LORD PRESIDENT—The Court considers that in the circumstances of this case the Act of Sederunt does not apply and that there should be no certificates for skilled witnesses.

The Court refused the motion for certificates.

Counsel for the Pursuers—The Solicitor-General (Morison, K.C.)—Ingram. Agent—J. George Reid, S.S.C.

Counsel for the Defenders—Watt, K.C.—W. J. Robertson. Agents—Anderson & Chisholm, S.S.C.

Friday, January 16.

SECOND DIVISION.

[Sheriff Court at Glasgow.

JAMES DUNBAR & COMPANY *v.* SCOTTISH COUNTY INVESTMENT COMPANY, LIMITED.

Process—Sheriff—Proving the Tenor—Competency of Action in Sheriff Court—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 5 (1).

Held that an action of proving the tenor is incompetent in the Sheriff Court.

Observed per Lord Salvesen—"A general rule applicable to the construction of statutes is that there is not to be presumed, without express words, an authority to deprive the Supreme Court of a jurisdiction which it had previously exercised, or to extend what was once the privative jurisdiction of the Supreme Court to the inferior courts."

James Dunbar & Company, joiners and building contractors, Glasgow, *pursuers*, brought an action in the Sheriff Court at Glasgow against the Scottish County Investment Company, Limited, Glasgow, *defenders*, in which they craved the Court "to find and declare that the specification and estimate of the carpenter, joiner, and glazier works of four tenements erected by pursuers in Garrioch Road, North Kelvinside, for and on behalf of defenders, was of the following or similar tenor, namely—'. . . [*Here follows the tenor*]. . . .' As also to find and declare that the decree to be pronounced shall be in all respects as valid and effective a document to the pursuers for all purposes as the original specification and estimate if extant would have been, and to find the defenders liable in expenses in the event of their appearing or offering opposition hereto."

The pursuers *pleaded, inter alia*—"1. The said estimate and specification of the carpenter, joiner, and glazier works of four tenements erected in Garrioch Road referred to having been lost or destroyed and being of the tenor before quoted, declarator that an extract of the decree following hereon should be as valid and effectual for all purposes as the original estimate and specification."

The defenders pleaded, *inter alia*—"1. The action is incompetent."

On 8th July 1919 the Sheriff-Substitute (LYELL) found in law that the Sheriff Court had no jurisdiction to entertain the action, sustained the first plea-in-law for the defenders, and dismissed the action.

Note.—"It may be well in the first place to state shortly the genesis of this action of proving the tenor. The pursuers here raised an action in this Court against the defenders concluding for payment of the balance of the price of carpenter work done on certain tenements in Glasgow, founded on a written specification and offer by them and a written acceptance by the defenders. The defenders pleaded that the account was prescribed, to which the pursuers replied that the plea was elided by the fact that the debt sued on was constituted by the written obligation of the defenders. The Sheriff allowed the pursuers to produce the offer and acceptance together with the measurement of the work on which they founded, and granted diligence for the recovery of these documents. On the pursuers proceeding to execute the commission one of the directors of the defenders' company deponed as a haver that the paper containing the specification and offer in question was at one time in the company's hands, but although he had made a search he could not now find it. The pursuers were therefore unable to obtemper the Sheriff's interlocutor to produce the offer on which they founded as the counterpart to the defenders' acceptance which they produced. In these circumstances procedure was sisted in that action that the pursuers might bring an action of proving the tenor of the missing offer, on the ground that the document was not merely an adminicle of evidence but an essential part of the written constitution of the debt founded on, the terms and execution of which must be proved before the pursuers were entitled to say that prescription had been elided.

"Accordingly this action of proving the tenor of the said specification and offer has now been raised, and the defenders' plead that the Sheriff Court has no jurisdiction to entertain it.

"There is no doubt that down to the year 1907 at least such an action would have been incompetent here—'The cognisance of this action from its importance, and from the dangerous consequences which might follow if the tenor of deeds were to be sustained which either never existed or laboured under nullities or have since been extinguished, is appropriated to the Court of Session'—Ersk., iv, 1, 58. The Court held in the case of *Carson* v. *M'Micken & Macintyre*, 14th May 1811, F.C., that a proof taken before a sheriff to prove the tenor of a missing bill of exchange was incompetent and ordered it to be withdrawn from the process, and there seems to be no trace of any further attempt to take such proceedings in the Sheriff Court down to 1907. But the pursuers here found on the 5th section of the Sheriff Court Act of that year as conferring jurisdiction on the sheriff to entertain such cases. The section is entitled 'Extension

of Jurisdiction,' and enacts that 'Nothing herein contained shall derogate from any jurisdiction, powers, or authority presently possessed or in use to be exercised by the sheriffs of Scotland, and such jurisdiction shall extend to and include (1) actions of declarator (except declarators of marriage or nullity of marriage, and actions the direct or main object of which is to determine the personal status of individuals).'

