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 gangerman 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

advance of the crane can be stopped whenever necessary, a layer on and an assistant, whose duties are to load and unload the crane and steady the timbers when the crane is travelling. The defenders, however, worked the said crane with only two men, viz., a driver and a layer on; [had there been a banksman as there ought to have been] *to have been* in accordance with invariable practice in working such cranes, *a banksman* to scotch the said crane, when it became necessary to stop it, the accident to the pursuer would have been avoided. The pursuer made repeated complaints to the defenders of the inadequacy of the staff engaged in working said crane, but nothing was done by the defenders."

[The words in italics were deleted, and those underlined were added, by amendment in the Outer House.]

The defenders denied liability and, *inter alia*, pleaded—"(1) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

The Lord Ordinary (CULLEN) on 29th November 1910 approved of an issue for the trial of the cause.

The defenders reclaimed, and argued—The action was irrelevant. The ground of fault alleged was the absence of a banksman to scotch the crane when necessary. But pursuer failed to aver how the banksman could have prevented the accident or at what point of time he could intervene. The absence of the banksman was not connected on record with the accident. The case came very near the maxim *volenti non fit injuria*, because pursuer was not a mere workman but a superintendent, and averred that he made complaints.

Argued for the pursuer—There was a sufficient specification on record. It was clear from the averments in Cond. 3 that a banksman could have prevented the accident, and that the time at which he could have done so was when the pursuer was dragged in front of the crane.

LORD SALVESEN—In this case the Lord Ordinary has adjusted issues for the trial of the cause, and has thus affirmed the relevancy of the pursuer's case. He has, however, not given us an opportunity of considering his reasons for so deciding, as no opinion was delivered in explanation of the interlocutor pronounced, and we are therefore left without any guidance beyond this, that he has decided in favour of the pursuer.

After full consideration I have come to be of opinion that the pursuer has not stated a relevant case. His averments, shortly stated, are that he had the superintendence of a travelling steam crane run on rails laid in the woodyard of the defenders, and used for the purpose of transporting timber from one part of the yard to another; that while the crane was being so used and had approached within 4 or 5 feet of the stop-block—by which it is brought to a stand—the timbers which were being transported slipped out of position and hung out of position in the chains, and that the pursuer met with his accident when he had gone to the end of the timbers for the purpose of steadying them, as it was his duty to do. The ground of fault alleged is that the crane was being worked with too few men, and in particular that there was no banksman, whose duty it is to direct and signal the driver and to "scotch" the crane, that is, to fasten and remove from the front of the crane a moveable stop-block by means of which the advance of the crane can be arrested whenever necessary. It is then alleged, in general terms, that had there been a banksman the accident to the pursuer would have been avoided.

Now it appears from the pursuer's own averments that when he left the crane in order to steady the timbers the crane was only 4 or 5 feet from the stop-block, and however slow the rate of progress at which the crane was travelling may have been it is obvious that a very short interval of time would elapse until the crane itself reached the stop-blocks. The suggestion is that sometime before it was reached the banksman might have been able to apply the moveable stop-block in front of the crane and so arrest its progress before it reached the stop-block, the contact between which and the crane caused the accident to the pursuer. On the face of it this seems so improbable that I think it was necessary for the pursuer to aver in what way the banksman should have acted so as to have avoided the accident and what amount of time was available for him to have discovered the pursuer's danger and to have enabled him to stop the crane by placing the moveable stop-block in front of it. There is no averment whatever on this subject beyond the general one to which I have referred, and that appears to me to be wholly insufficient in the circumstances of this case. It is not to be left out of view that the pursuer was the superintendent of the travelling crane and could have directed it to be stopped by the driver before proceeding to adjust the timbers, in which case the accident of which he complains could obviously not have occurred. To suggest that an inferior servant should have taken some precaution which did not occur to the pursuer himself seems at first sight to be extremely far fetched, and cannot, I think, be accepted on the averments of the pursuer as they stand.

