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.

Per Lord Lindley—"There is nothing in sec. 57 which either cuts down or excludes sec. 56."

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., STIRLING and MATHEWS, L.JJ.), who had reversed a judgment of CHANNELL, J., upon a case stated by the Commissioners of Inland Revenue.

Sec. 56 (2) of the Stamp Act 1891 is quoted in the rubric.

Sec. 57 provides—"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part as the case may be of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

The Underground Electric Railway Company of London acquired by purchase the undertaking of the Metropolitan District Electric Traction Company, Limited, and the bargain between them as to the price to be paid was concluded in an agreement which contained, *inter alia*, the following provision—"Article 3—The profits of the new company (the appellants) available for dividend in respect of each year shall be applied in the following order and manner—that is to say, First, in payment of a cumulative dividend at the rate of 5 per cent. per annum up to the end of such year on the amount for the time being paid up on any shares for the time being issued by the new company; and, secondly, in paying to the Traction Company or its assigns as a further part of the consideration for the said sale such a sum as shall be equal to a dividend of 3 per cent. for such year on the amount for the time being paid up on such of the original ordinary share capital of £5,000,000 in the new company as shall for the time being have been issued by the new company."

Under sec. 59 (1) of the Stamp Act 1891 the above agreement was equivalent *quoad ad valorem* duty to an actual conveyance on sale.

At the date of the agreement the whole of the ordinary share capital of £5,000,000 had been issued, and £1,300,000 had been paid thereon. Upon this sum a dividend of 3 per cent. for the year would be £39,000.

The Commissioners of Inland Revenue being of opinion that the contingent annual dividend payable under article 3 was part of the consideration for the sale, and that it was payable either in perpetuity or for an indefinite period within the meaning of sec. 56 (2) of the Stamp Act of 1891, assessed the *ad valorem* duty at 10s. per cent. (sec. 56 (4)) on £39,000 multiplied by 20, bringing out the figure of £3900.

The Underground Electric Railway Company argued that the sum in question being payable on a contingency fell within section 57 of the Stamp Act 1891, and not within section 56.

CHANNELL, J., held that no duty could be assessed in respect of any part of the annual sum payable under sub-clause 2 of article 3 of the agreement, on the ground that the amount payable was unascertainable.

The Court of Appeal reversed this decision.

The Electric Railway Company appealed to the House of Lords.

Their Lordships having considered their opinions gave judgment as follows:—

LORD CHANCELLOR (HALSBURY)—I have had an opportunity of reading the opinion upon this case which Lord Lindley has written. I quite concur in it, and have nothing to add.

LORD ROBERTSON—I think that the judgments given in the Court of Appeal were perfectly right.

LORD LINDLEY—When the stamp duty payable on the conveyance in this case had to be ascertained, part of the consideration for the sale was 3 per cent. of the then paid-up capital of the purchasing company. This sum was a minimum sum, and it was payable periodically for an indefinite time. The amount payable in future was liable to be increased, but not to be diminished, except in certain events to which I will now refer. One of these events, and the only one in my opinion which creates any difficulty, was the possible insufficiency of the profits of the company to pay the amount referred to after paying a dividend of 5 per cent. on the paid-up capital of the company. That dividend of 5 per cent. had to be paid out of the profits of the new company to its shareholders before any further payment became payable to the selling company. The minimum sum payable periodically was so payable subject to a contingency, viz., the existence of a sufficiency of profits to pay, first, a dividend of 5 per cent., and then a further dividend of 3 per cent. We have, therefore, an ascertained minimum amount payable periodically as part of the consideration of the sale, but payable on a contingency. Is such a sum within sec. 56, clause 2, of the Stamp Act 1891? I need not read it again. Its language is very wide. It is contended that the words "money payable periodically" in that section do not apply to money payable on a contingency, because contingent payments are dealt with by sec. 57. I do not myself see how sec. 57 assists the appellants. Its effect seems to be that where the consideration for a sale consists of money payable on a contingency, such money is to be taken into account in ascertaining the stamp duty to be paid on the conveyance of the property sold. I see nothing in sec. 57 which either cuts down or excludes sec. 56. It is also contended that the words "money payable" in sec. 56 do not include money payable upon a contingency, because the contingency may never happen, and no money may be payable. But the words of sec. 56 appear to me to be wide enough to cover all moneys which may become payable, and the latter

