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CONVERTIBLE PROPERTY.

CONVERSION has long passed beyond its primitive scope. No more, as in the days of COKE, can it be said of this tort, that "there must be an act done to convert one thing into another" (*Isaac* v. *Clark*, 1 Bulst. 312), in that literal sense which implies the turning of one species of chattel into another. Far past seems the time when the term was thus limited to cases where goods were altered so as to lose their identity, whether by adulteration, manufacture or other mode of transformation, or were utterly destroyed without justification.

It was a wide extension of the term to include instances where the goods were sold by a bailee and the proceeds appropriated to his own use; for there the conversion into money was not a physical transformation, like the change of gold into coin or jewelry. But nowadays the conversion need not be by alteration or appropriation alone. It may be effected in an infinite variety of ways. It may consist of seizure, withholding, or other complete exclusion of the owner, or person having the better right, from the control of the goods; or it may consist simply of a purchase of goods from one who has himself been guilty of a conversion in disposing of them, provided the buyer takes the goods into his custody.

The ground is not even covered by the phraseology of the remodeled English forms of procedure, which, in describing the breach of duty, allege that the defendant "converted to his own use, or wrongfully deprived the plaintiff, of the use and possession of the plaintiff's goods." For the appropriation may be to

another's use, as by an agent for the benefit of his principal, or by a servant for his master; so the consumption of the goods may not be accomplished by the defendant himself, but by a third party, as where the defendant gives another's wine to his own friend, who drinks it: *Hiort* v. *Bott*, L. R. 9 Exch. 86. Yet, on the other hand, there are limitations, for it is considered that it must appear that the plaintiff's dominion over his property has been interfered with not in a particular way, but altogether; that he has been entirely deprived of the use of it: *England* v. *Cowley*, L. R., 8 Exch. 126.

Roll of Convertible Property.—Convertible property, therefore, involving the idea of property subject to conversion, and recoverable in specie or money equivalent by the remedies for such tort, has come to have a much wider range than it embraced in the days when the fiction of finding was the basis of trover, or replevin was the remedy merely for a wrongful distress. It is this expansion of the phrase, in its application to various objects, which now demands attention, indicative as it is of modern phases of legal development.

The designation now embraces every species of personal property, be it animate or inanimate, tangible or intangible. Conversion is co-extensive in this respect with trespass upon personalty, and likewise attaches its remedial efficacy to whatever, of a movable nature, is capable of ownership as property. Hence, the roll of convertible property embraces tame animals, whether domestic, like the dog (*Cummings* v. *Perham*, 1 Metc. (Mass.) 555; *Binstead* v. *Buck*, 2 W. Bla. 1117), or domesticated, as wild geese may be: *Amory* v. *Flyn*, 10 Johns. 102; and wild animals, while in the charge of a keeper, or under his control, or when captured by the pursuing hunter. Thus trover lies for a whale which has been killed and anchored with marks of appropriation by the captors: *Taber* v. *Jenny*, Sprague 315; and for oysters which are planted so as to show private ownership: *Shepard* v. *Leverson*, 1 N. J. L. 284. In the vegetable world, the list includes wild berries picked by trespassers (*Feeman* v. *Underwood*, 66 Me. 229), and turpentine run into boxes that were cut into trees: *Branch* v. *Morrison*, 5 Jones Law (N. C.) 16. Among minerals, the catalogue has not even been confined to those of terrestrial origin, but replevin has recently been brought for an ærolite in a museum. Nor is it requisite that the chattel be of a corporeal character.

