No. 627.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—2ND AND 3RD MARCH, 1926.

COURT OF APPEAL.—5TH AND 6TH JULY, 1926.

HOUSE OF LORDS.—10TH AND 12TH MAY, AND 12TH JULY, 1927.

(1) THOMAS (H.M. INSPECTOR OF TAXES) *v.* RICHARD EVANS & CO., LTD.(1)

(2) JONES (H.M. INSPECTOR OF TAXES) *v.* THE SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCIATION, LTD.(2)

Income Tax, Schedule D—Profits of trade—Deduction—Contribution to mutual insurance association—Mutual trading.

The Respondent Association in the second case was incorporated under the Companies Acts as a company limited by guarantee for the purpose of indemnifying its members (who are all coal owners), and its members only, against liability for compensation in respect of fatal accidents to workmen in their employment, and for this purpose it has powers to accumulate funds. There are no shareholders, but the members of the Company, viz., those protected by it, are each liable to contribute a sum not exceeding £25 in the event of its being wound up.

The funds of the Association are built up from contributions made by its members in proportion to the wages respectively paid by them. "Ordinary calls" which are made annually upon the members are paid into the general fund, which is the primary fund for the payment of the Company's liabilities for compensation and other expenses, and each year the surplus in that fund is transferred to the reserve fund, to which "extra-ordinary calls" made upon the members are also credited. When recourse is necessary to the reserve fund that fund is to be deemed to belong to the members in the proportions of their respective contributions thereto computed as prescribed, and the share in this fund of a member is returnable to him in whole or part on the winding-up of the Company or his own retirement. The rights of a member cannot be transferred except to a person succeeding to or taking over a protected mine or works, and a member remains liable for claims which accrued before he actually retired.

The Association was assessed to Income Tax under Schedule D in respect of the surplus of the calls received from members, and the income from its investments, over its outgoings by way of indemnity payments and re-insurance and other expenses, but the Special Commissioners on appeal discharged the assessment.

(1) Reported K.B.D. and C.A., [1927] 1 K.B. 33.
(2) Reported K.B.D. and C.A., [1927] 1 K.B. 33; and H.L., [1927] A.C. 827.

The Respondent Company in the first case was a member of the Association and claimed a deduction in arriving at its business profits for Income Tax purposes of the full amount of the calls paid by it to the Association. The Special Commissioners on appeal allowed the deduction.

Held, (1) *in the Court of Appeal, that the payments made to the Association by members were entirely premiums for insurance, and were admissible deductions in computing the members' profits for assessment to Income Tax, notwithstanding that such payments were partly applied in accumulating a fund which might in certain events be returnable to them wholly or in part;*

(2) *in the House of Lords, that the surplus of the Association's income from calls on its members and from its investments over its expenditure in meeting claims and re-insuring its risks did not constitute profits arising from a trade carried on by the Association, and that it was accordingly not liable to Income Tax in respect thereof.*

Styles *v.* New York Life Insurance Company (2 T.C. 460) *followed.*

CASES.

(1) *Thomas* v. *Richard Evans & Co., Ltd.*

CASE

Stated under the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 6th November, 1922, for the purpose of hearing appeals, Richard Evans & Co., Ltd., hereinafter called "the Company", appealed against an additional assessment to Income Tax in the sum of £3,608 for the year ending 5th April, 1919, made upon it by the Additional Commissioners for the Warrington Division under the provisions of the Income Tax Acts.

2. The Company carries on business as colliery proprietors in South-West Lancashire. In computing the profits of the Company for the purpose of the first assessment made upon it for the year ending the 5th April, 1919, the amount of the calls paid by the Company to the South-West Lancashire Coal Owners' Association, Ltd., hereinafter called "the Association", was allowed as a deduction in computing the Company's profits. It being subsequently considered that the deduction of these calls had been allowed in error, the additional assessment under appeal was made under the provisions of Section 52 of the Taxes Management Act, 1880.

3. The Association was originally an unincorporated association of coal-owners formed in 1897 after the passing of the Workmen's Compensation Act, in order to obtain by collective bargaining better terms from ordinary insurance companies for insurances against risks of fatal accidents in the mines owned by the members.

4. The Association was incorporated on the 20th June, 1907, as a company limited by guarantee. There are about 20 members of the Association. The principal object of the Association is that set out in Clause 3 (1) of the Memorandum of Association which reads as follows :—

> " To indemnify the members of the Company against " proceedings, losses, costs, damages, claims and demands in " respect of any accident or alleged accident resulting or " alleged to have resulted in fatal injury to any workman " or workmen (within the meaning of the Workmen's Com- " pensation Act, 1906), employed at or in connection with " any mines in which any member of the Company is " interested and to which the Coal Mines Regulation Act, " 1887, or the Metalliferous Mines Regulation Act, 1872, " apply, or at or in connection with any railway, factory, " quarry, brickworks, engineering works, or other works, " in which any member of the Company is interested, and " arising out of and in the course of such employment."

Under Clause 3 (12) of the Memorandum the Association has power :—

> " To accumulate and set aside funds, and to allocate any " of such funds to any special purpose, and to invest the " same in such manner as may be thought fit."

The other objects of the Association are not set out in detail, as it is admitted that no funds have been collected for the purpose of furthering those objects.

Under Clause 4 of the Memorandum :—

> " Every member of the Company undertakes to contri- " bute to the assets of the Company in the event of the " same being wound up during the time that he is a member, " or within one year afterwards, for payment of the debts " and liabilities of the Company contracted before the time " at which he ceases to be a member, and the costs, charges " and expenses of winding-up the same, and for the adjust- " ment of the rights of the contributories amongst themselves " such amount as may be required, not exceeding £25 ".

The following Clauses of the Articles of Association show the method of working of the Association :—

> " 3. The subscribers of the Company's Memorandum of " Association shall be the first members of the Company, " and any person who as owner, co-owner, lessee, or other- " wise, is engaged in establishing or working a mine or

" works, situate in the United Kingdom, or who in the " opinion of the Committee is interested in a mine or works " so situate, may become a member of the Company subject " to the provisions hereinafter contained.

" 4. In order to obtain admission as a member, the " person desirous of admission must apply to the Company " in writing requesting admission. Such writing must be " signed by the applicant, or in the case of a Corporation " must be under its Common Seal. The application must " be in such form as the Committee may prescribe or consider " proper, and must specify the mine or mines or works in " respect of which the applicant desires to be protected, " and must contain an undertaking by the applicant that " in consideration of his admission he will perform and " observe all the obligations for the time being imposed on " him by the regulations and bye-laws of the Company, " including, in the event of his ceasing to be a member, " obligations thereby imposed on him in respect of accidents " occurring previously to the cesser of his membership.

" A person admitted to membership is not to be entitled " to indemnity unless and until he is protected in accordance " with these presents.

" 5. The Committee shall be at liberty to admit any " member to protection in respect of any mine or works of " his situate in the United Kingdom, in respect of which " he is not for the time being protected with the Company, " and Clause 4 hereof shall, so far as suitable, be applicable " *mutatis mutandis* to any application for such protection.

" 6. An applicant for membership under Clause 4 hereof, " or for protection in respect of a further mine or works " under Clause 5 hereof, shall supply to the Company such " further information as to the mine or works in respect " of which protection is desired, or otherwise, as the Com- " mittee may from time to time prescribe, and before " deciding on any application, the Committee may from " time to time require any additional information.

" 7. The Committee shall have full discretion as to the " acceptance or rejection of any application under Clause 4 " or Clause 5 hereof, and if they accept any application " they shall give notice in writing thereof to the applicant, " and shall specify therein, or subsequently, the sums which " the applicant is required on such acceptance to pay to the " Company in respect of the protection required, and the " applicant must forthwith pay such sums accordingly, and " upon payment thereof his name shall, if he be not already " a member, be entered in the Register of Members as a " member of the Company, and shall in respect of such " protection be also entered in the Register of Protected

" Mines and Works, wherein also shall be entered particulars " of the mine or works in respect of which he is so to be " protected; and if any applicant fails to pay such sums " within 14 days after notice of admission, as aforesaid, the " acceptance of his application shall be nullified.

" 8. The Committee may at any time, upon breach of " or failure to observe any regulation for the time being " of the Company, by notice in writing, to any member, " determine his membership, and shall thereupon cancel the " entry of such member's mines or works in the Register " of Protected Mines and Works, and such determination " shall be without prejudice to the member's liability to per- " form all his obligations in respect of any accident occurring " before such determination or in respect of calls theretofore " made, or to the Company's legal remedies in the case " of breach of any such obligation. In such a case the " member shall have no right to be paid or credited with " any part of the Reserve Fund.

" 9. Whenever a member is in default as regards the " payment of any money due to the Company, he shall not " be entitled to any indemnity in respect of any accident " occurring whilst such default continues. And whenever " a member's protection has been determined under Clause 8 " or Clause 25 hereof, he shall not be entitled to any " indemnity in respect of any accident unless he shall, " within three days after notice of such determination, give " to the Company notice in writing of his desire to appeal " to a General Meeting against such determination, and a " General Meeting, held within one month thereafter, shall " nullify such determination. And when any such notice " of appeal is given, the Committee shall, without prejudice " to the determination, until the meeting is held, continue " to treat the protection as subsisting, and shall act accord- " ingly; and the Committee shall forthwith convene a " General Meeting to consider and decide the appeal, and " if in the result the determination shall not be reversed, " the member whose protection was determined thereby " shall forthwith make good to the Company all outgoings " and expenses incurred by the Company in the meantime " under the foregoing provisions of this clause, and a certi- " ficate under the Common Seal of the Company as to the " amount thereof shall be conclusive.

" 10. The rights of a member shall, save as hereinafter " provided, be personal. And he shall not, save as herein- " after provided, have any share or interest in the funds of " the Company capable of being transferred by assignment, " operation of law, or otherwise.
" Provided that:

" (*a*) If a member, with the consent in writing of this " Company, transfers his mine or works as a going " concern to another person or company willing " to take his place in this Company, and the trans- " feree before or at the time of such transfer " shall, in writing, request this Company to allow " him to take the place of the transferor as regards " such mine or works, and this Company shall, " in writing, assent thereto, then and from thence- " forth such transferee shall, as regards such mine " or works, stand in the place of the transferor.

" (*b*) Where a member is a firm, and by admission of " additional partners or otherwise such firm is at " any time reconstituted, the firm as for the time " being and from time to time constituted shall, " if the members thereof are all members of the " Company and notice of such re-constitution " shall have been given to the Company, succeed " to and stand in the place of the original firm " or of the firm as last constituted as regards any " mine or works in respect of which such original " or last constituted firm was protected with the " Company.

" (*c*) Where a member dies, or is found lunatic, or " becomes bankrupt, or files a petition for a " receiving order, or compounds with his credi- " tors, or suspends payment, and the legal " personal representatives, committee, or trustee, " or other persons approved by the Committee, " shall in writing request the Company to allow " them or him to take the place of such member, " and the Company shall in writing assent thereto, " then and from thenceforth such substitutes or " substitute shall stand in the place of the mem- " ber aforesaid, and unless such substitution is " effected within one calendar month after the " event, whether death, lunacy, bankruptcy, or " otherwise, the protection of the member shall " at the expiration of such calendar month " expire.

" 12. If the membership of any member is determined " in any manner, such member shall, notwithstanding the " cesser of his membership, continue bound to perform all " the obligations by these presents imposed on him in respect " of any accidents occurring previously to the cesser of his " membership or in respect of calls theretofore made, and " the determination shall be without prejudice to the Com- " pany's legal remedies for breach of any such obligation.

" 13. The Company shall from time to time keep a " register of mines and works in respect of which members " of the Company are protected, and such Register shall " specify—

" (1) The name and address of the member who is " protected;

" (2) The date of entry;

" (3) The name of the mine or works or of each mine " or works in respect of which he is protected with " the Company;

" (4) The date at which the member ceases to be a " member;

" (5) In what capacity a member is protected, whether " as owner or otherwise;

" (6) Whether the mine or works is a going concern, " and with regard to any mine, whether it is fully " opened out, in course of being opened out, or " simply in course of being sunk.

