

THE GLEANER:

AND NORTHUMBERLAND, KENT, GLOUCESTER AND RESTIGOUCHE
COMMERCIAL AND AGRICULTURAL JOURNAL.

OLD SERIES] *Nec araneorum sane textus ideo melior, quia ex se fila gignunt, nec noster vilior quia ex alienis libamus ut apes.* [COMPRISED 13 VOLUMES.

NEW SERIES, VOL. VI.] MIRAMICHI, TUESDAY EVENING, APRIL 11, 1848. [NUMBER 27.

STAGE COACH.

Summer Arrangement.

The subscriber will continue to run the Mail Stage between

Fredericton and Miramichi

During the present season, ONCE PER WEEK EACH WAY.

The Stage will leave the subscriber's residence, in Chatham, every MONDAY MORNING, at 9 o'clock; Douglstown at half past nine and Newcastle at 10 o'clock, and arrive in Fredericton the following morning at 9 o'clock. Will leave the North American Hotel, Fredericton, the following FRIDAY morning at 11 o'clock, and arrive in Chatham the day following at the same hour.

The subscriber has on this line, at all times a comfortable covered Coach, and a careful driver, who will afford every facility and accommodation to travellers.

FARE—£2. Each passenger will be entitled to carry with him 40 lbs of luggage; anything over that weight, 2 1-2 per lb.

Any person wishing to procure an Extra Conveyance from Chatham to Fredericton, can obtain the same on reasonable terms, at any time, by applying to the subscriber. He also keeps on hand Extras for the purpose of forwarding passengers by the above coach, desirous of getting to Shediac in time for the P. E. Island steamer.

WM. M. KELLY.

Miramichi, June, 1847.

N. B. Passengers will please be punctual to the hour of starting. All luggage at the risk of the owner.

Sheriff's Sales.

On the second SATURDAY in April, 1848, in front of Hamill's Hotel, Newcastle, between the hours of 12 and 5 o'clock, P. M., will be sold at Public Auction,

All the Real Estate, Right, Title, Interest, Property, Claim and Demand

Of Daniel Becket, in and to certain Land situate on the little South West branch of Miramichi; and all other the Real Estate of the said Daniel Becket, in the county of Northumberland. The same being taken by me under Execution issued out of the Supreme Court at the suit of Peter Mitchell against the said Daniel Becket.

JOHN M. JOHNSON,

Sheriff of Northumberland.

Sheriff's Office, 4th October, 1847.

On Monday the 29th May, 1848, in front of Messrs. M Samuel & Son's store, Chatham, between the hours of 12 and 5 o'clock, A. M., will be sold at Public Auction,

All the Real Estate, Right, Title, Interest, property, claim, and demand of William McKinnon, in and to the lower half of a Lot, now in the occupation of Hugh McKinnon, situate at the mouth of Bay du Vis River, in the parish of Glenelg.

Also—all other the Real Estate of the said Wm. McKinnon, in the County of Northumberland, the same having been seized by me under an Execution issued out of the Supreme Court at the suit of J. T. Williston, Esquire against the said William McKinnon.

JOHN M. JOHNSON, Sheriff.

Sheriff's Office, 23d November, 1847.

CO-PARTNERSHIP.

The subscribers having entered into Co. PARTNERSHIP, as Attorneys and Solicitors under the firm of Johnson & Mitchell, the business to be conducted by Mr. Johnson in Chatham, and Mr. Mitchell at Newcastle.

J. M. JOHNSON, Jun.,

P. MITCHELL, Jun.

Miramichi, 1st November, 1847.

NOTICE TO FARMERS.

The Subscribers have for Sale—

6 Fanning Machines,

of superior description. Copies of the one imported by them last fall, which has been so highly approved of. The above articles are manufactured here, and well worthy the attention of our Farmers. Terms liberal.

JOHNSON & MACKIE.

Chatham, Feb. 22, 1847.

All persons having any just demands against the Estate of the late JOHN LYONS, late of the parish of Newcastle, Farmer, deceased, are requested to render the same duly attested, within three months, and all persons indebted to the said Estate will please make immediate payment to

RICHARD HUTCHISON } Executors

JOHN PORTER, }
Newcastle, February 4, 1848.

