31 L. J., N. S., 286, Q. B.; s. c. 6 L. T. N. S. 721, the nuisance complained of arose from the use of a brick clamp erected by the defendant for the sole purpose of making bricks on his own land, the clamp being placed on that part of the land which was most distant from the plaintiff's house, and so as to create no further annoyance than would necessarily result from the burning of bricks. Upon this state of facts, Cockburn, C. J. directed the jury, upon the authority of *Hole* v. *Barlow*, that if they should be of opinion that the spot was a proper and convenient one, and the burning of the bricks, under the circumstances, was a reasonable use by the defendant of his own land, the defendant would be entitled to a verdict, whether there was or not an interference with the plaintiff's comfort. The Court of Ex. Ch. held this direction to be wrong, and in fact, overruled the case of *Hole* v. *Barlow*; but it must not, however, be supposed that, because *Bamford* v. *Turnley* has determined *Hole* v. *Barlow* to be not well decided, that therefore the only question for a jury in such an action is, whether the nuisance complained of be such as to render the plaintiff's enjoyment of his life or property uncomfortable. The majority of the judges who composed the Court of Error in *Bamford* v. *Turnley* only concurred in this, that the place being proper and convenient for the purpose of burning bricks or carrying on the defendant's trade would not alone entitle him to succeed in such an action. That this is the correct view of those cases would seem from the observations of Erle, C.J. in the case of *Cavy* v. *Lidbetter*, decided by the Court of Common Pleas in Hilary Term last: (32 L. J., N. S. 104, C. P.) That was also an action for nuisance from burning bricks, and the facts of the case were very similar to those of *Hole* v. *Barlow* and *Bamford* v. *Turnley*. Wightman, J., who tried the cause at the spring assizes for Kent, 1862, left it to the jury to say whether the plaintiff's enjoyment of his life and property were rendered substantially uncomfortable by what the defendant had done, and being required by the counsel for the defendant to leave also to the jury the question whether the defendant had burned the bricks in a convenient place for the purpose, refused to do so. A rule *nisi* for a new trial was obtained on the ground that such refusal was a misdirection, and upon the argument of the rule the case of *Bamford* v. *Turnley* having been cited for the plaintiff, the Court of Common Pleas took time to consider their judgment, and afterwards discharged the rule on the ground only that *Bamford* v. *Turlney* had decided that it was a misdirection to put such a question as Wightman, J. had been asked to put in *Cavey* v. *Lidbetter*, but said Erle, C. J., "beyond deciding that such a form of question was wrong, the judgment in the Exchequer Chamber does not extend. In the present case, if the objection had been that the learned judge told the jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to take into their consideration, in whole or in part, any evidence showing that the act complained of was an act of ownership on the part of the defendant, which was clearly lawful if it did not cause actionable discomfort to a neighbour, and that it was done with full intention to prevent discomfort in respect of time and place and manner and degree, I think that a misdirection would be made out. It seems to me that life in a dense neighbourhood cannot be carried on without mutual sacrifices of comfort; and that in all actions for discomfort the law must regard the principle of mutual adjustment; and the notion that the degree of discomfort which might sustain an action under some circumstances must therefore do so under all circumstances is as untenable as the notion that the act complained of, if done in a convenient time and place, must therefore be justified, whatever was the degree of annoyance that was occasioned thereby. And I would add, that the judgment of Willes, J., in *Hole* v. *Barlow*, appears to me sound, although the question left by Byles, J. has been decided to be wrong. In the present case the learned counsel, acting on the precedent of *Hole* v. *Barlow*, contended for a question wrong in form but did not contend for his right in substance, according to the principle I have above attempted to explain."

The judgment of Willes, J., so referred to with approbation by the Chief Justice, was to the effect, that the right of every one to pure air may be taken away for the sake of public convenience, on the same principle that private rights must generally yield to right *pro bono publico*. This ground for making lawful what would be otherwise an actionable nuisance is, however, disapproved of by Bramwell, B. in *Bamford* v. *Turnley*. "That law," says that learned judge, "to my mind is a bad one, which, for the public benefit, inflicts loss on an individual without compensation. But, further, with great respect, I think this consideration misapplied in this and many other cases." Indeed, it is scarcely possible to deduce any clear understood principle from the various opinions of the judges in these recent cases, nor would it seem to be easy to reconcile some of the doctrines which they propound with the older authorities.

In vol. 3 of Blackstone's Commentaries, book 3, cap. 13, p. 217 (by Chitty), it is said to be an actionable nuisance "if one's neighbour sets up and exercises any offensive trade, as a tanner's, a tallow chandler's, or the like; for though these are lawful and necesary trades, yet they should be exercised in remote places; for the rule is *sic utere tuo ut alienum non lædas.*" Again, he says: "If one erects a smelting-house for lead so near the land of another that the vapour and smoke kills his corn and grass, and damages his cattle therein, this is held to be a nuisance:" (citing as an authority 1 Roll. Abr. 89) "And by consequence," says Mr. Justice Blackstone, "It follows that if one does any other act, in itself lawful, which yet being done in that place necesarily tends to the damage of another's property, it is a nuisance, for it is incumbent on him to find some other place to do that act where it will be less offensive." And after pointing out that it is a nuisance to corrupt a watercourse, or "to do any act therein that in its consequences must necessarily tend to the prejudice of one's neighbour," he characteristically concludes with the following laudatory remark on the English law: "So closely does the law of England enforce that excellent rule of gospel morality, of doing to others as we would they should do unto ourselves."

The general doctrine contained in the passages above cited from Blackstone's Commentaries is, we believe, still quite correct. It is difficult to understand how the common-law right which a person has to wholesome air can be lost, except by prescription, if the decisions in *Elliotson* v. *Fleetham*, 2 Bing. N. C. 134; and *Bliss* v. *Hall*, 4 Bing. N. C. 183, rest on sound law, which it has never been doubted they do. It may be safely said since *Bamford* v. *Turnley*, that the idea that the place being convenient will justify the act, although it be done to the annoyance of a neighbour, is now exploded, and that "the convenient place" referred to in the passage in Comyn's Digest, which has been already cited, must mean "a place where a nuisance will not be caused to anothor." Still it would seem to be the opinion of several of the judges that the place where the act complained of occurred is proper for the consideration of the jury in determining the question whether there has existed a nuisance or not. If the fitness of the locality is to be considered, it surely ought to be with reference to the situation of both the plaintiff and defendant, as pointed out by Stuart, V. C., in *Beardmore* v. *Tredwell*, 31 L. J. 892, Ch.; s. c. 7 L. T., N. S. 207. "Nobody will doubt," says that learned judge, "that to the brickburner the place may be convenient, and probably the most convenient to him that can be found, but yet I apprehend it is perfectly clear that the mere circumstance of the place being convenient to one party is not enough to justify the continuance of the acts if they make the enjoyment of life and property uncomfortable to the other, or if they may be done elsewhere without these injurious consequences following." Indeed, the