

dent's family dwelling in his house—I had at first some doubt, but in the end I have come to agree with your Lordships on that point. As regards the second point—whether he was residing with his father during the time when he was on a visit to Oban—I have had no difficulty. There are many cases where a man has his residence at a particular house although he does not always sleep there. I may take the case of the conductor of a train who travels from London to Edinburgh every day for many weeks at a time. He must sleep in London on one night and in Edinburgh the next. Such a man has his residence in the house in which his wife and children reside, although he is away from home every second night. In this particular case the workman was just on a journey. He went to Oban, not to reside there, but because he had work to do which could not be done at home. I have no difficulty in holding that he was in the same position as if he had gone away from home for a holiday. I think he was still residing in his father's house, and therefore I hold that he was not a workman entitled to compensation under the Act.

LORD DUNDAS was absent.

The Court answered the first question of law in the affirmative and the second in the negative.

Counsel for the Appellant—Armit. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondent—MacRobert. Agents—Pairman, Easson, & Miller, S.S.C.

Thursday, January 26.

SECOND DIVISION.

[Lord Guthrie, Ordinary.]

M'ADAM v. CITY AND SUBURBAN DAIRIES, LIMITED.

Reparation—Slander—Issue—Innuendo.

A milkman brought an action of damages for slander against his employers. He averred that there had been a dispute between their manager and him as regards a balance alleged to be due by him, that in consequence thereof he did not return to his work the next day, and that a foreman, acting on the manager's instructions, came to his house and addressed him in the following words—"I'll give you a piece of advice. If you are wise you'll turn out to work, because I have been instructed by" the manager "to place the matter in the hands of the police." He maintained that these words were relevant to support an innuendo of embezzlement on his part.

The Court *refused* an issue, *holding* that the words complained of were not slanderous.

Reparation—Slander—Master and Servant—Liability of Master for Slander Uttered by Servant—Scope of Employment.

A milkman brought an action of damages for slander against his employers. He averred that there having been a dispute between their manager and him as regards a balance alleged to be due by him, a foreman, on the manager's instructions, had addressed him in the following words—"I'll give you a piece of advice. If you are wise you'll turn out to work, because I have been instructed by" the manager "to place the matter in the hands of the police." There was no averment as to what the manager's powers and duties were, but the pursuer averred that the foreman in making the statement, on the manager's instructions, was acting as the defender's servant for the purpose of intimidating him into remaining at his work, and thereby preventing him from disclosing their system of trading which was unfair to their customers.

The Court, assuming that the words complained of were slanderous, *held* that the foreman in uttering them, upon the instructions of the manager, was not acting within the scope of his employment, and that accordingly the action against his employers was irrelevant.

Samuel M'Adam, milk salesman, residing at No. 66 Bain Street, Calton, Glasgow, brought an action of damages for slander against the City and Suburban Dairies, Limited, Glasgow.

He averred, *inter alia*—" (Cond. 1) . . . The defenders carry on a large dairy business in Glasgow and suburbs. They employ a number of men whose duty it is to go round the streets with milk barrows and push the sale of defenders' milk, and also collect the accounts due to defenders therefor. The pursuer entered the defenders' service in this capacity on 12th May 1910. Under the agreement of service he lodged £1 as a security deposit, and his wages were fixed at 18s. a-week and commission. (Cond. 2) Each day after completing his rounds the pursuer returned to the defenders' dairy at Napiershall Street, Glasgow, and accounted for the milk not sold. The returned milk was measured by one of the defenders' foremen. Thereafter pursuer called on customers indebted to defenders to collect moneys due, and each day's receipts were handed over by him to defenders. There was no daily check and no receipts were given either to the customers or to pursuer. On Saturday afternoons the pursuer went to the clerk in charge at said dairy to get his wages, and any balance on the week's transactions either due to or by pursuer was adjusted and settled. . . . (Cond. 3) The pursuer had frequent disputes with defenders' foremen as to the measuring of the returned milk, and he took exception to and complained frequently to them of the loose and haphazard system in which the business was conducted. In particular, defenders' milkmen, including pursuer, were charged for the milk delivered to them each day at the rate of 1s. 1d. per