"The question therefore seems to resolve itself into this—Is a proving of the tenor an action of declarator? The pursuers maintain that it is, because its conclusions are declaratory and nothing else. There is no demand either for payment or performance by the defenders, and all that is sought is a finding and declaration that the terms of a missing document are as stated, together with a finding and declaration of the pursuers' right to use the decree in the action as in all respects equivalent to the missing document. In the style book the form is included among the forms of actions of declarator, and the conclusions of the summons are introduced by the ordinary words of style in such actions. The defenders, however, maintain that had the Legislature intended to impinge upon the exclusive jurisdiction of the Court of Session in the matter of proving of the tenor actions it would have said so in so many words. The answer made by the pursuers is that the Legislature has actually said so, once you grant that this action is properly described as an action of declarator. No doubt it is well established that the jurisdiction of the Supreme Court cannot be circumscribed or excluded by implication but only by special enactment; but it is to be observed that the section in question does no more than define the jurisdiction of the sheriff, and extend it so as to include all actions of declarator, with certain specified exceptions, of which a declarator of proving of the tenor is not one.

"On a just construction of the statute alone, therefore, I confess that I see great force in the argument for the pursuers, and should have been prepared to follow the lead of my brother Sheriff Fyfe in holding this kind of action competent here (see *Stewart*, 1914, 2 S.L.T. 22) but for the subsequent case of *Walker* v. *Nisbet*, 1915 S.C. 639. It is true that in that case the point was not made subject of express decision, nor, so far as one sees, was there any argument on it; but the fact remains that two of the judges expressed their unqualified opinion that an action of proving the tenor is only competent in the Court of Session. It is said that these opinions were purely *obiter*, which is true enough, but they are deliberate expressions contained in considered judgments having a direct bearing on the subject then in dispute, although not necessary for the decision of the true question involved in the action. In these circumstances it would be, to say the least, somewhat unbecoming were I to pronounce a judgment at this stage contrary to the views expressed in the only case, so far as I know, in which this question has been alluded to since the passing of the Statute of 1907."

The pursuers appealed, and argued—The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 5 (1), extended the jurisdiction of the Sheriff to actions of declarator except declarators relating to status, and an action of proving the tenor was just an action of declarator like other actions of declarator although the procedure was special. It was declaratory in its substance and in its conclusions — Mackay, Manual of Practice, p. 378. The style books included it amongst actions of declarator—Juridical Styles (3rd ed.), vol. iii, p. 73; Wallace, Sheriff Court Styles, pp. 188-190; Fyfe, Forms of Process, p. 79. *Stewart*, [1914] 2 S.L.T. 22; and *Walker* v. *Nisbet*, 1915 S.C. 639, 52 S.L.R. 439, *per* Lord Justice-Clerk (Macdonald) at 1915 S.C. 640, 52 S.L.R. 441, and Lord Salvesen at 1915 S.C. 642, 52 S.L.R. 441, were referred to. The Codifying Act of Sederunt, C, iv, 5, to show how matters stood when the Sheriff Courts (Scotland) Act 1907 was passed, and the Sheriff Courts (Scotland) Act 1877 (40 and 41 Vict. cap. 50), section 8, were also referred to.

