the interdict Mr MacRaild would in the meantime go on practising, and that without caution, which he says he cannot find.

Lord DEAS—I agree that this agreement is legal, and I also consider that it is a most equitable kind of agreement. It is not fair that a medical man should be deprived by his assistant of a practice which it has taken him years to form, and unless such an agreement was legal the younger members of the medical profession would never be appointed assistants. I also agree with Lord Curriehill that the construction of this obligation is that the respondent was not to accept the office. In my view the agreement would be the same, if the words "to his detriment" were not in it. I think they would have been implied in what preceded. Although we cannot now in point of form finally decide this case, my opinion proceeds upon the merits of it, and I think the parties should consider the propriety of discontinuing the litigation.

Lord ARDMILLAN also concurred.

URQUHART *v.* BONNAR.

New Trial. A third trial granted on the ground that the second verdict, as well as the first, was contrary to evidence.

Counsel for Pursuer—Mr Fraser and Mr J. C. Smith. Agents—Messrs Macgregor & Barclay, S.S.C.

Counsel for Defender—Mr Macdonald and Mr Rhind. Agent—Mr Thomas Ranken, S.S.C.

In this case betwixt John Urquhart, shoemaker in Cupar, and George Lindsay Bonnar, M.D., there, the following issue was on 27th July 1865 tried before the Lord President and a jury:—

"Whether the assignation dated on or about 24th May 1859, No. 6 of process, was signed by the pursuer when he was under essential error as to its nature and effect, induced through fraud and misrepresentation, or undue concealment on the part of the defender?"

The jury, by a majority of nine to three, returned a verdict for the pursuer. The issue had been previously tried before Lord Kinloch and a jury, when a similar verdict was returned by the same majority; but the Court found that this verdict was contrary to evidence, and granted a new trial.

The defender again moved for a new trial, and the Court having granted a rule upon the pursuer to show cause why it should not be granted, the parties were heard thereon. The following cases were cited—Railton *v.* Mathews, 11th March 1846 (8 D. 747); Macaulay *v.* Buist & Co., 9th December 1846 (9 D. 245); and Lenaghan and Others, 10th July 1857 (19 D. 975.) The Court to-day granted a third trial.

SECOND DIVISION.

PETITION—ANDERSON.

Bankruptcy—Recal of Sequestration. A person's estates were sequestrated, but no other procedure took place under the statute. The bankrupt was afterwards discharged of his debts by an arrangement with his creditors, and the Court, after intimation, declared the sequestration at an end.

Counsel for Petitioner—Mr Gifford. Agent—Mr Renton, jun., S.S.C.

This is an application by a bankrupt, made with the concurrence of his creditors, to have his sequestration recalled or declared to be at an end. Sequestration was awarded in 1864; and under the provision of the 48th section of the Bankrupt Act an abbreviate of the petition and deliverance was recorded in the Register of Inhibitions in the usual way. No other proceedings have been taken under the statute, and shortly after negotiations took place between the petitioner and his creditors, which resulted in an arrangement between them by which he has been discharged of all his debts. In these circumstances the petitioner presented his application to have his sequestration judicially declared at an end, and to have the necessary marking made upon the registers. The Lord Ordinary (Murel), holding that the jurisdiction which he exercises in such matters is purely statutory, and that the case is one which can scarcely be held within the provision either of sec. 31 or sec. 32, which regulate the recall of sequestration, reported the case. When the case first came before the Court, they ordered intimation of the petition to be made in the *Gazette*, and a meeting of creditors to be called. The meeting was called and no creditors appeared; and to-day the Court, in the circumstances, granted the prayer of the petition, and declared the sequestration at an end.

Wednesday, March 14.

FIRST DIVISION.

PEARSON *v.* J. AND G. DEWAR.

Process—Advocation—Reference to Oath. The Court having in an advocation repelled the reasons, and remitted the cause to the Sheriff, held that a minute of reference to oath, lodged in the Court of Session, was incompetent.

Counsel for Advocator—Mr Scott. Agent—Mr D. Crawford, S.S.C.

Counsel for Respondents—Mr Thoms. Agent—Mr W. Officer, S.S.C.

In this advocation from Fifeshire, the Court, after hearing the advocator some days ago, pronounced the following interlocutor:—"Having heard parties' procurators on the question of expenses decided by the Sheriff, this being the only matter now insisted in by the advocator, as stated by his counsel at the bar, repel the reasons of advocation, and remit the cause *simpliciter* to the Sheriff.

The advocator having lodged a minute of reference to oath of the whole cause, the Court to-day refused it as incompetent in this Court. The merits of the case had been withdrawn from the Court by the advocator himself, and the cause had not been advocated, but remitted to the Sheriff. It only remained here for the purpose of ascertaining and decerning for the expenses incurred in this Court. The advocator was entitled to lodge his reference in the Sheriff Court; but whatever the result of the reference he could never get quit of the expenses incurred in this Court.

LOWSON *v.* FINLAY (*ante*, p. 89).

Expenses. The expense of a witness cited to give evidence at a jury trial, but not examined, *allowed.*

Counsel for Pursuer—Mr Crichton. Agents—Messrs G. & J. Binny, W.S.

Counsel for Defender—Mr Shand. Agents—Messrs Morton, Whitehead, & Greig, W.S.

This case was tried at Christmas, when the jury returned a verdict for the pursuer. In his account of expenses he made a charge of £11 odds for the citation and attendance at the trial of a witness from Ireland to prove a practice of trade. The auditor disallowed the charge, in conformity with his rule of allowing only the expenses of witnesses who are examined at the trial. This witness was not examined, because it became evident in the course of the trial that the part of the defender's case, as stated on record, which he had been brought to meet, was not to be insisted on.

The Court allowed the charge, in respect the pursuer's case had not been overloaded with evidence on the point referred to.