Some few years ago when giving that part of the course on Equity Jurisprudence relating to torts, the writer gave an examination question abstracted from a recent decision of the Court of Chancery of New Jersey. It was the usual nuisance case: a complaint by an adjoining owner of noise, dust and vibration. One student included in his answer the following statement: "The test then is whether this conduct interferes with ordinary comfort, not according to some fanciful standard but according to the plain and sober manners of an English gentleman." Such sturdy loyalty to the home of the common law and one of its most estimable products may have commendable elements in a chaotic world; but the deportment of the English countryside seems a whimsical test to apply in a mill town of northern New Jersey best known for bootleggers and communists. Nevertheless our student had the semblance of a thought: he was seeking to recall an oft quoted dictum of Vice-Chancellor Knight-Bruce: "... ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people?" ¹ This impressive dictum was quoted in Soltau v. DeHeld,² a case read in course; in fact, it has been referred to so frequently that a judge in a recent English case expressed some gratification that they had got along without mentioning it. Our student was justified in recalling it, and his emendation may be taken as a mild offset to Napoleon's sneer at the English as a nation of shop-

¹ A. B. 1890, M. A. 1893, LL. B. 1893, LL. M. 1933, University of Pennsylvania; Professor of Law, University of Pennsylvania Law School; editor of casebooks in Equity and Procedure; author of Early Courts of Pennsylvania (1910), and of numerous articles in legal periodicals.
² Walters v. Selfe, 4 De G. & S. 315 (1851).
³ 2 Sim. (N. S.) 133 (1851).
keepers. Indeed, if gentlemen are as cheap as Sir Thomas Smith implies, and include all who can live idly without manual labor, perhaps the emendation was not as commendatory as it seems. In fact, a proper sense of humility would recommend the modest limitations indicated by the Supreme Court of Washington: "The nuisance and discomfort must affect the ordinary comfort of human existence as understood by the American people in their present state of enlightenment." 4

In attempting to separate sound from other forms of nuisance and discover if possible what kinds of complaints are likely to receive sympathetic consideration from the courts, general statements, dicta, and definitions are not very helpful. Nuisance, which means literally annoyance, may be described as a wrong done to one by unlawfully disturbing him in the enjoyment of his property or in the exercise of a common right.5 But the term eludes exact definition because, as has been well said, "the controlling facts are seldom alike, and each case stands on its own footing. We are not aided by the classification into public and private nuisances, because the difference between them does not depend on the nature of the thing done, but on the fact that one affects the public at large and the other a limited number only. . . . The injury may be to person or property, to health, comfort, safety or morality. It may be a crime." 6 What amount of annoyance or inconvenience, then, will constitute a nuisance is largely a question of degree; the injury of course must be real and substantial and in the case of private nuisance must be such as to interfere materially with ordinary physical comfort or the reasonable use of property. But what is ordinary comfort to the "sober English people" or the Americans "in their present state of enlightenment"? In spite of the inclination of ultra modernists to lift their eyebrows at cases, we must go to them for information: they are, in fact, all we have, except a confused multitude of local ordinances which tell us something about the kinds of petty annoyances that have provoked restrictive community action, but nothing about the consensus of opinion to which such restrictions may be attributed.

So far as private nuisance is concerned there is little to be learned from the early reports that is of much value in solving the problems of the age of mechanical invention. The cases deal, commonly, with injuries relating

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3 COMMONWEALTH OF ENGLAND (1583) Bk. I, c. 20. 1 BL. COMM. *406.
to real property or its appurtenances, such as stopping or interfering with rights of way, flooding the land by the diversion of waters or water courses, or corrupting the air with noisome smells, so as to render one's dwelling house unwholesome and uncomfortable. This last group may be regarded as the forerunner of a well known line of decisions that have followed the industrial revolution, which preserve and elaborate a principle found in the early law that the fact that an occupation was commendable in itself and carried on in a proper manner did not alone justify substantial damage to property or the infliction of material discomfort upon residents of a neighborhood. Such cases frequently present a complex of nuisances, noise, smoke, dust, vibration and offensive odors; pleaders naturally make out as dark a story as possible, although it is admitted that no particular combination of annoyances is essential.

