examination in bankruptcy which he says were not disclosed to the Court when a preliminary proof of the question of jurisdiction was taken in the divorce action.

In these circumstances I am of opinion that there must be inquiry into the facts. The pursuer desires to vindicate a fund which vested in him for behoof of the creditors of the husband before divorce was granted. In answer to his claim the decree of divorce is tabled. If his reply is sound this decree is null, because the first essential for the validity of the decree is that it should have been pronounced by a court of competent jurisdiction between parties who are *bona fide* subject to it. None of the authorities referred to by the Lord Ordinary really apply to a case of this kind. The decree was in absence. The pursuer, in my opinion, has a title to reduce a decree which he says is null, and which is pleaded as a bar to recovery by him of property which had vested in him prior to its date.

Although one is reluctant to sanction a course which may have the result of affecting the status of the husband and wife in order to secure merely patrimonial interests of others, it is necessary to point out that if the pursuer succeeds in establishing that the decree of divorce was not pronounced in accordance with the rules of public international law it would have no extra territorial effect whatever. This is stated by Lord Westbury in *Shaw* v. *Gould*, 3 E. & I. App. 55 at p. 81; *Bonaparte* v. *Bonaparte*, 1892, P. 402; *Le Mesurier*, 1895, A.C. 517; *Pemberton* v. *Hughes*, 1899, 1 Ch. 781. Although, therefore, in one view the present proceedings may involve hardship, it is in the interests of both Mr and Mrs Somerville that the question now raised should be finally determined.

The reclaimer did not argue plea 2 (2) before us.

The Court adhered.

Counsel for Pursuer (Respondent) — M'Lennan, K.C.—J. B. Young. Agents—Forbes, Dallas, & Co., W.S.

Counsel for Defender (Reclaimer) — Fleming, K.C.—Macmillan, K.C.—Howden. Agents — Fraser, Stodart, & Ballingall, W.S.

Tuesday, March 18.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

LOCHGELLY IRON AND COAL COMPANY, LIMITED *v.* CRAWFORD (SURVEYOR OF TAXES).

Revenue — Income Tax — Profits — Deductions — Levies Paid to Coal-owners' Association — Conciliation Board Expenses — Subscriptions to Mining Association of Great Britain — Experimental Work Done at Government's Request — Money Wholly Expended for Purpose of Trade — Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 53), *sec.* 100, *Schedule D, Rules Applying to First and Second Cases, No.* 1.

A colliery company paid annual levies to an association of coalowners. Part of these levies was applied by the association for the following purposes —(1) in defraying the expenses of the Conciliation Board (Scotland), (2) in paying the subscriptions to the Mining Association of Great Britain, and (3) in experimenting with coal dust for the purpose of devising means to prevent explosions in mines, the experiments having been made at the request of the Home Secretary with a view to legislation.

Held that the levies, so far as they were applied to meeting Conciliation Board expenses, constituted a good deduction, but so far as applied to the other two purposes they were not a good deduction.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts — 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 purpose of such trade, manufacture, adventure, or concern. . . ."

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts, held at the Inland Revenue Office, Edinburgh, on the 16th January 1912, for the purpose of hearing appeals under Schedule D of the Income Tax Acts, the Lochgelly Iron and Coal Company, Limited, of Lochgelly, Fife, appealed against an assessment of £60,148—less wear and tear allowance £9693—for the year ending 5th April 1912, made upon them under section 60, Schedule A, No. III, rule 2, and 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) and the Revenue Act 1866 (29 and 30 Vict. cap. 36), sec. 8, in respect of the profits of the concern.

The only point in dispute was as to the admissibility or non-admissibility of the deduction for Income Tax purposes of the following sums, which were debited in the profit and loss accounts of the appellants in respect of their contributions in the form of levies to the Fife and Clackmannan Coalowners' Association, of which they were members:—

Year ended 31st May	1906 . .	£22
,, ,,	1907 . .	£74
,, ,,	1908 . .	£59
,, ,,	1909 . .	£74
,, ,,	1910 . .	£720

It was agreed (1) that should the deductions in question be held to be inadmissible, the correct liability of the appellants to income tax, Schedule D, for the year ending 5th April 1912 was £60,163, less wear and tear allowance £9693.

The Special Commissioners being of opinion that the contributions (or levies) in question were not admissible deductions

under the Income Tax Acts in arriving at the appellants' liability, increased the assessment to £60,163, less wear and tear allowance £9693, and at the request of the appellants stated a Case for appeal.

