

defendant also put up a similar device. one of his public houses at Liverpool. The action was brought to restrain the judgment from selling or advertising under the name of 'Stone Ale' or 'Stone ales,' any ale or beer not made by the plaintiff, and from carrying on the business of a brewer under the title of "Stone Brewery," or "Montgomery's Stone Brewery," or any other title calculated to induce the belief that the business carried on by him was the plaintiff's business, and from infringing the plaintiff's trade mark. The Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.), though holding that the words "Stone Ale" could not be properly registered as a trade-mark, yet held that the plaintiff had acquired by user a right to use the words 'Stone Ale' within the principle of *Wotherspoon v. Currie*, 5 H.L., 508, and being of the opinion on the evidence that the defendant was endeavouring, by his use of the words, fraudulently to pass off his ales as the plaintiff's, affirmed the injunction granted by Chitty, J.

NUISANCE—LANDLORD AND TENANT—IMPLIED AGREEMENT FOR QUIET ENJOYMENT—DEROGATION FROM GRANT.

*Robinson v. Kilvert*, 41 Chy.D. 88, was an action in which the plaintiff, the tenant of part of a building, complained that the defendant, his landlord, was using another part of the building, which he retained in his own occupation, in a way that was prejudicial to the plaintiff, and he based his right to relief on the score of the defendant's use of his premises amounting to a nuisance, or at all events, as being in derogation of his grant, and a breach of an implied agreement for quiet enjoyment. The facts of the case were, that the defendant had let to the plaintiff a floor of the building to be used by him as a paper warehouse, but the defendant did not know at the time of letting that the plaintiff was going to store any particular kind of paper, liable to be deteriorated by an amount of heat which would not hurt paper generally. After the demise to the plaintiff, the defendant commenced a manufacture in the cellar which required the air to be hot and dry, and used a heating apparatus. This raised the temperature on the floor of the plaintiff's room to 80°, but the general air of the room was not nearly so high, and it did not appear that the plaintiff's work-people were inconvenienced. The defendant found the excessive heat injurious to his brown paper, and made it less valuable, and hence the present action. The Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), however, affirmed the Vice-Chancellor of the County Palatine in dismissing the action, and held that the landlord was not liable either on the ground of nuisance, or of implied agreement for quiet enjoyment. Lindley, L.J., says at p. 97, "If the effect of what the defendants are doing had been to make the plaintiff's room unfit for storing paper, I should have been prepared to hold that there was a breach" (*i.e.*, of the implied agreement for quiet enjoyment). "But the evidence falls short of that—it does not show that the room is made unfit for a paper warehouse—but only that it was made unfit for storing a particular kind of paper. Now if the tenant wants extraordinary protection for a particular branch of trade he must bargain for it