arbitrator is entitled to take into account the fact that owing to the workman having only one eye the consequences of an accident to that eye would be very much more serious than if he had two eyes. That question does not arise. Personally I should have had no doubt that that was a relevant circumstance which the arbitrator might take into account and attach such weight to as in the particular circumstances he thought right. If necessary a decision could be obtained by an arbitrator finding that employment at the face is unsuitable for a particular one-eyed man, and then stating the question whether he was entitled in coming to that decision to take into account the specially serious consequences of an accident to the remaining eye, or whether that was a circumstance to which he ought to have attached no weight. I agree with your Lordship in the result.

LORD MACKENZIE was absent from the hearing.

The Court answered the question of law in the negative, recalled the determination of the arbitrator, and remitted to him of new to decide whether employment at the face was suitable employment for the appellant.

Counsel for the Appellant—Lord Advocate (Munro, K.C.)—T. Graham Robertson. Agent—D. R. Tullo, S.S.C.

Counsel for Respondent—Horne, K.C.—Russell. Agents—Wallace & Begg, W.S.

Friday, November 6.

FIRST DIVISION.

[Sheriff Court at Glasgow.

ORENSTEIN & KOPPEL—ARTHUR KOPPEL (A.G.) *v.* EGYPTIAN PHOSPHATE COMPANY, LIMITED.

Process — Foreign — Sist — Enemy Corporation — "Branch Locally Situated in British Territory" — "Transaction" — Trading with the Enemy Proclamation, No. 2, dated September 9, 1914 (Statutory Rules and Orders, 1914, No. 1376), 5 (1) and 6.

The Trading with the Enemy Proclamation, No. 2, dated September 9, 1914, declares, *inter alia*—"5. From and after the date of this Proclamation the following prohibitions shall have effect, . . . and We do hereby accordingly warn all persons resident, carrying on business or being in Our Dominions—(1) not to pay any sum of money to or for the benefit of an enemy"; and "6. Provided always that where an enemy has a branch situated in British . . . territory . . . transactions by or with such branch shall not be treated as transactions by or with an enemy."

A company, registered in Germany and manufacturing there, which had an office but no manufactory in Britain, and in respect of that office was registered under the Companies (Consolidation) Act 1908, sec. 274, brought an action in the Sheriff Court against a British company for payment under a contract. After a proof the Sheriff pronounced an interlocutor. Pending an appeal, the cause having been put to the short roll, war was declared against the German Empire. The pursuers presented a note to the Lord President craving an order that the cause should be put out for hearing in its proper order upon the short roll. The Court *refused* the note, and *hoc statu sisted* the process.

Held that the pursuers' office in Britain was not a "branch" within the meaning of declaration 6 of the said Proclamation, so that according to declaration 5 (1) thereof the Court were precluded from giving an effective decree.

Held (*per* the Lord President and Lord Johnston) that a payment to the pursuers under the said contract was not a "transaction" within the meaning of declaration 6 aforesaid.

The Trading with the Enemy Proclamation, No. 2, dated September 9, 1914 (Statutory Rules and Orders 1914, No. 1376), declares, *inter alia*—"3. The expression 'enemy' in this Proclamation means any person or body of persons of whatever nationality resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country. . . . 5. (*cited supra*). . . . (1) (*cited supra*). . . . 6. (*cited supra*). . . . 7. Nothing in this Proclamation shall be deemed to prohibit payments by or on account of enemies to persons resident carrying on business or being in Our Dominions, if such payments arise out of transactions entered into before the outbreak of war or otherwise permitted."

In the Sheriff Court at Glasgow, Orenstein & Koppel—Arthur Koppel, Alstein Gesellschaft (trading as Orenstein & Koppel—Arthur Koppel (Amalgamated)), railway material and rolling stock manufacturers, Berlin, registered under the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) as a foreign company trading in this country, and having their registered address in this country at 27 St Clement's Lane, Lombard Street, London, *pursuers*, brought an action against the Egyptian Phosphate Company, Limited, 188 St Vincent Street, Glasgow, *defenders*, for payment of sums which the pursuers averred to be due and resting-owing to them under a contract between the parties for the supply of certain iron-work.

After sundry procedure had been taken in the action and a proof had been led the Sheriff-Substitute (CRAIGIE) on 5th November 1913 pronounced an interlocutor against which the pursuers appealed. The cause was appointed to be put to the short roll. Pending the appeal war was declared against the German Empire.

