

the field of A. and the field of B. If the ditch is on A.'s side of the bank, the presumption is said to be that B. owns the bank, and, indeed, not only the bank, but also the ditch itself. The ground for this presumption—if, indeed, it can be called a presumption—is, according to the old case of *Vowles v. Miller* (1810, 3 Taunt. 137), that it is easier for a man about to make a bank by way of a fence to start digging from the extreme edge of his own land and to throw the excavated earth back towards his land until the ditch is of the desired depth. By doing this he is supposed to avoid the risk of trespass. In point of fact, this so-called presumption appears to us to be based on rather narrow and not very natural grounds. For when a bank and ditch have been in existence some years, the neighbour's cattle tramp down the edges of the ditch and feed on the herbage on the bank. In other words, if, indeed, this practice is really followed, the virtual result is to abandon the ditch in favour of the neighbour's cattle. Not only this, but there is a further reason for doubting the reality of this presumed practice, and that is that if the original maker of the bank and ditch, or his successors in title, wish to dig out the ditch from time to time—to scour it, as they say in some localities—he or they have to get over the fence to get to the work.

When we come to consider the matter, it seems to us that it would be a more reasonable presumption, based on a more probable hypothesis, that, when the bank and ditch were made, the owner commenced digging some feet back from the boundary of his land and threw the excavated soil towards his neighbour's land, thus keeping the ditch on his own side, and reserving in fact for himself the practical use of a greater part of his own property. However this may be, the Courts have certainly favoured the other view, and there are a number of cases in which the existence of the presumption has been recognised; amongst them we may refer the reader to the cases of *Noye v. Reed* (1827, 1 Man. & Ry. (K.B.) 53), and *Henniker v. Howard* (90 L.T. Rep. 157).

In practice, the question of repair of a fence between the lands of two adjoining owners is usually settled, at any rate in