LORDS DUNDAS and SALVESEN were sitting in the First Division.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First Parties—Sandeman, K.C.—Garson. Agents—Alexander Morison & Company, W.S.

Counsel for the Second Parties—Anderson, K.C. — W. T. Watson. Agents — Macpherson & Mackay, S.S.C.

Wednesday, February 24.

FIRST DIVISION.

[Bill Chamber.

GLASGOW INSURANCE COMMITTEE *v.* SCOTTISH INSURANCE COMMISSIONERS.

Statute — Construction — Jurisdiction — National Insurance Act 1911 (1 *and* 2 *Geo. V, cap.* 55), *secs.* 59 (5), 65—*Regulations "for Carrying this Part of this Act into Effect" — Power of Court of Session to Review such Regulations.*

The National Insurance Act 1911, sec. 65, enacts—"The Insurance Commissioners may make regulations for any of the purposes for which regulations may be made under this part of this Act or the schedules therein referred to, and for prescribing anything which under this part of this Act or any such schedules is to be prescribed, and generally for carrying this Part of this Act into effect, and any regulations so made shall be laid before both Houses of Parliament as soon as may be after they are made, and shall have effect as if enacted in this Act: Provided that if an address is presented to his Majesty by either House of Parliament within twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder."

Held (*diss.* Lord Johnston) that the Court of Session had no jurisdiction to review any regulations made under the provisions of the above section, and that such regulations could only be reviewed by the procedure provided in the section.

Institute of Patent Agents v. *Lockwood*, June 11, 1894, 21 R. (H.L.) 61, 31 S.L.R. 942, *followed.*

The National Insurance Act 1911 (1 and 2 Geo. V, cap. 55), enacts—Section 59 (5)—"Any Insurance Committee may, and shall if so required by the Insurance Commissioners, combine with any one or more other Insurance Committees for all or any of the purposes of this Part of this Act, and where they so combine the provisions of this Part of this Act shall apply with such necessary adaptations as may be prescribed."

Section 65 is quoted (*supra*) in the rubric.

The Insurance Committee for the Burgh of Glasgow, constituted under the National Insurance Act 1911 and the National Insurance Act 1913 (3 and 4 Geo. V, cap. 37), *complainers*, brought a note of suspension and interdict against the Scottish Insurance Commissioners, constituted under the foresaid Acts, *respondents*, "to interdict, prohibit, and discharge the respondents and all others acting by their authority or for their behoof from following forth or acting upon or taking any steps to carry into effect the National Health Insurance (Drug Accounts Committee) Regulations (Scotland) 1914, professing to be made by the Scottish Insurance Commissioners under section 59 (5) and section 80 of the National Insurance Act 1911, and dated 19th December 1914, and from laying or authorising or instructing the laying of the said regulations before both Houses of Parliament or either House of Parliament, and to ordain the respondents to recall, cancel, and countermand any instructions or directions or requests already given by them either directly or indirectly for carrying or taking any steps to carry into effect the said regulations, or for laying or authorising or instructing the laying of the said regulations before both Houses of Parliament or either House of Parliament."

The complainers pleaded—"(1) The said regulations being *ultra vires* of the respondents, the complainers are entitled to interdict as craved. (2) The said regulations being an invasion of the statutory jurisdiction and the rights of the complainers, they are entitled to interdict as craved."

The *Regulations* in question, dated 19th December 1914, were for the alleged purpose of giving effect to a resolution of the National Insurance Commissioners for Scotland to require the Insurance Committees in Scotland to combine as from 1st January 1915 for the purpose of establishing a central organisation to be known as the Drug Accounts Committee.

On 2nd February 1915 the Lord Ordinary on the Bills (ANDERSON) pronounced this interlocutor—"Allows the note to be amended as proposed, and this having been done, ordains the respondents, pending the hearing of the case on answers, to recall, cancel, and countermand any instructions or directions or requests already given by them, either directly or indirectly, for laying or authorising or instructing the laying of the regulations referred to before both Houses of Parliament or either House of Parliament."

