STATUTORY PARTY WALLS.

The Pennsylvania system of statutory party walls, after an existence of nearly two hundred years, has finally been passed upon by the Supreme Court of the United States and declared constitutional.[1] An unbroken line of Pennsylvania authorities is thus upheld to the effect that when either of two adjoining lot holders "builds upon his own property up to the division line, he does so [in cities governed by the statutory provisions in question] with the knowledge that in case of the erection of a party wall, that part of his building which encroaches upon the portion of the land subject to the easement will have to come down if not suitable for incorporation into the new wall." [2] In the case in question, it was the wall of a theater that had to give way to a party wall for a fifteen-story department store building. No damages were collectible, although it was alleged and proved that a complete season of the theater had been ruined as a result of the work. The jury's verdict of $25,000 was set at naught.

It must not be assumed, however, too readily that the recent decision of the Supreme Court of the United States authorizes the extension of the Pennsylvania system to other parts of the United States. Of the two grounds presented in the argument of the successful counsel, the first, that of police power, was passed over as one unnecessary for the decision of the case. The statutory system was upheld clearly and solely on the ground that it had become as a matter of history a part of the property system of the Pennsylvania municipalities in question, a system brought by the first settlers in Philadelphia under William Penn and illustrated in statutes concerning Philadelphia going back

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[1] Jackman v. Rosenbaum Co., 67 L. Ed. Advance Opinions, p. 7 (1922), affirming s. c., 263 Pa. 158, 106 Atl. 238 (1919).

[2] Language quoted from Mr. Justice Holmes *ubi supra*. The leading Pennsylvania authorities, other than the Jackman case, are: Evans v. Jayne, 23 Pa. St. 34 (1854); Hoffstot v. Voight, 146 Pa. 632, 23 Atl. 351 (1892); Heron v. Houston (No. 1), 217 Pa. 1, 66 Atl. 108, 118 Am. St. Rep. 898 (1907).

to 1721 and Pittsburgh to 1794.[3] As Mr. Justice Holmes said in giving the opinion of the court, "In a case involving local history as this does, we should be slow to overrule the decision of courts steeped in the local tradition, even if we saw reasons for doing it, which in this case we do not."

Few if any other states in the Union find themselves in exactly the same position as Pennsylvania with reference to statutory party walls. In the District of Columbia, to be sure, as part of the original plan by which the City of Washington was laid out, a very similar effect is produced.[4] Some of the southern states (South Carolina, Louisiana, and Mississippi) have a somewhat analogous provision based on the French code under which one's boundary wall may be used by a neighbor as a party wall subject to certain conditions.[5] Iowa has copied

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[3] For Philadelphia, 11 Dallas, Laws of Pennsylvania, 152; for Pittsburgh, 3 Dallas, Laws, 588, 591, referring to the Act incorporating the borough of Reading, 2 Dallas, Laws, 124, 129.

[4] In the fundamental regulations for building created in 1791 by the trust deeds from the original proprietors of the land and by the declaration of the President of the United States before the sale of any of the public lots, it was provided that all lots were to be purchased subject to the right of first builders to encroach on neighboring lands for party wall purposes. *Cf.* Miller v. Elliot, 5 Cranch C. C. 543, Fed. Cas. No. 9568 (1839). The provisions of this plan were several times enacted in by-laws and recognized by acts of Congress. On this basis the following sections from the Code of Law for the District of Columbia, which seem to involve the compulsory sale of a part of one's land, are intelligible:

"Section 1586. Party walls. Whenever on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person, any part less than seven inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree.

"Section 1587. If the wall of any house already erected cover seven inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than seven inches in width shall be paid for as provided in the preceding section."

See also Hutchins v. Munn, 22 App. D. C. 88, 31 W. L. R. 344 (1903); District of Columbia v. Mattingly, 28 App. D. C. 176, 34 W. L. R. 670 (1906); Act of Mar. 1, 1899.

[5] The Code of South Carolina (1912), Sec. 3540, on party walls in cities and towns reads as follows:

"Every person who shall erect in a city or town any building with brick shall have liberty to set half his partition wall in his next neighbor's

the Pennsylvania type of statute and through a course of decidedly halting decisions has suceeded in maintaining the system.[6] In Massachusetts the city of Boston was subject to such a system in colonial times, but owing to the supposed incongruity with the constitution adopted in the Commonwealth of Massachu-

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ground, providing he leave a toothing in the corner of such wall for his neighbor to adjoin unto." Civ. '02, Sec. 2454; G. S. 1842; R. S. 1966; 1722, VII, 177.

