

a noxious mixture which caused serious injury to horses and other animals. The municipal authority made no objection to the defendants' proceedings, and the defendants endeavored to shelter themselves from liability to the plaintiff on that ground. The House of Lords (Lords Halsbury, L.C., Watson, Shand, and Davey,) reversed the decision of the Scotch Court dismissing the action, and held that the defendants' act amounted to a legal nuisance, which was not sanctioned by either the defendants' Special Act or the General Tramways Act, and that the default of the municipality did not affect the defendants' primary liability, and the plaintiffs were declared to be entitled to an injunction (or interdict, as it is termed in Scotch law), as claimed. We may, however, note that Lord Halsbury points out that if the question had arisen in England, it is doubtful whether the obstruction as proved was such as a private person could sue to abate without further proof of peculiar damage to himself. Probably under English law the action should be brought in the name of the Attorney-General.

WATER—DIVERSION OF WATER—"STREAM"—LEASE—COVENANT.

*McNab v. Robertson*, (1897) A.C. 129, is another appeal from a Scotch Court. The plaintiff was a lessee of a distillery with thirteen acres of land and two ponds, "together with a right to the water in the said ponds and in the streams leading thereto." The defendant, the lessor, sunk a tank on ground outside of the demised premises and drew off from certain marshy ground water percolating therefrom underground, which would otherwise have found its way into the ponds; and the point in controversy was whether this percolating water was "a stream" leading to the pond, and their Lordships (Lords Watson, Shand and Davey) held that it was not, but Lord Halsbury, L.C., dissented and thought that the words "in the streams leading thereto" were sufficient to cover all sources by which the ponds were supplied with water, whether above or below ground.