In this type of litigation noise is frequently a factor, but not the only or indeed the leading factor in an accumulation of disturbances. An effort will be made as far as possible in this survey to confine the discussion to cases where noise was the sole or at least the predominant factor in inducing action by the court. For it is generally admitted that noise alone may constitute a nuisance, although in determining whether it is in fact such a nuisance as to entitle the complaining party to relief at law or in equity, the character, volume, time, place and duration of its occurrence, as well as the locality, must be taken into consideration.

In examining the authorities in which industrial noises are considered it is noticeable at once that few of the complaints involve the great plants of nationally important heavy industries, as is not uncommon in the smoke and gas cases. Chemical fumes and smoke are annoying at greater distances than noise, and it is usual to find the larger plants situated in neighborhoods fully industrialized or purposely placed in comparative isolation.

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7 Batten's Case, 9 Co. 53 (1610); Aldred's Case, 9 Co. 57 (1610); Morley v. Pragnell, Cro. Cas. 510 (1639); Fitzherbert, Natura Brevium (1st ed. 1743) 26; 1 Comyn, Digest (4th ed. 1793) 303; 3 Bl. Comm. 216; 1 Rolle, Abridgment (1668) 88.

8 "Un tan house est necessary, car tous wear shoes; et uncro ceo poit estre pull down, &c. si est erect al nusance l'auter; et issint de glass-house." Jones v. Powell, Palm. 536 (1628); Baltimore & P. R. R. v. Fifth Baptist Church, 108 U. S. 317, 2 Sup. Ct. 719 (1883); Judson v. Los Angeles Gas Co., 157 Cal. 168, 106 Pac. 581 (1910); Simon v. Detroit Motor Valve Co., 233 Mich. 17, 206 N. W. 336 (1925); Davidson v. Isham, 9 N. J. Eq. 186 (1854); Roessler, etc. v. Co. v. Doyle, 73 N. J. L. 521, 64 Atl. 156 (1906); Fish v. Dodge, 4 Denio 311 (N. Y. 1847); Bohan v. Port Jervis Gas Light Co., 122 N. Y. 18, 25 N. E. 246 (1890); Walters v. Selfe, 4 De G. & S. 315 (1851); Bamford v. Turnley, 3 B. & S. 66 (1862); St. Helens S. Co. v. Tipping, 11 H. L. Cas. 642 (1865).


The enterprises involved, in complaints concerning noise, while frequently of local importance, are usually of moderate size and of a type that may be operated successfully within, or upon the border of, a residential section. On the other hand, occasionally, residential building operations spread into a partially industrialized area. Such fluctuations seem inevitable in communities still in a state of development. Zoning, while helpful, is not decisive. It has been held recently in Massachusetts, that a zoning ordinance which impresses an industrial character upon a neighborhood does not sanction practices not naturally incidental to ordinary and reasonable use. It has been said that where industrial works are collected in an appropriate locality and are prudently carried on during working hours, noise inseparable from such enterprises must be endured by those who by choice or necessity live in the vicinity. But although not entitled to the same peace and quiet as in a district strictly residential, the householder can still insist that the business be conducted in a reasonable manner, with due regard to his rights as one who dwells in a manufacturing district. Indeed if the law were otherwise he could be driven from his home without redress. “One who settles in a district, which possesses natural resources of a special kind, cannot prohibit the development of those resources merely because it may interfere in some degree with personal satisfaction or aesthetic enjoyment. No one can move into a quarter given over to foundries and boiler shops and demand the quiet of a farm. On the other hand, the noisy or noisome factory cannot with immunity invade territory stamped by use for residence.” Just as in international law there must be compromises with neighbors whom to some it would be preferable to exterminate, so in these minor conflicts compromises that do not always meet the tests of logic are unavoidable. Necessarily they are based on practical considerations. Highly nervous and oversensitive persons are not afforded exceptional immunity or protection. “Equity is sometimes said to act upon the conscience of the individual,” observes a federal judge, “but that phrase does not mean that


