of the person who applies for interdict is not borne out by the authorities. If any person asks interdict on statements of fact made by him to the judge, he does so at his own peril, and the mere circumstance that he may have been misled or sanguine will not justify him in a question with the person whom he has injured. The argument in fact on the side of Mr Campbell's client proceeded upon a disregard of the plain distinction drawn between a case of interdict and a case of diligence, and that being a matter settled by decision, I think that the case does not present any legal difficulty.

LORD M'LAREN—The ground of action averred by the pursuer is that he has suffered damage by reason of the defenders having wrongously obtained interim interdict, with the result of interfering with the sale of his goods. *Prima facie* such an averment constitutes a relevant case for damages. There is a very well-settled distinction between rights of action for wrongous use of interdict and for wrongous use of personal diligence. It is unnecessary to enter into the grounds of this distinction, further than to say that interdict is an extraordinary remedy almost always productive of great inconvenience, and therefore our law does not allow a party to get interim interdict as a matter of course, but only on sufficient representations made to the judge, on which alone, in the case of interim interdict, the judge acts. Where interdict is improperly obtained no distinction can be taken between the cases when it is based on positive false statements, and when it is obtained by the suppression or non-disclosure of facts which are necessary to enable the judge to determine the question of the expediency of granting interim interdict. Here, according to the averments of the pursuer, the judge was misled, with the result that he granted interdict against the sale of the aggregate of all the articles constituting the stock of a trader, when, if the facts had been properly set before him he would have limited the application of the interdict to certain articles which were the complainer's property. It is true that there are expressions in the condescendence annexed to the petition for interdict which indicate that the applicant was not entitled in whole to the remedy he asked, all the goods not being his property, but this was not brought forward by him in such a prominent way as to attract the attention of the Sheriff, and, in particular, the complainer did not directly inform the Sheriff that he did not desire interdict to the full extent. According, therefore, to the pursuer's averments the defender obtained an interdict to which, in fact as it now appears, he was not entitled. I agree that these averments constitute a case for damages, such as is proper to be disposed of by the Sheriff.

LORD ADAM and LORD KINNEAR concurred.

The Court dismissed the appeal, and remitted the case to the Sheriff for proof.

Counsel for the Pursuer and Respondent —H. Johnston—Salvesen. Agent—F. J. Martin, W.S.

Counsel for the Defender and Appellant — Vary Campbell — Craigie. Agents — Miller & Murray, S.S.C.

Wednesday, October 16.

FIRST DIVISION.

HOOD AND ANOTHER *v.* GORDON.

Election Law—Member of Parliament—Petition against Election — Process — Amendment—Corrupt Practices Act 1883 (46 *and* 47 *Vict. cap.* 51), *sec.* 40 (2), *sec.* 68 (4).

The Corrupt Practices Prevention Act 1883 provides in sec. 40 (2) that "any election petition presented within the time limited by the Parliamentary Elections Act 1868, may, for the purpose of questioning the return or the election upon an allegation of an illegal practice, be amended with the leave of the High Court." . . . .

Held (1) that an application for leave to amend an election petition under this section fell to be made to one of the Divisions of the Court, and not to the Election Judges; (2) that on leave to amend the petition being granted, it was unnecessary to remit the petition to the Election Judges, inasmuch as it was already before them except as to questions which were statutorily outside their jurisdiction and within that of the Inner House.

On 19th August 1895 James Hood and Andrew Gillanders, qualified voters at the election of a Member of Parliament for the combined counties of Elgin and Nairn, presented an election petition under the Parliamentary Elections Act 1868 against John Edward Gordon, the elected candidate, praying to have it declared that the election and return of the respondent was null and void. The petitioners averred that the election had been brought about by bribery, treating, and undue influence.

On September 6th, after a date had been fixed by the Election Judges for the trial of the petition, the petitioners presented to the First Division a supplementary petition, in which they prayed to be permitted to amend the said petition by adding thereto certain statements. The prayer also proceeded to crave that the election should be pronounced null and void. The statements proposed to be added consisted of averments of contraventions by the respondent and his agents of various provisions of the Corrupt Practices Prevention Act 1883 in relation to the return and declaration respecting election expenses.