Opinion.—"I think it is only right to stop the further procedure of these regulations through the House of Commons, because if they go through the House it is quite clear, on the case of *Lockwood*, that the complainers will be debarred from having the legal question which they have raised tried. The opinion of certain Judges of the House of Lords in the case of *Lockwood*, which was a case very similar to this,

was to the effect that once regulations of this character receive the imprimatur of Parliament they will become in effect part of the Act of Parliament under the authority of which they have been framed. Therefore if these regulations go through the House of Commons without any interpelling address being moved and carried, they will have the effect of statute; and Mr Clyde's clients will be barred in this case from having the question tried—a question which I think they are entitled to have tried, and which, being a question of law, is more appropriate for a tribunal of law than for the House of Commons.

"Therefore I am going to issue such an order as will enable Mr Clyde's clients to have this question tried in the Courts. In effect the order I mean to issue is an order suspending in the meantime, and until this legal question may be ultimately determined by the Courts, the Parliamentary procedure which is usually followed in reference to these regulations. How that is to be done it may be for the complainers when they get my order to say. I have no doubt the Insurance Commissioners, who are now being made familiar with the opinion I have formed upon this application, will themselves do what they can to aid Mr Clyde's clients in getting this Parliamentary procedure in the meantime suspended.

"It may not be enough just to serve this. The complainers may have to do something more; they may have to communicate with London."

The respondents reclaimed, and argued—The Insurance Commissioners had full legislative power, subject only to the right of Parliament to annul, not challengeable in a court of law. This power was based on section 65 of the National Insurance Act 1911 (1 and 2 Geo. V, cap. 55), which contained no limitations, and therefore no question of *ultra vires* could arise. Unless used in *mala fide* this power could not be scrutinised by the Courts, and it was precisely because the Courts would scan such regulations so narrowly that Parliament had been substituted for them. The Commissioners were intended to control fully the local committees. Similar powers had been conferred before, and had been held valid—Light Railways Act 1896 (59 and 60 Vict. cap. 48), sec. 15 (2); Gas and Water-Works Facilities Act 1870 Amendment Act 1873 (36 and 37 Vict. cap. 89), sec. 14; Churches (Scotland) Act 1905 (5 Edw. VII, cap. 12), sec. 2; *Institute of Patent Agents, &c.* v. *Lockwood*, June 11, 1894, 21 R. (H.L.) 61, 31 S.L.R. 942, Lord Herschell, L.C., Lord Watson; *Slattery* v. *Naylor*, (1888) 13 A.C. 446, Lord Hobhouse at 452. Counsel outlined the general scheme of the Act of 1911, referring particularly to the following sections—1, 2, 3, 8-13, 14, 15 (2), 15 (5), 57, 58, 59 (4), 59 (5), 60 (i) (*c*), 65, 66, 78, 80, 113 (2).

Argued for the complainers—As stated in their grounds of complaint, the regulations were *ultra vires*, inasmuch as the proposed committee (*a*) interfered with the scheme of administration of medical relief in the Act, invading the jurisdiction and rights of the Insurance Committees, and (*b*) was without warrant in the Act. According to the argument of the reclaimers, the question of "*ultra vires*" could not arise, and the Commissioners might even modify the Act. This amounted to a claim of general delegated powers of legislation. The reclaimers were in a dilemma. They must either claim to legislate as they liked, except in *mala fide*, or else admit that their power lay within certain defined limits, whereupon obviously a question emerged for the Courts to try. The case of *Institute of Patent Agents* v. *Lockwood* (*supra*) was argued on the basis that the question of *intra vires* or *ultra vires* was still open, Lord Herschell, L.C., at 65-66. The regulations only became law when laid before Parliament, and therefore action under the Court of Session (Scotland) Act 1868 (31 and 32 Vict. cap. 100), sec. 89, was still competent.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary in this case rests I think on a misconception of the true meaning of section 65 of the National Insurance Act, and of the effect of the judgment of the House of Lords in the case of the *Institute of Patent Agents* v. *Lockwood*, (1894) 21 R. (H.L.) 61. His Lordship apparently holds that the pleadings disclose a question of law which it is for this Court to consider and decide, and that if certain parliamentary procedure enjoined by the statute is once adopted redress will be impossible. I cannot agree. It appears to me that this Court has no right or power to entertain the question of law raised in these pleadings. But if we had, then no parliamentary procedure, even although enjoined by statute, could deprive us of our jurisdiction.

