do so.

By Mr. Dos. Passos: I object to this manner of procedure. The complainant is here, represented by able and skilled counsel, and as this examination was specially set down for the purpose of closing with Mr. Baldwin, and as I have closed my cross-examination, upon the theory that the re-examination would be closed this afternoon, I insist upon the examination going on, or being closed; and, if not, the defendant withdraws his statement that his cross-examination is closed, if the counsel persists in adjourning this examination until he can confer with other counsel.

By Mr. Root: I feel that, out of respect and deference to Mr. Parker, that I must do so.

By Mr. Dos. Passos: Then the defendant will insist upon his right to a further cross-examination.

Examination adjourned with no date being fixed.

IN CHANCERY OF N. J.

Between
ABRAM H. BALDWIN,
Complainant,
AND
JENNIE M. FLAGG and another,
Defendants.
} On Bill.

It is stipulated and agreed between the parties hereto, that the further examination of Mr. Baldwin as a witness in above cause may be ad ourned to three o'clock January 24th, 1882, at 83 Cedar street, N. Y., and that the examination may proceed in the absence of the Master; the record of the same to be sent to Mr. Day, the Master, with this stipulation attached, the testimony so taken to be considered by both sides as properly in the cause as though taken in the presence of the Master.

January 18th, 1882.

H. A. ROOT,
Counsel for Plaintiff.

W. L. FLAGG.

IN CHANCERY OF NEW JERSEY.

ABRAM H. BALDWIN
vs.
JENNIE M. FLAGG and another.
} On Bill, &c.

NEW YORK, January 24, 1882.

This testimony, taken to-day, to be sent by the stenographer, with the stipulation, dated January

18th, 1882, to Mr. Day, the Master, No. 721 Broad Street, Newark, directly.

ABRAM H. BALDWIN, the complainant, being further recalled for cross examination, testifies as follows:

BY MR. FLAGG: Q. In one of your answers, in the testimony taken January 6th, you said that the balance of that mortgage, over and above $7,563.44, was to be regarded as so much margin for future transactions, did you not?

Objected to, upon the ground that the witness did not so testify; that he said that the balance, over and above the $7,563.44, was to be applicable to transactions that were to be made in the future, as appears by the testimony, which is as follows:

"Q. And the balance was to be applicable "to transactions that were to be made in the "future?

"A. Yes, sir; if they were made, it was "regarded as so much margin for future "transactions."

Q. Then, I ask you, now, if the balance, over and above $7,563.44, was to be applicable to transactions to be made in the future?

A. It was, if I made the advances, but I had the option to make the advances or not.

Objected to by defendant.

Question repeated.

A. I have already answered it.

Question repeated. Then, I ask you now, if the balance, over and above $7,563.44, was to be applicable to transactions to be made in the future?

The witness is requested to answer yes or no, if he can, as to whether or not this balance was to be applicable to future transactions.

A. I have already answered the question to the best of my ability, what I did.

Q. When you say that the balance, over and

above $7,563.44, was to be applicable to transactions that were to be made in the future, do you mean to say that it was to be a margin, or that it stood as security for the advances to pay losses?

Objected to, upon the ground that the witness has already testified what the agreement between the parties was, and how this money was to be regarded is a question of law to be derived from the agreement between the parties already in evidence.

A. I don't understand the question.

Q. What do you consider a margin to be?

Objected to, upon the ground that what the witness considers is not evidence.

Q. What is a margin?

Objected to, upon the ground that the question has already been asked and answered, and the witness is directed not to answer.

Q. In your testimony in this case of December 30th, you were asked the question, "What is a margin," and I read your answer, which is as follows: "A margin is a deposit subject to the loss of a customer." Exactly what do you mean by that?

A. I mean just what I say. I can't explain it any more.

Q. Is it a thing that you hold, as a broker, as security for money you advance, to cover losses in the customer's transactions?

A. I have already stated what it was. That is my definition of a margin, and I have no other definition to give.

Q. Did you not, in these accounts, hold this mortgage as security for money claimed to have been advanced by you to pay difference losses on these accounts?

Objected to, upon the ground that how he held the mortgage, whether as security or in whatever shape it was held, is a question of law which the witness is not called upon to

answer. He has already testified as to the agreements between the parties when the mortgage was given.

A. It was all I had to hang on to.

Q. Then you did hold this mortgage in these accounts as security for money you claim to have advanced to pay losses on the transactions mentioned therein?

Objected to, upon the ground that whether he held this mortgage as security or not, is a question of law, and that the witness is not called upon to answer, and it is a question for the Court to decide.

A. You told me that was all the money your wife and yourself had, and you were ruined, and I had nothing else to look to.

Q. Look to for what?

A. Any losses that might occur when I gave you, or Mrs. Flagg, or any account that you were interested in, a credit.

Q. By credit, you mean money that was advanced by you to pay losses on the transactions mentioned in the accounts?

A. That is all I had.

Q. By credit, you mean money that was advanced by you to pay losses on the transactions mentioned in the accounts?

A. You said you did not have any money, and that was all the way I could get my pay for credits. You said you and Mrs. Flagg had no money, and that was the only way I could get payment for any losses which might occur in the accounts.

Q. Then the mortgage was held by you as security or margin, for such money as you might advance to pay losses on the transactions therein?

Objected, to upon the ground that whether he held this mortgage as security or not, is a question of law, and that the witness is not called upon to answer, and it is a question for the Court to decide.

A. Held by me as per the agreements which I made with you in writing, which were the agreements we had.

The defendant objects to the last answer as *verbatim*, taken from the mouth of his counsel, Mr. Root.

Complainant's counsel denies that such is the case, as is well known by Mr. Flagg himself.

Q. Mr. Baldwin, will you please state if $7,563.44 of the mortgage was not taken by you as security for losses which you claimed to have been advanced by you in the accounts previous to the taking of the mortgage?

Objected to as unintelligible.

A. The amount mentioned was taken by me exactly as stated in the papers between us.

Q. The papers state that it was taken for an indebtedness?

A. You know as much about that as I do.

Q. Didn't you claim that that indebtedness arose on account of advances made by you for losses in the different accounts produced here?

A. I did not claim anything but what Mrs. Flagg and yourself admitted in writing.

Q. I ask you, if you did not take the $7,563.44 of the mortgage, as security for that amount claimed by you to have been advanced to pay losses on the transactions in the accounts presented here

A. The papers show, much more clearly than I am able to explain, just exactly what I took it for.

Q. The papers do not show, and I ask again, if you did not take that amount of the mortgage as security for money which you claim to have advanced to pay difference losses in the accounts.

Objected to upon the ground that the papers do show.

A. I think the papers do show, and, in fact, I know they do.

By Mr. Root: Q. Can you make any further answer to that question?

A. No, sir; I can not.

Q. Do you know how you took any portion of this mortgage other than except as appears by the papers between the parties?

A. No, sir.

By Mr. Flagg: Q. Will you look at the accounts and state from them how much you had advanced to pay losses in the speculations after taking the mortgage on the day you commenced this foreclosure suit?

Objected to, upon the ground that it would require a very long examination and calculation of the accounts, and the witness has not time to make it at the present time, and the accounts themselves will show, and are in evidence, and the best evidence.

The defendant states that he has appeared this afternoon on this examination to conduct it personally, in the absence of his counsel, and as will appear from the examination and objections, his attempts to expedite the taking of testimony in this case are met in such a spirit that he is compelled to desist.

Counsel for complainant states that this examination has been continually postponed at the instance of the defendant and for the accommodation of himself and his counsel. The complainant is ready to proceed further, or to adjourn until an early day, when the counsel will himself be present and conduct the examination.

Mr. Flagg states that he thinks that the record will not show one adjournment at the request of the defendant, and that he will take the earliest day to go on before the Master in Newark the complainant will name.

The complainant names to-morrow, Wednesday, January 25th. at 3 P. M.

IN CHANCERY OF N. J.

ABRAM H. BALDWIN
vs.
JENNIE M. FLAGG ET AL.
} On Bill.

NEW YORK, February 4th, 1882.

CROSS-EXAMINATION of MR. BALDWIN CONTINUED BY MR. DOS PASSOS :

Q. Mr. Baldwin, Mrs. Flagg instituted a suit against you in the New York Common Pleas in this city, did she not?

A. I believe she did; yes, sir.

Q. When was that?

A. That was last March, I think; the papers will show.

Q. March, 1881?

A. Yes.

Q. Were the papers served on you in that matter?

A. I could not tell.

Q. Don't you remember that?

A. No, sir.

Q. You only remember a suit?

A. I remember a suit; yes, sir.

Q. Do you remember the nature of the suit?

A. Not exactly.

Q. Well, do you remember anything about it?

A. Yes, I remember something about it.

Q. Well, what do you remember about it?

A. I believe it was a suit to prevent my foreclosing.

Q. Were you about to foreclose a mortgage at that time?

A. I do not know, sir.

Q. Well, were you about to commence?

A. I don't really know whether I was or not.

Q. Had you given any instructions to anybody to commence it?

A. I don't think I had.

Q. Why was that suit instituted then?

A. Well, I believe that Mr. Flagg got rather mad at me for something; I have forgotten now; I don't remember much about it, sir.

Q. And all the memory that you have got in regard to that transaction, the institution of that suit, the nature of it, is what you have already related in answer to my questions?

A. Yes, sir; that is about all.

Q. Now I want to give you the full, fair, square opportunity to say anything else you wish to say about it?

A. I don't remember anything else, sir.

Q. Did you consult your counsel at that time in relation to that suit.

MR. ROOT: Objected to as immaterial.

A. I may have done so.

Q. Don't you remember that you did?

A. I have so many consultations with my attorney that I don't remember every special one.

Q. Don't you remember that you consulted him in relation to your dealings with Mr. Flagg or Mrs. Flagg at that time with reference to that suit that had been instituted in the Common Pleas?

A. I probably did.

Q. And did you authorize him to make a defense to that suit?

A. I think I did.

Q. On what ground?

A. I could not tell you now.

Q. Can you tell me at any time?

A. If I looked up the papers I suppose I could.

Q. But without the papers you know nothing at present?

A. Not at present, I have forgotten most of it.

Q. This mortgage that you received from Mrs. Flagg through the hands of Mr. Flagg, was it a first or second encumbrance on the property as you understood?

A. I understood it was a second.

Q. What was the first encumbrance on the property ?

A. A mortgage held by the Life Insurance Company.

Q. Did Mr. Flagg tell you that there was a previous encumbrance on the property ?

A. I think he did.

Q. What did you do after the institution of that suit with reference to that first mortgage ?

A. I did not do anything.

Q. What did you direct to be done ?

A. Did not direct anything to be done.

Q. Was that first mortgage bought by anybody from that insurance company ?

A. I have heard it was.

Q. From whom did you hear ?

A. I think Mr Root told me.

Q. You had a consultation with Mr. Root about purchasing that mortgage, had you not ?

A. No, sir.

Q. Never ?

A. No, sir.

Q. And you mean to put down on the record in this case that you never had any consultation with Mr. Root to purchase that first mortgage ?

A. I never asked Mr. Root. I have talked about it, I don't know whether you would call it a consultation, but I had nothing to do with buying it.

Q. You talked about it ?

A. I talked about the first mortgage.

Q. What did you say ?

A. I wanted to know who held it, after I found I had got it; that is all.

Q. What else ?

A. I think that is about all.

Q. Don't you remember anything else ?

A. Not at the moment; no, sir.

Q. Why did you want to know who held it ?

A. I had a little curiosity.

Q. Why did you want to know?

A. Mr. Flagg told me it was held by an insurance

company, and I did not know whether interest was paid on it; my object was to find out more than I knew.

Q. Did you find out more about it than you knew?

A. Not much.

Q. What did you find out?

A. That the interest was paid.

Q. What else did you find out?

A. That is all I found out.

Q. What else took place between you and Mr. Root, or what other conversation had you with Mr. Root about that first mortgage?

MR. ROOT: Objected to, upon the ground that his conversations with Mr. Root were confidential. He is not called upon to answer. I don't suppose you insist on the question?

MR. DOS PASSOS: Yes, I do.

By advice of counsel the witness refuses to answer.

Q. Now, Mr. Baldwin, did you not, after consulting with Mr. Root, direct him to ascertain whether that first mortgage could be bought, so that you could use it in foreclosing it, and for the purpose of aiding you in collecting your money that you claimed to be due against Mrs. Flagg?

A. Did not I direct Mr. Root?

Q. Yes?

A. No, sir.

Q. You have already testified you knew Mr. McCoon?

A. Yes.

Q. You had a conversation with him about purchasing this mortgage, did you not?

A. I don't think I did.

Q. You have already made several affidavits in these various praceedings, have you not?

A. Yes, sir.

Q. Now, do you mean to say that you never had

any conversation with Mr. McCoon about purchasing that first mortgage?

A. I may have talked to him about it.

Q. What did you say to him?

A. I cannot remember.

Q. What was the nature of those conversations in general?

A. Well, I could not tell you that.

Q. You wish it to go on the record that at this time you have no recollection about the conversations occurring between McCoon and yourself with respect to purchasing that first mortgage—is that it?

A. Yes.

Q. Did you direct Mr. McCoon to go to the Mutual Life Insurance Company to purchase the mortgage?

A. No, sir.

Q. Did you say anything to him about it?

A. I might have done so.

Q. What did you say?

A. I cannot remember what I said.

Q. About what did you say?

A. I don't remember.

Q. Haven't you any remembrance of anything that occurred in relation to the purchase of that mortgage?

A. No.

Q. Do you remember that you gave Mr. McCoon your own individual check with which to purchase it?

A. No, sir.

Q. Do you remember the money was drawn from your office for which to purchase it?

A. I heard that it was afterwards.

Q. Did you object to the money being drawn?

A. Mr. McCoon had a balance with me at that time of some $50,000 or $60,000.

Q. How was it that Mr. McCoon came to purchase that first mortgage?

A. He was buying mortgages all the time.

Q. And what you wish the Court to understand in this matter is that Mr. McCoon, in this general business of buying mortgages all the time, happened to hit upon this mortgage, and purchased it; is that your version of the transaction. Answer the question yes or no?

MR. ROOT: He is not obliged to either say yes or no.

A. I suppose he would not have purchased it if he hadn't known about the case. He buys mortgages all the time, and this was a good mortgage.

Q. Now, do you know Mr. McCoon's relations to any of the officers of the insurance company?

A. I don't know who the officers are.

Q. Do you know any of the officers?

A. No, sir.

Q. Don't know any of the officers of the Mutual Life Insurance Company?

A. I don't know who they are.

Q. Do you know any of the officers of the Mutual Life Insurance Company?

A. Not as officers.

Q. Do you know them in any way?

A. I may—you may be one.

Q. That is not answer to my question. Do you know any of the officers of the Mutual Life Insurance Company?

A. I don't know whether I do or not.

Q. Do you know Mr McCurdy?

A. No, sir.

Q. Do you know B. B. Shearman?

A. I know him by reputation.

Q. Did you know him personally?

A. I don't think I ever spoke to him but once in my life, that is when I first met him.

Q. When was that?

A. Over five years ago,

Q. What connection was Mr. McCoon with B. B. Shearman?

A. I don't know of any particular connection.

Q. Wasn't he engaged in the management of Mr. McCoon's estate in some form? 10

A. Yes, I guess they are joint trustees.

Q. Do you know that Mr. Shearman was a trustee or a director of the Mutual Life Insurance Co.?

A. I think I do, now that you mention it.

Q. Now, Mr. Baldwin, do you mean to tell me and to tell the Court that you have no other remembrance about this transaction of purchasing this mortgage by Mr. McCoon, except what you have stated here? 20

A. I do. I don't know of anything else that I know of or remember.

Q. Did you not suggest to Mr. McCoon to purchase it?

A. No, sir.

Q. Did you not suggest to your counsel that he should suggest to Mr. McCoon to purchase it?

A. I don't think I did.

Q. Don't you know that you did?

A. No. 30

Q. Do you mean to tell the Court that you had nothing to do directly or indirectly with the purchase of that mortgage by Mr. McCoon?

A. Didn't have anything directly, no.

Q. Did you indirectly?

A. No, only so far as my check was given and charged to Mr. McCoon.

Q. When was the check charged to Mr. McCoon?

A. I don't know.

Q. Was it not under an arrangement between 40 you and Mr. McCoon that he should purchase that mortgage for the purpose of using it against Mrs. Flagg?

A. No.

Q. You are positive of that?

A. Yes.

Q. Now, Mr. Baldwin, did you make an affidavit in the suit brought by Mrs. Flagg in the Court of Common Pleas against you?

A. I don't know.

Q. You can't tell now?

A. No.

Q. Have you got a poor memory, Mr. Baldwin?

A. Well, I don't know; I have a great many things on my mind to remember.

Q. Then you mean that in answering any of the questions which have been asked you in this controversy you don't mean to be certain about anything, do you?

A. As certain as anybody can be, with my best recollection.

Q. But your memory is poor, isn't it?

A. I don't call it poor; no.

Q. Have you got a good memory?

A. Yes.

Q. But you are not able to remember anything in relation to this McCoon matter or this Common Pleas suit, except what you have stated?

A. That is about all; yes.

Q. You are not able to give the details with any greater degree of certainty than you have heretofore?

A. No.

Q. Do you remember that you made an affidavit in the Court of Common Pleas in the suit that I have mentioned?

A. I made an affidavit.

It is hereby stipulated that an official copy, or a certified copy of the affidavit made by Mr. Baldwin, and the stipulation entered into by Mr. Baldwin in the Court of Common Pleas, shall be inserted in this case as part of this examination.

Mr. Dos Passos: We produce it and offer it in evidence, the whole thing.

Mr. Root: To the whole thing objection is made.

Q. When did you begin an action to foreclose this mortgage against Mrs. Flagg?

A. I don't know. The papers will show.

Q. Do you know?

A. Not exactly.

Q. With reference to the proceedings in the Court of Common Pleas, do you know when the foreclosure suit was commenced in New Jersey in this action?

A. Some time in June, I think—June or July.

Q. You don't know?

A. No, sir.

Mr. Flagg now proposes to examine the witness further, and counsel for complainant objects on the ground that there have been too many counsel already examining this witness.

By Mr. Flagg: Q. Do you recollect the month in which Mrs. Flagg brought the Common Pleas suit against you?

A. Some time last March, I guess.

Q. How long after you brought this action to foreclose the second mortgage did Mr. McCoon bring his action to foreclose the first mortgage?

Mr. Root: Objected to, on the ground that the records will show.

A. I don't know.

Q. Were the same attorneys employed in New York and New Jersey in both cases?

A. Partly.

Q. I mean at the time of the actual commencement of the actions?

A. That I have already answered.

Q. What attorneys were in one case that were not in the other?

A. I don't know. What is the name of that firm?

Q. Were Tittsworth & Marsh the attorneys in both cases?

Objected to as immaterial.

By Mr. Root: Q. Do you know, Mr. Baldwin?

A. No, I do not.

Q. Are you aware that Mrs. Flagg made a petition

in this Court in the McCoon case, for an order to discontinue the McCoon suit?

A. No; I don't know anything about it.

Q. Do you remember an examination in the McCoon case in this office?

A. I think I do.

Q. Did you state on that examination that the check with which McCoon procured the assignment from the Mutual Life was your check?

MR. ROOT: Objected to, upon the ground that it is improper to ask the witness what he testified to in another proceeding; that the regular practice is to read to him his examination or exhibit it to him and then ask him if he so testified.

A. I may have done so.

Q. In that motion was McCoon asked or were you asked to produce your books showing Mr. McCoon's account?

A. I may have been.

Q. Do you remember?

A. Well, not specially; no.

Q. Did you refuse to produce your books showing Mr. McCoon's account on that motion?

A. Did I refuse—no; I don't know that I did.

Q. Did you produce the books on that motion?

A. I would not be sure whether I did or not.

Q. What did Mr. McCoon do with that mortgage?

A. I understand he sold it.

Q. Have you heard who he sold it to?

A. Yes.

Q. Who did he sell it to?

A. Mr. Davis.

Q. Mr. Erwin Davis?

A. Yes.

Q. Did he do that before the motion spoken of in this case was decided?

A. I don't know.

Q. Did Mr. McCoon, before he assigned this mort-

gage to Erwin Davis, discontinue his foreclosure suit, and also an ejectment suit which he had brought upon it?

A. I don't know.

Q. Have you heard that he did?

A. I have not heard anything about it.

Q. Has anybody told you, or have you heard from no individual living, that Mr. McCoon discontinued his foreclosure and ejectment suits during the pendency of that motion?

A. No one has told me anything about it. I don't know it.

Q. Did Mr. Erwin Davis, immediately upon his receiving the assignment, commence a foreclosure proceeding, also upon this first mortgage?

A. I don't know.

Q. Have you heard that he did?

A. I haven't heard anything about it.

Q. Did Mrs. Flagg make a like petition in Mr. Davis' suit as she made in the McCoon suit to compel Mr. Davis to discontinue his suit?

A. I don't know.

Q. Were you not examined in a suit brought by Erwin Davis upon this same first mortgage?

A. I don't think I was.

Q. Did you not attend at Mr. Charles Nettleton's office on several occasions upon an examination in Erwin Davis' foreclosure suit upon that first mortgage?

A. I think I was there, come to think of it. I have been examined at Mr. Nettleton's office but I don't know which case it was.

Q. Didn't you know that it was in the case in which Erwin Davis was plaintiff and Mrs. Flagg the defendant?

A. No.

Q. Didn't you receive a subpœna in that case?

A. I might have done so.

Q. Don't you know that you did?

A. No, sir.

Q. Were you not paid the fee by Mr. Flagg himself personally on several occasions; and handed a subpœna in that case?

A. I have been paid several fees by Mr. Flagg—I don't know.

Q. Then you did not read any subpœna that may have been handed to you?

A. I read if I received it; yes.

Q But you don't remember now what it was?

A. No.

Q. After bringing the foreclosure suit in this case, did you also bring an attachment suit upon the bond?

A. I may have done so.

Q. Don't you know?

A. Not specially; no.

Q. Did you know that Mrs. Flagg's household goods and wearing apparel were attached by you in that proceeding.

A. I was told that they were. I told you that I didn't want any wearing apparel.

Q. Is the Sheriff, under your attachment proceedings on that bond, now in possession of Mrs. Flagg's furniture and a large quantity of Mrs. Flagg's wearing apparel in that attachment suit?

A. I believe he is now in charge, but I don't know exactly how much wearing apparel there was; I didn't know there was any.

By Mr. Dos Passos: Q. Who is Erwin Davis?

A. He is a gentleman that is in the mining business.

Q. Is he related to Mr. Root?

A. I believe he is, yes, sir.

Q. Is he his uncle?

A. I think he is.

By Mr. Flagg: Q. Will you look upon the account and say if on Sept. 11th, there was 100 New Jersey Central; Oct. 5th, 200 North West; Oct. 26th, 100 Delaware & Hudson; Oct. 29th, 100 Missouri, Kansas & Texas and 200 Union Pacific; Nov.

1st, 200 Erie preferred; Nov. 13th, 100 Erie preferred; Nov. 19th, 200 Erie preferred; Dec. 21st, 10,000 Cleveland, Columbus & Indiana Central Bonds to the credit of that account?

A. I cannot tell at this time without making an extended search.

Q. (Showing witness a paper). Do you recognize that?

A. Yes, sir.

Q. Whose handwriting is it in?

A. It is in Mr. Rathborne's, manager of my office.

Q. Who signed it?

A. I signed it.

Q. Did you send that paper to Mrs. Flagg?

A. I did, I believe.

Q. Did you send it on the day it bears date?

A. I think I did.

Q. What is that notice?

MR. ROOT: Objected to on the ground that the paper speaks for itself.

Q. What was the occasion of your sending that notice?

A. I could not tell exactly now.

Q. Was it a notice requiring the account to be closed?

MR. ROOT: Objected to on the ground that the paper will show. It is no more notice than what it states in the paper.

(The paper above referred to is dated Feb. 24th, 1881, and is marked Da for identification.)

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	Foreclosure.

Transcript of shorthand notes of testimony, &c., taken in the above stated case before William T. Day, Esq., a Master in Chancery of New Jersey, at his office, in the City of Newark, N. J., on Monday, the 13th day of February, A. D. 1882.

APPEARANCES.

MR. ROOT (with whom was CORTLANDT PARKER, ESQ.) for the complainant.

MR. KEASBEY for the defendant.

ABRAM H. BALDWIN. Cross examination continued:

BY MR. FLAGG: Q. (Showing witness paper marked for identification D. A , for defendants) Look at this paper and state if that is the usual form of paper served upon a customer in your office when you refuse to go on longer with his account?

A. I cannot tell that, because I never refused—stopped, with anybody else. It is the only paper of the kind that I ever made.

Q. Then I understand you to say, after looking at this paper, that you cannot tell whether this is the usual form of paper you serve on a customer when you decline to go on with him any longer?

A. I have already answered the question.

Q. How do you mean to be understood as answering it?

A. As I did answer it.

Q. Do you mean to say to that yes, or no?

A. I mean to say just as I answered it, I never served any other paper of that kind in my life.

Q. You have served another paper of this kind to

my knowledge ; I ask again if this is the form of paper you serve on a customer when you want him to close, or you wish to close your account with him?

Objected to because of the assertion in the beginning of the question, "You have served another paper of this kind," of which there is no evidence.

A. If I have served another paper it has been on you,—I do not think that I ever served such a paper on any other party, because every one else's account is different—that is the only one of the kind I ever had.

Q. This paper appears to be dated February 24th, 1881; how much had you advanced on account of the $4,000 in this mortgage to pay losses in the account on the day this paper bears date?

A. I had advanced it all, more than all.

Q. To pay losses?

A. To pay losses,—losses at the market price of the stock.

Q. Did Mr. Flagg see you immediately upon your serving this paper upon him?

A. I could not say as to that.

Q. Do you remember that he called at your house?

A. I remember that he called at my house.

Q. The evening of the receipt of that paper?

A. I do not know if it was the evening of the receipt of that paper or not.

Q. Do you remember his getting into a carriage with you and riding up to the Windsor Hotel in New York, that evening?

A. He rode up with me several times; I do not know if he rode up that evening.

Q. Did you state to Mr. Flagg at that time that you had to borrow in the market for the next day, for your own account, $700,000?

A. No; I did not.

Q. Did you go with Mr. Flagg to Mr. Birkem's house on Fifth avenue, for the purpose of borrowing this money for your account?

A. Not for my account; I used to borrow it in the ordinary course of business, but not for my own account.

Q. Did you go to other capitalists' houses that night for the purpose of borrowing money?

A. No, sir; and I would like to make an explanation here: that Mr. Birkem had offered me money a great many times, and money was very tight, and I called on him that evening; that is all there was to that.

Q. Did you, during that evening, tell Mr. Flagg that you knew you had not advanced to pay losses the amount that you had agreed upon this mortgage but that you had to save yourself; that you were obliged to pay one per cent. a day for money, and that you were good for nothing to your customers unless you saved yourself?

A. If you will ask that question in detail I will answer it; the first part, please.

Q. (The first part of the former question was read to witness as follows: "Did you, during that evening, tell Mr. Flagg that you knew you had not advanced to pay losses the amount that you had agreed upon this mortgage?").

A. No, sir.

Q. (The rest of the question was read to witness as follows: "But that you had to save yourself; that you were obliged to pay one per cent. a day for money, and that you were good for nothing to your customers unless you saved yourself?").

A. Well, I will answer no to that.

Q. Did Mr. Flagg go down to your office next day?

A. I do not know.

Q. Did you sell the 200 shares that are mentioned in the notice, under and in accordance with that notice?

A. No, sir.

Q. Why did you not?

A. My impression is that I was trying to help you out; hoping the stocks would go up.

Q. After this did Mr. Flagg request you to purchase any more stocks in the account?

A. I do not know if he did or not.

Q. Did you ever, after this, advance any more money in the account?

A. No; I think not; no, sir.

Q. Did Mr. Flagg demand from you that you advance any more in that account after that?

A. I do not think he did.

Q. Do you remember how long after this Mrs. Flagg brought her suit against you in the Court of Common Pleas, in New York, for an accounting and the surrender of this bond and mortgage?

A. I do not.

Q. About how long after?

A. I do not know.

RE DIRECT EXAMINATION:

BY MR. ROOT. Q. Was the sale of Mrs. Flagg's stock which was made at the Exchange sales room, one hundred shares of Ches. & O. first pref. made under *that* notice or a subsequent notice?

A. I think it was under a subsequent notice.

Q. Do you not recollect whether it was or no, refreshing your memory by the date of that notice and the date of the sale, as appears by your account?

A. It was not sold under that notice, it was made under another notice.

Q. By whom was this notice drawn?

A. Mr. Rathbone. The notice marked D *a* for identification.

Q. Under whose advice?

A. MR. Root's advice.

Q. Was this notice prepared and served by Mr. Root's advice?

A. It was.

Q. As was also the subsequent one?

A. Yes, sir.

Q. I understood you to testify that at the time the notice D *a* was served you had advanced to pay

losses $4,000, more than the sum mentioned in the mortgage as due; had that amount been advanced to pay losses, or was it advanced to buy stocks, and did you include in that estimate the value of the stocks you then had?

A. On the value of the stocks held by me, the prices in the market, more than the $4,000, was advanced.

Q. Do you recollect now so that you could state positively whether or not Mr. Flagg did or did not demand that you should buy some stocks for his account after this February 24th? Can you say positively?

A. No, sir.

Defendant's counsel stated that the cross-examination of Mr. Baldwin was closed.

Complainant's counsel states that he rests unless he should desire to call the book-keeper to verify the correctness of the entries made in the book.

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	Foreclosure.

It is stipulated that as Mrs. Flagg's testimony taken on the 4th of Feb. was taken before Mr. Baldwin's cross-examination was closed, the same shall be considered in the case as taken after the cross-examination of Baldwin is closed, and shall appear thereafter in the record.

Feb'y 13, '82.

H. A. ROOT, For Complainant. A. Q. KEASBEY & SONS, for Defendant.

JENNIE M. FLAGG, sworn and examined by Mr. Dos Passos, testifies as follows:

Q. Mrs. Flagg, you are the wife of William L. Flagg?

A. Yes, sir.

Q. And you are one of the defendants in this suit?

A. Yes, sir.

Q. Now, will you look at these two papers, the bond and mortgage which have been marked Exhibit C^1 and Exhibit C^2, and state whether you signed those?

A. (Papers shown witness.) Yes, that is my signature.

Q. To both of the papers?

A. Yes, sir.

Q. Under what circumstances did you sign those?

Objected to as immaterial.

A. I signed it to help Mr. Flagg speculate with Mr. Baldwin.

Q. Did you read those papers at the time you signed them?

Objected to.

A. No, sir.

Q. Who handed them to you to sign?

A. Mr. Flagg.

Q. What did Mr. Flagg state to you at the time you signed these papers?

MR. ROOT: Objected to on the ground that it is immaterial; that what conversation passed between Mr. and Mrs. Flagg is not competent, and in no way affects the plaintiff in this case.

A. He said if I would sign the bond and mortgage I would get my note back.

Q. And what else?

A. And it would help him speculate with Mr. Baldwin.

Q. Did he mention that this mortgage was to be used for anybody's account but his own?

A. No, sir.

Q. Never heard anybody else's name in connection with it?

A. No, sir.

Plaintiff's counsel object to all these questions, and they are taken subject to objection, the ground of objection to be taken hereafter.

Q. Did you have any personal communication with Mr. Baldwin about these papers?

A. No, sir.

Q. Never saw him about them?

A. No, sir.

Q. Never had any conversation with him about them?

A. No, sir.

Q. And do you remember the time that this bond and mortgage was presented to you by your husband. Where was it presented?

A. At Summit.

Q. Where you live?

A. Yes, sir.

Q. And do you remember just about the time that he presented them to you to sign?

A. Just after we finished breakfast. He was going to New York.

Q. Have you stated all that took place between you and Mr. Flagg at that time?

A. Yes, sir.

Q. All that you remember?

A. Yes, sir.

Q. What was said by Mr. Flagg in respect to the amount of the indebtedness that he owed to Mr. Baldwin. What did you understand about that at that time?

A. Why, if I signed the mortgage he could speculate more with Mr. Baldwin.

Q. And that you would get your note back?

A. And that I would get my note back.

Q. And did he say anything in respect to the amount that this mortgage covered?

A. I have forgotten.

CROSS-EXAMINED BY MR. ROOT:

Q. Mrs. Flagg, I understand you to say that this mortgage was given to help Mr. Flagg's account. Do I?

A. It was given in my name.

Q. Did I understand you to say it was given for the purpose of helping Mr. Flagg in his account with Mr. Baldwin?

A. It was given to help Mr. Flagg speculate with Mr. Baldwin.

Q Were you not at that time speculating with Mr. Baldwin yourself?

A. No, sir.

Q. You had not been at any time?

A. No, sir.

Q. Will you please look at that letter which is marked Exhibit C[3], Dec. 2d, 1881, and state if that is your handwriting?

A. Yes, sir.

Q. Mrs. Flagg, from what source did you obtain this house in Summit?

Mr. DOS PASSOS: Objected to as incompetent, irrelevant and illegal, and I direct you not to answer it.

(The witness does not answer the question.)

Q. Did you purchase it yourself with funds belonging to you, or your separate estate, or did your husband purchase it and take title in your name?

Same objection and direction, and the witness does not answer.

The examination taken to-day at No. 83 Cedar street not being in the presence of Mr. Day, the Master, it is stipulated between the parties that the same may be taken and used on the trial of this action, with all the force of testimony taken before the Master, both sides waiving his presence.

WILLIAM L. FLAGG, sworn for the defendant.

DIRECT EXAMINATION, BY MR. KEASBEY:

Q. Are you one of the defendants in this suit?

A. I am.

Q. The husband of Mrs. Jennie M. Flagg, the owner of the property?

A. I am.

Q. What is your profession?

A. Attorney and counsellor-at-law.

Q. Where have you practiced law?

A. In the State of New York.

Q. For how long?

A. I think fifteen years about.

Q. Have you of late years been engaged in buying and selling stocks in New York, to some extent?

A. I have been engaged in dealing in stocks.

Q. When did you become acquainted with the complainant, Mr. Baldwin, as a stock broker?

A. The first I ever knew of Mr. Baldwin was in January, 1880.

Q. Had you any knowledge of him whatever before that time?

A. I had not.

Q. Who introduced you to him?

A. Mr. D. M. Ripley.

Q. Was he in any way connected with him?

A. Mr. Ripley had been a client and friend of mine, and was then the confidential clerk of Mr. Baldwin.

Q. Who invited you to Mr. Baldwin's office?

A. Mr. Ripley.

Q. Did you go?

A. I did.

Q. State how you came to enter upon your first stock speculation with him, and the conversation that took place?

A. I met Mr. Baldwin at Mr. Ripley's rooms in Thirty-first street. He said he was glad to know me, or to make my acquaintance, and in the course of the conversation said that he would like to have

me come down to his office; that it was a lucky office, and he thought we could make some money.

Q. Did you go?

A. I did; some days after that.

Q. What passed there?

A. I went into his office and deposited a check for $1,000. I told Mr. Baldwin that was all the money I had—I mean loose money that I could speculate with. He said, "All right, we will open an account together."

Q. Did you sign any paper?

A. Not then. I went on speculating with Mr. Baldwin for some period, when he required me to sign a paper, which is the paper heretofore marked for identification by the complainant, and is marked, as I see, Exhibit C[19]. I think that is the first paper Mr. Baldwin asked me to sign. It is as follows:

"NEW YORK, June 8th, 1880.

"DEAR SIR: Upon the stock or other security bought or sold for my account a margin of 5 per cent upon the par value will be kept good. Should the margin at any time fall below 2 per cent. upon the par value, you are authorized to close the account for my account & risk & for that purpose buy or sell at the Stock Exchange, I hereby expressly waiving all & every demand & notice whatsoever.

W. L. FLAGG."

Q. How long have you been conversant with Wall street transactions?

A. Something over six years.

Q. Have you made them a study, as a lawyer?

A. I have.

Q. Do you understand the matter of stock transactions in Wall street as they are conducted at the present day—as an expert?

A. I do.

Q. What is a margin?

A. A margin is a deposit pledged by a customer

with a broker to secure the broker for his advances to pay losses on the account.

Q. Was that the purpose of the deposit of $1,000 made by you?

A. It was.

Q. Will you look at the accounts of the complainant and state what they represent, and explain how they were carried on, and the relations which you had with the complainant with respect to them?

A. You mean the accounts marked as exhibits in this action; all these stock speculation accounts?

Q. Yes.

A. These accounts all represent transactions purporting to have been on the New York Stock Exchange under an agreement which I had with Mr. Baldwin. I am referring now to the account outside of the joint accounts. They represent what are called "long" and "short" transactions. By "long" transactions I mean where an order is given to the broker to buy—that is, in the case of these accounts, where Mr. Baldwin received an order to credit the account with certain stocks — and "short" when he is ordered to sell stocks not then in possession. These transactions were based upon the fluctuations of the market and were purely speculative. There never was any question of the delivery of any of these stocks, when purchased, to me, or to what is the same as me—Mrs. Flagg—to whose name the account was changed. Of course the transactions representing short sales were not sales of actual stock by me, because from the nature of the transaction itself the stock was not in possession. Mr. Baldwin thoroughly understood, and it was expressly stated between us, that there never should be any delivery of the stocks to me, and I should never be required to pay for them. These transactions are undoubtedly on the books of Mr. Baldwin, as stated in these exhibits; but I do not understand, and it was not necessary, so far as my relations with Mr. Baldwin and the account were concerned, that Mr. Baldwin should actually buy for himself the

stocks or actually make the sales for the short account; it was all the same for me if the record was made in the account in accordance with my order. I never inquired and did not care whether Mr. Baldwin bought or sold on the Stock Exchange in accordance with my orders; that was not my affair. I will say that a very large proportion of these transactions were what are called "short" transactions; the account was charged as having sold stocks, with the hope, so far as my connection was concerned, of having it credited with their purchase at a lower rate, abiding the contingency of future prices.

Q. Give the date of Mrs. Flagg's first connection with these tranactions?

A. I think June 15th or 16th, 1880.

Q. Where did you live then?

A. In Summit, N. J.

Q. Did Mrs. Flagg live there?

A. Mrs. Flaggs' only residence was there—her home.

Q. Had she been at all engaged in stock speculations?

A. Never.

Q. Had she any knowledge of such transactions?

A. No more than a child.

Q. Had she ever to your knowledge been in a broker's office?

A. I do not think she ever was.

Q. Did she know Mr. Baldwin at the time?

A. She had met him, I think, socially with Mr. Ripley, or perhaps once at dinner.

Q. Will you explain the circumstances under which the account was changed to her name?

A. The fluctuations of price in the account on or about the 15th of June, Mr. Baldwin said, had affected my margin so that the books showed an advance by him to pay losses exceeding the amount of $1,300 (the amount I had put in for margin, having put in $300 subsequent to the $1,000); he said it exceeded that by a considerable sum and he must have

more margin. I told him that I had not any money, and he knew it. He said, "Well, your wife owns that place in Summit, don't she?" I said, "Yes, sir." He said, "Well, let her give me her note." I said that would not do him any good, because a note given by a wife to secure her husband's account would not be good. He said, "Well, change the account to her name—fix it some way; you don't want it to stay this way." Accordingly I broached the subject to my wife. She said—

Complainant's counsel objected to any conversation between Mr. Flagg and his wife out of the presence of Mr. Baldwin.

By the Witness: I wish to say that I did this at the request of Mr. Baldwin.

The statement of any communications between the wife and husband objected to by Mr. Parker on every ground, public policy and otherwise, out of the presence of Mr. Baldwin.

By the Witness: I wish to say that Mr. Baldwin asked me distinctly to broach the subject to my wife, and to talk with her about it at Summit. As I was saying, I did so. She said she was willing to help me, but that she had not much faith in it. She sat down and I dictated the letter marked complainant's Exhibit C[3], word for word. She also inclosed her note, at my request, for $4,500, which accompanied that letter.

Q. What did she do with them?

A. I took them to Mr. Baldwin. The portion of the note required to secure what was then shown to be Mr. Baldwin's advances for losses went for that; the remainder was taken by Mr. Baldwin as a margin for future speculations of the same kind.

Q. How much money did the transactions stated in the account involve upon the margin of that note, do you know?

A. I do not think there was more than a couple of thousand dollars of the note that could apply to

future speculations, and the transactions, Mr. Baldwin has sworn here, were hundreds of thousands of dollars.

Q. What do you mean by the joint account that you have referred to? when did it commence, and how?

A. Outside of my personal account with Mr. Baldwin, Mr. Baldwin asked me to go into joint-account transactions with him, in which he should be a partner as well as get a commission as broker. I consented, and that account commenced about May 6th. The transactions shown in the exhibit here which purports to be a record thereof, were exactly of the character I have stated as in the personal account. Mr. Baldwin started that account without any margin, and never required any. There was also a Flagg & Ripley joint account commenced about May 21 of the same character. Mr. Baldwin never required any margin in that. They were purely speculative, both of them, and, so far as I was concerned, never contemplated any real transactions in stocks so far as deliveries were concerned, but only speculations as to the prices on the market.

Q. Had Mrs. Flagg any knowledge of these two joint accounts?

A. Never.

Q. Had she any connection with them directly or indirectly?

A. Never.

Q. Did you ever consult her in any way about these joint accounts?

A. I never spoke to her about them and she knew nothing in regard to them.

Q. When was the bond and mortgage in question given?

A. In August.

Q. State the circumstances which led to the giving of the mortgage?

A. Mr. Baldwin came to me and said that the market fluctuations had been such as that the books

showed his advances to pay losses in the transactions had used up the note, and he wanted something to represent security for future advances, to pay losses for future speculations; he said he did not want to go on with the note any more, and asked me to get my wife to execute a mortgage for enough to pay his advances for losses on the personal account, in which Mrs. Flagg had given the letter and note, as stated, and what was shown to be losses in the joint account, and he said he would take $4,000 more in the mortgage as security for $4,000, which he agreed to advance for future losses in the personal account. I delayed three weeks before I would broach this to my wife; I objected to the mortgage including anything on account of these joint accounts, but Mr. Baldwin insisted, and said that he knew that they had nothing to do with the account in which he had taken the note, but he said that he had a partner, Mr. McCoon, that it was necessary for him to have his books show that he had some sort of security for those joint accounts; he said that I could get my wife to sign anything that I asked her to, and in fact said that he would take legal steps against me or my wife, according as he was advised, and would stop speculating then and there if I did not get my wife to sign a mortgage including the losses as shown in the joint accounts. He said furthermore with reference to the joint accounts that he was so anxious to get the books straight with regard to them, that if I would get the losses on them included by Mrs. Flagg, in her mortgage, he would take personal charge of those joint accounts and speculate in them himself and work off all the losses; that I need not worry about that. After many discussions on that subject, and especially on Baldwin's promise that he would go on speculating until the account showed that he had advanced for losses the sum of $4,000, to be mentioned in the mortgage, if I would get the mortgage signed by my wife; I took the bond and mortgage to her, including the losses on the joint accounts; she signed them and acknowledged them

without a question or a word, or reading them. I took them to Mr. Baldwin and handed them to him.

Q. Did you mention to her in any way the joint accounts or the money secured by the mortgage for them?

A. Mrs. Flagg said nothing. I remember that I told her that the mortgage was to cover what Mr. Baldwin said he had advanced to pay losses in that account, and that if she would sign it I could go on speculating and that I could hand her the note back.

It is consented that the testimony as to conversations between Mr. and Mrs. Flagg should be taken subject to objection.

Complainant's counsel objects to all statements made by Mrs. Flagg out of the presence of Mr. Baldwin.

Q. Was there any paper contemporaneous with the mortgage signed by Mr. Baldwin?

A. There was.

Q. Will you produce it?

A. I will (producing a paper); that is the paper.

Q. Will you read it so that the stenographer can take it down?

Objected to.

Said paper marked for identification D *b*.

Complainant's counsel object to Mr. Flagg continually asking counsel questions during the course of the examination.

Adjourned until Wednesday, the 15th day of February, A. D. 1882, at 1 o'clock, P. M.

IN CHANCERY OF NEW JERSEY.

BALDWIN VS. FLAGG.	Foreclosure.

Pursuant to the adjournment the parties met at the office of William T. Day, Esq., Master in Chancery of New Jersey, and continued the examination of witnesses, &c., in the above stated case, on Wednesday, the 15th day of February, A. D. 1882.

