the trial. All that the plaintiff is required to prove is title in himself, and a conversion by the defendant. In this case the title is not in dispute, and when the plaintiff proves that the defendant was driving his horse from Waterbury to Southington, and that while doing so he wilfully or negligently drove him in such a manner as to cause his death, is not his case fully proved? It is quite immaterial how the horse came to be in the defendant's possession. Whether lawfully or unlawfully is not of the slightest consequence. He may have found him in the highway; he may have hired him from a stranger; he may have taken him from the plaintiff's stable, with or without leave, upon a week day, or upon the Sabbath; it is all the same. The plaintiff is bound to offer no proof on the subject. If the defendant would derive any benefit from the illegal contract *he* is the one to prove it; and when he attempts to do so, he is met with the objection that he cannot avail himself of an illegal transaction in which he participated as a defence to the action."

Upon the same principle it is conceived that where, in similar cases, there has been collateral damage but no conversion, the plaintiff would be entitled to recover in trespass or case (according to the facts), and that in these actions, as in trover, the means by which the possession was acquired would be immaterial. This might serve to harmonize the decisions, and while recognising the liability, would preserve intact the principles upon which the different forms of action depend.

ANGELO T. FREEDLEY.

Philadelphia, Pa.

RECENT ENGLISH DECISIONS.

High Court of Justice, Chancery Division.

MOODY v. STEGGLES.

A. and B. were respectively owners of two houses which adjoined each other, A. using his house as a public house. Both the houses were formerly in the possession of P. When A.'s house was conveyed to P. it was not used as a public house, and there was no evidence to show when it was first used for that purpose. After the death of P. his devisees conveyed the house, now in A.'s possession, to his predecessors in title, the house now in B.'s possession having been previously conveyed to his predecessors in title. For more than forty years, a signboard with the name of A.'s public house on it had been fixed to the wall of B.'s house. B. having taken down the signboard, *held*, that it having been there for so many years, it must be presumed that it was placed there by virtue of some easement granted to A.'s pre-

decessors in title, there being no evidence to the contrary, and an injunction was granted, restraining B. from moving it.

It is not necessary that there should be a physical connection between the dominant tenement and the easement.

THIS was an action for an injunction to restrain the defendants from removing a signboard which was fixed to their house.

The plaintiffs were the owner and occupier of a public house in Newmarket, called the Grosvenor Arms, which is situated in a narrow street or yard called Grosvenor yard, running out of the High street. The defendants were the owners of a house which is situated at the corner of the High street and Grosvenor yard and immediately adjoining the public house.

The defendants' house projected in front of the public house, so that it could not be seen from the High street.

In 1819, the plaintiffs' house was purchased by a Mr. Parkinson, who was then owner of the defendants' house. At that time, the plaintiffs' house was not used as an inn, and there was no evidence to show when it was first used for that purpose.

In 1833, the devisees of Parkinson, who was then dead, conveyed the plaintiffs' house to the plaintiffs' predecessor in title. Some time previously the defendants' house had been conveyed to a predecessor in title of the defendants.

It was proved that for more than forty years a signboard had been fixed to the defendants' house, at the entrance of Grosvenor yard, bearing the name of the public house. At the time of the Newmarket Spring Meeting this year, the defendants took down the signboard and placed it on the plaintiffs' premises. It was put up again temporarily, and this action was brought to try the plaintiffs' right to have it fixed to the defendants' house.

North, Q. C., and *Stirling*, for plaintiffs, referred to *Wood* v. *Hewett*, 8 Q. B. 913; *Lancaster* v. *Eve*, 5 C. B. (N. S.) 717; *Hoare* v. *Metropolitan Board of Works*, Law Rep. 9 Q. B. 296.

Cookson, Q. C., and *Maidlow*, for defendants, referred to *Ackroyd* v. *Smith*, 10 C. B. 164; *Keppell* v. *Bailey*, 2 M. & K. 517; *Hill* v. *Tupper*, 9 Jur. (N. S.) 725; *Thomas* v. *Hayward*, Law Rep. 4 Exch. 311; *Angus* v. *Dalton*, Law Rep. 3 Q. B. Div. 85 (17 Am. Law Reg. (N. S.) 645); *Wheeldon* v. *Burrows*, Eng. W. N. 1879, p. 123 (18 Am. Law Reg. (N. S.) 646).

