

companies. The blame for ill kept highways, high fares, and wretched accommodation upon street railways may rest upon the municipalities, if they exact excessive amounts and expend the money for ulterior purposes.

But upwards of twelve years ago the parties, with great deliberation, entered into this agreement, expressly made under and pursuant to the powers conferred upon them in and by the legislation in question, in which agreement payment to the plaintiffs of proportions of the gross receipts of the defendants is very clearly provided for, and the defendants have, up to the present time, regularly made quarterly payments thereof in accordance with the terms of the agreement; and the very agreement has, in a measure at least, been recognized by the Legislature, in a subsequent Act respecting the defendants, passed at their instance and upon their petition, in which the whole of the agreement and of the by-law referred to in it and based upon it are set out; 56 Vict. ch. 90 (O): and under other similar Acts of incorporation other like agreements have been made and have been recognized and given effect to by legislation. So that we have an interpretation put upon the enactment by the defendants themselves, and by the Legislature, contrary to that now contended for by the defendants. It is therefore quite too late to give effect to this defence, and unnecessary to consider the questions whether by estoppel merely the defendants should fail; and what the effect of their succeeding would be—whether to avoid the whole agreement, or merely to relieve them from an obligation without which, or a valid equivalent for it, no contract between the parties would probably ever have been made.

The second defence covers two quite distinct questions, though each depends entirely upon the meaning of the words “gross receipts” used in the agreement in question. Under that agreement the plaintiffs are entitled to a “percentage” of the defendants’ “gross receipts,” and the first question is: Does that term include fares paid by passengers without the corporate territorial limits of the defendants, who also began their journey upon the defendants’ railway beyond such limits?

The words “gross receipts” are, in their ordinary full meaning, very comprehensive, no doubt designedly so, to leave no room for disputations and cunning devices to which the use of the word “profits” or the word “earnings” might give encouragement. But plainly the words were not meant