

in proper cases is all the more imperative because of the absoluteness of the effect of the registration if the register be not rectified. Take, for example, the simple case of an agent who has purchased land on behalf of his principal but has taken the conveyance in his own name, and in virtue thereof claims the ownership of the land, whereas in truth he is a bare trustee for his principal. The Court can order him to do his duty just as much in a country where registration is compulsory as in any other country, and if that duty includes fresh entries in the register or the correction of existing entries it can order the necessary acts to be done accordingly. It may be laid down as a principle of general application that where the rights of third parties do not intervene no person can better his position by doing that which it is not honest to do, and inasmuch as the registration of this absolute transfer of the whole of the original grants was not an honest act under the circumstances, it cannot better the position of the plaintiffs as against the defendant, and they cannot rely on it as against him when seeking to enforce rights which formally belong to them only by reason of their own fraud. It must be remembered that in the present case the defendant immediately on the bringing of the action applied to rectify the register, and that such rectification only awaits the event of this suit. His right to it is set up in the defence, so that he has taken all the steps necessary to obtain the full relief to which he is entitled.

There is, however, another ground upon which, in their Lordships' opinion, the defendant is entitled to succeed in this case. It is admitted that the plaintiff company bought with full knowledge of the transactions with regard to the land occupied by Loke Yew, so that they knew that Haji Mohamed Yusuf had parted with his rights in that land. Under the provisions of section 3 of enactment No 9 of 1903, entitled "An enactment to define and amend the law relating to certain kinds of specific relief," the plaintiff company became by the transfer trustees for Loke Yew in respect of that land. This is clear from illustration "g" to that section which reads as follows—"A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this enactment for B of the land so bought."

The present is an even stronger case, inasmuch as the plaintiff company through Glass, their trustee and agent in the transaction, were aware that Haji Mohamed Yusuf had actually granted away these lands and been paid for them. The plaintiff company therefore are trustees for the defendant for all the rights of which they thus had notice. These rights amounted to the rights of a freeholder subject to an annual payment to the owner of the head grant. Now it is clear that a *cestui que* trust has the right to require a trustee who is a bare trustee for him of land to register that land in his name, seeing that he is the sole beneficial owner and that the trustee

has no interest therein. The present action from this point of view is an action by a bare trustee of land to eject the beneficial owner who is and has for years been in possession of the land and is cultivating it.

It is not necessary for their Lordships to decide whether the defence of the statute of limitations is well founded or not, and therefore that question must be taken to be left open.

In the Court of the Judicial Commissioner at Kuala Lumpur, in which the action came on in the first instance, Braddell, J., found in favour of the defendant with costs. On appeal to the Court of Appeal this was set aside. In their Lordships' opinion the appeal ought to have been dismissed. Their Lordships will therefore humbly advise His Majesty that the judgment of the Court of Appeal should be discharged, with costs, and the judgment of the Court of First Instance restored. The respondents must pay the costs of this appeal.

Counsel for the Appellant—Upjohn, K.C.—C.H. Sargant. Agents—Gush, Philips, Walters, & Williams, Solicitors.

Counsel for the Respondents—Buckmaster, K.C. Agents—Hollowes & Carter, Solicitors.

HOUSE OF LORDS.

Tuesday, April 1, 1913.

(Before the Earl of Halsbury, Lords Atkinson, Shaw, and Moulton.)

COMMISSIONERS OF LAND TAX FOR CITY OF LONDON v. CENTRAL LONDON RAILWAY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Land Tax—Redemption—Presumption that the Exemption Conferred by Redemption Extends ad medium filum via.

Where land tax has been imposed and redeemed under Statutes 38 Geo. III, c. 5, 38 Geo. III, c. 60, and 42 Geo. III, c. 116, the *præsumptio juris* that land abutting on a street or highway is bounded by the *medium filum viae* held to extend to the question whether that part of the land which underlies the road is included in the redemption, and that therefore the respondents, who under statutory powers had acquired the strip under the street, were exempt from payment of land tax thereon.