The Glasgow Insurance Committee here seek interdict against any steps being taken to carry into effect the National Health Insurance (Drug Accounts Committee) Regulations (Scotland) 1914, professing to be made by the Scottish Insurance Commissioners under certain sections of the National Insurance Act, and against the Commissioners laying these regulations before both Houses of Parliament or either House of Parliament. In their statement of facts the complainers set out that the National Insurance Commissioners for Scotland, in December 1914, issued a circular letter to the committees, that is to say, the Insurance Committees, intimating that they had resolved, under powers conferred by a certain section of the Act, to require Insurance Committees in Scotland to combine, as from 1st January 1915, for the purpose of establishing a central organisation to be known as the Drug Accounts Committee. Thereafter the respondents issued to Insurance Committees regulations, dated 19th December 1914, made by them for the alleged purpose of giving effect to their said resolution. These are the regulations referred to in the prayer of this note. It is clear therefore that what is complained of is regulations designed to carry into effect the first part of the National Insurance Act, to wit,

that relating to health insurance. The complainers set forth with clearness and precision the grounds of their complaint. Thus (first) they complain of the action of the National Insurance Commissioners in setting up the proposed Drug Accounts Committee as being *ultra vires* in respect that it interferes with the scheme of administration of medical benefit provided by the statute, and constitutes an invasion of the statutory jurisdiction and rights of the Insurance Committees; and (second) on the ground that the constitution of the proposed Drug Accounts Committee is *ultra vires* of the respondents in respect that it is a new and independent committee for the constitution of which the Act contains no warrant.

These two questions thus clearly raised the Glasgow Insurance Committee says it is for this Court to consider and decide. But the statute says the contrary, for the statute empowers the National Insurance Commissioners to issue certain regulations for the purpose of carrying into effect the health insurance part of the Act, and distinctly provides that these regulations when made and issued are to have effect as if they were enacted in the National Insurance Act. The regulations, in short, when issued become additional clauses in this Act of Parliament. In other words, the regulations taken as a whole constitute in effect an amending Act of Parliament. They have exactly the same effect as if they had been passed by Parliament. Obviously that would not be so if the regulations related to any other topic than the health insurance part of the National Insurance Act. If, for example, the regulations related to the unemployment part of the Act, then they would not have statutory force, and we should have power at once to set them aside. But if they relate exclusively to the health insurance part of the Act, then they have statutory force, and we have no power to intervene.

The regulations complained of here are, say the complainers, issued for carrying into effect the first part of the National Insurance Act, and they are only challenged on the ground that, as the complainers say, they invade their powers as conferred by the Act. But the statute says that they are to have exactly the same force as if they were enacted by Parliament itself if they relate to this part of the Act. This is the express provision of the Act. Now although it confides limited legislative powers to the National Insurance Commissioners, Parliament has not parted with all control over their action. On the contrary, the National Insurance Commissioners are enjoined instantly they have made their regulations to lay them before both Houses of Parliament —that they are to do so as soon as may be after they are made. And then it is provided that His Majesty in Council may annul these regulations if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which the House has sat next after such regulations are laid before it. But unless and until either House of Parliament passes a resolution annulling the regulations they are to have statutory effect.

