through his department of the state, because no individual is named, and the expression "Minister of Marine" is at once defined as meaning the Government of Spain. It undoubtedly was a competent way of making a contract which should be effectual to the Spanish Government to make it through the Minister of Marine; but authority to make a contract does not necessarily imply that the agent who contracts on behalf of a disclosed principal is entitled to sue upon the contract. I cannot therefore quite agree with the Lord Ordinary's view—"If the head of a government department is authorised by the law and constitution of the state to enter into a contract relating to his department which shall be binding upon the state, and if he does enter into such a contract I fail to see any good reason why he should not have a title to enforce it." This is too broadly stated. In each case it depends on the terms of the contract, but the general rule is that the disclosed principal must sue.

II. If, then, the true principal in these contracts is the Government of Spain, the form of Government being monarchical, the King of Spain is the proper person to sue. The public property of the State is held to be vested in him individually, and according to international law he alone is recognised in the courts of this country—*United States of America* v. *Wagner*, L.R., 2 Ch. App. 582. It is said that he is entitled to sue by an authorised representative. I assume that in Spain he can do so, and that in matters relating to war vessels the Minister of Marine in Madrid, by law and practice in Spain, directly represents the Government. But that is not the question. If a foreign sovereign desires to bring an action in this country, he must do so according to the law and practice of the *forum;* and the validity of the instance must be judged of just as if the question arose between any two parties who are subject to the jurisdiction of the Scottish courts and as if no privilege of exterritoriality existed. Now, in this country, as in England, in judicial proceedings the person having the real interest in the suit must sue in his own name, and he cannot delegate the right to sue to an agent or representative who has no interest in the suit.

No doubt if not resident in this country he can grant a factory and commission authorising another to raise an action for him. But the name of the principal must appear on the face of the writ, and the action must be raised in his name, although the name of the factor may be conjoined. This of course is without prejudice to what I have already noted, viz., that an agent or factor may specially contract for right to sue in his own name, or the contract may be so framed as to involve this, and also to involve the personal liability of the agent.

As to the general law, I may refer to *Levy* v. *Thomson*, *Bennett* v. *Inveresk Paper Company*, 18 R. 975, 28 S.L.R. 744; and to Pollock on Contracts, 5th ed., p. 96, and Evans on Principal and Agent, p. 453. In *United States of America* v. *Wagner* Lord Cairns says (L.R., 2 Ch. App. 595)—"I apprehend that the only rule is that the person, state, or corporation which has the interest must be the plaintiff."

III. If I am right in this, the only other question is whether the subsequent ratification of these proceedings by the King of Spain cures the defect in the instance. It is settled by the case of *Hislop* that it does not. Lord Watson says (8 R. (H.L.) 105),—"I know of no authority for holding that according to the law or practice of Scotland a person who has no right or title whatever can sue an action provided he obtain the consent and concurrence of the party to whom alone such a right or title belongs." And his Lordship is equally clear that it is incompetent to introduce a new party as pursuer. As I have said, these rules of practice and procedure are binding upon a foreign sovereign who sues in our courts.

Therefore although I have some doubt upon the first question, I agree that the first plea-in-law for the defenders should be sustained and the action dismissed.

The Court recalled the interlocutor reclaimed against, sustained the first plea-in-law for the defenders, and dismissed the action.

Counsel for the Pursuers and Respondents —Dundas, K.C. — Blackburn. Agents — Macandrew, Wright, & Murray, W.S.

Counsel for the Defenders and Reclaimers —Campbell, K.C.— Tait. Agents — Forrester & Davidson, W.S.

Tuesday, December 10.

FIRST DIVISION.

[Railway Commissioners.

ALEXANDER COWAN & SONS *v.* NORTH BRITISH RAILWAY COMPANY.