part of clause 2 certainly favours this construction. Moreover, sec. 57 says that money payable on a contingency is to be taken into account, and that to my mind removes any doubt which might otherwise arise as to the inclusion of contingent payments in sec. 56. Then it is said that the purchasing company may be wound up, or may at some future time reduce its capital, and so reduce in future the minimum sum payable periodically to the selling company. No doubt these are possible events, but at most they are merely other contingencies on which the payment of the minimum sum depends. Unless the contingency of winding up or reducing the capital happens, the minimum sum continues to be payable. The fact that the minimum sum is payable on more contingencies than one is in my opinion quite immaterial. They only affect the ability of the purchasing company to pay, which is the only contingency of any importance. For these reasons I am of opinion that the decision of the Court of Appeal was correct, and that this appeal should be dismissed with costs.

Judgment appealed from affirmed, and appeal dismissed with costs.

Counsel for the Appellants—Roskill, K.C. —Austen-Cartmell. Agents—Bircham & Company, Solicitors.

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

HOUSE OF LORDS.

Friday, December 15.

(Before Lords Macnaghten, Robertson, and Lindley.)

BRITISH EQUITABLE ASSURANCE COMPANY *v.* BAILY.

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

Company — Life Assurance Company — Assurance Policy—Construction—Effect of Prospectus on Terms of Policy—Participation in Profits—Change of Regulations.

The deed of settlement of an insurance company founded in 1854 provided that its profits were to be divided as directed by its bye-laws, and that its bye-laws could be altered by other bye-laws. In 1886 the bye-laws provided that the whole profits made in the mutual branch were to be divided among the policy-holders in that branch. In that year the company issued to the respondent a policy entitling him to £400 on death, and "all such other sums, if any, as the said company by their directors may have ordered to be added to such amount by way of bonus or otherwise according to their practice for the time." There was nothing further in the policy or the proposal which could be construed into a contract by the assurance company to pay anything beyond the £400, and the respondent's proposal for insurance was made on a form in which he expressly agreed to "conform to and abide by the deed of settlement and bye-laws, rules, and regulations of the company in all respects." The respondent, however, had taken his policy relying upon a prospectus issued by the company, which stated:—"The entire profits made by the company in the mutual department, after deducting the expenses, are divided among the policy-holders without any deduction for a reserve fund."

In 1902 the assurance company proposed under the Companies Act 1890 to alter its constitution by becoming registered as a company with limited liability, with a memorandum and articles of association which provided that 5 per cent. of the profits of the mutual department were to be carried to a reserve fund. The proposed change was perfectly competent, looking to the constitution of the company as set forth in the original deed of settlement.

Held that the company had not contracted with the respondent that the whole of the profits of the mutual department should be divided among the policy-holders in that department. Judgment of Court of Appeal *reversed.*

Appeal from a judgment of the Court of Appeal (WILLIAMS, STIRLING, and COZENS HARDY, L.JJ.), who had affirmed a decision of KEKEWICH, J.

The facts of the case appear sufficiently from the rubric and the judgments of their Lordships.

At the conclusion of the arguments their Lordships took time to consider their judgment.

LORD MACNAGHTEN—This case raises a question between an insurance company and the holders of participating policies in the company's office. At the suit of a plaintiff suing in a representative character, Kekewich, J., declared that the company ought to continue to distribute the entire profits coming from the participating branch of its business, after making certain deductions which it is not necessary to specify, among the holders of participating policies. The Court of Appeal has affirmed that order. The judgment of the Court was delivered by Cozens Hardy, L.J. The ground of the decision is expressed in a single sentence—"A company cannot by altering its articles justify a breach of contract." No one, I should think, would be inclined to dispute the proposition. But, with all deference, that is not the question. The simple question is, what was the contract between the parties? The distribution of profits in this company is governed by a bye-law duly passed in accordance with the provisions of its deed of settlement made in 1854, when the company was competently registered under the Acts then in