That is a very startling proposition. I have looked into all the authorities that I could find upon the subject, and I can find no warrant whatever for it. I am bound to say that upon the true construction of this covenant I agree entirely with the Court of Appeal.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—C. A. Russell, K.C.—Ashworth James. Agents—Clements, Williams, & Co., Solicitors.

Counsel for the Respondents—Neville, K.C.—M'Swinney. Agents—T. B. & W. Nelson, Solicitors.

HOUSE OF LORDS.

Thursday, November 23.

(Before the Lord Chancellor (Halsbury), Lords Robertson and Lindley.)

CORY & SON, LIMITED *v.* HARRISON AND OTHERS.

(On Appeal from the Court of Appeal in England.)

Contract—Construction—Sale of Business—Contract not to "Directly or Indirectly Carry on, or be Engaged, or Concerned, or Interested in" the Business.

A coal merchant, engaged both in the home and foreign trade, sold his home business to a company, entering at the same time into an agreement with the company not to "directly or indirectly carry on, or be engaged, or concerned, or interested in the coal trade in any part of Great Britain or the Isle of Man." He subsequently sold his foreign business to another company on credit, looking for payment to the company's future profits. The company subsequently started a home business in Great Britain.

Held that the mere fact of his being a creditor of the company did not make him "concerned or interested in" the coal trade in the meaning of the agreement.

This was an appeal from a judgment of the Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.), who had affirmed a judgment of Joyce, J.

The facts were as follows:—The respondent Harrison carried on business as a coal merchant, being engaged both in the home trade and also in an export trade. He sold his home trade to the appellants, who were also coal merchants, retaining the export trade, and entered into a covenant not to "directly or indirectly carry on, or be engaged, or concerned, or interested in the coal trade in any part of Great Britain or the Isle of Man." He afterwards sold his export trade to a company. The sale was not for cash, and he looked to the profits of the company's trade for payment of the purchase money. The company afterwards began to carry on a home trade, and the appellants brought this action for breach of covenant, asserting that the respondent Harrison was "concerned or interested in" the company's coal trade in Great Britain.

Joyce, J., and the Court of Appeal gave judgment for the defenders. The pursuers appealed to the House of Lords.

At the conclusion of the argument for the appellants their Lordships gave judgment.

Lord Chancellor (Halsbury)—I think that we are all of opinion that what is complained of here is not within the covenant. It would be absolutely impossible, I think, to lay down with precision what is or is not comprehended in such words as "interested or concerned in." All that I can say about it is that you must look at the facts of the particular case, and look at the business meaning of the words. I agree that the question to be determined is, What was the business meaning of these words dealing with such a subject-matter as is dealt with by these agreements? And to my mind it is impossible to say that the words of the covenant make this gentleman "concerned or interested in" this particular business. Of course, the ambiguity is created when words so very wide in their extension are applied to a business of this character. The words "concerned or interested in" would in popular signification undoubtedly include a great deal more than would have been intended by the business meaning of this covenant. When it is put that you are "interested" if you lend money to a person, if you supply him with capital, if you do this, that, and the other which enables a business to be carried on, in a certain wide sense it cannot be denied that you are "interested"; and being "interested" may also include terms of affection, because, speaking in one sense, they may give a person an interest in something. But when you are dealing with the subject-matter which is here dealt with—namely, the carrying on of a business, and endeavouring to prevent the carrying on of that business directly or indirectly, or having any part or concern in that business—I think that every business man would quite comprehend that the mere fact of being a creditor of the firm is not being "concerned or interested in" it. Although in a certain sense every creditor is "interested in" the solvency of his debtor, and in that sense there is an interest, that is not the sort of interest which is contemplated by this covenant It appears to me that this is really the short point which we have to decide, and as far as I am concerned I think there is no doubt about it—that it is not within the covenant. For these reasons I am of opinion that this appeal should be dismissed with costs.