FRY, J.—The plaintiffs sue in this case in respect of a signboard

which for many years has been hanging against the defendants' house. It appears that the defendants are the owners and occupiers of a house in the High street, Newmarket, and behind that house and at the side of it, there runs a yard or narrow street, which is called Grosvenor yard, and up that yard the plaintiffs have a house, which for a good many years past has been and still is used as a public house. It is in evidence before me that for a period of from forty to fifty years, at least, a signboard has been hung against the side of the defendants' house and at the entrance to Grosvenor yard, thereby inviting passengers going along the High street of the town to the plaintiffs' house. That signboard having existed there for that length of time, and not having been shown to have been erected by the license or permission of the defendants or of their predecessors in title, and being entirely convenient and in one sense necessary for the enjoyment of the plaintiffs' premises, I think it is a case in which I am bound, if I legally so can do, to presume a legal origin and continuance to that fact. Where there has been a long enjoyment of property in a particular manner, it is the habit, and in my view, the duty of the court, as far as it lawfully can, to clothe fact with right. Looking at all the facts of this case, I feel myself both justified and bound to come to the conclusion that the chattel, the signboard, has been placed by the plaintiffs' predecessors in title on the defendants' house, not with the view of allowing that chattel to become part of the property of the defendants' predecessors in title, but by virtue of such easement granted by those predecessors in title to the plaintiffs' predecessors in title.

In coming to that conclusion, I feel myself entirely justified to act upon the three cases which have been cited to me on behalf of the plaintiffs, viz.: *Wood* v. *Hewitt*, *Lancaster* v. *Eve* and *Hoare* v. *The Metropolitan Board of Works*. It is said, however, that in this case there are circumstances which prevent the application of the principle there laid down. The first objection is placed upon the early common ownership of the tenements. Now the history of that, so far as it appears before me, is this: In January 1819, the house, now the plaintiffs', was purchased by Mr. Parkinson, who at that time was the owner of the defendants' house, and therefore on and after the 7th January 1819, the two tenements became the property of Mr. Parkinson. At that time, however, the plaintiffs' house was not occupied as an inn, but apparently as a private

house. The next date of which we have any knowledge at all is 1833. It appears that at that time Parkinson was dead. Parkinson's devisees conveyed the plaintiffs' house to Mr. Moody, the predecessor in title of the present plaintiffs, and it appears that before that date—how long before I do not know—the defendants' house had been conveyed by Parkinson, or Parkinson's devisees, either to George Bloom or to a predecessor in title of George Bloom. It is suggested that on these facts I ought to infer that the signboard was erected whilst the two tenements were the common property of Parkinson or his devisees. It appears to me I cannot come to any such conclusion, because there is no evidence whatever to show me whether the plaintiffs' house was converted into an inn before or after the defendants' house was conveyed away by Parkinson. It is quite consistent with the facts before me, that the defendants' house may have been alienated by Parkinson, years and years before the plaintiffs' premises were converted into an inn, and years before any signboard was fixed. That argument in my judgment fails. What would have been the result if the defendants had proved the erection of this signboard during the common ownership it is unnecessary for me to say.

The next argument which has been introduced on the part of the defendant is this: It is said that the easement in question relates not to the tenement, but to the business of the occupant of the tenement, and therefore I ought not to tie the easement to the house. It appears to me that that argument is of too refined a nature to prevail, and for this reason, the house can only be used by an occupant, and that occupant only uses the house for the purpose in life which he pursued; therefore in some manner (sometimes more direct and sometimes more indirect) an easement is more or less connected with the manner in which the occupant of the house uses it. To take an illustration from the cases which have been cited before me. The easement which was upheld in *Wood* v. *Hewitt* was an easement to have a hatch in another man's soil. That hatch was only useful to the tenement occupied by the plaintiff so long as he occupied it as a miller. Therefore in that sense the easement was connected with the business of the occupant. So in *Lancaster* v. *Eve* the easement was one to have a pile fixed in the water-way of the Thames, which was useful so long only as the occupant of the plaintiffs' premises used it for the purposes of a wharf. Similarly in *Hoare* v. *The Metropolitan Board of Works*, which is still more

like the present case, the easement was to have a signboard supported by a pole fixed into the common, an easement which is useful only so long as the occupant used the house for some purpose which rendered an invitation to the public desirable. I think, therefore, that argument fails.

