Parliament expressly provides that in place of total exemption there shall come into operation a reduced rate, and that upon the completion of eight voyages; and it is also most clearly expressed that the clause in question shall be applicable to years beginning in October. From this I should infer that the full rate is exigible for every voyage subsequent to 1st October 1895. What confirms me in this view is that if anything different had been intended, there would have been provided what we are familiar with in many Acts of Parliament—temporary provisions which would have regulated the rates during the intercalary period from October to December. But I think in the contemplation of the Act there is no intercalary period. The powers of the old Act, which would subsist in perpetuity if Parliament had not interfered, are suddenly cut off in the middle of a year—I mean on the 30th of September 1895—and the new Act takes effect from and after that date. I was at first impressed with the apparent equity of the conclusion which the Lord Ordinary had come to, but on further consideration I am satisfied, for the reasons assigned by your Lordship, that the judgment is not well founded, and that we ought to sustain the reclaiming-note.

Lord Kinnear—I agree. If the defenders had acquired a right under any lawful contract with the former Commissioners, they would not be deprived of it by the new Act. But there is no element of contract in the imposition of the rates in question. They are fixed by statute. The Commissioners were not empowered by the Act of 1879 to charge any further rate on a vessel which had already paid rates on ten voyages during the currency of a single year, until the beginning of a new year. I cannot consider this to be a vested right of the kind which Parliament intended to save from the operation of the new Act. It is not a particular right arising to an individual from contract, or from the conduct of the Commissioners, but a general right of the lieges to use the harbour on paying the statutory rates. Accordingly, when the defenders rest their case upon this so-called vested right, it seems to me that the question they really raise is whether they have acquired a right to use the harbour on payment of the rates provided under the old Act instead of those under the new. That question does not appear to me to admit of discussion. The Act of 1895 provides a new schedule of rates, and for the computation of the period for which they are to be payable special dates are fixed for the beginning and end of the year. The effect of this is that the Commissioners can levy rates which they were not entitled to charge under the old Act. Section 10 provides, as a necessary consequence of the transference of the rights of property and actions to the new Commissioners, that they shall be held as representing their predecessors to the effect of enforcing their rights, and being responsible for their liabilities, and accordingly any claim which had arisen against the former Commissioners will be equally available against the new Commissioners, and must be determined on the same grounds as if the new Act had not been passed. But this cannot mean that in any case the old conditions of rating are to continue in force after the new Act has come into operation.

The Court sustained the reclaiming-note and reversed the decision of the Lord Ordinary so far as regards the tonnage rates.

Counsel for the Pursuers—Ure—Salvesen. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Defenders—Guthrie—Craigie. Agent—John Rhind, S.S.C.

Tuesday, June 16.

SECOND DIVISION.

[Sheriff of Stirlingshire.

HARPER *v.* PATERSON.

Parent and Child—Illegitimate Child—Affiliation—Proof of Paternity—Effect of Defender's Denial of Material Facts Established by the Evidence.

The pursuer in an action of affiliation gave evidence that the defender had met her frequently during the latter half of the year 1894, that he had courted her, and that he had sexual intercourse with her in November of that year. She also averred that when she found herself pregnant she sent three letters on the subject to the defender—the first two by post, the third by a messenger. The defender denied having courted the pursuer or walked out with her except on one occasion. He also denied having received letters from her. The proof established that the pursuer and defender had been seen walking together on several occasions during the period mentioned by the pursuer. The messenger who had taken the pursuer's third letter to the defender also gave evidence that when she presented it to him, he, on learning that it was from the pursuer, refused to take it, saying that he had had enough of the pursuer, and wanted no more of her messages.

Held (*dub.* Lord Trayner) that the defender's denial of the above facts was false, and that the denial, taken with the facts themselves, was sufficient corroboration of the pursuer's case.

Marjory Harper, a domestic servant, raised in the Sheriff Court at Alloa an action of filiation and aliment against John Paterson, fish merchant, Alva.

A proof was led. The facts of the case are fully set forth in the note to the Sheriff's interlocutor.

On 9th March 1896 the Sheriff-Substitute (Johnstone) pronounced the following interlocutor—"Finds that on or about the 7th day of August last, 1895, the pursuer was

delivered of an illegitimate female child: Finds that she has failed to prove that the defender is the father of said child: Assoilzies the defender accordingly from the conclusions of the petition.

