within four days of the date of this order, what illegal acts or corrupt practices, if any, are thereby intended to be charged distinct from the bribery, treating, and undue influence charged in article 4 against the respondent, his agents, and others on his behalf.

"JOHN COWAN,
"*One of the Judges on the Rota for Election Petitions.*"

Agents for Petitioner — Graham & Johnston, W.S.

Agents for Respondent — Duncan, Dewar, & Black, W.S.

Monday, January 12.

CHRISTIE *v.* GRIEVE

Parliamentary Election Act 1868—*Bribery—Corrupt Practices—Motion to Dismiss Petition—Want of Specification—Competency of Motion. Held* that a motion to dismiss a petition against the return of a Member of Parliament was incompetently made before the Election Judges, the scope of such an application being beyond that of "interlocutory questions and matters." Motion to refuse petition in respect of want of specification, *refused.*

In the petition against the return of Mr Grieve as member for Greenock, leave to appeal against the interlocutor of the Election Judges of December 28 was granted by Lord Cowan. At the same time the respondent Mr Grieve boxed the following note:—

"My Lord Justice-Clerk,—Of this date (Dec. 17 1868) the respondent, Mr Grieve, presented to the Honourable Lord Cowan and the Honourable Lord Jerviswoode, the Judges for the trial of election petitions for the time being, pursuant to 'The Parliamentary Elections Act 1868,' a note to have the petition in question dismissed: Of this date (Dec. 28, 1868) Lord Cowan refused the application to have the petition dismissed, and a reclaiming note has been boxed bringing his Lordship's interlocutor under the review of the Court.

"It has been suggested that there is some doubt whether an application to dismiss should not rather come before the Court in the first instance, instead of before one of the election Judges, the scope of such an application being said to be beyond that of 'interlocutory questions and matters,' within the meaning of the 24th section of the general rules of 27th November 1868. To provide against this view of the matter the present note is presented to your Lordship; and the respondent accordingly prays your Lordship to move the Court

"To set aside the interlocutor of Lord Cowan, of date 28th December 1868, to dismiss the petition, in respect that it does not, in terms of section 2 of said rules, 'set forth articulately,' 'according to the rules and practice of the Court of Session in ordinary proceedings,' the facts relied on in support of the prayer of the petition; that is to say, the allegations in fact which form the ground of action; or, at least to find and declare that the 3d and 5th articles of said petition do not set forth any ground of fact which can be the subject of trial: and to dismiss the petition in so far as it is founded on any averments contained in said articles; or to do further or otherwise in the premises as to their Lordships may seem proper."

The case was again argued.

SOLICITOR-GENERAL and CLARK in support of motion to dismiss petition.

A. MONCRIEFF in answer.

The arguments were substantially the same as those already reported.

At advising—

The LORD JUSTICE-CLERK in giving his opinion said that they had before them two forms of application for the dismissal of the petition presented by Mr Christie against the return of Mr Grieve—the one in the form of a reclaiming note against the judgment pronounced by Lord Cowan, the Judge selected from the rota to try the case, and the other an independent application made to them directly by Mr Grieve, that the petition should be dismissed. These steps had been taken on opposite views as to the proper tribunal to adjudicate on the matter of the former proceeding, and as to the process of review by which the Court could correct the judgment pronounced on such matters by the Judge who was to try the case. As the right or the claim to review such a judgment was contested, it became material for them to consider the facts relative to the position of the Court and of the Judge in reference to such questions. He spoke of the inquiry, in the first place, as to the tribunal which fell to deal with such an application as the present. The application was one to dismiss the petition. It proceeded upon the assumption that there had been no statutory petition presented within the time fixed by the Act of Parliament. It was said to be awanting in that which was alleged to be necessary in a petition framed and presented according to the rules of the Court by which they were to be guided, which had in this matter all the power and effect which statutory regulation could possess. The rules of the Court, as framed by the judges, distinguished—and he thought in perfect accordance with the spirit of the statute—between the special functions of the Court, and of the Judge who had the cause for trial. The 24th rule contained the direction on which the question must hinge, and to which reference has been made as the test-rule applicable to the present discussion:—"All interlocutory questions and matters, except as to the sufficiency of the security, shall be made upon application in writing, to be lodged at the office of the principal Clerk of Court, and shall be heard and disposed of by one of the election Judges, or in their absence by the Lord Ordinary on the Bills." The question therefore before the Court, in so far as related to the proper tribunal before which application should be made, might be stated as identical with the question whether the application of Mr Grieve to have this petition dismissed, was on a question or matter interlocutory, or whether it was on a question or matter of a different character. He held that, in seeking for the dismissal of the petition, Mr Grieve raised matter not of an interlocutory nature, but of a nature which went to the absolute and definite termination of the cause which was before the Court. It was an application to dismiss the petition, not an application to obtain further specification, or for the amendment of the petition, or for certain rules by which the broad generality complained of might in effect be obviated, but for the absolute disposal of the case as it was presented to the Court. In a popular sense, an interlocutor may mean any judgment of a Court embodying the finding of that Court; but that was not its legal construction; and when a matter interlocutory was referred to, it had a reference to orders in a cause which was in dependence—ad-

