Indeed, the only other explanations of the transaction suggested are—(1) that the 7 per cent. debentures were a bonus or inducement to accept the new bonds; and (2) that the true nature of the transaction was a postponement of the obligation to meet the coupons on the original bonds. I cannot say that I see any bonus or inducement to accept the new bonds in a transaction which had no effect beyond meeting the obligation which the interest coupons themselves represented. And it is difficult, in view of the fact that the interest coupons on the original bonds had to be surrendered, to hold it established that the 7 per cent. debentures represented (not the equivalent of these coupons), but only an arrangement by which these coupons, surrendered as they had been, were to suffer postponement as regards their payment. In short, in the absence of any other evidence of the true character and function of the 7 per cent. debentures, it is impossible to say that the Commissioners did not have material before them upon which they could arrive at the conclusion in fact at which they did arrive, namely, that the 7 per cent. debentures were the *surrogata* of the coupons which were surrendered. That is enough to enable us to answer the first of the two questions in the case in the affirmative.

With regard to the second question—whether the sum of £773 was properly included in the computation of profits of the company for the purposes of income tax—it follows that if the 7 per cent. debenture bonds did represent the interest on the surrendered coupons the value of those debentures must be included in the account of the company's profits, provided that the debentures themselves were saleable and had a value on the market. The question becomes one of ascertaining the amount of the profits and gains of the company. If instead of receiving cash for the coupons on the old bonds, the company got a saleable security, that saleable security is just part and parcel of the company's profits and gains. Its market value must be assessed, and if that is fairly and properly done the amount represents just so much profit or gain to the company. It appears from the proceedings that the question of the saleability and the value on the market of these debentures was the subject of little or no discussion in the appeal before the Commissioners. There is no record in the case that the appellant company raised any contention upon either head, but of course if the appellant company had intended to dispute the surveyor's view that the debentures were marketable, and had a value of about 75 per cent. of their face value, it was their business to do so on appeal before the Commissioners. They did not however dispute it and we have accordingly no material upon which to criticise the finding that 75 per cent. of the value of these debentures was realisable on the market, and therefore fairly represented the profit or gain of the company in the year in question.

The result is to answer the second question also in the affirmative.

LORD MACKENZIE—I am of the same opinion.

The question whether or not the debentures were saleable at 75 per cent. does not seem to have been made the subject of controversy before the Commissioners at all. The only questions which were raised were whether they were entitled to proceed upon a certain principle in dealing with the figure £773, and for the reasons which your Lordship has explained I am of opinion that they were.

LORD CULLEN— I concur.

LORD SKERRINGTON did not hear the case.

The Court answered the questions in the affirmative.

Counsel for the Appellants—Fleming, K.C. — Dykes. Agents—Guild & Shepherd, W.S.

Counsel for the Respondent — Solicitor-General (Murray, K.C.) — Wark, K.C. — Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Saturday, February 25.

FIRST DIVISION.

[Lord Blackburn, Ordinary.

CLARK *v.* CLARK.

Expenses—Husband and Wife—Law Agent—Interim Award—Appropriation—Outlays—Agent's Fees.

A wife who was pursuer in an action of separation and aliment obtained decree in the usual form for £100 of interim expenses. The money was paid, and she allowed it to remain in the hands of her law agent without giving him any special instructions as to its disposal. Sometime afterwards, while the case was still proceeding, she changed her agent. *Held* (1) that the decree did not imply a special appropriation of the sum to outlays necessary in the cause or create a trust limiting the disposal of the sum to disbursements on that head, and (2) that in the absence of special instructions by the pursuer as to the disposal of the sum, the first law agent was entitled to take payment of his fees, as taxed, *pro tanto* out of the balance of the sum in his hands unexpended on outlays.

Mrs Esther Thomson or Clark, *pursuer*, brought an action of separation and aliment against her husband Donald Clark, M.B., Ch.B., Pollokshields, Glasgow, *defender*.

On 1st March 1921 LORD SALVESEN, for the Lord Ordinary (ANDERSON), closed the record, allowed a proof, and on the motion of the pursuer for an interim award of expenses, decerned against the defender for payment to the pursuer of the sum of £100 in name of expenses.

The sum decerned for was paid by the defender, and was allowed by the pursuer to remain in the hands of Mr John Baird,

solicitor, who was then acting as her law agent.

