Douglas, 206 Ill. App. 586 (1917). In the absence of bad faith or lack of consideration, the insane person must accompany his rescission with a restitution of the *status quo*. *Neale v. Sterling*, 4 P. (2d) 250 (Cal. App. 1931). But see *Smith v. Thornhill*, 12 S.W. (2d) 625 (Tex. Civ. App. 1928) (to be entitled to return of consideration, party must show that insane person still has it or that it was spent for necessaries). See 32 Col. L. Rev. 504, 506 ff. (1932). Thus the holder in due course is safe except where the indorsee of the insane person acted in bad faith; and this result seems justified. It might be argued that the holder in due course could not enforce a forged note against the apparent maker, and that the act of obtaining a note from an insane person is somewhat more like forgery than like ordinary fraud upon a normal person. But where there is no proof of bad faith apart from lack of consideration, this analogy is not available; and the chief justification is the superior claim of the insane person to protection. In England, however, the latter claim of the lunatic is not recognized. All that is necessary to the enforcement of an executory contract is that the person who dealt with the insane person was ignorant of the insanity at the time of the transaction. *York Glass Co. v. Jubb*, 134 L.T.R. 36 (1926); 25 Col. L. Rev. 230 (1925); Brown, Can the Insane Contract?, 11 Can. Bar Rev. 617 ff. (1933). To take away the protection of the insane to that extent too closely approaches the earlier *laissez-faire* attitude, however; and the balance reached by the American courts seems far preferable. The present case illustrates the effectiveness with which unwarranted insanity defenses can be avoided under the present rule.

Constitutional Law—Securities Exchange Act of 1934—Control of Stock Manipulation on National Exchanges—[Federal].—The defendants, Torr & Co., held an option for the purchase, at approximately the market price, of 47,700 shares of a certain stock listed on the New York Curb Exchange, a registered national securities exchange. Torr & Co. then hired the co-defendant brokers in New York and in other financial centers of the country to recommend this stock to their customers, such purchases not necessarily to be made from Torr & Co. These brokers were to be paid a compensation considerably higher than the ordinary Exchange commission rates. In recommending this stock, these brokers made no fraudulent statements but did fail to mention to their customers the source and nature of their compensation. Partly because of these transactions, trading in this stock increased tremendously and the market price rose sufficiently to make it profitable for Torr & Co. to begin to exercise their option and to dispose of these shares. The Securities & Exchange Commission then sought two injunctions: one against Torr & Co. to restrain their dealings with the recommending brokers under § 9a (2) of the Securities Exchange Act of 1934; the other against the recommending brokers to restrain their recommendations to their customers under § 17a of the Securities Act of 1933. Section 9a provides: "It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange. . . . . (2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others." 48 Stat. 889 (1934); 15 U.S.C.A. § 78i (1936). Section 17a provides: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly .... (2) to obtain money or property by means of .... any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading ...." 48 Stat. 84 (1933); 15 U.S.C.A. § 77q (1936). The facts disclosed the use of the mails, telegraph and railroad in the transactions between Torr & Co. and the recommending brokers. There was no showing that the stock was not worth the market price. *Held*, injunctions granted. Torr & Co. have violated the provisions of § 9a; the other brokers have violated those of § 17a. Regulation of transactions conducted through the facilities of a national securities exchange (§ 9a) is a constitutional exercise of congressional power over interstate commerce. *Securities & Exchange Commission v. Torr*, 15 F. Supp. 315 (N.Y. 1936).

Despite the importance of determining the constitutionality of Congress' attempt to regulate the activities of national securities exchanges and the use of their facilities, it seems probable that the Supreme Court will not consider this question unless it is clearly raised by the facts of the case before the court. See *Jones v. Securities & Exchange Commission*, 79 F. (2d) 617 (C. C. A. 2d 1935); *cf. Jones v. Securities & Exchange Commission*, 298 U.S. 1 (1936). Even though the district court in the principal case plunged into a discussion of the constitutionality of these provisions, it is questionable whether there were in fact violations of the act.

