this claim is clearly different from and exclusive of the claims which go before. Then it seems that the award really followed the claims, because I find that the arbiter narrates the heads of claim—for the application of purchased artificial manures and the consumption of feeding-stuffs on the holding during the whole tenancy the manurial residuum of which is unexhausted, the sum of £145, and for the continuous good farming during the whole tenancy whereby the fertility of the farm is greatly increased, the sum of £95. His award is quite properly divided into the heads of claim, and he awards what he thinks right under the first three heads, to which no objection is taken, and then he awards "for continuous good farming, £95."

I think we must take it that the £95 has here been given for continuous good farming during the whole tenancy, and that, I think, is not a claim allowed by the Agricultural Holdings Acts. It seems to me hardly possible for the defender to aver that the arbiter or the parties or the agricultural community understood the language of the fourth head of the award as meaning something other than it does mean according to its plain terms. I think the defender's averments, and in particular the material passages in answer 3, are quite irrelevant. I do not think it would be permissible for the arbiter to go into the witness-box and practically contradict both the claim and the award. It seems to me therefore that we must sustain the first, second, and fourth pleas for the pursuer and grant decree of reduction.

I confess that part of Mr Macmillan's argument did cause me to feel a considerable amount of sympathy for the tenant, but after all we must decide cases not on sympathy but to the best of our ability according to law. I think that arbitrations under these Acts must be conducted as the statutes provide and in no other way.

LORD GUTHRIE—I agree. We have heard a good deal about the practice in such matters, but I cannot imagine that it is the practice to state claims as they are stated here. Mr Macmillan's argument ignores what your Lordship in the chair pointed out, that the occurrence of the words "during the whole tenancy," both in the claim and in the award, is fatal to the defender's case. There may be a practice of taking the prior part of the lease when a great deal of the manure has disappeared and to give a slump sum under the statute, and to call that an award in respect of continuous good farming, but it surely cannot be a practice to sustain a claim which covers not only the first part of the lease but the whole tenancy.

In view of these words I agree that unless the parties were prepared to aver that the matter was fully explained to the arbiter in the arbitration, accepted by both parties, and acted upon by the arbiter, there is no room for question as to the result that must be arrived at.

The Court recalled the Lord Ordinary's interlocutor, sustained the first, second, and fourth pleas-in-law for the pursuer, and granted decree of reduction as craved.

Counsel for the Pursuer and Reclaimer—Chree, K.C.—Scott. Agents—Connell & Campbell, S.S.C.

Counsel for the Defender and Respondent—Macmillan, K.C.—Morton. Agents—Charles George, S.S.C.

Thursday, December 21.

FIRST DIVISION.

HOOLACHAN, PETITIONER.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule, sec.* 17 (*b*)—*Process—Date of Award of Arbitrator—C.A.S., L, xiii,* 11 (2) *and* 17 (*a*).

On 11th November 1916 an arbitrator under the Workmen's Compensation Act 1906 issued an award, which, however, had not the date filled in. On 13th November it was handed by an assistant of the Sheriff-Clerk to the workman's agent with the remark that the award had been issued that day, and the agent in the presence of the assistant then filled in 13th November as the date of the award. No notice of the award was sent to the workman or his agent. On 20th November the workman, who wished to appeal against the award, lodged a minute craving the arbitrator to state a case for appeal. The arbitrator refused on the ground that the minute was not timeously lodged, and that C.A.S., L, xiii, 11 (2) and 17 (*a*), were peremptory and left him no discretion. *Held*, in a petition by the workman for an order ordaining the minute to be received, that the date of issue of the award was 13th November, and the minute timeously lodged, and prayer of petition *granted*.

The C.A.S., L, xiii, enacts—Section 11 (2)—"An award by a Sheriff under the Act, or a certified copy thereof, shall be forthwith recorded by the sheriff-clerk in the said register as if it were a memorandum, and written notice of such recording and of the terms of the award shall be forthwith sent by him to the parties interested." Section 17 (*a*)—"An application to a Sheriff to state a case on a question of law determined by him shall be made by minute lodged in the process within seven days after the Sheriff has issued his award. . . ."

James Hoolachan, *petitioner*, presented a petition craving an order on the Sheriff-Substitute at Hamilton to receive a minute on his behalf asking for a Stated Case in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58).