Appearances as heretofore.

JENNIE M. FLAGG, recalled for re-direct examination:

BY MR. KEASBEY:

Counsel for the complainant objected to any re-examination of Mrs. Flagg, on the ground that the direct examination and the cross-examination have been concluded, and also on the ground that there is another witness on the stand.

Q. On your cross-examination you were shown a letter dated June 18th, 1880, marked "Exhibit C[3]," and you said that you wrote that letter, and you also said that you had never at any time speculated with Mr. Baldwin yourself. Where did you write the letter mentioned.

A. In Summit.

Q. At your own home?

A. Yes, sir.

Q. Was Mr. Baldwin there?

A. No, sir.

Q. Have you ever spoken to Mr. Baldwin about stock speculations?

A. No, sir.

Q. At any time?

A. No, sir.

Q. This letter directs Mr. Baldwin to transfer to your name the personal account of your husband, in his name, on his books. Why did you do that?

A. Because my husband asked me to.

Q. The letter incloses a note for $4,500, as margin in a speculative account which you say you wish to open with him. Who asked you to give that note?

A. My husband.

Q. Had you had any business or dealings whatever with Mr. Baldwin?

A. No, sir.

Q. Did you owe Mr. Baldwin any debt?

A. No, sir.

Q. Did you receive from Mr. Baldwin, or from any person, any consideration or value for that note?

A. No, sir.

Q. Did you know, when you signed that note and wrote that letter, how large a claim Mr. Baldwin had against your husband?

A. No, sir.

Q. Is this letter all in your own handwriting?

A. Yes, sir.

Q. State how you wrote that letter?

A. Mr. Flagg dictated it to me, word for word, and I wrote it.

Q. After you gave Mr. Flagg this letter and note, did you have any knowledge or information as to any transactions concerning stocks, with Mr. Baldwin?

A. No, sir.

Q. When you signed the mortgage, some two months after, what did you think you gave it for?

Complainant's counsel objected upon the ground that the mortgage expresses the contract and that parol testimony as to the intent of the parties is inadmissible.

A. For the account referred to in my letter.

Q. Did you ever hear of any other accounts?

A. No, sir.

Q. Since this suit has been brought have you ascertained that other accounts were claimed to be secured by the mortgage?

A. Yes, sir.

Q. How?

A. Mr. Flagg has told me so.

Q. Have you ever had any personal concern with, or knowledge of dealings with stocks anywhere or with anybody?

A. No, sir.

RE-CROSS EXAMINATION:

BY MR. ROOT: Q. (Showing witness "Exhibit C[15].") Look at this and look at the signature of the paper?

A. Yes, sir.

Q. That is yours?

A. Yes, sir.

Q. You say you never had any conversation with Mr. Baldwin about stock transactions for yourself or your husband. Have you had conversations with your husband?

A. No, sir; I do not know anything about it, sir.

Q. Have you never had any conversation with your husband concerning stock speculations?

A. No, sir.

Q. You never have?

A. Nothing more than to ask how stocks were?

Q. Did you not know during the time these speculations were going on something about what he was doing?

A. No, sir.

Q. Did he not tell you at any time that he was buying and selling stocks?

A. No, sir.

Q. He did not?

A No, sir.

Q. You never had any conversation whatever with him about stocks in general or about the account, from the time you gave him that letter, until the mortgage?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. You were asked on your former examination how you acquired the premises in Summit which were mortgaged, and you then, under the advice of counsel, declined to answer. Will you now answer the question?

A. Well, I put money into the house.

Q. Where did you get your money?

A. It was left me by my mother.

Q. How much?

A. I do not remember.

Q Don't you know how much was left you by your mother?

A. No, sir.

Q. Can you approximate to it?

A. No, sir; I left it all to Mr. Flagg; he settled the estate.

Q. Do you know whether it was $1,000, or less?

A. I do not know anything about it.

Q. Did not Mr. Flagg pay for that house himself?

A. I put money in that house myself.

Q. Can you answer that question?

A. Well, of course Mr. Flagg paid for it; he did all the business.

Q. Did the money with which that real estate was purchased come from him or from you?

A. It came from both of us.

Q. Did the principal part of it come from him or from you?

A. I cannot tell—I think—he put—I don't know. I think (pause).

Q. You think what?

A. I do think he put in more—I cannot tell anything about it.

Q. When was that bought?

A. I do not remember.

Q. Was it bought after the house was built or was the house built on it?

A. Oh! the ground, you mean.

Q. Did you buy the ground first and build the

house, was the house on the ground when you bought?

A. Bought the ground first.

Q. And the house was built?

A. Yes, sir.

Q. Do you know how much was paid for the ground?

A. No, sir; I do not know.

Q. You do not know when that was bought?

A. No, sir.

Q. Did your money pay for that ground?

A. No, sir; I do not think it did.

Q. Did your money pay for the erection of the house, aside from the furniture?

A. My money helped to pay for it, I think. I do not remember much about that; I do not remember anything about it.

Q. How much money was paid for the ground? Did you say you do not know?

A. No, sir; I do not remember.

Q. Was it as much as seven or eight thousand dollars?

A. I do not think it was as much as that.

Q. Was it five?

A. I do not think it was as much as that.

Q. About how much do you think?

A. I think it was about $2,000.

Q. About two thousand for the ground?

A. I think it was; I do not know.

Q. You say your mother left you money?

A. Yes, sir.

Q. When did she die?

A. In August.

Q. Of what year?

A. Five years ago.

Q. When was this ground bought, before or after her death?

A. Before.

Q. Then you would state positively that the ground was not bought with money of her's, would you not?

A. Yes, sir.

Q. When was the house built, before or after her death ?

A. After.

Q. How long after ?

A. It was commenced about three months after —two months I think—three months, perhaps.

Q. Where did she die ?

A. In Summit.

Q. Was she living with you ?

A. No, sir.

Q. She resided there ?

A. Yes, sir.

Q. What was her name ?

A. Ward.

Q. The first name ?

A. Maria.

Q. How soon after her death did you first obtain any money from her estate ?

A. I do not remember.

Q. Can you approximate the time when you first received any money ?

A. I did not receive it at all.

Q. Were there any other legal representatives besides yourself ?

A. Yes, sir.

Q. How many ?

A. Four (4).

Q. Who was the administrator, or executor ?

A. Mr. Flagg.

Q. The sole executor or administrator ?

A. Yes, sir.

Q. Which was he, executor or administrator, do you know ? that is, do you know whether she left a will or not ?

A. She did not leave a will.

Q. Where was the estate settled—in what county ?

A. In New Jersey.

Q. In what county—in Union County ?

A. Yes, sir.

Q. Who built that house ?

A. I put money in the house.

Q. Who was the contractor who built it ?
A. A Mr. Riker.
Q. Of what place ?
A. I do not know ; I think he is of New York.
Q. What is his first name ?
A. I do not know.
Q. What did the house cost ?
A. I do not know.
Q. What did you understand it cost ?
A. I do not know ; I do not remember what it cost.
Q. And you do not know at all how much of your money went into it.
A. No, sir.
Q. Will you state positively that any of the money which came to you from your mother's estate was paid for the erection of that house ?
A. Yes, sir.
Q. You will ! How do you know ?
A. Why, Mr. Flagg had it all, and he told me that he put it in the house.
Q. Did he tell you how much he put in ?
A. No, sir.
Q. And your only knowledge on that subject is entirely derived from what he told you ?
A. Yes, sir.

RE-DIRECT EXAMINATION :

Q. Referring to Exhibit C[15], I ask you if you know in whose handwriting that paper is ?
A. No, sir.
Q. Is it your husband's ?
A. I do not know, sir.
Q. Oh, yes, you know that ?
A. I don't think it is my husband's.
Q. Is it in his handwriting ?
A. No, sir, it is not in his handwriting.
Q. Did you read the paper when you signed it
A. No, sir.
Q. Who handed you the paper to sign ?
A. Mr. Flagg, I think.

Q. Do you know now what it contains?
A. No, sir.
Q. Did you ever know what it contains?
A. No, sir.
Q. How did you come to sign it?
A. Mr. Flagg asked me to.
Q. Did he explain it to you in any way?
A. No, sir.
Q. What did he say when you signed it?

All these questions are taken subject to the objection of complainant at the last hearing.

A. I do not remember anything about that.
Q. Why did you sign it?
A. I signed it because Mr. Flagg asked me to.

RE-CROSS EXAMINATION BY MR. PARKER:

Q. In all these matters you had entire confidence in Mr. Flagg and trusted to his management and were willing that your property should be bound for whatever might befall—was it not so?
A. I did what Mr. Flagg asked me to.
Q. From confidence in him?
A. Yes, sir.
Q. Not from any other reason?
A. No, sir.
Q. And you were willing to let this property—so far as you were interested in it—be security for it, were you not?
A. Yes, sir.

FURTHER RE-DIRECT:

Q. Then you intended that this property should be security for your husband's stock speculations with Mr. Baldwin?
A. Yes, sir.

FURTHER RE-CROSS:

Q. After you wrote this letter of June 18th, which you say Mr. Flagg dictated and you wrote at his dictation, you knew its contents, did you not?
A. I do not remember anything about it; I wrote

it just as he told me to, word for word, every word; I put it down as he told me to.

Q. After you had written it you knew what you wrote?

A. I did not read it.

Q. You wrote it?

A. Yes, sir.

Q. You remembered what was written?

A. I did just as he told me, I put it down word for word, every word.

Q. And you knew, did you not, after you had written that letter that the account was going on in your name?

A. Yes, sir.

Q. And do you mean now to say that while you knew the account was being carried on in your name in Mr. Baldwin's office, you never inquired of your husband and he never told you anything about it?

A. No, sir; I do not know anything about it.

Q. Did you not ever speak to him upon the subject of that account?

A. I don't remember—oh, no!

Q. You did not say anything to him on the subject that you recollect?

A. I do not remember.

FURTHER RE-DIRECT:

Q. You have said that you knew the account was going on in your name; do you mean to say that you actually knew the account was going on, or anything about the account, after that?

A. I did not know anything about it other than the note I wrote.

Q. You told him in that note to put it in your name; did he ever tell you or write to you that he had put it in your name?

A. No, sir.

Q. Did you ever get any message, or information

of any kind whatever concerning that account, from Mr. Baldwin?

A. No, sir.

Q. Did you have anything whatever personally to do with that account, or any knowledge about it, after you wrote that letter?

A. No, sir; I did not know anything more about it.

WILLIAM L. FLAGG — Direct examination resumed.

By MR. KEASBEY: Q. (Handing witness paper heretofore marked D*b* for identification). In whose handwriting is the signature "A. H. Baldwin" to that agreement?

A. It is in Mr. Baldwin—the complainant's—handwriting.

Q. What is the date?

A. August 26th, 1880.

Q. To whom is it addressed?

A. Mr. and Mrs. Wm. L. Flagg.

Q. In whose handwriting is the body of the paper?

A. That I cannot state, but I think it is— I cannot state

Q. Is it in your handwriting or in that of any clerk or agent of yours?

A. No, sir. There is an interlineation in it in Mr. Baldwin's personal handwriting.

Q. State what words in that paper are in the handwriting of Mr. Baldwin.

A. The words interlined "or by Mr. Flagg for her," and also the signature "A. H. Baldwin."

Q. In what colored ink?

A. Blue.

Q. Where was this paper given to you?

A. In Mr. Baldwin's office.

Q. By whom?

A. By Mr. Baldwin.

Q. Did you ever give it to Mrs. Flagg?

Objected to as immaterial.

A. She never saw it. I never gave it to her and she never saw it until this moment.

Q. What did you do with it?

A. I kept it with my papers.

Defendant's counsel offered said paper in evidence and the same was marked Exhibit D[1] for defendant.

Q. This paper states that of the sum, $11,563.44, named in the mortgage, $7,563.44, was the amount of the indebtedness of yourself and Mrs. Flagg to Mr. Baldwin, is that a correct statement of the indebtedness of Mrs. Flagg?

Complainant's counsel objected on the ground that parol evidence is not admissible to alter or affect a written instrument.

A. It was not.

Q. What other indebtedness than hers did that sum embrace?

A. In any view Mrs. Flagg, except nominally, was in no way indebted to Mr. Baldwin. The account which had been put in her name as before stated, showed an indebtedness for difference losses of just about the amount of the note Mrs. Flagg had given as security.

Complainant's counsel moves to strike out the answer as not responsive, and objects to the question as showing a legal conclusion and not a fact.

Q. Of what was the difference then made up?

A. The remainder of the seventy-five hundred and odd dollars, stated by Mr. Baldwin there as indebtedness, was made up of what he said he had advanced to pay difference losses in the two joint accounts which he has put in here.

Q. This letter states that the balance of the mortgage, $4,000, was to cover future advances, and it agrees that he will not assign or dispose of the bond and mortgage before the said $4,000 of future advances have been made, and that such advances of

$4,000 are to be charged to the personal account of Mrs. Flagg only. What was the agreement between you and Mr. Baldwin at the time he wrote this letter, and this mortgage was given as to future advances?

Objected to as above stated.

A. Mr. Baldwin stated to me that if I would get my wife to make this mortgage for the amount for which it is made, that he would go on with the speculations upon my order until he had advanced for difference losses in the account, the $4,000, provided for as future advances in that agreement, that was the sole consideration. That is, Mr. Baldwin's agreement to do that was the sole consideration for changing the security from a note to a mortgage, and the only reason why I consented to have Mrs. Flagg give the mortgage.

Q. This mortgage was given in August. When was it credited in the account?

A. The account will show. It was some time in November.

Q. State the circumstances which occasioned the crediting the amount of the mortgage in the account?

A. The mortgage never was intended on either side to be credited in the account any more than the note had been. They were both taken for the same purpose—that is, as margin, or as security for Mr. Baldwin's advances to pay difference losses. The note had never been credited in the account, neither was the mortgage, as appears from the exhibits here. But one day Mr. Baldwin came to me with some pencil figures and said that he had then advanced already $4,000 for difference losses. I told him that he had made a mistake; that I knew better. We then went back into his inner office, and, upon figuring, we ascertained that no such advances had been made to me, and that he had made a mistake. I told him that I did not want to be annoyed in that way again. He said, "Well, how shall I fix it?" I said, "You had bet-

ter have the figures before you all the time." He said, "Well, as I have got to advance, in case you lose, up to $4,000, the amount of the mortgage had better be in the books charged up, so that this annoying mistake shall not happen again."

Complainant's counsel objected to that part of the answer wherein the witness stated what the intentions of the parties were, on the ground that the evidence is to be derived from the words used.

Q. After getting the mortgage, what was the course of dealing between you and Mr. Baldwin, as to the magnitude of the transactions?

A. After getting the mortgage, Mr. Baldwin encouraged me to involve the account in very heavy speculations. He gave me points—as is the saying upon the street—until the account was swelled to something like 1,300 shares of stock, representing in par $1,300,000. All of a sudden he thought the market would go down, and became apparently very much alarmed at the enormous transactions represented in the account, and insisted that the account must not show such a heavy responsibility. Upon his clamor in the matter, I was induced to give him orders to lessen the account by some stocks upon my order, and very many stocks he, in the parlance of the street, sold—in reality, in this case, substracted from the credit of the account—without any orders whatever, so that a great loss stood apparently charged in the account: but the stocks which he sold without orders, he told me he would replace in the account. He said he was so sure the market was going down, and that he would be able to replace them in the account at a cheaper figure, that he was willing to take the responsibility of a lessening of the account that we had. In this way the account in February was reduced to a credit of 200 shares of stock only.

Witness requested that the whole of the last answer be read over to him by the stenographer.

Complainant's counsel objected to the answer being read to the witness.

Witness withdraws the request.

Complainant's counsel objects to Mr. Flagg being entitled to have his answers, after he had delivered them, read to him, as he has done in almost every instance heretofore.

Counsel for the defendant claims that the last part of the objection of complainant's counsel ought not to have been entered on the record.

The Master states such to be his view.

Q. Did you complain to Mr. Baldwin of the manner in which he had sold out your stocks against your order?

A. I did.

Q. What did he say in reference to these unauthorized sales?

A. He said that he did not believe in my judgment in the market. He thought I was wrong; that he would take the responsibility of the sales that I objected to, and I would find out that the account would make money, as he would replace them, as he believed, at a lower figure.

Q. Did he serve you with a notice on the 24th of February, 1881?

A. He did.

Q. Will you produce it?

A. (Witness produced a paper).

Q. It is the paper already referred to?

A. It is the paper that has already been marked for identification D*a*.

Defendant's counsel offered said paper in evidence.

Objected to as immaterial and incompetent.

Marked Exhibit D^2, for defendants.

Q. What did you do on receipt of that notice?

A. I went that very night to Mr. Baldwin's house in New York City and told him that the service of that notice was an outrage; that it was in violation

of every agreement he had made with me, and I asked him to withdraw it. He prevaricated and said he would see about it. He said that he knew it was not in accordance with his agreement with me, and that he acklowedged that he had not advanced $4,000 since the taking of the mortgage to pay difference losses; but he said, "I am compelled to borrow money, and money in the market now is very difficult to get; "I have got to borrow to-morrow," he said, "$700,000, and I do not know where to get it; if your two stocks are sold, it will relieve me just so much from my dilemma." I said to him, "Why—why should you have to pay one per cent. a day for money?" and reminded him that banks were not charging that much to reputable bankers. He said, "Get into a carriage with me," and I did, as one was standing before his door, and we went up to the Windsor Hotel and he left me and went to several men there, telling me that he wanted to borrow money of them for the next day if he could. We also went to two houses of monied men in the city, that night; he left the carriage and went in, and came back saying that he had been trying to borrow money. He gave me to understand that his personal trouble as to raising money, and the fear that he would not be able to get the money to go through with his business, was his reason for giving this notice.

Q. What did you cause to be done a few days after, early in March?

Complainant's counsel objects to witness making a suggestion to counsel after he has asked a question.

Q. You evidently do not understand my question. What did you do in regard to any legal proceedings?

A. I went down to Mr. Baldwin's office the next day, and Mr. Root was standing in Mr. Baldwin's office apparently in charge of Mr. Baldwin's business. Mr. Baldwin was lying in an inner office with his overcoat thrown over his head, apparently in

very deep depression, in great excitement, I could get no agreement either from Mr. Baldwin or from Mr. Root to withdraw the notice; on the contrary, they insisted, both of them, that the threat in the notice should be carried out. I then said to Mr. Root, in reply to his suggestion, that as the stocks were going to be sold they had better be sold on the exchange than at public auction, that they might be sold on the exchange instead of public auction, not waiving, however, objections to any such transactions in the account.

Q. Did you bring a suit in New York?

A. On the 5th day of March, I brought a suit in New York City, in the Court of Common Pleas, in Mrs. Flagg's name, asking for an accounting, and demanding a cancellation and surrender of the bond and mortgage set up in this action.

Q. Had this foreclosure suit then been begun?

A. No, sir.

Q. Do you remember when that was begun.

A. My suit in the Court of Common Pleas was commenced March 5th, and this suit, I believe, was commenced March 17th.

Q. How much, according to the account, had Mr. Baldwin advanced of the $4,000, to pay difference losses in the account, after getting the bond and mortgage?

A. Do you mean at the time of serving the notice of February 24th?

Q. Yes.

A. According to his books, and admitting the sales that he had made without any authority, about $3,000.

Q. How much does he claim to have had advanced in the proceedings in this suit?

A. $3,346.07.

Q. Has he ever made any further advances under his agreement?

A. He has not.

Q. Have you made any demand for such advances?

A. I have asked him to replace the stocks which he sold without any authority, in the account, and to go on with his agreement upon the transactions until such time as his advances to cover difference losses amount to the $4,000.

Q. What answer to that demand did he give?

A. He refused positively to do anything whatever, and said that he would make or break as the matter stood.

Q. With the stocks you have mentioned credited to this account, how will the account appear upon an accounting, as asked for in your suit in New York?

Objected to as calling for a legal conclusion.

A. It will be shown that, instead of Mr. Baldwin advancing anything under the terms of this mortgage, the account made a large sum of money.

Objected to as a mere matter of opinion.

By the Witness: And that Mr. Baldwin is indebted on the account in quite a large sum of money.

Q. You have spoken in your testimony of the nature of the account with Mr. Baldwin, and of "long" and "short" sales, and their meaning and effect, will you explain more fully and clearly what you mean by that?

A. I mean this: that there are transactions in Wall street that are real transactions, where there is a dealing in stocks, and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase, or to the transaction; and that there are also transactions in Wall street—and they are the majority, in my opinion—which are not for investment, and are mere transactions in margins. My transactions with Mr. Baldwin were all of the latter kind. By the phrases "buy" and "sell," as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. A transaction for what is called a "long" account is an order to the bro-

ker (on a marginal transaction, like this) to credit his account with stock at a certain price, and if the fluctuations of the price on the Stock Exchange mark the figure indicated by the customer, the broker is obliged to credit the account according to the order; the broker is not obliged to actually buy the stock, and there is no question of the delivery of the stock to the customer, and no intention of delivery. The broker may, if he pleases—and he very often does, in fact--credit a customer's account without insuring himself in the transaction by buying the stock. If he does buy the stock, he borrows money on it to represent what he has given for it, and then, without ever delivering it to the customer, delivers the stock to another broker when the customer orders a sale. If he does not actually purchase the stock, and a sale is made on the order of a customer at a higher price than the order was given to purchase, the broker pays it out of his own pocket. And so far as the "short" transactions are concerned, the customer gives an order to the broker to sell stocks when the prices on the Stock Exchange reach the figure he names; neither party has the stock in possession, or any arrangement to have it. The broker, in such a case, credits the account with a sale at the price named in the order. He can then either make a sale himself on the Stock Exchange or not, as he chooses. If he does, he takes the money which he gets on the transaction to purchase in the contract when the customer orders a purchase on a "short" sale. This is done with another broker. If he did not he would stand the loss in the account himself.

The transactions of course are intricate, and are difficult to be understoood by the oldest speculators themselves.

Adjourned until Friday, the 17th day of February, A. D. 1882, at 10 o'clock, A. M.

IN CHANCERY OF NEW JERSEY.

BALDWIN

vs.

FLAGG.

Transcript of short-hand testimony taken in the above stated case, on Friday, Feb. 17th, 1882, before William T. DAY, Esq,, M. C. C., at the City of Newark, N. J.

APPEARANCES:

Mr. ROOT for the complainant.

Mr. E. Q. KEASBEY, for the defendant.

WILLIAM L. FLAGG.—DIRECT EXAMINATION RESUMED.

By Mr. E. Q. KEASBEY.

Q. Were each and every one of the transactions oyu had with Mr. Baldwin exactly of the same character—that is, was any one of them one which represented, so far as you were concerned, a real transaction in stock?

A. They were all of an identical character, and none of them represented a real transaction in stocks.

Q. Single out of the account Mr. Baldwin has shown here one of the transactions which appears to have been a *long* transaction, and state exactly what was done.

A. Well, I will take the paper which he has handed in here, which he has marked "Exhibit C11," for complainant; under date of April 19th, there appears to have been credited to the account 100 Del. & Hud. at 80¼. That stock, supposing it to have been upon my orders, which I do not remember now, was, so far as I was concerned, simply a credit of the stock. I never saw the stock; it was never transferred or delivered to me; I never had anything to do with it. It appears

from this same paper that the credit of that stock was taken out of that stock, or, in the language of the street, was "sold," on the 19th day of —are you inquiring of a "long" or a "short" transaction?

Q. Long?

A. I see I have made a mistake. I have picked out a "short" transaction instead of a "long" one.

Q. Proceed and explain a "short" transaction?

The witness requested the stenographer to read the last answer but one. The stenographer did so.

Q. I will repeat my question and ask you to pick out a "long" transaction, and state exactly what was done?

A. Well, I will take the exhibit marked C[7]. Under date of July 1st, 1880, there appears to have been credited to this account 100 Erie Preferred at 65¾. That was a mere credit in the account. I never saw the stock; neither was it ever delivered to me, or transferred to me or Mrs. Flagg, in whose name the account then stood, A credit of that 100 Erie Preferred seems to have been taken out of the account July 2d—in the technical phrase of the street, it was "sold" out of the account at 65¼. The purchase, or the credit, of the account was made in contemplation of the contingent event of a rise in the price. It appears to have been a disappointment, as there was a loss of $75, including commission, which was a "difference" loss, and appears to have been an item for which Mr. Baldwin appears to have advanced upon the security of the margin.

Q. Now take out in the same way a transaction which appears to have been a "short" transaction, and state what was done?

A. Well, I will go on with what I was saying with regard to this transaction as shown in Exhibit C[11], the transaction recorded as of April 9th. It

appears from this that the account was charged as having sold 100 Del. & Hud. at 82¾. Of course I cannot remember whether this was on my order or not. That stock was not in my possession, and I had no prospect or possibility of having any in my possession when that charge in the account—or what is known on the street as a "short" sale—was made. I never had the stock to deliver on April 19th. It appears from this exhibit the transaction with regard to that 100 Del. & Hud. was closed—that is, the account is charged with having bought that 100 Del. & Hud. at 80¼. That was a transaction made upon the hope of a contingent fall in the price, and appears to have been realized, as the account seems to have received a profit. It was a transaction, so far as Mr. Baldwin and myself are concerned, in differences, and wholly effected margins and not stock. Every one of these transactions might be explained in this same way.

Q. Did you ever see or receive any of the stocks mentioned in this account?

A. Never one of them.

Q. What commissions did Mr. Baldwin charge upon these accounts?

A. $25 for every 100 shares of stock bought and sold.

Q. What is the whole amount of his commissions charged?

A. I will figure it up and let you know. It was four thousand two hundred and fifty dollars ($4,250).

Q. What was the ruling rate of interest for money borrowed from day to day in Wall street during the time covered by these accounts?

A. It would average about 3 per cent.

Q. For what time?

A. Perhaps a little more. During the period covered by these accounts.

Q. Three per cent. for what period?

A. Three per cent. a year.

Q. What did Mr. Baldwin charge in these accounts on money he pretends to have borrowed?

A. All the time 6 per cent., and on several occasions more. Once or twice as high as 365 per cent.—that is, one per cent. a day. There are other charges which are less than 365 per cent.—varying.

Q. When he took the bond and mortgage, did he give up Mrs. Flagg's note?

A. He did not.

Q. Did you ask for it?

A. I did. I asked him personally on several occasions for it.

Q. Did you obtain a restraining order as to this bond and mortgage in New York in the Court of Common Pleas?

A. I did; in the suit brought in the name of my wife I procured a preliminary order, restraining Mr. Baldwin from assigning, disposing of, or forclosing upon this bond and mortgage, with an order to show cause why it should not be made permanent.

Q. What did he do with regard to it?

A. He came into court on the return day of the order, and made an affidavit and argument before the Court that as this matter affected New Jersey property, and was within the jurisdiction of New Jersey courts, it was not proper for him to be restrained. He also filed his affidavit and stipulations which it has been agreed should be part of the testimony in this case.

Q. Has Mr. Baldwin taken any other aggressive steps toward your wife in this matter?

Objected to as immaterial.

A. He has. He has caused an attachment suit to be brought upon the bond connected with the mortgage, under which Mrs. Flagg's household goods, and library, pictures and wearing apparel have been attached. He has also caused his partner, Mr. McCoon, to get an assignment of a little first mortgage that was held against the property by the Mutual Life Insurance Co., he paying for the

assignment with his own check. Foreclesure upon the first mortgage was commenced by Mr. McCoon shortly after this suit was commenced. There was also an attachment suit brought in Mr. McCoon's name. On Mrs. Flagg's petition to compel the discontinuance of those suits in Mr. McCoon's name, on the ground that they were persecutory and really in the interest of Mr. Baldwin. Mr. Baldwin's books were required by the Chancellor to be shown. Whereupon the suits in McCoon's name were discontinued, but not before McCoon had made an assignment to one Irwin Davis, an uncle of Mr. Root. He also commenced foreclosure, and a like petition was made by Mrs. Flagg, and the Chancellor on the hearing had on this petition made an order denying Irwin Davis the use of the process of the Court in his proceedings.

Q. What is the present condition of these litigations in regard to the first mortgage?

A. They are stayed by the Chancellor.

Q. Was any tender made of the amount due on the first mortgage.

A. Yes, sir.

Q. Was it accepted?

A. It was not accepted.

Q. Have you made any proposition looking toward a settlement with Mr. Baldwin for a speedy and friendly termination of the matter?

Objected to as immaterial.

A. Yes, sir; I told Mr. Baldwin that these proceedings on his part were very distressing to my wife; that I was willing to sacrifice, and she was willing to sacrifice, rather than have these proceedings go on at law. I have urged Mr. Baldwin and Mr. Root to consent to a reference in the Common Pleas case, and get a speedy termination there. I have also been very urgent with Mr. Baldwin to leave the whole matter to some fair and prominent business man in the city of New York, conversant to such affairs, and to abide his decision, and have

named Mr. Baldwin's own banker, Mr. B. B Sherman, president of the Mechanics Bank in New York. He seems to prefer litigation.

Q. Something was said by Mrs. Flagg in regard to how she came into possession of the house on which this mortgage was made; can you state any facts in regard to it?

A. I think Mrs. Flagg contributed toward the erection of these premises something like $2,000; the rest was my money.

Q. What was your financial condition at that time?

A. At the time the house built in her name?

Q. Yes.

A. I was probably worth over and above what I put in the house and the property there in Summit in the neighborhood of $50,000.

Q. Do you know anything further bearing upon this case which it is proper to state now?

A. There may be, but I don't recall anything more to say.

CROSS-EXAMINATION BY MR. ROOT:

Q. You say in your testimony "there are transactions in Wall street that are real transactions, where there is dealing in stock and the parties intend that the stock bought and sold shall be delivered, and where the money put up is applicable to the purchase or the transaction, and there are also transactions in Wall street—and they are the majority, in my opinion—which are not for investment and are mere transactions in margins. My transactions with Mr. Baldwin were all of the latter kind." Do you know of any other place in Wall street where similar transactions are made?

A. Yes, sir.

Q. Name the other place?

A. I think all the brokers' offices.

Q. I don't ask you what you think; do you know?

A. I know what others, speculators in stock, have told me.

Q. Do you know from personal experience?

A. I never carried on a speculative account with any other broker under exactly the conditions I did with Mr. Baldwin.

Q. Have you carried any other accounts with any other broker which you would call "a transaction in margin," as you have defined your transactions with Mr. Baldwin?

A. I have.

Q. With whom?

A. With John H. Davis & Co.

Q. With whom else? With any one else? Have you with Stout & Co?

A. I have no marginal accounts with Stout & Co.

Q. Have you with any other person which you can recollect except John H. Davis & Co?

A. I may have had; I don't recollect now.

Q. Have you with Cecil Zimmermann & Co?

A. No, sir,

Q. You would not state positively you have not had any such transactions with other persons besides Davis & Co. and Baldwin?

A. No, sir.

Q. Do you know of any other transactions with any other broker of a similar nature which has been made by any other customers?

A. Why, I can only know with regard to other customers' dealing with these brokers—or these stock speculation firms—from what such customers told me.

Q. And you say that as an expert (which you have testified that you are in these matters) that transactions of this description are of the majority in Wall street, in your opinion?

A. I will say, in my opinion, I believe that the majority of transactions in Wall street are speculative transactions, as contradistinguished from investment transactions or legitimate transactions.

Q. And will you add, are such transactions as

you have described between yourself and Mr. Baldwin?

A. Well, in my transactions with Mr. Baldwin, there was a peculiar and special agreement.

Q. Were your transactions with Mr. Baldwin peculiar and special so far as the dealings or not dealings in stocks were concerned?

A. They were.

Q. In what respect did they differ from your transactions with Davis & Co?

A. I never had any conversation, specially, with Mr. Davis upon the point, but I did have conversation with Mr. Baldwin when I first went to his office, when I told him that there must be no question about the delivery of these stocks to me whatever, as I was not able to take them, and—

Q. (Interrupting) I am not asking about your conversation, but I am asking you to distinguish the transaction as it was made for your account between the two firms?

A. As to how John Davis & Co. made the actual transaction on the Stock Exchange, I know nothing; neither do I know how Baldwin made the transaction on the Stock Exchange; that was their part of the business.

Q. Then other than the answer already given, you are unable to distinguish between the two houses in the matter of the making of these transactions?

A. I will say that I presume the manipulation on the Stock Exchange by Baldwin and by Davis are similar; but so far as my dealing with the two is concerned, my arrangement as to the transaction was more specific in so far as that conversation was concerned with Mr. Baldwin.

Q. Now, Mr. Flagg, don't you know as a matter of fact that your testimony on that subject, which I have read to you, is entirely untrue?

A. I will not notice the personal character of that question but will answer: my testimony on that point is absolutely correct.

Q. Will you go further, and say that where in the same answer you used this language, "by the phrases 'buy' and 'sell' as used in such transactions the actual purchase and sale of the stock is not contemplated by the customer" is also true?

A. Yes, sir.

Q. Is it not a matter of fact that when you made a transaction in the office of Mr. Baldwin or Mr. Davis you gave an order to buy and sell stock on the Exchange; thereupon the order was sent to the Exchange, and that you waited to see whether the order was executed, and in some cases it was and in some cases it was not, depending upon the condition of the market when the person who went to execute your order arrived there?

A. I would prefer that that question be made into more than one question.

Q. Can you not answer the question as it is now framed?

A. I do not carry it in my head.

Q. Will the stenographer read the question to the witness?

(The stenographer did so.)

A. I think that when I gave an order I used the phrases "buy" and "sell," as I before stated, and also that I stood by the instrument to see if the fluctuations of the price on the Stock Exchange at any time marked the price at which my order had been given. I could not expect Mr. Baldwin to credit the account with any transaction unless at the time of crediting it the prices named were prices marked in the market.

Q. Do you mean to be understood as swearing that your orders to purchase or sell were not executed on the Exchange?

A. I know nothing about it.

Q. You will not swear that they were not?

A. I don't know anything about it.

Q. As you have described the order, the way of giving orders, do you still mean to testify that when

you gave an order to Mr. Baldwin to buy a certain stock, you did not contemplate that he should buy it, as you have testified ?

A. I contemplated only the fact that the account was to be charged according to the order.

Q. And did not contemplate the transaction ?

A. And did not contemplate what Mr. Baldwin might or might not do.

Q. And your transactions with Mr. Davis were the same in that respect ?

A. I have not said so.

Q. Were they or were they not ?

A. I never had a distinct understanding with Mr. Davis as I did with Mr. Baldwin ——

Q. (Interrupting). I am not asking you for your distinct understanding, but about the transactions ?

A. How far did I get in my answer ?

(The stenographer read the previous answer to the witness as follows: "I never had a distinct understanding with Mr. Davis as I did with Mr. Baldwin.")

WITNESS (continuing): that there was to be no deliveries of stock to me.

Q. Were there any deliveries of stock made to you by Mr. Davis ?

A. I think there were.

Q. State what and when ?

A. I do not remember anything about it now.

Q. Will you swear there were ?

A. No, sir; I won't swear there were.

Q. Is it not a fact, that after you had given Mr. Baldwin an order to buy or to sell any stock on the Exchange, you were notified from whom the stock was purchased, if it was bought, or to whom it was sold if a sale was made, together with the notice which you usually receive after a transaction was made ?

A. Will the stenographer read that question ?

Q. (The stenographer did so.)

A. I don't know what you mean by "together."

I was usually notified by Mr. Baldwin of a purchase and sale of stock for the account.

Q. Is that all the answer you can make?

A. That is all the answer I think of now.

Q. Were you not also notified of the name of the person from whom the stock was bought, if a purchase was made?

A. Well, I really don't recall that I was. I presume likely the notice did contain the name of the party from whom it purported to have been purchased.

Q. That person would be a member of the Stock Exchange?

A. I don't know anything about that.

Q. You say you are an expert in these transactions?

A. I say so far as Mr. Baldwin's notices to me were concerned.

Q. You do not pretend, then, to be an expert in transactions in Wall street, except so far as Mr. Baldwin's notices to you were concerned?

A. (Will the stenographer please read the question?)

Q. (The stenographer did so.)

A. You were asking me specially with regard to what was contained or might have been contained in Mr. Baldwin's notes to me, and I am stating the facts as near as I can remember.

Q. You say if the fluctuations of the price reached a certain point, and your order had been given to "buy" or "sell" at that point, it was a matter of no consequence to you whether the transaction was made or not, but that you were entitled to have your account credited with the purchase or the sale at that price?

A. I was, under my agreement with Mr. Baldwin.

Q. When did you make such an agreement with him?

A. When I first started the account.

Q. In whose presence?

A. I don't think anyone was present.

Q. Do you know where it was?

A. In Mr. Baldwin's office.

Q. What office?

A. 66 Broadway, New York City.

Q. In the office where the clerks are, or in the public office?

A. I cannot be precise as to that.

Q. Did you ever communicate that to any one else?

A. I have talked it over with Mr. Baldwin a good many times.

Q. You have never spoken to anybody else about it?

A. I don't think I have; it is not a matter I would be apt to talk about to anybody.

Q. Do you recollect the language that was used on that occasion?

A. I have stated it in this examination, I think.

Q. Will you repeat it?

A. I don't remember how I stated it exactly.

Q. Regardless as how you did state it, and though you don't remember how you did state it, perhaps you can state it afresh?

A. I told Mr. Baldwin, before I first commenced with him, that I was not financially able to take deliveries, and that my transactions would be simply upon the fluctuations of the price, and he agreed—

Q. (Interrupting). State the language that he used?

A. And he said there never need be any deliveries in stock, and that he would never call on me to take any. He said the margin was all he looked to.

Q. Was this all?

A. Will the stenographer read that over?

Q. No, he will not read it at all. Is this all that he said? Are you ready to answer? I will have indicated here a pause very soon, as it is usual, if you don't answer it.

Witness respectfully asks the Master that he may have the answer, so far as he has made it, read, so that he may make a proper

connection, as in the bustle of the examination the connection has been lost in his mind.

Counsel for the complainant objects to the answer of Mr. Flagg being read over to him, as he claims that by so doing Mr. Flagg is endeavoring to make a case for the Court, and that he submits that the witness should be examined in the same manner as if he was in Court; and in Court a witness is not entitled to have his answers read to him before another question is asked.

The Master, upon this request that a connection may be given, permits the answer to be read over to the witness for that purpose, "although," he says, "at the time I thought it was not proper that the answer should be read."

The stenographer read the answer to the witness as follows: "And he said there never need be any deliveries in stock, and that he would never call on me to take any. He said the margin was all he looked for."

Q. Is that all he said?

A. That is all that I now recall on that subject.

Q. And from that conversation that you have testified to, you draw the conclusion which you first testified to?

A. Not altogether from that.

Q. From what else?

A. From my whole dealings, and in the general nature of the transactions with Baldwin.

Q. What was there in your whole dealings, and in the general nature of your transactions with Baldwin, which entitle you to be credited with a purchase or a sale of stock at a particular price, if that price was indicated, as you have described, upon the instrument?

A. Because I had deposited a margin with Mr. Baldwin, which it was agreed should be security for any advances for difference losses—for any difference losses marked upon the account.

Q. What is this instrument?

A. (Continuing). And because Mr. Baldwin was working on a commission.

Q. You spoke of an instrument; what instrument do you mean?

A. I am not conscious at this moment of having referred to an instrument lately.

Q. There is an instrument called a stock indicator, is there not, in a broker's office?

A. Ah! I thought you meant a paper instrument; I now remember I did use the word instrument, referring to a stock indicator.

Q. What does this stock indicator indicate?

A. Its purpose is to give a correct telegraphic record of the fluctuations of prices on the N. Y. Stock Exchange.

Q. Well, you say it marks the purchase and sales of stock there in the Exchange?

A. Not necessarily the purchase or sales.

Q. Where there is a purchase there must be a sale, must there not?

A. Yes sir; but what is marked on that indicator is not always a transaction.

Q. Do you mean to say that Mr. Baldwin's agreement with you was such that if you had given him an order to buy 500 shares of Han. and St Jo. common stock, at 50, and after you had given him that order to buy that stock at 50, a transaction had been made in that stock at that price, at which Mr. Baldwin, your representative, was present; but when he was unable to buy it at that price, that your agreement with him was such that you could have held him for that purchase and claimed from him your Han. and St. Jo. stock at 50?

A. I understood, Mr. Root, that if my order to buy, to credit the account with the stock, was, before its countermand, a fair price, as reported on the indicator, that my account was entitled to be credited accordingly.

Q. Supposing the same stock sold on the Exchange at 200, and Mr. Baldwin was there offering the

stock for you at that price, and was unable to sell it at that price, would you still be entitled to be credited with the sale of that stock at 200?

A. Please read the question.

Q. Yes; please read the question to him? (The stenographer read the question).

A. I do not claim that the account was to be charged or credited with transactions which the record of the dealing on the Stock Exchange showed were not based upon fair market prices; that is all I can say about it.

Q. Will you now answer the question?

A. I cannot answer the question any differently than what I have answered it.

Q. You cannot answer yes or no to that question?

A. I decline to answer any differently from what I have answered it.

Q. Now, Mr. Flagg, describe a transaction such as you referred to in your answer on your direct examination as " dealing in stocks, and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase;" describe such a transaction as that?

A. That is a transaction where the broker and the customer both understand that the order intends that the broker must buy the actual stock, and where it is understood between the parties that the money deposited by the customer with the broker is part payment for that stock; in other words, where both parties know that the customer intends to take the stock, and that he is not dealing in mere differences.

Q. Then it could not be a real transaction where the money put up is applicable to the purchase, unless the customer intended to take up the stock.

A. I should say this, that the intention of taking delivery would have to exist; but I can imagine a case——

Q. (Interrupting). I do not ask for your imagination, but I ask you about facts?

A. There might be a case where a customer gave such an order to a broker, and repenting his purchase before actual delivery, or changing his mind, and ordering the broker to sell the stock before the actual transfer was made.

Q. Otherwise it would be what you would call a "dealing in differences?"

A. I prefer to characterize a particular transaction, and not to be general in my answer.

Q. Is that all the answer you can make the question?

A. Where there is no intention of the delivery of the stock being made to the customer, I should say that it was a transaction, not in stocks, but in differences and margins.

Q. And you will swear to that?

A. That is my opinion.

Q. You have said that a margin was a security deposited with the broker to pay different losses on the account; is that all a margin is?

A. I don't think, Mr. Root, you have correctly stated what I said a margin was.

Q. What did you say?

A. The record will show.

Q. Do you decline to state what you said?

A. I prefer, if you will be kind enough, to have you refer to my answer as to what a margin is.

Q. I will read your former question; you have said that a margin was a security deposited with the broker to pay difference losses on an account; is that all a margin is?

A. By your question you put words in my mouth and ask me to characterize those words. That I decline to do. If you will ask me what a margin is I will be happy to answer you.

Q. Can you make no further answer to the question?

A. That is my answer, sir.

Q. I now read from your testimony, "What is a margin? A. A margin is a deposit pledged by the customer with the broker to secure the broker for

his advances to pay loss on the account." Is that all a margin is?

A. I could not give a more definite answer than that.

Q. Is not a margin used to assist a broker in carrying stocks?

A. Where the margin is cash, actually in the possession of the broker, the fact is that it does assist him in carrying stocks?

Q. Do brokers on the exchange make one transaction for a customer where the margin is deposited and another and a different one where there is none?

A. I do not understand your question.

Q. (To the stenographer.) Repeat it?

The stenographer read the last question to the witness.

A. I do not understand that there will be any difference in the actual form of the transaction.

Q. Would there be any difference, even if the customer deposited with the broker sufficient money to pay for the stock outright?

A. I never heard of but one form of transaction on the Stock Exchange.

Q. You have testified about two forms of transactions; one a real transaction and the other a transaction in margins; do you now mean to be understood as changing that evidence?

A. No, sir: the form of an actual transaction on the Stock Exchange is, I presume, identical. The question of real, as opposed to gaming, transactions does not consist in anything done on the Stock Exchange, but in the intentions of the parties.

Q. The intentions of what parties?

A. The parties dealing.

Q. Do you mean the broker and the customer?

A. Yes, sir.

Q. Would it be necessary that both should intend that they were gaming transactions, or would the

intention of one be sufficient to stamp them as gaming transactions?

A. I think it would require that both should have a knowledge of what was being done?

Q. Would you say positively that these transactions of yours with Mr. Baldwin were gaming transactions?

A. I do not propose, in my evidence, to state what may or may not be the opinion of the Court. I propose merely to state the facts, and let the Court characterize them.

