decided a good many years ago, in 1885, one can understand the argument which was there suggested, which was that when you are dealing with the bonuses of an insurance company you pay a bonus to induce people to become shareholders in your undertaking, therefore it is part of the necessary expenditure to induce people to come in. But the Court of Appeal, and this House afterwards, refused to acquiesce in that argument. They said "That is not true; you must ascertain first the income; you must ascertain what the income tax is levied upon—that is to say, the profit of the undertaking is to be ascertained first; and when you have found out what the profit of the undertaking is you have then to tax it as profit." Really the whole question comes back to the definition of the word "profits." When once you have defined what the word "profits" means it is perfectly clear what the result of this case must be. I am of opinion, for the reasons which I have given, that the judgment of the Court of Appeal is absolutely right, and I move your Lordships that the appeal be dismissed with costs.

LORD ROBERTSON—The whole argument of the appellants is rested upon the words of Schedule A read out of all relation to the subject-matter of the enactments. What has got to be remembered, and not to be ignored, is that Schedule A merely provides a formula for ascertaining the income arising from the ownership of lands. It is an artificial and rather elaborate method of estimating income, but what it yields is, on the theory of the Acts, income none the less than if the question was raised under any other of the schedules. Now if this be so there is no room for argument. The view of the appellants really implies that the tax under Schedule A is not income tax at all, and I am not sure that the reasoning would not tend to the shareholders' own part of the proceeds being taxed over again, this time as income tax. I entirely agree in the judgment of Buckley, J.

LORD LINDLEY—I am entirely of the same opinion. The reasoning of the judgment of Buckley, J., appears to me to be absolutely unanswerable, and although I have listened with great respect to what is an intellectual conjuring trick, I am satisfied that there is nothing at all in the appellants' argument.

Judgment appealed from affirmed.

Counsel for the Appellants—H. Terrell, K.C.—W. M. Cann. Agents—Burgess, Cozens & Co., Solicitors.

Counsel for the Respondents—Danckwerts, K.C.—R. J. Parker. Agents—Sharpe, Parker, Pritchards, Barham, & Lawford, Solicitors.

HOUSE OF LORDS.

Wednesday, November 22.

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

CHARLESWORTH AND ANOTHER *v.* WATSON AND ANOTHER.

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

Mines and Minerals — Mining Lease — Construction — Undertaking to Win, Work, and Get Fairly, Duly, and Honestly the Whole of the Coal.

A lease for a term of twenty-one years of a seam of coal provided that the lessees should, as soon as they commenced working the coal, pay a yearly rent of £100 per acre of coal, and until then a yearly rent of £5. They undertook that they would "at all times during the said term hereby appointed fairly, duly, and honestly win, work, recover, obtain, and get the whole of the said mine . . . or seam . . . in a proper and workmanlike manner." It ultimately turned out to be impossible to work the coal except at a loss, and the lessees declined to do so.

Held that on a true construction of the lease they were bound to work the coal (the words "fairly, duly, and honestly" adding to rather than detracting from their obligation), and that accordingly they were liable to the lessors in damages for breach of contract.

The respondents on 18th December 1885 leased to the appellants for the term of twenty-one years a certain seam of coal, the lessees "yielding and paying therefor, as soon as the said lessees shall commence working the said coal, yearly and every year during the said term . . . the clear annual rent of £100 for an acre of the said coal by two half-yearly payments . . . the first payment thereof to begin and be made on the half-yearly day next after the said lessees shall have commenced working the said coal, and yielding and paying yearly and every year during the continuance of this demise the further sum of £100 for every acre of the said coal . . . and also yielding and paying yearly and every year during the said term until the said lessees shall begin to work and get coal from and out of the said mine . . . the annual rent of £5 to be paid and payable at the time and in the manner aforesaid." The lessees covenanted, *inter alia*, that they and "their several agents, servants, colliers, and workmen shall and will at all times during the said term hereby appointed fairly, duly, and honestly win, work, recover, obtain, and get the whole of the said mine, bed, vein, or seam of coal hereby demised in a proper and workmanlike manner, and also that they, the said lessees, shall not or will not desist from working and using any of

the workings until all the coal which can or may with ordinary safety to the workmen, or according to the ordinary method of working, be first got thereout, and shall and will well and effectually preserve . . . the several water levels, &c., . . . and further that they . . . shall not in working or getting the said mine . . . open any pit . . . nor injure the surface of the lands." . . .