I am accordingly of opinion that the action should be dismissed as irrelevant, and I have very little doubt that our doing so will be in the interest of the pursuer himself, as he has an undoubted claim under the Workmen's Compensation Act, under which I think he would have been well advised to seek his remedy.

The LORD JUSTICE-CLERK and LORD ARDWALL concurred.

LORD DUNDAS was absent.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for Pursuer (Respondent)—Anderson, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders (Appellants)—Munro, K.C.—Mair. Agent—D. R. Tullo, S.S.C.

Thursday, January 26.

SECOND DIVISION.

DICK'S TRUSTEES *v.* DICK.

Succession—Will—Construction—Expenses of Education.

A testator directed his trustees "to pay the expenses necessary for the education of my children; and it is my desire that my sons A. and J. should have a university education suitable to prepare them for whatever profession they may adopt."

A had graduated as a Bachelor of Medicine, and was in practice near Leeds. He was studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. He called upon the trustees to defray his expenses in connection with the Public Health degree.

Held that the trustees were not bound to pay these expenses, in respect that they were not incurred by A in preparing himself for the profession which he had adopted.

On 15th March 1910 Mrs Annie Buchanan Thomson or Dick and others, the testamentary trustees of the late John Dick, who resided at West Knowe, Airdrie, and died on 16th July 1901, *first parties;* and Alexander Dick, M.B., residing at Birstall, near Leeds, a son of the testator, *second party*, brought a Special Case to expiscate the testator's trust-disposition.

The testator, *inter alia*, directed his trustees—"(*Third*) To pay the expenses necessary for the education of my children; and it is my desire that my sons Alexander and James should have a university education suitable to prepare them for whatever profession they may adopt."

The Case stated, *inter alia*—"The elder son Alexander is a physician near Leeds, and was married on 5th October 1908. . . . The elder son is at present studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. This degree will be of advantage to him in his profession, and he has called on the first parties to defray the expenses connected therewith under the powers conferred on them by the third purpose. The first parties feel doubtful as to whether it is within their power to pay these. . . . The first parties *maintain* . . . that they are not entitled, under the third purpose of the settlement, to make any payments on behalf of a son for education after such son has entered the profession adopted by him, and that accordingly they are not entitled to pay on behalf of the second party the expenses connected with his Public Health degree. The second party maintains that he . . . is entitled to the expenses incurred by him in connection with his Public Health degree. . . ."

The following *question of law* was, *inter alia*, submitted—"Are the first parties bound to pay on behalf of the second party the expenses connected with his Public Health degree?"

Argued for first parties—The trustees were not bound to pay the expenses of the second party in obtaining this diploma. He was only entitled to the expenses of preparation for his profession. It was not part of his education for his profession to get this diploma, which was a post-professional qualification. He could not enter for it until he had been a full-fledged practitioner for a year.

Argued for the second party—Under his father's will he was entitled to such sums as were reasonably necessary to complete his education. This Public Health degree was of importance in enabling him to qualify himself for his profession. It was the natural termination of his education as a doctor to take this qualification. It was necessary in order that he might become a full-fledged doctor in public health.

At advising—

LORD JUSTICE-CLERK—Lord Dundas has prepared a judgment in this case, which is the judgment of the Court.

LORD DUNDAS—[*Read by the Lord Justice-Clerk*]—[*After dealing with questions as to which the case is not reported*]—. . . . The third and last question in the case does not appear to me to be attended with any difficulty. By the third purpose of his settlement Mr Dick directed his trustees to pay the expenses necessary for the education of his children, and added—"It is my desire that my sons Alexander and James should have a university education suitable to prepare them for whatever profession they may adopt." The case informs us that Alexander, who is a passed physician, "is at present studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. This degree will be of advantage to him in his profession, and he has called on the first parties to defray the expenses connected therewith under the powers conferred on them by the third purpose." The question put to us is whether or not the trustees are bound to comply with this request. I am of opinion that they are not. It seems to me that Alexander Dick has got beyond the stage of preparation for the profession of his adoption, and that the very conditions upon which alone he could enter for this diploma demonstrate that he is thereby excluded from the