vancing to its termination, but which was still in dependence, and to be in dependence after the interlocutor should have been pronounced. An interlocutory sentence was not a sentence definitive of the cause or of the instance. Now, they had before them at present an application for a sentence definitive of the instance; they had an application which should dispose of the cause as presented; and therefore they had an application, not for an interlocutor, but for a sentence by which the matter should be disposed of out and out. In the view which he took of the matter, therefore, the application was not properly made to Lord Cowan, who had a separate and independent jurisdiction in "interlocutory matters and questions," but who had no power to pronounce such a sentence as was required of him in the form of the dismissal of the petition. If so, it must follow that the application now made to the Court was a proper and competent application, having in view the dismissal of the petition, and that they were not hindered to deal with it from anything which took place before Lord Cowan. Had it been otherwise, and had his view been that Lord Cowan had been called upon to pronounce, and had pronounced, a proper interlocutory judgment upon a petition in a matter interlocutory, he should have held that Lord Cowan's judgment would have been final in the matter; for it appeared to him that the Judge in the matter of the trial was as fully and effectually vested with independent and absolute jurisdiction in all these interlocutory matters as they were in the general questions which arose in the exercise of their jurisdiction. He thought it was so from the terms used in the statute, and from the 24th rule of the Court; and it must needs be so, otherwise he should think no trial could proceed at all; for if at every stage, and upon every judgment pronounced in the way of preparing a case for trial, it were competent to come up by reclaiming-note to the Court to have the review of this Court upon the validity and propriety of the judgments delivered, it was quite clear that no effectual progress could be made with a view to the speedy adjustment of the matter or the trial of the cause. The question then came to this, whether the application made to them was, on its merits, a right application which they ought to grant, or an application which they ought to refuse. They had no objection stated to the application as being made at too late a stage of the proceedings; and he was not disposed to hold it as excluded by the delay which had intervened, although it was plain that such an application would have been more conveniently made, and perhaps properly should have been made, at the earliest possible period of the proceedings. The case of Mr Grieve, then, viewed upon the merits, seemed to be this. It substantially rested upon the absence of specification in the petition of the facts upon which the prayer of the petitioner rested. The argument was that, as the second rule of the Court referred to a condescendence and to the rules and procedure of the Court of Session, it implied, or rather exacted, that the petition should set forth all the details required in an ordinary condescendence of the Court, and required, not at an initial stage of the proceedings, but required in a cause which was complete and perfect, as it was said this petition ought to be, within twenty-one days of the date of the return. Now, the question was, Whether that construction of the rules was right? He held, upon the construction of that second section, that there was nothing in the rules which embodied anything more in reference to a condescendence than the form of it. As he read the rules, the statement of the party, in presenting the petition, was to be articulate in the form of a condescendence; it must set forth the facts on the record on which the prayer of the petition was rested. Now, the facts as stated on this petition, and on which the party rested as leading to the voidance of the election in favour of Mr Grieve, were that there had been bribery, treating, and undue influence, and the prevalence of extensive corrupt practices in the election. They had a statement, certainly, as to the facts—they had not a statement as to each individual fact, which would seem to be very much a statement of the evidence of the general fact, but they had in the petition a statement as to the facts upon which the party relied. There was also in a certain degree a particularisation of the facts, because they must hold these things as having occurred at or about the time of the Greenock election, and among the constituency of that burgh, and, by fair enough reading, within the burgh, or in its immediate neighbourhood. Now, what was said to be required? It was a specification and detail of facts. The facts alleged were relevant; but the allegation was that they were not set out with sufficient precision. Now, what was the amount of specification required? Take the case of bribery, or the case of the general prevalence of corrupt practices within the burgh. What would be specification enough according to that view? He did not know any other specification that would be enough if they were to insist on more particular specification at that stage than the specification of every act of bribery, or of every act of corrupt practices which had so extensively prevailed, because it would never do to say that they might specify a few, and make a general allegation as to others. They must come to this, that they must require that either every individual act going to constitute the character of the general fact averred should be set out, or that it was sufficient to set out, in the face of the petition, the fact itself which constitutes the crime upon which it was said that the election should be declared void. Now, if such a demand were well founded, in what would it result? He thought it would result in this, that in every election petition they would have—what had been suggested as being in compliance with an order for specific facts—a setting out of two or three hundred electors on the face of the petition, and an averment of each of these parties being bribed; and in that way only could a party proceed with security on the face of the application, because, to say that every act of bribery should be stated anterior to the presenting of the petition within twenty-one days of the return, and that nothing else could be permitted to be proved except what was stated on the face of the petition, would be a complete denial of anything like an inquiry that could be rationally prosecuted. He took it that it was not necessary to set forth in the petition such details; and he apprehended that if it was once admitted that, under the authority of the Court of Session, in a similar application in the ordinary exercise of its jurisdiction, it would be competent in the form of a revised condescendence or amendment, or minute of agreement, to make precise that which was said to be general, the objection in this case utterly failed, because it was an objection going to the dismissal of the petition; and to any different effect an application could have been made for such an order as to protect the

