244; *Curriers' Co.* v. *Corbett*, 11 Jur. N. S. 719; *Rich* v. *Basterfield*, 4 C. B. 805; *Rex* v. *White*, 1 Burr. 333.

The statement of the law which I have just quoted accords entirely with what was laid down in the late case of *St. Helen's Smelting Co.* (Limited) v. *Tipping*, 11 Jur. N. S. 785, which went up to the House of Lords: "A man may not use his own property so as to injure his neighbour. When he sends on the property of his neighbour noxious smells, smokes, &c., then he is not doing an act on his own property only, but he is doing an act on his neighbour's property also; because every man, by common law, has a right to the pure air, and to have no noxious smells or smoke sent on his land, unless, by a period of time, a man has, by what is called a prescriptive right, obtained the power of throwing a burden on his neighbour's property .....When great works have been created and carried on—works which are the means of developing the national wealth—you must not stand on extreme rights.....Business could not go on if that were so. Everything must be looked at from a reasonable point of view; therefore the law does not regard trifling and small inconveniences—injuries which sensibly diminish the comfort, enjoyment or value of the property which is affected." This was the language of Mr. Justice Mellor, and was held to be correct both by the other judges in answer to a question submitted to them in the House of Lords, and by the noble lords who took part in disposing of the appeal. Lord Chancellor Westbury said in his judgment: "If a man lives in a town, of necessity he must submit himself to the consequence of those obligations of trade which may be carried on in his immediate locality which are actually necessary for trade and commerce, also for the enjoyment of property, and for the benefit of the inhabitants of the town, and of the public at large." Here, the fault of the defendant's case is, it does not appear that the sending these clouds of smoke into his neighbours' houses is necessary at all, or that the defendant has taken any means to avoid it.

Lord Cranworth mentioned his charge, in a case he had tried while a Baron of the Exchequer, as an accurate statement of the law. The action, his lordship said, "was for smoke in the town of Shields. It was proved incontestably that smoke did come, and in some degree interfered with a certain person, but I said, 'You must look at it, with a view to the question whether, abstractedly, that quantity of smoke was a nuisance, but whether it was a nuisance to the person living in the town of Shields;' because if it only added in an infinitesimal degree to the quantity of the smoke, I thought that the state of the town rendered it altogether impossible to call that a nuisance."

This was a case at law, but the rule in equity is the same *Beardmore* v. *Tredwell*, 3 Giff. 699; was a bill to restrain a nuisance; and in the course of his judgment the Vice-Chancellor observed: "Where a man is injuring his neighbour to a very material extent, in a way not absolutely necessary and unavoidable in order to enjoyment of his own fair private right, this court is always disposed to interfere." The learned judge afterwards quotes with approbation the following language of Mr. Justice Willes, *Hoe* v. *Barlow*, 4 C. B. N. S. 334; *Vide Cavey* v. *Lidbetter*, 9 Jur. N. S 798; *Wanstead Board of Health* v. *Hill*, 13 C. B. 479. "The common law right which every proprietor of a dwelling house has to have the air uncontaminated and unpolluted, is subject to this qualification; that necessities may answer for the interference with that right, *pro bono publico*, to this extent, that such interference being in respect of a matter essential to the business of life, and being conducted in a reasonable and proper manner, and in a reasonable and proper place." The Vice-Chancellor adds, "If there be another place where it may be conducted without injurious consequences, or with less injury according to law, the right of a person complaining to have his air uncontaminated and unpolluted would be clear."

These and other authorities shew that while the plaintiffs cannot insist upon the complete immunity from all interference which they might have in the country, the defendant cannot, on that ground, justify throwing into the air, in and around the plaintiffs' houses, any impurity which there are known means of guarding against. See *The Stockport Waterworks' Co.* v. *Potter*, 7 H & N. 160; *Barford* v. *Turley*, 3 B. & S. 62; *Tipping* v. *St. Helen's Smelting Co.*, 4 B. & S. 608.

It was proved, on behalf of the defendant, that there are other establishments of various kinds in the same part of the city from whose works more smoke is sent forth than from the defendant's mill; and, on the other hand, the plaintiffs have given evidence that the smoke from these establishments, though they have been many years in operation, never reached the plaintiffs' houses so as to cause any inconvenience to their occupants. I have no doubt it is from the defendant's engine that the smoke now complained of comes; but, had it been partly or chiefly from the others, the fact would have been no justification of additional injury on the part of the defendant.—See *Rex* v. *Neil*, 2 C. & Payne, 486; *Spokes* v. *Banbury Board of Health*, 1 Law Rep. Eq. 51; *Radenhurst* v. *Coate*, 7 Grant, 239; *Attorney-General* v. *Sheffield Gas Consummers' Co.*, 3 DeG. Mc. & G. 332; *Spokes* v. *Banbury Board of Health*, 1 App. Eq. 50; and *Turnbridge Wells Improvement Commissioners*, 1 Law Rep. Eq. 169.

The learned counsel for the defendant argued that there could be no injunction except at the suit of the occupier, and that the other plaintiff was improperly made a plaintiff in respect of the other plaintiff's residence, and that no relief could be had in respect of a nuisance of this kind affecting the houses they have rented to others. But if the defendant is restrained as respects Mr. Richard Cartwright's residence, this renders the question immaterial as to the other houses, for the discontinuance of the nuisance, as to the former, would involve its discontinuance as to the latter; and if the one plaintiff is improperly joined, this does not under the present practice disentitle the other to relief. I do not find, however, that the rule at law which