" And for the purposes of such register, the Committee " may from time to time require each member to furnish " to the Company such information as the Committee may " desire, and each member shall be bound forthwith to " furnish such information accordingly, and if any member " shall in relation to such register furnish to the Company " any information which in the opinion of the Committee " shall be inaccurate, the Committee shall be at liberty, in " their absolute discretion, by notice in writing to the " member, to determine his membership of the Company. " Nevertheless, such member, if he objects to such deter- " mination, may, within seven days after notice has been " given to him, by notice in writing to the Company, appeal " to a general meeting of the Company, and the Committee " shall call a general meeting accordingly, and the decision " of such meeting shall have effect.

" 14. Whenever an accident, fatal or likely to be fatal " occurs at the mine or works of any member protected by " the Company, such member is forthwith to give notice " thereof to the Company, and is to furnish the Company " with all such information and assistance in regard thereto " as the Committee may require.

" 15. A fund is to be established by the Company, and " such fund is to be composed of the contributions of the " members thereto, made in manner and proportions here- " inafter appearing. On or before the 30th June in each " year each member shall furnish the Committee with a " written estimate of his probable disbursements by way " of wages or salaries to the workmen employed or to be " employed upon or in connection with the protected mines

" and works of such member during the twelve calendar " months ending on the 30th June of the following year. " The Committee shall then (if in their opinion the financial " position of the Company shall require it) in each year make " a call on the members, such call to be made as soon as " possible after the 30th June in each year. Such calls are " hereinafter styled ' ordinary calls.'

" 16. The ordinary call shall in the case of each member " be calculated on the amount of his written estimate at a " percentage rate. The said percentage rate shall be deter- " mined by the Committee prior to the making of such call, " and shall be uniformly applied in the calculation of the " amount of the call to be levied on each member. Each " member shall within 14 days of receiving notice of the " amount due from him in respect of such call, pay the same " to the Company, and the same when paid shall be dealt " with as part of the said fund, which is hereinafter called " ' the General Fund '. Such fund shall be the primary " fund for the payment of the liabilities of the Company, " whether for compensation in respect of accidents or " administrative expenses or otherwise.

" 17. As soon as possible, and not later than two weeks " after the 30th June in the year 1908, and in each succeed- " ing year, each member shall deliver to the Committee, " a correct statement in writing of his actual disbursements, " by way of such wages or salaries as aforesaid, during the " 12 calendar months preceding such 30th June. If the " amount appearing on such statement is greater than the " amount of the member's previously delivered estimate of " probable disbursements, such member shall forthwith pay " a further or supplemental call on the amount of the " difference, calculated at the same percentage rate as the " original call, but if the amount appearing on such state- " ment is smaller than the amount of the member's " previously delivered estimate of probable disbursements, " such member shall be entitled to a return of a sum of " money, calculated at the percentage aforesaid on the " amount of the difference, or, at his option, to be credited " with such sum of money in or towards payment of any " future calls.

" 18. In the case of a member being admitted to the " membership (or to further protection under Clause 5) after " June 30th in any year, such member shall pay, in respect " of his membership or further protection during the then " current year ending June 30th, such sum as the Committee " shall decide. The Committee in fixing such sum shall have " regard to the length of the unexpired balance of such " current year, and to the probable disbursements of the " member admitted to membership for further protection,

" by way of such wages or salaries as aforesaid in connection " with his protected (or further protected) mines and works " during such unexpired balance of such current year. The " applicant for membership or further protection shall furnish " the Committee with all such information as they may " require for the purposes aforesaid, and the sum so fixed " shall be forthwith paid as provided by Clause 7, and shall " not be liable to variation or adjustment on proof of a " difference between such probable disbursements and the " disbursements actually made.

" 19. The Committee may, at any time (subject as here- " inafter provided) have recourse to the Reserve Fund when " the General Fund shall be insufficient to defray the " liabilities of the Company, whether in respect of accidents " or otherwise, and shall, at any time, and whether recourse " shall have been previously had to the Reserve Fund or not, " have power by Resolution to make an Extraordinary Call " for the purpose of meeting any liabilities of the Company, " whether actually incurred or in the opinion of the Com- " mittee likely to be incurred which the General Fund is " or will be in their opinion insufficient to meet, or for the " purpose of strengthening the Reserve Fund. The Resolu- " tion shall specify a uniform percentage rate, and the call " shall in the case of each member, be calculated, at such " percentage rate, on the amount of his last preceding state- " ment of actual disbursements by way of wages and salaries, " delivered pursuant to Clause 17 hereof. The moneys " resulting from an Extraordinary Call expressly made for " the purpose of strengthening the Reserve Fund shall be " paid directly into that Fund, and form part thereof for " all purposes.

" 20. As soon as possible after the 30th June in 1908, " and in each succeeding year, the Committee shall transfer " to another fund (called ' the Reserve Fund ') such sum, " from the General Fund as in their opinion fairly repre- " sents the excess of General Fund receipts over expendi- " ture and liabilities attributable to the 12 calendar months " ending on such 30th June. The sums so transferred shall " be paid to a separate account to the credit of the Company " with the Company's bankers, and may be invested in such " stocks, funds or securities as the Committee think " expedient, and the Committee may at any time vary any " such investments and realise and dispose of them as they " think expedient, and the resulting income shall at the " discretion of the Committee, be in whole or in part trans- " ferred to the General Fund or be accumulated by being " invested in manner aforesaid, and such accumulations " shall form part of, and be available for the purposes of " the Reserve Fund.

" 20A. In the event of recourse being had to the Reserve " Fund under the provisions of Clause 19, the following " provisions shall (with a view to securing to each member " a due proportionate share of the Reserve Fund based on " the amount which such member shall have contributed " or be deemed to have contributed to the Reserve Fund) " have effect :—

" (1) For the purposes of this clause the Reserve Fund " shall, at any time at which recourse thereto is " made or contemplated, be deemed to belong " to the members in the proportions of their " respective contributions thereto, the amount of " such respective contributions to be calculated " on the basis of sub-clauses (2), (3), (4), (5) and " (7) of this clause.

" (2) Each transfer from the General Fund to the " Reserve Fund made (pursuant to Clause 20) " in 1908 and every subsequent year, shall be " apportioned in account between the members " proportionately to the Ordinary Call (or, in a " case to which Clause 18 applies, the sum payable " under that clause), paid by or credited to them " respectively in the Company's financial year " previous to such transfer to Reserve Fund.

" (3) Each member shall be credited in account with " the amounts of all Extraordinary Calls paid by " him, and also with all sums which he shall be " deemed to have contributed to the Reserve " Fund by virtue of the last sentence of Clause 22.

" (4) At the end of each year (commencing with the " year ending the 30th June, 1909) the net income " of the Reserve Fund shall be ascertained. Such " income (less so much thereof as may have been " carried over to General Fund under Clause 20 " (*b*) in relief of Ordinary Calls) shall for the " purposes of this clause be deemed to have been " contributed by the then members and shall be " apportioned in account between them in manner " following. The total of the respective sums " then already credited in account to each such " member pursuant to sub-clauses (2), (3) and " (5) hereof and to this sub-clause shall be " ascertained, and the said net income shall be " apportioned in account between such members " in the proportion of the respective amounts so " ascertained as aforesaid.

" (5) Each member succeeding or representing a " member under Clause 10 shall for the purpose " of this clause be credited in account not only

" with his own contributions to the Reserve Fund
" under the last three preceding sub-clauses, but
" also with those of the person whom he succeeds
" or represents.

" (6) On any recourse being had to the Reserve Fund
" under Clause 19, the sum proposed to be with-
" drawn shall, in the first place, be determined
" by the Committee, and the liability therefor be
" apportioned between the members for the time
" being on the basis of such sum being about to
" be raised by Extraordinary Call. If the quota
" of any member (ascertained as aforesaid) in the
" sum proposed to be withdrawn shall exceed his
" share of the Reserve Fund (ascertained by the
" Company's Auditors pursuant to the five pre-
" ceding sub-clauses) such member shall forthwith
" on demand pay the difference to the Company,
" and such payment shall be carried direct into
" Reserve Fund and be dealt with as part of the
" sum proposed to be withdrawn. For the purpose
" of all subsequent dealings with the Reserve
" Fund under this clause, and for the purposes of
" Clause 81, the amount of such payments shall
" be credited to the member paying the same, or
" any member succeeding or representing him
" under Clause 10, as if such payment had been
" made on an Extraordinary Call.

" (7) On each occasion (after the first) on which
" recourse is had to the Reserve Fund, the amount
" which each member shall, pursuant to sub-
" clauses (2), (3), (4) and (5) hereof, have
" contributed or be deemed to have contributed
" to the Reserve Fund shall (for the purpose of
" computing the respective shares of the members
" in the Reserve Fund as then constituted) be
" diminished by the total amount of his quota
" (including the amount of the quota of any mem-
" ber whom he succeeds or represents under
" Clause 10), calculated pursuant to sub-clause (6)
" in the total amount previously withdrawn from
" Reserve Fund under Clause 19.

" (8) The provisions of the last preceding seven sub-
" clauses are to be applied exclusively for the
" purpose of computing the proportions in which
" the members are at any given time interested
" in the Reserve Fund, and accordingly such
" expressions as 'apportioned in account',
" 'credited in account', and the like shall not
" ground any right in any member to call for

" payment of any sum so apportioned or credited
" or to set off the same against any liability of
" such member to the Company.

" 20B. The Committee may at any time credit the " members (in relief of Ordinary Calls only, and not so as " to ground a claim to payment in cash), with the whole " or any part of the income of the investments representing " the Reserve Fund, instead of accumulating such income " as provided by Clause 20, and the income so credited as " aforesaid shall be carried to the General Fund. The " amount so carried over at any time shall be credited to " the members respectively according to their then respective " interests in the Reserve Fund computed according to the " provisions of Clause 20A. Notwithstanding anything in " sub-clause (7) of Clause 20A contained the amounts credited " to members under this clause shall not be deemed to be " amounts withdrawn from Reserve Fund for the purposes " of that sub-clause, but shall be credited as payments made " pursuant to an ordinary Call, for the purposes of sub- " clause 2 of Clause 20A.

" 21. A member may, at any time, by giving not less " than 6 calendar months' notice in writing to the Company " such notice to expire on any 30th day of June), retire " from the Company. Upon retirement of any member, the " Committee shall with all convenient speed ascertain the " amount (if any) due from such member to the Company " as his proportion of the expenses, disbursements and " liabilities of the Company up to the date of such retirement " and also the amount (if any) due to such member out of " the Reserve Fund, and the balance shall forthwith be paid " to or by the Company by or to the member as the case " may be. On the member paying to the Company the sum " (if any) due from him his membership shall cease, and " the entry or entries of his mines or works in the Register " of Protected Mines and Works shall be cancelled. A " member may, nevertheless be permitted at the discretion " of the Committee, to cancel his notice of withdrawal, " either unconditionally or upon such terms as may be " arranged.

" 22. On the retirement of any member pursuant to " Clause 21 hereof such member shall be entitled to receive " out of the Reserve Fund an amount arrived at as " follows :—The Committee shall ascertain (according to the " method prescribed by Clause 20A) the share of the Reserve " Fund which would for the purposes of that clause have " been deemed to belong to the retiring member in the event " of recourse to the Reserve Fund being had or contemplated " at the date of such retirement. The retiring member shall " be entitled to receive out of the Reserve Fund one-fourth

" of the share so ascertained. In the event of two or more " members retiring on the same date such retirements shall " be deemed to take effect simultaneously.

" Provided nevertheless that in the event of the with- " drawal of a member by reason of such member's tenancy " of the protected mines and works expiring or without " default on his part being determined or in the event of " such mines and works being permanently discontinued " or exhausted, such member shall be entitled to receive out " of the Reserve Fund an amount arrived at as follows :—

" (*a*) If such member withdraws under this proviso " within five years from the date of his admission " as a member of the Company he shall be " entitled to three-fourths instead of one-fourth " of the share of the Reserve Fund deemed to " belong to him and ascertained as aforesaid.