Argued for the respondents—The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 5 (1), did not extend the jurisdiction of the Sheriff to actions of proving the tenor. The word "declarator" although of wide meaning must be construed within a reasonable limitation—*Macleod* v. *Attorney-General for New South-Wales*, [1891] A.C. 455, *per* Lord Chancellor Halsbury at 456. An action of proving the tenor was *sui generis*. It involved an exercise of the *nobile officium*, which appertained only to the Court of Session — Sir George Mackenzie's Works, vol. ii, p. 333. That author having dealt with actions involving an exercise of the *nobile officium*, then proceeded to deal separately with actions of declarator. In classifying the different kinds of actions Stair, Erskine, and Bankton placed the action of proving the tenor in a class by itself. The Court of Session Act 1850 (13 and 14 Vict. cap. 36) did not alter what was then the usual mode of procedure in actions of proving the tenor—*Inch's Trustees* v. *Inch*, 1855, 17 D. 1138; see also *Ferrier* v. *Berry and Others*, 1823, 2 S. 305 (268). By rule 23 of the Sheriff Courts (Scotland) Act 1907 decrees could be granted in absence without a proof, but a decree of that sort was wholly unsuitable to an action of proving the tenor. There were actions of proving the tenor where there was no defender, *e.g.*, where the action was brought against the lieges—*Mitchell* v. *The Lieges*, 1852, 14 D. 932. The Codifying Act of Sederunt, C, iv, 5, prevented in the Court of Session decree going out in absence without a proof. Section 5 of the Sheriff Courts (Scotland) Act 1907 could not be intended to apply to actions of proving the tenor, because it would be impossible to determine "the value of the subject in dispute" if a remit were sought in terms of the section. Dove Wilson, Sheriff Court Practice, 3rd ed., p. 66, and 4th ed., p. 60, and the Sheriff Courts (Scotland) Act 1877 (40 and 41 Vict. cap. 50), section 8, were also referred to.

LORD JUSTICE-CLERK—In this case the question is whether by the Sheriff Court Acts of 1907 and 1913 actions of proving the tenor are competent in the Sheriff Court. It has been held by one of the Sheriffs in Glasgow (Sheriff Fyfe) that they are competent, but the Sheriff-Substitute in the present case has decided otherwise. Founding particularly upon expressions of opinion, which may be perhaps *obiter*, pronounced in this Division by two of the judges who took part in the decision of the case of *Walker* v. *Nisbet* (1915 S.C. 639), he has come to the opposite conclusion. He has accordingly sustained the defenders' plea that the action is incompetent, and he has dismissed the action on the ground that the Sheriff has no jurisdiction.

As I understand it, the affirmative contention in this controversy is founded upon the view that an action of proving the tenor is an action of declarator. I think, with great respect, it is impossible to say that an action of proving the tenor was ever regarded or spoken of as an action of declarator. No doubt the summons contains declaratory conclusions, but when one inquires into the history of the action one finds that it really began as the exercise of prætorian jurisdiction, and all along it has been regarded as having very special characteristics and important consequences distinct from those of an action of declarator. In one of the decided cases on this point the question of *casus amissionis* was found one of the most difficult questions which had to be determined. This is not surprising when the true ground of the action is considered. Although the initial conclusion is in form declaratory, the extract of the decree becomes as valid and effectual as the deed which had been lost. The circumstances of the loss frequently raised a difficulty though they were not specifically referred to in the conclusion as raising one of the questions which the Court had to consider.

But what to my mind is conclusive of this question is that ever since I came to the Bar I have never heard a proving of the tenor spoken of as an action of declarator. On the contrary, it was always distinguished from an action of declarator. One finds even in the rolls of the Court that an action of proving the tenor is called as "Proving the tenor." I find that no further back than the calling lists of last year there is one example of that, and in the same list there is a declarator of nullity of marriage and various other forms of declarator duly entered as declarators.

If one looks at the text-books of our writers on practice, or the digest, one finds that proving the tenor has always been dealt with as being an entirely different branch of legal process from an action of declarator. In all these there are separate categories or separate chapters dealing with actions of proving the tenor and other distinct forms of action, and an action of proving the tenor is just as distinct from an action of declarator as any two actions can well be. I think it was recognised in the statutes dealing with process that the use of the most general words did not cover a proving of the tenor. I notice in one case which Mr Cooper cited to us—the case of *Inch* (17 D. 1138)—that the question considered was whether under the Court of Session Act 1850 (13 and 14 Vict. cap. 36), by which alterations had been made on the forms of process which were necessary in regard to actions of proving the tenor, such an action could be brought in the Outer House. The rubric in that case is—"Actions of proving the tenor are to be proceeded with before the Inner House notwithstanding the provisions of the Act 13 and 14 Vict. cap. 36, for making up the record by summons and defences in the Outer House in all cases coming into Court by a summons." The report states that the Lord Ordinary reported verbally that at the first calling of the action no defences were lodged, and then, defences being given in on the second enrolment, he ordered the parties *per incuriam* to revise their summons and defences with a view to making up the record as in an ordinary action. Objection was taken to this procedure by the defenders, and the Lord Ordinary having already committed himself to deal with the matter in the Outer House, reported the case to the Court. The report contains this passage—"For the pursuer it was stated that there had arisen doubts as to whether an interlocutor making avizandum to the Court was now competent. By the Judicature Act, 6 Geo. IV, cap. 120, section 27, and Act of Sederunt 1828, it was provided that actions for proving the tenor should proceed as formerly, the Lord Ordinary making avizandum to the Court; but by the Court of Session Act, 13 and 14 Vict. cap. 36, the mode of making up records by revisal of summons and defences before the Lord Ordinary was made applicable to all causes coming into Court by summons, and might be held to include in its provisions such actions as the present." The Court rejected that view, and held that the terms of the Act of 1850 did not impinge upon the regulations required to be observed with regard to a proving of the tenor, and accordingly they remitted to the Lord Ordinary to get the case put into proper shape as if there had been no Act of 1850 passed at all.

