of prescriptions and chemists' accounts, so as to check the prescription of substances which are not proper drugs and medicines, and to deal with outstanding cases of extravagant prescribing. The complainers have throughout taken exception to the policy embodied in these regulations, and they have presented the present note in order to restrain the respondents from laying the regulations before Parliament. They admit that if the regulations are laid before Parliament and not objected to within twenty-one days they will obtain the force of statute, but they maintain that as the regulations are *ultra vires* of the respondents and inconsistent with the provisions of the Act itself they are entitled to the protection of the Court. On the other hand the respondents plead that the regulations in question are not open to challenge or review in a court of law.

I am of opinion that the respondents are right. It is true that in the ordinary case a bye-law made by a statutory authority may be challenged in the Courts as being *ultra vires*, and we have many instances in which such a proceeding has been successfully instituted. The speciality in this case is that the regulations made by the respondents are declared to have effect as if enacted in the Act itself either from their date or at all events from the time when they are laid before Parliament. This follows, I think, from the provision I have already quoted, which, while providing that His Majesty in Council may annul the regulations, declares that this shall be without prejudice to the validity of anything previously done thereunder. It is accordingly contemplated that the regulations may be acted on before an address has been presented in either House of Parliament praying that the regulations be annulled. Now if they are to have statutory effect in the meantime, and after undergoing the necessary procedure in the Houses of Parliament are to be treated as permanently embodied in the National Insurance Act 1911, it appears to me that a court of law has no jurisdiction to deal with the matter of their validity. The duty of the Court is to give effect to the statute, and, as Lord Chancellor Herschell said in the *Institute of Patent Agents* v. *Lockwood*, [1894] A.C., at p. 360, if there is a conflict between two sections to be found in the same Act you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. In short, the duty of the Court in such a case is limited to a construction of the Act. It has no power to declare any particular enactment to be invalid. I was at first impressed with the view that this would be in effect to concede to the respondents legislative powers, always subject to the matter of their regulations being within the general scope and purpose of the first part of the Act, but on full consideration I think the remedy is with Parliament and not by an appeal to the courts of law. If it should appear that there was a real conflict between the Act itself and the regulations, no doubt proper representations would be made against the regulations with a view to having them annulled by His Majesty in Council, and it is always open to the complainers after the regulations are laid before Parliament to use any influence they possess for this purpose. That appears to me to be the only safeguard that is provided, but the Legislature has thought it in the circumstances of this Act to be a sufficient safeguard. I am, accordingly, of opinion that we ought to sustain the second plea-in-law for the respondents, and refuse the note.

The Court recalled the interlocutor of the Lord Ordinary, and refused the note of suspension and interdict.

Counsel for the Complainers (Respondents)—Clyde, K.C.—Aitchison. Agents—Macpherson & Mackay, W.S.

Counsel for the Respondents (Reclaimers)—The Solicitor-General (Morison), K.C.—T. G. Robertson. Agent—James Watt, W.S.

Thursday, February 25.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

GRAHAMSTON IRON COMPANY *v.* INLAND REVENUE.

Revenue—Income Tax—Profits of Trade—Deductions—"Money Wholly and Exclusively Laid Out for the Purposes of such Trade"—Levies Paid to Trade Association—Proof of Levies being so Expended by Trade Association—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Rules Applying to First and Second Cases, No.* 1, *and secs.* 120 *and* 123.

A company of iron founders paid levies to a trade association of which they were members, and which was formed for the purpose of raising and keeping up prices, and thus enabling its members to earn larger profits. The company having claimed to be allowed to deduct these levies from the amount of their assessment for income tax, the Special Commissioners required the company to produce before them the accounts of the association for the past three years to show the manner in which the sums paid were expended by the association. The company did not produce the accounts, on the grounds that they were not the company's accounts, that they were not under the company's control, and that by the rules of the association members of the association were not entitled to examine them. The Commissioners disallowed the deductions.