The *facts* of the case were—On 3rd August 1915 the petitioner sustained personal injury by accident arising out of and in the course of his employment with the Bent Colliery Company, Limited, coalmasters, Bent Colliery, Hamilton, and claimed

compensation from the said Bent Colliery Company, Limited, under the Workmen's Compensation Act 1906. Thereafter arbitration proceedings under the said Workmen's Compensation Act were commenced by the petitioner before the Sheriff-Substitute of the county of Lanark at Hamilton for an award of compensation. On 24th July 1915 the said Sheriff-Substitute awarded the petitioner compensation at the rate of £1 weekly in respect of his total incapacity for work. Compensation at the said rate of £1 per week was thereafter paid to the petitioner by the said Bent Colliery Company, Limited, down to 14th August 1916, when they refused to make any further payment at the full rate. On 11th September 1916 application was made to the said Sheriff-Substitute by the said Bent Colliery Company, Limited, for review of the amount of the weekly payment of compensation to the petitioner. On 11th November 1916 the arbitrator issued his award diminishing the compensation payable to the petitioner to the sum of 17s. 6d. per week as from 9th September 1916. No notice of the said award was sent to the petitioner or his law agents. On 13th November 1916 a copy of the said arbitrator's award was handed to a clerk in the employment of the petitioner's law agents, in the office of the Sheriff-Clerk at Hamilton, by one of the assistants of the said Sheriff-Clerk, with the remark that it had been issued that day. The said copy award was blank as to date, and the said clerk thereupon filled in the date as of 13th November 1916. This was done in the presence and with the knowledge of the Sheriff-Clerk's said assistant. The petitioner was dissatisfied with the terms of the said award, and on being advised that the same was appealable on point of law by way of Stated Case he gave instructions to lodge and proceed with an appeal. On 20th November 1916 a minute was lodged in the said proceedings by the law agent for the petitioner craving the said arbitrator to state a case for appeal to the Court of Session on the question of law therein set forth, but the arbitrator refused to state a case at the instance of the petitioner in respect that the application for a Stated Case was not made until the 20th November 1916, whereas it should have been made at latest on 18th November 1916, as the award was issued on 11th November 1916. The whole circumstances were explained to the said arbitrator, but he held that he had no power to dispense with the provisions of the Codifying Act of Sederunt 1913, cap. xiii, sec. 17 (*a*).

The *prayer* of the petition was — "To appoint this petition to be intimated on the walls and in the minute book in common form, and to be served upon the said Bent Colliery Company, Limited, and upon the Sheriff-Clerk, Robert George Slorach, and to ordain them to lodge answers hereto, if so advised, within eight days after service; and to ordain the Sheriff-Clerk of the County of Lanark, at Hamilton, forthwith to transmit the whole process in the said arbitration proceedings between the petitioner and the said Bent Colliery Company, Limited, under the Workmen's Compensation Act 1906, to the Clerk of the First Division of the Court of Session; and thereafter, on resuming consideration hereof, with or without answers, together with the said whole process, to ordain the said Sheriff-Substitute, as arbitrator foresaid, to receive the said minute on behalf of the petitioner, and to accept the same as timeously lodged, and thereafter to proceed as accords; and to retransmit the said process to the Sheriff-Clerk of the County of Lanark at Hamilton."

No answers were lodged.

Argued for the petitioner—The C.A.S., L, xiii, 11 (2) and 17 (*a*) had not been complied with by the Sheriff-Clerk. It was his duty to record the award, and to notify the petitioner of such recording and of the terms of the award. He had not done so. Further in the circumstances the petitioner was entitled to believe that the date of issue of the award was the 13th November, for until that date the day of issue had not been fixed. Unless the award was dated and signed by the arbitrator and notice thereof given to the petitioner, the award could not be held to be issued, for if those things were not done the seven days allowed for lodging a minute craving a stated case would be rendered useless. In England and Ireland the Court had a discretionary power to extend that time—*Henneberry* v. *Doyle Brothers*, 1911, 46 Ir.L.T. 61 (*per* L.C. Barry at p. 62). The case was similar to cases under the Bankruptcy Statutes, where the Court in exercise of the *nobile officium* had provided a remedy when statutory requisites had not been observed *per incuriam*, but the petitioner's position was stronger, for there was no *incuria* on his part. The Court's powers with reference to its own Acts of Sederunt were described in *Govan* v. *M'Killop*, 1909 S.C. 562 (*per* Lord Low at p. 565), 46 S.L.R. 416. The prayer of the petition should be granted.

