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

and MATHEW, L.JJ.) who had reversed a decision of CHANNELL, J.

The facts are set forth in Lord Macnaughten's opinion *infra.*

Their Lordships having taken time to consider their judgments gave judgment as follows:—

LORD MACNAGHTEN — Notwithstanding the decision of the Court of Appeal and a certain hesitation on the part of the learned judge of first instance which led the Court of Appeal to think that they were about to "give effect to his real opinion" by overruling the judgment which he had pronounced, it does not appear to me that this case is one of any great difficulty. The question is raised on an award stated in the form of a special case. The arbitrator, who was appointed by the Board of Trade, was the late Sir Frederick Bramwell, a gentleman admittedly of extreme ability and of great experience in arbitrations of this sort. The parties to the controversy were, on the one hand the Swinton and Pendlebury Urban District Council, and on the other the Manchester Carriage and Tramways Company, Limited, who were (within the meaning of the Tramways Act 1870) promoters of a tramway in the district of the Swinton Council. The tramway under statutory powers and obligations was worked by the tramway company in connection with tramways constructed by the Salford Corporation, and by them leased to the company. In this way the tramway in question formed part of a continuous or through line to Manchester. Adjoining the Salford main line about a mile or three-quarters of a mile from the limits of the district of the Swinton Council, the tramway company had two depots, known as the Ford Lane depot and Church Street depot. On the 22nd January 1901 the Swinton Council duly gave notice to the tramway company that they were required to sell to the council under the conditions and in the manner provided by section 43 of the Tramways Act, so much of their undertaking as was within the district of the Swinton Council. On receiving the prescribed notice, the promoters are bound to sell to the local authority "their undertaking or so much of the same as is within" the "district," and the purchasing authority is bound to pay "the then value"—that is, I think, the value at the date of notice (exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatever) of the tramway and all lands, buildings, works, material, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district. The value is to be determined, in case of difference, by arbitration. What the arbitrator has to find is the value to the promoters, not the value to the purchasing authority. Nor are the promoters under any obligation, as the Court of Appeal seems to have thought, to make a good title to the adjuncts and accessories for which the purchasing authority has to pay. If their title be infirm, if their tenure be insecure, or their possession precarious, the arbitrator no doubt would take that into consideration in determining value, but the purchasers must pay the value of their adjuncts and accessories to the promoters whatever it was at the date of the notice, even although they may be of little or no value to the purchasing authority. The notice of January 1901 was given at the instance of the Salford Corporation. Their lease to the tramway company was then about to expire. On its expiration they proposed to work a combined system of tramways through Swinton and Salford as one undertaking, and to work it by electricity instead of using horse-power. As the persons really interested in the purchase under an arrangement sanctioned by Parliament, they represented the Swinton Council in all the negotiations and proceedings consequent upon their notice to the tramway company. After a protracted hearing of much evidence, the arbitrator made his award on the 28th May 1903. The award sets out with minute and perhaps unnecessary detail the relative Acts of Parliament and orders, and the result of the evidence as to the two depots. And then there is a passage which seems to me to be not immaterial, having regard to the view taken by the Court of Appeal—"and pay for the actual tramways within their districts." But they contended that under section 43 they were not compellable to purchase either the Ford Lane or the Church Street depot, on the ground that even if such depots or either of them were suitable to and used by the tramway company for the purposes of their tramways, they were both of them situated geographically without the district of the council, and that the said section only made it obligatory upon the local authority to purchase that which was within their district. Counsel for the tramway company contended that if such depots were in fact suitable to and used with their undertaking within the council's district, the council were under the said section compellable to purchase them, although the depots themselves were outside the district. "I was asked," the arbitrator adds, "by counsel for the Council to state my award in the form of a special case for the opinion of the Court on this point." Now, stopping there, it seems to me that nothing can be plainer than this—that one question, and one question only, was intended to be raised by the special case. It is quite true that the arbitrator does not follow throughout this introductory statement the exact language of the section. In the earlier part he follows it literally. In the latter part he substitutes the expression "used with" for the words "used for the purpose of." In my opinion that is a mere slip—a very natural slip—a slip which the arbitrator, if his attention had been called to it, would have been entitled to correct. Nor can I see that in this particular case there can be any difference in meaning between the two expressions. If a thing is suitable to and used with a tramway I am unable to imagine how the person or company so