Two other arguments have been addressed to me. It is said that, although you may have the easement for the support of a signboard from the soil direct, you cannot have such an easement for the support of a signboard from a wall, which is fixed into the soil. That argument appears to me to be untenable, because for all purposes of support the wall must be taken to be part of the soil. It is part of the freehold. I know no reason why a wall should not support a signboard as well as a signboard be supported by a direct connection with the soil.

Lastly, it is said there must be a physical connection between the dominant tenement and the easement. Now, I am not aware that such law has ever been laid down. The cases which I have been referred to are inconsistent with the theory. There was no physical connection between the hatch which was the subject of discussion in *Woods* v. *Hewett*. The easement there was to have that chattel although that chattel was disconnected physically with the soil; and the same observation applies to the case of *Hoare* v. *The Metropolitan Board of Works*, and also with more or less distinctness to *Lancaster* v. *Eve*. And I may observe that for a very long period the court has in certain cases substituted what I may call a metaphysical for a physical connection with the soil. The old cases, which have gone to show that chattels capable physically of disconnection with the tenement are nevertheless part of the freehold, illustrate that principle. Everybody knows that a key, although in its nature a chattel, belongs to the house, and passes with the freehold; and that the millstone, which is capable of being detached from the mill, is nevertheless part of the fee-simple of the mill, and passes with it. These cases show that physical connection is not always necessary, even to constitute a particular thing an integral part of a fee-simple. One other argument remains to be considered, which is this: it is said that the signboard creaks, and it is said that the plaintiffs have no right to cause the annoyance which is produced by the creaking of the signboard. Now it appears to me from the evidence, that the signboard, if I may use such expression creaks from its own nature. It is not easy and probably not pos-

sible, to expose a wide surface of metal, such as this signboard appears to be, to the action of the wind down this passage, without causing some creaking, and it appears to have always creaked more or less. But the evidence goes to show that in the spring of last year, it creaked rather more than usual, and then an interview took place between Mr. Vaughan, who was specially affected by it, and the plaintiff, Miss Moody, in which she seems to have offered him the use of the ladder, and to have invited him to grease it himself, which invitation he refused. The whole thing with regard to the creaking is of a trumpery description. It does not appear to me that there has been any creaking in excess of what is naturally incidental to a signboard, and certainly in the later exercise of the right, the plaintiff has studiously desired to minimise the inconvenience to the defendant, because it has been erected with India rubber washers, which undoubtedly have diminished the noise to the greatest possible extent. Therefore, that defence appears to me to be insignificant and idle. The result is that in my judgment the plaintiffs are entitled to the injunction which they seek, and which will be to restrain the defendants and their respective servants and agents from pulling down and removing the said signboard from the said dwelling-house, and from preventing the plaintiffs or either of them from affixing the signboard to the dwelling-house.

An easement, in its broadest sense, may be called "a right to use another's estate, for one's own benefit." It is a right *to use it*, in distinction from a right to take and carry away anything from it, to use elsewhere; this latter right being familiarly known by the rather awkward phrase *profit à prendre*. Among the many uses to which another's estate may be subject, under this right or easement, besides the familiar ones of a right of way, of support, for a drain, water-pipes, &c., and those noticed in the principal case, are a right of depositing merchandise on another's land, and hoisting it up into the windows of the claimant's building: *Richardson* v. *Pond*, 15 Gray 387; a right to swing one's doors, shutters, window-blinds, &c., over the adjacent land: *United States* v. *Appleton*, 1 Sumn. 492; *Richardson* v. *Pond*, *supra*; a right to have fire escapes overhang a neighbor's soil: *Havens* v. *Klein*, 51 How. Pr. R. 82; a right to nail trees to another's wall: *Hawkins* v. *Wallis*, 2 Wils. 173; to fasten a clothes-line to his building: *Drewell* v. *Towler*, 3 B. & Ad. 735; to use another's chimney for conveyance of smoke: *Hervey* v. *Smith*, 22 Beav. 299; 1 Kay & Johns. 389; to tether horses on his land: *Johnson* v. *Throughgood*, Hob. 64; to pile logs, boards or lumber thereon: *Gurney* v. *Ford*, 2 Allen 576; *Pollard* v. *Barnes*, 2 Cush. 191; to deposit coal-dirt and the refuse of a coal mine: *Big Mountain Improvement Company's Appeal*, 54 Penn. St. 361; a right of dockage and bringing up vessels alongside of the claimant's wharf, although the adverse party owns the fee of the soil under the dock: *Sargent* v. *Ballard*, 9 Pick. 251;