party from the consequences of too general a statement, in the same way as had been done, or attempted to be done in the interlocutor, or in the condition annexed to the interlocutor of Lord Cowan. In the view he took of this matter, therefore, there did not seem to be any statutory defect in the petition. It appeared to him that they had before them a statutory petition; and when he was asked to dismiss it because it was not a statutory petition, he refused the motion. He had nothing to do with annexing a condition with respect to specifying particulars. That fell within the province of the Judges in the rota. The question he had been asked to determine was to dismiss the petition; and the answer which he had to make was this, that he should not dismiss the petition, which appeared to him to have been formed according to statutory rule, and to express that which should form a good foundation for the proceedings of the trial of that election petition, whether under application to the Judge who was trying the cause there should be further specification or not. The view, then, which he thought should be embodied in their interlocutor was, that they should find that the application fell to be made, in the first instance, to the Court; that consequently the proceedings before Lord Cowan did not interpose any obstacle to their considering a petition made directly to them by Mr Grieve, and that upon the consideration of that petition upon its merits, they should refuse it.

Lord Neaves concurred generally in the views expressed by the Lord Justice-Clerk, and gave it as his opinion that any motion for the dismissal of an election petition should, in order to be competent, be made immediately after the lodging of the petition, and before the Clerk of Court had entered it in his lists as a petition "at issue," after which period the petition must be tried. Supposing the application for the dismissal of the petition were competent at that stage, he was of opinion that the grounds upon which the motion was made were not satisfactory. The allegation made was an allegation of systematic and extensive prevalence of corrupt practices of various kinds—of treating, bribery, and undue influence. That was a fact of that general and comprehensive nature that did not require condescendence beyond this, that the party must make out the case that he alleged. He had no right to anticipate what might be done. It certainly did not appear to him that a case of this kind would be made out by a single case of bribery. The case alleged was one of systematic and extensive bribery, such as precluded the convenience and expediency of condescending upon details, because it was not the details that were complained of—it was the universal, extensive, organised, systematic prevalence of these corrupt practices at elections. He held, therefore, that the fact was sufficiently condescended upon in the petition. He thought, however, that it was very right that as the trial drew nigh something should be done, such as Lord Cowan had directed in his interlocutor, to give particulars so as to prevent surprise. That was plainly a matter coming within the province of the Judge appointed to try the case.