By section 5 of the Parliamentary Elections Act 1868 (31 and 32 Vict. cap. 125) it is provided—"From and after the next dissolution of Parliament a petition complaining of an undue return or undue election of a member to serve in Parliament for a county

or borough may be presented to the Court of Common Pleas at Westminster, if such county or borough is situate in England, . . . by any one or more of the following persons. . . .." Section 58 of the same Act provides:—"The provisions of this Act shall apply to Scotland, subject to the following modifications—(1) The expression, the Court, shall mean either Division of the Inner House of the Court of Session, and either of such Divisions shall have the same powers, jurisdiction, and authority with reference to an election petition in Scotland, and the proceedings thereon which by this Act are conferred on the Court of Common Pleas at Westminster with respect to election petitions in England. (5) The trial of every election petition in Scotland shall be conducted before a judge of the Court of Session to be selected from a rota to be formed as hereinafter mentioned."

By the Parliamentary Election Petition Rules of 1868, which have the force of statute, it is provided:—"(17) The time and place of the trial of an election petition shall be fixed by the judges, and notice thereof in writing shall be affixed by the principal clerk on the notice-board in his office. . . ." "(24) 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, and shall be heard and disposed of by one of the judges, or in their absence, by the Lord Ordinary on the Bills."

The Corrupt Practices Prevention Act 1883 (46 and 47 Vict. cap. 51) provides in sec. 40 (2) that "any election petition presented within the time limited by the Parliamentary Elections Act 1868 may, for the purpose of questioning the return or the election upon an allegation of an illegal practice, be amended with the leave of the High Court, within the time within which a petition questioning the return upon the allegation of that illegal practice can under this section be presented." By section 68 (4) of the same Act it is provided that "the jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said Court to whom the same may be remitted by such Division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of Sederunt for the purposes of this Act."

Argued for petitioners—This Court was the proper one to which to bring the application for leave to amend by petition. It was evident from section 5 of the 1868 Act that this was the course contemplated by that Act, and under sec. 40 (2) of the 1883 Act it was directly laid down that this course must be followed. This course had been followed in the *Greenock Election Petition*, July 20, 1892 (unreported). Accordingly, the amendment should be allowed, and the petition remitted to the Election Judges.

Argued for respondent—This Court was not the proper tribunal before which to bring an application for leave to amend an election petition. The natural course for the petitioners to follow would be to apply to the Election Judges, and there was no necessity to come to this Court. The petition was pending before the Election Judges, and until it was removed from their jurisdiction it was incompetent for another Court to interfere. Section 11 of the 1868 Act—as applied to Scotland by section 58 (5)—showed that the Election Judges ought to deal with such matters as this. The expression "High Court" used in section 40 (2) of the 1883 Act was to be read as meaning the Court before whom the petition was being conducted, not in its technical sense—as interpreted in sec. 68 (4) of the Act—of "one of the Divisions of the Court of Session."

At advising—

LORD PRESIDENT—We are asked by the petitioners to grant leave to amend a petition originally presented by them to have the election for Elginshire declared void and Mr Gordon unseated. Objection has been taken to that on grounds of technicality and procedure, and this objection raises matters worthy of consideration. But I am bound to say that on this question, which is one of practice and precedent, we have not received such assistance from the bar as it turns out might have been available. We have ourselves examined the law applicable to this matter, and I find that our course is rendered tolerably clear by the Parliamentary Election Petition Rules applicable to Scotland, framed by the Judges in Scotland under the Act of 1868, and by two decisions of the other Division of the Court. Shortly stated, it appears to me that the result of these enactments contained in the statute and in the rules, along with the decisions which I have referred to of the Second Division, is this—A petition under the Parliamentary Elections Act is properly presented to either Division of the Court, but what may be done after the petition is presented depends entirely on the nature of the questions which are sought to be raised. In one case, which is not reported, but in which I was counsel, and as to which I have just now verified the facts, viz., the *Wigtonshire Burghs* case, the petition never was moved in the Division until the approval of the Auditor's report after the trial had taken place. My recollection of the *Dumbartonshire* case is that the same course was followed, but as to that I am not so accurately informed. But in the two reported cases which have occurred in the Second Division, the question has been carefully considered what motions are proper to the Division and what to the Election Judges, and that is so far determined by the 24th rule of the Rules of 1868, which provides that 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, and shall be heard and disposed of by one of the Judges; that was, of course, in the days when one and not two Judges tried these

