WEBSTER and GIBSON, for respondent, were not called upon.

At advising—

The LORD JUSTICE-CLERK—I am satisfied with the judgment of the Lord Ordinary. The old woman could not act for herself, and it was well known that her daughter acted for her. The tradesmen knew that she was acting for her mother, and did not rely on her as proprietor, because they were aware that her right only arose on the death of her mother. The property belonged to the old woman, and on her death was claimed by her son as heir at law. The debts due to the pursuer were good against the mother, and must descend to her heir. I could understand his saying that he was not liable for improvements which were not properly executed. But as the Lord Ordinary has limited his judgment to what were necessary repairs, there is no room for that contention.

I am not much impressed by the quarrel between the defender and his sister as to these improvements. He was living in the house on which the repairs were made, and, if he had desired the tradesmen not to go on with the work, he might easily have stopped them. He cannot now take the property without paying for these improvements.

Agent for Pursuer—Wm. Mitchell, S.S.C.

Agents for Defender—D. Crawford and J. Y. Guthrie, S.S.C.

Saturday, January 21.

FORSTER v. FORSTER.

Reduction—Perjury. The allegation that a decree was obtained by perjury is not sufficient ground for reducing it.

This was an action of reduction of a decree of declarator of marriage obtained by the present defender Mrs Jessie Grigor or Forster, against the present pursuer James O. T. Forster, on 25th May 1869. The pursuer alleged "For the greater part of the time during which said action was in dependence the present pursuer was absent from this country. Especially he was absent while the preparations were made for the proof, and while the proof was being taken. Owing to this, much evidence that might have been available to the present pursuer was overlooked and not laid before the Court. In that action the present defender produced a bible, with the following writings therein:—'I, James Ogilvie Tod Forster, take thee, Jessie Grigor, to be my wedded wife from this day henceforth until death us do part; and thus do I plight thee my troth.' 'I, Jessie Grigor, take thee, James Ogilvie Tod Forster, to be my wedded husband from this day henceforth until death us do part; and thus do I plight thee my troth.' (Signed) 'James Ogilvie Tod Forster; Jessie Grigor. *Sept. 2d*, 1865.' These writings she alleged to be in the handwriting of the present pursuer, with the exception of her own signature; and she adduced two witnesses, William Atkinson and Jane Bain, who expressed their belief that the said writings were in his handwriting. The witnesses who spoke to these writings, namely, William Atkinson and Jane Bain, were not in a position of knowledge which entitled them to speak on such a matter. Moreover, the pursuer avers that the said witnesses are not entitled to credit. They gave wilfully false testimony on other parts of the case essential to the success of the pursuer in that action, and that with regard to facts within their own knowledge."

The Lord Ordinary (JERVISWOODE) sustained the 2d and 3rd pleas of the defender, which were "The statements in the condescendence are not relevant or sufficient to support the conclusions of the summons. The decree of declarator of marriage having been pronounced *in foro* in an action in which the present pursuer was throughout duly represented, after proof had been led, and the pursuer heard thereon, the present action of reduction ought to be dismissed."

"*Note*—The questions here raised are of importance not only to the parties immediately interested in the present suit, but in a more general aspect.

"As respects the interests of the pursuer and defender here, it may be, and has been, argued with much force, that if the decree under challenge proceeded on evidence which can now be proved to have been unworthy of credit, it ought not to stand. But the opinion of the Lord Ordinary is that where a decree of this Court is challenged on allegations of falsehood in the evidence, it is essential to their relevancy that these should be of the most specific and direct character in their terms. What shall be held to be such it is not necessary here to inquire further than in so far as respects the matters of averment made on the part of the pursuer. But these, in the opinion of the Lord Ordinary, fall short in material respects of that specification and precision which the Court are warranted and bound to expect and require."

The pursuer reclaimed.

KEIR, for the defender, moved the Court to remit the reclaiming-note to the other Division of the Court, in respect that the decree in question had been pronounced by that Division.

LANCASTER objected to the competency of this course.

The Court refused the motion, on the ground that, under Act of Sederunt, it was neither imperative nor competent for them to grant it.

LANCASTER (the DEAN OF FACULTY (GORDON), and the SOLICITOR-GENERAL (CLARK) with him) argued that there was no authority or principle for holding that a reduction on the ground of falsehood was incompetent. Was there to be no remedy? The cases of *De La Motte* v. *Jardine*, M. 447; and *Robertson* v. *White*, M. 12,100, showed that an action of reduction was competent. The pursuer could not know that the witnesses were going to perjure themselves till they gave their evidence, and as he was then out of the country he was at great disadvantage.

KEIR (with him SHAND) were not heard in reply.

The Court held that the Lord Ordinary was right. There was no allegation of *res noviter*, nor of subornation of perjury, which might have made a difference. The pursuer had notice that the writing alleged to be in his handwriting was to be produced at the proof, and he did not bring a single witness to prove that it was not his. He cannot now be allowed to do what he ought to have done at the proof.

Agents for Pursuer—H. & A. Inglis, W.S.

Agents for Defender — Macdonald & Roger S.S.C.

Tuesday, January 24.

FIRST DIVISION.