Their Lordships gave their considered judgment, containing the *facts*, as follows:—

LORD ATKINSON—This is an appeal from an order of the Court of Appeal, varying an order of Swinfen Eady, J., made upon a Special Case stated with the concurrence of the parties to a certain action for a declaration in order to submit the questions

of law therein arising for the opinion of the Court.

The material facts found in the case are the following:—The respondents, under the powers conferred upon them in that behalf by the various statutes mentioned in the Special Case, have constructed an underground railway under certain streets in the City of London running roughly from Staples Inn in Holborn to Cornhill. Neither the soil nor the surface of these streets is vested in any public authority. Numerous tenements and hereditaments with the houses erected thereon abut upon the streets through the subsoil of which the railway has been constructed. Each of these separate tenements has been charged under the provisions of three statutes, namely, 38 Geo. III, c. 5, 38 Geo. III, c. 60, and 42 Geo. III, c. 116, with land tax amounting to certain sums. In many instances the tax payable in respect of each separate set of premises was before the construction of the railway redeemed under the provisions of one of these statutes. Three sets of premises have been selected as specimens, and the contracts under which the land tax payable in respect of them has been redeemed are attached to the Special Case. No evidence was given to show that the first two of these sets of premises were acquired under any grant or conveyance. The first contract bears date the 3rd February 1804. The second the 7th December 1896. The third contract is dated the 18th May 1897, after the Railway Company had acquired the premises with which it deals under their statutory powers. The company are described in it as the freeholders, and the tax redeemed is that assessed for the year 1896-7.

Swinfen Eady, J., in giving judgment on the several points raised in the case expressed himself as follows—"I therefore answer the Special Case by determining that the plaintiffs are not liable to pay land tax in respect of so much of their railway and works as is situate under any lands, tenements, or hereditaments which have been exonerated from the land tax before the construction of the railway, but that they are liable to pay land tax in respect of so much of their railway and works as is situate under any lands, tenements, or hereditaments not so exonerated. And that where the tax has been redeemed on lands and houses abutting on a public street or highway the exonerated does not extend to the middle line of such street or highway."

The parties do not now, as I understand, quarrel with the decision of the learned Judge on the first and second of these points, but merely with that upon the third. It was in reference to his decision upon this last point that an appeal was taken to the Court of Appeal, and has been taken from the decision of that Court reversing it to this House.

The case of the respondents on this point was, as set out in the Special Case, shortly this—They contended that the premises mentioned in the three contracts respectively abutting upon the public street

extended presumably to the *medium filum vice*; that this was presumably their boundary, and that the land tax assessed upon each set of them must be taken to have been assessed upon the entirety of the premises, including that portion under half the highway, and that when the tax was redeemed the entire premises were exonerated. Swinfen Eady, J., decided that this contention was not sustained. The Court of Appeal by a majority decided that it was sustained. The question for your Lordships to determine is which of these decisions is right. It was argued at some length on behalf of the appellants that the presumption that the boundary of a close or a parcel of land abutting upon a highway or river is the *medium filum* of that highway or river was only applicable either to the construction of grants or conveyances of that close or land, or to fix the extent or limits of the ownership of a close or land so situated, and that it had no application to the construction of a contract to redeem land tax, and accordingly that the land underlying half a roadway or river could not be held to be exonerated under such a contract unless this was specifically provided for in the contract.

It appears to me that a fallacy underlies that reasoning. Recourse is had to the presumption in such a case as this, I think, in order to fix and determine the true extent and limits of the close or tenement abutting on a public highway or river. If the contract of redemption sufficiently indicates that this close or tenement is assessed as a whole, a taxable unit, or separate entity, then when the tax so assessed is redeemed it must be taken that the entirety of that entity, not merely the profitable part of it, is thenceforth exonerated.