Note. — "This is in some respects a peculiar case. The pursuer is a domestic servant of thirty years of age, and the defender is a widower of fifty-six. The pursuer does not appear to have accepted the attentions of the defender very willingly. She was ashamed, apparently, to be keeping company with a man so much older than herself. The disparity in age operates, I think, in favour of the truth of the pursuer's story. She would have a natural repugnance to exhibit herself as the paramour of a man of the defender's age had there not been improper relations between them, or had there been anyone nearer her own age with whom she had been intimate, and against whom she could have proceeded. She has not, however, in my opinion, made out her case. Neither she nor the defender were satisfactory witnesses, and both gave evidence which is obviously much exaggerated. All that the pursuer has proved is that she was keeping company with the defender during the summer and autumn of 1894, and that they were occasionally or frequently seen together in the streets of Alva, or on the public roads in the neighbourhood. It is not proved that they were seen together under circumstances which could fairly give rise to suspicion of impropriety. Any other evidence rests on the unsupported testimony of the pursuer. The letter referred to in the evidence, and said to have been written by the defender to the pursuer, has been destroyed by the pursuer herself. What its contents were can only be guessed. It is said to have referred to love and marriage. Even if it is correctly described, such a letter would not necessarily help the pursuer in an action like the present.

"The defender's evidence, except in so far as it is a denial of the paternity, might have been dispensed with. He attempts to account for his whole time during the summer and autumn of 1894 with the view of excluding the possibility of opportunity. I attribute no importance to this evidence. In my opinion it is grossly exaggerated. If so disposed, and if the pursuer consented, it can hardly be doubted that he could have found opportunity for improper intimacy with the pursuer. The pursuer does not appear to have been keeping company with any other man about the time spoken to. She swears positively that she had intercourse with the defender on two occasions in November 1894, and on the whole I think it is probable that her story is true, and that the defender is really the father of her child. Looking, however, to the character of the evidence led, and to the opinion of the Court in the case of *M'Inven* v. *M'Millan*, January 13, 1892, 19 R. 869, I do not feel that I have sufficient grounds for holding the paternity proved."

The pursuer appealed to the Sheriff (LEES), who on 3rd April 1896 pronounced the following interlocutor—"Recals the interlocutor of the Sheriff-Substitute of 9th March complained of, and finds that the evidence adduced is relevant to infer that the defender is the father of the illegitimate female child borne by the pursuer on 7th August 1895: Therefore repels the defences, and decerns against the defender in terms af the prayer of the petition," &c.

Note.—"The pursuer says that in January 1894 the defender, whom she had known for some years, began to keep company with her, and walked with her regularly on Thursday evenings till the end of that year. She further says that he frequently attempted to take liberties with her, but never succeeded till 7th November 1894, when he had intercourse with her in a field, and again on 9th November 1894 in the kitchen of her employer's house, and that he thus became the father of the child which she bore on 7th August 1895. She also says that the defender sought to marry her, and that in August 1894 he wrote her a letter speaking of love and marriage. She states that on 3rd December of that year the defender came to her master's house early in the morning and wanted her to let him in, and that she was so disgusted that she quarrelled with him. Shortly afterwards she found herself pregnant, and she says she wrote to the defender twice on the subject, and as he took no notice she sent a letter to him by Annie Hunter. The defender denies that Annie Hunter ever was at his house. She says that she went twice to his house and succeeded in seeing him the second time, and offered to give him the letter. She adds that the defender asked whom the letter was from, and on learning it was from the pursuer, declined to receive it, as he had had enough of her, and wanted no more of her dirty messages. Now, as he swears that he never received the letters which the pursuer says she posted to him, if this be true, there is no explanation of how the pursuer conveyed any dirty messages to him. Neither is there any explanation from the defender of how he came to be on bad terms with the pursuer in December 1894, for he denies that he went to the house of the pursuer's master and asked the pursuer to let him in, and he also denies that she told him that month that she was pregnant. He says she told him in September 1894 that people were blaming him for her condition; and at one moment he says she blamed him too, and at another that she did not. Now, as the first act of connection between the parties is said to have occurred in November 1894, the defender's statement is, on the face of it, untrue, and I am at a loss to conceive any other object in it than to imply that the pursuer (who had had a child ten years ago) was living a loose life. But in the evidence there is no room for any suggestion of this kind, or for ascribing the paternity of the pursuer's child of 7th August 1895 to anyone but the defender. From the first she attributed it to him. Annie Hunter says the pursuer told her early in December. In February 1895 the

pursuer's master attacked the defender on the subject, and in March the pursuer herself spoke to him on the point.