" (*b*) If such member withdraws under this proviso " within ten years from the date of his admission " as a member of the Company he shall be " entitled to one-half instead of one-fourth of the " share of the Reserve Fund deemed to belong " to him and ascertained as aforesaid.

" (*c*) If such member withdraws under this proviso after " ten years from the date of his admission as a " member of the Company he shall not be entitled " to receive out of the Reserve Fund more than " one-fourth of the amount of the share of the " Reserve Fund deemed to belong to him and " ascertained as aforesaid. Before a member shall " be entitled to the benefit of this proviso he shall, " if required by the Committee produce such " evidence of such expiration, determination, " discontinuance or exhaustion as shall be satis- " factory to the Committee.

" On the retirement of any member (or the " simultaneous retirement of two or more mem- " bers), the remainder of the share or shares in " the Reserve Fund deemed to belong to him or " them and ascertained as aforesaid shall be " credited in account to the remaining members " in the proportions of the respective amounts " which such members respectively shall before " such retirement have contributed or be deemed " to have contributed to the Reserve Fund pur- " suant to Clause 20A. And the sum so credited " in account to each such member shall be deemed " to have been contributed by him to the Reserve " Fund.

" 26. There shall be a Committee for the management " of the affairs of the Company which shall be composed " as follows :—

" Each member of the Company shall be entitled to " appoint a nominee to represent him upon the Committee " and from time to time to revoke such appointment and to " appoint a new nominee in the place of a nominee ceasing " by reason of death, resignation, revocation of appointment " or otherwise, but any such appointment shall only take " effect during the continuance of the membership of the " Appointor. Every appointment or revocation of appoint- " ment shall be in writing signed by the member appointing " or revoking (or in case of the Appointor being a Corpora- " tion, under the Common Seal of such Corporation) and " shall be addressed to the Company at its registered office. " Until at least seven nominees shall have been appointed " as aforesaid, the subscribers of the Memorandum of " Association of the Company shall act as Interim Com- " mittee, with all the powers of a Committee appointed as " aforesaid.

" 35. The management of the business of the Company " shall be vested in the Committee, and the Committee, in " addition to the powers and authorities by these presents " or otherwise expressly conferred upon them, may exercise " all such powers and do all such acts and things as may " be exercised or done by the Company and are not hereby " or by statute expressly directed or required to be exercised " or done by the Company in General Meeting, but subject, " nevertheless, to the provisions of the statutes and of these " presents, and to such regulations, not being inconsistent " with these presents as may from time to time be made by " the Company in General Meeting, but no such regulation " shall invalidate any prior act of the Committee which " would have been valid if such regulation had not been " made.

" 81. If the Company shall be wound up, the claims of " the creditors of the Company and the costs and expenses " of the winding-up shall, as between the Reserve Fund (if " any) and the other assets of the Company be deemed pay- " able primarily out of such other assets in priority to the " Reserve Fund. And the Reserve Fund or so much thereof " as shall remain after discharge of such claims, costs and " expenses shall be deemed to belong to the then members " in the proportion in which under Clause 20A hereof it " would be deemed to belong to them if the Company were " not in winding-up and recourse were then being had to " the Reserve Fund under Clause 19, and shall be dis- " tributed accordingly. And the other assets (if any) of the " Company available for distribution among the members

" shall be divided among the members rateably according to " the amount of their respective aggregate contributions " during membership to the funds of the Company, but so " that a member representing or succeeding to another " member shall in addition to his own contributions be " credited with the aggregate contributions of the member " whom he succeeds or represents."

A copy marked "A" of the Memorandum and Articles of Association of the Association is annexed hereto and forms part of this Case.(1)

5. The following facts were proved in evidence before us :—

(*a*) From the formation of the Association in 1897 until 1907 the Association confined its operations to collective bargaining on behalf of its members with insurance companies for favourable rates of premiums on fatal accident risk policies and to settling the terms of the policies. The policies were issued direct by the insurance companies to the members who paid the premiums direct to the companies. The members carried their own liability for non-fatal accidents.

(*b*) The rate of premium charged by the insurance companies to a member was originally at the rate of 8*s*. 6*d*. per cent. on the aggregate annual wages paid by the member. By 1907 this rate had risen to 11*s*. per cent. which was a better rate than could have been obtained by the members by direct bargaining with the insurance companies.

(*c*) In 1907 it was considered that if mutual insurance were undertaken by the members themselves it might be cheaper and might make for stability of premiums, and with this view the Association was incorporated to undertake the business of mutual insurance amongst its members. Every coal-owner insured by the Association is a member of the Association.

(*d*) At the first meeting of the Association the rate of contributions was considered and it was decided to make an ordinary call on the members at the rate of 10*s*. per cent. and an extraordinary call at the rate of 4*s*. per cent. (payable quarterly). The amount of the calls had been considered each year and had been fixed at the same rates ever since 1907. A copy marked " B " of the form of application for the calls is annexed hereto and forms part of this Case. The ordinary call is carried to the Ordinary Call Account which is the General Fund referred to in Clause 16 of the Articles of Association, and out of this fund the expenses and liabilities are met.

(1) Omitted from the present print.

(*e*) The area in which the mines of the members were situated had been liable at intervals to calamities involving a large number of fatal accidents. In order to safeguard the position of the Association in the event of such a calamity happening in the mine of one of its members, it was considered necessary to form a Reserve Fund. A fund was accordingly formed under the provisions of Clause 20 of the Articles of Association. The balance of the General Fund or Ordinary Call Account being the excess of the general fund receipts over expenditure and liabilities was carried to this Reserve Fund, and the extraordinary calls were paid directly into this fund in accordance with the provisions of Clause 19 of the Articles. No precise figure was originally fixed for the Reserve Fund. The matter was considered by a Special Committee in 1914, which came to the conclusion that a Reserve Fund of £100,000 would be an adequate provision against the risks involved. Owing, however, to the increase of the amounts payable for compensation consequent upon the increase of wages it was subsequently considered that a Reserve Fund of £200,000 should be aimed at.

At 30th June, 1917, the Reserve Fund stood at £84,465. This was made up as follows :—

	£
Proceeds of extraordinary calls and excess of General Fund receipts over expenditure and liabilities to 30th June, 1916...	72,328
Proceeds of extraordinary call year to 30th June, 1917	6,595
	£78,923
Balance of the General Fund, year to 30th June, 1917, being the excess of receipts over expenditure and liabilities attributable to the twelve months ended at that date	5,542
	£84,465

A copy marked " C " of the accounts of the Association for the year ended 30th June, 1917, is annexed hereto and forms part of this Case.

At the 30th June, 1920, the Reserve Fund stood at £147,513 10*s*. 8*d*. to which the balance at that date of the General Fund, viz., £11,302 16*s*. 1*d*. was added, making a total of £158,816 6*s*. 9*d*. A copy marked " D " of the accounts of the Association for the year ended the

30th June, 1920, is annexed hereto and forms part of the Case. At the date of the hearing of the appeal the Reserve Fund had approximately reached £200,000. It was the intention of the Committee, if the circumstances remained the same to abandon the extraordinary call which had not in fact been collected for the two years prior to the date of hearing of the appeal and to consider the question of the reduction of the ordinary call.

(*f*) In order to safeguard the position of the Association still further in the event of a calamity, it had effected a reinsurance of a portion of the risk with an insurance company. It reinsured against risks of accidents in which more than six fatalities occurred, at first up to a limit of £50,000 in respect of any one accident, but later up to a limit of £150,000.

(*g*) The outstanding liabilities of the Association for any year had been met before transferring sums to the Reserve Fund. At 30th June, 1917, the first three items of expenditure in the ordinary call account (General Fund) met all expenses and liabilities to that date. The first item of such expenditure entitled "compen- "sation account including estimate for outstanding "claims," viz., £9,601 11*s*. 10*d*. represented the actual cost of settlement of all claims made during the year including an estimate of outstanding claims at the end of the year, and the balance of £3,542 19*s*. 5*d*. was the balance left after meeting all liabilities to that date.

(*h*) The rate of premium charged by the Association for the year 1919–20 was certainly lower than that charged to other coal-owners by insurance companies.

(*i*) One member had, owing to the closing down of the mine, withdrawn from the Association and had received the fraction prescribed by Clause 22 of the Articles of Association of his proportion of the Reserve Fund.

(*j*) Credit was not taken in the Company's accounts for its interest in the Reserve Fund of the Association as it would only be entitled to receive its proportion of the fund in the event of the winding-up of the Association, or a fraction of its proportion in the event of its withdrawing from the Association.

(*k*) It was open to the Association to wind up at any time, and in that event each member of the Association would be entitled to receive his share of the Reserve Fund.

6. An extract was read from the Report of the Government Departmental Committee on Workmen's Compensation (1922) in which it was stated that the evidence before the Committee

led them to the conclusion that the establishment of Mutual Associations was the most economical method of insurance, and that the main fact disclosed in regard to this system of insurance was the absence of any guarantee that sufficient moneys are being set aside each year to cover outstanding liabilities.

7. It was contended on behalf of the Company :—

(1) That the sole purpose for which the contributions were paid by the Company is to insure against fatal accident risks;

(2) That sums expended by the Company for insurance were admissible deductions in computing its profits for the purpose of assessment to Income Tax; and

(3) That the assessment under appeal should be discharged.

8. It was contended on behalf of the Crown (*inter alia*) :—

(1) That the objects of the Association were not only the insurance of its members against risks but also (*inter alia*) the accumulation of funds.

(2) That the funds so accumulated had not been expended and under the Memorandum and Articles of Association of the Association need not necessarily be expended for the purpose of insurance or at all but were applicable to any special purpose which the members might think fit and in certain circumstances were returnable in whole or in part to the members.

(3) That so far as the contributions paid by the Company to the Association had not been expended by the Association for the purpose of insurance but had been used for the accumulation of funds they were not money wholly and exclusively laid out or expended by the Company for the purposes of its trade and were not admissible deductions in computing the profits and gains of the Company.

9. The following cases were referred to :—

Adam Steamship Co., Ltd. v. *Matheson*(1).
Grahamston Iron Co. v. *Crawford*(2), 52 S.L.R. 385.
Lochgelly Iron & Coal Co. v. *Crawford*(3), 50 S.L.R. 597.
Usher's Wiltshire Brewery, Ltd. v. *Bruce*(4), [1915] A.C. 433.

10. Having considered the facts and arguments we gave our decision as follows :—

There is no doubt in this case that the payments made to the South-West Lancashire Coal Owners' Association, Limited, are " for insurance and nothing more " and that

(1) 12 T.C. 399. (2) 7 T.C. 25. (3) 6 T.C. 267. (4) 6 T.C. 399.

they are in themselves reasonable and proper payments. If they were made to an ordinary trading company they would be clearly admissible in whole, but as the surplus arising from them to the insuring company is not itself assessable by reason of the decision in the *New York Life Insurance Company* case(1), it is claimed that the payments so far as they cause a surplus are not deductible by the Appellant Company. It is important to notice that the *New York Company* case was decided in 1889 before *Salamon's* case(2) which was decided in 1897, and as the " dicta " in the *New York* case seem in several respects to be inconsistent with the later decision, they cannot in our opinion be used as authority for reaching the conclusion which the Inspector now asks us to make. In *Adam SS. Company* v. *Matheson*(3) the Court laid it down that payments made for insurance and nothing more are admissible deductions and the payments in the present case are so made. It is true that a surplus has arisen from them to the insuring company but this surplus is not divisible among the insured companies, and the fact that part of it might be recovered upon cessation of membership or even the whole of it upon a dissolution does not seem to us sufficient ground for applying the dicta of the *New York* case to the facts of the present one.

Our decision is accordingly in favour of the Appellant Company.

11. The Appellant immediately upon the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act, 1880, Section 59, which Case we have stated and do sign accordingly.

12. The question for the opinion of the Court is whether the contributions paid by the Company to the Association are wholly admissible as deductions in computing the Company's profits for the purpose of assessment to Income Tax.

