

RECENT ENGLISH PRACTICE CASES.

REPORTS.

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(Collected and prepared from the various Reports by
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ATTORNEY-GENERAL V. BIRMINGHAM, TAME
AND REA DRAINAGE BOARD.

*Action in nature of supplemental suit—Action
to enforce judgment against successors in title
—Nuisance—Injunction.*

A decree was made in 1875 against the corporation of B., as the sanitary authority of B., granting a perpetual injunction to restrain them from allowing sewage to flow into a river so as to be injurious to health, or a nuisance to the plaintiffs; but the injunction was suspended for five years, to give the corporation an opportunity to execute certain works. After the expiration of this period the plaintiffs desired to enforce the injunction, but in the meantime the B. T. & R. District Board had been constituted by Act as the sanitary authority of the district, in place of the Corporation of B.

The plaintiffs brought an action against the B. T. & R. Board, claiming a declaration that they were entitled to the same benefit of the decree as against the defendants in the present action, as if they had been defendants in the former suit. The defendants demurred, on the ground that the statement of claim shewed no cause of action against them.

Held (reversing Bacon, V. C.), that the demurrer must be allowed.

[May 18. C of A.—L. R. 17 Ch. D. 635.]

The above head note sufficiently shows the facts. On the appeal, counsel for appellant met an expression of the M. R. in *Attorney-General v. Birmingham*, L. R. 15 Ch. D., 425, where he says:—"If it becomes necessary to enforce that judgment against persons who have acquired a title after it is made, an action must be brought for that purpose:"—on which the V. C. in the court below had relied,—by observing that he (the M. R.) did not say that could

be done without fresh wrong being committed.

JESSEL, M. R., after remarking, *arguendo*, that under the old practice a supplemental bill, or an original bill in the nature of a supplemental bill, always alleged a fresh injury or the continuance of the old one—and after stating the facts, and observing that the action was clearly one of first impression—said:

"The first observation to be made is that this is an injunction to restrain the continuance of a tort. It is an injunction merely against the council, their workmen, and agents, and cannot be said to run with the land. If they have sold the property to somebody else, there is no injunction against the new owner, and nobody ever heard, in such a case, of the new owner or purchaser of land being liable to the former decree. If he continues the nuisance, or commits a fresh nuisance, you can bring an action against him, and that is all; he has nothing to do with the former proceedings, and I cannot see any ground whatever for supposing that he can be bound by that decree; nor, I believe, was such a thing ever heard of before. That being so, what is the case made by the present respondents? It is said, although the action would not lie in an ordinary case, yet, as this is a public body which has taken over a portion of the property of the former public body, and to a certain extent succeeded to it, this new body is bound by Act of Parliament by the former decree. Of course an Act of Parliament can do a great many things, and it can certainly make the new body bound by the old decree. Therefore, the only question remaining to be examined is, has it done so?"

This question he decides in the negative.

JAMES, L. J. agreed that the action was entirely a novel one. He had never seen such a declaratory action before. It was either wrong or unnecessary. If the defendants were liable, they were liable, and the plaintiffs did not want an action. If they were liable the plaintiff should have applied for a sequestration. The declaration of liability makes no difference. It appeared to him to be quite clear they were not liable, because there was no liability under the decree which in any way attached to the present defendants.

LUSH, L. J., held that the statement of claim was defective in two essential particulars, either of which would be fatal:—

* It is the purpose of the compiler of the above collection to give to the readers of this Journal a complete series of all the English decisions on pleading and practice which illustrate the present procedure of our Supreme Court of Judicature, reported subsequently to the annotated editions of the Judicature Act, that is to say, subsequently to June, 1881.