Railway — Railway and Canal Commissioners — Jurisdiction—Appeal — Rebate on Sidings Rate—Station Accommodation —Special Services at Trader's Siding—Railway Rates and Charges (No. 25) Order Confirmation Act 1892 (55 *and* 56 *Vict. c. lxiii.)—Railway and Canal Traffic Act* 1894 (57 *and* 58 *Vict c.* 54), *sec.* 4.

In an application to the Court of the Railway and Canal Commission under the Railway and Canal Traffic Act 1894, section 4, by a trader who received coal at a private siding, for a rebate from a siding-to-siding rate, upon the ground that the siding-to-siding rate exceeded the maximum rate for conveyance, and was the same in amount as the siding-to-station rate charged to a neighbouring station, the railway company maintained in defence that the siding-to-siding rate in so far as in

excess of the conveyance maximum was not charged for station terminal services but was a reasonable charge made for services rendered at both ends of the journey. *Held* on appeal (1) that it was not a condition-precedent to the railway company lawfully making such a charge at a private siding that its reasonableness should have been determined by an arbitrator in an application under the Railway Rates and Charges (No. 25) Order Confirmation Act 1892, section 5; (2) that the Commissioners had jurisdiction under the Traffic Act of 1894, for the purpose of determining whether the rebate claimed should be allowed, to determine whether the charge made by the railway company for services at the sidings was reasonable; and (3) that the determinations of the Commissioners upon the questions raised by the defence were determinations upon questions of fact, and consequently not subject to appeal.

This was an appeal from an order of the Railway and Canal Commissioners at the instance of Alexander Cowan & Sons, Limited, papermakers, Penicuik, applicants and appellants, against the North British Railway Company, respondents.

The following statement of the facts upon which the application was founded is taken from the opinion of Sir Frederick Peel:—"Messrs Cowan are papermakers carrying on business in the Penicuik district, and have in connection with one of their mills a siding called Low Mill siding. This siding forms a junction with the Penicuik Railway, now North British, 22 chains north of Penicuik Station, and was constructed by Messrs Cowan on their own land and at their own expense at the same time as the Penicuik Railway, and it has been in use ever since that railway was opened in 1872. Its incoming traffic consists chiefly of coal from Arniston and other collieries, and of esparto grass and rags from Granton, Leith, and other places, and the total yearly tonnage is very considerable, that of coal alone exceeding 30,000 tons. In November 1899 Messrs Cowan claimed to have a rebate off the company's coal rate, on the ground that it included the Penicuik terminal for station accommodation, or that it did not differ in amount from the coal rate to the station, although in the one case station accommodation was provided, and in the other was not." . . .

On 15th December 1899 Messrs Cowan & Sons presented this application to the Railway Commissioners, in which they averred as follows:—"(2) The applicants receive at their Low Mill siding large quantities of coal for use in their works. These coals are received from Arniston, Tranent, Carberry, Loanhead, and Whitehill on the respondents' line, and also from other places on their line. Said coal is received and unloaded by the applicants entirely on their Low Mill siding. The applicants' coal traffic is dealt with by the respondents as regards delivery thereof in exactly the same way as all the applicants' other traffic is dealt with. The applicants do not ask and do not receive any station accommodation for said coal traffic. (3) The respondents, notwithstanding that they are not required by the applicants to provide any accommodation for their coal at Penicuik Station, charge the applicants rates for coal which are of the same amount as they charge traders at Penicuik Station who receive accommodation there. (4) These rates include a charge for station terminal, and the respondents have refused and still refuse to make any allowance or rebate to the applicants in respect thereof. (5) These charges have since 31st December 1892 included a charge for station terminal at the Penicuik end of the journey, and have to that extent been illegal as against the applicants. The said charges for said station terminal, amounting as after mentioned to £2500, have been paid since 31st December 1892 under protest. (6) The applicants have suffered loss or damage by said illegal charges. The amount of coal received by them from 31st December 1892 to 30th September 1899, is 197,552 tons 19½ cwt. The applicants estimate the said loss and damage in respect of said illegal charges on the above tonnage at £2500."

