Report by the Joint committee of the House of Lords and the House of Commons on public sewers (contributions by frontagers) : together with the proceedings of the committee and minutes of evidence and speeches delivered by counsel.

REPORT

BY THE

Joint Committee of the House of Lords and the House of Commons

ON

PUBLIC SEWERS (CONTRIBUTIONS BY FRONTAGERS)

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE AND MINUTES OF EVIDENCE AND SPEECHES DELIVERED BY COUNSEL

Ordered by The House of Lords *to be Printed*
13*th May* and 17*th June* 1936

Ordered by The House of Commons *to be Printed*
17*th June* 1936

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H.L. 93, 123
H.C. 122

HOUSE OF LORDS.

ORDERS OF REFERENCE.

Die Jovis, 2° *Aprilis*, 1936.

Moved, to resolve, That it is expedient that a Joint Committee of both Houses of Parliament be appointed to consider the provisions of sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills (The Chairman of Committees); *agreed to: Ordered*, That a Message be sent to the Commons to communicate this Resolution, and to desire their concurrence.

Die Jovis, 9° *Aprilis*, 1936.

Message from the Commons that they concur in the Resolution of this House, communicated to them on Thursday last, on the subject of Public Sewers (Contributions by Frontagers), as desired by this House.

Die Mercurii, 29° *Aprilis*, 1936.

Moved, That a Committee of Three Lords be appointed to join with a Committee of the House of Commons to consider the provisions of sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills (The Chairman of Committees): *Agreed to.*

The Lords following, with the Chairman of Committees, were named of the Committee:

L. O'Hagan.

L. Macmillan.

Leave given to the Joint Committee to hear parties interested, by themselves, their Counsel, or Agents, so far as the Committee think fit.

The cost of preparing for publication the Shorthand Minutes of Evidence taken before the Committee was £45 10s. 6d.

The cost of printing and publishing this volume is estimated by the Stationery Office at £128 7s. 6d.

Ordered, That such Committee have power to agree with the Committee of the House of Commons in the appointment of a Chairman.

Then a Message was ordered to be sent to the House of Commons to acquaint them therewith, and to request them to appoint three Members of that House to be joined with the said Committee, and to propose that the Joint Committee do meet in the Chairman of Committees Committee Room, House of Lords, on *Wednesday*, the 13*th of May* next, *at half-past Ten o'clock*.

Die Martis, 5° *Maii*, 1936.

Message from the Commons to acquaint this House, That they have appointed a Committee of Three Members to join with the Committee appointed by this House, as mentioned in their Lordships' message of Wednesday last, and that they have made the following Orders :—That leave be given to the Committee to hear parties interested by themselves, their Counsel or agents so far as the Committee think fit : That the Committee have power to send for persons, papers and records : That two be the quorum.

Die Mercurii, 6° *Maii*, 1936.

Message from the Commons, That they have ordered that the Committee appointed by them to join with a Committee of this House, relative to Public Sewers (Contributions by Frontagers), do meet the Committee appointed by their Lordships, as proposed by this House.

Die Mercurii, 13° *Maii*, 1936.

Minutes of Speeches delivered by Counsel, and Evidence taken before the Joint Committee from time to time to be *printed*, but no copies to be delivered out except to Members of the Committee and to such other persons as the Committee shall think fit, until further order.

HOUSE OF COMMONS.

ORDERS OF REFERENCE.

Thursday, 2nd April, 1936.

Message from *The Lords*,—That they have come to the following Resolution, viz. : That it is expedient that a Joint Committee of both Houses of Parliament be appointed to consider the provisions of Section 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers, and to make recommendations as to the circumstances in which, and the conditions upon which, similar provisions should be allowed in future Bills.

Wednesday, 8th April, 1936.

Ordered, That so much of the Lords Message [2nd April] as communicates the Resolution, That it is expedient that a Joint Committee of both Houses of Parliament be appointed to consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers, and to make recommendations as to the circumstances in which, and the conditions upon which, similar provisions should be allowed in future Bills, be now considered.—(*Sir George Penny.*)

So much of the Lords Message *considered* accordingly.

Resolved, That this House doth concur with the Lords in the said Resolution.—(*Sir George Penny.*)

Message to the Lords to acquaint them therewith.

Wednesday, 29th April, 1936.

Message from *The Lords*,—The Lords have appointed a Committee consisting of Three Lords to join with a Committee of the Commons to consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers, and to make recommendations as to the circumstances in which, and the conditions upon which, similar provisions should be allowed in future Bills, and request the Commons to appoint an equal number of their Members to be joined with the said Lords.

The Lords propose that leave be given to the Committee to hear parties interested by themselves, their Counsel, or Agents, so far as the Committee think fit.

Thursday, 30th April, 1936.

Ordered, That so much of the Lords Message [29th April] as relates to the appointment of a Committee on Public Sewers (Contributions by Frontagers) be now considered.—(*Sir George Penny.*)

So much of the Lords Message *considered* accordingly.

Ordered, That a Select Committee of Three Members be appointed to join with the Committee appointed by the Lords to consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills.

Ordered, That leave be given to the Committee to hear parties interested by themselves, their Counsel, or Agents so far as the Committee think fit.

Ordered, That the Committee have power to send for persons, papers, and records.

Ordered, That Two be the quorum.—(*Sir George Penny.*)

Message to the Lords to acquaint them therewith.

Committee *nominated* of,—Captain Bourne, Mr. Cape, and Sir Henry Cautley.—(*Sir George Penny.*)

Tuesday, 5th May, 1936.

Message from *The Lords,*—That they propose that the Joint Committee do meet in the Chairman of Committees' Committee Room, House of Lords, on Wednesday the 13th of May next, at half-past Ten o'clock.

Public Sewers (Contributions by Frontagers),—Lords Message *considered:*—

Ordered, That the Committee appointed by this House do meet the Lords Committee as proposed by their Lordships.—(*Sir George Penny.*)

Message to the Lords to acquaint them therewith.

TABLE OF CONTENTS.

REPORT

By the Joint Committee of the House of Lords and the House of Commons on

PUBLIC SEWERS (CONTRIBUTIONS BY FRONTAGERS)

1. The Order of Reference directs the Committee :—

> " To consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills."

2. The Committee met on 13th and 20th May, 1936, when counsel were heard on behalf of (1) The Association of Municipal Corporations and the Urban Districts Councils Association and (2) a number of Associations representative of the landowning interest. The Committee also had before them Memoranda prepared on behalf of these parties. On the latter date Mr. E. J. Maude of the Ministry of Health, at the invitation of the Committee, gave evidence in explanation of a Memorandum which the Ministry had submitted with regard to Section 62 of the Romford Act. The Committee are indebted to the Ministry and to the parties for the assistance thus afforded. On 17th June, 1936, the Committee met for the purpose of private discussion, when the present Report was agreed upon.

3. Under the existing general law, stated broadly, when a sewer is constructed by the local authority in a street, the right of the local authority to recover contributions to its cost from the frontagers depends upon whether the street is (1) a highway repairable by the inhabitants at large or (2) a private street not so repairable.

If the street is a highway repairable by the inhabitants at large the local authority cannot recover from the frontagers any part of the cost of the sewer which they have constructed.

If the street is a private street not so repairable the local authority may recover the cost of the sewer from the frontagers under one or other of two enactments, viz. : the Public Health Act, 1875, Section 150, or the Private Street Works Act, 1892. The latter Act is adoptive and when in force excludes resort to Section 150 of the Public Health Act, 1875, which it has to a large extent superseded in practice by reason of its more complete and detailed provisions.

4. There has been no serious complaint as to the working of either Section 150 of the Public Health Act, 1875, or the Private Street Works Act, 1892, in the case of private streets. Where land is being developed for building purposes and streets are formed to provide access to the buildings in course of erection it is recognised as equitable that, if the local authority constructs sewers in these streets to serve the needs of the buildings abutting upon them, the frontagers should be called upon to meet the cost of such sewers. Liability and benefit are in such circumstances reasonably commensurate; the sewer presumably is of no larger dimensions than the buildings fronting the street require for the disposal of their sewage and the frontage basis of apportionment of the cost provides a fair measure of contribution.

5. The problem with regard to highways repairable by the inhabitants at large is quite different; and it is with this problem alone that the Committee are concerned under their terms of reference. The local authority has a general duty under Section 15 of the Public Health Act, 1875, to " cause to be made such sewers as may be necessary for effectually draining their district ", but this does not impose any liability on the authority to provide sewers in anticipation of the future requirements of their district or so as to enable a landowner to develop his land for building purposes. Consequently when the owner of land fronting on a highway proposes to develop it for building purposes and desires that it should be equipped with a sewerage system he cannot require the local authority to lay down a sewer in the highway for his use. But as he must provide some means of sewage disposal for his houses and is naturally averse from installing cesspools which may subsequently have to be scrapped and which are also unattractive to purchasers, resort is had to a practice which has grown up whereby the local authority agrees to construct the requisite sewers on the landowner entering into a voluntary agreement to contribute to the cost. From the landowner's point of view this is quite a satisfactory solution of the difficulty as he contributes only to the cost of the sewers so far as serving the land which he is developing. It is less satisfactory from the point of view of the local authority which may have to construct a sewer in the highway for a considerable distance in order to reach the contributor's land and may be unable to recover any part of the cost of so doing from other landowners fronting on the portion of the highway so traversed, who may nevertheless benefit by the presence of the sewer if and when they in turn come to develop their land for building purposes.

6. It is plainly undesirable in the public interest that lands fronting on a highway should be developed for building purposes without adequate sewerage; the landowner developing his land

desires the provision of a sewer in the highway so as to avoid the cost of cesspools and at the same time to improve the value of his buildings; yet there is no statutory means whereby the local authority, if it provides a sewer, can recover the cost of it from those who benefit by it. The local authority is naturally disinclined to provide sewers at the cost of the community for the benefit of individuals. Hence the resort to the system of voluntary contributions, which, as has been shown, provides only a very imperfect solution of the difficulty.

7. The problem has become acute in recent times through a number of associated causes and perhaps chiefly—(1) the construction of a large number of new highways to carry the increasing motor traffic; (2) the great activity in the building trade, particularly on the outskirts of the larger centres of population and (3) the recent extensive alterations in the boundaries of the districts of local authorities. By the new highways fresh land is opened up and rendered accessible, building operations are stimulated by the prospect of profit, and the sewerage problem at once emerges. The Committee are satisfied, and indeed the parties before them were agreed, that some solution of this problem must be sought which on the one hand will encourage local authorities to provide the required sewers and on the other hand will ensure a reasonable contribution to the cost from those who benefit by them.

8. It is obvious that the problem as affecting highways, and particularly new highways driven through previously inaccessible land, is quite different from the problem as affecting private streets which has been satisfactorily met by the existing legislation of 1875 and 1892. In the case of private streets the unit is relatively small; private streets are seldom of great length; the houses generally adjoin each other; the sewerage facilities to be provided are on a modest scale suited to the requirements of the street to be served; and private streets are usually so constructed that they can be opened up for the laying of a sewer at moderate cost. In such a case the apportionment of cost according to frontage provides a reasonably equitable measure of contribution. Highways, on the other hand, may be of indefinite length; they may pass through land in process of being developed or about to be developed and also through land that may not be developed for years if ever; the sewer which it may be necessary to construct may be of dimensions and at a depth quite out of relation to the requirements of a particular group of frontagers, for it may have to serve distant communities; and the modern methods of highway construction involve the provision of a strongly built surface which it is costly to break open for the insertion of sewers. Thus cost and benefit may become widely divorced and the frontage basis of allocation prove quite inequitable.

9. It was with the object of meeting this situation that Section 62 of the Romford Act was devised. The expedient there adopted is to apply to highways the provisions of the Private Streets Works Act, 1892, with modifications. Broadly speaking, the Section empowers the local authority, if it decides that a sewer should be constructed in a highway and that its construction will increase the value of the premises fronting it, to apportion the cost among the frontagers and recover from each his proportion according to the extent of his frontage. Section 10 of the 1892 Act, which is incorporated in Section 62 of the Romford Act empowers the local authority to adopt some other method of apportioning cost than by frontage and, if they think just, to have regard, in settling the apportionment, to the degree of benefit to be derived by any premises from the works and to the amount and value of any work already done by the owners or occupiers of the premises. But this is so entirely discretionary on the part of the local authority as to be scarcely satisfactory to the landowners affected. The owner may object to the provisional apportionment upon him on the grounds set out under five of the six heads in Section 7 of the 1892 Act (which include the objection that the proposed works are unreasonable or the estimated expenses excessive) but two new grounds of objection are also made available to him, viz. :

> " (*g*) That the proposed works will not increase the value of any premises of the objector ;
>
> " (*h*) That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived from such premises from the proposed works."

There is also a proviso that no expenses apportioned against agricultural land shall be recoverable or interest thereon chargeable until the land ceases to be agricultural.

10. This enactment has been subjected to considerable adverse criticism. It labours under the defect always attendant on the attempt to apply legislation designed to meet one class of cases to a quite different class of cases and then endeavouring to remove the consequent anomalies by adding a series of qualifications. Among the grounds of criticism of Section 62 the most salient are—that it places on the owner the burden of establishing by formal proceedings that the sewer will not increase the value of his premises, or that the cost to him is in excess of the benefit to be derived by him, both highly controversial topics ; that the definition of agricultural land (see Section 2 (2) of the Rating and Valuation Apportionment Act, 1928), affords insufficient protection ; that while the highway may pass through land which is in course of being or is about to be developed, it will probably also

pass through land which the owner has no intention of developing and which does not need the sewer but yet which is not technically agricultural; that while the presence of a sewer in an adjoining highway may add potentially to the value of undeveloped land that potentiality may never be realised owing to the land never being developed, yet payment may be exacted in respect of the alleged benefit; that the sewer may be constructed of dimensions and laid at a depth quite inappropriate to the particular frontagers' actual or possible requirements; that the cost of construction of the sewer may be greatly enhanced by the fact that the highway which has to be opened up has been built to carry heavy traffic in which the frontager has no interest.

11. Two other criticisms of an economic character have been advanced against Section 62 of the Romford Act. In the first place it is said to be unjust to a purchaser who has bought land fronting on the highway in reliance on the existing law which absolves him from liability to be called upon to contribute to the cost of any sewer which the local authority may construct in the highway. In the second place it is said that it is unjust that a ratepayer who in his past payments of rates has contributed to the cost of sewers laid by the local authority at the general expense in other highways, whereby other ratepayers have benefited, should find himself called upon to bear individually the cost of the construction of a sewer in his own highway.

12. On these and other grounds it is accordingly maintained that Section 62 of the Romford Act in its endeavour to remedy an existing defect in the law has created new injustices. The Committee are satisfied that Section 62 as it stands, however commendable as a first essay to deal with a difficult situation, does not adequately or completely meet the case. This, indeed, has already been recognised by Parliament. Thus in Section 67 of the Rugby Corporation Act, 1933, which follows the precedent of Section 62 of the Romford Act, a further proviso is added to the effect that no expenses apportioned against premises which prior to five years before 1st January, 1928, were assessed to rates, are to be recoverable unless such premises have been in the interval or shall in future be so altered as to be new buildings. The Wigan Corporation Act, 1933, Section 60, also contained a similar addition to the Romford Section 62, but in this case fixed the critical date at 22nd November, 1932, only a year before.

13. In the Bill promoted by the Corporation of Coventry in the present Session of Parliament further modifications of the Romford Section 62 were proposed. In the Bill as amended in the House of Commons Clause 50, while reproducing generally the Romford Section 62, gives the frontager a right to object to a provisional apportionment against him on the new ground—

> " (*i*) That the sewer is of greater capacity than is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer is to be constructed or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street, regard being had to the capacity requisite for the surface-water drainage of the street or part of a street."

The clause also contains a proviso inter alia exempting premises which were subject to rates before 27th November, 1935, unless and until altered so as to be new buildings; and providing that no apportioned expenses are to be recoverable from any frontagers until they actually connect their premises with the sewer.

14. These emendations have in turn been the subject of further criticisms. Thus it is said that, owing to the many recent alterations in the areas of local authorities, a ratepayer may not in fact have made any payments in the past towards the construction of sewers in the highways of the area in which his premises have only recently been included. And again it is said that to exempt frontagers from contributing to the cost of a sewer until they actually effect a connection with it, is contrary to the public interest as tending to induce them to postpone effecting a connection as long as possible.

15. It will be apparent from the foregoing examination of the position that the task of framing a code which will reconcile all the numerous conflicting interests and avoid inflicting injustice in any of the very varied circumstances of individual property owners, is one of almost insuperable difficulty. The Committee are not satisfied that Section 62, of the Romford Act, either in its original form or as since amended, supplies an adequate solution, and they recognise the force of the criticisms to which it has been subjected. In the opinion of the Committee the case should be dealt with by the Legislature on broader lines which, while they may not be so exhaustive of all the possibilities, will provide a reasonable working system and will avoid may of the complications and controversial provisions with which the clauses hitherto framed bristle. It is worth while to make some sacrifice of ideal justice in order to secure intelligibility and precision in a matter where certainty as to their rights and duties on the part both of local authorities and of landowners and ratepayers is so eminently desirable. In leaving the branch of their remit which is concerned with Section 62 of the Romford Act the Committee refer to the specific recommendations on the subject which will be found at the end of this Report.

16. The Committee now pass to the consideration of Section 64 of the Romford Act. This section deals with an exceptional type

of case, but it is of the nature of a corollary to the principle embodied in Section 62. Under the powers conferred by Section 16 of the Public Health Act, 1975, a local authority may carry any sewer into, through or under any lands (if on the report of the surveyor it appears necessary). In the exercise of this power a local authority sometimes finds it necesary to lay a sewer through undeveloped land in order to reach the area or premises beyond, which the sewer is to serve. The owner of the undeveloped land traversed by the sewer in entitled to compensation for any damage thereby occasioned to his property. If a street (whether a private street or a highway repairable by the inhabitants at large) is subsequently formed on the line of the sewer, the owner will get the benefit of the sewer for any buildings which may be erected fronting the street. If no provision is made for his contributing to the cost of the sewer he will not only have received compensation in respect of the original construction of the sewer through his land but will also have, without any payment, the benefit of the sewer when it becomes serviceable to him. It was to meet this case that Section 64 of the Romford Act was designed and the Committee are of opinion that it is right that provision should be made to meet such cases. In reading Section 64 it is necessary to have also in mind Section 66 which provides that, where the local authority has to pay compensation in respect of the laying of a sewer through any land, there shall be set off against such compensation any enhancement of value conferred by the sewer upon the land which it traverses.

17. The scheme of Section 64 is to render recoverable by the local authority, in the case figured, a contribution from the landowner to the original cost of the sewer proportional to the frontage of his land upon the new street which overlies the sewer. In calculating the contribution to be exacted any sum deducted for enhancement in assessing the compensation paid to the landowner when the sewer was originally constructed is to be deducted from the contribution recoverable from him. While the general principle of the Section commends itself to the Committee they are of opinion that the method of working it out is quite indefensible. The machinery of the Private Streets Works Act, 1892, is again invoked but in order to make it applicable to such very different circumstances the provisions of the Act have been so mangled as to make the task of understanding what has actually been enacted almost impossible. The Committee were furnished with a copy of the Act of 1892 showing the alterations and adaptations which had been necessitated in order to make it available for the purposes of Section 64, as set out in the First Schedule to the Romford Act, and they venture to say that no worse example of legislation by reference and adaptation is to be found in the Statute Book.

18. In the opinion of the Committee the precedent of Section 64 having regard also to the provisions of Section 66 should not be followed (as it has been already in several Acts). In the first place the Committee do not think that on the original assessment of damage caused by the construction of the sewer any set off should be made in respect of the potential enhancement of the land due to the laying of the sewer. Such enhancement should be left to be paid for, if and when realised, by the landowner, in the contribution which the landowner will be called upon to make when his land comes to be developed and the sewer becomes serviceable to him. In the next place, if the recommendations of the Committee with respect to Section 62 are adopted, a much simpler code will be framed for the recovery of contributions from frontagers. This code should be made to apply with the necessary variations to the case figured in Section 64.

Recommendations

19.—*A. Section 62 of the Romford Act.*

The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of laying a sewer in a highway repairable by the inhabitants at large—

(1) the basis of the apportionment of the cost on each frontager should be the extent of his frontage on the highway:

(2) The cost to be apportioned should not exceed the average cost per lineal yard in the district of providing sewers in private streets under the Private Streets Works Act, 1892, any excess cost to be borne by the general rates:

(3) No part of the cost so ascertained and apportioned should be recoverable from any frontagers whose premises abut upon the highway at the date of the resolution by the local authority to construct the sewer unless and until a new building abutting on the highway is erected on such premises, and then only to an extent proportional to the extent of the frontage of the new building; no interest should be chargeable on the apportioned cost or any part thereof until it becomes so recoverable.

(4) The re-erection or alteration of an existing building should not be treated as the erection of a new building unless the size or character of the building is substantially altered.

(5) Frontagers whose existing buildings abut upon the highway at the date above specified should be permitted to connect their buildings with the sewer without thereby rendering exigible the share of the cost apportioned on their premises.

(6) If the construction of the sewer is not completed within two years after the date of the resolution, the resolution and all liabilities consequent thereon should lapse.

(7) All existing agreements entered into between the local authority and landowners should be safeguarded.

It may be necessary to make special provision for cases where the frontage is so small as to be quite out of proportion to the area which the sewer will serve.

B. Section 64 of the Romford Act.

The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of a sewer which has been laid in land over which a street (whether repairable by the inhabitants at large or not) is subsequently constructed—

(1) There should be no set off in respect of enhancement of value in assessing the compensation payable at the time of the original construction of the sewer to the owner of the land traversed by it.

(2) If and when a street is constructed over the sewer a contribution towards the cost of the sewer should be recoverable from the owners of the land or premises fronting on the street, such contribution to be calculated and exigible in the same manner and subject to the same conditions, with the necessary adaptations, as the Commitee have recommended with regard to contributions under Head A.

20. The Committee have not conceived it to be their duty, nor do they feel competent, to frame draft clauses on the lines of these recommendations and they recognise that in the process of actual drafting it may be necessary to adopt different phrasing and to introduce provisions to render the scheme more complete, but they are of opinion that the principles which they have indicated in their recommendations are those upon which future legislation should proceed.

17th June, 1936.

LORDS AND MEMBERS PRESENT

AND

MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

DIE MERCURII, 13° MAII, 1936.

Present:

Earl of Onslow.	Captain Bourne.
Lord O'Hagan.	Mr. Cape.
Lord Macmillan.	Sir Henry Cautley.

The Order of Reference is read.

It is moved that the Earl of Onslow do take the Chair.

The same is agreed to.

It is moved that the Committee be an open one.

The same is agreed to.

The Course of proceedings is considered.

The Committees decide to hear Counsel on behalf of the parties who have applied to be heard before them.

Mr. F. J. Wrottesley, K.C., and Mr. F. N. Keen, appear as Counsel on behalf of—

The Freeholders' Society.

The Central Landowners' Association.

The National Federation of Property Owners' Associations.

The Chartered Surveyors' Institution.

The Land Agents' Society.

The Incorporated Society of Auctioneers and Landed Property Agents.

The House Builders' Association of Great Britain.

The Ecclesiastical Commissioners.

Messrs. Lewin Gregory Torr Durnford & Co. and Messrs. Martin & Co. appear as Agents.

Mr. Tyldesley Jones and Mr. Maurice Fitzgerald appear on behalf of the Association of Municipal Corporations and the Urban District Councils Association.

Mr. E. J. Maude and Mr. W. A. Ross representing the Ministry of Health attend the Committee.

Mr. Tyldesley Jones is heard to address the Committee on behalf of the Associations of Local Authorities.

Mr. Wrottesley is heard to address the Committee on behalf of the Associations of Landowners.

Ordered, That the Committee be adjourned to Wednesday next at half-past ten o'clock.

DIE MERCURII, 20° MAII, 1936.

Present:

Earl of Onslow.	Captain Bourne.
Lord O'Hagan.	Mr. Cape.
Lord Macmillan.	Sir Henry Cautley.

The EARL of ONSLOW in the Chair.

The Order of Adjournment is read.

The proceedings of Wednesday last are read.

Mr. F. J. Wrottesley, K.C., is further heard on behalf of the landowners.

Ordered, That the Committee be adjourned to Wednesday, the 17th of June next, at half-past ten o'clock.

DIE MERCURII, 17° JUNII, 1936.

Present:

Earl of Onslow.	Captain Bourne.
Lord O'Hagan.	Mr. Cape.
Lord Macmillan.	Sir Henry Cautley.

The EARL of ONSLOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The following draft Report is laid before the Committee by the Lord in the Chair:—

1. The Order of Reference directs the Committee—

> "To consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontages to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills."

2. The Committee met on 13th and 20th May, 1936, when counsel were heard on behalf of (1) The Association of Municipal Corporations and the Urban Districts Councils Association and (2) a number of Associations representative of the landowning interest. The Committee also had before them Memoranda prepared on behalf of these parties. On the latter date Mr. E. J. Maude of the Ministry of Health, at the invitation of the Committee, gave evidence in explanation of a Memorandum which the Ministry had submitted with regard to Section 62 of the Romford Act. The Committee are indebted to the Ministry and to the parties for the assistance thus afforded. On 17th June, 1936, the Committee met for the purpose of private discussion, when the present Report was agreed upon.

3. Under the existing general law, stated broadly, when a sewer is constructed by the local authority in a street, the right of the local authority to recover contributions to its cost from the frontages depends upon whether the street is (1) a highway repairable by the inhabitants at large or (2) a private street not so repairable.

If the street is a highway repairable by the inhabitants at large the local authority cannot recover from the frontages any part of the cost of the sewer which they have constructed.

If the street is a private street not so repairable the local authority may recover the cost of the sewer from the frontages under one or other of two enactments, viz.: the Public Health Act, 1875, Section 150, or the Private Street Works Act, 1892. The latter Act is adoptive and when in force excludes resort to Section 150 of the Public Health Act, 1875, which it has to a large extent superseded in practice by reason of its more complete and detailed provisions.

4. There has been no serious complaint as to the working of either Section 150 of the Public Health Act, 1875, or the Private Street Works Act, 1892, in the case of private streets. Where land is being developed for building purposes and streets are formed to provide access to the buildings in course of erection it is recognised as equitable that, if the local authority constructs sewers in these streets to serve the needs of the buildings abutting upon them, the frontages should be called upon to meet the cost of such sewers. Liability and benefit are in such circumstances reasonably commensurate; the sewer presumably is of no larger dimensions than the buildings fronting the street require for the disposal of their sewage and the frontage basis of apportionment of the cost provides a fair measure of contribution.

5. The problem with regard to highways repairable by the inhabitants at large is quite different; and it is with this problem alone that the Committee are concerned under their terms of reference. The local authority has a general duty under Section 15 of the Public Health Act, 1875, to "cause to be made such sewers as may be necessary for effectually draining their district", but this does not impose any liability on the authority to provide sewers in anticipation of the future requirements of their district or so as to enable a landowner to develop his land for building purposes. Consequently when the owner of land fronting on a highway proposes to develop it for building purposes and desires that it should be equipped with a sewerage system he cannot require the local authority to lay down a sewer in the highway for his use. But as he must provide some means of sewage disposal for his houses and is naturally averse from installing cesspools which may subsequently have to be scrapped and which are also unattractive to purchasers, resort is had to a practice which has grown up whereby the local authority agrees to construct the requisite sewers on the landowner entering into a voluntary agreement to contribute to the cost. From the landowner's point of view this is quite a satisfactory solution of the difficulty as he contributes only to the cost of the sewers so far as serving the land which he is developing. It is less satisfactory from the point of view of the local authority which may have to construct a sewer in the highway for a considerable distance in order to reach the contributor's land and may be unable to recover any part of the cost of so doing from other landowners fronting on the portion of the highway so traversed, who may nevertheless benefit by the presence of the sewer if and when they in turn come to develop their land for building purposes.

6. It is plainly undesirable in the public interest that lands fronting on a highway should be developed for building purposes without adequate sewerage; the landowner developing his land desires the provision of a sewer in the

highway so as to avoid the cost of cesspools and at the same time to improve the value of his buildings; yet there is no statutory means whereby the local authority, if it provides a sewer, can recover the cost of it from those who benefit by it. The local authority is naturally disinclined to provide sewers at the cost of the community for the benefit of individuals. Hence the resort to the system of voluntary contributions, which, as has been shown, provides only a very imperfect solution of the difficulty.

7. The problem has become acute in recent times through a number of associated causes and perhaps chiefly—(1) the construction of a large number of new highways to carry the increasing motor traffic; and (2) the great activity in the building trade, particularly on the outskirts of the larger centres of population. By the new highways fresh land is opened up and rendered accessible, building operations are stimulated by the prospect of profit, and the sewerage problem at once emerges. The Committee are satisfied, and indeed the parties before them were agreed, that some solution of this problem must be sought which on the one hand will encourage local authorities to provide the required sewers and on the other hand will ensure a reasonable contribution to the cost from those who benefit by them.

8. It is obvious that the problem as affecting highways, and particularly new highways driven through previously inaccessible land, is quite different from the problem as affecting private streets which has been satisfactorily met by the existing legislation of 1875 and 1892. In the case of private streets the unit is relatively small; private streets are seldom of great length; the houses generally adjoin each other; the sewerage facilities to be provided are on a modest scale suited to the requirements of the street to be served; and private streets are usually so constructed that they can be opened up for the laying of a sewer at moderate cost. In such a case the apportionment of cost according to frontage provides a reasonably equitable measure of contribution. Highways, on the other hand, may be of indefinite length; they may pass through land in process of being developed or about to be developed and also through land that may not be developed for years if ever; the sewer which it may be necessary to construct may be of dimensions and at a depth quite out of relation to the requirements of a particular group of frontagers, for it may have to serve distant communities; and the modern methods of highway construction involve the provision of a strongly built surface which it is costly to break open for the insertion of sewers. Thus cost and benefit may become widely divorced and the frontage basis of allocation prove quite inequitable.

9. It was with the object of meeting this situation that Section 62 of the Romford Act was devised. The expedient there adopted is to apply to highways the provisions of the Private Streets Works Act, 1892, with modifications. Broadly speaking, the Section empowers the local authority, if it decides that a sewer should be constructed in a highway and that its construction will increase the value of the premises fronting it, to apportion the cost among the frontagers and recover from each his proportion according to the extent of his frontage. Section 10 of the 1892 Act, which is incorporated in Section 62 of the Romford Act, empowers the local authority to adopt some other method of apportioning cost than by frontage and, if they think just, to have regard, in settling the apportionment, to the degree of benefit to be derived by any premises from the works and to the amount and value of any work already done by the owners or occupiers of the premises. But this is so entirely discretionary on the part of the local authority as to be scarcely satisfactory to the landowners affected. The owner may object to the provisional apportionment upon him on the grounds set out under five of the six heads in Section 7 of the 1892 Act (which in-

clude the objection that the proposed works are unreasonable or the estimated expenses excessive), but two new grounds of objection are also made available to him, viz.:

"(*g*) That the proposed works will not increase the value of any premises of the objector;

"(*h*) That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived from such premises from the proposed works."

There is also a proviso that no expenses apportioned against agricultural land shall be recoverable or interest thereon chargeable until the land ceases to be agricultural.

10. This enactment has been subjected to considerable adverse criticism. It labours under the defect always attendant on the attempt to apply legislation designed to meet one class of cases to a quite different class of cases and then endeavouring to remove the consequent anomalies by adding a series of qualifications. Among the grounds of criticism of Section 62 the most salient are—that it places on the owner the burden of establishing by formal proceedings that the sewer will not increase the value of his premises, or that the cost to him is in excess of the benefit to be derived by him, both highly controversial topics; that the definition of agricultural land (see Section 2 (2) of the Rating and Valuation Apportionment Act, 1928) affords insufficient protection; that while the highway may pass through land which is in course of being or is about to be developed, it will probably also pass through land which the owner has no intention of developing and which does not need the sewer but yet which is not technically agricultural; that while the presence of a sewer in an adjoining highway may add potentially to the value of undeveloped land that potentiality may never be realised owing to the land never being developed, yet payment may be exacted in respect of the alleged benefit; that the sewer may be constructed of dimensions and laid at a depth quite inappropriate to the particular frontagers' actual or possible requirements; that the cost of construction of the sewer may be greatly enhanced by the fact that the highway which has to be opened up has been built to carry heavy traffic in which the frontager as no interest.

11. Two other criticisms of an economic character have been advanced against Section 62 of the Romford Act. In the first place it is said to be unjust to a purchaser who has bought land fronting on the highway in reliance on the existing law which absolves him from liability to be called upon to contribute to the cost of any sewer which the local authority may construct in the highway. In the second place it is said that it is unjust that a ratepayer who in his past payments of rates has contributed to the cost of sewers laid by the local authority at the general expense in other highways, whereby other ratepayers have benefited, should find himself called upon to bear individually the cost of the construction of a sewer in his own highway.

12. On these and other grounds it is accordingly maintained that Section 62 of the Romford Act in its endeavour to remedy an existing defect in the law has created new injustices. The Committee are satisfied that Section 62 as it stands, however commendable as a first essay to deal with a difficult situation, does not adequately or completely meet the case. This, indeed, has already been recognised by Parliament. Thus in Section 67 of the Rugby Corporation Act, 1933, which follows the precedent of Section 62 of the Romford Act, a further proviso is added to the effect that no expenses apportioned against premises which prior to five years before 1st January,

1928, were assessed to rates, are to be recoverable unless such premises have been in the interval or shall in future be so altered as to be new buildings. The Wigan Corporation Act, 1933, Section 60, also contained a similar addition to the Romford Section 62, but in this case fixed the critical date at 22nd November, 1932, only a year before.

13. In the Bill promoted by the Corporation of Coventry in the present Session of Parliament further modifications of the Romford Section 62 were proposed. In the Bill as amended in the House of Commons Clause 50, while reproducing generally the Romford Section 62, gives the frontager a right to object to a provisional apportionment against him on the new ground—

> "(i) That the sewer is of greater capacity than is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer is to be constructed or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street, regard being had to the capacity requisite for the surface-water drainage of the street or part of a street."

The clause also contains a proviso inter alia exempting premises which were subject to rates before 27th November, 1935, unless and until altered so as to be new buildings; and providing that no apportioned expenses are to be recoverable from any frontages until they actually connect their premises with the sewer.

14. These emendations have in turn been the subject of further criticisms. Thus it is said that, owing to the many recent alterations in the areas of local authorities, a ratepayer may not in face have made any payments in the past towards the construction of sewers in the highways of the area in which his premises have only recently been included. And again it is said that to exempt frontages from contributing to the cost of a sewer until they actually effect a connection with it, is contrary to the public interest as tending to induce them to postpone effecting a connection as long as possible.

15. It will be apparent from the foregoing examination of the position that the task of framing a code which will reconcile all the numerous conflicting interests and avoid inflicting injustice in any of the very varied circumstances of individual property owners, is one of almost insuperable difficulty. The Committee are not satisfied that Section 62, of the Romford Act, either in its original form or as since amended, supplies an adequate solution, and they recognise the force of the criticisms to which it has been subjected. In the opinion of the Committee the case should be dealt with by the Legislature on broader lines which, while they may not be so exhaustive of all the possibilities, will provide a reasonable working system and will avoid many of the complications and controversial provisions with which the clauses hitherto framed bristle. It is worth while to make some sacrifice of ideal justice in order to secure intelligibility and precision in a matter where certainty as to their rights and duties on the part both of local authorities and of landowners and ratepayers is so eminently desirable. In leaving the branch of their remit which is concerned with Section 62 of the Romford Act the Committee refer to the specific recommendations on the subject which will be found at the end of this Report.

16. The Committee now pass to the consideration of Section 64 of the Romford Act. This section deals with an exceptional type of case, but it is of the nature of a corollary to the principle embodied in Section 62. Under the powers conferred by Section 16 of the Public Health Act 1875 a local authority may carry any sewer into, through or under any lands (if on the report of the surveyor it appears necessary). In the exercise of this power

a local authority sometimes finds it necessary to lay a sewer through undeveloped land in order to reach the area or premises beyond, which the sewer is to serve. The owner of the undeveloped land traversed by the sewer is entitled to compensation for any damage thereby occasioned to his property. If a street (whether a private street or a highway repairable by the inhabitants at large) is subsequently formed on the line of the sewer, the owner will get the benefit of the sewer for any buildings which may be erected fronting the street. If no provision is made for his contributing to the cost of the sewer he will not only have received compensation in respect of the original construction of the sewer through his land but will also have, without any payment, the benefit of the sewer when it becomes serviceable to him. It was to meet this case that Section 64 of the Romford Act was designed and the Committee are of opinion that it is right that provision should be made to meet such cases. In reading Section 64 it is necessary to have also in mind Section 66 which provides that, where the local authority has to pay compensation in respect of the laying of a sewer through any land, there shall be set off against such compensation any enhancement of value conferred by the sewer upon the land which it traverses.

17. The scheme of Section 64 is to render recoverable by the local authority, in the case figured, a contribution from the landowner to the original cost of the sewer proportional to the frontage of his land upon the new street which overlies the sewer. In calculating the contribution to be exacted any sum deducted for enhancement in assessing the compensation paid to the landowner when the sewer was originally constructed is to be deducted from the contribution recoverable from him. While the general principle of the Section commends itself to the Committee they are of opinion that the method of working it out is quite indefensible. The machinery of the Private Streets Works Act, 1892, is again invoked but in order to make it applicable to such very different circumstances the provisions of the Act have been so mangled as to make the task of understanding what has actually been enacted almost inextricable. The Committee were furnished with a copy of the Act of 1892 showing the alterations and adaptations which had been necessitated in order to make it available for the purposes of Section 64, as set out in the First Schedule to the Romford Act, and they venture to say that no worse example of legislation by reference and adaptation is to be found in the Statute Book.

18. In the opinion of the Committee the precedent of Section 64 having regard also to the provisions of Section 66 should not be followed (as it has been already in several Acts). In the first place the Committee do not think that on the original assessment of damage caused by the construction of the sewer any set off should be made in respect of the potential enhancement of the land due to the laying of the sewer. Such enhancement should be left to be paid for, if and when realised, by the landowner, in the contribution which the landowner will be called upon to make when his land comes to be developed and the sewer becomes serviceable to him. In the next place, if the recommendations of the Committee with respect to Section 62 are adopted, a much simpler code will be framed for the recovery of contributions from frontagers. This code should be made to apply with the necessary variations to the case figured in Section 64.

Recommendations.

A. Section 62 of the Romford Act.

19. The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of laying a sewer in a highway repairable by the inhabitants at large—

(1) The basis of the apportionment of the cost on each frontager should be the extent of his frontage on the highway:

(2) The cost to be apportioned should not exceed the average cost per lineal yard in the district of providing sewers in private streets under the Private Streets Works Act, 1892, any excess cost to be borne by the general rates; or, alternatively, a sum per lineal yard should be specified in the Bill, as suggested by the Ministry of Health.

(3) No part of the cost so ascertained and apportioned should be recoverable from any frontagers whose premises abut upon the highway at the date of the publication by the local authority of its intention to promote such a Bill unless and until a new building abutting on the highway is erected on such premises, and then only to an extent proportional to the extent of the frontage of the new building; no interest should be chargeable on the apportioned cost or any part thereof until it becomes so recoverable.

(4) The re-erection or alteration of an existing building should not be treated as the erection of a new building unless the size or character of the building is substantially altered.

(5) Frontagers whose existing buildings abut upon the highway at the date above specified should be permitted to connect their buildings with the sewer without thereby rendering exigible the share of the cost apportioned on their premises.

(6) All existing agreements entered into between the local authority and landowners should be safeguarded.

It may be necessary to make special provision for cases where the frontage is so small as to be quite out of proportion to the area which the sewer will serve.

B. Section 64 of the Romford Act.

The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of a sewer which has been laid in land over which a street (whether repairable by the inhabitants at large or not) is subsequently constructed—

(1) There should be no set off in respect of enhancement of value in assessing the compensation payable at the time of the original construction of the sewer to the owner of the land traversed by it.

(2) If and when a street is constructed over the sewer a contribution towards the cost of the sewer should be recoverable from the owners of the land or premises fronting on the street, such contribution to be calculated and exigible in the same manner and subject to the same conditions, with the necessary adaptations, as the Committee have recommended with regard to contributions under Head A.

20. The Committee have not conceived it to be their duty, nor do they feel competent, to frame draft clauses on the lines of these recommendations and they recognise that in the process of actual drafting it may be necessary to adopt different phrasing and to introduce provisions to render the scheme more complete, but they are of opinion that the principles which they have indicated in their recommendations are those upon which future legislation should proceed.

It is moved by the Earl of Onslow that the said draft Report be considered.

The same is agreed to.

Paragraphs 1, 2, 3, 4, 5 and 6 are read and agreed to without amendment.

Paragraph 7 is read.

It is moved by Captain Bourne after (" traffic ") to leave out (" and ") and after (" population ") to insert (" and (3) the recent extensive alterations in the boundaries of the districts of Local Authorities ").

The same is agreed to.

Paragraph 7 is again read and agreed to as amended.

Paragraphs 8, 9, 10 and 11 are read and agreed to without amendment.

Paragraph 12 is read.

It is moved by the Earl of Onslow that paragraph 12 be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Paragraph 12 is again read and agreed to without amendment.

Paragraph 13 is read and agreed to without amendment.

Paragraph 14 is read and agreed to without amendment.

Paragraph 15 is read.

It is moved by the Earl of Onslow that paragraph 15 be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Paragraph 15 is again read and agreed to without amendment.

Paragraph 16 is read and agreed to without amendment.

Paragraph 17 is read.

It is moved by the Earl of Onslow that paragraph 17 be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Paragraph 17 is again read and agreed to without amendment.

Paragraph 18 is read and agreed to without amendment.

Paragraph 19 is read.

It is moved by Captain Bourne to leave out in subsection (2) the words (" or, alternatively, a sum per lineal yard should be specified in the Bill, as suggested by the Ministry of Health ").

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Sir Henry Cautley.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Mr. Cape.	

The said amendment is agreed to.

Subsection (2) as amended is agreed to.

It is moved by Captain Bourne to leave out in subsection (3) the words (" publication by the local authority of its intention to promote such a Bill ") and insert (" resolution by the local authority to construct the sewer ").

The same is objected to.

On question?—

Contents. (4)	Not Contents. (2)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	Sir Henry Cautley.
Lord Macmillan.	
Captain Bourne.	

The said amendment is agreed to.

It is moved by the Earl of Onslow that subsection (3) as amended be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Subsection (3) as amended is agreed to.

It is moved by the Earl of Onslow, after subsection (5), to insert the following subsection (" (6) If the construction of the sewer is not completed within two years after the date of the resolution, the resolution and all liabilities consequent thereon should lapse ").

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

New subsection (6) is agreed to without amendment.

It is moved by the Earl of Onslow that subsection (1) of Part B be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Subsection (1) of Part B is agreed to without amendment.

It is moved by the Earl of Onslow that subsection (2) of Part B be agreed to.

The same is objected to.

On question?—

Contents. (5)	Not Contents. (1)
Earl of Onslow.	Mr. Cape.
Lord O'Hagan.	
Lord Macmillan.	
Captain Bourne.	
Sir Henry Cautley.	

The said motion is agreed to.

Subsection (2) of Part B is agreed to without amendment.

Paragraph 19 is again read and agreed to as amended.

Paragraph 20 is read.

It is moved by Mr. Cape to leave out the words ("but they are of opinion that the principles which they have indicated in their recommendations are those upon which future legislation should proceed").

The same is objected to.

On question?—

Contents. (1)	Not Contents. (5)
Mr. Cape.	Earl of Onslow.
	Lord O'Hagan.
	Lord Macmillan.
	Captain Bourne.
	Sir Henry Cautley.

The proposed amendment is disagreed to.

Paragraph 20 is again read and agreed to without amendment.

The draft Report is again read and agreed to as amended.

Ordered, That the Lord in the Chair do make the Report to the House of Lords, and that Captain Bourne do make the Report to the House of Commons together with the Minutes of Evidence, and do apply to the House of Commons for leave to report the Minutes of Speeches delivered by Counsel.

Ordered, That the Committee be adjourned.

MINUTES OF SPEECHES DELIVERED BY COUNSEL

DIE MERCURII 13°, MAII, 1936.

Present:

Earl of Onslow.	Captain Bourne.
Lord O'Hagan.	Mr. Cape.
Lord Macmillan.	Sir Henry Cautley.

The EARL of ONSLOW in the Chair.

MR. W. E. TYLDESLEY JONES, K.C., and Mr. MAURICE FITZGERALD appear as Counsel on behalf of the Association of Municipal Corporations and the Urban District Councils Association.

Messrs. SHARPE, PRITCHARD & Co. and Messrs. LEES & Co. appear as Agents.

