LORD SKERRINGTON—It was admitted by counsel that there was evidence which entitled the jury to come to the conclusion that sexual intercourse had taken place on the occasions in question between the pursuer and her master, the defender. The defender placed himself in a position of disadvantage with the jury because he denied that fundamental fact, and the jury disbelieved him. As the jury believed the pursuer and disbelieved the defender, I think that they were entitled to take the view that the sexual intercourse had been brought about substantially in the way and manner deponed to by the pursuer—I mean, that she was not a willing participant in this act of immorality. That view was, I think, corroborated by the girl's admitted previous good character and behaviour in that household and by the fact of her youth and innocence.

If the jury came to the conclusion that this previously good girl allowed sexual intercourse to take place between herself and her master, they were entitled to ask themselves how that happened. And if they were satisfied that it came about because the master was the aggressor, they were, in my view, entitled to draw the inference that the act of sexual intercourse would not have been permitted by this girl if the aggressor had been a stranger, but that she did permit it because he was her protector in that household. He was the master of the household, he was entitled, generally speaking, to do as he liked in the house, and the girl was at a disadvantage when resisting his wishes.

To make out seduction in the legal sense it must be established that the parties did not meet on equal terms, and that the woman was unfairly treated by the defender. What has to be negatived is the *prima facie* view that where a man and a woman commit an act of immorality both are free and willing consenters. That view must be displaced by the pursuer, and the burden of proof at the beginning undoubtedly lies on her. On the evidence in this case I fail to see why a reasonable jury might not draw the inference that that burden of proof had been satisfactorily discharged.

LORD CULLEN—I agree. I think if the jury took the view that the girl surrendered herself unwillingly, they were entitled in the circumstances to draw the inference that the master did use his influence over her to obtain connection.

LORD ANDERSON — I entirely agree. I desire to add that I am quite satisfied with the jury's verdict, and am of opinion that the pursuer proved her case.

The LORD PRESIDENT was absent.

The Court refused the motion for a rule.

Counsel for the Pursuer—Macphail, K.C. —A. M. Stuart. Agents—Menzies, Bruce Low, & Thomson, W.S.

Counsel for the Defender—Watt, K.C.—Burnet. Agents—Mackay & Hay, W.S.

Saturday, June 14.

FIRST DIVISION.

SMITH AND SLOAN, 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 miners' agent who was a candidate at a parliamentary election, being unable to obtain the services of a law agent, appointed a checkweighman as his election agent. Both of them were ignorant of their duties under the Corrupt and Illegal Practices Prevention Act 1883. The candidate failed within the statutory period to make the declaration with regard to election expenses, and the agent failed to lodge accounts properly detailed and accompanied by vouchers, and to send in the statutory declaration with the accounts. An abstract of the accounts after the pattern of those published by returning officers was timeously lodged, and the vouchers though not lodged had been obtained and were in order. Neither party had any interest to conceal any expenditure, and on discovering that they had failed to comply with the statute they anxiously endeavoured to rectify their omissions. They presented a petition for an order allowing an authorised excuse. No answers to the petition were lodged but the returning officer appeared by counsel.

The Court, on condition that the proper accounts and the declarations were lodged within ten days, *granted* the prayer of the petition, finding the returning officer entitled to his expenses up to the date when proof was ordered and to a watching fee thereafter.

Observations per Lord Guthrie on the circumstances to be taken into consideration in such applications.

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 election expenses of a candidate at an election for a county or burgh 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 risen 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 burgh, 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 excuse for the failure to transmit such return and declaration, or for an error or false statement in such return and declaration, as to the Court seems just. . . . (3) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the Court seem best calculated for carrying into effect the objects of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the Court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Court shall relieve the candidate from the consequences of such act or omission on the part of his election agent. (4) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse."

Section 68—" . . . (4) 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."

Robert Smith and Alexander Sloan, *petitioners*, presented a petition craving the Court to make an order (first) for allowing an authorised excuse for the petitioner Robert Smith's failure to comply with the provisions of the Corrupt and Illegal Practices Act 1883, section 33 (4), in respect that he did not make a declaration respecting election expenses, and (second) for allowing an authorised excuse for the petitioner Alexander Sloan's failure to comply with section 33 (1) of the Act of 1883 in respect that he did not make a return of election expenses in the form and manner required by that section and did not make a declaration respecting election expenses as provided for by section 33 (2) of that Act.

On 18th March 1919 the Court remitted to Lord Guthrie to hear evidence and report.

