bal contract, confirmed, as the purchaser says, by a letter written on the same day by the seller to the purchaser. The defence is that there was no concluded sale. The defender says that he, by the letter libelled, proposed to conclude a sale, which the pursuer refused or at least failed to do. Then, when the purchaser asked for performance, he was informed by the defender that there was no contract between the parties. Looking to the evidence of Robertson, one of the pursuers, on the one hand, and of Martin, one of the defenders, on the other hand, it appears impossible to doubt that a verbal contract was entered into on 7th July. The defender's account is, not only in substantials, but in almost every detail, the same as the pursuer's—(*reads evidence of Hugh Martin junior, given above*). If the case had stood upon this evidence alone, I think it would have been conclusive, but the seller writes a letter—(*reads letter of 7th July*). This letter was not answered by the purchaser. He did not comply with the request contained in the letter, and the reason he gives is that he considered the bargain already concluded, and did not think it of the least consequence whether he answered the letter. I confess I agree with him. It might have been as well to have written "All right," but his failure to do so cannot annul the bargain. Certainly it is not the right of the seller, after concluding a verbal bargain, in which there was no stipulation that it should be reduced to writing, afterwards to insist on converting it into a written contract. So that this letter was either a matter of mere surplusage, or an attempt to do what the seller had no right to do. It might be used as a piece of evidence as to the precise terms of the verbal contract, if there was any dispute about them; but there is none.

There remains the question Whether the Sheriff-Substitute's interlocutor is well founded?—He "finds in law that in contracts of this kind time is of the very essence of the bargain, and that the pursuers, by their failure to answer defenders' letter, and to forward specifications of the kind of iron wanted, enabled the defenders to cancel the contract in question if they saw fit; finds that the defenders having cancelled the bargain, were justified in doing so, and in refusing to manufacture the iron referred to in the specification of 19th August." The first objection to this finding is that it sustains a defence not pleaded. The defender says there was no contract to cancel. That objection alone would be sufficient. But further, assuming that there was a contract, I find no ground for holding that the defender did cancel the contract, or that he was justified in doing so. He certainly did not cancel the contract, because he believed there was no contract, But further, on what ground would he have been justified in cancelling it? Because the purchaser did not answer this unnecessary letter, and because he delayed to send a specification? Now, it must be remembered that both parties had an equal right and interest to push on the contract. If the purchasers were delaying to send a specification, it was the duty of the seller to remind them of the contract, and to insist on them sending a specification.

I agree with the Sheriff in the main ground of his judgment, that there was a concluded contract between the parties, and nothing to derogate from that concluded contract.

LORD DEAS—I do not differ from your Lordship, but I regard it as a very narrow question.

LORD ARDMILLAN—I admit that it is a narrow question, but I agree with the Sheriff. It certainly would have been better if the pursuers had answered the defenders' letter, but they might naturally think that in mercantile dealings not to answer a letter is taken to mean acquiescence in its contents.

LORD KINLOCH concurred.

The Court refused the appeal.

Agent for Pursuers—R. P. Stevenson, S.S.C.
Agents for Defenders—Adamson & Gulland, W.S.

Wednesday, July 10.

PITCAIRN *v.* SMITH.

Bastard—Proof of Paternity.

Admission by the defender of intercourse with the pursuer 237 days before the birth of the child, coupled with medical evidence that the child was small, *held* sufficient to prove the paternity.

In an action of filiation and aliment, the defender admitted intercourse with the pursuer on one occasion, 237 days before the birth of the child, but averred that the pursuer had intercourse with other men corresponding to the time of conception of the child. This averment he failed to prove. On the other hand, there was no proof of previous intercourse by the defender during that year. The medical man who attended the pursuer at the birth of the child was called as a witness for the defender, and deponed that there was nothing to indicate that it was a premature child, although it was a very small child.

The Sheriff-Substitute (LAWRIE) assoilzied the defender.

The Sheriff (GLASSFORD BELL), on appeal, found the paternity proved, to which the Court adhered.

Counsel for Pursuer—Guthrie Smith and Lang. Agents—Muir & Fleming, S.S.C.
Counsel for Defender — Millar, Q.C., and M'Kechnie. Agent—James Campbell Irons, S.S.C.

Thursday, July 11.

WILLIAM STEEL AND OTHERS *v.* COMMISSIONERS OF THE BURGH OF GOUROCK.

Process — Interdict — Nuisance — Public Health (Scotland) Act, 1867 (30 *and* 31 *Vict. c.* 101).

Three proprietors within a burgh presented a petition to the Sheriff to interdict the Local Authority of the burgh, acting under the Public Health Act, 1867, from carrying out a system of drainage for the burgh, on which they had determined. The petitioners averred, incidentally, that the intended operations would be injurious to their persons and properties, but their allegations consisted chiefly of statements that the intended system of drainage was a bad one for the interests of the burgh generally. Petition *dismissed*, as containing no relevant averments to justify the interference of the Sheriff, and as being an attempt to control the resolutions of the Local Authority, contrary to the provisions of the Act.