

The preceding discussion is academic in so far as the principal cases are concerned, for the projections of the buildings in both cases were over the plaintiff's own lands; but it arises naturally out of the Judge's dictum; and if the arguments are sound and the cases cited properly interpreted it appears that there is no ground for the proposition that the right to maintain a permanent portion of a building projecting into a neighbour's property is an easement.

Another, and the true point to be determined is, upon what grounds such a projection is to be maintained as of right when the owner loses part of his land underneath the projection by the occupation of a trespasser. In this phase, if the right claimed is an easement, the number of years of occupation is an important factor, for title by possession can be acquired in 10 years, while the acquisition of the right to an easement takes 20 years.

Assume, for the sake of the argument, that in either case the defendant had been in occupation of the plaintiff's strip of land for exactly 11 years, during which time the plaintiff had regularly, at intervals, gone on the strip for the purpose of painting his house, taking in supplies or the like, so that if the strip had belonged to the defendant, he would have been in the way of acquiring an easement. Now, it is plain that a man cannot have an easement over his own land; and the land belongs to the plaintiff, notwithstanding the occupation of the defendant, up to the close of the last day of the 10 years. Therefore, during the 10 years the user by the plaintiff of his own land cannot be considered in computing the 20 years necessary to acquire an easement. It is not until his title to the strip has been extinguished by the occupation of the defendant that he is in a position to begin that user which may in time ripen into an easement. On the above hypothesis of occupation for 11 years, then, the plaintiff would have had only one year's user to his credit. It is submitted, therefore, that in order to justify awarding an easement to a plaintiff whose title has been defeated by possession, there should be a lapse of at least 30 years before (occupation and user continuing) the plaintiff could claim an easement.

But there seems to be another and a better ground for the plaintiff's relief. It has been determined that a man may gain title by possession to a cellar, *Rains v. Buxton*, 14 Ch.D. 537; and that title can be similarly gained to a tunnel, *Bevan v. London Portland Cement Co.* (1892), 3 R. 47, 67 L.T. 615, without interfering with the ownership of the soil lying above. And, where a trespasser has been in occupation of land, lying under an overhanging projection, it is sufficient, and seems on the authority of the above cases, proper, to hold that all that the owner loses is that which the trespasser occupied, namely, the land under the projection, and that the overhanging portion of the owner's building remains his own property unaffected by the trespass.