Mr. F. J. WROTTESLEY, K.C., and Mr. F. N. KEEN appear as Counsel on behalf of The Freeholders Society, The Central Landowners Association, The National Federation of Property Owners Associations, The Chartered Surveyors' Institution, The Land Agents Society, The Incorporated Society of Auctioneers and Landed Property Agents, The House Builders Association of Great Britain, and The Ecclesiastical Commissioners.

Messrs. LEWIN, GREGORY, TORR, DURNFORD & Co., and Messrs. MARTIN & Co. appear as Agents.

Chairman.] Before we actually start I want to tell learned Counsel on both sides that certain Members of the Committee are landowners and possibly might be affected by any decision that might be arrived at by the Committee and possibly carried out by Parliament subsequently. Therefore, I think we ought to take the usual course of disclosing interests, and ask the views of the parties as to whether they would wish to have an adjournment or wish to go on.

Mr. *Tyldesley Jones.*] Speaking for the Municipal Corporations Association and the Urban District Councils Association, remembering that your Lordship and the members of the Committee may be not only landowners but ratepayers, we waive any objection.

Mr. *Wrottesley.*] We take the view that landowning is such a common habit in this country either on a large or a small scale that it would be rather an advantage to have them amongst the Members of the Committee.

Chairman.] Then there is no objection?

Mr. *Tyldesley Jones.*] No.

Chairman.] We have decided that the public will be admitted and that copies of the evidence may be given to the parties.

Mr. *Tyldesley Jones.*] My Lord, so far as the procedure is concerned I appear with my learned friend Mr. Maurice Fitzgerald for the Association of Municipal Corporations and the Urban District Councils Association. In as much as we are here really in support of Clauses which have been inserted in Private Bills altering the general law, I imagine it is rather incumbent upon me to justify the exceptions to the general law which have been created by the sections which have been referred to your Lordship's Committee.

It is not necessary for me to remind your Lordship of the terms of the Resolution which was passed by your Lordship's House and agreed to by the House of Commons. And I may just remind you that what it did provide was that this Committee was: "To consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills." Therefore, what I propose to do is this. I thought I would call your Lordship's attention to the general law as it exists to-day, referring

you to the relevant sections of the Public Health Act. I can do it quite shortly, sum that up, explain how they have been interpreted by the Corporations, and then draw the Committee's attention at once to these two sections, point out the alterations they made, and then tell you of the subsequent provisions which have been inserted in other Acts in which further modifications have been made—modifications of the general law and modifications of the two sections of the Romford Act. I think that would be the most convenient course, and I can do it quite shortly.

The matter of provision of sewers and expense of sewers is dealt with by the Public Health Acts.

Lord *Macmillan.*] You are going to give us the existing general law?

Mr. *Tyldesley Jones.*] Yes. Section 13 of the Public Health Act, 1875, vests in the local authority all existing and future sewers in the district of the authority. That is enough for Section 13. Section 15 is important; it is this: "Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act." That is the Section which is of the greatest importance in this matter at the moment. The obligation is imposed by Section 15 on the local authority to provide: "such sewers as may be necessary for effectually draining their district for the purposes of this Act". Under that Section the Courts have held this: A local authority are not by that Section under any obligation to provide sewers for the prospective development of a building estate. They are not required to provide sewers in anticipation of a building estate. The Committee will see how that goes to the root of this question. If you have an estate which a landowner wants to develop, he cannot go to the local authority and say: "I am going to build so many houses there; provide sewers in anticipation of houses coming". He cannot do that. It has also been held that under that section there is no obligation to provide sewers for, say, half a dozen houses. There must be such a development in the district as to render a sewerage system reasonably necessary for that part of the district. Under Section 16 there is the power to: "carry any sewer through across or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar" etc., "and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into through or under any lands whatsoever within their district". Under that Section your Lordship will remember that a local authority can construct a sewer in a public street, in a private street, or, if the Surveyor makes the report referred to in the section, through any private lands. "They may also" says the Section "(subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage". If a landowner has a sewer carried through his land under that section, he is entitled to compensation. That is under Section 308 of the Public Health Act as amended by the Acquisition of Lands Act, 1919. He is entitled to have compensation for the laying of the sewer through his land, any detriment he suffers through having his land taken up by the sewer, and he is now entitled under the Act of 1919 to have that compensation settled by an Official Arbitrator. That is the obligation under the Act of 1875 on a local authority to construct sewers. If a local authority do not perform their obligation under that section in a matter of construction of sewers, there is a remedy by appealing or referring the matter—complaining—to the Ministry of Health either under the Act of 1875 in the case of a county borough, and now, in the case of other local authorities, under the Local Government Act, 1929.

I now come to some some sections which deal with the rights of an owner of property to drain into sewers. Under Section 21: "The owner or occupier of any premises within the district of a local authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications." So that your Lordship sees that directly a sewer is made, every landowner or houseowner has a right to

connect his drains to that sewer. Then Section 22 gives a right to owners and occupiers outside the district of a local authority to make connection with drains on agreed terms. I do not think that is really material.

Now Section 23 is really important. This is the section which deals with the power of a local authority to enforce drainage of undrained houses. It is important to bear in mind exactly what the section provides, because it has sometimes been misunderstood or mis-stated: "Where any house within the district of a local authority is without a drain sufficient for effectual drainage, the local authority shall by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size"—and so on—"Provided"—I am missing out the next paragraph, which I do not think is material—"that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners." Now, my Lord, that section does not enable a local authority to say to a house owner: "You must connect your drains to a public sewer." The only power they have under that section is if a house is not effectually drained, and if it is effectually drained they cannot do anything under the section——

Chairman.] Who decides whether it is effectually drained?

Mr. *Tyldesley Jones.*] Under this it would be a Court of Summary Jurisdiction. If they find a house not effectually drained they can say: "Connect it to that sewer," if there is a sewer within 100 feet, but if there is no sewer then they can only require the house to be connected to a cesspool. But if you have a house now connected to a cesspool, the local authority cannot say: "You must give up that cesspool and must connect your house to a public sewer." That is a little important, as you will find when we come to consider the effect of the law as it stands to-day and the absence of all power, such as we are asking for, to compel landowners to contribute to the construction of new sewers where required. Section 25 prohibits the building of new houses in an Urban District unless drained to a sewer or cesspool, showing again that anybody in an Urban District having constructed a house anywhere, the local authority cannot say: "That new house is to be connected to a sewer." It can be connected to a cesspool. That is, again, subject to this, that if there is a sewer within 100 feet the local authority can say: "Connect the house to that sewer." Section 26 prohibits the erection of any building over a sewer; that, again, will be important later.

Now I go to Section 150, which is one of the sections which deals with the case of constructing new sewers in the case of estates being developed. The marginal note is "Power to compel paving etc., of private streets." It says: "Where any street within any urban district (not being a highway repairable by the inhabitants at large)" your Lordship will note those words—"or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled" etc., "or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, required them to sewer level pave" etc., "the same within a time to be specified in such notice. Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor"—such plans being to certain scale—"and in the case of a sewer, showing the depth of such sewer below the

surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice. If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses." In which case they are charged on the estate, under Section 257.

Chairman.] In fact that is the usual practice, is it not?

Mr. *Tyldesley Jones.*] Except where the later Act, the Private Street Works Act, has been adopted. There are two codes; there is this one in Section 150, which is considered to be rather out-of-date; there is the other code in the Act of 1929, which is an adoptive Act, and the local authority may adopt it or not.

Lord *Macmillan.*] Is it not important to keep in view that according to the general law there are two categories concerned from the point of view of sewerage, those which are made in streets which are repairable by the inhabitants at large, and those which are not, and that there is a different code applicable to these two?

Mr. *Tyldesley Jones.*] No, my Lord. I want to point out that Section 150, as your Lordship sees, is dealing with private streets.

Lord *Macmillan.*] Exactly.

Mr. *Tyldesley Jones.*] So is the other.

Lord *Macmillan.*] Yes, they are both dealing with private streets.

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] But there are the two categories?

Mr. *Tyldesley Jones.*] Yes, that is right. The position is this, if I may put the point shortly, now. Under either Section 150 or the Act of 1892, if an estate is developed and sewers have to be laid in streets that are not repairable by the inhabitants at large, the landowner can be compelled to pay. If, on the other hand, a sewer is laid for the purposes of his estate in a street which is repairable by the inhabitants at large, the landowner cannot be required to pay a penny.

Lord *Macmillan.*] And then with regard to those that are not repairable by the inhabitants at large, there are two existing systems, one in the Act of 1875, Section 150, and the other in the more recent code of the Private Street Works Act.

Mr. *Tyldesley Jones.*] That is so, and, of course, it is common knowledge that it is intended to introduce a new code which will sweep away the two.

Chairman.] What Section is that of the Act of 1892?

Mr. *Tyldesley Jones.*] The whole Act. I am afraid I shall have to draw your Lordship's attention, roughly, to the scheme of the Act. You will see that the Act of 1892 defines "street" in such a way as to exclude streets repairable by the inhabitants at large. It is in Section 5 of the Act of 1892: "The expression 'street' means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large."

Sir *Henry Cautley.*] Are we concerned with sewers under roads that are not repairable by the inhabitants at large?

Mr. *Tyldesley Jones.*] No.

Sir *Henry Cautley.*] We are only concerned with sewers under public roads repairable by the inhabitants at large?

Mr. *Tyldesley Jones.*] Yes. The point is that what these Clauses do is, they do apply to roads which are repairable by the inhabitants at large the same provisions with the necessary adaptations.

Sir *Henry Cautley.*] I am aware of that.

Mr. *Tyldesley Jones.*] The law as regards the laying of sewers under what I will call private streets if I may and the cost of them is satisfactory to local authorities, and what we are here to say is that it is not reasonable to say that the landowners—estate developers, they are, really—should get the benefit

of sewers laid in public roads for the benefit of their estates without contributing anything towards the cost of the sewers. Directly the sewer is laid, up goes the value of the estate; it has a building value far in excess of what it had before, and the landowners, who get that additional benefit by reason of the construction of the sewer, ought to pay a contribution towards the cost of the sewer, and it ought not to be borne by the general body of ratepayers, for the benefit of the particular landowner.

Lord *Macmillan.*] It is a proposal, really, to assimilate the two classes of roads, in certain cases and under certain safeguards?

Mr. *Tyldesley Jones.*] It is.

Mr. *Wrottesley.*] I think my friend's answer to Sir Henry Cautley was only true of Section 62, the first clause with which we are dealing.

Mr. *Tyldesley Jones.*] My friend is quite right. There are two sections in the Romford Act, the first one dealing with the laying of sewers in public roads. The second one—my friend is quite right—does deal with the cost of a sewer laid in a private street but through land which is subsequently converted into a street; it may be public or private.

Mr. *Wrottesley.*] Yes, that is right.

Mr. *Tyldesley Jones.*] That will emerge later. I agree that my learned friend is quite right. That is the point really. One section in the Romford Act, Section 62, assimilates the law as regards the cost of the construction of sewers in public streets to that of private streets. The position is that it is felt in practice so unreasonable that the general body of ratepayers should bear the expense of constructing a sewer for the benefit of an estate about to be developed, that the practice of the Ministry of Health is this: If a local authority apply to the Ministry for their sanction to a loan for sewerage works, constructing new sewers, and the Ministry find that the sewer will be available for an estate about to be developed, they say to the local authority: "Have you got an agreement from the landowners to contribute? If you have not, go and ask them for it". And the practice in all cases is now for the local authority to go to the landowners and say: "We will lay a sewer there if you contribute", and the landowners do, generally, contribute.

Lord *Macmillan.*] What is the power of the local authority to receive contributions in aid of the discharge of their duties?—Is it a charitable contribution?

Mr. *Tyldesley Jones.*] I do not think so. I do not think there is any difficulty about that. I should rather want notice of that question, if I am to cite authority upon it.

Chairman.] Would not it be this, that the landowner wants to develop and he goes to the local authority and says: "Will you make sewers?" and they say: "No, not until you do develop"?

Mr. *Tyldesley Jones*: Yes.

Chairman.] Until they make the sewers he cannot develop, and thereby he is forced to contribute?

Mr. *Tyldesley Jones.*] That is how it works, but Lord Macmillan's point is, what is the right of the local authority to receive a contribution?

Lord *Macmillan.*] Yes.

Mr. *Tyldesley Jones.*] I do not think there is any difficulty about that in law.

Lord *Macmillan.*] As you know, there is a difficulty about certain trustees for certain purposes receiving moneys unless they have power to receive additional moneys to those which they are entitled to at law.

Mr. *Tyldesley Jones.*] There are subsequent difficulties as to how they are to dispose of these moneys.

Lord *Macmillan.*] The contribution is really more of a levy than a contribution. A contribution suggests a voluntary payment, but this is paid under suasion.

Mr. *Tyldesley Jones.*] Your Lordship sees why I was insisting upon the position under the general law. The local authority cannot be required to lay the sewers; therefore, there is no statutory obligation. The landowner says: "Will you lay a sewer? I want to develop the estate". The local authority cannot be compelled to and there is no statutory obligation to do that. That is why I referred to the decisions. But the local authority say: "We are prepared to lay that sewer in anticipation of your development and in excess of our statutory obligation, if you, for whose estate it is going to be laid, will make a contribution", and that is what, in fact, happens.

Sir *Henry Cautley.*] If the landowner did build his houses, the local authority would then be bound to lay a sewer, would they not? But they will not allow

him to build his houses; they will not pass his plans. Is not that it?

Mr. *Tyldesley Jones.*] Here is the difficulty. A landowner can build his houses if he likes, but his plans have to make provision for the disposal of the sewage of the house, and if there is no sewer within 100 feet he is entitled to do what he does in fact, show on his plans a series of cesspools, and drain his houses to the cesspools.

Sir *Henry Cautley.*] So the local authority enforce contributions by saying: "You cannot build these houses because there is no drainage"?

Mr. *Tyldesley Jones.*] The local authority says to him: "You cannot build those houses unless you drain them either to a sewer which is non-existent or to a cesspool which you will have to construct" and the expense of constructing those cesspools is generally, I understand, as great as, if not greater than, the contribution to a sewer.

Lord *Macmillan.*] They can say to the landowner: "And if you prefer an adequate sewerage system, then you must make a contribution". My difficulty is a little antecedent, how the local authority have any power to do a thing which they are not under duty to do? Do they volunteer to put this sewer down in anticipation?

Mr. *Tyldesley Jones.*] Yes, there is no doubt at all that under the Public Health Act, they can lay a sewer even though they cannot be compelled to lay that particular sewer. They have a statutory power and a more limited statutory obligation.

Lord *Macmillan.*] Then they are in a position to say: "If you want sewers in anticipation and prefer that to putting in cesspools yourselves, then we will not do that unless you make a contribution"; and, therefore, in a sense it is an enforced method, but it gives a choice to the landowner, no doubt.

Mr. *Tyldesley Jones.*] This is the difficulty. If you have an estate *there* which is about to be developed and a sewer is required, the landowner *here* will often be willing to contribute—this is actually found in practice—to the construction of a sewer to drain his property, but that sewer will have to make a connection with the existing sewerage system of the local authority so as to pass the property of another landowner which will benefit? The local authority are being pressed by the first landowner, and are willing to lay the sewer if they get contributions. Landowner No. 1 says: "I will contribute" but Landowner No. 2 says: "No, I will not". What happens? They cannot compel landowner No. 2 to contribute. They are pressed by landowner No. 1 to lay the sewer; they want to see that development, and they are, therefore, compelled to lay their sewer to drain the property of landowner No. 1 past the property of landowner No. 2 who refused to make a contribution, and whose property is immediately enhanced in value by the construction of a sewer to which he refused to contribute a farthing.

Captain *Bourne.*] Surely the Romford clause goes a great deal beyond estates which are about to be developed? It also deals with all cases where there are houses in the district of a local authority which have been built at some period when there were no sewers?

Mr. *Tyldesley Jones.*] I quite agree. May I say, I want, first of all, to show why a clause of this sort is necessary. I agree one has to look at the clause with some care to see whether it may hit other cases unfairly. I quite assent to that, but if I may put in broad outline what is the case for such a clause, then I am going to show you that Committees who have had to consider this matter have been pressed with the difficulties or the alleged hardships in some cases and have inserted in that clause various provisions which are designed to meet those kinds of cases. That is really the necessity for this clause. The landowners, as a rule, who are about to develop estates are only too anxious to contribute to the cost of sewers laid by the local authority rather than be compelled to go in for cesspools themselves. Financially it is to their advantage, but it is the landowner who will not contribute but whose property is enhanced by the expenditure of money at the expense of his neighbouring landowner and the general body of ratepayers, who is the person who in our view requires to be roped in by means of this clause.

Sir *Henry Cautley.*] The last sentence does not mean you are seeking to put a main sewer on the same footing as a private sewer under the Private Street Works Act?

Mr. *Tyldesley Jones.*] No.

Sir *Henry Cautley.*] Because you say that it has to pass the estates of other landowners and, therefore, it will be much larger than the ordinary sewer put down under a street development, and you are seeking to put the whole cost on to the frontagers?

Mr. *Tyldesley Jones.*] No. May I say at once that that is one of the points that would create hardships, and a sub-clause has been put in to meet that point. May I say at once that we do not think that landowner B, who may have a sewer carried past his land of larger capacity than would be required otherwise, by reason of the fact that it is draining a large area beyond, ought to be required to pay except upon the basis of such size of sewer as would be required for the draining of the road in which his property is situated.

Lord *Macmillan.*] You speak of a contribution; how is the scale of contributions regulated?

Mr. *Tyldesley Jones.*] We have adopted the Private Street Works Act scale, and that is this: You apportoin it, first of all, according to frontage.

Lord *Macmillan.*] I am thinking of the voluntary contributions.

Mr. *Tyldesley Jones.*] That is a pure matter of agreement.

Lord *Macmillan.*] That is what I wanted to know. Is the landowner really at mercy as to the extent of his contribution?

Mr. *Tyldesley Jones.*] To some extent he is at mercy, and so is the adjoining landowner—everybody is, and the ratepayers.

Lord *Macmillan.*] That is the difference between something that you may charge according to a statutory scale, and something which is a matter of agreement, as my Lord in the Chair has said. It, of course, means higgling on the market.

Mr. *Tyldesley Jones.*] Of course, if it is left to a matter of agreement, if it is a case of higgling on the market, then the necessities of the parties may be used to their detriment.

Lord *Macmillan.*] Quite.

Chairman.] Your large estate on the right, we will say, is going to bring its large sewer past a small estate; you are going to assess the owner of the small estate simply for the amount which it would have cost him if there was no large estate beyond and for the size of the sewer to drain his small estate into the main sewer. Is that the method?

Mr. *Tyldesley Jones.*] Not quite that.

Chairman.] I want to be quite clear on that.

Mr. *Tyldesley Jones.*] Your Lordships have a bundle of Sections of Acts. This is a list which my learned friend's clients have been good enough to get out. It is headed "Public Sewers (Contributions by Frontagers) Joint Committee." If your Lordship will turn to page 8, you will find the Coventry Corporation Bill, 1935-36. I do not want you to trouble about that page, but if you will turn over to the next page, you will see paragraph (i). It is the second paragraph on page 9. This is one amongst the objections which the landowner who is sought to be charged can raise to the assessments sought to be made upon him. "That the sewer is of greater capacity that is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer is to be constructed, or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street regard being had to the capacity requisite for the surface-water drainage of the street or part of a street." You see that is a limitation which was inserted by a Committee of the House of Commons, who heard the opposition to this clause, to meet the very point that a landowner ought not to be required to pay his share on a larger scale of sewer because it is required for some area beyond.

Chairman.] This is described as a Bill; did not it become law?

Mr. *Tyldesley Jones.*] It is pending, this Session. May I say that the view taken by the local authorities and those who have been advising them, the Parliamentary agents advising them, was that the point was sufficiently covered by a decision in the Courts in the case of the Acton Urban District Council v. Watts. Lord Macmillan might like to have the reference to that case. It is reported in 67 Justice of the Peace, page 400. What was decided there is shortly stated in Lumley thus: "An authority would not be entitled to provide at the expense of the frontagers a larger sewer than the street requires in order to facilitate the drainage of other parts of the town, but they might construct an unnecessarily

large sewer provided they, themselves, bear the extra cost."

Lord *O'Hagan.*] That is the public authority?

Mr. *Tyldesley Jones.*] Yes. That is under the Private Street Works Act, 1892. Under that Act they cannot charge a frontager to a street except upon the basis of the cost of the sewer required for sewering that street. The view which the local authorities adopted in connection with these sections was that that decision would apply, and that it was not necessary to make any specific provision for it. In the Coventry case, however, the Committee put in this provision. I am bound to say that I have been looking at this point with some care, and I am not satisfied that the Acton decision would apply to the Romford clause, and my view—and I tell my clients this—is that a sub-clause such as was inserted by the Committee on the Coventry Bill is required.

Captain *Bourne.*] On that point, in the case of a private Bill when these clauses are brought up you not infrequently find that the position put in front of the Committee is that you have got a high road leading out of a borough or urban district, in which development either has taken place or is going to take place, and it is desirable in the interests of sanitation to sewer that High road?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] The effect, of course, may be that you want a fairly big sewer, because you may have to take it a very long distance.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] How do you think either the case you have just quoted to us or this new paragraph (i), which is, of course brand new, would apply to frontagers, let us say, fairly close to the old urban boundary, one end of the street where you had to have a sewer bigger than they would need for their development in order to get to somebody a little beyond? Would it be treated as being necessary to put a sewer of that size for the benefit of those close to the old boundary?

Mr. *Tyldesley Jones.*] If this sub-clause is inserted their liability would be based upon the cost of a sewer of the size requisite for the drainage of the street or part of the street in which the sewer is to be constructed or requisite for the drainage of the premises erected or to be erected fronting such street. Take the case of such a street as this; they have laid a large sewer in the street; it goes right away beyond to other streets; you have to find the cost of a notional sewer required to drain that street alone.

Captain *Bourne.*] Irrespective of the length of it? That is the point I wanted to get at?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] In your opinion, under this, what would happen if it is necessary to sewer say for a mile outside? What has hitherto been done? Such a case might very easily occur with modern development.

Mr. *Tyldesley Jones.*] The frontagers would be liable for a sewer at least.

Captain *Bourne.*] For a mile in length —their proportion of it?

Mr. *Tyldesley Jones.*] No, only if that sewer is in the same street and is of a size required for draining that street. That is true to-day of the law in respect of private streets.

Captain *Bourne.*] Yes, but if you take the development on a private estate, you very rarely get private streets of very great length. It is very difficult where you have a main road coming into an urban district; there is development along each side of that main road for a long distance there, and, therefore in order to sewer it properly you have got to sewer for a very great length, far greater than would, for instance, be needed if the development was in blocks.

Mr. *Tyldesley Jones.*] Is not the answer to that this? Just consider how development, in fact, takes place. If you have got a town there with a long road—take the Bath road—running out a long distance, development spreads out gradually; you do not get a development of two or three miles straight away without having sewers laid. What happens and will happen, of course, is this: You will get a certain amount developing if you like for half a mile or, it may be even a mile, from the town. Houses are built, the sewer is then laid for that mile and the cost of that mile will have to be apportioned. The notional length of sewer laid and the cost of the notional sewer must be limited to the distance which the sewer is being laid then, that is, one mile. What is the cost of the sewer upon which the owners can be charged? In my view that one mile only.

What would be the cost of a sewer to drain the houses in that mile? That is the test. When that is done, later on there will be a further extension of the sewer, when further development takes place. You will then have to deal with another length of sewer, and again in each case you do not deal with 3 or 4 miles of sewer. The development is gradual, and you will deal with the cost of each bit of sewer as it is put in; and in each case, under this subclause, in my view, the cost which will be apportioned between the landowners is the cost of a sewer which would be requisite, and no more than requisite, for draining the houses on the portion of the street with which you are dealing.

Chairman.] May I ask this question: Supposing you have your mile—we will say the town is *there*—and the end of the mile is *there*. There is a gentleman who has a small estate *here;* would he pay less than the man who had an estate *there?*

Mr. *Tyldesley Jones.*] He would pay according to his frontage, subject to another very important qualification.

Chairman.] Supposing the sewer cost £5,000, we will say, would the man at the end of the mile pay a larger proportion, because the sewer in order to drain the whole mile would be larger, than the man at the other end, near the town?

Mr. *Tyldesley Jones.*] No, they both pay in proportion to frontage, subject to another qualification, which I have not yet touched upon. There is another qualification which was introduced in the Romford Clause. If your Lordship would look at page 8 for a moment, among the objections which the landowner who is sought to be charged can make is this: "(*g*) that the proposed works will not increase the value of any premises of the objector." Take the case of a landowner close to the borders. He can say: "This will not increase the value of my property at all. I can reach a sewer there; it will not add ¼d. to the value of my property." If so, he can object and he gets off. Look at (*h*), another objection: "that the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived by such premises from the proposed works".

Your Lordship sees, therefore, that the scheme of the clause is: if a sewer is laid in a public road where there is no sewer to-day, and thereby adjoining property is enhanced in value, the property which is enhanced in value ought to bear its proportionate share of the cost of the sewer, scaling down the cost of the sewer, as I have explained just now, to the cost of a sewer required for draining that part of the road.

Lord *Macmillan.*] This seems to me to be arithmetically correct. Take the case of the mile covered with ribbon development on each side and, therefore, appropriate to be sewered; if you happen to be an owner fronting on that mile, then you will have to pay your frontagers' proportion of the total cost of a sewer one mile long?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] That sewer one mile long will have to be a very big sewer because it has got to accommodate the sewage of the whole of the inhabitants of that mile?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan*: If, on the other hand, you had the good fortune to be on a street which has only been developed for 100 or 200 yards, then you will only have to bear your proportion of that. It depends, therefore, on accident, whether your street happens to be a short or long one, whether you will have to pay a small or large sum, and yet the benefit to you may be exactly the same; you are getting your sewage carried away. Is not that arithmetically correct?

Mr. *Tyldesley Jones.*] That is true of every sewer in a private street.

Lord *Macmillan.*] It may be, but I wanted to bring out that it is true?

Mr. *Tyldesley Jones.*] Yes, it is quite true; but there is this, that if you have a street a mile long you have also a mile of frontagers. Now the cost of constructing a sewer of larger capacity does not go up in proportion to the length of the sewer. I am rather perhaps going into the region where I am not qualified to express an opinion, but one knows that the cost of a sewer laid in a long street does not go up in proportion to its length; and if the sewer is greater, you have a greater number of contributors, and I myself cannot see that it follows at all that the proportionate cost distributed amongst all the landowners would be greater in the case of

a long sewer than in the case of a short sewer.

Lord *Macmillan.*] The other point I wanted to raise is this. The remedy against a possible injustice is to be found in a power to object?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] It is one thing to make objections and another thing to have them sustained, as we all know.

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan*: The landowner is, therefore, put in this position, that if he thinks this apportionment is unjust to him in view of some circumstances which he may raise (and he may raise a limited number of quite important points) he has practically to litigate them. He has, first of all, to obtain a decision of the local authority upon them.

Mr. *Tyldesley Jones.*] First of all, there is a provisional apportionment made by the surveyor.

Lord *Macmillan.*] He may appeal against that to a Court of Summary Jurisdiction, and litigate that at his own cost?

Mr. *Tyldesley Jones.*] Certainly, but the Magistrate can give him costs, of course.

Lord *Macmillan.*] There are two ways of doing the thing; you may give a person a ground of objection, or you may legislate that you may not do a certain thing.

Mr. *Tyldesley Jones.*] Even if you legislate that one shall not do this, that, or the other thing, still some Court has to decide whether in fact one is doing it.

Lord *Macmillan.*] Certainly.

Sir *Henry Cautley.*] The same process takes place in the final apportionment—more litigation?

Mr. *Tyldesley Jones.*] That is so. The objections there being of a more limited character. Unfortunately, I suppose, the complexity of life to-day is such that these questions between the community and the private individual have to be determined in some way. You cannot lay down in an Act a cast-iron method which will automatically work. There has to be an application of a method laid down and an ultimate resort to a Ministry or a Court of Summary Jurisdiction.

Lord *Macmillan.*] I can see that in the case of a comparatively small land-owner with a cottage or something abutting on a street, his apportionment will probably be a comparatively small sum, if it is a small frontage, of possibly £15 to £20, which, to him, may mean a great deal. Having regard to the cost of litigating upon it and being advised upon it, because I imagine the unfortunate gentleman could not proceed without advice in view of the complexity of this code, he would say: "I would rather pay and give up such rights as I have."

Mr. *Tyldesley Jones.*] It is exactly the same in respect of a man who buys a house on an estate which is being developed by means of private roads.

Captain *Bourne.*] Is it the same?

Mr. *Tyldesley Jones.*] I submit that it is exactly the same.

Captain *Bourne.*] If you buy an estate which is being developed by private owners there is a certain code of law which applies to it?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] Therefore, you may work on the assumption that the code is identical. He may or may not know it, but it is up to him to find out what is the code under which he is buying. You put the Romford clause into operation on people who, when they bought, could not possibly have known it.

Mr. *Tyldesley Jones.*] Is not that a different point? I quite agree it has to be considered in a moment, but I venture to submit that it has not met my answer to Lord Macmillan's point. I quite agree that there is another point there to be considered. If I may say so, in answer to Lord Macmillan, it is quite true that if there is a difference of opinion about the apportionment of the expenses between the properties or whether a particular property ought to bear any part of the expenses, it has got to be determined. I do not see how you are going to avoid that unless you are going to say: "To prevent there being any hardship on people having to litigate, let us put the whole burden on the community." Then you get away from all this, but if you are going to do that, it is going to mean that the existing ratepayers and the small people—because the small people generally live in the inner part of the town—are going to be rated for the benefit of the people on the outskirts of the town.

Lord *O'Hagan.*] I suppose you will deal later on with the question of frontages. So far as I understand from what you have said, the proportionate charge on the local landowner in the case of property that is not being developed will be in proportion to the frontage?

Mr. *Tyldesley Jones.*] Yes.

Lord *O'Hagan.*] The question of frontage, as you know, is a difficult one. You may have a small frontage involving back land which might possibly make use of the sewer, where the property is of greater value and greater size in spite of the fact that the frontage on to the road may be very small?

Mr. *Tyldesley Jones.*] I shall deal with that when I draw attention to the provision of the Private Street Works Act, which has a provision on that point.

Lord *O'Hagan.*] There is the other point, with which you will no doubt deal, that whereas it may be to the interest of one individual landowner to develop in one particular way, it does not follow that there is a desire by the landowner of the other property which is passed by the sewer in the way you describe to develop or to develop on the same lines; and, therefore, the user of the sewer, or the necessity for it, may be quite a different proposition to that particular landowner.

Mr. *Tyldesley Jones.*] That, I submit, is covered by the two sub-clauses to which I have been drawing attention.

Lord *O'Hagan.*] Up to a point.

Mr. *Tyldesley Jones.*] I submit fully, as far as you can cover it. If the landowner whose property is passed by the sewer that has been constructed says: "This sewer is no good to me or is less good value to me because I propose to lay out my estate in a way different from that in which my neighbour lays it out," that is a matter which goes first to the question of whether there will be any increase in the value of his estate by reason of the sewer, and, secondly, the extent, both of which points are dealt with by these paragraphs to which I have been drawing attention.

Chairman.] The object being that he should pay for what he gets?

Mr. *Tyldesley Jones.*] Yes, that he shall pay for the benefit his estate gets.

Chairman.] And no more?

Mr. *Tyldesley Jones.*] And no more.

Lord *O'Hagan.*] Therefore, the amount he may have to pay is not in respect of the length of the sewer that passes his property, but the user that he may make of it.

Mr. *Tyldesley Jones.*] The primary liability is according to frontage, subject to the qualification—that is what I was trying to put—that he can show that that is unfair because he will not derive that amount of benefit. If he substantiates that, the amount of his proportion of the cost which he is able to exclude because he says it is in excess of the value his property would get, does not fall on the adjoining landowners. It has to fall upon the local authority, in other words, the general body of ratepayers.

Sir *Henry Cautley.*] To secure that he has to litigate?

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] That means, when you said that it would fall upon the local authority, you are adopting sub-clause (vi) of Coventry on page 10?

Mr. *Tyldesley Jones.*] That is in Romford. Certainly.

Mr. *Wrottesley.*] Is it in Romford?

Lord *Macmillan.*] It is in Coventry also.

Captain *Bourne.*] Sub-clause (vi) in Coventry is new, is it not? I do not remember having seen this?

Mr. *Tyldesley Jones.*] Do you mean on page 10?

Captain *Bourne.*] Yes.

Mr. *Tyldesley Jones.*] No, you will find that is in Romford, on page 3.

Captain *Bourne.*] I beg your pardon, yes.

Mr. *Wrottesley.*] It did not include all the same grounds; the grounds were different?

Mr. *Tyldesley Jones.*] Yes, that is right. The ambit of exclusion was less.

Lord *Macmillan.*] How is the extent of the benefit to be ascertained, because I could imagine nothing more elusive than the difficulty of assessing the amount of benefit which accrues?

Mr. *Tyldesley Jones.*] I suppose those very useful people, Surveyors, come in there.

Lord *Macmillan.*] Expensive people, I understand?

Mr. *Tyldesley Jones.*] I must not say anything against Surveyors, considering where I dined last night. These things, of course, sound dreadful, but, when one realises that this code, the Act of 1892, is being operated every day up and down the country, I do not think that you will be told that it is an unworkable one or that it creates hardship in the working. The question here is whether it ought to be extended to the public roads.

Mr. *Wrottesley.*] I shall say it is most unworkable. It is almost unintelligible, and that is what the Minister of Health himself says about the Private Street Works Act.

Mr. *Tyldesley Jones.*] I rather understand and hope that the Ministry of Health is going to substitute an intelligible code.

Sir *Henry Cautley*]. Does not the Private Street Works Act operate without much litigation because the frontagers pay rather than litigate?

Mr. *Tyldesley Jones.*] Not being a frontager I do not know.

Sir *Henry Cautley.*] From your experience? I am only referring to my own experience.

Mr. *Cape.*] I do not think the frontager would litigate if he is fairly dealt with.

Mr. *Tyldesley Jones.*] No. After all, we do know this, that if a local authority misuse their powers to any considerable extent there is generally a good deal of agitation in the locality. We have only to read "The Times" of the last few days to see how in certain places the inhabitants are up in arms against a certain local authority, because they say the assessments are being made on a wrong scale, and that sort of thing. Agitation takes place, and people who suffer hardship in this country, as a rule, become vocal after a time.

Mr. *Wrottesley.*] When it is too late.

Mr. *Tyldesley Jones.*] I was going to call your Lordship's attention now to the Private Street Works Act, 1892, because that is all I think I need say about the Public Health Act of 1875.

Mr. *Wrottesley.*] Would your Lordship like to see this? We have done this: We have taken the Private Street Works Act, 1892, and we have tried to amend it and carry in the various amendments and adaptations which are made necessary if you are going to apply Section 62 and Section 64 of the Romford Urban District Council Act.

Mr. *Tyldesley Jones.*] You mean as it is done by the Private Acts?

Mr. *Wrottesley.*] Yes, as it is done there.

Mr. *Tyldesley Jones.*] I am going to ask you to let me use that later. What I wanted for the moment was to get before the Committee what is the general law.

Lord *Macmillan.*] We will see the virgin law first.

Mr. *Tyldesley Jones.*] Section 2 says: "This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act". Wherever this Act is adopted then, by Section 25, the provisions of the Act of 1875, contained in Section 150 are excluded. So your Lordship sees there are alternative codes, and the local authority can adopt those or not.

Chairman.] That is under Section 150?

Mr. *Tyldesley Jones.*] Yes, Section 150 is the general law. They can adopt this, in which case Section 150 is excluded. Section 3 deals with adoption, but we need not bother with that. Section 4 empowers the Local Government Board (now the Ministry of Health) to declare the provisions of this Act to be in force in a rural sanitary district. Your Lordship sees it is only adoptive by an urban authority, but a rural authority can get it extended to their district by an Order under Section 4. I ought to say this. My learned friend reminds me that Section 4 is not the provision now, because by the Local Government Act, 1929, this Act is in force in every rural district.

Lord *Macmillan.*] Adopted in every rural district, or in force?

Mr. *Tyldesley Jones.*] And administered by the County Council.

Lord *Macmillan.*] Does that mean that now every rural district council may adopt it, or that it is in force?

Mr. *Tyldesley Jones.*] In a rural district it is now made applicable to the county council, and they administer it. I am relying upon my learned junior, who has these Acts at his fingers' ends.

Sir *Henry Cautley.*] I understand that under the Local Government Act, 1929, the rural district council can administer this Act without adaptation.

Chairman.] Is not the case that the administration of this Act is now the duty of the County Council? Is it not handed to all County Councils? I think in a rural district it is the duty of the County Council?

Mr. *Tyldesley Jones.*] I am sure Sir Frederick Liddell knows, but we have the Act here, and my learned junior will look at it.

Chairman.] Is it the County Council, do you say?

Mr. *Tyldesley Jones.*] I am asking my learned junior. I am between two fires, for the moment, and am not quite certain.

Mr. *Wrottesley.*] It is Section 30, subsection (2) of the Local Government Act, 1929: "As from the appointed day, a county council shall with respect to such part of the country as is for the time being comprised in any rural district have the functions of an urban district council or a local authority under the enactments mentioned in the first column of Parts I and II of the First Schedule to this Act." The Private Street Works Act, 1892, is applied.

Chairman.] That is to say in a rural district the county council can apply this Act?

Mr. *Wrottesley.*] Will administer it. They are, I think, the administering body.

Chairman.] They must administer it?

Mr. *Wrottesley.*] It is an Act which you are not obliged to use.

Chairman.] It is not the rural district council which administers it; it is the county council. That is the point?

Mr. *Tyldesley Jones.*] Yes. My learned friend is quite right. Under sub-section (3) of the same section: "Functions under section one hundred and fifty of the Public Health Act, 1875, and under the enactments mentioned in the first column of Part I of the First Schedule," which include the Act of 1892: "shall as from the appointed day cease to be exercisable by rural district councils, and any rural district council who for the time being are invested with functions under any of the enactments mentioned in the first column of Part II"—that is a different thing—"shall not be entitled to exercise those functions except with the consent of the county council."

Chairman.] It is the county council?

Mr. *Tyldesley Jones.*] Yes. I want to draw your attention to the definition of "street" in the Private Street Works Act, 1892: "The expression 'street' means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large." So this code is not applicable to a public street. Under Section 6—I am going to take this as shortly as I can: "Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve"—I ask your Lordship to note this—"with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer"—we can leave out the other things—"and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street." So they can deal with a part of a street and provide that that is to be sewered. Then the Surveyor is to provide a specification and estimate and issue a provisional apportionment of the estimated expenses. Then such specifications and so on are to comprise certain particulars prescribed in Part I of the Schedule. We do not trouble about that. Under Subsection (3): "The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II of the Schedule to this Act, and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. During one month from the date of the first publication the approved specifications," etc., "shall be kept deposited" and so on.

Section 7 is important: "During the said month any owner of any premises shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the work may, by written notice served on the urban

authority, object to the proposals of the urban authority on any of the following grounds." Most of these are applied, but (*b*) is not to the case we have got because you will see it is inapplicable, but we take all these others and add to them. Let us look at them. "(*a*) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act; (*b*) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large "—that does not matter now; "(*c*) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate; (*d*) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive; (*e*) That any premises ought to be excluded from or inserted in the provisional apportionment; (*f*) "—this one is important—" That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises." These words in parenthesis refer to Section 10, and I would like to jump to Section 10, if I may: "In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say), (*a*) The greater or less degree of benefit to be derived by any premises from such works; (*b*) The amount and value of any work already done by the owners or occupiers of any such premises. They may also "—and this answers the question which was put to me just now—"if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum of proportion to be charged against any such premises accordingly." Under that, if you have a very short frontage to a street, but can get access to larger premises behind "through a court, passage or otherwise," the whole of these premises behind can be brought in.

Chairman.] It says that the urban authority *may*, if they think just. It is permissive. Supposing they do not do it?

Mr. *Wrottesley.*] They cannot be compelled. It is purely voluntary.

Mr. *Tyldesley Jones.*] They cannot, but what can happen is that the landowners can appeal to the Minister.

Chairman.] If the local authority do not have regard to this.

Mr. *Tyldesley Jones.*] The note on this point in Lumley is this: "It is for the authority alone to decide whether to make use of this section, and the Justices cannot entertain an objection that they ought to have but have not done so. (Bridgwater Corporation v. Stone.) An appeal will however lie to the Minister of Health under the Public Health Act, 1875, Section 268 "—because these two are made one Act—" against the decision of the local authority."

Lord *Macmillan.*] Not to avail themselves of these powers?

Mr. Tyldesley Jones.] Yes. So the local authority are primarily the people who decide, but there is a right of appeal to the Minister. That is as regards the private streets. Let me remind you that as regards a public road, if we get this, we are introducing a degree of benefit as one of the factors which must be considered, and in that we are going to differ——

Chairman.] You are going to make this Clause obligatory?

Mr. *Tyldesley Jones.*] It is done by those sub-Clauses on pages 8 and 9.

Chairman.] That is the effect. It makes the optional Section 10 obligatory.

Mr. *Tyldesley Jones.*] It is not quite that. It is this, that the sum or proportion to be charged against the premises of the objector must not be excessive having regard to the degree of benefit to be derived by the premises from the proposed works. That, you will see, is one of the two matters referred to there.

Chairman.] Yes, it is much the same.

Mr. *Tyldesley Jones.*] Yes, but it is not quite.

Chairman.] What about (*b*), "The amount and value of any work already done?"

Mr. *Tyldesley Jones.*] What work would he have done already? There is no sewer here. That has had to be introducted in this case because this Act is dealing not merely with sewering, but paving, levelling, and a lot of other things. There is either a sewer or there is not, and if there is no sewer he has not done anything. He may have constructed a cesspool; that is a different thing.

Chairman.] The construction of a cesspool is not included?

Mr. *Tyldesley Jones.*] No.

Lord *Macmillan.*] The purpose of this is to authorise the local authority to bring in persons who are not frontagers in the sense that they do not front upon a private street but benefit from the sewer.

Mr. *Tyldesley Jones.*] Only the last sentence; the first part applies to frontagers as well.

Lord *Macmillan.*] I was thinking that generally it is frontagers. If you have a deeper development then those who are not frontagers, but who may benefit by the introduction of this sewer, are to be brought into contribution.

Mr. *Tyldesley Jones.*] Yes, that is so.

Chairman.] Is it not the case that supposing you have a big development here and you are bringing in a side sewer, it may be necessary to have a much bigger sewer than would be needed if there was none of this back land development?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Therefore the frontagers would have to pay a good deal more than they would have to pay if there was not that huge back land development?

Mr. *Tyldesley Jones.*] They would subject to the capacity of the sewer required for sewering their street, which is the limit.

Chairman.] That is the way you get over that?

Mr. *Tyldesley Jones.*] I thought the point ought to be provided for, and would not be without special provision.

May I now continue to draw the Committee's attention to the general code. I was dealing with Section 7, and drawing attention to this, that the provisional apportionment that is made can be objected to on various grounds, and we are adopting those grounds so far as they are applicable, that is, cutting out (*b*) but extending them by introducing further objections. Under Section 8 "The urban authority at any time after the expiration of the said month may apply to a Court of Summary Jurisdiction to appoint a time for determining the matter of all objections made as in this Act mentioned". They give notice and then the parties can turn up. "The court may quash in whole or in part or may amend the resolutions, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority". What often happens is this. I do not put this forward as mitigating the possibility of hardship to which Lord Macmillan referred, but what in practice often does happen is that objection is taken by a landowner to something or other on one of these grounds, and the urban authority say "Yes, we agree that is right; we will ask the Court to alter it". That is in fact the way it has often worked, but do not imagine I am putting that forward as justifying the passing of provisions which might be oppressive. I am only just referring to that, that in practice the alteration of plans is often asked for by the urban authority itself or an agreement with an owner to get rid of his objection or to meet the objection which he validly makes. That explains why the authority often have to ask for an amendment. Then it goes on "The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given". Then under subsection (3) your Lordship sees, the costs are in the discretion of the Court.

Then Section 9 is only in regard to some incidental work; I do not think I need trouble about that. Section 10 I have referred to. Section 11 is as regards the powers of the urban authority to amend plans from time to time. Section 12 says: "When any private street works have been completed, and expense thereof ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case

may be), and such final apportionment shall be conclusive for all purposes; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act" and so on. "Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds or any of them". This is the matter that was referred to just now. Your Lordship sees they are limited grounds. "(*a*) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent. (*b*) That the final apportionment has not been made in accordance with this section. (*c*) That there has been an unreasonable departure from the specifications, plans and sections. (3) Objections under this section shall be determined in the same manner as objections to the provisional apportionment"—that is by the Justices.

Sir *Henry Cautley.*] Do you know of any objections ever having been taken under that Section?

