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

the appellants under Schedule D of the Income Tax Act 1842, based on their printed accounts and statements of profits for the proceeding three years, they appealed to the Commissioners of Income Tax claiming to be entitled, for the purpose of computing their profits, to deduct a yearly sum to meet the exhaustion of the nitrate grounds.

The Commissioners of Income Tax, Channell, J., on a stated case, and the Court of Appeal, having all decided against them, they appealed to the House of Lords.

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD MACNAGHTEN—I do not think it necessary to say more than a very few words. I think that your Lordships are satisfied with the judgment of the Court of Appeal, and with the reasons by which that judgment is enforced. It seems to me that this claim comes within the third rule, and that it is money wholly and exclusively laid out and expended as capital. For these reasons I move your Lordships that this appeal should be dismissed, and that the appellants should pay the costs.

LORD ROBERTSON—I think it undesirable that any doubt should be thrown upon a settled course of decisions on the income tax law, and it seems to me that although the case has been argued with a vigour which did full justice to it, the arguments advanced are of a most familar character. The propositions required to be established in order to bring it within the provisions and decisions are these—I begin by stating, of course, that it is under Schedule D that the case is to be judged. First of all, is this capital for which it is proposed to obtain a deduction? Now, that seems to me to be entirely concluded by the findings in the case. There is no doubt whatever that the scheme of the enterprise of this company was to invest their capital in the acquisition of this property, and then to proceed to work it as a mining concern. That being so, Collins, M.R., seems to me to be abundantly justified in saying that this is merely another case where capital has been embarked in a wasting subject-matter. The whole of the argument for the appellants is really founded on what I suppose that no one would doubt, that as the output takes place there is a consumption of a certain proportionate amount of the capital. But that is concluded, as Lord Macnaghten has said, by rule 3. I agree with Stirling, L.J., further, that section 159 is never to be laid out of account in these instances, because in its express prohibition of an allowance being made for capital it, on the face of it, refers to all the various cases under the various schedules. Accordingly the argument that there is something peculiar to Schedule A in the principle which has been applied in *Addie's* case (February 16, 1875, 2 R. 431), and in the other cases which have been mentioned, fails before the universal *conspectus* which in express terms is given by section 159 to this very principle.

LORD LINDLEY—I am entirely of the same opinion. It appears to me that it is quite impossible to get out of rule 3. I cannot see my way to do it at all.

Order appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—Danckwerts, K.C.—Bremner. Agents—Ashurst, Morris, Crisp, & Company, Solicitors.

Counsel for the Respondent—The Attorney-General (Sir R. B. Finlay, K.C.)—The Solicitor-General (Sir E. Carson, K.C.)—Rowlatt. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

HOUSE OF LORDS.

Friday, December 15.

(Before Lords Macnaghten, Robertson, and Lindley.)

MANCHESTER CARRIAGE AND TRAMWAYS COMPANY *v.* SWINTON AND PENDLEBURY URBAN DISTRICT COUNCIL.

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

Statute — Tramways Act 1870 (33 *and* 34 *Vict. cap.* 78) *sec.* 43 — *Interpretation— Purchase of Tramway within its District by Local Authority under Compulsory Powers— Whether bound also to Pay for Depot out of District "Suitable and used . . . for Purposes of Undertaking."*

Section 43 of the Tramways Act 1870 provides:—"Where the promoters of a tramway in any district are not the local authority, the local authority . . . may . . . by notice . . . require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district . . ."

Held that the words "within such district" qualified the word "undertaking" and not the words "lands . . . promoters," and that accordingly a local authority acquiring a tramway undertaking under the above section was bound to pay the promoters the value of a depot suitable to and used by them in the undertaking, although not situated within the district of the local authority.

Judgment of Court of Appeal *reversed.*

This was an appeal from a judgment of the Court of Appeal (COLLINS, M.R., STIRLING