

FILTHY PERCOLATIONS.

ally find I am right." His ready wit sometimes extricated him in an unexpected way from the mazes of subtlety which were sometimes thrown around questions at the bar. Thus he was sitting in banco, with Baron Bramwell by his side, in the little room up many stairs, known as the second Vice-Chancellor's Court at Westminster, now happily among the courts abandoned, while a long-winded counsel was "distinguishing" the case before them from a decision of the House of Lords. After painfully enduring the operation for some time, the baron said: "You are very much mistaken, if you think that my brother Bramwell and I, sitting in this cock-loft, are going to overrule the House of Lords." His sentences on malefactors, like his judgments, were short: "You are a bad old man, and you'll just take ten years' penal servitude," was quite enough for the confirmed sinner convicted for the tenth time of felony. In a prolix age his brevity was refreshing; and if his mode of cutting knots instead of untying them prevented his elucidating the law, it at least tended to the despatch of business. In his total absence of affectation, sometimes approaching a want of dignity, he was free from another of the smaller vices of the day. On a summer Circuit, when the weather was very hot, Baron Martin not only took off his wig and robes, but finding the cushion of his chair too warm, ordered something cooler to be put on it, and sat on a soap-box. In his combination of tenderness and robustness, and in other ways, he was not unlike Dr. Johnson, but without the learning and rhetorical power of his great namesake. He inspired all who knew him with affection; and although not a great lawyer, he must be reckoned an admirable judge.—*Law Journal*.

FILTHY PERCOLATIONS.

It is said in an early case that where one has filthy deposits on his premises, he, whose dirt it is must keep it that it may not trespass.¹ If filthy matter from a privy or other place of deposit percolates through the soil of the adjacent premises, or breaks through into the neighbour's cellar, or finds its way into his well, it is a nuisance.² To suffer filthy

water from a vault to percolate or filter through the soil into the land of a contiguous proprietor, to the injury of his well and cellar, where it is done habitually and within the knowledge of the party who maintains the vault, whether it passes above ground or below it, is of itself actionable tort. Under such circumstances, the reasonable precaution which the law requires, is effectually to exclude the filth from the neighbour's land, and not to do so is of itself negligence.³ It is only sudden and unavoidable accidents, that could not have been foreseen or guarded against by due care, that can excuse a party from liability. Injuries from extraordinary accidental circumstances, for which no one is at fault, must be left to be borne by those on whom they fall.⁴ The soil of a man's estate may be rendered cold and unproductive, or the walls of his building weakened and made damp and unhealthy, and, in various other ways, his property injured for use or occupation by the percolation of water beneath the surface caused by some wrongful act of another. The wrongful act may, perhaps, be thawing water from one's roof so near the boundary line that it must escape upon adjacent premises.⁵ And it makes no difference whether damage is occasioned by the overflow of, or the percolation through the natural bank, so long as the result is occasioned by an improper interference with the natural flow of the water.⁶ The right of one to be secure against the undermining of his building by water, or the destruction of his crops or the poisoning of the air by stealthy attacks of an unforeseen element is as complete as his right to be protected against open personal assault or the more demonstrative but not more destructive trespass of animals.⁷

If one purchases land from another on which the vendor has erected or maintained a nuisance, while not liable for the erection of the nuisance, he is liable, after knowledge thereof, for all damages sustained by the other.⁸ But if one gathers water into a reservoir where its escape would be injurious to others, he must, at his peril, make sure that the reservoir is sufficient to retain the water

ical Co. v. St. Helens, L. R. 1 Exch. Div. 196; *Marshall v. Cohen*, 45 Ga. 579; S. C., 9 Am. Rep. 170; *Pottstown Gas Co. v. Murphy*, 39 Pa. St. 257; *Tate v. Parish*, 7 T. B. Mon. 325; *Green v. Nunemacher*, 36 Wis. 50.

³ *Ball v. Nye*, *supra*; *Hodgkinson v. Ennor*, 4 B. & S. 229.

⁴ *Underwood v. Waldron*, 33 Mich. 232.

⁵ *Bellows v. Sackett*, 15 Barb. 96.

⁶ *Prexley v. Clark*, 35 N. Y. 520.

⁷ *Broder v. Saillan*, 2 Ch. Div. 692.

⁸ *Hurdman v. Northeastern R. Co.* 6 Cent. L. J. 367.

¹ *Tenant v. Goldwin*, 1 Salk. 360; S. C., 6 Mod. 311.

² *Tenant v. Goldwin*, *supra*; *Ball v. Nye*, 99 Mass. 582; *Columbus Gas Co. v. Freeland*, 12 Ohio St. 392; *St. Helens Chem-*