Lord Cowan said that when this application was first made to him the question as to its competency appeared to him to be one of considerable difficulty and doubt; and had the Court been sitting he would have reported the case for the decision of the Court. After the matter had been argued, he thought it was a question of very considerable difficulty; but he was not prepared to dissent from the decision at which their Lordships had arrived in holding the petition to have been incompetently presented to the Election Judge. On the contrary, viewing the case in all its bearings, it appeared to him that the only competent tribunal for the consideration of the petition was the Court, or the Second Division of the Court. With the greatest deference to their Lordships, he thought that the Court or the Judge who had jurisdiction was entitled, in refusing the application, to do so subject to such a consideration as he had attached to the refusal in his interlocutor. It must now be understood that, as the application to the Election Judge was incompetent, the interlocutor and all the proceedings that followed upon that application virtually fell. He thought that the application to this Court had been well made, because it had been presented on the 31st December last, and the list of election petitions was only presented by the prescribed officer on the 6th January, on which date the Election Judges fixed the days of trial. As to the question whether the application was well founded on its merits, it appeared to him that it was not well founded; and the fallacy of the reasoning for Mr Grieve appeared to him to lie in a mistaken construction of the expressions employed in the second rule of procedure. They asked the petition to be dismissed in respect that it did not, in terms of section 22 of the rules, set forth articulately, in the form of a condescendence, according to the rules and practice of the Court in ordinary proceedings, the facts relied on in support of the prayer of the petition. It was very easy to make a plausible argument—nay, to make a demonstration—when the very vital part of a proposition was excluded from consideration. The rule did not say that the condescendence was to be according to the rules and practice of the Court in ordinary procedure. The form of a condescendence was to be adopted in setting forth the facts relied upon in support of the petition. The sufficiency of the facts, or of the matter to be stated in that form, relevant to support the petition fell to be judged by a different criterion. There were some general considerations to which he thought it his duty to call their Lordships' attention in advising the case. The first of these was the peculiarity of the jurisdiction conferred by this Statute for the first time on the Courts of Scotland. He thought it seemed to be forgotten that the object of the Statute was to transfer a jurisdiction which was peculiar to the House of Commons itself, and to its Committees, to the Courts in England, Ireland, and Scotland. The Statute was full of difficulties and full of apparently inconsistent provisions, if they judged of it by the municipal law either of the one country or of the other—at all events if they judged of it by the municipal law of Scotland. His Lordship proceeded to point out that the Election Judges were empowered to alter the rules from time to time, and that until they made rules in reference to matters of procedure they were to be guided in the trials by the rules and practice of the Committees of the House of Commons. He then stated that the principle upon which the Election Judges had gone in framing the rules for the procedure at the trials had been to endeavour, as far as possible—as far as the practice and rules of their Courts would admit of it—to make their proceedings in these election petitions in unison with the proceedings under the same Statute which were to be followed in England

He did not anticipate that they would meet with any real difficulty in working out these rules. He concluded by intimating that the Election Judges had in view, either that afternoon or next day, to issue additional general rules for regulating these election trials.

The Court then pronounced an interlocutor to the following effect:—"Find that the motion made to Lord Cowan to dismiss this petition was not competently made, and that no competent deliverance could be pronounced by his lordship on the merits: Find that any such motion could only be competently made to the Court—meaning thereby this Division of the Court, to which this petition was presented: And, having considered the note for Mr James Johnston Grieve, and heard parties thereon, refuse the said note without prejudice to any appointment or order which the Judges on the rota, or the Judge selected from the rota to try this election petition, may make with a view to the better trial or disposal of this petition."

The Court allowed the expenses proper to the application made to the Second Divison, but disallowed other expenses.

Agents for Petitioner—Graham & Johnston, W.S.

Agents for Respondent—Duncan, Dewar & Black, W.S.

Thursday, January 7.

