

## ENGLISH LAW RELATING TO THE EMISSION OF SMOKE FROM CHIMNEYS.

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THE emission of smoke from chimneys may be dealt with under English law in the following cases:—

- (1) Throughout England where that emission is a nuisance at common law ;
- (2) Throughout England (except London) where that emission offends against the provisions of the Public Health Act, 1875, or against similar provisions in local Acts ;
- (3) In London where that emission offends against the provisions of the Public Health (London) Act, 1891.

I propose to deal very shortly with (1) for, speaking generally, it will be found that readier and easier means of abatement exist under (2) or (3) than under (1).

As, however, there are sometimes occasions when considerable damage has already been caused, or when it is desired to restrain for the future a serious emission of smoke which, if allowed to continue, would be injurious to public or private health or property, I will state shortly the law relating to (1).

To constitute a nuisance *at common law* by reason of the emission of smoke there must exist (*a*) injury to health ; or (*b*) injury to public or private property ; or (*c*) personal discomfort to individuals.

If it be desired to protect public health, or public property, or to prevent general discomfort, the law must, in most instances, be invoked by the Attorney General, as representing the public ; his action is generally (though not always) set in motion at the instance, or relation, of a public body, or of individuals.

Where, however, an individual is likely to sustain or has sustained injury to his health or property, or personal discomfort by reason of the

emission of smoke, he may himself invoke the law with respect to nuisance, by bringing an action for injunction to prevent the happening of the nuisance, or to prevent its recurrence, or to recover damages as compensation for that which has already occurred to him or his property by reason of the nuisance.

But whether the law be invoked by the Attorney General, as representing the public and its interests, or by an individual for his own protection or compensation, it will be necessary, in either case, to establish that a nuisance (as defined above) will probably be, or has been, created by the emission of smoke.

For the purpose of so doing it is not necessary to make out that black smoke (as under the Public Health Acts referred to above) or smoke of any shade, density, or quality, is likely to be, or has been, issued. It will be enough to establish that a nuisance (as defined above) is likely to occur, or has occurred, from the issue of smoke or vapour, or smells from a factory or other chimney, whether the latter be the chimney of a private dwelling house or not.

But what may be an actionable nuisance, even in this sense, is not capable of precise definition, applicable to all circumstances, or to all localities. This may be learned by a perusal of the Judgment of the late Lord Chief Baron Pollock, in the case of *Bunford v. Turnley* (31 L. J. Q. B., 292) where with the precision and freshness of language which always distinguished him, he said :—

“The question so entirely depends on the surrounding circumstances—the place where—the time when—the alleged nuisance, what—the mode of committing it, how—and the duration of it, whether temporary or permanent, occasional or continual—as to make it impossible to lay down any rule of law applicable to every case, and which will be also useful in assisting a jury to come to a satisfactory conclusion. It must at all times be a question of fact with reference to all the circumstances of the case. Most certainly, in my judgment, it cannot be laid down as a legal proposition, or doctrine, that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour, must necessarily be an objectionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at mid-day which would not be a nuisance at midnight. That may be a nuisance which is permanent and continual, which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose may be a nuisance if unreasonably loud and discordant, of which the jury alone must judge ; but although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every ten minutes, or the bell ring continually, I think a jury would be justified in considering it to be a very great nuisance. In general a kitchen chimney, suitable to the establishment to which it

belonged, could not be deemed a nuisance, but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might very properly be treated as one."

To this example I would venture to add that of a kitchen chimney improperly used with reference to fuel consumed, or otherwise, whereby large quantities of smoke were emitted for long intervals of time. He proceeds—

"The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, will furnish an indefinite number of examples in which some apparent natural right is invaded, or some enjoyment abridged, to provide for the more general convenience or necessities of the whole community."

The above views were expressed in an action successfully brought in respect of nuisance arising from brick burning.

Smoke, unaccompanied by noise or by noxious vapour, noise alone, and offensive odours alone, although not injurious to health, may severally constitute a nuisance. The material question in all cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence. Hence an injunction was granted to restrain the issuing of smoke and effluvia from a factory chimney, and the making of noise in the factory, although it was situated in a manufacturing town, it being proved that such smoke, effluvia and noise were a material addition to previously existing nuisances. (*Crump v. Lambert*, L.R. 3 Eq. 409; affirmed on appeal, 17 *Law Times* N.S. 133.)

#### PUBLIC HEALTH ACT, 1875.

From attempts to define what is an actionable nuisance, and from discussions of what is the appropriate proceeding when a common law nuisance is threatened or exists, it is encouraging to those who are earnest in the promotion of public health to turn to the plain language of the smoke sections of the Public Health Acts, referred to above, under which health and property are generally (although, I fear, with many exceptions) effectively protected.

The Public Health Act, 1875, contains the statutory law as to the emission of smoke throughout England, except in London, and except in a few provincial cities and towns governed by local Acts.

#### PUBLIC HEALTH (LONDON) ACT, 1891.

The provisions of this Act relating to smoke nuisance are practically (with some extensions) the same as those in the Act of 1875, already set out at some length. But since the Act of 1875 does not (with some

slight exceptions) apply to London, the smoke sections have been included in the Act of 1891, so as to be applicable to the Metropolis within "the administrative County of London."

The sanitary authorities within the London area are the Corporation of London and the city and borough councils.

In practice it is found in case of neglect of duty by the sanitary authority (excepting the Corporation of London) that a representation to the London County Council secures the abatement of a nuisance, or, at any rate, due attention to the matter.

It will be observed that up to the present time no legislation has been attempted with the view of minimising smoke from domestic kitcheners or grates. The height of buildings, etc., affecting the access of light and air have been the subject of drastic enactments; but the domestic kitchener or grate, which by the smoke it sends forth enormously affects light and air, has, so far as legislation is concerned, been left to work "its own sweet will." This seems inconsistent with the principle which one would assume underlies legislation, under which domestic appliances in connection with water, gas, electric current, etc., have been the subject of jealous regard, and are the objects of frequent domiciliary visits even in the neighbourhood of the domestic hearth. It is to be hoped that as a result of the inquiries now being carried on by the Coal Smoke Abatement Society, with the assistance of the Office of Works and others, a domestic grate may be discovered which shall, by improved combustion, prevent, at least, black smoke. When such a grate is discovered, legislation will be not only desirable but opportune, by which there may be secured to the consumer more beneficial use of fuel, and to the Metropolis and to large provincial cities and towns brighter and cleaner atmospheres.

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