The applicants applied to the Commissioners "(1) To determine what are the reasonable or just rebates to be made by the respondents from the rates charged by them to the applicants upon coal traffic passing to the private siding of the applicants, in respect that the respondents do not require and will not be required to provide station accommodation or perform terminal services. (2) For an order directing the respondents to repay the sum of £2500 to the applicants in respect of the illegal charges above mentioned. (3) Alternatively for an order directing the respondents to pay the sum of £2500 to the applicants as damages for overcharges on their coal traffic since 31st December 1892."

The respondents lodged answers, in which they averred—"(2) It is admitted that the applicants receive coal at their Low Mill siding from Arniston, Tranent, Carberry, Loanhead (Burghlee Colliery), and Whitehill on the respondents' railway, and that for such coal the respondents charge rates of the same amount as those that are in operation to Penicuik Station. (3) It is denied that the rates for the coal in question include a charge for station terminal. These rates include the rate for conveyance, and a charge in addition for services at the colliery end, and services at the Penicuik end, including the use of the Railway Company's waggons both at the colliery sidings or branches and on the applicants' siding. The respondents make a special stop of their trains at Low Mill siding with the applicants' coal, which they are not bound to do, and for which if it is done they are entitled to be paid a reasonable sum."

The Railway and Canal Traffic Act 1894 enacts—section 4—"Whenever merchandise is received or delivered by a railway

company at any siding or branch railway not belonging to the company, and a dispute arises between the railway company and the consignor or consignee of such merchandise as to any allowance or rebate to be made from the rates charged to such consignor or consignee in respect that the railway company does not provide station accommodation or perform terminal services, the Railway and Canal Commissioners shall have jurisdiction to hear and determine such dispute, and to determine what, if any, is a reasonable and just allowance or rebate."

The Railway Rates and Charges (No. 25) Order Confirmation Act 1892 enacts—section 5—that "the company may charge for the services hereunder mentioned, or any of them . . . a reasonable sum by way of addition to the tonnage rate. Any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party... (1) Services rendered by the company at or in connection with sidings not belonging to the company."

Proof was allowed and led.

The facts established, so far as not narrated *supra*, appear sufficiently from the judgments.

The Railway Commissioners on 6th August 1900 pronounced the following order: "Now therefore, after hearing counsel and witnesses for the applicants and for the Railway Company, this Court doth find and determine that the applicants are not entitled to a rebate or allowance off the rates charged to them by the Railway Company for the carriage of coal to the said Low Mill siding, in respect of the Railway Company not providing station accommodation for the applicants at Low Mill siding, and this Court doth therefore order that the said application be, and the same is hereby dismissed."