Although this seems to have been the rule in South Carolina since colonial times, its constitutionality seems never to have been questioned in the courts of that state.

The Civil Code of Louisiana provides as follows: Merrick's Revised Civil Code of Louisiana, 2nd ed., up to 1912.

"Art. 675. Dividing Walls in Cities. He who first builds in the cities and towns, or their suburbs, of this state, in a place which is not surrounded by walls, may rest one-half of his wall on the land of his neighbor, providing he builds with stones or bricks at least as high as the first story, and not in frame or otherwise; and provided the whole thickness of this wall do not exceed eighteen inches, not including the plaster, which must not be more than three inches.

"But he cannot compel his neighbor to contribute to the raising of this wall."

This provision is based on the French code (Code Civil, Articles 651-676), and though it is clearly a part of the living law in Louisiana, as evidenced by the number of cases that have been decided under it, and the judicial tendency to interpret it liberally—for example, Heine v. Merrick, 41 La. Ann. 195, 5 So. 760 (1889), permitting the foundation to extend more than nine inches prescribed for the wall—its constitutionality seems never to have been questioned or passed on in that state.

The Mississippi statute does not clearly give the right to the first builder to encroach on the land of his neighbor, but if one has built a solid wall at his line, it permits the adjoining owner to make a party wall, under certain conditions, of the wall so built, upon paying for the costs. The constitutionality of this statute has not been directly passed upon, but the statute enters into the jurisprudence of that state, as in the case of Howze v. Whitehead, 93 Miss. 578, 46 So. 401 (1908). In that case contribution towards the cost of rebuilding a wall was exacted from the second builder in the absence of an agreement. In the absence of a statute which makes the case intelligible, the adverse comment of a learned commentator in 9 Columbia Law Review 76 is quite fair, for he sees no basis in the common law for such contribution.

[6] The Iowa code has the following section on the resting of a wall on a neighbor's land:

Code of Iowa, 1919. Sec. 6435. Resting Wall on Neighbor's Land.

"Where building lots have been surveyed and plats thereof recorded, any one who is about to build contiguous to the land of another may, if there be no wall on the line between them, build a brick or stone wall thereon, when the sole thickness of such wall above the cellar wall does not exceed eighteen inches, exclusive of the plaster, and rest one-half thereof on the adjoining land, but the adjoining owner shall not be compelled to contribute to the expense of building said wall." (R., '60, Sec. 1914; C., '73, Sec. 2019; C., '97, Sec. 2994.)

This section has frequently been before the courts of Iowa. Its constitutionality was attacked and specifically passed upon in the case of Swift v.

setts, the system was held to have been annulled.[7] Delaware and the City of Camden, New Jersey, seem to have tried to copy the Pennsylvania system: in the former through a permissive statute;[8] in the latter through simple imitation such as was natural in Camden, which grew up practically as a suburb of Philadelphia.[9] The Supreme Court of New Jersey hesitated very much over the Camden ordinances until at last, by a peculiar interpre-

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Callan, 102 Ia. 206, 71 N. W. 233, 37 L. R. A. (1897). Though the judge was very frank in expressing his doubts, and though the *dictum* of Vice-Chancellor Pitney, of New Jersey, quoted below, was cited and considered, as well as the Massachusetts case of Wilkins v. Jewett, the court upheld the act, in view of its forty-two years of recognition and enforcement in the State of Iowa. Later cases have recognized the difficulty in sustaining the statutory provisions of the State of Iowa. Lederer v. Colonial Investment Co., 130 Ia. 157, 106 N. W. 357 (1906); Percival v. Colonial Investment Co., 140 Ia. 270, 115 N. W. 941 (1908). But the constitutionality of the act has never been seriously questioned in Iowa since Swift v. Callan.

[7] The Massachusetts Provincial Act, entitled "An Act for Building with Stone or Brick in the Town of Boston, and Preventing Fire" (Prov. Laws 1692-93, 5 W. & M., Ch. 13; 1 Prov. Laws, St. Ed. 42) was held to be in violation of the Declaration of Rights, Arts. 10, 12 and 15, and therefore repealed by the Constitution of Massachusetts, Ch. 6, Art. 6, as "repugnant to the rights and liberties contained in this Constitution." Wilkins v. Jewett, 139 Mass. 29, 29 N. E. 214 (1885). The Court there said:

> "It is a significant fact that since the adoption of the constitution, no trace can be found of any legislative or judicial sanction of the provisions of the provincial statute upon which the plaintiff relies. We think it has been regarded as repugnant to the principles of the Constitution and is of no force."