25 Stevens v. Rockport Granite Co., supra note 4, at 488, 104 N. E. at 373. See also Nuge v. Melville Shoe Corp., 280 Mass. 469, 152 N. E. 825 (1932); Ebur v. Alloy Metal Wire Co., 394 Pa. 177, 155 Atl. 280 (1931). A right to make a noise is not acquired by long user unless during the period of user the noise was an actionable nuisance. Sturges v. Bridgman, 11 Ch. D. 852 (1879).
As to the particular sounds that have furnished grounds for litigation, it will be found that those produced in the fabrication of metals are most conspicuous, owing to the pounding and hammering inseparable from such occupations. There are many suits involving iron mills, machine shops, forges and foundries, but, of course, the cases are by no means confined to these obvious instances of unusual disturbance. Jewelers and silversmiths have been charged with similar nuisances. A well known decision is the Appeal of the Ladies Decorative Art Club. In that case the defendants, who were enjoined from maintaining a nuisance, conducted a school of industrial art, in a house which was one of a row of dwellings in a residential section, to the discomfort of an adjoining owner. The disturbance consisted in the tapping and hammering incidental to the instruction in wood carving and metal chasing. The buzzing, whirring and grinding sounds of machinery have been a frequent source of complaint when excessive and ill timed. It is unnecessary to particularize, but printing establishments and plants for the manufacture of dairy products and ice may be mentioned as light industries usually located close to populous dis-
objects. Objections to garages and gas filling stations have been so frequent that they call for separate treatment. In many instances it is not so much the plant itself as the mode of operation that is objected to. Thus in Kobielski v. Belle Isle East Side Creamery Co. the testimony showed that active work began shortly after midnight and continued until seven or eight in the morning, heavily loaded auto trucks and numerous milk wagons came and went, milk cans were thrown about and there was loud talking and some swearing at the restless horses. The complainants who were deprived of their sleep and unable to keep their tenants were held entitled to an injunction. Indeed, loud and profane talk, boisterous conduct and continuous unnecessary noise are forms of disturbance easily avoided and have frequently been checked by injunction or indictment. The blowing of a factory whistle in the early morning hours has been held a nuisance. So the noise of airplanes has been considered as one ground of annoyance in proceedings to enjoin the use of a tract of land as an airport. As respects one point, there seems to be a general agreement that noises which would not under the circumstances be held a nuisance in the daytime may well be declared a nuisance if made at night. The occupants of dwellings and apartments are entitled to protection from disturbance during ordinary

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23 Supra note 21; see cases cited supra note 21.


sleeping hours. In some instances a less stringent rule has been applied to temporary noises during building operations. Even so, damages have been awarded in Massachusetts against a building contractor with respect to unnecessary noises by his workmen in the early morning. On the whole, and without any change in the language of the courts, there can be detected a tendency to require from industry an increased regard for the comfort of the surrounding community. Improved building construction, more skillful engineering, make this possible without imposing too heavy a burden on essential activities.

A few cases concern hospitals. Although conducted as a gainful occupation, the hospital is charitable in spirit and essential to the practice of modern medicine. Nevertheless, a hospital must be conducted with due regard to the comfort and health of others. Even when as a charitable institution it may not be subject to an action at law, it may still be enjoined from maintaining a nuisance.

A court of equity may require a hospital so to arrange its internal construction as not to distress its neighbors by exposing them to the groans and moans of the operating room. So, in a recent New York case, a private hospital for alcoholics and drug addicts was enjoined from disturbing the neighborhood by failing to control the cries and screams of the patients.

Whether the keeping and breeding of animals is regarded as an industry or a sport, the obviously proper place for it, as regards both the creatures themselves and the neighbors, is in the great open spaces made familiar by the motion pictures. But one may be of a sociable disposition, and a lover not only of pets but of his fellow men. It is also an advantage to be close to one's market, even at the risk of annoying some, who under no circumstances could be conceived of as customers. The barking of dogs has frequently led to litigation. The dog is a noisy animal and is valued on that account. As put by the judge in the lower court in a Colorado case: "To some ears the barking of a dog, especially on the person's own premises,

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31 Kestner v. Homeopathic M. & S. Hospital, 22 Dist. R. 793 (Pa. 1911); Deaconess Home v. Bontjes, 207 Ill. 553, 69 N. E. 748 (1904), aff'd 104 Ill. App. 244 (1902).

