house unless excepted in the deed: Act of 10th April 1849, Pamph. L. 600; *Knight* v. *Beenken*, 6 Casey 372

Only a few of the general principles governing party-walls independently of statutory enactments have been discussed in this country.

1. Without a contract or statutory authority no owner has a right to build his wall beyond his own line, and if he does so the adjoining owner may treat it as a trespass and compel it to be taken down, or he may use it as a party-wall without paying anything for it; *Sherrerd* v. *Cisco*, 4 Sandford 480; *Orman* v. *Day*, 5 Fla. 385. The observations of WOODWARD, J., in *Zugenbuhler* v. *Gilliam*, 3 Clarke 391, that at common law the adjoining owner by using the wall makes it a party-wall and becomes liable for the value of half the wall, are not supported by authority, as the passage cited from 2 Bouvier's Inst. 178 is based on the statute of Pennsylvania. This case, therefore, except so far as founded on the statute of Iowa, cannot be regarded as sound law.

2. *Primâ facie* the wall and the land on which it stands are held in England to belong to the adjoining owners in moieties as tenants in common, but this presumption is rebutted when the amount of each one's ownership can be ascertained, and each is then owner in severalty of his portion: Gale on Easements 411 (3d London ed.) And the American courts are said to lean towards this latter presumption: *Sherrerd* v. *Cisco*, 4 Sandford S. C. 480. Each half, however, is subject to an easement of support for the other.

3. If two adjoining owners build a wall partly on each lot, and by express agreement or by continuous use for twenty years, treat it as a party-wall, it becomes a technical party-wall and each has an easement of support for his half: *Webster* v. *Stevens*, 5 Duer 553.

4. So, if an owner of adjoining lots build upon them a wall partly on each, intended and necessary for the support of both, a conveyance of either house and lot with its appurtenances, grants an easement for the support of the house in so much of the wall as stands upon the other lot: *Eno* v. *Del Vecchio*, 4 Duer 53; 6 Id. 17.

5. After such a grant and continued use of the wall for twenty years neither can remove the wall or deal with his half so as to impair the support of the other's house: *Eno* v. *Del Vecchio*, 4 Duer 53; 6 Id. 17; *Potter* v. *White*, 6 Bosworth 644; *Phillips* v. *Bordman*, 4 Allan 147. In *Potter* v. *White*, one who took down a party-wall and built a new one without the consent of the adjoining owner, was held liable for loss of rent, and expenses of repair, &c., made necessary by the removal of the old wall and building of the new. In *Phillips* v. *Bordman*, the Supreme Court of Massachusetts granted an injunction to restrain one owner of an ancient party-wall from cutting away a portion of its face and erecting a new wall on his own land two inches from that part of the old wall left standing, and connected with it and supporting it by occasional projecting bricks and ties.

And in *Eno* v. *Del Vecchio*, *ubi sup.*, it was said that if either wishes to change the wall he may do so within the limits of his own lot, provided he does not injure the other, and for such purpose he may shore up the whole wall for a reasonable time while the changes are in progress, but if he does this without the consent of the adjoining owner he does it at his own peril, as the question of negligence does not come in at all, and no degree of care or skill will relieve him from liability if injury is actually done.

The Supreme Court of Ohio, however, have held the contrary, and that where owners of adjoining lots build a party-wall by express agreement for the support of their houses, but without any stipulation as to the continuance of the wall, either party or his grantee has a right to take down his part of the wall, after notice and using sufficient care—although it may have been used as a party-wall for twenty-one years; and where the wall fell down, notwithstanding the care, it was held that there was no cause of action: *Hieatt* v. *Morris*, 10 Ohio State 523.

The rules above enunciated in *Eno* v. *Del Vecchio* and other cases do not, however, apply to a party-wall built by tenants for years of adjoining lots, so as to affect the reversioners or their grantees: *Webster* v. *Stevens*, 5 Duer 553. And the right to use the party-wall is only the right to use it *as it has been used*. Thus, A. conveyed a house to B. with a reservation, "the owners on both sides to have mutual use of the present partition-wall." The wall was entirely on the lot conveyed to B., and only a portion of it was used as a partition-wall. A. subsequently conveyed the adjoining lot to C., who enlarged the house and used a greater part of the wall than was so used at the time of the conveyance to B. Held that he was liable to B. for damages in so doing: *Price* v. *McConnel*, 27 Ill. 255.

6. How long the easement of support acquired by lapse of time or by contract not specifying the term for which it is granted, continues, is still an unsettled question. That it continues so long as the wall remains safe and well adapted to the original purpose, appears to be conceded by all the cases except *Hieatt* v. *Morris*, 10 Ohio State 523, already cited (*supra* 5). When however, the wall becomes ruinous and unsafe or unfit for its purpose of support. either party has a right to take down his half in a skilful manner, after due notice to the other party. And if one-half cannot be taken down without danger, the owner may take down the whole, and such right is not affected by the nature of the use or occupation of the other building: *Campbell* v. *Mesier*, 4 Johns. Ch. 334; *Partridge* v. *Gilbert*, 3 Duer 184; s. c., 15 N. Y. 601.

But whether the right of support continues longer than the existence and fitness of the old wall is questionable. In *Campbell* v. *Mesier*, 4 Johns. Ch. 334, Chancellor Kent appeared to think that the easement was in fee, and where one owner pulled down an ancient party-wall which had become ruinous, and rebuilt it, the Chancellor held the adjoining owner liable to contribute rateably to the expense, provided that if the new wall should be higher or of more expensive material than the old one, the builder should pay the extra expense. But in *Sherrerd* v. *Cisco*, 4 Sandford 480, it was held that if the wall be destroyed by fire or accident the adjoining owners are not bound to rebuild it. The land becomes freed from all servitude in relation to the party-wall as in case of two adjoining lots without buildings. And in *Partridge* v. *Gilbert*, 3 Duer 184, 15 N. Y. 601, Denio, C. J., was of opinion that the right to support ceased when the wall