There is room for doubt whether the learned judge was correct in his assumption that there had been no judicial sanction of this provincial statute in the history of Massachusetts. *Cf.* Weld v. Nichols, 17 Pick. 538, 541 (1836), and Quinn v. Morse, 130 Mass. 317 (1881).

[8] Compare Revised Code of 1874, Chs. 73 and 74, in which the council of the City of Wilmington is given the "power to regulate party walls." *Cf.* 17 Laws of Delaware 436 (1883).

[9] Under the charter of the City of Camden then in force, an ordinance of June 6, 1850, recognized the right of a builder to impose a part of his party wall on a neighboring lot. In Traute v. White, 46 N. J. E. 437, 19 Atl. 196, 197 (1890), Vice-Chancellor Pitney says:

> "And I think it proper to say further that but for the expressed *dictum* of Chancellor Green in Hunt v. Ambruster, 17 N. J. E. 208, I should have thought an act or ordinance authorizing a party to build a wall on his neighbor's land to be simply not legislation, but usurpation."

However, he clearly distinguishes the situation in Pennsylvania.

> "Legislation," he says, "regulating and authorizing party-walls was had in Pennsylvania as early as 1721, and became imbedded in its colonial system and was a part of it when it became a state and adopted a written constitution, and on this ground it may be that such legislation can be justified in that state."

tation of a statute, it was held that the Camden ordinance had been repealed.[10]

In view of this peculiarity in the jurisprudence of Pennsylvania, it may at first sight seem to be a purely local, though interesting, study to probe into the historical and other reasons for the existence of the Pennsylvania law and its limited application, even in Pennsylvania, to certain municipalities. There are, however, at least two aspects of the study of more than local interest: first, a general principle has been announced as to the relevancy of local history of this kind in connection with rules of property—and every jurisdiction has its own corresponding rules;[11] second, the mode of importation of this rule into Pennsylvania and its actual workings are valuable illustrations of the true nature of the "reception of English law in America."

Mr. Justice Moschzisker, in his learned opinion in the *Jackman* case, devotes a whole section[12] to a discussion of the history of party-wall legislation. He there points out that the party-wall system was brought over to Pennsylvania from London by

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[10] See Schmidt v. Lewis, 63 N. J. E. 565, 52 Atl. 707 (1902).

[11] A very few illustrations may suffice. Thus in the case of Traute v. White already cited, after discussing the historical basis of statutory party walls in Pennsylvania, Vice-Chancellor Pitney continues:

> "Upon similar grounds, legislation authorizing the compulsory drainage of meadows is justified in New Jersey. Hoagland v. Wurts, 41 N. J. L. 175; in Court of Errors, 42 N. J. L. 553; 43 N. J. L. 456; 114 U. S. 606, 5 Sup. Ct. Rep. 1086; State v. Blake, 36 N. J. L. 442. But an examination of these authorities, especially the opinion of Chief Justice Beasley in 41 N. J. L., shows that, but for the sanction of ancient usage, that sort of legislation could not be supported."

Another illustration may perhaps be found in the Ohio rule (General Code, §§ 3782, 3783), with reference to lateral support in municipalities. The statute arbitrarily sets nine feet below the line of the curb as the limit within which one may dig without incurring liability. It thus deprives the neighbor of lateral support where the land in its natural state would fall upon the removal of so much earth and at the same time deprives the digger of the common law right to go deeper if the land in its natural state would still stand in spite of more excavation. The Supreme Court of Ohio has reserved the question of the constitutionality of these sections in Carrel v. The Building Co., 92 Oh. St. 526, 112 N. E. 1081 (1915). Lower courts are not in full agreement on the constitutional standing of these sections. *Cf.* Emory v. Coles, 5 Oh. N. P. 199, 7 Oh. Dec. 414, and Belden v. Franklin, 8 C. C. (N. S.) 859, 18 Oh. C. Dec. 373.

The compulsory contribution to the cost of fencing is a more common provision of statutes. *Cf.* Freund, Police Power, Sec. 443.

