ings immediately adjoining the tract of the company, but also buildings and other property situated at a distance and separated from (say 39 feet, as in *Penn. R. R. Co.* v. *Kerr*, *supra*,) the buildings immediately set on fire by the passing locomotive. Again, immediately after a rain, with no wind, the escape of fire from locomotives in large quantities would scarcely consume a thatched roof adjoining the track, in accordance with this established law of necessary, natural or probable consequence. And inasmuch as the jury is allowed to determine whether there has been a due regard and care in the management and structure of the locomotive when fire escapes and does injury, it seems altogether proper that they should be also allowed to determine what proportion of the consequences of a want of regard and care in such management and structure is necessary, natural and probable.—*Albany Law Journal.*

OWNERSHIP OF SOIL OF HIGHWAYS.

It is a well-known presumption of law that the soil of a highway *prima facie* belongs to the owner of the land intersected by it; and where the land on either side belongs to a different proprietor, each will be entitled to the soil on his side *usque ad medium filum via*, or, in plain English, up to the middle of the road (*Doe* v. *Pearsey*, 7 B. & C. 305), whether it be a private road or a public road (*Holmes* v. *Billingham*, 7 C. B. N. S. 329). The presumption has been said to be founded on the supposition that the right to the use of the road was granted by the owner of the soil at some former period, and that his ownership extended originally up to the middle of the road (*White* v. *Hill*, 6 Q. B. 487), a convenient but bold assumption, so that we are not surprised that Lord Denman should have thought in *White* v. *Hill*, that presumptions of this nature were put too high.

It has been recently doubted whether the rule of law as to this presumption applies to the case of a street in a town, or of a site for cottage granted by a land-owner on the side of a public road (*Becket* v. *Corporation of Leeds*, 20 W. R. 454), but this does not go beyond *dicta*. It is, however, settled that the presumption does not arise where the land intersected by the road originally belonged to one person, and part has been granted to one owner and part to another (*White* v. *Hill*, *sup.*); nor does it arise where the highway is one which was originally laid out, under the provisions of an Inclosure Act, across the waste of a manor (*R.* v. *Edmonton*, 1 Moo. & Ray. 24); for there the soil of the highway is considered as remaining vested in the lord of the manor, subject to the right of the public to pass and repass over it (*Poole* v. *Huskisson*, 11 M. & W. 827). Nor does the soil of highways vest in turnpike trustees, where such are appointed under the provisions of the general Turnpike Acts, without a special clause for the purpose, for they are only considered as having the control of the highway (*Daxison* v. *Gill*, 1 East, 69). For this reason, in a case where the trustees of a turnpike road were empowered to lower the level of a road going over a hill, and they moved to restrain the adjoining freeholder from making a tunnel under the road, on the ground that it would obstruct future improvements of the road, Lord Langdale, M.R., declined to interfere (*Cunliffe* v. *Whalley*, 13 Beav. 411). In general, the question whether the soil of a highway has passed by a conveyance of the adjoining land, will depend on the intention of the parties, as manifested by the conveyance. In *Berridge* v. *Ward* (9 W. R. C. L. Dig. 20, 10 C. B. N. S. 400), where a piece of land had been conveyed to a purchaser with general words, the court presumed that the soil *usque ad medium filum viæ* passed by the general words inserted in the the conveyance as appurtenant to the piece of ground specifically granted, though it was in terms excluded by the measurement and colouring of a plan to which reference was made in the conveyance. So, too, in *Simpson* v. *Dendy* (8 C. B. N. S. 433), the conveyance of a field, described as "Chamberlain's Field, containing by admeasurement 3a. 3r. 35p., be the same more or less, abutting towards the west on Hall's Lane," was held to vest in the purchaser a moiety of Hall's Lane. On the other hand, in *Marquis of Salisbury* v. *The Great Northern Railway Co.* (7 W. R. 75), where the defendant company had purchased of the plaintiff a piece of freehold ground abutting on a highway, partly for a site for their line of railway, and partly for the purpose of diverting a portion of the existing highway, it was held that the conveyance to the defendant company did not by implication or otherwise pass that part of the old road which had ceased by the diversion to form part of the highway.

The ground of this decision was the presumable intention of the plaintiff not to part with his freehold in the soil of the road. The circumstance that he had acquiesced in the defendant company's taking possession of and enclosing the disused portion of the old road, might have had more weight with a Court of Equity than it had with the learned judges who tried the case. Any how, the case may be viewed as establishing that the presumption does not arise on the occasion of a sale by a land-owner to a railway company or public body of a piece of ground adjoining the highway.

The next and more important question is, what are the rights of the owners of the soil of a highway with relation to the soil of it, and what are such rights worth? As such owner he is entitled to all profits arising therefrom, both above and underground, subject to the rights of the public (Comyn. Dig. Chimin, A 2), yet such profits, above ground at all events, can seldom be worth much, for obvious reasons. And here it may be observed, first, that where there has been a public highway, no length of time during which it may not have been used will prevent the public from resum-