The Lord Chancellor, in commenting upon rules framed by the Board of Trade under an identical parliamentary sanction to the one before us, said in the case of *Lockwood* these rules "are to be laid before Parliament and remain before Parliament for consideration for forty days, and during those forty days they may be annulled by a resolution by either House. If not so annulled, or until so annulled, what is the effect? They are to be 'of the same effect as if they were contained in this Act.' I have asked in vain for any explanation of the meaning of these words, or any suggestion as to the effect to be given to them if notwithstanding that provision the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule if validly made is precisely the same—that every person must conform himself to its provisions." And with regard to the words used in the Act of Parliament here, that when the regulations are passed they are to have effect as if they were enacted in the Act, Lord Herschell says—"I own I feel very great difficulty in giving to this provision that they 'shall be of the same effect as if they were contained in this Act' any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act;" and then he proceeds to contemplate the case in which the regulations might be contrary to certain sections in the Act of Parliament and says—"You have just to try and reconcile them as best you may."

Now I can express my opinion in this case best by adopting, with a variation appropriate to the circumstances, the concluding words of Lord Watson's opinion when he says in *Lockwood*—"It appears to me that the whole scheme was left to the discretion of the National Insurance Commissioners, and it is impossible for me to say that, looking to those regulations, the National Insurance Commissioners have in any measure exceeded that discretion. It was by their opinion, not by any judicial opinion, that the matter was to be determined. The Legislature retained so far a check that it required that the regulations which they framed should be laid upon the table of both Houses, and of course these regulations could have been annulled by an unfavourable resolution upon a motion made in either House. But what is to be the effect if no such motion be made or carried, or if a motion hostile to the scheme be made in both Houses and rejected by both? The statute makes no difference between these cases. The views expressed by the learned Judges in the Court below, so far as I understand it, would in the latter case make it competent for the Court to inquire at its own hand whether or not the National Insurance Commissioners had kept within the statute although the Legislature had declined to interfere." And then with regard to the important words in section 65 Lord Wat-

son says—"In regard to those words which I have just read, I do not think I can express my opinion more clearly than by saying that I think they mean exactly what they say. Such rules are to be as effectual as if they were part of the statute itself."

Therefore, as the complainers here allege that the regulations of which they complain were passed for the purpose of carrying into effect the first part of the National Insurance Act, I am of opinion that this Court has no jurisdiction to consider the validity of the regulations, and that Parliament, and Parliament alone, can interfere.

On these grounds I am for recalling the interlocutor of the Lord Ordinary and refusing the note.

LORD JOHNSTON—Under the National Insurance Act 1911, section 15 (5), it is provided that every Insurance Committee shall "make provision for the proper and sufficient supply of drugs and medicines and prescribed appliances in accordance with regulations made by the Insurance Commissioners." Provision has been so made, but there seems to be a feeling in some quarters, shared in by the Insurance Commissioners, that there is on the part of some panel doctors a tendency to over prescribe and a want of effective control on the part of some Insurance Committees. The details of the arrangements for the supply of drugs, &c., were not explained to us, but I gathered that the panel druggists are affected in their net remuneration by any excessive prescribing, and that difficulties in continuing agreements with them are threatened. The Insurance Commissioners propose to institute a process of uniform and comprehensive audit, and have prepared and published regulations thereanent, which they were on the point of laying before Parliament under the statute when this process of interdict was raised by the Insurance Committee of the burgh of Glasgow, on the ground that the proposed regulations were *ultra vires* of the Commissioners and an invasion of the statutory functions and right of independent action of the Committee.

The form which the prayer of the note takes is, shortly put, to stay the Commissioners taking steps to lay their proposed regulations before Parliament in terms of the statute, section 65, with a view to their thereby having imputed to them statutory effect. The complainers thus proceeded on the view that, standing the case of *Lockwood*, [1894] A.C. 347, they would probably be barred from appealing to the Courts if they allowed the procedure specified in section 65 of the statute to be carried through. At any rate they felt that they could not take the risk. But the Commissioners challenge the jurisdiction of this Court to entertain the question even as it is thus brought before them. They claim in so many words by their counsel legislative power by virtue of the statute, deny the Court's right to interfere, and maintain broadly that their regulations are not examinable by any Court, and that the only way in which their regulations can be prevented automatically acquiring the effect of statute is by the presentation to His Majesty of an address by either House of Parliament.

