Bramwell, L. J., said:—"The bargains made by the plaintiff "upon behalf of the defendant were what they purported to be; "they gave the jobber 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."

He further said:—"I will assume that that was the nature of the bargain between the parties, and that by its terms the prin- "cipal would be entitled to call on the broker to re-sell the "stock, so that, instead of taking and paying for it, the prin- "cipal would have to pay only the differences. In my opinion "that bargain does not infringe the provisions of 8 & 9 Vict., c. "109, which was directed against gaming and wagering; for "the principal might take the stock which has been bought for "him, and hold it as an investment."

He points out too that there is no gaming and wagering in a transaction of the kind now in question. The passage is as follows:—"The broker has no interest in the stock, and it does "not matter to him whether the market rises or falls; but when "a transaction comes within the statute against gaming and "wagering, the result of it does affect both parties. In the "case before us, the broker does not wager at all."

Cotton, L.J., laid down what in his view was of the essence of a gaming contract in these terms:—"The essence of gaming "and wagering is that one party is to win and the other to lose "upon a future event, which at the time of the contract is of an "uncertain nature—that is to say, if the event turns out one "way A. will lose, but if it turns out the other way he will win. "But that is not the state of facts here. The plaintiff was to "derive no gain from the transaction: his gain consisted in the "commission which he was to receive, whatever might be the "result of the transaction to the defendant. Therefore the "whole element of gaming and wagering was absent from the "contract entered into between the parties."

Even where a person is employed to enter into gambling contracts upon commission, it has been held by the courts of this country that if he makes payments in pursuance of such employment, he can recover such payments from his principal, that the implied contract of indemnity is not, in such a case, in itself a gaming or wagering contract and is therefore not null and void. The intervention of the legislature was considered necessary in order to invalidate such contracts and by the Gaming Act, 1892,