The Case stated—"I. The following *facts* were admitted or proved:—(1) The Fife and Clackmannan Coalowners' Association (hereinafter called the Association) consists of thirteen collieries in Fife and Clackmannan. (2) During the five years entering into the average on which the assessment under appeal was based the Association, which was formed many years ago with the object, *inter alia*, of discussing methods and arriving at conclusions tending to the more economical working of the whole of the collieries concerned, was purely mutual, voluntary, and informal, possessing no rules, regulations, or constitution of any kind, and had no legal power to recover payment of any levy from its members. The appellants along with the other members of the Association have now formally adopted certain rules and regulations. These are set forth in a deed of agreement, which became operative as from 1st January 1912, and from which it appears that the objects of the Association now are to provide mutual protection to its members in matters affecting their general interests, and to indemnify members for loss of output in case of a strike or restriction of output on the part of the workmen. (3) Meetings of the Association have been held from time to time, at which all proposed levies from its members and the manner in which such levies should be expended were discussed and agreed. (4) The appellants produced copies of abstracts of income and expenditure of the Association covering the whole of the five years, on the average of which the assessment on the appellants was based. . . . During the above periods the income of the Association consisted almost entirely of the proceeds of the levies made on its members, and the accounts show the precise manner in which the proceeds of the levies were expended. (5) The £59 debited in the appellants' accounts for the year ended 31st May 1908, already referred to, represented their share of a special levy, calculated at the rate of £60 per million tons of output, for the purpose of experimenting at the request of his Majesty's Government in coal dust with a view to preventing so far as possible explosions in mines. . . . A portion of the levies was expended in subscriptions to the Mining Association of Great Britain in meeting Conciliation Board (Scotland) expenses."

The case was heard before the First Division on 20th October 1912, when the appellants argued that the contributions in question being sums exclusively laid out for the purposes of their trade were allowable as deductions in arriving at their profits assessable to income tax in terms of the Income Tax Act (5 and 6 Vict. cap. 35), section 100, Schedule D, Rules applying to first and second cases. They founded on the cases of *Moore* v. *Stewarts & Lloyds, Limited*, July 20, 1906, 8 F. 1129, 43 S.L.R. 811 and *Guest, Keen, & Nettlefolds, Limited* v. *Fowler*, [1910] 1 K.B. 713, 5 T.C. 711, and distinguished their case from that of *Rhymney Iron Company, Limited* v. *Fowler*, [1896] 2 Q.B. 79, 3 T.C. 476. Respondents argued that the contributions in question were inadmissible as deductions under the first rule of Schedule D, first and second cases, section 100, in respect that they were not money wholly or exclusively laid out or expended for the purposes of the appellants' trade, and founded on the case of *Rhymney Iron Company, Limited* v. *Fowler, cit. sup.*, and *Strong & Company, Limited* v. *Woodifield*, 1906 A.C. 448, 5 T.C. 215. In the course of the hearing it transpired that counsel for the respondent did not propose to maintain that no part of the levies paid by the appellants was an admissible deduction for income tax purposes. On the contrary, counsel for the respondent admitted that money expended on some of the purposes to which the Fife and Clackmannan Coalowners' Association devoted the levies might be admissible deductions, although sums expended on other purposes to which the levies were applied were not. The Court indicated that the accounts of the Association did not show what sums could be instructed as permissible deductions in the appellants' accounts. The case was accordingly continued in order that it might be ascertained what items could be regarded as permissible deductions if the appellants had not been members of the Association, and that the parties might come to some arrangement *inter se* whereby those points in the case as to which they were in agreement might be disposed of, and the Court put in the position of being able to deal with such points only as were matter of controversy between the parties.

Thereafter the parties came to an agreement in which they dealt with each purpose to which the levies were applied by the Association, and arrived at a settlement in regard to all but three of those purposes. This agreement was embodied in a joint-statement by the parties which was lodged in process. The statement tabulated the expenditure of the Association under the following four heads, viz.—

"(1) Items in accounts of Coalowners' Association, which appellants and respondents are agreed form admissible deductions.

(2) Items which appellants have waived their claim to deduct.

(3) Item which respondent waives his objection to appellants' claim to deduct; and

(4) Items which respondent holds to be non-admissible deductions."

The items under head (4) of the statement were as follows:—"Conciliation Board expenses; subscription to Mining Association of Great Britain."