Conversion is maintainable not only for a gold piece of private issue (*Chapman* v. *Cole*, 12 Gray 141), and coin in a bag (*Griffith* v. *Bogardus*, 14 Cal. 410; *Skidmore* v. *Taylor*, 29 Id. 619), but also for promissory notes (*Pierce* v. *Gilson*, 9 Vt. 216), and other negotiable securities (*Comparet* v. *Burr*, 5 Blackf. 419), certificates of stock (*Anderson* v. *Nicholas*, 28 N. Y. 600; *Atkins* v. *Gamble*, 42 Cal. 98), and, as it is held, even for the shares themselves: *Ayres* v. *French*, 41 Conn. 142; *Boylan* v. *Huguet*, 8 Nev. 345; *Kuhn* v. *McAllister*, 1 Utah 275; *Paine* v. *Elliott*, 5 Pac. C. L. J. 155—*Contra*, *Neiler* v. *Kelley*, 69 Penn. St. 407. So it lies for property not figuring in commercial transactions, as process of court (*Keeler* v. *Fassett*, 21 Vt. 539), and every sort of valuable or important paper. Yet, curious as it may seem, it has been found necessary to rule that replevin does not lie for a coffin and its contents, when those contents consist of a corpse, in which there can be no property: *Guthrie* v. *Weaver*, 1 Mo. App. 136. The court said that when a coffin has been, with the consent of all persons having any pecuniary interest in it, deposited in the earth for the purpose of interment, with a corpse enclosed within it, it is no longer an article of merchandise, the title to which can be settled in a contest of the husband of deceased with her father over the disinterment of the remains.

Objects severed from the Freehold.—It is familiar elementary doctrine, however, that conversion can be predicated only of personal property. It cannot be maintained for real estate, or for anything forming a part of the realty, so long as it is connected therewith: 6 Wait's Actions and Defences 158. But when anything that is annexed to the freehold, as growing crops, trees, buildings, machinery or other fixtures, are severed therefrom, they become personal property; and from that time action lies for their conversion (6 Wait's Actions and Defences 162), for the severance, while it alters the character of the property, does not change the title: *Riley* v. *Boston W. P. Co.*, 11 Cush. 11; *Halleck* v *Mixer*, 16 Cal. 574.

Timber Trees and Growing Crops.—Products of the Soil.—The doctrine is clearly applicable to the products of the soil. Thus standing trees or timber belong to the realty, but when cut down they become personalty, and one who thereupon carries them away without authority is liable for conversion to the owner of the

realty, or his representative: *Whidden* v. *Seelye*, 40 Me. 247; *Sampson* v. *Hammond*, 4 Cal. 184. See also *Moores* v. *Wait*, 3 Wend. 104. The same rule prevails with growing crops, and hence conversion is maintainable for cutting and carrying away corn and stalks standing and growing: *Nelson* v. *Burt*, 15 Mass. 204.

Portion of Freehold.—Earth.—Nor does it alter the doctrine if the severance be of a portion of the freehold itself. Hence severed earth is the subject of conversion, for which trover will lie. This was held in *Riley* v. *The Boston Water Power Company*, 11 Cush. 11, which was trover for three hundred and ninety-four squares of dirt, sand and gravel, severed by trespassers upon the land, and bought by some of the defendants, at whose direction it was tipped up at the filling ground which they were improving under a contract with the other defendant, the Water Power Company. The court aptly said: "It is certainly true that for an injury to his real estate the party cannot maintain trover. That form of action is appropriate exclusively to the recovery of damages for the unlawful conversion of personal property. But this being granted, the further inquiry is, whether the three hundred and ninety-four squares of earth severed from the land of the plaintiff and removed from the same and sold to the defendants and used by them, was, at the time of such purchase by the defendants and use of the same, still a part of the realty and retained unchanged its character as such, or whether by the act of separation in fact, and a removal of the earth to a distant place, it has not changed the character of the earth so removed to that of personal property. It seems to us that it is very well settled, that whatever is severed from the land—as in the familiar case of standing timber trees—if such trees, being a part of the realty, are cut down, they cease to be real estate and become personal. But this transmutation, while it changes the character of the property in this respect, does not change its ownership. It would not do so if cut down by the owner of the land, and not any more so by being cut down by a person entering unlawfully upon the land and making the severance. It is the actual severance that changes the property from real to personal, and that irrespective of its being done with or without the consent of the owner of the land. And in this respect we see no distinc-

tion between removing living trees, deriving their nourishment from the earth, and the removal of a portion of the earth itself."

Similarly it has been held that trover is maintainable for a stone split out from a rock in a farm. It had been detached by plaintiff from its original situation on the ledge, and laid up preparatory to its removal for use in the construction of a tomb. Plaintiff having sold the farm, the stone lay there for over thirty-two years: then defendant bought the property of the first purchaser, and moved off the stone to his own premises, a conversion for which he was held responsible after such a great lapse of time: *Noble* v. *Merrick*, 42 Vt. 146.