SIR F. PEEL—[*After stating the facts ut supra, and dealing with a different question the appeal in which is reported voce Cowan & Sons* v. *North British Railway Company, March* 19, 1901, 3 *F.* 677, 38 *S.L.R. p.* 514]—"Messrs Cowan's other application, referred to above, is for a rebate from the rates they have been charged on coal delivered at their siding in respect that station accommodation has not been provided. This is a different issue from that with which the former case between the same parties was concerned. There it was a question under section 5 of the North British Rates and Charges Act 1892, of what it would be proper for the Railway Company to charge in addition to the tonnage rate for alleged special services at a siding not their own; here Messrs Cowan claim, under section 4 of the Traffic Act 1894, to have a deduction from their rate in consideration of their not using a station. . . . Now, the coal for Low Mill siding is carried from different collieries, but the Arniston colliery sends the largest quantity, and it appears that the rate from that colliery to the siding, where station accommodation is not provided, is the same as to Penicuik Station where it is provided. It also appears that the respondents revised their coal rates on the passing of their Rates and Charges Act 1892, and that the principle on which the rates were revised and made up was to charge the maximum for conveyance that their Act allows, and to add to this 2d. for terminals, or services at both ends, at or in connection with sidings not belonging to the company. More than two-thirds of their gross coal traffic being siding-to-siding traffic, it was for this traffic in particular that they fixed the rates, but the rates so fixed were also applicable to their other or siding-to-station traffic, where such description of traffic was comparatively small and unimportant. The 2d. is, they state, much below the cost of siding services, which they estimate to cost them 3d. a ton at the colliery or forwarding end, and 3½d. at the delivery end, and as a separate charge the amount is low, and viewed apart from its equalling the station charge, could scarcely be disputed. But 2d. is also all that is extra to conveyance in the siding-to-station rate, and like the charge of 2d. for the services at the two ends in the siding-to-siding rate, is partly for accommodation at Penicuik Station, and partly for services at the colliery end. But the portion applicable to the station would not exceed 1d., and 1d. per ton therefore is the maximum sum available for allowance as rebate, and if the question as to a rebate turned only upon what it should be actually put at, we might, though we have no jurisdiction to determine the payment for services in connection with sidings, require to consider whether a reasonable charge for such work would not absorb a good portion of the sum to which a rebate is limited. But, on the whole, I think no sufficient ground has been shown for any rebate whatever being allowed. There is no coal delivered at the station which competes with coal consigned to Low Mill siding, and the station accommodation therefore is not an undue preference warranting a lower rate for the siding under the Traffic Act 1854. Nor is it, under the circumstances, a ground for rebate under the Act of 1894. The reason of the station and siding rates not differing in amount is that the quantity using the station is so small that the company did not think it worth while to have a rate of carriage for it differing from the siding rate. They had fixed a rate for the sidings where the coal traffic is very large, and rather than have a separate rate for a station traffic out of all proportion smaller they made the siding rate applicable to it. Messrs Cowan's coal traffic is about 97 per cent. of the whole coal traffic to Penicuik, including their own. In 1897 the tonnage to the station was 685 tons, and to Messrs Cowan's siding 30,506 tons. The small tonnage dealt with at the station has no doubt station accommodation for a rate no higher than the rate for coal carried to the siding, but for the reasons above stated I do not think that this furnishes a ground for diminishing the charge for coal to the siding or granting a rebate from it.

VISCOUNT COBHAM—The applicants in this case, Messrs Cowan, owners of the Low Mill sidings on the North British Railway, ask that a rebate should be allowed them under section 4 of the Traffic Act of 1894 from the rates charged for coal consigned to their sidings from various collieries in the district. The onus of proving their claim lies upon them, and accordingly they bring evidence to prove that these rates, although siding-to-siding rates, include a charge for station accommodation. The fact upon which they mainly rely to establish their contention is the existence of what has been in previous cases called a comparable rate—that is to say, a rate in which there is a terminal element, but which in other respects is comparable with the rate in dispute. The Penicuik Station rate for coal quoted for comparison in this case, except in one important particular, fulfils these conditions. The traffic in respect of which it is charged is collected from the same collieries, it is conveyed practically the same distance to a station near the sidings, and except that station accommodation is provided, it has the benefit of the same services as the coal delivered at Messrs Cowan's sidings. The rates themselves are identical, and if we follow the principle laid down in *Tennant's* case (10 R. and C. Cases 194), we must assume that the station rates include some charge for the station accommodation provided. It only remained for the coal traffic at the station to bear some reasonable proportion to that at the siding, and the applicants would have established by means of this comparison a very strong presumption in support of their case. But in point of fact the coal traffic at Penicuik Station is wholly insignificant, having been between January 1893 and September 1899 about 3 per cent. of the total coal traffic at the station and siding combined, or an average of about 1000 tons in each year. The station rate has been therefore little more than a paper rate, and although it would have saved much trouble if the Railway Company had fixed different rates for the station and the sidings, I think their explanation may be accepted, that in view of the insignificance of the station coal traffic they had not thought it worth while to make any distinction. At anyrate, I cannot regard rates under which so wholly disproportionate an amount of traffic is carried as "comparable" rates for the purposes of this inquiry.