In the case of *Dow* (10 D. 1465), to which Mr Wilton referred this morning, a will had been found in the repositories of the deceased torn into two halves, and an action was brought by a party having an interest to have it found and declared that the will was null and void. Questions having arisen as to form of the issue, the case was taken to the Inner House. In delivering judgment Lord Justice-Clerk Hope, after stating that there was a doubt as to when the deed had been torn, observed—"In this state of matters I think the proper course is to sist process till a process of proving the tenor shall have been brought. This is the proper way to extricate the case. No verdict returned in this process could have the effect of making the deed be held as if it had not been torn, and enabling it to be recorded. Many other considerations make me doubt the propriety of sending

this case to a jury. The question here is not the simple one of how was the deed torn? There are many nice legal presumptions which the Court alone could supply as to when the deed was last entire, and when and how it was torn. The issue, in whatever shape it is put, just comes to be a proper case for the Court in a proving of the tenor; and as I think that this process must at some stage be brought, the proper course will be to sist proceedings now till it be done. All the Court seem to be strongly of opinion that the *onus* of proof lies upon the defender; but still this is a very delicate matter." In the end the Court sisted the original action of declarator until an action of proving the tenor of the deed in question had been brought at the instance of the defender.

The more recent case of *Shaw* (3 R. 813), which originated in the Sheriff Court, was an action of accounting. The pursuer's title to sue depended upon a document which was not produced, and it was held that the action could not proceed until the pursuer had brought a proving of the tenor of the writ on which he relied to constitute his title to sue.

Now invariably I find that an action of proving the tenor is spoken of as a process of proving the tenor, an action of proving the tenor, or a proving of the tenor, without any qualifying term at all. I cannot recall any instance of my ever having heard, or seen, or known it described as an action of declarator. Accordingly on that very simple ground which seems to me sufficient for the decision of this case—where we are dealing with a matter of nomenclature or terminology—I cannot understand how an action of proving the tenor could ever be held to have been described in an Act of Parliament as an action of declarator. I think it is a different action altogether from what I understand to be an action of declarator, and accordingly the Sheriff-Substitute in this case has in my opinion arrived at a right result.

I should like to point out that if this were an action of declarator it would be competent for the Sheriff, if no defences were lodged, to pronounce a decree in absence finding that the tenor of the document had been proved and that the copy which had been lodged had the same effect as the original document without any proof; whereas if it were remitted to the Court of Session that Court must necessarily allow a proof. This proof seems to me an essential element in a proving of the tenor in order to establish the requirements necessary to enable a decree to be pronounced whether the case is defended or not.

The defenders here have not thought it necessary to raise the question as to whether the pursuers' averments as to *casus amissionis* are sufficient. I think that in a question such as this mere consent on the part of the parties does not in the least relieve the Court from the duty of determining on its own merits and apart from any concession or admission this question of jurisdiction.

I am quite clearly of opinion that in the sense of the statutes we are dealing with, namely, those of 1907 and 1913, an action of proving the tenor, or a process of proving the tenor, is not an action of declarator, and accordingly we should affirm the judgment of the Sheriff-Substitute.