using it can avoid using it for the purposes of the tramway. By what perverse ingenuity could it be used otherwise? Then we come to the award. The arbitrator awards and finds "as a fact that the Ford Lane depot, although in a limited sense used with the undertaking of the tramway company within the district of the council, is not suitable to such undertaking." Then he adds—"I further award and find as a fact that the Church Street depot was used with and is suitable to the said undertaking." Then, following accurately the words of the section, he finds the value of the tramways and "of all lands, buildings, works, materials, and plant of the Manchester Carriage and Tramway Company suitable to and used by them for the purposes of the undertaking." He finds separately (*a*) the value of the tramways lines; (*b*) the value of the land and buildings constituting the Church Street depot and the tramway lines therein and the tramway line in Church Street leading into the depot; and (*c*) the value of the fixtures and fittings in and upon the Church Street depot as per the valuation thereinbefore referred to. The total was £49,006. But the arbitrator adds that should the Court be of opinion that the Council were not compellable to purchase or pay for the Church Street depot, then the last two items, which amounted together to £24,317, were to be deducted, and the value was to be reduced to £24,689. The learned judge of first instance answered the question in favour of the tramway company. The answer of the Court of Appeal was in favour of the Swinton Council. The learned Lords Justices of the Court of Appeal inferred from the variation in language to which I have referred that there was some ambiguity in the award, and that the arbitrator had it in his mind to submit to the Court some question of law which he certainly did not formulate, and which the learned counsel for the Swinton Council candidly admitted that he did not ask him specifically to state. What that question could possibly have been I am unable to imagine. The question of user was a mere question of fact. The question of suitability was a mere question of fact. Both those questions had been answered by the arbitrator, and answered, your Lordships will observe, as questions of fact in favour of the Swinton Council. The only question which the arbitrator reserved —the question depending on geographical position—was not argued seriously at your Lordships' Bar. It was determined in favour of the appellants by the learned judge of first instance. The Court of Appeal apparently did not think it worth discussing. And, speaking for myself, I do not think that it is open to argument. The learned Lords Justices in the Court of Appeal seem to have been much impressed with the consideration that the arbitrator was a gentleman of much experience and ability. They thought it most unlikely that he should have made a slip or a blunder, as they termed it, and therefore they came to the conclusion that he must have meant something by the change in his language. Well, persons of the greatest experience and ability do make slips sometimes, and I must say that I should have thought it much more likely that a man of experience and ability should make a slip than that anybody of common sense in a serious document, and after much consideration, should present to the Court a conundrum in the form of a cryptogram. It is not, perhaps, uninstructive to find that both the learned and experienced counsel in their address to the arbitrator made just the same slip, if it be a slip, and that the learned counsel for the Swinton Council was, if I may venture to say so, the first offender. I therefore move your Lordships that the order appealed from be reversed, and that the order of Channell, J., be restored, with costs both here and below.

LORD ROBERTSON—It is certain that in this special case the arbitrator directly, expressly, and formally states one point for the opinion of the Court. It is certain that no other point is directly, expressly, or formally stated by him, or indeed stated at all. The most that can be said, or has been said, is that it is to be inferred from his having mentioned certain things which would be relevant to the consideration of another question, that he really intended to submit that other question. To this there seem to me to be several answers, and the first is that the arbitrator has shown by the structure of his special case that his way of stating a point for decision was to state it directly or expressly, and I must say that I think this conclusive. But secondly, even if it were permissible to infer that the arbitrator really intended to submit a further point from his having mentioned things relevant for its discussion, it must be remembered (and has been forgotten) that this is not merely a special case but an award, and many things are relevant to the award, and of a kind usually inserted in an award, which may not bear on the point submitted for decision. This special case is presented not under sec. 19 of the Arbitration Act, which provides for special cases pure and simple, but under sec. 7 (*b*), which provides for awards being stated in the form of a special case. Now it cannot be affirmed of all that is set out in this special case that it is relevant either to the question admittedly stated or to the question which it is now sought to evolve out of it, and the reason is that the document serves the double purpose of award and special case. Even if all the passages in the award which are founded on by the respondents could be pressed into their service they are ultimately confronted with the difficulty that the arbitrator has decided that the depot was suitable to the use of the undertaking. Now it is against this conclusion that the respondents invoke the consideration of distance and inaccessibility, and this conclusion is determined against them in the exact terms of the statute. I am unable to think that there is any veiled importance or significance in the use of the word "with" in the award. There is no limit or sug-