Held that the Special Commissioners were entitled to demand production of the accounts of the association before allowing the amount of the levies to be deducted from the assessment.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) enacts—Section 100, Schedule D, Rules applying to First and Second Cases—"*First.*

In estimating the balance of the profits or gains to be charged . . . no sum shall 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. . . ." Section 120—"Upon receiving notice of appeal . . . the said Commissioners shall direct their precept to the person appealing to return to them within the time limited therein a schedule containing such particulars as the said Commissioners shall demand . . . for their information respecting the property of such person, or the trade, manufacture, adventure, or concern in the nature of trade . . ., and the amount of the balance of his profits and gains, distinguishing the particular amounts derived from each separate source before mentioned, or respecting the particulars of the deductions from any of such profits or gains made in such statements or schedules. . . ." Section 123—"Whenever the Commissioners for General Purposes shall be dissatisfied . . . with any schedule delivered to them, or shall require further information respecting the same, it shall be lawful for the said Commissioners for General Purposes to put any question in writing touching . . . the contents of such schedule, or touching any of the matters which ought to have been contained therein, or any sums which shall have been set against or deducted from the profits or gains to be estimated in such . . . schedule and the particulars thereof, and to demand an answer in writing accordingly from and signed by the person to be charged . . ., and the said Commissioners for General Purposes shall from time to time issue their precept requiring true and particular answers to be given to such questions within seven days after the service of such precept; and every such person shall make true and particular answers in writing . . ., or shall within the like period tender himself before the said Commissioners for General Purposes to be examined by them *viva voce* to such matters. . . ."

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at the Inland Revenue Office, Edinburgh on 7th July 1914, and at an adjourned meeting of the said Commissioners held at York House, Kingsway, London, on 31st August 1914, for the purpose of hearing appeals under Schedule D of the Income Tax Acts, the Grahamston Iron Company of Falkirk, *appellants*, appealed against an assessment of £3141 for the year ended 5th April 1914, made upon them under section 100, Schedule D, of the Income Tax Act 1842 (5 and 6 Vict. cap. 35) as amended by the Income Tax Act 1853 (16 and 17 Vict. cap. 34) in respect of the profits of the concern, viz., that of iron founders, carried on by them. The assessment appealed against was based on the average profits of the three years ended 31st December 1912, and in arriving at such assessment the additional Commissioners for the Division of Falkirk had disallowed a claim on the part of the appellants to deduct the sum of £923, being one-third part of the sum of £2770 debited in the profit and loss account of the appellants for the year ended 31st December 1912—the last of the three years entering into the average on which the assessment was based—in respect of payments consisting of contributions and levies (hereinafter referred to as "payments") to the National Light Castings Association, of which they were members. The disallowance by the additional Commissioners of the said sum of £923 as a deduction from the income of the appellants for the purposes of the income tax was the only point on which the opinion of the Court of Session was sought. In the event of the decision of the Special Commissioners with respect to such deduction being held to be erroneous in point of law, it was agreed that the case be referred back to them for such adjustment of the appellants' liability as might be necessary.

The Special Commissioners, on consideration of the facts and arguments submitted to them, were of opinion that in default of full and explicit information, and especially in the absence of the accounts of the association showing precisely the manner in which the sums received were expended or the extent to which such sums had been expended by the association, they were not in a position to determine whether the whole or any portion of the payments in question was an admissible deduction under the Income Tax Acts in arriving at the appellants' liability. They accordingly confirmed the assessment appealed against as made on the sum of £3141, and at the request of the appellants stated a Case for appeal.

The Case stated—"1. The following *facts* were admitted or proved—(1) The National Light Castings Association (N.L.C.A.) (hereinafter called the association) was formed for the purpose of raising and keeping up the price to the buyer of goods and articles made and/or supplied by its members. During the year 1912 payments amounting to £2770 were made by the appellants to the association under the rules and regulations after mentioned. (2) On 26th June 1914 the Special Commissioners addressed to the appellants a precept in the following terms:—'The Commissioners for the Special Purposes of the Income Tax Acts having received notice of appeal against the above assessment do hereby require you to forward to them at their office, 49 Wellington Street, Strand, London, W.C., on or before the 3rd day of July 1914, a schedule containing the following particulars, namely—1. A copy of the rules and regulations of the National Light Castings Association. 2. A copy of the accounts of the said association for each of the three years 1910, 1911, and 1912. If the association was set up and commenced within the three years accounts should be furnished for the period from the date of first setting up the same. Given under our hands this 26th day of June 1914.' (3) In response to the said precept the appellants produced a copy of the rules and regulations of the association. The appellants did not produce the accounts of the association called for in the said precept on the ground that the said accounts were not in the

possession or under the control of the appellants. The appellants, however, tendered the evidence of Mr A. E. Wenham, the secretary of the association, who was prepared to give *viva voce* evidence as to the objects and methods of the working of the association. The Special Commissioners considered that the objects and methods of working of the association were fully set forth in its printed 'rules and regulations' (which form part of this case), and that any further evidence in relation thereto which did not include the precise manner in which the payments made to the association were expended by the association was unnecessary and not pertinent to the point at issue.