The injunctions in the principal case were granted to restrain roughly, two classes of transactions: (1) those between Torr & Co. and the recommending brokers; (2) those between the recommending brokers and their customers. Transactions of the latter type may be conducted through several media of communication. The recommendation and sale may take place by mail, interstate or intrastate telephone or telegraph, or through the facilities of a national securities exchange, *i.e.*, by the use of a stock-ticker or by the purchase of the stock on the Exchange floor. Although the means used in the principal case are not shown, from the number of New York brokers involved it seems a fair inference that many transactions were conducted with local customers by telephone or by personal contact. And since the object of the scheme in the principal case was to increase trading in this stock on the Exchange, it is probable that these brokers bought this stock for their customers on the Exchange floor and thus employed the most obvious facility of an exchange. Then, if § 17a had provided for such regulation, the constitutionality of securities exchange regulation would have been raised. But since § 17a does not contain such a provision, the injunction issued against the recommending brokers seems too broad. An entirely separate provision may be invoked to sustain the breadth of this injunction, however, even though the district court disregarded its application. See Brief for the plaintiff, p. 17. Section 9a (4) of the 1934 act does provide for the use of facilities of a national securities exchange but its wording includes only the "making" of any false or misleading statement. 48 Stat. 889 (1934); 15 U.S.C.A. § 78i (1936). It will be necessary, therefore, for the Supreme Court to construe the word "making" as including the brokers' *omissions* to disclose their compensation before the constitutionality of securities exchange regulation is raised by the transactions between the recommending brokers and their customers.

If, however, the injunction restraining Torr & Co. from paying commissions to these recommending brokers is not dissolved, it is probable that the recommendations will cease irrespective of an injunction against these brokers. (The above discussion would then be pertinent only in determining the criminal liability of these particular recommending brokers. 48 Stat. 86 (1933); 15 U.S.C.A. § 77t (1936): 48 Stat. 87 (1933); 15 U.S.C.A. § 77x (1936): 48 Stat. 899 (1934); 15 U.S.C.A. § 78u (1936): 48 Stat. 904 (1934); 15 U.S.C.A. § 78 ff. (1936).) Thus whether this suit will restrain all the transactions involved depends upon the validity of the injunction issued against Torr & Co.

Even assuming the constitutionality of § 9a (2), the broad scope of the injunction might be questioned. There was no showing of the means of communication by which Torr & Co. made its arrangements with the New York brokers. Effecting of these transactions by local telephone, telegraph or even mail would not bring into question the validity of that provision of § 9a regulating the use of the facilities of a national securities exchange. Nor is it probable that these facilities were used by the recommending brokers in their dealings with Torr & Co. On the other hand, Torr & Co. obviously did intend that facilities of the exchange would be used in increasing the sales of shares of this stock. Thus to "effect a series of transactions" by the use of "any facility of any national securities exchange" should be construed as including the contemplated transactions of the recommending brokers on the exchange. But if the narrow construction of looking only to the dealings between Torr & Co. and the brokers were adopted, it would be necessary for the Commission to show either that exchange facilities were actually used in these transactions or, as indicated above, that § 9a (4) is applicable before the constitutionality of Congress' regulation of securities exchanges is raised.

Determination that a given activity has a purely local situs does not necessarily withdraw this activity from congressional regulation under the interstate commerce clause. Thus a federal law regulating the activities of packers and stockyards employees has been sustained on the ground that, although stockyard activities were purely local in their nature, these activities had a sufficiently direct effect on the interstate stream of cattle to authorize their regulation under the commerce clause. *Stafford v. Wallace*, 258 U.S. 495 (1922). The same reasoning was applied to sustain the validity of the Grain Futures Act regulating the conduct of grain exchanges. *Chicago Board of Trade v. Olsen*, 262 U.S. 1 (1923); *cf. Hill v. Wallace*, 259 U.S. 44 (1922) (similar act invalidated as an unconstitutional exercise of the federal taxing power). The conclusions in older cases that exchanges are not themselves engaged in interstate commerce have been disregarded on the ground that these cases did not disclose the presence of a substantial interstate flow of articles of commerce. See *Nathan v. Louisiana*, 8 How. (U.S.) 73 (1850) (state license tax on broker dealing only in foreign bills of exchange held not a burden on interstate commerce); *Hopkins v. United States*, 171 U.S. 578 (1898) (livestock exchange held not engaged in interstate commerce so as to be subject to the provisions of the Sherman Act); *Ware & Leland v. Mobile County*, 209 U.S. 405 (1908) (affirmative showing of no interstate transportation of goods); *cf. Moore v. N.Y. Cotton Exchange*, 270 U.S. 593 (1926) (no showing that the exchange dealings necessarily resulted in interstate transportation of cotton). Thus it seems clear that to uphold the regulation of manipulations on securities exchanges, the court must find (a) that securities are articles of commerce, and (b) that such manipulation imposes an unreasonable burden on the interstate flow of these articles.