"The defender's line is to deny most of the statements the pursuer has made; but he not only contradicts himself, but his evidence is in direct conflict with the statements of witnesses on material and suggestive points. He contradicts or corrects himself as to what the pursuer said to him in September. He will admit only one walk with her, and that in September, but he afterwards speaks to walking about with her on another occasion in Alloa for an hour and a half, though eventually he places the occurrence of this walk in summer, and before September. He denies that this meeting occurred by arrangement; but two sentences later he practically admits that it did, and the evidence of the pursuer and Mrs Addison puts the matter beyond doubt. In August he admits he gave the pursuer her fairing at Alva fair, but denies taking her into the grocer's to get it, or that at parting he asked her to remember what he had said. Annie Hunter speaks to the visit to the grocer's (an immaterial fact) and to the request to the pursuer to remember. The pursuer explains that what she was to remember was to meet the defender to go to Stirling, and Annie Hunter speaks to the pursuer telling her the explanation subsequently; but the defender denies everything about the matter.

"The defender admits the prevalence of the rumour that he was keeping company with the pursuer, but denies that there was any foundation for it, either in the way of public or clandestine meetings. Annie Hunter speaks to various meetings between the pursuer and the defender; but these seem generally to have occurred in the evening, owing mainly to the great disparity of the ages of the parties having tickled the humorous sensibilities of the Alva people. In August she saw them riding together on a switchback railway at Alva. Later on the same day she saw them still together. In the end of the following month the pursuer dismissed her from her company as she was going to meet someone. Miss Hunter, however, yielding to the curiosity of her sex, remained long enough to see the defender join the pursuer, and the two go away together. The following month she saw them again together at the same place. Later in the month she saw them together at the close mouth. She says she saw them meet on other occasions, but always on Thursday evenings. Jessie Hunter speaks to a meeting between the parties in the beginning of 1894. This occurred about ten at night, and Paterson had obviously been waiting for the pursuer. Mrs Addison speaks to the arrival of Paterson for the meeting in Alloa, and to the pursuer telling her that it was her sweetheart she was going to meet. The witness saw Paterson arrive; and thereon pursuer put on her things and went away with him. She and Jessie Hunter also speak to the pursuer showing them a letter signed 'J. Paterson,' which spoke about love and marriage. The pursuer says 'J. Paterson' was the defender. He denies he ever wrote to the pursuer, and tries to prove that the various secret meetings with the pursuer could not have occurred, by the evidence of his brother and his daughter and his time-book. I agree with the Sheriff-Substitute in thinking that he does not disprove the meetings, and that they could occur well enough consistently with the time-book.

"I am unable to conceive of any reason for the tissue of falsehoods the defender has told, except his knowledge that the pursuer's story is the true version of matters. It appears to me to be beyond dispute that the defender's evidence is not able to be trusted, and I think there is sufficient corroboration of the pursuer's evidence to be found in the statements of the two Hunters and of Mrs Addison to warrant a judgment in her favour, apart from any consideration of what may be implied from the defender's falsehoods on suggestive details. I notice that the Sheriff-Substitute, who had the advantage of seeing the witnesses, states that on the whole he thinks it is probable that the pursuer's story is true, and that the defender is really the father of her child, but that he feels he has not sufficient grounds for holding the paternity proved. I take this to mean, that as a juryman he would have given his vote for the pursuer, but that as judge he hesitates to say the preponderance of the evidence is that way. I am perhaps more rash, but I think that, even taking the defender's evidence into consideration, the preponderance of the evidence is distinctly with the pursuer. While, if the defender's statements are unable to be trusted, and I think they cannot, then the pursuer's story, in the light of the corroboration it receives, must be sustained."

Against this interlocutor the defender appealed, and argued—In an action of filiation the pursuer must prove her case in the same manner as if the action was one of alleged breach of contract, and the evidence must be dealt with as in any other case which depended on the ascertainment of disputed facts — *M'Inven* v. *M'Millan*, January 13, 1892, 19 R. 369; *Young* v. *Nicol*, June 8, 1893, 20 R. 768, Lord Trayner's opinion p. 770. Here there was no sufficient corroboration of the pursuer's evidence.