Nichols v. *Boston*, 98 Mass. 39; to have another's land remain for ever free, open, and unobstructed by buildings: *Parker* v. *Nightingale*, 6 Allen 341; *Peck* v. *Conway*, 119 Mass. 546; a right to wash and water sheep and cattle in a neighbor's pond: *Manning* v. *Wasdale*, 5 Ad. & El. 758.

On the other hand a right to enter and carry away anything from another's soil though sometimes called an easement, is much more; as to cut grass, or pasture one's cattle: *Bailey* v. *Appleyard*, 8 Ad. & E. 161; to hunt on another's land: *Pickering* v. *Noyes*, 4 B. & C. 639; *Wickham* v. *Hawker*, 7 M. & W. 63; to fish in his brook or unnavigable stream: *Waters* v. *Lilley*, 4 Pick. 145; to take sand or stones, or seaweed from his beach: *Blewett* v. *Tregonning*, 3 Ad. & E. 554; *Hill* v. *Lord*, 48 Me. 84; *Constable* v. *Nicholson*, 14 C. B. (N. S.) 230; or coal from his land: *Huff* v. *McCauley*, 53 Penn. St. 206; to cut and carry away trees growing on his land: *Bailey* v. *Stephens*, 12 C. B. (N. S.) 91. See the valuable case of *The Tinicum Fishing Co.* v. *Carter*, 61 Penn. St. 21.

But a right to take and carry away water from a neighbor's spring, as it issues from the ground, and *not collected* by him in any tank, reservoir, cisterns, &c., to be used for domestic purposes, is not a *profit à prendre*, but only an easement; since water in *such a condition* is held to be not a produce of the soil: *Race* v. *Ward*, 4 E. & B. 702; *Manning* v. *Wasdale*, 5 Ad. & E. 758; and see *Hill* v. *Lord*, 48 Me. 99.

In *Littlefield* v. *Maxwell*, 31 Me. 134, it was held that a right to pile logs, wood and lumber on another's land, to such an extent as to practically deprive him of the whole use of his premises, was not merely an easement, but was a *profit à prendre*, and, therefore, could not be claimed by custom: *sed quære*.

One main difference between a *profit à prendre* and an easement, is that the former is an interest *in* another's land, and the latter only a right to use another's land; and the consequent difference in the mode of acquiring these respective rights.

One question discussed in *Moody* v. *Steggles*, was whether the dominant and servient tenement must be adjacent or contiguous. But there seems to be no necessity for any physical contiguity. It is clear that if there be three lots of land, A., B. and C., belonging to separate owners, and the owner of A. has a right of way by purchase over B., he may acquire by a prescription a way over lot C., in continuation of it, although A. and C. nowhere touch each other: see *Leonard* v. *Leonard*, 2 Allen 543. And in *Perrin* v. *Garfield*, 37 Vt. 312, PECK, J., says, "It is not necessary that the dominant and servient tenement should be contiguous to each other."

And even in cases of an easement or claim of a right of lateral support from adjacent land, it is not necessary that the servient estate should be immediately adjacent the dominant estate. This point arose in the very recent case of *Mayor of Birmingham* v. *Allen*, Law Rep. 6 Ch. Div. 284.

The plaintiff and the defendant were the owners of parcels of land, separated from each other by a narrow strip of land belonging to a third person. The owner of this intervening strip had, many years ago, worked out the coal beneath it. The subsequent working by the defendant of the coal under his own land, caused, or threatened to cause, a subsidence of the plaintiff's land, and this action was brought to restrain him from such work. In considering the law applicable to the case, the Master of the Rolls, starting with the proposition that a landowner is entitled to have his land, in its natural state, supported by the land of his neighbor, said: "Who is his neighbor? The neighboring owner for this purpose must be the owner of that portion of land—it may be a wider or a narrower strip of land—the