The origin and history of this presumption was much discussed. These are, in my view, irrelevant topics. It is well established that the presumption is applicable to cases where no grant or conveyance has to be construed—*Doe d. Pring v. Pearsey* (7 B. & C. 304), *St Mary's, Newington v. Jacobs* (L.R. 7 Q.B. 47). In *Harrison v. Rutland* (1893, 1 Q.B. 142) Kay, L.J., states the rule succinctly thus—"The soil of a highway belongs *prima facie* to the owner of the land adjoining it. If the land on either side is the property of different owners, each is the owner of the soil *ad medium filum* of the highway. But this ownership is subject to the right of the public to use the highway. Any use of the soil of the highway other than the legitimate use of it for a highway is a trespass upon that soil as against the owner to whom it still belongs. These propositions are amply established by judicial decisions." No doubt this presumption may be rebutted, either by the provisions of a grant or conveyance or by the surrounding circumstances. In *Leigh v. Jack* (5 Ex. Div. 264) it was rebutted by the fact that the street upon which the lands abutted was at the date of the grant not actually made but only intended to be made by the grantor. But unless and until rebutted it must

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prevail. Moreover, subject to the right of way or easement of the public, as it is sometimes called, the soil and every incident of the ownership of it remains in the owner. He can maintain an action for trespass upon it against any member of the public who uses it for purposes not covered by that easement—*Harrison v. Rutland, supra*—and he can maintain ejectment to recover possession of any portion of it upon which anyone has built a structure—*Chester v. Alker* (1 Burr. 133). Lord Mansfield, C.J., in that case, when dealing with this question of ejecting, cites with approval the following passage from Rolle's Abridgment B. fi. 1, 2—"That the King has nothing but the passage for himself and his people, but the freehold and all profits belong to the owner of the soil." And he proceeds to add—"So do all trees upon it, and mines under it (which may be extremely valuable). The owner may carry water in pipes under it. The owner may get his soil discharged of this servitude or easement of way over it by a writ of *ad quod damnum*." When a street or road is stopped up under the Highway Act 1835, s. 91, the same result follows—*Rolls v. St George-the-Martyr, Southwark* (14 Ch. Div. 785).

The main argument of the appellant, however, was this—that the land tax is under the Land Tax Act 1798 assessed on the "annual value" of the land, tenement, or hereditament, and as the soil under the highway was in these three instances of no annual value to the owner at the time of redemption of the tax it could never have been assessed. Taken by itself, and until it is used for some valuable purpose, such as having cellars or some such thing made in it, this land may be of no value, but it by no means follows that the annual value of the close or tenement of which it forms part may not be enhanced in value by the right and power which the owner of that close or tenement has to utilise the subsoil of the roadway for some beneficial purpose. A dwelling-house with cellars built under the street in front of it is presumably more valuable than a house with none; and equally a house with soil under the roadway in front of it, in which the owner of the house can excavate and build cellars or some such works, is presumably more valuable than a house with no frontage of that kind. In this point of view the soil under the roadway has, when taken together with the other portions of the tenement of which it forms part, an annual value, and is assessed to land tax, when those other portions of the tenement are assessed, on the enhanced value which it gives to them. During the argument I asked Sir R. Finlay, who opened the appeal, if he contended that if a close which contained some utterly valueless land was assessed to land tax under a description by which it could be readily identified at a certain sum, and that tax was redeemed, a portion of the close which was valueless at the time of redemption could be assessed if it subsequently became valuable. He answered in the negative. In other words, a tenement

which is assessed as a whole as a taxable unit cannot be disintegrated, its valuable portions treated as assessed, and its valueless portions treated as not assessed. If that be so, as it is admitted that it must be, then in my view the question for decision in this case resolves itself into this—Do these three contracts on their true construction indicate that the three sets of tenements or hereditaments with which they respectively deal were each assessed as taxable or assessable units? If they do, then when the tax to which these units were respectively assessed was redeemed the entirety of each unit was thenceforth exonerated.

