was provided by the defenders for boiling oil at the port where the oils in question were shipped, and that it is in evidence that they had no boilers at Creektown, where a considerable quantity of oil was in use to be shipped, the Lord Ordinary does not think that the defenders have made out such a case of negligence on the part of the pursuer in the above respects as ought to subject him in liability for the whole loss arising upon those portions of the oil, the quantity of which was inferior to that of the bulk of the cargo."

The defenders reclaimed.

MONCREIFF and GLOAG for them.

SOLICITOR-GENERAL and H. SMITH in answer.

The Court adhered. It was clear "dash" was allowed by actual contract in addition to the first year's salary, and it would not do for the defenders arbitrarily to say it was not due on the second year, but was included in the increased salary. On this point the evidence was conflicting, but the preponderance of evidence was decidedly in favour of the pursuer's contention. His acceptance of an account-current, in which he was not allowed "dash" on his second year's salary, was explained by him, and his evidence was corroborated by the testimony of Mr Laughland, that from pressure of time he did not examine the account till he got to Madeira, but having then discovered its omission, he gave notice of objection on this point as soon as he arrived in Glasgow. The Lord Ordinary was right on the other points also; and as commission was to be allowed on cargoes "traded for," the pursuer was clearly entitled to commission on the cargo of the "Mary Hamilton," as it was provided by him, though not shipped till after his departure.

Agents for Pursuer—Henry & Shiress, S.S.C.

Agents for Defenders—Wilson, Burn & Gloag, W.S.

Friday, February 18.

SECOND DIVISION.

PRATT *v.* MACKIE.

Parent and Child—Filiation—Additional Proof—Act of Sederunt 1839, *sec.* 83. Circumstances in which *held* that the pursuer of an action of filiation had failed to establish the paternity of her child against the defender.

Circumstances in which opinion indicated that the 83d section of the Act of Sederunt of 1839, allowing additional proof, was applicable.

This was an appeal from the Sheriff-court of Aberdeen, in an action of filiation and aliment. The summons alleged that the child was the result of intercourse which took place "in or about the month of April 1868." The defence was a simple minute of denial; and on the record so framed parties went to proof. The proof having been closed and been debated, but no judgment pronounced, the defender presented a petition for additional proof, setting forth that, owing to the vagueness of the pursuer's summons, he had not been prepared to meet the evidence which she had led, and that he was now in a position to meet it with an *alibi*, the details of which were specified in the petition. The Sheriff-Substitute (COMRIE THOMSON) granted this petition. He added the following note:—"The proof was taken and closed on Saturday the 8th. A debate followed, and in consequence of a doubt, arising from the date of birth having been proved to be different from that set forth on record, the Sheriff-Substitute, at the request of the pursuer, stated that he would not write his judgment till Monday, in order that any authority to be found on the point might be brought under his notice. On Monday the defender made the application now embodied in the petition. The course followed is very unusual, but seems justified by the provision of the 83d section of the Act of Sederunt of 1839." The Sheriff recalled, and refused the prayer of the petition, holding that no "weighty" reason had been shown in terms of the Act of Sederunt of 1839. In his note the Sheriff observed:—"The pursuer's evidence was of the kind usual in such cases, the ground of surprise; and that the defender was anxious and confused might be stated in any case of this description; and to allow the defender to aprove an *alibi* after the proof was closed and parties heard, would be of very pernicious consequence in actions of filiation. The Act of Sederunt requires *very weighty reasons* to be shown to justify *further* proof." The Sheriff-Substitute then advised the case upon the proof as led, and decided in favour of the pursuer. The defender thereupon brought the present appeal.

J. A. REID, for him, contended (1) that the pursuer's case was not made out as the evidence stood; (2) that even if it were, he should be allowed an opportunity of rebutting it by the additional evidence which he had tendered.

BUNTINE in answer.

The Court recalled the Sheriff-Substitute's interlocutor, and held that, even taking the case as it stood, the pursuer had failed to make out her case. The corroboration relied upon by the pursuer was totally insufficient. That consisted mainly of the testimony of a girl thirteen years of age, her niece, who spoke to circumstances of so scandalous a character as to make them almost incredible. Their Lordships, moreever, indicated the opinion that, looking to the vagueness of the summons, the defender might very well have been taken by surprise at the proof, and was, therefore, fairly entitled to ask for an opportunity of supplementing his evidence. The Act of Sederunt of 1839 no doubt required "weighty" reasons for an allowance of additional proof, but that only applied when there had been a judgment, as well as a closing of the proof.

Agents for Appellant—Renton & Gray, S.S.C.

Agent for Respondent—J. Barclay, S.S.C.

Saturday, February 19.

PATTISON AND OTHERS, PETITIONERS.

Trust—30 & 31 *Vict., cap.* 97, *sec.* 7—*Minor Descendants—Petition.* Circumstances in which prayer of a petition granted for advances to minor descendants of a truster under the provisions of this Act.

This was a petition at the instance of pupil children, and brought under the authority of the Act 30 and 31 Vict., c. 97, § 7, for authority to trustees to make advances out of the trust funds in their hands for the maintenance and education of the children. Section 7 of that Act provides, "that the Court may from time to time, under such conditions as they see fit, authorise trustees to advance any part of the capital of a fund destined, either