The pursuers presented a note to the Lord President, setting forth declaration 6 (*cited supra*) of the Proclamation of September 9, 1914, and submitting that in respect of the said declaration they were entitled to be heard in His Majesty's Courts on the matters contained in the cause. The pursuers craved his Lordship to order that the cause should be put out for hearing in its proper order upon the short roll.

The following statement in regard to the position of the pursuers is taken from the *narrative* of the said note—"The said Orenstein & Koppel—Arthur Koppel (A.G.) is a German company carrying on business in Berlin, and having its works at Spandau and elsewhere in Germany. The said company was formed on 16th February 1909 by the amalgamation of Arthur Koppel (A.G.) with a company called Orenstein & Koppel (A.G.), but which on the amalgamation changed its name. The said Arthur Koppel (A.G.) had since 1892 a branch or place of business situated in London, and in respect thereof was registered under the Companies Act 1907, sec. 35. Since the said amalgamation the present company of Orenstein & Koppel—Arthur Koppel (A.G.) have had situated in London the branch who are the present pursuers, and in respect thereof they are registered under the Companies (Consolidation) Act 1908. They have no works in Great Britain. The said branch is carried on by its manager Fredreik Rudolf Leistikow, who has full power and authority conferred upon him to enter into contracts, institute and defend actions at law, and do all such acts and things as he thinks proper on behalf of the said branch."

Argued for the pursuers—Whether or not the Court were precluded from hearing the cause and from granting the pursuers a decree for payment depended on (1) the rights of belligerent subjects at common law, and (2) the effect of the Trading with the Enemy Proclamation (No. 2), dated September 9, 1914 (Statutory Rules and Orders, 1914, No. 1376). It was within the royal prerogative during war to licence transactions with the enemy which would otherwise be illegal. By the old law of war all the subjects of one belligerent State were the enemies of all the subjects of the other; they could not lawfully trade with each other—Bell's Principles, section 43. But the practice of nations had modified this rule—See Hall's International Law (6th ed.) as regards the property of enemies, p. 413; as regards contracts, pp. 383-385; as regards enemy-character, p. 490. The question always arose whether the individual seeking redress possessed enemy character. This now depended not on nationality but on domicile of trade—*The Yonge Klassina*, November 30, 1804, 5 Ch. Rob. 297; *Janson* v. *Driefontein Consolidated Mines, Limited*, August 5, [1902], A.C. 484 (Lord Lindley, at p. 505). According to declaration "6" of the said Proclamation (*cited supra*), where an enemy had a branch locally situated in British territory, transactions with such branch were not to be treated as transactions with the enemy. The pursuers' company was registered in respect of their branch in London under the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), section 274. Its position was therefore dissimilar from that of the company in *Lord Advocate* v. *Huron and Erie Loan and Savings Company*, 1911 S.C. 612, 48 S.L.R. 554. It was conceded that a mere agency was not a "branch." The company must have a local place of business where the principal must be present. This held of the pursuers' branch in London, —*cf.* the statements in the pursuers' note (*cited supra*) in regard to the powers of the pursuers' representative in London. Something depended also on the character of the business. If a foreign manufacturing company, whose manufacture was wholly foreign, had a British office merely as a channel for the disposal of its products, that would not be a branch. The pursuers' business was not really that of manufacturers, although they so described themselves, but that of middlemen. The manufacture in Germany was conducted by a child company. The branch business bought from various other firms in other countries. By any test it was a "branch" within the meaning of declaration "6" of the said Proclamation. As regards the term "transaction," it was used in the said Proclamation in a very general sense—Trading with the Enemy Proclamation (No. 2), dated September 9, 1914, declarations "5 (5)," "5 (10)," and "6." Counsel also referred to the Proclamation, dated August 5, 1914, relating to trading with the German Empire (Statutory Rules and Orders, 1914, No. 1252). The contract between the present parties was a transaction within the meaning of the said declaration "6," and the term related to the execution as well as to the making of the contract. No doubt the money, if paid under the contract, might reach Germany, but it was the business of the State to prevent that. The pursuers were therefore entitled to be heard. In any event, the Court should sist, not dismiss, the action.

Counsel for the defenders intimated that as the question was one of national policy they wished neither to consent to nor oppose the crave of the note. Counsel, however, submitted that the pursuers were a German corporation. Registration under the Companies (Consolidation) Act 1908, section 274, was merely a matter of filing information. The Trading with the Enemy Proclamation (No. 2), dated September 9, 1914, had little bearing on the question. It had primarily in view transactions entered into during the war, and did not deal with actions at law—*cf.* Treasury Notice of August 14, 1914, printed in the *Times*, August 22, 1914. By the common law an enemy resident in enemy country had no title to maintain an action—*Arnauld & Gordon* v. *Boick*, June 15, 1704, M. 10,159. An exception to this rule had been recognised—*Jansen* v. *Driefontein Consolidated Mines, Limited* (*cited supra*), Lord Lindley at p. 505. The question was whether the pursuers' company was within the exception.

