Counsel for the Appellant—Shearman, K.C.—E. Browne. Agents—Pattinson & Brewer, Solicitors.

Counsel for the Respondent—Horridge, K.C. — Shakespeare. Agents — William Hurd & Son, Solicitors.

HOUSE OF LORDS.

Wednesday, June 19, 1907.

(Before the Earl of Halsbury, Lords James of Hereford, Robertson, and Atkinson.)

YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD *v.* BENSTED.

(On Appeal from the Court of Appeal in England.)

Revenue—Income-Tax—Sewer—"Hereditament"—"Capable of Actual Occupation"—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 60, *Schedule A, Rules Nos.* 1 *and* 3.

Held (*affirming* the judgment of the Court of Appeal) that a sewer vested in and under control of a local authority is for the purpose of income-tax a hereditament capable of actual occupation, and is chargeable in respect of the annual value thereof according to Schedule A, Rule No. 1, of the Income-Tax Act 1842.

This was an appeal from a judgment of the Court of Appeal (Collins, M.R., Cozens-Hardy and Farwell, L.JJ.), who had affirmed a judgment of Walton, J., in favour of the Crown, upon a case stated by the Commissioners for the General Purposes of the Income-tax.

Earl of Halsbury—In this case I think that the judgment of the Court of Appeal ought to be affirmed. It appears to me that there is a mixture, not to say a confusion, of thought in using the word "profits" in a sense which is not consistent with the mode in which it is used in the statutes relating to income-tax. It may be—I do not propose to controvert the idea—that in an ordinary sense there might be some difficulty in saying what are "profits"; but really it seems to me that every part of the argument here has been covered by authority. In the first place, it is clear that there is an occupation, and, in the next place, it is clear that there is a beneficial occupation. The alternative suggested—namely, that this is one of those excepted undertakings (the only colour for which is that the word "drain" is used in the excepting section)—is to my mind untenable. The word "drain" used by itself might perhaps bear the meaning which it is suggested by the appellants that it ought to bear, but when you look at the mode in which the word "drain" is introduced, and the other words with which it is associated, its meaning depends upon a very familiar canon of construction—that when you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and overridden by the general proposition familiarly described as the *ejusdem generis* principle; and accordingly the word "drain" used in that section is not included in the excepted businesses which are therein described, so as to make the word "drain" applicable to the present question. Then if it is not the rest seems to me to be perfectly clear, because you have here a beneficial occupation, and by the rules applicable to Schedule A you have to take a hypothetical tenant, and the rent which the hypothetical tenant would give if he were called upon to get rid of this sewage, as ascertained by the mode by which it is to be calculated, and by the machinery by which the Legislature has supposed that this somewhat difficult problem is to be solved. I really do not feel it necessary to do more than say that I concur with the judgments which have been delivered on this subject by every judicial person before whom it has come. I entirely concur with them, and I cannot forbear from pointing out that the Attorney-General in the course of exactly seven minutes appeared to me to dispose of the whole day's argument with which we had been entertained. I must say that I congratulate him, and I am endeavouring to emulate his success by the length of the judgment which I am now delivering.

Lord James of Hereford concurred.

Lord Robertson—I agree that the judgment is right, and I think that the controverted subjects have been accurately and adequately discussed in the Court of Appeal.

Lord Atkinson concurred.

Appeal dismissed.

Counsel for the Appellants—Danckwerts, K.C.—S. T. Evans, K.C.—Redman. Agents—Wrentmore & Son, Solicitors.

Counsel for the Respondent—Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C. — W. Finlay. Agent — Sir F. C. Gore, Solicitor of Inland Revenue.

PRIVY COUNCIL.

Wednesday, July 3, 1907.

(Present—The Right Hon. Lords Robertson and Collins, Sir Arthur Wilson, and Sir Alfred Wills.)

FRIESE-GREENE'S PATENT.

Patent—Practice—Extension of Patent—Advertising—Patents, Designs, and Trade Marks Act 1883 (46 *and* 47 *Vict. c.* 57), *sec.* 25 (1).