At advising—

Lord President—In this case I think the minute given in by the applicant craving that the arbitrator should be ordained to state a case was given in timeously and in compliance with the Act of Sederunt.

We are told in the petition that the arbitrator issued his award on 11th November 1916. Apparently he wrote it and signed it on that date, but it was not dated as on that date. The date was left blank. It was handed by an assistant of the Sheriff-Clerk at Hamilton to the petitioner's law agent on 13th November, and it was then still undated. The law agent, in presence of the Sheriff-Clerk's assistant, then filled in that day's date, which he was informed by the Sheriff-Clerk's assistant was the date of issue.

In my opinion that was the moment of issue of the award, and if so, the minute given in on the 20th November was within the seven days prescribed by the Act of Sederunt. Accordingly I am of opinion that we ought, in terms of the prayer of the petition, to retransmit the process and ordain the Sheriff-Substitute as arbitrator,

to receive the minute and accept the same as timeously lodged, and to proceed.

LORD JOHNSTON—I agree with your Lordship. But I have to say that I think it is time now that this Act of Sederunt was made more explicit.

What your Lordship has said embodies the spirit of what has already been enacted, but it is, I think, for consideration whether it is not now desirable to add a little to the letter. I would suggest to your Lordship that what is required is this. I read from the Codifying Act of Sederunt, L, xiii, 11. The second sub-section bears this—"An award by a Sheriff under the Act, or a certified copy thereof, shall be forthwith recorded by the sheriff-clerk in the said register as if it were a memorandum, and written notice of such recording and of the terms of the award shall be forthwith sent by him to the parties interested." I think if there were added, without alteration of what I have read, these words, "by registered letter, and the date of the transmission of such notice shall, for the purposes of this Act of Sederunt, be held to be the date of issue of such award," the enactment would be more complete.

That would represent more fully the intention of the Act of Sederunt; and looking to the fact that this is not the first occasion in the last six weeks on which we have had to deal with this matter, I think that it would be desirable to make the Act of Sederunt so explicit that there shall not be imposed upon intending appellants the necessity of coming here, at some expense to them and trouble to the Court, to obtain redress against irregularity or negligence in the sheriff-clerk's office.

LORD MACKENZIE concurred.

LORD SKERRINGTON was absent.

The Court pronounced this interlocutor—

"Ordain the Sheriff-Substitute at Hamilton as arbitrator to receive the minute on behalf of the petitioner referred to in the petition, to accept the same as timeously lodged, and thereafter to proceed as accords: Further, appoint the process in the arbitration proceedings to be transmitted to the Sheriff-Clerk of the County of Lanark at Hamilton as craved."

Counsel for the Petitioner — Moncrieff, K.C.—Burnet. Agents—Simpson & Marwick, W.S.

Saturday, December 23.

FIRST DIVISION.

GRIEVE'S TRUSTEES *v.* JAPP'S TRUSTEES AND OTHERS.

Writ — Title — Property — Subscription — Discrepancy between Signature of Granter and Name of Granter in Body of Deed and in Testing Clause — Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 39.

A disposition of heritable subjects was subscribed "Isabella C. Moncur," whereas the body of the deed bore that the deed was granted by, and the testing clause that the deed was subscribed by, "Mrs Isabella Williamson or Moncur." Another disposition of heritable subjects was subscribed "Joan Colville Brown," whereas the body of the deed bore that the granter was Mrs Joan Colville or Brown, and the testing clause made no reference to the discrepancy. The subjects of the titles, of which those deeds formed part, came into the hands of trustees, who sold the subjects. The buyer took exception to the dispositions as being informally executed, and the trustees brought a petition under the Conveyancing (Scotland) Act 1874, section 39, craving declarator that the deeds were duly subscribed by the granters thereof. *Held* that the petition was unnecessary and must be *dismissed.*

The Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94) enacts—section 39—"No deed, instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect according to its legal import because of any informality of execution, but the burden of proof that such deed, instrument or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument or writing bears to be attested, shall lie upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses."

Frank Hunter and others, testamentary trustees of the deceased John Grieve, *petitioners*, brought a petition under the Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), section 39, craving the Court to allow a proof of the averments contained in the petition, and thereafter to declare that the deeds after mentioned were duly subscribed by the granters.

Answers were lodged by James Thomas Japp and others, testamentary trustees of the deceased William Japp, solicitor, Alyth,