At advising—

LORD JUSTICE-CLERK—This is a case requiring careful consideration, and this I have given it along with your Lordships. It is one of those cases where any existing corroboration of pursuer's evidence does not go to prove improper familiarity; all that is proved is familiarity compatible with honourable courtship. The case is peculiar in this respect, that the man is well advanced in years, while the woman is much younger, and he asserts that he only walked out with her once, and that there was nothing in the nature of courtship between him and the pursuer. The evidence of other witnesses, however, establishes that that was not the fact, and that the pursuer

and defender were often seen together in such circumstances as led the witnesses to believe that they were keeping company as lad and lass. The defender's denial of these facts gives the case a very different complexion from what it would have had if he had admitted that he had honourably courted the pursuer. Unless we are to take the pursuer and her witnesses as having concocted a story, the evidence establishes that there were incidents in which the pursuer and defender took part which showed that they were in intimate and peculiar relations with one another. The letter of 23rd December 1894 is lost, but he denies that he received any such letter. The woman who brought the letter gives evidence that there was such a letter. If she is to be believed, written communications of the kind mentioned must have passed between the parties. Then there are other meetings which the pursuer avers took place between her and the defender, which the defender denies, and which I hold to be proved. In such circumstances I think that there is sufficient corroboration of the pursuer's statements to allow us to come to the conclusion that she has proved her case, and that the decision of the Sheriff ought not to be disturbed.

Lord Moncreiff—I am satisfied that in the whole circumstances there is sufficient corroboration of the pursuer's evidence to entitle us to pronounce decree in her favour. In all such cases the pursuer's evidence requires corroboration, but the kind of corroboration depends upon the circumstances of the case. It is not often that the act itself or even indecent familiarities between the parties can be directly proved. Both the pursuer and the defender are now competent witnesses, and a great deal depends upon the nature of the parties' evidence. If the defender in an action of this kind refused to go into the box, that fact would go a long way towards proving the truth of the pursuer's case. In the same manner, if the defender goes into the box and gives false evidence upon important particulars, in regard to which the evidence of the pursuer is corroborated, that will also tend to prove the truth of the pursuer's case. Here there is no doubt that the defender has spoken falsely in denying that he had meetings with the pursuer on various dates, and that he received a letter from her in December 1894, matters which are spoken to by the pursuer and proved by independent testimony. In these circumstances I think that there is here substantial corroboration of the pursuer's statements. The Sheriff-Substitute has taken a different view. He has done so, however, not because he doubts the truth of the pursuer's case, but because he he considers himself bound by authority to hold that it is not sufficiently corroborated. In my opinion there is sufficient corroboration, taking into consideration the defender's denials of proved statements and the evidence of the other witness, Annie Hunter, in the case.

Lord Trayner—This is a case in which the proof is so conflicting as to leave me in considerable doubt as to whether the pursuer has proved her case. I rather incline to agree with the Sheriff-Substitute, and hold that the pursuer has failed to prove that the defender is the father of her child. But I must say I have great suspicion of the truth of the defender's evidence, and in view of the fact that both your Lordship and Lord Moncreiff have come to the conclusion that the pursuer has made out her case, I am not prepared to dissent.

Lord Young was absent.

The Court pronounced the following interlocutor:—

"Dismiss the appeal, and affirm the interlocutor appealed against: Find that the pursuer has proved that the defender is the father of her illegitimate child born on or about 7th August 1895: Therefore of new decern against the defender in terms of the prayer of the petition."

Counsel for the Pursuer—Orr. Agents—Coutts & Palfrey, S.S.C.

Counsel for the Defender—Baxter—T. B. Morison. Agent—George F. Welsh, Solicitor.

Saturday, June 20.

SECOND DIVISION.

WHITE'S TRUSTEES *v.* WHITE.

Succession—Vesting—Discretionary Power in Trustees to Postpone Payment—Conditional Institution of Children if Beneficiary Died Unpaid—Whether Power Exercised.

A testator directed his trustees to divide the residue of his estate among his children in certain proportions—in the case of sons upon their attaining majority, and in the case of daughters at majority or marriage, with a destination-over in the case of those predeceasing or dying in minority, to their issue, whom failing the testator's other children or their issue; and he provided, with respect to the shares falling to his sons, that the capital of the one-half thereof should not be payable to them respectively until they should respectively have attained the age of twenty-five years, "declaring nevertheless that my trustees shall have power to pay to any of my sons the capital of the said half, in whole or in part, as soon after he shall have attained majority as they shall deem advisable; and that, on the other hand, my said trustees, if they shall consider it for the interest of any of my sons, shall have power to withhold payment of the capital of such half, in whole or in part, even after he shall have attained the