

valuation roll, and that the determination of the Valuation Committee should be sustained.

The Court were of opinion that the determination of the Valuation Committee was right.

Counsel for the Assessor—J. R. Christie.
Agents—Macpherson & Mackay, W.S.

Counsel for the Respondent—Chree.
Agents—John C. Brodie & Sons, W.S.

COURT OF SESSION.

Saturday, February 4.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'LAUHLAN v. HOGARTH & SON.

Reparation—Ship—Accident to Dock Labourer on Board Ship—Action against Managing Owner—Relevancy.

A dock labourer was injured while working on board the "B. H.," which was being discharged at Glasgow. He brought an action of damages against H. & Company, who, he averred, were "managing owners" of the vessel. An excerpt from the Register of Shipping was produced which showed that H. & Company were not the registered owners of the "B. H."

Held that the action against them was irrelevant.

Bernard M'Lauchlan, dock labourer, 69 Piccadilly Street, Anderston, Glasgow, brought an action of damages for personal injuries against H. Hogarth & Son, ship-owners, 24 St Enoch's Square, Glasgow.

He averred, *inter alia*—"Cond. (2) On 2nd August 1910 pursuer was at work on board the "Baron Herries" in Queen's Dock, Glasgow. Said vessel was loaded with copper ore, and pursuer was employed by James Adair, stevedore, 20 Queen's Dock, in the discharging of said vessel, which was carried on by filling said ore into buckets, and thereafter discharging them over the side of the ship. Said vessel at the time of the accident to pursuer was under defenders' control, and pursuer's employer, the said James Adair, had contracted with defenders to discharge said ship. Defenders were the managing owners of said vessel. They engaged and paid the crew of same on their own behalf, and said vessel was sailed under their flag, which had their name or their initials thereon. Cond. (3) On said date pursuer in the course of his duty had to go to the lower hold to get the ore from the combings round the hatch mouth. Whilst he was going to said lower hold he stepped into a scuttle which was uncovered, and pursuer was thrown forward cutting his upper lip severely through its coming into violent contact with the blade of the propeller of said vessel, and injuring the pursuer as after mentioned."

The defenders pleaded—"(1) The averments of the pursuer not being relevant or

sufficient to sustain his pleas, the action should be dismissed with expenses."

The defenders produced an excerpt from the Register of Shipping which disclosed the fact that the Kelvin Shipping Company, Limited, Glasgow, were the registered owners of the "Baron Herries."

On 29th November 1910 the Sheriff-Substitute (WELSH) before answer allowed the parties a proof of their averments.

On 5th December 1910 the pursuer required the cause to be remitted to the Court of Session for jury trial. He subsequently lodged an issue.

The defenders objected to the relevancy of the action, and argued—The case was irrelevant against the defenders, who, as the Register of Shipping showed, were not the owners of the vessel, nor were they even averred to be so. They were averred to be managing owners. A managing owner or ship's husband was the agent for the owners. It was his duty to look after matters on shore, e.g., the outfit and repair of the ship, contracts of affreightment—Bell's Prin. 449. He had absolutely no duties to perform on board the ship. The pursuer's accident happened on board. He must therefore make his claim against the person whose fault was actually responsible for the accident, or against the owners of the vessel. *Taylor v. Rutherford*, March 17, 1888, 15 R. 608, 25 S.L.R. 430, was referred to. Moreover, the averments of accident were irrelevant for want of specification. Further, if the case were to proceed it should go back to the Sheriff for proof, as the injuries were of a trifling nature.

Argued for pursuer—The case was relevant. When the pursuer averred that the defenders were managing owners of the vessel on their own behalf, he had done enough. He averred that the vessel was under the defenders' control, and that the accident was their fault. Further, the accident was averred with sufficient specification. The case should not be sent back to the Sheriff but should go to jury trial. The Court had a wide discretionary power in this matter—*Sharples v. Yuill & Company*, May 23, 1905, 7 F. 657, 42 S.L.R. 538.