It does not appear to me that *Hare v. Putney Overseers* (7 Q.B.D. 223), *Lambeth Churchwardens v. London County Council* (1897 A.C. 625), and suchlike cases, dealing with rateability for poor-rate under 42 Eliz., c. 2, have any application to cases like the present. That statute provides that the poor-rate is to be raised by taxation of "every occupier of lands, houses," &c., and it has been decided by this House many times that the "occupation" which renders the occupier liable to be rated must be a "beneficial occupation," a thing of value. Any occupation, however undoubted and well established, is inadequate if it is not of this character, and all that was decided in those cases was this, that the owners, the Metropolitan Board of Works in the one case and the London County Council in the other, were not in such beneficial occupation of the structures or land with which the cases were respectively concerned as to render them liable to be rated. There is, however, no provision as to occupation in the Land Tax Acts. It is clear from the wording of sections 4 and 5 of the Land Tax Act 1798 that all the lands, tenements, and hereditaments therein mentioned are charged with the land tax, and the tax is to fall, under section 14, upon those "having or holding" the same. The persons who so "have or hold" them are described in section 5 as "the landlords, owners, and proprietors," and provision is made that such of these persons as do not receive for their own use the true yearly value of the properties for which they are chargeable by a pound rate, by reason of the fact that these properties are encumbered by rent-charges, annuities, or other annual payments issuing thereout, or fee farm rents, rent services, or other rents thereupon reserved or charged, shall be entitled to deduct a proportionate part of the rate from the person entitled to these rents or encumbrances. No doubt the tenants of lands and hereditaments assessed are by section 16 authorised and required to pay the tax in the first instance, but they are entitled to deduct out of their rent so much of the rate as the landlord ought to pay and bear, and landlords, both mediate and immediate, are required to allow such deduction. In case any difference should arise between the landlord and the tenant as to the amount to be deducted, the Commissioners are, by section 18, empowered to settle it. It was stated that

the practical rule adopted by these latter is that where the tenant holds at a rack rent he deducts the entire tax from his rent. The entire burden of the rate therefore falls upon the owners, not the occupiers, of the property assessed, and the amount of the burden is measured by the annual value of the property to that owner. If the value be nominal, then, as was pointed out by Stirling, L.J., in the case of *Westminster City Council v. Johnson*, 1904, 2 K.B. 737, the property would not in practice be included in the assessment, and would in that sense, but only in that sense, cease to be assessable. That very case, however, shows that the owner may be assessable though in fact he receives no income from the hereditament assessed, but rather holds it at a loss. The facts of that case were that the soil under the streets in Piccadilly Circus, Great Marlborough Street, and Broad Street, was vested in the City Council under the provisions of the Public Health (London) Act 1891. They had constructed under these streets lavatories and sanitary conveniences for the use and benefit of the public. They had placed paid attendants in charge of them, and had made some small charge for the use of the closets and lavatories. Those charges, in the case of Piccadilly, met the expenses of management and maintenance, but in the other two cases it was otherwise, and, taking the three together, they were a source of expense to the City and a burden on the City rates. The Council had, under the provisions of the 45th section of the Public Health (London) Act 1891, power to lease these conveniences for a term not exceeding three years at such a rent and subject to such conditions as they might think fit, and could make such charges for their use as they might think proper, but such a demise should provide that the premises should be maintained for the purposes mentioned in the statute. It was held in the Court of Appeal by Collins and Stirling, L.J.J., that the Council had such a proprietary right in those conveniences as holders of lands, tenements, or hereditaments as rendered them liable to be assessed under the Land Tax Act 1798, sec. 4.