The *facts* established by the evidence were:—Robert Smith, a miner's agent, was a candidate in the labour interest for the Parliamentary Division of Bute and Northern Ayr at the parliamentary election in December 1918. He appointed Alexander Sloan, a checkweighman, his election agent, the only two law agents in the district who would have acted for a Labour candidate being engaged otherwise. Smith left the whole of the payment of the election expenses to Sloan, who knew nothing whatever of the statutory provisions with which in the performance of his duty he required to comply. On 28th December 1918 another candidate was declared elected for the constituency. On 23rd January 1919 Smith went over the whole of the election accounts

which were submitted to him by Sloan and found them all paid and duly receipted. Sloan showed to Smith an abstract of the accounts, which was as follows:—

"Motor car accounts . .	£ 61 12 3
Printing, stationery, and advertisements . . .	157 10 7
Halls and committee rooms	77 17 10
Election agent's charges, sub-agents, clerks, and messengers . . .	144 17 0
Posts, telephones, and telegrams	50 0 0
Candidate's personal expenses	30 0 0
Miscellaneous . . .	43 17 5
	£565 15 1"

That abstract was lodged without further itemisation and without vouchers. It was framed by Sloan on the model of abstracts of other candidates' expenses which had appeared in the newspapers, and which Sloan believed were the accounts as lodged by the election agents. Neither Smith nor Sloan knew the candidate required to make a declaration about election expenses, nor did Sloan know that the amounts when lodged had to be accompanied by a declaration by him with regard to those expenses. On 3rd February the petitioners learned that their accounts were not in order and they immediately saw the deputy returning officer and endeavoured to rectify matters. They were informed that the time had gone past and were advised to consult a law agent, which they did. The petitioners had no interest to suppress any items of expenditure, the whole of their expenses being paid by the Miners' Federation.

Argued for the petitioners—Authorised excuses should be allowed. The petitioners had acted in perfect good faith and their failure to comply with the statute was due to inadvertence. They offered to lodge fully itemised accounts with vouchers, and to make the requisite declarations in terms of the Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51), section 34 (3). *Clark* v. *Sutherland*, 1897, 24 R. 821, 34 S.L.R. 555, and *In the Matter of the Election of County Councillors*, 1889, 5 T.L.R. 173, were referred to.

Counsel for the returning officer referred the Court to section 35 (1) and (2) and to the *Borough of West Bromwich*, 1911, 6 O'M. & H. 256, at 284-9, as showing that ignorance of the statutory provisions was no excuse.

LORD GUTHRIE—In this case an application is made by a candidate and his agent for relief, under the Corrupt and Illegal Practices Prevention Act 1883, in respect of admittedly illegal practices.

The candidate's illegal practice consisted in failure to send in the statutory declaration. The agent's fault was twofold. He sent in his accounts, but they were not properly itemised and they were not accompanied by vouchers. His other failure was that he did not send with the accounts the declaration demanded of him by the statute.

Similar questions have been considered in the Courts of England and of Scotland, and the decisions show that the Courts have kept three things in view in deciding whether illegal practices can be excused on the ground of inadvertence coupled with good faith. The first question the Court is accustomed to ask is, What kind of person is the applicant? If he is a professional man, ignorance of law cannot excuse his inadvertence except it might be in the case of ambiguity in a statute. He is bound to know that the whole of these matters are regulated by Act of Parliament. He has easy access to the Acts of Parliaments and to manuals on election subjects, and he is accustomed to read such works. Further, if the applicant, although not a professional lawyer, has previous election experience, the fact that he may have forgotten that experience cannot excuse his inadvertence. The second question the Court asks is, What is the nature of the illegal practice? If it is something which the candidate or his agent had an interest to do, or which might affect the return of the candidate, the practice will be highly suspect. But if, on the other hand, there appears to be no reason whatever, personal or otherwise, why an illegal practice should have been followed, then the presumption is that what was done was done in good faith and merely from negligence. The third question is, What attitude has the applicant taken up when the mistake was discovered? Has he treated it lightly or defiantly? or has he done everything he possibly could to put it right?

I think in each of these three details the applicants here are in a favourable position. The candidate was a miners' agent brought into the election at very nearly the last date when he could be nominated, and he had no previous experience as a candidate. The election agent was brought in as a *dernier ressort*. An attempt was made to get a professional man. There were only two professional men who would have acted—Mr Howie and Mr Bain—and they were engaged elsewhere. It was necessary to resort to a layman, who happened in this case to be Mr Sloan, a checkweighman.

When one considers the nature of the illegal practice it is clear that the presumption would be in favour of good faith. The applicants had no motive to conceal anything, either to keep back vouchers, which were all in proper order, or to conceal expenditure, or to avoid sending in declarations.

