gaming. I am far from saying they are engaged in a laudable pursuit. But all the parties might equally lose. I cannot assimilate this to the nature of gaming or wagering, to constitute which there must be two parties, one of whom must lose." In like manner Lord Wood says—"To wagering or gaming there must be two parties. The provisions of the statute are all framed on that footing. The parties must come together directly or through their brokers. In contracts within the statute there must be opposite parties, and there can be no innocent ignorant parties. If a party or his broker go to another party or his broker and arrange or make a contract for the sale and purchase of shares where neither party is to be bound to deliver or accept the shares, but where they are merely to pay the differences according to the rise or fall of the market, that would be gaming within the statute. But in the present case there is no evidence that any one of the contracts forming the transactions in the account libelled was a contract for payment of differences, and to be implemented by such payment."

I think that case and these opinions afford an excellent test for determining the main question in this case, and applying that test here, I cannot have the slightest hesitation in adopting the view stated by my brother Lord Shand, that there is here a *bona fide* contract in each particular case which may be enforced in the ordinary way by requiring delivery or acceptance.

The result is that this transfer must be ordered to be registered, and for that purpose judgment must go against the Caledonian Railway Company. There are two of their pleas in defence which have been disposed of by a previous interlocutor, viz., the first and second, but the remainder of their pleas, I apprehend, must now be repelled also, as none of them afford a sufficient reason for refusing the registration of the transfer.

I am not making these observations with any reference to the question of expenses, but merely with reference to the form of the judgment. And of course Mr Rayner's pleas necessarily fall to be repelled also; and that having been done, there is nothing in the way of an order for registration of the transfer.

The Court pronounced this interlocutor:—

"Find in fact that the transfer of stock which the pursuer claims to have registered was not granted in security or payment of gambling transactions between the pursuer and the compearing defender John Rayner: Recal the interlocutor of the Sheriff-Substitute dated 27th November 1888: Repel the pleas-in-law for the defenders the Caledonian Railway Company, and repel also the pleas-in-law for the said compearing defender Rayner: Ordain the Caledonian Railway Company to register in their register of transfers the said transfer No. 8/2 of process, dated 26th July 1887, and to deliver to the pursuer a certificate in his favour for the amount of stock thereby transferred, and decern," &c.

Counsel for the Pursuer—Graham Murray—C. S. Dickson. Agent—David Turnbull, W.S.

Counsel for the Caledonian Railway Company—D.-F. Balfour, Q.C. Agents—Hope, Mann, & Kirk, W.S.

Counsel for Rayner—M'Clure. Agents—R. Bruce Cowan, W.S.

Saturday, March 1.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

BELL *v.* BELL.

Parent and Child—Aliment—Liability of Grandfather for Aliment — Obligation Discharged by Offer to Receive Grandchild into Family.

In an action by the mother of a child against its grandfather for its aliment, the defender proved that he was eighty-five years of age; that his annual income was £173; that his house was occupied by himself, two daughters, a son-in-law, and five grandchildren. *Held* that the defender discharged himself of his obligation to aliment by offering to receive his grandchild into his family.

Mrs Mary Gregory or Bell, wife of Claud Hamilton Bell (who at the date of the present action was furth of Scotland), and Claud Hamilton Bell junior, one of the children of this marriage, raised an action in the Sheriff Court at Edinburgh against Charles Bell, M.D., the father of Claud H. Bell senior, Edinburgh, for payment of £16 per annum as aliment of Claud Hamilton Bell junior.

The defender admitted his liability to pay aliment, but in implement of his obligation offered to receive him into his family, and to support and educate him along with his other grandchildren.

To this proposal Mrs Bell refused to consent.

In the proof allowed by the Sheriff-Substitute the following facts were established—The spouses were married in London in March 1879, and two children were born of the marriage, Charles, aged ten years, and Claud, aged eight years. In December 1888 the spouses separated in terms of a minute of separation, which, *inter alia*, provided that the eldest child Charles should live with and be brought up by his grandfather the defender. Thereafter the pursuer supported herself and her youngest child by taking in lodgers. She had no means of her own, and her friends were not in a position to give her any assistance, and latterly she had found it impossible to subsist upon the sum she earned by letting her rooms. In June 1889 Claud Hamilton Bell senior left Scotland and went abroad. He

was at that time indebted to his brother Wallace Bell in a sum of £800, and at the date of the present action he was not contributing anything towards the support of his wife or children. It was established that the defender's nett income from all sources was £173, and that he was eighty-five years of age. His house, which consisted of seven or eight rooms, was occupied by himself, two daughters (one married), and a son-in-law, and five grandchildren, one of whom was the eldest son of the pursuer Mrs Mary Bell.