It is open, however, to the applicants to prove their claim by other evidence than that of a comparable rate. They have failed in their claim to a 2½d. rebate on the proportional principle, but they say that, even assuming that the coal rates are made up of the maximum conveyance rate, and 2d. added for services at both ends (and I think that this was sufficiently proved), a rebate of 1d. should be allowed from the added 2d. The penny, they say, although this has not been admitted or I think proved, is charged for services at the Low Mill sidings, and regard being had to the decision in the previous case, this is said to be wrongly charged, and a corresponding rebate is claimed. It may be questioned whether a rebate from a rate that is above the maximum can be claimed under section 4 of the Act of 1894, but however this may be, I think it as well to say that, while giving full effect to our previous decision, and without quantifying the value of each service, I am satisfied by the evidence before us that 2d. cannot be more than the company are reasonably entitled to ask in return for what they do for the applicants' traffic, and that there is no ground for asking for any rebate from it. As regards the other points raised, and also the second application of Messrs Cowan, I entirely agree with the views of my colleagues.

LORD STORMONTH DARLING—I agree with my colleagues in their conclusion on the question of rebate, because I do not think that the applicants have shown any just cause for granting one, and I say so mainly because the insignificant quantity of coal delivered at Penicuik Station seems to me to deprive the rate to that station of all the importance which in ordinary circumstances would attach to it as a "comparable rate."

Messrs Cowan & Company appealed, and argued—The respondents rendered no terminal services for which they were entitled to charge anything more than the maximum rate for conveyance. It had already been decided that the services performed by them at the siding were nothing save for conveyance, which only ended when they put the trucks on to the siding—*Cowan & Sons* v. *North British Railway Company*, January 26, 1898, 10 R. and C. Cases 169. There was nothing to distinguish coal from the other traffic dealt with by that order, it having been excluded only on a technical objection as to whether it fell within the expression "goods" used in the application. The same principle must necessarily be applied to coals—*Lancashire and Yorkshire Railway Company* v. *Gidlow* [1875], 7 E. & I. App. 517. But where something more than the maximum rate was charged, and there were no terminal services in respect of which charges could be made, the extra amount must be set down to siding services for which, as had been shown, the respondents were not entitled to charge. Terminal charges were dealt with by section 4 of the Railway and Canal Traffic Act 1894, and could not be held to apply to siding charges. (2) But in any case the Commissioners had exceeded their jurisdiction in determining that the respondents were entitled to charge for their services at the siding, for that question was one which was by statute relegated to the consideration of an arbiter appointed by the Board of Trade, and the Commissioners had no jurisdiction to decide it—Railway Rates and Charges Confirmation Act 1892, sec. 5. Alternatively it was a condition-precedent to the right of the respondents to charge for services that they should first have obtained the determination of the arbiter that the charge was reasonable. (3) It was competent to examine the Commissioners' opinions to discover their grounds of judg-

ment, and if these were erroneous their order was open to review—*North Eastern Railway Company* v. *North British Railway Company*, December 17, 1897, 25 R. 333, at 346, 35 S.L.R. 282. Sir F. Peel's opinion showed that he had formed the wrong view that where there was no comparable rate a trader was not entitled to rebate. That was only one way of proving his claim. Nor was it necessary for the trader to prove affirmatively that the company were making a terminal charge—*Salt Union, Limited* v. *North Staffordshire Railway Company*, July 12, 1898, 10 R. and C. Cases 179.

Argued for the respondents—Unless the appellants could make out that they were in fact charged for station accommodation which they did not get, they were not entitled to a rebate—Railway and Canal Traffic Act 1894, sec. 4. The Commissioners had decided that there was no case for a rebate, because the appellants were in fact not so charged. That was quite a good *ratio decidendi*, and that was an end of the question—*Salt Union Limited* v. *North Staffordshire Railway Company, supra.* The Commissioners, however, had power to consider all questions affecting the application, and to examine the grounds for their charge alleged by the respondents. They found on doing so that the respondents were performing services at the siding which were advantageous to the appellants, and for which the appellants ought to pay, and were right in setting that off against a claim for rebate—*Corporation of Birmingham, &c.* v. *Midland Railway Company*, April 15, 1896, 9 R. and C. Cases 165. The application had been made by the appellants under section 4 of the Act of 1894, and the jurisdiction exercised by the Commissioners had been precisely in accordance with that section. They had not been asked to determine as arbitrators a difference under section 5 of the Act of 1892, and accordingly the appellants' objection to their jurisdiction was unfounded.