The last point is the attitude taken up by the applicants to have the matter cleared up. When they discovered the mistakes they had made, the applicants saw the sheriff-clerk, who took them to the Sheriff, and the Sheriff said that he could not interfere. They then at once consulted Mr Howie, solicitor, to whom I have referred. The curious fact is, that on the date when the discovery was made, it was in point of fact not too late for the candidate to send in his declaration, but it was assumed by everybody that the same rule applied to him as to the election agent, whereas the fact was that while the election agent was two days late the candidate had still five days to send in his declaration. The proof thus disclosed that on being apprised of the mistake

the applicants at once offered to do everything that by the statute, of whose provisions they were ignorant, they should have done earlier—the candidate to send in a declaration, and the election agent to send in a properly itemised account with relative vouchers and relative declaration.

It is fair to notice that the election agent was, not unnaturally, misled—in a professional man this could be no excuse, but in his case it is some excuse—by seeing in the newspapers an abstract of election expenses such as he thought he was bound to return as election agent. What he saw was an abstract which the returning officer was bound to publish in the newspapers—the abstract which the returning officer makes up from the return sent to him by the election agent. Both the applicants thought such an abstract would be all that was necessary, and accordingly no properly itemised account was sent in. I cannot but think that this is a case where the applicants have shown that what took place was done, in a reasonable sense, through inadvertence and consistently with good faith, and in my opinion the circumstances here are such as fairly to bring the case within the provision of the statute.

With regard to the vouchers, as Mr Patrick has stated, the documents are now in process, and it seems to me that these should be sent to the returning officer. Whether he should be left to take his own course, or whether your Lordships should authorise publication, is not of great importance, but certainly everything should now be done to remedy the mistake, and it is quite clear that the applicants are anxious to do everything they can to remedy the mistake.

Lord Skerrington—The first condition of success in an application like the present is that the applicant should satisfy the Court that the failure to comply with the statute did not take place by reason of any want of good faith on his part, and in addition to that he must bring his case within one or other of the grounds of excuse specified in the Act of Parliament. The Act refers to illness, death, and so on. But, as I understand, the only ground of excuse which the applicants say applies to the present case are the words "by reason of inadvertence or of any reasonable cause of a like nature."

That phrase is a somewhat curious one. It implies that inadvertence may be "a reasonable cause," and I assume that what is meant is that there must exist some reasonable explanation. Accordingly if the Court is satisfied that in point of fact the non-compliance with the statute was due to the applicant not having adverted to a particular duty incumbent on him, then the Court would have to consider whether that inadvertence was in the circumstances a reasonable excuse or explanation.

To say that a man has not adverted to a particular duty, and has consequently failed to perform it, may either imply gross and reprehensible negligence on his part, or, again, it may mean that, being a human being, he has through frailty made a mistake. In either case he has been guilty of negligence. The evidence shows that there was nothing of the nature of bad faith. It is equally clear that the failure to comply with the statute was due to inadvertence; and it is also established, in my opinion, that this inadvertence was such as to afford a reasonable excuse for the violation of the Act of Parliament.

Accordingly I agree that the prayer of this petition should be granted, subject to the necessary conditions as to the lodging of accounts and declarations.

Lord Cullen—I concur.

Lord Mackenzie—I agree that in the circumstances disclosed in the proof the prayer of the petition may be granted subject to the condition that the accounts in the form prescribed by the Act, with the vouchers, be lodged in the hands of the returning officer, and that the statutory declarations are made by the candidate and by the election agent. When these things have been done under warrant of the Court, it will then be the duty of the returning officer to proceed as directed by section 35.

I desire to point out, in consequence of what passed when this petition was first before the Division, that matters such as those disclosed in the petition must be regarded as serious by the Court. It was impossible to take the course which was then proposed and to grant the prayer of the petition without examination into the reasons for the failure on the part of the two petitioners to observe the provisions of the Act. They came into Court admitting that they have been guilty of illegal practices, and if without an authorised excuse, as is in the Act mentioned, then the consequences would follow which are provided by section 10. Section 10 enacts that "A person guilty of an illegal practice . . . . shall on summary conviction be liable to a fine not exceeding one hundred pounds, and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election." That shows the serious nature of the failure to observe the provisions of the Corrupt Practices Act. And I take leave to point out that the purpose of the Corrupt Practices Act is to preserve purity in popular elections, among other things by making precise regulations in regard to the expenditure of money.

