

AUTHOR AND CONTINUER OF NUISANCE.

on law-giver takes any interest in the affairs of this world and of the people whom he regenerated and blest, we can faintly imagine the satisfaction and content with which he must view the fulfilment of an engagement made in his reign, the result of the ideas of equity, utility and good faith which he instilled into the minds of his subjects and stamped upon his laws. This incident should make us proud that we belong to Alfred's race, and that we have succeeded to the possession of his laws. It should also make us proud to belong to a profession whose ideal is so high, however far short of it we may come in practical administration, and whose office is so useful and beneficent. As to those of us who are legislators it affords a significant admonition that it is not all legislation that deserves to live a thousand years, and that we should accede to none which might not usefully attain such a tenure of existence. *Albany Law Journal.*

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In the law of nuisance a question of very frequent discussion and somewhat variable decision has been, against whom an action is proper to be brought, where the property causing the nuisance has, since the creation of the nuisance, passed into new hands; in other words, whether the creation or continuance of the nuisance is the substantial ground of action. The question has arisen alike with regard to the respective concurrent liabilities of grantor and grantee, and of landlord and tenant.

In an old case the declaration alleged that the defendant kept and maintained a bank, by which a brook was caused to flow around the plaintiff's land. The court said "there has not been any offence committed by the defendant, for he alleged that he kept and maintained a bank, which is that he kept it as he found it, and it is not any offence done by him, for he did not do anything; and if it were a nuisance before his time, it is not any offence in him to keep it." The case is distinguished from those in which every using is a new nuisance, as the using of

an aqueduct which takes water wrongfully from another. There every turning of the cock to let the water flow is a new nuisance. *Beswick v. Camden*, Cro. Eliz. 520.

In *M'Donough v. Gilman*, 3 Allen 264, it was held that in order to render a lessee liable as for a nuisance to a passageway for refitting a privy, the refitting must have rendered the privy more of a nuisance than it was before.

In *Roswell v. Prior*, 12 Mod. 635, the plaintiff recovered against the defendant for erecting a building which obstructed ancient lights. The defendant had leased the ground with the nuisance, and contended that the action should be against the lessee. But the court said: "Surely this action is well brought against the creator, for before his assignment over he was liable for all consequential damages, and it shall not be in his power to discharge himself by granting it over, and more especially here where he grants over, reserving rent, whereby he agrees with the grantee that the nuisance should continue, and has a recompense, viz., the rent for the same; for thereby, when one erects a nuisance and grants it over in that manner, he is a continuer with an interest."

It is held that the lessor of premises for the purpose of carrying on a business necessarily injurious to the adjacent owners is liable as the author of the nuisance: *Fish v. Dodge*, 4 Denio, 311. See *Brady v. Weeks*, 3 Barb. 157; *Kint v. McNeal*, 1 Denio, 436. Also (in New York) that an action of nuisance against an assignee alone for maintaining a nuisance erected by his grantor was unknown to the common law, and is not authorized by the revised statutes: *Brown v. Woodworth*, 5 Barb. 550. So, if one erect a nuisance and then convey the land with warranty, he remains liable for the continuance of a nuisance: *Waggoner v. Jermaine*, 3 Denio, 306. A municipal corporation is liable for the continuance of a nuisance which it has created: *Pennyoy v. Saginaw*, 8 Mich. 534. More than twenty years before suit was brought, the defendant had constructed a sewer or water course through property owned and occupied by him. In 1845 he let a house, shop and cellar to the plaintiff (which he had previously occupied with the prop-