erty). In 1851 the water course burst, damaging the plaintiff's cellar and goods. In an action for negligently and improperly constructing the sewer, and keeping and continuing it in that state, the jury found that it was not originally constructed with proper care, and it was proved that it had been continued in the same state. *Held*, the action was maintainable, both upon the ground of "*sic utenetur*," &c., and because it was in derogation of the demise to the plaintiff to allow what was before rightful to become wrongful to him: *Alston* v. *Grant*, 24 Eng. L. & Eq. 122.

The remedy for a nuisance, however, is concurrent. If the owner of land on which a nuisance is created lets the land, or if a tenant, after creating a nuisance, underlets, and the nuisance is continued, an action lies at the option of the party injured, either against landlord or tenant: *Rex* v. *Pedley*, 1 Ad. & Ell. 822; *Staple* v. *Spring*, 10 Mass. 72; *Plumer* v. *Harper*, 3 N. H. 88.

The action lies for the continuance of a nuisance, though the plaintiff has accepted money paid into court in full satisfaction of the original erection: *Holmes* v. *Wilson*, 10 Ad. & Ell. 503.

In *Ryppon* v. *Bowles*, Cro. Jac. 373, Coke, C. J., inclined to the opinion that a tenant for years is not liable for the mere occupation of a building erected by his lessor, and which obstructs the plaintiff's lights, because his tearing down the building would be waste as to his landlord.

It is no defence to an action for continuing a nuisance, by acts done on the land of a stranger, that the defendant cannot enter to abate it without rendering himself liable to action by owner of the land. *Smith* v. *Elliott*, 9 Barr, 345. If the plaintiff recover damages for a nuisance from a lessee, who afterwards underlets, the nuisance continuing, an action still lies against the lessee for the continuance: *Rosewell* v. *Prior*, Salk. 460. See 12 Mod. 635. In a late case it it is held, that one who creates a nuisance not liable for its continuance after parting with the property with which it is connected, unless he is benefitted by such continuance, or warranted the continued use of the property, as enjoyed in connection with the nuisance. *Hanse* v. *Cowing*, 1 Lans. 288. And, in another recent case, a lessee in possession under a lease which binds him to keep the premises in repair, is held liable for a nuisance, in connection with the general principle that control of the premises creates such liability. *Fisher* v. *Thirkell*, 21 Mich. 1.

In the case of *French* v. *Richards* (Leg. Intel.), partly, however, upon the ground of a statute of Pennsylvania, the lessee of premises destroyed by fire was held entitled to contribution from the lessor, for expenses incurred in the removal of a wall which was left in a dangerous condition. Hare, P. J., suggests the following important distinctions: "It is a general and invariable rule in equity that charges necessarily incurred for a common object, or in pursuance of a legal obligation, shall be so apportioned or distributed that those shall bear the burden who receive the benefit. Under this salutary and comprehensive principle insurers may be liable for goods stolen or destroyed during the process of removal from a building which is on fire; the ship-owner bound to contribute to a loss occasioned by a jettison of the cargo; a landlord compelled to refund taxes paid by his tenants; or a tenant for life or in common entitled to require that the co-tenant or remainderman shall bear a due proportion of a charge or incumbrance resting on the land. A lessee from year to year has, by reason of the imbecility of his title, a stronger claim to protection against charges on the inheritance than a tenant for life. That the premises which he holds are destroyed by fire or devastated by a flood, will not, it is true, entitle him to call on the landlord for aid, or even suspend the rent. If he repairs the dykes or builds up the walls it must be at his own cost. If, however, under these circumstances, a duty is imposed by the law, which though primarily that of the lessor is yet obligatory on the tenant, and actually performed by him, the right to indemnity or contribution will be as clear as in the instances already cited; and such in effect is the case now in hand, because the walls being, according to the evidence, in a condition dangerous to all around, were a nuisance, requiring instant measures for its abatement. The