gallon. The milk was sold to the public on defenders' instructions, and as advertised in their bills, at 1s. per gallon. The men, on defenders' instructions, made up the difference of 1d. by selling short measure. After pursuer had started work, various customers, however, became aware that they were getting short measure and complained to pursuer, who thereupon gave the customers full measure. He gave notice several times that he was leaving, and in particular he gave notice on 9th June 1910. The defenders' foreman, John Willis, on the following day, however, urged pursuer to stay, and the pursuer agreed to do so. (Cond. 4) On Saturday, 11th June 1910, defenders' foreman John Willis accompanied pursuer in his rounds for the purpose of checking the credits due by customers. At the conclusion of the round John Willis told pursuer that there appeared to be a shortage of £2, 14s. due by him to defenders, but that he, John Willis, thought it was more, and he asked pursuer to come into the office. John Bell, another foreman of the defenders', the said John Willis, and defenders' clerkess, then proceeded to go into the accounts. They brought out a sum of £8, 6s. 9d. as due by pursuer to defenders. Pursuer denied that any sum was due by him, and stated that they were making some great mistake. The said John Bell insisted, however, that there was no mistake, and he detained pursuer in the office and telephoned for defenders' manager, Mr Charles Watson. . . . (Cond. 5) Mr Watson on his arrival at the dairy accepted the statement of the foreman, John Bell, that there was a sum of £8, 6s. 9d. for which pursuer had failed to account. Pursuer again indignantly denied that there was any sum for which he had failed to account. Defenders' manager also declined to pay pursuer the wages and deposit which were due to him, stating that they were security for the shortage. Ultimately, however, defenders' manager paid pursuer 14s., which sum pursuer accepted under protest. Mr Watson, defenders' manager, then proposed to pursuer that he (pursuer) should continue his employment with defenders at a wage of £1 a-week, and that defenders should keep off 6s. each week till the alleged shortage was cleared. Pursuer did not agree to these terms. . . . (Cond. 6) On Sunday, 12th June, pursuer did not return to work as he thought he had been unfairly dealt with. About 10.45 a.m. on that day John Willis, the defenders' foreman, called at pursuers' house, which was then at No. 10 Wilson Street, Partick, and asked pursuer if he intended to go out to work. Pursuer said 'No,' and added that he was to see a lawyer about the money due to him by defenders. Willis then left. Shortly afterwards John Bell called and asked pursuer if he was going to turn out to work, and pursuer replied in the negative. Bell then said to pursuer, 'I'll give you a piece of advice. If you are wise, you'll turn out to work, because I have been instructed by Mr Watson to place the matter in the hands of the police.' *The pursuer believes*

and avers that Bell had been told by Watson to say to pursuer that the matter would be placed in the hands of the police if he did not return to work. Watson in asking Bell to say so, was acting in the course of his employment as manager for the defenders, and in the interest or supposed interest of the defenders. . . . (Cond. 7) The said John Bell made the said statement to the pursuer in the presence and hearing of the pursuer's wife and of Mrs Catherine M'Adam or Tennyson, wife of and residing with William Tennyson at 10 Wilson Street, Partick. By said statement the said John Bell falsely, calumniously, and maliciously represented and intended to represent that the pursuer was guilty of dishonestly appropriating the money collected by him for and on behalf of the defenders, and had rendered himself liable to criminal prosecution on account thereof, and it was so understood by those who heard it. The said representation was made by him in the course of and within the scope of his employment, and on the instructions of defenders' manager Mr Watson. In making said representation the said John Bell was acting as the servant of defenders for the purpose of forcing the pursuer to resume his work with the defenders on the terms proposed to him by defenders' manager. There was absolutely no justification for said accusation against the pursuer. The threat of placing the matter in the hands of the police was made by the defenders' servant Bell with the view of coercing the pursuer into returning to defenders' employment and of preventing him disclosing the system of trading adopted by defenders and specified in Cond. 3. Moreover, Watson and Bell were both well aware that there was no foundation for the said accusation, and knew from their examination of the books that pursuer was not due any sum whatever to defenders." [The words printed in italics were added by way of amendment subsequent to the closing of the record.]