Q. Was there any express intention on the part of Mr. Baldwin that these should be gaming transactions?

A. As you draw this out, Mr. Root, I will say Mr. Baldwin almost invariably, when he spoke to me of these accounts, has called them gaming transactions.

Q. Did you call them gaming transactions, too?

A. Yes, sir.

Q. Would you still call them gaming transactions, even if you knew that every transaction that appears by the account to have been made was actually made on the Stock Exchange. They would still be gaming transactions, would they?

A. I say again that the question as to whether they are gaming transactions or not is for the Court. In answer to your question I will say that whether or not Mr. Baldwin chose to, or did actually protect himself in the account by buying and selling stock, makes no difference with that question.

Q. But you have testified several times that there were two kinds of transactions in Wall street, one a real transaction, and the other a transaction in margins, and I now ask you, if it should appear that Mr. Baldwin had actually sold all the stocks which he claims to have sold in the exhibit, and purchased all the stocks which he claims there to have bought, would you still say these transactions of yours with Mr. Baldwin were transactions with margins?

A. Most certainly.

Q. Did you ever hear of a transaction in margins before?

A. Yes, sir.

Q. Did you ever really know of any having taken place besides the one you have testified to with Mr. Davis?

A. I have answered that question, and can only say that I know of other peoples' transactions in margins only from what they have told me.

Q. You say that in a "long" transaction the account is given credit for certain stock; is that so, or is it debited?

A. It is credited with the stock——

Q. Is the account debited or credited with the purchase when made?

A. I say that I am not a bookkeeper, but I understand that when I give an order to buy stock that, in that case, the stock is put in the account—not the actual stock itself, but a record of it.

Q. Look at the account of Mrs. Flagg, marked Exhibit C 7, under date of August 30th, where it says: "Dr. 100 Del. & Hud., 84, $8,412.50," and state whether that is a purchase or sale of stock?

A. Well, I should say that was a purchase.

Q. Then your testimony before, in which you said that when stock was bought the account was credited, is incorrect, is it?

A. No, sir.

Q. It is not?

A. No, sir.

Q. When stock is sold is the account debited or credited with the sale?

A. Credited with the money. I mean to be understood that a "long" transaction credits stocks to the account, and a "short" transaction credits cash to the account—when an order is given.

Q. You have said there was never any question of the delivery of any of these stocks, and that it was agreed between you and Mr. Baldwin that none should be delivered; where was that said?

A. In his office.

Q. Was there anybody present?

A. No, sir; I never had any conversations with Mr. Baldwin of a private character, relative to my own transactions with him, in anybody's presence; the very nature of the transactions was such as to preclude such a thing.

Q. Is it not a fact that, during the period while you were speculating in Mr. Baldwin's office, you had, on many occasions, endeavored to make a purchase or a sale on the Stock Exchange, and were unable to do it by reason of the inability of the brokers to execute your orders?

A. I never endeavored to make a purchase on the Stock Exchange while I was in Mr. Baldwin's office.

Q. I mean through a stock broker?

A. I never made any endeavor, personally or through a broker, to make any transactions in the N. Y. Stock Exchange.

Q. Have you not frequently, while in Mr. Baldwin's office, said, "Go and sell me a hundred shares of stock," and is it not the fact that the order has gone over, or the broker has taken the order from that office over there?

A. I presume my orders were given like this, "Will you buy me such and such a stock at such and such a price?"

Q. Thereupon the person, the broker, if the broker were in the office, would immediately leave the office, proceed to the Exchange, and endeavor to carry out your instructions, would he not?

A. That I know nothing whatever about.

Q. You never saw the broker leave the office to go to the Exchange to execute an order, did you?

A. I do not recollect any occasion when I saw a broker specially leave the office to execute an order of mine.

Q. You were in the office, during the time you were speculating there, nearly every day, were you not?

A. Yes, sir.

Q. And you would be there nearly all day, would you not?

A. Not all day, but during the office hours, when the Stock Exchange was open.

Q. You know George Cecil, don't you; he is a member of the Stock Exchange?

A. Yes, sir; I do.

Q. Have you not often said to him, or to Mr. Ripley, in charge of the office—requested Mr. Ripley, who was in charge of the office, to send him over to execute an order for you?

A. I never asked him to send him over to execute an order for me in my life.

Q. You never asked him to execute an order for you?

A. I have said to him myself—

Q. (Interrupting.) Is it not a fact that on many occasions brokers have gone out of that office, purporting to go to the Stock Exchange, and have returned and told the manager in charge of the office, as well as yourself, that they were unable to carry out some orders of yours?

A. I have been informed in Mr. Baldwin's office, after giving an order on this account, that the account could not be credited in accordance with the order, because the prices on the Stock Exchange did not allow.

Q. Have you not often said, "Go and sell me so much stock," and the broker has come back and reported that he could not sell the stock?

A. They have said that prices did not admit of executing an order.

Q. Have they not said in so many words that they could not sell it, or buy it?

A. Well, that means that.

Q. Have they not said that?

A. They have not said that, so that I can remember the exact words.

Q. Have they not said that in substance?

A. I understand the two things to be in substanee the same.

Q. You will not swear they have not said that in the exact words?

A. I won't swear to exact words, no sir.

Q. You still mean to say, as you before testified, that you never undertook to have an order executed on the Stock Fxchange on your own account?

A. I never had anything to do with that.

Q. Didn't you ever tell Mr. Cecil, as a broker there, under Mr. Baldwin, "I wish you would go and sell me so much stock, or I wish you would go and buy it on the Exchange?"

A. I never gave an order to Mr. Cecil in my life.

Q. Did you not tell Mr. Baldwin himself, on many occasions, "Mr. Baldwin, go over there and see if you can get such and such a price for such and such a stock?"

A. I never said "go over there;" you insist in putting the words "go over" in; I say I never—

Q. (Interrupting.) Have you not used the expression "Won't you go and buy that stock," or "won't you go and sell it?"

A. I don't know that I ever used the word "go" about it.

Q. Did you ever use the expression, leaving out the word "go?"

A. Yes, sir; I have told Mr. Baldwin to buy and sell stock, as I have stated here before, and I have stated the sense in which those words were used.

Q. I am asking you for the words, and that is all; it is a fact, is it not, that customers cannot go inside of the Stock Exchange?

A. I have heard so.

Q. You have never been in there?

A. I have.

Q. Have you ever bought or sold any stocks in there?

A. No, sir.

Q. Because you could not, I suppose?

A. I never have tried.

Q. When you say in your testimony that you never inquired whether Mr. Baldwin bought or sold

on the Stock Exchange, in accordance with your orders, that that was not your affairs, do you mean what you say?

A. Yes, sir.

Q. And you still swear that never after you had given an order to purchase or sell stock, did you inquire whether the stock had been bought or sold?

A. In the sense in which I answered that question, it is true. I mean by inquire, inquire in reference to the effect an actual purchase or sale by him would have on my account; I may have asked Mr. Baldwin, as I think I have, if he actually did buy or sell. I was often curious to know.

Q. And when he reported that he had not, the transaction did not go in your account, did it?

A. Well, I don't remember, sir.

Q. You didn't get a notice—

A. (Interrupting.) I don't remember, sir, I never asked him the question as affecting my account.

Q. You never did?

A. No, sir.

Q. Then you mean to be understood as swearing that if you gave him an order to make a certain transaction on the Stock Exchange,—that is, to buy or sell certain stock—and he came back and reported to you that he was unable to do so, nevertheless, that transaction which you had ordered made would go into the account?

A. Mr. Baldwin would never in such a case report to me that he was unable to do so, with any other meaning than that he could not credit the account as I had ordered, on account of the state of the market on the Exchange.

Q. I am not asking you for Mr. Baldwin's meaning, I am asking you for the words employed, and I now repeat the question?

A. I will not attempt, Mr. Root, at this distance of time to pretend to use the words.

Q. I do not ask you for the words, but I ask you for the substance?

A. I have given the substance.

Q. Then you may give it again; when you gave Mr. Baldwin an order to sell a certain number of stocks on the Stock Exchange, and he came back and reported to you that he was unable to sell the stock at the price you had given him, do you mean to be understood here as swearing that your account would have credit for the sale of that stock, nevertheless?

A. I mean to say that upon Mr. Baldwin's making such a report as that to me, it would be equivalent, and I always considered it equivalent to his refusing to credit his account according to my orders, and that his account with the market did not justify it.

Q. Don't you know that when he bought stocks for your account he paid for them?

A. I don't know anything about it.

Q. Don't you know that when he sold them he delivered them?

A. I don't know anything about it, sir.

Q. You received monthly statements from him, did you not?

A. Yes, sir.

Q. In those monthly accounts you were charged with the commissions you have spoken of?

A. Yes, sir.

Q. $12.50 for the purchase of every 100 shares, and $12.50 for the sale of every 100 shares?

A. Yes, sir.

Q. Not only your account, but Mrs. Flagg's, you received?

A. Yes, sir.

Q. And you examined it?

A. No, sir.

Q. You never examined it?

A. Not especially.

Q. You looked them over?

A. I looked at the balances.

Q. You looked generally at the transactions?

A. No, sir; if the balance corresponded with my private figures—

Q. (Interrupting). You kept private figures as how you stood on the market all the time?

A. I kept floating memoranda which I have not now, but which I kept at the time.

Q. Where are those memoranda?

A. I say I have none of them now; I kept them on little pieces of paper.

Q. You say that you deposited to your account, between the time you opened it and the time Mrs. Flagg's account was opened on June 16th, $1,300, I believe?

A. Yes, sir.

Q. Look at the account and see how much money you drew out and received from Mr. Baldwin during that period?

A. The accounts will show; I prefer to leave the accounts to speak for themselves.

At this point a recess was taken.

AFTER RECESS.

Q. Look at March 15th, and see if you did not receive cash $25.

A. It is so stated on the account.

Q. April 22d, $57.50.

A. It is so stated in the account.

Q. May 3d, $50?

A. It is so stated in the account.

Q. May 6th, $50; May 10th, $100; May 17th, $35; 8th, $55; 21st, $50; 24th, $75; 25th, $20; 29th, $75; June 1st, $200; June 3d, $25; 15th, $25. Did you receive these amounts?

A. I do not remember.

Q. Is it not so stated in the account?

A. I said so.

Q. You have testified that you consider yourself an expert in transactions upon the Exchange. Don't you know that when a broker makes a transaction for his customer, if he makes a purchase it is necessary that the stock should be actually delivered to

him and paid for by him, before the transaction is complete?

A. I suppose that if a broker makes a personal transaction on Stock Exchange, if it is buying he takes it and pays for it, and if it is selling he gets the money for it and delivers the stock—that is his own affair.

Q. Suppose the transaction is not a personal one, but one for his customer, is it not necessary that the same process should be gone through in order to complete the transaction?

A. A broker does not necessarily buy or sell stocks upon the orders of a customer in a marginal transaction, such as these of myself and Mr. Baldwin were; he may choose to do so or not, just as he pleases.

Q. Don't you know, that until the stock is delivered to him, and paid for by him, in the case of a purchase, the customer has no claim upon the broker in cases where the seller of the stock is given up to the customer.

A. That might be so in some accounts with some customers, but not in all accounts, and especially not so in these accounts of mine with Mr. Baldwin.

Q. After your wife's letter of June 15th to Mr. Baldwin, you were aware that the account was opened between your wife and Mr. Baldwin, were you not?

A. I was aware that the account was changed to Mrs. Flagg's name?

Q. Was there not a new account opened in her name?

A. I would not say that there was a new account opened in her name; no, sir.

Q. Will you say it was not?

A. It was a continuation of the old account.

Q. Will you say there was not a new account opened in her name?

A. I think the more precise answer would be, that the account was changed to her name.

Q. Can you answer the question? Will you say that a new account was not opened in her name?

A. If you choose to put it, or have it appear in that way, you can argue it from my answer.

Q. Subsequent to that date you received notices of purchases and sales for that account?

A. I suppose I did; was not particular about notices.

Q. And these notices contained the names of the sellers of the stocks, as well as those as you formerly testified to?

A. I presume they did; I do not remember it now.

Q. Did not that fact enable you, if you questioned whether the transaction had been actually made by Mr. Baldwin, to go to the person whose name was upon your notice, and ascertain whether it actually had been made?

A. If I had felt called upon, or had there been any reason for me to care whether Mr. Baldwin made the personal transactions upon the Stock Exchange, I should have inquired. As there was no such necessity, I never did.

Q. You received monthly statements on that account from Mr. Baldwin, did you not?

A. I did.

Q. An account was presented in August, prior to making of the mortgage?

A. I presume there was.

Q. Do you not know there was?

A. No, sir.

Q. Have you not been shown, during this examination, accounts at the foot of which you certified to the correctness?

A. If you refer to a special account, drawn up for a special purpose at that time, not the regular monthly account, I think I may say, yes, such an account was presented?

Q. Look at this paper that is now shown you, and see if that is not the account of Mrs. Flagg's which was so certified to by you?

A. That is my signature.

Q. Does not it say in your own handwriting "the

foregoing account is correct. J. M. Flagg by W. L. Flagg, Attorney, W. L. Flagg"?

A. The paper speaks for itself.

Q. Does not that appear upon the paper at the foot of it in your handwriting?

A. Yes, sir.

Q. And the balance there, is four thousand three hundred and seventy dollars and forty-three cents, is it not?

A. That so appears upon the papers.

Q. To which you certified the correctness. You have said that negotiations were pending between Mr. Baldwin and you for some time prior to the actual execution and delivery of the mortgage on that subject; is that so?

A. Yes, sir.

Q. You had several conversations with him on the subject?

A. Yes, sir.

Q. As to what he would do in the future on the account?

A. Yes, sir.

Q. As to conditions?

A. Yes, sir.

Q. You called upon Mr. Tilney, the attorney for Mr. Baldwin, who examined the title of the premises?

A. No, sir.

Q. Did you ever see Mr. Tilney with reference to it?

A. He was in Mr. Baldwin's office and I saw him there.

Q. On more than one occasion, or on only one occasion?

A. I won't be sure as to that.

Q. How long previous to the execution of the mortgage did you see him first, if you saw him more than once?

A. I won't be sure; I did not charge my mind.

Q. Give me your best recollections—it was several days, was it not?

A. I cannot say.

Q. Was Mr. Baldwin then present in the office when you saw Mr. Tilney there?

A. On the occasion which I now recall to my mind, I think Mr. Baldwin was there.

Q. And you had a little talk with Mr. Tilney on the subject, did you not?

A. I do not remember.

Q. You would not say you did not?

A. I will not say I did not—not on the merits.

Q. I did not ask you about the merits, but on the subject of the making of the mortgage?

A. I cannot swear that I had any conversation with Mr. Tilney on the subject.

Q. From whom did you receive the letters which have been here marked in evidence and which were signed by yourself and your wife which are marked "C"[15] and "C"[16].

A. I think it was from Mr. Tilney.

Q. And at the time he delivered these to you, you were in Mr. Baldwin's office.

A. Yes, sir.

Q. And as near as you recollect, I suppose that was a few days previous to the actual signing of the mortgage, was it not?

A. I do not recollect as to that.

Q. After you received these letters what did you do with them—put them in your pocket and took them home with you?

A. I think so; I think I did. I put them in my pocket and took them home with me.

Q. Did you examine them?

A. I read them.

Q. And you knew their contents?

A. Yes, sir.

Q. You signed the one which was intended for you to sign, and your wife signed hers?

A. We signed the respective ones that were required of us to be signed.

Q. You had several interviews, you say, with Mr. Baldwin previous to this on the subject?

A. Yes, sir.

Q. At the time the mortgage was delivered, by you to Mr. Baldwin, you also delivered these letters?

A. My impression is, with regard to these letters that the one signed by Mrs. Flagg was taken by me to her at Summit. I do not think the other was ever in my possession excepting to sign.

Q. I am asking with reference to their deliverance to Mr. Baldwin, was that the time of their delivery.

A. They were left on Mr. Baldwin's desk.

Q. At the time the mortgage was delivered, was it not?

A. That is my impression, but I cannot be particular as to that.

Q. And the letters then represented the agreement which existed between you and Mr. Baldwin, did they not?

A. The letters represented what I consented to sign, and I must be presumed by signing; but I will say that while I signed I did not mentally agree.

Q. Will you please define to the Court what you mean by your expression "while I signed I did not mentally agree"?

A. I meant this, that Mr. Baldwin understood that I was under pressure while that transaction was being carried on.

Q. Is that all you mean by that expression?

A. That is all I mean.

Q. And will you not go further, and say that you did not intend to carry out that agreement at the time you made it?

Witness asks if he must answer that question, as it is asked in the absence of Mr. Keasbey—he thinks it is impertinent.

Mr. Root for the complainant says that he has no objection to Mr. Keasbey being present or heard on that question.

By the Master: I think that while the wit-

nesses' counsel is not present the witness can merely go on and answer the question with the privilege on the part of his counsel to enter an objection at the proper time.

(To Mr. Root). I suppose Mr. Root would have no objection to that?

By Mr. Root. No; none.

Q. Do you answer?

A. The letter I signed, I signed with perfectly honorable intentions at the time.

Q. You say that your wife contributed about $2,000 toward the Summit property?

A. That is my present impression and recollection about that.

Q. Have you got any positive recollection?

A. No, sir; I have not. From the circumstances I should not have.

Q. Her mother died intestate?

A. Yes, sir.

Q. And in Union County?

A. Yes, sir.

Q. And letters of administration were issued to you?

A. Yes, sir.

Q. And there were four sisters?

A. Yes, sir.

Q. And what property did your wife's mother leave?

A. She left furniture and I don't remember now--

Q. (Interrupting). Did she leave real estate?

A. She did not?

Q. How much money?

A. I do not remember now.

Q. It was divided equally between the daughters, was it not?

A. Yes, sir.

Q. Have you filed your accounts?

A. Yes, sir.

Q. When did you file them?

A. I have forgotten.

Q. Have you not copies of them?

A. No, sir.

Q. Did you distribute the property?

A. I did.

Q. When did you make the distribution?

A. I have forgotten.

Q. After or before you built the house?

A. The money was paid according to my recollection from time to time.

Q. To the various legal representatives?

A. Yes, sir. I may add here that the money Mrs. Flagg put into the house did not alone come from her mother, but came from an aunt who also died about the same time.

Q. How much was that?

A. I don't remember, sir, I am only stating the amount of Mrs. Flagg's contribution from my best memory, and I believe it to be very nearly that.

Q. Will you state positively that any portion of the money contributed by her went toward paying for the land.

A. I think not.

Q. Don't you know not?

A. Well, I don't remember as to dates about it.

Q. Will you swear positively that any portion of her money paid for the erection of that house?

A. For the purposes of this case I am willing to have it stand that it did not go into the land.

Q. Nor pay for the erection of the house?

A. Yes, sir; part of the money did go into the erection of the house.

Q. How much?

A. I have stated.

Q. You have not stated?

A. For the erection of the house and the purchase of the furniture I should say altogether, without her money being applicable to one more than to another, about $2,000.

Q. What did the house cost?

A. I don't remember.

Q. Approximate it?

A. In the neighborhood of about $10,000.

Q. And the barn stable, I mean?

A. Well, perhaps about $2,500; perhaps not so much as that.

Q. And the ground?

A I don't remember, but I think it was either $1,000 or $1,500.

Q. Did you have the house built by contract?

A. Yes, sir; partly by contract and partly not.

Q. Who was the contractor?

A. Mr. Geo. Riker.

Q. Of what place?

A I don't know where he is now; he was then of New York, that is, I always knew of him of New York.

Q. He was a contractor of New York, and did not reside in Summit?

A. No, sir.

Q. Did you not pay his whole bill yourself?

A. Well, I gave the money; yes, sir.

Q. Didn't you give it out of your own money?

A. I gave it out of my own money, and Mrs. Flagg's money was never separate from mine.

Q. Was it mixed with your's?

A. Yes, sir.

Q. Was the money belonging to the other legal representatives mixed with your's, too?

A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. Had any actual distribution been made to any of the legal representatives at the time you paid the contractor for the erection of your house?

A. The money from the estate and the money paid to Mrs. Flagg by her aunt were in my hands while her house was being built.

Q. As to the furniture, what did that cost?

A. I don't remember, sir.

Q. Will you swear that the distribution had been made either from the estate of her aunt or of her

mother at the time that you paid the contractor the contract price for that house ?

A. I won't swear ; no, sir.

Q. Can you get a copy of your accounts as administrator of your wife's mother's estate ?

A. I suppose I could get it.

Q. Will you produce it here, in order to show when and what sum was paid to your wife ?

A. I will if I am so advised by my counsel.

Q. You have testified in your direct examination that Mr. Baldwin agreed, at the time the mortgage was given, that he would go on with the speculations on your orders until he had advanced for difference losses $4,000 provided for as future advances in that agreement ; is not that so ?

A. I cannot say, Mr. Root, that you have stated the exact words of what I said, but that is the substance.

Q. The answer you gave is as follows : "Mr. Baldwin stated to me that if I could get my wife to make this mortgage for the amount for which it is made that he would go on with the speculations upon my order until he had advanced for difference losses in the account $4,000, the amount provided for as future advances in the agreement." I am reading now from your testimony ; you so testified, did you not ?

A. Yes, sir ; the record will show.

Q. Where was it that he said it ?

A. He said it a good many times.

Q. Where at any one time ?

A. I cannot specify places.

Q. Can you specify who was present?

A. Nobody was present, as I have said.

Q. Nobody was present when he said it at any occasion?

A. Not that I remember. Never talked of my matters with Mr. Baldwin, they being from their nature a kind I wish to keep private in anybody's presence.

Q. Did he use the expression that you have used in your answer, "difference losses?"

A. No, sir; I don't think he did. I will say here, however, that his words were "until you have lost."

Q. State when and where the conversation was held when he said that?

A. That I cannot do.

Q. State who began the conversation, if you know?

A. The conversation was part and parcel of many conversations had by Mr. Baldwin with me, and by me with Mr. Baldwin, during the time we were talking about the mortgage.

Q. What do you mean by difference losses?

A. I mean the differences which occur between buying and selling and selling and buying, as those phrases are used on the street, in a speculative account.

Q. Would they apply to an account not a speculative one?

A. You could make them if you wanted to.

Q. Do you call that a technical term?

A. Well, sir, it is very often used on Wall street.

Q. You would not, however, say that the words "difference losses" is a technical term?

A. It is an expressive term, a correct term, and to whether it is technical is a matter of opinion.

Q. When you said in your direct testimony that your account had swelled to that enormous proportion of 1,300 shares of stock, which would aggregate in price one million three hundred thousand dollars, and stuck to it, what did you consider par for such stock?

Witness says that he asked Mr. Root to change $1,300,000 to $130,000, and that Mr. Root refused, and said that he would cross-examine on that point.

Mr. Root says that the statement of the witness is untrue.

Q. Will you now answer the question?

A. One moment; I am not through with my statement.

BY MR. ROOT (to the Master): I request the Master to direct the witness to proceed with the testimony.

BY THE MASTER: Answer the question, Mr. Flagg.

A. $1,300,000 should be changed to $130,000; it was a mere mistake.

Q. When you say in your direct examination—referring to the day on which you saw Mr. Root in Mr. Baldwin's office—that you told him that you would consent that the 200 shares of the stock then standing in your name might be sold on the Stock Exchange, you added, "not waiving, however, the objection to the transaction in the account," what do you mean by that?

A. I mean that Mr. Root—that what Mr. Root had asked me the night before to consent, so far as the place of sale was concerned, that it be at the Stock Exchange instead of at the Public Exchange; I didn't agree to that the evening before, but on the next day, as I have stated, I consented that so far as the place of sale was concerned I would not object to the New York Stock Exchange instead of the Public Exchange.

Q. Did you not, as a matter of fact, come to the door of Mr. Baldwin's office simply, and see Mr. Root in the office, and call him out in the hall, and say to him that if Mr. Baldwin wanted to sell these 200 shares of stock he might do it, and was not that the entire conversation on the subject that day?

A. My recollection is that I did not say anything to Mr. Root about this in the hall. The circumstances are distinctly in my mind; I saw Mr. Root in the hall later. When I told him he might sell on the New York Stock Exchange, he was standing in front of Mr. Baldwin's desk. The consent referred merely to the place of sale.

Q. And you will swear positively that you did not unqualifiedly say to Mr. Root that you would consent that Mr. Baldwin should sell those stocks without going any further?

A. I do not remember the exact conversation, but I intended to convey to Mr. Root the idea—and as I remember my conversation it did convey to Mr. Root the idea—that so far as the mere place of sale was concerned I waived it, and that if the stocks were intended to be taken out of the account, as Mr. Root had stated they would be inevitably, I would as lief it should be on the New York Exchange, and rather, than on the Public Exchange.

Q. Can you now answer my former question, which was——

A. (Interrupting) I can answer the question in no different way from what I have answered it. I wish to convey the exact facts that are now in my mind.

Q. You have testified that when you began your action in the Court of Common Pleas, Mr. Baldwin had advanced about $3,000 to pay losses on your account. Do you know exactly how much he had advanced?

A. No, sir; I do not know the exact figures.

Q. Look at the account and see if you can tell?

A. I will state that I read those figures in Mr. Baldwin's affidavit, in which he so stated in that case.

Q. Can you tell from an examination of the account?

A. I cannot tell anything about Mr. Baldwin's accounts.

Q. That action in the Court of Common Pleas was commenced when?

A. I think it was on the 5th of March, 1881.

Q. Answer was put in within twenty days, was it not?

A. No, sir.

Q. When was it?

A. You are the attorney in the case and ought to know.

Q. Well, the action was at issue within sixty days, was it not?

A. I am not positive, sir.

Q. Have you put that case on the calendar at all?

A. No, sir; I have tried to have it referred.

Q. I ask you if you had put the case on the calendar or noticed it for trial. Don't you know that there was an equity term of that Court, held in both November and December, at which that case could have been heard if you had placed it on the calendar?

A. Yes, sir; but the issues involved are being tried here, and Mr. Keasbey has advised me, as you would not consent to a reference in New York, to let the trial here suffice for the present.

Q. Have you made a motion for a reference in New York?

A. I have not.

Q. Have you done anything whatever since the service of your summons and complaint in that case?

A. Except to ask yourself and Mr. Baldwin if you would not consent to refer it.

Q. Have you taken no steps whatever yourself to bring it either to a reference or a hearing?

A. That is because of the pendency of the litigations here. My idea has been, however, to have a reference there if you would consent to it.

Q. You obtained a temporary injunction restraining the foreclosure of these mortgages, didn't you?

A. During the pendency of the order to show cause on your stipulation.

Q. And that injunction was vacated on the hearing?

A. Yes, sir, on Baldwin's stipulation, which will be part of the testimony in this case.

Q. You say the rate of interest during the time that your account was running with Mr. Baldwin, was three per cent. a year, do you?

A. I didn't say that.

Q. The average rate you said ?

A. I don't think I said that.

Q. What did you say ?

A. I said the rate of interest on money loaned from day to day was, I thought, during this period, about an average of three per cent.

Q. You authorized Mr. Baldwin to charge to your account whatever rate of interest he was obliged to pay, interest or commissions, for securing money to carry your stock with, did you not ?

A. The exhibit will speak for itself which you have put in here on that subject ?

Q. Mrs. Flagg's note that you have testified about, in whose possession is that now ?

A. I think Mr. Morgan has it.

Q. Who is Mr. Morgan ?

A. He is the attorney in the Common Pleas case.

Q. It was delivered to him in Court, was it not ?

A. It was handed to him for inspection.

Q. Was it not delivered to him in Court ?

A. No, sir ; not with the intention of delivery.

Q. Not with the intention of delivery ?

A. Not with the intention——

Q. (Interrupting) How do you know that it was not delivered to him with the intention of delivery ?

A. I wish to change that (witness complains that he is interrupted while he is answering). I mean that it was handed to Mr. Morgan. Mr. Morgan asked to look at it in the Court of Common Pleas Chamber, and you (Mr. Root) and Mr. Baldwin left the Chambers so quickly that Mr. Morgan had no opportunity to return it. That is how I understand it.

Q. You have taken a part as counsel in this case, have you not?

A. In what respect do you mean?

Q. Can you answer the question? You know what is a counsel in a case, don't you?

A. I have performed some of the duties which belong to an attorney and counsel.

Q. You had something to do withframing the answer in this case, had you not?

A. I am one of the defendants.

Q Did you have anything to do with framing the answer in this case?

A. Certainly I did.

Q. You have had several counsel—the two Mr. Keasbeys and Mr. Dos Passos, a lawyer from New York—have you not?

A. If you choose to separate the firm of Keasbey & Son into—

Q. (Interrupting) I don't choose to do that.

A. (Continuing) Two; then in that sense they will count for two, and Mr. Dos Passos will count for another.

Q. You have also cross-examined Mr. Baldwin, have you not, at considerable length, and on two or three occasions?

A. I conducted that examination in the absence of Mrs. Flagg's counsel.

Q. Have you not examined him on two or three occasions?

A. I think so.

Q. Have you not only examined him in the absence of counsel, but also examined him in the presence of counsel?

A. I have, at the request of Mr. Keasbey.

Q. I observed during your direct examination that your counsel read from a paper—a number of sheets of legal cap—upon which was writing, your handwriting; will you say whether or not you wrote down the testimony, or wrote down the questions there, which you desired Mr. Keasbey to put to you?

A. We consulted as to the questions in order to expedite the examination, and I wrote the questions at his dictation.

Q. Did you write all the questions at his dictation?

A. Well, I made suggestions.

Q. Where were the questions written?

A. Some were written in his office, and some were written in New York.

Q. Did you write that which you wrote in New York? Was that merely the questions, or was it the testimony as you would give it on the stand, the substance of the testimony?

A. Nothing of testimony was written.

Q. But merely questions to draw out testimony which you wished to testify to?

A. Merely a scheme.

Q. Merely a scheme?

A. In rough, with some questions which Mr. Keasbey wanted.

Q. Were not substantially all the questions which Mr. Keasbey asked you on that paper?

A. I don't think so; they may be substantially.

Q. Did you not during the course of your examination several times suggest to Mr. Keasbey that he should or should not ask certain other questions?

A. I do not think I did.

Q. Will you swear that you did not?

A. No, sir.

Q. You say you have had dealings with John H. Davis & Co., what other brokers have you had dealings with in Wall street—Stout & Co.?

A. Yes, sir.

Q. What other brokers?

A. Well, that's all of any account.

Q. Well, state what brokers you have had dealings with, whether of any account or not?

A. Hatch & Kendal; that is all.

Q. Have you ever had any difficulties with any of these firms?

A. Only with Stout & Co.—a slight difficulty.

Q. You have had a law-suit with them?

A. I have.

Q. You have sued them for conversion of stock?

A. I have.

Q. That case is now pending?

A. Yes, sir.

Q. You never had any difficulties with Davis & Co.?

A. No, sir, not in the stock account.

Adjourned until Monday, February 20th, 1882, at 1:30 P. M., at the same place.

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	Foreclosure.

Pursuant to adjournment the parties met at the office of William T. Day, Esq., M. C. C., of N. J., in the City of Newark, N. J., and continued the examination, &c., in the above stated case, on Monday, the 20th day of February, A. D. 1882.

APPEARANCES:

MR. ROOT for the Complainant.

MR. EDWARD Q. KEASBEY for the Defendant.

WILLIAM L. FLAGG: Cross-examination resumed by Mr. Root:

Q. Have you produced here your accounts as administrator, showing the amount of money paid by you to your wife out of her mother's estate?

A. I have not; Mr. Keasbey advises me it is not necessary for me to do so.

Q. And you decline to produce them?

A. Under his instructions?

Q. You say you filed your report showing what money you received and paid out as administrator of the estate of your wife's mother?

A. Yes, sir.

Q. And that report is now on file?

A. Yes, sir.

Q. Does that report which you made show that you paid any money whatever to your wife?

A. I do not remember.

Q. Does that report show that she received any from her mother's estate?

A. I do not remember exactly the form of that report and how the account is stated.

Q. And you decline to produce it?

Defendant's counsel objected to asking for the report and to the demand for the production of a document which is on file at a public office, and of which a copy can be obtained. And defendants' counsel advises the witness that he is not bound to prepare and produce a copy of it at his own expense.

Q. By the advice of your counsel do you decline to produce it?

A. I think that is proper for me to do.

Q. And you do do it?

A. I leave myself in Mr. Keasbey's hands; I do as he tells me.

Q. And he tells you not to do it?

A. He does.

Q. Look at the paper which has been offered in evidence and marked as Exhibit "C20" bearing date November 1st, 1880, and which is as follows: "My Dear Sir—At your discretion sell my stocks this afternoon—W. L. Flagg," and state whether the signature is yours?

A. It is.

Q. And whether you gave that to Mr. Baldwin?

A. I did.

Q. And do you mean to be understood as saying in this case, that when you said in that written paper "at your discretion sell my stocks this afternoon," you did not mean to order them sold at his discretion?

A. I mean to say that on the day I signed that exhibit Mr. Baldwin insisted that the account showed transactions larger than he wanted to be

responsible for to me. He wrote this paper himself. It is in his handwriting down to the words "this afternoon." It was an attempt on his part, as the paper shows, to get from me a general order to do with the account just as he saw fit; I added the words " this afternoon." It refers to stocks as credited in the account, and it does not refer or intend to refer to anything except the account.

COMPLAINANT'S COUNSEL: Mr. Flagg, I asked you a plain question, suceptible of an answer and you have not answered it. I ask the stenographer now to read you the question which I asked before?

(The stenographer read as follows: " Q. And do you mean to be understood as saying in this case that when you said in that written paper, ' at your discretion sell my stocks this afternoon,' you did not mean to order them sold at his discretion").

Q. Will you answer that question?

A. I meant by that paper to say to Mr. Baldwin that he might take out of the account such stocks as were then credited to it that afternoon.

Q. Did you not mean exactly as the paper says?

A. As I have stated before, the word " sell" is always used in giving orders on speculation in Wall street, as well as the word " buy," as it saves circumlocution. I think my previous testimony is clear upon that point.

Q. And do you mean to swear in this case that the word " sell," in that order which I have read, did not mean to sell in the common and ordinary acceptation of that term?

A. I mean this—and the word as used there means this—that I was willing that any stocks which stood credited to that account might be taken out of the account. I did not know if Mr. Baldwin actually had in his possession any stocks which stood to the credit of that account; I did not have any of the stocks myself; consequently I could not

have used the word "sell"—I did not use the word "sell"—other than in the sense I have indicated.

Q. Do you know what the word "sell" means?

A. It means to dispose of.

Q. You did not, you say, use it in the sense of "dispose of"?

A. Except so far as a disposition would be made for the account, as I have stated.

Q. And you mean to be understood here as saying that the word "sell" has a different meaning in Wall street from what it has in general use?

A. I mean—in a word—to say that customers speculating in brokers' offices use the word "sell" and "buy" as I have attempted to describe.

Q. And will you go further, and say that customers in a broker's office, when they use the words "sell" and "buy," do not mean sell and buy, in the common acceptation of those words?

A. Do not mean that they are actually selling or buying, or necessarily that the broker is actually selling or buying.

Q. And you say this is the custom on the street?

A. I do.

Q. And that when they give an order to sell, they do not intend that the broker shall go to the Exchange and there sell?

A. I did not say that.

Q. What do you say on that subject; do they or do they not intend that the broker shall go to the Exchange and sell?

A. They do not necessarily intend that the broker shall go to the Exchange and buy or sell?

Q. I call your attention now to Exhibit "C[21]." A letter as follows: "November 1st, 1880. A. H. Baldwin. Dear sir: Acknowledging the sales made for my account to-day, I wish to say that they are satisfactory and acknowledged as correct. Yours truly, W. L. Flagg." That signature is yours?

A. I have sworn to it—it is.

Q. And you gave that paper to Mr. Baldwin subsequent to the paper I have just called your atten-

tion to, about which you have testified—Exhibit C[20]?

A. Yes, sir.

Q. It refers to the same subject, does it not—to wit: sales?

A. It refers to the same subject.

Q. In Exhibit C[20], you directed the sales, did you not—in words?

A. I have stated what I directed, and the exhibit shows.

Q. Now, if you did not intend, when you wrote the paper Exhibit C[20], directing Mr. Baldwin at his discretion to sell your stocks "this afternoon," on November 1st; that he should make sales of your stock, how did it happen that you wrote C[21], in which you say: "Acknowledging the sales for my account to-day I wish to say that they are satisfactory and acknowledged as correct."

A. Mr. Baldwin wrote the exhibit and I signed it. The exhibit is in his handwriting. The word "sales" intends there exactly as I have said it intended in the previous exhibit.

Q. Will you swear that Mr. Baldwin did not, after you gave him Exhibit C[20], proceed to the Exchange, or send there, to make sales of stock, report them to you, and thereupon you accept them and give him the Exhibit C[20], approving of those sales?

A. As to whether Mr. Baldwin actually went to the Stock Exchange and made any such sales as he reported to me had been that day charged in the account, I know nothing.

Q. Regardless of what was done with the account, did he not report to you, after he received Exhibit C[20], that he had made sales for your account?

A. He reported in those terms; yes, sir.

Q. And you still mean to be understood as testifying in this cause, that when you gave the order, Exhibit C[20], "At your discretion sell my stocks this afternoon," you did not contemplate the actual sale of the stock.

A. I contemplated no actual sale of any stocks which I had or which Mr. Baldwin had ; it was, however, in my mind, as I have stated before, that if Mr. Baldwin had, on my orders to purchase, actually purchased—as he had a perfect right to do —instead of insuring the account himself, he would that afternoon sell such stocks as he was personally carrying for the account.

Q. What do you mean by " insuring the account himself ?"

A. I mean that when I gave an order to buy Mr. Baldwin might charge the account with a purchase, and then, believing that I was wrong in my guess that the market would go up, would choose, rather than to purchase himself on the Stock Exchange against my order, to remain in a position to make the loss himself.

Q. Do you know, or have you reason to know, that on any occasion during the period when you were speculating with Mr. Baldwin, either on your own account or when you were giving orders for your wife's account, and you ordered a certain stock purchased that it was not actually purchased ?

A. I used to say in a laughing way to Mr. Baldwin that I wondered how many of these stocks he actually purchased against my order. He would not have been likely to have told me how he did in that respect.

Q. Mr. Flagg, I ask the stenographer to repeat the question to you and then ask you to answer it. (The stenographer read the question as follows: " Do you know, or have you any reason to know, that on any occasion during the period when you were speculating with Mr. Baldwin, either on your own account or when you were giving orders for your wife's account, and you ordered a certain stock purchased that it was not actually purchased "?)

A. I do not know anything about it; I did not care.

Q. Did you not care enough to inquire, after you

had actually given the order, whether it had been actually executed on the Exchange ?

A. No, sir.

Q. You never did that ?

A. I asked him about the price.

Q. You never asked him if he had bought it ?

A. I presume I asked him whether he had bought it.

Q. Do you know whether or not, at any time or on any occasion, Mr. Baldwin did insure the account himself ?

A. As I have before stated, what Mr. Baldwin's private transactions in regard to this account were I know absolutely nothing, and have no interest.

Q. Do you know what a debit balance is?

A. I presume I do—yes, sir.

Q. What is it ?

A. I prefer not to give a definition of that book-keeping term.

Q. Is it not a balance due from a customer to a broker for stocks purchased, crediting the customer first with the amount of money deposited with him as margin ?

A. I do not understand that a debit balance applies particularly to brokers' accounts. I suppose a debit balance might be such a balance, and would be such a balance, as correctly stated the accounts under the agreements between the parties concerned.

Q. If no stocks had been bought for you when you gave an order to buy stocks, would there still be a debit balance due by you ?

A. There might be—yes, sir.

Q. How would it be ?

A. That is, the account might show a debit balance.

Q. But that would be in a case where the account was false, would it not ?

A. Not necessarily.

Q. Supposing all these accounts which have been rendered to you to have been true and correct ac-

counts of transactions made, would you still say that the stocks might not actually have been bought and sold as represented therein ?

A. I will answer the question according to my understanding of it. These accounts might all represent correctly my orders and still not represent a single transaction on the N. Y. Stock Exchange.

Q. Do you mean to be understood as swearing that the notices could have been delivered to you and the transactions entered in the account without actually having been made ?

A. They could have been.

Q. Would the accounts in that case be true accounts ?

A. Supposing they correctly represented my orders they would be true, in the sense that I have indicated.

Q. Would they be true in fact ?

A. If the records of the accounts were intended to show what Mr. Baldwin actually did on the Stock Exchange ——

(Witness here requested that the answer thus far made be read over to him by the stenographer).

Objected to.

The Master directed the stenographer to read the answer.

(Complainant's counsel objects to Mr. Flagg consulting with his counsel during the cross-examination).

(Defendant's counsel replies that Mr. Flagg did not consult with him.)

(Complainant's counsel requires the Master to decide whether he did or did not.)

(The Master states that the witness spoke to his counsel.)

(Defendant's counsel states that the witness spoke to him, but did not consult with him; he simply said that he wished Mr. Keasby, Sr., were here to object to the argument being carried on in the testimony.)

(The witness here requested that his testimony be read to him.)

(The master directed the stenographer to read the three questions and answers last above. Upon the stenographer doing so, witness continued as follows:)

They would not be true.

Q. Did not Mr. Baldwin pretend to make these transactions on the Stock Exchange?

A. I do not know.

Q. Don't you know whether or not he reported to you that he had done so?

A. I never considered his reports as implying that he had ever done anything, actually, on the Stock Exchange.

Q. Regardless of how you considered his reports, did he not report that he had actually made these transfers on the Stock Exchange?

A. If you refer to the mere words used, yes, because the words used were as of real transactions, whereas the subject matter did not necessarily involve any real transactions.

Q. If really no transactions had been made, then the words that claimed they had been made would be false?

A. No, sir.

Q. They would not?

A. No, sir.

Q. Then you mean to testify here, that if you gave an order to Mr. Baldwin to buy 100 shares of stock, to pay $120 per share for it, and he should go out, claim to go to the Stock Exchange, return and notify you that he had actually bought the 100 shares of stock ordered, at the price indicated, yet he would not be reporting falsely to you?

A. If he had used the word "actually," I might have thought that he had chosen to buy the stock himself for his own purpose; but if he had come in and made the ordinary report I should not have concluded anything more from it than that my account would be credited with the transaction.

Q. Suppose he had not used the word "actually," and had come from the Exchange, and told you he had bought a stock at a certain price for your account, when in reality he had not; then you mean to testify here that he would not be making a false report?

A. If Mr. Baldwin came in and made the speech which you have just made, I should conclude that he had done something different from ordinary in the account.

Q. If he had reported that he had bought 100 shares of stock for your account and he had not in fact, he would then not report falsely?

A. In one sense his words would convey a false meaning; in the sense in which we understood each other, they would not.

Q. You say, "in the sense in which we understood one another" his report would not be false. Then I understand you to testify here in this case, that there was an understanding between you and Mr. Baldwin, which falsified the accounts themselves and the notices?

A. If you choose to understand me in that light I cannot avoid it.

Q. Will you answer the question?

A. I have tried to answer you, Mr. Root, conscientiously, and if I have failed to make myself understood, I despair of doing so.

Q. Can you make no other answer to the question?

A. No, sir.

Q. How do you know that the ruling rate of interest during the time covered by this account would average three per cent.?

A. I have not computed by the figures, I judge that from reading financial reports from day to day.

Q. You have testified that in some instances you have been charged as much as one per cent. per day; look at the account and see if there was ever a charge for extra interest of one per cent. per day, except on one occasion, and that on February 28th?

A. My present recollection is of one charge at that rate, that is the only one charged in the account.

Q. Look at the account and see if there is any other charge of more than 6 per cent. per month?

A. I do not say these accounts state correctly, I am merely stating what the accounts state.

Q. What do they state—that is what I am asking you?

A. Yes, sir; I find one of April 9th.

Q. What was that—read the charge?

A. One-eighth, paid for borrowing money, April 7th.

Q. What is the amount?

A. $23.75.

Q. What is the item where you say one per cent. a day was charged for money—read that item?

A. One per cent. paid brocker for obtaining money, $111.42.

Q. And those are the only two items in all the accounts for obtaining money?

A. I do not say so.

Q. Then look?

A. That is all I see from a hasty perusal of these exhibits.

Q. You say the commissions charged in your account were $4,250.

A. Yes, sir.

Q. That is $12.50, for buying 100 shares of stock, and $12.50 for selling?

A. Yes, sir.

Q. That commission you agreed to pay Mr. Baldwin for making the transactions?

A. We never had any understanding upon that subject; it was understood however he was to have the rate of commission usually charged on the Stock Exchange.

