Brown v. *Pentz*, 1 N.Y. Leg. Obs. 24, was never officially reported, and we do not recognise it as an authority. But we think that the ruling of the Supreme Court of Massachusetts in *Weld* v. *Nichols* 17 Pick. 538, is conclusive on this question. It was there held that the liability to pay for the party-wall was a mere personal liability, and not repugnant to a covenant in a deed that the land was free from incumbrances.

The easement which passed from Schenck to his grantees was the right to the support of the party-wall afforded by that part thereof which rested upon the land of Isham.

Schenck and Isham were not tenants in common of the party wall, but each owned that part thereof on his side of the line; Schenck advanced the money to build Isham's moiety, on the agreement of the latter that he or his heirs would repay it when he or they should have occasion to use the wall. This is clearly a mere personal covenant, in no wise connected with or affecting the enjoyment of the lot conveyed to Bloch.

Judgment affirmed with costs.

Note by Editor of American Law Register.

In the assize of Buildings, by Henry Fitz Elwyne, first Mayor of London, (1 Richard I, A. D. 1189), it is enacted that "when it happens that two neighbors wish to build between themselves a stone-wall, each of them ought to give one foot and a half of his land; and so at their joint cost they shall build a stone-wall between them, three feet in thickness and sixteen feet in height. And, if they wish, they shall make a rain-gutter between them, at their joint cost, to receive and carry off the water from their houses, in such manner as they may deem most expedient. But if they should [not] wish to do so, either of them may make a gutter by himself, to carry off the water that falls from his house on to his own land, unless he can carry it into the king's highway.

"They may also, if they agree thereupon, raise the said wall as high as they may please, at their joint cost. And if it shall so happen that one wishes to raise such wall and the other not, it shall be fully lawful for him who so wishes it to raise the part on his own foot and a half as much as he may please, and to build upon his part, without damage to the other, at his own cost; and he shall receive the falling water in manner already stated.

"And if anyone shall build of stone, according to the assize, and his neighbour through poverty cannot, or perchance will not, then the latter ought to give unto him who so desires to build by the assize, three feet of his own land; and the other shall make a wall upon that land, at his own cost, three feet thick and sixteen feet in height; and he who gives the land shall have one clear half of such wall, and may place his timber upon it and build.

"But this assize is not to be granted unto any one so as to cause any doorway, inlet, or outlet, or shop, to be narrowed or restricted, to the annoyance of a neighbor.

"This assize is also granted unto him who demands it as to the land of his neighbor, even though such land shall have been built upon, provided the wall so built is not of stone.

"Also, no one of those who have a common stone-wall built between them, may, or ought to pull down any portion of his part of such wall, or lessen its thickness, or make arches in it, without the assent and will of the other.

"If any person shall wish to build the whole of a wall upon his own land, and his neighbor shall demand against him an assize, it shall be at his election either to join the other in building a wall in common between them, or to build a wall upon his own land and to have the same as freely and meritoriously as in manner already stated:" Liber Albus of the City of London, Book III., Pt. 2, p. 278 *et seq.*, edited by Henry T. Riley, under the direction of the Master of the Rolls, London, 1859.

This assize or ordinance from which we have quoted at some length, as the volume is believed to be not generally found in the libraries of this country, exhibits a remarkable degree of efficiency for that early and turbulent day in the police regulations of that great city which, as LORD CAMPBELL says, was "a sort of free republic in a despotic kingdom:" Lives of the Lord Chancellors, I., 8. The recent destructive fire in the reign of King Stephen, alluded to in Liber Albus, had led to a great improvement in a building by the subtitution of stone-walls and tiled roofs for the wood, thatch, and straw previously used, and in the course of this change much dispute had probably arisen as to party-walls and the rights of support and roof-drainage depending thereon. Hence, this assize was ordained, as the preamble states, "*per discretiores viros civitates, ad contentiones pacificandas*" It is probable, however, that it only consolidated and enacted into positive law, the previous custom of the city. To this custom, the independent growth of the convenience and necessittes of a large and compact city, we prefer to look for the foundation of the present law of party-walls, rather than to the urban servitude of the civil law, *tigni immittendi*, though similar circumstances produced similar laws in both cases, and in later times, no doubt, the just reasoning and mature wisdom of the civil law had great influence in developing the English law of party-walls as well as of other easements.

The custom of party-walls, developed by time and regulated by various statutes, was introduced into this country, together with the process of foreign attachment, the custom of *feme sole* traders, and other customs of London, by the first settlers in Philadelphia under William Penn, and in 1721 the legislature of Pennsylvania passed an act, still in force, regulating in detail the whole subject of party-walls in the city of Philadelphia. Under this act it has been held that the builder's right to compensation for one-half the party-wall is not a lien on the adjoining land, but a mere personal charge against the builder of the second house, and does not run with the land against his assignee: *Ingles* v. *Bringhurst*, 1 Dallas 341; *Hart* v. *Kucher*, 5 S. & R. 1. Therefore if the first builder be paid before the second house is built the right to compensation is gone; it is neither a hereditament nor an appurtenance to land and does not pass by a conveyance of the house: *Hart* v. *Kucher*, 5 S. & R. 1; *Davids* v. *Harris*, 9 Barr 501; *Todd* v. *Stokes*, 10 Id. 155; *Gilbert* v. *Drew*, Id. 219.

By statute, however, the right to compensation for use of a party-wall is now made an interest in the realty and passes by a conveyance of the