forbids an action for a nuisance like that here except by the occupier, *Mumford* v. *The Oxford, Worcester & Wolverhampton Railway Company*, 1 H. & N. 34; *Simpson* v. *Savage*, 1 C. B. N. S. 347; is a rule of this court: The judgments in *Wilson* v. *Townsend*, 1 Drewry & Sm. 324; *Cleve* v. *Mahany*, 9 Weekly Rep. 882; *Jackson* v. *Duke of Newcastle*, 10 Jur. N. S. 688; and *Goldsmid* v. *The Tunbridge Wells Improvement Commissioners*, 1 Law Rep. App. 354; contain some observations the other way.

As to the sparks, the defendant has given evidence to shew that a screen, which he has put on the top of the pipe since the commencement of the suit has removed this cause of complaint. It is sworn that the screen is amongst the closest made, and closer than are generally made for this purpose, Sparks do still pass through, but not to the same extent as before, and there is no evidence that it would be possible by any contrivance to prevent them to a greater degree than the defendant has now done. No case was cited which would justify me in holding it a nuisance to make use of machinery driven by steam in this part of the town; and if a certain amount of danger to the houses in the neighbourhood is the necessary consequence, it seems to be a consequence which, as owners of town property, they must accept, subject to any right they may happen to have to damages at law in case of actual loss. The case is not the same as a corning-house to powder mills, as in *Crowder* v. *Tinkler*, 19 Ves. 619; which was cited by the learned counsel for the plaintiff in support of this branch of his case.

The claim of the bill founded on the noise by the engine, was not much pressed. The noise is less since the completion of the defendant's building than it was previously; and, on the whole evidence, does not appear to be such now as to interfere sensibly with the comfort of persons in average health living in the plaintiffs' houses. *Vide Soltau* v. *DeHeld*, 2 Sim. N. S. 133; *Scott* v. *Frith*, 10 Law T. N. S. 240; *Attorney-General* v. *The Sheffield Gas Consummers' Co.*, 3 DeG. McN. & G. 337; *White* v. *Cohen*. 1 Drew. 318.

My opinion on the whole case is, that the defendant has a right to use steam for propelling his machinery, but is bound to employ such reasonable precautions in the use of it as may prevent unnecessary danger to his neighbour's property from sparks, and unnecessary annoyance or injury to them from the noise or smoke; that though he seems, since the bill was filed, to have performed this duty as respects the sparks and noise, he has done nothing in respect to the smoke; and that the plaintiffs' complaint in reference thereto is well founded. The decree will therefore require the defendant to desist from using his steam engine in such manner as to occasion damage or annoyance to the plaintiffs, or either of them, as owning or occupying the houses mentioned in the bill. *Walter* v. *Selfe*, 4 DeG. & Sm. 321.

The defendant must pay the costs.

CHANCERY CHAMBERS.

(*Reported by* Richard Grahame, Esq., *Barrister-at-Law*)

Bowman v. Fox.

Vesting order—Sale under decree.

Where under a decree for sale the plaintiff becomes the purchaser of the property, the Court will not grant a vesting order in his favour.

[Chambers, September, 1866.]

This was an application for a vesting order on behalf of the plaintiff, who had purchased the lands and premises at the sale in the cause. No objection was made by the defendant to the application.

Mowat, V. C., refused the application, on the ground that as the Court could not compel the execution of a conveyance by the defendant to the plaintiff, it could not issue any order in his favour, which would have the same effect as a conveyance.

In Re Kerr.

Solicitor's Bill—Taxation of—Costs of Taxation.

[Chambers, September 27, 1866.]

In this case an order had been obtained by the solicitor for the taxation of his bill against a client. The client did not attend upon the taxation, and in consequence thereof the Master refused to allow the solicitor the costs of the taxation.

W. H. C. Kerr now applied for an order for the allowance of these costs.

The Judge's Secretary.—The Court has no power to give the solicitor his costs of taxation where the client has not taken out an order for the taxation, and where he did not attend the taxation upon an order taken out by the solicitor.

Bank of Montreal v. Power.

Amendment of Bill.

Quære.—Whether a bill can be amended after decree. It cannot be amended on an application *ex parte*.

[Chambers, September 27, 1866.]

Holmsted applied on petition *ex parte* for leave to amend after decree by correcting a description of the mortgaged premises

The Judges' Secretary.—The application cannot be granted *ex parte*, and *quære* whether a bill can be amended at all after decree. In *Barrett* v. *Gardner*, Chan. Cham Rep. 344, the Chancellor refused leave to amend, whilst in *Spafford* v. *Fry*, V. C. Spragge granted it. Under the circumstances the application must be refused. The petitioner had better file a new bill.

Edwards v. Bailey.

Master's Report—Silence of as to reference directed.

[Chambers, October 1, 1866.]

In this case a reference was directed to the accountant to enquire whether a sale or a foreclosure would be for the benefit of the infant defendant. By his report made under this decree, the accountant did not certify specially as to this reference, but the accounts were taken, and those of the incumbrancers who had proved