

OWNERSHIP OF LANDS USQUE AD MEDIUM FILUM.

J. L., deceased, of all the lands of which J. L. died seized. In 1854 J. L. was seized of a piece of land adjoining the south side of a part of the piece of waste land, and called Grundy Street. By deed dated the 1st Dec., 1854, he conveyed to the defendant the latter piece of land in fee, subject to a ground rent secured by powers of distress and re-entry. The land conveyed did not include any portion of the site of Grundy Street. On the 19th March, 1857, J. L. by deed conveyed to the Mersey Dock Trustees a piece of land adjoining the north end of the waste land called Grundy Street, but no portion of the site of Grundy Street was conveyed. The last piece of land was subsequently conveyed by those trustees to the defendant. The first mentioned piece of waste land is bounded on the east by waste land called Napier Place; but neither Napier place nor Grundy Street was ever used by the public as a highway. In 1872 the defendant completely inclosed the pieces of land called Grundy street and Napier Place. No complaint was made by the plaintiff or her predecessors until 1875. Judgment was given by the Exchequer Division for the plaintiff. On appeal it was argued that the street had been defined on the plans, and as clearly as it could be in the conveyance; and that the grantor could not derogate from his own grant.

Where the claim to the soil of a road or the bed of a stream is founded upon a presumption arising from a grant of the adjacent land, the words in the instrument of grant are to be taken in the sense in which the common usage of mankind has applied to them in reference to the context in which they are found. If lands granted are described as bounded by a house, no one could suppose the house to be included in the grant; but if land granted is described as bounded by a highway, it would be equally absurd to suppose that the grantor had reserved to himself the right of the soil *ad medium filum*, in the far greater majority of cases wholly unprofitable. Hence it can never be a question to be determined by the literal meaning of the words without reference to the circumstances in which they are

used. The general rule is, that a grant of land bounded by a highway or river carries the fee on the highway or the river to the centre of it, provided the grantor at the time owned to the centre, and there are no words or specific description to show a contrary intent: per Cur., *Lord v. Commissioners for City of Sydney*, 12 Moo. P. C. 97.

An instance of such an intention, i. e. of an intention not to pass the adjacent soil, is found in the case of *Marquis of Salisbury v. Great Northern Railway Company* (inf.), as well as in the recent case of *Plumstead Board of Works v. British Land Company*, 31 L. T. Rep. N. S. 752. In the latter case, the defendants being owners of certain lands, in 1863 laid them out for building purposes, and made roads and ways across them. Nearly the whole of the estate was sold in lots to different purchasers, and conveyed to them by bounds set out in coloured plans. Each lot conveyed was numbered, and had a frontage upon one of the roads, and was stated in the conveyance to be on the side of the road and adjoining thereto. The road was not included in the admeasurements or colouring. The roads had been dedicated to the public, but no proceedings had been taken to make them repairable by the parish. The Court of Queen's Bench held upon those facts that it was intended by the form of conveyance used that no part of the soil of the road should pass from the defendants to the purchasers of the lots.

The conveyance in *Simpson v. Dendy*, 8 C. B. N. S. 433, was by the lord of part of the demesne of the manor. The land was described "all that piece or parcel of meadow ground commonly called or known by the name or description of Chamberlain Field, containing by estimation 3a. 3r. 35p., be the same more or less, and abutting toward the west on Hall Lane." The deed also contained the following general words: "Together with all ways, etc., and appurtenances to the said messuage, etc., lands, etc., belonging, or therewith used, possessed, occupied, or enjoyed, or accepted, reputed, taken, or known as a part, parcel, or member thereof, or as appurtenant or belonging thereto." Upon