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.

The facts stated by the Sheriff-Substitute as admitted or proved were as follows:—"(1) That the respondent was a carter with Wordie & Company, contractors, who had a contract with the appellants for the cartage of goods to and from the appellants' station in Buchanan Street, Glasgow. (2) That on 27th October 1900 the respondent had been in accordance with his usual practice collecting goods from various firms in town, and had carted them to the appellants' station and delivered them there. (3) That he was leaving the station with his horse and lorry, when the horse took fright at the gate of the station. (4) That on the occasion in question he had finished his day's work, and was proceeding to the stables when the accident occurred. (5) That the approach to the station from Buchanan Street is by means of a crossing of the footpath of Buchanan Street, and that the lorry was on the crossing, and the hind end of the lorry was not clear of the crossing of the footpath when the horse reared up and bolted. (6) That the respondent and another man on the lorry did all in their power to control the horse, but it got beyond their control and dashed down the incline in Buchanan Street until it came to the top of Dundas Street, where it dashed into an apothecary's shop, and the respondent's left leg was crushed between the wall and the lorry. (7) That the respondent's leg had to be amputated, and he is now unfit for his work as a carter. (8) That the horse continued on its course without any interruption until it dashed into the apothecary's shop, and the shop is at a distance of 315 yards from the entrance of the station. (9) That the respondent had been about ten months in the employment of Wordie & Company, and his duties were to deliver goods from the station in the morning to various places in town, and in the afternoon he was regularly employed collecting goods from various houses in town and delivering them at the station, where his work was finished. (10) That he was not employed in any other work, either on behalf of the appellants or on behalf of Wordie & Company, after he delivered the goods at the station. (11) That Wordie & Company have a contract with the appellants whereby they carry their traffic from the town to the station or from the station to the town at so much per ton, and, generally speaking, the work done under the contract is that Wordie & Company go to the station and load goods and deliver them to various houses in town, and they also go to various houses in town and lift goods and deliver them to the Railway Company at the station."

In these circumstances the Sheriff-Substitute found in law "(1st) That on the occasion in question the respondent was employed on, in, or about a railway, and the accident arose from the bolting of the horse, which took place at the railway station. (2nd) That the appellants were the undertakers in the sense of the Workmen's Compensation Act; and (3rd) that they contracted with Wordie & Company for the execution by them of their cartage work, and they are liable under the Act to Wordie & Company's workmen in respect of any accident arising out of and in the course of their employment." The Sheriff-Substitute accordingly awarded the respondent compensation.

The questions of law for the opinion of the Court were—"1. Whether in view of the fact that the respondent was in the employment of Messrs Wordie & Company, carting contractors, who have contracted with the appellants to carry goods to and from appellants' station at a fixed rate per ton, and that the respondent had delivered at Buchanan Street Goods Station a load of goods falling under the contract with his employers, and at the time of the accident was proceeding to the stables with his horse and empty lorry, the respondent sustained personal injury by accident arising out of and in the course of employment by the appellants as undertakers in the meaning of the Workmen's Compensation Act 1897? 2. Whether, in view of the fact that the horse attached to the lorry in charge of the respondent bolted when on the foresaid crossing outside the gate of Buchanan Street Goods Station, and that the respondent was injured at a point 315 yards distant from said station, the respondent was injured in employment on or in or about a railway."

In the Court of Session the appellants did not dispute that they were the undertakers within the meaning of the Act.

The Workmen's Compensation Act 1897 enacts—Section 1 (1)—"If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employers shall, subject as hereinafter mentioned, be liable to pay compensation." Section 7 (1)—"This Act shall apply only to employment by the undertakers as hereinafter defined (*inter alia*) on or in or about a railway." . . .

Argued for the appellants—(1) The accident to the respondent did not arise out of and in the course of his employment—*Gibson* v. *Wilson*, March 12, 1901, 3 F. 661, 38 S.L.R. 450; *Holness* v. *Mackay and Davis* (1899) 2 Q.B. 319. (2) The respondent's employment was not "on or in or about" a railway. Clearly it was not "on or in" the railway. Nor was it "about" a railway. That word, according to the decisions, implied local contiguity to the railway or factory, and the workman's claim had been rejected where the accident had occurred within a less distance than in the present case, viz., 315 yards—*Kent* v. *Porter*, March 20, 1901, 38 S.L.R. 482; *Brodie* v. *North British Railway Co.*, November 6, 1900, 3 F. 75, 38 S.L.R. 38; *Barclay, Curle, & Co.* v. *M'Kinnon*, February 1, 1901, 3 F. 436, 38 S.L.R. 321; *Lowth* v. *Ibbotson* (1899), 1 Q.B. 1003. Although the horse bolted from a point near the railway, the accident could not be said to have occurred there, but at the point where it dashed into the shop.

