one of them then they are not joyntenants but he to whose use the disseison is made is sole tenant." Coke gives an interesting example that if A disseise one to the use of B without B's knowledge and B later assents to the disseisin A is the tenant of the land until the assent but after assent B is the tenant though both A and B are disseisors. Thus not only would the nature of the tenancy when it first arose depend on intention, but the intention of the disseisors could subsequently affect it.

It would follow that in *Bolling v. Hobday* Chitty J. could legitimately have looked to the trusts of the will as some evidence of the intention with which the disseisors held even though the trusts might have been extinguished.

This is the course which has been followed by the Irish Courts. Thus in *MacCormack v. Courtney*[6] the Divisional Court on a case stated by Palles B. held that where the next of kin of an intestate acquired the title at law by adverse possession they did so as tenants in common in the proportions to which they were entitled in equity. In *Smith v. Savage*[7] Barton J. followed both *Ward v. Ward* and *MacCormack v. Courtney* holding that next of kin of an intestate in possession of chattels real acquired a joint tenancy in the shares of the other next of kin but in respect of their own original shares they acquired as tenants in common. He apparently thought that next of kin would always, as between the joint tort-feasors, acquire a possessory title as tenants in common for the "next of kin are in possession not as trespassers under a wrongful title but as equitable tenants in common and when the Statute runs in their favour they acquire title as legal tenants in common."

Other instances in which the disseisors would hold as tenants in common of the legal estate can be readily imagined. For example, where tenants in common of a mortgage acquire the title to the equity of redemption or again where expenses are borne and profits shared in unequal proportions, the disseisors hold to their own use in unequal shares and, as one of the unities is absent, their tenancy cannot be joint.

It is accordingly submitted that persons who together acquire an interest in land by adverse possession will become joint tenants of that interest unless the circumstances, as a whole, indicate their intention to hold as tenants in common.

—AIRLIE SMITH.

6. [1895] 2 I.R. 97.
7. [1906] 1 I.R. 469.

LIABILITY OF A LANDLORD FOR NUISANCE.[1]

In *Wringe v. Cohen*,[2] the Court of Appeal reviewed the whole position as to the liability of an owner or occupier for a nuisance on his premises due to lack of repair. The appellant landlord based his defence upon the supposed doctrine that a landlord who has covenanted to repair leased premises is liable for a nuisance upon those premises only if he actually knows, or ought to have known, of the existence of the nuisance. For this contention he mainly relied upon *St. Anne's Well Brewery v. Roberts*,[3] and upon the opinion of Goddard J. in *Wilchick v. Marks*,[4] that the landlord was liable only if he actually knew.

1. The author gratefully acknowledges the assistance he has received in writing this note from discussion with the Honours class in the Law of Wrongs.
2. [1940] 1 K.B. 229.
3. (1928), 44 T.L.R. 703.
4. [1934] 2 K.B. 56, at p. 66.

The whole force of the joint judgment of Slesser and Luxmoore L.JJ. and Atkinson J. is directed towards showing that the landlord, who has covenanted to repair, is liable without proof of knowledge or means of knowledge, except where the nuisance is due to the act of a trespasser or to a latent defect :—that is to say, the principles of liability applicable to such a landlord are the same as those applicable to an occupier. The plaintiff in this case would have had a remedy against the tenant, but since the tenant would have been entitled to compensation from the landlord, the action was brought directly against the landlord to avoid circuity.

In discussing whether the person on whose land the nuisance existed should have knowledge of the nuisance, the Court traced a long line of cases to show that knowledge was relevant only under special circumstances. The chief of these cases was *Tarry v. Ashton*[5] in which the majority of the Court of Appeal held that an occupier was under an absolute obligation to prevent his property from becoming a nuisance. But though Blackburn J. also found that the defendant was liable, there has been a conflict of opinion over the grounds on which he based his conclusion. The Court in *Wringe's* case thought that Blackburn J. did not hold that the defendant had known that the lamp in question was out of repair. In some subsequent cases it had apparently been thought that, because the defendant had commissioned an independent contractor to examine and repair the lamp he must have had knowledge of its disrepair but the Court in *Wringe v. Cohen* expressly says :—" It is perfectly plain from the facts of the case that, so far from it being shown that the defendant knew that the lamp wanted repair in August, the contrary was the case."[6] The emphasis in the judgment of Blackburn J. was thrown upon the fact that the defendant was under a duty to keep his premises in repair, and that duty was not discharged by entrusting the work of repair into the hands of an independent contractor.