Now, turning to the three contracts attached to the Special Case, it is shown on the plan to which your Lordships have been referred that the tenements mentioned in the contracts all abut upon the public street. I take that to be the meaning of paragraph 4 of the Special Case. The owner of each of them is therefore, in my view, presumably entitled to the soil under half the roadway opposite to his tenement. The middle line of the street is presumably the boundary of the tenement, and the house or messuage and the moiety of the road fronting it form but one tenement. That message or tenement is in the case of the earliest contract adequately described. I do not think that in the case of the Cheapside premises either of these things is affected by the use of the words "occupation of Richard Clarke" and

"occupation of John Perrell." These are, in my opinion, mere descriptions of the abutting premises. In the second contract two plots of ground abutting on to Newgate Street, formerly the sites of two "houses and premises," are described. For the same reason half the street opposite to them presumably forms part of them, and there is nothing to rebut that presumption in this instance or to show that the street itself and not the middle thread of it was the true boundary of these plots. The description of them as No. 36 house and No. 47 house is, I think, inadequate for that purpose. In the last specimen contract the premises dealt with are described as two pieces of land formerly known as houses Nos. 85 and 86 Newgate Street, and Nos. 21 and 22 King Edward Street, more particularly delineated in the plan annexed. On referring to the plan it will be seen that these pieces of land abut upon the two streets. As in the other case, so in this, I think that *medium filum vice* is presumably their boundary. I think that each of those several contracts must *prima facie* be taken to describe the whole of the tenement or hereditament mentioned in them, and that the burden rests upon the appellants to show that the portion of the tenement under the roadway was treated as severed from the remainder of it, and was not assessed to land tax. This burden is, in my view, certainly not discharged by the only fact relied upon for the purpose—namely, that the portion of tenement under half the roadway would, if taken by itself, and apart from the rest of the tenement of which it forms part, be of no yearly value. I am of opinion, therefore, that the judgment of the Court of Appeal was right and should be affirmed and this appeal be dismissed with costs, and I beg leave to move accordingly.

LORD SHAW—The respondents are a company incorporated by the Central London Railway Act 1891 (54 and 55 Vict. c. 196). By that and a subsequent Act of 1892 (55 and 56 Vict. c. 291), they were empowered to construct railway and other works partly within and partly beyond the area of the City of London. The question in this case has reference to land in and under which they have constructed a double tunnel or tube. This land is substantially under the line of certain well-known public streets, Holborn, and thence eastward by way of Cheapside to the Bank.

Ex adverso of these streets there are, of course, very many separate tenements or parcels of land. In past years the land tax upon a large number of these has been redeemed. The transactions of redemption are not challenged. The Commissioners maintain the broad proposition that the redemption had no effect beyond the frontage of the tenements. These parcels were described and were in fact bounded by the streets. The streets themselves being accordingly beyond the stated boundaries of the properties, no land tax was ever levied thereon, no land tax was

ever redeemed, and accordingly land tax upon the property occupied by the Railway Company can be levied now.

Upon the other hand, the respondents maintain that the ownership of the frontages on either side of the street extended *ad medium filum viae*, just as, had the division or boundary between two subjects been a stream, the ownership of the riparian proprietors would have extended *ad medium filum fluminis*; and they accordingly contend that to hold that the scheme of the street was impliedly excluded from the incidence of the land tax upon the frontagers' properties, or from the scope of the transactions under which this tax was redeemed, is not warranted by law. If that contention be correct, the Railway Company, which has acquired rights under the surface of the streets, is the successor of the *ex adverso* owners, and in all cases where redemption by such owners of the land tax upon their properties as a whole has taken place the company is entitled to the benefit of such exemption and to stand free of the tax.

I am of opinion that each of these propositions of the respondents is correct.

I do not think that any advantage to the parties would be gained, nor would any elucidation of the true question to be settled be secured, by a discussion of the question whether this land tax falls upon owner or upon occupier. When the occupier pays primarily he may deduct the amount paid from his rent, while, on the other hand, a contract between owner and occupier on the subject is not excluded. No light falls upon the topic from an examination on economic grounds of the much disputed question upon whom the tax ultimately falls. The land tax is by the terms of the leading Act (38 Geo. III, c. 5, s. 6), upon "all and every manors, messuages, lands, and tenements," &c., within the enumerated counties, cities, boroughs, towns, &c., as set forth; and upon "all and every person or persons," &c., "having or holding" any such manors, messuages, or lands. The subsequent provisions as to primary payments, relief, and the like, do not impinge upon the cardinal fact that the tax is upon all the lands themselves, and upon all the persons having or holding the same.

