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NOTES.

RIGHT OF LESSEE TO RECOVER DAMAGES FOR NUISANCE.—The respective rights of landlord and tenant in regard to maintaining actions to recover damages for a nuisance have recently been considered in *Bly* v. *Edison Electric Illuminating Co.* (1902) 172 N. Y. 1 a case that has done much to define the law of New York on this perplexing question. The nuisance complained of consisted in the emission of smoke and cinders from defendant's electric light station and in the vibration of plaintiff's house, caused by the running of defendant's machinery. The sole issue was whether the plaintiff was barred from recovering damages because the leases under which she claimed were all made subsequent to the establishment of the nuisance, and a majority of the court held that she was not barred thereby.

It is not disputed that a nuisance affecting the use and enjoyment of property is primarily an injury to possession rather than ownership; but it is equally certain that a reversioner may in some cases have a right of action. The English criterion seems to be the degree of permanence of the nuisance. If it consists in an obstruction of a permanent character, such as a wall, *Jesser* v. *Gifford* (1767) 4 Burr. 2141, or even a temporary obstruction under a claim of right, *Bell* v. *Midland Ry. Co.* (1861) 10 C. B., N. S. 287, the reversioner may sue; but if it arises not from the mere presence of a thing but from its use in a particular way, as in case of the ordinary nuisances of smoke or noise, he can recover nothing, even though the value of his reversion has depreciated thereby. *Simpson* v. *Savage* (1856) 1 C. B., N. S. 347; *Jones* v. *Chappell* (1875) L. R., 20 Eq. 539. If both landlord and tenant are injured, both may sue and divide the damages between them. *Shelfer* v. *City of London Electric Lighting Co.*; *Meux's Brewing Co.* v. *Same* (1895) 1 Ch. 287.