Ore.—Upon the same principle trover is maintainable for minerals severed from the soil, as coal mined and carried away through mistake in going beyond the boundary line (*Forsyth* v. *Wells*, 41 Penn. St. 291. For measure of damages, see Blanchard & Weeks L. C. on Mines 633); or tin-ore carted off in sand or gravel thrown up from the pits: *Northam* v. *Bowden*, 11 Exch. 70.

Ice.—It is upon a like basis that ice may be the subject of conversion. When originally formed, it is a part of the realty, and according to the prevailing opinion, belongs to the owner of the soil whereon the body of water is situated: *Mill River Co* v. *Smith*, 34 Conn. 462; *State* v. *Pottemeyer*, 33 Ind. 402; *Paine* v. *Woods*, 108 Mass. 173. But when cut and taken from a pond or stream, as for purposes of merchandise (1 Schouler Pers. Property 86), the ice becomes a chattel personal, and is the subject of conversion. In the recent case of *Higgins* v. *Kusterer*, 41 Mich. 318, it has been maintained that even before cutting, ice could be sold where formed, as personalty. This view may be justified under the doctrine of constructive severance, which is applied to growing timber (1 Schouler Pers. Prop. 124), and in fact generally to fruit trees, crops, &c. (Id. 84, 125), as when these are sold separately from the realty, with the intention that they shall be speedily removed. But the court seems to have gone further than the facts of the case, which received attention out of all proportion to its pecuniary importance, required, and reasoned from the ephemeral character of the ice in controversy that such was the general rule; whereas it is only upon the theory of constructive severance that it could be said that any sale of ice

ready formed, as a distinct commodity, whether in or out of the water at the time, is a sale of personalty.

That ice is convertible property, in the original sense of the term, appears to be maintained in another recent case. In *Aschermann* v. *Philip Best Brewing Co.*, 45 Wis. 262, defendant took possession under a chattel-mortgage he held, of a building containing a beer-room and an ice-room connected by slides, plaintiffs failing, after notice, to remove their ice, defendant opened the slides between the two rooms, and allowed a current of air to pass over the ice and into the beer-room, cooling the beer and causing a more rapid melting of the ice than would otherwise have occurred. The court held the defendant responsible for conversion, because the ice was destroyed as effectually, if not so rapidly, as it would have been had the defendant taken the same quantity from the ice-house in midsummer and exposed it a sufficient time to the rays of the sun.

Natural Accessions—Manure.—As with portions of the freehold, so with natural accessions to the soil, as manure. The general rule appears to be that manure made in the course of husbandry, upon a farm, is a part of the realty (*Middlebrook* v. *Corwin*, 15 Wend. 169; *Daniels* v. *Pond*, 21 Pick. 367), and this has been maintained, in determining the liability of an administratrix, of manure taken from the barnyard of the homestead, and standing in a pile on the land, although not broken up nor rotten, nor in a fit state for incorporation with the soil: *Fay* v. *Muzzey*, 13 Gray 53. On the other hand, the character of personal property attaches to manure made in a livery stable, or in any manner not connected with agriculture, or not in a course of husbandry (*Daniels* v. *Pond*, 21 Pick. 372), and this has been applied to manure from a hotel stable, though afterwards spread upon the land in the usual course of husbandry: *Fay* v. *Muzzey*, *supra*. Of course in such cases, it is as much the subject of conversion as other personalty. So it has been held, that manure lying upon the earth but not incorporated with the soil, is personal property, and that, therefore, trover lies for its removal (*Pinkham* v. *Gear*, 3 N. H. 484), and is even maintainable by one who raked it into heaps where it had accumulated in the street: *Haslem* v. *Lockwood*, 37 Conn. 500. Where, however, manure is part of the realty, the effect of severance is as heretofore illustrated; hence trover lies for manure that is severed from the freehold, as from a

farm, and carried to other premises: *Stone* v. *Proctor*, 2 Chip. (Vt.) 108.