Section 25 (1) of the Patents, Designs, and Trade Marks Act 1883 provides "A

patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council "praying that his patent may be extended for a further term. . . ." Rules prescribing the mode of advertisement were framed by the Privy Council, and rule number 7 was in the following terms—"The Lords of the Committee may excuse petitioners and opponents from compliance with any of the requirements of these rules, and may give such directions in matters of procedure and practice under section 25 of the Act as they shall consider to be just and expedient."

Held that the Judicial Committee had no power to entertain a petition for extension when there had not been any previous advertisement.

This was a motion in reference to a petition for the extension of letters-patent. The petitioner had through ignorance made no advertisement, and craved their Lordships to dispense with any, under rule 7.

Their Lordships' judgment was delivered by

LORD ROBERTSON—It is not within the competency of this board to entertain a petition for extension when there has not been any previous advertisement. In sec. 25 (1) of the Patents, Designs, and Trade Marks Act 1883 the words are—"A patentee may after advertising in manner directed by any rules made under this section." The board has occasionally—as in the case of *Lindon's Patent* (14 R.P.C. 643), where, before any rules had been made under the Act of 1883 their Lordships allowed the advertisements required by the old rules to be inserted, after the petition had been presented—made relaxation, in very special circumstances, of some of the provisions of the rules, but if their Lordships were to do what they are now asked to do they would be dispensing, not with rules, but with the statute. The application must be refused.

Motion refused.

The petitioner appeared in person.

Counsel for the Crown—Rowlatt. Agent—The Solicitor to the Treasury.

HOUSE OF LORDS

Thursday, July 4, 1907.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords James of Hereford and Atkinson.)

KRÜGER & COMPANY *v.* MOEL TRYFAN SHIP COMPANY.

Ship — Charter-Party — Bill of Lading—Charterer's Duty to Present Proper Bill of Lading—Bill of Lading Differing from Charter-Party — Shipowner Liable to Holder of Bill of Lading according to its Terms—Charterer Bound to Indemnify Shipowner.

The respondents, a firm of shipowners, chartered a vessel to the appellants. By the charter-party the shipowners were exempted from liability for accidents of navigation, even if occasioned by the master's negligence, and the master was to sign clean bills of lading without prejudice to the charter. The charterers sold the intended cargo to a purchaser, and, the cargo having been loaded, drew and presented bills of lading to the master, who signed them. The clause of exemption was not referred to in the bills, the charterers and the master both believing (erroneously) that it was incorporated by the words "all other conditions as per charter-party." The bills of lading were thereafter indorsed to the purchaser. The ship was lost owing to the master's negligence. The indorsee of the bills of lading having in an action recovered the sum of £12,571 from the shipowners on the ground of the master's negligence, *held* that the charterers were bound to indemnify the shipowners who had become liable to the indorsee owing to the charterers' breach of contract in tendering to the master for signature bills of lading disconform to the charter.

Appeal from a judgment of the Court of Appeal (SIR J. GORELL BARNES, P., FARWELL and BUCKLEY, L.JJ.), who had affirmed a judgment of Phillimore, J., in an action tried before him in the Commercial Court without a jury.

The facts sufficiently appear from the considered judgments of their Lordships *infra*.

LORD CHANCELLOR (LOREBURN)—This case raises a novel point. Shipowners, the respondents, chartered their vessel under a charter-party which relieved them from liability for negligence of the master, and with the following clause: "The master to sign clean bills of lading for his cargo, also for portions of cargo shipped (if required to do so) at any rate of freight without prejudice to this charter, but not at lower than chartered rates, unless the difference is paid to him in cash before signing bills of lading." The vessel was under the terms of the charter-party to proceed to Rangoon and there load from the charterers a cargo of rice and then proceed to Rio. She went to Rangoon and loaded the rice. Charterers' agents then presented bills of lading to the master. These bills of lading contained the words "freight for the said goods, and all other conditions as per charter-party," but did not incorporate the exception contained in the charter-party exempting the shipowners from liability for negligence of the master. Accordingly, under these bills of lading the owner was in law liable to whosoever might have the right to sue on them for the consequences of this negligence. The agents did not realise this, nor did the master, who duly signed the bills.