Mr. *Tyldesley Jones.*] I am afraid I cannot speak from my own experience. Perfectly frankly, I have never had any experience whatever of the operation of this Act.

Mr. *Wrottesley.*] I have been in a case I know where we had a dispute on both parts. It was some time ago now. We had a dispute on the original estimate, and again when it came to be discussed after the work had been done. I do happen to recollect that.

Mr. *Tyldesley Jones.*] That would be on one of these three grounds?

Mr. *Wrottesley.*] I cannot recollect that now. The second one must have been on one of these three grounds.

Chairman.] You are secured against having to pay more than 15 per cent. beyond the estimate?

Sir *Henry Cautley.*] "Without sufficient reason".

Mr. *Wrottesley.*] I am told the cases are quite numerous.

Mr. *Tyldesley Jones.*] Section 13 simply enables the expenses to be charged on the premises. That can be done I suppose where you have tenants for life and limited owners. Section 14 refers to "Recovery of expenses summarily or by action."

Section 15 is important. "The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable." Section 16 refers to Churches, and Section 17 is "Power for limited owners to borrow for expenses." Section 18 is "Power for urban authority to borrow for private street works." Then Section 19 is "Adoption of private streets." It says the urban authority may adopt and make roads repairable by the inhabitants at large.

Lord *Macmillan.*] Then it ceases to be a private street, and becomes a street repairable by the inhabitants at large.

Mr. *Tyldesley Jones.*] Yes. It becomes a public road.

Mr. *Wrottesley.*] It is compulsory under this Act.

Mr. *Tyldesley Jones.*] It is compulsory. Under Section 20: "on the application in writing of the greater part in value of the owners of the houses and land in such street," the urban authority must make it a public road. It can be made compulsory by the greater part of the owners.

Chairman.] That is to say, when the owners have made their street up to standard the local authority keep it up.

Mr. *Tyldesley Jones.*] Yes, or pay for it. Then there are provisions about the railways and things like that. I do not think there is anything else I need trouble about in that Act. That is the general Act.

May I sum that up? It seems to me that one may sum up the general law in this way. The owner of an estate who wants to develop it must provide or pay for the sewers on all the roads required to be constructed by him for the development of his estate. If he does that, and if he constructs a road on the edge of his property, the neighbouring owner whose property abuts upon the road which owner A constructs for the development of his, owner A's estate can be compelled to pay his share of the cost of the sewers which are put in that road for the development of property A.

Chairman.] In proportion to the benefit of property B.

Mr. *Tyldesley Jones.*] In proportion to the frontage, unless the local authority or Ministry of Health decide that regard is to be had to the greater or less degree of benefit to be derived by property B from the works. This is Section 10.

Chairman.] Yes. That is the point.

Mr. *Tyldesley Jones.*] Yes, but primarily the owner of property B can be compelled to pay for the sewering of a new street constructed by owner A on the edge of his property for the development of his property A.

Sir *Henry Cautley.*] Is that before the houses are built?

Mr. *Tyldesley Jones.*] Yes, certainly.

Sir *Henry Cautley.*] There is no frontage, is there?

Mr. *Tyldesley Jones.*] It is land.

Sir *Henry Cautley.*] The land is agricultural land.

Mr. *Tyldesley Jones.*] It does not matter. May I say, we are going to deal with agricultural land, but under the Private Street Works Act it does not matter. I am dealing for the moment with existing law.

Chairman.] In this case supposing somebody has considerable property that is developed, served not by a sewer but by a cesspool; a man beyond says "I think I should like to have a sewer," but the benefit of the sewer to him is of small cost compared to what it would be to the large property which has been developed. It may cost this man here a very large sum of money to do away with his cess pits and put his property on to the sewer.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] A great deal more than it would actually cost a man who is putting in a sewer to develop his property beyond. Is not that a possibility?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] This man who is not really going to get so much benefit may be compelled by the other one to put the whole of his sewerage system on to different lines at very great expense.

Mr. *Tyldesley Jones.*] He cannot compel him to put his sewerage system on a different basis.

Chairman.] But he can make him pay for the sewer.

Mr. *Tyldesley Jones.*] Yes. To-day there is a large property developed by means of cess pits; you have beyond it a small property which is now being developed; if you have got a street running right through those two properties which is not repairable by the inhabitants at large, the local authority can say "We are going to construct a sewer down that street, and property A, which is already developed on the cess pit principle, has got to bear its share of the cost of that sewer according to frontage." Subject to this, that if the local authority decide under Section 10 that regard is to be had to the greater or less degree of benefit to be derived by the premises, then property owner A could say "I shall not derive much benefit from it," and that has to be taken into account. To what extent effect is going to be given to it, or how it is to be measured I do not know. That is the position. To-day the law is that, and it is desirable that it should be, and for this reason: that it is most undesirable that cesspools should be encouraged, either that new cesspools should be encouraged to be constructed, or old ones to be retained. If property owner A, a large estate which has been developed with cesspools, can get out of his liability to contribute to the cost of the sewer because he has cesspools there, and because he does not in fact make use of the sewer, there is no incentive to him to give up the cesspool. He will retain his cesspools. That is an important point. We think it is most desirable that if a sewer is constructed the property owners adjoining should be required to pay their share, and not be entitled to say "No, we would rather go on with cesspools." That is not in the interests of public health.

I was trying to sum up the general law, and what I was putting was this. I do want to emphasise this, because I think this is a little important. You have those two estates; you have the owner of Estate A developing it, and in the process of developing it, constructing a road adjoining his neighbour's property. The local authority come and say "We want to put a sewer down there." The adjoining owner, of agricultural land it may be, says "I do not want to make use of the sewer." The law says "You must pay your share," and he has got to pay his share and he gets a statutory right to use it. Take your alternative case: The owner of property A develops his

land without constructing that new street because there is already a country lane there. It is essential to public health that there should be a sewer laid there; the owner of the property comes to the local authority and says "I want a sewer laid there; it will be absolutely essential." The local authority are faced with this alternative; either they have got to say "No, we are not going to construct it at all," in which case cesspools go up; or they have got to say "We will construct it provided you contribute to it," or the alternative is, they have got to say "If you will not contribute to it, still we think it is so important that we have got to do it, and we have got to make the general body of ratepayers all over the town pay for that sewer in order that your property may be developed." The result is as a rule, as I said earlier, that the landowner says "I will contribute." The adjoining owner says "I will not," and he has a sewer laid in what was a country lane, and his property immediately goes up in value. He has a statutory right to connect to the sewer, and he does not contribute a farthing towards the cost of that sewer, although he immediately gets a big increase in value.

Sir *Henry Cautley.*] If you are right, does not he make a contribution when the houses are built?

Mr. *Tyldesley Jones.*] That is one of the points to which I am going to draw attention. When the Coventry clause was under discussion—it is not quite on this section; it was on Section 64—a similar point was raised, and it was then said: "Let the liability attach when a connection is made." If you are going to do that, if you are going only to have a liability when a connection is made, it is an inducement to the landowner not to make his connection, end either to sink or make a new cesspool.

Sir *Henry Cautley.*] If the sewer was there, the local authority would not allow him to do that.

Mr. *Tydlesley Jones.*] If his house is built 100 feet away they cannot prevent him.

Mr. Wrottesley.] It was applied to Section 62 in Coventry.

Mr. *Tyldesley Jones.*] I am much obliged. I am going to draw your attention to it. The Romford Clause does not impose upon the owner of the adjoining property a liability to pay for that sewer while his property remains agricultural. It is only when his property is developed that the liability would attach, but the liability is not conditioned on his making connection to the sewer under the Romford Clause, though under a later development such a provision has been inserted and, we submit, unreasonably. We do not think that is consistent with the ambit of the Clause. Therefore the position is this, that the landowner, the man who owns the piece of land which is capable of development if a sewer is constructed there, immediately gets all the advantage of an increased value of his property if that sewer has to be laid in a street repairable by the inhabitants at large. We think it is quite unreasonable that he should not contribute anything to it. The object of the Clauses brought up by Romford in 1931 was to impose a liability upon those who are willing to pay and do pay, and upon those who to-day stand out and will not pay and benefit from the expenditure incurred by the general body of ratepayers and contributed to by the reasonable landowner to-day.

I told you about the practice of the Minister of Health. The Minister has for a long time past taken the view—when I say Minister I mean all that congerie which comes under the descrip- of the Ministry—for a very long time that this is not reasonable; and accordingly wherever a local authority to-day propose to lay a sewer in a public road to assist development about to take place, they do require the local authority to try to get the landowners to pay contributions and only to borrow the balance. That policy has been very successful in the past in getting a certain number of landowners to contribute, but some will not; some stand out, and we think get an unreasonable advantage at the expense of others.

Now may I draw your Lordship's attention to the Romford section? I think I may take the bundle which my learned friend's clients were good enough to prepare, and read Section 62 on page 2. "Where the Council resolve to constrct a sewer in a street or part of a street within the district repairable by the inhabitants at large which has not been previously sewered and pass a further resolution with respect to such sewer that in their opinion the construction thereof will increase the value of premises fronting adjoining or abutting on such street or part of a street the expenses of the construction of such

sewer shall be recoverable and shall be apportioned and become charged (subject as mentioned in the Act of 1892) on the premises fronting adjoining or abutting on such street or part of a street in like manner as under the Act of 1892 the expenses of private street works executed in a street or part of a street not being a highway repairable by the inhabitants at large are made recoverable and are required to be apportioned and are charged on the premises fronting adjoining or abutting on such street or part of a street and all the provisions of the Act of 1892 except section 19 (Adoption of private streets) section 20 (On street being paved etc. urban authority to declare same public highway) "—those are inapplicable, because it is a public road already—" and paragraph (*b*) of section 7 (Objections to proposed works) "—that is the objection that it is a street repairable by the inhabitants at large; of course that is not applicable—" shall apply as if such sewer were private street works and the expenses of construction of such sewer were the expenses of execution of such private street works as if in the definition of the expression 'street' in section 5 the word 'not' were omitted and as if in the said section 7 after paragraph (*f*) the following two paragraphs were inserted". Now these are the objections which may be taken: "(*g*) That the proposed works will not increase the value of any premises of the objector; (*h*) That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived by such premises from the proposed works". So we have added those two objections to all the others which were applicable under the Act of 1892. Now we come to the provisos: "Provided that (i) No expenses apportioned in pursuance of this section against agricultural land shall be recoverable until such land ceases to be agricultural land".

Chairman.] That is to say, until the land is ripe for development it will not be charged.

Mr. *Tyldesley Jones.*] Until it is developed.

Chairman.] Until it is actually developed. When you say "developed" do you mean built on?

Mr. *Tyldesley Jones.*] Until it ceases to be agricultural land.

Chairman.] That is what I say—ripe for development. I mean it is in the market for building.

Mr. *Tyldesley Jones.*] No. It may be in the market for building and still be agricultural land.

Chairman.] Anyhow, that the intent to build on it is immediate?

Mr. *Tyldesley Jones.*] No, intent will not do; while it is used as agricultural land it is exempt. It is only until the land ceases to be used as agricultural land.

Chairman.] Is that so?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Supposing you had a plot for building and you allowed somebody to have an allotment on the land, that would make it agricultural land, would not it?

Mr. *Tyldesley Jones.*] If it is used for another purpose.

Chairman.] I mean if there is an allotment on the land which is already plotted and laid out, would that make it agricultural land?

Mr. *Tyldesley Jones.*] It is still being used——

Captain *Bourne.*] I think land used for allotments is specially covered.

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] You will find it on page 32 of this bundle.

Mr. *Tyldesley Jones.*] Your Lordship will find what is agricultural land for this purpose by turning to page 32.

Chairman.] Never mind, I do not want to delay.

Mr. *Tyldesley Jones.*] It is really when it comes in for rating. It may or may not be built upon, but it might be used for what we see up and down the country now, storing old derelict motor cars.

Captain *Bourne.*] Once they start to develop you come in. I do not think it is a very material point.

Mr. *Tyldesley Jones.*] Yes. Once you stop using it for agricultural purposes, yes I agree, certainly. Now proviso (ii): "If a part only of such land ceases to be agricultural land then only the portion of the expenses attributable to that part shall become recoverable; and (iii) Interest shall not be payable to the Council on any moneys in respect of the time during which under provisos (i)

and (ii) to this section they are irrecoverable ". The object of that being, of course, that the liability is suspended, and it is not to carry interest in the meantime. Then proviso (iv): " If and so far as the sum apportioned is disallowed either on ground (*g*) "——

Chairman.] This is the important one. It puts it on the ratepayer and not on the other landowners.

Mr. *Tyldesley Jones.*] Yes, that is right. That is the Romford Clause. That was passed in 1931 under these circumstances. I must tell your Lordship about this. There were 78 landowners affected. One opposed. A settlement was effected with that opponent and the Petition was withdrawn, whereupon the Clause was passed by the Committee of your Lordship's House without argument, but I think your Lordship intimated to the Committee that it was desirable that they should have the Clause justified——

Chairman.] What happened was this. The Petition was withdrawn. It was a very important matter, and it was referred to the Committee under the Standing Order which turned it into an Opposed Bill, in order that it might be properly argued, it being the first precedent.

Mr. *Tyldesley Jones.*] What happened was, that it was considered by Lord Redesdale's Committee in the presence of the representative of the Ministry of Health, who pointed out that it was an important variation in the general law, but they did not see any strong objection to it provided that the two points which had been met by the Promoters were embodied in the Clause as it was passed. I am emphasising this because I want to make it quite plain to the Committee that these early decisions were not come to after a vigorous opposition, or indeed any opposition. On the contrary. I want that made perfectly plain, that in putting this matter before their Lordships they had not the advantage of, for instance, the arguments which my learned friend addressed at a later stage on another Bill and will no doubt address here. This Section 62—and perhaps I might just follow it out to its end now—was introduced again in two Bills in the Session of 1933, Rugby and Wigan. On both those Bills the Ministry of Health presented a report in which they raised two new points.

Lord *Macmillan.*] Were both these Bills unopposed?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] In both Houses I think, were they not?

Mr. *Tyldesley Jones.*] Yes, and I should say perhaps in the first place, the Romford case in the House of Commons was also considered by the Local Legislation Committee, of which, I think, an honourable member on this Committee, Mr. Cape, was Chairman; the Committee heard Counsel and evidence in support of the Clause. That is on the Romford Bill.

Mr. *Wrottesley.*] The whole history is in the Memorandum of which you have had a copy.

Mr. *Tyldesley Jones.*] Yes. What I am more concerned with is, I want to get if I may, the additions which have been made to this Clause 62.

Chairman.] Yes, we want to get the evolution of this Clause.

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] It answers two questions that happen to be put at the moment.

Mr. *Tyldesley Jones.*] I am obliged. All I want to do is to get to the Clauses which were added, and the reasons why they were added. Your Lordship may take it, putting it generally, that until I come to the Coventry Bill, the matter was considered from time to time by Committees without the assistance of opponents.

Chairman.] That is the whole point. Coventry was the first time it had been petitioned against.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] We are also interested to know whether the Bills were opposed on other points or not. So far as the House of Commons is concerned, that makes a difference. It does make a difference from our point of view whether a Bill went to a Group or an Unopposed Committee. Anything that shows that would be of assistance.

Mr. *Tyldesley Jones.*] We will look at that later. I think for the moment this Committee is going to consider the case on its merits and is not going to pass something because some Committee passed it, misled by the eloquence shall I say of one of my learned friends.

Mr. *Wrottesley.*] Or yourself.

Mr. *Tyldesley Jones.*] This is virgin ground to me.

Mr. *Wrottesley.*] And to me.

Mr. *Tyldesley Jones.*] I have never been engaged in one of these things before.

All I venture to say is that it may be interesting on the history, but we want to look at the merits of the section.

Lord *Macmillan.*] Let us see how far Rugby advanced it.

Mr. *Tyldesley Jones.*] Yes. When Rugby and Wigan came before the Committee the Ministry raised two new points, and if I tell you what the points were, then you will see how they were given effect to. One is that a higher price may have been given by the owner of a piece of land abutting on a piece of highway because there is no liability under the existing law to pay for a sewer if and when constructed in the road, whereas on a private street the purchase of a piece of land would take into account his contingent liability to pay for the sewer when laid. That was the first point raised by the Ministry of Health. The second point they raised was that it may be a hardship on the owners of houses who have been rated towards the costs of sewers in other parts of the town to be made to pay now their share of the cost of the sewer going to be provided in a public street elsewhere.

Lord *Macmillan.*] They have been making contributions to the general public health of the community for some time and getting no particular benefit in return, and now they are going to get a particular benefit.

Mr. *Tyldesley Jones.*] Yes. That is the whole point, and it was suggested by the Minister that the Clause should not apply to premises which came into rating before the resolution to promote the Bill, in other words, before the public had notice of the possibility of a liability. I am going to say something if I may on both these points later, but I want to show your Lordships how the Committee met them. If you will take this bundle——

Chairman.] You are taking Rugby and Wigan together, are you not?

Mr. *Tyldesley Jones.*] Yes, they are the same, subject to one minor point. Paragraph 2 on page 5, proviso (ii) was inserted to meet the Ministry of Health report: "Provided that"—"(ii) no expenses apportioned in pursuance of this section against premises (not being agricultural land) which prior to the first day of January One thousand nine hundred and twenty eight were assessed to the general district rate or the rate for special expenses levied for the parish in which the premises were situate shall be recoverable unless such premises have since that date been or shall be so altered that the alteration would be deemed to be the erection of a new building for the purposes of the Act of 1901 and the Public Health Acts". So that you will see that what they did in this case was to say that no premises which had been rated prior to a period of five years back—in this case they gave them five years back—shall be liable to be assessed unless the premises are so altered as to amount to the erection of a new building. In Wigan the date they adopted was not five years back, but the 22nd November, 1932. That was the date of the resolution to promote the Bill.

Chairman.] That was to meet a special case?

Mr. *Tyldesley Jones.*] Yes. That is, the existing ratepayers were dealt with in that way. The other point raised, namely, that a purchaser may have paid more because of the freedom from liability of the land by reason of its being situated on a public road, was not a point which the Committee thought required provision, and no amendment was made for that—I am going to submit rightly not. So that your Lordship sees we have got to the next stage. We have got this provision added.

Without troubling your Lordship with all the names of various Acts, there were other Acts passed, again without opposition, but this Session there were six Bills which asked for this Clause. Two only were opposed, one the Bill of the Thornton Cleveleys Urban District Council. That was opposed by the Imperial Chemical Industries, but on certain amendments being made they withdrew their opposition, so I shall not trouble you with that for the moment. The other was the Coventry Bill, where the matter was argued out by my learned friend Mr. Wrottesley for the landowners, and Mr. Craig Henderson for the Corporation of Coventry. The position was this, that so far as this Clause is concerned—because I have not yet referred to a different Clause which your Lordship will have to consider later—the Bill was amended first of all by the provision which I told your Lordship about as to the capacity of the sewer. That is on page 9. If your Lordship will turn to page 9 for a moment you will see: "(i) that the sewer is of greater capacity than is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer

is to be constructed or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street regard being had to the capacity requisite for the surface-water drainage of the street or part of a street ".

Chairman.] This is all carrying out the principle that the man shall not pay for more value than he gets?

Mr. *Tyldesley Jones.*] Yes, and shall not pay an unreasonable sum for that.

Chairman.] He does not have to pay on a flat rate; he has to pay for what he gets. That is your principle.

Mr. *Tyldesley Jones.*] Yes, but he is not to be deemed to get a portion of an excessively large sewer.

Chairman.] Yes. It is up to a certain rate and he may not go above it. If it goes above it the Corporation pay. If it goes below it he does not pay. That is the point.

Mr. *Tyldesley Jones.*] Yes. That was inserted by the Committee because they thought it was necessary to provide for that. My clients took a different view, but I am bound to say I think something of the sort is necessary to limit the liability of the landowner to the proportionate cost of a sewer of a size required for the draining of the street on which his house is situated. That was the first amendment they made. On page 9 the first proviso excluded the assessment of the premises which had been rated prior to the date of the resolution to promote the Bill. That is not new; that is repeating what they put in Rugby. There were certain specified sewers excluded. They are special features which we do not need to trouble about.

Mr. *Wrottesley.*] That is true of both (*b*) and (*c*); they are special to the Coventry case.

Mr. *Tyldesley Jones.*] Proviso (ii) is the provision about agricultural land; proviso (iii) is new; during the argument one member of the Committee made the suggestion that it would be fair to confine the liability to contribute to the cost of the sewer to the time when an actual drainage connection was made. The Corporation Counsel did not assent to that, perhaps it was rather sprung on him, I do not know whether one can say that the matter was fully argued, but at all events the Committee considered it and the Committee thought it was right to put it in, and they put in proviso (iii): "no expenses apportioned in pursuance of this section against any premises fronting adjoining or abutting on a street or part of a street shall be recoverable until there exists an actual drainage connection between the said premises and the sewer the expenses of which have been apportioned ".

Chairman.] That means to say that this would not be payable if there was a cesspit

Mr. *Tyldesley Jones.*] No.

Chairman.] So a man can keep on his cesspit, and until he chooses to connect with a sewer he would not pay.

Mr. *Tyldesley Jones.*] No, and his property may have gone up considerably in value. He can sell his property, pocket the additional value, and he pays nothing.

Chairman.] He sells it with a liability, does not he?

Mr. *Tyldesley Jones.*] He sells it with a liability, true, but it is the fact that the sewer came there which really put the value of his property up. He sells it with a liability, I agree, but the point of course is that the improvement in the value far exceeds the liability. That is our view. Your Lordship sees that this is entirely inconsistent with the whole ambit of the Clause. The point of the Clause is to make a man liable to contribute towards the cost of a sewer which enhances the value of his property, and in proportion to the enhancement of the value of his property. Now, if his property is enhanced by say, to take a figure, £1,000 immediately the sewer is constructed, it is rather absurd to say that although he can realise that £1,000 at once, he is not to pay it until something more happens, namely, not that his property is enhanced, but that he has also made a connection.

Captain *Bourne.*] Are not you now getting on to the point whether in the case of an existing house with grounds there is much enhancement in value because you run a sewer past it down the main road. What you are really arguing for the moment is the case of development, in which I agree the sewer puts up the value enormously; but this is not to deal with development, but with existing houses.

Mr. *Tyldesley Jones.*] This deals with both.

Captain *Bourne.*] Surely not, does it?

Mr. *Tyldesley Jones.*] Yes, certainly.

Captain *Bourne.*] Did you mean sub-clause (iii)?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] This deals entirely with existing houses. It does not deal with development.

Mr. *Tyldesley Jones.*] It does.

Chairman.] It does do this: It gives you the option of putting in a cess pit system for a new house.

Mr. *Tyldesley Jones.*] Certainly.

Chairman.] Though I do not suppose anybody would.

Mr. *Tyldesley Jones.*] In some cases they do. Sub-clause (iii) deals with both, if I may answer the honourable member. Sub-clause (iii) deals with the case of premises from which for some reason or another no connection is in fact made. It may be perhaps because there is no house there——

Mr. *Wrottesley.*] May I say if that is so I am quite sure it is a mistake. The case which this Section was put in to cover was the case of a house which did exist before the sewer came along. There is no doubt about that. I have been reminding myself by looking at the minutes. Those words were settled by the Corporation.

Chairman.] Would that make it clear, that it only applies to existing houses?

Mr. *Wrottesley.*] That is the case that was argued.

Chairman.] That was the intention. That is what Captain Bourne says. As it is worded, it seems to me it might apply to a new house.

Mr. *Tyldesley Jones.*] It does, and we are dealing with both. It does not matter; your Lordship will consider whether it is necessary to cover both, and if it is not, the words will have to be limited.

Mr. *Wrottesley.*] I am told it works like this, that we could not charge a house on a road beside the sewer under the bye-laws, if the sewer were already there.

Mr. *Tyldesley Jones.*] That is not quite right.

Mr. *Wrottesley.*] I do not want to waste time arguing a point I am not instructed to argue, but it is quite definite that the case intended to be covered here is the case put by Captain Bourne of the house that is there first and the sewer comes to it.

Chairman.] It is an existing house. That is a question of drafting to see whether it carries it out.

Mr. *Tyldesley Jones.*] This question does not depend upon somebody's intention in the Coventry Bill. The Committee are considering this matter at large.

Chairman.] We want to know what this Clause means.

Mr. *Tyldesley Jones.*] Yes, what it means, not what it is intended to mean. This Clause covers every case where there is a piece of land abutting on a road in which a sewer is now constructed, and in which for some reason or other no actual connection is made. That may first of all because there is no house there. That is one case. If there is no house there a new house may be built. We cannot by law require a new house to be connected with an existing sewer unless it is within 100 feet of it. I drew your Lordship's attention to the section. Therefore if you have a piece of land to-day with no house there, the owner can come and build a house 110 feet away from the sewer. We cannot say "connect to the sewer," so he can construct a cesspool if he likes. That is the first case, and that case is covered by this proviso.

Sir *Henry Cautley.*] You can say that the cesspool is a nuisance, cannot you, and prevent him using it, and compel him to join up with the sewer?

Mr. *Tyldesley Jones.*] No, a cesspool need not be a nuisance.

Sir *Henry Cautley.*] It is very difficult in an inhabited part.

Mr. *Tyldesley Jones.*] No.

Sir *Henry Cautley.*] I have had those cases before me two or three times.

Mr. *Tyldesley Jones.*] It may be a nuisance under the Public Health Act. If he keeps his cesspool so as to be a nuisance he can be run in.

Sir *Henry Cautley.*] If there is a sewerage system close to, it is almost impossible for the owner to say that his cesspool is not a nuisance.

Mr. *Tyldesley Jones.*] I speak with very great deference because you obviously have had to consider this matter, but may I say this. As I understand the law, it is this—I speak with great humility on this subject—that if you have got a house with a cesspool provided, and the man keeps the cesspool in a proper con-

dition and does not allow it to become a nuisance, he cannot be proceeded against. The local authority cannot say to him "You must connect your house with that sewer" if the house is effectively drained to-day. That is under the Section of the Act of 1875. So if you have a house and a cesspool, and the house is effectively drained to the cesspool, and it is kept in a proper condition and emptied out periodically, the local authority cannot say "No, you must connect to the sewer" and he can go on maintaining that existing house and cesspool within 110 feet of the sewer and the local authority cannot object.

Chairman.] There is another point. Supposing a man has a largish place, we will say 15 or 20 acres?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Suppose he has an approach half a mile long with a considerable frontage to the road *here*, and they suddenly turned that into a street; he will not be able to bring a half a mile of sewer to join the main sewer; he would probably keep his own drainage system and have to pay for the frontage to his park. He would have to pay for a cesspool system and a sewerage system.

Mr. *Tyldesley Jones.*] True, subject always to this, that he can object that the proposed works do not increase the value of his property.

Chairman.] It might increase the value of his property if he is going to cut it up for building.

Mr. *Tyldesley Jones.*] That is the point. Is his property increased in value or not? That is the first point. Secondly, supposing it is increased in value, he is still entitled to say "The proportion to be charged on me is excessive, having regard to the degree of benefit to be derived by my premises from the proposed works".

Lord *Macmillan.*] The potential benefit is one which I can understand enters into valuation, but it may on the other hand be an entirely hypothetical thing because you do not want to realise it. To take the case that my noble friend in the Chair put, of a considerable park, it may be true that if you were to cut it up into building lands you could make a lot of money out of it. On the other hand it may be your home and you do not want to do anything of the sort, yet from the valuation point of view you have to take into account all the potentialities of the property when you come to value it, and it has, of course, that potentiality, although it is not one that is going to be realised in your lifetime, or possibly for generations.

Mr. *Tyldesley Jones.*] That principle has been accepted by Parliament over and over again. I put on one side the valuation for death duties as not being in any way parallel; but take the case of town and country planning. If an estate is improved in value by a town planning scheme, the landowner, though he may not desire to derive the benefit of the improved land, is still liable to pay compensation. You will find throughout our legislation that obligations——

Sir *Henry Cautley.*] Surely there is no obligation on him to pay until the land is realised?

Mr. *Tyldesley Jones.*] I am told that is so. I am afraid that was a bad one.

Chairman.] There is another point. You are forcing this man to pay for two drainage systems, to pay for his sewer and also to pay for his cess pit.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] It is impossible for him to run a sewer half a mile simply to serve one house.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] But if he develops, then under this Clause he will have to pay the full value. It is simply a deferred payment—it is not that the valuation is reduced—until he actually uses the thing.

Mr. *Tyldesley Jones.*] This is the point. If you exclude that provision about no liability until connection is made and leave that out for the moment, the rest of the section proceeds upon this basis, that the man is to pay proportionately to the value he gets, the improved value of the land. Now it seems rather wrong to say that that improved value of the land is to be the basis of his liability and the measure of his liability, but he is not even to pay that until an event happens which, of course, puts an entirely different complexion on the value of the sewer to him. If I have a park abutting on the road, with a public sewer, and my house is drained to a cesspool up *there*, I agree I can say that the value of my land is enhanced because of the sewer only to a small extent. My liability is then fixed having regard to the very small extent of the improvement in value of my land then. I subsequently make connections to the sewer. Is it that I now have the benefit of the sewer and

should only pay upon the basis of the improved value of my land, arrived at at a date when there is no connection made or apparently immediately contemplated? The two things are inconsistent; they are proceeding upon two different principles at the same time.

Captain *Bourne.*] Have not you conceded the principle already when you say that in the case of agricultural land there shall be nothing done until it is developed? Have not you given the whole principle away?

Mr. *Tyldesley Jones.*] If I have, then so much the worse for me.

Sir *Henry Cautley.*] I was going to put the same point. What is the difference in principle?

Captain *Bourne.*] Is not really the point this, that you have conceded the entire principle because if you did not you would never have got this Clause through either House? So far as agricultural land is concerned, the position would have been far too strong in both Houses, and you would never have got your Clause.

Mr. *Tyldesley Jones.*] That may excuse, but does not justlfy.

Captain *Bourne.*] I think you have conceded your principle, and now you want to get something else.

Mr. *Tyldesley Jones.*] No. Many exceptions are conceded not by accepting a principle but from motives of expediency. Why should not agricultural land contribute its share to local rates? Because Parliament says that the interests of agriculture are so great that it should be exempt from rating.

Mr. *Wrottesley.*] And it derives so little advantage.

Mr. *Tyldesley Jones.*] Agricultural land derives much more benefit from the expenditure of rates than the railway lines of a railway company, and yet the one is treated differently from the other. I venture to submit, if I may say so, that we have conceded nothing by exempting agricultural land while agricultural land.

Lord *Macmillan.*] But it is to be read in the sense of the Rating and Valuation Apportionment Act, 1928. It "does not include land occupied together with a house as a park, gardens (other than as aforesaid) pleasure grounds", and so on. You do not get the benefit of exemption if you have a park of an acre or two.

Mr. *Tyldesley Jones.*] Yes. People who have parks can very quickly bring them within agricultural land by purchasing a few cows.

Mr. *Wrottesley.*] That is not so easy since yesterday, because I understand under the Milk Control Board four cows do not exempt it.

Mr. *Tyldesley Jones.*] That only means you go into the milk marketing scheme.

Sir *Henry Cautley.*] If premises are altered so as to include a residence, is not the principle identical here? Why should he be paying for the making of a sewer which is of no value?

Mr. *Tyldesley Jones.*] Because the man's land has been improved in value, and the question is——

Sir *Henry Cautley.*] The theory, as I understand it, is that it is land for development, that is that the owner who is going to get the benefit of development should pay for the sewer. That is a principle which I should understand.

Mr. *Tyldesley Jones.*] Here is the dilemma. If you are going to accept that and say that the owner is not to pay anything until he makes his connection to the sewer, then there is no justification for putting the other limitations, namely, that he is only to pay according to the improved value. If he is going to make use of the sewer, then you ought to apportion the cost of the sewer according to frontage without that limiting provision as to the improvement to the value of the land. That is my point.

Sir *Henry Cautley.*] To make it clear, should not you put in some other words to show that there is development going on or likely to go on? The liability does not accrue until there is development or threatened development.

Lord *Macmillan.*] Your remedy may outstrip the mischief. You may, in your desire to make a perfectly legitimate and equitable arrangement, take powers which really outstrip the mischief.

Mr. *Tyldesley Jones.*] Certainly, but what I am anxious to do is this. I am anxious to guard against two inconsistent limitations, one limiting the man's liability to the improvement in the value of his land and imposing that as the limitation of liability at the time when he may in fact subsequently make use of the sewer; if you are going to make that the time for the accrual of

the liability, then the user ought to be the measure, and not the improved value of the land. If he is going to use the sewer he ought to bear his proportionate share of the cost of the sewer in proportion to frontage.

Lord *Macmillan.*] I can see a possible injustice there. Take the very case figured of a modest area of land with a house upon it, and adequately and effectually sewered by a cesspool, so that all would agree that it is perfectly efficiently drained. Then comes this sewer along the highway; he is not going to make any connection with it; it is of no interest to him; he says "I ought not to contribute to this." The answer is "You must" and he says "Why?", and the answer is "Because you are going to get a benefit, the benefit being the enhanced value of your land." Undoubtedly it would be enhanced in this sense, for particular purposes; for development purposes it would be enhanced if it was going to be broken up and sold, but it is not enhanced in the hands of the owner for the time being, except in this sense, that his executors will have the privilege of paying higher death duties upon it.

Mr. *Tyldesley Jones.*] That is absolutely true now under the Private Street Works Act. It is exactly the same position.

Lord *Macmillan.*] That perhaps does not commend it any more to me. We are not like the Law Courts, you know.

Mr. *Tyldesley Jones.*] The Committee are in a position to say that you do not agree with a policy which Parliament adopted in the Act of 1892. I agree, but I do want to draw your Lordship's attention to that, that if it is right and proper to impose upon the owners of houses abutting on a private street this liability, we cannot draw a distinction, I submit, between that case and the case of an owner of land on a public road. If it is wrong in the latter case, then the first may also want correcting.

Lord *Macmillan.*] With your assist ance we are making a survey of the whole position in order if possible to get some guidance as to what may be an equitable basis. It is not necessary that one should assume that everything that has been done hitherto has been absolutely right, and proceed upon that basis, because if you are now going to alter what is the existing liability by improving it, it may be that the repercussions of that upon what is existing law may require modifications of existing law, so as to make the whole scheme coherent and equitable.

Mr. *Tyldesley Jones.*] Certainly. I am desirous of drawing your Lordship's attention to the position under the existing law, and saying that is the policy. It may be wrong, and it may be that your Lordships will think that when the time comes, the existing law, the Private Street Works Act, ought to be amended in that respect in the new code. My interest in this matter is that I am the local authority, and to a large extent I represent here the general body of ratepayers.

Lord *Macmillan.*] Are not we really in this position, that everyone here will recognise—Mr. Wrottesley's clients or anybody else—that there may well be a case for a change of the law, due largely to modern developments?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] In order that the burden may be equitably distributed, their particular benefit is obtained as distinct from the benefit which the ratepayer obtains generally by belonging to a well sewered community, and where they obtain a benefit to their own pocket as distinguished from the general body, that should be paid for by them. That may be an excellent principle and one which will commend itself to both Houses of Parliament. What we are concerned to do is to see that that principle is worked out into effective Clauses, which will not go beyond the purpose which is to be achieved, and will safeguard all legitimate interests. That is generally our problem.

Mr. *Tyldesley Jones.*] I quite agree, and if I may I will make our position plain. I draw attention to this, that I necessarily have to take up the position of rather urging the claims of the general ratepayers, because a particular interest is represented by my learned friend. Your Lordship will not think I hope that the local authorities are desirous of being unreasonable in this matter in any way, because under the peculiar circumstances of the case, the general body of ratepayers not being otherwise represented, I am drawing attention, if I may, to as much as can be said for their side of the question.

Lord *Macmillan.*] Yes. The benefit of the discussion is to hear the case put as high as it can be put.

Mr. *Tyldesley Jones.*] I do not want your Lordship to think that the great Corporations for whom I am appearing are in any way antagonistic to the landowners or are desirous of mulcting them whatever. It is so that the Committee may have both sides at the highest.

Chairman.] We quite understand that, and we are very grateful to you.

Mr. *Tyldesley Jones.*] That is what I draw attention to, that this point which has been criticised by members of the Committee is a point that at all events arises under the Private Street Works Act and wants consideration. I do venture to say this, that if liability is to be contingent on a connection being made, that seems to suggest that a proper basis ought to be the apportionment of the total cost amongst all the premises which use the sewer, according to user, and not according to the increase in the value of the property. The limitation therefore of the liability to the increase in the value of the property by the construction of a sewer I venture to submit ought to go out of the Clause.

Sir *Henry Cautley.*] Is not the difference now that we are altering the law as regards roads repairable by the inhabitants at large?

Mr. *Tyldesley Jones.*] Yes.

Sir *Henry Cautley.*] That is why we put in the exemption (i) about the old houses.

Mr. *Tyldesley Jones.*] That does not justify that exemption, I am going to submit. Take this very case your Lordship has been good enough to put to me. Take an estate which has been laid out, with an old mansion. One does find it still existing in the country. It has paid rates for perhaps 100 years, and it has been rated for the construction of sewers in public roads in other parts of the district. The estate is now developed, sewers are laid in the private streets constructed on the estate. The owner of that house, though he has been rated for 100 years for the construction of sewers in other parts of the borough, has to bear his share of the cost of construction of the sewers on the private estate. I want to emphasise this: the point which was taken, and which I am going to say is a bad one, by the Ministry of Health, to which effect was given in the Rugby case was, that if a property had been rated in the past and any part of the rates contributed by it have been used for the construction of sewers in other parts of the borough, it ought not to be liable for the construction of the sewers from which it is going to benefit until it has been reconstructed so as to amount to a new house. Is that reasonable.

Sir *Henry Cautley.*] Because he has paid so much in the past for the construction of other sewers under the existing law under which he was entitled to have sewers made for his own use when the time came. Now we are altering that. That is the ground of the objection, because he has contributed so much for the general benefit of the ratepayers for the benefit he has never received, it is unjust now to saddle him with providing a sewer for himself when he has paid for sewers for so many other people.

Mr. *Tyldesley Jones.*] If that principle is right, how can it be truer than of a house which has contributed for 100 years towards the cost of sewering the town, and which now, by reason of the development all round it by new private streets, has to pay its share of the sewers in the new private streets?

Sir *Henry Cautley.*] The land is coming in for development.

Captain *Bourne.*] Is that a case which often arises? I should have thought it was practically impossible.

Mr. *Tyldesley Jones.*] No; there are plenty of cases—when I say there are plenty perhaps it is not very proper for me to say that, but one can draw on one's own experience—of estates across which new private roads have been constructed for development purposes, passing the old house. I dare say all the members of the Committee can call to mind some cases of that sort. Under the law as it stands to-day the mere fact that the house has been paying rates, it may be for 100 years, for the construction of sewers in other parts of the town, does not exempt it from liability to pay its share of the cost of the new sewers going to be constructed in the street for its own benefit.

Lord *Macmillan.*] I can see however a justification for the Ministry's point of view. I think there are considerations both ways, but I can see justification for it in this sense, that the gentleman has paid for all these years a public health rate, has in that rate contributed a sum which has been expended by the local authority on providing sewers in public streets elsewhere, the benefit of which has

inured to the frontagers on these public streets. He also is a frontager on a public street, and his turn is coming, and he says " A sewer is going to be put down there; my more fortunate predecessors before this legislation was enacted have had this benefit at my expense in part*, and now it is going to be put entirely upon myself ". That is the one aspect of it. The other aspect of it is that as legislation changes and new burdens are imposed, those who lived in an era when the burdens were less onerous have the advantage, but the new people who come in under the new regime may have to pay more and differently from those who were fortunate enough to be under the old regime.

Mr. *Tyldesley Jones.*] I am not aware that the present owner of the property can take credit for the burden borne by his predecessors. If he could, those of us who own property which can extend back for some centuries might have a very big credit balance when we came to the rating of our properties.

Lord *Macmillan.*] Yes, and if there is a change in the incidence of a rate, then you have, if I may be colloquial, to lump it. You cannot help it. You cannot say " I have made contributions in the past which must be taken into account." This seems a case of a particular benefit; other persons have been benefited individually, not merely the whole community, which is a case where the burden may change from time to time, but other individuals have been benefited and you, being an individual say, " Why do not I get the same benefits as an individual as other individuals got? "

Mr. *Tyldesley Jones.*] There is one feature which destroys the point completely at once, and it is this. You might put forward that argument if the identity of rating areas had remained undisturbed over the period, but we know it has not. We know that the boundaries have changed considerably, and though the ratepayer on this property has contributed in the past something in rates which has been used for the purposes of sewering some other area, it is by no means the same area which now constitutes the local authority's district. New districts have been brought in, and that is just one of the points that is creating difficulties. I will take as illustration the town of Bognor Regis. I happen to have a map showing the sort of thing that happens. I am only referring to this as an illustration.

Chairman.] That is one of the Bills of this Session, is it not?

Mr. *Tyldesley Jones.*] Yes. (*The maps are handed in.*) The old area was that within the blue border. Bognor, as now extended, is within the brown border. Roads repairable by the inhabitants at large are coloured light brown, and those with existing sewers are red. Now your Lordship will see that in the western part of what is now Bognor, there is a large number of roads light brown, that is roads repairable not sewered. Development takes place for instance on the Pagham Road. Do you see to the extreme west there is a road called Pagham Road, and there are a lot of streets called Gardens and Avenues laid out above? Development takes place there. What happens? A house which abuts on the Pagham Road would not be liable to pay anything towards the sewer which was laid in that road and from which it would get a benefit, but that house never contributed anything towards the cost of the sewer in the central part of Bognor, because that was formerly Bognor, when this place was not Bognor. The owner of this house is going to say, " I ought not to pay because my house abuts on a public road and I am going to require sewers to be provided for my house "—at the expense of whom? The ratepayers of Bognor generally, including the central part of Bognor, but people in the central part of Bognor never got anything from him towards the cost of the construction of sewers in the centre of Bognor.

Sir *Henry Cautley.*] But under the existing law he would not be liable to pay at all?

Mr. *Tyldesley Jones.*] Who would not?

Sir *Henry Cautley.*] This gentleman you are speaking of.

Mr. *Tyldesley Jones.*] I agree. That is what we are seeking to alter.

Sir *Henry Cautley.*] Indeed you are seeking to make him pay, to put a new liability on him.

Mr. *Tyldesley Jones.*] I agree. The point that was made against me was that it is unfair to make this man in Pagham Road pay for the sewer in his road, because for years and years he has been paying rates which have been used for

the construction of sewers in other parts of the town.

Chairman.] It has not been for years and years, because he was not in the town until after the extension.

Mr. Tyldesley Jones.] That is my point. My point is that if the liability is not altered, the ratepayers in the centre of Bognor have got to pay for a sewer for this gentleman. It is suggested that that is fair because he contributed towards the cost of their sewers. I say he did not.

Captain *Bourne.*] When did the extension take place?

Mr. *Tyldesley Jones.*] In 1934 under the County Review.

Captain *Bourne.*] He has paid for two years.

Mr. *Tyldesley Jones.*] It does not matter. This is on the principle of the thing.

Sir *Henry Cautley.*] Prior to that he paid rates to the other local authority.

Mr. *Tyldesley Jones.*] Yes, but not for construction of sewers. There were no sewers.

Lord *Macmillan.*] The purpose of it is to effect an equitable arrangement, and it is quite true that in that sense he has built up no fund of credit by the past rates he has paid, but in cases where he has built up a fund because he has been in the area all the time, is different; the two cases do not seem to be on the same footing. You do not get rid of that inequity by pointing to this case where it is quite equitable.

Mr. *Tyldesley Jones.*] What I venture to say is that you cannot construct a debit and credit account for each individual ratepayer, obviously. This is such a common case that it completely destroys the assumption which underlies this suggestion, that the rating area has always been the same. It is not, and that destroys the point. It would be quite right to say that there would be something in the point——

Lord *Macmillan.*] A hardship is none the less of a hardship on an individual, because it does not occur to a good many people.

Mr. *Tyldesley Jones.*] Hard cases make bad law, and if your Lordship is going to say——

Mr. *Wrottesley.*] That means bad interpretation of law, surely, not the bad making of law.

Mr. *Tyldesley Jones.*] If your Lordship is going to say that because in some cases a man may have to pay rates for the construction of sewers for the benefit of other people, therefore he is entitled to have sewers constructed for his benefit at the expense of the general body of ratepayers, you must alter the Private Street Works Act, and you must limit it to those cases where the rating area has remained the same, and that is practically impossible.

Captain *Bourne.*] If you will be good enough to look at the Clause passed in the Rugby Act, you will notice that provision is made for precisely the same point you are making, and that is this, that those parts which were recently added to Rugby and which did not pay a sewerage rate did not get the benefit of being excluded from the Clause. Parliament can deal with these things on evidence.

Mr. *Tyldesley Jones.*] That is the five years period. Proviso (ii) is the five years period.