LORD PRESIDENT—We have before us here a note for "Orenstein & Koppel—Arthur Koppel, Aktien Gesellschaft (trading as Orenstein & Koppel—Arthur Koppel (Amalgamated))," who design themselves as railway material and rolling stock manufacturers, of Berlin. They are pursuers of an action directed against the Egyptian Phosphate Company, Limited, 188 St Vincent Street, Glasgow. The prayer of the note is not happily expressed, but in the discussion before us it was treated as a crave that the cause be heard by this Court. So reading it, it would be idle for us to hear the case if under present circumstances we are precluded from pronouncing an effective decree in favour of the pursuers. I am of opinion that we are so precluded, and consequently that this note ought to be refused.

As your Lordships are aware, a state of war has existed between Great Britain and the German Empire since 11 o'clock on the night of the 4th August last, and, by Royal Proclamation given on 9th September by His Majesty, with the advice of the Privy Council, all persons who are resident and carry on business, or are in the Dominions of His Majesty, are warned "not to pay any sum of money to or for the benefit of an enemy." I regard that prohibition as absolute, universal, and subject to no exceptions whatever. And if that view be sound, it offers an easy solution of the apparent difficulties of this note. For the pursuers, being a company incorporated in Germany, and carrying on business in Germany, fall within the description of "enemy," as set out in the Royal Proclamation; and the defenders being a company incorporated in His Majesty's Dominions and carrying on business there, will be guilty of a crime, and punishable accordingly, if they pay money to the pursuers, who are an enemy in terms of the Royal Proclamation.

The pursuers point to the sixth article of the Royal Proclamation, which provides that where an enemy has a branch locally situated in British territory, "transactions by or with such branch shall not be treated as transactions by or with an enemy." And by virtue of that proviso the pursuers say that the general prohibition in the Royal Proclamation does not apply inasmuch as they allege they have a branch "locally situated in British territory." On the facts set out in this note—beyond which I do not go—I am of opinion that the pursuers have no branch in British territory; and further, that there is no transaction in the sense of the sixth article of the Royal Proclamation with which we have to deal.

The facts upon which the pursuers' contention rests are these:—They are a body of persons incorporatcd in Germany; they carry on business in Germany; they manufacture railway plant and rolling stock; their works are in Spandau and elsewhere in Germany; they have no works in His Majesty's Dominions; they have hired premises for a servant who is in this country; these premises are in London, and there this servant is authorised to transact business on behalf of the pursuers; presumably he solicits orders, transmits orders when received to Germany for execution, and when the orders are executed he collects the payments from persons resident in His Majesty's Dominions and transmits the money to the pursuers. The contract with the defenders for the supply of certain ironwork was made by this servant on behalf of the pursuers; and it is to recover payment of the balance alleged to be due under this contract that the action now depending in this Court is raised. If in that action we were to pronounce decree in favour of the pursuers that decree could only be obtempered by the defenders transmitting the cash to the pursuers direct or handing it to their servant that he might transmit it. A clearer case of the payment of money to and for the benefit of an enemy it would be difficult to conceive.

But the pursuers say that the facts set out in the note clearly show that they have "a branch locally situated" in the British Dominions, and that consequently they are entirely free from the prohibition. There is no definition—and one would not expect a definition—of "branch" in the Royal Proclamation. I can easily figure to myself what is a branch of a business within the ordinary meaning attached to that word in commercial circles, but I shall not attempt any definition. It is sufficient for the purpose of this case to say that if one were asked to figure a typical instance of what is not a branch but a mere agency, no better example could be found than is disclosed in this note. Indeed, it was conceded in argument—the concession could scarcely have been withheld—that if manufacturers of goods in one country engage a servant to sell these goods in another country, they cannot be said to have set up or established a branch of their business in that other country. And it is immaterial whether the servant is paid by salary or by commission, and equally immaterial whether his masters hire premises for him or pay his hotel bill. The fact that there has been, as here, registration of the company under the 274th section of the Statute of 1908 is also nothing to the purpose.

