witnesses might well differ as to whether what took place fell under the one description or the other. I agree with the Lord Ordinary in accepting the oversman's account of what took place, and in holding that the arbiters validly devolved the determination of the price in each case on him. The case made by the landlords, namely, that "no difference of any kind arose between them (the arbiters) as to the valuation prices to be paid by the pursuers to the defender Alexander Fotheringham," is contradicted by the evidence on both sides. But suppose that the true result of the evidence is to show either that some of the items were adjusted by the arbiters with or without hearing the oversman's suggestions, while others were devolved by them upon the oversman, who thereupon disclosed his own valuation and fixed the prices, or suppose that in all cases the prices were fixed by the arbiters with or without hearing the oversman's suggestions, I agree with Lord Salvesen in thinking that the award although pronounced by the oversman would not be thereby rendered invalid, being in this case admittedly identical with the figures which, according to the landlords, were arrived at by the arbiters without difference of opinion.

In regard to the second award, it is admitted that the arbiters differed in opinion. But the landlords say that this difference not being on the merits of the questions submitted to the arbiters, but on a mere question of procedure, namely, as to whether at a certain stage of the reference a solicitor should be appointed as clerk to the reference, it was incompetent for one of the arbiters to devolve or for the oversman to act. It seems to me on the authorities that it is sufficient to bring the office of an oversman into active operation if there be such a difference of opinion between arbiters, either on the merits of the questions involved or on the proper procedure to be followed, as brings the proceedings to a deadlock. The correspondence read along with the evidence makes it clear that such a deadlock had in point of fact occurred. It is immaterial whether Mr Cargill, the tenant's arbiter, or Mr Milne, the landlords' arbiter, was in fault. It is sufficient that a deadlock had occurred. I therefore think that the Lord Ordinary's interlocutor should be affirmed.

LORD JUSTICE-CLERK—I agree with the opinions delivered. This is a case of a very ordinary arbitration in which the questions relate to skilled valuation only. There was therefore no call for formality of procedure, and the mode in which matters were dealt with up to a certain point was quite in accordance with ordinary practice in such cases. The main difficulty which arose at a later stage was, I think, the consequence of what I cannot characterise otherwise than as the unreasonable conduct of one of the arbiters, by which matters would have been brought to a deadlock unless the oversman had intervened. I am satisfied that when the oversman did intervene to bring the arbitration to a conclusion he did so rightly, and that there is no ground for holding that when he did intervene anything was done which can be impugned on any reasonable ground. The Lord Ordinary has disposed of the case on grounds stated by him, and with his views I entirely concur.

LORD DUNDAS was not present, being engaged in the Extra Division.

The Court adhered.

Counsel for Reclaimers (Pursuers)—Constable, K.C.—Guild. Agents—Guild & Guild, W.S.

Counsel for Respondent (Compearing Defender)—Solicitor-General (Morison, K.C.)—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Thursday, July 2.

FIRST DIVISION.

[Sheriff Court at Glasgow.

WILLIAM SINCLAIR, LIMITED *v.* CARLTON.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Arising Out of and in the Course of the Employment*"—*Workman Acting Outwith the Scope of his Employment.*

C, a carter, was instructed by his employer to deliver by lorry certain bags at the warehouse of X. It was the duty of carters to make such deliveries by slinging the bags on to X's tackle, but they had no duty to receive or stow the bags inside the warehouse. In addition to C's lorry there were a number of other lorries belonging to C's employers and in charge of C's fellow servants making deliveries to X at the same time. In accordance with a custom of the carters, which was not proved to be within the knowledge of their employers, one carter slung all the bags not only from his own lorry but from each lorry in turn on to X's tackles, while the remaining carters assisted X's servants to receive and stow the bags in the warehouse. In consideration of this arrangement all the carters, including the carter who slung the bags, were paid sixpence by X. On the occasion in question C slung the bags and the remaining lorrymen assisted X's servants. While engaged in slinging bags not on his own lorry but on one of the other lorries belonging to his employers C was injured.

Held that the accident did not arise out of and in the course of C's employment within the meaning of the Workmen's Compensation Act 1906.

John Carlton, carter, 134 Naburn Street, Glasgow, *respondent*, claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) from William Sinclair, Limited, carting contractors, 43 Virginia Street, Glasgow, *appellants*, in respect

of an injury received by him while in the employment of the said company. The Sheriff-Substitute (MACKENZIE) at Glasgow, acting as arbitrator, awarded compensation and stated a Case for appeal.