COURT OF LORDS ORDINARY.

MURRAY *v.* BERNARD.

(Et e contra.)

Commission Agent—Business Books—Recovery of Outstanding Debts—Interim Possession—Inversion of Possession—6 Geo. IV., c. 120, sec. 42—A. S., 10th July 1839, sec. 130, 146. A party who for some years acted as agent for a trading firm, was furnished by them with ledger and other books for entry of sales, &c., it being stipulated *inter alia* that the books should remain the property of the firm. The agent ceasing to act for the firm, pleaded a right to retain the books until all the outstanding debts had been recovered. *Held* that the firm, as having the greatest interest in the books, were entitled to recover them. A petition for immediate delivery of the books pending a result of an advocation of the original petition for delivery, *dismissed.*

In the spring of 1860 James Murray, agent, Jamaica Street, Glasgow, entered into an agreement with J. & J. Bernard, brewers, Edinburgh, to become sole agent for them in Glasgow and certain other places. By the eighth article of the agreement it was provided, that "The said James Murray shall be furnished by the said Thomas & James Bernard with a proper set of books, consisting of ledger, cash, cask, and order books, into which all entries connected with this agency shall be regularly made; and the said books shall belong to and remain the property of the said Thomas & James Bernard." It was further provided that, notwithstanding the acceptance by Murray of bills drawn upon him by T. & J. Bernard, the right of property in the accounts of the customers was to remain with T. & J. Bernard, Murray having the right of collecting and recovering outstanding accounts, except only in the event of his failing to return the bills, or of his death, bankruptcy, or insolvency.

Murray was furnished with books, and acted as agent for the respondents until April 1867. The respondents then presented a petition in the Sheriff-court of Glasgow, stating that Murray had ceased to act as their agent, and that they had appointed another agent, Macgregor, in his place; that it was indispensable that Macgregor should have possession of their books and papers to enable him to conduct the business, that they had applied to Murray for the books, undertaking to give him all reasonable access to them for any lawful purpose, but he declined either to give up the books or to allow access to them. They accordingly craved delivery of the books, they giving Murray such access to them as he might require.

Murray contended that he was entitled to retain the books in question until the outstanding debts had been fully recovered, and an accounting had taken place between him and the petitioners. He alleged that during the continuance of the agreement he had, with consent of the petitioners, conducted a separate business of his own, the transactions of which were recorded in the same set of books, with the knowledge and consent of the petitioners. Meantime he was willing to give access to the books.

The Sheriff-substitute (GALBRAITH), after a proof, held that there was no evidence that, on termination of his agency, Murray was bound to deliver up the books to enable the petitioners to keep together the business he had formed for them; that possession of them was indispensable in order that he might collect the outstanding debts for which he had become responsible; that he had no authority so to use the books as to give him a right of property in them; bnt that the petitioners, although the property of the books was in them, were not entitled to delivery of them until the purposes of the agreement were carried out.

The Sheriff (BELL) recalled, and held that the books having been all along the property of the petitioners, and there being no stipulation in the articles of agreement that Murray was to have a right of retention of the books for any purpose after his agency had ceased, the petitioners were entitled to reclaim possession of them when that event happened, the more especially as they could not carry on their business satisfactorily, either by themselves or by a new agent, without these books, and as they offered to give Murray access to the books at all reasonable times, until the accounts contracted through him were collected.

Murray advocated.

Pending the advocation, T. & J. Bernard presented a petition to the Sheriff, setting forth the statute 6 Geo. IV., c. 120, sec. 42, which enacts "That in all advocations of interlocutors pronounced by Sheriffs, it shall be competent to the Inferior Judge to regulate, in the meantime, on the application of either party, all matters regarding interim possession, having due regard to the manner in which the mutual interests of the parties may be affected in the final decision of the cause." That by sections 130 and 146 of the Act of Sederunt of 10th July 1839, it is likewise made competent to the Sheriff to regulate all matters respecting interim possession, as aforesaid. And craving the Sheriff to ordain the respondent to deliver up to the petitioners the business books belonging to them, before enumerated, or such of them as your Lordship may consider the petitioners are entitled