

UPSTAIRS AND DOWNSTAIRS TENANTS.

had a parlour baby carriage in which, to quiet his darling, he was in the habit of trundling his child up and down his carpeted rooms at divers times by day and by night. An unfortunate Mr. Pool had rooms below those in which the baby ruled supreme, and he objected to lying quietly and impassively beneath the juggernaut wheels of the youthful Higinson, so applying to the court he asked that the noise might be stopped. Pool failed to show that the noise was made unnecessarily, or that it was made for any purpose other than soothing the child's sufferings; so the injunction to stop the noise was refused. The court said that occupants of buildings, where there are other tenants, cannot restrain the others from any use of their own apartments, consistent with good neighbourship, and with a reasonable regard for the comfort of others. "If the rocking of a cradle, the wheeling of a carriage, the whirling of a sewing machine or the discord of ill-played music, disturb the inmates of an apartment house, no relief by injunction can be obtained, unless the proof be clear that the noise is unreasonable and made without due regard to the rights and comforts of other occupants." To warrant an interference on the part of the law the noise must produce actual physical discomfort to a person of ordinary sensibilities and must have been unreasonably made. 18 Alb. L. J. 82; 8 Daly (N.Y.) 113.

Lord Justice Mellish also thought that the noise of neighbour's children in their nursery, as well as the noise of a neighbour's piano, are such noises as men must reasonably expect, and must to a considerable extent put up with. *Ball v. Ray*, L. R., 8 Ch. 471. Probably both Judge Van Hoeson (who decided against poor Pool), and his lordship were both family men. Suffering humanity however will rejoice that both admitted that there was a limit even to the noise that must be endured from children. *Modus in rebus*, as Lord Kenyon would say.

The law of gravitation, which started Newton thinking by hitting him on the nose with an apple, has frequently proved injurious to tenants occupying lower flats. The question has been frequently discussed whether the landlord, or some person or any person else, is liable for liquids percolating through from upper stories and falling upon, and so injuring the goods, wares or merchandise of sub-servient tenants.

Firstly, let us consider where the landlord can be held responsible because of the rain oozing through or other fluids dropping down. *Carstairs v. Taylor*, L. R., 6 Ex. 223, settles that the landlord is not responsible for the peccadilloes or gnawings of rats (if he does not know of their doings, at all events).

Taylor rented to the plaintiff the ground floor of a warehouse in Liverpool for the purpose of storing rice. Nothing special was said as to repairs. Taylor occupied the upper floor. The water from the roof was collected in gutters which terminated in a wooden box, resting on the wall and partly projecting over it in the inside; thence the water was discharged by a pipe into the drain. The gutters and box were examined from time to time, and on the 28th of April, when looked at, were found secure, but between that date and the 22nd, a rat or rats wilfully and maliciously—if not feloniously, gnawed, nibbled, bit and ate a hole in that part of the box which projected on the inside of the wall. On the 22nd Jupiter Pluvius was active and a heavy storm occurred and the collected rainwater passed through the hole into the upper floor of the warehouse, and thence obeying the dictates of nature descended to the ground floor, injuring the plaintiff's rice. The Court of Exchequer held that Taylor was not liable, either on the ground of an implied contract, or on the ground that he had brought the water to the place from which it entered the warehouse. Kelly, C. B., remarked: "Clearly there is no duty on the occupier above, whether he be landlord or only occupier, to guard against an accident of this nature. It is absurd to suppose a duty on him to exclude the possibility of the entrance of rats from without." (*Ex pede Herculem*: verily the learned chief baron, showed the land of his origin in these last quoted words.) His brother Bramwell evidently thought that he knew the general tactics pursued by these rodents in entering warehouses; he remarked: "It is said that rats can be easily got rid of out of a warehouse, but assuming it to be so, it is no negligence not to take means to get rid of them till there is reason to suppose they are there; and it cannot be said that persons ought to anticipate that rats will enter through the roof by gnawing holes in the gutters."

In Maine it has been held that an action will lie at the suit of a tenant of a store in the lower storey of a building against a landlord, who has the care and control of the upper stories, for an injury to his goods caused by the rain descending through the roof down upon the store below, if the accident happens through the negligence of the landlord in the management of that part of the building under his control. *Toole v. Becket*, 67 Me. 544; citing *Priest v. Nichols*, 116 Mass. 401. And in New York it was decided that where a landlord, who himself occupied the upper flat, allowed liquids to leak through into his tenant's rooms, he was liable. *Stapenhurst v. Amer. Man. Co.*, 15 Abb. Pr. (N. S.) 355.