Q. And that is the rate of commission?

A. I so understand it.

Q. Do you not know that it is?

A. I do not know it, sir.

New Jersey State Library

Q. Do you not know that a member who does not charge that is liable to expulsion?

A. I do not know; I have heard it?

Q. You never objected to any of these commissions?

A. I never objected to the rate.

Q. Have you objected to the account?

A. I do not think I have specially objected with regard to commissions.

Q. And he has not charged you more than this $12.-50 for purchasing, and the same amount for selling, 100 shares of stock in the account if I understand?

A. I do not think he has.

Complainant's counsel here declares the cross-examination of Mr. Flagg closed.

It is agreed that the examination shall be continued on the part of the complainant, in the City of New York, at the office of John R. Dos Passos, Esq., No. 3 Broad street, on Tuesday the 21st of February, inst., at 10 o'clock, A. M.

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	Foreclosure.

Pursuant to adjournment the parties met at the office of John R. Dos Passos, No 3 Broad street in the City of New York, on Tuesday the 21st day of February, A. D. 1882, and continued the examination in the above stated case, Before William T. Day, Esq. M. C. C. of N. J.

APPEARANCES:

MR. ROOT for the complainant.
MR. WILLIAM L. FLAGG for the defendant.

DEFENDANT RESTS.

A. H. BALDWIN re-called, in rebuttal.

BY MR. ROOT:

Q. Did you at any time during the period that these speculations were going on for Mr. or Mrs. Flagg see Mr. or Mrs. Flagg together?

A. Yes, sir.

Q. And have any conversation with them, or with him in her presence?

A. Yes, sir.

Q. When and where?

A. I thind it was at the—I only met them twice—it was either at the Grand Hotel or at the Brunswick, I think it was at the Grand Hotel.

Q. Do you recollect where in the Grand Hotel?

A. In the dining-room.

Q. Were they both present?

A. Yes, sir.

Q. Do you recollect what conversation passed between you at that time?

A. I went up there to get Mr. Flagg to change his position on the market, and I said to Mrs. Flagg that he was the most obstinate man I had ever met, or something of that kind.

Q. Did you have a talk then about the account?

A. No, sir.

Q. What do you mean by saying you did not have a talk about the account, did you not say anything about the account?

A. Nothing special, only that I told her I could not make him make money, something of that sort, nothing definite.

Q. Did you refer to the account?

A. Yes, sir.

Q. Do you recollect whether she said anything or not?

A. I think she said he was not so bad as he seemed, that he was a real nice fellow, but that his friends did not generally know it, something like that.

Q. Did you ever see them again together and have any conversation on the subject?

A. No, sir.

Q. Was this at the Grand Hotel or at the Brunswick?

A. At the Grand Hotel, I think.

Q. And you did not see them again?

A. I do not remember that I did.

Q. Mr. Flagg has testified that it was stated between you and him that there never should be any delivery of the stocks to him, and that he should never be required to pay for them, did you ever have any such conversation with him?

A. No, sir; not in any way.

Q. Did his account with you differ, in so far as the making of the transaction was concerned, from any other account?

A. No, sir; it was exactly the same as every other transaction in my office, with the exception

that he did not put up his margin in money, only in the commencement of the account.

Q. Did you have any arrangement with him, or agreement or understanding of any kind, by which his account was entitled to be debited or credited unless a transaction was actually made for the account on the Stock Exchange?

Objected to as not calling for conversation, but calling for the witness' conclusion.

Question withdrawn.

Q. Did you ever have any conversation with him in which you stated to him, or made any agreement with him, that his account should be credited unless a transaction was actually made on the Exchange?

So much of the question objected to as calls for an agreement.

COMPLAINTANT'S COUNSEL: So much of the question is withdrawn.

Q. Now, Mr. Baldwin, answer the question, leaving out the word "agreement?"

A. Will you read the question?

Q. I will repeat it to you. Did you have any conversation with him at which it was stated that his account was to be debited or credited with any transaction unless the transaction was actually made for the account on the Exchange?

A. No, sir; most emphatically, no.

Q. Did you ever charge him with a purchase which was not actually made on the Exchange?

Objected to, as the witness' testimony on that subject, now called for, is not the best evidence. If the witness actually made the transactions he can prove them by the parties with whom he made the transactions, and by the memoranda in his books which he made at the time, and in the proper manner, but not in this manner.

A. No, sir.

At this point witness says: "You want a sale also, don't you?"

COMPLAINANT'S COUNSEL says: "What did you say to me?"

WITNESS REPLIES: "You wanted a sale also?"

Q. Did Mr. Flagg on any occasion give you an order to buy stock at a certain price, and did you thereupon endeavor to buy them, and failing, owing to the advanced price of the stock, report to him that you could not make the purchase?

A. Yes, sir.

Q. On many occasions?

A. On several.

Q. When you buy stocks for a customer, is the account credited with the purchase price, or debited?

A. It is debited.

Q. And is the amount which you pay out for stocks in the case of a purchase, charged to a customer?

A. Yes, sir.

Q. And against that charge is there credited on your books whatever sum of money may be deposited in your office?

A. Yes, sir.

Q. And that deposit you call what?

A. A margin.

Q. How long have you been a member of the Stock Exchange?

A. About four (4) years.

Q. What is the value of a seat in the Exchange?

A. About thirty thousand dollars ($30,000).

Q. Describe a transaction as it is made on the Stock Exchange—suppose you were going to buy 100 shares of Lake Shore—what would you do?

A. I would go into the crowd where Lake Shore is dealt in.

Q. When you arrived there what would you find?

A. I would find an offering price and a bidding price at an eighth difference.

Q. When you say you would find an offering price, what do you mean?

A. I mean that some brokers would be offering at one-eighth above what other brokers would be bidding for it; I should bid, and if I could not buy the stock at the bidding price, I should take it at the offering price.

Q. When you made a transaction what happened?

A. I would make a report to the office.

Q. But before you make the report how do you make the transaction there?

A. I put down the parties name.

Q. No, no; but before you put down the parties name, I want you to describe a transaction as it is made there?

A. I say that I will take the stock.

Q. What does the other broker do?

A. The other broker says "sold," and we each put it down on a piece of paper and compare it. I take the report then over to my office and it is entered on the purchase and sales book, the name of the party of whom I bought the stock, the price, and the manner in which it was bought, and then there is a report made out and given to the customer showing the price of the stock, who it was purchased of, the manner in which it was purchased, whether it was regular, &c.

Q. Do you at any time actually receive the stock?

A. In all cases that stock comes in.

Q. When it comes in what is done?

A. I give my check for it to the party.

Q. Do you actually receive the certificate?

A. I do.

Q. What do you do with that?

A. I put it in my drawer.

Q. When you sell it what do you do—you go through the same process?

A. I go through the same process only reversed.

Q. You actually deliver it?

A. I actually deliver the stock, and actually re-

ceive a check from the party to whom I sell the stock.

Q. Is there any difference in the transaction made by a broker for a customer whether the customer has a large or a small margin ?

A. No, sir.

Q. I read from the testimony of Mr. Flagg as follows : " Question (by Mr. Flagg's counsel). You have spoken in your testimony of the nature of the accounts with Mr. Baldwin, and of 'long' and 'short' sales, and their meaning and effect. Will you explain more fully and clearly what you mean by that ? Answer. I mean this—that there are transactions in Wall street that are real transactions, where there is a dealing in stocks, and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purpose, or to the transaction ; and that there are also transactions in Wall street—and they are the majority, in my opinion—which are not for investment, and are mere transactions in margin. My transactions with Mr. Baldwin were all of the latter kind. By the phrases 'buy' and 'sell,' as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. A transaction for what is called a 'long' account is an order to the broker (on a marginal transaction, like this), to credit his account with stock at a certain price, and if the fluctuations of the price on the Stock Exchange mark the figure indicated by the customer, the broker is obliged to credit the account according to the order ; the broker is not obliged to actually buy the stock, and there is no question of the delivery of the stock to the customer, and no intention of delivery. The broker may if he pleases—and he very often does, in fact—credit a customer's account without insuring himself in the transaction by buying the stock. If he does buy the stock, he borrows money on it to represent what he has given for it, and then, without ever deliver-

ing it to the customer, delivers the stock to another broker when the customer orders a sale. If he does not actually purchase the stock, and a sale is made on the order of a customer at a higher price than the order was given to purchase, the broker pays it out of his own pocket. And, so far as the 'short' transactions are concerned, the customer gives an order to the broker to sell stocks when the prices on the Stock Exchange reach the figure he names. Neither party has the stock in possession, or any arrangement to have it. The broker in such a case credits the account with a sale at the price named in the order. He can then either make a sale himself on the Stock Exchange, or not, as he chooses. If he does, he takes the money which he gets on the transaction to purchase in the contract. When the customer orders a purchase on a 'short' sale, this is done with another broker. If he did not, he would stand the loss in the account himself." Is it true that you have ever made for Mr. Flagg any transactions such as he describes when he defines a transaction in margins?

A. No, sir.

Q. Are such transactions usual in Wall street?

A. No, sir, I never heard of its being done in any instance.

Q. You have been a commission broker during the four years that you have been a member of the Exchange?

A. Yes, sir.

Q. And have you had much or little business?

A. I have had considerable.

Q. Are there or not, as recognized transactions, such transactions as he has described here?

A. If there are, I don't know it. I never heard of such transactions.

Q. What would be the difference in a transaction made for a customer where the customer had a large margin or no margin?

A. There would be no difference, only that the customer with a large margin would have a smaller

debit balance on the purchase than the customer with a small margin. In each case it would be done for the interest and profit or loss of the customer, and upon his responsibility entirely.

Q. Describe to the Court what is meant in Wall street by a sale of stocks which Mr. Flagg has called a "short" sale. What is done in that case? Give the details.

Objected to, on the ground that the witness has been asked that question on his direct examination, and it is mere repetition.

A. On receipt of an order from a customer, the broker goes over to the Stock Exchange and sells the stock; reports it to the office; the report is made out to the customer in the same way, notifying him of the sale; and when the time comes to deliver the stock it is borrowed of some party who has the stock, a check is given for it, and the stock is received and delivered to the party to whom stock was sold on the customer's order.

Q. Does the broker pay the person from whom he borrows the stock for the use of the stock?

A. Yes, sir.

Q. Then, I understand you that, in the course of a "short" sale, there is actually a sale and delivery of the certificate of stock?

A. Yes, sir.

Q. After the stock has been sold in this manner, and after the contract comes to be closed up, what is done?

A. The broker buys the stock, receives it, and gives his check for it, and delivers it to the party of whom he has borrowed the stock, and receives his check; and that ends the transaction.

Q. Supposing the party to whom you sell the stock, in the case of a short sale, fails or refuses to receive it, who stands the loss—yourself or your customer?

A. The customer. All transactions are done for the account, profit and loss, of the customer.

Q. And I understood you to testify that you delivered to the customer the name of the purchaser of the stock?

A. Yes, sir; it is so understood that the customer is to be held; the broker has no interest in the transaction, only his commission.

Q. Have you in your possession a form of notice such as you give to customers in the case of a purchase or sale of stock?

A. I think I have. [Witness searched his pocket.] No, I have not.

Q. Give its contents?

A. It is in the form of a letter, stating that I have bought for the account and risk of the customer so many shares of stock, at a certain price, of a certain party.

Q. Or, in the case of a sale?

A. It is the opposite in the case of a sale.

Mr. Flagg admits that, from the 31st of January, 1880, to the time Mrs. Flagg's account was opened, he received in cash

dollars.

Q. State the circumstances which led you to open the account with Mrs. Flagg?

A. The circumstances were that Mr. Flagg wanted to continue speculating, and I objected to his doing so without additional margin. He proposed that I should take Mrs. Flagg's note. That is all there was to it.

Q. Did you say to him, as he has testified, "Put the account in Mrs. Flagg's name," or was that his suggestion?

A. That was his suggestion. I suggested nothing of the kind.

Q. Did you suggest the writing of or have anything to do with the contents of the letter of June 15th from Mrs. Flagg to you?

A. No, sir.

Q. When did you first see it?

A. When he gave it to me.

Q. Did you have any conversation with him about it before that?

A. No, sir.

At this point Mr. Baldwin, after a recess had been granted, came in and stated that he admitted that the examination was had here to-day, at his request, for the advantage of himself and his witnesses; but that, owing to the extreme excitement in the stock market, he would request that the examination be adjourned until three o'clock.

The defendant, in order to favor Mr. Baldwin, consented that he should have that privilege.

AFTER RECESS.

A. H. BALDWIN. EXAMINATION RESUMED BY MR. ROOT:

Q. Did you say to Mr. Flagg, as he has testified, referring now to the making of the note by Mrs. Flagg, "Your wife owns that place in Summit, does not she; let her give me that note." Did you say that?

A. No, sir.

Q. He says: "I said that would not do him any good, because a note given by a wife to secure her husband's account would not be good. He said, Well, change the account to her name; fix it some way, if you don't want it to stand this way." Did he so tell you?

A. No, sir.

Q. Did you ask him to broach the subject to his wife?

A. No, sir. I have answered that once—this morning.

Q. Now, concerning the joint accounts which Mr. Flagg has testified were of the same nature as he has described under what he terms transactions in margins; were the transactions in the joint accounts of Flagg & Ripley and Flagg & Baldwin such

transactions as he has described under his definition of that term, or were they real?

A. They were real.

Q. Were they such transactions as you have described in your testimony concerning his own and his wife's account?

Question and answer objected to as being conclusions.

A. Yes, sir.

Q. Was the money in all cases paid for the stock so bought?

A. Yes, sir.

Q. And did you receive the money in all cases for the stocks sold?

A. Yes, sir.

Q. I understand you to say that this applies not only to the joint accounts, but also the account of Mr. and Mrs. Flagg?

A. Yes, sir.

Q. Look at the "Exhibit C[14]," the Flagg and Ripley account, and state what was the first transaction entered in it?

A. Long, 100 shares of Western Union. The first transaction is the check which I gave J. H. Davis & Co., to take up 100 shares of Western Union. My check was for $9,109.92.

Q. Did you suggest the opening of that account?

A. No, sir.

Q. How did it come to be opened; at whose instance?

A. At the instance of Mr. Flagg.

Q. What did he say on that occasion; do you remember?

A. Mr. Flagg and Mr. Ripley had 100 shares of Western Union with Mr. Davis—John H. Davis & Co., rather—and, as I suppose, their margin had about become exhausted with John H. Davis; and Mr. Flagg asked me as a personal favor to himself and Mr. Ripley to take up the stock, pay for it, and carry it for him.

Q. Did you suggest the opening of the Flagg & Baldwin account?

A. No, sir.

Q. Was that opened at Mr. Flagg's request?

A. Yes, sir; I did not suggest the opening of the Flagg & Baldwin account, for this reason; that the Flagg interest already had all they could carry.

Q. Mr. Flagg has testified that, prior to the giving of the mortgage on August 26th—the mortgage in suit—you told him you did not want to go on with the note any more, and asked him to get his wife to sign a mortgage for enough to pay for your advances for losses on the personal account in which Mrs. Flagg had given the letter and note, and you said you would take $4,000 more in the mortgage as security for $4,000 which you agreed to advance for future losses in the personal account; is that correct?

A. No, sir.

Q. State the circumstances which led to the giving of the mortgage—the conversation, as near as you can, between Mr. Flagg and yourself on the subject?

A. Mr. Flagg had lost more than the amount of the note—Mrs. Flagg's note—and I refused to carry the account any further; then he suggested giving me this mortgage and putting in $4,000 additional, that I might speculate on if it seemed best to do so. My idea in this thing was to get Mr. Flagg whole in the matter.

Q. Did you agree to pay out or to advance that $4,000 to pay losses?

A. No, sir.

Objected to.

Q. Was anything said to that effect between you and Mr. Flagg?

A. To the effect that I should pay out $4,000?

Q. Yes.

A. No, sir.

Q. You had several conversations before that mortgage was received by you?

A. Yes, sir.

Q. In those conversations did you go over the whole subject with him?

A. Yes, sir.

Q. After you had had those conversations, did you go to your attorney and give him instructions as to the negotiations which had been concluded, and direct him to draw certain papers?

A. Yes, sir.

Q. And did he do so?

A. Yes, sir.

Q. And what are those papers?

A. The papers that have already been offered in evidence—the mortgage, the letters which passed between Mr. Flagg and Mrs. Flagg to me, and the letter from me to Mr. and Mrs. Flagg.

Q. Was there any agreement or understanding of any kind between you and Mrs. Flagg, except such as stated in those papers?

A. No, sir; not of any kind.

Q. After the papers were drawn, what did you do with them—that is, before signature?

A. I gave them to Mr. Flagg.

Q. Did he take them away with him?

A. He did.

Q. Do you remember how long he kept them?

A. I think it was two or three days.

Q. To use Mr. Flagg's own language: "Mr. Baldwin promised that he would go on speculating until the account showed that he had advanced for losses $4,000, and the mortgage was executed." Is that so?

A. No, sir.

Q. Mr. Flagg has also testified that you agreed to advance this $4,000 to pay "Difference losses." Did you ever use such an expression, or one similar to it?

A. I never heard of it in my life until hearing Mr. Flagg—either hearing Mr. Flagg, or reading it

in the testimony. It is a term that is not used in Wall street at all.

Q. Did you ever use any language which means as you suppose those words mean?

A. No, sir; there is no such language in Wall street.

Q. Mr. Flagg has testified that this note of $4,500 you refused to deliver to him. Is that so?

A. No, sir.

Q. What was said, if anything, between you at any time on that subject?

A. It was never mentioned in any way.

Q. Did you subsequently deliver the note?

A. I did.

Q. How?

A. By my attorney, Mr. Root.

Q. How did you happen to do that?

A. Mr. Root told me that they wanted it; that was the first I had heard that they did want it. The note was in my safe for safe-keeping; I had no claim on it.

Q. Did Mr. Flagg ever say anything to you relative to the purchase of the house in Summit—as to who bought it?

A. He told me that he made his money out of a claim from the Government, and he had given this house to his wife.

Q. Look at the Exhibit "D[1]," and the words "or by Mr. Flagg for her," interlined on the second line from the bottom, and state whether that interlineation is made by you and in your handwriting?

A. Yes, sir.

Q. Was it made before you signed it?

A. Yes, sir.

Q. Mr. Flagg has testified that one day you went to him with some pencil figures, and said that you had advanced already $4,000 for difference losses; that he told you you had made a mistake; that you went back, and, upon figuring, ascertained that no such advance had been made; that he told you he did not want to be annoyed in that way again, and

you told him you would fix it; that he told you you had better have the figures before you all the time; and that you replied: "Well, as I have got to advance in case you lose up to $4,000, the amount of the mortgage had better be in the books charged up." Is that true?

A. The whole statement of Mr. Flagg is absolutely untrue.

Q. Was anything of that kind said?

A. No, sir.

Q. Explain to the Court what you mean in your letter to Mr. and Mrs. Flagg of August 26th, in which you say that you will not assign or dispose of the said mortgage until the $4,000 of future advances had all been made?

Objected to.

Q. State what, if any, conversation occurred between you, which led to that expression?

A. Mr. Flagg asked me as a personal favor to put that in—that I should not assign the mortgage. He said that he was perfectly satisfied with anything I might do, but he did not want the mortgage to be in the market. I agreed to that as in the letter of August 26th.

Q. Did you actually advance $4,000 when you made the first purchase for Mrs. Flagg after the account was opened?

A. I advanced double that, sir; I advanced some $8,600.

Q. Mr. Flagg has testified that you were in the habit of giving him points and encouraging him to involve very heavy speculations?

A. I never gave Mr. Flagg points but what he asked me for. He would always ask me what I thought of the market, and I told him to the best of my judgment. If he had taken my opinions he would have been very much better off.

Q. Mr. Flagg has testified you sold some stocks without his authority; is that so?

A. Not in any case.

Q. He also testifies that you promised that you would replace those stocks, you were so sure the market was going down, and you would take the responsibility of replacing them at a lower figure?

A. I never did so; it is not my business.

Q. Mr. Flagg also testifies concerning the notice you had given him of February 24th, that he called on you and told you that it was an outrage and a violation of every agreement, and that you prevaricated, and said that you would see about it; that you at once admitted that it was not in accordance with your agreements with him, you had not advanced $4,000 to pay difference losses; that you then said you were compelled to borrow money; that you did not know where to get it, and that the reason for giving the notice was the trouble he had to get the money; is that so?

Defendant's counsel objected to this manner of examining the witness, and to all questions like it. It is proper, if Mr. Root sees fit, to read the defendant's testimony, and then to ask the witness what was done or said, but not to characterize the testimony in wholesale in this way.

By Mr. Root: I will adopt the suggestion of the counsel and amend the question to satisfy him, and instead of asking the question, "Is that so?" I will substitute the words "What, if anything, was said or done on that subject?"

A. Nothing.

Q. Mr. Flagg has also described the scene in your office when he found Mr. Root in charge—your lying in the inner office, your overcoat thrown over your head in deep depression and great excitement. What, if anything, was said or done upon that subject?

A. I don't remember it. I never knew Mr. Root was in charge of my office. He may have been there.

Q. Was he ever to your knowledge?

A. No, sir.

Q. Do you recollect being in deep depression and great excitement, with your overcoat thrown over your head?

A. I do not.

Q. Did Mr. Flagg ever come to you, after the service of that notice of February 24th, and demand that you should buy for him certain stocks, to which you replied that "you would stand or fall, make or break, as the matter stood?"

A. No, sir.

Q. Mr. Flagg also testifies that instead of your advancing anything under the terms of the mortgage, you are indebted to him in the account in quite a large sum of money; is that so?

Defendant's counsel states that that is not the testimony of Mr. Flaggon that subject.

Complainant's counsel states that it is.

Defendant's counsel asks complainant's counsel to read what Mr. Flagg did say on that subject.

Complainant's counsel says that Mr. Flagg's testimony covers one hundred or two pages, which he does not think he is called upon at this moment to go over and find, but if he did not so testify, he will have the advantage of it before the Court.

A. I consider that Mr. Flagg is a large debtor of mine, I cannot understand how I can owe him anything.

Q. Have you actually paid, laid out and expended the sum which you claim in this action?

A. Yes sir.

Question and answer objected to as not proper testimony, or the way to prove any indebtedness.

Q. Have you since that mortgage was made actually paid out—expended, in other words, the sum of $3,346.07?

A. Yes sir, and the amount of $4,000 was more than due at one time.

Q. Concerning the extra interest or commission for obtaining money which is charged in this account, did you actually pay out that money for the purpose of obtaining money to carry the stock?

A. Yes sir.

Objected to as incompetent.

Q. How many charges are there for extra interest in this account?

A. I think only one.

Q. There are two. Look at the account and state?

A. In the account of Mrs. Flagg under date of January 28th, 1881 there is a charge of $111.42.

Q. Look at the W. L. Flagg account under date of April 9th?

A. In W. L. Flagg's account, April 9th, 1880, there is a charge of $23.75.

Q. Are those the only charges for extra interest?

A. Those are all I can see, and which I actually paid. I may state that I paid on the date of February 24, 1880, 1½ per cent for money in putting up nothing but Governments which belonged to me to carry my customers at the time of the bank panic, which I never charged to customers.

The statement of the witness objected to as gratuitous and not responsive.

Q. What are the commissions usually charged by brokers for purchasing and selling stocks?

A. One eight per cent on the par value, which amounts to twelve dollars and a half, unless it is in mining stock, or something of no account.

Q. In stocks, such as were dealt in in this account, what is the commission?

A. Always one-eighth, sir. We are obliged to charge one-eight or else we are liable to expulsion from the Exchange.

Q. What would one-eighth per cent. be upon one hundred shares of stock?

A. Twelve and a half dollars.

Q. What is the commission on selling?

A. The same as on buying. I buy and sell 100 shares of stock for $25.

Q. Did you ever tell Mr. Flagg that you had a partner by the name of McCoon, and that it was necessary the mortgage should be credited to the account to satisfy Mr. McCoon?

A. The statement is wholly false.

Q. Did you ever say anything on that subject?

A. I never told Mr. Flagg that Mr. McCoon was my partner. Mr. McCoon was never my partner, he ran my business at one time while I was sick in the country.

Q. Mr. Flagg has testified, by his agreement with you, if the fluctuations of prices reached a certain point, and the order had been given to buy and sell at that point, it was a matter of no consequence to him whether the transaction was made or not, but he was entitled to have the account credited with the purchase or sale at that price. Is that correct?

Objected to as calling for a characterization of the testimony in wholesale.

COMPLAINANT'S COUNSEL: Then I will amend my question by asking what if anything was said between you on that subject?

A. The statement of Mr. Flagg is utterly false.

Q. Did you ever have any conversation with him on that subject?

A. Not in the least. Mr. Flagg never had an order filled in my house in any way, unless it was first executed in *bona fide* good faith and in reality, between myself or my broker, and the party with whom I made the transaction; I am ready to show that every transaction in which Mr. Flagg or Mrs. Flagg, or between Ripley and Baldwin and Flagg, was an actual transaction. The stocks bought were paid for, the stocks sold were delivered, and the checks received and deposited by me in my bank.

Defendant's counsel objects to this testimony as not responsive to the question, the witness not having been asked what he did

on the Stock Exchange, but if it was necessary that he did anything under his agreement with the defendant, on the Stock Exchange.

Q. There is an instrument, is there not, in your office, and generally in brokers' offices, called a stock indicator?

A. Yes, sir.

Q. What does that instrument note or indicate?

A. The purchase and sales of stocks, or transactions on the Stock Exchange.

Q. Are the transactions real or fictitious?

A. Real in every case. Should it indicate a fictitious transaction, the party reporting the transaction would be liable to expulsion from the Stock Exchange.

Q. Mr. Flagg testifies that in speaking of your account with him you have characterized them as gaming transactions. Have you ever so done?

A. No, sir, not in the least. I carry on a respectable banking business, not a gambling house of any kind.

Q. Were these accounts in any respect different from all your other accounts, except that you usually have a cash margin?

A. No, sir, not in the least. It was the only account of the kind that I ever had. I will never have another.

Q. Is there any rule of the Stock Exchange requiring the broker to charge six per cent. for money?

A. Yes, sir. If you don't charge six per cent, you render yourself—the committee of the Stock Exchange on commissions regard it as a cutting of commissions unless you charge the full rate. Everyone is compelled to charge the full rate, and the regular commissions.

Q. That's all.

CROSS-EXAMINED:

BY MR. FLAGG: Q. Mr. Baldwin you have said, to-day that the transactions made by a broker for a

customer in stocks are upon the responsibility of the customer, have you not?

A. I have, sir.

Q. Do you mean to say here, that in all the transactions as you know them in Wall street, the customer is responsible so far as the stocks are concerned?

Objected to on the ground that it is incomprehensible. I do not know what is meant by "so far as the stocks are concerned."

A. I mean to say this—shall I answer?

Q. Yes.

A. If you mean that I purchase 100 shares of stock for the account of a customer, and the party of whom I purchase the stock fails, or refuses to deliver the stock of any account, the customer is responsible. If I loose the stock after it has come into my possession, I might be liable, but in no other way. The transactions are executed entirely for the account and risk of the customer in every case.

Q. Then you never knew of any transaction either in your office or on Wall street where the customer was not responsible so far as the stocks themselves were concerned?

Objected to by complainant's counsel. I do not know what you mean. I request the counsel to define his question—what he means by "so far as the stocks are concerned."

Can you answer the question, Mr. Baldwin?

By the Witness:

I cannot answer it, sir.

Q. You do not know that there are accounts in Wall street, kept by brokers where the purchases and sale of stock are not upon the responsibility of the customer, but where the broker takes all the responsibility of the stocks?

A. I never heard of such a transaction, and I

have been there five years in a very active business.

Q. Have you never in your business opened an account with a customer where the customer put in no deposit of margin, or any money whatever?

A. I have opened accounts with customers where I knew, and knew beyond peradventure, that they were honorable men, and bought stocks for them without any margin, for the reason that I knew that if I asked them for a margin they would immediately furnish it. Not being in want of funds myself, I take perhaps for that transaction their honor, but it was understood in all cases that they would put the margin up if I asked it.

Q. Then you undertake in such a case the purchase of stock, paying for it yourself with the hope or prospect that the customer would put up the margin?

A. No hope about it if they were honest men.

Q. In the confidence, however?

A. No confidence about it, it was a certainty, it was not like this case.

Q. It was a reliance then upon their honor that they would put in the margin?

A. Yes, sir; it was better than real estate.

Q. In such a case what would you do with the stock?

A. What would I do with the stock? Why I would receive it if it was bought.

Q. What else would you do with it?

A. I would protect it—take care of it.

Q. What else?

A. That is all that is necessary that I know of.

Q. Would you sell it on the order of the customer?

A. Yes, sir.

Q. In such a case would the customer ever see, or have delivery or transfer of the stock?

A. He would if he wanted it.

Q. I ask you if he would actually?

By Complainant's Counsel: I submit he has answered the question.

A. I have answered the question.

Q. You will not answer it any other way?

A. I have said that if he wanted to see the stock, he could see it, as a matter of course. I repeat it. There is nothing to conceal about it.

Q. Would he in that case have transfer or delivery of the stock?

A. Yes, he would if he wanted it.

Q. Suppose he did not want it?

A. Then he wouldn't get it.

Q. On such a sale what would be the result—

Objected to on the ground that the question has no point, and is incomprehensible.

Q. On such a sale what would be the result to the customer?

A. On such a sale as what?

Q. Such a sale as you have been asked about just now.

A. What would be the result?

Q. Question repeated.

The stenographer read the question as follows: "On such a sale, what would be the result to the customer?"

A. Give it up; I don't know how the market was.

Q. Supposing the market was higher than when he purchased?

A. If he sold higher than he paid?

Q. Question repeated.

The stenographer read the question as follows: "Supposing the market was higher than when he purchased?"

A. Then he got the money, less my commission, and interest on the amount I had invested for him. I want to change that a little, instead of getting the money, he got the profit.

Q. Supposing the sale was at a price less than he gave for it?

A. Well, then I—when he sold the stock, I should

deliver the stock, get a check for the amount I sold it for, take out my commission, figure up the interest, send him a note and tell him to come around, and he would, and give me a check.

Q. Would not that be a difference loss?

A. It would not. It would be a very unusual proceeding. If John Jacob Astor, or William H. Vanderbilt, or a great many such people, asked me to buy 5,000 shares of stock for them, I would buy it. They would not consider it a difference loss. They would consider it a debt of honor, and if they had made a loss they would immediately remit. "Difference losses" is not a term I am used to; I never heard it before I met you.

Q. Again I repeat, would not the difference between the purchasing price of that stock and the selling price of that stock, upon which you would base your note, as you say, to the customer to remit, be a loss founded on the difference between the purchasing and selling price?

A. We have no gambling—difference losses—in Wall street, they are all founded on real transactions.

Q. I again ask you, Mr. Baldwin, if the loss which you would in that case ask of the customer would not be a "difference loss"—that is, the difference between the purchasing and the selling price?

Objected to on the ground that this is not a school, and that as the witness has already said he did not know the meaning of the words, "difference losses," he should not be required to say whether such a thing was a difference loss. He must be asked facts.

By Complainant's Counsel:

Q. Can you answer the question?

A. Not more fully than I have.

Further Cross-examination.

Q. I ask again if the loss in such a case would not be founded upon the difference between the purchasing and selling price?

A. The commerce of the whole world is founded on the same principle.

By Complainant's Counsel:

Q. Answer the question.

A. I don't know how he wants that answered. If he writes it out I will answer it. I have answered it three times; I aint going to answer it again. I submit to Mr. Day if I have not answered the question three times.

(The preceding question and answer were directed to be stricken out by the Master).

Defendant's counsel states that a motion is made by Mr. Root to strike out Mr. Baldwin's reply, and that he objects to what he has said being stricken out.

The Master states that no motion has been made by Mr. Root to strike out any part of the answer. The Master simply directed that the conversation, not in response to the question, should be stricken out.

Further Cross-Examination:

Q. Suppose the case of a customer who comes to your office and says that he has only a thousand dollars in money which he puts up with you as a margin, and upon that a speculative account is opened, involving stocks to the value of hundreds of thousands of dollars, do you in that case, when you actually buy and sell the stocks on his orders, depend upon his responsibility to pay for the stocks and take delivery of them?

A. I want to state first that I know no difference between a speculative and an investment account where the customer buys the stocks and pays for them. The customer in each case is treated exactly alike. Now if a customer came into my office and put up $1,000, he would give me a stop order to close his account when a certain amount of his margin should be exhausted, which I would do and give him the balance of his margin which was left. Unless the customer continued to make money, he would not be very apt to trade in hundreds of thousands of dollars.

Q. Then, in that case, you would depend upon the margin and the stop order in the account?

A. Not only that, but the character of the man—who he was introduced by—whether I considered him an honest man or not.

Q. What is a stop order?

A. A stop order is an order to stop the customer's loss at a certain point.

Q. In what cases would you require it?

A. I always require it.

Q. Would you require it when you knew the customer had the money to pay for the stocks and intended to take delivery?

A. Yes, sir; if he did not agree to take up the stocks within the same day, or within the day after, I should in all cases unless I knew that his character was above reproach, and that he was solid financially.

Q. If you knew that he was intending to take up the stocks and able to pay for them, and you believed him to be an honest man, you would not require the stop order?

A. I would not; it would not be my duty to do so.

Q. But where he told you he had only a thousand dollars, and was speculating heavily, you would require such stop order?

A. He could not speculate heavily on a thousand dollars.

Q. Well, speculating, then?

A. Yes, sir.

Q. Where a customer consented to give a stop order in an account, would you not conclude that he intended to sell the stocks, or give the order in his account without actually taking the stocks?

A. Not necessarily.

Q. What would be his object in protecting himself by the stop order if he had the money to pay for the stocks and intended to take them?

A. He might not want to lose the money he had in his pocket to pay for the stock, he might want to limit the loss. Because a party is ready to take up

stock it does not signify that he is ready to lose all the value of the stock by any means.

Q. Then a man who is a rich man—

A Thinks just as much of his money as any one else.

Q. Then a man who is a rich man may be speculating in stocks as well as a poor man?

A. I have heard so; yes.

Q. Now suppose the case of a customer who has used up, as you know, all his money, and you have taken in his account, as margin, a mortgage on his wife's home, and you have an account with him which shows transactions involving hundreds of thousands of dollars, do you mean to say that those transactions, so far as the price of the stocks go, are upon the pecuniary responsibility of that customer?

A. If a man is foolish enough to take a mortgage, I suppose that is all he has got; I don't see any difference in the account than if he put up $10,000 or $20,000 of money.

Q. How, in that case, could you expect that customer to take delivery and pay for all those hundreds of thousands of dollars of stock?

A. I give it up. I don't run my customers' business, I am running A. H. Baldwin's business.

Q. Did you never hear, so long as you have been in Wall street, of the difference between "investment account" and "speculative account?"

A. No, sir; only that one takes up the stock, the other does not. They are all speculative.

Q. In what sense do you mean that an account where the customer takes up the stock is speculative?

A. The only difference is that he pays for the stock and sells it when he has a profit; in the other case, the broker pays for the greater part of the stock; he pays for all of the stock except what his customer has furnished him as margin.

Q. Then you consider the margin, which the customer puts into a speculative account, the broker's property?

A. I do not.

Q. Then the margin which you hold is his property?

A. It is his property, subject to the losses on his account in the broker's office.

Q. It is not applicable, but is only used by the brokers in case the broker actually purchases the stock for the account?

A. Well, it is applicable in this way, that the customer is charged with the amount of the cost of his stocks, less the amount of the margin.

Q. You mean by that that where a customer has put in cash as a margin to secure the broker's advances for losses, it does actually help him in case he purchases the stocks on the orders.

Objected to on the ground that the counsel is endeavoring to put into the witness's mouth testimony corroborating his own theory of this case, and directly opposite to that the witness has already testified.

A. Well, cash helps him only in the way of a deposit, and as security.

Q. The money which actually pays for the stock in case the broker buys on the orders, is the money furnished by the broker, is it not?

A. To a certain extent, yes, sir.

Q. Is it not absolutely?

A. Not entirely, it is the money, less the amount of the margin, to a certain extent.

Q. If the margin is the customer's property, and is in the broker's hands as a deposit to secure him for anything he advances for losses, how can it be applicable to the purchase of stocks?

A. That is one of the purposes for which the margin is deposited.

Q. Take the case of this mortgage, in case you actually purchase stocks on Mr. Flagg's orders on the security of it as a margin, do you not have to furnish all the money?

A. Yes, sir.

Q. Why would a margin consisting of a com-

modity, differ from a margin consisting of money, so far as it was applicable to the stocks in question?

A. The difference would be that it could not be used at the moment.

Q. Then I understand you to mean that the fact that the margin is in the broker's hands as money, enables him to use the customer's property in his business?

A. The customer has pledged this margin in his transactions with his broker, he has no right to it until the account is closed. He has had very many times the advance of the amount of his margin.

Q. In case the broker knows that he has every dollar he has, and all his resources, in the broker's hands as margin, how can that customer be expected to know anything about the actual transactions on the Stock Exchange for his account?

A. I never had a customer that told me all he had in the world was on the Stock Exchange, or invested in his broker's hands. I can see no difference whether all he had was in the hands of his broker, or part of what he had, his interest would be the same, he would be a little more interested perhaps in making money, that would be the only difference.

Q. So long as the broker knew, and the customer knew that it was absolutely impossible for him to pay for and take delivery of the stock, what other interest would he have than in the fluctuations in the price?

A. The mere fluctuations in the price is all that anybody has in the market. He would have no more or less than other customers. The man that pays for his stock is only interested in the fluctuations of the price.

Q. He being from the nature of the case in a position where it is known he cannot take delivery of the stock, or transfer of the stock, has he any further interest than to see that the account with his broker is credited according to his orders?

A. It is not impossible that he could take de-

livery of the stock, he might make a loan with a bank, or something of that sort, on the margin in the hands of his broker, and on the stocks which he has.

Q. What you mean by that is—applying that answer to this case—that Mr. Flagg might have taken his mortgage and the stocks and got a loan on it?

A. On the stocks held by me for the interests of the account.

Q. Do you know of any bank or institution that would probably have made him a loan on such terms?

A. They might have done so, I have not borrowed money of any institution.

Q. Is it not a fact, Mr. Baldwin, that under the conditions on which this account was being carried, there was no question, and could be no question of the delivery and transfer of these stocks?

A. To whom?

Q. To the customer.

A. No, I don't tnink there would be any question but what you might have delivered the stocks to somebody on a loan.

By Complainant's Counsel:

Q. The question is, "could have been delivered to him"?

A. I might have delivered them to him, yes.

Further Cross-examination:

Q. You mean by that, you might have made me a present of them if you had wanted to?

A. I am not making presents. It is a matter of business. You could have taken the mortgage, given it to somebody else, and taken the stocks up. The value of the stocks and your mortgage would have served as a margin to the party of whom you made the loan.

Q. Is not that rather a stretch of the imagination, Mr. Baldwin, considering the way business is done on Wall street?

A. There are parties that do nothing else but loan

on real estate here. It is no stretch of imagination if the property at Summit is worth anywhere what you represented to me it was worth.

Q. Then you mean to say, irrespective of what can be done, that where a customer has exhausted all his money and has consented to allow his wife to make a mortgage on her house for a margin, that it is fair to conclude that there was an intention in that speculative account for the customer to actually pay for the stock?

A. I don't conclude anything about it, I say it has been done.

Q. Is it a natural conclusion?

A. I am unable to answer that.

Q. Does it look reasonable?

A. Yes, sir; I know a case where it has been done.

Q. Now, Mr. Baldwin, how long have you stated you have been a broker on the New York Stock Exchange?

A. I joined the board in 1879.

Q. You have accounts in your office which are investment accounts, have you not.

A. Yes, sir.

Q. And customers who mean to pay for and take up their stocks?

A. Yes, sir; and do it too.

Q. And you know what is necessary when you intend or desire to have those customers take up their stocks and close the account?

A. Yes, sir.

Q. In case you wanted in such an account, to have a customer close it, what would you do?

A. I should either see him or write him and tell him to take up his account.

Q. Supposing he would not do it?

A. Well if he would not do it, I don't know what I would do.

Q. Then you don't know, although you have been a broker so many years, what it is necessary for

you to do to compel a customer to close his account with you?

A. Yes, sir; I suppose it is necessary to give him notice. I thought you were talking about investment accounts.

Q. What kind of notice?

A. Notice that you wish to close his account. My attorney always takes care of those things.

Q. What are the requisites, what is it necessary for that notice to contain?

Objected to on the ground that Mr. Flagg, a lawyer, and defendant, is asking Mr. Baldwin, a broker, a question of law merely.

A. I should act as my attorney directed me to.

Q. In case that customer was asked to pay for his stocks what would you ask him to pay?

A. If it was an investment customer, I should ask him to pay the value of the stocks, less the amount of money that I might have in my hands to his credit; the same with a speculative customer, and I should instruct my attorney to attend to the rest, in fact I should do it all through my attorney.

Q. Would it not be to pay the balance of his account upon which you would surrender him, or give up to him, the stocks that you held for him?

A. I don't know that it would, no sir; I should direct my attorney to attend to the business.

Q. Would you not require a customer to pay you the balance that was shown to be due on his account, and thereupon would you not surrender to him his stocks?

A. If he paid me all that was due on the stocks, I suppose I would.

Q. Will you look at this exhibit marked "D²", and state what you there required the defendants in this case to do when you required this account to be closed.

Objected to on the ground that the exhibit

itself will show, and that is the best evidence.

Defendant's counsel states that he reads from the exhibit.

Q. "I hereby demand payment forthwith of the balance of the account due by you to me, amounting to the sum of $3,400, with interest from March 8th, 1880, and $9,575, and interest from December 28th, 1880, aggregating $12,975, and interest, together with $25 commissions". I ask you if according to your books and the exhibits which you have put in here, that account shows a balance due you of $12,975?

A. Yes, sir; I think it does.

Q. Will you swear that it does?

Objected to on the ground that the witness cannot be called upon to state from his memory about an account when the accounts themselves are in evidence, and are the best evidence.

Q. Will you please look at the accounts and see how much those accounts claim there was due from the defendants to you about February 24th, 1881?

A. I will, and put in the amount hereafter.

Q. Now, Mr. Baldwin, will you look at this Exhibit "D²" and compare it with the exhibits here of the accounts and state if you have not in this Exhibit "D²" required the defendants to pay the price stated in the account to have been the price at which the defendant ordered the two stocks mentioned therein, and not the balance shown by the exhibits to be due on the account of February 24th?

A. I don't know whether it is or not.

Q. I ask you to look at that exhibit and state?

A. I don't know what condition the account of Mrs. Flagg was in at the time, and without figuring it up, cannot tell. I will furnish it.

Q. I hold in my hand the exhibits, and you can state from them at a glance if you will look. Will you please do so?

A. I cannot state at a glance, for the reason that you had other transactions during that month, and exactly how your account stood at the time, I am not able to state without examining the account attentively, it would take me perhaps an hour.

Defendant's counsel reads from the Complainant's Exhibit "C[11]" under date of March 8th, one hundred Chesapeake & Ohio, first preferred, 34, and asks:

Q. Is not that the price at which that Chesapeake & Ohio referred to in the Exhibit "D[2]" was put in the account?

A. I don't know sir; you may have had another one hundred Chesapeake & Ohio.

Q. If that is the only Chesapeake & Ohio first preferred in the account, then I ask you if that is not the price at which the Chesapeake & Ohio referred to in Exhibit "D[2]," was put into the account?

A. If that is the only Chesapeake & Ohio in the account, I suppose that is the one.

Q. Now, I read from Exhibit "C[9]," under date of December 29th, "100 Central Pacific, 95¾, and ask you if that is not the Central Pacific referred to in Exhibit "D[2]?"

A. I state the same in that instance as I did at the former one, without looking the account over attentively, I cannot tell about it.

Defendant's counsel states that Mr. Baldwin has not looked at this exhibit.

By Mr Root: Then show it to him.

By the Witness: I see 100 Central Pacific here, whether it is that Central Pacific or not, I do not know.