Captain *Bourne.*] "Or the rate for special expenses levied for the Parish in which the premises are situate". That was put in to deal with an extension where part of the Parish was rated for sewerage, and the rest was not so rated or under special expenses.

Mr. *Tyldesley Jones.*] No.

Captain *Bourne.*] I think I am right in this because I had the case in front of me. I am perfectly certain I had the case in front of me in Committee and that was put in to prevent the people getting the benefit of this who have never contributed to the sewerage rate.

Mr. *Tyldesley Jones.*] I think not.

Captain *Bourne.*] I think if you look it up during the luncheon interval, you will find I am right.

Mr. *Tyldesley Jones.*] The Honourable Member may be perfectly right in his impression of what the intention is. That is not the effect of it. What this section is doing is drawing a distinction between the general district rate, which is of course levied in every parish in a rural district, and the special expenses rate which is only levied in those parishes——

Captain *Bourne.*] Rugby is a Corporation; it is not a rural district.

Mr. *Tyldesley Jones.*] This is dealing with a case of an area which may have been in a rural district, and I am told it was. The Honourable Member may be

quite right in his impression as to how it came about, but that is not the effect of it, with great deference. It is drawing a distinction between the general district rate which is levied through the whole district, and the special expenses rate which is only levied in these parishes where there are special expenses.

Lord *Macmillan.*] Is it your contention on behalf of your clients that it is expedient that there should be no distinction made between the case of a person who has contributed in the past to the construction of sewers in other parts of the town in public roads, and persons who have not so contributed.

Mr. *Tyldesley Jones.*] Yes, that is right.

Lord *Macmillan.*] I could understand that as a question of principle. The question is whether that is sound or not. If it is not sound then the question is how the distinction can be reasonably imported into the Statute so as to safeguard any interests.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] One other point, if I may add it, to what my noble friend has said. You do not admit that the general body of the ratepayers in the town would gain any benefit from the new sewers being constructed in these roads so that there would not be any liability, apart from a proportional liability. Do you see my point?

Mr. *Tyldesley Jones.*] No, I am sorry.

Lord *Macmillan.*] Subject to this, that every person who resides in a well sewered community has the general benefit of the sewer. He has that advantage.

Mr. *Cape.*] He has got to contribute to it as well.

Lord *Macmillan.*] Yes, and quite rightly, of course.

Mr. *Tyldesley Jones.*] Your Lordship sees that this exemption from liability in respect of existing rated properties is not limited to properties which have been rated for construction of sewers. Supposing you have a house in a district where in fact there have been no sewers at all, there is an exemption if there have been paid education rates, and things of that sort.

Lord *Macmillan.*] That is only a question of how you would condition the qualification.

Mr. *Tyldesley Jones.*] I know. I am drawing attention to the Clause because this is the Clause submitted to the Committee.

Lord *Macmillan.*] I am more interested in the general question of whether this is a good point and one requiring to be safeguarded, not as to whether Parliament has hitherto succeeded successfully in meeting it.

Mr. *Tyldesley Jones.*] My submission is that it is not a good one, and if it were it could not obtain except where you found the rating areas have remained unaltered, and that does not exist in England anywhere to-day.

Chairman.] I should like to draw your attention to the fact that it is now ten minutes past one.

Mr. *Tyldesley Jones.*] I have been anxious not to be too loquacious.

Chairman.] We have rather drawn you out. I do not think we can sit after a quarter to four.

Mr. *Tyldesley Jones.*] This point is so important really.

Chairman.] Yes. I only want to fix our programme. Lord Macmillan can only sit on Wednesdays. We might meet next Wednesday.

Mr. *Tyldesley Jones.*] Your Lordship appreciates that there is another Clause which I have not touched on yet.

Chairman.] Yes. We are going on this afternoon I hope.

(*After a short adjournment.*)

Chairman.] Where exactly did we get to, Mr. Tyldesley Jones?

Mr. *Tyldesley Jones.*] Before the adjournment I had been dealing with the point taken by the Ministry of Health and given effect to in the Rugby clause and the Coventry clause, that existing ratepayers ought not to be made liable to pay for sewers in public roads unless and until they have altered their premises so that they amount to a new building. I have put the views of my clients before the Committee on that, and I do not want to say anything more about it. But I did want to say one word —I will be quite short—about the other

point that the Ministry took on this Clause 62. Your Lordships may remember it was not given effect to in the clauses. The point taken was that a man may have bought a piece of land and may have given more for the piece of land if it abuts on to the public road because he has not this liability imposed upon him. That, I venture to think, is not a valid argument. From time to time, Parliament does impose liabilities upon landowners or occupiers which affect the value of land. If it is right to impose this liability, you cannot refuse to impose it merely because somebody may have bought a piece of land at a time when that liability did not exist. If that were to be so, no new liability could ever be imposed upon a landowner or an occupier, because the imposition of a duty or a liability on an occupier ultimately affects the value of the land. That, I venture to say, is not a valid point. It was not accepted by any of the Committees who considered Clause 62, or the corresponding clause, and I do not want to say any more about it than that I venture to think it is not a point which the Committee could entertain as being an objection to this clause or a point for which provision is required. I do not think I need say anything more about Clause 62 of the Romford Act, and these clauses which followed it. If the Committee would not mind looking at the table of contents in front of that bundle, the front page, you will see there what my friend's clients very conveniently call " section 62 clauses "; that means Section 62 of the Romford Act and the subsequent clauses which were developed on the lines of the Romford Section 62.

Chairman.] You told us this morning about Wigan and Rugby, and we were dealing with Coventry.

Mr. *Tyldesley Jones.*] Yes. Thornton Cleveleys does not help us at all. That was a case where there was some opposition by Imperial Chemical Industries, but it was settled, upon some amendment being made, which I do not think helps us at all here.

Mr. *Wrottesley.*] There is just the proviso to clause 6, subclause (1) of Thornton Cleveleys, on page 11, is there not? It is rather different.

Mr. *Tyldesley Jones.*] Will the Committee look at page 11? My learned Friend draws my attention to this, that in the Thornton Cleveleys Bill there was a proviso added to subclause (1) of clause 6 which said: " Provided that the expenses recoverable by the Council under this section shall not exceed the expenses of the construction of a sewer that would suffice for the drainage of the premises on which such expenses shall be apportioned under this section." That is only embodying the same principle as was embodied in——

Mr. *Wrottesley.*] One part of Coventry.

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] It is a different expression.

Mr. *Tyldesley Jones.*] That is so, my Lord.

Now may I pass on, looking at the table of contents, to what are described as " Section 64 clauses."

Chairman.] May I ask you just one question, before you pass on to Section 64 clauses? In the Coventry Bill, on page 10, proviso (iii), is the provision with regard to development. That is right, is it not?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] There is nothing else in Coventry, I think?

Mr. *Tyldesley Jones.*] No. Coventry embodied the Rugby provision with regard to development.

Chairman.] Yes, I wanted to be quite certain of that. Now may we pass on to section 64?

Mr. *Tyldesley Jones.*] Yes. Section 64 deals with a different matter. May I quite shortly explain, without reading the clause, what the point is. I reminded your Lordships that under the Public Health Act, there is power to construct a sewer through private land, the landowner being entitled to compensation from the local authority. This case occurs: Estate A is about to be developed, and the sewers are required for that estate. Estate B intervenes between Estate A and a public sewer. For the purpose of disposing of the sewage from Estate A, the local authority are willing to lay sewers, but they find it is necessary to lay a sewer through the land forming part of the Estate B, through private land. They are entitled to do it. They naturally would take a line which, on a town planning scheme or otherwise, is destined to be the route of a street; if there has been a town planning scheme they would naturally take the line of a proposed street, because nobody can build over a sewer, under

that section of the Public Health Act to which I referred, and it is convenient, if you are going to lay sewers, to lay them where there will be streets in the future. Now, they lay sewers through property B; the owner of property B is entitled to compensation; it is assessed and paid. Later on, the owner of property B develops his estate. He cannot build over the sewer; he naturally adopts that as the line of a street, and he constructs a street over the sewer. He then develops the land on both sides of the street for building purposes, and the houses can now, by law, be connected with that sewer. He, therefore, has had a sewer made in his private land for which he has had compensation, and when he develops his land he has the statutory right to use the sewer, and he has not contributed a farthing towards the cost of that sewer. The principle of the clause is that when he develops this land, he ought then to bear his share of the cost of the sewer; that is the principle. We venture to think that that is reasonable.

Chairman.] He will be entitled to his wayleave before he develops.

Mr. *Tyldesley Jones.*] He will have got his money—his cash compensation.

Chairman.] You are not touching that.

Mr. *Tyldesley Jones.*] Yes, we do effect that. I will tell the Committee how. May I read the Romford Section on page 15; it says: "In any case where the Council have incurred expenses in constructing after the passing of this Act" —so it does not affect cases where sewers have been laid before—"a sewer in or under land within the district and such land has become a street (whether repairable by the inhabitants at large or not) since such sewer was constructed such expenses shall be recoverable and shall be apportioned and become charged (subject as mentioned in the Act of 1892) on the premises fronting adjoining or abutting on such street in like manner as under the Act of 1892 the expenses of private street works executed in a street not being a highway repairable by the inhabitants at large with respect to which a resolution has been passed by the Council under subsection (1) of Section 6 of that Act are made recoverable and are required to be apportioned and are charged on the premises fronting adjoining or abutting on such street and all the provisions of the Act of 1892 (except Sections 11, 18, 19, 20 and 25"—I will not stop to explain what they are for the moment—" and subsection (1) of Sections 6 and 21) shall apply subject to the adaptations thereof set forth in the First Schedule to this Act: Provided that (i) Where any sum so apportioned and charged in respect of the expenses of construction of any sewer is recoverable from a person against whose compensation in respect of the carrying of the same sewer into through or under his lands an amount for enhancement of value has been set off in pursuance of the section of this Act whereof the marginal note is 'Benefits to be set off against compensation' the amount so set off shall be deducted in arriving at the sum to be so apportioned and charged and recoverable". May I pause there for the moment? The section in question is to be found on page 18a of this bundle; you will see it provides this: "In estimating the amount of compensation to be paid by the Council to any person in respect of the carrying of any sewer into through or under any lands within the district the enhancement in value of any lands of such person over or on either side of such sewer and of any other lands of such person through which the sewer is not carried arising out of the construction of the sewer shall be fairly estimated and shall be set off against the said compensation". So that your Lordship sees this: We lay this sewer through property B; the landowner of property B is entitled to compensation; but if we have this clause, which I have just been reading, when he makes his claim the local authority would be entitled to say: "Yes, it is true that you are going to have so much of your land occupied by a sewer, but the laying of the sewer will enhance the value of your property, and the benefit which will accrue in the form of enhanced value of property will be set off against the compensation which you otherwise would get for the laying of the sewer through your land." That is if he stood alone; he would get compensation measured by the net detriment to his property. When we come to page 15, we are now dealing with this case: Let us assume the landowner has had his compensation on the reduced scale, because the enhancement has been set off. Now he constructs a road over the sewer, and we say to him under Section 64: "Now you are developing your property and making your sewer across here you have got to bear a share of the cost of the sewer"—but we agree it would not be

fair to make him pay a share of the cost of the sewer, entirely disregarding the fact that he has already suffered a reduction of compensation for the enhancement of value of his property by reason of the construction of the sewer. There this proviso (i) is put in to meet that point. What it says is: "Where any sum so apportioned and charged in respect of the expenses of construction of any sewer is recoverable from a person against whose compensation in respect of the carrying of the same sewer into through or under his lands an amount for enhancement of value has been set off in pursuance of the section of this Act whereof the marginal note is 'Benefits to be set off against compensation' the amount so set off shall be deducted in arriving at the sum to be so apportioned." We are not to have it twice over, in other words; that is the object of it.

Chairman.] There is one point to which I should like to draw attention, or upon which I should like information from you: What powers has the second landowner—the one who gives the wayleave for the sewer—to arrange for the direction of that sewer?

Mr. *Tyldesley Jones.*] None, my Lord.

Chairman.] It looks to me as though, if the local authority can lay that sewer where it likes, it forces him to develop his property in a way which he may not wish to.

Mr. *Tyldesley Jones.*] Not quite, because it is subject to compensation. If they were to take a line across his land which he said was going to cause great detriment to development, he would get so much more compensation.

Chairman.] Supposing he said: "I am not going to develop now; the land is not ripe for development, but in 20 years' time it will be; if you run that sewer along there, that is exactly where I am going to build houses," what is the position then? Do you say that they give him compensation for what is going to happen 20 years hence?

Mr. *Tyldesley Jones.*] No; he will get compensation for the present detriment he suffers—that is, in respect of a reduction in the value of the land.

Lord *Macmillan.*] And that will include any potentialities.

Mr. *Tyldesley Jones.*] If he could show that we would thereby interfere with the value of his property, that we would depreciate the value of his property, he would get compensation for that.

Captain *Bourne.*] I take it if you insist—taking those two examples you have put—in running a sewer across property B diagonally, which would in point of fact make it extremely difficult to lay out the property for development, that would be a ground for compensation.

Mr. *Tyldesley Jones.*] He is, of course, entitled to compensation in any event.

Captain *Bourne.*] It would be a ground for obtaining a greater sum of compensation, because it made it more difficult to lay out the property later.

Mr. *Tyldesley Jones.*] Certainly; there will be no dispute between my learned friend and myself on that.

Mr. *Wrottesley.*] Provided it could be foreseen, I agree. The difficulty is that it might not be foreseen.

Mr. *Tyldesley Jones.*] I quite agree with this, that whether or not it does in fact interfere with the value of the property might be a matter of dispute, and that is a matter which the Arbitrator would have to determine.

Chairman.] It is a matter of opinion.

Mr. *Tyldesley Jones.*] Yes; but if the Arbitrator is satisfied that it does interfere with the value of the property, he must award compensation for the detriment.

Sir *Henry Cautley.*] Why should the owner of property B pay something towards the cost of a road which he does not want, and which will not benefit him until 20 years hence?

Mr. *Tyldesley Jones.*] First of all, he receives compensation for the detriment he suffers.

Sir *Henry Cautley.*] I understand that.

Mr. *Tyldesley Jones.*] In arriving at his compensation, the Arbitrator has to take into account any enhancement in the value of the property due to the construction of the sewer. If he says: "I do not want the sewer; it does not improve my property at all," he would dispute that there was any enhancement of value. That would have to be determined.

Sir *Henry Cautley.*] This clause only comes in when the road is made.

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] That seems to me to raise a little difficulty. It is when such land has become a street.

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] What is the precise point of time when it becomes a street? Is it when the street is laid out?

Mr. *Tyldesley Jones.*] When it has been constructed, surely?

Chairman.] It is in the definition clause.

Lord *Macmillan.*] No; it defines "street", but not the precise time at which it becomes a street.

Mr. *Tyldesley Jones.*] The definition is taken from the Public Health Act. Surely it would not become a street by drawing a plan; it would not become a street merely because you marked it out with pegs; it would not become a street because you lifted the turf. Surely it becomes a street when it is complete?

Lord *Macmillan.*] This imposes an immediate liability for money, and one wants to know the precise point of time when the money becomes due.

Mr. *Tyldesley Jones.*] Certainly.

Sir *Henry Cautley.*] When does the money become due?

Mr. *Tyldesley Jones.*] This compensation will become due when the Council have passed this resolution, made their apportionments, and got their apportionments approved. I want to show you that in a moment. This introduced the procedure of the Private Street Works Act. The date of completion of the street does not create a date of liability. It is the procedure under the Private Street Works Act, as adapted, which will fix the point of time for liability.

Sir *Henry Cautley.*] Is the owner of property B liable to pay for the sewer made under his land, which may not be of any use to him for 20 years?

Mr. *Tyldesley Jones.*] We will see. If the street is made for it, it is because his property is being developed.

Sir *Henry Cautley.*] Take the note on the side. It says: "Apportionment and recovery of expenses of construction of sewer constructed before land became a street".

Mr. *Tyldesley Jones.*] Certainly; it is dealing with a case of a sewer which has been constructed across private land.

Sir *Henry Cautley.*] I understand that; take your illustration of Estates A and B.

Mr. *Tyldesley Jones.*] And over which a street is now constructed. The section does not come into operation until a street has been constructed over the sewer.

Sir *Henry Cautley.*] I could not follow that.

Mr. *Tyldesley Jones.*] May I make that plain? It says: "In any case where the Council have incurred expenses in constructing after the passing of this Act a sewer in or under land within the district and such land has become a street (whether repairable by the inhabitants at large or not) since such sewer was constructed." So it is dealing with a case where first you have a sewer constructed through private land, and where at a later date there has been constructed a street over the sewer. That is the case with which it is dealing.

Now, if I may go on, proviso (i) is a proviso inserted for the benefit of the landowner, to ensure that we are not to get a certain thing twice over. Proviso (ii) is "No expenses apportioned in pursuance of this section against agricultural land shall be recoverable until such land ceases to be agricultural land."

Chairman.] These are the same as we have had before.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Proviso (iii) is the same, and proviso (iv).

Mr. *Tyldesley Jones.*] Yes. Subclause (2) is "In this section the expression 'street' includes part of a street."

Captain *Bourne.*] Looking at this again, it does seem very difficult. I am looking at proviso (ii). If this cannot come into operation before the lands become a street, I am rather wondering what function proviso (ii) fulfils, and whether it has not been put in on a false analogy from clause 62.

Mr. *Tyldesley Jones.*] No, for this reason. A street may be constructed over the sewer, but though the land, by reason of the construction of the street, has now become available for development, it may still be used as agricultural land.

Captain *Bourne.*] Yes; I understand.

Mr. *Tyldesley Jones.*] That is the point. It is like a lot of these fields we see, which have erected on them a board with "Building Plots for Sale," but still there are cattle grazing.

May I say I want, for the moment, to jump over the First Schedule. That is a Schedule which contains adaptations of the Private Streets Works Act. I want to jump over it for the moment for this reason. Those provisions deal with the machinery. I shall have to refer to it perhaps a little bit later on, but I want to show you the development of the main clause. We started with this clause in Romford in Section 64, and if I look at the table of contents in front of this Bundle, I see that Rugby and Wigan, in 1933, contained similar clauses. Again I make no point of that, because they were not fought clauses. But there was no alteration there. The clauses were in exactly the same form. Then we come to Thornton Cleveleys. Mr. Lees kindly reminds me that there are several other Bills—I have a list of them—where this clause was inserted, but again there was no opposition, and I do not think it really assists this Committee to be told about those other Bills. I am not going to give the Committee a lot of names and cases where the matter was not threshed out with the assistance of Counsel on both sides.

Lord *Macmillan.*] Excepting that it shows a large number of local authorities are concerned. It does show that.

Mr. *Tyldesley Jones.*] Yes, but when considering the principle of it it is rather this case, that a precedent having been established, the Committee is satisfied that there is nothing to exclude the application of the principle of it, and it has gone through. It does not help us now if the Committee is considering the matter afresh.

Lord *Macmillan.*] No, except that it shows it has a value in the eyes of local authorities.

Mr. *Tyldesley Jones.*] I think the very fact that we are here will show that.

Mr. *Wrottesley.*] It is usual for a clause obtained like this to spread rapidly. That is agreed. It is put into every Bill in the next Session.

Mr. *Tyldesley Jones.*] The cases in that Session of 1933 were Rugby and Wigan—I have already referred to those—Barking, Warrington, and Wimbledon; in 1934, Darlington; in 1935, Beckenham, Exeter, Sunderland and Urmston, and in 1936, this year, there are several Bills.

Captain *Bourne.*] I think I ought to make the comment that, so far as the House of Commons Bills are concerned, these clauses were deliberately not considered, in view of the fact that this Committee was going to sit.

Mr. *Tyldesley Jones.*] I am much obliged.

Chairman.] We have left them over, too, in the House of Lords; I think the only one is Hornchurch.

Mr. *Tyldesley Jones.*] At all events, there is no question about it but that this Committee is now considering the matter on its merits. May I say at once I am using this merely to put before you the considerations which have so far been engaging the attention of Committees and the decisions they have come to, without in any way saying those are precedents which bind the Committee. Of course, they do not.

Looking at this table of contents, you will note Thornton Cleveleys Bill; I do not think I need take up time about that.

Captain *Bourne.*] It is the proviso on page 23.

Mr. *Tyldesley Jones.*] I do not think I need trouble you with that.

I do want to say a word about Coventry. You will see that Coventry is absent from the section 64 clauses group, but Coventry did contain a clause partly modelled on section 64, but going far beyond it. I have not the Coventry clause as it was introduced; I do not want to deal with more clauses than necessary.

Chairman.] I do not think we need go into the Coventry clause, because you are not pressing it, are you?

Mr. *Tyldesley Jones.*] The clause which Coventry asked for went far beyond Section 64 of the Romford Act.

Chairman.] And it was struck out?

Mr. *Tyldesley Jones.*] Yes. Just as I admit perfectly frankly that decisions of former Committees in my favour were merely decisions of Committees which will be reviewed here, so I shall ask you to review the decision in Coventry to give them nothing on this matter. I am not going to argue, or attempt to justify the clause which was in fact put forward by Coventry; it went far beyond Romford, Section 64. To make effective and to

work Section 64, which I have just read, on page 15, required an adaptation of the Private Street Works Act, and here my learned friend Mr. Wrottesley's clients have been good enough to prepare a document which I am going to use, if he will allow me to do so.

Mr. *Wrottesley.*] Certainly; I have offered it. (*Copies of the document are handed to the Committee.*)

Mr. *Tyldesley Jones.*] This series of amendments was settled, as I understand it, with the assistance of the Ministry of Health. Having drawn your attention already to the Private Street Works Act, it will be enough now if we look at what amendments were made. The red ink amendments are the amendments.

Mr. *Wrottesley.*] Yes, the red ink ones are the section 64 ones.

Mr. *Tyldesley Jones.*] The Committee will not be troubled with the black ink amendments, but simply with the red ones. We need not trouble about the amendment on page 3 of the Act.

Chairman.] I am a little bit puzzled about this.

Mr. *Tyldesley Jones.*] May I explain what it does?

Chairman.] It takes your Romford Act——

Mr. *Wrottesley.*] No, the Private Streets Works Act.

Mr. *Tyldesley Jones.*] And then it takes our Romford Act, and says that Romford has, for this purpose, amended the Private Streets Works Act, 1892, as altered in red.

Chairman.] It takes the Romford Act, and shows it on the Private Streets Works Act.

Mr. *Tyldesley Jones.*] Yes.

Sir *Henry Cautley.*] Is the result the same as the First Schedule on page 16?

Mr. *Tyldesley Jones.*] Yes. This is the writing of the amendments which appear on page 16 into the copy of the Act.

Sir *Henry Cautley.*] It is shorter to look at page 16, is it not?

Mr. *Tyldesley Jones.*] I do not find it so, because you then have to have a copy of the Private Streets Works Act, and do the mechanical work which my learned friend's clients have done.

Lord *Macmillan.*] Why is not that done in the process of legislation? Really it is a dreadful way of legislating, when you think that this has to be done at the expense and trouble of private parties who have got to consider it, when it ought to be done in the Statute.

Mr. *Tyldesley Jones.*] Those of us who sit on this side of the table sometimes wonder why those observations are made to us, and not elsewhere.

Lord *Macmillan.*] You are the sounding board. You provide the opportunity for these things to be said.

Mr. *Tyldesley Jones.*] I am afraid we must here, at all events, hold all the Members of the Committee, in their respective Houses, partly responsible.

Lord *Macmillan.*] So far as the judiciary are concerned, they have made similar observations from time to time. But at the moment, I am not sitting judicially.

Mr. Tyldesley Jones.] The first amendment is simply to cut out the limitation of the streets not being repairable by the inhabitants at large, so this will apply if a street is made over a sewer, and whether the street is made as a street repairable by the inhabitants at large at first or is not is immaterial on this point. Subclause (1) is struck out because it is not required. Then under sub-section (2) "The Surveyor shall prepare, as respects"—then instead of "street" you read "sewer," "(*a*) A specification of the" then read "sewer" and instead of "an estimate of the probable expenses" read "statement of the actual expenses". Now you see we are dealing with matters after they have happened, and an apportionment. We do not want a provisional apportionment. It is to contain the particulars set out in this Schedule. Under sub-section (3) he gives notice of the preparation of his statement and of his actual apportionment and during the month he has got to keep it open for inspection. Then under Section 7, as amended, "During the said month any owner of any premises shown in the statement as liable to be charged with any part of the expenses" may object on these grounds "(*a*) That an alleged street or part of a street is not or does not form part of a street". (*b*) is no longer material. "(*c*) That there has been some material informality, defect or error". "(*d*) That the works are insufficient or unreasonable or that the expenses are excessive (*e*). That any premises ought to be excluded from or inserted in the

apportionment. (*f*) That the apportionment is incorrect in respect of some matter of fact to be specified in the objection (or where the apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit derived or to be derived by any persons or the amount or value of any work already done by the owner ". Putting it shortly, the position is exactly the same as regards this sewer already constructed as under the Act of 1892. It is with respect to prospective works making allowance for actuality. You have actual figures to work on now; the whole thing is known. That is merely adopting the language of what had to be prospective language to the actual state of things which is *ex hypothesi* now known. Then we add in as further objections, if I may read (*f*) again, because (*f*) is amended; (*f*) is this, that they may object " That the apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit derived or to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises." Now we must take up No. 2 in red ink above: " by way of construction of a sewer in the street or part of a street to which the apportionment relates." So if the owner has already spent any money on sewers that has to be taken into account. Then we add as further objects paragraphs (*g*) and (*h*) which appear in red.

Mr. *Wrottesley.*] It is confined to a sewer in the street.

Mr. *Tyldesley Jones.*] Certainly. He does not get credit for any sewer constructed elsewhere.

Mr. *Wrottesley.*] In the street behind.

Mr. *Tyldesley Jones.*] I quite agree. " (*a*) That the sewer will not increase the value of any premises of the objector " and (*h*) " That the sum or proportion to be charged against any premises of the objector under the apportionment is excessive having regard to the degree of benefit derived or to be derived by such premises from the sewer." That would include the case my learned friend has just been putting. Supposing that the owner is sought to be charged in respect of a sewer in the road in front when the street is constructed; as my friend said rightly, under (*f*) he does not get credit for money he has spent on a sewer which may have been put in at the back of his premises. Under (*h*) he may claim that it should be taken into account because if his premises have the benefit of sewerage already laid by him in another street, then the benefit which he will get from the new sewer is so much less, indeed may actually be destroyed. That is the way he gets it. So that when you come to assess him he is entitled to object and say: " Quite true; here is this street made over the sewer; I have not contributed a farthing to the sewer but I object to being charged because I shall get no benefit at all from it. Why, I have laid my sewer behind there." That has got to be taken into account. I need not trouble your Lordships with the details of section 8 for this reason, that that is the procedure about the hearing of objections and that is applied, just making the necessary alterations, substituting " actual apportionments " for " provisional apportionments." I do not think anything turns on section 9. We have adopted section 10, and adapted it too.

Chairman.] With only a drafting amendment.

Mr. *Tyldesley Jones.*] That is all but I want to emphasise that even as regards a work which has already been constructed with a street over it there is the power of the urban district authority—and if they do not do it, of the Ministry of Health on appeal—to say that these things, with a greater or less degree of benefit should be taken into account. I should not have thought myself that section 10 was required at all in view of the addition we made to the objections earlier in section 7. If you would not mind turning back for one moment, under section 7 we have added (*g*) and (*h*) to the objections and those deal with the degree of benefit derived or to be derived from the sewer. That covers paragraph (*a*) in section 10 and I myself should have thought it was unnecessary to repeat it by adapting section 10. Then (*b*) " The amount and value of any work already done "—that is not done except to the extent to which it has been adopted by the local authority of the Minister of Health as a basis for settling the apportionment or rather as a matter to be considered in fixing the apportionment. I can conceive that

it may be that the draftsman found that it would be more troublesome to cut out (*a*) and leave in (*b*) and to some extent there may be a little duplication but I do not think it really does any harm. I only wanted to point that out.

Lord *Macmillan.*] They are rather different approaches. In the one case it is an objector's right to object on a particular ground with regard to the quantum of benefit; on the other hand it is a discretion on the part of the urban authority, if they please, to have regard to the benefit.

Mr. *Tyldesley Jones.*] That is true, but your Lordship sees this that if they please or the Minister, on appeal, decides that they are to have regard to the considerations in Section 10, if they do then, of course, they are made effective in the hands of a landowner as objections and are so given effect to in paragraph (*f*) on the top of page 5.

Lord *Macmillan.*] They do not take the initiative in that matter?

Mr. *Tyldesley Jones.*] They take the initiative in making them material matters. When they have been made material matters then the landowner can object that the material has not been properly regarded.

Lord *Macmillan.*] Under (*g*) on the other hand he can do it on his own motion.

Mr. *Tyldesley Jones.*] That is the point, and, therefore, to some extent, my new addition (*h*) covers ground which is covered in Section 10 and to a little extent there is a duplication. I do not think it matters. There are drafting reasons which would make it more cumbersome if you tried to avoid that duplication. Section 11 is struck out. Sections 11 and 12 are no longer required except a small portion of subclause (1) of Section 12 because we have got rid of the provisional and final apportionment. We made one apportionment in the first instance. The remaining provisions of the Section are, where required, applied with the necessary drafting amendments. Sections 18 and 19 are not, of course, required; they have got nothing to do with this. Section 20 is not wanted. The first part of Section 21 is, apparently, not wanted, and of course Section 25 is not wanted. There is the scheme. It is the adaptation and application of the Private Street Works Act to this kind of case. There are two points; first of all, there is the principle and, secondly, the machinery.

That is the whole of the matter which I have to put before the Committee. I do not think I can add anything more beyond saying this, that it does seem right and proper that, if a landowner is put into a position later to avail himself of sewers constructed at the expense of other landowners and the general body of ratepayers and thereby develop his estate more beneficially than he otherwise would, it does seem that it is not unreasonable to ask him to pay a contribution towards the cost which has been incurred in laying the sewer through his land, of which he now makes use.

Chairman.] He would only pay the original cost of laying the sewer?

Mr. *Tyldesley Jones.*] That is all. He will pay a contribution towards the actual cost. That is all.

Sir *Henry Cautley.*] Should not there be some limitation of time as to that liability?

Mr. *Tyldesley Jones.*] I should have thought not.

Sir *Henry Cautley.*] Say 40 or 50 years. The neighbourhood may become unpopular and development ceases. Is it not advisable to have that liability limited?

Mr. *Tyldesley Jones.*] If the property has not been developed and the district becomes unsuitable for development he will never pay.

Sir *Henry Cautley.*] The liability will attach to the property. A limitation is very desirable in most cases. This liability is clogging the title as it were.

Chairman.] It may be that after a certain number of years a totally different system of drainage will be introduced and then the unfortunate man would have to pay for a drainage system for which he never had any benefit if there were no limitation.

Sir *Henry Cautley.*] You might consider that.

Mr. *Tyldesley Jones.*] I am afraid my mind has not applied itself to that. Perhaps I may look at that. There are two corrections I want to make. Your Lordships may remember that both parties did prepare memoranda which were furnished to your Lordships. I do not suppose your Lordships have had much opportunity for looking at them?

Chairman.] They only arrived late last night.

Mr. Wrottesley.] Ours was only a list of points. There is no argument in our memorandum.

Mr. *Tyldesley Jones.*] There are two corrections I ought to make with reference to mine. The point is that there are two mistakes. The memorandum which we have supplied, I am afraid, had to be prepared under some pressure. We did not know it was going to be asked for. It was prepared by the Parliamentary Agent under very great pressure. There has been a great deal of other work on. There are two errors which they desire me to correct. The first error is on page 10.

Mr. *Wrottesley.*] Is there not one on page 8?

Mr. *Tyldesley Jones.*] I am not going to read this document. It will be available for your Lordships' consideration.

Chairman.] Give us the line and the words.

Mr. *Tyldesley Jones.*] In the second paragraph, page 10, it is stated that: "In the case of the laying of a sewer through private land no charge can be made unless the landowner constructs a street over the sewer." It should read "unless a street is constructed over the sewer,"—because the street might be constructed by a local authority—or, if you like "unless the landowner or the local authority". I do not want your Lordships to think it is entirely left in the option of the landowner to construct a sewer because the local authority might do it. Then, on page 5 in the third paragraph: "It is submitted that the cost which would fall on the frontager for his share of a sewer would not exceed the cost which he would incur in the provision of a cesspool". That submission is not quite accurate, nor is it quite what is intended. It is, of course, true and that is our submission in the case of an average house frontage, but if you were to take the case of a long frontage, such as a park or pleasure grounds to a road, the liability which the frontage would attract would exceed, in all probability, the cost of cesspool drainage. I want to make that quite plain.

Chairman.] We strike out that paragraph do we?

Mr. *Tyldesley Jones.*] No,—"It is submitted that in the case of a normal house frontage"—that is what we mean.

Chairman.] I think that is quite clear.

Mr. *Tyldesley Jones.*] The Ministry of Health have sent, I gather, to your Lordships a memorandum about the cost of constructing sewers and cesspools. I do not know whether your Lordships have had that. I am not going to say anything about it beyond this, that that is worked out too upon the basis of the normal frontage.

Chairman.] I think we may take it that all these are the usual small developing estates—small plots.

Mr. *Tyldesley Jones.*] Yes, that is the point. I am sorry to have trespassed so long on your Lordships' time.

Chairman.] Mr. Wrottesley, I am afraid I have to go at 10 minutes to four and perhaps the Committee will forgive me. I only wanted to tell you so that you did not get involved in a long argument and have to break off.

Mr. *Wrottesley.*] Your Lordships probably know that I am instructed by a number of Societies such as the Freeholders Society, the Central Landowners Association, the National Federation of Property Owners Associations, and then by some professional bodies, the Chartered Surveyors Institution, the Land Agents Society, the Incorporated Society of Auctioneers and Landed Property Agents, the House Builders Association of Great Britain and then by one other client, the Ecclesiastical Commissioners, who are, of course, well known as very large and, I believe, very well-behaved landowners. I understand that the view is this—and this is what I am instructed to say—and particularly this is true of the first Section, Clause 62—that if that can be made to work without doing injustice they are in favour of it. But as regards Clause 64 we find it so difficult to make it work justly that I am not instructed to ask you in any event to pass that clause. I will give you my criticism but I do want to make it quite clear that with regard to the first of these two clauses, Section 62, if it can be made to work without injustice, my clients, professional and otherwise, would like to see something on the Statute Book.

Chairman.] You are not objecting in principle to the clause, provided it can be made to work properly?

Mr. *Wrottesley.*] That is so. Therefore, with regard to that clause, I should like to come at once and to put in the simplest possible form what are the most apparent defects in it.

I am not sure that they are not all matters which have already occurred to one or another Member or perhaps all the Members of the Committee but I can put them quite simply and, perhaps, the only other thing I might say by way of introduction is this, that if you read that memorandum—and I, like your Lordship, only got that memorandum late last night—and if I look at the speeches made by Counsel on the one or two occasions when this Bill was introduced before a Committee of either House,—I think they were always House of Commons Committees—I always find the same things in them. I always find a case put dealing with what is called an estate developer. I always find that. The real troubles that you are going to find are these, that the clause which is, quite rightly, I daresay, and honestly and properly aimed at an estate developer, unfortunately hits a number of quite innocent persons who do not want to develop their estates, who prefer to live in their own homes and, nevertheless, are going to be subjected to a measure which in their case is positively penal. That is the difficulty. If we may take that clause, Section 62, first of all,—it has been read and I need not remind you of what it provides—it is true to say that it applies to persons who have purchased their plots—and I lay some stress on the word "plots"—on the faith of the general law, and it cannot, I think, be denied that frontage land, land fronting on an existing highway, commands a higher price than similar land which does not face on to a public highway. One of the elements which makes up that increased value is not merely access which, of course, is a consideration, but also the certainty that under the present condition of the law the man who has bought a plot with a view to erecting a house upon it, which leads on to a public highroad, a road repairable by the inhabitants at large, can never be subjected to a charge for the making up of a street or for the provision of a sewer.

That is one of the elements. That is the first point. But it goes much further than that. This same clause applies to persons who not merely purchase their plots on the faith of that state of the law but have actually built or bought houses, in which case the owner will have *ex hypothesi* provided himself with a drainage system. That must follow. If you have a man who goes and buys a plot frontaging on a highway and the house is there, it must have an adequate drainage system, one which is not a nuisance. Now, alongside the plot so purchased and beside the house so bought or built there comes a sewer in an existing highway. The person with whom we are dealing will probably have paid a higher price for his land, having regard to the fact that it was land which never could be subjected to the cost of making up a private street or the cost of laying a sewer; and if he has bought his house he has similarly bought a house which could not by law be subjected to either of those charges. But in the second place he has paid for and constructed a private drainage system which must, of course, consist of a drain and something in the form of a disposal works. It must not be a nuisance. That cost you will find quantified by the independent gentleman who made this estimate of expense for us from the Ministry of Health. You will find that figure put at about £20 to £30, as I understand it. If you will turn to the third page of that note: "Cost of sewers in streets," which the Minister of Health was good enough to provide us with, you will find some rather interesting figures. My instructions are that we think the Minister of Health rather under-estimated the cost of a private cesspool, but if you look at that page, which begins with: "Assuming an average house frontage of 30 feet or 10 yards"; I think it would not be a waste of time to look at those two or three figures. "Assuming an average house frontage of 30 feet, or 10 yards, the houses on both sides of the road being served by a single sewer, the cost of these sewers per frontage would be in the first case $\frac{£1\ 5s. \times 10}{2} = £6\ 5s.$ and in the second $\frac{£3 \times 10}{2} = £15$. It would probably be fair to say"—and this sums it up—"that the cost per frontage of a sewer laid in a street and to serve the premises therein ranges between figures of £5 to £15. An owner wishing to connect his premises to the sewer would have to provide a drain (usually four-inch, with one or more traps and inspection chambers) from the back of his premises

(where the sinks, etc., are situated) to the sewer "—it is described there—" a distance of probably 60 to 70 feet, at a cost of (say) £12 to £15. Thus, if an owner had to pay for both his frontage share of the sewer and for his drain "—this is dealing with the cost of the sewer and the drain to connect with it—" his total outlay might be of the order of £20 to £30." Now with regard to cesspool drainage—" The expenditure involved in cesspool drainage also varies within wide limits. The cost, including the expense of connecting the cesspool with the house, might be any figure between £15 and £30. This system, however, entails recurrent expenses of emptying." Your Lordship sees why I pause and draw attention to that. We think it is an under-estimate. It does not matter much perhaps for the purposes of my argument, but I am drawing attention to the fact that you have here an individual who has either bought land and perhaps paid a higher price than he would otherwise have paid and built his house upon it, or has, possibly more frequently the case, bought the house on the main road and paid not only for the house but for his private drainage. If we take the Ministry of Health's own figure he would have paid probably a figure of about £30. That is expenditure which he was forced to make because the Local Authority when he put the house up, or when he bought the house, had not brought the sewer to him. It has never been regarded as being the law of this country that a person is to make his own sewers. The duty is quite plainly, under the Public Health Act, charged and charged only on the Local Authority. That is quite definite. You have a case here of a person who is confronted with the absence of sewerage that may have been due to slackness on the part of the Local Authority—it may not; I do not know. At any rate, it is not his fault, it is not the fault of the gentleman who buys his house that the sewer was not there when the house was built—the house indeed may be an old house. It is quite clear that in the case of which I am thinking you have a man who has paid for his house, paid for his cesspool, and in buying his house has paid a figure which takes into account the fact that he could not be charged with the provision of that sewer. Those are not the only payments that such an individual will have made, in all probability. He will in addition have paid full rates, including a contribution to the sewerage rate just as if he had had the advantage of sewerage. So now you have a man who has paid for his own sewerage system, who has possibly paid more for his house because he was never liable to have to pay a charge for a sewer, and, thirdly, he has been contributing for as long as he has been inside the Local Authority's area, to their sewerage rate. I should have thought that the only terms upon which, in justice, such a man can be made to pay for a sewer when at last it does come to him, are of deducting the cost thrown away through his having to provide the cesspool and in some way allowing him for the rates he has paid and for which he has not yet received the service.

Let us think for a moment and compare the Education rate. The childless man, the well-to-do man, all, it is true, contribute to the Education rate. They may say that personally they make no use of the facilities provided; one has no children to educate; the other may prefer sending his children to schools at which he pays. But, at least, if the childless man marries and has a family he is not in addition charged an entrance fee when he does send his child to school. The principle of rating, as I have always understood it, is that you do not rate people on the basis of excusing those who do not make use of the facilities, neither do you charge them for the facilities when they happen to come along. Therefore if the childless man marries, or if the well-to-do man decides that it is a mistake to send his children to a school at which he pays and prefers rather to use that system of education which is provided by the State, he is at liberty to send the whole of his family there, however large, and nobody dreams of charging him an entrance fee because he does so. Why, therefore, in a community where you have an occupancy of a house which is in existence when this Act is passed, should the occupier of such a house be exposed to the fact that he is to pay for a sewer which he does not need to use because he has a perfectly efficient cesspool, a cesspool which he was compelled to use because the sewers were not made and that through no fault of his? It may well be that he consulted his Solicitor and was told that he could never be charged with the cost of a sewer and for that reason may have paid more for his house, then when the sewer comes along he is really made to pay for it though it were

an ornament or an amenity to him. I do suggest that in some way those cases ought to be met.

Now how are such cases to be met? I do not want to pass this over: it is perfectly true that if you look at the Romford clause you do get provisoes which I have no doubt may have been regarded as being some sort of protection for the cases I am putting, for instance proviso (*g*) at the bottom of page 2, and (*h*) at the top of page 3. Proviso (*g*) is: "That the proposed works will not increase the value of any premises of the objector." It may be said: If you are one of these people who have a cesspool you must show that the proposed works will not increase the value of your premises. To begin with, I should have thought that the case I am putting is one which ought to be looked after by the Act of Parliament and not left to be looked after by a Bench of Justices; and no one can tell how they would construe this rather elaborate Act. I should have thought that the duty of those who want to alter the general law was to look after the case which I am putting, the case which I can see has occurred to members of the Committee. Certainly you cannot rely on (*g*) to give me any protection at all because (*g*) says only that I can object on the ground that the proposed sewer will not increase the value of my premises. If I were desirous of realising my property I do think it is highly probable that the provision of the sewer will have increased the value of my premises, but the point is that I do not want to cash it, I do not want that money, I want to be left in peace, I want to live in my home; a not unnatural demand. But to come along to me and say: "Oh, but here is the sewer, now you can sell your house for £500 more than you could have got last year when you had not a sewer—that is no comfort to me. I think it was the Ministry of Health themselves who drew attention to questions like this, and it was in order to meet points like that that one or other of these amendments were introduced at some time or another into this clause. In my submission clearly such a person ought to be left scatheless; he certainly ought not to be compelled to go before Justices at all and certainly ought not to be victimised and made to pay for what is to him a purely theoretical increase of value which will materialise, as I think Lord Macmillan pointed out this morning, only when he has the privilege of giving his descendants the power of paying rather higher death duties when he dies. That is the only good he gets if he insists on stopping in his own home until he dies. That such a person should be charged during his lifetime or at the time the sewer comes in a case where the sewer is no good to him, is, in my submission, an obvious injustice; and if this clause cannot be amended so as to prevent injustice occurring I suppose the Committee will say: "It is unfortunate, but the clause which contains that injustice must not be passed"—especially as it is a departure from the general law.

The next ground on which it is said this gentleman might escape is under head (*h*) "That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived by such premises from the proposed works." I do think it is very difficult to follow what that means. The Committee will remember that the principle applied in the Private Streets Works Act is frontage and it becomes extraordinarily difficult, to me at any rate, suddenly to turn aside from frontage and understand what is meant by introducing for the first time the question of benefit. I am going to make this submission in passing, and as to this all my clients are entirely at one; that this kind of legislation, if it is to be encouraged at all, should not be on the basis of frontage; it is nothing to do with frontage; it should be a benefit. Benefit at least one understands. You may have a sewer extending for two or three miles along an existing high road and which may not only be of a capacity beyond anything dreamt of in connection with any private street but may be at a depth which will double the cost.

Sir *Henry Cautley.*] Frontage may depend very largely on the development of the estate. Where the street is there, the frontages may be all alike, but when you have a long main road that would not be applicable.