On 14th September 1921, while the cause was still proceeding before the Lord Ordinary, the pursuer revoked her mandate to Mr Baird, and instructed Mr William Marshall Henderson, S.S.C., Edinburgh, to act as her law agent. Mr Baird handed over the documents in the case to Mr Marshall Henderson, but retained the sum awarded as interim expenses in payment *pro tanto* of his business account for conducting the case. The account as taxed amounted to £165, 16s. 1d., representing outlays of £48, 16s. 11d. and business charges of £116, 19s. 2d.

On 8th December 1921 the Lord Ordinary (BLACKBURN) pronounced the following interlocutor:—"Authorises and ordains Mr John Baird, the former agent of the pursuer, forthwith to hand over to Mr Marshall Henderson, her present agent, the balance in his hands remaining of the sum of £100 received as interim expenses so far as unexpended on necessary outlays."

Mr Baird reclaimed, and argued—The order pronounced by the Lord Ordinary was not competent. It contained no decerniture and could not therefore be extracted and enforced except by some form of commitment for contempt of Court. Even the amount to be paid was not specified and was only ascertainable. Further, the Lord Ordinary had proceeded on the view that the sum in an interim award of expenses was specially appropriated to outlays, and was held by the agent in trust for that purpose. There was no foundation for such a view. In *Mitchell* v. *Mitchell*, 1893, 1 S.L.T. 141, which was the only case cited, the question had not been raised. Mr Baird was just in the position of a creditor in possession of money belonging to his debtor. He might have obtained the decree in his own name as agent-disburser — *Granger's Trustee* v. *Hannay's Trustee*, 1835, 13 S. 495.

Argued for the pursuer—The order was competent. The Court had power to control members of the College of Justice—Shand's Practice, vol. i, p. 39; *Belcher*, November 18, 1837, F.C.—and therefore to order them to do what was right. An award of interim expenses was not meant to meet the agent's business account, but to meet necessary outlays—*Mitchell* v. *Mitchell*, *cit. sup.* It was impliedly appropriated to that purpose—Fraser, Husband and Wife, vol. ii, pp. 1230, *et seq.* Counsel also referred to Begg on Law Agents, p. 193.

At advising—

LORD PRESIDENT—The practice of granting decrees for interim expenses in the early stage of consistorial actions—where the wife is pursuer and has no separate estate—rests on the necessity for instituting and completing without delay an inquiry into the facts on which the action is brought. Lord Ardmillan in *Tibbets* v. *Tibbets* ((1862) 24 D. 599) described their object as being "so to assist the pursuer to proceed in the proof as to promote the ends of justice whatever may be the result of the inquiry." It follows from the character of the object which such decrees are intended to serve that their amount is in practice restricted to bare necessaries. Generally speaking they are based on a rough estimate of the outlays necessary to be incurred in bringing the pursuer's case to proof without taking into account liability for professional fees. But it is not the practice to limit or qualify the decrees otherwise than in amount, and in the absence of express limitation or qualification they are—to the extent of the sums contained in them—just decrees to account of the pursuer's expenses of process generally. It is true that a pursuer who recovers under such a decree will only be acting prudently in her own interests if she restricts the use of the money to necessary outlays. In like manner the agent whom she employs, and in whose hands the money is placed or allowed to remain without special instructions, will best consult the interest of his client by conserving it for the same purpose. But this is not because the decree creates or implies any special appropriation of the money to necessary outlays, but because if the money were to be prematurely exhausted in defraying other kinds of expense connected with the conduct of the action it might be difficult to obtain a further decree on the ground that the first one had proved less than was really necessary to bring the case to proof. Suppose the action is brought to a conclusion while a balance of the amount awarded as interim expenses still remains in the agent's hands it is clear that the agent would be entitled to recoup the amount of his taxed professional fees out of that balance as far as it went. He would, indeed, be bound to impute it *pro tanto* to his account. While the litigation is still in progress the only restriction upon the particular expenses which the sum in the decree can be properly employed to meet is that arising from the practical considerations of prudence and expediency to which I have just referred.

In the present case the decree was for as much as £100, because it was expected that evidence would have to be taken abroad. It turned out that this evidence could be dispensed with, and so a considerable part of the anticipated outlay was saved. The decree was in the usual form and the pursuer gave no special instructions with regard to the disposal of the money which she allowed to remain in her agent's hands in the usual way. After the action had proceeded for some time, but before the stage of proof had been reached, the pursuer changed her agent. By that time the amount expended in necessary outlays was £48, 16s. 11d. The agent did not stand upon his lien, and gave up the papers to his successor. But he had his account taxed at once, the amount allowed him by the Auditor as fees (exclusive of outlays) being £116, 19s. 2d. To meet this the agent retained the balance of £51, 3s. 1d. remaining in his hands. But on the motion of the pursuer the Lord Ordinary pronounced an order upon him to hand over that balance to the new

agent whom the pursuer had appointed in his stead.