The Case set forth the following *facts*:—"(1) That the respondent is a carter and was in the employment of the appellants on 19th December 1913. (2) That on above date the respondent was sent by the appellants, along with another carter in their employment named Imrie, to convey twenty bags of glucose from the premises of the Anchor Line to the warehouse of Messrs Burton, Son, & Sanders, Kinning Park, Glasgow. (3) That on arrival at said warehouse the respondent found other four lorries there, each with a lorryman in the service of the appellants, and that these lorries contained sugar in bags, also for delivery to Messrs Burton, Son, & Sanders. (4) That the duty of the appellants' carters consisted in delivering the goods by slinging the bags on to tackle which was provided by the consignees, and that they had no duty to receive or stow the goods inside the consignees' warehouse. (5) That in accordance with a custom which prevailed among the carters one remained on the lorries, slinging the bags from each in turn, while the others assisted Messrs Burton, Son, & Sanders' men in receiving and stowing the goods in the warehouse. This practice was not instructed by the appellants, and it is not clear from the evidence whether or not it was within their knowledge. (6) That the carters, including the man who slung the bags, were in the habit of receiving sixpence each for their services from Messrs Burton, Son, & Sanders, but that this practice was not approved of or consented to by the appellants. (7) That on this occasion the respondent, while slinging bags of sugar from the third lorry in succession, not being his own lorry, was struck by a bag and the lifting tackle, which gave way and knocked him down, injuring his left hand and side. (8) That he still suffers from the injury to his left hand, and is incapacitated from following his occupation as a carter. (9) That although the respondent was not engaged in slinging bags from his own lorry he was so engaged on the lorry of a fellow workman, and was in the employment of the appellants at the time."

The *question of law* for the opinion of the Court was—"Whether, upon the evidence as stated above, I could competently find that the said accident arose out of and in the course of the employment of the respondent with the appellants within the meaning of the Workmen's Compensation Act 1906?"

Argued for the appellants—At the time of the accident the respondent was engaged along with the other carters in a concerted operation for hire in the interest of the consignee, in which operation the appellants were not concerned and were not interested. The appellants had a system of working known to their employees. That system the employees set aside for one of their own, the risks of which were different and possibly greater than those of the appellants' system. Consequently the accident did not arise out of and in the course of the employment. Moreover, the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 6 (2), gave the employer who had paid compensation a right of relief against a third party by whose fault the injury was caused. If the injury here was caused by the consignees' servants the appellants would have no right of relief. They would be met by the defence of common employment, the respondent being engaged along with the other carters and the consignees' servants in one piece of work under one control, viz., that of the consignees. Reference was made to *M'Allan* v. *Perthshire County Council, Western District*, May 12, 1906, 8 F. 783, 43 S.L.R. 592; *Smith* v. *Morrison*, 5 Butterworth 161; *Cronin* v. *Silver*, 4 Butterworth 221; *Smith* v. *Lancashire and Yorkshire Railway Company*, [1899] 1 Q.B. 141; *Reed* v. *Great Western Railway Company*, [1909] A.C. 31, *per* Lord Macnaghten at p. 33; *Conway* v. *Pumpherston Oil Company, Limited*, 1911 S.C. 660, *per* Lord President (Dunedin) at p. 665, 48 S.L.R. 632.

Argued for the respondent—It was the duty of the respondent to sling the bags on to the consignees' hoisting-tackle, and it was in doing that very work which he was employed to do that the respondent was injured. It was too narrow a view, and ruled out all idea of community of labour, to hold that the respondent had a duty to sling bags from his own lorry only. In any event, it was a reasonable extension of his duty to assist the other carters, who were in the same employment, by slinging the bags from their lorries—*Goslan* v. *James Gillies & Company*, 1907 S.C. 68, 44 S.L.R. 71; *Menzies* v. *M'Quibban*, March 13, 1900, 2 F. 732, 37 S.L.R. 526. In the cases where workmen had been refused compensation on the ground that they were acting outwith the sphere of their duties, they had undertaken work with which they had no concern whatever—*Smith* v. *Fife Coal Company, Limited*, 1913 S.C. 662, 50 S.L.R. 455; *Kerr* v. *William Baird & Company, Limited*, 1911 S.C. 701, 48 S.L.R. 646; *M'Diarmid* v. *Ogilvy Brothers*, 1913 S.C. 1103, 50 S.L.R. 883.