LORD DUNDAS—I am of the same opinion. The real importance and high dignity of an action of proving the tenor are recognised by Erskine, illustrated in the case of *Carson* (14th May 1811, F.C.), to which the Sheriff-Substitute refers, and re-echoed in the books on practice. Erskine observes (iv, 1, 58)—"The cognisance of this action, from its importance, and from the dangerous consequences which might follow if the tenor of deeds were to be sustained which either never existed or laboured under nullities, or have been since extinguished, is appropriated to the Court of Session." In Shand's Practice, vol. ii, p. 828, I find these words—"It has been known in our practice from the earliest times. . . . This action is evidently one of much delicacy and importance, for by means of it writings which never existed, or which laboured under serious and fatal objections might, without due care, be reared up. Thus a man who forged a deed and showed it to several persons and then destroyed it, might afterwards attempt by a proving of the tenor to give it the efficacy of a genuine document." In the comparatively recent case of the *Duke of Athole* (1880) 7 R. 1195, Lord President Inglis said—"A proving the tenor is so peculiar and yet so important a form of process that we must walk warily when we meet with an out-of-the-way case."

The importance and delicacy of the action were, as the books remind us, recognised by the fact that it was reserved for the exclusive jurisdiction of the Court of Session, and even in the Court of Session the Lord Ordinary was obliged to make great avizandum with the cause to the Inner House at an early stage of the proceedings. There used to be, as the books on practice narrate, six forms of action in which the procedure was appropriated to the Inner House of the Court of Session. Of these we were informed, I believe rightly, that two are obsolete. As regards three others, jurisdiction was extended to the Sheriff Court; but in each case that was done by express statutory enactment, conceived in plain and unmistakable language.

It is said that jurisdiction has been similarly extended in the case of the remaining one of these six actions, namely, proving of the tenor which we are now considering. Such an extension if it were to be effected would, I think, require to be made by an express and unequivocal statutory provision, and in my judgment we do not find such provision in the words of the Sheriff Court Act which are here founded upon. I do not think that on any proper rule or principle of construction the words "actions of declarator" in section 5 of the Act of 1907 can be held to include an action of proving the tenor. That action is no doubt in form a declarator, and we are told that a form of its summons appears in some of the style

books among those of actions of declarator. None the less, as my Lord in the chair has so fully pointed out, a proving of the tenor has never been spoken of or regarded as an action of declarator, but always by its own name and designation and as in a category by itself. I agree with all that the Lord Justice-Clerk has said, and my own experience and recollection coincide with his Lordship's.

The view which I take derives, I think, support from rule 23 of the statute to which the Lord Justice-Clerk has made reference. I think there is some force also in the point made on the latter part of section 5 of the Act of 1907 which deals with the value of the cause or subject in dispute, for it would be difficult indeed in most cases to estimate the value of an action of proving the tenor. I therefore arrive without serious hesitation at the conclusion that the Sheriff-Substitute here is right and that we should refuse the appeal.

LORD SALVESEN — We have had a very full and able argument on the question which has been raised in this action. For myself I had already expressed an opinion in the case of *Walker* v. *Nisbet* (1915 S.C. 639) in favour of the view which the Sheriff-Substitute arrived at, but it was pointed out, I think with perfect justice, that the opinion I expressed, and the opinion of the Lord Justice-Clerk who concurred in my view, did not proceed upon argument, but merely on impression and personal experience. Therefore I should have been perfectly willing to reconsider the opinion I then expressed, which was purely *obiter*, but the very full argument we have had in this case has only confirmed me in the view which I hazarded in the case of *Walker* v. *Nisbet*.

The action of proving the tenor has always been in a class by itself. In Scottish legal parlance it has never been described or known as an action of declarator. The reason why it has been in a class by itself is because there has always been and still is a special code of procedure applicable to it. The history of the action gives the reason for this special code, for it originated as an appeal to the *nobile officium* of the Court. Now the *nobile officium* of the Court can only be exercised by one or other of the Divisions of the Court of Session. Accordingly the procedure which has been followed from time immemorial up to 1907, when a change was made solely in the interests of economy, was that the case while originating in the Outer House was transferred by an interlocutor—which must also have been of very ancient date, looking to its archæological form — by which the Lord Ordinary made great avizandum with the cause to one or other of the Divisions of the Court. When the case came before the Division in that way a proof was allowed if the relevancy of the action was not disputed, and was generally taken, and I think ought always to be taken, by one of the members of the Court, and thereupon the proof was printed and the matter was considered by the Division.

Now all that procedure points to the origin of the action as being something different from actions in which parties are contesting patrimonial rights, and it has been laid down by all the writers on the subject and by judges of the highest eminence that the action is a peculiar one, that it is of great importance that it should be dealt with carefully and only after such inquiry before the tribunal which falls to deal with it as will establish the averments made, and guard people against the danger of having a deed which has ceased to be in existence set up and given the same effect as if it had been itself produced.