Artificial Annexations—Buildings.—The doctrine which applies to the severance of portions of the soil, and of vegetation growing thereon, and of natural accessions thereto, is equally applicable to objects artificially annexed to the freehold, however ponderous or bulky, Thus buildings, such as dwelling-houses and similar structures, are *prima facie* real estate: Wells on Replevin 43; *Chatterton* v. *Saul*, 16 Ill. 149; *Goff* v. *O'Conner*, Id. 421; *Meyers* v. *Schemp*, 67 Id. 471; *Smith* v. *Benson*, 1 Hill (N. Y.) 176; *Madigan* v. *McCarthy*, 108 Mass. 377; *Dame* v. *Dame*, 38 N. H. 432. But a building may become personal property with the consent of the owner of the land, express or implied: *Smith* v. *Benson*, *supra*; *Fuller* v. *Tabor*, 39 Me. 519; *Dame* v. *Dame*, 38 N. H. 429; *D. T. of Corwin* v. *Moorehead*, 43 Iowa 466; *Harris* v. *Powers*, 57 Ala. 139; Wells on Replevin 43. See *Gibbs* v. *Estey*, 15 Gray 587; *Dolliver* v. *Ela*, 128 Mass. 557. So it may be regarded as personal property on account of the action of the defendant in treating it as such, which estops him from claiming otherwise: *Davis* v. *Taylor*, 41 Ill. 407.

Again, the difference may depend on the question of attachment to the ground. Thus the general tendency seems to be to regard buildings as real property if erected on a foundation (*Madigan* v. *McCarthy*, 108 Mass. 376) excavated in the soil, or even if set on stone piers (*Landon* v. *Platt*, 34 Conn. 517), and annexed to the land; but to treat a building as personal property if not affixed to the soil (*Tyler* v. *Decker*, 10 Cal. 435), as where it is set on wooden blocks resting on the surface of the earth (*Hinckley* v. *Baxter*, 13 Allen 139; *Pennybacker* v. *McDougal*, 48 Cal. 162; *Mills* v. *Redick*, 1 Neb. 437; but see *Huebschmann* v. *McHenry*, 29 Wis. 655; *Ogden* v. *Stock*, 34 Ill. 522; *Salter* v. *Sample*, 71 Id. 430); without any underpinning: *Pullen* v. *Bell*, 40 Me. 314; *Hinckley* v. *Baxter*, 13 Allen 139.

Of course, whenever a building is personal property it is the subject of conversion, and the owner of the land is liable if he resists its removal by the builder, or otherwise converts it to his own use: *Davis* v. *Taylor*, 41 Ill. 405; *Dame* v. *Dame*, 38 N. H. 429; *Harris* v. *Powers*, 57 Ala. 139. But even where a building is real property, but has been severed from the land, it

thereby becomes personalty, and action lies for its conversion: as where it is removed by a party (*Ogden* v. *Stock*, 34 Ill. 522), after an ejectment suit has been decided against him (*Huebschmann* v. *McHenry*, 29 Wis. 655), or carried away by a flood, and floated off into the street: *Buckout* v. *Swift*, 27 Cal. 433.

Perhaps the best summary of the doctrine governing this species of convertible property, so far as concerns the effect of agreement, is conveyed in an opinion given in the case of a dispute over a school-house erected by a town on land which turned out to belong to the adjacent parish: *First Parish in Sudbury* v. *Jones*, 8 Cush. 184, per BIGELOW, J. "The term 'land,'" it was there said, "legally includes all houses and buildings standing thereon. Whatever is affixed to the realty is thereby made parcel thereof, and belongs to the owner of the soil. * * * Things personal in their nature, but prepared and intended to be used with real estate, having been fixed to the realty and used with it, become part of the land by accession, pass with it, and belong to the owner of the land. * * * It follows, that where there is no agreement to change the legal rights of the parties, materials, when used for building a house, become part of the freehold, and cannot be reclaimed by their original owner after annexation to the realty, as against the owner of the land to which they have been affixed. Buildings erected on land of another voluntarily and without any contract with the owner, become part of the real estate, and belong to the owner of the soil:' *Washburn* v. *Sproat*, 16 Mass. 449; *Leland* v. *Gassett*, 17 Vt. 403; *Peirce* v. *Goddard*, 22 Pick. 559. An exception is admitted to this general rule, where there is an agreement express or implied, between the owner of the real estate and the proprietor of materials and buildings, that when annexed to the realty, they shall not become parts of it, but shall still remain the property of the person annexing them. In such case the law gives effect to the agreement of the parties, and personal property, though affixed to the realty, retains its original characteristics and belongs to the original owner.

