other to recover that which is due to him. It may be that their true character is what is described by Lord Young, but the pursuer certainly does not say so, and the defenders say the very reverse in statement 1, where they say—"Fifty shares were to be carried over and the remainder taken up and paid for." With these statements before us, I think it would be unjust to both parties if we withheld facilities for proof, or were influenced by considerations which are not properly before us and not determined by proof. I am therefore for reverting to the interlocutor of the Sheriff-Substitute.

Lord Justice-Clerk—I quite understand the view of Lord Craighill with regard to a decision on the relevancy of this case. But I think that it would be idle to extend this controversy, and that the facts before us, which could not possibly be controverted by any evidence which could be led, are sufficient to support the judgment of the Sheriff. In that state of matters to put the parties to the cost of further procedure and proof would be an outrage on the forms of process which I am not disposed to allow. In the first place, let me say that while I sympathise very much with the views of Lord Young as to the nature of the transactions between these parties, I am not prepared to rest my judgment on that ground. I do not think that these are illegal contracts so far as I can judge of them, and there is no statement that they are so on record. I have referred to the passage of Addison on Contracts quoted by Lord Young, and I think it so modified by what immediately follows that it is impossible to adopt his Lordship's view. In the case of *Hibblewhite* v. *M'Morine*, cited in that passage, Baron Parke says—"I cannot see what principle of law is at all affected by a man's being allowed to contract for the sale of goods of which he has not possession at the time of the bargain and has no reasonable expectation of receiving. Such a contract does not amount to a wager, inasmuch as both the contracting parties are not cognisant of the fact that the goods are not in the vendor's possession; and even if it were a wager it is not illegal, because it has no necessary tendency to injure third parties." In these circumstances, without giving any opinion on the question, I am not inclined to adopt that ground of judgment.

The pursuer's case is that he employed the defenders as his brokers, and that they undertook to hold the stocks over till the next settling-day, and that on a certain day between settling-days (the balance being then in pursuer's favour) the stockbrokers chose without authority to close and sell. I think there is enough to show that the brokers undertook the employment on a certain belief as to the pursuer's position. They admit that they were not entitled to sell without justification, but say that they were justified on two grounds—one being the nature of the rules of the Stock Exchange, the other that the pursuer misled them as to his means. These were grounds on which a proof might have been led. The Sheriff has held proof to be unnecessary, because everything necessary to the defence has been admitted, and no qualification of that admission has been stated from the bar. Lord Craighill complains that one party is allowed proof and not the other. What the Sheriff has really done is, in my opinion, to find that on the statement of the two parties there is no room for inquiry. This pursuer wrote the defenders a letter manifestly for the purpose of raising his credit with them. It was false, and the brokers found that out. What is his statement on record? It is that another man had £4000 and not he. That is conclusive of this, that the pursuer is guilty of wilful falsehood; and I assume from the terms of the letter that it was written to increase his credit. The defenders wrote to him requesting the name of the solicitor who, according to the pursuer's letter to them, offered him the bond. The pursuer will not face that. He says—"Well, if you are not satisfied, let us close." Can anyone doubt that first a false statement and then a refusal of information form a justification for what the defenders did. I know no reason for going into a long proof on such a matter.

But further, the pursuer says in his letter—"Close. I won't satisfy you, but I think you should hold on a little longer." That is not inconsistent with acquiescence in what the brokers said they would do. It is acquiescence.

The Court adhered to the judgment of the Sheriff.

Counsel for Appellant—J. P. B. Robertson—Baxter. Agent—Andrew Fleming, S.S.C.

Counsel for Respondents—D.-F. Kinnear, Q.C.—Guthrie. Agents—Maconochie & Hare, W.S.

Friday, May 27.

SECOND DIVISION.

[Sheriff of Midlothian.

WHITE *v.* M'CABE.

Parent and Child—Aliment.

This was an action for aliment for an illegitimate child, of which Janet M'Cabe, the pursuer, alleged that Robert White was the father. The pursuer, who had previously had two illegitimate children, alleged that the defender had connection with her on two occasions, once in September 1879 and once in October immediately following. The defender denied that he ever had connection with the pursuer, but with regard to the occasion in October deponed that on that occasion he was in pursuer's company and was intoxicated, but "had no connection with her so far as my knowledge lies."

The Sheriff-Substitute found that defender was the father of the child, and decerned for aliment, and on appeal the Sheriff adhered.

The defender appealed, but the Court, without calling on counsel for respondent, adhered.

Counsel for Appellant—Dundas Grant. Agent—John A. Robertson, S.S.C.

Counsel for Respondent—J. M. Gibson. Agent—R. Broatch, L.A.