[12] Section 2, pp. 165, 166.

the first settlers in Philadelphia under William Penn. In this, as in so many other matters, Pennsylvania follows London customs rather than English common law.[13] Even the statute of 1721 took for granted the existence of the compulsory party-wall system and merely undertook to afford a remedy for "divers inconveniences, irregularities, and controversies" which, as it is said, "frequently happened in relation to party walls." The origin of the system of party-wall regulation in effect in Pennsylvania was, according to the Chief Justice, the great fire of 1666, or rather the ordinance for the rebuilding of London of the following year.[14] Of the possible purposes to be served by such a system he suggests two:

(a) Protection against fire by encouraging the building of substantial party walls of fire-proof construction instead of flimsy contiguous house walls of combustible material.

(b) Economy by providing in the congested districts a means of using adjoining properties with the least waste of space and at the smallest possible expense consistent with efficiency.[15] Both problems were, of course, particularly acute in London at the time of the fire.

It is doubtful, however, whether the system was invented and applied in London for the first time in 1667. Though it

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[13] In a learned note in 7 Am. Law. Reg., N. S., pp. 10 ff., it is said:

"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."

In addition it may be noted that the entire practice of the Pennsylvania Orphans' Courts is manifestly based on the Hustings procedure of London rather than on the ordinary ecclesiastical mode of probate.

[14] 18 and 19 Car. II, Ch. 8. (19 Car. II, Ch. 3, Ruffhead.) Repealed 11 and 12, Vict., Ch. 163, Sec. 1.

[15] This second aspect is closely akin to our modern housing emergency statutes, at least to those which attempt to meet the situation by encouraging building operations. It must be remembered that immediately after the great fire, the housing situation was acute. Thus we read in Samuel Pepys's diary a few days after the fire:

"This day our Merchants first met at Gresham College, which, by proclamation, is to be their Exchange. Strange to hear what is bid for houses all up and down here; a friend of Sir W. Rider's having £150 for what he used to let for £40 per annum."

seems unknown to English law outside of London, there is evidence going back to a very early day indicating the existence of a custom of London in favor of compulsion in the matter of contributing land to a party wall at the request of one's neighbor. In the year 1189, the first of the reign of Richard I, during the term of Henry Fitz Elwyne, the first mayor of London, an assize of buildings was issued "for the allaying of the contentions that at times arise between neighbors in the city touching boundaries made or to be made between their lands and other things; to the end that, according to the provisions then made and ordained, such contentions might be allayed." After providing that where two neighbors wish to build between themselves a stone wall, each of them ought to give one foot and a half of his land, the assize proceeds:

"And if only one shall wish to build of stone, according to the assize, and his neighbor 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 equal half of such wall and may place his timber upon it and build." [16]

It has been suggested that this assize, like that of 1667, was the result of destructive fires.[17] Indeed, the White Book of the City of London, compiled in 1419, tells us "that in ancient times the greater part of the city was built of wood and the houses were covered with straw, stubble, and the like. Hence it happened that when a single house had caught fire, the greater part of the city was destroyed through such a conflagration; a thing that took place in the first year of the reign of King Stephen when, by reason of the fire that broke out at London Bridge, the church of St. Paul was burnt; from which spot the conflagration

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[16] See *Liber Albus, the White Book of the City of London*, edition Riley, pp. 276-297.

[17] 2 Palgrave, Rise and Progress of the English Commonwealth, pp. 172, 174, 175.

extended, destroying houses and buildings as far as the church of St. Clement Danes."

"For this," we are told, "many of the citizens to the best of their ability, to avoid such a peril, built stone houses upon their foundations . . . so that through such a house as this the houses of the neighbors have been saved from being burnt. Hence it is that in the aforesaid ordinance called the Assize, it was provided and ordained in order that the citizens might be encouraged to build with stone."

In 1212 another ordinance was passed in London somewhat similar to that of 1189 in its general purpose. After a great fire, it was found desirable to fix the wages of masons, carpenters, tilers, and others in order to facilitate the rebuilding of the devastated area.[18]

It is interesting to compare the experience of other countries in which problems incident to crowding in large cities eventually brought about rules for more or less compulsory agreements among neighbors as to party walls. Naturally the provisions are generally limited to urban property. It is called forth by crowding, and in each country, except possibly the United States, it is independently invented when urban conditions reach the point where house is joined to house. The social basis of crowding has differed from time to time. At least two forces that operated in ancient and mediæval times have tended to diminish, namely, the necessity of crowding within the walls of a city or otherwise protected area and the limited facilities for transportation and communication which made it necessary for every citizen to be within a few miles of the forum or agora or "gate." On the other hand, at no time in history has the percentage of the world's urban population been comparable to that of the present day. The causes of the growth of cities have been frequently analyzed by students of sociology. They include the advantages of civilization that the city furnishes, though the country is constantly becoming better able to compete in this respect. They include also the removal of functions from the