Q. Is it not the only Central Pacific credited in the account December 28th?

A. It is charged.

Q. The money is charged on the stock as put into the account on December 28th?

A. It is the only 100 shares of Central Pacific

that I see charged to the account of Mrs. Flagg on December 28th, whether that is the Central Pacific that you refer to or not, I do not know.

Q. Do you doubt your own Exhibits?

A. Not at all, sir. You may have had 300 or 400 more—you may have had other stocks that had been carrying from month to month. I have got to take the whole account in to see how the account stood at that time.

Q. Will you look at the Exhibit "D^2" and state if you have not demanded interest on $3,400 from March 8th, 1880?

A. The words of the exhibit are "with interest from March 8th, 1880."

Q. Does it not then evidently refer to the price at which the Chesapeake & Ohio mentioned in that exhibit, was charged in the account on that day?

A. It may be so.

Q. Is it not certain that it is?

A. Well, not entirely so; no.

Q. What doubt can there be about it?

A. There can be doubt—do you mean I don't know the condition of my account?

Q. You have stated that 100 Chesapeake and Ohio is referred to in this exhibit, and referring to the account, it appears that 100 Chesapeake and Ohio was bought on March 8, at 34. Exhibit "D_2," Demands interest on $3,400 from March 8. I ask you, then, if the demand there is not of the price at which that Chesapeake and Ohio was put into the account on that day?

A. It may be so; I can't tell without going over the account accurately, and in detail.

Adjourned until February 24th, at 2.30 P. M., o'clock, at New York.

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	In Foreclosure.

Pursuant to adjournment, the parties met at the office of John H. Dos Passos, Esq., No. 3 Broad street, in the City of New York, on Friday, the 24th day of February, A. D. 1882, ard continued the examination, &c., in the above-stated case.

APPEARANCES.

MR. ROOT for the complainant, MR. A. Q. KEASBEY, for the defenndant.

A. H. BALDWIN. CROSS-EXAMINATION, RESUMED BY MR. KEASBEY:

Q. Have you found out how much the debit balance was on the account as it stood on the 24th of February, A. D. 1881—the date of your notice to Mrs. Flagg?

A. I have not looked at the account since I was on the examination last time.

Q. Do you know what the debit balance was?

A. On that date?

Q. Yes.

A. My impression is that by the debit balance at that date Mr. Flagg would owe me somewhere about $150, if the stock had been sold at the market, counting the $4,000, the amount of the mortgage, exhausted.

Q. Did you ascertain that from an examination of the books?

A. No, sir; I ascertained that from my general knowledge of the account.

Q. Now, if you really thought that Mr. Flagg had any real property in the actual stocks, and the right of possession on the payment of debit balance shown

on your books, why did you claim as you did in the notice—Exhibit D_2—the right to dispose of them, if you were not paid a different and much larger sum than the debit balance shown on your books?

A. Only because through these various transactions for Mr. Flagg he owed me the amount stated in the account.

Q. Is that the only answer you can give to the question?

A. That is the only answer I know; the stocks were at his command at any time he would pay the debit balance and the amount of the cost of the stocks, with interest.

Q. Did you not know when you signed and served the notice of February 24th, that you were not required to give the notice which was required when the stocks belonged to the customer?

A. They did belong to the customer in this case, when he had paid the debit balance; they were always at his command; the stocks were subject to his order on the payment of his debit balance, and the amount that I had advanced on the stocks.

Q. (Last question repeated).

A. I want to say further, that I have not got any stocks in my office for any customer but what are at all times subjeet to his commands on his paying the amount that I have advanced on them; they are all legitimate transactions in every case—real transactions.

Q. Had you not been in the habit in this account of doing what you call selling stocks out of this account without orders, and had you not, before this, served notices which did not contain what you knew was necessary for them to contain in cases where you proposed to sell stocks belonging to the customer?

A. I never sold any stocks in this account without positive orders from Mr. Flagg. I did not catch the last part of the question—will you repeat it, Mr. Keasbey?

Q. Had you not been in the habit in this account

with Mrs. Flagg of doing what you call selling stocks out of the account without orders?

A. Now, I have answered that.

Q. Yes?

A. That I never sold any stocks in the account without a positive order—now the rest of it, please.

Q. And you, before this time, served notices which did not contain what you knew it was necessary for them to contain in cases where you proposed to sell stocks belonging to a customer?

A. Any notices that I may have served were suggested to me by my attorney.

Q. That does not answer the question?

A. Well, I am not in the law business, my attorney does my business and gets paid for it.

Q. Did you serve notices which did not contain what you knew was necessary in cases where you proposed to sell stocks belonging to a customer?

A. I could not answer that, sir, any better than I have already.

Q. Did you serve notices not dictated by your counsel?

A. Do you mean with Mr. Flagg?

Q. Yes—in regard to selling the stocks?

A. I could not really say. I have served notices of the purchase and sale of stocks, which is a regular form and entered into in all transactions in my office, but as to a form which is unusual or a notice that is unusual being served by me, I could not state that I ever served one without the advice of my counsel.

Q. Will you swear that you never did?

A. Swear that I never did serve a notice without the advice of my counsel? No, I won't swear that —I don't think I ever did.

Q. (Exhibiting a paper to witness). Look at that paper, which is dated November 30th, 1880, and say whether you served that paper upon Mr. Flagg?

A. I don't know anything about that paper, sir.

Q. In whose handwriting is it?

A. It is in the handwriting of Mr. Ripley.

Q. Who was Mr. Ripley?

A. He was the manager of my office.

Defendant's counsel offered said paper in evidence. Objected to as immaterial. Marked as Exhibit D^3 for defendants.

Q. When did Mr. McCoon cease to run your business?

A. Mr. McCoon did not run my business—about along in August, 1880; he only ran my business while I was in the country sick.

Q. Has he been interested in it since?

A. No more than any man that works for me—no partnership matter of any kind—I have hired him at a salary—that is the only way.

Q. Will you explain why you ask in your notice of February 24th for the actual price of the stocks as shown in your account, rather than the debit balance?

A. If you will show me the notice perhaps I can explain it to you—(paper handed to witness)—why I asked for the actual price of the stock instead of the debit balance?

Q. Yes.

A. Well, I suppose that the reason is that the amount that I demand in this notice disposes of those stocks; I considered myself secure on the balance through this mortgage; I am not conversant enough with the account at the moment to say whether this is the whole amount that Mrs. Flagg Mr. Flagg, Flagg & Ripley, and Flagg & Baldwin owed my concern.

Q. Is that the only answer you can give to the last question?

A. That is the only answer.

RE-DIRECT EXAMINATION:

Q. Referring to that notice—was that prepared by yourself or your attorney?

A. My attorney.

Q. What attorney?

A. Mr. Root.

Q. Did you have anything to do with the notice except to sign it?

A. No, sir.

Q. Mr. Flagg has testified that when you bought stocks for him his arrangement with you was such that there was no intention on your part to deliver the stocks to him—state what the facts are on that subject?

A. When I made a purchase for the account of Mrs. Flagg, or any account in my office, I am always ready to deliver the stocks at all times on the payment of the costs.

Q. And were you in this case?

A. I was, sir; in every instance it was a *bona fide* legitimate transaction in which I paid for the stock with my check and received the stock.

Q, I am only asking you as to the intention, whether it was your intention or not to deliver it to him?

A. Yes, sir.

Q. In the cases of "short" sales which you have described, I wish you would go a little further; after what you tell us about a short sale by selling it in the market, what is your claim on your customer in so far as the delivery of the stock is concerned?

A. When a customer gives me an order to sell stock "short," it is understood that I shall borrow the stock, if, at any time afterwards the customer brings in the stock, I receive it at the price and deliver it for his account.

Q. And if he does not bring it in?

A. Then I borrow it and deliver it for his account and risk.

Q. And after you have have borrowed it is it necessary or not that he should subsequently deliver the stock to you by means of either a purchase by you for his account on the Exchange, or coming in and delivering it?

A. He must do one or the other; either deliver the stock to me or I shall buy the stock and fill his "short" sale.

COMPLAINANT'S COUNSEL: I am now through with this witness, unless I should find on an examination of the testimony that I want to ask him some questions; I have not yet had an opportunity of examining the testimony last taken.

BENJAMIN G. TALBERT, being conscientiously scrupulous of taking an oath, was at his own request affirmed, and testified as follows on behalf of the complainant in rebuttal:

DIRECT EXAMINATION BY MR. ROOT:

Q. What is your occupation?

A. I am a member of the N. Y. Stock Exchange; broker.

Q. Are you engaged in the stock broking business?

A. I am.

Q. With whom?

A. John H. Davis & Co.

Q. Are you a member of that firm?

A. I am.

Q. When did your business connection with Mr. John H. Davis begin?

A. On the 1st of February, 1878.

Q. And you have been connected with him ever since?

A. Yes, sir.

Q. As a partner?

A. Yes, sir.

Q. Do you know William L. Flagg, one of the defendants in this suit, the gentleman sitting there (pointing to Mr. Flagg)?

A. I do.

Q. Has your firm ever had any business transactions with him?

A. Yes, sir.

Q. Has he or has he not ever had an account with your firm?

A. Yes, sir.

Q. How long have you been a member of the Stock Exchange?

A. Since August, 1873.

Q. How long have you been engaged in the business of a commission broker?

A. For 10 or 11 years.

Q. Have you had much or little experience in that capacity?

A. Well, sir; I should judge I have had considerable.

A. And are you or are you not familiar with transactions in Wall street, as made by members of the Exchange.

A. I am, sir; very.

Q. For their customers?

A. Yes, sir.

Q. Mr. Flagg upon his direct examination, was asked this question by his counsel: "Q. You have spoken in your testimony of the nature of the account with Mr. Baldwin, and of 'long' and 'short' sales and their meaning and effect, will you explain more fully and clearly what you mean by that?" To which question Mr. Flagg made answer as follows: "I mean this, that there are transactions in Wall street that are real transactions, where there is a dealing in stocks, and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase or to the transaction; and there are also transactions in Wall street, and they are the majority in my opinion, which are not for investment and which are mere transactions in margins. My transactions with Mr. Baldwin were all of the latter kind. By the phrases 'buy' and 'sell,' as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. The transaction on what is called a 'long' account is an order to the broker [on a marginal transaction like this] to credit

his account with stock at a certain price, and if the fluctuations of the price on the Stock Exchange mark the figure indicated by the customer, the broker is obliged to credit the account according to the order; the broker is not obliged to actually buy the stock, and there is no question of the delivery of the stock to the customer and no intention of delivery. The broker may, if he pleases, and he very often does, in fact, credit a customer's account without insuring himself in the transaction by buying the stock. If he does buy the stock he borrows money on it to represent what he has given for it, and then without ever delivering it to the customer delivers the stock to another broker when the customer orders a sale. If he does not really purchase the stock, and a sale is made on the order of a customer at a higher price than the order was given to purchase, the broker pays it out of his own pocket, and so far as short transactions are concerned, the customer gives an order to the broker to sell stocks when the prices on the Stock Exchange reach the figure he names. No party has the stock in possession or any arrangement to have it. The broker in such a case credits the account with a sale at the price named in the order. He can then either make the sale himself on the Stock Exchange or not, as as he chooses; if he does, he takes the money which he gets on the transaction to purchase in the contract, when the customer orders a purchase on a short sale. This is done with another broker. If he did not, he would stand the loss in the account himself." Mr. Flagg was further questioned on cross-examination on the same subject, and he testified as follows: "Q. Have you carried on accounts with any other broker which you would call a transaction in margins, as you have defined your transactions with Mr. Baldwin?" To which he answered, "I have." The question was asked, "With whom?" To which he answered, "With John H. Davis & Co." Mr. Talbert, are there any transactions recognized in Wall street such as Mr. Flagg

has described in his definition of a transaction in margins?

A. Not to my knowledge; I have never known of any.

Q. Has he ever made such transactions with your firm?

A. Not to my knowledge.

Q. Would you know whether he had or not?

A. I should be apt to.

Q. Were his transactions with your firm real or fictitious transactions?

A. Real in every instance—so far as I know—since I have been a member of the firm.

Q. When he gave you an order to buy stocks did you actually buy them on the Exchange?

A. In every case.

Q. When he gave you an order to sell stocks did you actually sell them on the Exchange?

A. In every case.

Q. Does your firm do a large or a small brokerage business?

A. A large business.

Q. How many customers, as nearly as you can state, if you are willing to state?

A. I do not see what bearing that is going to have.

Q. Never mind.

A. I think the question will be answered by the answer of "a large business."

Q. Does your firm ever insure accounts in the way Mr. Flagg has described?

A. Never to my knowledge.

Q. Have you ever heard during your experience in Wall street of any brokerage house "insuring" accounts, as Mr. Flagg has there described?

A. No, sir.

Q. If such business was carried on in Wall street, would you be apt to know it?

A. Well, I should think that if a firm carried on a business of that kind they would be apt to keep it to themselves and not let any one know it.

Q. Are there or not such transactions recognized in Wall street?

A. I never heard of them being recognized.

Q. That is all.

By Mr. KEASBEY: I should like Mr. Flagg to conduct the cross-examination.

By Mr. ROOT: Very well, I have no objection.

CROSS-EXAMINATION BY MR. FLAGG:

Q. At what date did your connection with John H. Davis & Co. commence?

A. I have already answered that question.

Q. I do not recollect your answer; will you please state?

A. The 1st of February, 1878.

Q. Any knowledge that you have of Mr. Flagg's transactions with the firm have been since that time?

A. Yes, sir.

Q. Do you or do you not know whether Mr. Flagg had business transactions with John H. Davis & Co. before that time?

A. I don't know; I suppose he did, but I do not know of my own knowledge.

Q. You have heard transactions in Wall street called gambling transactions, have you not?

A. Well, I might hear a remark, but never any transaction specified.

Q. I did not ask you that. I asked you if you had not heard the general remark made, and if it is not a general remark with regard to certain transactions in Wall street, that they partake of the nature of gambling?

A. That would be according to what the transactions are.

Q. Have you not heard that remark made, and is it not a matter of common report?

A. I do not know it to be such.

Q. Have you not heard such reports?

A. If you will tell me in connection with what

transactions, I can give you an answer to the question intelligently; I cannot without.

Q. Do you read the financial articles of the "Evening Post," for instance?

A. I do not.

Q. Do you read largely in connection with remarks that are made about transactions in Wall street?

A. I read the "Daily Times" and the "Commercial Advertiser."

Q. You do not remember ever to have heard any conversation, or to have read in the daily prints, in regard to transactions in Wall street, that they were gambling transactions?

A. Well, an editorial of a paper may state that all stock operations are gambling, but no specific transaction.

Q. I am not referring now, sir, to specific transactions; I am asking now as to what the public speech and public prints, with regard to Wall street transactions, are.

Objected to as entirely incompetent and absurd.

Q. Have you heard the expression used on the street of "wash sales?".

Objected to.

A. Yes.

Q. Do you know what is meant by that expression, "wash sales?"

A. Why, of course I do.

Q. What is meant, please.

A. It is used when an order is sent in by a member to one broker to buy stock, and an order is sent in to another to sell stock.

Q. In other words, they are matched orders?

A. So it is supposed; yes, sir.

Q. Would those transactions represent real transactions or not?

A. In every case, so far as my knowledge goes, there would be a delivery and sale, a receipt and purchase of the stock, and actual checks would pass.

Q. Then, where the transactions in the Stock Exchange do not really represent real transactions, the manipulations, so far as what they do is concerned, have all the outward appearances of a real transaction?

A. Well; it is a real transaction.

Q. Is it a real transaction in the sense of being legitimate and real?

A. Certainly; because you must take it as such unless you know positively that the orders are matched. I may assume, or other brokers may assume, that there are matched orders in the market, but it is simply an opinion; because, if such orders are sent in, the parties who sent the orders are not going to give it away and state that they are matched orders where—(interrupted).

Q. But the transaction—

By Mr. Root (interrupting): Let the witness finish the answer.

By the Witness: Never mind; go on.

Q. But the transaction in reality might not be real and legitimate, but have all the outside appearances of it, and not be detected?

A. The transaction, I claim, is real; as I stated before, in every instance, so far as my experience goes, in the sale of stocks there is always a delivery and in the purchase of stocks always a delivery, always a receipt.

Q. When a speculator, however, gives an order to one broker to buy 500 shares of stock, and to another broker to sell 500 shares of stock, is he not buying and selling between himself alone?

A. I don't know that fact; I would not know that fact.

Q. Supposing my statement to be correct?

A. I would not know. For instance, I am a broker, and a man comes to me and orders a sale—I have no knowledge whatever that he has given an order to buy—and I go in and execute my order, I may strike the man to whom he gave the other order, and I may strike some other man.

Q. The transactions between two brokers, then, on the Stock Exchange, may represent the transaction of a man with himself What you mean to say is, that the broker does not necessarily know it?

A. That is it exactly.

RE-DIRECT EXAMINATION:

Q. Is there any rule of the Exchange forbidding "wash sales?"

A. There is, if you can trace it.

Q. Suppose a broker should go in the Exchange and make what are known as "wash sales" there, and it should be discovered, is there any penalty for it?

A. I don't know what it is, but there is a penalty connected with the Governing Committee.

Q. And is it or is it not forbidden?

A. It is, by the rules of the Governing Committee.

RE-CROSS EXAMINATION:

Q. The very fact that, as you have stated, it is almost impossible to prove such transactions, would allow of their execution almost with impunity, would it not?

A. No, not with impunity, because if it went to that extent it would be discovered.

Q. You mean that if there —

A. (Interrupting). I mean what I say, exactly.

Q. Precisely. You mean by that that if these transactions became so large in proportion, and made too great a scandal, more effective means would be taken to find them out?

A. I mean just what I said, exactly.

FURTHER RE-DIRECT:

Q. May I trouble you with a single further question—to describe to the Court in as few words as you can, what a "wash sale" is? Just describe it?

A. Well, as near as I could describe it, what we

should term a "wash sale" there—as I have already stated—an order might be sent in by a principal to buy a quantity of stock, and this principal might send to another broker to send an order in to sell the same quantity of stock; but if that is done it is usually done on a large scale.

Q. And that would be what you would call a "wash sale?"

A. Yes, sir; that is what we always determine to be "wash sales"—anything of that kind.

STEPHEN V. WHITE, sworn for the complainant, on rebuttal:

DIRECT EXAMINATION BY MR. ROOT:

Q. What is your occupation?

A. I am a stock broker.

Q. Are you a member of the New York Stock Exchange?

A. Yes, sir.

Q. How long have you been a member of the New York Stock Exchange?

A. Since the consolidation of the two boards in 1869, which is now thirteen years, about; and before that I had been for four years a member of the Open Board of Brokers, which was consolidated with the New York Stock Exchange at that time.

Q. Do you hold any official position in the Stock Exchange?

A. Well, I am a member of the Governing Committee now, and have been for some time a member of several sub-committees, or perhaps only one sub-committee at the present time.

Q. Has the Stock Exchange a president?

A. Yes, sir.

Q. Who is president?

A. Donald McKay.

Q. Has it a vice-president?

A. Yes, sir.

Q. Name him?

A. Fred. Lawrence, I think, sir.

Q. Have you been vice-president of the Exchange yourself?

A. No, sir; I have been chairman of the Arbitration Committee of the New York Stock Exchange for a good many years.

Q. How long have you been engaged in the commission business?

A. Seventeen years and over.

Q. Have you been considerably engaged in it?

A. Very actively.

Q. And have you or not had what would be called a large business?

A. Part of the time quite large, and part of the time not so large.

Q. Are you familiar with transactions in Wall street?

A. Yes, sir.

Q. Mr. Flagg, one of the defendants in this action, has been asked by his counsel this question:

"You have spoken in your testimony of the nature of the account with Mr. Baldwin, and of 'long' and 'short' sales, and their meaning and effect; will you explain more fully and clearly what you mean by that answer?' and he replied, "I mean this, that there are transactions in Wall street that are real transactions, where there is a dealing in stocks, and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase or to the transaction; and there are also transactions in Wall street, and they are the majority in my opinion, which are not for investment, and which are mere transactions in margins; my transactions with Mr. Baldwin were all of the latter kind. By the phrases "buy" and "sell," as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. The transaction of what is called a 'long' account, is an order to a broker (on a marginal transaction like this), to credit his account with stocks at a certain price, and, if the fluctuations of the price on the Stock Exchange

mark the figure indicated by the customer, the broker is obliged to credit the account according to the order. The broker is not obliged to actually buy the stock, and there is no question of the delivery of the stock to the customer, and no intention of delivery. The broker may, if he please, and he very often does in fact, credit a customer's account without insuring himself in the transaction, by buying the stock. If he does buy the stock, he borrows money on it to represent what he has given for it, and then, without ever delivering it to the customer, delivers the stock to another broker when the customer orders a sale. If he does not re-purchase the stock, and a sale is made on the order of a customer at a higher price than the order is given to purchase, the broker pays it out of his own pocket. And so far as 'short' transactions are concerned, the customer gives an order to the broker to sell stock when the prices on the Stock Exchange reach the figure he names. No party has the stock in possession, or any arrangement to have it, the broker in such a case credits the account with a sale at the price named in the order; he can then either make a sale himself on the Stock Exchange, or not, as he chooses; if he does, he takes the money which he gets on the transaction to purchase in the contract, when the customer orders a purchase on a "short" sale; this is done with another broker; if he did not, he would stand the loss in the account himself."

Mr. White—are there, or are there not transactions in Wall street such as Mr. Flagg describes in his definition of transactions in margins?

A. There are no such transactions in the N. Y. Stock Exchange, so far as I have ever heard in my life. When you say in Wall street, it might perhaps embrace men who deal in what is called "bucket shops" where I do not know the *modus operandi*. But by members of the N. Y. Stock Exchange there is absolutely no such mode of procedure as has been detailed, ever coming within my knowledge.

Q. When the customer goes to the broker, and gives him an order to buy stock, what is contemplated—a purchase, or a debit or credit of the account?

A. There is contemplated a purchase—the delivery of the stock upon the purchase, the charge of the account to the customer, with the amount of money paid for it, together with a commission, and bringing it down, as we call it, "long" of 100 shares of stock at the price.

Q. In order to place a customer "long" of 100 shares of stock, then, I understand it is necessary that the stock should actually be bought for the account and risk of the customer?

A. Yes, sir.

Q. Until that is done, is the customer "long" of the stock?

A. There is no other method of procedure coming within my knowledge by members of the N. Y. Stock Exchange, except to buy the stock. When he has bought it, and the stock has come in, and been paid for, then the customer is "long" of the stock; before that, he is "long" of an executory contract; but he is not long of the stock, in fact, until the money is paid, and the certificate or certicates received placed to his credit, and his account debited with the amount of money paid.

Q. Has your experience in Wall street been such that you could say to this Court positively whether there are or not the transactions Mr. Flagg describes, recognized there by members of the board?

A. I think I could state positively that no such transactions are recognized by the N. Y. Stock Exchange.

Q. Do you make such transactions yourself?

A. As you have described?

Q. Yes?

A. I never made one of the kind in my life.

Q. Did you ever do what Mr. Flagg calls here "insure the account"?

A. No, sir; never.

Q. Are such transactions allowed by the rules of the Stock Exchange ?

A. No, sir.

Q. Do you know what a " wash sale" is ?

A. Yes, sir.

Q. Have you ever heard of a " wash sale" being made ?

A. Yes, sir ; I have heard of them.

Q. How would you define a wash sale ?

A. It is where, by agreement, two brokers—one should buy and the other should sell, formally, a given number of shares of stock at a given price, it being understood between the parties that there was really nothing done.

Q. Are such transactions allowed by the rules of the Exchange ?

A. No, sir.

Q. Have you ever heard of such transactions being done as between a customer and his broker ?

A. Oh, no! I never heard of " wash sales" between a customer and his broker; that would be—

Q. (Interrupting). Such things would be impossible, would they not?

A. Well, I cannot see how it could be done.

Cross-examination by Mr. Flagg:

Q. You have spoken of the definition Mr. Flagg gave in his testimony of transactions not, in your opinion, recognized by the Stock Exchange, have you not?

A. Yes, sir.

Q. Do you mean by your answer any more than that such a transaction would not be recognized on the Stock Exchange?

A. Well, yes, sir; I mean more than that. If it were proven before the Governing Committee that a member of the Stock Exchange was in the habit of making transactions of that sort, he would certainly be disciplined.

Q. Your answer means, then, that such transac-

tions coming fully to the knowledge of the Stock Exchange, would not be recognized?

A. Yes, sir.

Q. You do not mean to say that such transactions would be impossible?

A. No, sir; I do not mean to say that.

Q. They would be possible as between a broker and a customer?

A. Yes, sir.

Q. You have spoken about "wash sales;" do you consider a "wash sale," where the transaction is as has been described, of the man with himself, a real transaction?

A. Where the man sells to himself, or buys of himself?

Q. Yes.

A. Why no.

Q. Such a transaction as that is possible on the N. Y. Stock Exchange, is it not; that is, a speculator may give an order to the broker to buy 500 shares of stock and an order to another broker to sell 500 shares of stock?

A. Yes, sir.

Q. Would not that be a transaction of a man with himself?

A. You make it somewhat complicated; by a little explanation I think I can—

Q. I would like an answer to my question, Mr. White?

BY MR. ROOT (to the master): I request that the witness be allowed to answer in any shape that he pleases, and not be interrupted by Mr. Flagg.

BY THE MASTER: Proceed and answer the question in your own way, Mr. White.

WITNESS: I was going to say, the purchase and sale of stock involves a contract and necessarily two contracting parties. The market is an open one—a man cannot go to another and say to one broker "buy 500 shares of stock of A," and to A "sell 500

shares of stock to this particular broker," and have that executed, because every man upon the floor is entitled to have his bid recognized. The man who first puts the bid upon the floor must buy the stock; if a man desires 500 shares of stock to be bought and sold at a given price, he may direct two brokers to go in and do it, and it will be a chance if they make the connection together, because it is a free market and very many brokers are bidding and offering at about the market price; so that if a man gives an order to two brokers to buy and sell at a given price, they would not necessarily trade with each other; it would be a chance if they did. But each would trade with some third person. In a very dull market it might happen that they would get together.

Q. Exactly; but, Mr. White, I ask you if such a transaction as I have described is not possible?

A. Yes, sir; it is possible that a person give an order to two brokers to buy and sell, and that they should meet.

Q. Supposing, as you have described, the speculator gives the orders to several brokers on both sides instead of to one broker, would not the result of the days' work of the speculator be that he bought and sold of himself?

A. It would hardly ever happen that it would; third parties——

Q. I ask you it it is possible—I do not ask you whether it might or might not happen?

A. Yes, sir; it is possible.

Q. Where an agreement between a customer and broker had been made for carrying out transactions such as have been described in the testimony of Mr. Flagg which was read to you, it would be possible to be carried out on the Stock Exchange, would it not?

A. Well, it would be possible for it to be carried out in the office, but it would not be possible for it to be carried out in the Stock Exchange.

Q. Exactly; it would be possible for it to be carried out between customer and broker ?

A. Yes, sir.

RE-DIRECT EXAMINATION :

Q. Will you please describe to this Court what is meant by a "short" sale ; state what is done when a "short" sale is made ?

A. By a "short" sale is meant an actual sale of stock, made on the theory that the stock is about to decline, to be bought in if it should decline, at a profit (which is very likely to be a disappointment to a man sometimes).

Q. When a "short" sale is made of stock, state what is done by the broker ?

A. The stock is sold and the amount of stock is delivered to the purchaser by the broker.

Q. For whose account ?

A. For the account of the customer who orders it sold.

Q. When the stock is bought in what is done ?

A. Then it is paid for, and the amount that is paid for it is charged to the customer as the sale price had theretofore been credited to him.

Q. Are "short" sales real transactions ?

A. Just as real as a purchase for "long" account—that is to say, all business on the Stock Exchange, unless the party fails, is consummated by the actual delivery of the stock named, and it is paid for by a certificate or certificates representing the numbers of shares, and each certificate is numbered, making it a specific delivery of a specific property which can be traced from the time it is issued until it is re-transferred by passing it from the brokers' offices—everyone of them taking a memorandum of the number.

Q. After a purchase of 100 shares of stock is made by a broker for a customer, is the stock held by the broker subject to the customer's orders ?

A. It is held by the broker, subject to sale by the

customer's orders ; it is not subject to his orders for delivery unless paid for.

Q. But I mean in case the customer was "long" of 100 shares of stock in your office and came down there to-morrow morning and said : "How much is my debit balance? I want that stock." You would be obliged to deliver it up to him?

A. I would be obliged to deliver it to him during the course of the business day or fail.

Q. Would it make any difference in that customer's right whether he had a small margin or a large or no margin?

A. None whatever ; his right to the stock is consummated by his paying the debit balance there is against him, whether he had any margin before or not.

Q. Are not transactions often made for the account of customers with no margin whatever?

A. Yes, sir.

Q. Those are made on that?

A. Either made on credit on the account of the party or the party calls and pays for them afterwards.

RECROSS-EXAMINATION :

Q. The transactions you have just described are transactions where the understanding between the customer and the broker is that there shall be deliveries of stock?

A. Yes, sir.

Q. Not transactions in mere margins or differences?

A. No, sir.

Q. Where a broker is acting under an agreement with a customer that the customer is to pay for and take delivery of the stock, what sort of a notice must the broker give to the customer in case he wants him to close out his account, or he wants to close the customer's stocks?

A. I know what the ordinary rule is in the Stock Exchange.

Q. Will you tell what that notice requires?

A. Notifying a man his debit balance against such an account of stocks is so many dollars and cents and requiring him to pay the debit balance and take up the stock.

Q. Exactly, and if he does not what will be the result?

A. That depends on future action; there may be a sale out and out and take the chance of a lawsuit or--

Q. (interrupting) Does the notice usually contain a statement of what will be done in case the customer does not do that?

A. I do not think there is any rule about that.

Q. Is it not necessary in case a broker sells such shares of stock that they should be sold at public auction instead of at the New York Stock Exchange?

A. Well, that is a question of law, I think.

Q. Is not that the custom on the street in such cases?

A. I should not say it was; I have been in the habit of doing it at public auction myself, but there are persons who sell on the Stock Exchange.

Q. Now, if a broker served a notice purporting to require the closing of an account on a customer, and, instead of asking him to pay the debit balance shown on his books, asking him to pay a much larger sum—a sum representing the price at which that account had been charged the stocks which he proposed to sell, what would you then conclude?

A. I should conclude he had kept a false account and was not to be trusted.

Q. Where a broker serves a customer, in the course of his account, with a notice like this (reading to witness from Exhibit D 3), "please take notice that your account with this office is too large for your margin. You will please sell 300 shares before 3 P. M. to-day, or I shall sell at the opening of the Board to-morrow at 10 A. M.?"

A. I should construe that as a peremptory demand

for additional margin on the account, and that he proposed to lessen his risks by selling a portion of the stocks, so that the percentage would be larger on the remaining stocks on hand in the account.

Q. Would you not conclude, sir, that a broker who knew the requirements of a notice such as your answer says it is customary to serve on a customer who owned his stocks, who served such a notice as that, held the stocks in a different relation from the ordinary?

A. No; I should think that he held them on the ordinary arrangement, which is an advance for the account of the customer over the money paid, with commissions and interest, and that he, owing to fluctuations in the market, or his care for avoiding loss, had required that there should be more money as margin in proportion for the account, and that he required a portion of the stock to be sold in order that the percentage of margin remaining would protect a larger fluctuation in the remaining stock.

Q. If he knew that he could not sell stocks on the New York Stock Exchange, and could not sell without notice, how would you explain his serving such a notice as this, which says that he will sell "tomorrow morning" on the N. Y. Stock Exchange?

Objected to, on the ground that it is improper, even on cross-examination, to ask a witness to explain a paper with which he has no connection and which is for the Court to construe.

A. If he knew that he could not sell on the N. Y. Stock Exchange, he would seem to be undertaking an impossibility when he said he would, and I could not explain an attempt at an impossibility.

Q. In that notice is not Mr. Baldwin saying he will do that very thing?

A. Yes, sir.

GEORGE W. CECIL, sworn for the complainant, in rebuttal.

DIRECT EXAMINATION BY MR. ROOT:

Q. What is your business?

A. Stock broker.

Q. Are you in business?

A. I am.

Q. Where?

A. 74 Broadway and 9 New street.

Q. Are you a member of any firm?

A. I am.

Q. What is the firm?

A. Cecil, Zimmerman & Co.

Q. What business are they engaged in?

A. Stock commission business and banking business.

Q. Do you know Abram H. Baldwin, the complainant in this cause?

A. I do.

Q. How long have you known him?

A. I have known him about 3 years.

Q. Do you know William L. Flagg, one of the defendants in this case?

A. I do.

Q. How long have you known him?

A. About 5 years.

Q. Have you ever been engaged in business for Mr. Baldwin?

A. I have.

Q. In what capacity?

A. As a "two-dollar broker."

Q. What do you mean by a "two dollar broker?"

A. If I buy 100 shares of stock I get $2 for it from Mr. Baldwin; if I sell it I get $2 for it.

Q. Have you executed orders for Mr. Baldwin and for the customers in his office on the N. Y. Stock Exchange?

A. I have.

Q. During what period were you so occupied?

A. I think I went with Mr. A. H. Baldwin in the latter part of 1879—if I am not mistaken, in October.

Q. Do you recollect how long you remained with him?

A. I remained with him for two years, pretty near.

Q. Have you ever seen Mr. Flagg, one of the defendants in that office?

A. I have.

Q. On what occasions?

A. A great many.

Q. Have you ever executed orders on the Exchange for Mr. Flagg's account?

A. I have.

Q. Have you ever received orders from him personally to go there and execute orders.

A. I have.

Q. On many occasions?

A. Yes, sir.

Q. Has it ever happened that you have received an order from Mr. Flagg to go over to the Stock Exchange and buy or sell a certain number of shares of stock, and you have returned and reported to him that you could not buy or sell, owing to the condition of the market when you reached there?

A. Yes, sir.

Q. Has that happened more than once?

A. Oh, my! yes.

Q. How many times, as near as you can judge?

A. That I cannot tell.

Q. Should you say 10 or 20, or 50 or 100?

A. Well, I should say fully 50.

Q. Look at the accounts in evidence marked Exhibits C 7, 8, 9, 10, 11 & 12.

and state, if you recollect, making any of the transactions in that account?

A. I recollect "Union Pacific" sometimes. I need not look at this, and "Northwest" and the thing I recollect most of all was in "Reading," because he gave me an order to buy him 100 Reading, and I went and bought him 100 Reading, and it went up, and next morning he wanted to sell

it, and when Mr. Ripley told him it was only 50 shares, he got mad at me, and said he meant 100 full shares, while Reading is half stock; and when a man gives me an order to buy Reading or Lackawana, or Morris and Essex, or those stocks that are half shares, I buy 100 half shares of that stock—and I recollect this one.

Q. Look carefully over these accounts and see if you recollect making any of the other transactions there, or state from your memory, refreshed from looking at that account?

A. Yes, I gave him a good many of these things; Mr. Baldwin never did the business, never—I did it all.

Q. Do you recollect making the transactions that are recorded there—many of them?

A. Well, I cannot state that I recollect; but I know that I made most of them.

Q. Cannot you tell from looking at the paper?

A. Yes; I think I made most of those transactions—yes, I do.

Q. You have been present in Court during the examination of Mr. S. V. White, have you not?

A. I have.

Q. You heard the answer of Mr. Flagg that I read to Mr. White, did you not, where Mr. Flagg describes transactions in margins?

A. Yes, sir.

Q. Did you ever know, during the time you were with Mr. Baldwin, of his making such transactions as Mr. Flagg has described, and which were not *bona fide* transactions, which were executed?

A. Did I ever hear it—no.

CROSS-EXAMINATION:

BY MR. FLAGG: Q. Did you have any authority while Mr. Flagg had this account with Mr. Baldwin to accept any orders from him as a customer?

A. Yes, sir.

Q. Who gave you those orders?

A. Mr. Baldwin, when you first came there.

Q. Do you mean to swear here that Mr. Flagg knew or supposed that you had any authority to take an order from him in that office?

A. I do not propose to swear to what you knew; I know what I knew; I was not there to mind you —my orders were that I should take orders when you first came there; but after you had been there six months I was told not to take any—of that I told you myself.

Q. You told Mr. Flagg at the end of about six months that you had no such authority?

A. That is just exactly it—somewhere around there—that is about the time, I think.

Q. And you think that Mr. Flagg was conscious at any time while you and he were in Mr. Baldwin's office, that you had the right to accept an order from him?

A. Why, certainly I do, or else you would not have given them to me, I don't suppose.

Q. Will you swear that any conversation which Mr. Flagg had with you with regard to an order, was not in the sense of an order previously given to somebody else in the office?

A. Yes, most assuredly I will--I will swear to that.

Q. That you accepted and took from him original orders and executed them without a word from anybody?

A. Yes—about the first six months--after that I didn't, as I told you before, and my testimony will show—I was told not to; I did not even get them from Mr. Ripley; I got them from you standing by the ticker; you used to rush and jump at me.

Q. Do you know anything about any agreement Mr. Flagg had or might have had with Mr. Baldwin in this matter?

A. You told me something about it.

RE DIRECT EXAMINATION:

Q. Referring to the period after you had been advised not to receive orders directly from Mr. Flagg,

did it or did it not often happen that you received orders either from Mr. Baldwin or Mr. Ripley in Mr. Flagg's presence?

A. Mr. Ripley---and Mr. Baldwin sometimes, too.

Q. In Mr. Flagg's presence, to go to the Exchange and execute orders?

A. Yes, sir.

Q. After so receiving orders from Mr. Baldwin or Mr. Ripley, in the presence of Mr. Flagg, have you on any occasion gone to the Exchange and endeavored to execute the order, and returned and informed Mr. Flagg of your inability to do so?

A. Yes, I have—not of my inability, but the inability of the market to allow me to.

Q. How frequently has that happened?

A. Oh! hundreds of times.

Q. Did you or did you not, in every case where you received an order, either from Mr. Flagg or in his presence and claim to go to the Exchange and execute it, and come back and report that you had executed it, actually buy or sell there?

A. Oh, yes!

Q. Did you, during the period that you were doing business for Mr. Baldwin as you have described, also take orders directly from other customers in his office?

A. Yes, sir.

Q. From many or most of them?

A. All of them.

CHARLES T. HYDE, sworn for complainant, on rebuttal.

DIRECT EXAMINATION BY MR. ROOT:

Q. What is your occupation?

A. Book keeper.

Q. For whom?

A. A. H. Baldwin.

Q. How long have you been so employed?

A. Four years.

Q. Did you have anything to do with the keeping of the books appertaining to the account of Mr. and

Mrs. Flagg, Flagg & Baldwin, and Flagg & Ripley?

A. Yes, sir.

Q. You kept those books?

A. Yes, sir.

Q. Look at Exhibit C 11, under date of February 28th, 1880. "Mr. W. L. Flagg, Dr. 200 Read. 67⅛, $6,800" and state whether or not that stock was purchased by Mr. Baldwin?

A. (Referring to book) "M. C. Bouvier, 200 Reading at 67⅛," received on the 28th and gave check to M. C. Bouvier on January 28th, which will show $6,787.50.

Q. (Showing witness check). Is that the check?

A. That is the check.

Q. Is it certified?

A. It is certified and returned endorsed by M. C. Bouvier.

Q. To whose order is it made?

A. M. C. Bouvier.

Q. Was that check delivered to M. C. Bouvier?

A. It was.

Q. I want you to go through the history of that transaction. What was the first occurrence, or notice to you of that purchase?

A. Mr. Cecil had the order and bought the stock at 67⅛, at the Stock Exchange, and reported to Mr. Baldwin for Mr. Flagg's account.

Q. You received the report from Mr. Cecil first; what then was done?

A. It was entered in the purchase and sales-book for the account of W. L. Flagg, of which a notice was given.

Q. To whom?

A. Mr. W. L. Flagg.

Q. What next occurred?

A. It was passed from the purchase and sales-book to the blotter, I gave a check for it on the next day; that would be the 28th.

Q. On the 28th, what happened?

A. The stock came in.

Q. Did the actual certificate of stock come in?

A. Yes, sir; and I have the number for the same in the blotter.

Q. Of that particular purchase?

A. Of that particular stock purchased.

Q. Give me the number?

A The number is in the blotter.

Q. That book is not here?

A. No, sir.

Q. What is the blotter?

A. It is a check from here (referring to book produced) and from there it is checked into the ledger, from which an account is rendered the first of each month.

Q. In what shape was that stock when you received it? How was it endorsed?

A. Endorsed by the member of the Exchange—I don't know what name, of course;but I know it was a good delivery.

Complainant's counsel offered check produced in evidence and the same was marked Exhibit C,[23]

Q. Look on the credit side of the same exhibit under date of January 31st, to the entry "200 Reading 69½, $6,937.50"; what was that?

A. Yes, sir, on January 30th, sold "H. L. Holden & Co., 200 Reading, 69½" which is the next day received; it goes out on January 30th, less commission, $6,937.50.

Q. State what was done with the stock on the 31st if anything?

A. We delivered 200 shares of Reading at 69½, less commission, for W. L. Flagg's account.

Q. When you delivered that, did you receive a check for it?

A. Yes, sir.

Q. And that check was credited in the account?

A. Well, it was credited in our books, but he was credited, less the commission.

Q. And the stock, you say, was actually delivered?

A. Yes, sir.

Defendant's counsel here states that he was not in the room when this testimony commenced, and wishes here to interpose this objection: This testimony is immaterial and irrelevant to no issue involved in this case.

Q. Look at the next transaction, and state what was on the debit side of William L. Flagg's account?

A. On January 28th, he bought "Northwest, common," at 91⅛, "seller three," received on the 29th, and paid Mark & Co. check $9,112.50.

Q. (showing witness check). Is the paper now shown you the check which paid for that stock?

A. It is.

Q. Was it certified?

A. Yes, sir.

Q. Was it delivered to Mark & Co.?

A. Yes, sir.

Q. And you received the stock?

A. We received the stock.

Q. When it was sold was the stock delivered, as you have described in regard to the Reading?

A. Yes, sir.

Complainant's counsel offered the check last produced in evidence, and the same was marked Exhibit C[24].

Q. And the transaction was recorded in the account after it was sold?

A. Yes, sir.

Q. (showing witness number of checks). Look at this bundle of checks, and state whether or not these are the checks that paid for the various stocks included in this account?

A. Yes, sir; they are. I have looked over them.

Q. You have gone over the account?

A. Gone over them.

Q. You have produced these checks?

A. I have.

Q. And here is found a check for each purchase of stock referred to in the account?

A. On this account for stock.

Q. All of these accounts?

A. All of these accounts.

Complainant's counsel offered said checks in evidence, and the same were marked Exhibit C[25] to Exhibit C[233], inclusive.

Defendant's counsel objected to the same, as immaterial and, in no event, the proper way to prove the account.

Q. And would your testimony regarding the Reading apply to the purchase and sale in each of the other transactions recorded in the account?

A. It would.

Q. You say you kept these books?

A. Yes, sir.

Q. And the exhibits here produced have been compared by you with the ledger?

A. They have.

Q. Are they correct transcripts of the ledger?

A. They are.

Q. Were those books correctly kept?

A. They were.

Q. Was or was not a check given in each case where a transaction was recorded in the book, and was or was not in each case the stock received by you?

A. I received the stock.

Q. Are you able to give the numbers of the certificates of stock in each case?

A. Yes, sir; by referring to the blotter, which is not here.

COMPLAINANT'S COUNSEL: We offer to produce the blotter, if counsel of defendants desire to cross-examine about it, or to see it.

DEFENDANT'S COUNSEL: I do not wish it for the purpose of any cross-examination.

(No cross-examination of this witness desired by defendant.)

Adjourned until Monday, February 27th, to the office of W. H. Howell, Esq., No. 3 Broad Street, New York, at 3 o'clock P. M.

IN CHANCERY OF NEW JERSEY.

BALDWIN vs. FLAGG.	On Foreclosure.

Continuation of examination, pursuant to adjournment of Friday, February 24th.

Examination taken at the office of William H. Howell, Esq., No. 3 Broad street, New York, N. Y., before WILLIAM T. DAY, ESQ., M. C. C. of New Jersey, on Thursday, March 2d, A. D. 1882.

APPEARANCES.

MR. ROOT, for Complainant.
MR. FLAGG, for Defendant.