"2. Mr Douglas Wenham, on behalf of the appellants, *contended* that their payments to the association were sums laid out exclusively for the purposes of their trade, and hence that such payments were properly allowable as an admissible deduction in arriving at their profits assessable to income tax, Schedule D; that he had only to show for what purpose the money was expended by the appellants, and that the manner in which the sum so expended by them might be subsequently applied is immaterial. He further contended—(1) That the rules and regulations of the association produced showed conclusively that the payments made to the association by the appellants were for the sole purpose of maintaining prices, and thereby enabling the appellants to earn profits, and that therefore the deduction in question was justified. (2) That as it was not within the power of the appellants to produce the accounts of the association the Special Commissioners were not entitled on that ground alone to refuse the appeal. (3) That in any event the Special Commissioners were bound, before finally adjudicating upon the appeal, to receive and consider, *quantum valeat*, the evidence tendered.

"3. Mr E. S. London, Deputy Chief Inspector of Taxes (with him Mr W. Crawford, Surveyor of Taxes) contended for the Crown—(1) That the expenditure of a mutual association, such as the one in question, is admissible—for the purposes of the Income Tax Acts—only to the extent that it would be a permissible deduction if incurred by the appellants themselves. (2) That the association receives sums from members which are not *de facto* expended. (3) That the rules (No. 28) provide for the division of any surplus assets amongst the members in the event of the association being wound up. (4) That the association accounts can alone prove to what extent expenditure of an admissible nature for income tax purposes has been incurred."

Argued for the appellants—The deduction claimed was expended exclusively for the purposes of the appellants' trade, and was therefore a good deduction — *Moore* v. *Stewarts & Lloyds, Limited*, July 20, 1906, 8 F. 1129, 43 S.L.R. 811. It was sufficient to show that the appellants had so expended the sums in question, and unnecessary to inquire as to how the association had dealt with them — *Guest, Keen, & Nettlefolds, Limited* v. *Fowler*, [1910] 1 K.B. 713; *Usher's Wiltshire Brewery Company, Limited* v. *Bruce*, 1914, 31 T.L.R. 104; *Lochgelly Iron and Coal Company, Limited* v. *Crawford*, 1913 S.C. 810, 58 S.L.R. 597. If the Surveyor of Taxes considered the money was being misappplied by the association the *onus* of proof was on him. The accounts called for were not the appellants' accounts nor under their control, and by the rules of the association the appellants were not entitled to see them. The oral evidence tendered was accordingly the only evidence the appellants had and was sufficient. The Commissioners were not entitled to refuse the appeal merely because the accounts were not produced—*Reg.* v. *Chew*, 1894, 71 L.T.R. 541.

Counsel for the respondent were not called on.

LORD PRESIDENT—The sole question in this case is whether or no the appellants are entitled to have a deduction of a sum of £923 in fixing their income-tax for a certain year. The sum I have just mentioned was, they say, paid by them to an association of which they are members, the object of which is, stated in a sentence, to prevent the members playing against one another the game of "Beggar my Neighbour"; in other words, it is an association for the purpose of keeping up the prices, and so maintaining, or raising it may be, the profits of its members. And unquestionably if they can show that the sum in question was actually expended by them for that purpose they are entitled to the deduction, because it is now well-settled law that such subscriptions are sums expended for the purpose of trade, and are not merely an application of profits already earned. "But," say the Special Commissioners of Income-Tax, to whom this question in the first instance is referred, "we desire to have evidence to show that this sum has been expended for these purposes, and we are not ready to accept the mere statement of the appellants themselves that they have expended the sums for that purpose. We desire to know whether *de facto* the sums have been so expended." Now the question was quite sharply raised, I observe, before the Special Commissioners, because the case bears that it was contended on behalf of the appellants that all they had to show was the purpose for which they spent the money, and that the manner in which the sum so expended by them might be subsequently applied is immaterial. I cannot agree to that as a general proposition. It may be perfectly true that if they had expended the money and applied it by payment to some third party for the purpose of keeping up their profits—for the purposes of their trade—and the Special Commissioners were satisfied of that, they would not inquire further as to whether this third party had *de facto* expended the money in the way in which it was intended to be expended. The case with which we have to deal is one in which the appellants paid this sum to a company, to a voluntary association of which they themselves are members, and it appears to me quite reasonable that the Special Commissioners before