petitions, or in their absence, by the Lord Ordinary officiating on the Bills. In these cases—*Christie* v. *Grieve*, 7 Macph. 378, and *Irwin* v. *Muir*, 1 R. 834—the Second Division had to determine whether the question which was brought under their cognisance was an interlocutory matter. If it was, then the statutory rule made that proper to the decision, not of the Division but of the Election Judges; and in both these cases the Division held the subject-matter in dispute was not of an interlocutory character, because in both cases the objection taken by the respondent, which formed the subject of debate, went to the root of the petition, and if sustained would have precluded any further procedure. The Court then laid down that questions of that character and quality were proper to the Division, and not to the Election Judges. I have referred to the 24th rule, but that does not exhaust the questions which are expressly appropriated to the decision of the Election Judges as distinguished from the Division, because Election Judges have also to fix, *inter alia*, the time and place of trial. It is expressly provided, for under the 17th rule—the time and place for trial, interlocutory matters, the trial itself, all are proper, not to the Division, but to the Election Judges. But in the two cases to which I have referred—*Christie* v. *Grieve*, and *Irwin* v. *Muir*—the Court held, as I have already mentioned, that questions going to the root of the petition, and requiring to be determined before anything else is done, are proper to the Division.

Now, we have to consider how stands the present application. It was suggested by Mr Dickson that it was necessary that the petition—when I say the petition I should amplify that by saying all petitions, even under the Act of 1868—must be got out of the First Division by being transferred or remitted to the Election Judges. I take that, upon the statute, the Rules, and the two decisions which I have referred to, to be a mistake. I do not think that the Division requires to remit the petition for the disposal of these matters within the statute and the Rules even to the Election Judges. The thing works automatically. If you have a thing proper to the Division in the sense of the two Second Division cases, come to the Division. If you have a matter proper to the Election Judges under the statute and the Rules, go to the Election Judges. Now, how stands the present application. It appears to me to depend, not on the discrimination of the duties of the Division and Judges, as those are determined by the Act of 1868, because it is expressly presented under the Act of 1883; it is an application for leave to amend the petition. Now, the Act of 1883 says that leave must be granted, if at all, by the High Court, and the High Court, as interpreted for Scotland, means the Division. Accordingly, here I think our course is quite clear. We are asked to administer the Act of 1883 on an application for leave to amend, and it is we alone who can grant such leave. Accordingly, I think we must entertain this application, but entertain it for the purpose of performing the statutory duty under the Act of 1883, of granting or refusing leave to amend. Now, on the merits of the question, Mr Dickson, whose position I perfectly understand, made no observations—that is to say, he had no opposition to offer on the merits of the question whether the petition shall be amended unless he was right in his original suggestion, that that is no business of ours, and is to fall to the Election Judges. Now, I have looked at the proposed amendments. They seem to be legitimate and proper, and I am supported in that view by the absence of observations to the contrary on the part of Mr Dickson. I think we should grant leave to amend the petition by inserting in it the allegations contained in the note. By a singular view of what was fitting in such an application the petitioners have gone on in this application for leave to amend this petition, to pray over again that Mr Gordon be unseated. I am not disposed to take any notice of that application, because that is not matter for us. I propose to limit our action to what the Act of 1883 gives us power to do, that is, to give leave to amend. I think we should do so by allowing the petitioners to insert this statement of facts contained in this paper, and leave it so. After that the parties require no remit of ours to go to the Election Judges to get them to exercise the powers conferred on them by the Act of 1868, the Rules under that Act, and the Act of 1883.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court "granted leave to amend the original petition . . . in terms of the prayer of the supplementary petition."

Counsel for Petitioners—Shaw, Q.C.—Dewar. Agent—James Falconer, W.S.

Counsel for Respondent—C. S. Dickson—J. Wilson. Agents—Mackenzie, Innes, & Logan, W.S.

Friday, October 18.

FIRST DIVISION.

[Dean of Guild Court, Edinburgh.

MACKAY'S TRUSTEES AND ANOTHER *v.* WILSON & SONS.

Dean of Guild—Warrant for Structural Alterations—Form of Warrant where Buildings already Erected—Process—Heritable Right—Onus probandi.

W., who had made certain structural alterations on his premises without obtaining a warrant from the Dean of Guild, and had thereby incurred a fine, brought a petition in the Dean of Guild Court, craving the Court to