J. JACOB,
W. J. BRAITHWAITE,
P. WILLIAMSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

4th September, 1924.

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(1) 2 T.C. 460. (2) [1897] A.C. 22. (3) 12 T.C. 399.

EXHIBITS.

"B."

THE SOUTH-WEST LANCASHIRE COAL-OWNERS' ASSOCIATION LIMITED.

Haydock Offices,
St. Helens.
June, 1920.

Dear Sirs,

At the meeting held on the 1st ultimo it was decided that the rate for the year ending June 30th, 1921, be 10*s*. per cent., and that, in addition, there be paid 1*s*. per cent. per quarter. I shall be glad therefore if you will send me your cheque on account not later than the 30th instant for about one-half of your premium say £ , so that you may be covered against any fatal risk after June 30th next, pending the adjustment of the figures and the payment of the balance of your premium.

Please make your cheque payable to "The South-West Lancashire Coal Owners' Association, Limited" and crossed "For credit of payee's Deposit Account only."

With regard to the 1*s*. per cent. per quarter to be paid for the purpose of building up the Reserve Fund, due notice will be given as to the payment of this after June 30th when this year's wages have been ascertained.

I send you enclosed herewith a blue form in triplicate which kindly fill up as required in due course, and return one copy to me not later than the date named thereon. In the event of your not being able to obtain your Auditor's certificate in time, will you please send a return without it and forward the certified return later.

We have arranged to pay the balance of premium in respect of the Association's insurance of Catastrophe Risk by the 15th July. I shall therefore be glad if you will kindly let me have the blue return of wages at the earliest possible moment.

Your faithfully,

Secretary.

"C."

Dr. ORDINARY CALL ACCOUNT. Cr.

Income.

1917. June 30.	£	s.	d.
To Ordinary Call	16,488	10	0
,, Interest	248	0	7
,, Investment income	3,024	5	5
	£19,760	16	0

Expenditure.

1917. June 30.	£	s.	d.	
By Compensation Account (including estimate for Outstanding Claims)	9,601	11	10	£12,018
,, Expenses Account (including estimate for Outstanding Expenses)	767	7	8	
,, Catastrophe Re-Insurance	1,648	17	0	
,, Amount added to Reserve against Depreciation in market value of investments	2,200	0	0	
,, Balance proposed to be carried to Reserve Fund	5,542	19	6	
	£19,760	16	0	

BALANCE SHEET.

Liabilities.

1917. June 30.	£	s.	d.
Claims Outstanding Account	1,046	4	2
Premiums paid in advance	6,070	0	0
Sundry Creditors	411	4	6
Reserve against continuing liability	1,000	0	0
Reserve Fund (proceeds Extraordinary Calls and balance Ordinary Calls)	78,922	11	11
Balance Ordinary Call Account, year 1916–17	5,542	19	6
	£92,993	0	1

Assets.

1917. June 30.	£	s.	d.	£	s.	d.
Cash at Bank—						
On Current Account	129	13	9			
On Deposit Account	3,939	18	4			
				3,968	12	1
Investments				85,457	13	10
Sundry Debtors				3,566	14	2
				£92,993	0	1

"D."

[*Private and Confidential.*]

THE SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCIATION, LIMITED.

Registered Office :—Haydock, near St. Helens.

President of Association.
LIEUT.-COL. LIONEL E. PILKINGTON, C.M.G.

Vice-President.
HARRY SPEAKMAN, ESQ.

Committee of Management :—

WM. CLARK, Chairman, (Garswood Coal and Iron Company, Limited).
R. F. Clark, (Ackers, Whitley & Co., Ltd.).
Edward Marsh, (Bromilow Foster & Co., Ltd.).
Wm. Southern, (Collins Green Colliery Co., Ltd.).
Thomas Mason, (Cross Tetley & Co., Ltd.).
Jno. Robinson, (Richd. Evans & Co., Ltd.).
Fred G. Bowe, (Orrell Colliery Co., Ltd.).
A. Wedgwood, (Outwood Collieries, Ltd.).
W. W. Wooton, (Wm. Ramsden & Sons, Ltd.).
Percy K. Davies, (James Roscoe & Sons.).
R. B. Mawson, (Rose Bridge & Douglas Bank Collieries Co., Ltd.).
A. J. A. Orchard, (St. Helens Collieries Co., Ltd.).
Harry Speakman, (Jno. Speakman & Sons, Ltd.).
Geo. E. Lomax, (Sutton Heath & Lea Green Collieries, Ltd.).
L. E. Pilkington, (Sutton Manor Collieries, Ltd.).
Thomas Bridge, (Tyldesley Coal Co. Ltd.) (Unsworth and Cowburn).
F. W. Grundy, (Westleigh Colliery Co., Ltd.).
H. O. Dixon, (Westhoughton Coal and Cannel Co., Ltd.).
W. R. Davies, (Englefield Collieries, Ltd.).
W. R. Davies, (Wirral Colliery (1915), Ltd.).

Secretary.
WILLIAM J. PART.

REPORT OF THE COMMITTEE OF MANAGEMENT.

Gentlemen,

The number of deaths recorded during the year has been 49.

The Accounts for the year ended June 30th, 1920, have been duly audited and are submitted herewith.

After making provision for claims unsettled, there is a surplus of £24,602 16*s*. 1*d*. In view of the great decrease in the value of securities since last year the Committee have added a further sum of £13,300 to the Reserve against depreciation in market value of Investments, and recommend that the balance of £11,302 16*s*. 1*d*. be added to the Reserve Fund of £147,513 10*s*. 8*d*. making a total of £158,816 6*s*. 9*d*.

The Committee have decided to make an Ordinary Call of 10*s*. per cent. and an Extraordinary Call of 1*s*. per cent. per quarter on the wages in respect of the year ending June 30th, 1921. The notices in regard to these calls have been issued to the members accordingly.

The Auditors, Messrs. J. D. Nickels & Co., of Liverpool, retire but are eligible for re-election.

We are, Gentlemen,

On behalf of the Committee of Management,

LIONEL E. PILKINGTON, } Members of
WM. CLARK, } Committee.

Haydock, near St. Helens.
July 22nd, 1920.

WILLIAM J. PART, Secretary.

Dr. ORDINARY CALL ACCOUNT. Cr.

1920. June 30. *Income.*	£	s.	d.	1920. June 30. *Expenditure.*	£	s.	d.
To Ordinary Call	33,443	5	0	By Compensation Account (including estimate for Outstanding Claims)	10,497	10	0
„ Interest	231	11	5	„ Expenses Account (including estimate for Outstanding Expenses)	652	16	10
„ Investment Income	5,422	13	0	„ Catastrophe Re-Insurance	3,344	6	6
				„ Amount added to Reserve against Depreciation in market value of Investments	13,300	0	0
				„ Balance proposed to be carried to Reserve Fund	11,302	16	1
	£39,097	9	5		£39,097	9	5

Dr. BALANCE SHEET. Cr.

1920. June 30. *Liabilities.*	£	s.	d.	1920. June 30. *Assets.*	£	s.	d.
Claims Outstanding Account	1,603	14	6	Cash at Bank—			
Sundry Creditors	2,817	12	0	On Current Account 149 19 3			
Reserve against continuing liability	1,000	0	0	On Deposit Account 8,254 10 1			
					8,404	9	4
Reserve Fund (proceeds Extraordinary Calls and balance Ordinary Calls)	147,513	10	8	Investments	143,188	12	10
Balance Ordinary Call Account, year 1919–20 ...	11,302	16	1	Sundry Debtors	12,644	11	1
	£164,237	13	3		£164,237	13	3

Report of the Auditors to the Shareholders of the South-West Lancashire Coal Owners' Association, Limited.

We have audited the Balance Sheet of the South-West Lancashire Coal Owners' Association, Limited, dated 30th June, 1920, as above set forth.

We have obtained all the information and explanations we have required.

In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of our information and the explanations given us, and as shewn by the books of the Company.

J. D. NICKELS & CO.,
Chartered Accountants, Auditors.

Liverpool, 22nd July, 1920.

LIONEL E. PILKINGTON, } Members of
WM. CLARK, } Committee.

WILLIAM J. PART, Secretary.

(2) *Jones v. The South-West Lancashire Coal Owners' Association, Ltd.*

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 9th July, 1924, for the purpose of hearing appeals, The South-West Lancashire Coal Owners' Association, Limited (hereinafter called " the Association ") appealed against an additional assessment to Income Tax in the sum of £20,000 for the year ending the 5th April, 1921, made upon the Association by the Additional Commissioners for the Division of Warrington under the provisions of Schedule D of the Income Tax Act, 1918.

2. At all times material to this appeal the sole activity of the Association was the indemnity of its members, who are all coal owners, against liability for compensation in respect of fatal accidents to workmen in their employment. The Association is a purely mutual concern, every person indemnified by the Association being a member of the Association, and every member being indemnified by the Association. The assessment which formed the subject of the appeal, was made in respect of the surplus of the calls received from the members of the Association, and of the income of the Association's investments over the amount of the outgoings of the Association to meet indemnity claims by its members, and the cost of reinsurance of a portion of the risks which it undertakes.

3. The Association was originally an unincorporated association of coal owners formed in 1897 after the passing of the Workmen's Compensation Act in order to obtain by collective bargaining better terms from ordinary Insurance Companies for insurances against risks of fatal accidents to workmen employed in the mines owned by the members.

4. The Association was incorporated on the 20th June, 1907, as a Company limited by guarantee. There are about 20 members of the Association. The principal object of the Association is set out in Clause 3 (1) of the Memorandum of Association as follows :—

> " To indemnify the members of the Company against proceedings, losses, costs, damages, claims and demands in respect of any accident, or alleged accident resulting or alleged to have resulted in fatal injury to any workman or

workmen (within the meaning of the Workmen's Compensation Act, 1906), employed at or in connection with any mines in which any member of the Company is interested and to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, apply, or at or in connection with any railway, factory, quarry, brickworks, engineering works, or other works in which any member of the Company is interested, and arising out of and in the course of such employment."

Under Clause 3 (12) of the Memorandum the Association has power :—

" To accumulate and set aside funds, and to allocate any of such funds to any special purpose, and to invest the same in such manner as may be thought fit."

The other objects of the Association are not set out in detail as it was admitted that no funds have been collected for the purpose of furthering these objects.

Clause 3 (21) of the Memorandum of Association provides as follows for the distribution of the Company's assets among its members :—

" To distribute any of the assets for the time being of " the Company among the members in kind or otherwise, " and to make such arrangements as may be thought fit for " the return to members of the Company on their ceasing " to be members of such part or proportion of their contri- " butions to the funds of the Company as may be thought " advisable."

[*The remainder of paragraph* 4 *of this Case is omitted, being in the same terms as paragraph* 4 *of the Case Stated in* Thomas *v.* Richard Evans and Company, Ltd.—*see p.* 792 ante.]

5. The following facts were proved in evidence before us :—

(*a*) From the formation of the Association in 1897 until 1907 the Association confined its operations to collective bargaining on behalf of its members with insurance companies for favourable rates of premiums on fatal accident risk policies and to settling the terms of the policies. The policies were issued direct by the insurance companies to the members who paid the premiums direct to the companies. The members carried their own liability for non-fatal accidents.

(*b*) The rate of premium charged by the insurance companies to a member was originally 8*s.* 6*d.* per cent. on the total amount of the annual wages paid by the member. By 1907 this rate had risen to 11*s.*

per cent. which was a lower rate than could have been obtained by the members by direct bargaining with the insurance companies.

(*c*) In 1907 it was considered that if mutual insurance were undertaken by the members themselves it might be cheaper and might make for stability of premiums, and with this object the Association was incorporated to undertake the business of mutual insurance amongst its members.

