such proof being necessary in order to explain the title.

Counsel for the Pursuers — The Solicitor-General and Mr Cook. Agents—Messrs W. & J. Cook, W.S.

Counsel for the Defenders—Mr Clark and Mr Hunter. Agents—Messrs Morton, Whitehead, & Greig, W.S.

This is an action of reduction, improbation, and declarator of non-entry in regard to certain lands and tenements in and around St Andrews, at the instance of the principal and professors of the United College *v.* William Blyth, founder in St Andrews, and others. The alleged title to these subjects is a charter by John Hepburn, prior of St Andrews, in 1512 which conveys various subjects specifically described, and amongst the rest, "Terras, tenementa, et annuos redditus infra scriptos, infra civitatem Sancti Andreae et glebam monasterii ejusdem—videlicit, totas et integras terras et tenementa de vinella vulgariter dicta Priouris Wynd, alias Burne Wynd, et infra vinellum ipsam et portam monasterii exteriorem." It is within this specific description that the subjects described in the summons are alleged by the pursuer to fall. The pursuers chiefly rely upon the fact that in 1571 the College of St Leonard granted a feu-charter in these subjects in favour of Thomas Lentroun—in whose right one of the defenders is now said to stand—for payment of a feu-duty of 10s. Scots, which has been paid ever since. The Lord Ordinary (Kinloch) found that the pursuers had produced no title to the subjects in question; and to-day the Court, dealing with the case as a mere question of fact, adhered, on the ground that even assuming the pursuer's title to be adequate and habile to carry the subjects, they had not explained it by the proof of possession which they had led, so as to show that their title comprehended them.

Thursday, Feb. 15, *and Friday, Feb.* 16.

JURY TRIAL.

(Before Lord Kinloch.)

PHILIP *v.* NORTH BRITISH RAILWAY CO.

Reparation—Culpa—Master and Servant. Verdict for the defenders in a case in which the pursuer alleged that he had been injured through the fault of the defenders, his employers.

Counsel for the Pursuer—Mr Campbell Smith and Mr Alexander Nicolson. Agent—Mr William Milne, S.S.C.

Counsel for the Defenders—The Solicitor-General and Mr A. B. Shand. Agents—Messrs Dalmahoy, Wood, & Cowan, W.S.

In this case the pursuer, James Philip, railway goods guard, residing at Burntisland, claims damages from the North British Railway Company, in respect of injuries sustained by him, through the alleged fault of the defenders. The following is the issue sent for trial:—

"It being admitted that the pursuer was a goods guard in the employment of the defenders on or about the 17th day of January last 1865:

"Whether, on or about that date, and within or near their station at Tayport, the pursuer sustained severe bodily injury by being crushed between two carriages in consequence of the insufficient length of the bufters, through the fault of the defenders—to his loss, injury, and damage?"

Damages laid at £500 sterling.

It appeared from the evidence that on the morning of the 17th January 1865 the pursuer was employed, along with the other servants of the company, in his duties at Tayport station. A goods train was preparing to start from Tayport to Burntisland. The train had been partly set, and another waggon was being brought up from behind, by the engine drawing it a certain length, and then throwing it off. The pursuer, whose duty it was to couple the carriages before the departure of the train, was standing behind the last waggon which had been placed on the line, when the other waggon—which was laden with flax, part of which projected over the sides—came up from behind and inflicted the injury complained of. The pursuer's left collar-bone was broken, and he was otherwise crushed in the upper part of his body. The buffers of the two waggons were about eleven inches in length. They had originally been 12-inch buffers, but had been worn away by wear; and on either end of the waggons were upright beam or standards to prevent the ends from giving way. It also appeared in evidence that at the place where the accident occurred there was a slight incline in the ground, but not such as to prevent a waggon standing still if brought up in the proper way.

On behalf of the pursuer it was contended that there was here no seen danger from which he could have protected himself; that at the time when the accident occurred he was engaged in doing only what he had done repeatedly for the last five years; that he was not violating any printed rule of the company by coupling the waggons when one of them was in motion; and that the accident occurred from the old and dangerous character of the waggons, whose buffers were not only worn away, but whose ends were patched up by beams to prevent their giving way altogether.

The defenders, whilst admitting that the buffers were not sufficiently long to admit of a man with certain safety coupling two waggons together, one of them being in motion, maintained that there was no legal obligation upon them to provide waggons with buffers of such length that a man might stand against one of them with safety when another is being put up against it; and that therefore no failure of duty could be attributed to then. It the pursuer chose to run the risk of coupling waggons in this way, he had no right to do so at the peril of anybody but himself.

Lord KINLOCH said that the question before the jury was whether the injuries sustained by the pursuer were attributable to the fault of the company or not. It was a simple question of fact, involving no intricate points of law. It was an unquestionable general principle of law that employers must furnish their employed with safe implements for the use of their trade; but when you say safe you must add the qualification, when made use of in a proper manner. The best way of looking at this case was to consider whether there was any fault attributable to the company by having waggons such as described, and with buffers so short, in their employment at all. It did not follow that because these waggons could not be coupled with safety when one or other of them was in motion that the company ought to have discarded them. There were abundant ways of coupling waggons besides that of coupling them when they were in motion; and they had heard in evidence that other companies, such as the Caledonian and North-Eastern, employed waggons with even shorter buffers. There must be risk to a large extent in coupling waggons when one of them is in motion, and they had been told that the general rule was against such a proceeding. The pursuer was not compelled by any rule of the company to couple waggons in this way. A man could never be compelled by his employers to do that which was dangerous to life and limb. It was in his discretion to couple the waggons as he did, and if he took that particular way it was not the fault of the defenders.

The jury returned a verdict for the defenders.

Saturday, Feb. 17.

FIRST DIVISON.

M'LEAN *v.* M'QUEEN AND OTHERS.

Process—Reclaiming Note—Competency. Objection to the competency of a reclaiming note, that the