the Lord Ordinary (Ormidale) granted the motion. The object of the defenders is alleged to be the wish to get information from her as to the kind of life which she is and has been living in London. The pursuer reclaimed; and to-day the Court, Lord Cowan dissenting, recalled the interlocutor, and remitted the case back to the Lord Ordinary to refuse the motion.

The LORD JUSTICE-CLERK said—The only difficulty that I feel in disposing of the reclaiming note against the interlocutor in this case is that the thing is utterly unprecedented. But, as the case stands before us, the motion of the defender is that the pursuer should be ordained to furnish the defender with her present residence or address, and the Lord Ordinary has granted the motion. Now, I can conceive circumstances that might justify such an application; but these must be very special, and none such have been alleged in the present case. On the contrary, the defenders' counsel have not made it intelligible to me what possible advantage they could get by the information which they desire; and the pursuer's counsel contends that as a general rule a party is not bound to say where his place of residence is merely at the bidding of his opponent. It may be extremely inconvenient to make such a statement. I see no ground either in fact or in law why this motion should be granted and I am therefore for recalling the Lord Ordinary's interlocutor.

Lord NEAVES and Lord BENHOLME concurred.

Wednesday, Jan. 17.

BEFORE THE WHOLE COURT.

GORDON *v.* GORDON'S TRUSTEES (*ante*, p. 69)

Declinator. A judge is not entitled to decline on the ground that his grandniece is married to one of the parties.

This case was debated before the whole Court some weeks ago, when the Judges took time to consider their judgment.

The LORD PRESIDENT to-day mentioned that since the debate the pursuer had been married to his grandniece, and that as he was thus related by affinity to one of the parties, he desired to decline giving his vote.

The LORD JUSTICE-CLERK said that the point raised by this declinator was an important one, but it had been already settled by several decisions. In the case of Sir William Erskine *v.* Robert and Henry Drummond, 28th June 1787 (M. 2418), the Lord President declined in respect Mr Henry Drummond was married to his brother's daughter. The declinator was repelled, and the determination was ordered to be marked in the Books of Sederunt, which proves that it was intended that it should be followed as a precedent in future. It had been previously decided, in the case of Calder *v.* Ogilvie, 31st January 1712, that a judge might vote in the cause of one who was married to his niece, unless where the niece was the proper party, and the husband was only called for his interest. These decisions proceeded upon the statute 1594, c. 212, which only prohibited judges from voting where their father, or brother, or son was a party; and the Act 1681, c. 13, which extended the prohibition to all relations in the first degree, whether by consanguinity or affinity, and farther provided that no judge should sit or vote in any cause where he is uncle or nephew to the pursuer or defender. The latter part of the Act of 1681 did not, however, like the former, exclude uncles or nephews by affinity. The same decision was pronounced in three cases referred to in Brown's Supplement, vol. 5, p. 424.

The other Judges concurred, and the Lord President's declinator was therefore repelled.

FIRST DIVISION.

BAIN *v.* BROWN.

Practice—Decree for Expenses. Where the estates of a party found liable in expenses have been sequestrated, the Court will not qualify their decree by finding in it that the other party is entitled only to a ranking on his estate for the amount.

Counsel for Pursuer — Mr Scott. Agent — Mr Michael Lawson, S.S.C.

Counsel for Defender—Mr Cattanach. Agents—Messrs Paterson & Romanes, W.S.

In this case the jury returned a verdict for the defender. The pursuer moved for a new trial, but his estates were afterwards sequestrated, and the trustee declined to sist himself as a party. The Court to-day therefore applied the verdict, and found the defender entitled to expenses. It was proposed for the pursuer that the Court should qualify the decree for expenses, to the effect of finding that it would only entitle the defender to a ranking on his sequestrated estate. It was said that if this precaution was not taken the defender might keep his decree until after the pursuer was discharged, and then charge him to pay the full amount. reference was made to the case of Jackson & Co. *v.* Keil and Others, 22d November 1862 (1 Macph. 48), where Lord Kinloch had in a note expressed a doubt as to whether such a motion as the present should not be urged before the decree was pronounced.

The Court, in respect the only authority for inserting the qualifications asked seemed to be a doubt by a Lord Ordinary, refused to do so, leaving the question of the defender's right to a ranking or to full payment for after-discussion if it should ever arise.

Thursday, Jan. 18.

GALBRAITH *v.* CUTHBERTSON.

Proof—Oath on Reference—Intrinsic and Extrinsic. Qualification of an oath which held intrinsic.

Counsel for Pursuer—Mr G. H. Pattison and Mr A. C. Lawrie. Agent—Mr Thomas Ranken, S.S.C.

Counsel for Defender—Mr Gordon and Mr Lorimer. Agents—Messrs Wotherspoon & Mack, S.S.C.

In an action of count, reckoning, and payment at the instance of Mrs Barbara Cuthbertson or Galbraith, spouse of Robert Galbraith, tinsmith in Glasgow, with concurrence of her husband, against her brother James Cuthbertson, formerly farmer in Toponthank, now in Kilmaurs, as executor of his deceased brother George, the defender claimed a sum of £180, which he said was due by the male pursuer to the estate. A reference having been made in regard to this sum to the pursuer's oath, he admitted that he borrowed £180 from the deceased George Cuthbertson, for which he gave him his I O U, but he added—"Within three weeks, to the best of my recollection, after I had borrowed the £180 I went up to the bazaar market in Glasgow, and held out £180 to him, saying, 'Here is your money,' and asked him to give up the I O U. He said he did not want it, and 'I make you a compliment of it.' I asked him what was to come of the I O U. He said he would either destroy it or bring it to me, and he never asked the money from me after that." The pursuer further deponed —"I never saw the I O U since I granted it." The I O U was not produced, and was not now to be found.

The Lord Ordinary (Kinloch) found that the qualification contained in the deposition of the pursuer, that the deceased had made a gift of the money to the pursuer was intrinsic, and that the deposition was therefore negative of the reference.

The defender reclaimed, and contended that the qualification was extrinsic. He cited Gordon, 3d January 1764 (M. 13,234), and Thomson *v.* Duncan,