At advising—

Lord Kinnear—We have heard a very able argument for the appellants, but it has not convinced me that the order of the Railway Commissioners is wrong. The application to the Commissioners is presented under section 4 of the Railway and Canal Traffic Act 1894, by which it is provided that "whenever merchandise is received or delivered by a railway company at any siding not belonging to the company, and a dispute arises between the railway company and the consignor or consignee of such merchandise as to any allowance or rebate to be made from the rates charged to such consignor or consignee, in respect that the railway company does not provide station accommodation or perform terminal services, the Railway and Canal Commissioners shall have jurisdiction to hear and determine such dispute and to determine what, if any, is a reasonable and just allowance or rebate." Founding upon this enactment, the applicants aver that they receive at their Low Mill siding, which belongs to them and not to the company, large quantities of coal for use in their works, that these coals come from Arniston, Whitehill, and other places on the respondents' line, and are received and unloaded by the applicants entirely on their Low Mill siding, that the applicants do not ask and do not receive any station accommodation for their coal traffic, that the respondents, however, charged them rates for coal which are of the same amount as they charge at Penicuik, a station at 22 chains' distance from the siding, to traders who receive station accommodation there, that these rates include a station terminal, and that the respondents refuse to make any rebate or allowance in respect thereof.

The complaint therefore is that the applicants have been charged for station accommodation in respect of the traffic to Low Mill siding, and since Low Mill siding is not a station, it follows that if any station charge is included in the rate it ought to be disallowed. But if that be the ground of complaint, the onus of shewing that the rates charged to them do in fact include charges for station accommodation lies beyond question upon the applicants. The strength of their case is that the rate charged to them at their siding is above the maximum conveyance rate, and that exactly the same excess in addition to the maximum is charged at Penicuik Station, where station accommodation is provided. Now, when a railway provides a station it is reasonable to suppose that a charge for such accommodation is included in the rate; and when they charge exactly the same rate at a neighbouring siding, they furnish to the trader a plausible argument that they are trying to charge for station accommodation at the siding also. But that is a bare presumption which may be redargued; and a complaint upon that ground therefore raises, in the first place, a simple question of fact. The Commissioners have inquired into the facts, and they have decided, for very clear and convincing reasons, that upon the facts the appellants' case has failed. They have held that no useful comparison can be made between the Penicuik Station rate and the rate in dispute, because while the rates are identical, the traffic at the station bears no reasonable proportion to the traffic at the siding, the former traffic having been about 3 per cent. and the applicants' traffic 97 per cent. of the whole coal traffic to Penicuik, and they hold that "rates under which so wholly disproportionate a traffic is carried" cannot be regarded as comparable rates for the purpose of the appellants' argument. But they have further found, as a result of the evidence before them, that the rates charged at Penicuik Station were not taken as a model for the charge at the siding, but, on the contrary, that in readjusting their scale of charges after their Act of 1892 the company's officers first fixed the proper rate for coal traffic from siding to siding, because the great bulk of the traffic is so carried, and then adopted the rate so fixed for station traffic, because the amount of

that traffic seemed to be too insignificant to make it worth their while to enter into a separate calculation. They arrived at the siding-to-siding rate by taking the conveyance rate at the maximum, which they were quite entitled to do, and adding 2d. per ton for cost and services at both sidings; and the Commissioners say that this is a low charge, which, were it not for its equalling the station charge, would scarcely have been disputed. Having fixed the siding rate in this way, they took the same rate for the traffic to the station, without distinguishing between the cost to them of station and siding traffic, because the station traffic was too small to justify a more minute and elaborate discrimination. In these circumstances the Commissioners have held that the appellants' case has failed, because while the Railway Company are admittedly charging more than the conveyance rate, they are not charging for station accommodation which they do not provide, but they perform services at the siding which are costly to them and advantageous to the traders, and for which they ought to be paid. They therefore pronounced the order under review, by which they find and determine that the applicants are not entitled to a rebate or allowance of the rates charged to them by the Railway Company for the carriage of coal to Low Mill siding.