is a sound that is pleasing and one which tends to make him feel secure.” But the Supreme Court in that case took a less indulgent view of the defendant’s conduct in maintaining in the suburbs of a city a kennel and dog hospital with accommodations for ninety-three dogs which howled and barked day and night continuously, disturbing and keeping awake the plaintiff, his wife and children, rendering them nervous and irritable and depriving them of the proper enjoyment of their home, and reversed the judgment for defendant with directions to grant an injunction unless the nuisance was discontinued.3 Indeed there are circumstances under which the barking of a single dog may be a nuisance.34 But dogs are far from being the only animals whose noise has called for judicial intervention. In Singer v. James35 the plaintiff, whose residence was a mile and a half from Baltimore, was held entitled to an injunction restraining the defendant from keeping such a great number of fowls, hogs and dogs that their noise deprived the plaintiff and his family of the comfortable enjoyment of their dwelling house. Constant noise from the stamping and kicking of horses in an adjoining stable has resulted in an injunction.36 The bleating of calves day and night at a slaughter house to the annoyance of an adjoining owner has been suppressed;37 a city ordinance forbidding the keeping of goats within a fixed distance of a dwelling has been held reasonable.38 On the other hand, the lessee of a hotel in a borough was unsuccessful in restraining an adjoining owner from keeping game cocks and chickens that disturbed his guests by loud crowing from one to five in the morning. Said the court, with a martyr’s resignation: “There are numberless noises and inconveniences which are not conductive to perfect rest, but all these are the music of the night, and while silently bearing with them, we must at times close our windows and keep out or deaden the disturbing sounds, if we would hope for partial quietude.”39 In one case, the noisy presence of


35 130 Md. 382, 100 Atl. 642 (1917).


37 Bishop v. Banks, 33 Conn. 118 (1865).


crickets in a leased apartment was set up as a constructive eviction, unsuccessfully it is true; but the proposition is an indication of the effect that seemingly slight disturbances may have upon irritated nerves. In the animal noise cases the locality of the disturbance is no doubt an important factor in determining the question of nuisance; but, as in other types of annoyance, it is not necessarily the deciding factor. In several of the most important cases cited above, the contending parties resided in small towns or city suburbs.

Where the disturbing sounds have their origin in enterprises connected with public entertainment or sport, one would expect that a more exacting standard of conduct would be imposed than for vital economic services. Such is the view of the New Jersey Court of Chancery: "... in considering whether a noise amounts to a nuisance," says Vice-Chancellor Pitney, "the question whether or not it is made for a necessary or useful purpose is always taken into consideration." So, in a suit to restrain the operation of a roller skating rink, when it was suggested that louder noises were made by passing trains, trolley cars and automobiles, the court pointedly observed that these were necessities, while the present case related to a private business in no sense a public necessity. But as a rule, the cases do not avowedly stress the relative importance of the source of disturbance, whatever it may be, where substantial injury is inflicted upon the complaining party. This may reflect the modern attitude toward recreation, as compared with the older tendency to look with suspicion on any sort of entertainment for the public outside of military exercises and traditional festivals. Some forms of amusement have long been under the ban of the law. The gaming house and the bawdy house are nuisances per se, although conducted with an outward appearance of decorum. At common law a stage for rope dancers and a bowling alley were indictable as common nuisances. Rope dancers have left the highways for vaudeville, and as for bowling alleys, they are hardly any longer to be regarded as evil haunts "from their tendency

60 Ben Har Holding Corp. v. Fox, 147 Misc. 300, 263 N. Y. Supp. 695 (1933). Unfortunately the tenant was a tuba player. "It is singular," said the court, "that a musician should complain about another musician." Id. at 307, 263 N. Y. Supp. at 702.


42 First M. E. Church v. Cape May G. & C. Co., 73 N. J. Eq. 257, 67 Atl. 613 (1907). See other rink cases: Manos v. City of Seattle, 24 P. (2d) 241 (Wash. 1933); Snyder v. Cabell, 29 W. Va. 48, 1 S. E. 241 (1886); Churchwardens of the Church of St. Margaret v. Stephens, 29 Ont. L. R. 180 (1898).