From the Glasgow Courier.

(Published by request.)

THE BRIDGETON HOSPITAL.

HUSSEY v. THE GLASGOW ROYAL INFIRMARY.

It will be remembered that, some time since, the directors of the Infirmary acquired certain buildings in the suburb of Bridgeton, which they intended to fit up as an hospital or infirmary, auxiliary to the present institution, which is admittedly inadequate, in point of accommodation, especially in times when fever, or other contagious diseases are prevalent. This appropriation of the building, however, was opposed by several proprietors and tenants in the neighbourhood, who applied to the Sheriff for an interdict against the hospital being established in the locality proposed. After a lengthened litigation, the Sheriff-Substitute gave a decision on Monday last in favour of the directors of the infirmary. We have been enabled to obtain a copy of the judgment; and it will be observed, from the luminous note of the learned Sheriff-Substitute, that further explanation on our part, in reference to the details of the case, is unnecessary. The interlocutor and note are as follows:—

Glasgow, 24th January, 1848.—Having considered the Revised Minutes of Debate of both parties, and resumed consideration of the proof productions and whole process, finds that the conclusions of this action are for interdict against the defenders' constructions or erecting any building on any part of certain lands of Barrowfield, or Bridgeton, "to be applied to the uses and purposes of a fever or other hospital, infirmary, or other place for the reception of diseased persons or patients, and from converting or otherwise altering the buildings presently on the aforesaid lands, and on the grounds acquired by the respondents to be applied to the purposes aforesaid." Finds it admitted by the defenders, that on the ground in question, acquired by them as Directors of the Glasgow Royal Infirmary, there are several buildings originally designed for a cotton factory, which "they intend forthwith to fit up and furnish for the reception of patients during the existing prevalence of fever, and for ordinary diseased patients at other times, should the wards or the ordinary infirmary be crowded;" Finds that the pursuer has failed to prove that the use to which it is so proposed to put the said buildings in the locality in question constitutes a nuisance; therefore, and for the reasons stated in the annexed note, sustains the defences, finds that said pursuer is not entitled to the interdict craved, refuses the same and assizes the defenders; finds the pursuer liable in expenses, allows an account thereof to be given in, and remits the same to the auditor to tax and report, and decerns.

(Signed) HENRY GLASSFORD BELL.

NOTE.—This is a case of general importance, and the Sheriff-Substitute has bestowed on it his best attention.

At common law a proprietor is entitled to make every legitimate use of his own property up to his line of march, without being liable for any consequent deterioration of value on his neighbor's property. The rule, as stated by Erskine, is, that "where the proprietor's act is of its lawful, though it should be in its consequences determined to his neighbour *utitur jure suo*, he is allowed to make use of what is his own in manner most beneficial to himself, and though his neighbour suffer damage he has no redress, unless the act of the other was in *amulacionem*." It is accordingly settled, that in the absence of any servitude, a proprietor may build on the very verge of his ground, though the consequences should be to stop all his neighbour's lights; and in like manner that he may establish manufactories, erect chimneys, furnaces, steam-engines, limekilns, open quarries of stone or mines of stone or mines of coal, on the very verge of his ground, however disagreeable or inconvenient, in direct or consequential effect to the contemnerous proprietor, provided he act not in mere spite or malice. See Bell's *Parsons*, sections 965 and 966, and authorities there quoted. But, on the other hand, the landowner's right to so absolute a use of his property is qualified by the law of nuisance, whatever is noxious or unsafe, or necessarily renders life substantially uncomfortable to the public generally or to the neighbourhood, whether by stench, as the boiling of whale-blubber, by unhealthy vapours or effluvia, or by noise, as a smithy in an upper floor, is a nuisance, and may be prohibited if proposed to be introduced into a locality hitherto exempt. At the same time, as is well remarked by Lord Ivory in one of his notes on Erskine (B. ii. l. 1. sect. 3d), "Every question of nuisance depends so much on its own individual circumstances, and the slightest modification in the relative situation and condition of the properties has so material an effect on the result, that in no class of cases is it more ne-

cessary to observe the utmost caution in inferring from one what will be decided in another."

