in-law. His children, if he had any, continued Mr Reid's grandchildren, which implied their father being Mr Reid's son-in-law, just as much as their mother being Mr Reid's daughter. If a legacy had been left to the sons-in-law of Andrew Reid the pursuer would have been entitled to partake in it."

The defenders reclaimed, and argued that the pursuer not having applied for admission during his wife's lifetime, he was not entitled to obtain admission as a son-in-law after her death, and that they should have been allowed a proof of their averment that, from the period of the foundation of the guildry, it had been the usage to admit as sons-in law only those persons who made application during the lifetime of their wives. The Lord Ordinary had refused to allow this proof as incompetent.

The Court, after argument, on 4th July 1865, allowed to the parties a proof of their averments bearing on the question of usage, and the case having been again argued, the Court to-day altered the Lord Ordinary's interlocutor, and assoilzied the defenders.

The LORD PRESIDENT said—The question raised is whether a person, in order to obtain the privilege claimed by the pursuer, must be not only a son-in law of a member, but also the husband of a member's daughter. The following are the rules as to the entry of members founded on by the pursuer:—"1. Any individual having, neither by birth nor marriage, any claim or title to be admitted a member of the fraternity and incorporation shall be admitted a member on payment of £30 sterling. 2. Sons and sons-in-law of guild brethren, excepting as hereinafter mentioned, shall be admitted members of the fraternity and incorporation as follows, viz.:—If not exceeding twenty-one years of age, by payment of the sum of £1, 1s.; and if exceeding that age, according to the scale or table of fees hereunto annexed, which is hereby declared to form part of these rules, in the same manner as if it were herein engrossed. 3. Where an individual has been admitted a member of the fraternity, in virtue of a right acquired through marriage with the daughter of a guildbrother, his children by a previous marriage shall not be admitted members of the fraternity and incorporation other wise than is specified in the first article thereof." The claim of the pursuer is founded on the expression "sons and sons-in-law" in rule second. A question has been raised whether these rules were or were not intended to extinguish and ignore the previous unwritten law of the guildry. If they were, it is said the words must be read in their popular sense, and not as qualified by previous usage. On the other hand, it was contended that these rules only put into words what was the previous law of the fraternity. And it is said that previous to 1852 the usage was to admit sons-in-law, but only during the lifetime of their wives. I think that, in regard to the condition of things before 1852, when there were no rules, the usage is the thing to be looked to. It is said, on the one hand, that there is no instance of any son-in-law being admitted after his wife's death. On the other hand, it is said there is no instance of anyone being rejected, and therefore there is no usage on the subject. There is a case in 1791 of a Mr Henderson, who was admitted after his wife's death; but that was an exceptional case. He had applied during his wife's life, and the consideration of his application had been delayed through the fault of the Dean of Guild, and he was therefore admitted. That is the plain meaning of what was done, whatever be its value. Except that case, there is no case of admission, and none of an application tabled and refused. But there are cases proved where the parties would have been entitled to admission if after their wives' deaths they had been admissible; and these were not parties who did not care about entering, but who contemplated entering, and were deterred by those whom they consulted as to the usage. There are also one or two instances of persons being urged to enter before their wives' deaths, lest they might lose their privilege under the unwritten law of the corporation. The preponderance of evidence is in favour of the defenders, and the fact of no instance occurring is corroborative of it. I therefore think it established that the usage was to reject persons in the position of the pursuer. There is a minute of 1780 founded on by both parties. It is in these terms:—"Which day there was an overture laid before the guildry, in order for to have a standing law made annent the admission of the sons-of-law of gild brethren who had neglected to enter during the life of their wife, who had been the daughter of a gild brother; which being considered by the meeting, they appoint the Dean of Guild and his council to draw up a proper overture, to be laid before the guildry at their next meeting; and also that this overture shall comprehend the grandchildren of gild brothers whos father had neglected to enter; and that this overture shall be put in the book in order that the same may be turned into an act at next anniversary meeting, if so they shall approve thereof." This minute shows that it was in contemplation to alter the standing law as it stood at the time—namely, the usage. It was contended for the pursuer that this was a proposal to prevent admission after a wife's death, and that nothing having been done upon it, the law must have been as he contends. I think it could not be a proposal of that kind. Sons-in-law after the wife's death were kept out already according to the usage, and it must have been a proposal to let them in. This being so, do the regulations of 1852 abrogate the unwritten law? Is the term "son-in-law" used in a different sense in them from its sense previously. If it was intended to make any difference it would have been clearly stated, and I am not satisfied that the rules were intended to alter the law, or to do anything but remove doubts.

Lord CURRIEHILL concurred. He thought that if an alteration of the laws was made in 1852 there might be a question as to the power of the brethren to make it. He thought that the true theory of the society's law was to provide for the daughters of members as well as sons. The sons had a right to enter as such. The law gave the daughters the same privilege, by admitting their husbands on the same terms.

Lord DEAS said the Lord Ordinary proceeded on the footing (1st) that it was quite competent to make these rules; and (2d) that it was incompetent to inquire into previous usage in such a case as this. He greatly doubted the first point, and also the legality of making by these rules what the members themselves called "a new constitution." He had no doubt of the competency of looking to usage. Before 1852 there was nothing but usage, and he concurred as to the result of the proof upon it. Being satisfied of this, he was clear that the term "sons-in-law" could not be held to be used in the rules in any other sense than that in which it had been used from time immemorial.

Lord ARDMILLAN also concurred. He founded mainly on the overture in 1780, which, he said, it was impossible to read as an overture to prevent the admission of persons in the position of the pursuer. Nothing followed on it; therefore the practice remained. But in 1791 a person claimed admission whose wife was dead. It was as clear as day from what was done in that case, that the practice was not to admit, because he was admitted on the special ground that the matter had been delayed by the Dean of Guild. This exception proved the rule.

SECOND DIVISION.

PRINCIPAL AND PROFESSORS OF UNITED COLLEGE OF ST ANDREWS *v.* BLYTH AND OTHERS.

Property — Title — Possession — Proof. Held (aff. Lord Kinloch) that pursuers, claiming that certain subjects were included in their title, had failed to prove possession of the subjects, so as to show that their title comprehended them—

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