determining the fact should ascertain how the money was actually spent by the association, bearing in mind that the appellants are themselves members of the association, that the association is under the sole control of its members, who may retire from it at any moment, and that the assets belong to the appellants along with their fellow-members. I am not disposed, and I understand your Lordships are not disposed, to sustain the finding of the Commissioners as it stands, and now and here to disallow this payment of £923. I propose that we should remit back to the Special Commissioners to consider the case with the evidence which the appellants are asked to tender, namely, the accounts of the association, which show—and which are the only true evidence by which it can be shown—how the money was actually spent.

LORD JOHNSTON—I concur in the course which your Lordship proposes to take. I think the question is really determined by the passage which I adverted to in Lord Dunedin's opinion in the case of *Moore* v. *Stewarts & Lloyd*, 1906, 8 F. 1129, 43 S.L.R. 811, where he says it all depends on "whether the expenditure was really an outlay to earn profit or was an application of profit earned. Well, that is a question of fact, and it is a question of fact which is not solved by a mere perusal of the document under which the money is claimed." Now the appellants here seem to me exactly to controvert that proposition, because they ask us, and they asked the Commissioners first of all, to hold that the Inland Revenue were bound to determine this question upon perusal of a certain document, namely, the rules and regulations of this association. I refer again to Lord Dunedin in the case of the *Lochgelly Iron and Coal Company*, 1913 S.C. 810, at p. 814, 50 S.L.R. 597, at p. 599, where he points out that the money, when received in that case by the Coalowners' Association, might be applied to purposes some of which "might involve amounts which, if charged in the account of the individual member, would be proper deductions as being expenses undertaken with a view to earning profits, whereas others might not." Now I think it is perfectly legitimate for the Inland Revenue to take up that attitude here. This association has made a levy; it has received payment of it. What has it done with it? Some of the expenditure, it may be, has been made perfectly legitimately towards the increase of profits of these particular appellants, some of it may not, but surely the Inland Revenue are entitled to have some means of judging of that question. The appellants' only answer is that they have by their own act placed themselves in such a position that they cannot satisfy the request of the Inland Revenue. Very well, if they cannot satisfy that reasonable and proper request they must accept the consequence, which is that the assessment must stand. But it seems to me that the appellants are really taking up an unreasonable attitude when they might have quite easily satisfied the Inland Revenue had they taken a different line. This association is a purely voluntary association; the appellants have chosen to tie their hands behind their backs in going into it, and therefore they cannot do directly what the Inland Revenue asks. But it seems to me that with a little reason the information might be given to the Inland Revenue, because it is perfectly certain that the same question will arise between the Inland Revenue and every other member of this association. I accept the situation that the interest of all these parties requires that none of them should have any information about the business of the others. That is quite reasonable. But surely the books of the association can be disclosed, as the books of all companies are disclosed, in confidence to the Inland Revenue, in order that the Inland Revenue may satisfy themselves, not upon the question of what are the profits of the other companies concerned, because that they get from the ordinary returns of these companies, but upon the question of what has been the expenditure of this association. The seal of confidence need not be broken, and yet the Inland Revenue may thus get all the information necessary for determining the question which they perfectly legitimately desire to determine.

LORD SKERRINGTON—I concur with your Lordships.

LORD MACKENZIE was sitting in the Extra Division.

The Court pronounced this interlocutor—

"Refuse the appeal, and remit the case to the Special Commissioners to consider the same with such evidence as may be obtained from the accounts of the association with respect to the manner in which the contributions and levies in question were expended by the association."

Counsel for the Appellants—Macmillan, K.C.—MacRobert. Agents—Martin, Milligan, & Macdonald, W.S.

Counsel for the Respondent—Solicitor-General (Morison, K.C.)—Candlish Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Wednesday, December 2, 1914.

FIRST DIVISION.

[Sheriff Court at Glasgow.

COLLINS *v.* BARROWFIELD LODGE OF ODDFELLOWS FRIENDLY SOCIETY.

Friendly Society—Dispute with Member—Action to Enforce Decision of Superior Court of the Society—Friendly Societies Acts 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 68 (1), *and* 1908 (8 *Edw. VII, cap.* 32), *sec.* 6.

A member of a friendly society having been expelled by his lodge, but the expulsion not having been sustained on appeal to the district court, brought an action against the lodge for decree