"Within this exception are included not only cases where there is an express agreement between the parties, that personal property shall not become real estate by annexation to the soil, but also that large class of cases which arise between landlord and tenant, in which by agreement either express, or implied from usage or otherwise, the tenant is allowed to retain as his own pro-

perty, if reasonably removed, fixtures erected by him for purposes of trade, ornament or ordinary use, upon leasehold premises during his tenancy."

Fixtures.—We are thus naturally brought to the consideration of fixtures, which are not only the fit subject of separate treatises, but even in their connection with conversion would require special treatment.[1] The law as between lessor and lessee having just been stated, though in a general way, a single case of recent date will suffice to illustrate the nature of the questions which arise where no such relation exists. Thus, in *Morrison* v. *Berry*, 42 Mich. 389, the refusal of the owner of the freehold to allow the removal of apparatus for supplying gas, in the nature of a fixture, placed thereon without his consent by a third person, was held not a conversion of personal property. A manufacturer of gas machines, under a contract with the husband, placed such machine on the land of the wife; and it was considered that even assuming that the contract could be rescinded for fraud, as to the husband, the wife, not being a party thereto in any way, would not be liable in trover for refusal to surrender the property. The court says: "It is also elementary doctrine that a person who makes improvements on the land of another, where the landowner has not been in fault about it, does so at the risk of losing both his property and his labor. * * * It is not a question here whether articles of ambiguous character, not intended for permanent annexation, have become a part of the freehold. Here the intention was explicit and not open to any controversy. The case in no way differs from a contract to build a house on the lot, or to make repairs on it. The equities would be as strong in the one case as in the other, and the law is identical in both cases. The amount of injury to the freehold which would be caused by the removal is not the question. If it is a part of the freehold it cannot be taken away. The removal of locks from doors, or doors from their hinges, or windows from their frames, or fences or gates from the ground, may generally be made without doing any serious harm to the rest of the building beyond the inconvenience of doing without them, but no one has ever supposed they could be so removed without taking away what is a part of the freehold.

[1] For a collection of cases where trover was brought for fixtures, see 6 Wait's Actions and Defences 158–162.

* * * A refusal to allow the removal of what has become, by the act and intervention of the demandant, a part of the freehold, cannot * * * be treated as a conversion of personal property."

Judge COOLEY'S dissenting opinion, fully presenting the opposite view, was to this effect: "There is no pretence that the wife has dealt with her husband in any capacity in respect to the articles in controversy. He was not her agent in buying them, nor her vendor. It would be different if she had purchased them in good faith, without knowledge of his fraud. But she has bought nothing; she has simply been quiescent while her husband has been making these improvements upon her premises. Neither was it claimed that the machine, pipe and fixtures could not be removed without injury to the premises. The case, then, is this: the plaintiffs parted with their goods under circumstances which entitle them to rescind the sale and recover them back or their value. The fraudulent purchaser of the goods has affixed them to the realty of a third person, but under such circumstances that had the realty been his, he could not have retained them. The third person, without a shadow of equity, now seeks to retain them on the purely technical ground that by being affixed to her realty, their legal nature has been changed, and they have become an inseparable part of her own property. But according to *Adams* v. *Lee*, 31 Mich. 441, unity of title in the freehold, and in that which is annexed to it, is essential in order that the latter may become a part of the realty. It is not pretended that there was any such unity of title here, unless the annexation itself brought it about. The old notion that physical annexation should have this extraordinary effect, was said, in *Meigs's Appeal*, 62 Penn. St. 28, to be exploded, and that the question of fixture or no fixture must depend upon the intention of the parties. 'There is,' says the chief justice, in *Wheeler* v. *Bedell*, 40 Mich. 693, 696, 'no universal test whereby the character of what is claimed to be a fixture can be determined in the abstract. Neither the mode of annexation nor the manner of use is in all cases conclusive. It must usually depend on the express or implied understanding of the parties concerned.' But who are the parties whose consent or understanding must control? Surely if one having the movable thing of another in his possession, annexes it without the consent of the owner to the real estate of a third party, it would not thereupon, and by force of that act alone,

become the property of the third party: *Cochran* v. *Flint*, 57 N. H. 514, 547. One man cannot give away the property of another in this manner. The consent of parties that shall convert a chattel into an inseparable part of the realty, is the consent of the parties owning the chattel and the realty respectively."

