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 balances for these customers thus being entered upon the bank's books. Since the defendant withheld deposit slips covering the same amount of money as that missing, the bookkeeper did not know that these entries were false. Later the shortage was discovered and the defendant was indicted for embezzlement and making and "causing to be made" false entries under a federal statute reading: "Any officer . . . . or employee . . . . of any national banking association . . . . who embezzles . . . . any of the moneys . . . . of such . . . . bank . . . . or who *makes* . . . . any false entry in any book . . . . of such . . . . bank . . . . with intent . . . . to deceive any officer of such . . . . bank . . . . shall be deemed guilty of a misdemeanor. . . . ." (Italics added.) 40 Stat. 972 (1918); 12 U.S.C.A. § 592 (1936). Conversion of the money not being proved, the defendant was acquitted of the embezzlement charge but was convicted of making false entries. On appeal, *held*, (one judge dissenting), conviction reversed and case remanded. Strict construction of this criminal statute requires that it be applied only to one who either makes the entries himself or affirmatively directs their making. *Giles v. United States*, 84 F. (2d) 943 (C.C.A. 5th 1936), *cert.* granted, 57 Sup. Ct. 46 (1936).

Many defendants have been convicted under this statute who have not personally made the entries upon which their convictions have rested. The problem, then, is whether the acts of the defendant in a particular case have sufficient causal connection with the actual making of the entry for the court to hold that the defendant "made" the entry within the meaning of the statute. The court in the principal case admitted that a direct order to make such an entry was equivalent to the actual making of such entry. 84 F. (2d) 943, 945, 946; see *United States v. Allis*, 73 Fed. 165 (C.C. Kan. 1893); *United States v. Youtsey*, 91 Fed. 864 (C.C. Ky. 1898); *United States v. Fish*, 24 Fed. 585 (C.C. N.Y. 1885). The court relied upon two cases in which the defendant was acquitted as illustrations that there was no crime unless the defendant at least ordered the false entry. *United States v. McClarty*, 191 Fed. 523 (D.C. Ky. 1911) (bank president indicted for false entry by bookkeeper because, without knowing that the entry was being made, he "concealed" facts which would have enabled the bookkeeper to correct the error); *Booker v. United States*, 98 Fed. 291 (D.C. N.D. 1899) (bank president signed and verified certain entries knowing them to be false but having had no part in the actual making of the entry). The court's reliance on these cases is partially justifiable; but their practical omission of the many cases affirming convictions where the causal connection was indirect is well open to criticism. As in the principal case, the defendant in each of these cases set into motion machinery which ordinarily would (and actually did) result in the making of false entries, although the defendant issued no orders or exerted no authority over the bookkeeper. *Morse v. United States*, 174 Fed. 539 (C.C.A. 2d 1909), *cert.* denied, 215 U.S. 605 (1909) (bank president had his secretary sign a sham promissory note which was entered in the ordinary course of business as a loan outstanding); *Hargreaves v. United States*, 75 F. (2d) 68 (C.C.A. 9th 1935), *cert.* denied, 295 U.S. 759 (1935) (similar situation); *Billingsley v. United States*, 178 Fed. 653 (C.C.A. 8th 1910) (defendant ordered one false entry made and others resulted as a matter of routine; defendant held responsible for the later entries as separate offenses). The force of these cases as precedents is strong when one considers that the bookkeeper in the principal case could be expected to (and did) make an incomplete entry by entering only those amounts on the slips left for him by the defendant.

Previous to this decision, it seems to have been generally assumed that the statutory provision for "making false entries" included "causing false entries to be made." *United States v. Youtsey*, 91 Fed. 864, 875 (C.C. Ky. 1898); *Morse v. United States*, 174 Fed. 539, 554 (C.C.A. 2d 1909), *cert.* denied, 215 U.S. 605 (1909); *United States v. Reece*, 280 Fed. 913, 916 (D.C. Idaho 1922); note the indictment in the principal case set out above. If the statute had expressly contained these words, the court intimated that it probably would have upheld the defendant's conviction. 84 F. (2d) 943, 946. This decision would embody an approach similar to the common law courts' refusal to be misled by indirect causation. See *Aldrich v. People*, 224 Ill. 622, 79 N.E. 964 (1906) (defendant convicted of larceny for exchanging check on his own trunk for one on another so that the carrier in possession of the trunks delivered the wrong one to the defendant); *Commonwealth v. Barry*, 125 Mass. 390 (1878) (same); 1 Wharton, Criminal Law § 203 (12th ed. 1932). Unless, therefore, the rule requiring strict construction of a criminal statute is conclusive, the decision in the principal case is erroneous. The making of false entries *per se* was not a crime at common law. The statute involved in the principal case was enacted simultaneously with the establishment of the federal reserve system and was intended to prevent misdealings with bank funds. The provision for the making of false entries was intended to operate as a double-check on misappropriations: It is a part of the embezzlement section (40 Stat. 972 (1918); 12 U.S.C.A. § 592 (1936)); and most cases involve a misapplication of funds as the basis for the false entry. *Agnew v. United States*, 165 U.S. 36 (1897); *United States v. Fish*, 24 Fed. 585 (C.C. N.Y. 1885); and most of the cases cited herein. The technical difficulty of proving an embezzlement in the principal case, therefore, would seem to have set the stage for a conviction on the false entries charge.

Domestic Relations—Constitutional Law—Statutory Construction—Validity of Illinois Separate Maintenance Act—[Illinois].—The Illinois Separate Maintenance Act, passed in 1935, reads, in part, as follows: "Provided there are no living children, born of such marriage no person having once received separate maintenance or temporary alimony for a period of two years or a fraction thereof shall be entitled to further separate maintenance or temporary alimony against the same spouse, except for the portion of the two years as remains unexpired. Provided, also, that there are no living children . . . . the time during which the husband or wife is living . . . . apart . . . . under a decree of separate maintenance, shall be for the purpose of divorce regarded as desertion by the husband or wife." Smith-Hurd's Ill. Rev. Stat. 1935, c. 68, § 22. The plaintiff-wife, who had secured a separate maintenance decree in 1925, petitioned for a rule against her husband to show cause why he should not be held in contempt for failure to pay support money. The husband, relying on the Separate Maintenance Act, filed a complaint for divorce and alleged that he was no longer liable to pay. The cases were consolidated, and the lower court discharged the rule as to payment of support money and dismissed the divorce complaint for want of equity. Both parties appealed. *Held*, the Separate Maintenance Act is constitutional, creates a new ground for divorce and is retroactive (April 24, 1936, not reported). On rehearing, *held*, the Separate Maintenance Act is unconstitutional because (1) it amends the Divorce Act without incorporating the amended section in the new act as is required by art. 4, § 13 of the Illinois Constitution; (2) it makes an arbitrary classification which violates the due process requirement of § 2 of art. 2, and the prohibition against special laws in