[18] 1 P. & M. *644, citing 2 Munimenta Guildhallæ 644.

homestead or the farm to the factory. And in this connection it is not merely the spinning and weaving, or even the cooking, that has been the greatest factor. It is the removal of part of the actual process of farming. A large percentage of the world's agricultural work is accomplished in those city factories where harvesters, binders, tractors, cheap automobiles, fertilizers and the like are produced. The crowding of today is accordingly somewhat different in its physical aspects from that of the past. We can build higher. We can overcome hills and valleys. We can cross rivers. We can spread to twenty or thirty miles from the town center for residence purposes. Yet there are limits to our freedom from crowding. In the first place, there is the item of expense. Land in cities is sold by the foot. Again, we are limited by the plats made in the days of different modes of transportation and of different ideas of architecture. Boston is not the only city in the United States whose streets seem to have been laid out by a runaway heifer. Habit is another factor quite as potent as the more physical ones. Many of the cities of America bear traces of the imitation of the architecture of various parts of Europe, regardless of its adaptability to local conditions. In this connection, the theme now under consideration, the reception of a legal system, is not without effect.

All of the legal systems of Europe begin with social conditions in which party walls are unnecessary and unknown. Roman law originally contemplated the separation of houses not only for purposes of public safety against fire, but for the facilitation of the private defense of the individual *paterfamilias* against enemies. Each house was regarded as an island (*insula*) and separated from other houses by an *ambitus* about five feet wide, one-half of which was to be furnished by each property owner. In course of time the city became congested and people departed in practice from the system of *insulae* and *ambitus*.[19] Certain passages in Livy and Cicero have been taken as indications that the relaxation of the old rule for the separation of

[19] *Cf.* Girard, *Manuel*, 6th ed., p. 367; *ib.*, p. 262, n. 2; Karlowa, *Römische Rechtsgeschichte* II, p. 519, *et seq.*

houses had begun under the stress of the Second Punic War which drove the masses from all over Italy into an already overcrowded Rome. At any rate, Cicero speaks of servitudes, corresponding to our easements, including *jura parietum*.[20] These *jura parietum* apparently included the right of a neighbor under certain conditions, *oneris sustinendi* (*ferendi*), that is, to build above one's wall, or *tigni immittendi*, that is, of sticking a beam into the existing wall. It does not appear, however, that any such right was conceived of as existing by operation of law independently of contract or grant. In the time of Augustus, Vitruvius speaks of a legally prescribed thickness of such walls and of the ground on which they stand as *locus communis*.[21]

Of modern European law, that of France is typical. In France it appears that party walls were used early, especially in the cities. A Code of Orleans going back to the tenth century seems to supply a compulsory method for the bringing together of neighbors who are unable to make an agreement as to the construction of a wall between them.[22] It is this code apparently which was copied into the Custom of Paris and which gave rise to the provision in French law as it stands today and as it has been copied into the jurisprudence of Louisiana and several other American states.[23]

Masselin, in his work on party walls,[24] traces the origin of

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[20] Cicero, *De Oratore* I, 38, 73.

[21] Vitruvius, II, 8, 16.

[22] The text of Coutûme d'Orleans is as follows:

"Art. 235. *Si aucun veut bastir contre un mur non moitoyen, faire le peut, en payant moitie tant dudit mur, que fondation d'iceluy, jusques a la hauteur dont il se voudra ayder. C'est qu'il est tenu faire auparavant que rien demolir ne bastir. En l'estimation duquel mur est compris la valeur de la terre sur laquelle ledit mur est fonde & assis. Au cas que celuy qui a fait le dit mur l'ayt pris sur son heritage.*"

[23] The text of the French Custom of Paris reads:

"Art. 194. *Si aucun veut batir contre un mur moitien, faire le peut; en payant moitie tant du dit mur que fondation d'iceluy, jusques a son heberge; ce qu'il est tenu payer paravant que rien demolir ny batir. En l'estimation duquel mur est comprise la valeur de la terre sur laquelle est ledit mur fonde & assis, au cas que celuy qui a fait le mur, l'ait pris sur son heritage.*"

Cf. the French Code, Arts. 660, 661.