The pursuer pleaded, *inter alia*—" (1) The defenders having slandered the pursuer as descended on, the pursuer is entitled to reparation as concluded for."

The defenders pleaded, *inter alia*—" (3) The alleged statement by the said John Bell not being slanderous, *et separatim*, not having been made with the authority of the defenders, the defenders are entitled to absolvitor."

The following issue was proposed for the pursuer—" Whether, on or about 12th June 1910, in the pursuer's house at No. 10 Wilson Street, Partick, the defenders, by their servant John Bell, in the presence and hearing of the pursuer, his wife, and Mrs Katherine M'Adam or Tennyson, 10 Wilson Street, Partick, or any of them, falsely and calumniously stated of and concerning the pursuer, 'I'll give you a piece of advice. If you are wise you'll turn out to work, because I have been instructed by Mr Watson to place the matter in the hands of the police'—or used such words of the like import and effect, meaning thereby to represent that the pursuer was guilty of

dishonestly appropriating money collected by him on behalf of the defenders, to the loss, injury, and damage of the pursuer?"

On 2nd December 1910 the Lord Ordinary (GUTHRIE) approved of the issue, and appointed it to be the issue for the trial of the cause.

Opinion.—"The question in this case at the present stage is whether, if the statement complained of is slanderous, the defenders, a limited company, have been relevantly averred to be the authors of the slander. It is admitted to be settled by the case of *Riddell v. The Glasgow Corporation*, 1910 S.C. 693, 47 S.L.R. 630, that a corporation or limited company may be guilty of slander. Is this a case for the application of the principle? I am of opinion that it is. The statement is alleged to have been made by one of the defenders' foremen in pursuance of his duty to secure the continuance of the pursuer at his work, and Bell, the foreman in question, is said to have made the statement on the instructions of the defenders' manager. Their manager must be presumed until the contrary is proved to have had general power to act for the defenders, and I cannot hold that he was acting outside his powers if he instructed his subordinate to use the threat which Bell is said to have employed.

"Notwithstanding the use of the word 'police,' I think the words require the innuendo which the pursuer has now inserted in the issue.

"In view of the words complained of having been uttered, it is said, in presence of uninterested persons, I cannot hold the case privileged. If privilege arises at the trial the issue can be amended. The averments in the third, fourth, and fifth articles of the condescence supply sufficient facts and circumstances (extrinsic and antecedent if that were necessary, which it is not) to furnish grounds for the malice alleged."

The defenders reclaimed, and argued—(1) The words complained of were not defamatory. No charge of embezzlement was made against the pursuer. There was merely a threat that the matter would be handed over to the criminal authorities. That was only to happen if the pursuer failed to return to his work. There was accordingly no slander—*Agnew v. British Legal Life Assurance Company, Limited*, January 24, 1906, 8 F. 422 (Lord Ardwall at 424), 43 S.L.R. 234. The Lord President adopted Lord Ardwall's view on that part of the case. (2) But *esto* that there was a slander, the defenders were not liable therefor. It was no doubt established that a master might be responsible for his servant's libel—*Citizens' Life Assurance Company v. Brown*, [1904] A.C. 423. It had also been decided that vicarious liability existed in the case of verbal slander—*Finburgh v. Moss's Empires Limited*, 1908 S.C. 928, 45 S.L.R. 792; *Riddell v. Corporation of Glasgow*, 1910 S.C. 693, 47 S.L.R. 630. In both these cases the slander was accompanied by assault. *Dyer v. Munday*, [1895] 1 Q.B. 742 (a case of assault), was the beginning of this

