difficult point to determine, and one that has given me much anxious consideration, is whether the amounts which the Company returns to the policy-holders every five years can be estimated as part of the income of the Company for the purposes of municipal taxation? Strong reasons can be given on both sides of this question. Many arguments can be advanced in favour of taxing these moneys, but just as many can be urged against it. I have searched in vain for any case in which the same question has arisen in our own Courts. So far as I know or can find out the question has not been up in this Province for judicial decision. The American cases do not assist us much, for in most of the States, so far as I can judge, by their systems of taxation the *corpus* of the fund would be that which would be singled out for taxation; nor do I find any American decision where this question has been before the Courts. Mr. Mackelcan has referred me to some American cases in support of the assessment. In the case of *Sun Mutual Insurance Company* v. *New York*, 8 N. Y., 241, cited to me, where a mutual insurance company was authorized to accumulate from its profits a fund to continue liable for its losses during the term of its existence, it was held that this accumulation was capital, and was liable to taxation as such. I was also referred to a note at page 160 of Cooley on Taxation, in which it is said: "Income means that which comes in and is received from any business or investment of capital, without reference to the outgoing expenditure." In *People* v. *Board*, 20 Barb. 81, it was held in the State of New York that the surplus reserve fund of mutual life insurance companies, incorporated previous to the year 1849, was liable to taxation as capital. None of these cases, it will be seen, touch the question here presented. The nearest approach to the point in dispute will be found discussed in the late English case of *Last* (Surveyor of Taxes), appellant, and the *London Assurance Corporation*, respondents, 12 Q. B. D., 389, decided on the 14th of March, 1884."

The learned judge then stated the facts, arguments and judgments fully in this case and proceeded:—"The junior judge, Mr. Justice A. L. Smith, expressed the opinion that the share going to the policy-holders was taxable and was in favour of giving judgment for the Crown, but as there was a difference of opinion and the Court was evenly divided, he withdrew his judgment and judgment in the case passed for the insurance company. I have searched in vain to find any trace of the case being brought up on appeal. We, therefore, have in that case the decision of the Government Commissioners against the Crown and their view sustained by the decision of the Queen's Bench Division. Had not the Crown officers been satisfied with the correctness of that decision I have no doubt they would have taken the opinion of the Court of Appeal on the question, if that were possible. It may be, however, because there was no appeal."

But I am of opinion that the decision in the case last referred to would, according to the authorities in England, be binding on any Court of co-ordinate jurisdiction. On this point, I refer to the authorities collected in the opinion of Mr. Justice Patterson in our own Court of Appeal *In re Hall*, 7 A. R. 135. It is true that two of the judges give the opinion in that case, that in the Court of Appeal in this Province the same rule in respect to the withdrawal of the opinion of the junior judge should not be observed as is in the House of Lords, and that although disposing of the case such a decision cannot be cited as authority. The case in 12 Q. B. D. may be put thus:—"If there was no appeal from it, then, according to the rule in the House of Lords, the decision is authority; if there was an appeal from it the best evidence of its correctness is the fact, that there was no appeal. If there was a right of appeal, I cannot conceive why (unless satisfied of its correctness) the Crown did not further test the question in a higher Court."

It is laid down by all the writers of authority on the construction of statutes that all statutes imposing a pecuniary burden, whether by way of tax or otherwise, are subject to the rule of strict construction: Maxwell on Statutes, 259; Potter's Dwarris on Statutes, Chap. V., and subsequent chapters. It was laid down by the Court in the cases of *Hull Dock Co.* v. *Browne*, 2 B. & Ad. 59; *Nicholson* v. *Fields*, 7 H. & N. 810, 816; *Parry* v. *Croydon Gas Co.*, 11 C. B. N. S. 579; S.C., 15 C. B. N. S. 568 that such was the correct view to take of statutes imposing pecuniary burdens.

Maxwell lays down the rule in this way:—"The subject is not to be taxed unless the language by which the tax is imposed is perfectly clear and free from doubt. In a case of doubt the construction most beneficial to the subject is to be adopted." The opinion of Lord Lyndhurst in *Stockton Railway Co.* v. *Barrett*, 11 C. C. & F. 602, and per Parke, B., *In re Micklethwaite*, 11 Ex. 456 is cited for the latter proposition.

In this case I might decide the question by saying that the Legislature has not specifically provided for the taxation of that which it is here proposed to tax, and if I have a doubt, I should decide against the assessment. With the strong views advanced in support of both sides of the question, candour compels me to say I have doubts, and