62 Barnett v. Tedescki, 154 Ala. 474, 45 So. 904 (1908); De Forest v. United States, 11 App. D. C. 458 (1897); Commonwealth v. Godall, 165 Mass. 588, 43 N. E. 520 (1896); People v. Elmore, 236 N. Y. 489, 177 N. E. 14 (1931); Commonwealth v. Ciccone, 85 Pa. Super. 316 (1925). Drawing together great numbers of disorderly persons, to the inconvenience of the neighborhood, a practice referred to by Hawkins in PLEAS OF THE CROWN (1716) 195, has, through the reluctant efforts of the police urged on by reformers, almost disappeared. Only an occasional road house preserves the manners of ruder days. Roulette is not as noisy as a radio and a more sophisticated younger generation would rather live next door to a strumpet than a trumpet. Still the morals must be preserved of those who cannot get away to the Riviera.
to withdraw the young and inconsiderate from any useful employment". Some early American decisions support the old and stern doctrine; but the prevailing opinion today is that a bowling alley is not a nuisance per se, although like other noisy forms of recreation, it may in fact be held a nuisance on account of its location or the manner in which it is conducted.

The disturbance of residents by organized sports or amusements may result either from sounds originating in the activities themselves, or from the almost inevitable noise of the attending throngs. In *Walker v. Brewster* a property owner was enjoined from permitting his grounds to be used for what were described as monster fêtes, with displays of fireworks. There was music by bands and dancing and, of course, crowds of spectators. The court pointed out the difference between private entertainment and the business of giving entertainments and collecting crowds. The case is the precursor of many others seeking to restrain the noisy operation of various types of amusement parks and picnic grounds. "When people came to be amused [in swings and roundabouts]," observed the court in one case, "one's ordinary experience told one they would shout; it was a necessary consequence of their mode of enjoying themselves. There was nothing improper in it, but it could not be permitted to interfere with peoples' comfort." Roller coasters, with their combination of noisy apparatus and excitable riders, have been a frequent source of complaint.