LORD JUSTICE-CLERK—Three points were brought before us in this action—(1) whether there was a relevant case against the defenders Hogarth & Son, (2) whether the accident was relevantly averred, and (3) whether this was a case for jury trial. As regards the third point, I am clearly of opinion that this is not a suitable case for jury trial. Taking the first point next, the pursuer brings his action against Hogarth & Son, shipowners, Glasgow, who are sued as the managing owners of a particular vessel, i.e., the "Baron Herries." They are not the registered owners of this vessel, as appears from an excerpt from the Register of Shipping, which is before us. It belongs to the Kelvin Shipping Company, Limited, Glasgow. Hogarth & Son can therefore only be owners of the vessel in the sense of being managing owners, a term which corresponds to the old expression ship's husband. Managing owners

have no charge of, nor responsibility for, the work done on a vessel at all. They are employed for entirely different purposes. Their duties are very well explained in the passage in Bell's Principles which was cited to us (sec. 449). The pursuer's accident being one that happened on board the vessel, the defenders as managing owners cannot be responsible therefor.

Coming to the question of the relevancy of the averments of accident, I must say that I have never seen a record so bad as this in the way of want of specification.

[His Lordship then proceeded to deal with a point on which the case is not reported.]

LORD ARDWALL—I agree. I think that the first ground on which your Lordship's opinion proceeds is sufficient for the decision of the case, but I also agree that on the facts stated the pursuer's case is irrelevant.

With reference to the first point, that the action is not relevant as directed against the present defenders, the pursuer avers that the defenders Hogarth & Son were "managing owners" of the vessel on board which the accident took place—in other words, that they were agents acting on behalf of the owners. Further, an excerpt from the Register of Shipping is produced by which we see that the owners of the whole 64 shares of the "Baron Herries" were the Kelvin Shipping Company, Limited. It is therefore clear that Hogarth & Son were nothing more than managers or agents for this company.

In these circumstances it is of course possible that a relevant case might have been made against the defenders, but it could only have been on the ground of personal fault. There are only two grounds of liability in an action of damages for personal injury such as this—one is that there is personal fault on the part of the defender, and the other that there is vicarious fault, an employer being held liable for the fault of those in his employment. The first ground of liability is not alleged in this case, and as regards the second ground we find that the owners, who were the employers, and who alone could be held vicariously liable for the fault of their employees, are not called as defenders.

Now, since this particular action could only be relevantly directed against the person directly in fault, or the owners of the vessel, there is clearly no case against Hogarth & Son, the defenders, who were merely managers or agents for the owners.

LORD ORMIDALE—I entirely concur.

LORD DUNDAS was absent, and LORD SALVESEN was sitting in the Lands Valuation Appeal Court.

The Court dismissed the action.

Counsel for Pursuer—M'Kechnie, K.C.—A. A. Fraser. Agents—Weir & Macgregor, S.S.C.

Counsel for Defenders—Sandeman, K.C.—J. Stevenson. Agent—Campbell Fail, S.S.C.

HOUSE OF LORDS.

Thursday, March 16.

(Before the Lord Chancellor (Loreburn), Lord Kinnear, Lord Atkinson, and Lord Shaw.)

RIDDELL v. GLASGOW CORPORATION.

(In the Court of Session, May 18, 1910, 47 S.L.R. 630, and 1910 S.C. 693.)

Reparation—Slander—Master and Servant—Liability of Master for Slander of Servant—Course of Employment.

In an action of damages for slander raised by the wife of the tenant of a house in a city, pursuer, against the corporation of the city, defenders, held that a tax-collector whose duties included "the collection of the police assessments payable by the pursuer's husband and the granting of receipts therefor," and who consequently had to consider what credits the payee was entitled to, was not acting within the scope of his employment in accusing the pursuer of altering and forging a receipt entitling to a credit, so as to render the corporation, his employers, liable in damages for slander. *Per* the Lord Chancellor—"I do not see that he (the tax-collector) had any authority to express an opinion."

This case is reported *ante ut supra*.

The Glasgow Corporation, defenders and reclaimers, appealed to the House of Lords.

LORD CHANCELLOR—This is an action for slander against the Corporation of Glasgow in respect of certain utterances on the part of a person in their employment, and I take his position as it is stated in the third condescendence that he "was in the service of the Corporation" as a tax collector, and "his duties included the collection of the police assessments payable by the pursuer's husband and the granting of receipts therefor." That was his position; and his duty was to go to the house where these people resided for the purpose of discharging that duty. While there he seems to have made a charge of forgery against the wife of the ratepayer. The point is whether or not the Corporation of Glasgow are liable in damages for that slander.

Now I see no difference whatever in principle between an oral and a written slander, and I think that point was not made by Mr Clyde; and I do not think the principle is really in dispute. If it was the duty of the servant, within the scope of his authority, to make a statement on behalf of his principals for their benefit, then the principals are liable for utterances in the course of making that statement. Now in this case the duty of this tax collector has already been specified, and is to be taken as contained in the third