That being the nature of the action and the reason for the privative jurisdiction which the Court of Session has always had in such actions, I think it would require express language in any statute to deprive the Court of Session of that privative jurisdiction. A general rule applicable to the construction of statutes is that there is not to be presumed without express words an authority to deprive the Supreme Court of a jurisdiction which it had previously exercised, or to extend what was once the privative jurisdiction of the Supreme Court to the inferior courts. Accordingly, if the word "declarator" were to be regarded as ambiguous the presumption would be against its including an action of proving the tenor.

I agree with what your Lordship in the chair has said on the subject. I think an action of declarator could not in our legal terminology, which has been recognised in the profession all my time and evidently for centuries before, be held to include a proving of the tenor, which is not in my judgment a declarator. I also agree with what has fallen from Lord Dundas. If we reached any other conclusion the risks of documents which should not but might be held proved in such an action are very great, because under article 23 of the rules appended to the 1907 Act it would undoubtedly be competent for the Sheriff-Substitute to pronounce a decree in absence without any inquiry, and it might be to the great prejudice of persons who had not been called in the action at all.

Sheriff-Substitute Fyfe, who was the first to hold that this was a competent action in the Sheriff Court, was apparently so impressed with this view that he had to invent a code of procedure in the Sheriff Court for which there was no warrant in the Act of 1907 on which he relied, and to adopt in the Sheriff Court the code of procedure which had been in use in the Court of Session. The mere fact that he had to do so in order to satisfy himself shows the risk there would be of holding that this action was covered by the general extension of the jurisdiction of the Sheriff Court contained in the section to which we were referred. If the view of Sheriff Fyfe prevailed nobody who regarded the interests of his clients solely would bring an action of proving the tenor in the Court of Session, for he might obtain a decree in absence in the Sheriff Court. That is another consideration which seems to me to confirm the view that the statute never intended by the general words used to cover such an

action as this, which was an appeal to the *nobile officium* of the Supreme Court, and was therefore only competent in the Supreme Court.

The Court dimissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellants (Pursuers)—Sandeman, K.C.—Wilson. Agents—Pairman, Miller, & Murray, S.S.C.

Counsel for the Respondents (Defenders)—Wilton, K.C.—Couper. Agents—Fraser, Davidson, & Whyte, W.S.—Turnbull & Findlay, Solicitors, Glasgow.

Saturday, January 17.

FIRST DIVISION.

MUNRO AND M'MULLEN, PETITIONERS.

Election Law—Corrupt and Illegal Practices—Authorised Excuse—Ignorance of Statutory Provisions — Corrupt and Illegal Practices Prevention Act 1883 (46 *and* 47 *Vict. cap.* 51) *sec.* 34.

A doctor serving in the army was labour candidate at a general election; he nominated as his agent a working shipwright. The candidate was defeated; he failed to make the statutory declaration respecting election expenses. His agent failed to make the declaration respecting election expenses and to make a return thereof. Both were unaware of their statutory duties and the candidate's time was fully occupied with his military duties; both acted in *bona fides*. In a petition for an authorised excuse the Court *granted* the prayer.

Smith and Sloan, Petitioners, 1919, 56 S.L.R. 484, *followed.*

Observations per the Lord President that for the future the Court would not be ready to accept mere ignorance on the part of an election agent of his duties under the Act of 1883 as an excuse.

The Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51) enacts, section 33—"(1) Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses) in the form set forth in the Second Schedule to this Act or to the like effect, containing, as respects that candidate—(*a*) A statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression 'return respecting election expenses'); (*b*) A statement of the amount of personal expenses, if any, paid by the candidate; (*c*) A statement of the sums paid to the returning officer for his charges, or, if the amount is in dispute, of the sum claimed and the amount disputed; (*d*) A statement of all other disputed claims of which the election agent is aware; (*e*) A statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court; (*f*) A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received. (2) The return so transmitted to the returning officer shall be accompanied by a declaration made by the election agent before a justice of the peace, in the form in the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses). . . (4) At the same time that the agent transmits the said return, or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses. . . . (6) If, without such authorised excuse as in this Act mentioned, a candidate or an election agent fails to comply with the requirements of this section, he shall be guilty of an illegal practice. . . . ."

Section 34—"(1) Where the return and declarations respecting the election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—(*a*) If the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent, or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or (*b*) If the election agent of the candidate applies to the High Court or an election court and shows that the failure to transmit the return and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the Court may, after such notice of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the Court seems fit, make such order for allowing an authorised