Mr. *Wrottesley.*] I agree. It serves two purposes in the Private Streets Works Act: it gives a unit of development and a unit of the work to be made; but one of the great difficulties in taking the Private Streets Works Act and applying it to these apparently amorphous conditions is this: You do not have a unit of work which is a reasonable one, and you certainly do not have a unit of area. My friend said that this

work might proceed, and suggested it was all to proceed by short lengths. I do not know that, nor does he, nor does anybody. I do not think it is so and I have no reason to suppose that my clients think it is so. The sort of case where this arises is only too often this: An estate lying some considerable distance away from the centre of the town, development taking place of some satellite community—I mean satellite as compared with the original nucleus—and it is often wise and provident for the local authority to take a sewer to such a housing estate. The way in which this Section would be used would be to try to earn a little on the way at the expense of houses which happen to lie along an old road or highway. I have no reason to suppose, and nobody can suggest, that this case is limited to short sections. Really, one has great difficulties. One of the two great difficulties in this case is the difficulty of arriving at a proper and sound unit which is equivalent to some extent, at any rate, to the Private Streets Works Act. The unit is the street, and the unit of the work is the sewer; but under the clauses here there is a very different basis. The Ministry of Health in their Report point out that difficulty, although they do not regard it as a difficulty. Will you look at the bottom of the same page?: "The above remarks contemplate normal conditions. Where, however, the sewer is laid in a prolonged street, it is probable that the lower portion may require to be of much greater capacity than the upper, in which event the cost can hardly be regarded as that of an ordinary street sewer, since in its lower portion it has assumed to some extent the character of a trunk or outfall sewer. These conditions become, of course, accentuated if the sewers of other streets discharge to the sewer in question. It will be appreciated that generally speaking, private streets (the sewering of which is chargeable to the frontagers) are not of great length, and hence the conditions referred to in this paragraph would not apply to them". I think, if you look at the beginning of that Report, you have another element to which some importance must be attached—that is, depth. Would your Lordship look at the last two paragraphs on the first page?: "In normal circumstances, however, a rough estimate of the cost of laying a 9-inch sewer, at a depth of 7 feet in average soil and with the usual amenities, etc., would be £1 5s. 0d. a yard. Alternatively, a sewer which, owing to the nature of the flows and the local levels, requires to be laid of 15-inch size and at a depth of 14 feet, may be taken as costing about £3 a yard". Over 100 per cent., nearly 200 per cent. added to the cost, according to whether it is a deep or a larger-capacity sewer. That shows what a dangerous zone we are in. One has to remember that when you are in these high roads you will have sewers laid at a considerable depth. It is rather different from a private street, and you are much more frequently in a road where the sewer is laid at a much greater depth in order to deal with areas lying further out. You have, in other words, to get your fall. You have difficulties under the Private Streets Works Act which even there may be harsh and oppressive, but when you come to apply them to an existing high road you have to bear in mind what it may mean where there are deep sewers and sewers of considerable capacity. I should have thought it was impossible to suggest that you could apply the principles of the Private Streets Works Act unless you introduced two most important qualifications; first in some way providing that the person beside the road shall, when he comes to pay, not have to pay for a sewer which is laid at an unnecessary depth having regard to the nature of the premises, but is laid deep because it has to deal with an area two miles away; nor should he have to deal with a flow which is of a capacity out of all proportion to the size of his house, or what it would be if it were ordinary private estate development. Those are two very important points, in my submission.

Sir *Henry Cautley.*] If you have to lay the sewer under a modern motor road, provided with thick concrete reinforcement——

Mr. *Wrottesley.*] That is another point. What can be the justification, following that up, if my house happens to be beside Watling Street, for making me pay for going through 12 inches of concrete and going down 14 feet? I imagine that work done in that sort of street or in any busy thoroughfare must surely be much more expensive in any event. There is so much more watching to be done owing to the traffic, and you are so much more cramped. Without quantifying, there must be much greater expense in hacking your way through a busy thoroughfare than is incurred in the

ordinary private street where the surface is a builder's road surface, a comparatively easy and cheap matter, where you have no special watchmen, you do not have work done in relays, closing half the road, which means unnecessary expense, you do not have the depth, and you do not have the sewer not proportionate to the size of the house.

I was going to suggest, with regard to this Clause 62, that three of the things your Lordship should insist upon should be: first, that this clause is not to be made a vehicle for putting upon a person any expense in respect of a sewer greater than he would have to incur if he were in a private street; second, that he should not be exposed to any expenditure which is referable to the fact that a long length of sewer is being dealt with; and third, that he should not be exposed to any additional expense by reason of the fact that he happens to live on a road which is a busy thoroughfare, and therefore is a very expensive road to open, and a very expensive road to reinstate. Assuming all those items can be disposed of in some way, I have asked my clients if there is any standard, and they seem to be unanimous upon this, that the average size of the sewer which is put in under the Private Streets Works Act is about nine inches. I am very anxious to prevent any needless litigation in the future before Justices, and I am told—and I think my friend will probably find that his clients will agree—that a 9-inch sewer is the average sort of sewer laid under the Private Streets Works Act. They may get as small as six inches, but my clients tell me that I shall be quite safe in saying a 9-inch sewer. That represents the sort of standard size sewer which you would expect to have to pay for under the Private Streets Works Act. It may be said: "Oh, well, it may be right or it may be wrong"; but if some simplification—and, Heaven knows, simplification is needed in this case—can be introduced into this, I should welcome it, and my clients would welcome it. It may be unusual, but we are trying to do the unusual here. We are trying to get away from the Public Health Act, trying to get some of the advantages of town planning in advance of town planning, and my clients are not disposed to quarrel with Clause 62 if it can be worked justly. They assure me that if a 9-inch sewer were taken as a standard, and if that were agreed on in some way, you would simplify enormously the problems which otherwise would arise which some unfortunate Justices would be called on to decide in their spare time. I have been at some of these Inquiries, and I can assure you that they are long Inquiries—deciding between Surveyors as to whether work put in by a local authority is all that is necessary having regard to the nature of the premises. I do not know how you are going to begin to solve that problem, applying the Private Streets Works Act to a section of Watling street, or a road some two miles or a mile and a half from the town, running out to a building estate. In the case in which I was interested, Coventry, there were three cases where the Corporation owned property somewhere near the periphery of the Borough, a pretty wide Borough, and they had to run the sewer to link up with their housing estate which they were developing. Some of the sewers run along roads. In such a case you would have all the unfortunate individuals who had already got their houses along the road leading out to those very distant points charged *primâ facie* with their share, on a frontage basis, of the cost of a comparatively large sewer, of a comparatively large diameter, and I do not know how deep that sewer would have had to be as it approached the town.

Captain *Bourne.*] I am trying to get your proposition. Is your suggestion that Clause 62, if it can be so drafted, should be that the only liability on the frontagers should be for a sewer not exceeding nine inches, laid—at what depth, and in what circumstances?

Mr. Wrottesley.] The difficulty is to answer those last two questions. It should be at a normal depth. A sewer which the frontagers should be called on to contribute to should be 7 feet below the road on average soil—to use the words of the Minister. In such a case as I have been instancing it would be 14 feet down, and about three times as large as it need be.

Captain *Bourne.*] What would you regard as a normal depth in the case of the ordinary private street work? We want to get the information if we can.

Mr. *Wrottesley.*] It is bound to vary.

Captain *Bourne.*] It must, of course.

Mr. *Wrottesley.*] It depends whether you get land on a slope or land which

is flat. I have a little diagram here which indicates how great a hardship this might be. I am told that 6 feet is about normal, though I observe that the Ministry use 7 feet in their Report.

Captain *Bourne.*] The other point about which I am a little puzzled is this: On your suggestion, what variety of hypothetical surface would you regard it as necessary to remove and reinstate?

Mr. *Wrottesley.*] The builder's road. I think every Surveyor knows what is meant by that. If there should be a dispute before Justices, it would be the builder's road. Because a person happens to have his house beside a concreted road you should not expose him to the expense of cutting through that very expensive surface, the work having to be done in a particularly laborious way because of traffic, and then expose him to the expense of reinstating, which must, of course, be a very serious matter. Some method should be adopted of safeguarding the individual. I am now talking, not of the existing frontager, but of anybody, though, of course, it is an *a fortiori* case for the unfortunate individual who happens to have been living there before the Act was passed. In any event, there should not be the charge, certainly not on the resident, and I should have thought not even on the estate developer, a charge which varies owing to matters which are far removed from him physically, such as the distance of a housing estate which it may be necessary to drain by means of the road in which his house happens to be.

Chairman.] Would you say that there were a number of concrete roads which were likely to be broken into?

Mr. *Wrottesley.*] One of the difficulties in this case is this. This is what happened in the Romford case: The Council are very eloquent on some new development in Romford, and a number of gentlemen who are all land-owners are called in to say that they support the proposals in the Bill. I do not think they thought them over very carefully, because difficulties have arisen since. Things which are quite fair *vis-a-vis* the estate developer are entirely unfair when applied to a person who is not in the business; but I think certainly the whole object of this Act is to deal with highways, highways which have houses beside them.

Chairman.] Would it meet you if you took the Coventry Clause at page (10), paragraph (iii)? "No expenses apportioned in pursuance of this Section against any premises fronting adjoining or abutting on a street or part of a street shall be recoverable until there exists an actual drainage connection between the said premises and the sewer the expenses of which have been apportioned."

Mr. *Wrottesley.*] That is on the first point. There are two quite different points I want to put. The first point is that persons who are *bona fide* residents before the Act is passed, or before the sewer comes, who have had to provide their own drainage, ought not to be made to pay on a theoretical value. It is quite fair that they should pay, but it is unfair that they should pay until they have derived some benefit from the sewer.

Chairman.] That is to say, until he wants the sewer.

Mr. *Wrottesley.*] Until he either makes use of it or sells his land.

Chairman.] Sells to somebody with the advantage of the sewer.

Mr. *Wrottesley.*] Until he sells, he should not be made to pay.

Chairman.] Or until he joins up.

Mr. *Wrottesley.*] Or until he joins up.

Chairman.] There is one point which has been urged, that it is contrary to the public interest to maintain a cesspool system when a sewer is available.

Mr. *Wrottesley.*] It is the law of this country that you can drain your cesspools, and I believe that in the greater part of the civilised world that system still prevails. I know there is a passion in this country to provide sewerage, but it is not necessary for the Corporation to make use of it, and I cannot conceive how it can be just with regard to existing premises. I am not here, with regard to this case, to defend the person who is developing, so it will be observed that I am not speaking on behalf of a very large class which is going to increase in future. I am speaking now on behalf of persons who are in residence, who actually have existing houses, and such persons, in my submission, so long as they keep their drainage system in proper repair and efficient, cannot be forced on to the sewers. That is the law of this land, and, since that is the law of the land, I should have thought it was improper to try by a roundabout

means to force them on to a sewer, especially a roundabout means which is unjust.

Sir *Henry Cautley.*] I am the Chairman of a Parish Council, and we are being forced to provide a sewerage system.

Mr. *Wrottesley.*] That is the way I put it.

Sir *Henry Cautley.*] I think this question is a very large one. In my experience as a County Councillor in Sussex, we are making these motor roads all over the County, and they are not sewered. I do not know what the depth of concrete is, but they are very strong reinforced roads.

Mr. *Wrottesley.*] 12 inches is the present standard of the Ministry of Transport. I know it was nine inches, and I think it is 12 inches now.

Sir *Henry Cautley.*] They extend far out in the country districts. If under this Act, when the sewer is made, the frontager is to pay for making the sewer through roads like that, it will be a very heavy expense.

Mr. *Wrottesley.*] It may be that in those circumstances the sewer would be laid by the side of the road, but that would involve duplicate services, which has it own expense. That is, of course, contrary to the policy of the Private Streets Works Act with its unit to a points that I want to put before the Committee, if I may: The first is that something ought to be done to protect the person whom this sewer will not help, and the second point is that whatever a person has to pay, it should be in some way standardised. That really is the misfortune of trying to apply the Private Street Works Act with its unit to a situation in which you have no unit. The existing street may be Watling Street or the Great North Road, or one of those roads to which the Honourable Member alluded. What is the unit? How is it to be discovered? The only unit I can think of is one of measurements. The normal private street works sewer is a 9-inch sewer. I was pleased to see last night that the Minister of Health selected the same diameter as my clients have selected, the 9-inch sewer.

Chairman.] In average soil the cost would be £1 5s. a yard?

Mr. *Wrottesley.*] Yes. I do not think you can expect Justices under either of those special clauses to apply such standards as I have been putting. To begin with, it says: "The sum or proportion to be charged against any premises is excessive having regard to the degree of benefit to be derived." The point I am putting has nothing to do with the degree of benefit. There is always this confusion all through, that the Private Streets Works Act did not go on benefit, it went *primâ facie* on frontage, and for that there was a reason. I have a street. Let us suppose this room is a street. I lay a sewer down the middle, the road is laid on either side, and the houses are on either side. Parliament in the Private Streets Works Act decided that normally the division up of the cost should be by frontage. It works in the case of the ordinary newly-built road quite well and reasonably because the frontages are all approximately the same; but if you are going to have a frontage line with regard to this road, which is not the case of a developed property, you will find that the property which runs along the main road at this point is a farm, at the next point a public house, at the third point a row of cottages, the sort of development one meets on existing roads, and I cannot see how frontage can have anything to do with it.

Captain *Bourne.*] What is the alternative suggestion to frontage?

Mr. *Wrottesley.*] Benefit. I do not get into these difficulties if you limit the cost. My clients take strongly this view, that whatever you do, if you can, first of all limit the cost of the work and keep that down to a reasonable size on whatever would be the equivalent of the unit. The other point on which they are unanimous, I think, is this, that it should all be done on the basis of benefit. The basis of frontage is mistaken, and it is terribly dangerous.

Chairman.] You mean benefiting the existing occupier or the potential value of the land?

Mr. *Wrottesley.*] I would exclude the occupier if he is one of the class who has been there before. I mean benefit to those persons who are charged, the estate developers.

Chairman.] Supposing it is an undeveloped estate, what would you describe as the benefit there? Would it be the potential value of the frontage, if it is a long frontage, or the actual house occupied on the spot?

Mr. *Wrottesley.*] I do distinguish between the house already dwelt in and land which is ripe for development.

Chairman.] I understood that the thing they are really aiming at is the land ripe for development.

Mr. *Wrottesley.*] In so far as you are aiming at the land ripe for development, I say that clearly the proper standard is benefit, not frontage at all.

Sir *Henry Cautley.*] If you take that, to what length of sewer will you apply it? In the ordinary case under the Private Streets Works Act you have the ordinary street, a well defined unit. If you have one of the old roads repairable by the inhabitants at large, where are you going to stop? How much cost of the sewer, what length of the sewer, are you going to apply to a certain area to which you apportion the benefit?

Mr. *Wrottesley.*] Under the benefit system you can charge a man with a sewer of the size which will benefit him, and that will mean possibly a sewer of greater capacity than in the case of a person, merely a frontager, who has a plot.

Sir *Henry Cautley.*] That is not relevant to the actual cost of the sewer put down.

Mr. *Wrottesley.*] You cannot ask for more than the cost.

Captain *Bourne.*] Take the case you have already given. You have somebody who has along one of the main roads a house and largish grounds, and the land is capable of development. He does not wish to develop it, but for some reason or another it may suit him to connect his house with this sewer; it may be cheaper. What is the benefit to him? Is it the enhanced value which that land would reach if it were put on the open market, or is it merely the fact that he gets rid of the annual expense of £3 in cleaning out his cesspool?

Mr. *Wrottesley.*] It is the latter.

Chairman.] The actual benefit he gets is saving the trouble of cleaning out the cesspool?

Mr. *Wrottesley.*] That is the benefit.

Chairman.] Not the increased value of the land?

Mr. *Wrottesley.*] No, he should not be assessed on the increased value until he realises that value. He simply gets the benefit of not having to empty his cesspool because it is done for him automatically. That is the full amount of the benefit. When he develops his land it may be that he or his successors, or the purchaser, will get other and different benefits.

Chairman.] If he has an approach, say, 100 yards from the frontage, and puts himself on to the sewer, he pays for that benefit. He has, perhaps, a quarter of a mile frontage to his park or garden. When he comes into the market they would pay when they connect up.

Mr. *Wrottesley.*] Yes, when he comes into the market for development. It is not my clause, and I do not know, but that is what I am content to admit as quite just.

Chairman.] You are agreeing with that?

Mr. *Wrottesley.*] I am agreeing with that.

Chairman.] You pay pari passu with the benefit?

Mr. *Wrottesley.*] That is right.

Chairman.] The actual benefit which you are getting?

Mr. *Wrottesley.*] Until then I have not the money with which I can pay if I am a small man. One sometimes gets a false view by taking the case of the larger man who has reserves of money.

Chairman.] Do you pay when the property passes?

Mr. *Wrottesley.*] Yes.

Chairman.] By sale or by death?

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] He might benefit by much more than the cost of the sewer.

Mr. *Wrottesley.*] No, clearly you must not make a profit on the sewer. That was what was endeavoured to be done in Coventry.

Sir *Henry Cautley.*] What part of the sewer?

Mr. *Wrottesley.*] On any part. The Corporation could lay a sewer permitting profit to be made, and they could charge the landowners around. They could say: "We have multiplied the value of your property by two. The sewer cost only £10,000, but we could lay it, and you could not have done, therefore we want £20,000 from you."

Sir *Henry Cautley.*] If they are paying by enhancement of value, that is the price they ought to pay.

Mr. *Wrottesley.*] Never more than cost, or a fair proportion of the cost. I was asked what is the increased value to a house which in fact links up with a sewer.

Sir *Henry Cautley.*] You have to apportion the cost of a sewer when it is laid over all the property.

Mr. *Wrottesley.*] If you can.

Sir *Henry Cautley.*] By benefit.

Mr. *Wrottesley.*] Apportion it by benefit, yes; but you only apportion the total cost by benefit. You have an upward limit.

Lord *O'Hagan.*] If you recover the total cost, X-pounds, on your basis of present benefit, then the benefits, or potential benefits, are realised at different periods; you have to have a redistribution of the fund.

Mr. *Wrottesley.*] I think it might be necessary.

Lord *O'Hagan.*] A redistribution on every occasion of a sale of one plot of ground frontage on this road, because at that time there would be so much paid into the fund, and the other would have to be paid so much.

Mr. *Wrottesley.*] I am afraid I cannot take a clause beyond doing what it purports trying to do. What I am pointing out is that the proper way, and the only proper and fair way, is to distribute the cost. If I have spent £5,000 on the construction of a sewer, the most I can get back is the £5,000. That must be conceded. Now comes the question how are people to be made to pay for it? First, persons who have already come into residence and who intend to go on residing should not pay at all.

Lord *Macmillan.*] You can hardly escape the arbitrary method. The frontage method has the advantage that it is co-extensive with the sewer itself. Every foot of the frontage is potentially, at any rate, capable of deriving benefit from it. Is not your better course, to safeguard the kind of case you have in mind, rather by attaching conditions to the period when the demand is to be made, or something of that sort, than by redistributing the cost?

Mr. *Wrottesley.*] The latter has been done in any event in some cases, when the clause speaks of not apportioning anything against agricultural land until it ceases to be agricultural land. I do not now understand how that is going to be done. That raises the very problem your Lordship has raised.

Sir *Henry Cautley.*] That means that the Local Authority pay the proportion until the land becomes liable?

Mr. *Wrottesley.*] I suppose so.

Sir *Henry Cautley.*] Whether it is right is open to argument. Agricultural land is to come into charge as soon as it ceases to be agricultural land. Then there is a provision that no interest is to be paid meantime. That means that the Local Authority pay their proportion until they can make their demand, which is as soon as the agricultural land ceases to be agricultural land. That applies, not only to one field, but to part of a field.

Mr. *Wrottesley.*] It has the advantage with regard to dormant values.

Lord *Macmillan.*] The Local Authority pays in the first place the whole. It recovers at once from those who ought to pay at once because they have a realised benefit. In the case of agricultural land, where there is no benefit at all, they will only pay as and when they come into benefit. Then ultimately, when the whole distance is developed, the Local Authority will have got back the whole X-pounds. No doubt it will be postponed, but it is quite right in the meantime that they should pay the cost, which is not conferring any benefit except the general benefit to the community, the benefit of seeing that the whole area is well sewered.

Chairman.] The Local Authority has the sewer wholesale and sells it retail. It is rather like buying a large estate and then developing it; you make your sewer and then develop it.

Mr. *Wrottesley.*] There are two points, first, the exclusion of *bona fide* residents, and, second, in some way or other reducing the total bill to be paid by all of them to something which is reasonable, and is not made more expensive by the fact that the sewer is a long sewer, or is deep under the road. Those are the two principal points.

Ordered: *That the Committee be adjourned to Wednesday next, the 20th of May, at* 10.30 *a.m.*

DIE MERCURII 20° MAII, 1936.

Present:

Earl of Onslow.
Lord O'Hagan.
Lord Macmillan.
Captain Bourne.
Mr. Cape.
Sir Henry Cautley.

The Earl of ONSLOW in the Chair.

Chairman.] Mr. Wrottesley, we were having the pleasure of hearing your argument. Perhaps you would take it up where you left off?

Mr. *Wrottesley.*] If your Lordship pleases. May I say this before I resume: Your Lordships will remember I told the Committee that I was representing a number of bodies, including various professional bodies, one of which was the Chartered Surveyors. I am anxious to make it clear that the Chartered Surveyors in no sense take sides on the topics we are discussing. They have not the matter before them with a view to deciding what is right or wrong, but what they did think was that it was most desirable that this Committee should have the matter argued on both sides, and they have taken the rather sportsmanlike attitude of assisting in the necessary expense of providing Counsel, and so forth, and of the preparation of this case.

Lord *Macmillan.*] They should have been provided with that impossible person, a neutral Counsel!

Mr. *Tyldesley Jones.*] Providing some of the Counsel, my friend should say.

Mr. *Wrottesley.*] Yes. I do not desire to create the impression, and it would be misleading to create the impression, that the Chartered Surveyors had taken this matter into consideration and decided one way or the other. What they do think is desirable is that they should be before the Committee and the matter should be argued from both sides.

Chairman.] Where were we exactly?

Mr. *Wrottesley.*] I was on the Section 62 type of clause. That is as to the sewer in the highway.

I think I can sum up the matters I had dealt with quite shortly by saying that they appear to me to lead to two or three propositions. First of all, if Clause 62, as to sewers run along existing highways, is to become what I may call a stock clause in any sense, it should contain certain safeguards and the first, and, perhaps, the most important of them, is that there should be excluded from the burden premises in existence at the date of the Act or the laying of the sewer, as the case may be. At any rate they should be excluded until they in fact make use of the sewer. That was the first point. The second point to which I had directed my observations was this, that in addition, having regard to the nature of the property which you may expect to find in existence along an existing highway, and which has had to provide itself with its own drainage, its own cesspool, and so forth, there ought to be some safeguard for properties which have long frontages and only one house. There is, as the Committee will remember, a great deal of property in this country lying along high-roads as to which to put upon the owner the burden of a sewer for the whole of his frontage would be hopelessly oppressive. The definition used in the Clauses so far is that to be found on page 32 of this bundle of Clauses. I think the endeavour was to proceed by the process of excluding agricultural land so long as it remained agricultural land. I think that, broadly, may be said to be the effect of what was endeavoured to be done. But when we turn to agricultural land as defined for this and brought in to these Clauses hitherto (you will find it on page 32 of this bundle of Clauses) it will be observed that, as I understand it, you would be subjecting to burden properties of this kind—land under ¼ of an acre which was being used for keeping chickens; that may involve quite a long frontage of a person of no particular means. You would be putting the burden *prima facie* upon persons' parks, their gardens, their pleasure grounds; you would be imposing the burden *prima facie* on land which is kept for sport or recreation, on racecourses on race gallops, and lands of that kind, and the various other types of property upon which I think there should not be an endeavour to put a burden by a Clause of this kind. I can think of

another one—mining dumps, slag heaps, tips from mines, land reserved. Colliery owners are under the necessity of providing themselves with sites of that kind in advance, and very often have to buy and sterilise land of that type in order to be able to tip the refuse from the mine upon it. I should have thought it was quite clear that that land ought to be excluded at once in advance and that such persons should not have to go through the course of going up and arguing whether they receive any benefit.

Chairman.] Would not that be de-rated land?

Mr. *Wrottesley.*] Not unless it was agricultural land.

Chairman.] If you substituted for agricultural land de-rated land, would that be a greater help?

Mr. *Wrottesley.*] That I am afraid, would not do because then we should have difficulties, I think, with things like parks.

Chairman.] Except that most people's parks are agricultural by this time.

Mr. *Wrottesley.*] Your Lordship knows there are such areas in the inner parts of parks, nearer to the house; I do not know whether you can or cannot wangle it by saying——

Sir *Henry Cautley.*] A colliery dump would clearly be rateable?

Mr. *Wrottesley.*] It would be rateable.

Mr. *Cape.*] Would not colliery dumps come under the De-rating Act seeing that they are part of the production of this country?

Mr. *Wrottesley.*] I do not think so.

Mr. *Cape.*] They are necessary. You cannot carry on your colliery unless you have your dump.

Mr. *Wrottesley.*] You mean they would be rated at a quarter?

Mr. *Cape.*] Yes.

Mr. *Wrottesley.*] They would get that relief, but they would not be reckoned as agricultural land.

Mr. *Cape.*] In the course of your statement this morning will you tell us if you can of any cases of hardship that have taken place in the Romford Urban District Council's area?

Mr. *Wrottesley.*] I have nothing in mind.

Mr. *Cape.*] You have not any?

Mr. *Wrottesley.*] No.

Mr. *Cape.*] The reason for that is, as you know, that I have a sort of private affection for these two Clauses.

Mr. *Wrottesley.*] If you look at the proceedings in Romford, the case was presented really with the assent of the landowners concerned, and they knew what they were doing; they knew what sewers they wanted, I think; they knew where the development was going to be; and the case being presented along those lines was a definite case where it was foreseen where all this was going to lead, no hardship was probably entailed.

Mr. *Tyldesley Jones.*] I do not think there was any assent by the landowners. There was opposition.

Mr. *Wrottesley.*] I think there was assent. They called a landowner.

Mr. *Tyldesley Jones.*] They called one landowner.

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] There were 72 landowners affected; one opposed, and he was settled with. The case was sent back on your Lordship's directions, and in support of the Clause one estate developer was called.

Lord *Macmillan.*] Let us define the problem. It is apparently agreed on all sides that there are certain types of property which should have special consideration. The only question is how those types are to be defined in such a way as to see that the burden is only placed where it ought to fall. You take exception at the present moment to statutory agricultural land being the type of land, because you think the definition might bring in subjects which ought to be postponed, because it is not really so much a question of exclusion as of postponement. It would be a charge imposed on the land on which no interest would run, but it would be an incipient charge and only fall to be paid as and when it was developed. In the meantime it would stand in the books of the local authority as a charge upon that property, but it would impose no obligations on the landowner unless and until he chose to develop, and then it would mature.

Mr. *Wrottesley.*] That is the point.

Lord *Macmillan.*] The point we wish to get at, with your help, is what would be the right definition of those subjects which are to have special treatment. What are the merits of them which entitle them to receive consideration?

Mr. *Wrottesley.*] What are the merits of the case? I am assuming that the merits are that they receive no benefit.

Mr. *Cape.*] Would not you rather prefer that the cases you describe should

be left to the local Council to determine?

Mr. *Wrottesley.*] No, I certainly would not. I am here where I can get the thing laid down, and if it is a just case I ask for it to be dealt with in advance. I say it would be unfair that the owners of this type of property in respect of urban areas should have to go before a Justice and argue the point as to whether they do or do not receive any benefit. I want it laid down plainly in advance that to land of this type a sewer is useless. So long as no use is made of the sewer and the land is not developed they are not to be at the risk of having to contribute to a sewer which is useless to them. The whole problem is dealt with by the Promoters along the line of frontage. It is one practical way of dealing with it, but since that is the practical way of dealing with it and not benefit, then I say we have to be quite sure that this system of frontage is not to be oppressive.

Lord *Macmillan.*] The Romford Clause already proposes such an exception with regard to agricultural land.

Mr. *Wrottesley.*] Yes.

Lord *Macmillan.*] Your point at the moment is whether the statutory definition of "agricultural land" really achieves the purpose by excluding all those subjects it ought to exclude?

Mr. *Wrottesley.*] Yes. I look at the definition and find that it obviously leaves out a great deal which has just as good a claim to exemption as agricultural land.

Chairman.] What you really mean is uninhabited land.

Mr. *Wrottesley.*] I mean land prior to development and uninhabited.

Chairman.] It is not quite that. You might have a garden attached to a house and you could not say that that was undeveloped.

Mr. *Wrottesley.*] I meant undeveloped for building, the type of thing we are discussing.

Chairman.] Take a case of this kind: Suppose you had a tomato grower with a large row of glass-houses; he would not get much benefit from the sewer. I do not know whether he would have agricultural land, would he?

Mr. *Wrottesley.*] He would get out. He is a market gardener; he is protected.

Chairman.] A poultry run would not escape?

Mr. *Wrottesley.*] A poultry run under a quarter of an acre would not and over a quarter of an acre would. A man with a cottage and something under a quarter of an acre of his poultry run would be hit. The man who had three acres would not. The real fact of the matter is that a definition has been lifted into this new legislation which is quite inappropriate, and I think that does occur to one when one reads the definition.

Chairman.] How would it work in this way? Supposing you paid so much for a house, if you had a house with a lot of undeveloped land, agricultural or otherwise, you would not pay more than if you had a smaller frontage?

Mr. *Wrottesley.*] That is exactly the principle I was going to suggest.

Chairman.] Is that what you are aiming at?

Mr. *Wrottesley.*] That is what I am aiming at. At the same time you have only to look at that definition on page 32 to see that it is not appropriate, because it acts very oddly. I will take the case of the park, because I should have thought a park and pleasure grounds, pleasure grounds inside a town, was the very thing that the town wants to stick to; they do not want to force that into development by putting random burdens upon the owner. They do not want to force that into development. Some of the great charm of our towns surely is the existence of a house which has a large garden very often running along the side of the road, but giving the unfortunate owner a road frontage of, say 200 yards. It would be clearly, in my submission, not only unjust but unstatesmanlike to put a burden upon a person in that position, because you would possibly drive him into abandoning his house and selling it for development when he would rather go on living there.

Chairman.] That would apply to school playgrounds.

Mr. *Wrottesley.*] That would apply to school playgrounds and recreation grounds. Those are what we call "lungs" and any enlightened person would prefer, I think, that those pleasure gardens and recreation grounds should be kept inside the town and not be under any risk, not even a *prima facie* risk, of having to be dealt with along the lines of frontage; and since it has been thought fit to exclude agricultural land,

my submission would be that you would equally desire to exclude property of that kind.

Lord *Macmillan.*] You do certainly find that the terms of the definition include very remarkable things, but do not include land occupied mainly for purposes of recreation.

Mr. *Wrottesley.*] No.

Lord *Macmillan.*] Would that hit a playing field established as a memorial to His late Majesty, for example?

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] Not if it is a public one. Recreation grounds are exempt under the Private Street Works Act on the ground that they are extra-commercial; that is the reason.

Chairman.] I am thinking of a case in point where there is a school around which a town has grown up, and its cricket grounds are in a very admirable building area; they would be hit?

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] I was rather dealing with the case Lord Macmillan put of a public ground.

Mr. *Wrottesley.*] I have in mind a particular case, I think it is in Ledbury, where there are two cross roads in that old town and one of the corners is occupied by a mansion house. The park spreads along the two roads, the road coming from Hereford and the road going into England, so to speak, and this park and grounds occupy the whole frontage. There are many acres of it. It is obviously a most desirable thing for any town to have, and I have no doubt it is very much appreciated by that town. That sort of property would be liable to be hit for the cost of a sewer which it was to be hoped was never to be of any use to that park.

Chairman.] Anyway, your contention is that there are a great many open spaces of land which are not developed, which are non-agricultural, and which are not likely to be agricultural, which would be hit by this. That is really the point?

Mr. *Wrottesley.*] Yes, and should not be hit unless and until the owner of such property desires to develop it in the sense of selling it for building or getting rid of it for building. I think Lord Macmillan asked me to make a suggestion. I had thought that it was the duty of those who promulgate this legislation to satisfy the Committee that they have a satisfactory definition to deal with the matter, but one method of dealing with it is this. Your Lordship will appreciate that I am dealing with dwellings existing there when the sewer comes along; indeed I have been dealing with buildings in existence, when the Act is passed, accompanied by this sort of amenity. One way of dealing with it will be to decide the terms upon which such a person owning let us say a house—it might even be a mansion house—is to be allowed to connect with a sewer. That is the first point. I ask the Committee to say that until they connect neither the house nor the park nor the pleasure grounds is, any of it, to count, or to be charged with an actual payment. When connection is made as between such a house and the sewer, what is the best way and what is a fair way to deal with the owner of such a property when in fact he makes use of the sewer in the road? I asked those who are familiar with these things and who are behind me as to whether we could not approach it from the point of view of arriving at some standardised frontage for such a house. It is suggested to me that a fair figure would be that such a house should pay on the whole of its actual building frontage plus a quarter. I will tell you how we arrive at that. I am told that probably represents in the Private Street Works Act about the average that falls upon the ordinary frontage.

Chairman.] I do not quite follow, my obtuseness is so great, when you say the ordinary frontage?

Mr. *Wrottesley.*] I mean the actual frontage of the building. I am envisaging a house lying in its own ground. I mean on the actual frontage of the building he should pay as though that was his frontage, plus a quarter; in other words that he should pay one and a quarter times his actual building frontage.

Captain *Bourne.*] Do you mean the frontage of his house as it lies towards the street or what might be regarded as the frontage from the point of view of an architect? A house very often lying like that does not face towards the street, but faces in another direction. Which do you mean by the frontage?

Mr. *Wrottesley.*] I meant the actual frontage. If you thought that was likely to lead to abnormality, the difficulty can be met, I understand, by some process. You add the two frontages together, and divide them by 2.

Chairman.] You mean you measure the house this way and that way?

Mr. *Wrottesley.*] Lengthways and sideways and divide by 2.

Chairman.] And add a quarter?

Mr. *Wrottesley.*] And add a quarter, the quarter being arrived at like this. 1¼ times its frontage, and you can define its frontage in such a case as being the mean between its two fronts.

Lord *Macmillan.*] What about a building that is not rectangular? A circular building would seem to me to beat you altogether, Mr. Wrottesley.

Mr. *Wrottesley.*] No, I think a circular building would be quite easy.

Lord *Macmillan.*] You could drop a perpendicular. No, I could conceive a more embarrassing one than a circle.

Mr. *Wrottesley.*] If you had substantial premises it would not matter whether the house was sideways on or lengthways on; you get a contribution. The point of adding a quarter is that it is what an owner of a house in private grounds generally finds is his share. He will pay 1¼ on his actual building frontage. You allow for the spaces between the buildings and actual turnings off the road.

Mr. *Tyldesley Jones.*] My advisers do not accept it.

Mr. *Wrottesley.*] I do not ask them to. It is not for me to make your proposals. It is for you to make your proposals fair. I do not mind if you cannot make them fair. I shall ask the Committee to reject them.

Lord *Macmillan.*] Transferring a code which has been prepared for one purpose to another purpose is always embarrassing, because the circumstances are different. The effort, I understand, of all of us is to adapt a code, which it is agreed has worked fairly and reasonably well and been a useful code, to new circumstances which have arisen; and it seems to me that the new circumstances differ from the old circumstances in one very material respect, that whereas formerly a private street was a relatively limited street in length and therefore the burden was more or less apportioned to the benefits because a number of little houses were put up on this new street and they all paid their share, now the country is being covered by great public highways built not at all with a view to accommodating the houses as the private street was built but built for another, a national and no doubt important purpose, constructed in an entirely different way and rendering it very much more costly to put in sewers. The private owner, who was quite willing and was, quite justly, assessed to pay for the sewering of his private street in which he was a resident, is proposed now to be assessed for the placing of a sewer in something that may be miles long, constructed quite differently and raising therefore quite different questions. If you are going to apply a code which is designed to meet one set of circumstances to another, and really, to my mind, a very different sort of circumstances, the difficulty is to ascertain what are the safeguards it is necessary to insert so that the code will work with equal equity in the new circumstances to the equity with which it operated in the old circumstances; but is it really possible to do that without doing it afresh, instead of attempting to adapt something which is not framed with that view?

Mr. *Wrottesley.*] That is a question which I leave with the Committee.

Lord *Macmillan.*] We want your help on it.

Mr. *Wrottesley.*] My clients say this: If this thing can be made to work fairly and can be confined to hitting the only case put when this case was first promoted, which was put with regard to people who were going to develop, then I said in advance, you will remember, when addressing my argument to this Committee, that my clients are not against that. All they are here to do is to endeavour to see that it does not by chance and at random strike at a number of people and damage them, who have done no harm, and it would be thoroughly unjust that they should be struck.

Mr. *Tyldesley Jones.*] We are most anxious to take the same line, to do what is right.

Mr. *Wrottesley.*] I had applied my mind to the question of what are the fair terms upon which an existing house, large or small, should have to pay when the owner is going on living in it, it is going to remain the same house, and it is a house which may be, so to speak, hampered by its grounds, its gardens. What are the fair terms on which such a house should be permitted to connect? If my learned friend has a fairer suggestion than mine, let him make it.

Sir *Henry Cautley.*] Following on what Lord Macmillan has said and what you have said, does not it come to this, that we ought to disregard the Private Street

Works Act and make a new code here in respect of roads repairable by the inhabitants at large?

Mr. *Wrottesley.*] That is the great difficulty. I have pointed out, and Lord Macmillan has put this morning, the real difficulty in this case. You have an Act which proceeded with a well-recognised standard or unit, namely, a street. You have a certain type of work going into that street which was necessary for that unit, and you try to use that code for another and quite different purpose for which it was not intended.

Lord *Macmillan.*] I think the process of adapting Acts which is rather torturing Acts, is most unfortunate. You get questions of interpretation of the most difficult order, and they are difficult for the public to understand. After all, one wants the public to understand their rights in these matters without always having to be advised professionally upon it. The method of legislation which tortures an Act which has been devised for one purpose to make it fit another and totally different purpose is a bad form of legislation. I think there is a very great deal in what Sir Henry says. Here is a problem that has to be met for which a remedy is required because a new set of circumstances arise which call for that remedy. There is obviously a fair way of doing it, but what is the fair way is naturally a topic of much discussion. I think it would be better if it were done by a code applicable to frontagers on public highways of what they are to contribute when sewers are put in.

Mr. *Wrottesley.*] Preparing it *ab initio?*

Lord *Macmillan.*] Preparing it *ab initio.*

Mr. *Wrottesley.*] They are not more comfortable because they know the Private Street Works Act itself is in process now of being altered.

Mr. *Tyldesley Jones.*] Might I respond to my learned friend's invitation? He suggested just now that if I had any suggestion to make he would be glad if I would make it. What we are trying to do now is to settle principles, not drafting, and it would be quite hopeless to attempt to draft a clause. I have rather been trying to approach this matter from the point of view of principle with a special regard to the observation my learned friend made last time, and which I think was a very pertinent one on the question of principle, namely, the position of the owner of an existing house who may be called upon, if this clause passes as it stands, to contribute to the cost of the sewer which he does not want to use and which is of no value to him, however notionally it may improve the value of his property, until he wants to develop. It occurred to me that it was a matter which ought to be met, the point my learned friend put, and by way of suggestion I would throw this out—I do not ask my learned friend to assent to or dissent from it—that an existing house and any land occupied therewith as a park, garden or pleasure ground—those are the words which exclude these things from agricultural land—should not be liable to pay until either (1) a connection is made to the sewer or (2) the house is so altered as to constitute a new building or (3) the user of any part of the house or land is changed. The reason I have adopted the last language is that under the Town and Country Planning Act it is the change of user, I think, which amounts to development. That is just a suggestion.

Sir *Henry Cautley.*] You apply that to any existing house?

Mr. *Tyldesley Jones.*] Any house existing at the date of the construction of the sewer. It does not meet my learned friend's point that he made this morning. This was drawn up before.

Mr. *Wrottesley.*] I am very much obliged to my friend for helping.

Mr. *Tyldesley Jones.*] What we are anxious to do is to try to get this Committee, if they can, to lay down some principles which can then be worked out in properly drawn clauses.

Mr. *Wrottesley.*] My friend has not thought of anything for the second part, what the scale of contribution should be?

Mr. *Tyldesley Jones.*] Frankly the view we take at present is that the scale of contributions ought to be frontage, frontage of the whole property to the road, postponing the liability until one of those events happens, which would fairly bring the whole property into assessment. I am not saying for a moment that my events are quite satisfactory to my learned friend. I do not suppose they are.

Chairman.] That is to say when the property is developed. That is what it comes to.

Mr. *Tyldesley Jones.*] When something happens which in the view of this Committee ought to render the property liable, then it ought to be on the basis of

frontage. I submit that you cannot get a satisfactory notional frontage or anything of that sort, and one can satisfy oneself of that by taking one simple case. My learned friend has referred to Ledbury; we can all think of another very celebrated case, Petworth, and the park there coming right up into Petworth and a very large house going up several storeys. I am only taking that as an instance. You may find many a smaller house, but covering practically the same ground because it has only two storeys; it is not fair to take some notional frontage of that sort of the actual house, because if you have a low house of two storeys spreading over an area of land, the frontage would be double that of a very much bigger house which went up to four storeys.

Mr. *Wrottesley.*] That I appreciate. There is some limit to the complications one can consider, and it shows the difficulty of trying to apply a frontage basis to something to which a frontage is not a fair test.

Captain *Bourne.*] I want to get at one word in the suggestion you threw out just now, Mr. Jones. I think you put it that when a connection is made to the sewer they should be liable on the frontage?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] That would be presumably the whole frontage?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] Is not that a very undesirable thing altogether, that there should be that principle, because surely the effect would be if you take the case which either you have quoted or Mr. Wrottesley has quoted—I happen to know both those—the frontage charge would be very high indeed for connecting with the sewer. Therefore the tendency of the owner would be to retain a cess pit because the frontage charge is out of all proportion to any benefit he would get out of it.

Mr. *Wrottesley.*] Because my friend does postpone the matter.

Mr. *Tyldesley Jones.*] Until connection.

Captain *Bourne.*] It seems to me that whether the people connect or not, it is to the interests of the local authority and the general health that that should be encouraged. Therefore it seems to me that any charge for the connection so long as there is not an alteration of user really is not a justifiable claim.

Mr. *Tyldesley Jones.*] It would be a little bit hard in such a case as we have in view, if a large house of that type should obtain a considerable benefit from a sewer which is paid for by the other ratepayers.

Captain *Bourne.*] If you get a sewer coming down the middle of the main street in the town, I may go and pull down some old cottages there and build a very big fine new house, and all I pay is the expense of connecting with your sewer; I do not pay a penny for the sewer you have put down.

Mr. *Tyldesley Jones.*] Because the sewer is there now.

Captain *Bourne.*] But you are under a legal obligation to sewer.

Mr. *Tyldesley Jones.*] You are not under any legal liability to construct sewers in advance of development.

Captain *Bourne.*] The whole case you are arguing is where there has been partial development, and in that case you may not think it worth while to sewer, but a certain amount of legal obligation is on you. We are not discussing the undeveloped thing at this moment.

Mr. *Tyldesley Jones.*] With great deference, we are not discussing a case where there is necessarily partial development at all. We are discussing the case of a public street where a sewer is proposed to be laid to assist development none of which may have taken place. I do not want to interrupt my learned friend in the middle of his argument.

Mr. *Wrottesley.*] My view is that we are dealing with property which is developed, and with regard to this Clause I concentrate on that. This Clause ought to be made to fit fairly on what is in effect developed property when the sewer comes there. All I was trying to do when I put this formula of a length and a quarter was simply to suggest something which would be a fair payment to be made by existing premises, when it happens that they find it convenient to connect with the sewer. If it is not acceptable, I drop it.

Mr. *Tyldesley Jones.*] We are both anxious to try to put forward something.

Mr. *Wrottesley.*] It is based on what I understand to be an average. It does try to meet the fact that the house may be facing only edgeways to the road. I am told you can get over that by possibly, in the case of a rectangular house, adding the breadth and depth

together and dividing by 2. All I was anxious to do was to find some reasonable charge which might reasonably be made upon a small or large house as the price of joining the sewer, because I thought probably your Lordship might like to be able to——

Sir *Henry Cautley.*] I thought there was general agreement last time that in cases of agricultural land the land would come into charge as soon as it was developed in some way? The only question which remains on that is as to park lands or amenity lands of a big house, whether they are to be charged with the whole cost of sewering according to frontage, or whether part of the amenity land should be exempt.

Mr. *Wrottesley.*] There are two points, I think. There is also the point in the case of an existing house of what terms are to be fixed. If that person is to pay when he joins with the sewer, how are you going to fix the payment?

Lord *Macmillan.*] It is the standard of measurement you are looking for?

Mr. *Wrottesley.*] Yes, because if you apply it to a large house or a house which happens to be laid out, as houses are very often, with a garden running along the road, you are obviously imposing upon that house a charge which would be eight times as much as you would think of imposing——

Sir *Henry Cautley.*] What is the present method under the Private Street Works Act?

Mr. *Wrottesley.*] Frontage now, subject to appeal.

Sir *Henry Cautley.*] What is the present method of estimating the frontage of an existing house on a new street?