(*d*) At the first meeting of the Association the rate of contribution was considered, and it was decided to make an ordinary call on the members at the rate of 10*s*. per cent. on the total amount of the annual wages, and an extraordinary call of 4*s*. per cent. (payable quarterly). The amount of the calls had been considered each year and had been fixed at the same rates ever since 1907. A copy, marked "B," of the form of application for the calls is annexed hereto and forms part of this Case(1). The Ordinary calls are carried to the Ordinary Call account which is the General Fund referred to in Clause 16 of the Articles of Association and out of this fund the expenses and liabilities are met.

(*e*) The area in which the mines of the members were situated had been liable at intervals to calamities involving a large number of fatalities. In order to safeguard the position of the Association in the event of such a calamity happening in the mine of one of its members, it was necessary for the Association to form a Reserve Fund. A Fund was accordingly formed under the provisions of Clause 20 of the Articles of Association. The balance of the Ordinary Call account, being the excess of the general fund receipts over expenditure and liabilities was carried to the Reserve Fund, and the Extraordinary Calls were paid direct into this Fund in accordance with the provision of Clause 19 of the Articles. No precise figure was originally fixed for the Reserve Fund. The matter was considered by a Special Committee in 1914, which came to the conclusion that a Reserve Fund of £100,000 would be an adequate provision against the risks involved. Owing however to the increase of the amounts payable for compensation consequent upon the increase of wages, it was subsequently considered that a Reserve Fund of

(1) See p. 809 *ante*.

£200,000 should be aimed at. At the 30th June, 1920, the Reserve Fund stood at £147,513 10*s.* 8*d.* to which the Balance at that date of the General Fund, viz.: £11,302 16*s.* 1*d.* was added making a total of £158,816 6*s.* 9*d.* At the date of this appeal the Reserve Fund exceeded £200,000. It was the intention of the Association, if the circumstances remained the same to abandon the Extraordinary Call which had not in fact been collected for four years prior to the date of the hearing of the appeal, and to consider the question of reduction of the Ordinary Call under the provisions of Clause 20*b* of the Articles of Association. A copy, marked "C," of the accounts of the Association for the three years ended the 30th June, 1919, is annexed hereto and forms part of this Case(1).

(*f*) In order to safeguard the position of the Association still further in the event of a calamity, it had effected a reinsurance of a portion of the risk with an insurance company. The reinsurance was against risks of accidents in which more than six fatalities occurred, at first up to a limit of £50,000 in respect of any one accident, but later up to a limit of £150,000. The item "Catastrophe Reinsurance" in the Expenditure side of the Ordinary Call account is the premium paid for this reinsurance.

(*g*) The rate of contribution, including all extraordinary calls charged by the Association to its members for each of the three years to the 30th June, 1919, was certainly lower than the rate of premium charged to other coal owners by insurance companies.

(*h*) Since 1907 one member had owing to the closing down of the mine withdrawn from the Association and had received the fraction prescribed by Clause 22 of the Articles of Association of his proportion of the Reserve Fund.

(*i*) The amounts of the extraordinary calls received by the Association during the three years ended the 30th June, 1919, were as follows:—

For the year to the 30th June,	1917...	£6,595
,, ,, ,, ,,	1918...	£8,517
,, ,, ,, ,,	1919...	£10,134

(1) Omitted from the present print.

(*j*) It was open to the Association to wind up at any time, and in that event each member of the Association would be entitled to receive his share of the Reserve Fund.

(*k*) The outstanding liabilities of the Association for any year has been met before transferring sums to the Reserve Fund. The first three items of expenditure in the Ordinary Call Account met all expenses and liabilities to that date, and included an estimate of outstanding claims at the end of the year. The amount transferred to the Reserve Fund was the balance left after meeting all liabilities to the end of the year.

6. An extract was read from the Report of the Government Departmental Committee on Workmen's Compensation (1922) in which it was stated that the evidence before the Committee led them to the conclusion that the establishment of Mutual Associations was the most economical method of insurance, and that the main fact disclosed in regard to this system of insurance was the absence of any guarantee that sufficient monies are being set aside each year to cover outstanding liabilities.

7. It was contended on behalf of the Association :—

(1) That the Association was a purely mutual concern.

(2) That consequently under the decision in the case of the *New York Life Insurance Co.* v. *Styles*(1), (1889) 4 A.C. 381, the Association was not carrying on any trade from which profits liable to Income Tax arose, and

(3) That the Association was not therefore liable to Income Tax and the assessment should be discharged.

In support of the contentions reference was also made to the case of *The Commissioners of Inland Revenue* v. *The Eccentric Club, Ltd.*(2), [1924] 1 K.B. 390, and *The Commissioners of Inland Revenue* v. *The Cornish Mutual Assurance Co., Ltd.*(3).

8. It was contended on behalf of the Inspector of Taxes (*inter alia*)—

(1) That the decision in the case of the *New York Life Insurance Co.* v. *Styles* proceeded on its own special facts, and did not govern this case.

(2) That the case of *The Commissioners of Inland Revenue* v. *The Eccentric Club, Ltd.*, was distinguishable from the present case, inasmuch as the club was formed to provide social amenities and had no commercial activities.

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(1) 2 T.C. 460. (2) 12 T.C. 657. (3) 12 T.C. 841.

(3) That the Association carried on a trade and the surplus of the calls received by the Association from its members and of its other income over the amounts paid by the Association in settlement of claims for indemnity and the cost of reinsurance of the risks referred to in paragraph 5 (*f*) hereof and other expenses was a profit arising to the Association from its trade.

(4) That the assessment was correct in principle and subject to any necessary adjustment of figures should be confirmed.

The case of *Salomon* v. *Salomon & Co., Ltd.*, [1897] A.C. 22, was referred to.

9. We held that though the dicta in the case of the *New York Life Insurance Co.* v. *Styles* seemed difficult to reconcile with the decision in the case of *Salomon* v. *Salomon & Co., Ltd.*, the former case directly covered the present case, and we were bound to follow it. Further, although the case of *The Commissioners of Inland Revenue* v. *The Cornish Mutual Assurance Co., Ltd.* related to Corporation Profits Tax, that decision must apply with at least equal force to Income Tax. We accordingly discharged the assessment.

10. The Appellant immediately upon the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

J. JACOB,
P. WILLIAMSON, } Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

14th May, 1925.

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 3rd March, 1926, when judgment was given against the Crown, with costs.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown; Mr. A. M. Latter, K.C., for Richard Evans and Company, Ltd.; and Mr. Latter and Mr. Glover for the Association.

JUDGMENT.

Rowlatt, J.—In these two cases the Respondent Company in the first appeal was a protected member of the South-West Lancashire Coal Owners' Association, Limited, who are the Respondents in the second appeal. The sole activity of the Association is the indemnity of its members, coalowners, against compensation in respect of fatal accidents to workmen; it is a purely mutual concern, every person or company indemnified by the Association being a member. As regards the Respondents in the first case, it is found that the payments they make to the Association are payments for insurance and nothing more, and they are reasonable and proper payments such as would be admissible if paid to an ordinary insurance company.

The object of the Association is to indemnify its members, and to accumulate and set aside funds for that purpose. In the event of a winding-up, every member is liable to contribute £25. The members are those who are protected by it; there are no shareholders, the Association being limited by guarantee in the way I have indicated. In order to obtain admission as a member, the person who seeks protection must fulfil certain requirements, found in Article 4, and then he can be protected in respect of his works by following the procedure set out. Then he has to pay some premiums under Rule 7, and then his position is (I think sufficiently accurately stated) that he is to be protected against the losses in question, or the claims in question, by calls to be made on his fellow members and himself, and every member is in that position; they are mutually protecting each other under this Company, or, rather, mutually providing the Company with funds to indemnify each particular member.

Now the rights of a member in the Company cannot be transferred at all, apart from the works in which he is protected. There are provisions in the Articles for the case of the transfer of works or a change in partnership which is effecting a transfer of the works, death, bankruptcy, lunacy and so on, in which case there are provisions made for letting the benefit of the protection run on to the successor of the member so disappearing, he however remaining liable for claims that had accrued before he actually retired.

The Association not only collects rateably from the members each time a loss occurs, but it builds up a fund by asking members to pay proportionately to the wages that they pay at their works, provision being made for having this estimated beforehand and adjusted at the end of the year. Out of these "calls", as they are termed, is built up a fund with which to meet the claims for indemnity. In addition the Association is at liberty to create, and has created, a reserve fund, which is some-

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thing beyond what I may call the ordinary fund or the current fund, as a reserve to meet extraordinary calls, I suppose to equalise liabilities over a long series of years, the interests in this reserve fund being elaborately provided for. No member will at any time, subject to one small qualification, get anything returned to him in cash, but the interest which is accruing on the reserve fund can go in diminution of his calls, and so on. The money is kept by the Association for the protection of all concerned, and for making protection effective. A member can retire if he chooses, and if he retires he is entitled to get back in cash a proportion—not all, but a proportion—of what is called his share in the reserve fund, and this is the only instance of a member receiving cash from the Association. The way in which the interest in the reserve fund is to be calculated, as between those shifting bodies of people is provided for by elaborate machinery, the object being to show in what proportion the particular protected person is entitled to have his calls reduced, and ultimately, if he retires, to show the proportion he can take out of the fund. I do not think I need say anything further. I think I have said enough to summarise the elaborate provisions which govern the activities of this Company.

In the first appeal, the question arises whether the Respondents, Messrs. Evans and Company, can deduct what they pay to this protective Association, of which they are members, as an expense. It is not denied that an insurance premium to obtain such protection as this would be a deductible expense, and certainly if this is to be looked at simply as a payment of that kind it is deductible. Why is it suggested that it is not deductible? One suggestion is that it is not deductible because some of it may be returned. But it can only be returned if a member retires from membership. I do not think this circumstance can, even in part, take the payment out of the category of a genuine insurance premium. If a person pays a premium for insurance, with a right to a refund next year, or in certain events, it might perhaps be said that he is paying a premium under discount, and the full amount cannot be claimed as a deduction. But that does not arise here. Whether a member will get anything back is extremely remote; the occasion may never arise, and I do not think I need trouble with that matter.

It is said then that the colliery Company, having paid the money to the protecting Association, still owns the money, in the sense that it is interested *pro rata* in it as a reserve. I do not think that has any bearing upon the point. They have paid the money and bought with it, or in respect of having subscribed it, the protection, not only of its own payment, but the protection of the combination of all the other people who have done the

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same. The argument treats this payment as if it were a payment which the colliery Company itself had carried to a contingencies fund, or some domestic insurance fund, which would simply mean that it had not spent it. But that is not so. The money has been laid out, the colliery Company buying protection with it upon a true insurance principle—a principle which pools losses or distributes losses. I think, therefore, that the payments are deductible. The first appeal must be dismissed.

Now it is said for the Crown that, if the colliery Company is entitled to deduct those payments, the Association is taxable in respect of them. It seems to me that that is a fallacious argument. Assuming that the sums paid by the colliery Company in a particular year are more than sufficient to protect the paying Company, because it has not had any accident in that year, then, if there is an insurer in the case, there is in that an element of profit. But one cannot follow the germ of profit in one payment so as to say that in what follows there must always therefore be a profit. Every taxpayer must be looked at as regards his own business, and the money that comes in may be, as Mr. Hills has pointed out, capital expenditure of the person who pays it, and income of the person who receives it. This fund cannot be followed through for this purpose; the position of the receiver must be looked at and in this case the Association might make a loss, or might do so if it were an ordinary insurance company, on the year. The position of the Association must be looked at as a whole, quite irrespective of the position of the protected firms.

Now I come to the second appeal. In the second appeal the question is, did this Association make a profit? This brings me to a consideration of *The New York Life Insurance Company* v. *Styles*(1). The Commissioners say it is difficult to understand and reconcile that case with the case of *Salomon*(2). I do not think there is any difficulty of that kind myself. The principle laid down in the *New York Insurance Company* case is that no one can make a profit out of himself. Now that is very true, but I am not at all certain it does not confuse us in this particular case. It is true to say a person cannot make a profit out of himself, if what is meant is that he may provide himself with something at a lesser cost than that at which he could buy it, or if he does something for himself instead of employing somebody to do it. He saves money in those circumstances, but he does not make a profit. But a company can make a profit out of its members as customers, although its range of customers is limited to its shareholders. If a railway company makes a profit by carrying its shareholders, or if a trading company, by trading

(1) 2 T.C. 460. (2) Salomon v. Salomon & Co., Ltd., [1897] A.C.22.

