implement of the consideration in his favour. I think this agreement is onerous as it stands, and is not the less to be implemented because implement is asked after the death of the other party.

LORD ADAM—The case is so clear that I have nothing to add to what your Lordship has said.

LORD M'LAREN and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers and Respondents — Kennedy — J. Reid. Agents — Macpherson & Mackay, W.S.

Counsel for the Defenders and Reclaimers —Lorimer — Orr. Agent—George Inglis, S.S.C.

Tuesday, May 23.

FIRST DIVISION.

[Lord Low, Ordinary.

NORTH BRITISH RAILWAY COMPANY *v.* MAGISTRATES OF EDINBURGH.

Conveyance—Qualified Disposition—Repetition of Qualifying Words in Warrandice Clause.

A common law conveyance of lands was granted "with and under the provisions of the said Act." . . . . These qualifying words were inserted in the dispositive clause and the disponer proposed to repeat them in the warrandice clause. To this the disponee objected, although unable to shew that he would suffer prejudice. The Lord Ordinary *held* that the disponer was entitled to qualify the warrandice clause as proposed, and the Court refused to disturb his judgment.

The North British Railway Company obtained a special Act of Parliament in 1891 which enabled them to obtain from the Corporation of Edinburgh certain ground in Princes Street Gardens, Edinburgh.

By section 35, sub-section 22, of said Act it was provided that "nothing contained in this Act shall prejudice or affect the rights of servitude or other rights of the Corporation, or of the vassals of the Corporation, in virtue of their title-deeds."

An arbitration was entered into between the parties, with the result that the Corporation were found entitled to receive £26,500 from the railway company as the value of the land to be conveyed. The parties endeavoured to arrange the terms of the disposition of the land to be granted, but were unable to agree. The Corporation desired to insert in the dispositive clause the words—"But declaring always that these presents are granted with and under the provisions of the said North British Railway (Waverley Station, &c.) Act 1891, in so far as applicable to the subjects and others hereinbefore disponed," and to add after the words "we grant warrandice" the following—"but subject always to the provisions of the said North British Railway (Waverley Station, &c.) Act 1891 and Acts incorporated therewith." The railway company refused to accept a disposition with these qualifications, but finally they acquiesced in the qualifying words being inserted in the dispositive clause but not in the repetition of them in the warrandice clause. They expressed their willingness however to accept a conveyance without any clause of warrandice.

The Corporation charged the railway company on letters of horning to make payment of the said sum of £26,500 and the railway company brought a note of suspension of said charge on the ground they were not obliged to pay until they received a conveyance to the lands.

Upon 19th April 1893 the Lord Ordinary (LORD LOW) pronounced the following interlocutor:—Finds . . . that the respondents are entitled to qualify both the dispositive clause and the warrandice clause of the conveyance by a reference to the said Act . . . and in respect of the offer made by the respondents to grant to the complainers a conveyance in terms of the draft No. 37 of process, Finds the letters and charge orderly proceeded: Sustains the same: Repels the reasons of suspension: . . . Refuses the prayer of the note: . . . Grants leave to reclaim.

"*Note.*—As I intimated when this case was argued before me, I am of opinion that the respondents are entitled to qualify the conveyance which they grant to the complainers by a reference to the Act of Parliament. The complainers are not entitled to acquire the lands except subject to the conditions and restrictions imposed by the Act, and I do not think that the respondents can be asked to grant a disposition which *ex facie* might convey to the complainers, and bind the respondents to warrant to them larger and more unrestricted rights in regard to the lands than they are authorised to convey by the Act. In such circumstances it seems to me that a conveyance containing a reference to the Act, both in the dispositive and in the warrandice clause, is the proper form.

"The complainers consented at the debate to a reference to the Act of Parliament in the dispositive clause, but they objected to any such reference in the warrandice clause, and they have now lodged in process a minute (No. 39) in which (for the first time) they offer to accept a conveyance without a clause of warrandice at all.

"I confess that I am unable altogether to appreciate the complainer's objection to a reference to the Act in the warrandice clause. I do not see how they can be prejudiced by such a reference, because, while the dispositive clause, qualified by a reference to the Act, conveys to the complainers all that they are authorised to acquire, a warrandice clause, also qualified by a reference to the Act, lays upon the respondents the obligation to warrant to the complainers all that is conveyed by the

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 artsmiths 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