Complainant's counsel called upon Mr. Flagg to produce the notice of proposed sale of the Ches. & Oh. 1st pref., served upon Mrs. Flagg on the 14th of March, or thereabouts.

Defendant's counsel stated that he proposed to produce it at the proper time and place.

Complainant's counsel requires to know if he refuses to produce it now.

DEFENDANT'S COUNSEL: He does.

Complainant's Counsel offered in evidence the account of Jennie M. Flagg with A. H.

New Jersey State Library

Baldwin, with a certificate of correctness made at the bottom thereof by Mr. Flagg.

Objected to as not properly proved.

Marked Exhibit C^{234}.

Also offered account of Flagg & Baldwin with A. H. Baldwin, with a like certificate of correctness.

Same objection.

Marked Exhibit C^{235}.

Also offered account of Flagg & Ripley with A. H. Baldwin, with like certificate of correctness.

Same objection.

Marked Exhibit C^{236}.

JOHN H. DAVIS, sworn for the complainant, on rebuttal.

DIRECT EXAMINATION BY MR. ROOT:

Q. What is your occupation?

A. Banker and broker.

Q. Are you a member of the New York Stock Exchange?

A. Yes, sir.

Q. How long have you been a member?

A. About eight (8) years.

Q. Have you been engaged during that period, or a portion of the time, in the commission business?

A. Yes, sir.

Q. Do you know Mr. William L. Flagg, one of the defendants in this case?

A. Yes, sir.

Q. Mr. Davis, Mr. Flagg has been examined in this case as a witness on his own behalf and that of his wife, and this question was put to him by his counsel: "You have spoken in your testimony of the nature of the account with Mr. Baldwin, and of 'long' and 'short' sales, and their meaning and effect; will you explain more fully and clearly what you mean by that?" to which question Mr. Flagg replied as follows: "I mean this—that there are

transactions in Wall street that are real transactions, where there is a dealing in stocks and the parties intend that the stocks bought and sold should be delivered, and where the money put up is applicable to the purchase or to the transaction, and there are also transactions in Wall steeet—and they are the majority in my opinion—which are not for investment, and which are mere transactions in margins. My transactions with Mr. Baldwin were all of the latter kind. By the phrases 'buy' and 'sell,' as used in such transactions, the actual purchase and sale of the stock is not contemplated by the customer. A transaction for what is called a 'long' account, is an order to the broker (on a marginal transaction like this) to credit his account with stock at a certain price, and if the fluctuations of the price on the Stock Exchange mark the figure indicated by the customer the broker is obliged to credit the account according to the order; the broker is not obliged to actually buy the stock, and there is no question of the actual delivery of the stock to the customer, and no intention of delivery. The broker may if he pleases, and he very often does, in fact, credit a customer's account without insuring himself in the transaction by buying the stock; if he does buy the stock he borrows money on it to represent what he has given for it, and then, without ever delivering it to the customer, delivers the stock to another broker when the customer orders a sale. If he does not actually purchase the stock, and a sale is made on the order of the customer at a higher price than the order was given to purchase, the broker pays it out of his own pocket; and so far as the 'short' transactions are concerned, the customer gives an order to the broker to sell stocks when the prices on the Stock Exchange reach the figure he names; neither party has the stock in possession, or any arrangement to have it. The broker in such a case credits the account with a sale at the price named in the order. He can then either make a sale himself on the Stock Exchange

or not, as he chooses; if he does, he takes the money which he gets on the transaction to purchase in a contract when the customer orders a purchase on a 'short' sale; this is done with another broker; if he did not he would stand the loss in the account himself." Mr. Flagg was further questioned as follows: "Have you carried on any other account with any other broker which you would call a transaction in margins, as you have defined your transactions with Mr. Baldwin?" To which he replied: "I have." The question was asked him, "With whom?" and he replied: "With John H. Davis & Co." Is it or is it not a fact that Mr. Flagg has ever had transactions with you such as he describes in his testimony when he defines transactions in margins?

A. Will you allow me to make an explanation there?

Q. Yes, sir?

A. In reading that, I would certainly understand it to be his version of certain transactions which are not clear, and not what are customary on the street.

Q. Has he made transactions with you or your firm which he properly describes when he defines transactions in margins?

A. No, sir.

Q. That is all, sir?

A. That is, he has not defined it quite.

Q. Has he made any transactions with you where by the phrases "buy" and "sell" an actual purchase and sale of the stock was not contemplated?

A. No, sir.

Objected to on the ground that the language of the witness, Mr. Flagg, was not correctly used to the witness, the expression of Mr. Flagg in his testimony being "contemplated by the customer."

COMPLAINANT'S COUNSEL: The objection comes altogether too late, the question hav-

ing been answered before any objection was made to it.

Q. Have you ever made any transactions in stock with Mr. Flagg which did not represent real taansactions on the Stock Exchange ?

A. Never, sir.

Q. When you have claimed to have bought stock for his account, have you in every instance actually purchased it ?

Objected to, as there is nothing in Mr. Flagg's testimony which implies that a broker in such a case may not make such a transaction.

A. Yes, sir.

Q. When you have claimed to have made sales for his account, have you in every instance actually made them ?

Same objection.

A. Yes, sir ; in all them.

CROSS-EXAMINATION BY MR. FLAGG :

Q. Where were you in the summer of 1880 ?

A. I was in New York part of the summer, and in Europe for the balance.

Q. And part of the fall ?

A. Mostly in New York.

Q. How many months during that year were you in Europe ?

A I could not tell you now.

Q. Would it be four months, do you think ?

A. I have not any idea at present.

Q. You cannot say that it would be three months?

A. I cannot think of it at present ; I have not committed it to my memory.

Q. It was several months?

A. I do not remember, at present.

Q. During the time of your absence who had charge of your business as your partner ?

A. Mr. Talbert and Robert P. Anderson.

Q. Did Mr. Talbert specially have charge of the account, or Mr. Anderson?

A. Mr. Anderson had more to do with it than Mr. Talbert.

Q. Did Mr. Flagg, while you were absent in Europe, have an account with your house, opened in your absence and conducted in your absence?

A. I am not prepared to say at present; I think he had, though.

Q. Did Mr. Flagg, in connection with that account opened with Mr. Anderson and concluded with Mr. Anderson, ever take up any stocks, or sell any stocks, or have delivery or transfer of any stocks in your office?

A. The accounts are not before me, Mr. Flagg; at present, I do not remember. I have no accounts before me, my memory is not committed to anything of the kind.

Q. You do not remember?

A. No, sir.

Q. Do you know the conversation and arrangement that Mr. Anderson made with Mr. Flagg when he opened that account, of your own knowledge?

A. Opened what account?

Q. The account with Mr. Anderson, in your house?

A. I do not know of your ever having any account with Mr. Anderson in my house.

Q. I mean, then, an account in your house opened on an arrangement with Mr. Anderson?

A. My books will show every arrangement that was ever made with you in my house.

Q. Having stated that you think Mr. Flagg did open such an account with your house through Mr. Anderson, in your absence, you are not able to state, except from inspection of your books, whether Mr. Flagg ever had any delivery or transfer of the stocks?

Objected to, on the ground that the witness did not state that Mr. Flagg had ever opened such an account with Mr. Anderson.

A. I never stated that I knew that Mr. Flagg opened an account—a special account—with Mr. Anderson in my house. Mr. Flagg never had but one account, which started years ago and continued until it was closed up, with John H. Davis & Co.

Q. Will you state that Mr. Flagg did not have an account known as the "No. 2 account" in your house?

A. You had an account with my house, but not with Mr. Anderson, which I think was called the "No. 2 account."

Q. Now, Mr. Davis, I am not asking you about accounts with Mr. Anderson; I am asking about accounts with your house opened at the time Mr. Anderson was here and in charge of your business?

A. Well, my testimony in relation —— (To Mr. Root.) When I came here I understood my testimony was to be in relation to Mr. Baldwin's account —it was in regard to a certain point that I was requested to come here. I am not here to be interrogated about anything by Mr. Flagg, am I?

COMPLAINANT'S COUNSEL: Mr. Flagg is entitled on cross-examination to a great deal of latitude, and the Court is not here present, excepting in the person of the Master.

WITNESS: All right.

Q. (Last question read to witness, as follows: "I am not asking you about accounts with Mr. Anderson, I am asking about accounts with your house opened at the time Mr. Anderson was here in charge of the business?")

COMPLAINANT'S COUNSEL: What are you asking him?

Q. I ask if I did not open such an account with Mr. Anderson?

A. I really could not state when that "No. 2 account" was opened. My recollection at the present time will not serve me. I was not expecting to answer such questions.

Q. Then your answer that there was but one ac-

count is not strictly correct—there was a "No. 2 account?"

A. My answer that there was only one account is correct, so far as your account with me and my firm was concerned. I might specify half a dozen peculiarities about the account, No. 1, No. 2, &c., according to the character of the stock you were dealing in, or something.

Q. *My* question refers to the peculiarities of three accounts which Mr. Flagg now remembers to have opened in your house. One was the first account he ever opened; the other was called the No. 2 account, and the third account was an account which he opened in your house during your absence, while Mr. Anderson was in charge. I now ask you if you will swear that those three accounts—differing as they may—were not opened with your house?

A. I am not prepared without my books to say whether there were that many accounts or not.

Q. There might have been?

A. (Question not answered.)

Q. There may have been?

A. I am not prepared, I say, to say how many accounts—how many numbers there were attached to them. The account was with William L. Flagg.

Q. Whatever accounts there were you mean they were all with William L. Flagg?

A. I considered them all under one account nevertheless, and all under the same condition.

Q. What do you know of the condition, if you were absent in Europe, under which the account, which we will for this purpose call the "Anderson account," was opened—what do you know of your own knowledge?

Objected to, as no account called the "Anderson account" has been testified about.

A. Well, I know that they were conditions that were consistent with my manner of doing business, the same as any other person would open an account with me; what conversation passed, *verbatim*—be-

tween Mr. Flagg and Mr. Anderson of course I could not know, excepting what Mr. Anderson told me, if I was in Europe, could I?

Q. That is an answer to my question and a satisfactory answer.

A. My books would show all the account though.

Q. Do you have reason to know what Mr. Flagg's financial condition was at the time the account with your house, through Mr. Anderson, was opened?

A. I do not remember at present, sir.

Q. If you had a customer who had confessedly exhausted all his money, and you had accepted, in a speculative account in your office for what you claimed then to have advanced to pay losses, and to provide for future margins, a mortgage on his wife's property, would you in that case say, in case you went on speculating with him in the account, that he intended to pay for and take delivery of hundreds of thousands of dollars' worth of stock?

Objected to, as being in the first place incomprehensible, and in the second place, impertinent; and on the ground that it is immaterial what the intention of witness might be in a hypothetical case.

A. It is too complicated for me to answer.

Q. That is all the answer you can give to the question?

A. That is my answer.

Q. If I can simplify the question any, I will. If you had an account with a customer, and his financial condition was such that, to secure you for advances to pay losses, his wife had given a mortgage on her home, would you consider that that customer intended to take up and pay for hundreds of thousands of dollars' worth of stock?

A. Knowing the law of New Jersey to prevent a man's giving mortgage on his wife's house, to pay his debts, I should not be willing to accept the house mortgage as margin, as long as the account was in the husband's name.

Q. Does that answer my question, Mr. Davis?

A. (To Mr. Root). Well, does it?

Q. I asked you, I did not ask you to ask Mr. Root if it did, I ask you myself?

A. Well, there are some questions you cannot answer. It is not distinct.

Q. I will try and make it more distinct, Mr. Davis, then. Would you expect a customer, under those conditions to pay for and take delivery of hundreds of thousands of dollars' worth of stock?

A. I would not. Because from the character of the account it would not be intended by the customer to do so.

RE DIRECT EXAMINATION:

Q. Did it make any difference, in carrying on an account with a customer, whether the customer had a small or a large margin, in so far as the nature of the transactions were concerned?

Objected to, as there is no issue involved here which makes such a question pertinent.

A. No, sir.

Q. If he had a small margin he had a larger debit balance?

A. If he is "long" of the market, yes, sir.

Q. And stocks are always bought for the account of the customer?

A. Always.

Q. And have you, or your firm ever since its existence, carried on any business for anybody where you insured the account yourselves?

A. We never have, sir.

Q. And have your firm ever claimed to have bought for its customers any stocks which it did not actually buy?

A. No, sir.

Q. Where is Mr. Anderson?

A. He is dead.

WILLIAM L. FLAGG, recalled for complainant, on rebuttal.

BY MR. ROOT: Q. Look at the accounts which I have here offered in evidence, and state whether or not they are all certified as correct by yourself?

Mr. Flagg states that he mistook what counsel offered; he thought he referred to the larger exhibits.

Q. Will you answer the question whether those accounts are all certified to by you as correct?

A. I have been examined on those exhibits before.

Q. Look at them and state whether or not you decline to answer the question?

A. I do not decline to answer the question; I think I have stated before that the signature to those exhibits is mine.

Q. Well, swear again, are they or are they not certified to by you as correct, all three of them?

A. The signatures there are mine.

Q. Will you answer the question?

A. I do not propose to characterize the signature there, I propose to swear to what I—

Q. (Interrupting). Look at the Mrs. Jennie M. Flagg account—is not the language at the foot of it ("The foregoing account is correct—Jennie M. Flagg, by W. L. Flagg, Att'y.—W. L. Flagg") all in your handwriting?

A. It is.

Q. Look at the Flagg & Baldwin account and state whether or not the certificate at the foot of it, which is in this language—"The above statement of account is correct. W. L. Flagg"—is in your handwriting?

A. It is.

Q. And that is your signature?

A. It is.

Q. Look at the Flagg & Ripley account and state whether the certificate at the foot of it, in the following language—"The above statement of account

is correct. W. L. Flagg"—is in your handwriting? A. It is.

Not cross-examined.

HENRY A. ROOT: Sworn for the complainant on rebuttal.

DIRECT EXAMINATION:

WITNESS. I am the counsel for the, complainant in this case. I am a practicing lawyer, and was admitted to the bar as a counsellor of the Supreme Court of the State of New York, over ten years ago. I have been, during the last ten years, in active practice as a counsellor, and I consider myself competent as an expert in the law. The law of the State of New York in regard to stock transactions is, that what is called a "short" sale of stock, and such a sale as has been described by Mr. Baldwin and the witnesses in this case, is a valid, binding contract under the law of this State. It was so held in the case of *Knowlton vs. Fitch*, reported in 52 N. Y., page 288, in a decision by the Court of Appeals of this State, Mr. Justice Rapallo writing the opinion of the Court.

I have heard the testimony given by Mr. William L. Flagg in this case, and recollect his testimony as to what took place in Mr. Baldwin's office about the 25th of February. I prepared, myself, and caused to be served upon Mr. Flagg, the notice which bears date, I believe, the 24th of February. I should have brought a copy of that notice with me except for the fact that Mr. Flagg himself promised to have the original here to-day.

BY MR FLAGG: I did not understand that Mr. Root asked me for the notice of February 24th, but for another notice, and—

WITNESS (Interrupting): I beg pardon, myself. I refer to the notice of March 14th.

That notice was prepared hurriedly, and, by my mistake, the debit balance was not demanded; by reason of that mistake a sale was not made under that notice. Also, I may add, because of the fact that on the next day Mr. Flagg came to Mr. Bal-

win's office where I was, and had a conversation with me, in which he told me that I might tell Mr. Baldwin that he might sell all the remaining stocks in his account, which consisted of 100 shares of Ches. & Oh. 1st pref. and 100 shares of Central Pacific; he told me that if Mr. Baldwin wished to sell them he might do so. He did not say that he would permit him to sell them on the public Exchange, but I believe that he did say he need not go to that trouble—"Let him sell them on the Stock Exchange." At all events, he unreservedly said that he might sell them. The notice of proposed sale of the 100 shares of Ches. & Ohio, of March 15, demanded correctly the debit balance; it was arrived at,—and will appear from the accounts in evidence, —by deducting the credit balance as shown by Mrs. J. M. Flagg's account, from the amount realized on the sale of the Ches. & Oh. 1st pref. That sum was demanded in that notice as the debit balance. The 100 shares of Cent. Pac. were sold after my interview with Mr. Flagg, and on the Stock Exchange, and pursuant to the consent of Mr. Flagg that it should be so done, and I believe it was sold on the 25th of February. It was sold at 83½. The Ches. & Oh. 1st pref. was sold at public auction on the 15th of March, and realized at that sale within ⅛, or ¼, or possibly ½ per cent., of the price of the stock at that time on the Exchange.

The $4,500 note of Mrs. Flagg was delivered by me to Mr. Morgan, Mr. Flagg's attorney, in the Court of Common Pleas, when the motion was made by me, on behalf of Mr. Baldwin, to vacate the temporary injunction which was issued in that case, enjoining Mr. Baldwin from foreclosing the mortgage in suit.

I will present here, as soon as I can send to my office and get it, a true copy of the notice which was served on Mrs. Flagg, and which, it has been admitted in this case, was received by her.

Not cross-examined.

COMPLAINANT RESTS.

WILLIAM L. FLAGG, recalled by the defendant, on rebuttal.

DIRECT EXAMINATION:

BY MR. DOS PASSOS:

Q. Have you computed from the complainant's exhibits what was the debit balance shown on Mr. Baldwin's books February 24th, when he served defendant's Exhibit marked D²?

Complainants' counsel objected to witness having in his hands any figures or computations not in evidence and testifying from them, as it now appears he is doing.

A. I hold in my hands the figures taken from Mr. Baldwin's Exhibits put in in this case, from which I computed this day the debit balance as shown on those exhibits to exist on Mr. Baldwin's books on the 24th day of February, when he served that Exhibit. That debit balance so shown was eleven thousand one hundred and ninety-four dollars and eight cents ($11,194.08).

Q. Mr. Cecil stated that he took orders from you in Mr. Baldwin's office. As this seems to contradict what you said in regard to giving such orders, please state the facts?

A. I knew Mr. Cecil in Mr. Baldwin's office to be what he describes himself in his testimony as being, a "two-dollar broker." I never knew that he had authority to take original orders from any customer. The room in which the orders were given was not a large one, and Mr. Ripley sat at a desk occupying a large space in it; Mr. Cecil usually stood by that desk. I never supposed, in talking about my orders to Mr. Cecil, that he supposed he was taking an original order from me. Mr. Ripley was the order clerk. Mr. Cecil has evidently misunderstood my conversation, as I have not the least object and could not have any object in misstating in regard to that fact.

Q. (Handing witness a paper). Look at this

paper and state by whom it is signed, what it is, and when you received it?

A. This paper is signed in the handwriting of the complainant, Abram H. Baldwin, whose handwriting I know. It is a notice which was handed to me, I think, or to Mrs. Flagg, I am not positive which, from the complainant. It was after I had brought the suit in the Court of Common Pleas and after Mr. Baldwin had consulted his lawyer about foreclosing this mortgage, and, as it appears, after the notice served February 24th, by which Mr. Baldwin attempted, as is shown by that Exhibit, to commit me to the position of actual owner of the stocks by getting me to pay what purported on his account to be the purchase price.

Defendant's counsel offered in evidence the paper shown to the witness in the last question, marked Exhibit D^4.

CROSS EXAMINATION:

BY MR. ROOT:

Q. You say you could have no object in misstating in regard to the position of Mr. Cecil, do you?

A. I do.

Q. What was your object when you said in your testimony before that there never had been an order given to Mr. Cecil to go and buy stocks on the Stock Exchange, and he had been there and reported in your presence that he was unable to purchase stocks there?

A. I did not say that an order had not been given to Mr. Cecil; if I remember my testimony I said that I had never consciously given Mr. Cecil an original order, and I had no object in so stating further than to state the fact as I understood it.

BY MR. FLAGG: I object to Mr. Baldwin talking to me while I am giving my testimony.

BY MR. ROOT (to Mr. Baldwin): Have

you talked to Mr. Flagg while he has been giving his testimony?

BY MR. BALDWIN: No, sir.

Q. You do not recollect your testimony correctly; you did state that at no time had an order been given to Mr. Cecil in your presence when he had gone to the Exchange and attempted to execute it, and had come back with the report that he could not do so. Was that true or not?

A. I do not recollect my testimony. Whatever my testimony was I stand by, sir.

WILLIAM H. HOWELL, called for defendants, on rebuttal, and, being conscientiously scrupulous of taking an oath, he was, at his own request, affirmed.

DIRECT EXAMINATION:

BY MR. FLAGG:

Q. Where do you reside?

A. In this city, in Fifty-seventh street, No. 56 West.

Q. What is your business?

A. Commission dealer in grain and stock.

Q. Have you had dealings on Wall street?

A. I have.

Q. For how long have you been dealing in Wall street?

A. Twelve years, or thereabouts.

Q. Have you had accounts with brokers, members of the N. Y. Stock Exchange?

A. I have.

Q. For how long a period have you had dealings with such brokers?

A. As I said before, twelve years, or more, continuously and frequently.

Q. Do you consider yourself familiar with the customs of brokers in transactions for customers' accounts?

A. I do.

Q. What is the custom ?

Objected to on the ground that the witness has not yet qualified himself to speak as an expert.

A. It depends upon the nature of the transaction, whether they are for differences of margins, or whether they are for real transactions.

Q. You mean transactions in actual stock ?

A. Yes, sir.

Q. Will you describe the custom where the account is one for what you call differences ?

A. The custom is that where the broker, not intending to make delivery of the stock, or the customer to receive delivery, there is but a mere transaction on margins or differences.

Q. In such cases, is it a matter of perfect indifference to the customer whether the broker buys or sells the stock on the Stock Exchange or not ?

A. Undoubtedly so; he having no interest in the delivery of the stock, it makes no difference to him.

Q. Have you had dealings on account, on the N. Y. Stock Exchange, with brokers, such as you have mentioned ?

A. I have, several.

CROSS-EXAMINED BY MR. ROOT:

Q. You say you are a commission broker in grain and stock ?

A. Yes, sir.

Q. Are you a member of the N. Y. Stock Exchange ?

A. No, sir.

Q. You give your experience, then, as a customer rather than a broker ?

A. No, sir; I am a member of what is called a Mining Board.

Q. You give this as your experience as a broker, do you ?

A. No, sir.

Q. That is what I ask you. You give it as your experience as a customer?

A. Yes, sir.

Q. With what members of the Stock Exchange have you had such dealings as you have here described?

A. With several members.

Q. Name them?

A. I have had dealings with John H. Davis & Co.

Q. What kind of dealings have you had with John H. Davis & Co?

A. Dealings in margins and differences, as I have described, and real dealings, stocks which I have paid for.

Q. With any other brokers?

A. Yes, sir.

Q. Who?

A. F. M. Lockwood & Co.

Q. When did you have such dealings with F. M. Lockwood & Co?

A. Three or four years ago; perhaps two; I do not recollect exactly.

Q. Did you have very many dealings?

A. A great many; yes, sir.

Q. When you gave an order to F. M. Lockwood & Co. to buy, you did not intend to have the stock bought for your account, did you?

A. My intention was to have a credit in my account.

Q. Will you answer the question?

A. I have answered the question.

Q. That answers the question?

A. Yes, sir.

Q. Is that all the answer you can give to the question?

A. That is what my understanding of it is.

Q. The question is a very simple one. When you gave an order to F. M. Lockwood & Co. to buy for your account, you did not mean to have them buy for your account, did you?

By Mr. Flagg: Objected to, as the witness

is not here to be badgered, he having answered the question.

Q. (Question read to witness as follows: "When you gave an order to F. M. Lockwood & Co. to buy for your account, you did not mean to have them buy for your account, did you?")

A. (Witness did not answer).

Q. Do you decline to answer any further?

A. I meant to have them credit my account at the price I gave them the order.

Q. Is that the only answer you can give?

A. That is my answer.

Q. Is that the only answer you can give?

A. I do not know how to answer it any other way.

Q. Did you or did you not, when you gave F. M. Lockwood & Co. an order to buy stocks for your account, intend that they should buy them for your account?

A. My intention was that my account should have credit according to that order. I did not know what they did with the order or what they did about the stock.

Q. And it was not your intention to have the stock actually bought for your account?

A. It was to have it credited.

Q. Can you answer that in no other way?

A. I do not see any other way.

Q. When I ask you whether, when you gave them an order to buy stocks, you intended they should buy, and you answer you intended they should credit your account, do you mean to be understood as testifying that you did not intend them to buy?

A. I mean to testify that I intended to them to credit my account.

Q. And you mean to testify that you did not intend them to buy the stock?

A. I do not say that.

Q. Is it so or not that you intended them to buy stocks?

A. I intended them to credit my account with the order.

Q. Will you answer that question ?

A. I see no other way of answering it.

Q. When did you begin to do business with them in that way—about four or five years ago ?

A. I do not remember the dates ; about four or five years ago, I should think.

Q. Did they give you notice they had made the transaction for you ?

A. I presume they did.

Q. Did they not give you notice stating from whom they bought the stock, if it was an order to buy ?

A. I have no particular memory of what their notices contained.

Q. You would not state they did not ?

A. I would not state they did not.

Q. When they bought stock for you, or claimed to buy stock for you, did they charge you interest on the stock ?

A. I believe they did. I do not remember any occasion particularly or any purchase.

Q. You do not know whether they actually bought stock, you say, or not ?

A. I do not.

Q. If they did not actually buy the stock for you they told you a falsehood when they said they did, did they not ?

A. I do not know.

Q. They did report they had bought it when you gave them an order to buy it ?

A. Probably they did.

Q. Would or would not that be true, if they did not buy it ?

A. It would not be true.

Q. Now, take the case of a sale. If they had bought stock for you and you wanted it sold, you would tell them to sell it, would you not ?

A. I suppose that is the expression I would use.

Q. When you told them to sell it did you intend them actually to sell it?

A. I did not care what they did.

Q. Answer the question.

MR. FLAGG: He has answered the question—he did not care what they did.

MR. ROOT (to the stenographer): Put down every word Mr. Flagg utters.

MR. FLAGG: And put down all that Mr. Root says.

MR. ROOT: Very well, put it all down.

Q. (The previous question was read to the witness as follows: "When you told them to sell it did you intend them actually to sell it?")

A. I had no intention as to what they should do about it.

Q. You told them to sell it, did you not?

Objected to on the ground that the question had been asked and answered before.

A. (The question was not answered.)

Q. Then I understand you to say that when you told them to sell it you did not mean what you said?

Objected to as a mere repetition, and as intended to annoy the witness.

A. I do not think I have said any such thing.

Q. Well, did you or did you not?

A. Of course, I meant what I said.

Q. You meant, then, they should sell it?

A. Yes, sir.

Q. After you told them to sell it did they give you a report that they had sold it?

A. I presume they did.

Q. Did they give you on that report the name of the purchaser?

A. Very likely; that is the custom.

Q. Suppose, then, they gave you a notice that they had sold it, when in fact they had not sold it, would that notice be true or false?

A. It would be false.

Q. You base all your theories and all your descriptions of these transactions upon falsehood entirely, do you not?

A. I do not.

Q. What do you base it on?

A. My belief.

Q. Anything else?

A. No, sir.

Q. Then you are testifying here on your belief simply, and not upon your knowledge?

A. My belief is founded upon my knowledge.

Q. What is your knowledge on the subject upon which you found your belief?

Objected to as the witness has already been examined as to his experience and as to the foundation upon which his testimony has been given.

A. My knowledge is that I have had transactions that I knew were not correct.

Q. With F. M. Lockwood & Co.?

A. I did not say that.

Q. Well, then, say whether you have or not?

A. Ask me the question.

Q. With whom have you had transactions that were not correct?

A. Am I obliged to answer that question?

The Master states that in his opinion the witness is obliged to answer the question.

Defendant's counsel states that if the witness objects to making the answer he will take the matter to the Chancellor, as he thinks the witness is not obliged to answer such question.

Q. Do you decline to answer the question?

A. I decline to answer the question at present.

Q. Why do you decline to answer that question?

A. I do not propose to give my private affairs into this case.

Q. Will you state whether it was or was not with F. M. Lockwood & Co.?

A. I decline to answer.

Q. Do you know of your own knowledge that any transaction F. M. Lockwood & Co. pretended to make for you on the Stock Exchange was not actually made?

A. I again decline to answer.

Q. Why do you decline to answer?

A. Because it is my private business.

Q. You have testified in this case that you had with F. M. Lockwood & Co. certain transactions that were called transactions in margins or differences, have you not?

A. Yes, sir.

Q. And you mean to be understood in this case that when you speak of a transaction in margins or differences you do not refer to a real transaction on the Exchange, is it not so?

A. Yes, sir.

Q. And then still you will not say when further xamined on the subject that the transactions which they claim to have made for you were not all actually made on the Exchange, will you?

A. I do not claim it as to them; I have had dealings with other people that I do not believe were actual transactions.

Q. And you have not had with F. M. Lockwood & Co.?

A. I do not state so.

Q. You do not claim then that you had any transactions with F. M. Lockwood & Co. that were not actually made on the Exchange?

A. I do not know of any such.

Q. And you would not wish to be understood as swearing here that any had taken place?

A. No, sir.

Q. Then your previous testimony which you have given in this case, in which you have sworn that you had with F. M. Lockwood & Co., transactions in margins which were not transactions on the Stock Exchange; is it or is it not true?

A. I have had transactions with others; I mention

my knowledge and belief as to general transactions I have had, and not particular ones.

Q. Will you answer the question?

A. Will you repeat the question?

Q. (The former question was read to witness as follows: "Then your previous testimony which you have given in this case, in which you have sworn that you had, with F. M Lockwood & Co., transactions in margins which were not transactions on the Stock Exchange—is it or is it not true?")

A. I do not know that I have stated, as your question says, that my transactions were with Lockwood & Co.

Q. Now, come down to John H. Davis & Co. Have you testified in this case that you have had, with John H. Davis & Co., transactions in margins?

A. Yes, sir.

Q. Have you had, with John H. Davis & Co., any transactions in stocks which were not actual transactions on the Exchange?

A. I do not know that I have?

Q. You do not mean to be understood as swearing that you have, do you?

A. No, sir.

Q. Eh?

A. I do not.

Q. Please specify with whom you have had these transactions?

A. I believe I declined to answer—but I will answer that I have had with W. H. Granbury & Co. and with Arrance & Young.

Q. Are they members of the Stock Exchange—both of them?

A. I believe so.

Q. When did you first have transactions with Granbury & Co.

Defendant's counsel here states that the testimony of this witness is upon the point as to whether he knew that these brokers actually bought or sold upon his order, for

themselves, on the Stock Exchange, and not as to the point of his agreement with his brokers, whether of margins or differences, or otherwise.

A. I think as far back as 1873.

Q. With which member of the firm did you have your transaction?

A. (Not answered.)

Q. Do you remember?

A. I do not remember.

Q. Describe to this Court transactions such as you had with Granbury & Co.; did they claim to buy the stock for you?

A. They did.

Q. Did they claim to sell it?

A. They did.

Q. Did you give them an order to buy?

A. I did.

Q. Did you give them an order to sell?

A. I did.

Q. When you gave them an order to buy did they report that they had bought?

A. They did.

Q. Did they give you the name of the seller on a notice?

A. I don't remember that they did.

Q. When you gave them an order to sell, did they report that they had sold?

A. They did.

Q. Do you mean to be understood as swearing, in this case, that when they reported they had bought they had not bought?

A. I do not know what they did.

Q. Do you mean to be understood as swearing, in this case, that when they told you they had sold they had not sold?

A. I do not know what they did.

Q. Did they charge you interest?

A. They did.

Q. If they reported to you they had bought, and

they had not, in fact, bought, would their report be false?

Objected to as arguing with the witness on the testimony and not calling for a fact.

A. Presumably, it would.

Q. And the same would be true of a reported sale, would it not?

A. Yes, sir; it would.

Q. Then in order to establish the fact to the Court that you had had with this firm accounts such as you describe, it is necessary that their reports should be false, is it not?

A. It is my belief that they were not correct.

Q. Will you answer the question?

A. That is my answer.

Q. Have you no other answer that you can give.

A. I have no other answer.

Q. Upon what do you found your belief?

A. My belief is founded on the fact that there were no transactions of a like nature made in the Stock Excnange reports on the same day.

Q. Did you ever have any difficulty with them on account of the fact you have just testified to?

A. I believe I objected to the transaction.

Q. Did you ever charge them that they had not bought stock which they claimed to you they had bought on the Stock Exchange.

A. My belief is that I did.

Q. Did this happen on more than one occasion?

A. I think that occasion ended my account with them.

Q. And you stopped your account because they did pretend that they had made these transactions on the Exchange?

A. Because I believe so; yes, sir.

Q. Now come to the next, Arrance & Young—you said you have had transactions with Arrance & Young, which were such transactions as you have described where they guaranteed the account.

A. As what?

Q. Where they guaranteed the account?

A. Ido not know that I have said anything about guaranteeing the account.

Q. Then you do not mean to be understood as swearing in this case that those brokers guaranteed the account, do you?

A. I do not know that I said anything about it.

Q. Do you or not mean to be so understood?

Objected to as a mere argument, and as an attempt to entrap the witness.

A. (Not answered.)

Q. Will you answer the question?

A. Give me the question again, please?

Q. (Question read to witness as follows: "Then you do not mean to be understood as swearing in this case that those brokers guaranteed the account, do you?"

A. I do not.

Q. Who does guarantee the account?

A. 'Give it up.

Q. If they pretend to buy, and tell you they have bought, and they do not buy, and then they pretend to sell, and do not sell—suppose the stock goes up—who loses in the case of a purchase?

A. If they do not do anything, I do not see how there is any guarantee about it.

Q. You have your claim on them for your money, don't you, if the stock has made an advance?

A. Yes, sir.

Q. You do not mean to be understood as swearing that Arrance & Young ever made any false transactions for you, or any such transactions as you have described when you have described these transactions of margins, do you?

Objected to as characterizing the transactions as false, whereas the witness' statements do not necessarily imply that such notices, while false in words, would be false in idea.

COMPLAINANTS' COUNSEL: Inasmuch as the

witness has sworn positively they were false, I shall continue to ask the question.

A. That is my belief.

Q. Upon what do you found that belief?

A. I have answered that question. Upon the reports.

Q. No; you answered that question about Granbury & Co.

A. Well, I answer the same as to the other parties.

Q. You answer the same as about Granbury & Co.?

A. Yes, sir.

Q. Because you were unable, in examining the reports of sales upon the Stock Exchange, to ascertain that any stock had been bought in the case of a purchase, at the price they claimed to have paid for it—that is it?

A. Yes, sir.

Q. And the same would be true of a sale?

A. Yes, sir.

Q. I understand you to say that you had had such transactions as those with John H. Davis & Co.?

A. I did not say as those, I said I had had transactions. You asked me if I had had transactions with them and I said yes.

Q. Did you ever have any transactions with John H. Davis & Co. where they did not actually buy the stock?

A. I do not remember any.

Q. Do you remember any with any other firms than those you have stated?

A. I do not recollect any.

Q. And you cannot any more particularly identify the transactions than you have?

A. No, sir.

Q. You cannot say this particular stock or that particular stock, can you?

A. No, sir.

RE-DIRECT EXAMINATION:

Q. Mr. Howell, in the case of these brokers where

you found that they did not actually make the transaction, did you look to that fact further than to charge them with improperly charging your account?

Objected to as being altogether and outrageously leading, and intended to make the witness testify exactly the opposite to his testimony on cross-examination.

A. I did look to that fact.

Q. And stated it as a reason why the account should not be so charged?

Same objection.

A. Yes, sir; I did.

Q. So that the sole object of your looking, in the case of these brokers, was to find out whether the charge they had made in the account was correct?

Same objection.

A. Yes, sir.

RE-CROSS EXAMINATION:

Q. You know Mr. Flagg very well, do you not?

A. Yes, sir.

Q. And have for a great many years?

A. Perhaps three or four.

Q. And a great portion of the testimony has been taken in your office on account of your friendship with Mr. Flagg. Is it not so?

A. That I cannot say. I do not know what testimony was taken in this case. I have seen some of the testimony taken in my office.

Q. Is this testimony to-day being taken in your office, and has it been taken in your office several times before—in the Drexel Building, New York City?

A. Twice before I believe.

Q. Are you in any way related to him or his wife?

A. No, sir.

Q. Do you mean to be understood as swearing to

this Court that, when you were dealing with Arrance & Young and you gave them an order to buy you 100 shares of stock at a certain price and they reported that they did it, and then you gave them an order to sell the same stock at an advance price and they did it, and they actually went on the Stock Exchange for your account and risk and made a purchase and made a sale, charged you with the purchase price, charged you with interest on what they had paid until they made the sale; then credited you with the amount that they actually received for it, that that would be a transaction in differences, or do you not?

A. Read that over to me, please.

Q. (Last question read to witness).

A. I do not know that they actually did.

Q. If they actually did that would be a real transaction, would it not?

A. It would be a transaction in differences.

Q. If they actually bought it and sold it for your account would that be a transactions in differences?

Objected to as already answered.

Q. You swear to that?

A. Yes, sir.

Q. You swear it would not be an actual transaction?

A. As far as my knowledge goes and belief.

Q. You believe then that if they actually went and bought it and actually went and sold it, it would not be a real transaction?

A. I don't know that they actually did do it.

Q. If they did it would it or would it not be a real transaction?

A. I would not consider it when I had margins.

Q. You would not consider it a real transaction when you had margins?

A. No, sir.

Q. You would not swear it was not?

A. No, sir.

MR. FLAGG: Of course not, because it is a question of law!

Q. How recently have you made any of these transactions?

A. I do not understand what you mean by "any of these transactions;" do you mean transactions in margins?

Q. Transactions in differences, as you call them?

A. Within the past month.

Q. With whom?

A. I decline to answer.

Q. Define the distinction between a transaction in differences, or margins, and a real transaction?

A. Transactions in margins, as I understand it, are where the customer orders the broker, or gives such an order, as that he will credit his account with the price at which the order was given, or debit the account, where such is called for, and in real transactions, where the customer gives an order, intending to pay for the stock in full, plus a commission in all cases.

Q. And that would be the only distinction which you would draw between the two, would it?

A. That is my idea of it.

Q. And you state that you have had a large experience in Wall street, and you are familiar with all these transactions, do you?

A. I do; yes, sir.

Q. Now, if the customer gave to the broker an order, and the customer intended that the broker should actually buy, and then he actually bought, would that come under the head of a real or a marginal transaction?

A. I do not think it would come under the head of a real transaction.

Q. Then, you say that the distinction is, that, in order to make a real transaction on the Exchange, the customer must actually intend to pay in full for the stocks and take them?

A. Yes, sir.

Q. And that otherwise it would not be?

A. Yes, sir.

Q. And it would make no difference whether the

customer had one per cent. margin or ninety per cent. margin, as far as the transaction was concerned?

A. I do not see that it would.

Q. Suppose a customer had with the broker security to pay for the stocks, and sufficient to pay for them in full when added to his margin, would that make any difference?

Objected to as all these questions are questions for the Court to determine upon the evidence, and questions of law, which the witness is not supposed to be able to determine.

A. It might depend upon his intentions. I do not think the mere fact of his having stocks there as a margin would make it his intention to make a real investment, though there might be such a case.

Q. Supposing it is proven, in this case, that Mr. Baldwin, for Mr. Flagg, actually bought and paid for every share of stock charged in the account, would you call those transactions real ones?

A. I do not know what his intentions might be.

Q. If he paid for them would you call the transaction, so far as Mr. Flagg was concerned, real?

A. I would call it a real one if Mr. Flagg gave his check for the purchase when made.

Q. And not otherwise?

A. Not otherwise.

Q. And it would not be real if Mr. Baldwin, in all cases, purchased the stock, and gave his check for the amount paid for the stock, and charged it to Mr. Flagg in his account, would it?

A. I do not think that it would be.

Q. Would you swear that it would not be, in this case?

Objected to, as asking the witness to swear to a question of law.

A. (Question not answered.)

Q. Answer the question?

A. I believe I have answered it.

Q. Answer it again?

A. Just ask me that question?

Q. Will you swear that it would not be, in this case?

A. I affirm that it would not be.

FURTHER RE-DIRECT:

Q. With regard to the testimony being taken here in your office, I ask you if Mr. Dos Passos' office is not directly above you here in this building?

A. It is above me in the building, but not directly?

Q. And did you not allow the examination to be carried on here, because it was inconvenient to carry on the examination in his office?

A. I did.

FURTHER RE-CROSS EXAMINATION:

Q. You have heard Mr. Flagg's testimony in this case, somewhat, have you not?

A. Very little of it.

Q. Have you not heard it read over by me several times to the various witnesses?

A. I have heard some of it.

Q. Have you not heard the examinations of Mr. Talbert, Mr. White and Mr. Davis?

A. Yes, sir.

Q. You heard portion of that up in Mr. Dos Passos' office, did you not?

A. Yes, sir.

Q. You have heard me read over on several occasions Mr. Flagg's definition of transactions in margins, have you not?

A. I believe I have.

Q. And you have had a number of talks with Mr. Flagg before you went on the stand, have you not?

I have known him for 3 or 4 years.

Q. On this subject, now, before you went on the stand?

A. On this particular testimony?

Q. Yes.

A. I have.

JAMES JULIAN, sworn for the defendants on rebuttal.

DIRECT-EXAMINATION BY MR. FLAGG:

Q. What is your residence and place of business?

A. My business is at 83 Nassau street. My residence in Seventy-ninth street.

Q. Have you been a member of the N. Y. Stock Exchange?

A. I have.

Q. How long were you such.

A. About ten (10) years.

Q. Did you during those ten years do business on the N. Y. Stock Exchange as a broker?

A. Yes. sir.

Q. For customers?

A. Yes, sir.

Q. Are you from long experience acquainted with the manner in which brokers conduct the accounts of customers on Wall street?

A. Yes, sir.

Q. Mr. Flagg's testimony was read to Mr. Davis in your hearing here, was it not?

A. In my hearing here?

Q. Yes.

A. I do not know that I paid any special attention to it.

Q. I ask you if in your business as broker with the accounts of customers you know any difference in such accounts?

A. What kind of accounts?

Q. The accounts you have for customers?

A. The customer's account?

Q. Yes.

A. Well, in my experience of about ten years I don't think I ever had but one kind of accounts.

Q. What kind were they?

A. Speculative accounts.

Q. What did they affect?

A. What did they affect?

Q. Yes. Were they transactions in stocks, or in margins and differences?

A. In margins. They put up margins and bet whether the stock would go up or down; betting on stocks—gambling—that is what it was; gambling transactions.

Q. You say you never had any other but such accounts as you remember?

A. I cannot recall any other.

Q. In such accounts is there any intention, as between the customer and the broker, that the customer shall receive delivery or get transfer of the stocks?

A. In my experience the customer never looks for it.

Q. The customer not looking for delivery or taking transfer of the stocks, does it make any difference to that customer whether the broker goes on the Stock Exchange and makes any transaction for himself or not?

A. I do not see that it does.

Q. Does the service of a notice by the broker on the customer of the fact that the stock was received by the broker, or the broker passed his check for it, necessarily imply to the customer that the broker did anything?

A. It does not prove that he did.

Q. Why not?

A. Because the broker might have made a "wash sale."

Q, Have you been cognizant of such sales on the Stock Exchange?

A. I have.

Q. Do you know that they are made?

A. I know that they have been made.

CROSS-EXAMINATION BY MR. ROOT:

Q. You say you are a member of the Stock Exchange?

A. I said I had been a member for some 10 years.

Q. When?

A. From about 1864 to '74.

Q. The N. Y. Stock Exchange, here?

A. The Open Board of Brokers before they were consolidated, and the N. Y. Stock Exchange after they were consolidated; when they were consolidated I was, of course, a member of the N. Y. Stock Exchange.

Q. Where was your office?

A. I had several offices.

Q. Where, when you ceased to be a member of the Stock Exchange?

A. No. 9 New street. A sub-tenant of Arrance & Young.

Q, In the same office with them, or having a branch of their office?

A. I was independent; they had the front office and I had the back; they rented the whole office, and I rented the back office of them.

Q. You had numerous accounts with customers then?

A. Oh, indeed! I had quite a number. Entirely independent of Arrance & Young.

Q. And you did in that office what you called guaranteeing accounts did you?

Mr. Flagg objected to the word "guaranteeing," requiring explanation to the witness implying a legal responsibility which perhaps is not known to the witness.

