and water companies to lay pipes under the soil of the highways may fairly be contended to amount to something more than an easement. The Gas Company has exclusive right to the use and possession of the soil occupied by their pipes or mains; and this in itself, it may be argued, confers a right of property of higher grade and nature than an easement or mere right of way. It is different from the right of a street railway to lay rails on the surface of a street, and to use the portion of the street occupied by their rails in common with the general public. With a water or gas company the mains, when laid, cannot be used by any other than themselves, nor can their portion of the subsoil of the highway be invaded by either the public or a rival company.

The case of *Chelsea Water Works* v. *Bowley*, 17 Q.B. 358, which has been relied upon as establishing that the right acquired from the owner of lands of carrying their pipes through his lands only amounts to an easement, has been much questioned as establishing any general principle of law, and as being of any authority outside of the particular facts of the case itself, and of the terms of the particular statute relating to the waterworks in question.

In the very recent case of *Metropolitan R.W. Co.* v. *Fowler*, L.R., Appeal Cases 1893, 416, Lord Herschell confines *Chelsea* v. *Bowley* to these narrow limits. He says, at page 422, speaking of *Chelsea* v. *Bowley*: "That case was decided upon the terms of the particular statute relating to the waterworks then in question; that the water company, in respect to their right to lay pipes for the purpose of carrying a stream of water through certain lands, had no interest in the lands, but only an easement over them. It is quite unnecessary to inquire whether upon the true construction of the Water Works Act in relation to the facts of that case a correct conclusion was arrived at in determining that the water company possessed an easement only. It is certainly a little difficult to reconcile some of the expressions used in that case with those used in *Regina* v. *East London Water Works Co.*, 16 Q.B. 705."

In *Metropolitan R.R.* v. *Fowler*, a railway company had acquired the right to tunnel under the surface of the streets, which was held to amount to more than an easement, and to confer a right which was a hereditament, and as such liable to pay the land tax.

The Assessment Act, like 58 George III., cap. 5, section 4, contemplates tenements and hereditaments under the surface being liable to taxation, because in subsection 9 and section 2 it uses the words "mines, minerals, and quarries, when the property of private individuals, as distinguished from those belonging to the Crown."

What is the meaning of the word "land" in subsection 9, section 2? It is said that the words "lands," "real property," and "real estate" shall include "all buildings or other things erected upon or fixed to the land," etc.; but, as pointed out by Mr. Justice Patterson in *Toronto Street Railway Company* v. *Fleming*, 37 U.C.R., at page 126, "the section does not define land itself"; yet he holds that "land," as commonly and usually understood, must be taken to be intended to be also the subject of taxation. If we examine some of the prior legislation on the subject, perhaps there may be found an explanation of this apparently singular omission. Section 10 of the Interpretation Act, cap. 1, R.S.O., 1887, reads "The interpretation section of the Municipal Act, so far as