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44. [State v. Haines, 30 Me. 65 (1849). See Jacob Hall's Case, 1 Mod. 76 (1671); Hawkins, op. cit. supra note 43, at 693.]
45. [Bloomhuff v. State, 8 Blackf. 205 (Ind. 1846); State v. Haines, supra note 44; Tanner v. Trustees of Albion, 5 Hill 121 (N. Y. 1843); Updike v. Campbell, 4 E. D. Smith 570 (N. Y. 1855).]
47. [L. R. 5 Eq. 25 (1857).]
50. [Schlueter v. Billingheimer, 9 Ohio Dec. (Reprint) 513 (1885); Edmunds v. Duff, supra note 48; see cases cited supra note 48, and Note (1924) 33 A. L. R. 725. A merry-go-round was enjoined in Town of Davis v. Davis, 40 W. Va. 464, 21 S. E. 906 (1893). In Attorney-General v. Doremus, supra note 4, an injunction to restrain trap shooting was refused.]
Athletic clubs have been restrained from disturbing a residential neighborhood by boxing contests at night that drew crowds and caused noise and confusion. On the other hand the court need not anticipate that nuisance will result from the mere fact that a number of people will assemble at a particular spot, as in the case of an open air tabernacle or auditorium. In an Irish case race meetings on Sunday were enjoined where the shouting and cheering of the crowds and the cries of the bookmakers disturbed the quiet enjoyment of suburban homes and interfered with church services. And in this country a similar principle has been applied, although not uniformly, to Sunday baseball. The game, however, is not a nuisance per se and under ordinary circumstances injury must be shown. So also a dance hall is not a nuisance per se, although it may become a nuisance from the manner in which it is conducted and from the behavior of the persons assembled in and around it. "Among the noises," it has been said, "which, if they do not cause substantial discomfort, residents in large industrial cities may have to put up with, is a certain amount of the noise which accompanies and is incident to the reasonable recreation of a crowded population. In the fashionable quarter of a city a similar discomfort is experienced at certain seasons, and, within due limits, may have to be submitted to." The miniature golf course, which came and went so quickly, has left reminders that even so mild a form of entertainment may in its operation become objectionable to nearby residents. An instructive case is Ackers v. Nosstrand Athletic Club, Inc., 212 App. Div. 543, 209 N. Y. Supp. 76 (1925); Bellamy v. Wells, 60 L. J. Ch. 156 (1891). Murphy v. Cupp, 182 Ark. 334, 31 S. W. (2d) 396 (1930). Sheets v. Armstrong, 307 Pa. 385, 161 Atl. 359 (1932). See also Jones v. Little Rock Boys' Club, 182 Ark. 1950, 34 S. W. (2d) 222 (1931) (recreation center); Briggs v. City of Grand Rapids, 261 Mich. 77, 245 N. W. 555 (1932) (football field); City of Lynchburg v. Peters, 145 Va. 1, 133 S. E. 674 (1926) (stadium). Dewar v. City & Suburban Racecourse Co., [1899] 1 Ir. R. 345. Gilbough v. West Side Amusement Co., supra note 41; Seastream v. New Jersey Exhibition Co., 67 N. J. Eq. 178, 58 Atl. 532 (1904) (injunction granted); McMillan v. Kuehnle, 78 N. J. Eq. 251, 78 Atl. 185 (1910) (injunction refused). Where a nuisance occurs it makes no difference that the enjoyment of the property interfered with is religious and devotional. Churchwardens of the Church of St. Margaret v. Stephens, supra note 42. Alexander v. Tebeau, 24 Ky. L. R. 1305, 71 S. W. 427 (1903); Cronin v. Bloomecke, 58 N. J. Eq. 373, 43 Atl. 605 (1899); Rifley v. Rush, supra note 41; Peden v. Furman University, 155 S. C. 1, 135 S. E. 907 (1930); Royse Ind. Sch. Dist. v. Reinhardt, 159 S. W. 1010 (Tex. Civ. App. 1913). McPheeters v. McMahon, 21 P. (2d) 606 (Cal. App. 1933); Whitcomb v. Vigean, 240 Mass. 359, 134 N. E. 241, 19 A. L. R. 1439 (1922); Thoene v. Mosby, 257 Pa. 1, 101 Atl. 98 (1917); Truehart v. Parker, 257 S. W. 640 (Tex. Civ. App. 1923); Cain v. Truehart, 12 S. W. (2d) 239 (Tex. Civ. App. 1928); Tarr v. Hopewell Community Club, 153 Wash. 214, 279 Pac. 594 (1929). Cf. Commonwealth v. Cardoze, 119 Mass. 210 (1875); Linden v. Fischer, 191 N. W. 901 (Minn. 1923); People v. Rubenfeld, 254 N. Y. 245, 172 N. Y. Supp. 485 (1930). New Imperial and Windsor Hotel Co. v. Johnson, [1912] 1 Ir. R. 327, 336. Central Trust and Savings Co. v. Mencke, 14 Dist. & C. 115 (Pa. 1930); Gottschall v. McIlhenny, 36 Dauph. Co. 366 (Pa. 1931). Cf. Drennen v. Mason, 153 So. 689 (Ala. 1931); Rickard v. Feinstone, 14 Dist. & C. 114 (Pa. 1930) (injunction to restrain construction refused).
where the gentle game of croquet came under the scrutiny of the court. The bill was to restrain the playing of this game on a vacant lot opposite the complainants' residence in the city of Washington during the evening, not later than 11 P. M. A decree granting an injunction was reversed on appeal in a well considered opinion which found the complainants unduly sensitive.

An approach to the cases concerned with music is complicated by the embarrassing question, what is music? Perhaps it is best to avoid the always delicate problem of art as did Mr. Justice Kekewich. Whether classical music was more distracting than works of a lower class, he could not say. Lord Selbourne has summed up the common sense view: "A nuisance by noise (supposing malice to be out of question) is emphatically a question of degree. If my neighbor builds a house against a party wall, next to my own, and I hear through the wall more than is agreeable to me of the sounds from his nursery or his music-room, it does not follow (even if I am nervously sensitive or in infirm health) that I can bring an action or obtain an injunction. Such things to offend against the law must be done in a manner which, beyond fair controversy, ought to be regarded as exceptive and unreasonable." A wilful and malicious disturbance by loud noises is actionable, as it should be. But that does not mean that popular songs may not be sung in a private residence or club, although unappreciated by the listeners, in the absence of malicious or disorderly conduct. The giving of music lessons by a teacher of music even when supplemented by practice on such instruments as the piano and violin and singing, has been held not such an annoyance as to entitle an adjoining resident to an injunction. But in one instance an injunction was granted to restrain vocal music on the premises of a manufacturer and dealer in musical instruments which disturbed an adjoining business. The Salvation Army has not come off as well as the teachers, owing to municipal regulation of street music, although in one case it was said that the use of the streets contemplates not quiet and repose but the noise and bustle