Lord Robertson—I am of the same opinion. I think that the case of the appellants is much too far fetched. When J. & C. Harrison entered into the agreement for the sale to John Harrison and

Tidswell, they were carrying on their foreign business quite legitimately, and it is that foreign business which they sold to John Harrison and Tidswell. Now, if John Harrison and Tidswell had simply taken over the foreign business, and the clauses which have been referred to had been inserted in the agreement, there could not have been a word to say in support of the appeal. Does the mere fact that the new firm, who themselves are quite free from the obligations of the covenant, intend not to limit their business to the foreign trade, but to carry on the home trade, involve the present respondents in a breach of this contract? It seems to me that the position is really not substantially different from that of a moneylender, or, at all events, that the reasoning must apply to the one case as well as to the other; because the basis upon which the appellants have ultimately rested their case is a very narrow one, that inasmuch as you have these clauses applicable not merely to the export business, but to the other operations of the new firm, therefore the respondents are liable in this action. I think that untenable, and I am quite content to face the challenge which was made by the learned connsel for the appellants to treat this in a business aspect. It appears to me that to apply the word "interested" in this sense would be to give it an extension which would prove most embarrassing, and indeed impracticable, in the ordinary conduct of business.

LORD LINDLEY—I am of the same opinion, and I cannot usefully add anything to the reasons which have been given.

Order appealed from affirmed, and appeal dismissed with costs.

Counsel for Appellants — Warmington, K.C. — Haldane, K.C. — Austen-Cartmell. Agents — Deacon, Gibson, Medcalf, & Marriott, Solicitors.

Counsel for Respondents—Neville, K.C.— Hughes, K.C.—Sheldon. Agents—Keene, Marsland, Bryden, & Besant, Solicitors.

HOUSE OF LORDS.

Tuesday, November 28.

(Before Lords Macnaghten, Robertson, and Lindley.)

ALIANZA COMPANY, LIMITED *v.* BELL (SURVEYOR OF TAXES).

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue — Income Tax — Profits — Nitrate Grounds — Exhaustion of Material — Deductions—Income Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100, *Sched. D, 1st Case, Rule III, sec.* 159.

An English company owned lands, buildings, and plant in Chili, digging out of the land a substance called "caliche" and extracting from it soda, potash, and iodine, from the sale of which they made their profits. The lands, &c., when all the "caliche" has been extracted would be of almost no value.

Held that in computing their profits for income tax under Schedule D they were not entitled to deduct any yearly sum to meet the exhaustion of the "caliche."

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., STIRLING and MATHEW, L.JJ.), who had affirmed a judgment of CHANNELL, J., upon a case stated by the Commissioners for the General Purposes of the Income Tax Acts for the City of London.

The Income Tax Act 1842 provides, sec. 100, Schedule D, 1st Case, Rule I—"The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern upon a fair and just average of three years."

Rule III—"In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, manufacture, adventure, or concern, nor for any sum expended for the supply or repairs or alterations of any implements . . . nor on account of any capital withdrawn therefrom; nor for any sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern; nor for any capital employed in improvement of premises." . . .

Section 159—"In the computation of duty to be made under this Act in any of the cases before mentioned . . . it shall not be lawful to make any other deductions therefrom than such as are expressly enumerated in this Act . . . nor to make any deduction from the profits or gains from any property herein described . . . on account of diminution of capital employed, or loss sustained in any trade, manufacture, adventure, or concern, or in any profession, employment, or vocation."

The appellants were an English company incorporated under the Companies Act, with a registered office in London. They owned land, buildings, and machinery in Chili, the land being a large tract of nitrate grounds. The upper stratum of these grounds consisted of a substance called "caliche," and it was the presence of this substance which gave value to the land. The caliche was dug up and taken to the company's works, where there was extracted from it nitrates of soda, potash, and iodine, from the sale of which the company's profits were derived. When ultimately the caliche in the company's property becomes exhausted their land and plant will have little or no value.

An assessment having been made upon