I understand that in fact the proposed regulations had been forwarded to the clerk to be laid before Parliament, but that they had not actually been so laid. The Lord Ordinary on the Bills has, acting under the Court of Session Act 1868, section 89, required the Commissioners to recall any instructions for laying the said regulations before Parliament pending the hearing of the case on answers. The case appeared in the Single Bills of the First Division for the first time one morning, and we were asked to give it precedence. Answers were allowed to be received at the Bar, and it was then and there heard. We had thus, so to speak, a *pro re nata* hearing of the case—a course most exceptional, if not unprecedented. I regret to say that I do not think the discussion was adequate to the occasion, for undoubtedly the question raised is a most important one, affecting as it does the statutory relations of the Insurance Commissioners and Insurance Committees, which is by no means clear upon the statute. In my opinion the note should now be passed to try the question in the ordinary way. Were this done at once, any necessary expedition might be given to it consistent with a full consideration of the statute as it affects the question raised, for I fully admit that the case is one calling for despatch. As your Lordships are of opinion that the case may be, and should be, disposed of at once, I can only express as best I may, on the argument which we had and on such further study of the Act as I have myself been able to give it, the doubts which I entertain, and which that argument did not touch, much less relieve. On one point only have I been able to come to a definite conclusion.

I am not at all satisfied that the jurisdiction of the Court is excluded, and I take leave to doubt whether the Commissioners, although they may possibly attain their end by another method as to which it would be premature to indicate any opinion, have adopted a competent course and have not acted *ultra vires*.

I think that there is a good deal to distinguish the case from that of *Lockwood*. In *Lockwood's* case the body concerned was the Board of Trade, a Government Department, amenable directly to Parliament and represented in Parliament, and to which in general terms was committed by the Patents, &c., Act 1888, section 1, to "make such general rules as are in the opinion of the Board of Trade required for giving effect to this section," which merely provided in the most sketchy terms for the establishment of a register of patent agents, with the declaration that section 101 of the principal Act of 1883 shall apply to all rules so made as if they were made in pursuance of the section. This reference back to the Act of 1883 imported that such rules were to be laid before Parliament, and might be

annulled by resolution in Parliament, but should otherwise be of the same effect as if they were contained in the Act, and should be judicially noticed. "The truth is," as was said by Lord Herschell, L.C., "the legislation is a skeleton form of legislation left to be filled up in all its substantial and material particulars by the action of rules to be made by the Board of Trade." What was objected to was the fixing by the Board of Trade of fees to be paid as a condition of registration. "I cannot but think," again quoting Lord Herschell, L.C., "that it was well within the scope of the enactment that the Legislature should entrust the Board of Trade, who were to make these rules, with the power of fixing such fees as they thought reasonable and necessary for carrying into effect the purposes of the section. Unless they had done so it seems to me very difficult to say that it would have been possible to carry them into effect at all. With all deference to the learned Judges who have taken a different view, it appears to me that the conclusion at which they have arrived has been induced by not sufficiently regarding the method of legislation which has been followed in the section now under consideration, and not observing that it was the intention of the Legislature, having expressed the general object and having provided the necessary penalty, to leave the subordinate legislation, so to speak, to be carried out by the Board of Trade."