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60 19 App. D. C. 28 (1901).
61 Motion v. Mills, 13 T. L. R. 427 (1897).
62 Gaunt v. Finney, L. R. 8 Ch. App. 8, 12 (1872). See also Lord Justice Mellish in Ball v. Ray, supra note 36, "not . . . like the noise of a pianoforte . . . or . . . children in their nursery, which are noises we must reasonably expect."
66 Motion v. Mills, supra note 61. The plaintiffs were, among other things, auctioneers.
incident to the transaction of business and the harmless pleasures and devotions of the people. Whether bells may be classed with musical instruments is a question upon which opinions may differ. At least they have tonality, ritual significance, and in some cases practical value, as on fire engines and alarm clocks. The leading case is *Soltau v. DeHeld*. There a chime of bells, that had been installed on the roof of a house converted into a chapel, was rung five times on weekdays and more frequently on Sundays, to the disturbance and annoyance of the complainant and his family. An injunction was granted, and the same principle has been applied in other cases of chimes and church bells as well as bells used for secular purposes where the ringing has been unreasonable and unusual. In *Cluney v. Lee Wai* an injunction was granted to restrain the use of objectionable musical instruments in a Chinese theatre during hours that interfered with sleep. The orchestra included gongs, drums and wind instruments, and the music was described as harsh, strident and discordant. This would rule out most contemporary compositions; but such works are seldom heard except by those who pay for the privilege in sanctuaries devoted to the art.

Not the music itself but the mode of production is the true source of complaint in numerous cases where mechanical means are depended on for the production of a continuous volume of tuneful sounds as a means of enlivening pleasures that might otherwise prove monotonous, and, perhaps more often, as a method of attracting customers to the scene of revelry. The continual operation of steam organs and other loud instruments to the discomfort of nearby residents has frequently been enjoined. In *Winter v. Baker* it was said that the organ was a good organ but its goodness was in its loudness. In *Lambton v. Mellish* the organ could be heard a mile. That is much too far. The ingenuity of modern advertising has its trials as well as its seductions. *Stodder v. Rosen Talking Machine Co.* is a leading case. The defendant placed in his doorway a talking machine

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68 *In re* Gribben, 5 Okla. 379, 47 Pac. 1074 (1897). See also Regina v. Nunn, 10 Ont. Pr. 395 (1884).
69 Supra note 2.
71 In re Hawaii 310 (1896).
73 Supra note 72.
74 Supra note 49.
75 241 Mass. 245, 135 N. E. 251 (1922).
operated by an electric motor which was played from 10 A. M. until 5 P. M. or later, the records consisting of every variety, singing, speaking and instrumental. The continuous and monotonous playing, which was found to be a substantial addition to the other noises of the street, injuriously affected the plaintiffs and their employees, in their place of business immediately opposite, by gradual wear on their nervous systems and by making it difficult for them to concentrate on their work. An injunction was granted restraining the defendants from playing in the entrance of their store any records on a talking machine in such a manner as to cause the noise produced to be "appreciably audible or heard" in any part of the respective places of business of the plaintiffs. Damages were also awarded. Upon a subsequent violation of the injunction the defendants were fined for contempt. In a recent Texas case an injunction was sought against the defendant who operated a root beer stand in a manner considered objectionable by the plaintiff, whose home was on the opposite side of the street. Among various nuisances it was alleged that a radio was maintained at all hours of the day and night. The court below, among other things, perpetually enjoined the defendant from using a radio, and this was one of the errors for which judgment was reversed. "Clearly," said the court, "a radio is not a nuisance per se. The record shows that practically every residence and each of the other places of business surrounding appellant's root beer stand is equipped with or has a radio. We do not hold that a radio cannot be so operated that it would not become a nuisance or that a court could not require a party to so operate his radio that it would not be a nuisance. The fact, however, that the radio was being operated as a nuisance would not authorize the trial court to absolutely prohibit its use." That cases dealing with the noise of loudspeakers are few may be attributed in part to the novelty of these instruments and the rapid progress of their development, and in part to a tendency to correct such abuses as may occur through penalties imposed by municipal ordinances.