In so far as it determines questions of fact we have no power to review this decision; and were it not for a plea to jurisdiction, it would seem to me to involve no other question. The question whether a rate is reasonable or not is just as much a question of fact as whether it is charged for one service or another, or whether services have been rendered. It is a question of which the Railway Commissioners are much better judges than we are. But at all events their judgment is final. The jurisdiction of the Commissioners, however, has been challenged by either party, and that undoubtedly raises a question of law for the determination of this Court.

The point taken by the Railway Company was not, I think, very seriously pressed, and is not probably material to their case, since according to them the order is right whatever view be taken of their objection to the jurisdiction. But since it was stated, I think it right to advert to it, both that it may not be supposed to have been overlooked, and in order to define the limits of our present jurisdiction. It is said that the moment the Commissioners have found that the rates charged do not in fact include station or terminal services, there is an end of the question, and a rebate must at once be disallowed, because a rebate to be allowed "in respect that a railway company does not provide station accommodation or perform terminal services," necessarily implies that such accommodation or such services have been charged for, and therefore when it turns out that they are not charged for, there is no longer any ground for complaint under the section. I do not think we are called upon to consider whether that is the true construction of the statute; or whether on the other hand, the trader who has not received station accommodation or terminal services may not make good his claim for a rebate if he has been called upon to pay any charge which he ought not to be compelled to pay. That is a question on which different opinions have been expressed by judges of high authority, but all that is necessary to decide for the present purpose is that the Railway Company may have a good answer to the application, if they can show that the charge complained of is not made for station accommodation but for services which they render to the trader at his siding, and for which they ought to be paid; and that, on the other hand, if that be maintained, it must in all justice be equally open to the applicant to challenge the new ground of charge so brought forward in answer to his complaint, and to show reason, if he can, why it ought not to be taken into account. I think therefore that the Commissioners were perfectly right in examining the ground of charge alleged by the Railway Company in order to determine whether anything had been done for the traders that could be set off against any claim for a rebate that might arise by reason of no station accommodation having been provided.

The appellants on the other hand maintain that the Railway Commissioners have exceeded their jurisdiction in determining that the company are entitled to charge for their services at the siding, because that is a question which has been committed by statute to the exclusive judgment of a different tribunal. This plea is founded on an Act of Parliament passed in 1892 to confirm a Provisional Order made by the Board of Trade under the Railway and Canal Traffic Act 1888, the fifth section of which provides that the company may charge for certain services, including services rendered at or in connection with sidings not belonging to the company, when rendered to a trader at his request or for his convenience, a reasonable sum by way of addition to the tonnage rate, and that any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party. The point taken upon this enactment was stated in two ways. In the first place, it was said to be a condition-precedent to the right of the company to make a charge for services at a siding, or to bring it under the consideration of the Commissioners, that they should first have obtained the determination of an arbitrator that such charge is reasonable. I think this view is untenable. The enactment is not that the company may charge a sum fixed by an arbitrator, but that they may charge a reasonable sum, and that if any dispute arises, not necessarily as to the reasonableness of the sum, but as to any point that can be raised under the section, it shall be determined by arbitration. The arbitrator is only to be called in when a dispute has arisen, and when occasion arises he may be called in at the instance of either party.