A. I did not.

Q. What kind of a business did you do?

A. A commission business.

Q. That is, you bought and sold stocks on commission?

A. Yes, sir.

Q. Did you actually buy stocks for your customers or not?

A. I did.

Q. In all cases?

A. In all cases.

Q. Where you claimed to have bought them, where you notified them you had bought, you did, in all cases?

A. Yes, sir.

Q. You went from your office to the Exchange, or sent there, and there made the purchase of the stock, and it was delivered to you the next day, in the case of a regular purchase?

A. Sometimes it could not be delivered for a week.

Q. But you would ultimately get the certificate of stock and pay for it?

A. Unless the party I had bought from failed.

Q. And when you were ordered to sell stock for your customers you would actually go to the Exchange and sell them?

A. I would.

Q. And you would charge your customer with the purchase price, would you not?

A. Certainly.

Q. And also charge him with the commission for making the purchase?

A. Certainly.

Q. And also charge him with interest on the money you paid for the stock?

A. Yes, sir; if I carried them.

Q. And when you sold you charged a commission?

A. Certainly.

Q. And then you would actually deliver the certificate of stock?

A. Well, that might or might not be; I probably never would have the stock, the certificate; I might have it transferred from the party I bought it of to somebody else.

Q. When you made a sale of that particular stock you would deliver to the purchaser the certificate of that stock, would you not?

A. No; he probably never saw the certificate, and probably I never did; we tried to avoid that, because it saved trouble.

Q. Suppose you had bought for a customer 100 shares of Erie and you had paid $2,500 for it, then

you sold that 100 shares of Erie to another broker—not to the one from whom you purchased it—what would the course be then, what would happen?

A. Well, there were two courses, three courses, probably; I might never receive the stock; I would tell the man I bought it of to deliver it to the man I sold it to; that is, if it was to be done to-day, or probably if the stock was due to-morrow, and I did not want to pay $2,500 for it, I would tell the party I bought it of yesterday to deliver it to you—I would lend it to you; that might go on for a month or two months and I might be carrying the stock and never see the certificate.

Q. But in case you actually saw the stock and received it, you would deliver it when you sold?

A. I probably would not have it at the moment I received the order; I would loan it out; borrow money on it.

Q. When you sold the stock, would you deliver the certificate to the buyer?

A. Yes, sir; or I would borrow one if I did not have it.

Q. But you would make the transaction a real one as between you and the broker to whom you sold?

A. Necessarily, or I would pay him the difference; if there was a difference due him, I would pay him, and if there was a difference due to me, he would pay me, and nothing would pass through either of our offices. If there was a difference of $100 coming to him or coming to me, we would exchange checks for that amount.

Q. If you sold him the stock, there would be no difference?

A. If I sold the stock one day for $2,500, and the next day ——

Q. (Interrupting.) No; I am speaking of a simple sale of the stock for $2,500?

A. Well, I might never deliver it to him at all.

Q. Why not.

A. Because it might go up to $3,000, and my customer tell me to sell, and I would say to the broker:

"You give me $500, the difference between the price I bought of you and the price it is now, and you need not deliver me that certificate, but give me $500." In that way a great number of the stocks are never received between the brokers who make the transaction. They simply pay the difference that is due from the one to the other.

Q. Then are you willing to swear in this case that when you had a customer "long" of 100 shares of Erie that you had actually bought, and then you sold the 100 shares of Erie to some other broker, you would not in all cases cases deliver the stock itself?

A. I swear that.

Q. You swear it?

A. Oh, yes!

Q. Would there be any difference in making a transaction for a customer whether the customer had a large or a small margin?

A. Any difference in what respect?

Q. In the transaction itself.

A. I cannot see any.

Q. If a man came to you and gave you $10,000, and asked you to buy 100 shares of stock at 110, you would go to the Stock Exchange and buy it, would you not?

A. I think I would; yes, sir. Except it was Richmond and Danville, or some of those things which go down $10,000 a day.

Q. You would charge it to him after you bought it and received it, would you not?

A. It would be charged to his account, of course.

Q. And exactly the same thing would be done if he only had $500 margin, would it not?

A. It would.

Q. Now, suppose he had in your office more money than enough to pay for the stock, would not the transaction be exactly identical ——

A. (Interrupting.) I cannot imagine such a case. I never had one of the kind in my life.

Q. Wait a moment. (Continuing.) With the case of a purchase upon a small margin?

A. I cannot imagine such a case.

Q. Will you answer that question or not. You have undertaken to testify here as to your knowledge as an expert about the customs of Wall street ——

A. (Interrupting.) I did not say I was an expert.

Q. You do not pretend to be an expert?

A. I did not say I was.

Q. Are you or are you not?

A. I decline to answer that.

Q. Will you now answer the question I just asked you?

A. Repeat it, please.

Q. (Former question read to witness as follows: "Now, suppose he had in your office more money than enough to pay for the stock, would not that transaction be exactly identical with the case of a purchase upon a small margin?")

A. I cannot imagine such a case in my office.

Q. And you cannot distinguish between the two cases in so far as the transaction itself is concerned?

A. I do not want to trouble my head to distinguish between them at present.

Q. Suppose that a customer came to you——?

A. (Interrupting). What customer?

Q. A customer came to you and said "Buy me 100 shares of stock at 100," and gave you his check for just sufficient to pay for that stock and your commission, would the transaction, as it was made by you in that case, in any wise differ from the transaction such as it would have been if he had only had 5 or 10 per cent. commission?

A. I think it would.

Q. Distinguish between the two?

A. In the case where a man gave me $10,000 and the commission added, it would be, as far as I could judge, an investment; he would own the 100 shares —the property.

Q. I am asking you to distinguish between what you would do in the one case and what you would do in the other?

A. I do not think you asked me that. You asked me——

Q. (Interrupting). Well, I ask you now.

A. How do you mean? What I would do in one case and what in another? If a man gave me $10,000 and the commission added, and asked me to give him the certificate, I would give it to him when I received it, and that would be the end of that transaction; that is what I would do in that case. Now, what is the other case?

Q. Would you not go to the Stock Exchange and buy the stock?

Defendant's counsel objected to the whole examination as frivolous and inconsequential.

Q. Would you not go to the Stock Exchange and buy the stock?

A. I would. I would not give him the stock, you know, except I bought it and paid for it.

Q. You would do the same if he had a margin, would you not?

A. I presume I would.

Q. And would not the transaction as made between the brokers be identical in both cases?

A. It would not.

Q. In what respect would it differ?

A. Because when a man gave me $10,000 to buy $10,000 worth of stock, I bought it with his money and handed it over to him; that was his stock. When he gave me $500 to buy $10,000 worth of stock, he would simply put up $500 to gamble on it and bet it would go up or——

Q. (Interrupting). I suppose Mr. Flagg asked you——

A. (Interrupting). Will you allow me to finish the answer?

Q. (Continuing). ——to come here and say these transactions were gambling transactions, as you have made use of that same remark a good many times?

Mr. Flagg: Objected to as impertinent to the witness, who has behaved so far with every deference to Mr. Root.

A. That is not a question, it is a supposition of yours. Is it a question?

Q. It is.

A. What is the question? You asked me if Mr. Flagg asked me to come here?

Q. Yes.

A. My answer to that is no; not to testify to anything of that kind embodied in your question.

Q. Then you mean to be understood as swearing that in cases where margins are deposited, and you buy the stock for your customer and charge him with the price paid for the stock and credit him with his commission, the stock does not belong to him?

A. I debit him with the commission.

Q. I said the same thing; I said charge. Now answer the question?

A. What is the question?

Q. (Question read to witness as follows: "Then you mean to be understood as swearing that in cases where margins are deposited, and you buy the stock for your customer and charge him with the price paid for the stock and credit him with his commission, the stock does not belong to him?").

A. I said it was a gambling transaction; that was my answer to the question.

Q. Is that your only answer to that question?

A. As I understand the question, that is my only answer. One is an investment and the other is gambling.

Q. Do you understand the question?

A. I think I do.

Q. And you have no other answer to make?

A. Read it again.

MR. FLAGG: The question being a question of law, the witness can answer or not, according as he says he has information of the law.

Q. (Question again read to witness in 4th question above).

A. I regard it as a gambling transaction.

Q. Have you no other answer which you can make to that question?

A. None.

Q. Take the case of a purchaser coming to you with the entire purchase price of 100 shares of stock, and not desiring to take the stock into his own possession, but desiring you to retain its custody in yours, and distinguish between what you would do for that customer and a customer who ordered you to buy the same stock upon a ten per cent. margin?

A. I am asked to distinguish between what I would do for the one or the other?

Q. Yes.

A. I should not do any different; I should charge them both the same commission.

Q. You would make the transaction for each customer then in exactly the same way?

A. I would do the best I could for either one or the other of them.

Q. But you would not do for one any different from what you would do for the other?

A. Oh, I never made any distinction; I did the best I could for any of my customers.

Q. I am asking you as to the *modus operandi*—what you would do?

A. I would—if the customer paid for his stock, I would hand it over to him.

Q. I am supposing a case where he did not wish you to?

A. I would put it in the tin box and lock it up in the safe.

Q. You would put the stock you bought on margins in the tin box, would you not?

A. No, sir; I think I would either loan that out or never receive it, and pass it over from broker to broker on due bills until I wanted the difference, as already explained to you.

Q. Now, come back to the original question and tell me in what respect your action in the one case would differ from the other?

Objected to as already answered fully.

A. I have given all the answer I can; I do not

see how I can say any more on that subject; I have answered that, I think, twice, as good as I can.

Q. You would go to the Exchange, or send to the Exchange, and make a purchase with each one, would you not?

A. In executing orders I would certainly go to the Exchange and make a purchase or sale according to the order.

Q. If it was an order to buy, you would go and buy—100 shares?

A. It would depend upon what kind of an order it was. I might not buy at all; it might be an order to buy at three or sixty days.

Q. If it was such an order you would not buy?

A. Yes, sir; but might not expect to see the stock in three days or sixty days.

Q. But you would buy it, all the same?

A. I would make a contract with a fellow-broker.

Q. And it would be just the same as if it was regular, as far as the contract goes?

A. Well, it is supposed to be; whether it is or not I am sure I don't know.

Q. Then you cannot draw the line of distinction between what you do for an investment customer and a customer on a margin in the hypothetical case I have given you?

A. Well, an investment customer with $10,000, telling me to buy 100 shares of stock costing $10,000, I would go and buy it for him for cash and hand it to him as soon as I got it, may be an hour or half an hour afterwards. A speculative customer, I would not buy it regular, but buy at 3 or 10 or 60, or anything of the kind. For an investment customer I would buy it so that he could have his stock at the earliest possible moment; I would make that distinction. I guess you can tell yourself there is a great difference between a cash customer and a speculator.

Q. Why did you leave the Stock Exchange?

A. Because I chose to.

Q. Did you fail?

A. I refuse to answer; I sold my seat and got the money.

Q. Did you pay it to your creditor?

A. I sold my seat and got the money; I will tell you who I got the money from, if that will interest you.

Q. I do not wish to know.

A. I sold my seat of my own volition; that is part of my answer.

Q. You have made transactions, during your career as a broker, for your customers which were "wash sales," which you have described?

A. I would not swear that I have not, but my opinion is that I never did in my life.

Q. Your best recollection is that in all cases where you have claimed to buy for customers you have actually bought?

A. Individually myself, I think I did.

Q. And where you claimed to sell for your customers, you have actually sold; that is your best recollection?

A. Yes, sir.

Q. That never in any case did you deceive them about it?

A. No, sir.

Q. That is your best recollection?

A. That is my recollection.

Q. What is your present business?

A. Carpet business—carpets and office furniture.

Q. At what number?

A. No. 83 Nassau street.

DEFENDANT'S COUNSEL: It has been consented on both sides, and I believe appears in the testimony, that the affidavit of Mr. Baldwin, with the stipulation filed in the Common Pleas, may go in as part of the testimony in this case.

With the request that the defendants may put these exhibits in at any time before the printing of the case, the defendants rest.

Adjourned to the office of William T. Day, Esv., M. C. C. of N. J., Newark, N. J., on Monday, March 6th, at 3 o'clock, P. M.

Complainant's Exhibit C 1.

KNOW ALL MEN BY THESE PRESENTS, That we, JENNIE M. FLAGG and WILLIAM L. FLAGG, of the City of New York, are held and firmly bound unto Abram H. Baldwin, of said city, in the penal sum of twenty-three thousand one hundred and twenty-six $\frac{88}{100}$ dollars, lawful money of the United States of America, to be paid to the said Abram H. Baldwin, his executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the twenty sixth day of August, one thousand eight hundred and eighty.

The condition of the above obligation is such, that if the above bounden Jennie M. Flagg and William L. Flagg, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above-named Abram H. Baldwin, his executors, administrators or assigns, the just and full sum of eleven thousand five hundred and sixty-three $\frac{44}{100}$ dollars and interest on demand; then the above obligation to be void, otherwise to remain in full force and virtue. And for the payment of the foregoing bond I do hereby bind my separate estate.

JENNIE M. FLAGG. [L.S.]
W. L. FLAGG. [L.S.]

Sealed and delivered
in the presence of
CHARLES EDGAR MILLS.

Complainant's Exhibit C 2.

Mortgage made by Jennie M. Flagg and William L. Flagg, her husband, to Abram H. Baldwin, all of New York.

Dated August 26th, 1880.

Given to secure the bond, set forth in the declaration for $11,563.44.

Recites bond, &c., as follows:

Whereas, The said Jennie M. Flagg and William L. Flagg are justly indebted to the said party of the second part in the sum of eleven thousand five hundred and sixty-three $\frac{44}{100}$ dollars, lawful money of the United States of America, secured to be paid by their certain bond or obligation, bearing even date with these presents, in the penal sum of twenty-three thousand one hundred and twenty six $\frac{88}{100}$ dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of eleven

thousand five hundred and sixty-three $\frac{44}{100}$ dollars and interest on demand.

Of the aforesaid sum of eleven thousand five hundred and sixty-three $\frac{44}{100}$ dollars, seven thousand five hundred and sixty-three $\frac{44}{100}$ dollars is the amount due from the parties of the first part to the party of the second part.

The balance of said sum, four thousand dollars, is security for future advances, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Covers the premises described in the declaration by the same description.

Contains usual covenants for payments, &c., insurance clause for $12,000.

Acknowledged before Charles Edgar Mills, Commissioner for New Jersey, in New York, August 31, 1880.

Recorded in the Clerk's office in Union County, New Jersey, on September 4, 1880.

Complainant's Exhibit C 3.

June 15th, 1880.

A. H. BALDWIN, ESQ.:

DEAR SIR—I inclose my note for four thousand and five hundred dollars as margin on a speculative account which I wish to open with you. Please transfer to my name the personal account of W. L. Flagg, now in his name on your books. You are authorized to follow my husband's directions in all matters connected with my account.

JENNIE M. FLAGG.

SUMMIT, N. J.

40 30 20 10

Complainant's Exhibit C 7.

MRS. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN,

(If not correct please report at once).

DR. CR.

1880.				1880.			
June 16....	Recd. from % W. L. Flagg, 100 Ches. & O. 1st Pfd..			June 16....	Deld. to % W. L. Flagg,		
				".....	100 N. West		
18....	100 A. &. P. Tel., 40.....	$4,012	50	".....	" " " " 100 Alton		
".....	100 Lake Shore, 103⅝.....	10,375		".....	" " " " 100 Erie		
21....	100 Erie Pfd., 61½.....	6,162	50	".....	" " " " 100 Lake Sh		
22....	100 N. West, 94⅛	9,425		16....	Bal. % W. L. Flagg, tr'nsf'd	$30,402	99
".....	100 Erie, 39¼.....	3,937	50	19....	100 St. Paul, 75	7,487	50
23....	100 Jer. Cent., 62⅝.....	6,275		24....	100 Wab. Pfd., 65¾.....	6,562	50
	100 Wab. Pfd., 65¼	6,537	50	".....	100 A. & P. Tel., 41¼.....	4,112	50
" ...	Cash.....	25		25....	100 Jer. Cent., 64⅝.....	6,450	
24....	100 Erie, 39.....	3,912	50	".....	100 " " 64¼.....	6,412	50
".....	Cash.....	37	50	".....	100 Erie Pfd , 66¼.....	6,612	50
25....	100 Jer. Cent., 64.....	6,412	50	26 ...	100 Erie, 40⅛.....	4,000	
26....	100 St Paul, 79⅛	7,925		30....	By Balance.....	4,127	01
28....	Ck.	65					
29....	Cash.....	50					
".....	Dividend on 100 N. W. (Sho't)	300					

96

	100 Wab. Pfd., 66	6,612	50
30	100 P. Mail, 40¾	4,087	50
	Interest	15	
		$76,167	50

June 30	Long 100 Ches. & O. 1st Pfd.		
	Short 100 Alton		
	Long 100 P. Mail		
	Long 100 Wab. Pfd.		
	To Balance	$4,127	01
July 1	100 Erie Pfd., 63¾	6,587	50
2	100 St. Joe Pfd., 72¼	7,237	50
13	Ck	30	
19	100 Un. Tel., 106⅜	10,650	
21	100 Lake Shore, 107⅝	10,775	
24	D. L. & W., 85	4,256	25
"	" " " " 84⅞	4,250	
"	100 Alton, 112⅞	11,300	
	For'd	$59,213	26
"	Amt. for'd	$59,213	26
31	Interest	49	67

		$76,167	50

July 2	Dividend on 100 A. & P. Tel.	$ 75	
"	100 Wab. Pfd., 66¾	6,662	50
"	100 Erie Pfd., 65¼	6,512	50
6	100 Lake Shore, 106⅛	10,600	
9	100 Un. Tel., 104⅛	10,400	
10	200 D. L. & W., 76	7,587	50
16	100 St. Joe Pfd., 69½	6,937	50
17	100 P. Mail, 41¾	4,162	50
24	200 D. L. & W., 83½	8,337	50
	For'd	$61,275	
	Amt. for'd	$61,275	

40 30 20 10

DR. COMPLAINANT'S EXHIBIT C 7 (CONTINUED). CR.

1880.			1880.		
July 31....	To Balance.....	$2,012 07			
		$61,275			$61,275
Aug. 2....	Dividend on 100 Lake Shore (H. L. Horton).....	$ 400	July 31....	Long 100 Ches. & O. 1st Pfd. Short 200 D. L. & W.	
4....	100 Jer. Cent., 75¼.....	7,537 50		By Balance.....	$ 2,012 07
5....	Ck.....	30	Aug. 2...	Dividend on 100 St. Joe Pfd.	300
7....	Cash.....	25	4....	100 Jer. Cent., 75½	7,537 50
10...	Ck.....	40	25....	200 D. L. & W., 89⅜.....	8,925
"...	200 D. L. & W., 85½.....	8,562 50			
28....	Int. to Aug. 26.....	29 23			
"...	To Balance.....	2,150 34			
		$18,774 57			$18,774 57
Aug. 28....	Ck., Robt. P. Anderson ...	$ 100	Aug. 28 ...	Long 100 Ches. & O. 1st Pfd, Short 200 D. L. & W.	
30...	Cash, W. L. Flagg.....	125			
"...	100 Del & Hud., 84.....	8,412 50	"...	By Balance.....	$2,150 34
Sept. 2....	Ck., W. L. Flagg.....	25	30....	100 Del. & H., 85½	8,537 50

Sept.	3....	Ck., Aug. 26, W. L. Flagg (Int.)	44 14	Sept.	3....	Cash (Int. Aug. 26)	29 23
	"...	100 St. Paul, 89	8,912 50		"...	100 St. Paul, 89½	8,937 50
	4....	10 M. Erie Fdg. 5%, 82½	8,262 50		"...	100 N. West., 101½	10,137 50
	7....	Cash, W. L. F	25		4....	100 St. Joe Pfd., 84⅞	8,475
		100 St. Paul, 92	9,212 50		11....	100 Del. & Hud., 87	8,687 50
	8....	100 St. Joe Pfd., 85	8,512 50		13....	100 Jer. Cent., 78¾	7,862 50
	10....	100 N. West., 104¼	10,437 50		16....	200 D. L. & W., 89⅝	8,950
	11....	Ck., C. A. Wallberg	22		17....	100 Ohio, 36	3,587 50
	"...	Cash	25		"...	100 St. Paul, 90¾	9,062 50
	"...	Recd. 10 M. Erie Fdg., J. H. Davis & Co.	8,400		18 ..	100 St. Joe Pfd., 81¾	8,162 50
	"...	100 Jer. Cent., 78	7,812 50		20....	100 St. Paul., 91⅞	9,175
		For'd	$70,328 64			For'd	$93,754 57

40 30 20 10

299

40 30 20 10

Complainant's Exhibit C 8.

DR. Mrs. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN. CR.

(If not correct please report at once.)

1880.			1880.		
Sept. 11	Amt. Forward	70,328 64	Sept. 22	Amt. Forward	93,754 57
14	Ck. F. C. Chazournes	31	23	100 M. K. T., 33⅛	3,300
16	Cash	50	"	100 Wabash, 37	3,687 50
"	200 D. L. & W., 90¼	9,037 50	24	100 St. Paul, 92⅛	9,200
17	100 St. Joe Pfd., 81	8,112 50	"	100 St. Joe Pfd., 81¾	8,162 50
22	Dft. Day & Sons	25	25	100 St. Paul, 92	9,187 50
"	Cash	25	"	20 M. Erie, Fdg 5 %, 84½	16,875
"	100 Ohio, 34¾	3,487 50	27	200 D. L. & W., 89¾	8,962 50
"	100 U. Pac., 91	9,112 50	"	100 N. Wst, 102¼	10,212 50
23	100 Wabash, 36	3,612 50	"	100 Wab. Pfd, 65⅜	6,525
"	100 Del. & Hud., 84⅞	8,500	"	100 U. Pac., 87	8,687 50
24	100 M. K. T., 31¼	3,237 50	28	100 Ohio, 32¼	3,212 50
25	Cash	65	"	200 Reading, 27½	2,737 50
"	100 N. West, 101⅜	10,150			
"	100 St. Joe Pfd., 80	8,012 50			
27	Cash	30			
"	400 D. L. & W., 89	17,825			
30	Int.	98 59			
"	To balance	32,763 84			
		184,504 57			184,504 57

300

Oct. 1	100 Wab. Pfd., 68.⅜	6,850	
4	200 Reading, 30	3,012	50
5	Dft. E. R. Morehouse	35	
"	200 St. Paul, 94	18,825	
6	100 N. West, 107⅜	10,750	
"	100 Omaha Pfd., 83	8,312	50
7	Dft. Dodd & Buttle	25	
"	100 N. West, 107⅜	10,750	
13	100 Omaha Pfd., 82⅛	8,225	
14	200 Un. Tel., 99¼	19,875	
	For'd	$86,660	00
"	100 U. Pac., 90⅞	9,100	
15	Dividend on 300 St. Paul 3½ %	1,050	
"	200 Wab. Pfd., 71	14,225	
16	100 St. Paul, 97⅝	9,775	
"	100 Erie Pfd., 74¾	7,487	50
"	Dft. Mr. Woodruff	35	
18	100 St. Paul, 97⅝	9,775	
"	100 Erie Pfd., 75⅛	7,525	
"	100 " 75⅜	7,550	
"	6 M. C. C. & I. C. Inc., 46½	2,797	50

40 30

Sept. 30	Long 100 Ches. & O. 1st Pfd.		
	Short 200 Reading, 100 Ohio, 300 St. Paul, 100 Wab. Pfd.		
	By balance	32,763	84
Oct. 8	200 Nwest, 107⅞	21,550	
11	100 Un. Tel., 97½	9,737	50
18	100 " 103⅛	10,300	
19	100 Un. Pac., 93¼	9,312	50
"	100 St. Paul, 98¼	9,812	50
"	200 Wab. Pfd., 72¼	14,425	
21	100 Nwest, 113½	11,337	50
22	100 Omaha Pfd., 85¼	8,512	50
	For'd	$127,731	34
23	100 Omaha Pfd., 86⅜	8,625	
27	100 Del. & Hud., 86½	8,637	50
29	100 N. Y. Cent 138	13,787	50
30	100 Ohio, 37¼	3,712	50
"	100 M. K. T., 38½	3,837	50
"	200 Un. Pac., 92½	18,475	
"	By balance	72,514	49
		257,340	83

20 10

DR. COMPLAINANT'S EXHIBIT C 8 (Continued.)

1880.				
Oct. 19...	3 M. " " 46...	1,383 75		
" ...	100 N. West, 113¼.....	11,337 50		
" ...	100 Erie Pfd., 74½.....	7,462 50		
20...	100 " 74¾.....	7,487 50		
21...	100 M. K. T., 38½.....	3,862 50		
22...	100 Del. & Hud., 85¼.....	8,537 50		
25...	100 Ohio, 35¾.....	3,587 50		
26...	Cash.....	100		
" ...	20 M. M. K. T. 2d, 70.....	14,025		
" ...	100 Ohio, 36.....	3,612 50		
28...	100 U. Pac., 92½.....	9,262 50		
29...	100 Erie Pfd., 75¾.....	7,587 50		
" ...	100 N. Y. Cent., 136½.....	13,662 50		
30...	100 U. Pac., 92½.....	9,262 50		
" ...	Int.....	189 58		
		257,340 83		
Oct. 30...	Long 600 Erie Pfd., 100 Ches. & O. 1st Pfd., 20 M. M. K. T. 2d.			
	To Balance.....	72,514 49		

302

Complainant's Exhibit C 9.

DR. MRS. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN. CR.

(If not correct please report at once.)

1880.			1880.		
Oct. 30	Amt. Forward	$72,514 49	Nov. 3	300 Erie Pfd. 74¾	$22,387 50
Nov. 3	Ck John E. Corwin	60	"	10m M. K. T. 2d, 69¼	6,912 50
4	Proportion Flagg & Ripley ac	329 96	"	10m " " ⅛	6,900
"	Int. from Aug. 26th to Nov 4	3 85	4	Bond and mortgage on	
"	Proportion Flagg & Baldwin ac	2,863 05	"	Real Estate, Summit, N. J.	11,563 44
"	Int. from Aug. 26 to Nov. 4	33 40	15	100 Erie Pfd 72¾	7,262 50
8	Dft W. M. Grovenor	30	18	100 Wab. Pfd. 76	7,587 50
"	Cash	50	22	100 Can. Sou. 71½	7,137 50
11	Dft J Smith Dodge & Sons.	12	"	200 Erie Pfd. 77	15,375
15	1m CC & I C Inc. 49½	496 25	23	100 Lake Shore, 118¼	11,812 50
16	Dft Henry Milford Smith.	70	"	100 W. U. Tel., 102¼	10,212 50
"	" John Rooney	60	30	By balance	41,740 67
"	Watts & Flagg	500			148,891 61
17	Cash	50			
19	"	300			

40 30 20 10

303

DR. COMPLAINANT'S EXHIBIT C 9 (Continued.)

19....	100 Can. Sou., $68\frac{1}{4}$	6,837	50
20....	100 Wab. Pfd, $77\frac{1}{4}$	7,737	50
"...	100 Manhattan $37\frac{1}{2}$	3,762	50
"...	100 W. U. Tel. $101\frac{1}{4}$	10,137	50
"...	100 Lake Shore, $117\frac{5}{8}$	11,775	
"...	Cash	300	
22....	Dft. Henry M. Smith	70	
"...	100 Erie Pfd., $76\frac{1}{4}$	7,637	50
23....	Dft. Quimby & Co.	100	
"...	Ck	50	
"...	100 Manhattan, $37\frac{1}{2}$	3,762	50
"...	100 Del. & Hud., $91\frac{3}{8}$	9,150	
24....	100 W. U. Tel. $100\frac{1}{8}$	10,025	
30....	Int	173	61
		148,891	61
Nov. 30....	Long. 10m C.C.&I. C. Inc. 100 Del. & Hud.. 100 Erie Pfd. 100 Ches. & O. 1st Pfd. 200 Manhattan, 100 W. U. Tel.		
	To balance	$41,740	67

Complainant's Exhibit C 9 (CONTINUED).

MRS. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN.

(If not correct please report at once).

DR.			CR.		
1880.			1880.		
Nov. 30	Amt. for'd	41,740 67	Dec. 1	100 Erie Pfd, 77¼	7,712 50
Dec. 7	Dft. Henry M. Smith	40	4	100 W. U. Tel., 90⅛	9,000
9	Bal ac. Watts & Flagg	28 39	17	100 Manhattan, 34	3,387 50
14	Dft. H. M. Smith	70	20	100 Can. Sou., 76¼	7,612 50
15	Dft. Mutual Life Ins. Co.	120	27	10 m C. C. & I. C. Inc. 56.	5,587 50
17	100 Can. Sou. 74	7,412 50	31	By Balance	38,971 43
18	Cash	100			
20	100 Ohio, 39	3,912 50			
24	Cash	50			
27	100 Del. & Hud. 90¼	9,037 50			
29	Dft. H. M. Smith	25			
28	100 Cent. Pac., 95¾	9,587 50			
31	Interest	147 37			
		72,271 43			72,271 43

40 30 20 10

DR. COMPLAINANT'S EXHIBIT C 9 (Continued.) CR.

				1881.			
		100 Ches. & O. 1st pfd		Jan'y 8	100 Del & Hud., $94\frac{7}{8}$	9,475	
		100 Manhattan		10	100 Erie Pfd., $92\frac{1}{4}$	9,212	50
Dec. 31	Long	200 Del. & Hud		20	100 Del & Hud., $98\frac{1}{2}$	9,837	50
		100 Ohio		"	100 Ohio $44\frac{1}{8}$	4,400	
		100 Cent. Pac		26	100 Jer. Cent., $90\frac{1}{2}$	9,037	50
	To balance		38,971 43	"	100 Nor. Pac. Pfd., $64\frac{3}{4}$	6,462	50
				31	By balance	15,830	98
1881.							
Jan'y 3	Ck C. A. Walling		22				
4	" H. M. Smith		60				
10	100 Erie Pfd., $91\frac{1}{4}$		9,137 50				
18	Ck Jas. Rooney		100				
19	100 Nor. Pac. Pfd., $66\frac{1}{2}$		6,662 50				
20	100 Jer. Cent., $91\frac{3}{8}$		9,150				
31	Interest		152 55				
			64,255 98			64,255	98
		100 Ches. & O. 1st Pfd					
Jan'y 31	Long	100 Cent. Pac					
		100 Manhattan					
	To balance		15,830 98				

Complainant's Exhibit C 10.

MRS. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN,
(If not correct please report at once).

DR.			CR.		
1881.			1881.		
Jan'y 31	Amt. ford	$15,830 98	Feb. 1	Dividend on 100 Cent. Pac.	$300 00
Feb. 28	1 % paid broker for obtaining money, Feb. 25	111 42	5	100 Manhattan 44	4,387 50
"	Interest	50 75	26	100 Cent. Pac., 83½	8,337 50
		$15,993 15	28	By balance	2,968 15
					$15,993 15
			Mar. 16	Del'd Scott & Myers, 100 Ches. & O. 1st pfd	
Feb. 28	Long 100 Ches. & O. 1st pfd To balance	$2,968 15	17	Ck Scott & Myers, proceeds of sale	
Mar. 17	Interest	6 92	"	100 Ches. & O. 1st pfd	3,629 00
"	To balance	653 93			
		$3,629 00			$3,629 00
1881.					
Nov. 17	Transf'd to sundry %	$653 93	Mar. 17	By balance	$653 93

40 30 20 10

307

Complainant's Exhibit C 11.

MR. W. L. FLAGG IN ACC'T WITH A. H. BALDWIN.

(If not correct please report at once.)

DR.				CR.			
1880.				1880.			
Jany. 28	200 Reading, 67 7/8		$6,800	Jany. 26	Ck		$1,000
29	100 N. West, 91 1/8		9,125	31	200 Reading, 69 1/2		6,937 50
31	Interest		7 25	"	By balance		7,994 75
			$15,932 25				$15,932 25
Jany. 31	Long 100 N. West						
"	To balance		$7,994 75	Feby. 3	100 Wab. Pfd., 70 1/2		$7,037 50
Feby. 2	100 Wab. Pfd., 69 3/4		6,987 50	28	By balance		15,142 56
3	100 " 71 1/8		7,125				
28	Interest		72 81				
			$22,180 06				$22,180 06
Feby. 28	Long 100 N. West, 100 Wab. Pfd						
	To balance		$15,142 56	March 2	100 Wab. Pfd., 67		$6,687 50
March 4	100 St. Paul, 81 3/8		8,150	6	100 St. Paul, 81 3/4		8,162 50

5...	100 Erie, 46⅛	4,625	
8...	100 Ches. & O. 1st Pfd., 34	3,412	50
9...	200 D., L. & W., 93	9,312	50
13...	100 Erie Pfd., 70½	7,062	50
15...	Cash	25	
" ...	100 Wab. Pfd., 68⅞	6,900	
23...	10m Erie 2d, 91¾	9,187	50
31...	Interest	62	70
		$63,880	26
March 31...	100 Erie Pfd / Long 100 Ches. & O. 1st pfd., 10m Erie 2d		
"	To balance	$18,505	26
April 9...	⅛ paid for borrowing money April 7	23	75
19...	100 Del. & Hudson, 80¼	8,037	50
22...	Cash	37	50
23...	100 St. Paul, 79	7,912	50
" ...	100 Wab. Pfd., 68	6,812	50
	Forward	$41,329	01

40 30

" ...	100 N. West, 93⅝	9,350	
" ...	100 Erie, 46⅝	4,650	
11...	200 D., L. & W., 94¼	9,412	50
17...	100 Wab. Pfd., 68¼	6,812	50
25...	Ck	300	
31...	By balance	18,505	26
		$63,880	26
April 8...	10m Erie 2d, 90½	9,037	50
9...	100 Del. & Hud., 82¾	8,262	50
20...	100 Jer. Cent., 76⅞	7,675	
23...	100 Wab. Pfd., 68⅝	6,850	
" ...	100 St. Paul, 79⅞	7,975	
" ...	100 N. West, 94⅛	9,400	
	For'd	$49,200	

20 10

309

Complainant's Exhibit C 11 (Continued).

Mr. W. L. Flagg in account with A. H. Baldwin.

(If not correct please report at once.)

Dr.				Cr.			
1880.				1880.			
April 23	Amt. For'd		41,329 01	April 23	Amt. For'd		49,200
26	100 Mich. Cent., 91		9,112 50	30	100 Mich. Cent., 89½		8,937 50
28	100 Jer. Cent., 77⅜		7,750	"	By balance		7,827 20
29	100 " 76⅞		7,700				
30	Interest		73 19				
			$65,964 70				$65,964 70
April 30	100 Ches. & O. 1st Pfd. 100 Erie Pfd., 100 Jer. Cent Short 100 N. West						
"	To balance		7,827 20	May 1	100 Jer. Cent., 75½		7,537 50
May 3	Cash		50	4	100 Iron Mt., 48½		4,837 50
5	100 Mich. Cent., 87		8,712 50	5	100 Mich. Cent., 87¾		8,762 50
"	100 N. West, 91¼		9,137 50	6	100 Iron Mt., 49		4,887 50
6	100 Iron Mt., 47¼		4,737 50	8	200 D., L. & W., 84¼		8,412 50
"	100 " " ¾		4,787 50	"	100 W. U. Tel., 105¼		10,512 50
"	Cash		50	10	100 Erie Pfd., 62½		6,237 50
7	Cash (Western Union)		98 26	"	100 Wab. Pfd., 65⅝		6,550 00
"	100 W. U. Tel., 104		10,412 50	11	100 Jer. Cent., 75¼		7,512 50

310

"	100 Erie Pfd., 62	6,212 50
8	100 Wab. Pfd., 64⅞	6,500 00
10	Cash	100
11	100 Jer. Cent., 72¼	7,237 50
"	200 D., L. & W., 82⅜	8,250
"	100 N. West, 89 ——	8,912 50
"	100 Wabash, 32	3,212 50
"	100 " Pfd., 62	6,212 50
12	100 Mich. Cent., 79	7,912 50
"	100 N. Y. Cent., 123	12,312 50
14	200 Reading, 46½	4,662 50
"	100 Jer. Cent., 67¼	6,737 50
15	100 Wab. Pfd., 58	5,812 50
17	Cash	35
"	100 St. Paul, 72⅜	7,250
	For'd	137,172 96

"	100 N. West, 90	8,987 50
"	100 Wabash, 33¼	3,312 50
"	100 " Pfd., 63	6,287 50
12	100 N. Y. Cent., 125	12,487 50
"	100 Jer. Cent., 67¼	6,712 50
"	100 N. West, 89⅛	8,900
"	100 Mich. Cent., 80½	8,037 50
13	100 St. Paul, 73	7,287 50
14	100 Reading, 48½	2,418 75
"	100 " 47½	2,368 75
15	100 Wab. Pfd., 59⅛	5,900
"	100 W. U. Tel., 98¾	9,862 50
"	100 Jer. Cent., 68⅞	6,875
17	100 Erie Pfd., 59	5,887 50
"	100 Jer. Cent., 69	6,887 50
	For'd	167,462 50

Complainant's Exhibit C 12.

MR. W. L. FLAGG IN ACCOUNT WITH A. H. BALDWIN.

(If not correct please report at once.)

DR.				CR.			
1880.				1880.			
May 17	Am't for'd	$137,172	96	May 17	Am't for'd	$167,462	50
" 18	Ck. J. H. Davis & Co.	500		"	100 N. Y. Cent., 125	12,487	50
"	200 Reading, 45¼	4,537	50	18	200 Reading, 47½	4,737	50
"	200 " 45¾	4,587	50	"	200 " 46	4,587	50
"	100 Jer. Cent., 65⅝	6,575		"	100 St. Paul, 71⅜	7,125	
"	100 " " 67¼	6,737	50	19	100 Jer. Cent., 64	6,387	50
"	100 " " 61¾	6,187	50	"	100 Mich. Cent., 76⅞	7,675	
"	100 St. Paul, 70¼	7,037	50	20	100 St. Paul, 70	6,987	50
"	100 N. Y. Cent., 124	12,412	50	"	200 D. L. & W., 77⅝	7,750	
"	100 Erie pf'd, 56¾	5,687	50	22	100 N. Y. Cent., 125½	12,537	50
21	Cash	50		"	100 P. Mail, 31	3,087	50
"	100 Erie, 37⅛	3,725		"	200 Reading, 48¼	4,812	50
"	200 Reading, 47¼	4,737	50	"	100 St. Paul, 71	7,087	50
22	100 W. U. Tel., 97	9,712	50	24	100 W. U. Tel., 96⅜	9,625	
24	200 D. L. & W., 73½	7,362	50	26	100 Alton, 105	10,487	50
"	Cash	75		"	100 N. West, 89¾	8,962	50
25	"	20		"	100 Erie pf'd, 51¾	5,162	50

3/12

"	100 St. Paul, 69¾	6,987 50		"	100 Erie, 31⅞	3,175	
"	100 N. Y. Cent., 124	12,412 50		"	100 St. Paul, 69	6,887 50	
26	100 P. Mail, 30	3,012 50		"	100 Lake Shore, 98½	9,837 50	
"	100 Erie pf'd, 47½	4,762 50					
27	100 W. U. Tel., 94	9,412 50					
29	Cash	75					
"	Int	~~5,167~~					
31	To balance	53,030 37					
		$306,862 50				$306,862 50	
				May 31	Long { 100 Erie pf'd. 100 Ches. & O. 1st pf'd.		
					Short { 100 Mich. Cent. 200 St. Paul. 100 Alton. 200 N. West. 100 Lake Shore.		
					By balance	$53,030 37	

3 13

40 30 20 10

40 30 20 10

Mr. W. L. Flagg in account with A. H. Baldwin.

Dr. (If not correct please report at once.) Cr.

1880.			1880.		
June 1..	Ck	200	May 31....	Am't for'd	53,030 37
"..	100 N. Y. Cent., 124¾	12,487 50	June 1....	100 N. Y. Cent., 125¾	12,562 50
2..	100 N. West, 88¼	8,837 50	4 ..	100 W. U. Tel., 89	8,887 50
3..	Cash	25	9.. .	100 Del. & Hud. (Flagg & McCoon transf'd).	
"..	100 Lake Shore, 96½	9,662 50	"...	Bal. ac't Flagg & McCoon	6,537 50
"..	100 W. U. Tel., 88	8,812 50	10....	100 Erie, 35⅝	3,550
5..	Ck. W. L. Carter	60 03	"...	100 Jer. Cent., 64⅜	6,425
9..	200 St. Paul, 75¼	15,075	"...	100 St. Paul, 75¼	7,512 50
"..	100 Jer. Cent., 63¼	6,337 50	15....	100 P. Mail, 39½	3,937 50
10..	100 Mich. Cent., 85½	8,562 50	".	100 Erie pf'd, 60¾	6,062 50
"..	100 Del. & Hud., 69	6,912 50	"...	100 Lake Shore, 105.	10,487 50
"..	100 St. Paul, 76	7,612 50	16....	Del'd to ac't Mrs. J. M. Flagg, 100 Ches. & O., 1st pf'd.	
11..	Ck	68 35			
12..	100 P. Mail, 38¾	3,887 50			
15..	Cash	25			
16..	Interest to date	24			
"..	Balance act. transf'd to Mrs. J. M. Flagg	30,402 99			
"..	Received for ac't Mrs. J. M. Flagg, 100 N. West				
					118,992 87

" ..	Received for ac't Mrs. J. M. Flagg, 100 Alton	
" ..	Received for ac't Mrs. J. M. Flagg, 100 Erie	
" ..	Received for ac't Mrs. J. M. Flagg, 100 Lake Shore...	
		$118,992 87

Complainant's Exhibit C 13.

M. Flagg & Baldwin in Acc't with A. H. Baldwin.

(If not correct please report at once.)

Dr.			Cr.			
1880.				1880.		
May 6	100 Jer. Cent. 75	$ 7,512 50		May 5	100 St. Joe Pfd. 70	$ 6,987 50
7	100 St. Joe Pfd. 69¼	6,937 50		22	200 Jer. Cent. 61	12,175
7	100 Erie Pfd. 62¾	6,286 50		"	100 " 61¾	6,162 50
11	100 Jer. Cent. 72¼	7,237 50		24	200 D.L. & W. 75	7,487 50
24	100 " 58¾	5,887 50		25	200 " 72	7,187 50
25	200 " 60½	12,125		"	100 Jer. Cent. 61⅞	6,175
"	100 " 54	5,412 50		"	100 " 54	5,387 50
"	100 " 55¼	5,537 50		"	100 " 54¼	5,412 50
"	200 D.L. & W. 72	7,212 50		"	100 St. Paul, 68⅞	6,875
"	200 " 70⅞	7,100		"	100 N. West. 89	8,887 50
29	Int. for May	54 98		27	200 Jer. Cent. 53¼	10,625
31	To Balance	12,057 52				
		$83,362 50				$83,362 50
June 9	200 Jer. Cent. 61⅞	12,400		May 31	Short { 100 Jer. Cent.	
"	100 " 62	6,212 50			{ 100 St. Paul	

"	100 St. Paul, 74⅞	7,500	
10	100 Jer. Cent. 62	6,212	50
11	100 N. West. 94.....	9,412	50
30	100 Erie Pfd. 68¼.....	6,837	50
	Int.....	52	05
		$48,627	05
June 30	Long 100 Erie Pfd..... To Balance..... ...	12,469	53
July 31	Int	44	07
		$12,513	60
July 31	To Balance.....	5,726	10
Aug. 30	To Int. to Aug. 26th.....	24	81
Sept. 30	Int.....	28	69
		$ 5,779	60
Sept. 30	To Balance.....	5,767	20
Oct. 31	Int.....	29	79
		$ 5,796	99

40 30

	" 100 N. West.....		
	Long 100 Erie Pfd.....		
	By Balance.....	$12,057	52
June 1	100 Jer. Cent. 59⅞...	5,975	
3	100 " 57⅛.....	5,700	
" ...	100 " 54¾.....	5,462	50
30	100 Erie Pfd., 69¾.....	6,962	50
"	By Balance...	12,469	53
		$48,627	05
July 13	100 Erie Pfd., 68.....	6,787	50
31	By Balance.....	5,726	10
		$12,513	60
Sept. 3	Cash ½ Int. Aug 26.....	12	40
30	By Balance.....	5,767	20
		$ 5,779	60
Nov. 4	W. L. Flagg proportion chg. to J. M. Flagg.....	2,863	05
6	A. H. Baldwin Spc. his proportion of ⅌.....	2,933	94
		$ 5,796	99

20 10

Complainant's Exhibit C 14.