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with its shareholders—even if it is limited to trading with them—makes a profit, that profit belongs to the shareholders, in a sense, but it belongs to them *qua* shareholders. It does not come back to them as purchasers or customers. It comes back to them as shareholders, upon their shares. Where all that a company does is to collect money from a certain number of people—it does not matter whether they are called members of the company, or participating policy holders—and apply it for the benefit of those same people, not as shareholders in the company, but as the people who subscribed it, then, as I understand the *New York* case, there is no profit. If the people were to do the thing for themselves, there would be no profit, and the fact that they incorporate a legal entity to do it for them makes no difference, there is still no profit. This is not because the entity of the company is to be disregarded, it is because there is no profit, the money being simply collected from those people and handed back to them, not in the character of shareholders, but in the character of those who have paid it. That, as I understand it, is the effect of the decision in the *New York* case.

Is there any distinction between that case and the present? I can see none. The money subscribed by the colliery Company is used for its protection; the fund belongs to it, and a large amount is kept in hand. No doubt, as the money is not distributed year by year, and the calls are not limited to the actual losses, but to enable a fund to be built up, it may in a sense be said that the Association has a fund which it holds as a company, and which it does not divide among all the people who have built it up, inasmuch as members may come in when the fund has been largely built up, and so there is a fund which does not go back to those people who subscribed it individually. That I think must have been so also in the *New York Company's* case, because there was there a reserve fund which involves that when a life dropped and the assured's executors were paid the amount due upon the policy, with bonus additions, there was still something left in the hands of the company beyond what was necessary to pay the claims as they became due. But that fact did not affect the decision. The broad principle was there laid down that, if the interest in the money does not go beyond the people or the class of people who subscribed it, then, just as there is no profit earned by the people subscribing, if they do the thing for themselves, so there is none if they get a company to do it for them.

I am fortified in this view by what was said in the *Padstow* case(1) and by what was said in the Court of Appeal in the

(1) *In re* Padstow Total Loss and Collision Assurance Association, 20 Ch. D. 137.

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North Cornwall case(1), although it may be that what there was said upon this point was not absolutely necessary for the decision.

The second appeal must also be dismissed.

The Crown having appealed against the decisions in the King's Bench Division, the cases came before the Court of Appeal (Lord Hanworth, *M.R.*, Scrutton, *L.J.*, and Romer, *J.*) on the 5th and 6th July, 1926, when judgment was given unanimously against the Crown in both cases, with costs.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown; Mr. A. M. Latter, K.C., for Richard Evans and Company Ltd.; and Mr. Latter and Mr. Glover for the Association.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you, Mr. Latter.

These two appeals raise questions which are so closely associated that we have adopted the course of having both cases called on, and Mr. Hills has presented his argument successively and also distributively in both cases, because it was almost impossible to keep the arguments of the one wholly independent from the arguments of the other.

Both cases are appeals from Mr. Justice Rowlatt, who held that the Crown was not entitled to make an assessment in the first case upon Richard Evans and Company, Limited, and in the second case upon the South-West Lancashire Coal Owners' Association. The facts out of which the suggested liability to Income Tax arises are these: Richard Evans and Company, Limited, carry on a business of colliery proprietors in South-West Lancashire, and they claimed to deduct from the profits or gains which are liable to Income Tax a sum which they paid in respect of insurance. They desired to be insured against the risks and liabilities to which they might become subject in respect of the men they employed as miners in the course of their business. For that purpose, Messrs. Richard Evans and Company, Limited, and a number of other companies or colliery proprietors joined themselves together in an Association which is called The South-West Lancashire Coal Owners' Association, Limited, (afterwards called the Association), and through that Association they obtained the insurance which was suitable to their risks and which gave them

(1) Commissioners of Inland Revenue *v.* Cornish Mutual Assurance Co., Ltd., 12 T.C. 841.

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the protection that they desired. In the Memorandum of Association are contained what are in effect the terms of the policy. By Clause 3 (1) of the Memorandum the Association was formed to indemnify "the members against proceedings, "losses, costs, damages, claims and demands in respect of any "accident or alleged accident resulting or alleged to have resulted "in fatal injury to any workman or workmen (within the meaning "of the Workmen's Compensation Act, 1906), employed at or in "connection with any mines in which any member of the Company "is interested and to which the Coal Mines Regulation Act, 1887, "or the Metalliferous Mines Regulation Act, 1872, apply, or at or "in connection with any railway, factory, quarry, brickworks, "engineering works, or other works in which any member of the "Company is interested, and arising out of and in the course of "such employment." It is quite plain, having regard to the number of Acts which are referred to in that Clause which I have just read, that the liabilities of employers and owners in respect of carrying on what is, in certain aspects of it, a hazardous trade, must subject them to the possibility of heavy demands for the liabilities incurred by their workpeople, and it is important therefore that they should be able to insure themselves. There are two kinds of insurance which they particularly desire. One is in respect of the accidents, unfortunate though they are, but fairly constant, and possibly averaging out in the course of the year. A certain number of men are injured, sometimes by the fall of coal, sometimes on the surface, in connection with the railway work which is done, and in a number of other ways ancillary to the mine. But there is another and still more grievous form of accident to which those who are engaged in working coal are subject, not necessarily in any district, in any particular year or portion of a year, but, taking the whole period, decade by decade, you will find unhappily that there are very severe accidents, leading sometimes to the destruction of the mine and very considerable loss of life. One has to bear in mind those two classes of liabilities against which it was important that the mine owners should insure themselves, and Messrs. Richard Evans and Company, Limited, therefore became members of this Association. The rights of a member were these: He was to be indemnified against the risks that I have described, and he was to make a contribution. He was to pay what is in effect his premium, and that is based, as we are told in Clause 17 of the Articles of Association on this: "each "member shall deliver to the Committee a correct statement in "writing of his actual disbursements, by way of such wages or "salaries as aforesaid, during the 12 calendar months preceding "such 30th June." Then: "If the amount appearing on such "statement is greater than the amount of the member's previously "delivered estimate of probable disbursements, such member

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" shall forthwith pay a further or supplemental call on the amount " of the difference, calculated at the same percentage rate as the " original call, but if the amount appearing on such statement is " smaller than the amount of the member's previously delivered " estimate of probable disbursements, such member shall be " entitled to a return of a sum of money, calculated at the percent- " age aforesaid on the amount of the difference, or, at his option, " to be credited with such sum of money in or towards payment " of any future calls." In other words, each member of the Association makes his contribution, which is in effect his premium, according to the estimate of his wages and actual disbursements in a particular twelve months, and adjustments are made to show that his premium in effect accords with the actual disbursements and wages paid.

In addition to that sum so paid, it was decided, and rightly decided, by the Association, to establish a reserve fund. The Association had power by resolution to make an extraordinary call for the purpose of meeting liabilities, but it gradually, as I understand, built up this reserve fund mainly by not paying back to the members some aliquot part of the sums paid by them which was in excess of the sum needed to meet the ordinary risks of the insured, and by attributing those excesses to the reserve fund. By this means it has accumulated a considerable sum in its hands ready to meet, if it should unfortunately occur, some cataclysm such as I have indicated, which is the second branch of the liability against which the insured desire to be insured. That that second branch was a very important one is shown by this, that the reserve fund has been steadily accumulated, and, more than that, lest it should in itself,although it had reached approximately £200,000, be insufficient to bear the burden of a heavy call upon it, the Association has reinsured a portion of its risk of that nature with an insurance company, thus providing on the second head of insurance an indemnity to its insured to meet an extraordinary liability.

With regard to the possibility of any of this sum so built up in the reserve fund coming back to insured members, the matter stands in this way: There is not in the ordinary course, as in what I may call a dividing club, a distribution of the assets not called upon to meet liabilities at the end of a year, or quinquennial or decennial periods. No member is entitled to withdraw, except on terms that, after giving notice, it has been ascertained that all accidents falling within the period during which he was a member have been met. Then if he ceases business altogether he may be entitled to withdraw on certain specified terms, which are shown in Clause 22 of the Articles of Association. If he withdraws within five years from the date of his

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admission, he shall be entitled to three-fourths instead of one-fourth of the share of the Reserve Fund deemed to belong to him and ascertained as aforesaid, and that decreases if he retires after a longer period. Now all that indicates that in some possible, though remote, event there may arise a right to an insured member to receive back some portion of the sum which he has helped to accumulate, but while the insurance system is in operation he makes his contribution to a fund, and his colleagues in the Association equally with himself have a right to share or to receive a portion of the sum which they have put together, if either of them respectively should unfortunately meet with accidents which are within the indemnity clause. Now I have drawn, perhaps imperfectly, perhaps too shortly, the system of insurance which is adopted by these members of this Association. They pay their moneys on this quota arranged on the basis of wages. They are liable to pay in response to an extraordinary call, but it has been found possible to build up the reserve fund out of ordinary contributions. There have been extraordinary calls, and the reserve fund has been built up partly out of them, but they were made some years ago, and have not been resorted to recently.

The reason why the members of the Association, including Richard Evans and Company, Limited, are members of the Association is that they may be insured persons reaping the advantages of a system of insurance, and they pay over their moneys, which have all the characteristics of premiums, in order that they may obtain insurance and nothing more. There are no other objects of the Association. They are not to advance any particular scientific methods, or propaganda, or anything of that sort. It is for the purpose of insurance and nothing else. When one has come to see that that is so, these sums which are paid for insurance are, like other costs of insurance, deductible from the profits and gains, which are the subject of Income Tax.

The Commissioners gave their decision in the following terms: "There is no doubt in this case that the payments made . . . are "'for insurance and nothing more' and that they are in themselves "reasonable and proper payments. If they were made to an "ordinary trading company they would be clearly admissible in "whole," and they held that the payments in the case being for insurance, and therefore part of the cost of seeking the profits and gains which are the subject of Income Tax, are deductible.

What is said on behalf of the Crown is that inasmuch as at some time there may be conceivably an end put to the Association, as one member after another may retire in accordance with the Articles of Association, if and when those events happen there may be a chance of some payments being made by way of return to them, and therefore that the payments made to

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the Association are not in themselves for insurance and nothing more; that they have in part the character of accumulating sums, held in reserve for, but ultimately distributable to, the members of the Association. It appears to me, from what the Commissioners have found, and after consideration of the cases, that there is no alteration in the character of these payments, and that they remain premiums, although there may be this possibility, more or less remote, of an ultimate return of some of the money. Mr. Justice Rowlatt says: "They have paid "the money and bought with it, or in respect of having subscribed "it, the protection, not only of its own payment, but the "protection of the combination of all the other people who have "done the same." With regard to this accumulated reserve fund, the liability in respect of the protection that the insurer requires is not one which can be estimated or determined at the end of a year, or two years, or five years. So long as the member is conducting his colliery he wants to have the protection as and when any serious accident may occur, and the sum that has been accumulated is not more than sufficient to meet that possible liability. The fact that it is not more than sufficient is abundantly proved by the fact that the Association has actually taken out a re-insurance policy with a company, and it appears to me that, from the evidence in the Case, this accumulated fund is such as may be needed and, according to the judgment of business men, is needed to meet such a loss as is desired to be insured against. If the business men carrying on the Association thought it safe to say that the accumulated reserve is too large, and that the Association might be able to distribute, or allow a set-off against the premiums, if that contingency were to arise then it would be possible for the Revenue to say: "Well, you have not paid the whole of these premiums." They could point, if and when a distribution was actually made, to the quota received, and say that the sums paid for premiums must be diminished because in fact the members of the Association had not paid their full premium; but upon the facts before us it is plain that these sums are paid for the purpose of obtaining insurance and for nothing more, and that there is no reason to cut down the cost of this insurance below the sum which has actually been paid by the members of the Association, that is, in this particular case, Messrs. Richard Evans and Company, Limited. For these reasons, in the first case it appears to me plain that these sums so paid are properly deductible as part of the costs of seeking the profits and gains which are the subject matter of and chargeable to Income Tax.