These conflicting views have been cited at length, because fairly representative of the doubts which encumber this topic. It may be clarifying, however, to analyze the elements of controversy in such cases. The first question to be settled is this: Is the article, on account of actual or constructive annexation, an inseparable part of the realty, or is it removable by the party who placed it there? The answer belongs to the domain of fixtures. Its only relation to the department of conversion is the effect on the title. If the article has not changed its personal nature, it may be emoved by the one who placed it on the land, without his incurring any liability therefor; and conversely, should the owner of the realty prevent its removal, he is responsible for such conversion. If the article has become, however, an inseparable part of the realty, in the legal sense, the landowner is entirely free from liability for preventing its removal, and if the one who placed it there severs it from the freehold, and thus makes it personalty again, conversion is maintainable against him.

Telegraph Poles.—The matter has, in a recent instance of the severance of telegraph poles, been differently regarded, where the controversy was not between the owner of the realty and the annexer of the chattels, but between the latter and a trespasser who severed and removed the articles in dispute, and was sued in conversion therefor. This suit of the *American Union Telegraph Co.* v. *Middleton*, 80 N. Y 408, was brought to recover damages for wrongfully and maliciously cutting down, and unlawfully carrying away and converting twenty-three telegraph poles, wires and insulators attached thereto, located in the state of New Jersey, and forming part of a continuous line of telegraph in operation in that state. The question was really whether the defendant should be discharged from arrest, but the court, in deciding this affirmatively, maintained that conversion was not the proper form of action; that the telegraph poles and appurtenances were affixed to the soil, and constituted a part of the freehold; and that as they could not be cut down without an entry on the realty, and this constitutes a material part of the damages, the only action which

can properly be brought is trespass *quare clausum fregit.* The objection that the tortious acts were committed upon the highway, where the defendant had a right to be, and hence there could be no trespass on the close, is met by reiterating that the plaintiffs had affixed their poles to the realty, and the cutting away of the same was a trespass remediable only in the manner already pointed out. To the further objection that the gravamen of the complaint was for carrying away and converting the poles which were severed, and were personal property after the cutting, even if they were a part of the realty previously, this answer was made: "It is quite obvious that the cutting of the poles and the removal of them was one continuous and uninterrupted transaction, inseparably connected together, and constituted a single cause of action which cannot be divided into two actions—one for the cutting and another for the conversion. The one was a part of the other, and the conversion so coupled with the cutting that they were the same." If the suit were brought by the owner of the realty, the position of the court on this point would hardly be in accordance with the general view, which has been thus pithily expressed: "In very strict form, trespass is the proper remedy for a wrongful taking of personal property, and for cutting timber, or quarrying stone, or digging coal on another man's land, and carrying it away; and yet the trespass may be waived and trover brought, without giving up any claim for any outrage or violence in the act of taking. * * * When the taking and conversion are one act, or one continued series of acts, trespass is the more obvious and proper remedy. But the law allows the waiver of the taking, so that the party may sue in trover."

The decision was further justified on the final ground that the conversion itself was not established. "The defendant," it was said, "only carried the poles and wires from the place in the highway where they were cut, to the ditches and side fences of the road, and left them there, or placed them on the side fences by the roadside. There was no assumption of possession, no attempt to exercise control or to convert to his own use. * * * The mere act of removal, of itself, independent of any claim over them in favor of the defendant or any one else, does not amount to the conversion of the poles, wires and insulators."