[24] *Nouvelle Jurisprudence, etc., sur les Murs Mitoyens*, Chapter 11, Sec. 2, paragraph 265.

the law of France as it is today from the customs and usages of Paris into Section 661 of the Code Civil. Ducrocq, in *Droit Administratif*,[25] speaks of this section of the Code as *"une véritable expropriation pour cause d'utilité publique."* It is, furthermore, according to him, the most extreme illustration of such an expropriation in the interests of the public in that it does not require the intervention of any administrative or judicial authority. Ducrocq considers it in violation of the principle of inviolability of private property laid down in the declaration of the 26th of August, 1789.[26] He finds in the antiquity of this provision no excuse for its extension in 1804 to all sections of France. Others have shown that the custom was very widespread in France before the adoption of the Code Civil; in fact, it has been said that rural France was as familiar with it as were the cities.[27] It is supposed that in northern France and in Belgium the usage of *"mitoyenneté"* came into existence at a time when closely built villages at some distance from the ordinary fortifications offered the best protection against feudal encroachments on the bourgoisie. The narrowness of the lots—rarely exceeding 12 to 15 feet for a house—led to the necessity of party walls, and economy no doubt dictated the use of walls already in existence for new houses.[28] The hold which this proposition acquired on French jurisprudence is illustrated by the fact that the mere declaration of one's intention to use his neighbor's wall as a party wall was enough to deprive the neighbor of the right to destroy the wall, although he may have had the intention to do so for a long time, and that if the proprietor of the wall proceeded to demolish it in spite of his neighbor's declaration of intention, he could be compelled to restore it to its former state.[29]

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[25] 7th ed., Paris, 1898, Sec. 1347, paragraph 12, quoted in Freund, *ubi supra.*

[26] Article 17, and Articles 544 and 545 of the Code Civil.

[27] *Répertoire Général Alphabétique du Droit Français*, Chapter I, p. 21.

[28] *Cf. Les Codes Annotés de Sirey*, notes under articles 660 and 661.

[29] *Ib.*, where a decision is cited, dated Rouen, 20 January, 1841, s. 41, 2. 262.

It seems, then, that the problem of providing for some system of bringing neighbors together in some equitable plan of party-wall building has almost inevitably resulted from the social fact of overcrowding in European communities. Excepting in a few of our eastern and southern districts, in which both overcrowding and the plan to meet it were imported more or less blindly from Europe, the problem has not yet become an acute one in American cities. Our lots are wider; our ability to cope with the danger of fire is greater; our building methods are more efficient and our opportunities in general for prevention of the risks and other disadvantages which the party-wall system is designed to remedy, are infinitely greater than were those of the Romans after the Punic War or of Europe during the days of mediæval walled towns that dared not grow beyond their original limits, or even in comparatively recent unwalled towns narrowly restricted as they were by the types of locomotion on which the inhabitants were forced to depend. It would be interesting to learn, if statistics were at all available, the extent to which party walls have been multiplied in jurisdictions adopting the Pennsylvania system or anything like it. That Philadelphia, Pittsburgh, and Reading have a larger number of party-wall houses, at least in the downtown districts, than other cities similarly situated as to age, size and wealth seems rather obvious at first sight. At least the practice of chopping up the lots in the early division of the city into very narrow widths, frequently twenty feet or less, seems to have been generally indulged in.

If it is true, as it has so often been asserted, that the early settlers had any idea of bringing with them only so much of the common law as was adapted to their new environment, a practical task of much greater difficulty than they had any cognizance of confronted them. The process of analysis by which to determine just what social conditions the various elements in our law were made for or calculated to meet was at least as difficult as the process of adapting old machinery to new purposes. Here we have a monumental example of the failure—the inevitable failure—to make this analysis with the full realization

of all its consequences. A party-wall system which grew up in times when they spoke of a height of sixteen feet becomes a part of the property system of huge municipalities in a great commonwealth and is applied in the erection of skyscrapers![30]

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[30] In this connection it is interesting to note that the omission of all reference to height has not been a necessary feature of all compulsory party-wall systems. The limitation to sixteen feet in the early London ordinance has already been referred to. Perhaps the earliest allusion to a compulsory party-wall system which has come down to us is that contained in the Talmud at the beginning of the tractate *Baba batra* in a context suggesting Babylonian rather than Palestinian archaeology, although reference is made to varying local customs in different localities. In this passage the height to which the compulsory law applies is limited to four cubits.