Mr. *Wrottesley.*] You know what you are doing when you buy your house and lay it out.

Sir *Henry Cautley.*] I was only asking you how they calculated it.

Mr. *Wrottesley.*] They calculate it on frontage. If you have an awkwardly shaped frontage you pay on it.

Sir *Henry Cautley.*] I am aware of that. My question was, how do they estimate the frontage of an existing house on a new street under that Act?

Mr. *Tyldesley Jones.*] Measure the frontage of the property, not the house.

Sir *Henry Cautley.*] Including the land adjoining it?

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] That is because you know what you are in for. But when the sewer comes along to the property of the type I am indicating, the person would not build property of the type I am indicating in a private street and therefore subject himself to this impossible burden. You would not enclose a park or pleasure grounds in a private street. The private street problem and private street history are quite different. Difficulties arise under the Private Street Works Act because people happen to have at corners sometimes gardens, and then there are problems of return frontages, and things like that which occur. But it is proposed to apply this to the case of property I have been indicating which it is most desirable the town should retain intact if they can only persuade persons to go on living in this type of property; and it would be thoroughly unjust to expose such a person to that type of frontage charge.

Chairman.] The question of a racecourse is another point. My recollection goes to Newmarket. I dare say you know the road going along there; the racecourse is all alongside the road, and it might mean in a case like that a tremendous expense.

Mr. *Wrottesley.*] An enormous expense.

Chairman.] Especially with a concrete road.

Mr. *Wrottesley.*] I was going to ask your Lordships to deal with that anyhow. I was going to see if we could not standardise along the lines I indicated on Wednesday last. In any event it would be very unfair that a racecourse or gallops should be even *prima facie* made liable for this. I agree they should be made liable against the time when the land is going to be developed, if ever.

Chairman.] Yes. If they are going to cease to be what they are now.

Mr. *Wrottesley.*] I have never contested that, but these persons should not even be put in peril.

Captain *Bourne.*] In my constituency there are the college playing fields, many of which would come hard up against and be situated on these roads.

Mr. *Wrottesley.*] Certainly, and they are private property.

Captain *Bourne.*] They are private property, and are situated well out, on just the kind of road to which this clause might apply.

Mr. *Wrottesley.*] Yes, along main roads where development is beginning to take place.

Mr. *Tyldesley Jones.*] Sewers are not put along race-courses.

Mr. *Wrottesley.*] No, but you may run a sewer along the edge of them to develop a housing estate half a mile further on.

Lord *Macmillan.*] A great many industrial firms have now playing fields for their employees. One sees those playing fields alongside roads, with the name of the factory or industry up, to which they belong.

Mr. *Wrottesley.*] Yes, my Lord. The Portsmouth Road is an example.

Sir *Henry Cautley.*] The racecourse at Doncaster is alongside the road.

Mr. *Wrottesley.*] Yes. That is a charming racecourse, and the whole of one side of it is along the road. If one goes down towards Kingston, one sees many playing fields alongside the road.

Lord *Macmillan.*] Let us pull it together, if we can. The point seems to me to be: when ought the charge to come into operation, and when it comes into oeration what is a fair standard of measurement of that charge? It seems to be agreed that the charge should not be an active charge against the property unless and until some benefit is derived from the sewer, and it is suggested by Mr. Tyldesley Jones that the connecting up, for example, is an outward and visible sign of obvious benefit. It is equally desirable that there should not be a deterrent in the way of taking advantage of the sewer, because it is manifestly in the public interest that the houses should be connected with the sewer, rather than have a cesspit. Therefore, the contribution which is to be exacted should not be on such a scale as to deter people from availing themselves of the sewer. I think it would be agreed that there should be a postponement of any charge until the time when the owner first gets benefit. That could be defined, I have no doubt, in some way; I think it is possible of definition; that is not so difficult. But when he has to pay, what should be the measure of his charge, what contribution should he make, is a much more difficult thing, because of the infinite variety of the circumstances. That is the real trouble. When you consider circumstances which will be inevitable, there must be some arbitrariness, because it is only in an ideal world that you can get rating to be absolutely perfect. You must have, therefore, a certain amount of arbitrariness, but you want to minimise the arbitrariness, so that it shall be as little unjust as possible. I myself think it is difficult to get away from the frontage test, because it has always been the accepted basis of liability. But I can see that in the new conditions, which are different from those of the private streets altogether, the test of frontage may operate in some circumstances much less fairly than it does in the private street; but it is awfully difficult to scale down or minimise the frontage test, which is an arbitrary one, or rather to modify it in such a way as to make it operate justly in the various circumstances you have indicated. I think it is difficult to get away from a frontage basis; it is almost the only thing on which you can take your standard—something definite and precise. After all, you know what is frontage. Your suggestion is still to retain the frontage basis—not the total frontage with the property adjoining, but the building frontage, plus a percentage.

Mr. *Wrottesley.*] We know what the idea of charging frontage is—because the whole of the frontage is being benefited. That is the only logical excuse for taking frontage at all. *Ex hypothesi* if you have a man with a park running for hundreds of yards on either side of his house, that is not a fair test, and it would be *pessimi exempli* to make that person pay exactly the same as he would pay if he had developed the park. It would be equivalent to saying: "You must develop; you cannot get your fair share of the value for the money which you have had to pay without developing". That is my point. If we are driven to frontage, my clients would ask me to say that it is too difficult and too dangerous. I would rather be excluded altogether. There are too many difficulties in trying to apply to existing highways a clause of this type, unless it can be confined to developing property, or I would ask that I should be excluded, if you please, even though I connect. It is admitted that I am not developing, and this whole problem only arises because it is thought to be in the public interest that I should be encouraged, rather than otherwise, notwithstanding that I have a proper drainage system, to connect with the sewer.

Lord *Macmillan.*] Also, when you come to develop, undoubtedly the fairness of it is manifest, because many proprietors have been willing to enter into agreements and contribute; that is a recognition that a contribution is in the circumstances when benefit is going to accrue a fair thing—because it is a benefit which is individual and not communal; but again, as I brought out last time, these are more or less haphazard adjustments. Adjustments could be agreed upon. Can we get any system of admeasurement which would be of universal application to all circumstances? At present it is done by agreement. It is going to be done in future by statute—if it is to be done by statute. I see the most extraordinary difficulties in the way of laying down any tariff.

Mr. *Wrottesley.*] At present, my Lord, it is not done by agreement—not in the case of property of which I am thinking.

Lord *Macmillan.*] No, you are talking of existing property.

Mr. *Wrottesley.*] I am confining myself at the moment to the existing houses. All this legislation—Private Street Works Act, and the clauses that are before you—is either devoted to dealing with development before it takes place, or after it has taken place.

Sir *Henry Cautley.*] Even then, your point only extends to the amenity grounds of a house.

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] You are saved by the exemption of agricultural land as to any other part. I can see a great injustice in the case of a house with 200 yards of frontage—with fields for instance—and a new house of exactly equal size, and only about 10 or 20 yards of ground. The charge on the two would be out of all proportion.

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] Therefore, you wish to find some method of dealing with what I call the amenity grounds—the garden, and what is exempted as agricultural land in the definition in the Rating and Valuation Act, and the park.

Mr. *Wrottesley.*] That is what I want.

Sir *Henry Cautley.*] That ought not to be beyond your powers, and those of your advisers.

Mr. *Wrottesley.*] I present my solution, which may be once your actual frontage or twice your actual frontage, or any factor you think fit; 1¼ is the standard, I was told, you in fact find working out, as being what you have to pay on your building frontage. Having regard to your extra bit of road for which you have to contribute, or the space between the houses. 1¼ times, I am told is right. What I am anxious to establish is the prevention of the very absurdity to which Sir Henry has just drawn attention. I think it is clean contrary to public interest, that as the price of connecting with the sewer I should have to pay exactly the same as the gentleman next door, who is frankly out for development.

Chairman.] There is frontage and frontage. There is the broad view of frontage which is the amount of land which extends on the road, whatever that road is used for; and there is your definition which is the frontage of the house.

Mr. *Wrottesley.*] Yes.

Chairman.] Your objection, I gather, really is that if a man has a large frontage to his house he pays more for his sewer, and if he has a small frontage to the house he pays less.

Mr. *Wrottesley.*] Yes.

Chairman.] Is it not possible—I do not know, but I throw out the suggestion—to measure that house not by the frontage, because a four-storey house might have half the frontage of a two-storey house, but in some other way?

Mr. *Wrottesley.*] It could be measured by cubic space. Rating surveyors are doing this calculation every day.

Chairman.] I was coming to that. I think valuers do value houses by cubic space sometimes.

Mr. *Tyldesley Jones.*] Yes

Mr. *Wrottesley.*] Then you are getting away from frontage.

Chairman.] It is only another sort of frontage. I do not know whether you know Ickworth? There is one house *there*, and one house *there*, and a house in the middle, and about a quarter of a mile of passage in between. That frontage, according to your definition, would be very long, whereas there are other houses like the Shell building which are rather different. I was wondering whether something of that kind might not be arranged.

Mr. *Wrottesley.*] I am only suggesting it would be unwise to make a person pay on the whole of his frontage, having regard to the type of frontage of which we are thinking.

Lord *Macmillan.*] This occurs to me, that another standard (you may say it is quite absurd) is rateable value. I do not know whether that is a possible solution, because in getting at the rateable value of a house such as you are describing, as you probably painfully know yourself, under Schedule B you are allowed the value of your residence plus, I think it is, about one acre, which goes in under Schedule B with the house. All the rest of your property is assessed under Schedule B as land in occupation—the income tax test.

Mr. *Wrottesley.*] Yes.

Lord *Macmillan.*] There is a discrimination already being made for another purpose, but a cognate purpose—the matter of taxation.

Mr. *Wrottesley.*] We should not resist rateable value. I am only trying to arrive at something fair for a mansion beside a row of houses, or a cottage beside a row of houses.

Lord *Macmillan.*] The advantage of rateable value is that you are allowed in the case of rateable value a small amount of curtilage. You are allowed one acre, I think, for a pleasure ground.

Sir *Henry Cautley.*] Under the Income Tax Acts.

Lord *Macmillan.*] Under the Income Tax Acts. The balance goes into Schedule B, as land enjoyed under Schedule B, and it is put in a different category.

Sir *Henry Cautley.*] That is nothing to do with rateable value.

Mr. *Wrottesley.*] No. I know what his Lordship has in mind. I have in point of fact the draft of the Income Tax Bill, and I will read it; it is defining "building": "'building' includes the site thereof and all courts, yards and offices attached thereto, and in the case of a dwelling-house, includes also any gardens or pleasure grounds occupied therewith to the extent of one acre."

Lord *Macmillan.*] There you get the definition.

Mr. *Tyldesley Jones.*] Is that the existing law?

Mr. *Wrottesley.*] It is also the existing law. It is lifted clean out of the Act, I think.

Chairman.] If you take a place near a town centre, the rateable value is high, and half a mile away it is a great deal lower.

Sir *Henry Cautley.*] I think rateable value might be an unfair test, because in some cases the larger the house the less the rateable value.

Mr. *Wrottesley.*] It is so sometimes.

Sir *Henry Cautley.*] The house might be so big that nobody would take it, and the rateable value then is almost nil.

Lord *Macmillan.*] How are you to measure the benefit? That is the real test.

Mr. *Wrottesley.*] That might be the answer with regard to existing premises, that until development does take place, charge them only for the benefit. What is the benefit of a man with a cesspool? It may be only the fact that he has not to empty his cesspool. I am not now dealing with final improvement in value.

Chairman.] The question of a developing building estate is not so difficult. Where you drive a road through a bit of open country, and you strike various houses in that area, how are you going to deal with that? Is not that really the point?

Mr. *Wrottesley.*] That is on the next clause, I think. This is simply running a sewer along an existing road, in order to reach some estate beyond.

Chairman.] It comes to the same thing: you build your road, and then you run your sewer.

Mr. *Wrottesley.*] The local authority finds development going on in the perimeter of the borough, and wants to run a sewer out there, but in the meantime it wants to get something out of me, who live beside the road. I say I do not mind if you find some way of making me pay properly, but to hit me on frontage in certain types of property is ridiculous.

Sir *Henry Cautley.*] Is not it a possible view that you should not charge the existing house, but rate it on the assessed charge on the frontage, and let it come into charge as it is developed?

Mr. *Wrottesley.*] That is the solution, I am inclined to think. I have only tried to advance and meet my friend and say that I will do something when I connect. From the point of view of the good of the country, I suggest that the desirable thing is certainly to put off any substantial charge on this type of property, or perhaps all charge, until the property is developed. That is when the property is going, so to speak, really to derive a benefit from this sewer—every acre of it.

Sir *Henry Cautley.*] The question would arise again, if the owner decided to connect the sewer with his existing house, of what was a fair charge.

Mr. *Wrottesley.*] That is the other problem, so to speak—the interim problem. There is the sewer, and he wants to connect. What is the reasonable ransom? I say it has no relation to frontage. I see in the Memorandum, which the Ministry has provided us with this morning, he does not suggest any payment with regard to this type of property. It is on page 5: "On the other hand, if the view is taken that objection (2) or (3) is sound"—objection (2) being: "that a frontager who has constructed a cesspool and has the expense of altering his system ought not to be put to the additional expense of paying his share of the sewer", and objection (3) being: "that a frontager who has contributed to the expense of a sewerage system"—that is to say through rates—"which has conferred no benefit on himself ought not to be asked to share the cost of the new sewer". They say that if either of those objections is sound, or both of them, "a merely transitory clause will not suffice, since either objection would be as valid half a century hence as now. Of the proposals which have from time to time been under discussion to meet these objections, the simplest would appear to be to provide that a charge is not to be made against premises which are developed at the date on which the sewer is constructed. The effect of this, if accompanied by the usual provision that the recovery of a charge against undeveloped land is to be postponed until the land comes into development, would be that at the date when the sewer was constructed the authority would not be in a position to recover any of the cost, but that recovery could be subsequently effected from time to time as and when the land charged came into development."

Mr. *Tyldesley Jones.*] Just read on, will you?

Mr. *Wrottesley.*] "It will, however, be appreciated that this course would draw a sharp distinction between the frontager on a public street and the frontager on a private street"—of course it would.

Mr. *Tyldesley Jones.*] "The latter may also"——

Mr. *Wrottesley.*] "The latter may also have paid rates for sewerage expenses without benefit to himself and may also be put to the expense of connecting his drains with the sewer and discontinuing his cesspool system." That is quite true, but at least he bought his property knowing what he was in for.

Sir *Henry Cautley.*] That difficulty still exists in the case of water supply. You may live in a parish and have your own water supply. The parish decides to have water. Water is brought there, and you are rated for it, whether you connect with the water scheme, or not.

Mr. *Wrottesley.*] They can either charge the water rate or a deficiency rate.

Sir *Henry Cautley.*] I am speaking of a deficiency rate.

Mr. *Wrottesley.*] Sometimes they charge both.

Sir *Henry Cautley.*] If you go on the water supply and scrap your plant, you have to pay the rate as well.

Mr. *Wrottesley.*] Yes. It is usual to charge both.

Sir *Henry Cautley.*] Is that not a very similar position to the sewer being brought to your door? If you are a sensible person you would join with the sewer rather than keep your cesspits, in the ordinary course.

Mr. *Wrottesley.*] I think the position is similar.

Sir *Henry Cautley.*] In the same way, with the water supply you join with the water supply and you scrap your own supply.

Mr. *Wrottesley.*] There is generally a water rate.

Sir *Henry Cautley.*] Is it a hardship having to pay for the sewer with which you can join up, and scrap your own cesspit? You get a much healthier system.

Mr. *Wrottesley.*] Yes. All I say is that the standard of payment should not be frontage, because it is hopeless in the case of these old premises, not built with the Private Street Works Act in front of them, and people having been very lavish in the outlay of parks or pleasure grounds: they would not have been if they had known that one of these days they had to pay for every yard of a sewer which was laid along the frontage. The next point I desire to put is that there is the case of buildings which stand far back from the road. How about those? How about the building which stands 100 yards back from the road?

Mr. *Cape.*] You cannot make provisions for every isolated building, can you?

Mr. *Wrottesley.*] No. I am only trying to say to those who propound the law: let it work reasonably in all cases.

Mr. *Cape.*] You have not given us one instance or illustration of a case in which a large number of the public is affected.

Mr. *Wrottesley.*] In my submission, the general public are very much interested in the preservation of open spaces in towns.

Mr. *Cape.*] You have given us instances of one or two playgrounds and such things as that.

Mr. *Wrottesley.*] I regard anything in the shape of a nice garden in the middle of a town as one of the biggest amenities that can occur, and any policy which is directed to encourage that person to sell his property for development is deplorable. Every inch of the space in urban areas is valuable.

Mr. *Cape.*] I do not think any authority would be foolish enough to jeopardise a case like that.

Mr. *Wrottesley.*] We must make sure that this legislation does not bring it about.

Mr. *Cape.*] Can you give us any case where that has happened?

Mr. *Wrottesley.*] There are only about two cases where it has been passed and only Romford, so far as I know, where it has been worked.

Mr. *Cape.*] Ten Councils have adopted it.

Mr. *Wrottesley.*] I do not think so.

Mr. *Cape.*] I stand to be corrected.

Mr. *Wrottesley.*] I think it is only three or four.

Chairman.] Romford, Rugby and Wigan.

Mr. *Wrottesley.*] I am on Section 62. I do not know whether it has been used anywhere. I dare say it has been used in Romford.

Mr. *Tyldesley Jones.*] It has been used in Romford and Rugby. I have a lot of particulars about Rugby.

Sir *Henry Cautley.*] Is it your suggestion that there should be some exclusion of existing houses standing back more than a certain distance from the road?

Mr. *Wrottesley.*] I should have thought so.

Sir *Henry Cautley.*] The power of the local authority to compel connection with the sewers is limited to where the sewer is within 100 feet, is not it?

Mr. *Wrottesley.*] Yes.

Sir *Henry Coutley.*] Would you suggest that every house beyond 100 feet should be exempt?

Mr. *Wrottesley.*] Or some distance, say 200 feet.

Sir *Henry Cautley.*] And only come into charge when a connection is made with the sewer.

Mr. *Wrottesley.*] Yes, and then it has to be borne in mind that that owner, in order to contribute to his own and the general public health has to lay a proper sewer of his own which may be a good many yards long. There are only three Acts where this Section 62 has been passed.

Chairman.] They differ a bit. The Wigan Act differs from Romford, does it not?

Mr. *Cape.*] I was on clause 64, Mr. Wrottesley.

Mr. *Wrottesley.*] I was dealing with the question of the sewer laid in the High Street. I am in the position of saying that I cannot give very much information about the working of it, nor would it help us. We have to try to consider in advance what obvious hardships might arise, and that is what I am here for, and I am putting some pretty obvious ones. As Mr. Cape agrees with me, nobody would do anything to assist the abolition of open spaces and gardens in the middle of towns.

(*The Committee confer.*)

Chairman.] Have you any other observations on Section 62, Mr. Wrottesley?

Mr. *Wrottesley.*] Yes; I have this further one. May I part from the last by saying my proposal is, when the property is developed, it is to pay full charge, so, in the end, whatever is a fair proportion of the cost of this sewer is ultimately going to be borne by this park. Let us take the park.

Lord *Macmillan.*] I think, Mr. Wrottesley, following my noble friend in the Chair, we are pretty well seized of this aspect of the problem, but there is one other thing raised by the Minister of Health's very useful memorandum, and that would be the scale of contribution as apart from the measurement.

Mr. *Wrottesley.*] Yes.

Lord *Macmillan.*] One of his suggestions is that there should be, so to speak, a notional standard sewer, and that the cost of laying such a sewer (I take it, in a normal road, not a cast iron road), should be used as the measure of contribution.

Mr. *Wrottesley.*] A builder's road.

Lord *Macmillan.*] Have you anything to say on that?

Mr. *Wrottesley.*] Yes. I had suggested it, and I can put it in a sentence, and this applies both to the existing owner (because he has to pay on frontage) and also to the developer.

Lord *Macmillan.*] The postponed charge?

Mr. *Wrottesley.*] Yes, that the standard should be 9-inch sewer, 6 feet deep laid in a builder's road.

Chairman.] That would be the average sewer; that is the idea.

Mr. *Wrottesley.*] I am told that is about the ordinary sewer you would expect to have to contribute to under the private street works scheme.

Mr. *Tyldesley Jones.*] I am told that my clients entirely dissent from that as being taken as the average. That is the trouble. It is very difficult to try to formulate things on some scales if we are in disagreement on the scale.

Lord *Macmillan.*] See if you can reach agreement on this, which is the principle of the thing: Would there be agreement on the basis that there should be ascertained what is the average cost of the type of sewer which would be naturally expected to be contributed to?

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] I will tell you why I object to that at once. Supposing there was a large estate being developed; the size of the estate may necessitate a much bigger sewer than 9 inches, and if you are to say that the whole is to be developed on the basis of a 9-inch sewer, it might result in this, that you would have to have several 9-inch sewers whereas in practice, you would put down a larger sewer.

Lord *Macmillan.*] This is only a notional figure.

Mr. *Tyldesley Jones.*] But then what happens? You charge the developer on the basis of the 9-inch sewers, whereas, in fact, the thing will be drained in an entirely different way with perhaps a 12-inch or 15-inch sewer, which is far cheaper than two 9-inch sewers.

Lord *Macmillan.*] A person who might have been accommodated by a 6-inch sewer would have to pay on a 9-inch one.

Mr. *Wrottesley.*] Certainly; 6 inches is quite common.

Lord *Macmillan.*] It is entirely a question whether you can get a platonic conception of a standard sewer.

Mr. *Wrottesley.*] The reason why a standard sewer of the type I am indicating, the ordinary sewer you would find in a builder's road, is right is because they have chosen to go on the basis of frontage. There is another way you can deal with this problem, namely, along town-planning lines, when you can lay out a great sewer as large as the district needs, and you charge every person who is going to benefit by it. It is very difficult to do. It is theoretically sound; you can find it in the Town Planning Act. But, if you choose to walk down the road and proceed on the basis of frontage, as this clause does, you must proceed on the basis of frontage, and it is immaterial that the frontager may have 10 acres behind, all of which will be drained by this sewer.

Lord *Macmillan.*] You say that frontage may be a fair test when you are dealing with a sewer which is of average dimensions in a private street (9 inches, or whatever the average dimensions may be), but it is not a fair measure of liability when you are dealing with sewers of much greater capacity?

Mr. *Wrottesley.*] That is right, and if this clause were dropped in this form, and you endeavoured to proceed along town-planning lines, you would not worry the frontagers at all; all my existing residents would have to pay obviously a trifling amount. He gets, say, one-thousandth part of the use of that sewer, and nine hundred and ninety-nine thousandths of the improved value of a sewer of that kind is distributed in the country all round or behind, which is being developed. But since they have chosen the Private Street Works Act basis, and do not seem to know of any other means of approaching the problem but the Private Street Works Act, which is the basis of frontage, then you must stick to frontage and not benefit, and therefore you must have a standardised sewer, otherwise you will obviously be inflicting hardship on a man who has only a shallow frontage. That is why a standard sewer is right, and it should be the sort of sewer you would expect to find in a private street.

Sir *Henry Cautley.*] As we are dealing with main highways, the majority of them would be trunk sewers.

Mr. *Wrottesley.*] The majority would be trunk sewers obviously.

Sir *Henry Cautley.*] We have no evidence before us, but that would be true, would it?

Mr. *Wrottesley.*] That is so, obviously. That is the danger I have to guard against.

Sir *Henry Cautley.*] So the principle of the Private Street Works Act does not apply.

Mr. *Wrottesley.*] It does not apply at all.

Sir *Henry Cautley.*] Because there you have a sewer which hitherto it has been the duty of the local authority to provide free of cost.

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] We do not agree with that. The greater number of streets which will be dealt with by this are not main roads at all.

Sir *Henry Cautley.*] There is a difference of fact at once.

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] We have to have something which works fairly.

Mr. *Tyldesley Jones.*] I agree.

Sir *Henry Cautley.*] My experience is that the highways are coming into main highways.

Mr. *Tyldesley Jones.*] Coming into, but not main highways. That is just the point. We take the view that under this scheme the roads which will really fall within it are the country roads which are public highways to-day, and not main roads. The main roads cannot be developed now under the Ribbon Development Act with long frontages along main roads. It is country lanes which are coming in.

Sir *Henry Cautley.*] On the contrary my experience is that it is the big main roads.

Mr. *Tyldesley Jones.*] In the past.

Sir *Henry Cautley.*] No, now. That is my experience.

Captain *Bourne.*] I do not know how often you have been round the country, but my experience is that the Ribbon Development Act has not begun to operate.

Mr. *Wrottesley.*] You have to pay compensation if you do apply it, and people are a little nervous of doing that.

Mr. *Tyldesley Jones.*] It does not seem much good putting statutes on the Statute Book if they are not going to operate.

Sir *Henry Cautley.*] If you had this notional sewer, as far as I can gather from my personal experience, these big main roads, concrete motor roads as I call them, have to have sewers on each side.

Mr. *Wrottesley.*] They have duplicate sewers.

Sir *Henry Cautley.*] Is the notional cost of the sewer to be the whole cost put on the frontager or half the cost as under the Private Street Works Act?

Mr. *Wrottesley.*] My point is, standardise.

Lord *Macmillan.*] This is a different point. You may have to have duplicate sewers, one on each side of the concrete motor-way. That sewer on that side would only serve the frontagers on that side of the road. At present, if the sewer is laid down a private street, you have the advantage of dividing the burden between the frontagers on both sides; each will therefore pay only 50 per cent. of the cost. You have a larger number of contributors; but if you have to have a sewer on each side, because you cannot break up the motor road, they will have to pay 100 per cent. Is not that your point?

Sir *Henry Cautley.*] Exactly.

Mr. *Wrottesley.*] That is what I say is unfair, just because I live beside a modern motor road. I say you have to standardise it.

Captain *Bourne.*] In most of the arterial roads that are being built, you have to have two sewers, one for foul water and one for rainwater.

Mr. *Wrottesley.*] Yes.

Captain *Bourne.*] The fact that there are two sewers is no benefit to the frontager at all. It is to get your road drained. The fact that he has to turn his rainwater into a rainwater sewer instead of a foul sewer is no benefit to him. Is it proposed that he should be charged double?

Mr. *Tyldesley Jones.*] He is to-day.

Captain *Bourne.*] Occasionally, not always.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] He is only charged under a local Act, and then only if there is some special reason why you should give him a double sewer. We have not infrequently struck that clause out of a Local Act.

Mr. *Tyldesley Jones.*] Under the General Act he is chargeable with the sewers, whatever they may be.

Captain *Bourne.*] I think not, because half the authorities put that clause in for separate sewers, and in about one

third of the cases I cut the clause out as being quite unnecessary.

Sir *Henry Cautley.*] Is a rainwater sewer a sewer under the Public Health Act?

Mr. *Tyldesley Jones.*] Certainly; under the Private Street Works Act, if the local authority have a separate system instead of a combined system, the frontager has to pay for both.

Lord *Macmillan.*] That may be fair under the Private Street Works Act, but not under a Public Act.

Mr. *Tyldesley Jones.*] I only want to get the fact.

Lord *Macmillan.*] You may have a main road with a lot of rainwater on it which may have to be drained off by a separate drain.

Mr. *Tyldesley Jones.*] May I say that the Honourable Member Captain Bourne asked if I had seen the effect of the Ribbon Development Act up and down the country. It only received the Royal Assent on the 2nd August last year; it has not had much time.

Captain *Bourne.*] I have not seen much effect of it, and when I have asked what local authorities have done under the Town Planning Act, which received the Royal Assent some time before that, the reply is invariably the same: "This Act has not begun to operate, and we do not expect it to operate for years."

Mr. *Wrottesley.*] I shall have to draw attention to that. The matters proposed to be done by these clauses are matters which might be done by Town Planning, and one of the vices of the next clause you are going to discuss is that it is an endeavour by local authorities to get the advantages of Town Planning without getting the area town-planned. You will find that on Section 64. My learned friend can test this. I hope I have made clear why I say that a standardised sewer is fair. It is fair because they have not endeavoured to proceed on the basis of benefit, which is different from frontage. There may be a property stretching 200 acres back, which will derive great benefit from the sewer; he does not endeavour to deal with that; he deals with it on the basis of frontage, and, that being so, I say the only way in which you can apply frontage at all is by applying a standard sewer laid under the Private Street Works Act; that is to say, in an ordinary builder's road, and a 9 inch sewer at that. These matters I have been dealing with would not make it unnecessary to retain Sub-clauses (*g*) and (*h*) in the Romford Act, to be found at the bottom of page 2.

Lord *Macmillan.*] The two grounds of objection.

Mr. *Wrottesley.*] Yes, because they would deal with points like this, where you may already have a sewer running at the back of a house; you may have property which fronts on two roads and comes right through from a back road to a front road, which is quite a common thing, in which case you would be landed with paying for both sewers; so those sub-clauses are still necessary. That is all I intend to trouble the Committee with on Section 62.

Sir *Henry Cautley.*] May I ask you a question of fact. These roads with which we are dealing are really roads where development is going to take place?

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] Not where it has taken place? Are the existing houses on these roads, speaking generally, numerous or few?

Mr. *Wrottesley.*] I have not the least idea.

Sir *Henry Cautley.*] In other words, the effect of one of the points you raised would be to make all the existing houses not subject to charge, but owners would be charged according to frontage, the charge only coming into operation when the land is developed?

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] Are the existing houses large in number?

Mr. *Wrottesley.*] They vary so very much. The idea of this is to apply it to the country at large.

Sir *Henry Cautley.*] As the sewers are only being laid with a view to further development, as I understand (development about to begin) it occurred to me that they might not be very numerous.

Mr. *Wrottesley.*] I do not think that they are very numerous.

Sir *Henry Cautley.*] That might meet the difficulty I see of bringing in the amenity lands.

Mr. *Wrottesley.*] The way I envisage it, rightly or wrongly, is that you are getting enormous solid development

taking place, with houses 4, 8, 10 or 12 to the acre at some places. It is therefore convenient to run your sewer and to tap that area and to drain it. In order to run along the highway to reach that site which is solid, you pass a certain number of isolated dwellings, and that is what I am concerned about. I understand they are comparatively few.

Sir *Henry Cautley.*] I do not know whether these houses are numerous or not.

Mr. *Wrottesley.*] Nobody can tell you.

Sir *Henry Cautley.*] I should have thought your experts would have known.

Mr. *Wrottesley.*] It means a survey of the whole of the urban districts of this country.

Sir *Henry Cautley.*] It seemed an obvious way out of the impasse in which we are, if we exempted all existing houses and only let the land come into charge whenever the land might be developed; that would free the owners from a good deal of hardship.

Mr. *Wrottesley.*] It would. It would postpone the thing. It would not end by relieving the developers in respect of that property; it would only postpone it.

Sir *Henry Cautley.*] Because when the land was developed then the charge would begin to operate.

Lord *Macmillan.*] That would also have the fairness, that these people, who have in the past been contributing through the rates to the laying down of sewers upon various other of the public highways throughout the area, from which they have received no benefit, should not be charged individually when they want one. It would also have the merit of not being retrospective legislation?

Mr. *Wrottesley.*] Yes.

Lord *Macmillan.*] But how far it would meet the case as a compromise is another question. No compromise to my mind is going to be ideal here. I cannot see an ideal here, because, as the Ministry point out, there are considerations either way upon practically every one of the topics you have raised, but to get a compromise which will operate over all reasonably well is the best one can hope for in the matter of local administration, I think. I am rather attracted also by the idea that the real mischief that exists here is the developing estate, developing at the cost of the public, and that there should be a fair charge made here, when this new state of matters is brought about by a person who is carrying out such an enterprise, and that he should certainly contribute, and according to the frontage, I should think. Then there is no trouble about him; he would simply pay. The only trouble would possibly be the scale of his contribution, whether it should be to a sewer big or small, or whether it should be to a standardised sewer; but with regard to the people through whose territory there has come a great arterial road, quite unwelcome, it is a little hard that it should bring with it the additional burden of having to pay for a sewer which they do not want and which may be of no use to them.

Sir *Henry Cautley.*] That expresses my view.

Lord *Macmillan.*] It might be fair that existing premises, which in the past have contributed their quota, should not be charged at all, but that, on the other hand, land which is being developed, and for whose benefit the sewer is really being put in primarily, should bear their cost. Then the only question would be, what cost?

Mr. *Wrottesley.*] As you know, my case is only to protect existing premises and make sure that they are not hit. With regard to all development, I say they ought to be made to pay, and I say with regard to scale, since you are going to do it by frontage, you must stick to your standard sewer.

Sir *Henry Cautley.*] The suggestion we made would carry with it the right of the existing premises to be connected to the sewer.

Mr. *Wrottesley.*] Without any payment?

Sir *Henry Cautley.*] Yes; I want to get that clear.

Mr. *Wrottesley.*] Certainly. There would be less injustice done that way than by the other way, in my submission.

Lord *Macmillan.*] There would be no deterrent to their connecting up, because they would have paid for it already by their contribution.

Mr. *Wrottesley.*] *Ex hypothesi*, they are ratepayers of some standing.

Chairman.] There is the question of the use of the building. You might have a farm house and buildings and cottages, and that might cease to be a farm and be used for residential purposes.

Mr. *Tyldesley Jones.*] Or be turned into an hotel.

Chairman.] Or be turned into an hotel. Would that come into your definition, Mr. Tyldesley Jones?

Mr. *Tyldesley Jones.*] Yes, that would attract liability under my proposal, because of change of user.

Mr. *Wrottesley.*] I should not resist that.

Sir *Henry Cautley.*] The proposal I would make would be that, if there is an alteration of buildings, they should come into charge.

Lord *Macmillan.*] It is the *status quo* you want to preserve. If a person chooses at his own hand to change his premises, and so get perhaps greater benefit, he should come in.

Sir *Henry Cautley.*] That is my opinion.

Captain *Bourne.*] Is not there a clause in the Rugby Act on page 5: "Has since that date been so altered as to constitute a new building." That would go a long way to meet the point.

Chairman.] Supposing a country house is turned into an hotel, would that be sufficiently altering it or not?

Mr. *Wrottesley.*] I am not sure whether that would. I should regard that as a matter of drafting.

Chairman.] Or a school?

Mr. *Tyldesley Jones.*] I do not think changing into an hotel necessarily would. There would have to be structural alterations. My words "change of user" are rather different. That would do it. Rugby is "structural alteration"; mine is "change of user," which may be something more.

Captain *Bourne.*] That would do a good deal, if you had "change of user" only.

Mr. *Tyldesley Jones.*] Not only. I suggested, first of all, connection. The Committee have been discussing that: "or house so altered as to constitute a new building." That is my third way of saying what is stated in Rugby: "or user of any part of house and land is changed."

Captain *Bourne.*] Supposing you had a piece of land which was used as a field —agricultural land.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] It is sold to the local bowling club or cricket club, and by change of user becomes a cricket ground; under your definition, I think that would become liable. It would receive no more benefit whatever; there would be no more development in one than the other. I think I see dangers at once.

Mr. *Tyldesley Jones.*] That would be change of user. Whether a bowling green is to be exempted because it is a bowling green has to be considered on its own merits.

Captain *Bourne.*] I quite agree, but you did not have a suggestion about these things on their own merits, and I was going to see how it works.

Mr. *Tyldesley Jones.*] I quite agree. Change of user to agricultural purposes would not attract liability.

Captain *Bourne.*] If you turned it into a dairy farm it obviously would not.

Mr. *Tyldesley Jones.*] Obviously I do not mean by "change of user" that the merits of the exclusion of a piece of land might not be considered.

Chairman.] You might confine it to built-on land.

Captain *Bourne.*] I was trying to find out where "user" might take us to, before we come to consider it.

Chairman.] "Change of user" would be to take a cricket ground and turn it into a farm.

Mr. *Wrottesley.*] The mere changing of a house into a shop does not seem to me to be a change which should alter the situation, but the changing of a private house into an hotel or a school is a very different story.

Captain *Bourne.*] It might be a little dangerous to say: "change of user".

Sir *Henry Cautley.*] Is not there a definition in the Act of those properties which are not to be charged?

Captain *Bourne.*] Not under those clauses.

Mr. *Tyldesley Jones.*] Which Act?

Sir *Henry Cautley.*] In any of the Private Acts we are dealing with.

Mr. *Tyldesley Jones.*] Only in those various provisos, as on page 5 in the case of Rugby, namely, agricultural lands; that is all.

Captain *Bourne.*] And some rather more elaborate ones in the case of Coventry.

Mr. *Tyldesley Jones.*] That is special.

Sir *Henry Cautley.*] "Change of user" might be altered to: "change of user for some purpose that is not exempt."

Mr. *Tyldesley Jones.*] That is right.

Lord *Macmillan.*] It is most important, if we can, to get as much agreement as possible, and I think the agreement we could reach is that existing buildings shall not be affected unless and until there is some alteration of circumstances. What alteration of circumstances shall bring them into charge is the problem that would have to be further explored, but if we are agreed that the existing buildings should not come into charge unless and until there is some alteration of circumstances (that is putting it in the most generalised fashion) then we would have further to proceed and say: "what alteration of circumstances shall be sufficient and appropriate to bring them into charge?"; not plainly an alteration of circumstances which is merely a change of user in the same category of user, but something which converts them from the existing type of user and puts them into a different type of category altogether, where they ought to come into charge, such as a commercial or industrial use. That is the kind of thing. That is a question of defining the alteration; but if we are agreed that they are not to come into charge until there is a change of circumstances, then we can consider what change of circumstances shall bring them into charge.

Mr. *Wrottesley.*] Nor will the Committee have solved the difficulties of frontage.

Lord *Macmillan.*] No.

Chairman.] You will get away from Captain Bourne's difficulty of the bowling green which has been established. If you confine this to buildings it is all right.

Captain *Bourne.*] I am really trying to get out whether this provision in Rugby on page 5, the second proviso, does not go far enough, because there, if you get any serious structual alteration, it comes in, and if you do not it is left as it is. Is that sufficient? That is what I am trying to get at; simply because it is not very easy to draft a definition which is going to catch the case we want to catch and is going to exclude the person we want to exclude; the point I was trying to get at is whether this definition in the middle of page 5 is satisfactory?

Chairman.] If you get a country house you can turn it into a girls' school without very much structural alteration, but its whole user and nature is changed. I do not say it is, but it might be desirable to bring that in.

Sir *Henry Cautley*] Do you mean the words: "be so altered that the alteration would be deemed to be the erection of a new building."

Captain *Bourne.*] Yes, in other words, substantial structural alteration. I am not particularly enamoured of that definition in Rugby necessarily.

Mr. *Wrottesley.*] I should myself rather have suggested that the real test is development: The object of this clause was to catch the developer. As you know, I am not endeavouring to stand in front of him at all. I am only saying with regard to the developer that he should pay, since it is on the basis of frontage, on the basis of a standardised sewer.

Sir *Henry Cautley.*] Changing a residential place into an hotel; if it has its whole character altered it ought to pay.

Mr. *Wrottesley.*] Yes. One has to be a little careful. I am not sure if a private residence were turned into a nursing home that I should regard it as a substantial alteration.

Captain *Bourne.*] I do not know whether you could use the words: "structural alteration."

Mr. *Tyldesley Jones.*] There might not be a structural alteration. Take the case of a house with pleasure grounds and the owner turning it into public pleasure grounds where he has an entertainment fair; there might be no structural alteration which would bring it within the proviso (ii) on page 5, but that is the kind of development where we do want to attract liability.

Lord *Macmillan.*] That is a commercial development.

Mr. *Tyldesley Jones.*] Certainly; my learned friend and I will not disagree on that.

Mr. *Wrottesley.*] No. My clients are of the opinion that the charge should not fall, even if there was a change of user, until the connection is made. It might not be necessary to make a connection.

Chairman.] You must have a building there.

Mr. *Wrottesley.*] You must have a building there, and until the connection is made, my instructions are to say that they do not think the charge should fall.

Chairman.] Mr. Tyldesley Jones' objection I do not think would be sustained there. Supposing a man lets his field for an agricultural show (it might be every year) or something of that kind, if there was no connection the payment would not be made, would it?

Mr. *Wrottesley.*] No, certainly not.

Mr. *Tyldesley Jones.*] I do not think so.

Chairman.] Supposing you have an hotel or a country club, a lot of subsidiary buildings might pay, and the main building, which has caused them to come there, which has been really a new development, would not pay unless you get some new scheme defining it, would it?

Mr. *Tyldesley Jones.*] My learned friend said that there ought not to be liability until connection is made. The developer ought to pay when he is developing, not merely when the connection is made. Supposing you have private streets now, the liability attaches to the frontagers on the private streets, whether they make the connection or not. My learned friend agrees that in the case of a development taking place the liability ought to attach. If you exempt the existing buildings, except under certain conditions, it seems to me that the liability of the developer who is developing the estate, in respect of a contribution towards the sewer, ought not to be dependent on or postponed until he makes the actual connection.

Lord *Macmillan.*] Is not this test rather unfortunate, because it makes the question of coming into chargeability depend upon a structural alteration. That cannot be the proper test, because, as we know, quite a large number of houses have been turned into hotels without structural alteration at all and become really commercial things, and therefore they would be properly chargeable, would they not, under your view?

Captain *Bourne.*] That is the question.

Mr. *Wrottesley.*] Change of user includes taking in paying guests.

Mr. *Tyldesley Jones.*] Must not we bear in mind that proviso (ii) was inserted, as I understand it, to meet a point made by the Ministry of Health, namely, that it is unfair to a rate-payer who has paid rates in the past for the construction of sewers elsewhere, from which he has derived no benefit, now to be charged with the sewer which is going to be constructed for his benefit. That is the point it was put in to meet. I venture to think it is a false point. It was not really put in to meet the point which we are now considering, and that is the trouble of it. It was really looking at a different point. It was said there "He has been contributing in the past in respect of an existing house." If he so alters the house as to make it a new hereditament, that credit in respect of past rates ought not to enure for his benefit. That is the point we are dealing with there.

Lord *Macmillan.*] It is a rather different problem.

Mr. *Tyldesley Jones.*] It is a rather different problem.

Sir *Henry Cautley.*] That is the point; he ought not to pay unless he alters the user.

Mr. *Wrottesley.*] It depends on the nature of the change. I rather think that the taking in of paying guests would be converting it into a boarding house. It would not be a private dwelling house.

Chairman.] Mr. Tyldesley Jones, do you want to say anything more on Section 62?

Mr. *Tyldesley Jones.*] I want to say a few words in reply.

Chairman.] Mr. Wrottesley, have you finished?

Mr. *Wrottesley.*] I have finished on Section 62.

Chairman.] I thought you had said so.

Mr. *Wrottesley.*] I have not dealt with Section 64 at all.

Chairman.] Quite.

Mr. *Tyldesley Jones.*] May we try to get back to where we were. After all, the principle that people who require sewers to be constructed for the purposes of the development of their estates should pay, is engrained in our law to-day. In the case of private streets it is enforced under the Act of 1892 or Section 150 of the Public Health Act 1875, so that, so far as private streets are concerned, the principle is there in our law and can be enforced, and there is no difficulty;

but the difficulty arises in the case of sewers in public roads. The position which exists and the difficulty which exist to-day is met by agreement, because the local authority are under no obligation to lay such sewers. The position therefore that arises now is that, if somebody is going to develop an estate and wants sewers for the proper development of his estate, he comes to the local authority and says: "Will you lay the sewer?" The local authority say: "No, we are not obliged to lay it; we will not lay it unless you contribute", and so he generally contributes, and there is no difficulty in that case. Where the difficulty arises is this, that to reach him you may have to lay the sewer past the property of other people who are going to derive a benefit. It is those other people who often stand out and say: "We are not going to contribute. We will stand by till A.B. has paid his contribution, and the ratepayers have expended the money", and then they say: "We will come in now and take the advantage of that sewer." That is the case which the legislation is required to meet. We quite agree, and I understand my learned friend agrees, that in that case that man who refuses to come in under the existing law ought to be brought in on fair terms. I quite agree that if you have an existing house which is on the route of such a sewer, and that existing house is going to get no benefit for the time being, I say: Exempt it for the time being. So it seems to me we are in agreement on the main principles. Therefore it comes down to this, as I suggested this morning: If you exempt an existing house and, I agree, "any land occupied therewith, as a park, garden or pleasure ground" (because those are the words which prevent those grounds being agricultural land under the definition we have got), if you tie them up to the house and exempt "any existing house and any land occupied therewith as a park, garden or pleasure ground," until certain events have happened, you will meet the injustice to which my learned friend has been referring, if the events which we put into the clause are the events which fairly ought to bring that land into assessment. It seems to me, My Lord, that so far we have really got a large measure of agreement. Therefore, we come down to this: What are the events which ought to bring existing property (I use the phrase "existing property" meaning property on which there is an existing house) into assessment? I am going to suggest this, My Lord, that you cannot get away from the basis of contribution according to frontage. The frontage may be quite unfair, as my learned friend has said, if you are going to impose it as the test of liability on an existing house such as the case he took of the house at Ledbury or the case which is no doubt in your Lordship's mind of Petworth. It is unfair while the *status quo* exists. I quite agree that during the *status quo* there ought to be no liability, but when the *status quo* ceases you must revert to the basis of frontage liability. If that is so, it is only a question of settling the basis on which liability is to attach. We are both agreed, as I understand it, that what we have loosely called development ought to result in liability according to frontage. "Development" requires some definition. What exactly do we mean by "development"? Anything like using the land for housing purposes, I suppose we both would agree is development. But what extent of development is meant by that? Is every parcel of land to be built upon before there is liability of the whole according to the frontage? You cannot, I submit, go so far as that and exempt some little bits of the land, because they have not yet been built on if the estate generally has been developed. There is the first difficulty. Development has to be defined and the extent of development. No doubt if the Committee said that development is to attach liability, we would have to put our heads together and see how we could define "development." I imagine that the Committee are not going to attempt to draw a clause now; you would at the most lay down the broad principles, and therefore I am approaching it in that way. That is the broad principle.

