full debtor, his character being thus disclosed on the face of the bond itself. But here we must look not merely to the joint promissory note by the two parties, but also to the written obligation in fulfilment of which it was granted. And I think it is clear from that transaction that this £5000 due to the Bank, in consequence of the account there embodied, was, as in a question with the Bank, the proper debt of M'Murray as much as of Durham & Sons. No doubt ultimately M'Murray was entitled to relief against Durham & Sons; but it by no means follows that, because a right of relief arises to one against the other of two co-obligants, therefore the one having that right has the right of a cautioner in the obligation. On the contrary, such a right arises every day where the character of a cautioner does not enter at all. But although Durham & Sons were bound to relieve M'Murray, I am clear that, in a question with the Bank, M'Murray owed the Bank £5000 under this promissory note, as his own proper debt, for which he had received full value. I therefore come to an opposite conclusion from the Lord Ordinary as to the claim of the defender to have a deduction from the sum due under the note.

I must add, however, that if I had been of an opposite opinion as to the nature of the obligation by M'Murray to the Bank as to this £5000, I should have hesitated to say that I concurred with your Lordships in holding that M'Murray had not been liberated by what took place. There was undoubtedly a giving of time on more than one occasion. There was so once or twice with the express consent of M'Murray, and there was so also without his consent having been obtained or asked. I do not say that the case in this branch is not one of considerable difficulty on the evidence; but I do not see that, if M'Murray is entitled to the equities of a cautioner, there is not enough to liberate him. But, holding as I do that he is not entitled to these equities, I arrive at the same result with your Lordships

Agents for Pursuer—Bell & M'Lean, W.S.
Agents for Defenders—A. & A. Campbell, W.S.

Friday, July 1.

SECOND DIVISION.

MUNRO *v.* STILL.

Parent and Child—Filiation—Evidence of Paternity. Circumstances in which *held* that the paternity of a child had been established against a person who admitted frequent connection with the pursuer, but denied being the father or having had opportunities of access as would infer paternity.

In this action of filiation and aliment the defender admitted frequent connection with the pursuer, who was a young girl in service at Banff, during the months of May, June, and July 1864. He left Banff for Inverness in July 1864, and his allegation was that he did not return until the 10th January 1865; and he admitted renewed intercourse thereafter up to May 1865, when he left Scotland, and did not return until 1868. The child was born on 26th August 1865, and there was evidence of its being rather premature.

The Sheriff-Substitute (GORDON) assoilzied the defender.

The Sheriff-Depute (BELL), on appeal, altered and decerned against the defender. He added the following note to his judgment:—"Frequent, habitual, long continued intercourse is admitted by the defender, and there is no indication of the pursuer having had intercourse with any other man.

"After continuing for months in 1864, the defender admits that this connection was renewed early in January 1865 at a period quite capable of resulting in the birth of a viable and healthy child. And it is proved that opportunity of renewed connection occurred a week or two earlier than its renewal was admitted.

"In order to obtain absolvitor in such a case it would be necessary to prove not merely that the child is living, and like to live, which frequently happens with children born in the eighth month; but farther, that the child was in point, not of conjecture but of actual fact, born after the usual period of gestation.

"In the general case there may be some slight presumption in favour of a party so alleging; but it is extremely uncertain, and quite insufficient to overturn the conclusions which must otherwise be admitted in the circumstances of the present case.

"And as to the proof of maturity, the Sheriff cannot hold that there is any sufficient evidence, more especially when it is considered that the child which surprised the mother in the harvest field was evidently unexpected, 'was a sober weakly looking child,' and 'had scarcely any nails on its fingers and toes.'"

The defender appealed.

R. V. CAMPBELL for him.

BUNTINE in answer.

The Court were of opinion that it did not appear that the child might not be the fruit of intercourse upon the 26th of December. There was no evidence that the defender was not in Banff at that time. In that case the child was born in the beginning of the ninth month, consequently there would not be strong physical appearances of immaturity. The circumstance of the mother having been working in the fields on the day of the birth, and that the child was small and weakly, were in support of this theory. The defender admitted continued intercourse before and after December, but averred that it was impossible for him to be the father of the child. It was incumbent on him to substantiate the fact of his absence, and he had failed to do so. It was not alleged that the woman had been intimate with any other man, her character seemed unexceptionable, and consequently the appeal must be dismissed.

Agent for Appellant—D. Cook, S.S.C.
Agent for Respondent—J. Barclay, S.S.C.

Friday, July 1.

HINSHAW & CO. *v.* ADAM & SON.

Artificer—Injury to Goods—Prima facie *Liability*—Onus—Culpa. *Held* that an artificer, in whose hands goods sustain damage, is *prima facie* liable for the damage, and has the *onus* thrown upon him of showing that the damage accrued from imperfection in the goods, or neglect or fault on the part of the owner by whom they were sent.

Circumstances in which *held* that such *onus* had not been discharged.

This was an appeal from the Sheriff-court of Lanarkshire in an action in which John Hinshaw