The parties here have had an opportunity of explaining their conduct, and I agree with the conclusion which your Lordships have arrived at on the evidence. It is not without significance that this was the first occasion on which elections throughout the country were held on one day. The check-weighman who acted as election agent was apparently not in the position of volunteering his services—he came to act because no qualified person could be got to take up the duty. Any persons, however, who take upon themselves the responsibility of candidate or election agent ought to make themselves acquainted with the statutory provisions under which alone they can discharge their duty.

I think that in the present case, looking to the position in life of the parties and to the fact that they were in no sense professional men, we may accept the view that there was inadvertence, by which I take it is meant negligence or carelessness, where the circumstances show an absence of intention to disobey the law.

The LORD PRESIDENT was absent.

The Court pronounced this interlocutor—

"The Lords having considered the petition (no answers having been lodged) along with the proof and the minute for the returning officer, and having heard counsel for the parties, on condition that the accounts in the form prescribed by the statute together with the statutory declarations by both petitioners be lodged in the hands of the returning officer within ten days from this date, grant the prayer of the petition and decern: Find the returning officer entitled to expenses down to and including 18th March 1919: Find him also entitled to a watching fee thereafter, and remit the account thereof to the Auditor to tax and to report."

Counsel for the Petitioners — Patrick. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Returning Officer—Fraser, K.C.—W. J. Robertson. Agents—W. & F. Haldane, W.S.

Wednesday, June 18.

FIRST DIVISION.

[Court of Exchequer.

INLAND REVENUE *v.* NOBLE.

Revenue—Income Tax—Liability to Assessment—Money Allowance to Detective Officer to Purchase Plain Clothes — "Salaries, Perquisites, or Profits . . . Accruing by reason of . . . Employments"—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 146, *Schedule E, Rule First.*

A detective officer employed by Glasgow Corporation received an allowance of £11, 14s. 3d., out of which he was bound to purchase a suit of plain clothes, coat, waterproof, and boots, and to replace any article which might become worn out. The clothes so purchased required to be suitable for the duties of the officer, and had to be approved by his superior officer. The allowance was not treated as income under the superannuation scheme. The detective officers were chosen from the police force. The police received their uniform free, and admittedly they were not subject to assessment for income tax in respect thereof. *Held* that the allowance in question was taxable as part of the officer's income under the Income Tax Act 1842, section 146, Schedule E, rule first, as being profits accruing by reason of his office or employment.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) enacts, section 146, that the duties thereby granted contained in Schedule E "shall be assessed and charged under the following rules,"—Schedule E, Rule First, —"The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profits mentioned in the said Schedule E . . . for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments. . . ." Rule Third—"The said duties shall be paid on all public offices and employments of profit of the description hereafter mentioned within Great Britain, *videlicet*— . . . any office or employment of profit held . . . under any public corporation."

William Fergusson, Surveyor of Taxes, Glasgow, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Glasgow finding that an allowance of £11, 4s. 3d. made to Louis Noble, detective sergeant, Glasgow, *respondent*, to purchase plain clothes, was not income within the meaning of the Income Tax Acts, took a case for appeal.

The Case set forth—"The following *facts* were proved or admitted, viz.—1. The assessment of £194, 10s. included £11, 14s. 3d. allowance for clothing, which the [respondent] claimed was not liable to income tax, and this item forms the subject of the present appeal. 2. Ordinary members of the Glasgow Police Force are supplied free of charge for the purposes of their duty with a uniform, including ordinary tunic and trousers, coat, waterproof, and boots. 3. Certain members of the police force, after being in the force for some time and showing special aptitude for the work, are selected by the Chief Constable for detective work, for which the ordinary uniform is unsuitable. They then become detective officers, and wear plain clothes in order that they may not be readily identified as members of the police force. 4. The Corporation resolved that a sum should be granted to these men with which to buy clothes suitable for their duties. The allowance for the year in dispute was £11, 14s. 3d., with which the [respondent] had to buy a suit of clothes, coat, waterproof, and boots, and to replace any article which may become worn out. The men cannot spend this money just as they please, but must buy clothes suitable for their duties and as approved by their superior officer. 5. Where detective officers in plain clothes, like any constable or police officer in uniform, have any clothing destroyed in the course of their duty—say, in a scuffle with a prisoner—it is replaced at the expense of the Corporation on an order of the Chief Constable. 6. The allowance for clothes is not considered as income in the superannuation scheme. 7. All uniform officers according to their grade receive the same pay as the officers of the detective department. The uniform officers receive their uniforms free, and the detectives receive the money allowance in lieu thereof. 8. The Chief Constable has power to transfer men from one department to the other,