Argued for the respondent—(1) The accident occurred in the course of the respondent's employment — *Tod* v. *Caledonian*

Railway Co., June 29, 1899, 1 F. 1047, 36 S.L.R. 784; *Holmes* v. *Great Northern Railway Co.* (1900), 2 Q.B. 409. (2) It occurred "about" a railway. The accident was in truth the bolting of the horse, which clearly happened "about" the railway, although the consequences, *i.e.*, the injuries, happened 315 yards away. The case was the same as if the horse had bolted from within the premises, in which case the appellants would have been liable —*Monaghan* v. *United Collieries, Limited*, November 27, 1900, 3 F. 149, 38 S.L.R. 92; *Strain* v. *Sloan & Co.*, March 13, 1901, 3 F. 663, 38 S.L.R. 475; *Fenn* v. *Miller* (1900), 1 Q.B. 788.

At advising—

LORD JUSTICE-CLERK—This case raises one of those questions as to the reading of the Workmen's Compensation Act which are so numerous, and sometimes not easy to decide. The facts are very fully and clearly stated by the Sheriff-Substitute in the case, and the only one of his decisions in law which I think is open to question is the first, in which he found that "on the occasion in question the respondent was employed on, in, or about a railway, and that the accident took place from the bolting of the horse, which took place at the railway station." The latter part of this finding seems to be more a finding in fact than in law, and must be taken along with the more specific findings in fact. [*His Lordship read the findings.*] I am of opinion on these facts that the statute does not apply. The horse and cart were no longer in the premises when the occurrence began which led to the accident, and it is not found that there was anything existing or being done connected with the railway or its premises which caused the horse to rear and run away. No cause is stated as matter of fact. There is nothing except this, that the horse being on the street, "took fright . . . reared up, and bolted," that it got beyond the control of those on the lorry, although they did all in their power to control it, and that in consequence after running about 315 yards it dashed into a shop, and thus caused the injury to the driver. I feel unable to hold in law that the accident happened when the pursuer was employed on, in, or about the railway. Even if the whole incident beginning just outside the railway on the street could be held to be the accident by which the pursuer was injured, which is I think more than doubtful, I do not think it can be said to have happened so that these words could apply to it. Hitherto the words "or about" have been held to cover cases where the party though not bodily within the factory was engaged in work at it, as for example where a carter on the street at the factory was having his cart loaded or unloaded by appliances of the factory, or the like. I do not think the word can be applied to the case of a man who, outside the limits of the factory, after his work has been completed, is injured by the running away of the horse which he is taking home to another place than the factory, there being no facts connecting the running away with the factory or anything done in or from it as a cause.

I therefore think that it should be held that the respondent was injured while in the employment of the appellants, but not on, in, or about a railway, and that the question should be answered accordingly.

LORD YOUNG—I agree in thinking that the Sheriff-Substitute was in error, and that this accident does not fall under the provisions of the statute.

LORD TRAYNER—I have had considerable difficulty in arriving at a decision upon this case, and have not always been of one mind regarding it. But I have come to be of opinion that the injuries for which compensation is asked were not sustained "on, in, or about" a railway, and that therefore the appeal should be sustained.

LORD MONCREIFF—The first question to determine is at what place for the purposes of this case the accident occurred—was it at the place where the horse bolted, that is, the entrance to the station, or the place 315 yards off, where the respondent's left leg was crushed? If at the latter, it did not occur "in or about" the railway. But I am of opinion that the accident must be held to have happened at the place first named. It was there that the respondent was first put in peril, he continued in peril the whole of the distance, and between the time that the horse bolted and the time when the respondent's leg was crushed he was doing his best in the interest not only of himself but of his employers to pull up the horse and escape injury.

There remain two questions—first, whether when the horse bolted the respondent was engaged in the employment of the appellants; secondly, if he was so engaged, whether the accident occurred, that is, the horse bolted, "in or about" the appellant's railway. These questions must be considered separately.

1. As to the first, I am of opinion that the accident arose out of and in the course of the respondent's employment in the sense of the first section of the Act. A coachman or a carter is acting in the course of and within the scope of his employment when he is coming from or returning to his stables, as much as when he is driving his master or his guests or carrying his luggage or goods. The fourth section of the Act places the servants of contractors who are engaged by undertakers to work for them in the same position as regards compensation as if they had been their own servants.

