Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Melbourne and Metropolitan Board of Works v. *The Metropolitan Gas Company, from the Supreme Court of Victoria; delivered the 5th July* 1905.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
SIR FORD NORTH.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The question in this case is whether the Melbourne and Metropolitan Board of Works is authorised to levy rates on the Metropolitan Gas Company in respect of gas mains comprised and separately valued in the valuations of the several municipalities within which they are respectively situate, and, if so, whether such gas mains are to be treated for rating purposes as sewered properties or as unsewered properties. The question turns on the Melbourne and Metropolitan Board of Works Act, 1890, No. 1,197, as amended by the Melbourne and Metropolitan Board of Works Act, 1897, No. 1,491.

The Board of Works was constituted and incorporated by the Act of 1890. It was given the management of the sewage and drainage as well as of the water supply of the Metropolis as defined by the Act. All rates received by the

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Board were to be paid into the Metropolitan General Fund. Subject to a charge for interest on liabilities of the Board any moneys standing to the credit of the General Fund were to be applied in payment of the salaries of the officers and servants of the Board, and of the expenses of carrying the Act into execution, and of carrying out any works under the authority of the Act, and in paying off the principal of moneys borrowed. By Section 122 the Board was authorized to prepare an annual estimate of its requirements, and then to make a rate to be called the Metropolitan General Rate, and to assess the same upon the several municipal districts within the Metropolis, in sums bearing the same proportion to the total amount to be raised by such rate as the net annual value of such property in each municipal district bore to the total net annual value of such property in the whole Metropolis, but no rate was to exceed a shilling in the pound. By Section 123 it was declared that for the purpose of making any assessment under the Act the Board should adopt as the net annual value of the property within each municipal district the total amount appearing by the valuation or assessment then in force in the municipal district for the purpose of striking municipal rates.

By the Act of 1897 the Act of 1890 was amended. Sections 122 and 123 were repealed. By Section 5, sub-Sections (1) and (3) of the Act of 1897, it was enacted that the Board should from time to time after sewers had been laid in any street or part of a street, cause a general notice to be given that the Board had made provision for carrying off the sewage of each and every property which or any part of which abutted on such street or part of a street in which sewers had been so laid, and that after such time as should be fixed by the Board

each and every property which or any part of which abutted on such street or part of a street should be deemed and taken to be a sewered property within the meaning of the Act, and that every property whether or not abutting as aforesaid which should be connected with any sewer of the Board should be and should be deemed to be a sewered property.

Section 8 of the Act of 1897 contains the following sub-Section :—

> "(5) For the purpose of making any rate the Board shall adopt as the net annual values of properties the valuation in force at the time of making the rate in the municipalities within which the properties respectively are situate."

By sub-Section (6), Section 8, the Board was authorized to levy upon every sewered property a rate to be called the "Metropolitan General Rate," for nine years after the commencement of the Act at one shilling in the pound of the net annual value of such property, and thereafter a rate not exceeding that amount. On unsewered property the rate for the nine years was to be two pence or one penny in the pound, according to the situation of the property as defined in the schedule to the Act. After the expiration of the nine years, no rate was to be levied on unsewered property. By sub-Section (7) the rate to be made and levied on sewered properties was to be calculated as for all the purposes to which the Metropolitan General Fund was applicable.

In order to provide for certain contingencies, as, for instance, in order to meet obligations incurred before the passing of the Act the Board was empowered (Section 10), but not oftener than once a year, to levy a rate up to the full amount of one shilling in the pound "on all "properties within the Metropolis whether "sewered or not."

It appears that the gas mains of the Metropolitan Gas Company are and have been from time to time comprised and separately valued in the valuations in force in the municipalities within which they are situate.

The claim of the Board is to enforce rates levied on the Gas Company in respect of their gas mains within the Metropolis, treating them as sewered properties wherever they issue from and are connected with a property of the Company coming under the definition of "sewered property" in the Act of 1897. On behalf of the Gas Company it is contended that their mains are not liable to the Metropolitan general rate, and that if they are, they are not liable to be rated as sewered properties. In the Court of First Instance the learned Judge, Williams, J., gave judgment for the Board on the ground that, the gas mains being necessarily connected with the gas works or gas holders of the Gas Company and forming part of its general system or undertaking, were through the gas works or gas holders connected with sewers of the Board and therefore were to be deemed sewered property. On appeal, the Full Court dismissed the action, holding that, inasmuch as gas mains are not capable of being sewered, they do not come within the description of property on which the Board was, by the Act of 1897, authorized to levy rates and that therefore these gas mains were not liable to be rated at all.

Their Lordships are unable to agree in the view of Williams, J. It appears to them that in the case of the Gas Company the subject liable to be rated is not the undertaking of the Company, but the properties of the Company comprised in the municipal valuations which the Metropolitan Board is bound to adopt, and that those properties, though comprised in the municipal valuations, are not liable to be rated as

sewered properties unless they fall within the definition of sewered property in the Act of 1897.

They agree in the opinion of the Full Court that the gas mains are not sewered properties, inasmuch as they do not abut on a street or part of a street in which sewers have been laid. But, on the other hand, as gas mains are not sewered property, their Lordships think they must come under the head of unsewered property, and that the circumstance that they are not in their nature capable of deriving from sewers the same benefit as houses intended for habitation is not of itself a sufficient reason for placing them in a new category not recognized by the Act, and so relieving them from rates altogether.

Their Lordships will therefore humbly advise His Majesty that the Order of the Full Court dated the 12th August 1903 and the Order of the Supreme Court dated the 28th April 1903 ought to be discharged each party bearing his own costs in each of the said Courts, and that instead of the last-named Order it ought to be declared that the gas mains of the Respondent Company comprised in the valuations of the municipalities within which they are respectively situate are liable to be rated as unsewered property, and that until payment such rates are a charge upon the property of the Respondent Company, and that (if necessary) it ought to be referred to the Chief Clerk of the said Supreme Court to inquire as to the amount of rates which under the foregoing Declaration were chargeable on the said gas mains of the Respondent Company at the respective times of making the rates referred to in the Statement of Claim.

Their Lordships think there ought to be no costs of the Appeal.