But I am further of opinion that payment arising out of a transaction is not a transaction in the sense of this Royal Proclamation; and, accordingly, if the question we have to deal with is liability or non-liability to pay a sum of money—and that is, according to the note, the nature of the question that is to be submitted for our consideration—then I am of opinion that that is not a transaction in the sense of the Royal Proclamation, and especially in the sense of the sixth article. That view derives, I think, strength and confirmation from the terms of the seventh article of the proclamation which draws a clear and marked distinction between payments arising out of a transaction on the one hand, and transactions on the other hand. That article gives express permission to persons resident or carrying on business in the United Kingdom to receive payments from an enemy, in the sense of the Royal Pro-

clamation, in two cases—(first) in the case of past transactions and (second) in the case of transactions otherwise permitted, and including a transaction properly falling within the sixth article of the Royal Proclamation. Now if it were deemed necessary to give express permission, even in the case of past transactions and in the case of permitted transactions, to a person resident in His Majesty's Dominions to receive money from the enemy, the inference seems to me to be plain that in such cases—past transactions or permitted transactions—express permission would require to be given to a person resident in this country to make payment of money to an enemy. No such express permission is given, and, in my opinion, nothing short of express licence by the sovereign to pay the enemy would elide the sweeping prohibition contained in the fifth article, sub-section one, of this Royal Proclamation.

On these grounds I am for refusing this note.

LORD JOHNSTON—We are asked to proceed, in order of the roll, to hear an appeal from the Sheriff of Lanarkshire in a case where the pursuers and appellants are a German firm. It is in the discretion of the Court in what order it will call its roll. Unless there is something exceptional in the situation, cases are ordinarily taken in their order in the roll. But if decree cannot, for the present at least, be enforced in ordinary course, the Court ought not to occupy time which might be devoted to the cases of other litigants in hearing a long case in which a small sum is at stake. If, then, in this action decree would fall properly to be suspended *sine die*, it is a case for the exercise of the Court's discretion by way of postponing the hearing also *sine die*.

I think that this result would have been arrived at without the intervention of the Royal Proclamation of 9th September 1914. But as the appellant's demand is based on that Royal Proclamation the question must also be considered on the terms of that document.

By section 5 (1) all persons resident, carrying on business, or being in the King's Dominions are prohibited from paying any sum of money to or for the benefit of an enemy. That, I think, is only declaratory of the law.

The appellants in the *partibus* of their initial writ set themselves forth as railway material and rolling stock manufacturers, Berlin, but as registered under the Companies Act 1908 as a foreign company trading in this country, having their registered address at 27 Clement's Lane, Lombard Street, London. They certainly do not manufacture railway material in Clement's Lane, in the heart of the city of London, and it is admitted in their note for hearing that neither do they do so in Berlin, but that though they carry on business in Berlin they have their works in Spandau and elsewhere in Germany and none in Great Britain. But under the Companies Act 1908, section 274, though incorporated in Germany, in respect that they have established a place of business in the United Kingdom they have duly registered themselves, and have nominated a person to accept service of writs in this country.

This gentleman, Mr R. F. Leistikow, they denominate the manager of the British "branch" of their business, and say that he has full power and authority conferred upon him to enter into contracts, institute and defend actions at law, and do all such acts and things as he thinks proper on behalf of the said "branch." And they represent that this "branch" of their business are the pursuers and appellants in the case. In the first place, this is inconsistent with the terms of their own initial writ, which correctly sets forth the German Company as pursuers. But a state of war with Britain was not openly in contemplation when the initial writ was drafted. In the second place, the statement in fact on which it is founded is rendered most doubtful by what passed at the bar. And in the third place, it involves a misconception of the provision of the Act 1908, section 274. That section merely requires a foreign company, if it establishes a place of business in this country, to take certain steps under penalty, which are all concerned with (*a*) affording the British customer information, and (*b*) facilitating the exercise of the jurisdiction of the British Courts. It is a total misconception to assume, as the appellants do, that the statutory registration in this country of the foreign company gives to the "branch" business, even if that term be applicable, a separate *persona*. But a foreign company, just as a foreign individual, may have a place of business in this country, even registered, without the business there carried on being a branch of the foreign business in the sense of the Proclamation. That result may follow in certain circumstances. In the majority it will not, and the so-called "branch" will be a place of business more or less of the nature of an agency, whether carried on under a servant of the company or a proper agency merely. It looks like the latter here. But without inquiry we could not, in my opinion, determine which alternative result is the correct one. I doubt whether such inquiry could be asked in the circumstances, and rather think that we should be bound to act on a *prima facie* view of the situation. But I do not think that we are really called on to determine whether the appellants' business in London is or is not a branch in the sense of the Proclamation to which I shall now refer. After prohibiting payment of money to an enemy, the Proclamation (section 6) says—"Provided always that where an enemy has a branch locally situated in British . . . territory . . . transactions by or with such branch shall not be treated as transactions by or with an enemy." The appellants found mainly, if not entirely, upon this proviso. I do not think that they maintained that this covers past as well as future transactions. If they did, the interpretation could not be accepted. For section 5 of the Proclamation contains ten separate prohibitions, or prohibitory declarations, all governed by the words "from and after the date of this Proclama-