The present case presents perfectly different features. The Insurance Commissioners are not a department of the Government. They are merely a statutory commission with statutory powers, and those very much defined indeed in the statute which created them. The scheme of legislation is no skeleton, but filled in in very great, not to say intricate, detail. By the National Insurance Act 1911, section 57, the Insurance Commissioners are constituted with a descriptive name, under which they may sue and be sued. It appears to be incontestible that such a statutory body is subject to the jurisdiction of the courts of law, not in relation to matters which are left to the exercise of their discretion, but in questions involving the statutory warrant for their actings, in fact in questions of *ultra vires* or *ultra fines commissi*.

The Insurance Committees again are created by section 59 of the Act. They are what may be called the administrative units, and to what extent they are subject to the Commissioners is really involved in the present question. The gravamen of the complaint of the Glasgow Insurance Committee is that the Commissioners have by their proposed regulations endeavoured to interfere with the statutory measure of independence which the committees have, and whereas the statute aims at decentralised and local administration, to substitute for that the centralised control of what the Commissioners themselves have in their preliminary circular styled a new "bureau," for the creation of which by the Commissioners there is, it is alleged, no warrant in the statute. The Commissioners propose the establishment of a new "Drug Accounts Committee," for the audit of the accounts of all Insurance Committees, and the collecting and supplying statistics. It is impossible that this work should be performed by a committee, composed as the Commissioners intend, personally, and in their preliminary circular the Commissioners make it quite clear that they contemplate the work being done, under the committee indeed, but really by a subordinate departmental establishment, consisting of a superintendent and clerks, the qualification of whom may be judged of by the salaries proposed to be paid them. It is not our province to consider the merits or the reasonableness of the course the Commissioners propose to take, and I would not even have explained their proposal did I not think it necessary to show that there is a very real and a far-reaching question to try at the bottom of the present case. I think in fact the Commissioners admitted that there was a very real question to try. Their attitude was, the Court have no power to try it.

In exclusion of the jurisdiction of the Courts, and in support of the claim for legislative powers, the Commissioners point to sections 65 and 78 of the Act.

The reference to section 78 may be at once dismissed. It empowers the Commissioners, with the consent of the Treasury (which, by the way, they do not say they have obtained here), to make orders, but for what purpose, for this and no other, viz., for removing difficulties in the way of getting the Insurance Committees constituted, or otherwise in bringing the first part, that is, the National Health Insurance part, of the Act into operation, for which purpose the orders may modify the provisions of the Act. But the Insurance Committees have long since been constituted, and the Act has been in operation for four years, and has even been substantially amended.

The 65th section is the real basis of the Commissioners' defence. It says—"The Insurance Commissioners may make regulations for any of the purposes for which regulations may be made under this part of the Act or the schedules therein referred to, and for prescribing anything which under this part of the Act or any such schedules is to be prescribed, and generally for carrying this part of this Act into effect, and any regulations so made shall be laid before both Houses of Parliament so soon as may be after they are made, and shall have effect as if enacted in this Act." This is followed by a proviso which I need not quote, that any such regulations may be annulled by an Order in Council on an address presented to His Majesty from either House.

This places the Commissioners in a very different position from that which the Board of Trade occupied under the Patent Agents Registration Acts in *Lockwood's* case, [1894] A.C. 347. When the Act of 1911 is examined it is found that almost in every second section of the eighty-three which compose the National Health Insurance part of the Act there is something enumerated and defined which the Commissioners are to do by regu-

lation or are to prescribe, and hence that there is a very wide field for "regulations for any of the purposes for which regulations may be made under this part of this Act . . ., and for prescribing anything which under this part of this Act . . . is to be prescribed." But the statutory definition of the Commissioners' powers and duties does not stop there. It deals specifically and in detail with a number of things which they may do without orders, and with a great number of things which they may do by means of orders, including those things which they may prescribe. I do not propose to analyse the statute. But it is worth while to give some examples of its method.

In the first place, there are some orders which are called special orders, and to these section 113 applies, and requires a special preliminary procedure to be gone through, of which an inquiry into a proposed draft order by a competent and impartial Commissioner may form part. Some orders are called orders merely.