I do not entertain any doubt that a summary order can be competently pronounced against an agent acting for a litigant before this Court, or that if the order were disobeyed it could be enforced—disciplinarily at any rate—without the necessity of petition and complaint. A number of authorities defining and illustrating the wide powers of the Court in this matter are collected in chapter 25 of the late Mr Henderson Begg's work on Law Agents. Objections were taken to the competency of the present reclaiming note, but these were not pressed, and it is therefore unnecessary to refer to them further. The only question is whether the order pronounced by the Lord Ordinary was warranted by the circumstances of the present case. The argument in support of the order was that all decrees for interim expenses involve a special appropriation of the sums decerned for to outlays only. For the reasons already given I do not think this proposition is maintainable. If the agent had been allowed to continue to act for the pursuer he would, no doubt, have conserved the money for further outlays in connection with the case until it was exhausted. But the pursuer chose to deprive him of his employment when only half performed. The balance then remaining in his hands was the subject neither of any special appropriation to outlays nor of any trust limiting the disposal of the money to disbursements on that head, and there is therefore no reason why the agent should be prevented from paying his taxed fees *pro tanto* out of the balance in hand. The order must accordingly be recalled.

LORD MACKENZIE—I concur.

The LORD PRESIDENT stated that LORD SKERRINGTON, who was absent at advising, concurred in his opinion.

LORD CULLEN did not hear the case.

The Court recalled the interlocutor reclaimed against and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer—Wilton, K.C.—Maclaren. Agent—W. Marshall Henderson, S.S.C.

Agents for the Defender—Simpson & Marwick, W.S.

Counsel for the Compearer and Reclaimer—Morton, K.C.—Guild. Agent—John Baird, Solicitor.

Saturday, February 25.

FIRST DIVISION.

[Sheriff Court at Lanark.

SLOAN *v.* SHOTTS IRON COMPANY, LIMITED.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Out of and in the Course of the Employment*"—*Breach of Statutory Rule—Miner who had Fired Three Shots and Heard Two Explosions Returning to Shot-hole within Prohibited Time—Miner Honestly Believing that Two of the Shots had Exploded Simultaneously—Explosives in Coal Mines Order, 1st September* 1913, *Rule* 3 (*a*).

The Explosives in Coal Mines Order of 1st September 1913 provides—Rule 3 (*a*)—"If a shot misses fire the person firing the shot shall not approach or allow anyone to approach the shot-hole until an interval has elapsed of not less than ten minutes in the case of shots fired by electricity or by a squib, and not less than an hour in the case of shots fired by other means."

In a mine to which the above regulation applied a miner was firing shots by applying a naked light to the fuses. Having fired three shots his lamp gave out, and he retired a short distance up a road-head to refill his lamp and await the three explosions in safety. While in the road-head he heard two separate explosions and concluded that two of the three shots fired by him had exploded simultaneously. Having come to this conclusion, honestly and in good faith, he returned to the face within four minutes of having fired the shots, whereupon the third shot exploded, injuring him severely. *Held* that the workman had committed a breach of the Order in approaching the shot-hole within an hour, and that accordingly the accident did not arise out of his employment.

Henry Sloan, shot-firer, Carluke, claimed compensation under the Workmen's Compensation Act 1906 from the Shotts Iron Company, Limited, coalmasters, Carluke, in respect of injuries sustained by him while in their employment on 23rd December 1920.

The matter was referred to the arbitration of the Sheriff-Substitute at Lanark (HARVEY), who awarded compensation, and at the request of the company stated a Case for Appeal.

The *facts* proved were as follows:—"1. On and prior to 22nd December 1920 the respondent was employed by the appellants as a repairer in their No. 6 Castlehill Colliery, Carluke, and he held a certificate as shot-firer from the manager of said colliery. 2. He commenced work as a repairer at 11 p.m. on 22nd December 1920 in said colliery, and at 3 a.m. on 23rd December he was instructed by the fireman in charge of the shift to take on the duties of shot-firer in No. 4 section of said colliery. 3. Said colliery is one in which the use of safety lamps is not required, and in which,