tion," and they are couched in such terms as "not to pay," "not to act," "not to enter into," &c. The whole are therefore prohibitions *de futuro*. What I understand the appellants to maintain is that payment of money after the date of the Proclamation in fulfilment of a contract current at the outbreak of war is itself a transaction in the sense of this proviso. It is impossible to regard payment of money in respect of the counter obligation under a current contract as itself a transaction in the sense of the Proclamation.

While, therefore, I do not think it necessary to determine whether the appellants have a branch of their business in this country in the sense of the Proclamation, I have no hesitation in concluding that there is nothing in the Proclamation to interfere with the Court's discretion in the management of its business, and that in that discretion this application should be refused.

LORD MACKENZIE—I agree with the conclusion reached by your Lordship in the chair, and upon this ground only, that the facts which are set out in the note, if proved, would not establish that the pursuers have a branch in this country within the meaning of article 6 of the Royal Proclamation.

LORD SKERRINGTON—The Proclamation of 9th September 1914 (called the Trading with the Enemy Proclamation No. 2) does not expressly deal with the rights of an alien enemy to sue or his liability to be sued in the Courts of the King's Dominions, nor does it profess to lay down any rules for the guidance of the King's Courts in regard to this matter. Nor does the Trading with the Enemy Act 1914 (4 and 5 George V, cap. 86), which became law on 18th September, throw any light upon this subject, though it recognises that the offence of trading with the enemy may be committed not merely by disobeying the Proclamation, but also by contravening the common law or a statute. None the less the Proclamation has an important though indirect bearing upon the duty of the Court in regard to enemy litigants. In the first place, it defines what persons or bodies of persons are meant by the expression "enemy" as used in the Proclamation. In the second place, if a particular transaction between a person resident in the King's dominions and an "enemy" is permitted by the Proclamation one may reasonably infer that the "enemy" is entitled to sue any actions properly arising out of such a transaction. The applicants, who are the pursuers in a Sheriff Court action and who have appealed the interlocutor of the Sheriff-Substitute to this Court, describe themselves (Cond. 1) as a "limited liability company registered in Germany." From this description I infer that they are a body incorporated in Germany within the meaning of section 3 of the Proclamation, and that the "enemy character" attaches to them as such. The transactions in respect of which the applicants brought this action in the Sheriff Court of Lanarkshire on 2nd February 1912 were quite lawful at the time they were entered into, but the applicants have failed relevantly to aver that these transactions were entered into between the defenders on the one part and a London branch of the German company on the other part. Accordingly, the transactions in question do not fall within section 6 of the Proclamation, but on the contrary must be treated as transactions between the defenders and a company which is now an enemy.

If the applicants are to be regarded as enemies, and if the transactions are not protected by section 6 of the Proclamation, counsel on both sides assumed that the appeal at the instance of the applicants falls to be sisted during the continuance of the war. This assumption was, in my view, a sound one, but I prefer to base my opinion upon authority rather than upon the admission or assumption of counsel. The earliest case which I have found—*Blomart* v. *Roxburgh*, (1664) M. 16,901, bears a certain resemblance to the recent case of *Jansen* v. *Driefontein Consolidated Mines*, [1902] A.C. 484, in respect that the decision turned upon the fact that this country was not actually at war with the alleged enemy country at some particular date. The Court on this ground repelled the objection to the pursuer's title, although the King had ordered the seizure of all Dutch vessels in Scotland. The next case, *Arnauld & Gordon* v. *Boick*, (1704) M. 10,159, is a direct authority for the proposition that an enemy "can pursue no action during the dependence and continuance of the war." In the next case, *Carron* v. *Cowan*, November 28, 1809, F.C., a foreigner resident in Denmark charged on a bill and the Scottish debtor was ordained by the Lord Ordinary in a suspension to consign the amount. At the time of the charge war between Denmark and this country had broken out. On a reclaiming petition at the instance of the suspender the Court remitted to the Lord Ordinary to sist procedure. In a subsequent case, *Wright* v. *Hutcheson*, January 17, 1810, referred to in a note to the report of *Carron's* case, the Court followed this precedent. During the dependence of a process the pursuer, a Danish merchant, had become an enemy and the Court sisted procedure *ex proprio motu* and refused a motion for consignation or caution. Again, in the case of *Burgess* v. *Guild*, January 12, 1813, F.C., an alien enemy was held entitled to prosecute a counter action which he had raised before the outbreak of the war. There remains the question whether the objection is one which can be waived. The defenders' counsel did not press the objection as against the applicants but left the matter to the Court. Following the decision in *Wright's* case and the opinion of Lord Davey in the case of *Jansen*, I think it is for the Court and not for the litigants to decide whether and to what extent an alien enemy shall be allowed to take benefit from the King's Courts. There is no *debitum justitiæ* in a question with an enemy, but the Court is acting in conformity with the presumed wishes of the King when, as in *Burgess's* case, it does not allow an enemy to be treated in a manner contrary to natural justice.