Of special orders examples will be found in section 1 (2), which is concerned with the restriction of the list of scheduled excepted employments; also in section 20, which deals with the reinsurance of the liabilities of approved societies in respect of maternity benefits. Other examples are found in section 47 (1) and (7) and in section 50.

Of orders examples will be found in section 7, which is concerned with matters incidental to the payment and collection of contributions. Similarly in section 8 (1) (*a*), which says that medical benefit is to include the provision of proper medicines and such appliances as may be prescribed by regulations. These examples may suffice, for there are so many others that I can hardly select.

But next of things to be prescribed, and apparently to be prescribed by order, there are abundant examples. Section 10 (7) is a good instance. Arrears are for the purpose of the section to be calculated in such manner as the Commissioners may prescribe. Another is found in section 18 (1).

Again, there are many things which the Commissioners are to do by framing and issuing tables, *e.g.*, section 5 (1), under which a scale of rates for voluntary insurance is to be prepared, subject to certain directions, and periods of payments are to be prescribed. Similar is section 9 (4) and many others.

There are other provisions in which the Commissioners are authorised and empowered to confirm what is done by other bodies, *e.g.*, to confirm schemes of approved societies for varying benefits under section 13 (1). In another case, section 48 (5), committees for management of the Seamen's National Insurance Society are to be constituted in accordance with a scheme prepared by the Board of Trade "with the approval" of the Commissioners. In another case, section 46 (3) (*h*), the regulations of the Commissioners are to be made "after consultation with the Admiralty and the Army Council."

But one of the most important provisions bearing on the scope and also on the limitation of the Commissioners' functions and their present contention is to be found in section 8 (9), by which it is provided that in the case of approved societies, wherever certain sums of money have been written off, the benefits of the insured person under this part of this Act shall be extended, not in such manner as the Commissioners may prescribe or order, but "as Parliament may determine."

From this consideration of the Act I think it is clear that the Commissioners' functions and powers under the Act are limited and defined to a degree, and particularly their powers to proceed by order, special or otherwise. There is no general purpose indicated, leaving the Commissioners to fill in the details. The statute plunges at once into detail, and the general purpose of the Act is the establishment of a system the details of which are specified. I think that there is substantial doubt whether the words in section 65 empowering the Commissioners to make regulations not merely for purposes defined, but "generally for carrying this part of this Act into effect," can receive an extended interpretation, and must not be specially affected by the consideration *ejusdem generis*, and so confined to the working out of specified details.

In considering the position in which the Insurance Committees are placed by the Act generally, and in relation to the Insurance Commissioners, it must be premised that the scheme of the Act is, as I have said, complicated and detailed. And it is specially complicated by the distinction between members of approved societies and deposit contributors. In the absence of any full argument on the subject I cannot pretend that I have fully grasped either the position of the Insurance Committees or their relation to the Insurance Commissioners. But so far as I have been able to do so, I think that they must be stated thus—avoiding all attempts to distinguish between the two classes of persons entitled to benefit and treating them all as deposit contributors—the Insurance Commissioners may be the guiding hand. The Insurance Committees are the administrative unit. They administer the benefits provided by the Act. The committees are constituted and to be elected, section 59 (1), (2), and (3), according to regulations made by the Insurance Commissioners. The latter may also make regulations for the transaction of business by the committees. And by section 59 (5) they may—and this is a provision specially founded on by the Commissioners—require any one or more Insurance Committees to combine for all or any of the purposes of the first part of the Act.

But then the powers and duties of the Insurance Committees are prescribed by section 60. These powers and duties are over and above those of administering the benefits provided by the Act under the earlier sections, and for which also funds come automatically into the hands of the committees under sections 42 and 61. Under section 60 (1) (*a*) the committees are in particular required to furnish the Commissioners with such statistical and other returns as they may require, and under

section 60 (1) (*c*) they are required to keep proper books and accounts in such form as the Commissioners may prescribe, and shall when required submit such accounts to audit by auditors appointed by the Treasury. Otherwise the administration of the benefits of the statute appear to be committed to their independent administration under section 15 and other sections. And if they have financial accountability it is to the Treasury.

