

This distinction is drawn with greater emphasis by Mr. Justice Burton in *Toronto Street Railway v. Fleming*, 37 U.C.R., at page 121. The distinction is there clearly and concisely stated. "The statute of Elizabeth was passed to throw a personal charge upon the occupiers of every description of real estate, but it was a personal charge only, not a charge upon the lands. Our Assessment Act, on the other hand, does not profess to rate the individual . . . but provides that all lands, etc., shall be liable to taxation, and at page 122 points out that 'a man is not assessed . . . but the land itself.'"

*Regina v. East London Waterworks*, 18 Q.B. 705, was decided under a statute worded very much as is the Act incorporating the Toronto Gas Co. The London company, by 47 George III., c. 72, s. 32, are empowered "to dig and break up the soil and pavement of any of the roads, highways, footings, streets, and public places," etc. The incorporating Act of the Consumers' Gas Co., 11 Vict., c. 14, s. 13, authorizes the company "to break up, dig, and trench so much or so many of the streets, squares, and public places of the city of Toronto," etc.

Lord Campbell held that, under the Imperial statute, the company had a direct interest in the land, and that the rate was properly laid. It is worthy of remark that the Paving Commissioners, who had power to make the rate, had also power to alter the position of the pipes belonging to any water or gas company underneath such street, etc. No such power has been reserved to the corporation of the city of Toronto, and the company have apparently the same rights as though they had expropriated the lands of a private individual.

It may be considered to be now well-settled law that exclusive possession or occupation of land is more than an easement; it is an interest in the land, and when an exclusive occupation is confined to the grantee he becomes rateable: *Smith v. Lambeth Assessment Committee*, 10 Q.B.D., at page 330, per Baggalay, L.J. Exclusive or unrestricted use of land passes ownership, and is not an easement: *Reilly v. Booth*, 44 Ch.D. 26, per Lopes, L.J. This was reiterated by the same learned Lord Justice in *Metropolitan Railway Co. v. Fowler*, (1892) 2 Q.B. 175, and was cited with approval by Lord Ashbourne in the same case in appeal, (1893) A.C., at page 428. The very latest case seems to be *Mayor, etc., of Southport v. Ormskirk*, (1893) 2 Q.B. 468, affirmed by the Court