Annexation by Trespasser or Converter.—In the case of the gas machine or the telegraph poles, it will be noted that the ques-

tion has touched the right or effect of severance, where the chattel was annexed to the land of a stranger by the owner or party having the right to the immediate possession of the chattel. But suppose a party lacking such right, annex an article of personal property to his own land, is he liable for conversion? Has the article become an inseparable part of the realty, in title as well as character, or is the conversion into real estate in nowise different from transformation into a different species of personal property? The latter would seem to be the more reasonable construction, and it has accordingly been held that, trover lies in such cases, even against a subsequent purchaser of the land: *St. Louis, &c., Railroad Co.* v. *Kaulbrumer*, 59 Ill. 152; *Ogden* v. *Lucas*, 48 Id. 492. It has properly been held, however, that replevin will not lie in such cases, for the same reason that it is not maintainable in any other case where the separate identity of an article can no longer be ascertained: *Ricketts* v. *Darrel*, 55 Ind. 470. The action was against one who had wrongfully removed fence rails and stakes and used them in the construction of a fence upon his real estate. The court admitted that "when a tree is converted into rails, it may be replevied; and when timber is wrongfully cut and converted into coal, the coal may be replevied. When an article is made personal property by being severed from the realty to which it first belonged, it may be replevied as long as its separate identity can be ascertained, whatever shape it may take; but when an article of personal property, though wrongfully taken, has become real estate by being attached to the realty, it cannot be replevied, because it has lost its separate identity and its character as personal property." This was illustrated by the statement that if a person wrongfully took and detained shingles, and nailed them upon his roof, or bricks, and laid them in a mill, replevin ought not to be maintainable, though the owner's rights were greatly outraged, for other remedies will afford redress. Hence it was concluded that in this case the rails could not be replevied, because they have lost their separate identity, and could not be delivered without detaching them from the realty, of which they have become a part.

Re-annexation.—Of course the same rules would govern where the article is first severed from the realty of another, and then re-annexed to his own soil by the trespasser; and this has been so held in the case of buildings (*Huebschmann* v. *McHenry*, 29 Wis.

655), although the general principle is recognised, that a building while in transit from one lot to another is personalty, but when re-affixed again becomes realty: *Salter* v. *Sample*, 71 Ill. 430; *Northup* v. *Trask*, 39 Wis. 515. Yet, the case would naturally be different if the owner of the realty was sued in conversion, for permitting the equitable owner of a building to affix it to his soil: *Northup* v. *Trask*, *supra*.

Subsequent Purchasers.—Furthermore, whether the chattel has been annexed or re-annexed to the realty by a trespasser or converter, a *bona fide* purchaser of the realty seems to be regarded as not liable in conversion: *Peirce* v. *Goddard*, 22 Pick. 559; *Fryatt* v. *Sullivan Co.*, 5 Hill 116; affirmed, 7 Hill 529; *Dolliver* v. *Ela*, 128 Mass. 557. But see *Ogden* v. *Lucas*, 48 Ill. 492; *St. Louis, &c., Railroad Co.* v. *Kaulbrumer*, 59 Ill. 152. It is even said: "A man cannot maintain an action against me, by proving that the person from whom I purchased my house, wrongfully took or converted the brick, stone, timber, lime or other materials of which my house was constructed. Nor can he enter and tear down my house, for the purpose of regaining that portion of it which once belonged to him. His only remedy is against the wrongdoer." This is certainly true, so far as replevin against the purchaser of realty is concerned. That the same principle applies where trover is brought, is illustrated by the late case of the *Detroit & Bay City Railway Co.* v. *Busch*, 43 Mich. 571. There, ties were taken by one who was a sub-contractor for building a railroad, and were used by him in the construction of the road. The sub-contractor put them here and there among the other ties used in forming the super-structure of the railway, spiking rails to them in the usual manner. The road was not delivered up to the company complete and ballasted, until four or five months after, though used somewhat earlier. It was held, that the owner of the ties, after waiting until they had become realty, could not bring trover against the railroad company as for their conversion; that the only conversion took place before the company had any control over the property; that receiving it as realty, a subsequent neglect or refusal to detach it, could not be regarded as a conversion; and that plaintiff had his remedy against the contractors, for the only conversion that ever took place. It will thus be seen, that in these cases a different rule prevails from that which governs personalty; for a *bona fide* purchaser of a chattel from a trespasser