became unfit, whether from age or accident, and that each owner was then remitted to his original unincumbered title to the division-line, citing *Sherrerd* v. *Cisco*, and dissenting from the views in *Campbell* v. *Mesier*. In the same case, however, Shankland, J., seemed of the contrary opinion and approved *Campbell* v. *Mesier*.

7. In regard to the right to compensation for the use of a party-wall, the cases differ. In Pennsylvania, in the cases cited above, it was held, until the Act of 1849, that it was a personal right of the builder against the person using the wall and did not run with the land, either in favor of the first assignee of the first builder or against the assignee of the second builder. To the same effect is the principal case. In New York, however, the decisions are otherwise. Thus, in *Burlock* v *Peck*, 2 Duer 90, A., owning two adjoining lots, conveyed one of them with the privilege to the grantee of building a party-wall on the division-line one-half on each lot, and covenanted to pay for one-half the wall when used. A.'s grantee built the wall and then conveyed to B. A. then conveyed the adjoining lot, and his grantee used the wall. Held that B. could recover of A. or his executors the value of one-half the wall. And, also, that B. having died after the use of the wall by the grantee of the adjoining lot, the action was properly brought by B.'s administrator, not his heir.

In this case the question of the liability of the grantee of the second lot, who actually used the wall, was not raised, but in *Keteltas* v. *Penfold*, 4 E. D. Smith 122, a covenant by A. for "himself, his heirs and assigns," to pay for half a party-wall when used, was held to run with the land so as to charge A.'s devisee. And in *Weyman's Ex'rs.* v. *Ringold*, 1 Bradford 52, a covenant to pay one-half the value of a party-wall when used, to the builder, "his executors or assigns," was held to run with the land in favour of the grantee of the covenantee. In the last case it was expressly agreed that the covenant should bind the lands "and the successive owners thereof," but the surrogate was of opinion that the covenant ran with the land independently of this agreement.

See, also, *Giles* v. *Dugro*, 1 Duer 331, where A. covenanted with B., his vendee, that the premises sold were clear of "all former or other grants, bargains and incumbrances whatsoever," but, in fact, A. had previously conveyed to C. the right to use a wall as a party-wall, and it was held that this was an incumbrance, and the use of the wall a partial eviction of B. who was entitled to recover from A. a sum having the same ratio to the purchase-money as the value of the land so occupied by C. bore to the value of the whole.

J. T. M.

CORRESPONDENCE.

Setting off judgments.

To the Editors of the Local Courts' Gazette.

St. Mary's, December 18, 1867.

Gentlemen,— On the 8th day of March, 1866, A. sued a note in the Third Division Court for the County of Perth, made by one B. in favor of Messrs. C. & D., upon which note A. obtained judgment against B. for $21 63 and costs, upon which judgment, execution was issued and returned *nulla bona*. On the 2nd day of November, 1867, B. the above named defendant, sued one E. in an action for damages, upon which he recovered a judgment for $30 without costs, payable in 10 days. On the 16th day of November, 1867, the son of E. called at my office, asking me to set off the judgment of A. against the judgment B. v. E.

E. being the actual plaintiff in this suit, I declined to set off this judgment, contending that I had no power to do so, as the judgment was not in his father's name, although I was well aware his father was the actual plaintiff in this suit. On the 18th day of November, 1867, the son of E. again called at my office, requesting me to set off the judgment A. v. B. against the judgment B. v. E., leaving at the same time an assignment dated 18th November, 1867, from A. to his father, of the judgment against B. and paying into Court the difference of the amount of the judgment. I took the assignment and money from the son of E. giving him a receipt for the money as paid on account, refusing to give him a receipt in full, at the same time stating to him that I did not think B. would trouble them any more on account of his judgment, and that I would get Mr. B. to receipt his judgment in full against E. I spoke to Mr. B. about the payment into Court and the assignment of judgment, when he stated he would not consent for his judgment to be set off against the judgment A. held against him, but requested me to issue an execution against E. I immediately notified E. that B. would not consent to that arrangement and that I would have to issue an execution the same day, but if paid the same week, no further costs would be made. The son of E. then applied to the judge for a summons to B. to shew cause why the judgment should not be set off. Upon this application the judge granted a summons for B. to attend at the next sittings of this Court, to shew cause why the judgment should not be set off.

My object in writing the above, is to ascertain whether it would have been in accordance with the rules of the Court for me to have set off the judgment A. v. B. against the judgment B. v. E., though E. is actually the plaintiff.

Yours respectfully,

James Coleman, *Clerk D. C.*

[We could not with propriety, however interesting in itself, answer a question at present before the judge for adjudication.—Eds. L. C. G.]