It is admitted that in the cases in issue land tax was imposed and was redeemed. It is agreed that these lands abutted upon these London streets, and that in the imposition and in the transactions of redemption the properties were not divided or made the subject of separate treatment. Accordingly the whole question in the case is, what, in this transaction with regard to land tax, was the extent of the land, parcel, or property so treated? Did it or did it not include the land *ad medium filum* of the street by which it was bounded, or was the land between the frontage and the middle of the street impliedly excluded from the scope of the transaction for the redemption of land tax? There is no question of an express agreement for exclusion.

With regard to properties bounded by a river or highway the law of ownership is settled. First, such ownership is presumed to extend *ad medium filum*. The highway or river may be the subject of rights of passage, or the surface of the former may, for public or municipal purposes, be vested in a public or municipal authority, and to this limited extent the rights of possession may be conditioned or restricted. When the road is shut up and definitely abandoned, and the rights of passengers or of the public authority are definitely withdrawn, the limitation flies off, and the unconditioned and unrestricted possession by the *ex adverso* owners may be resumed. I refer on this head to *St Mary's, Newington v. Jacobs (supra)*, and *Rolls v. St George-the-Martyr, Southwark (supra)*. Secondly, this presumption of the extent of the subject *ad medium filum* is applicable not only to the case of freeholds but to copyholds and leaseholds. In *Tilbury v. Silva*, 45 Ch. Div. 98, Kay, J., so expressed it in the case of a river boundary, but the same rule holds in the case of a boundary by highway. Thirdly, the presumption applies to land, &c., bounded by the streets of a town equally with those bounded by ordinary roads or highways. In *re White's Charities*, 1898, 1 Ch. 659, Romer, L.J., asks—"Why should towns be excluded? And if towns are excluded, where would you limit the exception from the rule? Would a country town be excepted? Would a small town? Would a village? Would a hamlet? Where are you to stop?"—and he adds the general statement—with which I entirely agree—"It seems to me that unless there are certain circumstances connected with the particular town, the rule applies to streets in towns as it does to highways in the country." Fourthly, presumption operates not only in cases where the boundary is expressed to be by the highway or street, but also in cases where the properties are delineated by plan, or colour, or measurement. I may refer to the opinion of Cotton, L.J., in *Micklethwait v. Newlay Bridge Company*, 33 Ch. Div. 133. To this I may add cases such as some of the present instances, where the properties are described as in the possession of persons named. In all such cases if the boundary is *de facto* the highway or street the presumption of extent *ad medium filum* applies. Fifthly, there has been much discussion as to the reason for, and the probable origin of, the doctrine. In some cases one reason may seem applicable and in other cases another, and probably the governing consideration may be found in general convenience. But this doctrine is not a mere inference of dedication, it is not a mere convenience in conveyancing, but it is, and is nothing less than, a presumption of, and applicable to, ownership itself. This is too deeply embedded in the law to be disturbed or doubted.

If these rules be kept in view the question arises why a transaction of redemption of land tax upon properties so situated should not extend to their entirety. The pre-