The lessees never worked the coal, having come to the conclusion that to do so would be unprofitable, and paid rent at the rate of £5 per annum from the date of the lease until August 1901.

The lessors claimed damages for breach of contract, contending that the lessees were bound to work the coal; the latter maintained that the lease left it optional with them whether they would do so.

The question was referred to arbitration, and subsequently appealed to CHANNELL, J., who gave judgment for the lessees. The Court of Appeal reversed his judgment and the lessees appealed to the House of Lords.

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

LORD CHANCELLOR (HALSBURY)—It appears to me that the judgment of the Court of Appeal is absolutely right, and I do not think it necessary to expand the views which they have expressed. The question comes very shortly to this, whether, when there is an undoubted obligation to work coals, that obligation can be qualified and cut down by words which, as it has been more than once admitted by the learned counsel who have addressed us, are intended to qualify not the obligation to work but the obligation to do what work is done in a proper manner. The adverbs which are used in the lease in connection with the words winning and working seem to me wholly inappropriate to qualify and cut down the original obligation. I hesitate very much to think that the words being such as they are, one could qualify and cut down the initial obligation by looking at what the nature of the transaction is; still, if one does look at it, it appears to me to point in the other direction. Both parties supposed that there was coal here; and if there was coal, is it to be supposed that for £5 a year the attempt to get profit out of this, which both parties assumed was a field of coal, was to be suspended for twenty-one years at the option of the person who took the lease? One could well understand that where the dead rent is of such magnitude that it would of itself be the heaviest burden upon the lessee if he does not work—in that case having regard to the nature of the obligation entered into, you may not require an absolute covenant to work; but where the dead rent is of so comparatively trifling a character as this—£5 a year for twenty-one years—to say that it is to be at the option of the lessee whether he will work or not seems to me a very unreasonable and unbusinesslike arrangement. To my mind, if one were once at liberty to consider the question whether it is a likely covenant to be entered into or not, I should come to a conclusion the other way; but I do not depend upon that. To my mind the sole question is whether there is or is not an absolutely clear obligation to work. I think that there is; and under those circumstances I move your Lordships that the appeal be dismissed with costs.

LORD ROBERTSON—The broad facts of this case are exceedingly simple. There is a lease of this field of coal for twenty-one years from 1885. In 1898 or the beginning of 1899 the colliery people intimate that they have dismantled and abandoned the working by which alone they proposed to work this coal seam. Accordingly, *prima facie*, it would appear that there is the clearest possible claim for damages for a breach of the contract which was knowingly entered into by those parties. The answer to that is, curiously enough, found in the specific obligation which relates to the working which they have abandoned. It is said both as regards the winning and the working that they are to win and work honestly, and a variety of laudatory epithets are applied. How those words limiting their operations to operations of a legitimate kind can take away their obligation to go on working I cannot see. If there had been a very long time taken in reaching the mine I can quite understand that questions might have been raised as to whether that period had not been unduly prolonged; but in this case the avowed abandonment of the working lifts us out of that region altogether. We have therefore simply to construe the clause to which I have referred. I read that clause as containing first of all the obligation both to win and to work, and then a qualification of that by saying that it must be well done. But why you should say that because you are obliged to do a thing well you are absolved from doing it at all passes my conception. The argument was presented in a very sharp and clear form by both the learned counsel. Therefore we understand the question as it is raised in this case. Upon that question I must say that I think the argument too clear to require more than a reference to the context for its refutation. I cannot accede to the view that by the particularity and care in defining the mode of the operations there is absolution given from entering upon those operations at all.

LORD LINDLEY—I have come to the same opinion. I was rather struck by the observations made by the learned counsel for the appellant and by a passage which was read from the judgment of Jessel, M.R., in *Abinger* v. *Ashton*, L.R., 17 Eq. 358. I have since looked at that case, and I think I see what was meant by it. Jessel, M.R., there had to construe a covenant which was badly drawn and open to more interpretations than one. One of the interpretations which he suggested that it might bear was that which was urged upon us as the true interpretation to be put upon this lease. But really and in substance it comes to this—that under a lease like this the lessee has an option whether he will work or not.

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