law. If the pursuer got an issue here it would be the first time that there would be held to be vicarious responsibility for verbal slander unaccompanied by assault. But the master would not be liable unless it was well averred that the servant was acting within the scope of his employment—*Eprile v. Caledonian Railway Company*, June 21, 1898, 6 S.L.T. 65; *Agnew v. British Legal Life Assurance Company (cit. sup.)*. There was no proper averment that either Watson or Bell were acting within the scope of their employment. All that was said about Watson was that he was the defenders' manager, and about Bell that he was one of their foremen. (3) Furthermore, the defenders were not liable because the doctrine of common employment completely barred the pursuer's claim. No action lay when the wrong was done by a fellow-servant—*Downie v. Connell Brothers, Limited*, 1910 S.C. 781, 47 S.L.R. 666. (4) Malice must go into the issue. The occasion was privileged, because Watson was said to have told Bell to make the statement complained of. It was thus clearly Bell's duty to carry out his orders. There was, however, no averment of facts and circumstances inferring malice.

Argued for pursuer—(1) The words were slanderous. The defenders desired to keep the pursuer in their employment so that their methods of business might not be disclosed. Bell's words amounted to a charge of embezzlement. *Agnew v. British Legal Life Assurance Company (cit. sup.)* was a totally different case. There was no suggestion there of any crime having been committed. Similar to it also, and different from the present case, was *Cockburn v. Reekie*, March 8, 1890, 17 R. 568, 27 S.L.R. 454. It could not be said that the innuendo in the present case was forced and unreasonable. (2) The defenders were liable for the slander. The slander was a company act, as Watson and Bell were acting in the course of their employment. It was to the interest of their employers that the pursuer should remain at his work. The idea that there must be authorisation of the act on the master's part had been repudiated. Even although the servant exceeded his authority, the master was liable if the action was done in the course of employment which was authorised—*Dyer v. Munday (cit. sup.)*, per Lord Esher (M.R.) and Lopes (L.J.), at [1895] 1 Q.B. 746 and 747. All that the pursuer had to show was that the action was done in the course of employment. Averments of the general scope of employment were sufficient, unless the act complained of was palpably outwith the scope, as in *Beaton v. Corporation of Glasgow*, 1908 S.C. 1010, 45 S.L.R. 780. In principle there was no distinction between verbal and written defamation—*Finburgh v. Moss's Empires Limited (cit. sup.)*, per Lord Stormonth Darling, 1908 S.C. at 937. The averments of authority in this case were sufficient. If they were proved the defenders would clearly be liable—*Citizens' Life Assurance Company v. Brown (cit. sup.)*. (3) The doctrine of collaborateur had never been applied to slander, and was

no defence here. It relieved a master from responsibility for an accident to one employee which was caused by the fault of another employee. (4) There was no privilege in this case, because the statement was made in the presence of parties who were not interested in the matter—*Ingram v. Russell*, June 8, 1893, 20 R. 771, 30 S.L.R. 699. Further, the slander was made from a palpably illegitimate motive.

At advising—

LORD ARDWALL—It will be convenient to consider this action under two heads—first, whether the words said to have been used by John Bell are slanderous and would have founded a relevant action against him as an individual had such action been raised; and second, whether, assuming them to have been slanderous, the defenders are responsible for the slander.

The words said by the pursuer to have been used are as follows—"I'll give you a piece of advice. If you are wise you will turn out to work, because I have been instructed by Mr Watson to place the matter in the hands of the police."

It is averred and not denied that the "matter" referred to a dispute which had arisen as to whether the pursuer had or had not properly accounted for an alleged deficiency in the pecuniary returns from milk sold by him for the defenders and the price of which he had collected. Bell was a foreman in the service of the defenders, though it appears from the record that John Willis, another foreman, was the foreman in whose department the pursuer was employed. In any view, it may be assumed that John Bell and the pursuer were fellow servants. In this state of matters John Bell called on the pursuer on Sunday 12th June, and is alleged to have uttered the words above quoted.