sumption of ownership is not rebutted with regard to the properties, each and all of which would accordingly have been a subject of conveyance on the footing of extending *ad medium filium*, although only a street boundary or the possession of a tenant had been mentioned. What reason can be imagined for splitting up this property and holding that a part of it, namely, that under the one-half of the street, had been detached in intention, or even in imagination, from the scope of the transaction? It is said that the land under the street was not beneficially occupied. There can be little doubt that with regard to the majority of properties in England it could be affirmed that there are portions or spots of them which, looked at by themselves, cannot be declared to be the subject of beneficial occupation, and that with regard to the strips of land over which roads run the same might be said. Yet the lands, messuages, and hereditaments of which this is true have been the subject of innumerable transactions dealing with each of them as a whole, including these spots, strips, or wastes; and it appears to me that these lands were meant all to be taken, and each to be dealt with as a whole. I think that the expression used in the Land Tax Act of 1798—namely, “all and every manors, messuages, lands, and tenements”—was meant to be a comprehensive inclusion of all the lands within the enumerated counties, &c., which contributed the quotas of the tax, and that this inclusion was not subject to those gaps (it may be enormous gaps) which could not be declared to be, if taken separately and by themselves, beneficially occupied. I adopt the judgment on this topic of Cotton, L.J., in *Westminster City Council v. Johnson* (*supra*). The reply to the whole of the lengthy argument as to beneficial occupation is to be found in a single sentence of that learned Judge, which I venture to repeat—“By the statute the tax is in my opinion made payable by reason of ownership, not by reason of occupation, still less by reason of the nature of the occupation.” I am of opinion that the judgment of the majority of the Court of Appeal is correct and that the appeal fails.

LORD MOULTON—I concur. It seems to me that the question raised by the appeal is purely a question of construction—namely, What were the lands on which the land tax was redeemed by the payments referred to in the three certificates set out in Schedules C, D, and E respectively? The appellants contend that those lands were bounded by the line of the frontage of the houses and plots mentioned in those certificates. The respondents, on the other hand, contend that they extended up to the middle of Cheapside, which is the highway on which the houses and plots abut. The dispute therefore affects only the land beneath the street between the above-mentioned frontage and the middle line of the street. In the argument before the House many points were discussed—such, for instance, as the question whether

the land tax should be considered a tenant's tax or a landlord's tax. I fail to see what relevancy such a matter has to the question for our decision. Two contentions, and only two, were in my opinion relevant to that question, and I shall confine myself to dealing with those two alone. In the first place, the appellants contend that the area in dispute was incapable of being assessed to the land tax in the year when the redemption was effected because it possessed no annual value at the time, and that therefore it was incapable of being included in any contract of redemption. In the second place, they say that the lands in respect of which the land tax was redeemed are defined by the certificates, and that those certificates, if properly construed, do not purport to include the lands in dispute. The first of these contentions is certainly a very extraordinary one. It is equivalent to saying that even if the certificates had, either by words or plans, specifically included the lands under the street, they would have had no operative effect with regard to those lands. Or, to put it in another form, if Blackacre be assessed to land tax and that land tax be redeemed, so that the certificate of redemption admits with regard to Blackacre both the contract of redemption and its fulfilment by payment of the agreed consideration, it is still open to the Land Tax Commissioners to assess portions of Blackacre to the land tax if in some future year they can prove that at the date of redemption such portions were not economically productive. A certificate of redemption would therefore be no longer conclusive as to the area redeemed. There is not a trace of authority for so extraordinary a proposition. To my mind the fallacy is evident. Whether Blackacre be under lease or in the hands of the freeholder, the whole of it is liable to be assessed under the Land Tax Act 1798, section 4, and the persons having or holding it are bound to pay the proper sum in respect of the yearly profits of the hereditament. These yearly profits issue out of the whole of Blackacre, and the provisions for redemption provide for the redemption of the land out of which they issue. It is *nihil ad rem* to discuss whether any particular area contributed to those yearly profits. It may well be that certain areas do not so contribute in a particular year, but that does not prevent them from being a part of the entity out of which the yearly profits come. It is not, in my opinion, open to the Commissioners to exempt any land from assessment to the land tax unless it has been previously redeemed, otherwise than in the sense that the land tax will be *nil* if the whole of the tenement produces no yearly profit. I am therefore of opinion that if, on the proper construction of the certificates, which are the true and only evidence of the land to which the redemption applies, the disputed lands are included in the redemption, the Court cannot subsequently inquire as to whether at the date of the redemption they contributed substantially, or at all, to the yearly profits by reference to which the quantum of the tax was then fixed.

