

dispositive clause—neither more nor less. I am not sure if a reference to the Act of Parliament in the warrandice clause is necessary for the protection of the respondents, but I think that they are entitled to have the reference inserted in order to make it quite clear that they do not warrant to the complainers more than they are entitled to acquire under the Act of Parliament.”

The complainers reclaimed, and argued—That as a matter of conveyancing the dispositive clause was the only proper place for qualifications. The warrandice clause should be construed with reference to the dispositive, but should not have qualifying words inserted in it.

Argued for the respondents—They were entitled to have the qualifying words repeated in the warrandice clause. There was nothing novel in this course. The complainers had failed to show that they had any legitimate interest in having the words omitted. The proposal to have the warrandice clause left out was an attempt to get by implication a clause of absolute warrandice—Bell's Lect. on Conveyancing p. 216.

At advising—

LORD PRESIDENT—The mere and bare question here—it being agreed that this deed is to be executed and delivered to the complainers—is whether the qualifying words are to be added to the warrandice clause or not.

That question was before the Lord Ordinary; it is not before us. The complainers must show that the Lord Ordinary was wrong in his view. This they have failed to do, and I am for adhering to his interlocutor.

LORD ADAM—I am of the same opinion. I do not see the interest of either party to object to the qualification proposed. The Lord Ordinary has decided the matter, and the railway company has nothing to say against the insertion of the qualifying words except that they are superfluous. They cannot point out any harm they will suffer by their being added.

LORD M'LAREN—We are not dealing here with the question of a statutory conveyance, for it is agreed that what is to be given and accepted is a common law one. The question is simply whether certain qualifying words are to enter the warrandice clause or not. The railway company do not say that the city is to warrant anything higher than is contained in the dispositive clause, and as the Corporation think it is desirable, for the sake of clearness, that the qualifying words should be repeated in the warrandice clause, and the railway company can show no reason to the contrary, I agree with the Lord Ordinary that they ought to be inserted.

LORD KINNEAR—I agree with what the Lord Ordinary says at the close of his note. It may not be necessary that the words should be added, but as the City thinks

they should, and the Lord Ordinary has taken that view also, it is out of the question for us to alter the judgment.

The Court adhered.

Counsel for Complainers and Reclaimers—Rankine—Cooper. Agent—James Watson, S.S.C.

Counsel for Respondents—Graham Murray, Q.C.—Dickson—Boyd. Agents—Macandrew, Wright, & Murray, W.S.

Saturday, May 27.

FIRST DIVISION.

[Sheriff of Lanarkshire.]

SHIELDS v. MURDOCH & CAMERON.

Reparation—Master and Servant—Unfenced Machinery—Factory and Workshops Act 1878 (41 Vict. c. 16).

A workman brought an action of damages against a firm of engineers, averring that he had been employed by them as a hole-borer, his duty being to regulate two perpendicular boring machines; that while engaged in this work he stood on an iron-bound table; that in the course of his work he had slipped on the iron surface of the table, and in trying to save himself had brought his right hand in contact with pinion-wheels in the machine, with the result that part of the centre finger had been torn off. He further averred that the pinion-wheels should, in terms of the Factory Act, have been guarded; that the defenders' foreman had been warned of the dangerous condition of the machine; and that if it had been fenced the accident could not have occurred.

Held that the case was relevant, and that the pursuer was entitled to an issue.

This was an action of damages raised in the Glasgow Sheriff Court by Edward Shields against Murdoch & Cameron, engineers, 115 Bothwell Street, Glasgow. The pursuer sought damages both on common law and under the Employers Liability Act.

The pursuer averred, *inter alia*—“(Cond. 1) The pursuer is an iron-borer, and up to 31st October 1892 was in the service of the defenders as a borer. Defenders are art-smiths and heating engineers in Glasgow. (Cond. 2) On or about said 31st October 1892 pursuer was working in the service of the defenders as a hole-borer at a perpendicular boring machine in their works at Bothwell Street. His foreman, to whose orders pursuer was bound to conform, was David Hogg, and pursuer was asked to go to work with the defenders by him. . . . (Cond. 3) While pursuer was engaged working with said boring machine he had occasion always to stand on an iron-bound table with a foundation of wood. While standing on

