

RECENT ENGLISH DECISIONS.

taining an interim injunction from the judge of first instance, and the Court of Appeal now refused to discharge it, though cautiously avoiding a positive opinion on the question of law involved. It was argued in opposition, that separate use was intended by Courts of Equity, to preserve property for the benefit of the wife, but it was never intended to operate so as to interfere with the domestic relations between husband and wife; that any contract, therefore, that either directly or indirectly involves a future separation between husband and wife is void as being against public policy; and that this injunction would cause the marriage settlement in this case to have that effect, and should therefore not have been granted. Cotton, L.J., goes the nearest to expressing an opinion on the law of the case. At p. 351, he says: "Undoubtedly Courts of Equity have said that when property is settled to the separate use of a married woman, she is as regards that property to be considered as if she were a *feme sole*; that is so, as regards protecting the property against the interference by the husband; if he wishes to deal with it as his property, and to deprive his wife of the property in it, then undoubtedly Courts of Equity will interfere, and it is their duty so to do. But where it is not interference with the property, assuming it is the property of the wife and that the husband has no right to interfere with it *qua* property, it is a very different thing to say that she, a married woman, can insist on a Court of Equity preventing her husband entering the house . . . My view is ~~this~~, that the separate use was not created by a Court of Equity in any way to enable a wife to prevent the husband from exercising his rights and duties as an husband, except by preserving property for her. I concur in the view that this injunction ought not to be discharged, on this ground, that, looking at the circumstances of the case

and at the facts which we have before us, and the affidavit of the husband, he cannot be considered as desiring to use or to enter this house as a husband, to enjoy the society of his wife, or to consort with her as his wife."

A. H. F. L.

SELECTIONS.

UPSTAIRS AND DOWNSTAIRS TENANTS.

"Birds in their little nests agree." So saith the poet. But men living in the same house do not always so. Some of the grievances suffered from the fellow-lodgers and landlords, and the remedies and attempted remedies therefor, are herein treated of.

Sometimes tenants object to noises made by other occupants of the same house, and oftentimes they have to object in vain, and can obtain no redress either against the landlord or their co-tenants. Where the rooms beneath the complainant's were used by another tenant for purposes of a highly immoral nature, and the frequenters thereof by singing immodest songs attracted a noisy crowd of boys in the street, the court held that this did not amount to an eviction of the complainant, and that he could not insist upon a diminution of the rent because the landlord did not put out the naughty tenant below according to promise. *De Witt v. Pierson*, 112 Mass. 8.

Where one tenant has obtained from the landlord the privilege of erecting a sign in front of the house, other tenants in the same building cannot interfere with number one's privileges. And as according to Mr. Justice Fry, of the Chancery Division of the English High Court of Justice, it is in the nature of sign-boards to creak, the court will not interfere when the creaking is not in excess of what is naturally incidental to a sign-board. *Snyder v. Hersberg*, 11 Phila (Pa.) 200; *Moody v. Streggles*, L.R., 12 Ch. Div. 261. It might have been useful if the learned judge had intimated how often a sign-board might, should or would creak in a day, and in how many notes; the key doubtless would be both high and flat.

About the year 1870 poor Higinson had an infant child—some fifteen months old—which was teething, and consequently sick and fretful. H. also