

Eng. Rep.]

GAUNT V. FYNNEY.

[Eng. Rep.]

I hear through the wall more than is agreeable to me of the sounds from his nursery or his music-room, it does not follow (even if I am nervously sensitive or in infirm health) that I can bring an action or obtain an injunction. Such things to offend against the law must be done in a manner which, beyond fair controversy, ought to be regarded as exceptive and unreasonable. I am far from saying that there may not be cases in which the owner of a house very near a mill in a manufacturing town may be entitled to protection against noises resulting from the introduction into the mill of new machinery, or of new modes and processes of working. But in every case of this kind it ought to be clearly made out that the mill-owner has exceeded his rights. When there has been no introduction of new machinery, and nothing new in the manner of working—when everything within the mill has gone on without change in the usual and accustomed course of the manufacturer's business—a plaintiff undertaking to prove that at and after a definitive time the noise from the mill admitted to have been previously lawful and harmless, became excessive and noxious, imposes upon himself (to say the least) an arduous task. And how have the plaintiffs acquitted themselves of this burden? I see no reason to doubt that they, and their servants and friends who were witnesses in this case (several of whom have not been cross-examined), do themselves believe that the considerable increase of noise of which they speak has really taken place, and are persuaded that this noise is a serious nuisance. But it is not impossible that this should be the case, and yet that the witnesses for the defendants (none of whom have been cross-examined) should be believed. Those who compare the noise which they hear to-day with the noise which they heard months or years ago, are witnesses (within certain limits) to impressions upon the mind, rather than to facts. Those who speak of the manner in which the engine and machinery have been worked, and the business of the mill carried on, speak of facts, and not of impressions on the mind. Mr. Fry made a happy use in part of his argument of a passage in a recent work upon mental science (*a*) which (treating of the influence of the mind upon the sense of hearing) says "that the thought uppermost in the mind, the predominant idea or expectation, makes a real sensation from without assume a different character." Every one must have had some experience of the truth of this statement; a nervous, or anxious, or prepossessed listener hears sounds which would otherwise have passed unnoticed, and magnifies and exaggerates into some new

significance originating within himself sounds which at other times would have been passively heard, and not regarded. In the present case, I have no doubt that a real "whirring sound," such as the plaintiffs' witnesses describe, did proceed from the machinery in the mill when at work, at all times before as well as after the erection of the steam-engine in 1864-5. I have no doubt that this sound (and also the sound of the steam-engine after its erection) was often, if not always, perceptible in the plaintiffs' garden, and in some of the rooms of their house, especially when the windows were open; I have no doubt that it was louder and more audible at some times, and when the wind was in particular quarters, than at other times, and other states of the wind. I have no doubt that it must always have been more or less heard in the old stable, where the heads of the horses, as they stood in their stalls, were turned towards the wall (described as a thin wall), on the other side of which the engine was fixed; and where there was a small window, which but for its being closed by certain boards would have opened directly into the engine room itself. But all this is admitted to have gone on from January, 1865, to June, 1870, without amounting to a nuisance. In June, 1870, a sudden noise had alarmed the servants of the plaintiffs, and since that time the plaintiffs had entertained the idea of some danger from the boiler used by the defendant. From this time forth the engine and its noises were to the plaintiffs a permanent source of irritation and uneasiness. [His Lordship then examined the evidence on both sides as to the house, and as to the effect of the noise and vibration on the horses in the stable.] Witnesses for the plaintiffs have stated that on one occasion the horse of a visitor when put in the stable was so terrified that he had to be removed; but this evidence does not make a powerful impression on my mind. The case of *Cooke v. Forbes*, L. Rep. 5 Eq. 163, shows that it is not every occasional and accidental noise which might frighten a horse in a stable on a particular day that will entitle a plaintiff to an injunction, if the general case habitual nuisance alleged in the bill is not satisfactorily proved. His Lordship came to the conclusion that no sufficient case was made out, and that the bill, so far as it sought relief on the ground of nuisance, must be dismissed. As to the trespass, it appeared that part of the defendant's engine-house overhung the plinth of one of the plaintiffs' walls. The defendant, however, disputed the right of the plaintiffs to the plinth, a question which he could not then determine. It was enough to