Now, change of user. "Development" is sometimes defined to include change of user. It is so under the Town and Country Planning Act. Under that Act, change of user amounts to development. I do not want development merely to mean covering with bricks and mortar, because if you take the case of an agricultural field now being turned into a pleasure fair—I have never been to Blackpool, but there is a pleasure fair there.

Mr. *Cape.*] You will have to go this Summer.

Mr. *Wrottesley.*] I have been there; I have the advantage over my learned friend.

Mr. *Tyldesley Jones.*] I hope my learned friend will take me there some

day. There are places of that sort which earn quite a substantial income, and would no doubt impose some liability on the sewers in their neighbourhood. It is a little difficult to see why they should be exempt. But that is not covered if you are going to limit development to building development. So change of user, if it is a change to a form which is not exempt under other provisions, I think ought to attract liability.

Lord *Macmillan.*] Not every change of user?

Mr. *Tyldesley Jones.*] Not every change of user, no. I put it this way: Change of user, unless the new use is one which exempts the property from liability.

Lord *Macmillan.*] It is a little *idem per idem.*

Mr. *Tyldesley Jones.*] Is it? I will say "which under other provisions are exempt." Development is defined in the Town and Country Planning Act.

Lord *Macmillan.*] Let us have that. I would like to have it.

Mr. *Tyldesley Jones.*] Section 53: "'Development', in relation to any land, includes any building operations or rebuilding operations, and any use of the land or any building thereon for a purpose which is different from the purpose for which the land or building was last being used; provided that (i) the use of land for the purpose of agriculture, whether as arable, meadow, pasture ground or orchard, or for the purposes of a plantation or a wood, or for the growth of saleable underwood, and the use for any of those purposes of any building occupied together with land so used, shall not be deemed to be a development of that land or building; and (ii) the use of land within the curtilage of a dwelling-house for any fresh purpose other than building operations shall not be deemed to be a development of that land if the purpose is incidental to the enjoyment of the dwelling-house as such."

Lord *Macmillan.*] Would you like to import that definition then?

Mr. *Tyldesley Jones.*] It seems to me, My Lord, that that definition of "development" might be imported generally. I think the terms of it would require consideration both from my learned friend's point of view, and from my point of view.

Lord *Macmillan.*] It would be "existing buildings shall be exempt unless and until development within the meaning of that Act takes place."

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Is that for the first time in that Act, or does it come out of another Act? Is it an old definition?

Mr. *Tyldesley Jones.*] I am told it is new.

Sir *Henry Cautley.*] When is development complete under that definition. When they start the use, or when it is completed? That seems to be the difficulty, as I see it.

Mr. *Tyldesley Jones.*] I think that carries me out of my depth at once.

Sir *Henry Cautley.*] That is what struck me.

Mr. *Wrottesley.*] I think one has to look at the text.

Mr. *Tyldesley Jones.*] As my learned friend says one has to look at the text.

Sir *Henry Cautley.*] The wording, after due consideration, seems to me to be sufficient for our purpose.

Mr. *Tyldesley Jones.*] That is, I think, a detail which would have to be considered carefully when one came to apply it.

Sir *Henry Cautley.*] Yes, I agree.

Mr. *Wrottesley.*] Most important was the point of view of interim development, and I think it was complete when it started. You could not develop at all until you got leave, before the plan was completed. At that stage, I think, the development was complete when it started; the first step in altering the *status quo.*

Sir *Henry Cautley.*] Would you like that?

Mr. *Tyldesley Jones.*] I do not think you can tie my learned friend or me.

Mr. *Wrottesley.*] It is in the right direction.

Mr. *Tyldesley Jones.*] It is a question whether a solution may not be found on those lines. I wanted to add a word on the question of agricultural land. My learned friend, quite rightly, drew attention to the limitation of agricultural land quoted here.

Mr. *Wrottesley.*] The Rating and Valuation Act.

Mr. *Tyldesley Jones.*] Excluding cottage gardens not exceeding a quarter of an acre and where there was poultry. Of course the whole point of that is this: If you had not a limitation such as a quarter of an acre, everbody who owned any house, who kept a fowl or two would say: "I am a chicken farmer". It is perfectly obvious that there has to be a limitation of that kind

so as to exclude my learned friend and myself from saying we are chicken farmers because we keep one or two fowls, if we do.

Mr. *Cape.*] Or pigs?

Mr. *Tyldesley Jones.*] Or pigs too.

Sir *Henry Cautley.*] I take it that the time for this exemption of existing buildings ought to date from the passing of the resolution of the local authority owning the sewer. Would that be it.

Mr. *Tyldesley Jones.*] The exemption from liability?

Lord *Macmillan.*] At what point of time is a building to be deemed to be in existence?

Mr. *Tyldesley Jones.*] I do not want a *terminus a quo;* a *terminus ad quem* is what I want.

Lord *Macmillan.*] At what point of time do the buildings exist?

Mr. *Tyldesley Jones.*] I am obliged to your Lordship; I had not followed the question.

Sir *Henry Cautley.*] I started my question with " Existing buildings ".

Mr. *Tyldesley Jones.*] I should think the date of the resolution, or something of that kind.

Sir *Henry Cautley.*] That would be the time, would it not?

Mr. *Tyldesley Jones.*] Yes, I think so, because the moment we passed a resolution, nobody should put a house up.

Mr. *Wrottesley.*] We should agree to the time of the passing of the resolution, with some safeguard that the sewer must be put in within some reasonable time after the resolution, so that the Council would not be able to pass a resolution covering all streets.

Captain *Bourne.*] Would you have any objection either to the date of the passing of the Act, or, alternatively, to the date when the notices of the intention to proceed with the Bill are originally given? They are both fixed dates.

Mr. *Wrottesley.*] That is a different point. We are now dealing with the proposition of the houses coming along before the sewer.

Captain *Bourne.*] I mean, no house which was erected or completed before either of those dates—the passing of the Act.

Mr. *Wrottesley.*] We were saying, before the coming of the sewer or the passing of the resolution for the sewer. With that we should agree.

Captain *Bourne.*] I think it is all right.

Mr. *Tyldesley Jones.*] I am afraid I must rather withdraw. Various local authorities are very concerned about this matter, and they are naturally anxious to get instructions on it. I am instructed that I ought not to assent to the date of the resolution to construct a sewer. One wants to consider it for a moment. If this were to be passed, the general law would be that anybody who builds a house after that date on a public road would have a contingent liability, just as he has if he builds on a private street. My clients at present think that " existing " ought to be existing at the date of the passing of the Act.

Lord *Macmillan.*] Before the passing of the Act.

Mr. *Tyldesley Jones.*] Then there is a question whether you may not have to throw that a little further back, the date of the resolution to promote the Bill for the Act.

Lord *Macmillan.*] This is a public measure.

Mr. *Tyldesley Jones.*] Is it?

Lord *Macmillan.*] What is contemplated, I understand, is general legislation.

Mr. *Tyldesley Jones.*] At the present moment what is referred to the Committee is to recommend the conditions under which similar clauses ought to be allowed in private Bill legislation in future.

Lord *Macmillan.*] I sincerely hope that this matter will reach the stage when you can have general legislation, which picks up the best of the clauses which have been devised in local legislation.

Mr. *Tyldesley Jones.*] But that is not likely to happen just yet, and in the meantime the local authorities are pressing for this matter to be dealt with individually.

Lord *Macmillan.*] So it will be either the date of the resolution to construct the sewer, or the date of the giving of the notice?

Mr. *Tyldesley Jones.*] No, My Lord, we suggest it should be the date of the resolution to promote a Bill imposing the liability.

Chairman.] In the case of a private Bill?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] What happens in the case of a public Bill?

Mr. *Tyldesley Jones.*] That gives everybody notice.

Sir *Henry Cautley.*] That surely does not give them notice. I never hear when a local authority is going to start a private Bill.

Mr. *Wrottesley.*] We take that view, that that date is locked up in the bosom of the local authority. In theory it is supposed to be known to every resident in the borough or district, but it is not, in fact, and I should say that if you are going to use the date of the Act at all and not the construction of the sewer, it should be the date of the Royal Assent.

Captain *Bourne.*] Would you have the same objection to the date on which the notices are published in the local Press giving notice of intention to promote, because that is a public thing, unlike the resolution which is passed in the Council and nobody would ever hear of it. The notices have to be published and would be public.

Mr. *Wrottesley.*] That would be preferable to the resolution, but I do ask for the Royal Assent.

Sir *Henry Cautley.*] Do you mean the Royal Assent to the Public Act?

Mr. *Wrottesley.*] Yes.

Sir *Henry Cautley.*] It ought to be when the proposal was to make the sewer.

Mr. *Wrottesley.*] That is the alternative. We are now on quite a different point.

Captain *Bourne.*] Mr. Tyldesley Jones, supposing you take the suggestion which has been made that it should be a house built before the resolutions have been published.

Mr. *Tyldesley Jones.*] Before the notice of the Bill.

Captain *Bourne.*] Or any other point of contact of the same kind before the Bill is actually passed; the Bill might be thrown out.

Mr. *Tyldesley Jones.*] That does not matter; there would be no liability.

Captain *Bourne.*] It would matter, because it might upset the whole building plans of somebody. Is there any real objection to taking the date of the passage of the Bill?

Mr. *Tyldesley Jones.*] Yes, because a lot of small houses might be run up. The people for whom my learned friend is appearing would not be affected, but we fear the speculative builders who might rush through houses.

Chairman.] You mean the jerry-built houses?

Mr. *Tyldesley Jones.*] Yes.

Mr. *Wrottesley.*] I am told that there is no chance of that. If the sewer is known to be coming, nobody dreams of putting up houses.

Mr. *Tyldesley Jones.*] Then there can be no difference in the date if that is right. The public notice, I would agree.

Mr. *Wrottesley.*] We are on a different matter altogether, as to whether it should be the construction of the sewer.

Mr. *Tyldesley Jones.*] There are two points really, as my learned friend has just been saying. The first suggestion was that "existing" should mean existing at the date of the resolution to construct the sewer. At first I appeared to be willing to assent to that. I have to go back on that assent, and I have to press for an earlier date, namely, either the date of the Royal Assent or, as I say, the date of the notice to promote the Bill, and the reason I press that is that if the legislation is passed, there is this contingent liability which everybody must know about. Therefore, I submit, it ought to be the date of the Royal Assent or the date of the notice for the Bill. The date of the notice for the Bill is preferable to the date of the Royal Assent, because a jerry-builder may run up houses in the meantime, and he is the person who ought to be stopped.

Lord *Macmillan.*] I think that is reasonable, but the only doubt I have is, supposing the Bill does not go through, does the notice have the effect of bringing it into operation, although the matter has not proceeded.

Mr. *Tyldesley Jones.*] No.

Lord *Macmillan.*] Would it be the notice for the Bill which subsequently receives the Royal Assent?

Mr. *Tyldesley Jones.*] Yes, certainly.

Lord *Macmillan.*] It would be a double provision?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] So, it would be simply a nullity if the Bill did not go through, and it would just drop.

Mr. *Tyldesley Jones.*] Yes, that date has no operation unless the Bill is passed, because it is a date put in the Bill.

Chairman.] It would hold up building operations between the date of the notice being given and the date of the Bill being thrown out.

Mr. *Tyldesley Jones.*] Yes, and so it should; you cannot get away from that. I want to deal with the suggestion that you can put in some standardised measure of liability. My clients dissent entirely from that; they submit that you cannot put in some standard liability, 9 inches, with a certain depth in a notional street or something of that sort. You cannot do that. Let me put this. If you were

going to have any notional standard sewer of that sort, it surely must be related to a standard property; but your properties are not standard. You may have on one side of the road, a flat property, on the other side a hilly property. If you have a hilly property the sewer which the local authority have to construct may be of a comparatively shallow depth, because the land has a fall. If you have a perfectly flat estate, the local authority necessarily has to construct a sewer with a fall, which means going down deeper. That is because of the geographical features of the owner's land; it is not some inherent vice on the part of the local authority. You cannot have standard measurements when you have not got standard estates. . The only result of that would be that the difference between the cost of the actual sewer and that of the standard sewer which will not fit the estate because it is not a standard estate, must fall upon the unfortunate ratepayers.

Mr. *Wrottesley.*] Why "unfortunate"?

Mr. *Tyldesley Jones.*] Because we think they are unfortunate if they have got to pay heavy rates for the benefit of the development of some estate developer's property. We may be wrong.

Sir *Henry Cautley.*] They pay the whole cost at present.

Mr. *Tyldesley Jones.*] That is just what they do not do, because at the present moment, we, the local authority, say "We are not going to lay the sewer unless you, the estate developer, are going to contribute."

Sir *Henry Cautley.*] You cannot say that as to sewers in public roads.

Mr. *Tyldesley Jones.*] That is just what we are doing. That is the whole point. In the private streets we have not got to do that because, in all private streets we go ahead, lay the sewers, apportion the expense and make every man pay. In the public streets to-day we say "You are developing an estate, by law we are under no liability to lay a sewer; we are not going to lay a sewer unless you, the estate developer, contribute to the cost of the sewer", and the Ministry of Health tell you in this memorandum which they put in to-day, that they are making that practically the standard practice. We get that out of the estate developer who is prepared to meet his moral liabilities reasonably. We want to hit the man who says: "I am not going to make a contribution, and I know you will be compelled to lay that sewer for that fellow over there because he is prepared to pay a contribution; I am not going to contribute, and I am going to wait till you have laid the sewer and take advantage of it without paying a penny piece." That is the man we are trying to hit, and that is the object of this legislation. The reasonable man contributes now under agreement.

Captain *Bourne.*] We now come back to the case of the trunk sewer?

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] Are you suggesting that it is reasonable that the people alongside—the frontagers—should pay for the cost of a trunk sewer possibly designed to carry sewage from development behind theirs, an immensely bigger sewer than is needed for their own purpose.

Mr. *Wrottesley.*] And a mile out.

Mr. *Tyldesley Jones.*] Certainly not, and it has been excluded by the clause. Page 9, paragraph (i), this is the paragraph I told you I thought was required in law, though my clients had formerly taken a different view. This is an objection: "that the sewer is of greater capacity than is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer is to be constructed or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street regard being had to the capacity requisite for the surface-water drainage of the street or part of a street."

Lord *Macmillan.*] There is a little difficulty there. As contrasted with a private street, one of these highways may be of indefinite length. Would you call the whole of the Kingston by-pass a street?

Mr. *Wrottesley.*] For this purpose, yes.

Lord *Macmillan.*] For this purpose.

Mr. *Tyldesley Jones.*] I do not know, but it is quite immaterial for this reason: What we are dealing with is the laying of sewers for the drainage of houses as the development takes place. No street like the Kingston by-pass has been sewered throughout its whole length at any one time. The development takes place piecemeal, and the sewers are constructed piecemeal. It is that length of sewer which is constructed, the cost of which is apportioned between the houses abutting on that length of sewer.

Mr. *Cape.*] The new length of sewer itself?

Mr. *Tyldesley Jones.*] One has to bear in mind that you are not here dealing with a case, and it is not, in practice, the fact, and cannot be, that, take the Bath Road, there is ever any chance of four or five miles of the Bath Road being sewered for development purposes at one time. It is not. It is done in bits, and as each bit is done the cost of that bit will be apportioned between the houses fronting on that part of the sewer. The thing works itself out quite simply in practice. If I may follow what Lord Macmillan put to me, there is no reason why a private street should not be four or five miles in length; it is not so in practice, because development does not take place in that way. That is just why you will not get four or five miles of sewer.

Mr. *Wrottesley.*] My clients absolutely disagree. They tell me that, having regard to fall, you may have quite a long sector which would be far beyond something which could ever occur under the Private Street Works Act and of far greater diameter.

Mr. *Tyldesley Jones.*] That only shows at once the great difficulty we are in because of the conflict of opinion as to what may take place.

Captain *Bourne.*] We have to have a standard clause, having regard not only to what may happen to-day, but to what may happen in the future.

Mr. *Tyldesley Jones.*] I quite agree.

Captain *Bourne.*] There is getting a strong tendency in several local Acts, and I think it may go further, to lay it down that when a street is broken up, or has to be repaired, every foreseeable operation shall be carried out at the same time.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] And, I think, some of the main roads leading out of a town, which have been recently taken into a country borough or an urban district, have to be made up, and I think there may be a tendency to sewer those in expectation of probable development over four or five years, simply because of the expense and difficulty of breaking up a road once it has been laid.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] Therefore one has to look at it as a very strong possibility that the argument you are now putting forward, although it may be justified at the moment, may not hold good in a few years time. That is what has happened in my place. This is Coventry; also this is a brand new clause.

Mr. *Tyldesley Jones.*] May I try to deal with the point for a moment. Your Lordship will appreciate this. This is really a very big question. It has very big ramifications.

Chairman.] Yes, we know that.

Mr. *Tyldesley Jones.*] The point which the Honourable Member has just been putting to me, does require very careful consideration indeed, and with perhaps greater knowledge of what is in fact done, or, I quite agree, what can be done, than I (I will not say my learned friend) can venture to deal with on my legs and without full consultation with my clients. But I venture to say this, that when you have a lot of houses built upon a road, such as the Honourable Member has been putting to me, they are not all connected direct to the big main sewer.

Captain *Bourne.*] They may be anything.

Mr. *Tyldesley Jones.*] I am told not. There again you see the difficulty I am in.

Captain *Bourne.*] They may be anything.

Mr. *Tyldesley Jones.*] They cannot be, in fact. The Honourable Member does know High Wycombe; that is the sort of street one bears in mind.

Captain *Bourne.*] Yes, I know quite well.

Mr. *Tyldesley Jones.*] You may want a large trunk sewer to deal with the drainage of a large area. You cannot connect your houses direct to that main trunk sewer. They have to be connected to subsidiary sewers which ultimately have to be brought to connect up to the trunk sewers, and those subsidiary sewers are are the sewers which I imagine it would be desired to make the frontagers pay for.

Captain *Bourne.*] Yes.

Mr. *Tyldesley Jones.* But the main trunk sewer which is down there, which will probably require great size, and in some places great depth to get the fall, is not the sewer to which houses are connected. That suggests to me the way in which this problem, which I admit is a difficult one, which must be considered, of the long main road, would have to be approached. It is not to the main trunk drainage, such as in London would be provided by the London County Council, that you want frontagers to contribute, but it is to the subsidiary

drainage which takes the drainage of their houses to the point where it is put into the main drainage. There again, really we want the assistance on this point of a sewage engineer. It does not appear to me, if this is right, that there is a real difficult problem arising out of such a long road as the Bath Road or something of that sort, because it would mean that you must have your subsidiary sewers dealing with at least a certain number of houses, and not more than a certain number of houses; probably such a length as in a private street would be dealt with by one sewer.

Captain *Bourne.*] There is another difficulty, and one which I think is very common nowadays, either a county borough, a borough or an urban district, extends its boundaries. Lying perhaps in the new boundaries, but some distance from the old ones are nuclei of houses which have been there a long time.

Mr. *Tyldesley Jones.*] The old villages.

Captain *Bourne.*] Yes. It is very desirable from the point of view of the sanitation of the district that those should be sewered.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] You may run a sewer a mile or so to pick up with that, which is highly desirable.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] What is going to happen to the people who may develop the land in between, because it is likely that this sewer may have to be laid deeper and have a greater diameter than is necessary for the people in between.

Chairman.] The people in between will not pay.

Mr. *Tyldesley Jones.*] If the population is some way away, no doubt there would have to be something in the nature of a main trunk sewer. When you are going to develop the intervening property you cannot connect that property, if I am right, direct to the trunk sewer; there would have to be subsidiary sewers. It may be that the liability of the intervening people would have to be to the subsidiary sewer, but not to the main sewer at all. That may be the line on which a solution may be found.

Chairman.] What is the correct form of notional sewer to which we should work?

Mr. Tyldesley Jones.] If I am right, there would not be a notional sewer but an actual sewer, which would have to be laid to the actual houses.

Mr. *Wrottesley.*] We agree to that, but we say we ought not to pay for it, because we do not get a corresponding benefit.

Mr. *Tyldesley Jones.*] As a parallel case, let me get back to the private estates. If you have an estate developed by means of private streets, and the local authority do carry a main trunk sewer through one of those private streets, they cannot charge the frontagers on the private streets with the main trunk sewer. There is authority for this. If they did, the Magistrates would disallow it on the ground that the proposed works were unreasonable for sewering the street.

Mr. *Wrottesley.*] Yes, the unit.

Lord *MacMillan.*] Is that the Acton case?

Mr. *Tyldesley Jones.*] That is the Acton case which, I agree with my learned friend, would not apply under the wording of our section, and would have to be given effect to by a special provision, as was done in the Coventry case. There is exactly the same problem there. You have a private street; you have the estate development. You have carried through that private street a big sewer, bigger than is required for the street itself. The local authority can charge against the frontagers in the private street, not the whole cost of the sewer, but only so much as is reasonably required for sewering the whole of the houses in the street.

Chairman.] That is already a town which is built up. The case Captain Bourne has put is a borough extension which takes in a village over *here;* between that village *here* and the main town is perhaps agricultural land.

Mr. *Tyldesley Jones.*] Then it does not pay.

Chairman.] Supposing they built the sewer, these people do not pay because they have already built all their houses with their connection.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] When that land is developed that land will have to pay?

Mr. *Tyldesley Jones.*] Will have to pay, with due regard to Objection (i) on page 9, namely, that they are not to pay for a sewer of a greater capacity than is reasonably requisite for the drainage of the street or part of a street in which the sewer is to be laid.

Captain *Bourne.*] It might not reasonably be that, but merely because it happens to be a very long street.

Mr. *Tyldesley Jones.*] "or the premises erected or to be erected fronting adjoining or abutting on such street or part of a street".

Captain *Bourne.*] The other point which comes up on this is the cost of construction which, in the kind of road I am thinking of, is obviously bound to be very much heavier than in a private street.

Mr. *Tyldesley Jones.*] I am told (there again I have to say I am told) that these sewers are not laid in concrete roads now. They lay the sewer either on the side of the road, or very often at the backs of houses, so that the sewer can be made available for not only the houses fronting on that main road, but the houses which are going to be built further back and have one sewer done at the backs. That is, in practice, what I am told generally happens now.

Mr. *Wrottesley.*] This section would not deal with that case.

Sir *Henry Cautley.*] We are only dealing with sewers laid in public highways.

Mr. *Tyldesley Jones.*] I agree, but what I am putting is that the supposed greater expense by putting the sewers in what are concrete main roads is not, in fact, adopted in practice. It is not an objection to my clause that that thing will happen, because I am instructed that it does not happen in practice; they put the sewer behind.

Captain *Bourne.*] Section 62 does not apply in that case.

Mr. *Tyldesley Jones.*] Exactly. Therefore it is no objection to Section 62.

Captain *Bourne.*] What we have to deal with is the cases where it is done. In the cases where it is not done the section does not apply, and the section is immaterial.

Mr. *Tyldesley Jones.*] Local authorities do not lay their sewers, I am instructed, under the big concrete main roads.

Captain *Bourne.*] I am sorry to disagree with you, but I think you will find that where it is a good second class road leaving the town, they do lay their sewers there.

Mr. *Tyldesley Jones.*] I have no doubt.

Captain *Bourne.*] That is the case we are dealing with.

Mr. *Tyldesley Jones.*] No, we are talking about the big main roads with concrete foundations.

Captain *Bourne.*] All roads, although they may not be a first class trunk road—any road of any substance leading out of a town, is heavily tarmaced; it has solid foundations and is much more expensive to break up. It is not fair to put the cost of that on the frontager. It is not his fault that the road is there.

Sir *Henry Cautley.*] The local authorities have already had a contribution from the Road Fund.

Mr. *Tyldesley Jones.*] Somebody has to pay for it. The question is who is going to pay for the cost of the sewer.

Sir *Henry Cautley.*] The cost of the sewer is so much increased by reason of the roads the local authority have made for the motors.

Mr. *Tyldesley Jones.*] Then, may I suggest, that the right thing would be to make the people, for whose benefit the more expensive road is put, pay; but you are not doing that.

Sir *Henry Cautley.*] You cannot put it on the Road Fund.

Mr. *Tyldesley Jones.*] Exactly.

Sir *Henry Cautley.*] The local authority have been paid by the Road Fund for making these roads in great measure. It only means that the local authority are going to get it twice over.

Mr. *Tyldesley Jones.*] No, it only means that the cost of developing estates is more to-day than formerly because the cost of sewers is more. The whole point then is who is going to pay, the general body of ratepayers, or the person who is going to benefit from the development?

Sir *Henry Cautley.*] The cost of development is no more; the cost in private street works is about the same.

Mr. *Tyldesley Jones.*] No, I believe not.

Sir *Henry Cautley.*] But you are coming to highways where you may alter the highways for other purposes, whatever they may be.

Mr. *Tyldesley Jones.*] I do not think that the cost of private street works is as small as it was.

Sir *Henry Cautley.*] Wages, and that kind of thing?

Mr. *Tyldesley Jones.*] The whole standard of roadmaking has gone up. What I was suggesting was this, that you cannot have some standard sewer by which you are going to measure the liability of the frontager, because standard sewers would only apply in a standard world with a standard estate

and, in fact, the sewerage here has to be adapted to the particular estates. It has to vary in size, gradient or depth, according to the nature of the locality which it has to serve.

Mr. *Wrottesley.*] Shall I deal with Section 64 now?

Chairman.] We would like to have a few words in private before luncheon on Section 62, and after lunch deal with Section 64.

Mr. *Wrottesley.*] Would it be wrong to make one observation on my learned friend's speech?

Chairman.] Please do.

Mr. *Tyldesley Jones.*] I shall not object.

Mr. *Wrottesley.*] He starts with this, and I suggest that it is fallacious, that in no event must any part of the cost of this sewer fall on the ratepayer. That is as if, instead of having a section in the Public Health Act, saying that they were to provide sewers, you had a section to say that in no event is any part of the cost to fall on the ratepayers. I do not agree to that.

Lord *Macmillan.*] That is a good point to leave with us.

After a short adjournment.

Chairman.] We did our best in your absence, but we have not been able to get quite all the help we want. We thought it would be desirable if we asked the Ministry of Health representative to come and give us the views of the Ministry, and tell us what they thought. We will ask you to give us your comments thereon afterwards.

Mr. E. J. Maude, C.B., is called in and examined.

Chairman.

1. Perhaps you will elaborate your Report. I think that is the best way of dealing with it?—I do not think I have very much to say beyond what is in this Memorandum. This Memorandum was definitely limited to the Section 62 clause, on the ground that that was the only clause under discussion.

2. We are dealing only with that now?—I need not go into the first paragraph on the first page; that merely indicates that it has been the considered view of the Department that the Private Street Works Code has proved a satisfactory code for its own purposes. It has been and is the considered view of the Department that the Private Street Works Code has, on the whole, worked reasonably well, and is accepted as an equitable solution of the problem, between the frontagers, the owners, and the ratepayers, for private street purposes. Consequently in considering the Romford clauses and similar clauses, we have turned our attention not to the question whether the Private Street Works Code is in itself right, but to whether and to what extent and under what conditions it is applicable to these roads repairable by the inhabitants at large. Then we have set out what has been the practice of the Department for several years; perhaps I need not bother to read that; it is an extract from the Annual Report on page 2. Undoubtedly the Department has encouraged—I may put it a little more strongly, perhaps—it has almost insisted on local authorities making an attempt to secure from the frontagers part of the cost of the sewers, for the reasons set out there. As regards paragraph 3 of the Memorandum, it is there suggested that, on the whole, the view of the Department is that the best way of achieving a reasonably simple clause that would be fair to the frontagers would be to adopt the suggestion which has already been made, that the basis of charge should be the cost of a 9 inch. sewer laid in the locality in a private street at a standard depth. I think we contemplate that the standard depth would be actually stated in terms of X feet in the Bill. Of course, we do not conceal the difficulties about this. It is very difficult to say what is the standard depth in any locality; it varies enormously, according to the lie of the land, the sewerage system, and so on. Frankly, my own view is that before Parliament is invited to pass public legislation on this subject, the whole thing would require a great deal of investigation—as Mr. Tyldesley Jones has said, probably with the help of engineers and so forth. The difficulty we feel about clauses on the lines of the Coventry clause is the difficulty of saying what the unit is in terms of a street. There is the difficulty that Captain Bourne referred to of the additional cost involved in breaking up a highway repairable, not necessarily a concrete street, but a highway repairable as compared with a builder's

road, which seemed to us to lead to the conclusion that on the whole the best available course at the moment would be to define it in some such terms as are indicated here. An alternative would be definitely to put a limit in terms of pounds, shillings and pence. You will recollect in the previous little note which we sent round, we pointed out that the cost per yard on the frontager—not per yard run—might vary from something like 12s. 6d. to about 30s. I think Mr. Wrottesley suggested that it might be rather on the low side. It would, of course, be possible to put in a maximum.

Chairman.

3. Where there is a single frontage, the cost would be £3 a yard. That 30s. means if you have a double frontage, does it not?—Yes.

4. So that in this case which Captain Bourne raised this morning where you have a road with two sides and a single frontage, the cost would be £3?—We were thinking here in terms of an ordinary private street, so it would be £3 per yard run, 30s. on the individual frontager.

Mr. *Tyldesley Jones.*

5. That is for a 15-in. sewer, is not it?—That is for the big sewer, a 15-in. sewer. Possibly a figure of something like £1 or 25s. might be appropriate as a maximum figure, but it is open to the obvious objection that as prices vary it tends to become out of date. It would be conceivable, I suppose, to have a provision in the Bill that some authority, the Minister or some other authority, might by order vary this maximum in accordance with the trend of prices, but that is not a very easy proposition. On the whole it seems to us that probably the cost of a 9-in. sewer in terms described here was the best way to meet that difficulty.

Sir *Henry Cautley.*

6. Did you say: "not exceeding", or did you say it should be a definite sum? If you had a definite sum, it would avoid all proceedings before Magistrates, and everything like that. If it is "not exceeding" it would still leave the difficulty of what was the actual cost?—It is very difficult to make a frontager pay more than the actual cost. One would probably choose a figure which would be, in nine cases out of ten, well within the actual cost; if he could show the actual cost was less than any figure, it is difficult to ask for more than that.

Mr. *Wrottesley.*

7. That could be done by apportioning and saying that the total recovered is not to exceed the total cost of the sewer?—The total cost of the sewer on this 9 in. basis.

Mr. *Wrottesley.*

8. That would meet that point?—Yes, that is what I pictured.

Chairman.

9. The point is that you would take a 9-in. sewer, we will say, as the maximum, and the frontager when he develops a frontage would then pay the cost of a 9-in. sewer, irrespective of what sewer was laid?—Yes, and I picture that you would do it in this way. The sewer to be laid is for a length of two miles, we will assume. You would proceed to work out the cost of a 9-in. sewer laid under normal conditions for two miles, and then the proportion of any frontager would be his proportion of frontage to two miles. That would mean, of course, if you were exempting the developed land, then as regards the proportion represented by developed land, the ratepayers would pay that.

Sir *Henry Cautley.*

10. That brings in, does it not, the assumption that it is to be a builder's road, and not a road existing to-day?—Yes, I was assuming that.

11. Would it not be possible to make the calculation for all the country, and to put in a definite sum? We are making a new code. It seems to me to simplify matters enormously. In both cases it is not going to be the actual cost of a sewer; it is to be the actual cost of a supposed sewer?—I understand we are thinking in terms of local legislation now, not in terms of a public Bill. You mean it might be possible to find a sum which would be appropriate to any local Act?

Sir *Henry Cautley.*

12. Yes, from the point of view of simplicity?—Frankly I should not like to express a very definite opinion on that, without consulting engineers.

Sir *Henry Cautley.*] I say that because I have arrived at the view that taking the existing cost would not be a practicable basis. So many of the roads that

are being laid are very costly roads, and their surfaces are made for various purposes, motor purposes, in particular, many of them, and the actual cost, to my mind, subject to the views of the Committee, is ruled out of the question. Therefore, you must have a notional cost.

Mr. *Tyldesley Jones.*] Would not that create this difficulty, that you would simply have the contest which you want to avoid, ante-dated, before the Parliamentary Committee when you have no facts and are in the pure region of speculation. It would mean that you would have to find out the probable cost of unknown sewers before they are constructed, to arrive at that figure. I think you would still get the contest before the Parliamentary Committee.

Sir *Henry Cautley.*] I have not the least doubt that surveyors and other such people could give us it very quickly.

Mr. *Tyldesley Jones.*] They generally differ!

Witness.] I would not like to speak with certainty, but I think probably the local authorities of different areas would take very different views as to what was the cost in their area of a standard sewer, a 9 in. sewer at what they regarded as their standard depth.

Captain *Bourne.*

13. Presumably evidence would be available as to what was the average charge in any locality for putting sewers in a private street?—Yes, it would be available to the Committee considering the Bill.

14. Yes, to the Committee considering the Bill. Presumably it could be brought forward what actually was the cost?—Yes, that is what we contemplate.

Captain *Bourne.*] Therefore, I think it ought not to be an insuperable difficulty to arrive at what might be the cost of this notional hypothetical sewer.

Mr. *Tyldesley Jones.*] At that date.

Captain *Bourne.*] Yes; it should not be an insuperable difficulty at the date when the Bill was in front of the Committee.

Mr. *Tyldesley Jones.*] Some would pay too much, and some too little, because it would be an average.

Captain *Bourne.*] Whatever we do, I think that is bound to be the case. I think we are bound to take a rough and ready justice; some people will suffer and some will score. I do not think we can avoid that.

Mr. *Wrottesley.*] It would only be comparatively a small percentage of error.

Witness.] If it turned out that the cost of making this sewer was actually less than the figure fixed in the Bill, then clearly only the actual cost ought to be paid.

Mr. *Wrottesley.*

15. There ought not to be a profit?—No, there ought not to be a profit.

Mr. *Tyldesley Jones.*] The honourable Member meant, in his question, the average in the particular locality?

Captain *Bourne.*] Quite. It obviously was not intended to be an average over the country.

Mr. *Tyldesley Jones.*] That is what I thought.

Captain *Bourne.*] If you are taking what I will call a hypothetical sewer to be laid in one of these public streets, for which the frontagers are to pay, I was suggesting that it ought not to be an insuperable difficulty to find out what would be the cost of laying a similar sewer in that locality. I was not suggesting the same figure for the whole country.

Mr. *Tyldesley Jones.*] That is what I understood, but my clients were not quite sure just what the honourable Member meant.

Paragraph 4 of the Memorandum deals with the question of frontage, but I think possibly I need not take time over that. It is merely to indicate that it seemed to us extremely difficult to abandon the idea altogether of frontage. We know from experience that the test of frontage has the great value of certainty, and from the owners' point of view, it seems to us, in private street works transactions, very important that the prospective purchasers should know, with some reasonable degree of certainty, what their liabilities are going to be. It may be that it is right to provide a special ground of appeal on the ground of lack of benefit, but I certainly would suggest that the primary apportionment ought to be on frontage. I am not sure that that would be denied by anybody, but it was mentioned at the last meeting of the Committee. I think some of paragraph 6 was read to the Committee this morning.

Chairman.

16. With regard to Wigan?—Yes. I did want to make it clear here that in our comments on the Wigan Bill we possibly failed to distinguish between two quite separate objections. One is the objection that here is an alteration of the law which is going to damnify a man who paid on the strength of the existing law. To meet that, as it seems to us, all that is required is to have what I call the transitional provision.

Chairman.

17. We need not trouble you over that, I think. Then paragraphs 7?—That matter goes down to the end of the memorandum. If I might make one further remark, I think one of the chief difficulties of the whole problem is the question of how to define development or redevelopment. It is true that the definition under the Town Planning Act has not had, so far as I know, any judicial interpretation yet. So far as we know, it is working all right, but, of course, it is early days to say. It did occur to me that it might be possible to have a much simpler form of language and simply talk in terms of development for building purposes and leave it at that. That is, I suppose, what one is aiming at. The whole virtue of a sewer is linked up with a building of some kind. So long as there is no building, there can be no question of a sewer.

18. I did not quite follow how you put it?—I was assuming that you would probably take the Rating and Valuation Act distinction between agricultural land and non-agricultural land, and as regards land which was not agricultural—that is to say, developed land—if it was developed at the date of either the passing of the Bill, or possibly the notices for the Bill, whichever date you adopt, you would exempt until it is redeveloped. Then comes the question of how you are to define "re-development". At present, in the Rugby Bill, I think it is defined in terms of the re-erection of a building, but it is quite clear that although that may meet some of the cases it does not meet all, because you might well have a typically large house, a mid-Victorian house, with a large frontage. The house is not pulled down at all; it may become uninhabited, or it may not, but the whole of the frontage may be developed in 30 feet plots, the very kind of development which this clause would be intended to hit, and yet I think I am right in saying that that would not be caught by the definition of "re-erection of a building": It occurred to me that it would be possible to have something quite simple—

Chairman.

19. Why would not it be caught by that definition?—Because there would not have been any pulling down. It would not come under the definition of "re-erection of a building".

Chairman.

20. Re-erection, no, but if they built houses there it would come in?—Yes, but, I am assuming an old house built 50 years ago. Therefore, it is developed land at the date when the Royal Assent is given to the Bill. On this footing, therefore, it is to be exempt until there is redevelopment. I think in the Rugby Bill redevelopment is defined in terms of "re-erection of a building"; that is to say pulling down and re-erection of a building. It has to be pulled down within 10 feet of the ground; I think that is the definition. In that particular case I mentioned there would not be any pulling down, nor any re-erection.

21. But there would be buildings?—That is true, there would be new buildings put up.

22. Would not that bring it in?—I speak subject to correction, but I do not think it would.

Chairman.] It is quite a common thing for people to sell off the frontage of their property, which is developed for building. You see it everywhere.

Mr. *Tyldesley Jones.*] What the Rugby Act, at page 5, says is: "Unless such premises have since that date been or shall be so altered that the alteration would be deemed to be the erection of a new building". "Premises" is not confined to building; "Premises" would include land; it has been held to include land in many Acts, and so the premises would be altered if new buildings were put up, would not they?

Captain *Bourne.*] I should have thought so.

Mr. *Tyldesley Jones.*] I should have thought they would, I should have thought Rugby would catch that.

Mr. *Wrottesley.*] It is not very happy, is it?

Mr. *Tyldesley Jones.*] I agree it is not very happy.

Sir Henry Cautley.

23. (To the Witness): I gather your view is that of development in the Town Planning Act?—I think, Sir Henry, that would probably meet the case fairly well, but I am not at all sure that there might not be a much simpler phrase in terms simply of development for building purposes.

24. The words are: "development in relation to any land includes any building operations or re-building operations or any use of the land or any buildings thereon for a purpose"?—I think that is rather what I contemplate, but I doubt whether it would be necessary to have that very elaborate proviso about change of user.

25. That is to exempt agricultural land?—It is not very material here, is it?

Captain Bourne.

26. Is not your difficulty on that user, that you have a piece of land which has been used for agricultural land up to a certain point. It is then bought by the local tennis club; it is laid out as tennis courts and there is a change of user, an obvious change of user, but at the moment it is not developed for building, so there is no particular reason why it should pay towards a sewer which is of no use to it at that moment. The fact that the sewer is there does not make any worse or better tennis courts. If it is subsequently sold to be built on, I agree the sewer does make a difference to it, but it is of no particular use for the purpose for which the land is used at the moment. Surely there is a danger in using the word "user" unless we put in a frightfully complicated clause exempting everything a human being can think of, or we should bring in people like that. Is not that the trouble with the town planning clause?—Are you thinking now of a piece of land which belongs to a tennis club at the date of the Royal Assent—at the crucial date?

27. I am thinking of something that is extraordinarily common in my own constituency. You have a piece of completely undeveloped land lying alongside a main road or, shall I say, a public road, somewhere on the outskirts. It is bought by a college and turned into a cricket field; the college has no particular interest in a sewer. The fact that it has a sewer along the main road does not make that piece of land the slightest degree more valuable for the purpose for which it is used?—If I may say so, I have not the least doubt that the pavilion would be joined up to the sewer.

28. It may be that the frontage would be very large, but the very thing that joins the sewer is negligible compared with what might have to be paid by the club in regard to its site. If that land is re-sold and houses are put on it, I admit the sewer puts up the value of it enormously. So long as it is kept for playing games the sewer really makes no practical difference to its value. The change of user might bring in land which I am perfectly clear we do not want brought in?—Take first of all the case of the cricket ground which is a cricket ground at the date of the Royal Assent; that would be technically, no doubt, developed land.

29. Yes, it is.—There, must not one rely on this additional power which the Local Acts give to appeal on the ground of lack of benefit?

Captain *Bourne.*] I do not know whether it is reasonable to put on all these people the expense of going to an Appeal on a thing which I think any reasonable person would agree that they really ought not to pay for. Why should they have all the expense of going to appeal? It seems to me we ought to draft a clause so as to bring any form of litigation of this sort that may arise under it down to a minimum. We do not want to say "you can appeal". The Local Authority really has no option in this clause except to put the assessment on, and then it means that the person who is aggrieved has to go and appeal to the Court. Both the Court and the Local Authority may think the appeal is quite reasonable, but why should you put the expense on the person? Surely we ought to try and see that the only cases which go to litigation are those where there is really a genuine thing to litigate about, and is it not a question as to whether on this we ought to cut that down to a minimum in our legislation?

Chairman.] What we want to do is to make the people who use the sewer pay for it, and therefore it is based on houses, not upon the actual ground which is used for a cricket field and a pavilion, because a pavilion uses a sewer very little indeed, if at all, and a cricket field would not use it at all. A house

of a considerable size standing in half an acre of ground would use it perhaps twice as much, or more.

Captain *Bourne.*] I think we ought to try to draft out clause to keep everybody like that out. Instead of saying "No, you have got a loophole to get out of it" we ought to try and prevent them being brought into it.

Witness.] I suppose that point could be met by giving a discretion to the local authority?

Captain *Bourne.*] That is my objection to the Town Planning idea, the change of user.

Mr. *Tyldesley Jones.*] Captain Bourne has in mind the proviso to it: "Provided that the use of the land" for so and so "shall not be deemed to be" etc.

Sir *Henry Cautley.*] That only applies to agricultural land?

Mr. *Tyldesley Jones.*] It is true the first one does, and the second does. I am only meaning that the scheme of the clause can be extended.

Captain *Bourne.*] If we can avoid it, I would rather not see legislation by reference.

Mr. *Tyldesley Jones.*] I am not suggesting that, because I think you would have to write this out and possibly add to it.

Sir *Henry Cautley.*] What Mr. Tyldesley Jones means is really to prepare another proviso dealing with Captain Bourne's point?

Mr. *Tyldesley Jones.*] Yes, not adapting this scheme without consideration, but adapting this scheme and possibly adding to it other things which ought to be excluded. That was my suggestion. It does provide a scheme; it is adapting the scheme to the clause and saying you have excluded every use which does not amount to a development.

Witness.] I am not sure what Captain Bourne's remarks were addressed to. Was he contemplating the sort of thing suggested, namely, that developed land should come under the charge and be treated as re-developed if it became used for building purposes? Because I should have thought that would not have caught the cricket ground case.

Sir *Henry Cautley.*

30. If you had adopted the definition of "Development" in the Town Planning Act.—I was rather getting away from that. I was rather suggesting an alternative to that.

31. —Which might be done by enlarging the proviso?—Would not it be better to say in effect "Land which is developed at the date when the Bill receives the Royal Assent is to be exempt from this charge unless and until it becomes re-developed, and by 're-developed' we mean, developed for building purposes"?

Chairman.

32. What exactly does "Developed for building purposes" mean? Does that mean that you have a bit of land and you divide it up into plots but do not build on it; you put up notices "Building land for sale"?—I should have thought not. I should have thought there had to be actual development.