It will be noticed that the preface to the alleged slanderous words was in these terms—"I'll give you a piece of advice." That is not an expression which would be used by a man meaning to slander another. He then goes on to say—"If you are wise you will turn out to work, because I have been instructed by Mr Watson to place the matter in the hands of the police." It is to be noted here, in the first place, that it is not said that he had been instructed by Mr Watson to make a charge against the pursuer, but only to place the matter, in which several people were implicated, including the pursuer's predecessor in the defenders' service, in the hands of the police, presumably for investigation. But putting that aside, I think the important matter is that Bell does not in these words make any charge against the pursuer. All he states is that he had been instructed by Mr Watson to place the matter in the hands of the police. Now it is not said that this statement was untrue, and that being so, it must be assumed on the pleadings of the pursuer that it was true, although the pursuer explains in an addition made after the printing of the record that Bell had been told by Watson to say

something different. That addition is wholly irrelevant in considering whether Bell's words, which are all that we have to deal with at this stage, were or were not by themselves slanderous. We are only concerned with what Bell did say, and not with what Watson may have told him to say. Accordingly the slanderous statement resolves itself into this, that Bell came to inform the pursuer of the instructions Mr Watson had given him in order that he (the pursuer) might take the course he thought best in the circumstances. I must say I cannot regard the words used as containing a slander at all; they merely state a fact as the ground for giving the pursuer a piece of advice. It would just be as absurd for a person to be charged with slander who, having heard that a criminal charge had been made to the police against a neighbour, came to tell him so in order that he might take such steps as he thought necessary to meet the charge. In short, I cannot view the words complained of as slanderous at all. It would be putting a malevolent and forced construction on them to say in the words of the innuendo that Bell meant thereby to represent that the pursuer had been guilty of dishonestly appropriating money collected by him on behalf of the defenders. I think it is apparent on the face of the words themselves that Bell never meant anything of the kind, and that all he meant was to inform the pursuer of the steps that Mr Watson had taken, and to advise him to turn out to work, the obvious meaning of that being that he would place himself at a disadvantage and be practically admitting himself to be in the wrong if he left his work.

As was remarked in an English case, if there are a number of good interpretations that can be put upon the language used, it is not reasonable, apart from extrinsic facts, that the only bad one should be seized upon to give it a defamatory sense.

I may repeat that in considering this question of Bell's liability for a slander, it is perfectly irrelevant to say that he had been told by Watson to say something other than he did say.

I may refer by way of illustration to the case of *Menzies v. Macdonald*, 1 F. 977, where it was attempted to make a chief constable liable in an action for damages for slander, but where it was held that it was not really anything more than a communication made to the pursuer in that case by way of a warning, just as here the words used were on the face of them intended for nothing else than a piece of advice.

But I think it is right that I should deal with the further question whether, assuming the words used to have been slanderous in the mouth of Bell, the defenders can be held responsible for these words.

The question of the liability of employers for the slanders of their agents or servants has recently been considered in several cases in Scotland. One of the first of these was the case of *Cameron v. Yeats*, 1 F. 456.

That was a case of written slander, and the case of *Eprile v. The Caledonian Railway*, 6 S.L.T. 65, where a company were held not liable for the alleged slander of their servants.

The next case was that of *Agnew v. The British Legal Life Assurance Company*, 8 F. 422, which came before me in the Outer House, and was subsequently considered by the Inner House. In that case I said this—"I take it to be the sound rule that it is the person who utters or writes the defamatory matter who is alone responsible for it, and that it is only in very special circumstances that the principal may be held responsible for the language of his agent." I repeated this in the case of *Riddell v. Glasgow Corporation*, 1910 S.C. 693, and now adhere to it.