The second case is a different one. Here we have to deal with an additional assessment to Income Tax made upon the South-West Lancashire Coal Owners' Association, Limited, and it is said on behalf of the Revenue that the Association whose purposes

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I have already described in the first case, has received the moneys of its members for the purpose of insuring them against what I will call the ordinary risks and for the purpose of accumulating a fund to meet the extraordinary risks to which their members are liable, and it is said that, inasmuch as those payments have been made over and parted with to the Association the Association has now got them in its hands and bought them in the sense that the Association is trading and has received these sums or premiums paid by the members in the course of its trade.

We are reminded (if we need to be reminded) that it has been decided quite recently in this Court, and confirmed in the House of Lords, that a mutual insurance company carries on a business. In the *Cornish Mutual Assurance Company, Limited* v. *The Commissioners of Inland Revenue*(1) it was held that a company incorporated under the Companies Acts, limited by guarantee, and having no share capital, carried on a mutual fire insurance business. There the number of members was unlimited, but it was held that the company carried on a trade or business. So here it is said that this Association is carrying on the business of insurance. It receives money from its members, it insures them against losses and risks, it pays money out to them as an indemnity against the risks and losses if and when they are incurred, and it is therefore carrying on business. And more than that, it does accumulate a certain sum as a reserve fund, showing that it has received into its hands more than is necessary for meeting annually the demands made upon it by its members in respect of the losses they have incurred. The Revenue say that in respect of that margin, that excess beyond what is necessary to pay to the members, the Association is liable to Income Tax for having made a gain in the course of carrying on what is undoubtedly its business. But when we consider what the Inland Revenue are claiming, they must show that there are profits or gains in the course of carrying on the business, and in my judgment in the *Cornish Mutual* case I called attention to the fact that in *Last's* case (2), I think it was, we sent for the book containing the reason which was given as an argument on the appeal in the House of Lords, and we found it was this: "Because the surplus of trading does not "constitute profits or gains within the meaning of the Income "Tax Acts". One has always to consider whether this surplus of trading does or does not constitute profits or gains within the meaning of the Income Tax Acts.

In the case of the *New York Life Insurance Company* v. *Styles*(3) it is pointed out that the company there was not liable because what it was doing was dealing with a number of mutual

(1) 12 T.C. 841. (2) Last v. London Assurance Corporation, 2 T.C. 100.
(3) 2 T.C. 460.

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insurers. The sum that it received was received for and on behalf of the members; it was not for the purpose of making a profit; it was not returnable as a profit to the shareholders of the company, but it was accumulated for the purposes of mutual insurance, and it was there held that no part of the premium income received under the participating policies was liable to be assessed to Income Tax as profits or gains under Schedule D, because they were not profits or gains under that Schedule. They were sums received, but they were not profits or gains; and so here it appears to me that these sums which have been received and not paid back, which have been accumulated by the Association to meet this greater or larger risk against which the insurers desire to be indemnified, are still moneys not accumulated as profits or gains by the Association, but held in its hands for the purpose of insurance, and not returnable as a profit or gain by any person or to any shareholder. The case is not like *Last* v. *The London Assurance Corporation* case(1). That was a case where there were actual profits and gains made and returnable, not merely to their own policy holders, but also to the shareholders. That point does not arise in this case. We have to consider what is the nature of this excess held by the Association beyond the actual sums paid out. In my opinion it falls within the description of the accumulations in the *New York* case, and is not a profit or gain within the meaning of the Income Tax Acts.

It is said that once the first case is decided in the way that it has been, that these moneys were absolutely paid over by the insured to the Association for the purpose of obtaining insurance, then the moneys that have been so paid over become the property of the Association, and that the Association ought then in its turn to be liable to Income Tax in respect of the excess that it has received. It appears to me that there is no inconsistency in saying that both judgments of Mr. Justice Rowlatt are right. True, in the first case the sum is deducted because it represents the cost of obtaining the insurance by the insured, but it does not necessarily then follow that the money received by the Association is as to a part of it some reaping of a reward or gain by the Association. It must be still looked at from the point of view of mutual insurance. Regarded as such, the Association does not make a profit or gain which is of the nature or character which subjects it to Income Tax.

For these reasons I think the judgment of Mr. Justice Rowlatt in both cases was right, and both appeals must be dismissed with costs.

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(1) 2 T.C. 100.

Scrutton, L.J.—These two appeals raise from different sides the question as to assessability to Income Tax of a transaction with a mutual insurance company. In the first case, which deals with the assured, the question is whether the colliery company can deduct the amounts it has paid to the mutual insurance company as costs of carrying on its trade.

In the second case, which deals with the insurance company itself, the question is whether a surplus of premiums over sums paid out in compensation is a profit of the company which can be taxed to Income Tax.

Mr. Justice Rowlatt has decided that the assured may deduct the sum it has paid to the company, and that the company is not liable to pay on the excess of premiums over sums paid out in compensation. I agree that he was right in both cases, and I only shortly express my reasons for that decision because I rather gather that the strenuous argument that we have listened to here may be repeated to a higher tribunal.

The authorities are a little interesting in their historical progress. An insurance company issued policies to people who were not its shareholders, with a provision that if it made a profit it would pay back to the policy holders a proportion of that profit, described as a bonus, and the question was raised then: "Can the insurance company say that the part of its profits that "it pays back to the policy holders under the terms of the contract "is not taxable as a profit to Income Tax"; and when all the Courts had finished dealing with it, four Judges thought one way and four the other; but, fortunately for the Crown, in the highest tribunal there were two Judges who thought one way and one the other. Every Court was divided, and so, by two to one in the House of Lords, reversing the Court of Appeal, which had been two to one the other way, it was held that the amount returned by that insurance company to the assured, the policy holder, was assessable to Income Tax.(1) But it is worthy of note, because I think it explains what happened in *Styles*(2), that in that case a question had also been raised whether that portion of the profits which was not paid back to the policy holder, but was put into a reserve fund, was taxable to Income Tax, and that question did not get beyond the first Court, for both Judges agreed in the conclusion which was arrived at. "The third question"—I am citing from 12 Q.B.D. on page 400(3)—"is as to the right of the "Crown to levy the duty upon what has been termed the life fund. "This should, in my opinion, be answered in the negative. The "case of the *Imperial Fire Assurance Company* v. *Wilson*(4), "to which our attention has been directed, has, in my opinion,

(1) Last v. London Assurance Corporation, 2 T.C. 100.
(2) Styles v. New York Life Insurance Co., 2 T.C. 460.
(3) 2 T.C. 100, at p. 116. (4) 1 T.C. 71.

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" no bearing upon the subject. In the course of the argument I " have pointed out the radical distinction and difference between " fire and life assurance, and I will not repeat myself further than " to observe generally that, as fire insurances run out in all their " incidents in one year, each payment of premium representing a " thoroughly fresh transaction, it practically matters not to " either side for Income Tax purposes whether the profit, which is " in such case simply the excess of annual premiums received " over annual losses actually sustained, is ascertained with " minute accuracy by reference to the current year of each " policy, or whether one takes the arbitrary year of the calendar " and assumes that to be the true policy year in respect of all " receipts and payments within it; the average must be sub- " stantially the same in either. In life insurance each year's " premium has relation to the whole duration of the life or risk, " and every year's premium has to be set aside and capitalized " for payment of the future debt; in no sense whatever can the " life fund as such be deemed to represent profit." That being the decision in *Last*(1), an insurance company(2), which had no policy holders who were not members, questioned whether it was covered by the decision in *Last's* case. The Crown said that it was. The assurance company said that inasmuch as all its policy holders were members there was a difference between it and *Last*, and that case went to the House of Lords. Fortunately there were six Judges in the House of Lords this time, instead of three, and four of them, including Lord Bramwell, who had been the dissentient Judge in *Last's* case, took the view that the fact that the policy holders were members made all the difference, and that a mutual insurance company was not covered by the decision in *Last's* case, because the sums paid back were paid to members of the company, who had themselves contributed the premium out of which it was supposed that the profits arose.

Now there has been a question what the House of Lords, in the *New York* case—the second case—exactly decided: whether they decided that a mutual company, all of whose policy holders were members, did not trade with its members; and there was a sentence in Lord Watson's judgment which suggested that it did; or whether they decided that the result of its trading with its members was not a profit. The House of Lords in the *Cornwall* case(3) has said that it was not decided in the *New York* case that a mutual company did not trade with its members, but that it was decided that the profits which it made and returned to its members were not profits taxable to Income

(1) Last *v.* London Assurance Corporation, 2 T.C. 100.
(2) Styles *v.* New York Life Insurance Co., 2 T.C. 460.
(3) Commissioners of Inland Revenue *v.* Cornish Mutual Assurance Co., Ltd., 12 T.C. 841.

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Tax. But in the facts stated to the House of Lords in the *New York* case there was again a surplus fund. It was pointed out that the company did not return to its members all the surplus but only so much as it thought prudent, having regard to its liability for future expenses and profits, and no question was raised in the *New York* case whether the reserve fund was liable to be assessed, for the reason that that question had been settled in *Last's* case without any appeal, and that it was unnecessary therefore to raise the point.

Now one comes to the present case. Here again is a mutual insurance company, an association of colliery owners, who insure in the association of which they are all members by reason of their insurance against their liability to pay compensation to workmen under the Workmen's Compensation Act. They pay premiums which are based originally on the estimated amount of wages paid by them during the year, and which are then corrected at the end of the year so as to accord with the actual wages paid, the owners paying or receiving in cash any difference between the estimated and the actual wages paid, and the ordinary calls which are made for that purpose of fixing the premium deal with the ordinary accidents to one or two workmen. But that is not all that such colliery owners desire to be insured against. It is unfortunately common knowledge that in certain states of the atmosphere there may be terrible explosions of gas in a colliery which may kill practically every man engaged, and inasmuch as it depends on states of the atmosphere you may have that accident occurring possibly in two or three collieries in the same district, the atmosphere being the same, and, now that compensation to a workman and his dependents may run up to £600 in case of death, an accident which results in the death of two or three hundred men may involve terrible pecuniary liability, as well as terrible disaster by the loss of human life, and so this insurance company not merely provides for the single accidents which kill one or two, and which involve a limited amount of compensation, but for a greater disaster to human life which may have a great pecuniary result. Clause (*e*) in paragraph 5 of the Association's Case sets out: "The area in which the mines of the members were situated had "been liable at intervals to calamities involving a large number "of fatalities. In order to safeguard the position of the Association "in the event of such a calamity happening in the mine of one of "its members, it was necessary for the Association to form a "Reserve Fund." The reserve fund was made up in two ways. If in the year there was an excess of receipts over expenditure, the balance was carried to the reserve fund. That balance was generally small, and so extraordinary calls were made and paid direct into the fund, with the result that a reserve fund was

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built up, the object of which was also to provide insurance against these terrible and extensive calamities, but not to do so by making a sudden call, in the year in which the calamity happened, for a very large amount on each member, but by requiring the payment of an additional premium each year, so that the pecuniary burden of such a calamity might be spread over a number of years. So that it seems to me that this reserve fund is exactly in the same position as a life insurance fund. The premiums are paid against an event which may occur years after, and a reserve fund is thus gradually built up, out of which a large sum may be available for a payment in any year; possibly two or three payments, if there are two or three accidents in the same year. What is to happen to the fund? If a man resigns, he gets back a share of it, but he does not, as you might be disposed to think get back a larger share the longer he has been a member and the more he has paid into it. He gets back a smaller share the longer he has been a member. If he withdraws within five years, he gets three-fourths of his share of the reserve fund; if he withdraws within ten years, he gets back one-half; if he withdraws after ten years, he gets back one-fourth; and for the reason that during the five, or ten, or fifteen years he has had protection by his payments against this great calamity, and the longer he has had protection, the less he gets back out of the reserve fund. This reserve fund seems to me exactly to fall into the same position as the life fund which was held not liable to taxation in *Last's* case(1), and which was not said to be liable to taxation in *Styles'* case(2).

