estate is due to the bank which protects it being properly maintained. Nor, as we think, can a man be heard to say that he is exempted from liability, and which a reasonable person would be bound to make.

The case of *Rex* v. *The Commissioners of Sewers of the County of Essex*, 1 B. & C. 477, where the duty of maintaining a sea-wall was cast on a proprietor by reason of frontage, seems to decide merely this, that where an owner of land in a level is bound to repair a sea-wall abutting on his land, the other owners in the same level cannot be called upon to contribute to the repairs of the wall, although it has been injured by an extraordinary tide and tempest, unless the damage has been sustained without the default of the party who was bound to repair. The case is shortly reported, at least shortly for such laborious reporters as Messrs. Barnewall and Cresswell, and does not appear to us to do much more than explain the circumstances under which one who repairs by reason of frontage is entitled to contributions from his neighbours. The Master of the Rolls, however, treats the judgment of Abbot, C.J., in that case as laying it down as a proposition of unquestionable law, that all persons enjoying the benefit of a sea-wall are bound, and are liable at common law, to repair and maintain it in the absence of any special custom to the contrary, or some special contract exempting them. "That, in my opinion, establishes this proposition as a necessary consequence," the Master of the Rolls is reported to have said, "that where a man buys land below the level of high water, and which would be daily covered by the overflow of sea water were it not prevented by the obstacle of a sea-wall, the purchaser has notice, and is already made aware, that by law he is liable to contribute to its repair."

It is plain, however, that this is a doctrine, which, unless guarded in its application, according to the view of it taken by his Lordship, may readily be carried too far. To allow liabilities not mentioned or referred to in the deed of grant to be implied against the purchaser would, in our judgment, be against public policy as tending to affect the security of possessions. The only exception that ought to be allowed is in cases where liability is, as it were, necessarily appendant to the estate, as in the case of an estate having a sea-wall for its frontage, where if a person took it without notice of the obligation to repair, the inference would be irresistible that it was incumbent on the owner for the time being to repair the sea-wall to the extent of his frontage for the benefit, not of himself merely, but of all the owners of land in the same level. We think that no stronger case can be conceived than this. The principle, in the opinion of Lord Westbury, C., and of the Master of the Rolls, was carried too far in *Pyer* v. *Carter*, 1 H. & N. 916, 5 W. R. 371. The Court of Exchequer held, in that case, that even in the absence of any reservation in the deed of grant the right to drain is reserved by implication of law over the part granted in favour of the part maintained, inasmuch as the grantee must have known that the water from the house must drain somewhere, and was therefore put upon enquiry. Now, an implication of this kind, in our humble judgment, is by no means so strong as the implication in the former case. Drains are under ground, and do not meet the eye of an intending purchaser in the same way as a sea-wall. And it is by no means a necessity that a house should be drained in any particular direction, or should be drained otherwise than into a cesspool situate on the premises; and the exact state of things could perhaps only be asceatained after a more careful inquiry than an intending purchaser is usually able to make. But when a piece of land is below the level of the sea, which is excluded from it by a sea-wall, the truth of the matter is obvious to the capacity. Lord Westbury, C., evidently thought that the doctrine of inferential notice had been carried too far when he so pointedly disapproved of *Pyer* v. *Carter*, in his judgment in *Suffield* v. *Brown*, 12 W. R. 356. We hope we shall not be thought presumptuous if we submit that *Suffield* v. *Brown* goes a little too far upon the other side of the true principle of equity. It will be seen, if we mistake not, that Lord Westbury held that if a grantor intends to reserve any right possessed by him over the property granted, it is his duty to reserve it expressly in the grant, rather than to limit and cut down the operation of a plain grant by the fiction of an implied reservation. Where the existence of the right is so obvious that it is inconceivable that its existence should be disputed, the omission to reserve it will sometimes occur, and when this is so it must surely be unreasonable that the vendor should lose a right which he would doubtless have reserved had its existence been less obvious. The doctrine of the American Courts on this subject will be found in Mr. Kerr's recent work on injunctions, p. 365, from which we make the following extract:—"The doctrine of *Pyer* v. *Carter* was also disapproved of by the Supreme Court of Massachusetts in *Carbrey* v. *Willis*, 7 Allen (Amer.), 354, and the true rule was there laid down to be in accordance with an earlier decision of the same Court in *Johnson* v. *Jordan*, 2 Metc. (Amer.), 234—that if the owner of two adjoining messuages or lots of land sells one of them, retaining the other, no reservation of the right of drain will be taken as reserved by implication of law over the part granted in favour of the part retained, unless it is *de facto* annexed, and is in use at the time of the grant, and is necessary to the enjoyment of the part retained. The principle laid down in *Pyer* v. *Carter* may be stated thus: —that if an easement be apparent and continuous, no express reservation is necessary in a grant of the servient by the owner of the dominant tenement. That the easement should be apparent and continuous is treated by Lord