the inaccurate use of the expression "participation in profits," instead of "participation in the sum that could be profits but for the right to participate." The controversy has now been settled in opposition to Lord Bramwell's view.

Whether the surplus profits are allotted to the policy-holders by contract as in that case, or by statute as in this, can make no difference. They still form part of the net annual income of the Company no matter how they are appropriated. They can in no sense be described as a loss, and though when made they may be an expenditure yet they are an expenditure out of profits, not an expenditure in order to make profits, and are, therefore, on the principle established by Last's case taxable as income, being profits of the same character and administered in a similar manner to those in question there. The plain object and expressed intention of the Assessment Act is that all property unless expressly exempted shall be liable to taxation. If this particular property cannot be taxed as income or as interest on moneys (as I think might have been done so far as it consists of such interest), I think it would puzzle anyone to show how it could practically be taxed at all. As there is nothing in the Act which can be laid hold of to reduce the meaning of the word income below that which it really is and is called in the Company's own Act, viz., the profits realized by them in their business, these profits may well be assessed as such, and, though for no doubt very good business reasons, the Company devote a large proportion of them to their policy-holders, having compelled themselves to do so by an Act passed at their own instance, they are still part of the income of the Company. To tax them is no infraction of the Statute or of their bargain with their policy-holders. It cannot affect the validity of the policies to the full amount the Company are bound to pay or the principles on which they provide for their payment. The only effect of the taxation is that there is so much less to divide and allot to the policy-holders.

I considered this question to some extent in Confederation Life Association *vs.* Toronto, 22 A. R. 116, and remain of the opinion there expressed.

As to costs, this is an experiment in assessment on the part of the City, and, while it turns out to be a successful one, I think each party should bear their own costs of appeal.

Maclennan, J. A. :—

The Company are assessed in respect of real property to the amount of $129,000, in respect of personal property, $4,000, and in respect of income, $692,000. The question relates to the last item alone. That sum is the income of the Company for the year 1896, for interest and dividends on the Company's investments. Besides that sum the Company received for premiums on new policies and renewals, rent of real estate, etc., the further sum of $2,063,648. The Company's payments during the same year for expenses, death and endowment claims, cancelled policies, re-insurance premiums, etc., amounted to the sum of $1,703,872, leaving a balance of receipts over payments of $1,051,776, as the Company's apparent income for the year over and above all expenditure. The assessment, however, is only upon $692,000. It appears that the most of the Company's insurance is with participation in profits, and, before the year 1879, it was the practice to allot to the policy-holders 75 per cent. of the profits. In that year, however, by an amendment of its Act of Incorporation, 42 Vic., ch. 71, the proportion of profits to be allotted to policy-holders was increased to not less than 90 per cent. It was contended for the Company that the share of profits to which policy-holders are thus entitled could not be regarded as income, for the reason that the Company had no control over it, and had no option but to pay it over to the policy-holders, and could not divide it among the shareholders. That argument is forcible and plausible, but I think it cannot be maintained as against the express terms of the Assessment Act. The question is whether it is part of the Company's income, and it is impossible to contend the contrary. Being income it is immaterial what is done with it—it is a subject of taxation. It is earned by the Company. It is called profits in the Act of 1879, and it is so in fact, and therefore income.

It was also contended that the interest from investments is largely required to produce and maintain the fund out of which the Company's policies are to be paid at maturity, and the evidence shows that such is the case and that the premiums charged are fixed with reference to the interest to be earned by their investment. I do not see that this circumstance makes any difference. The policies give the assured no legal claim on the interest so earned and received. The investments and the interest arising therefrom are the property of the Company. The assured have no lien thereon. They have nothing but the Company's covenant for payment. The capital of the Company, amounting to a million dollars, as well as its invested funds and other property, are all a security to the assured, and, by section 34 of the Assessment Act, the Company is to be assessed as if it was a partnership and not an incorporated company. The sum in question being therefore income of the Company, it is property, section 2, sub-sections (8) and (10), and liable to taxation, section 7, unless exempted. It is clearly not within any of the exemptions, and the question is governed by section 31. The last section declares that no person deriving an income from *any source whatever* not declared exempt by this Act shall be assessed for a less sum than the excess of such net income during the year then last past over the exemptions in sub-sections 23, 24 and 24a, section 7, etc. Now this sum of $692,000 is not derived from any exempted source, and I think it is impossible to say that it is not liable to taxation upon the very words of this section. I think it is income within the definition of Lawless *vs.* Sullivan, 6 A. Cas. 673, and that it is still income notwithstanding that a large part of it may be reserved for the quinquennial allotment to policy-holders as a share of profits; Last *vs.* London Assessment Corporation, 10 A. Cas. 438.

I was for some time inclined to think that so much of the interest on investments as was necessary to be reserved by reason of the new risks taken during the year should be exempt, but I think the statute does not permit that to be done, the whole being income of a kind not exempted.

I am, therefore, of opinion that the appeal should be dismissed.

Moss, J. A. :—

The appellant company is a life assurance company, having its head office at the City of Hamilton. In the year 1897 the Company was assessed for the year 1898 in No. 2 Ward, as follows:—

Real property	$129,000
Personal property	4,000
Income	692,000

The Company appealed to the Court of Revision in respect of the assessment for income, complaining that it was too high.