Now when we have reached that stage it seems to me quite clear—so clear that I was not surprised that Mr. Hills took some hours in arguing the contrary—that the sum which the assured pays for protection against the risk of having to pay for the extraordinary calamity in the shape of extraordinary calls, is the cost of insurance which he is entitled to deduct as his trade expenses. That disposes of the first case.

It seems to me also clear that the reserve fund which it is sought to tax in this case is a sum gathered up to provide against an ultimate possible liability, exactly the same as a fund composed of life premiums, built up to provide against an ultimate loss, is not subject to taxation, *qua* fund, to Income Tax. I have no doubt this company is having to pay on its income on investments, just as a life insurance company does, but it appears to me it is quite clear on the line of authorities that this fund cannot be taxed in the hands of the insurance company, because, as was said in *Last's* case, it does not represent profits on which Income

(1) Last *v.* London Assurance Corporation, 2 T.C. 100.
(2) Styles *v.* New York Life Insurance Co., 2 T.C. 460.

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Tax is payable. It is the ultimate provision for the payment of the liabilities which the Association has undertaken by reason of its having received premiums year by year.

For these reasons it seems to me that Mr. Justice Rowlatt was right in both the cases, that the assured is entitled to deduct the premiums, both ordinary and extraordinary, which he pays, as the cost of the insurance, and that the Association is not taxable on this reserve fund because it does not represent profits liable to tax.

I agree that both appeals should be dismissed, with the usual consequences.

Romer, J.—I agree. On the first appeal I have come to the conclusion, for the reasons given by the Master of the Rolls and Lord Justice Scrutton, that the payments made by the Respondents to their protective Association, who are the Respondents in the second appeal, are payments for insurance and nothing more. In other words, that they fall within what Mr. Justice Rowlatt has called the category of genuine insurance premiums, and I share the difficulty which that learned Judge felt in seeing how these payments are taken out of that category merely because some part of them—no one at present knows how much—may at some time hereafter—no one at present knows when—be returned to the Respondents.

On the second appeal it appears to me that the case differs in no respect that is material for the present purpose from that of the *New York Life Insurance Company* v. *Styles*. It is true that in that case the excess of the premiums paid over the expenditure properly payable out of those premiums was ascertained and the excess refunded in cash or in account to the persons who paid it annually, whereas in the present case the refunding, if it ever takes place, will take place at some time in the future; but as I read the speeches of the noble Lords who formed the majority in the *New York* case, the decision would have been precisely the same if the excess had been ascertained and refunded quinquennially, or at even more distant dates. I agree that both the appeals fail and should be dismissed.

The Crown having appealed against the decision of the Court of Appeal in the case of *Jones* v. *The South-West Lancashire Coal Owners' Association, Ltd.*, the case came on for hearing in the House of Lords (Viscount Cave, *L.C.*, Viscount Dunedin, and Lords Atkinson, Phillimore and Carson) on the 10th and 12th May, 1927, when judgment was reserved. On the 12th July, 1927, judgment was given unanimously against the Crown, with costs.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. Glover for the Association.

JUDGMENT.

Viscount Cave, L.C.—My Lords, this is an appeal by an Inspector of Taxes from a decision of the Court of Appeal affirming the judgment of Mr. Justice Rowlatt on a Case stated by the Commissioners for the Special Purposes of Income Tax, and raises the question whether the Respondent Association is assessable to Income Tax in respect of the surplus of its receipts in each year over the expenditure for the year as being profits of a trade or business.

The Association, as the Commissioners have found, has for its sole effective purpose the indemnity of its members (who are all coal-owners) against liability for compensation in respect of fatal accidents to workmen in their employment. The Association is a purely mutual concern, every person indemnified by the Association being a member of the Association and every member being indemnified by the Association. Under the scheme as set out in detail in the Articles of Association, a fund was to be established by means of "ordinary calls" to be made yearly upon the members in proportion to their disbursements by way of wages or salaries; out of this fund the members were to be indemnified against claims for compensation, and at the end of each year the surplus of the fund over the expenditure and liabilities of the Association was to be carried to a reserve fund. The Committee, upon which all the members serve or are represented, is also empowered to make "extraordinary calls" upon the members for the purpose of meeting any deficiency in the fund or for strengthening the reserve. There are provisions enabling the transferee of a mine belonging to a member, or the representatives of a member who may die or become bankrupt, to be substituted for such member, and there are also provisions entitling a member on retirement to receive out of the reserve a payment to be ascertained in accordance with a method described in the Articles; but subject to these provisions the funds are to remain with the Association, and in the event of a winding-up are to be divided among the members in proportions prescribed. A reserve fund has in fact been established, which at the date of the assessment in dispute exceeded £150,000.

The Association has, of course, paid or borne Income Tax upon the income from its investments representing the reserve fund, and as to this no question arises; but in the year 1920–21 an additional assessment was made upon it by the Additional Commissioners for the Warrington Division in the sum of £20,000,

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which was considered to represent the " calls " received in respect of that year after deducting the expenditure and liabilities of the Association. On appeal to the Special Commissioners, the additional assessment was discharged; and the decision of the Special Commissioners has been affirmed by Mr. Justice Rowlatt, and by the Court of Appeal. The question is whether that decision is right.

My Lords, when a question of law has been clearly decided by this House, it is undesirable that the decision should be weakened or frittered away by fine distinctions; and it appears to me that the decision of the House in the case of *Styles* v. *New York Life Insurance Company*(1), L.R. 14 A.C. 381, completely covers this case. In that case the company concerned was a life insurance company which had no shares or shareholders, the only members being the holders of participating policies. A calculation was made in each year of the probable liabilities and expenses of the company for the year, and the amount claimed for premiums from the members was founded on that calculation. At the end of the year an account was taken, and the greater part of the surplus of premiums over expenditure was returned to the policy-holders, either in cash or by an addition to the sums secured or a reduction of future premiums; the remainder of the surplus being carried forward as funds in hand to the credit of the general body of members. Income Tax having been claimed on the surplus of the premiums received for a year over the expenditure for that year, as profits or gains under Schedule D, it was held in this House that there were no such taxable profits. Lord Watson expressed his opinion as follows(2): " When a number of " individuals agree to contribute funds for a common purpose, " such as the payment of annuities, or of capital sums, to some or " all of them, on the occurrence of events certain or uncertain, and " stipulate that their contributions, so far as not required for that " purpose, shall be repaid to them, I cannot conceive why they " should be regarded as traders, or why contributions returned to " them should be regarded as profits. That consideration appears " to me to dispose of the present case. In my opinion, a member " of the Appellant Company, when he pays a premium, makes a " rateable contribution to a common fund, in which he and his " co-partners are jointly interested, and which is divisible among " them at the times and under the conditions specified in their " policies. He pays according to an estimate of the amount " which will be required for the common benefit; if his contribu- " tion proves to be insufficient, he must make good the deficiency; " if it exceeds what is ultimately found to be requisite, the excess " is returned to him. For these reasons I have come to the con- " clusion that the transactions of the Appellant Company, in so

(1) 2 T.C. 460. (2) *Ibid.* at p. 471.

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" far as these relate to participating policies, do not constitute the " carrying on of a trade within the meaning of the Income Tax " Acts, and that the surplus funds returned or credited to its " members are not profits." Lord Herschell dealt with the point as follows(1) : " Persons who agree to contribute to a common " fund for mutual insurance certainly would not, in ordinary " parlance, be regarded as carrying on a trade or vocation for the " purpose of earning profit. Let us see how the so-called profit " arises. It is due to the premiums which the members are " required to pay being in excess of what is necessary to provide " for the requisite payments to be made upon the deaths of " members, and not being, as the Case states they were intended " to be, commensurate therewith. This may result either from " the contributions having, owing to an erroneous estimate or " over-caution, been originally fixed at a higher rate than was " necessary, or from the death-rate being lower than was antici- " pated. Can it be properly said that, under these circumstances, " the association of mutual insurers has earned a profit ? The " members contribute for a common object to a fund which is their " common property; it turns out that they have contributed " more than is needed, and therefore more than ought to have " been contributed by them, for this object, and accordingly their " next contribution is reduced by an amount equal to their pro- " portion of this excess. I am at a loss to see how this can be " considered as a ' profit ' arising or accruing to them from a " trade or vocation which they carry on. It is true the alternative " is allowed them of leaving the excess in the common fund, and " so increasing their representatives' claim upon it in case of " death, but I cannot think that this makes any difference." Lord Macnaghten agreed, and the House by a majority held that no tax was payable.

Counsel for the Appellant contended that the present case was distinguishable from the *New York Life Insurance Company's* case(2) on the ground that, whereas the company there in question returned to its participating policy-holders the surplus of its receipts over its expenditure at the end of each year, the Articles of the Respondent Association require that surplus to be carried to reserve and not at once returned to the members. I do not think this a sound distinction. In this case, as in the *New York Life Insurance Company's* case, there are no shareholders interested, and the whole of the yearly surplus remains to the credit of the members and must either be applied to meeting their future claims or be returned to them on retirement. Sooner or later, in meal or in malt, the whole of the Association's receipts must go back to the policy-holders as a class, though not precisely

(1) 2 T.C at p. 482. (2) 2 T.C. 460.

(Viscount Cave, L.C.)

in the proportions in which they have contributed to them; and the Association does not in any true sense make a profit out of their contributions. It may be added that in that case, as in this, some part of the receipts of each year was carried forward as funds in hand.

It was argued that this view gives no effect to the well-established distinction between a company and its members, and that, although the members may make no profit, a profit may still accrue to the company. The same point arose in the *New York Life* case and was disposed of in the speeches of Lord Herschell and Lord Macnaghten. Lord Herschell, after stating that the Attorney-General (who in that case appeared for the Revenue authorities) had conceded that the fact that the persons associating themselves together for the purpose of mutual assurance had been incorporated was immaterial, and that the case might be treated as though it were an association of individuals unincorporated, added(1): "I think the Attorney-"General was correct in thinking it immaterial that the persons "thus associated had been incorporated, and that a legal entity "had been created distinct from the members of which it was "composed. This being so I shall, for the sake of simplicity, "consider the questions that arise as though the association were "unincorporated." Lord Macnaghten dealt with the same point as follows(2): "It happens here that the persons who combined to "obtain the benefit of mutual insurance became, by the very act "of insuring their lives, members of an incorporated company. "But the company (so far as regards the participating policy-"holders) was not formed for the purpose of carrying on a "business having for its object the acquisition of gain. . . . "The fact, therefore, that the insured, who are also the insurers, "carry on their business through the medium of a company was "properly treated as immaterial." It appears to me that the reasoning which commended itself to those distinguished jurists in the *New York Life* case, applicable as it is to genuine mutual concerns and to no others, applies to the present case, and disposes of the contention now under discussion.

For these reasons I am of opinion that this appeal fails, and I move your Lordships that it be dismissed with costs.

Viscount Dunedin.—My Lords, I concur. The whole case for the Crown rests on the idea that because in a single year the premiums received exceed the sums paid in respect of the losses in that year the balance represents a profit. It represents no such thing. It is simply a sum of money which is carried forward in order that it may be available to meet excessive losses in a

(1) 2 T.C. at p. 481. (2) *Ibid.* at p. 483.

(Viscount Dunedin.)

future year, or, if it is found in the end to be redundant, be returned to the shareholders either in the form of reduced premiums or of cash. The basis of the Crown's case seems to me to fail, apart from the fact that I agree that the present case is absolutely ruled by the case of *Styles* v. *The New York Life Insurance Company*.

Lord Atkinson.—My Lords, I have had the pleasure and advantage of reading the judgment which has just been delivered by my noble friend on the Woolsack and I entirely concur in it.

Lord Phillimore.—My Lords, I concur.

Lord Carson.—My Lords, I also agree.

Questions put:—

That the Order appealed from be discharged.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.

[Solicitors—The Solicitor of Inland Revenue; Mr. W. P. Ellen for Messrs. Peace and Darlington of Liverpool.]