In the present instance it is not maintained that the alleged nuisance will be created by anything intolerably offensive to the sense of sight, smell, or hearing. It is not alleged that the neighbourhood will suffer from any unseemly exhibition or from any stench or noise sufficient to render life uncomfortable. The pursuer's case is rested upon this as apparently admitted in his Revised Minute, that by the erection of the proposed hospital, "the health of his tenants, in the contiguous property, will be injuriously affected, and their lives endangered." Upon this issue the question undoubtedly hinges, because if it were clearly established that such a result would ensue, it would be extremely difficult to hold that the defenders, however benevolent their motives, were entitled to carry out a scheme by which persons already inhabiting the neighbourhood were subjected to so great an evil. But, on the other hand, it is to be observed that no popular apprehension, if unfounded in itself, is any reason why an otherwise lawful and laudable use of property should be prevented. A fear or terror of danger, amounting, it may be, to panic, will not make a nuisance; if there be no real danger, the defenders are not to be held responsible though it should appear that they are persons possessed of so intractable imaginations as to invest with ideal horrors what is in itself harmless. The law, therefore, is not correctly stated by the pursuer, when he says that, "if life be made uncomfortable by the apprehension of danger, it is a nuisance;" it must be a just apprehension founded on, and sanctioned by reason and experience, as in the very instance cited by the pursuer, where it was found illegal to keep large quantities of gunpowder near dwelling houses. It has farther to be observed, that in all large cities and crowded communities, it is necessary that fever hospitals should be erected somewhere. All the leading witnesses on both sides have stated that the removal of the lower class patients from their own confined and ill-ventilated dwellings to public hospitals, is not only conducive to the recovery of these patients themselves, but is a measure of general safety, calculated to check the spreading of disease, and to preserve the public health.

These things being premised, a careful consideration of the evidence which has been adduced seems necessarily to lead to a decision of the cause in the defenders' favour. A good deal of irrelevant matter has been introduced into the voluminous proof regarding the internal arrangements and accommodation of the hospital, the facilities for drainage, the general suitability of the locality, and the proximity of the lands or houses of certain third parties who are making no complaint. It is plain, that all this, in as far as it fails to affect the question of injury to the pursuer's property, and danger to his tenants, is *justitii* to him. It is right, however, to state, that even upon these points there is satisfactory evidence that careful provision has been made for good drainage and ventilation, that the internal accommodation will be of a superior description, and that the situation is well chosen. It is, as the plans in process show, nearly on the eastern outskirts of the city; the immediate vicinity is not densely crowded with houses, but is on the contrary, rather open; and the dwelling-houses which exist are for the most part as near or nearer various public works, such as gas works, chemical manure works, breweries, and factories, as they are to the hospital. Mr. Wilson, the architect, deposes—"The site for the hospital is in, my opinion, well chosen. It is on three sides entirely free of buildings, and surrounded by streets of the width respectively of about 62 feet, 42 feet, 48 feet. At no point do the premises adjoin dwelling-houses, excepting at the south-west corner, where the gable of a dwelling-house adjoins the gable of a part of the domestic portion of the buildings but at a distance of about 50 feet from the wall of the hospital." Neither does this dwelling-house belong to the pursuer, and, as already said, it is with him alone the defenders have to deal. As regards his property the plans No. 11, which has been proved to be accurate, shows that it does not adjoin any part of the hospital, which is, on the contrary 130 feet distant from the wall of any dwelling-house belonging to the pursuer.