gestion in the award of any intention in this abbreviation, and in the proceedings the word "with" was treated by both parties as convertible with the more ample expression of the statute. I have only to add that in my opinion the words "within such district" qualify the word "undertaking," and not the words "lands, buildings, works, materials, and plant of the promoters." The reading which I adopt is the natural reading, and the reason of the thing is adverse to the opposite view, for it cannot be suggested that stables, which might be close to the district although outside it, should be excluded from the clause, while the opposite construction breaks down entirely over the words "materials and plant." I am for reversing the judgment appealed against.

LORD LINDLEY—I am also unable to agree with the Court of Appeal in this case. The arbitrator here was not stating a case for his guidance before making his award; he made an award and set out the facts which he considered material in order to make it intelligible and satisfactory. But he made it, as he had power to do, subject to a question of law, which he was asked to state, and did state in very clear terms, in order that it might be decided by the Court. He was not requested to state, and did not in fact state, more than one question for such decision, and that question was whether the Church Street depot, which was outside the Swinton district, had to be paid for. The question submitted by the arbitrator to the Court for decision has been properly decided, and this is now scarcely disputed. But your Lordships are asked to say that the Swinton District Council desired to raise another point of law, and that the arbitrator has stated the facts in such a way as to show that he intended to raise another question, namely, whether the Church Street depot could in point of law be said to have been "suitable for and used by the company for the purpose of the company's undertaking." Counsel frankly admitted that the arbitrator was never asked to refer any such question to the Court, and I cannot myself see that he has in fact done so. The question of suitability is one of fact, and the arbitrator has found that question in favour of the selling company. It requires no little ingenuity to discover that such a question can be regarded as a question of law; but assuming that it can be so regarded, it is in my opinion manifest that no such question was intended by the arbitrator to be referred to the Court, and that he has not in fact stated any such question for its decision. I am convinced that the words "used with" in the award are only an abbreviation for "used for the purposes of," and that the arbitrator used the two expressions not intentionally by way of contrast, but inadvertently as synonymous. The appeal ought to be allowed with costs in the usual way.

Order appealed from reversed. Order of Channell, J., restored.

Counsel for the Appellants—Moulton, K.C.—Astbury, K.C.—Eldridge—Sandars. Agents — Ayrton, Biscoe, & Barclay, Solicitors.

Counsel for the Respondents—Balfour Browne, K.C. — Pickford, K.C. — Rhodes. Agents—Trass & Taylor, Solicitors.

HOUSE OF LORDS.

Friday, December 15.

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

UNDERGROUND ELECTRIC RAILWAY COMPANY OF LONDON *v.* COMMISSIONERS OF INLAND REVENUE.

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

Revenue — Stamp Duty — Conveyance on Sale—Ad valorem Duty—Periodical Payment—Payment Contingent on Profits—Stamp Act 1891 (54 *and* 55 *Vict. c.* 39), *secs.* 56 *and* 57.

Sec. 56 (2) of the Stamp Act 1891 provides as follows:—"Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument."

By an agreement by which a company's business was sold it was provided that part of the consideration payable to the sellers was to be the annual payment out of profits of a sum equal to a dividend of 3 per cent. on the amount for the time being paid up on such of the original ordinary share capital in the new company as should for the time being have been issued; such payment was however postponed to the payment of a cumulative annual dividend of 5 per cent. to the ordinary shareholders. At the date of the agreement the whole ordinary share capital had been issued, but only about a quarter of it paid up.

Held that under sec. 56 *ad valorem* duty fell to be paid on a sum representing 3 per cent. on the amount of ordinary share capital paid up at the time of the agreement (that being "money payable periodically . . . in perpetuity, or for an indefinite period . . .") multiplied by twenty, and that it was immaterial that the amount payable periodically was subject to the contingency of there being sufficient funds to pay the 5 per cent. dividend.