In this too brief survey of the decisions bearing on nuisances resulting from excessive noises of various sorts, many interesting judgments that deserve extended comment are relegated to the notes, as well as other cases that invite criticism. Enough has been said to show the general trend of authority. Courts of equity are not so slow as they once were to interfere for the prevention of tortious conduct. Criticism of the law's delay has had its effect. In the nuisance cases generally, the fatalism that once found discomfort the ordinary mortal lot, is giving place to an insistence that engineering skill shall be applied to reduce to the utmost the annoyances incidental to modern life. Legal standards of what should be regarded as

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ordinary and reasonable comfort improve, as the standard of living rises, and life becomes more civilized. It is curious that until very recently no scientific effort was made to determine the incidence of noise and its effect on health. An eminent judge has said: "That the subjection of a human being to a continued hearing of loud noises tends to shorten life is, I think, beyond all doubt." But a standard work of reference says: "The usual assumption that noise is harmful to man is by no means proved. Noise is known to affect the human heartbeat as well as the rate at which heat energy is set free in the human body, but the details of these effects have not been studied. Most individuals accustom themselves to living and working in noisy surroundings and only nervous individuals who fail to make this adjustment suffer harmful effects." This would seem an understatement, but such problems are now the subject of inquiry in various laboratories of psychology. Recent medical opinion holds that the effect of noise on the nervous system is a constant drain on nervous energy leading to neurasthenia and breakdown. Fortunately, one community has made a thorough effort to investigate the problem, and the report of the commission appointed by the Commissioner of Health to study noise in New York City and to develop means to abate it is a document deserving the careful attention of all who are interested in municipal welfare.

Scientific noise measurements were taken in many parts of the city and questionnaires were furnished to persons who wished to take part in the survey. Traffic, radios, collections and deliveries, whistles and bells, construction and vocal disturbances all had their part, and while it is not possible to eliminate many of the noises of a busy city, they can be considerably reduced by better management where sound is inevitable, and discouraged when wholly unnecessary by municipal ordinance, as in the case of radios and sound devices used for advertising. The problem of the privately owned radio with loud speaker is concededly different. The radio is a new toy, an escape from boredom; youth beats time with its foot, and the lonely woman hears a man's voice. But like all new toys it is used at first with too much abandon, as some may remember was the case with the automobile in the days of the "scorcher". Just as in the case of the barking dog and the noisy party, the annoyance is usually too petty for formal and expensive proceedings in equity, and ought, in all reason, to be settled by mutual concessions and neighborly good will. This perhaps may be difficult where apartment house faces apartment house, each with its concealed

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Pitney, V. C., in Gilbough v. West Side Amusement Co., supra note 41. Quoted with approval by Farmer, C. J., in Phelps v. Winch, supra note 48. In the latter case "The music was furnished by four college boys with a piano, saxophone, banjo and drum, and was the character of music suited to present-day methods of dancing, called 'jazz' music". Id. at 161, 140 N. E. at 848.

16 *Encyclopaedia Britannica* (14th ed.) 480, tit., Noise and its Control.

battery of horns belching trite songs and oleaginous sales talks. But if selfish and obstinate persons insist on disturbing the neighborhood, the burden of equity proceedings ought not to be imposed on the injured residents, but the nuisance should be dealt with by municipal ordinance and a small fine, as has been found the only practical method of coping with violations of traffic rules. Much of this noise is the result of mere thoughtlessness, and the broadcasting stations by occasionally advising their patrons to turn their radios down low in the late evening, could do their part in retaining popular good will for an industry now enjoying the advantages of novelty, but bound sooner or later to come in for its share of regulation. All disturbing noises are not city noises by any means. In the deep country a few owls can give a pretty fair imitation of a radio concert and the early barnyard noises rival those of the ash collectors and other harbingers of dawn. Exceptionally nervous persons, or those whose refinement exceeds the standards of "the American people in their present state of enlightenment", as the Washington court put it, must seek refuge in sound proof rooms, if they can afford them, or take their chances of the padded cell. Indeed, air and sound conditioned houses may be the next luxury, when luxury is resumed, to the profit of our inventors and engineers, who, having devoted one century to creating pandemonium, may spend the next century in abating it.