Two cases of verbal slander, however, were founded on by the pursuer, both decided in this Division. One was the case of *Finburgh v. Moss's Empires Limited*, 1908 S.C. 928, and the above-quoted case of *Riddell v. Glasgow Corporation*. These cases though coming under the category of slander were both peculiar in this respect, that they both arose out of mistakes by the servants of the defenders in the direct course of their employment. In *Finburgh's* case the servants of the owners of a theatre mistook a respectable woman for a notorious prostitute who had previously been put out of the same theatre, and they stated that she was a person of that character within the hearing of her husband and others. And again in the case of *Riddell* a collector of rates for the Corporation of the City of Glasgow made the mistake of supposing that the pursuer there had tampered with one of the Corporation receipts, and when she denied it he still continued to accuse her of it, and in point of fact assaulted her. In neither of these cases was there any possibility of a question but that the so-called slander, which really amounted to a personal verbal attack upon the pursuer, was uttered directly in connection with their duty to their employers. I must say I considered *Riddell's* case to be a very narrow one, but on the whole I thought that it was a case in which the Corporation should be held liable for the mistake and the consequent slander by their servant.

The present case presents a very different *species facti* from either of these. The Lord Ordinary, without any details as to what the powers and duties of the manager of this Dairy Company were, has held that it was within his duty and scope of his authority to endeavour to intimidate a servant into remaining in the employment of the defenders under a threat that if he did not do so a certain dispute that was pending between them as regarded accounting for money would be placed in the hands of the police. I cannot agree with this. If the defenders' manager believed that the pursuer had been guilty of embezzlement or theft his duty to the company was to dismiss him, and not to retain him in the service of the company. If, on the other hand, he did not believe that he

had been guilty at all it certainly was contrary to his duty to the company to make what he knew to be an unfounded threat, based on what he knew to be a false charge, of handing him over to the police if he did not return to work. There is a third supposition possible, but it is not put forward by the pursuer as it would be fatal to his case, that all the manager intended was to report the matter to the police in order that they might investigate it. But if this is what he meant it was as little within his duty to his employers to do so as in the other two cases supposed, because the police are not the proper parties to investigate a case of accounting such as this evidently was; and further, I do not think that a manager of a company such as this was entitled, without consulting the directors of the company, to institute legal proceedings of any kind against one of their employees—whether civil or criminal—at all events in circumstances such as we have here. Of course if he had seen an employee of the company snatch money out of a desk and run off with it, he would then have been entitled to raise a hue and cry and call in the police, but it is clear that no case approximating to that is here presented.

So far regarding Watson. But when we come to consider the case of John Bell, through whom alone on the record and issue the defenders are sought to be made liable, the pursuers are in this insuperable difficulty, as it seems to me, that they are suing upon slanderous expressions different from those which on their own averments Bell was instructed by Watson, who, as they maintain, was acting on the defenders' behalf, to use to the pursuer. Accordingly the expressions complained of were used by Bell not in pursuance of but contrary to the instructions of Watson, who it is said in this matter represented the defenders.

But apart from this, and assuming that Bell's language could reasonably bear the innuendo put on it by the pursuer, and that it was uttered in pursuance of Watson's instructions, it was as little within the scope of Bell's authority or his duty to the defenders, as it was in Watson's case, to threaten the pursuer with a criminal charge in order to intimidate him into remaining in the defenders' service, and that for the reasons given in regard to Watson.

On the whole of this question I am of opinion that no circumstances have been set forth relevant or sufficient to make the defenders responsible for the slander alleged to have been uttered by their servant John Bell. In short, we have not here the very special circumstances which I think would require to be alleged and proved before holding a company or other employer liable for the slander of their servant.

LORD DUNDAS—I retain the impression I had formed at the conclusion of the debate, viz., that this action ought to be thrown out. I doubt if the words said to have been used are slanderous at all. But assuming them to be so I do not think it is

relevantly averred that the defenders slandered the pursuer. I consider that the doctrine of vicarious liability for verbal slander is applicable only within very narrow limits, and that the Court should jealously guard against any undue extension of these. Lord Ardwall's observations as Lord Ordinary in *Agnew* (8 F. at p. 425, repeated in *Riddell*, 1910 S.C. at p. 699) are, to my thinking, very sound and salutary.