The other form in which the objection was put was, that when the company brought forward their claim to charge for siding services a difference arose which the Commissioners had no power to decide. If this were right, the proper course for the appellants to take was to move the Commissioners to sist the proceeding until the determination of an arbitrator should be obtained. It does not appear from the notes of procedure before us that any such motion was made. But whether the appellants failed to make the motion, or whether it was made and rejected, I am of opinion that the Commissioners were right in deciding the question for themselves, because they have power to determine the whole questions before them, and had no need to call in the aid of any other jurisdiction. It is true that a jurisdiction to determine differences arising under the section in question is conferred upon an arbitrator and not upon the Commissioners, and that a difference as to the liability of a trader to pay the charge in dispute is one of those that might have so arisen. But while the general jurisdiction to determine such questions does not belong to the Commissioners, a special jurisdiction is conferred upon them by the Act of 1894, which is a later statute, to determine questions such as those raised by this application, and, in particular, to determine whether any, and if any, what reasonable allowance or rebate should be made in respect of the company not providing station accommodation. Now, it is a familiar and elementary doctrine that when jurisdiction is conferred to determine specific rights, that necessarily implies jurisdiction to decide every question that must be decided in order to a final and effective determination of such rights. But it is manifest that the Commissioners could not determine the question submitted to them by the appellants without deciding whether the charge for services at the siding ought or ought not to be taken into account. It is impossible to decide what part of a charge it would be reasonable to take off without deciding what part it would be reasonable to leave standing. The prayer of the petition to the Commissioners is to determine what are the reasonable or just rebates to be made from rates charged to the appellants, and I cannot imagine how this is to be done without ascertaining whether the rates charged are as they stand reasonable and just or not. The Commissioners have therefore exercised exactly the jurisdiction which the appellants themselves have invoked, and I think that in this respect the application itself, and the determination of the Commissioners upon it, are founded upon a correct view of the statute. The Commissioners have not determined, and have not been asked to determine, a difference arising under the 5th section of the Provisional Order confirmed in 1892, and that is the only difference which must be referred to arbitration. They have decided a difference under the 4th section of the Act of 1894, and their authority to do so rests upon the express terms of that enactment. For these reasons I am of opinion that the objection taken to the jurisdiction of the Commissioners is unfounded. No other ground has been suggested for holding that the Commissioners have fallen into error in law, and as to all questions of fact the decision is final. The appeal must therefore be dismissed.

The LORD PRESIDENT, LORD ADAM, and LORD M'LAREN concurred.

The Court affirmed the Commissioners' Order and dismissed the appeal.

Counsel for the Appellants—Ure, K.C.—Clyde, K.C. — Horne. Agents — Menzies, Black, & Menzies, W.S.

Counsel for the Respondents—Sol.-Gen. Dickson, K.C.—Grierson. Agent—James Watson, S.S.C.

Tuesday, December 10.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

CALEDONIAN RAILWAY COMPANY *v.* BATHGATE.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *secs.* 1 *and* 7—*—Accident "Arising out of and in the course of" Employment—Employment "About" a Railway—Carter Injured* 315 *yards from Railway Station in consequence of Horse Bolting on Leaving Station.*

A carter in the employment of a contractor, who had a contract with a railway company for the cartage of goods to and from a station belonging to the company, had delivered certain goods there, and was leaving the station for the stables with his horse and lorry, having finished his day's work. Before the back of the lorry was clear of the crossing of the footpath which passed the entrance to the station, his horse bolted, and ultimately ran into a shop 315 yards from the station, with the result that the carter was injured. *Held* that the accident did not occur "on or in or about" a railway within the meaning of the Workmen's Compensation Act 1897, section 7, and consequently that the railway company were not liable in compensation—*diss.* Lord Moncreiff, who held (1) that the accident arose out of and in the course of the workman's employment within the meaning of the Workmen's Compensation Act 1897, section 1; and (2) that it occurred "about" a railway within the meaning of section 7 (1).

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, before the Sheriff-Substitute at Glasgow (BALFOUR), between the Caledonian Railway Company, appellants, and Archibald Bathgate, carter, claimant and respondent.