LORD PRESIDENT—I think the arbitrator has reached a wrong conclusion in this case, and that the accident which befel the respondent did not arise out of or in the course of his employment. His employers are a firm of carting contractors who have lorries, horses, and men engaged, *inter alia*, in carrying goods from the docks to various places of business in Glasgow. On the occasion in question the lorryman who was hurt had carried the goods from the quay to a consignee in Kinning Park. The consignee, for reasons of his own, which are not explained but which we can conjecture, when he found a number of lorries congregated at his premises, invited all the lorrymen except one to go inside and assist in receiving and stowing the goods in his warehouse. The one who was left outside had the duty thrown upon him of slinging all the bags from all the lorries which were congregated

outside. That was the system which the consignees adopted and which the lorrymen fell in with. They were remunerated by the consignee for the performance of that duty. But that was not the duty for which the lorrymen were engaged by their employers.

The fourth finding in the case sets out quite clearly that the duties of the lorrymen were confined to carrying the goods to the premises and slinging the goods by tackle which was supplied by the consignee, who received the goods and stowed them by his own servants and not by servants employed by the carting contractor. Accordingly it appears to me that at the time when the accident happened the respondent was in reality engaged in performing the work of the consignee, and was not engaged in work for which he was employed and paid by his own masters.

The cases cited appear to me to have no bearing upon the present. The one which comes nearest to it is that of *Goslan* v. *James Gillies & Company*, 1907 S.C. 68. The reason for the decision there is quite plain when one sees that although the injured man was not when he met with his accident engaged in the work for which he was specially employed, he was engaged in performing his master's work and was merely rendering a helpful hand to his fellow employees in furthering his master's interests. The only peculiarity in this case is that the kind of work in which the respondent was engaged at the time when the accident befel him was the same as that for which he was employed; that the lorry on which he was injured was a lorry which belonged to his employer, and was driven by an employee of the employer. These facts seem to me to be wholly immaterial, for the ground of my judgment is that the respondent was not engaged in his master's business but in the business of the consignee at the time when the accident befel him.

Accordingly I propose that we should answer the question in the negative.

LORD JOHNSTON—I entirely concur with your Lordship. This case seems to me not to be covered by the case of *Goslan*, which is the only one cited on either side which really bears upon the question, but is in contrast, and I think that that contrast justifies an entirely different judgment. It is quite true that the servant here was doing in a sense the work that he was employed to do, but he was doing it as part of an arrangement which entirely altered his employment, for he was not doing merely his own work but the same work for one or more of his fellow employees in order to liberate them to do the work of another employer. He was, therefore, just as much as they were, because in concert with them, performing work not for his own master but for the consignee of the goods being delivered, which the consignee was bound to supply men to do for himself. Although therefore he was doing technically the sort of thing which he was employed to do, it seems to me that he was just as much as any of the other three doing work outside the scope of his employment, and therefore I do not think that he is entitled to recover compensation from his proper employers.

LORD SKERRINGTON—I agree with your Lordship.

The Court answered the question in the negative and sustained the appeal.

Counsel for Appellants—Duffes. Agents—Warden & Grant, S.S.C.

Counsel for the Respondent—A. O. M. Mackenzie, K.C.—Young. Agents—Weir & Macgregor, S.S.C.

Friday, July 3.

FIRST DIVISION.

[Lord Hunter, Ordinary.

LORD NINIAN CRICHTON STUART *v.* OGILVIE.

Lease — Statute — Construction — Power to Resume—Notice to Tenant—Agricultural Holdings (Scotland) Act 1908 (*8 Edw. VII, cap.* 64), *sec.* 18 (1) *and* (5).

The Agricultural Holdings (Scotland) Act 1908, sec. 18, sub-sec. (1), enacts—"Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end . . . (*b*) in the case of leases from year to year . . . not less than six months before the termination of the lease." Sub-section (5)—"The provisions of this section relative to notice shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes. . . ."

A landlord let a park for one year, and in the lease reserved "Power to resume, in whole or in part, the lands hereby let for any purpose whatever, except that of letting to another agricultural tenant, on giving one month's notice of his intention so to do to the tenant." The landlord gave the tenant one month's notice of his intention to resume possession of the park, the purpose being to graze pedigree sheep belonging to himself.

Held that the enumerated purposes in sub-section 5 did not form a genus; that the resumption contemplated was covered by the words "other purposes," and consequently that the notice was sufficient.

The Honourable Lord Ninian Crichton Stuart of Falkland, in the county of Fife, *complainer*, brought a note of suspension and interdict against John Barrie Ogilvie, farmer, Westfield Farm, Falkland, *respondent*, in which he prayed the Court to interdict the respondent from trespassing upon and grazing sheep or cattle in a certain park, called the Mansion-House Park, belonging to the complainer.