LORD JUSTICE-CLERK—I concur without any reservation in the opinion which Lord Ardwall has delivered. I think it admirably sets forth what is the law in such cases.

The Court sustained the first plea-in-law for the defenders and dismissed the action

Counsel for the Pursuer (Respondent)—G. Watt, K.C. — MacRobert. Agent—A. W. Lowe, Solicitor.

Counsel for the Defenders (Reclaimers)—Murray, K.C. — C. H. Brown. Agents—Cairns, M'Intosh & Morton, W.S.

Thursday, January 26.

SECOND DIVISION.

[Lord Cullen, Ordinary.]

M'MANNING v. EASTON GIBB & SON,
LIMITED.

Reparation—Negligence—Master and Servant—Common Law—Relevancy—Defective System.

A workman was employed in the superintendence of a travelling steam crane which ran on rails, and was used for transporting timber from one end of a woodyard to the other. While endeavouring to steady some timber which the crane was carrying he was injured by being crushed between the crane and the stopblock at the end of the rails. In an action of damages at common law he averred that the accident was caused by the fault of his employers in having too few men to work the crane, and especially by the want of a banksman, who, he averred, was invariably employed to scotch such cranes. *Held* (rev. judgment of Lord Cullen, Ordinary) that the action was irrelevant in respect that there was no sufficient averment of the way in which, or the time when, the banksman could have acted so as to avoid the accident.

Benjamin Patrick M'Manning, labourer, Dunfermline, raised an action against Easton Gibb & Son, Limited, for decree for £250 as damages for personal injury received by him while in the defenders' employment on 22nd June 1910.

The pursuer averred that from January 1910 onwards he was employed as ganger-man or leading hand in the defenders' woodyard. His duties included, *inter alia*,

“the taking and booking of orders for timber, superintendence of the unloading, cutting, and sending out of timber, and the superintendence of a travelling steam crane.” It was also his duty to assist in working the crane, which was used for the transport of timber from one part of the yard to another. He averred further—“(Cond. 3) On or about the morning of 22nd June 1910 the said crane was being used for the purpose of transporting eight timbers for the use of a number of carpenters who were in the employment of the defenders, and were working near the end of the rails on which the said crane runs. Four of these timbers were about 14 to 16 feet long, and the other four were about 27 to 30 feet long. They were suspended from said crane by means of a sling chain. The said eight timbers were square at one end, and as they were heavier at that end they were slung round nearer the square end. When the said crane comes within about 4 or 5 feet of the stopblock, which is placed at the end of the rails to prevent the crane going off, the said timbers, owing to the length of the long timbers, slipped out of position and hung out of position on the chain. Owing to the change of positions the said timbers threatened to fall upon and cause serious injury to the said carpenters, and the pursuer, in accordance with his duty to and in the interests of the defenders, went forward to the end of said timbers for the purpose of steadying them, so as to prevent them doing any harm. While the pursuer was so engaged the weight of the timber dragged the pursuer in front of said crane, which ran forward and jammed the pursuer against the stopblock at the end of the line. . . . (Cond. 4) The said accident was due to the fault and negligence of the defenders in respect that *the said travelling crane was not fitted with a proper brake, and that the defenders worked the said crane with an inadequate and insufficient staff of men. Travelling cranes are invariably fitted with brakes by means of which their motion may be arrested at any time when required. Had the said crane been fitted with such a brake it could immediately have been stopped when the slipping of the said timbers occurred, and the accident to the pursuer would then have been avoided. Further, said crane was systematically worked by defenders with the jib in front at the part of the works where said accident occurred, and in this position the craneman was unable to see in front of him when the crane was travelling, owing to the construction of the boiler and other machinery of said crane. In these circumstances it was all the more necessary to have a proper and sufficient staff of men working the said crane, but the defenders systematically worked the said crane with an inadequate staff. The proper number of men to work a crane of that description is four, viz., a driver, a banksman, whose duty it is to direct and signal the driver and to scotch the crane, i.e., to fasten and remove from the front of the crane a moveable stopblock by means of which the*