The proposal of the Insurance Commissioners is that the whole Insurance Committees in Scotland are to be called upon to combine under section 59 (5) of the Act to elect representatives on a new committee, the duties of which committee will be (1) to scrutinise the drug accounts of each committee, and to report to that committee; (2) To furnish statistical or other returns to the Commissioners; (3) To do such other things as are incidental or conducive to the attainment of the above purposes.

Though nothing is said in the proposed regulations about the officials who are to do the work of this committee, its proposed work cannot be done without such, and the expense is to be laid on the administrative fund at the disposal of the several committees.

I am far from saying that the general scrutiny of drug accounts may not be desirable. And I am equally far from hazarding an opinion that the Insurance Commissioners may not have powers which may enable them to attain that end. That is not for us in this case to consider. But the question is, Have the Insurance Commissioners power to proceed as they propose? As to this I entertain great doubt and difficulty. 1st. The relations of the Insurance Commissioners and Insurance Committees are settled by the Act in great detail, and it is a question of vital importance in the administration of the Act whether, within their ambit, the latter have not an independent sphere under the Act which the Commissioners are proposing to invade. Where committees are created to intervene this is done by statute. In addition to the Insurance Committees themselves there are created by the original statute the advisory committee, the district insurance committees, the local medical committees, and, under the Amending Act of 1913 the panel committees and the pharmaceutical committees. The creation of a farther committee of the character proposed, not by the Act but by the order of the Commissioners, certainly does not come under the special powers conferred by section 65, and I doubt whether, when the whole scope and provisions of the Act are studied and fully understood, as they have not yet been, it will be found to come within the general power to make regulations "for carrying this part of this Act into effect."

And 2nd, the provision of section 59 (5) that "any Insurance Committee may, and shall, if so required, combine with any one or more other Insurance Committees for all or any of the purposes of this part of this Act" does not—and on this point only I have ventured to form an opinion—authorise the demand for combined action, which is made by the Insurance Commissioners under their proposed order. Section 59 (5) is intended to provide for the combination of districts where these districts are so situated, or of such size and population as to make administration in combination more effective than in separation. It is, as I read it, just the complement of the preceding sub-section — section 59 (4)—which provides for the creation of district committees in those cases where the natural area is so large as to make sub-division desirable.

For these reasons I consider that the note should be passed to admit of the important question raised being more fully heard and considered.

But it is contended—and I understand that the contention finds favour with both your Lordships—that the jurisdiction of the Court is excluded by reason of the fact that the orders of the Insurance Commissioners must lie on the table of both Houses of Parliament, and that if proceedings in Parliament are not taken timeously to stay them they will constructively become part of the Act. There are certainly opinions of the highest authority expressed in the case of *Lockwood* that orders or regulations made under a statute containing similar provisions do come to have such statutory effect. But these opinions were expressed in a case where the orders or regulations in question had not only already been held to be *intra vires* of the authority making them, but where the statutory procedure required to give them the force of statute was complete. Though *obiter* I think I am bound to accept them as conclusive in *pari casu*. But I do not think that they in any way preclude the Court from entertaining the question of the power of the authority making such orders or regulations if such power is challenged before they have been submitted to Parliament.

LORD SALVESEN — The interdict which the complainers here seek is admittedly without precedent. The Scottish Insurance Commissioners are, by section 65 of the National Insurance Act 1911, authorised to make regulations for carrying the first part of the Act into effect. Any regulations so made are to be laid before both Houses of Parliament as soon as may be after they are made, and shall have effect as if enacted in the Act, provided that if "an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything done thereunder." Now the respondents have made certain new regulations for the purpose of establishing a central organisation to be known as the Drugs Accounts Committee, the purpose of which they say is to secure a complete and systematic scrutiny

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.*