The certificate is conclusive that the land tax upon them was then redeemed, and it is settled law that if the land tax has once been redeemed no subsequent occurrences can render the lands liable to that tax in the future.

I turn, therefore, to the certificates. It is common ground that the descriptions of the parcels in the first and second certificates, and the description of the parcels in the third certificate coupled with the plan annexed thereto, would, if they occurred in a lease, conveyance, mortgage, will, or other document connected with the transfer of property, or the creation of charges thereon, be construed as including the disputed land; and it is further admitted by counsel for the appellants that they can produce no case in which any different construction has been put upon descriptions or plans of the like kind in cases where, as was admitted to be the fact in the present case, the presumption existed that the owners of land abutting on the highway were in virtue thereof owners of the soil *usque ad medium filum viæ*. But they ask your Lordships to say that this rule of interpretation does not hold good in a certificate of redemption of land tax.

Speaking for myself, I should be most reluctant to initiate such confusion in the legal interpretation of language. Consider for a moment the effect. Take for example the third certificate, which relates to lands acquired by the respondents for the purposes of their undertaking. The conveyance of the lands to the respondents would presumably describe the parcels conveyed in the exact terms used in the certificate, and by reference to the plan therein appearing. At all events, if it did so describe them it is common ground that such description would be adequate to convey to them the disputed lands. The respondents then go to the Land Tax Commissioners and enfranchise parcels which they describe in exactly the same language, and delineate in exactly the same plan, as in the conveyance under which they acquired them. Your Lordships are asked to say that the lands so enfranchised would differ from those conveyed, in spite of the fact that they are described in identically the same terms, and although there is admittedly no authority in support of making such a difference in the interpretation in the two cases. Counsel for the appellants have sought to support their contention by an appeal to the reasons which they say led to the above rule of interpretation in the case of conveyances, &c. These reasons do not seem to me to rest upon any trustworthy authority, or to be helpful in the present case. The question is what presumptions exist, not how they arose. It is settled law that the owners of lands abutting on a highway are presumed to own the land *usque ad medium filum viæ*, and that this presumption holds good in the present case. It is also admitted that in all legal documents transferring or affecting the property in such lands the corresponding lands under the road are presumed

to go with the lands abutting thereon. These presumptions are sufficient to decide the case. But I may add that personally I am of opinion that the justification for the latter presumption is that it is extremely improbable that parties dealing with such lands would intend to differentiate in any way between the two pieces of land. The case may be put thus—Where a boundary of a parcel is a highway, that is to say, a strip of land of a finite breadth, and not a mere line, the question arises as to what is the true geometrical boundary of the land. The law cannot permit that the land under the highway should belong to nobody, and for some reason or other, which I will not inquire into, it has accepted the very reasonable presumption that the true boundary is the *medium filum* of the highway. Now it is extremely unlikely that parties would wish to separate the land bounded from that which I may call the bounding strip, and hence the law presumes that the parties intend them to go together. This reason applies with equal force whatever be the nature of the document which has to be interpreted. In my opinion the presumption as to the construction of documents relating to lands abutting on a highway may be stated as follows—Where a parcel of land is described, or shown on a plan, as bounded by a highway, it is presumed that it is intended that the parcel should go up to the actual boundary on that side—that is under ordinary circumstances *ad medium filum viæ*. In every case in which parcels have had to be interpreted in a court of law this presumption has hitherto been followed, and I can see no reason why it should not be followed in the present case. I am therefore of opinion that the decision of the majority of the Court of Appeal was right, and that this appeal should be dismissed, with costs.

LORD ATKINSON—I should mention that Lord Halsbury, who is not able to be present to-day, agrees with the judgments which have been delivered.

Judgment appealed from affirmed, and appeal dismissed, with costs.

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