this table pursuer regulated two perpendicular machines while they were doing boring work. The boring was regulated by pursuer's hand, but the force which did the boring was supplied to the spindles by steam. The spindles were kept constantly in motion, so as to be always ready when pressure was required in boring the holes. In the spindles there were a number of pinion-wheels, which, in terms of the Factory Act, should have been guarded, and which a number of defenders' workmen had previously informed defenders' foreman were dangerous, and should be guarded. (Cond. 4) While pursuer was working at the perpendiculars in the usual course of his work, he suddenly slipped on the iron surface of the table, and he fell forward towards the pinion-wheels of the spindle. To save his arm or body from being entangled in these wheels, pursuer stretched out his hands. The result was that the centre finger of the right hand came against the pinion-wheels of the spindle, and though it was instantly withdrawn, the point of it was split, and the nail torn off, and a portion of the bone shattered. (Cond. 5) . . . Defenders took no steps to remedy the defects complained of till after pursuer was injured in the way described, and the exposed pinion-wheels were then fully covered up. Had the wheels been covered in the same way when pursuer was injured, his fingers could not have been caught by the pinion-wheels in the way described."

The defender pleaded, *inter alia*, that the action was irrelevant.

On 14th February 1893 the Sheriff-Substitute (ERSKINE MURRAY) allowed a proof.

The pursuer appealed for jury trial, and proposed an issue.

The defenders maintained that the action was irrelevant, and argued—That the primary cause of the accident being a slip due to accident or carelessness, the defenders were not responsible—*Robb v. Bulloch, Lade, & Company*, July 9, 1892, 19 R. 971; *Greer v. Turnbull & Company*, October 27, 1891, 19 R. 21.

Argued for the pursuer—The action was relevant. The ground of judgment in *Robb's* case was not that the accident was due to a careless slip, but because the pursuer on his own statement had not shown that there was a duty on the defenders to fence the particular portion of the machine at which the injured man was working.

At advising—

LORD PRESIDENT—I think we must allow the pursuer an issue. The pursuer's averments seem to me sufficiently relevant, and I cannot think that we can derive any assistance from a case necessarily so different in statement as that cited to us from the 19th volume of *Rettie (Robb v. Bulloch, Lade, & Company)*, 19 R. 971).

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court approved of the issue proposed and remitted the case to a Lord Ordinary.

Counsel for the Pursuer—Orr. Agent—W. A. Hyslop, W.S.

Counsel for the Defenders—Strachan—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Tuesday, May 30.

SECOND DIVISION.

GILLIES' TRUSTEES v. BAIN.

Succession—Trust—Settlement—Accumulation of Income—Thellusson Act 1800 (39 and 40 Geo. III. cap. 98), sec. 1—Casus improvisus.

A trustor directed his trustees to hold the residue of his estate, with accumulations of income, after payment therefrom of annual allowances to his children, during the lives of his children, and after their death to pay the capital and any accumulations to the lawful issue of his children. The trustor's only surviving child who attained majority, a daughter, repudiated the settlement, and a special case having been presented, the Court pronounced a judgment of which the effect was that the trustor's direction to hold the residue of his estate with accumulations of income till his daughter's death, and thereafter to pay the capital and accumulated income to her lawful issue, became restricted to the "dead's part."

After the trustees had been in possession of and had been accumulating income on the said fund for twenty-one years from the date of the trustor's death—held that further accumulation of income was prevented by the Thellusson Act, and that the directions of the trustor on the matter not being applicable, the future income of the fund fell to be paid to the person who would have been entitled to succeed to it *ab intestato*, viz., the testator's daughter.

Robertson Gillies, silk mercer, Edinburgh, died on 12th October 1871. He was survived by his wife Mrs Sarah Gillespie or Gillies, and by two children, viz., a son, Thomas James Gillies, who survived his father only about a month, having died in pupillarity on 11th November 1871, and a daughter Mary M. Gillies, who was in minority at the date of her father's death.

Robertson Gillies left a trust-disposition and settlement dated 26th January 1871, by which he conveyed his whole estate to trustees in trust for the following purposes—1st, For payment of the testator's debts and funeral expenses and the expenses of the trust; 2nd, for payment of an annuity and certain other provisions to the trustor's widow; 3rd, for payment of various legacies and annuities to relatives and friends of the trustor, said legacies amounting in all to £1275, and the annui-