

It has been held that where a corporation has ample power to remove a nuisance which is injurious to the health, endangers the safety or impairs the convenience of its citizens, it is liable for all the injuries that result from a failure on its part to properly exercise the power possessed by it: *Wood on Nuisances*, 2nd ed., s. 749; *Baltimore v. Marriott*, 9 Md. 160; *Flynn v. Canton Co. of Baltimore*, 40 Md. 312, 17 Am. Rep. 603; *Taylor v. Cumberland*, 64 Md. 68, 54 Am. Rep. 759.

*Hagerstown v. Klots*, 54 L.R.A. 940, goes perhaps farther than any other case in asserting the doctrine that a by-law prohibiting nuisances on public streets must not be allowed to become a dead letter but must be vigorously enforced, and that municipal corporations must take ordinary care and diligence to protect the public and prevent nuisances dangerous to the public has also the support of *Cochrane v. Frostburg*, 27 L.R.A. 728; *Spier v. Brooklyn*, 21 L.R.A. 641, and *Forget v. City of Montreal*, Mont. L.R. 4 Sup. Ct. 77. And an unlawful use of a street subjects the corporation to an action for damages: *Porterfield v. Bond*, 38 Fed. R. 391; *Elliott on Roads and Streets*, 267 and 677 and cases there cited; *Wood on Nuisances*, p. 749.

According to this theory we might go a step farther and contend that the existence of a prohibitory ordinance is not a condition precedent to a right of action wherein it would seem to differ from the principles necessarily applicable to non-enforcement cases not considered from a nuisance point of view.

The gist of the action is the permitting of the nuisance, not the failure to enforce the ordinance or by-law; but the municipality must do some corporate act to abate the nuisance, and the passing of the ordinance is the first corporate step in the means. It could hardly be contended that an isolated infraction of the ordinance would constitute a nuisance, but the act complained of to constitute such must be continuous or frequent, openly committed and allowed to continue without any effort on the part of the municipality to abate it.

These are merely some detached ideas which may be useful as furnishing food for thought even if too advanced or visionary to be safely followed in view of the great weight of authority to the contrary.

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