By interlocutor of 6th December 1889 the Sheriff-Substitute (HAMILTON) found that the defender's means were sufficient to admit of his paying £10 as aliment of his grandson, and that the offer to receive him into his own house and to maintain him there was not one which the pursuer was bound to accept.

To this interlocutor the Sheriff (CRICHTON) adhered.

The defender appealed to the Court of Session, and argued—The rule of law in such cases was that the party upon whom the obligation to aliment lay was entitled to discharge it in the manner least burdensome to himself—Fraser on Parent and Child, pp. 91-92; *Wilson* v. *Heritors of Cockpen*, February 18, 1825, 3 S. 547; *Pagan* v. *Pagan*, January 27, 1837, 16 S. 399; *Jameson* v. *Jameson*, November 22, 1845, 8 D. 86. No good reason could be suggested why the grandfather's offer should not be accepted, as nothing could be suggested against him or his household, and his offer was in every way reasonable—Bell's Prin. sec. 1630; *M'Kissock* v. *M'Kissock*, February 14, 1817, Hume, 6; *Ketchen* v. *Ketchen*, March 11, 1871, 9 Macph. 691.

Argued for the respondents—The question was in all cases one of circumstances, and the Sheriffs, who saw the parties and heard the evidence, thought it more desirable to allow the pursuer a modified sum of £10 per annum, which the defender was quite able to pay. It would really be cheaper for him to pay this sum than to receive the child; besides, the pursuer was its natural guardian, and there was no proof that she was in any way unsuited for the charge—*Wilson* v, *Heritors of Cockpen*, February 18, 1825, 3 S. 547.

At advising—

LORD PRESIDENT—The judgment of the Sheriff-Substitute and the Sheriff of Midlothian in a question of this kind are entitled to great weight, but I am sorry to say that I am compelled to differ from them.

I think that the offer of the grandfather in the circumstances of this case is quite a legitimate offer, and that he discharges himself of his obligation by making this offer.

The parties here are all in very poor circumstances. The father of the child for whom the aliment is sought has left the country in impecunious circumstances; the mother has to support herself by keeping lodgers on a small scale; and the grandfather himself has a very limited income, and seems to have burdened himself with a number of his relations who already live in family with him; so that it is a case in which the rule applies very strongly that the obligation lying upon the grandfather to aliment his grandchild is to be left to his own discretion, so that he may discharge it in the way which he finds least burdensome to himself. That is the general rule in such cases, and the circumstances of this case make that rule more than usually applicable.

I think therefore that we must reverse the interlocutors of the Sheriff-Substitute and the Sheriff and sustain the defences.

LORD ADAM—There is no question in the present case as to the liability of the grandfather to aliment this child, for he admits his liability. The only question which is raised is as to the manner in which this liability may be discharged, and the way in which the defender proposes to discharge his liability is by taking this child into family with him.

The pursuer refuses this offer, and claims a sum of money instead.

I agree with your Lordship that when a demand of this kind is made the party against whom it is made may discharge his obligation in the manner least inconvenient to himself. If any good reason could be suggested why an offer to receive the child into family should not be agreed to, that would materially alter the case, as, for instance, where it would be detrimental to the health or morals of the child, but in the present case there is no suggestion of this kind, and I can see no reason why this child should not be alimented in its grandfather's house.

LORD M'LAREN concurred.

LORD SHAND was absent.

The Court recalled the interlocutors of the Sheriff-Substitute and the Sheriff, and sustained the defences.

Counsel for the Pursuers — P. Smith. Agents—W. R. Patrick & Wallace-James, S.S.C.

Counsel for the Defender—G. W. Burnet. Agent—James Drummond, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, March 4.

(Before Lord Young, Lord Rutherfurd Clark, and Lord Kyllachy.

GARDINER *v.* JONES.

Justiciary Cases—Suspension—Oppression—Failure to Inform Panel of Right to Adjournment.

A person was arrested upon a warrant and brought before the police court of the town in which he resided, where he was charged with breach of the peace.