

to restrain the breach of a restrictive covenant against carrying on certain specified trades, or doing any act "which shall, or may be, or grow to the annoyance, nuisance, grievance or damage of the lessor, his heirs or assigns, or the inhabitants of the neighboring or adjoining houses." The alleged breach of this covenant consisted in the defendant having established a hospital on the land for treatment of outdoor patients suffering from diseases of the throat, nose, skin and eye, fistula and other diseases. The right of the plaintiffs to an injunction was resisted on the ground that the hospital was not an actionable nuisance, but both Kekewich, J., and the Court of Appeal (Cotton, Lindley & Bowen, L.JJ.) were of opinion that it was not a question whether a nuisance had been committed, but whether what was complained of was a breach of the covenant, and they held that without proof of any actual damage the plaintiffs were entitled to an injunction as asked; as Bowen, L.J., says at p. 98: "Annoyance is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but the ordinary sensible English inhabitant of a house—if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance, although it may not appear to amount to physical detriment to comfort." Here the fact of the existence of the hospital being the means of bringing a number of people into the neighborhood suffering from diseases of the eyes, etc., etc., was held to be a reasonable ground for apprehension that there was danger of spreading infectious or contagious diseases in the neighborhood.

RAILWAY COMPANY—ARBITRATION—JURISDICTION—WAIVER.

In *London, Chatham & Dover Railway Co. v. Southeastern Railway Co.*, 40 Chy. D. 10, the Court of Appeal (Cotton, Lindley & Bowen, L.JJ.), held, that though when parties have agreed to refer disputes arising between them to arbitration, the Courts are bound to give effect to the agreement if either party insist on it; yet that if neither of them do insist on it, the jurisdiction of the Court is not ousted by the existence of such an agreement; and therefore when a defendant had by his pleadings set up the agreement and his right to arbitration, but at the trial failed to raise the point, and went into evidence on the merits, it was held that the point could not afterwards be raised in the Court of Appeal.

BOND—CONDITION IN RESTRAINT OF TRADE—SPECIFIC PERFORMANCE—INJUNCTION—PENALTY—LIQUIDATED DAMAGES.

*National Provincial Bank of England v. Marshall*, 40 Chy. D. 112, was an action on a bond executed by the defendant in the general sum of £1000 on entering the plaintiffs' service as bankers, conditioned that it should be void if the defendant should perform his duty as therein mentioned, and also if he should pay to the plaintiffs £1000 as liquidated damages in case he should at any time within two years after his leaving the plaintiffs' service accept any employment in any other bank within twenty miles of the plaintiffs' bank. The defendant resigned his employment and immediately entered the service of a rival bank in