The same plan also shows that between the hospital and the nearest point of the pursuer's property there is a building 30 feet in width, which it has been proved is not to be occupied by patients; and between this building, which has no windows looking upon the pursuer's property, and his houses, there is a vacant space of ground of 78 feet in width. Now, what the pursuer has unpertaken, and is bound to make out, is, that disease will be communicated from the hospital to his tenants in the houses 130 feet distant. It goes no way to prove this that he has abduced sev-

eral of these tenants themselves, who say that they are so afraid that they will leave the houses if the hospital is opened; and who, also, all swear that "it would make no alteration in their resolution to do so, though they were certified by the first medical authorities in the kingdom that no danger to the neighbourhood would arise from the hospital." Neither is the pursuer's case advanced by the testimony of the several owners of property in the neighbourhood whom he has adduced. They speak merely to general impressions, and to their wish that there should be rather no Fever Hospital in Bridgeton, just as they might wish that there should be no factory or public work in the same locality. It is on this medical evidence that the pursuer must mainly depend; and here it must be confessed, as is usual where such evidence is required, there is some difference of opinion between the pursuer and defender's professional witness. Two general observations, however, occur. First, that a nuisance is not to be presumed, and that, as when proved, it infers restriction on the free use of property the onus of clearly establishing it lies on the party complaining; and second, that keeping in view the principle *testimonia ponderanda non memoranda*, it will be found on a careful perusal of what is actually deposed by the different medical gentlemen, that those for the pursuer speak doubtfully and hesitatingly as to the possibility of infection being conveyed from the hospital to his tenants' houses, while those for the defenders state in the strongest and most unequivocal terms, their conviction that no such thing will happen, and assign reasons for that conviction, drawn both from physiological facts and a wide field of experience. Thus, on the one hand, among the pursuer's witnesses, Mr. Hugh Douglas, surgeon says—"I depon that if it was possible to remove the impression of alarm on the minds of the parties living in the houses fronting Dale Street, there would be no reasonable cause of alarm, but I consider it would be impossible to do so." Mr. David Young, a surgeon, deposes—"There can be no doubt the erection of the hospital would be disagreeable, but as to the amount of danger I am not prepared to say—I am not able to say if the hospital would tend to increase fever in the locality." Mr. Ebenezer Robertson, surgeon, being called on to state whether in his opinion contagion will spread from the proposed hospital to the pursuer's property in Dale Street, being a distance of 130 feet, deposes—"I answer it may or may not, as I cannot say how far contagion will reach." And again, "Fever is not more prevalent in the vicinity of fever hospitals than elsewhere." Professor H. Rainey, M. D., certainly one of the most able of the pursuer's medical witnesses, being asked if he considers that the inhabitants of the pursuer's houses would have cause of alarm from the proximity of the hospital, says only—"I beg to decline answering that question." Professor Trail, of Edinburgh, whose testimony is equally entitled to weight with that of Dr. Rainey, deposes—"I am of opinion, that fever contagion is not carried to any great distance. I think the risk to the inhabitants of the pursuer's houses marked A, on the Plan, No. 11, is small; but I cannot say that they are without risk. I am also of opinion that, if the hospital be ventilated by pipes, carrying the effluvia into the cone represented on the plan, the risk would be farther diminished, both within and without the house." Lastly, William Seller, M. D. of Edinburgh, after mentioning the proximity of dwelling-houses to the Fever hospital in Edinburgh, says—"I have not known any instance of fever occurring in these dwelling-houses, arising from their proximity to the Fever hospital, or otherwise than by personal communication." Such is the testimony of the great majority of the pursuer's medical witnesses. On the other hand, how strongly and decidedly do the defender's professional witnesses negative the supposition of danger. Most of them speak from long personal experience of fever hospitals, and the universal observation of the fact in Edinburgh, Dublin, London, Paris, Glasgow itself, and other large towns, that no infection is ever found to be conveyed from the hospitals to the dwelling houses with which they are in almost every instance surrounded. Doctors Easton, and Perry, and Professor Couper of Glasgow concur in deposing most positively that they are satisfied the tenants in the pursuer's houses run no risk whatever, and have no reasonable cause of alarm. Dr. Easton adds, "I think it would be very difficult for the directors to find a better place for the establishment of a fever hospital than that proposed, and I have formed this opinion mainly from the circumstances of the site being at the corner of the street, and having free ventilation on all sides." Professors Christison and Allison of Edinburgh, whose eminence will not be disputed and to whose opinions in this case the greatest weight is undoubtedly due, not only entirely corroborate, from their own great experi-