It is said here that the respondent having delivered goods at the station, his connection with the appellants as employers was at an end from the moment when the goods were delivered. I am unable to take this view. This was not casual employment. The ninth finding in fact is to the following effect—[*His Lordship then read the Sheriff-Substitute's ninth finding*]. If, as I must hold, that finding is correct, the respondent had been executing work for the

appellants continuously and exclusively for ten months, just as if he had been a carter in their immediate employment.

But besides, it would be too narrow a view to take of the Act to hold that the moment a contractor's servant has unloaded goods carried for the undertakers all liability of the latter immediately ceases. The appellant's argument would admittedly have been the same if the goods had been delivered inside the station and the horse had bolted there, run through the entrance into the street and upset the driver half-a-mile away. Take the converse case of the carter being crushed against the gate-post on entering the station premises with an empty cart to take up a load of goods at the station. Could it have been said that the accident did not arise out of and in the course of his employment? I cannot accept that view, and therefore I think that when the accident occurred the respondent must be held to have been still in the employment of the appellants.

2. But this is not sufficient, because the respondent cannot recover unless the accident occurred "in or about" the railway. Upon this point I have little doubt. The horse bolted when it had barely cleared the entrance to the station; the hind wheels at least of the lorry had not even reached the causeway. It has been decided again and again that an accident occurring to a workman immediately outside a factory while the cart or lorry at which he is working is standing on the causeway is an accident occurring about a factory. In the present case the lorry had not even reached the causeway. It is true that at the moment the carter was not engaged in loading or unloading goods but on this question it makes no difference that instead of taking a load into the station the respondent had delivered a load and was coming away. I therefore think that as regards proximity the accident occurred about the railway in the sense of the statute.

I am therefore of opinion that the Sheriff has arrived at the right result, and that both questions should be answered in the affirmative.

The Court found that the respondent was not on, in, or about a railway when the accident occurred; therefore sustained the appeal, recalled the award of the arbitrator, and remitted to him to dismiss the claim.

Counsel for the Appellants — Dundas, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Claimant and Respondent —Watt, K.C.—Christie. Agent—James G. Brydon, Solicitor.

Thursday, December 12.

FIRST DIVISION.

[Lord Low, Ordinary.

COLQUHOUN'S TRUSTEE *v.* DIACK.

Right in Security—Retention—Bankruptcy —Balancing of Accounts—Obligation to Assign Bond in Favour of Bankrupt—Sums Due by Bankrupt.

A, the assignee of a bond and disposition in security over certain subjects belonging to B, having called up the bond, C paid to A the sum therein out of his own funds, but instead of taking an assignation of the bond from A, took only a simple receipt and a personal obligation to assign when required. C's estate was thereafter sequestrated, and at the date of the sequestration C was due certain sums to A. *Held*, in a question between A and C's trustee, that A was not bound to assign the bond except upon condition of receiving payment of all sums due to him by C.

This was an action at the instance of John Wilson, Chartered Accountant in Glasgow, trustee upon the sequestrated estates of the firm of J. & D. T. Colquhoun, writers in Glasgow, and of the individual members thereof, against James Diack and his wife, in which the pursuer concluded (1) for declarator that the parties were bound to assign and dispone to and in favour of the pursuer, as trustee foresaid, a bond and disposition in security dated 17th May and recorded 18th May 1880 for the sum of £200, and also the subjects conveyed in security by said bond and disposition in security; and (2) for decree ordaining the defenders to assign and dispone the said bond and disposition in security and the said subjects in favour of the pursuer.

On 17th May 1880 David Young, in consideration of the sum of £200 lent to him by James Colquhoun, one of the partners of J. & D. T. Colquhoun, granted to Colquhoun the bond and disposition in question over subjects in Vermont Street, Glasgow. On 29th October 1886 Colquhoun, in consideration of £200 paid to him by the defenders, assigned this bond and disposition in security to the defenders, and the assignation was recorded in the Register of Sasines on 30th October 1886.

On 5th November 1889 the defender Diack wrote to Messrs J. & D. T. Colquhoun on behalf of himself and his wife intimating that he would require repayment of the sum of £200 contained in the said bond at the ensuing term.

On 13th November the Messrs Colquhoun out of their own funds paid to Diack on behalf of himself and his wife the said sum of £200, but instead of obtaining from the defenders a formal assignation of the said bond and disposition in security, they took from Diack in exchange for the money a receipt and obligation in the following terms:—"*Glasgow, 13th November* 1889.—Received from J. & D. T. Colquhoun the