Although the Supreme Court has never expressly passed upon whether or not securities are articles of commerce, it is generally assumed that securities do comply with the court's definition of such commodities. Lippman, The Securities Exchange Act of 1934 and the Commerce Clause, 69 U. S. L. Rev. 18, 26 (1935). In upholding a state Blue Sky law the Court did ask a series of unanswered questions in such a way as to imply that securities are articles of commerce. *Hall v. Geiger-Jones*, 242 U.S. 539 (1917). Furthermore, district court cases which invalidated other Blue Sky laws practically assumed that the status of securities as commercial commodities was unquestionable. See *Alabama Transp. Co. v. Doyle*, 210 Fed. 173 (D. C. Mich. 1914); *Compton v. Allen*, 216 Fed. 537 (D. C. Iowa 1914); *Bracey v. Darst*, 218 Fed. 482 (D. C. W. Va. 1914). On the other hand, insurance contracts are not articles of commerce and their analogy to securities has been pressed. See *Paul v. Virginia*, 8 Wall. (U.S.) 168 (1868); *N.Y. L. Ins. Co. v. Deer Lodge*, 231 U.S. 495 (1913). But the rule as to insurance contracts is in such general disrepute that the non-contingent nature of stock ownership as well as the volume of trade in such stocks may well be considered grounds for distinction. See Isaacs, The Securities Act and The Constitution, 43 Yale L. J. 218, 223 (1933).

The necessity of finding (1) an interstate flow of commercial commodities and (2) that this flow is affected by exchange dealings has already been indicated. These are questions of fact and the district court judge answered them by (1) invoking the familiar presumption of constitutionality (see 31 Col. L. Rev. 1136 (1931)); (2) accepting the findings of Congress as controlling in the absence of proof to the contrary. 15 F. Supp. 315, 319–20. These findings disclosed not only the amount of money invested in securities and the volume of the securities business, but also that, in 1929, 77% of these transactions were cash dealings. Sen. Rep. on Stock Exchange Practices, 73d Cong., 2d session, no. 1455. Since transfers of title require actual delivery of stock certificates (Uniform Stock Transfer Act § 1 (adopted in 25 states); 2 Cook, Corporations § 373 *et. seq.* (7th ed. 1913); see *Hatch v. Reardon*, 204 U.S. 152, 161 (1907)), and since the maintenance by New York brokers of 1028 offices in 343 cities indicates that stock certificates probably continually pass through such offices, these findings were properly considered as demonstrating an interstate flow of securities. See *Chicago Board of Trade v. Olsen*, 262 U.S. 1, 37 (1923). It has been argued that, at least in New York, most transfers of stock are consummated either in the Exchange building or through the local clearing house. Hanna, The Securities Exchange Act of 1934, 23 Calif. L. Rev. 1, 28 (1934). But unless most of the 45,000 yearly customers keep their stock in New York, their certificates must be sent to New York to effectuate the sales of these certificates (6 U.L.A. § 1) and these transfers to the sellers' brokers, being continuous, should constitute the necessary interstate flow even though the actual sales are made and consummated locally. Similarly, Congress' findings indicate clearly that manipulative transfers on the exchanges have a direct effect upon this interstate flow. Sen. Rep. on Stock Exchange Practices, 73d Cong., 2d session, no. 1055.

Criminal Law—Banks and Banking—Causing False Entries to Be Made upon the Books of a National Bank—[Federal].—The defendant national bank teller discovered that a package of money was missing from his cage. To cover up the shortage, he withheld some of the day's deposit slips from the bookkeeper by putting them in a private box, and placed the rest in a drawer from which the bookkeeper customarily took the slips for entry. The bookkeeper thereupon only partially credited the individual accounts of those customers some of whose slips had been withheld, false