There was also appended to the statement the following note:—"Respondent also holds that the levy of £59, debited in appellants' accounts for the year ended May 1908, for the purpose of experimenting

in coal dust at the request of the Government, is not an admissible deduction."

On 18th March 1913 the case was again heard before the First Division.

Argued for the appellants—The question was whether the expenditure was money wholly and exclusively laid out for the purpose of the trade. The true test of that was whether the money was expended to make profits or was expenditure out of profits after they had been made. (1) *Conciliation Board Expenses.*—Conciliation was designed to facilitate the conduct of the business and to prevent the losses resulting from trade disputes, and was therefore a means whereby larger profits were sought to be earned. (2) *Subscriptions to Mining Association of Great Britain.*—This was not an association of professional men for the furtherance of their art, but an association of business men for business purposes. Its end and aim was a business end and aim. (3) *Cost of Experimenting with Coal Dust.*—It was in the interest of the business that it should be conducted safely. The experiments were undertaken with a view to perfecting the machine that made the profits.

Counsel for the respondent was called upon to reply regarding the Conciliation Board expenses only.

Argued for the respondent—To constitute a good deduction the expenditure must be made for the purpose of earning profits—*Strong & Company, Limited* v. *Woodifield*, 1906 A.C. 448, *per* Lord Davey at p. 453. The effect of the action of the Conciliation Board on the profits of the undertaking was too remote. The Board was not created for this particular company, which was merely one of many for whose benefit it existed.

LORD PRESIDENT—This Special Case raises the question of certain deductions claimed by the Lochgelly Iron Company which were not allowed by the Commissioners of Inland Revenue. These were deductions of levies made by and paid to the Fife and Clackmannan Coalowners' Association. When the case was before your Lordships on the last occasion it became evident it did not really contain the materials for the proper determination of the questions raised, because the levy of the Coalowners' Association was made in the form of a slump sum, and that sum was, with other sums received by the Coalowners' Association, applied to several separate purposes, and it became apparent that some of these purposes might involve amounts which, if charged in the individual account of the drawer, would be proper deductions, as being expenses undertaken with a view to earning profits, whereas others might not. Accordingly the case was continued. The parties have met together and obviously arranged the matter in the most reasonable spirit. The result is that your Lordships really have only three very small questions to determine; upon the others the parties have agreed. The first of these questions is whether payments to the Conciliation Board expenses are a good deduction. I am of opinion that they are. The Conciliation Board is a piece of machinery by which disputes between the workmen and the employer may be settled, and by that means expenses kept down and more profits earned, and although in any one particular year there may be no work for the Conciliation Board to do, yet it is a piece of machinery which the coalowners are entitled to keep up—just as one who was entitled to employ a legal secretary might properly charge the expenses of this employment even in a year in which he was fortunate enough to have no litigation or other legal expenses.

The next question concerns a subscription to the Mining Association of Great Britain. That, I think, is an expense which cannot be deducted, because the Mining Association is an association which keeps a watchful eye on mining affairs all over the country, no doubt to the benefit of mining interests generally, but without that character of particular service which I think is prominent in a Conciliation Board.

The third question concerns an item of £59 which was expended in experiments in coal dust. It is explained that the experiments were made on the explosive properties of coal dust at the instigation of the Home Secretary, who wished certain experiments made before embarking on new legislation. It was a voluntary and very proper act of the company to help him in the matter, but not an expense they undertook for the purpose of earning more profit in that or any other year. It was paid out of profits, and not with a view of earning profits.

That is my view on these three items. The precise way in which the matter will be carried out in the answer we give in the case will depend on the proportions which the admitted items bear to the admitted expenditure, and no doubt will be worked out by the parties, who have shown themselves so reasonable in the matter.

LORD JOHNSTON—I concur.

LORD CULLEN—I also concur.

LORD KINNEAR and LORD MACKENZIE were absent.

The Court allowed as a deduction in ascertaining the appellants' profits, in addition to the proportions of the appellants' contributions to the Fife and Clackmannan Coalowners' Association which effeired to the items admitted in the said print of documents to be admissible as deductions, that proportion of the appellants' contributions to the said Association which effeired to the Conciliation Board expenses: Refused the appellants' claim to deduct the proportion of their contributions to the said Association effeiring to the subscriptions to the Mining Association of Great Britain and to the expenses connected with experimenting in coal dust.

Counsel for the Appellants—Macmillan, K.C.—Hon. William Watson. Agents—Wallace & Begg, W.S.

Counsel for the Respondent—The Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agent—The Solicitor of Inland Revenue.