MRS MARGARET PHILLIPS OR HOOD *v.* WM. HOOD.

WM. HOOD *v.* MRS HOOD AND MRS GLENNIE.

Husband and Wife — Aliment — Voluntary Contract of Separation — Revocation. Circumstances in which it was *held* that no sufficient and *bona fide* revocation had been made by a husband of a voluntary contract of separation into which he had entered with his wife, and that accordingly aliment was due to her *ex contractu.* But *held*, farther, that as her action had only been sustained on the contract, and the question of her right to aliment at common law had not been yet raised, and it being in the husband's power at any moment to make a valid and *bona fide* revocation of the contract, decree could only be given for aliment under the contract up to the date of the judgment, and not prospectively.

Parent and Child—Custody—Process—Sheriff-Court —Jurisdiction. Circumstances in which it was *held* that a petition at the instance of a father for custody of his pupil children, brought against the mother in the Sheriff-court, had been properly dismissed on the ground of the father's absence from the country, and other practical difficulties in the way of granting the prayer of the petition; reserving the question of the Sheriff's jurisdiction in such cases.

These two cases between the same parties, the one at the instance of Mrs Hood for aliment against her husband William Hood, the other at the instance of the husband, the said William Hood, against his wife and a Mrs Glennie, for custody of his children, were heard and advised together.

The first-named action, that for aliment, was on a previous occasion before the Court (*vide ante*, p. 79), when, though it was held that arrears of aliment were due to the wife in terms of a voluntary contract of separation, entered into between her husband and her, the decision of her claim for *interim* aliment was, under the circumstances, postponed, in order to give the husband an opportunity of proving the *bona fides* of the revocation of the said contract of separation, which he alleged he had made since the date of the summons. Accordingly, in compliance with the order of the Court, contained in their interlocutor of November last, the defender was communicated with, and a minute was now put in by his agents, in which it was stated that a reply had been received from him, dated Sherbrook, Upper Canada, December 5 1870, that the information conveyed by this letter was to the effect that the appellant had been for some time in the service of the Grand Trunk Railway, and was receiving 24 dollars a month, that he was shortly about to leave that service and proceed to a better appointment in the United States, though he could not at present give the amount of his expected wages, and did not state what part of the United States he was going to. That he was ready and desirous to receive his wife and children, and to afford them a home with him in the States. That he was ready to pay their passage out to Sherbrook, in Upper Canada, which was his present address, and to which communications for him were to be sent. He added nothing, however, about his future address, or about the date of his leaving Canada for the United States. The minute accordingly craved that, in respect the appellant had judicially revoked the voluntary contract of separation, and had now shown himself willing and ready to receive back his wife, and to make arrangements for her joining him, the action should be dismissed.

FRASER, for the respondent, contended that this should be granted, as the only ground upon which the Court had formerly sustained the pursuer's claim was the subsistence of the contract.

BLACK, for the appellant, argued that no proof of the appellant's *bona fides* had yet been given.

In the second action, that at the husband's instance, for custody of the children of the marriage, two in number, aged respectively five and three years, the circumstances were the same as previously narrated in the first stage of the former case, (*vide ante.* p. 79). The respondent in this action, Mrs Hood pleaded *inter alia.* 1, "This action is not competent in the Sheriff-Court, particularly as the averments made, with regard to the petitioner, raise the question of expediency, in deciding which of the parents should have the custody of the children, and it should therefore be dismissed, with expenses. (2) "The petitioner not residing in this country, and not having authorised this action to be raised, it should be dismissed, with expenses."

The Sheriff-Substitute (COMRIE THOMSON) at first sustained the jurisdiction of the Court, and on appeal the Sheriff (JAMESON) pronounced the following interlocutor:—

"*Edinburgh, 15th February* 1870.—The Sheriff having heard parties' procurators on the respondent's appeal, and having considered the process, dismisses said appeal, and adheres to the interlocutor appealed from.

"*Note*—The Sheriff has no doubt of the *competency* of this application. Whether it will be right to grant it will depend on the facts and circumstances, which have not yet been ascertained. In the case of *Harvey* v. *Harvey*, 24th July 1850, *in this Court*, and referred to by the Lord Justice-Clerk in giving judgment in *Harvey*, 15th June 1860, 22 Dunlop 1198, the Sheriff (Mr DAVIDSON), in the first instance *sustained* his jurisdiction; but after the circumstances were disclossed, and it appeared that the petitioner had been divorced on the ground of adultery, he found that this Court was not competent to deal with that state of matters, and dismissed the application."

Thereafter, on a record having been made up, the Sheriff-Substitute sustained the first plea in law for the defender, and dismissed the petition. On appeal, the Sheriff pronounced the following interlocutor:—

"*Edinburgh, 23rd July* 1870.—The Sheriff having considered the petitioner's appeal, with his reclaiming petition, answers thereto, and whole process, recals the interlocutor appealed from in so far as it sustains the first preliminary plea in law stated for the respondents, to the effect that the action is incompetent: Finds that the competency of the original application has been already sustained in this Court by interlocutor of the Sheriff-Substitute, of date 15th December 1869, affirmed by interlocutor of 15th February 1870; but finds that it appears from the closed record that the