

the plaintiff Smyth requested them to abate the nuisance, their answer was that they "could do nothing towards stopping the nuisance." This, if not denied or explained, might be of weight in deciding the Court to grant a remedy by way of injunction, instead of giving time to see if some remedy could not be devised.—As to the 7th branch of the motion, the Master said that paragraph 6 was irrelevant, and should be struck out: *Pender v. Lushington*, 6 Ch. D. 70, at p. 75. The only question was, whether the defendants were violating the maxim "sic utere tuo ut alienum non lædas." If it is held that they are acting within their rights, their motives cannot be inquired into. Otherwise an inquiry might be necessary as to the value and sales of all the adjacent property. The inconvenience of such an addition to the present inquiry was sufficiently obvious.—The 8th branch of the motion was based on the statement that the defendants by their operations "are continuing to inflict the wrongs complained of herein upon the neighbourhood in general and the plaintiffs in particular." The Master said that these last words seemed to render any decision on this point unnecessary. Where a nuisance which is a public nuisance inflicts on an individual some special or particular damages, he has a private remedy: *Odgers Broom's Common Law*, p. 232. This was sufficiently alleged for the present. If it should afterwards appear that the Attorney-General should have instituted an information, this objection could be raised and given effect to at the trial, or even later, as in *Johnston v. Consumers' Gas Co.*, 23 A.R. 566, where it was so held in the Court of Appeal.—The order made was, that paragraph 6 of the statement of claim be struck out, and that the defendants should at once plead so that the order of RIDDELL, J., should not be interfered with so long as in force. Costs of this motion to the plaintiffs in the cause. F. E. Hodgins, K.C., for the defendants. H. E. Rose, K.C., for the plaintiffs.

The defendants appealed from the order of the Master in Chambers, and the appeal was argued by the same counsel before MIDDLETON, J., in Chambers, on the 25th October, 1912. The learned Judge said that the question of law sought to be raised by the appeal was not within the jurisdiction of the Master; and the Master's order should be affirmed; the right to raise the question of law in any appropriate way being reserved to the defendants. Costs to the plaintiffs in any event.