A different question would have arisen if the defenders' counsel had asked us to allow the case to proceed in ordinary course in order that his clients might prosecute their counter claim, which largely exceeds the principal claim. I reserve my opinion as to that question. Further, I express no opinion as to the right of a person resident in this country to sue an enemy if he can establish jurisdiction against him.

The proper course, in my opinion, is to sist the action.

The Court refused the prayer of the note and sisted process *hoc statu*, reserving the question of expenses in connection with the note.

Counsel for Pursuers and Appellants—Clyde, K.C.—Hamilton. Agents—Webster, Will, & Company, W.S.

Counsel for Defenders and Respondents—D. P. Fleming. Agents—Cadell & Morton, W.S.

Friday, November 13.

FIRST DIVISION.

[Court of Exchequer.

MOORE & COMPANY *v.* INLAND REVENUE.

Revenue — Income Tax — Profits — Deductions — Expenses of Promoting Private Railway — Money Wholly Expended for Purpose of Trade — Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, First Case, First and Third Rules, First and Second Cases, First Rule.*

In consequence of the railway facilities given by a railway company being unsatisfactory a firm of coalmasters joined with others in promoting two bills for the construction of a private railway. The scheme was finally abandoned by agreement, whereby the railway company undertook to grant increased facilities. *Held* (*diss.* Lord Johnston) that the money spent by the firm in promoting the two bills was capital and not revenue expenditure, and accordingly that it could not be deducted from their income in arriving at their assessable profits.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts—"The duties hereby granted, contained in the schedule marked D, shall be assessed and charged under the following rules:—

"*Schedule D.*

"*First Case.*—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act.

"*First Rule.*—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years, ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern, shall have been usually made up, or on the fifth day of April preceding the year of assessment, and shall be assessed, charged, and paid without other deduction than is hereinafter allowed. . . .

"*Third Rule.*—In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, manufacture, adventure, or concern, nor for any sum expended for the supply or repairs or alterations of any implements, utensils, or articles employed for the purpose of such trade, manufacture, adventure, or concern beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made; nor on account of loss not connected with or arising out of such trade, manufacture, adventure, or concern; nor on account of any capital withdrawn therefrom; nor for any sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern; nor for any capital employed in improvement of premises occupied for the purposes of such trade, manufacture, adventure, or concern. . . .

"*Rules Applying to First and Second Cases.*

"*First.*—In estimating the balance of the profits or gains to be charged according to either of the first or second cases no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains, for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade, manufacture, adventure, or concern, . . . nor for any disbursements or expenses of maintenance of the parties, their families, or establishments; nor for the rent or value of any dwelling-house or domestic offices, or any part of such dwelling-house or domestic offices, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned; nor for any sum expended in any other domestic or private purposes distinct from the purposes of such trade, manufacture, adventure, or concern. . . ."

Messrs A. G. Moore & Company, coalmasters, 142 St Vincent Street, Glasgow, *appellants*, appealed at a meeting of the Commissioners for the Special Purposes of the Income Tax Acts against an assessment made upon them by the Inland Revenue, *respondent*, "on the sum of £23,838, less an allowance of £1877 for wear and tear of machinery and plant, and a further allowance of £64, 10s. for life insurance—net, £21,896, 10s.—for the year ended 5th April 1914, made upon them under section 60, Schedule A, No. III, rule 2; and section 100, Schedule D, of the Income Tax Act