33. Not until you actually build the houses?—Yes. I should have thought that if you had a large 100-acre field and you sold it for building purposes in plots, and half an acre was sold and a house was built on that, it would be fairly clear that that half an acre was being developed for building purposes, and the rest not: that is what one wants to achieve.

34. There is no way which you can devise in which when that half acre is built upon the payment should take place when the house is connected with the sewer?—The difficulty about that has been put by various people, I think. Of course from a public health point of view that is not a very satisfactory solution, because it puts a premium on not connecting with the sewer.

Chairman.] I think they should be obliged to connect with the sewer, and then pay.

Mr. *Tyldesley Jones.*] We cannot compel them under the existing law?

Chairman.] No, but we can change it.

Witness. Then you get into questions of distance?

Sir *Henry Cautley.*

35. You can prosecute them for a nuisance, surely?—Yes. I think Mr. Wrottesley made that point, but there is in practice a world of difference between being able to prosecute successfully for a nuisance, and having perhaps a large area where everybody knows that drainage arrangements are very unsatisfactory. If there are actually sewers under the roads it would be, to say the

least, unfortunate that there should be a definite stimulus to not joining up to them.

Mr. *Wrottesley.*] This might help your Lordship on that. I have just asked more carefully,—I thought it was the view of my clients—and I find that we should think the Committee had protected all that was really essential to be protected by protecting premises in existence at the passing of the Act. We should regret seeing legislation in a form which might invite people to go on constructing houses and draining them to cesspools.

Chairman.] You mean that people building houses after the Act know what they are in for?

Mr. Wrottesley.] Yes. It would probably be in the public interest to discourage that, and therefore to make the important time perhaps the passing of the Act rather than the construction of the sewer would simplify matters. We do not want to ask anything unreasonable.

Lord *Macmillan.*] That really chimes largely with what Mr. Maude's report indicates as the simplest method, although it has some drawbacks. "The simplest method would appear to be to provide that a charge is not to be made against premises which are developed at the date on which the sewer is constructed," and by "developed" I understand that he means lands which have buildings upon them?

Witness.] Yes.

Mr. *Tyldesley Jones.*

36. Until re-development?—Yes.

Lord *Macmillan.*] You might figure this case, proceeding by example rather than by generalities. Suppose you take a mile of high-way repairable by the public and there is no sewer laid in that mile. It is one of those new arterial highways one mile long. You start to walk along it, and the first thing you encounter on the mile walking on the left hand is a field in which you see cows grazing. That would be exempt, would it not, if you put a sewer down?

Mr. *Tyldesley Jones.*] That is agricultural land.

Lord *Macmillan.*] I say that would be exempt. That is the first thing. It has not a house on it at all. The first thing I meet is a nice field with a lot of cows in it. That is manifestly agricultural land?

Mr. *Tyldesley Jones.*] May we be careful about this? It is not exempt; it is exempt for the time being—postponed.

Witness.] That is the very land one wants to hit?

Lord *Macmillan.*

37. We are at cross purposes. I mean nothing would be payable in respect of that land if you put down a sewer?—At the moment.

38. Yes. I can understand that. That is the first thing. The state of matters would remain as it is. So long as the farmer grazes his cows there, he would pay nothing. The next thing I encounter is the recreation grounds of Messrs. A. B. and Co., the well-known manufacturers, who have laid out a football ground and cricket pitch occupying a frontage of about 300 or 400 yards. What is their position when the sewer is constructed? I am not speaking of the deferred payment?—That would be developed land, exempt until re-development.

Chairman.

39. What about the pavilion?—That would be exempt.

Lord *Macmillan.*

40. That is an existing building?—That is an existing building.

Chairman.] Supposing there was a cricket ground and no pavilion and they built a pavilion, would that develop the whole land?

Mr. *Tyldesley Jones.*] Would your Lordship assist us to follow by telling us what clause you are asking Mr. Maude to construe at the moment?

Lord *Macmillan.*] He is proposing here what would be the best way to deal with the situation. I am merely considering what would be the best illustration, and I am taking a mile of road, of new road, which is repairable by the public as a highway. It has been put down there and it contains no sewer. You are looking along this road and saying "Shall we put a sewer down there", or "shall we exhort the local authorities to put a sewer there". We should look at the conditions obtaining. You find first of all agricultural land, and you say: "We cannot count on getting any contribution from these people at present"?

Witness.] At present.

Sir *Henry Cautley.*] Is that quite clear? The land is not agricultural land, is it?

Mr. *Tyldesley Jones.*] Yes, it is; cows are grazing there.

Lord *Macmillan.*] Nothing could better illustrate the difficulty when you come down to brass tacks. It seems to me when I put a practical example like this that everybody finds it necessary to say there is something wrong with it. We have got past the agricultural field. We cannot look for any payment from them just now. We come next to the cricket ground, and there the question would be: "Is this a place on which we could lay any charge"? First of all, there is a pavilion on it, but you say: "This was existing at the date when the notice for the Bill was given, and therefore we cannot exact anything there at all". We pass on. The next thing we come to are the gates of a gentleman's house, and we look over the wall and we see perhaps for 100 yards a small mansion house and a park in front and some flower beds and that sort of thing. That is existing; it is there on the spot. From them also you cannot get anything?

Witness.] No.

Lord *Macmillan.*] I do not see how you are going to get anything at all *primo loco* from many of these people, and if that is the character of the district through which you have driven this road, I do not see how you are going to get anything from them unless all of them are chargeable. They are told "Now if you develop, you will have to pay," but in the meantime the local authority have done it at their own charge?

Chairman.] Unless they had to take a sewer to get to somewhere else.

Witness.] That is exactly the case we contemplated here: "The effect of this, if accompanied by the usual provision that the recovery of a charge against undeveloped land is to be postponed until the land comes into development, would be that at the date when the sewer was constructed the authority would not be in a position to recover any of the cost, but that recovery could be subsequently effected from time to time as and when the land charged came into development."

Sir *Henry Cautley.*] That bears out that it ought not to until it is developed.

Mr. *Tyldesley Jones.*] We are wondering why a local authority should under those circumstances lay a sewer there at all?

Chairman.] To get to a place beyond.

Mr. *Tyldesley Jones.*] Then we shall get a contribution from those beyond, I suppose?

Captain *Bourne.*] Surely, you might get a case like this, where you extended your boundaries on a boundary extension; you have brought in an area, perhaps a densely inhabited one, with no sewerage beyond. You feel that in the interests of your locality it would be desirable to connect that with your main sewerage system, and you therefore run your sewer down your new road, not because of the interest in the road itself but because it is the cheapest and easiest means of getting at this outlying spot?

Mr. *Tyldesley Jones.*] If that is so, it is quite plain that, if the character of the land that we pass is such as Lord Macmillan has been putting, we shall get no contribution from many of these landowners until they develop, and provided there is a proper definition of and limitation to, "development," we should not object.

Chairman.] You would get nothing at all from anybody, nothing from the people to whom you were taking your sewer, because they would already be in existence, and you would get nothing from the other people because they were not yet developed.

Mr. *Tyldesley Jones.*] Not until they were developed.

Chairman.] Supposing we take this walk that Lord Macmillan took, and pass by the cows, and we get to a cricket field on which people have spent a lot of money in developing, but they have not built a pavilion. They say: "We have spent £5,000 in levelling this cricket field, and we must spend £200 in making a place for people to change their clothes in". Are you then going to charge the whole of the frontage of that cricket field as a contribution to the sewer because you are building a small building?

Witness.] On the formula suggested, would the whole cricket field be developed for building purposes?

41. That is what I want to know?—I agree that it is rather a nasty case.

Mr. *Tyldesley Jones.*] May I say that I do not think the local authorities would press that a cricket ground ought to pay.

Lord *Macmillan.*] I would rather have it in a Statute than leave it to the tender mercies of local authorities.

Mr. *Tyldesley Jones.*] I meant that. The local authorities would not press for it to be included in the clause. I agree absolutely with what Captain Bourne has said, that it is desirable that the clause should be definite and not left to the option of local authorities. I am not suggesting that for a moment.

Chairman.] Can we put in a clause to that effect?

Mr. *Tyldesley Jones.*] The clause would have to define the liability.

Captain *Bourne.*] I think we might get round that.

Sir *Henry Cautley.*] Does not it mean a proviso only to the clause in the Town Planning Act?

Witness.] Might I say in reply to something that Sir Henry Cautley said before lunch, that I quite agree that it is absolutely impossible to say what proportion of the land on one of these roads where a sewer is to be laid is likely to be agricultural. You cannot say, but I think it is fair to assume that a very substantial proportion would be. Therefore one does not want to be too much obsessed with the cases of the cricket ground and so on. I feel in regard to this lay-out the Committee have been discussing, that the local authority no doubt in course of time as and when development occurred would get back a substantial part of their cost. One cannot put it higher than that, but it would not be a negligible amount?

Lord *Macmillan.*

42. A deferred payment—and fairly long deferred in some cases?—Yes. One has to remember that apart from the case where a sewer is being put down to link up an outside district—that is a common case—in many other cases, it will not be for that, but because it is known that development is going to take place.

Sir *Henry Cautley.*

43. And developing the sewer will bring in a great quantity of land?—Yes, within a short space of time.

Lord *Macmillan.*] It will help on rateable value and all the rest of it after development?

Mr. *Tyldesley Jones.*] Yes.

Lord *Macmillan.*] It will attract development, and development attracts rateable value?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] Have you any questions, Mr. Jones?

Mr. *Tyldesley Jones.*] No, thank you.

Chairman.] Mr. Wrottesley?

Mr. *Wrottesley.*] No.

(*The Witness withdrew.*)

Mr. *Wrottesley.*] Here, my Lord, we come to a very different proposition, and whereas I had indicated that with regard to Section 62 my clients thought it desirable that, properly safeguarded, something along the lines of Section 62 should find its way, at any rate, into local legislation in a proper case, when we come to Section 64, I think we shall find it so dangerous that I doubt whether Section 64 ought ever to be granted as a stock clause. I am not saying that cases might not be made out in individual cases for particular sewers for Section 64, but there are real difficulties in using it as a general power and equipping every urban district council and borough in the country with the powers of Section 64.

In the first place it is not a common case like the last one. There must be hundreds of miles of highways in this country along which sewers have yet got to be laid, and beside which there are existing premises; but when you come to Section 64, you are dealing with what is, comparatively speaking, a rare case. You are dealing with a sewer laid, if I may say so, across country, laid in the line which the authority for some reasons of their own, desire to adopt, cutting across a person's property, regardless of whether that is the desirable line for that sewer to take having regard to the future development of that estate. If this sewerage work had been constructed and done as part of a Town Planning scheme, it would possibly have been paid for, to some extent, under the general principles of betterment which apply under Town Planning. It has to be borne in mind, I think, that town planning operates theoretically along these lines that, whereas you have land in multiple ownership and not in single ownership, the real object of town planning is to apply the same standard of development to land which is in multiple ownership as you would find a wise and prudent landowner exercising himself if he owned all the property.

If you have a landowner with sufficient property he does his own town planning. He plans with a view to the proper, and that is generally the most

remunerative, development of his own property. One of the principal objects of town planning is that if I have a property which I lay out in accordance with approved methods, grouping my factories in this place and my residences in that place, providing recreation grounds and so forth, I shall not have all that spoiled by having a little man in one corner making the last penny he can by setting up a garage with notices advertising "Shell", and that kind of thing, or setting up a fun fair in the middle of my area.

I think every Minister of the Crown, who has ever dealt with town-planning, has indicated that it is compelling all the landowners to develop their property together, as if it were all in one hand. If this is done there are provisions in the Town Planning Acts under which, if benefit would accrue to owner A by the town planning, as benefit might accrue through the sewers, three quarters of that betterment is to be taken away from the person whose property has been bettered, and similarly that the person who is interfered with in the development of his property by town-planning should be compensated. The two things should balance.

Here we are dealing with trunk sewers in the main. The only case that happens to have come under my notice was the case of the Coventry Corporation, where the sewers in question were these; Coventry had extended their area and had taken in some villages, or a nucleus of buildings,—small communities at some distance from Coventry. Each, or some, at least, of those little communities had got a local sewage works which was not particularly efficient. The result was that when Coventry came to Parliament and asked to extend its borough, it pointed out to Parliament that one of the advantages which would flow to the new community to be created would be that all the little unsatisfactory sewage works would be abolished because Coventry were going to lay a great sewer called the Sowe Valley sewer, and they were going to take the opportunity of abolishing each of these little sewage works which were dotted about down to the east and south east sides of Coventry. They were going to run connecting sewers from those little works to this great sewer, and carry the sewage away somewhere down the valley. That is what they said they were going to do. It was on that promise that they got the support of the landowners. That promise was held out and the landowners came and supported them. It is quite true that that Bill was not passed, but Coventry came again two or three years later and got that same extension. This time they were not opposed by the landowners, although it meant that they came in for much higher rates. The persons affected would have to pay higher rates, because they knew that this was the scheme of Coventry. When the Coventry Bill was promoted this year, still the sewers were not yet constructed, but they were going to be constructed, and this clause would apply to all those which were obviously main or trunk sewers. They were going to take the effluents from the little sewage works and take them to the main valley sewer. That was a case that came to my notice. In these cases, I take it, that you have to be sure that if you are going to pass stock clauses, which is, in effect, almost general legislation, it is not going to work hardship. Those being the circumstances under which those particular sewers were going to be constructed and it being obviously the case here, having regard to their nature as described in the clause, that they are going to be trunk sewers, one reason why, in my submission, the whole of this clause is on an extremely unsatisfactory basis is that the only satisfactory way, I should have thought, of dealing with sewers of that type is dealing with them on the principle of benefit. If you are going to have a great sewer running across an estate and many other estates, going from point A to point B, crossing over a corner of my estate, so possibly as to do it a minimum of good, I should have thought that the proper thing is to go to everybody who is benefited and say: "Everybody who is benefited is to pay his share". If this matter were dealt with on town-planning lines that is the way in which the matter would be dealt with. But, instead of that, this section says: "Some day a road will be made on the site of this trunk sewer. When a road is made upon it then we will apply the principle of frontage." It is extraordinarily difficult to do that as a practical measure. Would the Committee mind looking at that blood-stained palimpsest which has been handed in (to use Lord Macmillan's

language), which is our endeavour to torture this act into what it is apparently tortured into by this section 64.

Sir *Henry Cautley.*] Have the landowners been paid compensation for the sewers coming across their land?

Mr. *Wrottesley.*] I am coming to that. They may have received compensation or they may not have received any compensation, because it may be said that the sewer has bettered their land. That brings in a special complication. I am going to deal with that point. For the moment I point out that what happens is that some person has to go off and buy a copy of the Private Street Works Act, and if he has sufficient education in these matters, and sufficient intelligence, he has to create a document like this. If the Committee decide to pass either of these clauses. I shall ask (and my learned friend will probably support me) that the thing shall be reduced to one document which is to be put in the Private Act in question, and that it shall not be necessary for a person who has to try to understand a section in a local Act to have to do that sort of thing.

Lord *Macmillan.*] This is perfectly intolerable.

Mr. *Wrottesley.*] This is perfectly intolerable. We have done our best, and I need not pause to comment on it. One could spend an hour or two pointing out how difficult it is, and there is the possibility of arguments before Justices, taken, if necessary, to the House of Lords, as to what Parliament meant when they said "The Private Street Works Act is to apply as adapted."

Lord *Macmillan.*] That is mere form.

Mr. *Wrottesley.*] That is mere form. The next thing is that the whole machinery is of the wrong design to do the job. It will be remembered that one of the protections for the landowner in the Private Street Works Act is to have what are called the original estimates which can be checked and are to be checked when they are made, before the work is done. At that stage you have a right of audience to allege that they are exaggerated, that they are too expensive, or that they are unnecessary. That is not done in this case. In this case you go through a sort of drill under which, ten years after the work has been done, although you have not been consulted and you had no chance of approving or disapproving of it, you are given a so-called estimate, namely, an estimate of what was expended ten years ago.

Mr. *Tyldesley Jones.*] A statement.

Mr. *Wrottesley.*] You are given the actual expenditure which was incurred ten years ago on an article which is underground, and therefore you cannot see it. That is not satisfactory, surely. That is one of the difficulties.

The next point, and a very important one, I think, is this, that in most cases, and, I think, in every case but one (Wigan is the only exception, I think) in which you find this clause (and this is dealing with the point raised by Sir Henry Cautley) you find incorporated in the Act another clause which is on page 18*a*. It is Section 66 of the Romford Act. I ask your Lordships to look at this, it says: "In estimating the amount of compensation to be paid by the Council to any person in respect of the carrying of any sewer into, through or under any lands within the district the enhancement in value of any lands of such person over or on either side of such sewer and of any other lands of such person through which the sewer is not carried arising out of the construction of the sewer shall be fairly estimated and shall be set off against the said compensation." May I pause a moment there to see where we are. A sewer is brought and laid for a mile through my property. A certain amount of my land is sterilised; I may not build, of course, over the site of that sewer. As I have indicated it would probably not be in the direction I should have laid that sewer, because it is not laid for my purposes. This is a sewer laid to-day, when there is no development on my estate contemplated at all. It is laid for a mile through my property at an angle calculated to do me the maximum harm as well as good; it is by chance. We must face the possibilities. When the question of compensation for this is gone into, a Surveyor may, nevertheless, be able to find that the fact that, for the first time, my property is equipped with a trunk sewer, has increased the value of my whole property by a sum as much as (let us say exactly the same as) the amount of money I should receive for the wayleave and for the sterilisation of my property. I am putting a case; I am told that these things happen. You get a free run through my property, the basis being this: "It is true that I should have to pay you some money, but that money is just about equal to the

improvement in the value of your property that I am giving you by bringing this sewer into your property. It is advancing the development of your property, and you can sell your property by just about the same amount as the value of this wayleave; therefore we shall pay you nothing, and you shall be in the happy position of having a sewer earlier than you otherwise would have done."

Sir *Henry Cautley.*] Under what Act are they allowed to do that?

Mr. *Wrottesley.*] Under the special section of the Romford Act I can see no answer to that. I have racked my brains about it, and I have asked for an answer to it, and I have not been given one. Surely that means that I have bought my interest in that sewer, and I have paid for every pennyworth of value that sewer gives me. In every case where the enhancement of value is less than the compensation, I have obviously paid for the whole benefit of receiving that sewer through my land. The Surveyor has to deduct, from what I should charge for having my property broken up and temporarily sterilised, at any rate, exactly the enhancement in value of my land through the sewer coming there. If that is so, how can it be just, when, a little later, I make a road down on top of that sewer and do what I have been told I have been given the chance to do, to use the sewer, that they should say: "But the sewer cost more; the sewer cost twice as much as the enhancement of the value of your land and we are going to make you pay". You see, so far as it runs through my land, I pay the whole of the cost. I do not know the answer to that. But I find that there is not a case, with the exception of Wigan, where this section has not been carried in at the same time as this betterment section. That I say is an intolerable hardship; there is no provision made against it. I ransom myself to this sewer. I buy it, as it were, because I have deducted from my wayleave the whole improvement in the value of my property; I buy it to-day. In 10 years I want to build over it. There is no question that I must put a road over that sewer, because the land has been sterilised and I cannot build over it, so almost necessarily I am driven to build a road down the whole length of that sewer. What happens to me? I am then hit once more for any balance up to the total cost of the sewer.

Sir *Henry Cautley.*] You get no betterment from the sewer unless you can use it?

Mr. *Wrottesley.*] No, I get no betterment from the sewer unless I can use it. What is the enhancement in value? A sewer is not an ornament to a property; it is not a matter of amenity. It is laid down in this section (I take the Romford Act, and they are all the same, except Wigan) that in every case I have, first of all, the value of this sewer taken off me to-day; in 10 years time I desire to make use of it, and I am told that I have to pay the rest of the cost of it. They have had the use of my property for 10 years, yet when I go and suggest that I should make use of my estate by laying a road on top of it or by the side of it, they say: "You must pay the total cost of it; the enhancement was not as much as the total cost of the sewer." I do not know if my learned friend has an answer to that; I cannot find one, but I find it is not an unusual case. Whether these two sections got in by accident or by design I do not know; I can only assume it was by design. The whole trouble is that there has been this confusion of thought, in my submission, between frontage and benefit. If you are going to deal with trunk sewers passing from point A to point B through my property, it is perhaps quite reasonable that you should at the right time make me pay my enhancement. That may be right; but if you try to work it out on the basis of frontage you get the most odd results. If you take this simple case, *here* is my property, a rectangular property; *here* is the line of that sewer crossing that corner and therefore laid out in possibly the least convenient way and running all along the edge of my property *here*. If the line of that sewer happens to be at the edge of my property I make my road *there*. I only develop one side of my property. The person the other side has the whole length of that sewer and does not pay a farthing. It is entirely fallacious, in my submission, to base it on frontage.

Mr. *Tyldesley Jones.*] Is the street in that case right on the edge of your land?

Mr. *Wrottesley.*] Yes.

Mr. *Tyldesley Jones.*] Then he does pay under my clause.

Mr. *Wrottesley.*] Who pays?

Mr. *Tyldesley Jones.*] The adjoining owner.

Mr. *Wrottesley.*] Supposing *here* is the depth of the road, and all I have is a building frontage on that side, what happens? I pay the total cost, and that man does not pay a farthing. *This* is the trunk sewer. The object of a trunk sewer, a point to point sewer, is to develop an area, and to try applying frontage principles to a sewer of this kind is, in my submission, trying to marry up two things which cannot be married together at all. It has this further disadvantage that I am made to pay the total cost in a case like this of that sewer, some of it in advance, and therefore I shall pay, so to speak, considerably more because I may have paid for 10 years the total improvement of my property by that sewer. Subsequently I pay the rest of it. Anybody else who may benefit by that sewer does not subscribe a farthing.

There is a further point, of course, that if I had been going to pay for that sewer, (and that is what I am going to be asked to do in this case, to pay the whole cost of that sewer) I would say I should not mind paying for the sewer if I may lay it on the line I want, but you charge me for a sewer laid on the wrong line exactly the same price as I should pay for a sewer built on the line on which I want it. How can that be fair? The whole difficulties of this clause seem to me to arise from trying to apply the Private Street Works Act, admirable, no doubt, if you have a private street, but which does not apply to a thing which is not a unit, a thing which is not a private street work at all, but a sewer running from point to point, probably a trunk sewer for main drainage to a large extent, obviously not to please me, or it would have been laid on the line I asked. It is laid for some motive such as a Corporation may have to-day; draining a housing estate *here* down to a farm *there*. These are the circumstances in which this sewer falls to be laid. In my submission, you can multiply instances of absurdity in the case of a sewer of this kind. This is only one which occurs to me. I have taken the case of laying a sewer at an awkward angle and so sterilising part of my property. The result of that is that I am made to pay the whole cost of the sewer. It is the last place I should have put a sewer in, and this same sewer is going to advantage these persons possibly much more than me, and yet it is upon me that the whole cost will fall. I take that simple instance in the case of an owner of a piece of land of 200 or 300 acres. If that clause is capable of doing injustice like that, in my submission, it ought to be altered and made quite clear that it is not going to do such injustices before it passes into the current coin of local legislation. I have checked this. The only case I can find where this betterment section was not carried in was Wigan, where, as it happens, they had a private legislation of their own of a special kind which they happened to be adapting. Therefore if you pass this, one of the things you have to be most careful to see, in my submission, is that no betterment is being asked of the same person who has to pay the cost of the sewer. If it is such a clause, it ought not to be passed into current coin. A case ought to be proved for it. The code of the promoter ought to be looked at to see whether there is anything similar to Section 66 of the Romford Act. There are general observations which apply both to this and to Section 62. If either this or Section 62 is to become, as I say, a common form clause, it is, I should have thought, necessary to make some perfectly clear provision that there is to be no overlapping of claims. Take the case of the Ribbon Development Act. There should be some clear provision under which, whether you apply Section 62 or Section 64, a thing like the Ribbon Development Act should not be allowed to apply, or, if it is applied, that the whole of the money claimed should be returned. Something of that kind should be provided for. I do not think that has been considered yet. I find this strange piece of overlapping in Romford which produces that very odd result, and I find a similar kind of thing in the other private Acts we are discussing. There is the same question of betterment under town-planning. Something ought to be provided, I should have thought, to prevent the same betterment being asked for twice over. It may be answered that whoever comes to consider betterment will take this into account. I do not know whether that will be so or not; that will depend on the legislation; but I do ask that any local legislation imposing this kind of burden should be accompanied by some clear statement (and I think there is a precedent for this to be

found in the Hertfordshire County Council Bill of last year) some perfectly clear exclusion of the same person being burdened twice in respect of the same piece of betterment.

I have dealt with the suggestion that they should both be self-contained clauses. There is a further matter, which is this: I should have thought that if any clauses of this type are going to be passed there ought to be a provision that all previous agreements are protected. We know that it is quite common for Corporations to go and make agreements with the landowners, and I should have thought it was very desirable (we have been told about them, and we think it is most desirable) that either of these clauses should be accompanied by some perfectly clear proviso protecting all agreements which happen to have been made with landowners, because it may very well be that the effect of this law, if you were to pass either of these clauses in the sort of form in which they are put before you, would, especially having regard to questions of apportionment, lead to burdens being inflicted on landowners who had already made special arrangements with the local authorities.

Mr. *Tyldesley Jones.*] We should be most desirous that existing agreements should not be got rid of; we want to preserve them.

Mr. *Wrottesley.*] Or agreements with local authorities' predecessors. Lately there has been a great reshuffle of local authorities.

Mr. *Tyldesley Jones.*] Every agreement which binds an authority to-day ought to be continued.

Mr. *Wrottesley.*] I do not find anything making that clear.

Mr. *Tyldesley Jones.*] We will not take up time about that. If it is necessary we will not object to that for a moment, but I see nothing which will invalidate existing agreements.

Mr. *Wrottesley.*] I have considered it, and I think there is a danger, especially when you get into the region of an apportionment being made between frontagers and you have to go before Justices who have to administer this class of document. If they had to do that, I do not think they would spend much time on considering whether there had been anterior agreements.

There are difficulties which may occur, although they are not likely to be anything like so frequent, but there are such things, I suppose, as houses which may be found, comparatively speaking, in the fields, past which a sewer may be run, and obviously that class of case ought to be protected as regards this class of sewer, as against a sewer which may run in a main road. Again there arises this point. If you are going to deal with it along the line of frontage, I should have thought it must all be brought back to a standard sewer. If you are going to deal with it on lines of benefit, you do not mind about the size of sewer, I agree, because, if you succeed in apportioning a sewer of any calibre doing a job for an area over the whole area, in the end there is perhaps not much to complain of if everybody contributes something towards the total benefit received by the whole area dealt with, but directly you leave that principle, which is an extraordinarily difficult one to enforce, I agree and pass to this one of frontage, you not only get into the difficulties I have indicated by that simple diagram showing what injustice may be effected, but you get into this further difficulty, that 50, or it may be 75 per cent, of the persons who are really going to be benefited by these trunk sewers, are never going to have anything levied on them at all. That is the difficulty you are in. You get back to this, that a sewer laid for trunk purposes or, in effect, an overhead work, rather like a headquarters work, is nevertheless going to be charged in the end upon persons who happen to have houses beside the road which has been made over a sewer made 10 years ago.

Sir *Henry Cautley.*] Does this clause apply to every wayleave given for a sewer in the borough of Romford?

Mr. *Wrottesley.* I gather it does.

Sir *Henry Cautley.*] Every wayleave?

Mr. *Wrottesley.* Yes, it is general. It has been applying since 1931; it is the oddest feature. I cannot follow how this can possibly lead to justice in any case where the enhancement is less than the value of the wayleave. If the enhancement is more than the value of the wayleave one could have said "You shall pay the additional enhancement," but it is the rest of the cost. In my submission it is a hopeless confusion, in the case of trunk sewers, which you deal with along the lines of benefit in the Town Planning Act, to turn aside and try to use the frontage machinery; it is, in my submission, only leading you to confusion, and that case I put

before you with regard to Romford and their special compensation clause is an instance of it. I should have thought the best thing to do with regard to sewers of this kind, if there should be necessity for getting, so to speak, some contribution some day towards what is, after all, a trunk sewer when it is laid—if it is necessary to bring about that result, a good deal more hard thinking is necessary in order to produce a satisfactory clause than has been given to the subject up to date. That is my submission. Of course, again the whole question of agricultural land comes in; all these sorts of difficulties are just as much necessary to be dealt with in this case as the other, although the existing premises will probably be much more infrequent. There will be rarer cases of that. But, in my submission, the whole principle is quite wrongly conceived, and the fact that that Romford Act is coupled up with that very common section now of setting off, against wayleave compensation, betterment, in my submission shows a hopeless injustice which cannot have been foreseen, I imagine, by those who drafted it.

Mr. *Tyldesley Jones.*] My learned friend obviously looks upon local authorities as proceeding under this clause with impish glee to cause the utmost inconvenience to everybody concerned. My learned friend does not understand the clause. With great deference to him, he does not appear to have studied it. May I try to put it in its right bearings. This clause has been passed in 10 places without any objection from landowners, who are just as astute as those appearing to-day. I am going to show you why, in my view, these objections are hopelessly founded; that is my view; I may be quite wrong.

This is not dealing with a trunk sewer. My learned friend has over and over again used the phrase "trunk sewer". It is not. It applies to any sewer, it may be a 9-inch sewer. Why my learned friend said: "This is a trunk sewer" I do not know. Let us see. Here is a piece of land which a landowner want to develop. He lays out a road and he builds. Look what the local authority can do. Under the law to-day they can say: "We are going to lay a sewer down that road, and you have got to pay the cost of it. The frontagers have got to pay the whole cost of that sewer." Now, suposing the fact is that, before he begins to develop, they want to lay that sewer so as to get to a place beyond, they carry their sewer through his land. He says: "Now I am going to develop my land", and put a street on the sewer after the sewer has been constructed. The law to-day is that he can say: "I am not going to pay a penny." The position is exactly the same in the two cases; in the one case the sewer has been laid down after the street has been constructed by the landowner, and the landowner is liable to pay.

Sir *Henry Cautley.*] You have already received betterment.

Mr. *Tyldesley Jones.*] May I put that on one side for a moment; I am coming to that.

Sir *Henry Cautley.*] I thought it had escaped you.

Mr. *Tydlesley Jones.*] I am not going to forget that. I will come to the terms of payment. First of all, here is the road laid down, the road constructed first, the sewer constructed afterwards; not a farthing compensation to the landowner, but the landowner liable to pay. There is no compensation to the landowner if we put the sewer down after the landowner has put down his street, but he has to pay the whole cost of the sewer according to his frontage. Now take this case:—Sewer constructed first, street constructed afterwards. Unless this clause is passed, the landowner will have to pay nothing towards the cost of the sewer, which is the means of enabling his property to be developed.

Now let me come to payment. When we come to construct our sewer we have to pay him compensation for putting a sewer on his land, so if we construct a sewer before his street is made he is, to that extent, better off; he gets compensation for the use of his land. Under Clause 66 of he Romford Act we are entitled to say: "You are claiming compensation for the damage done to your property by constructing a sewer through it. If we can show that, in fact, there is some enhancement of the value of your property by reason of the construction of the sewer, we are entitled to set off that enhancement against the compensation we should otherwise pay you." In other words, we should pay him compensation for the net damage done to his property by constructing the sewer.

Sir *Henry Cautley.*] The only advantage he can get is the use of the sewer.

Mr. *Tyldesley Jones.*] Not at that time.

Sir *Henry Cautley.*] The future use.

Mr. *Tyldesley Jones.*] At the time he has a sewer constructed through a field.

Mr. *Wrottesley.*] He pays at once.

Mr. *Tyldesley Jones.*] He gets compensation at once. If we can show that there has been any enhancement of the value, we can set that off against the compensation for depreciation of his land, so that he gets paid for the net depreciation. If it is an open field, he obviously cannot use it, because he has no means of using that sewer. It can only mean that there will be enhancement. Now he constructs the road over the sewer. We now say: "You are now going to have the use of that sewer. You have been paid compensation for our putting that sewer under your land. We are not going to ask you to give that back; whatever you have had, you keep that. You are going to have, in addition, now, the right to use the sewer, but you must pay for that sewer on the principle of frontage, just as you would pay if the sewer were now constructed." But he says (and I come to the point the Honourable Member was putting to me) "You have already had the enhancement in value which my property has received up to the present owing to the construction of the sewer", and we say: "Certainly, and we shall deduct that from the expenses you would otherwise be asked to pay." That is in this clause. You have not seen that. Would you look at page 15?

Mr. *Wrottesley.*] I have drawn attention to that.

Mr. *Tyldesley Jones.*] Page 15: "Provided that (i) where any sum so apportioned and charged in respect of the expenses of construction of any sewer is recoverable from a person against whose compensation in respect of the carrying of the same sewer into through or under his lands an amount for enhancement of value has been set off in pursuance of the section of this Act whereof the marginal note is 'Benefits to be set off against compensation'" (that is Section 66) "the Amount so set off shall be deducted in arriving at the sum to be so apportioned and charged and recoverable." Under this clause he is far better off than he would have been under the Private Street Works Act, if they waited to lay the sewer until after he had completed his road; because in that case we would lay the sewer after he had completed his road, he would get no compensation, and he would have to pay the whole cost of the construction of the sewer through his land. If we lay a sewer before the construction of the street, he gets compensation for the net depreciation of his property. He keeps that for all time, and when (that is the important point) he makes use of the sewer for the purpose of development by constructing a street over it, then and then only is he asked to pay the apportioned amount of the costs of the sewer, but less any sum which was deducted on the former occasion for the enhancement of his property due to the presence of the sewer.

Sir *Henry Cautley.*] He is not being asked to pay twice over?

Mr. *Tyldesley Jones.*] No.

Mr. *Wrottesley.*] I did not say twice over. That is not my argument. My learned friend says that I have said I have paid twice over. I have paid the enhancement of my property to-day. You have had that and the interest on it for 10 years, and then you make me pay the rest of the necessary money to construct the sewer.

Mr. *Tyldesley Jones.*] That cannot be right. Here is a sewer made over a man's land. We will say it costs £1,000. It is ridiculous to suggest that the construction of a sewer of £1,000 sends the value of his property up by £1,000, if it is not property in course of development. Of course it does not. The enhancement of his property would be something very small under those conditions, and that enhancement is not paid by him. That enhancement has merely to be used to diminish any compensation he would otherwise get. That is the mistake my learned friend makes; he does not pay us one farthing.

Chairman.] There are two transactions.

Mr. *Tyldesley Jones.*] Yes.

Chairman.] You pay first for the nuisance created by the wayleave?

Mr. *Tyldesley Jones.*] Yes.

Chairman.] When you construct the sewer, the person benefited is asked to pay the cost?

Mr. *Tyldesley Jones.*] Yes. I pay the landowner compensation.

Chairman.] That he keeps.

Mr. *Tyldesley Jones.*] Yes, that closes the transaction.

Mr. *Wrottesley.*] I do not agree to that. The landowner at that time has deducted from what he has received the enhancement of his land.

Lord *Macmillan.*] He gets that back again before he is asked to pay anything more.

Mr. *Wrottesley.*] 10 years later he does. He has lost his money to-day.

Chairman. There are two separate transactions.

Mr. *Tyldesley Jones.*] There are two separate transactions.

Mr. *Cape.*] It may be only a year or two.

Mr. *Tyldesley Jones.*] He only suffers a diminution of his compensation by the extent to which his property is immediately enhanced in value; that is the point; so when we construct the sewer, he gets compensation for the net depreciation or damage sustained by him. That clause is not open to that objection. I am not going to take up time, because I think the Committee see how I put it, and that is the answer to that point.

I wanted to call attention to two other matters. Would your Lordship turn to page 17 of this bundle, paragraph 9, at the bottom of the page. This is one of the adaptations. "After paragraph F of Section 7, the following two paragraphs were inserted—(g) That the works will not increase the value of any premises of the objector; (h) That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit derived or to be derived by such premises from the works". What that means is that when he does come to use the sewer which has been constructed on his land by putting a street across it for the purpose of development, then, though he is asked to pay under the procedure of the Private Street Works Act, he has still a right to say: "But that sewer does not increase the value of my premises now and the amount of the apportionment is excessive having regard to the degree of benefit I shall get from it." He can take those two points, but he can take a further point. May I look at the tortured document, Section 7. One of the objections he can take is (d): "That the proposed works are insufficient or unreasonable, or that the expenses are excessive." My learned friend said that under this procedure you get no provisional apportionment to which objection can be taken, no estimate, and you cannot object to the amount. You can.

Mr. *Wrottesley.*] I said no estimate at the time.

Mr. *Tyldesley Jones.*] I agree; you have something far better. The local authority say: "We have spent so much." The Landowners say: "Show me the thing"; and they can say "It is excessive and we are not going to pay on this basis." They can go further and say: "This sewer is larger than is necessary for draining our property and it is unreasonable, and we are not going to pay." All the objections which can be taken to-day under the Private Street Works Act can be taken under this. To sum it up, I venture to say that what this is seeking to do is to put the general ratepayers and the local authority in the position in which they would be if the local authority waited until the street was constructed and then laid the sewer. It puts them both in the same position as they would be in that case, in a case where they construct the sewer first and the landowner comes and constructs a street on top of it afterwards and uses it. I ask your Lordship: Is it right that if the street is constructed over the sewer, after the sewer, that the landowner should benefit to the whole extent of the sewer without paying a penny piece for it and get his compensation as well which he keeps—nobody is seeking to take that away from him—whereas if he constructed the street first and we waited to put the sewer in until after the street had been constructed, he would get no compensation and would have to pay the whole apportioned cost of the sewer. It seems to me that it is a perfectly logical and simple thing which we are asking should be done, and the Ministry of Health in their Report on the Rugby Bill in referring to this clause said: "This is merely a logical extension of the principle embodied in Clause 68."

Mr. *Wrottesley.*] What was Clause 68?

Mr. *Tyldesley Jones.*] Clause 68 was Section 62 in the Romford case.

Mr. *Wrottesley.*] It was a very bad start, was it not?

Mr. *Tyldesley Jones.*] Everybody is agreed on the principle of Section 62.

Sir *Henry Cautley.*] What was included in the enhancement of value that you got at the beginning of the transaction which was finally settled then?

Mr. *Tyldesley Jones.*] Which would be used to reduce his compensation?

Sir *Henry Cautley.*] Yes. What was included in it—the improvement due to the sewer being made?

Mr. *Tyldesley Jones.*] Yes, in its present condition.

Sir *Henry Cautley.*] Why was not that matter settled once for all?

Mr. *Tyldesley Jones.*] That was for the property in its then condition without any street on the sewer. Now he goes and contructs a street on the sewer; he now comes in and makes use of the sewer as part of the development of his estate.

Sir *Henry Cautley.*] But what was included in the enhancement except the right to use the sewer? You valued it at that time, and you have been paid for the right to use the sewer from that estate.

Mr. *Tyldesley Jones.*] No; the property in its then condition.

Sir *Henry Cautley.*] It was useless, except if it was developed. The sewer was of no value—it was a detriment.

Mr. *Tyldesley Jones.*] How can anybody assess compensation for the use of a sewer by property in some condition other than its then condition?

Sir *Henry Cautley.*] In the future, of course, he can use it, but that is the enhancement—the possibility of its being used. The sewer itself is of no value to the estate whatever. It is the possibility of using it.

Mr. *Tyldesley Jones.*] There may be a house there, certainly.

Sir *Henry Cautley.*] If you have chosen to take a payment then, that should settle the matter.

Mr. *Cape.*] If the local authority cannot show that the sewer has enhanced the property they cannot put that as a set off against compensation. Supposing you put the sewer through this estate, and the local authority cannot show that there has been any enhancement of the property, they cannot put in a claim for enhancement against compensation.

Mr. *Tyldesley Jones.*] No; they cannot get it. I have been testing it in this way; I have been asking my clients: "Do you attach the slightest importance to Clause 66?" I do not know. That is a matter that has to be considered, but I should imagine, speaking offhand, that Clause 66 is probably not of very great value. Does the whole objection to the clause go if Clause 66 was struck out?

Mr. *Wrottesley.*] No.

Mr. *Tyldesley Jones.*] Then it is not the point.

Mr. *Wrottesley.*] It is one point. There are three or four points. It is one terrible one which I think you cannot get over.

Mr. *Tyldesley Jones.*] The Committee will say as to that.

Mr. *Wrottesley.*] Payment by set off is payment. I should have thought as a lawyer you would have agreed with me.

Mr. *Tyldesley Jones.*] It is not payment twice over.

Mr. *Wrottesley.*] I did not say it was.

Captain *Bourne.*] Supposing an estate had built a street first, and you came and put a sewer down, you would be entitled to recover the whole of the cost from the estate.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] But supposing the developer puts down his own sewers, are you then entitled to come and bring another sewer along that street, a sewer for your own purposes and not his, and charge him with the cost?

Mr. *Tyldesley Jones.*] Not if his sewer was satisfactory. Under the Private Street Works Act it says that: "Where any street is not sewered to the satisfaction."

Captain *Bourne.*] The point I was after is this: In a case where you take a sewer across country in this way, it is probably for your convenience to assist the sewerage of a block of houses lying *there*, and perhaps to connect with the main sewer lying *here*.

Mr. *Tyldesley Jones.*] Yes.

Captain *Bourne.*] It is quite true that you might want to take a sewer through his street after he built it, but would you be entitled to charge for a much larger sewer than he would want for his street, merely to relieve your houses over *there*?

Mr. *Tyldesley Jones.*] No.

Captain *Bourne.*] Under this clause, I think you are.

Mr. *Tyldesley Jones.*] I do not agree.

Captain *Bourne.*] The words are very mandatory. I agree it is open to the person to object on certain grounds, but the words are very mandatory: "In any case where the Council has incurred expenses, such expenses *shall* be recoverable and *shall* be apportioned and become charged." It is a very mandatory thing.

Mr. *Tyldesley Jones.*] Yes, but you must read the remainder of the clause.

Captain *Bourne.*] But, as I said earlier, it seems to me undesirable to put a very mandatory charge on it, and then leave the person who is aggrieved to go to the Court and get off, if we can possibly put the clause the other way round, that he is not charged "unless".

Mr. *Tyldesley Jones.*] I quite agree with the observations you made before, if I may say so with great respect, but this clause does not do that. You have to read

the clause as a whole. You have to read the clause with the Private Street Works Acts as modified; it is all one.

Captain *Bourne.*] That is this horrible thing.

Chairman.] The appalling document.

Mr. *Tyldesley Jones.*] I quite agree. I do not know why Parliament will do it, but Parliament will do it, despite everybody's protest.

Mr. *Wrottesley.*] It was not Parliament this time.

Mr. *Tyldesley Jones.*] Yes, it was.

Mr. *Wrottesley.*] I thought it came from behind us this time.

Mr. *Tyldesley Jones.*] No. That is putting it quite shortly; I do not want to take up time. This is proposing to put the parties in the same position as that in which they would be if the sewer was constructed after the road. There is only one other thing. The local authority in laying out a sewer like this, if they have to pay compensation to the landowner—and the landowner is much better off in this case than under the Private Street Works Act—would naturally carry the sewer through his land in such a way as would harmonise with his probable development. They would not desire to put it awkwardly for this reason, that in assessing the compensation it is perfectly obvious the Arbitrator would take into account whether it was going to hinder subsequent development or not, and local authorities do generally try to be reasonable in these matters, if only in order that that may reduce the compensation payable by themselves. Therefore, what does happen, in practice, my lord, is that when you are laying out a sewer like this, the sewer is laid in what is deemed to be the most convenient course for subsequent development. One last point. My learned friend put the case of the sewer being laid along a strip of the land, and the landowner subsequently constructing his street not right up to the edge of his land. Then he says that the adjoining owner would not have to pay anything towards the cost of the sewer. If the landowner wants to make him pay part of the cost of the sewer, he will be well advised to go to another Surveyor who will see that his street does go up to the edge of the land, and then the adjoining owner will have to pay. If he does as my learned friend indicated, it will be done to prevent the adjoining owner getting access.

Mr. *Wrottesley.*] It may be that it suits the lay-out of the rest of his estate.

Mr. *Tyldesley Jones.*] How can it suit the layout of the rest of his estate to leave a narrow strip between the street he constructs and the next estate, unless it is to prevent the adjoining landowner getting access. That is all I need say.

Mr. *Wrottesley.*] I only want to say one thing.

Mr. *Tyldesley Jones.*] My learned friend has no further reply.

Mr. *Wrottesley.*] I have not yet replied. I put the criticism, and my learned friend answered it. I only want to say that payment by set off is, I believe, payment, and if, by set off or otherwise, I buy the advantage of having a sewer in my land, I ought not again to have to pay the cost of it. In that way I should have to pay twice over.

Ordered: *That the Committee be adjourned to Wednesday, the 17th of June, at* 10.30 *a.m.*

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REPORT

BY THE

Joint Committee of the House of Lords and the House of Commons

ON

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