MESSRS. FLAGG & RIPLEY, IN ACC'T WITH A. H. BALDWIN.

(If not correct please report at once.)

DR.				CR.		
1880.						
May 21	Ck. J. H. Davis & Co.	$10,109 92	May 31	By balance		$10,126 77
"	Rec'd " " " 100 W. U. Tel.					
29	Int	16 85				
		$10,126 77				$10,126 77
31	Long 100 W. U. Tel.		June 7	100 W. U. Tel., 90		$8,987 50
	To balance	$10,126 77	30	By balance		1,153 95
June 30	Int	14 68				
		$10,141 45				$10,141 45
June 30	To balance	$1,153 95	July 31	By balance		$1,159 91
July 31	Int	5 96				
		$1,159 91				$1,159 91

July	31....	To balance.....	$1,159 91	Sept.	3....	Cash ½ int., Aug. 26.....	$2 51
Aug.	30....	Int. to Aug. 26.....	5 03		30....	By balance.....	1,168 24
Sept.	30....	Int.....	5 81				
			$1,170 75				$1,170 75
Sept.	30....	To balance.....	$1,168 24	Nov.	4....	W. L. Flagg proportion, chg. the ac. J. M. Flagg.	$329 96
Oct.	31....	Int.....	6 03		6....	D. M. Ripley, his proportion of ac.....	844 31
			$1,174 27				$1,174 27

319

40 30 20 10

Complainant's Exhibit C 15.

NEW YORK, August 26th, 1880.

A. H. BALDWIN, ESQ.:

DEAR SIR—I am in receipt of statement showing condition of my account with you, from which it appears that at to-day's prices I am indebted to you in the sum of forty-three hundred and seventy $\frac{43}{100}$ dollars ($4,370.43).

I acknowledge the correctness of this statement, and agree that the same shall be an account stated. I also ratify and confirm everything that my husband, William L. Flagg, has done with or through you for me. I also authorize and empower my husband to act for me in the future as my agent and attorney in the control and management of my said account, and in the purchase and sale, by and through you, of any and all stocks, bonds and other securities, and I agree to ratify and confirm and adopt as my own every such transaction.

JENNIE M. FLAGG.

Complainant's Exhibit C 16.

NEW YORK, August, 26th, 1880.

A. H. BALDWIN, ESQ.:

DEAR SIR—I am in receipt of statement showing condition of my joint account with you and also of my joint account with Ripley.

It appears that by the former I owe you twenty-eight hundred and sixty-three $\frac{05}{100}$ dollars ($2,863.05) and by the latter three hundred and twenty-nine ($\frac{96}{100}$) dollars ($329.96).

I acknowledge the correctness of this statement and agree that the same shall be an account stated.

W. L. FLAGG.

Complainant's Exhibit C 17.

A. H. BALDWIN,
Banker.
P. O. Box, 3189.

66 Broadway, New York.

C. H. BALDWIN 188
Member N. Y. Stock and Mining Exchange.

A. H. BALDWIN:

I authorize you to charge to my account interest and commissions you pay for money used to carry whatever stock you have or shall hereafter have for me at such rates as you pay for the same.

I agree to pay you this interest, this authority to include the premium you pay for the money above legal interest.

W. L. FLAGG.

Complainant's Exhibit C 18.

A. A. BALDWIN,
Banker,
P. O. Box 3189.

A. H. BALDWIN,
Member N. Y. Stock and Mining Exchange, 66 Broadway, New York.

JUNE 7th, 1880.

MR. D. M. RIPLEY:

DEAR SIR—When our joint account shall show seven thousand dollars ($7,000) debit, you will please give the necessary order to close the account, charging the debit balance to our respective accounts.

Yours, &c.,

[Signed] A. H. BALDWIN,
W. L. FLAGG.

Complainant's Exhibit C 19.

A. H. BALDWIN,
Banker,
66 Broadway.

NEW YORK, June 8th, 1880.

DEAR SIR—Upon the stock or other securities bought or sold for my account, a margin of five per cent. upon the par value will be kept good.

Should the margin at any time fall below two (2) per cent. upon the par value, you are authorized to close the account for my account and risk, and for that purpose buy or sell at the Stock Exchange, I hereby expressly waiving all and every demand and notice thereof whatsoever.

Upon these conditions, please ——— for ——— account and risk.

[Seal.] W. L. FLAGG.

Complainant's Exhibit C 20.

N. Y. Nov. 1, '80:

MY DEAR SIR. At your discretion sell my stock this afternoon.

W. L. FLAGG.

Complainant's Exhibit C 21.

BANKING HOUSE OF A. H. BALDWIN.

Post Office Box 3189. 66 Broadway.

A. H. BALDWIN,
Member of N. Y. Stock and Mining Exchange.

NEW YORK, Nov. 1st, 1880.

A. H. BALDWIN, Esq.

MY DEAR SIR. Acknowledging the sales made for my account to-day I wish to say that they are satisfactory and acknowledged as correct.

Yrs Truly,

W. S. FLAGG.

J23

Complainant's Exhibit C 23.

A. H. Baldwin.

No. 1410. NEW YORK, Jan'y 28, 1880.

Continental National Bank in New York

Pay to the order of M. C. Bouvier, sixty-seven hundred and eighty-seven $\frac{50}{100}$ dollars.

$6,787\frac{50}{100}$. A. H. BALDWIN,
by D. M. RIPLEY, Atty.

Above check stamped across the face "Continental National Bank, certified Jan. 28, 1880."

Indorsed:

"For deposit to the credit of M. C. Bouvier, Per T. Darling."

Complainant's Exhibit C 234.

MRS. J. M. FLAGG IN ACCOUNT WITH A. H. BALDWIN,

DR. (If not correct, please report at once.) CR.

1880.				1880.		
June 16....	Recd. from acct. W. L. Flagg, 100 Ches, & O., 1st Pfd.			June 16....	Deld. to acct. W. L. Flagg.	
18....	100 A. & P. Tel., 40	4,012	50	"	100 N. West.	
"	100 L. S., 103⅝	10,375		"	100 C. & Alton.	
21....	100 Erie Pfd , 61½	6,162	50	"	100 Erie.	
22....	100 N. West, 94⅛	9,425		"	100 Lake Shore.	
"	100 Erie, 39¼	3,937	50	"	Balance acct. W. H. Flagg transferred	30,402 99
23....	100 J. C., 62⅝	6,275		June 19....	100 St. Paul, 75	7,487 50
"	100 Wab. Pfd., 65¼	6,537	50	24....	100 Wab. Pfd., 65¾	6,562 50
"	Cash	25		"	100 A. & P. Tel., 41¼	4,112 50
24....	100 Erie, 39	3,912	50	25....	100 J. C., 64⅝	6,450
"	Cash	37	50	"	100 " 64¼	6,412 50
25....	100 J. C., 64	6,412	50	"	100 Erie Pfd., 66¼	6,612 50
26....	100 St. Paul, 79⅛	7,925		26....	100 Erie Com., 40⅛	4,000
28....	Check	65		30....	By Balance	4,127 01
29....	Cash	50				76,167 50

June	29....	Div. on 100 N. West (short)	300				
	"....	100 Wab. Pfd., 66.....	6,612	50			
	30....	100 P. M., 40¾.....	4,087	50			
		Interest.....	15				
			76,167	50			
		Long, 100 Ches. & O., 1st Pref., 100 P. M., 100 Wab. Pfd.; short, 100 C. & Alton.			July	2....	Div. on 100 A. & P. Tel...
	30....	To Balance.....	4,127	01		"....	100 Wab. Pfd., 66¾.....
July	1....	100 Erie Pfd., 65¾.....	6,587	50		"....	100 Erie Pfd., 65¼.....
	2....	100 St. Joe. Pfd., 72¼.....	7,237	50		6 ...	100 L. S., 106⅛.....
	13....	Check.....	30			9....	100 West. Union, 104⅛.....
	19....	100 West. Union, 106⅜.....	10,650			10....	200 D., L. & W., 76.....
	21....	100 L. S., 107⅝.....	10,775			16....	100 St. Joe. Pfd, 69½.....
	24 ...	100 D., L. & W., 85.....	4,256	25		17....	100 P. M., 41¾.....
	"....	100 " 84⅞.....	4,250			24 ..	200 D., L. & W., 83½.....
	"....	100 C. & Alton, 112⅞.....	11,300				
	31....	Interest.....	49	67			
		To Balance.....	2,012	07			
			61,275	00			

	75	
	6,662	50
	6,512	50
	10,600	
	10,400	
	7,587	50
	6,937	50
	4,162	50
	8,337	50
	61,275	00

325

40 30 20 10

40 30 20 10

MRS. J. M. FLAGG (CONTINUED) IN ACCOUNT WITH A. H BALDWIN.

DR. (If not correct, please report at once.) CR.

1880.			1880.		
Aug. 1....	Long, 100 Ches. & O., 1st Pfd.; short, 200 D., L. & W.		July 31....	By Balance.....	2,012 07
2....	Dividend on 100 L. S.....	400	Aug. 2....	Div. on 100 St. Joe, Pfd	300
4....	100 J. C., $75\frac{1}{4}$.....	7,537 50	4....	100 J. C., $75\frac{1}{2}$.....	7,537 50
5....	Check.....	30	25....	200 D., L. & W., $89\frac{3}{8}$.....	8,925
7....	Cash	25			
10....	Check.....	40			
"	200 D., L. & W., $85\frac{1}{2}$.....	8,562 50			
"	Interest to Aug. 28, '80. ...	29 23			
28 ...	To Balance.....	2,150 34			
		18,774 57			18,774 57
	Long, 100 Ches. & O. 1st Pfd.; short, 200 D. L. & W.		Aug. 28....	By Balance.....	2,150 34
Aug. 26....	200 D., L. & W. (selling), $90\frac{3}{8}$.....	9,050	Aug. 26....	100 Ches. & O. 1st Pfd. (selling), $25\frac{1}{8}$.....	2,500
Aug, 26...	Total Loss.....	4,399 66		The foregoing Account is correct, J. M. FLAGG, By W. L. FLAGG, Attorney.	
	Deduct Interest paid.....	29 23			
		4,370 43	(E. & O. E.)		W. L. FLAGG.

326

Complainant's Exhibit C 235.

MESSRS. FLAGG & RIPLEY IN ACCOUNT WITH A. H. BALDWIN.

(If not correct please report at once.)

DR.					CR.
1880.			1880.		
May 21	Check, J. H. Davis & Co..	$10,109 92	May 31	By Balance	$10,126 77
	Rec'd J. H. Davis & Co., 100 West. Union				
29	Interest	16 85			
		$10,126 77			$10,126 77
	Long, 100 West. Union				
May 31	To balance	$10,126 77	June 7	100 West. Union, 90	$8,987 50
June 30	Interest	14 68	30	By balance	1,153 95
		$10,141 45			$10,141 45
June 30	To Balance	$1,153 95	July 31	By Balance	$1,159 91
July 31	Interest	5 96			
		$1.159 91			$1,159 91

40 30 20 10

COMPLAINANT'S EXHIBIT C 235 (Continued.)

DR.					CR.
July 31....	To Balance.....	$1,159 91	Aug. 28....	By Balance.....	$1,164 94
	Interest to Aug. 26, '80....	5 03			
		$1,164 94			$1,164 94
	To Balance.....	$1,164 94		E. &. O. E.	
	For'd.....	$1,164 94			
	Less interest paid.....	5 03			
		$1,159 91			
	½ of $1,159 91.....	$579 96			
	Cr	250			
	Your proportion of loss....	$329 96			

The above statement of ℅. is correct.

W. L. FLAGG.

Complainant's Exhibit C 236.

MESSRS. FLAGG AND BALDWIN IN ACCOUNT WITH A. H. BALDWIN.

(If not correct please report at once).

DR.			CR.		
1880.			1880.		
May 6	100 J. C., 75	$7,512 50	May 5	100 St. Joe Pfd., 70	$6,987 50
7	100 St. Joe pfd, 69¼	6,937 50	22	200 J. C., 61	12,175
"	100 Erie " 62¾	6,287 50	"	100 " 61¾	6,162 50
11	100 J. C., 72¼	7,237 50	24	200 D., L. & W., 75	7,489 50
24	100 " 58¾	5,887 50	25	200 " 72	7,187 50
25	200 " 60½	12,125	"	100 J. C., 61⅞	6,175
"	100 " 54	5,412 50	"	100 " 54¼	5,412 50
"	100 " 55¼	5,537 50	"	100 " 54	5,387 50
"	200 D., L. & W., 72	7,212 50	"	100 St. Paul, 68⅞	6,875
"	200 " 70⅞	7,100	"	100 N. West, 89	8,887 50
29	Int. for May	54 98	27	200 J. C., 53¼	10,625
31	To balance	12,057 52			
		83,362 50			83,362 50
June 9	200 J. C., 61⅞	12,400			

40 30 20 10

329

40		30	20		10
"	100 " 62	6,212 60	31	Short—100 J. C., 100 St. Paul, 100 N. West. Long—100 Erie Pfd.	
"	100 St. Paul, 74 7/8	7,500			
10	100 J. C., 62	6,212 50			
11	100 N. West., 94	9,412 50	"	By balance	12,057 52
30	100 Erie Pfd., 68 1/4	6,837 50	June 1	100 J. C., 59 7/8	5,975
"	Interest	52 05	3	100 " 57 1/8	5,700
			"	100 " 54 3/4	5,462 50
			30	100 Erie Pfd., 69 3/4	6,962 50
				By balance	12,469 53
		48,627 05			48,627 05
"	Long—100 Erie Pfd				
"	To balance	12,469 53	July 13	100 Erie Pfd., 68	6,787 50
July 31	Interest	44 07	31	By balance	5,726 10
		12,513 60			12,513 60
July 31	To balance	5,726 10	Aug. 28	By balance	5,750 91
	Interest to Aug. 26, 1880	24 81			
		5,750 91			5,750 91

330

To balance.....		5,750 91			
	5,750 91				
Less Interest paid.	24 81				
	5,726 10				
½ of $5,726 10.....	2,863 05				

E. & O. E.

The above statement of % is correct,
W. L. FLAGG.

3
31

40 30 20 10

DEFENDANTS' EXHIBITS.

Defendants' Exhibit No. 1.

NEW YORK, Augt. 26, '80.

MR. AND MRS. WM. L. FLAGG:

I acknowledge the receipt of bond and mortgage on property at Summit, N. J., for $11,563.44. Of this sum $7,563.44 is the amount of your indebtedness to me; the balance, $4,000, is to cover future advances. I agree not to assign or dispose of said bond and mortgage before said $4,000 of future advances have been made. Said advances of $4,000 are to be charged to the personal account of Mrs. Flagg only. No future losses in the Flagg and Baldwin and the Flagg and Ripley joint accounts are to be considered as any part of said $4,000 advance. It being understood and agreed that I shall hvae the sole and absolute control of the said joint accounts, and it being further understood and agreed that all orders given by Mrs. Flagg or by Mr. Flagg for her, after this date, are to be charged to the personal account of Mrs. Flagg.

A. H. BALDWIN.

(Indorsed): In Chancery of N. J. Between Abram H. Baldwin, compl't, and Jennie M. Flagg & ano. def'ts, on bill.

July 13, marked Db for identification.

" 15, marked as exhibit D^1 for defendants. Dated Feb. 13, 1882.

WILLIAM T. DAY,
M. C. C.

Defendants' Exhibit No. 2.

BANKING HOUSE OF A. H. BALDWIN,
Post Office box 3,189.
A H. BALDWIN,
Member of N. Y. Stock and Mining Exchange,
66 Broadway.

NEW YORK, Feb. 24, 1881.

MRS. J. M. FLAGG:

MADAM—I hereby demand payment forthwith of the balance of account due by you to me, amounting to the sum of thirty-four hundred dollars, with interest from March 8, 1880, and ninety-five hundred and seventy-five dollars and interest from Dec. 28, 1880, aggregating twelve thousand nine hundred and seventy-five dollars and interest, together with twenty-five dollars commissions.

In event of your failure to pay the same on the 25th day of February, 1881, by 3 P. M., I hereby give you notice that I shall sell the stocks and securities of which a list is hereto annexed, Marked Exhibit A, held by me, at the Exchange Salesroom, No. 111 Broadway, in the City of New York on the 26th day of February, 1881, at 12:30 P. M., through Messrs. Scott & Myers, auctioneers, and shall apply the net proceeds of such sale as far as the same will go towards payment of the balance of such account, and shall hold you responsible for any deficiency remaining due by you to me after such application.

Yours, &c.,
A. H. BALDWIN.

EXHIBIT A—100 shares of the first preferred stock of the Chesapeake and Ohio Railroad Company.
100 shares of the stock of the Central Pacific Railroad Company.

Indorsed: In Chancery of N. J., between Abram H. Baldwin, compl't, and Jennie M. Flagg and an., def'ts. On bill. Marked for identification D *a*, for

defendants. Dated Feb. 4, 1882. William T. Day, M. C. C.

Feb. 15. Marked as Exhibit D². W. T. Day, M. C. C.

Defendants' Exhibit No. 3.

A. H. BALDWIN,

BANKER,

66 BROADWAY, NEW YORK.

P. O. Box 3189.

A. H. BALDWIN,
Member of New York Stock and Mining Exchange.

NOV. 30, 1880.

W. L. FLAGG, ESQ.

DEAR SIR: Please take notice that your account with this office is too large for your margin. You will please sell three hundred shares before 3 P. M. to-day, or I shall sell at the opening of the Board to-morrow, at 10 A. M., one hundred shares of Erie Pref'd, one hundred West. Union, and 10 C. C. & I. C. Income Bonds for your account and risk, holding you for any loss that may occur.

Yours truly,
A. H. BALDWIN,
RIPLEY.

(Indorsed): In Chancery of N. J., between Abram H. Baldwin, complainant, and Jennie M. Flagg, *et al.*, defendants. On bill. Marked Exhibit D³, for defendant, Feby. 24, 1882.

WILLIAM T. DAY.
M. C. C.

Defendants' Exhibit No. 4.

BANKING HOUSE OF A. H. BALDWIN,
66 Broadway,
Post Office Box, 3,189.

A. H. BALDWIN,
Member of N. Y. Stock and Mining Exchange.

NEW YORK, March 14, 1881.

MRS. JENNIE M. FLAGG.

MADAM—I demand payment forthwith of the sum of twenty-nine hundred seventy-five and $\frac{07}{100}$ dollars, being the amount due me upon your acct., and upon such payment I will deliver to your order one hundred shares of the First Preferred Stock of the Chesapeake and Ohio Rail Road Company, the same being now in my office and to the credit of your acct.

Upon your failure to pay for and take up the same on or before 3 o'clock, P. M., of March 15th, I shall proceed to sell the same at puclic auction at the Exchange Sales Room, No. 111 Broadway, in the City of New York, on the 16th day of March, 1881, at 12:30 P. M., by Scott & Myers, Auctioneers, and I shall hold you responsible for any deficiency that may be due me upon your acct., after giving you credit for any sum that may be realized at such sale.

Yours, &c.,

A. H. BALDWIN.

Indorsed—In Chancery of N. J., between Abram H. Baldwin, Comp't, and Jennie M. Flagg & an., Def'ts—on Bill—Marked as Exhibit D^4, for defendants—dated March 2, 1882.

WILLIAM T. DAY,
M. C. C. of N. J.

Defendants' Exhibit No. 5.

N. Y. COMMON PLEAS.

JENNIE M. FLAGG

AGAINST

ABRAM A. BALDWIN.

It is stipulated on the part of the defendant in this action that he will not assign or dispose of the bond and mortgage made and executed by Jennie M. Flagg and William L. Flagg, her husband, bearing date the 26th day of August, 1880, and recorded in the clerk's office, in the County of Union, the fourth day of September, 1880, at 10:45 o'clock A. M., Book 50 of Mortgages, at page 155, until the sum of four thousand dollars of future advances referred to in said bond and mortgage have actually been made.

March 10th, 1881.

ABRAM H. BALDWIN.

OFFICE OF THE CLERK OF THE COURT OF COMMON PLEAS, FOR THE CITY AND COUNTY OF NEW YORK.

STATE OF NEW YORK, City and County of New York, } ss.:

I, NATHANIEL JARVIS, JR., Clerk of the Court of Common Pleas, for the City and County of New York, do hereby certify that the foregoing copy stipulation has been compared with the original thereof, on file in this office, and that the same is a

correct transcript thereof, and of the whole of the said original.

In attestation whereof I have hereunto affixed the seal of the said Court this sixth day of May, 1882.

[SEAL] NATH'L JARVIS, JR., Clerk.

(Endorsed)

IN CHANCERY OF NEW JERSEY.

Between

ABRAM H. BALDWIN, Complainant,

AND

JENNIE M. FLAGG ET AL., Defendants.

On Bill, &c.

Marked Exhibit No. 5 for Defendants.
Dated May 10, 1882.

WILLIAM T. DAY, M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

ABRAM H. BALDWIN	On Bill to Foreclose.
VS.	On Final Hearing on Pleadings and Proofs.
JENNIE M. FLAGG AND HUSBAND.	

OPINION.

MR. H. A. ROOT, of New York, and M. C. PARKER, for Complainant.

MR. A. Q. KEASBEY for Defendants.

THE CHANCELLOR.

The bill is filed to foreclose a mortgage dated August 26th, 1880, given by the defendants to the complainant on land in Summit township, in Union county, and made to secure the payment of a bond of the same date given by the defendants to the complainant in the penalty of $23,126.88, and conditioned for the payment of $11,563.44 and interest, on demand. The mortgage recites that the defendants were at the date thereof justly indebted to the complainant in the sum of $11,563.44 mentioned in the condition of the bond; that its payment was secured by the bond and that of that sum $7,563.44 were due from the defendants to the complainant and the balance $4,000, was security for future advances. The title to the mortgaged premises was when the mortgage was given and still is in Mrs. Flagg, and she alone has answered. By the answer she admits the giving of the bond and mortgage, and sets up several defences. One is that the bond and mortgage were in fact executed by her at the solicitation of her husband for his accommodation and as surety for him, and that all the promises and covenants

in them were promises to pay his debts and to answer for his defaults and liabilities and were, as she insists, consequently invalid, and created no lawful obligation against her under the laws of this state, where she resided when these instruments were made and where the mortgaged premises are. Another defence is that as to $3,193.01 of the $7,563.44 mentioned in the mortgage, they were for the amount of alleged losses incurred by her husband in two partnership stock speculations, in one of which he and the complainant (the latter acting as broker as well as being partner in both) were jointly interested, and in the other he and one D. M. Ripley, the complainant's confidential agent, and the complainant, were the parties in interest; and that she never intended, as the complainant well knew, that the mortgage should cover those losses which occurred in transactions in which she had no interest, and of which, as she alleges, she had no information. A third defence is that the bond and mortgage were obtained from her husband on a special understanding to the effect that the complainant, who is and was a resident of the city of New York, and a stock-broker carrying on the business of buying and selling stocks and other securities, on commission, at the New York Stock Exchange, should, on the order of her husband, buy and sell stocks and other securities in a speculative stock account which the complainant had previously to the giving of the bond and mortgage been carrying on as a stock-broker for him; and that the complainant should in no case claim more than the difference arising out of such purchases and sales; that is to say, that the complainant, in consideration of brokerage commissions on purchases and sales and interest on money furnished by him to carry the stock and securities bought, should buy and sell stocks and other securities for the speculative account on the orders of Mr. Flagg, upon the condition and with the special provision and agreement that in no case was Mrs. Flagg as nominal principal, or her husband as the real principal, to be under any obligation to take delivery or transfer of any of the stock or securities, and when the differences between the purchases and sales were favorable to the account, it should be credited there-

with, and whenever the complainant advanced money to pay differences on purchases and sales which showed a loss, the amount of the differences should be charged against the account, the complainant agreeing, in consideration of receiving the security of the bond and mortgage and the commissions and interest, to make purchases and sales on speculations on the account, in accordance with Mr. Flagg's orders, until he should have advanced over and above the profit differences to be credited to the account, for differences, losses, cash drafts, commissions, and interest, the whole amount of the bond and mortgage; and no part of the amount of the bond and mortgage was to be due or payable at any time during the progress of the speculations, unless the amount of the complainant's advances to cover differences, losses, drafts, commissions, and interest should equal the amount of the bond and mortgage over and above all profit differences. Mrs. Flagg insists that this was a wagering contract, and therefore illegal and void; and that hence the payment of the bond and mortgage cannot be enforced. Still another defence is, that this suit was prematurely brought, inasmuch as she insists the complainant having agreed to make advances to the amount of $4,000, did not perform his agreement, but refused to make advances and buy and sell stocks or other securities for her husband, while as yet the difference in the account in the complainant's favor did not amount to the $4,000; and she insists that the mortgage is not due or payable until advances to that amount shall have been made. Another defence is, that the complainant has made illegal charges for interest and commissions.

The history of the transactions involved is as follows: Flagg opened an account with the complainant, January 28th, 1880, and bought and sold stocks on it on his own account up to the time when he began to make such sales and purchases in the name and for the account of his wife, which was June 15th, 1880. He was interested also as partner in the two accounts before mentioned. One (called the Flagg & Baldwin account), of himself and the complainant began May 6th, 1880, *and closed on the 13th day of July following.* The other (called the Flagg & Ripley account), of himself

and Ripley and the complainant, began May 21st, 1880, *and was closed on the 7th of June following.* On the 15th of June, 1880, Mrs. Flagg wrote the complainant a letter, enclosing therein her note for $4,500, in which she said she sent the note as margin in a speculation stock account which she wished to open with him, and requested him to transfer to her name the personal account of her husband on his books, and to follow the latter's directions in all matters connected with her account. The account was continued, and the transactions conducted accordingly in her name and for her account, under the control and direction of her husband, until August following, when the complainant, in view of the losses which had been incurred, was unwilling to go further without further security than was afforded by the note. The bond and mortgage were then given; as before stated, they are dated August 26th, 1880. By her letter of that date to the complainant, Mrs. Flagg acknowledges the receipt from him of a statement showing the condition of her account, from which it appeared that at that day's prices she was indebted to him in the sum of $4,370.43, and she acknowledged the correctness of the statement and agreed that it should be an account stated. She also thereby ratified and confirmed everything her husband had done with or through the complainant for her. She also by that letter authorized and empowered her husband to act for her in the future as her agent and attorney in the control and management of her account with the complainant, and in the purchase and sale by and through him of any and all stocks, bonds, and other securities, and agreed to ratify and confirm and adopt as her own every such transaction. Her husband by another letter, of the same date, to the complainant, acknowledged that he had received a statement of the joint accounts before mentioned, that it was correct, and that there were due to the complainant from him on the one (Flagg & Baldwin's) $2,863.05, and on the other (Flagg & Ripley's), $329.96 (altogether, $3,193.01); and agreed that the statement should be an account stated. By letter of the same date to Mr. and Mrs. Flagg the complainant acknowledged the receipt of the bond and mortgage, and stated that of the $11,563.44 which

it was made to secure, $7,563.44 were for the amount of their indebtedness to him, and that the rest, $4,000, was to cover future advances. And he thereby agreed that he would not assign or dispose of the bond and mortgage before the $4,000 of future advances had been made; and added that those advances were to be charged to the personal account of Mrs. Flagg only, *and that no future losses in the joint accounts before mentioned were to be considered as part of the* $4,000 *of advances; and that it was understood and agreed that he should have the sole and absolute control of those joint accounts*, and that all orders given by Mrs. Flagg or by Mr. Flagg for her after that date were to be charged to her personal account. The whole sum mentioned in the mortgage, $11,563.44, was credited to Mrs. Flagg in her account, under date of November 4th, 1880. *The account continued until March*, 1881. *On the fourteenth of that month the complainant demanded of Mrs. Flagg the payment of* $2,975.07 *as the amount due him on her account* (*the amount of the mortgage had, as before stated, been credited*) *and notified her that, on payment of that sum, he would deliver to her order one hundred shares of the first preferred stock of the Chesapeake and Ohio Railroad Company, then in his office and standing to the credit of her account, and that on failure to pay the money demanded, he would sell the stock at auction on the* 16*th of March*. The money not being paid, the stock was sold accordingly, and the sale produced such a sum of money as that when it was credited to Mrs. Flagg, there was a balance of account in her favor (crediting the mortgage) of $653.93. The difference, $10,909.51, between the amount of the mortgage and that sum is the amount which, with interest thereon from March, 17th, 1881, is claimed to be due on the mortgage. The note for $4,500 has been given up to Mrs. Flagg.

The first of the defences as they are above stated, is that Mrs. Flagg executed the bond and mortgage merely as security for her husband; *this defence must have reference to his share of the losses on the joint account, for the other indebtedness was her own, and the advances were to be made, not for him, but for her.* It is enough to say on this head that it is established in this state that a mortgage made by a married wo-

man on her own property to secure the debt of her husband is valid.

Campbell vs. Tompkins, 5 *Stew.*, 170. *Affirmed on appeal*, 6 *Stew.*, 362.

That Mr. and Mrs. Flagg were, when the mortgage was given, indebted to the complainant in the sum mentioned in the mortgage in that behalf $7,563.44, is proved clearly. By his letter of the same date as the mortgage Flagg acknowledged that he owed the complainant $3,193 01, and Mrs. Flagg, by her letter of that date acknowledged that she herself owed him on her own account $4,370.43, which two sums together make the amount, $7,563.44, mentioned in the mortgage as being then due from both of them.

It appears by the complainant's letter to them of the same date that it was understood that no future losses in the joint accounts called the Flagg and Baldwin accounts and Flagg and Ripley accounts should be considered any part of the $4,000 advances to be made. The three letters just referred to were all part of the same transaction and were written and signed to witness the matters stated in them. It appears from them that Flagg's share of the losses on the joint accounts was understood to be secured by the bond, but that future losses by him on those accounts or either of them were not to be. Mrs. Flagg is bound by the statements of those instruments. *Moreover, Flagg testifies that he told her that the mortgage was given to secure the losses incurred in the joint accounts.* It may be observed that she was not defrauded by the complainant in the matter in any way, and her husband who acted for her, is a lawyer, and had then been practicing in New York as such for many years. He testifies also that he is an expert (and he has given his evidence in this suit as such in her behalf), in the matter of stock transactions in Wall street, as conducted at the present day, having made them, as he says, a study as a lawyer, and having when the mortgage was given been conversant with them practically for four or five years.

There seems to have been no attempt to sustain the allegation that the complainant has made illegal charges for commissions, *and it appears by his testimony, which is uncon-*

tradicted on the point, that he has charged for interest only on what he paid.

There was a full understanding between him and Mrs. Flagg on the subject of the charges to be made for interest. By her letter to him of January 20, 1881, she expressly authorized him to charge to her account the interest and commissions he might pay for money used to carry whatever stock he then had or should thereafter have for her, at such rates as he should pay therefor, and she thereby agreed to pay him such interest, including the premium he should pay for the money above legal interest.

The complainant swears that he charged only what he paid, and that he finds but two charges for extra interest in the accounts; one of $23 75 in Mr. Flagg's account, under date of April 9, 1880, and the other of $111.42 in Mrs. Flagg's account, under date of February 28, 1881.

To consider the defence made on the ground that the transactions as indemnity in which the mortgage was given, were illegal. Part of the money secured was as already stated the amount of Flagg's share of the losses in the joint accounts. The transactions in which those losses were incurred, as well as those on individual account, were legal.

The complainant swears that every transaction in which Mr. and Mrs. Flagg were concerned and every one in the joint accounts was an actual *bona fide* transaction; that the stocks bought were paid for and received, and the stocks sold delivered, and the checks therefor received and deposited by him in bank; and in this connection it may be stated that the Flagg and Ripley account appears to have been a speculation in one hundred shares of Western Union Telegraph Company stock, and not only is the stock entered on the account "long," but the complainant swears that he at the request of Flagg, on beginning the account, bought it and paid for it, and carried it for the joint account.

The complainant's testimony as to his purchases and sales of the stock bought and sold for the defendants, whether on one account or the other, is in itself decisive as to the legality of the transactions in question. He swears that they were all actual transactions, and not mere agreements to pay dif-

ferences; that they were *bona fide* purchases and sales, and not mere wagering contracts. And he brings into court the checks given by him on the purchase of the stocks. It is urged, however, that as to the transactions for the account of the defendants alone, they were evidently, notwithstanding the testimony of the complainant concerning their character, in fact, "short," and therefore mere gaming transactions, substantially wagers upon the price which the stock would bear in the market at a future day; and that an actual sale or purchase was not contemplated in any case, but all the transactions of apparent purchase and sale were only colorable and fictitious, and therefore illegal and within our statute against gaming.

Here it may be remarked that while Mr. Flagg says that none of the transactions involved represented a real transaction in stocks, it is quite clear that he speaks merely of his own views on the subject, for he says the accounts represent what are called "long" and "short" transactions (and he explains that by "long" transactions "he means those where an order is given to a broker to buy, or in the case of these accounts, where the broker receives an order to credit the account with, certain stocks,") and he does not deny that the complainant in fact bought the stocks when he was ordered by him to do so. He says he never inquired, and did not care whether the complainant bought or sold on the Stock Exchange in accordance with his orders or not. *He speaks of the intention of the parties and not as to what was in fact done;* and so far as he speaks of the complainant's intentions on the subject he is contradicted by the *letter*. A "short" sale of stock is a sale before purchase usually with a view of purchasing at a future time at a lower price for delivery.

The *modus operandi* of such a sale through a broker is as follows: On receipt of the order to sell short from the customer the broker sells the stock and notifies the customer of the sale, giving him the name of the purchaser. When the time for delivery arrives he delivers the stock, but in the interest of and for the customer (since the latter sold the stock without owning it) borrows it to deliver, giving his check for it (he pays for the use of the stock for the transaction),

and delivers the stock to the buyer and receives the money for it. If to replace the stock borrowed a loss is met it is of course the customer's loss, and the broker looks to the "margin" in his hands for indemnity in that regard, as well as for his commissions, etc. *So that there is in every such transaction provision for an actual delivery of the stock.* Such transactions have in actions by and against the brokers, been held to be legal, both in New York and elsewhere.

Knowlton vs. Fitch, 52 *N. Y.*, 289.
White vs. Smith, 54 *N. Y.*, 522.
Smith vs. Bouvier, 70 *Pa. St.*, 325.
Thacker vs. Hardy, *L. R.*, 4 *Q. B. Dix.*, 685.
Ex parte Rogers, *L. R.* 15 *Ch. Div.*, 207.
Maxtow vs. Ghien, 75 *Pa. St.*, 166.

See also

Lehman vs. Strassberger, 2 *Woods' C. C.*, 554.
Bigelow vs. Benedict, 70 *N. Y.*, 202.

In the transactions now under consideration the complainant was acting as a broker, and not at all as a principal. The speculations were not his but Mrs. Flagg's. The gain and the loss were her's, not his. On her order and for her he actually bought stocks and became responsible to the seller for the value thereof and looked to her for the indemnity to which under the circumstances he, as an agent, obviously was entitled from his principal.

Not only is *bona fide* dealing in stocks lawful in New but it is lawful here and elsewhere. *Where the broker buys or sells the stock in fact the transaction is, so far as he is concerned, legitimate, whether his principal takes or intends to take the stock ultimately or not.* It is otherwise, however, where he is the agent of his customer in making agreements which are mere bets on the market value of stock at a future day, and which therefore neither involve nor contemplate any purchase or sale. To treat the broker as a principal in either case would be contrary to the facts, but while in the latter case he is of course chargeable with the knowledge that the transaction is a mere illegal, wagering contract which the law will not countenance and in respect to which and his dealings therein it will give him no aid, in the former his own

action being a matter of legitimate business, he is not responsible either for the intention or future action of his principal in the premises, and cannot be affected thereby.

To dispose of the remaining defence that this suit is prematurely brought. This is based on the claim that the complainant not only agreed to advance the $4,000 (which it is insisted he has not done), but agreed also that he would not take any steps to enforce payment of any of the money which the mortgage was given to secure, until he has done so. The agreement between the parties on those heads is to be found in the bond and mortgage, the complainant's letter of the same date (August 26, 1880), and his stipulation of March 10, 1881, in a suit brought by Mrs. Flagg against him in that month in the Court of Common Pleas, of the city of New York, for the surrender to her of the bond and mortgage and the note of $4,500. The stipulation, however, does not differ in any way from the agreement, which the letter evidences. The language is substantially the same. The parol testimony offered by the defendants to prove that the complainant, before the mortgage was given, agreed that in consideration of the giving of it he would advance the $4,000 is not competent.

The complainant, however, swears that there was no agreement or understanding of any kind on the subject, except that shown by his letter, which was merely that he would not "assign or dispose of the bond and mortgage before the $4,000 of future advances had been made." And it is noticeable that the stipulation drawn after litigation between these parties had commenced, is not that the complainant will not seek to enforce the payment of the money which he claims is due on the bond and mortgage, but that he will not "assign or dispose of" those instruments until the sum of $4,000 of future advances has "actually been made." What the agreement was is evidenced by the language of the letter and stipulation. It was that the complainant would not part with the ownership of the bond and mortgage until after the whole of the $4,000 had been advanced. The defendant's object in obtaining the agreement is plain. It was to keep the bond and mortgage in the complainant's hands

and out of those of strangers, to give the defendants opportunity to redeem them by means of their speculations through the complainant until the $4,000 were all gone. The agreement did not bind the complainant to advance any money at all, and its language cannot be held to imply an agreement that he would do so, or that he would not take any steps to enforce payment until after he had advanced the whole of the $4,000. Not only is there no necessary implication to that effect, but it would not be a reasonable inference. Had the parties intended to provide that there should be no enforcement of payment unless the whole amount had been advanced they would have done so. Mr. Flagg, it must be remembered, is a lawyer. The complainant would have been at liberty to enforce payment of the $7,563 44 and interest if he had not advanced any money at all. Where a mortgage is given to secure future advances by the mortgagee, and he stipulates that he will make advances to a certain amount and he makes advances, but not to the stipulated amount, he may enforce his claim for repayment by foreclosure for any amount he may have advanced.

Dart vs. McAdam, 27 *Bark*, 187.

Coleman vs. Galbraith, 53 *Miss.*, 303.

Robinson vs. Cromeleen, 15 *Mich.*, 316.

The case of *Maryott vs. Reuton*, 6 *C. E. Gr.*, 381, cited by defendant's counsel is not opposed to this doctrine. It merely holds that a foreclosure suit begun before the mortgage is due cannot be maintained. Though there was there an agreement to advance $9,000, which had been only partly performed (the mortgagee having advanced only $3,000, and refusing to advance any more), the decision was not put on that ground, but on the ground that the time when, according to the agreement of the parties, the mortgage was to become due had not arrived when the suit was began. Not only was no stress laid on the fact that the mortgagee had refused to fulfill his agreement as to the amount of advances, but no reference was made to it. The facts of that case were, as appears by the opinion, as follows :

Reuton held two mortgages of different dates, both given by Maryott to him on the same premises. The first one was

made to secure the payment of $6,000. When the second was given the first was past due. After the maturity of the first, and before the giving of the second mortgage, Reuton agreed with Maryott to advance him $9,000 and take a new mortgage to secure the amount of the first mortgage and the advances he should make. To save the expense of revenue stamps the new mortgage was made to secure the advances only and the first mortgage was let stand. The agreement was that the $6,000 of the first mortgage was to run without interest and not be due until the maturity of the second mortgage, which was February 1, 1868. Reuton, who, as before stated, had advanced only $3,000 of the $9,000 under the second mortgage and refused to advance more, began his suit August 27, 1867.

It will be seen that the case rather supports than antagonizes the principle above enunciated. But further the complainant swears and the evidence sustains his statement, that he has advanced under and on the security of the mortgage, more than $4,000. When the sale of stock was made by him pursuant to notice on the 18th of March, 1881, there was a balance of about $3,000 due him on the account after crediting the amount of the mortgage; that is, after crediting the whole of the $4,000, so that there was then due to him from Mrs. Flagg for advances and commissions and interest since the giving of the mortgage about $7,000. The proceeds of the sale were $3,629. Applying them to the account there remain due to the complainant $10,909.51, for which with interest from March 17, 1881, he is entitled to a decree.

FINAL DECREE.

This cause having come to be heard before the Chancellor, in the presence of Cortlandt Parker, of counsel for the complainant and A. Q. Keasbey, of counsel with the defendant, Jennie M. Flagg; and it appearing to the Chancellor that the complainant filed his bill for foreclosure against Jennie M.

Flagg and William L. Flagg, defendants, and that process of subpœna was duly served upon them, and that no answer, plea, or demurrer was filed by the said William L. Flagg within the time limited by law, but that Jennie M. Flagg filed her answer thereto, and on argument of the cause on said bill, answer, replication, and proofs on the part of said complainant and defendant, and it appearing to the Chancellor that the said bond and mortgage are valid and create a valid obligation against the said Jennie M. Flagg and lien upon the property in said mortgage described, and that the amount due upon the said bond is ten thousand nine hundred and nine dollars and fifty-one cents, with interest from the seventeenth day of March, eighteen hundred and eighty-one;

It is thereupon, on this thirteenth day of September, eighteen hundred and eighty-two, ordered, adjudged, and decreed by Theodore Runyon, Chancellor of the state of New Jersey, that the said bill of complaint be and the same hereby is taken as confessed against the said William L. Flagg; and it is further ordered, adjudged, and decreed that there is due upon the said bond and mortgage the sum of eleven thousand eight hundred and eighty-five dollars and ninety cents, being the said sum of ten thousand nine hundred and nine dollars and fifty one cents, with interest as aforesaid; and that the complainant is entitled to have the said sum of eleven thousand eight hundred and eighty-five dollars and ninety cents, with interest herefrom, besides a counsel fee of twenty-five dollars and the complainant's costs in this suit raised and paid by sale of the mortgaged premises in said bill described, and that for that purpose a writ of fieri facias do issue out of this Court, directed to the sheriff of the county of Union, commanding him to make sale, according to law, of the said mortgaged premises; and that out of the money arising from such sale, he pay to the complainant, or to his solicitor, his said debt, interest, and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such payment, that such surplus be brought into this Court, to abide the further order of the Court, unless previously disposed of by the

order of this Court, and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

And it is further ordered, adjudged, and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

THEODORE RUNYON, *C.*

NOTICE OF APPEAL.

The defendants, Jennie M. Flagg and William L. Flagg, hereby appeal from the final decree in the above-stated cause made on the thirteenth day of September instant and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated September 20, 1882.

A. Q. KEASBEY & SONS,
Solicitors of said Defendants.

I conceive that there is good cause for appeal in the above-stated cause.

A. Q. KEASBEY,
Of Counsel.

Served September 21, 1882.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JENNIE M. FLAGG and WILLIAM L. FLAGG, Appellants, And ABRAM H. BALDWIN, Respondent.	On Appeal.

PETITION OF APPEAL.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of Jennie M. Flagg and William L. Flagg, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree, made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the thirteenth day of September, in the year eighteen hundred and eighty-two, wherein the said Baldwin was complainant and the said Jennie M. Flagg and William L. Flagg were defendants, in this respect, to wit: that the said decree determines that the bond and mortgage therein referred to are valid and create a valid obligation against the said Jennie M. Flagg and a lien upon the property in said mortgage described and adjudges that there is due upon said bond and mortgage the sum of eleven thousand eight hundred and eighty-five dollars and ninety cents, and that the complainant is entitled to have the said sum with interest from the date of the decree, besides a counsel fee of twenty-five dollars and the complainant's costs in said suit raised and paid by the sale of the mortgaged premises in the bill of complaint de-

scribed, and that a fieri facias issue for that purpose, and that the defendants stand debarred and foreclosed of all equity of redemption in the mortgaged premises. And your petitioners humbly appeal from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree ought to have adjudged that the said bond and mortgage were invalid and create no obligation against the said Jennie M. Flagg and no lien upon the said premises, and that the said complainant is not entitled to have the said sum nor any other sum, nor a counsel fee, nor costs of suit raised and paid out of the said premises. Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

A. Q. Keasbey & Sons,
Solicitors and of Counsel with Appellants.

ANSWER TO PETITION OF APPEAL.

The answer of the above named respondent to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a decree was, on the thirteenth day of September last past, made and entered in the Court of Chancery in the cause for that purposed mentioned in the said petition as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same is produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs, to be adjudged to this respondent.

Cortlandt & R. Wayne Parker,
Solicitors, and of Counsel with Respondent.