It must be noted that most of the cases considered in *Wringe v. Cohen* are concerned with nuisance to the highway, e.g., in *Tarry v. Ashton* the lamp fell and injured a passer-by. But in *Wringe v. Cohen* it was the plaintiff's shop which was injured, and not someone on the highway. The Court, however, considered that the principles of liability in this connection were the same both for public and private nuisance. In effect the Court drew on precedents concerning the liability of an occupier for public nuisance, applied these to determine the liability of an occupier for private nuisance, and then decided that the landlord is bound by the same rules, if he has covenanted to repair. Each of the steps in this argument may be debated. Is the standard of liability the same for public and private nuisance ? Is a landlord who has covenanted to repair bound by the same rules as an occupier ?

One case strongly relied on by the appellant was *St. Anne's Well Brewery v. Roberts*,[7] in which the nuisance was the old city wall of Exeter which fell upon the plaintiff's inn. However, this case was distinguished on another ground, namely, that the nuisance was caused by a latent defect, to quote Scrutton L.J., " as latent a defect as you would expect any defect to be." This defect was the erosion of the foundations of the wall and the excavation of part of it by the plaintiffs or their prede-

5. 1 Q.B.D. 314.
6. at p. 237.
7 44 T.L.R. 703.

cessors in title for the insertion of cupboards. Thus, where a latent defect was concerned, the Court of Appeal was prepared to follow the orthodox line, and say that there was no liability. Where a nuisance was caused by the act of a trespasser, the occupier (or owner) was liable only if he knew or ought to have known of the nuisance. This was the doctrine laid down in *Barker v. Herbert.*[8]

An interesting minor point in the case is the support the Lord Justices thought they could draw from *Pollock on Torts* for their view of *Tarry v. Ashton.*[9] What was presumed to be one of Pollock's footnotes in the last edition says that " the decision in *Tarry v. Ashton* is correct because there was no evidence that defendant knew of the danger." Actually Pollock meant this note to refer to *Pritchard v. Peto*[10] and the learned editor inserted the reference to *Tarry v. Ashton* by mistake.

The conclusion to be derived from *Wringe v. Cohen* is clearly stated in the headnote: if, owing to want of repair, premises on a highway become dangerous and therefore a nuisance, and a passer-by or adjoining owner suffers damage by their collapse, the occupier or owner, if he has undertaken the duty to repair, is answerable whether or not he knew or ought to have known of the nuisance.

What is the precise effect of the reference to premises upon a highway? Has an adjoining owner greater rights in private nuisance because the house of which he complains is on the highway than if it is set a hundred feet back? If we once blur the distinction between public and private nuisance, are we to have two standards of liability for private nuisance according to the location of the house? This seems opposed to the whole tendency of the case to regard public and private nuisance as covered by the same principle where lack of repair is concerned.

—W. O. HARRIS.

8. [1911] 2 K.B. 633.
9. at pp. 239-40.
10. [1917] 2 K.B. 173. See 56 L.Q.R. (1940) p. 140.

NUISANCE—RYLANDS *v.* FLETCHER—NEGLIGENCE—LIABILITY FOR ACT OF INDEPENDENT CONTRACTOR.

Torette House Pty. Ltd. v. Berkman,[1] is an interesting case, if only for the number of points that were discussed. The facts were that the defendant, who was the owner of certain premises numbered 113, 115 and 117, employed an independent contractor to make some changes in the water supply to number 113. Failing to find the necessary stop-cock, the plumber tampered with those belonging to the other houses and carelessly turned on a stop-cock which had previously been turned off, and to which was attached a disused and unplugged pipe which ran under number 115. The water escaped from this pipe during the week-end and caused damage to plaintiff's goods in his adjoining premises at number 119.

The law of torts has been developed by extending the narrow forms of action until each covers now a fairly broad scope; but the natural result of the extension of each remedy is that there is now much overlapping and the boundaries of the specific torts are rather confused. Within each particular tort, there has been much rationalisation, but

1. (1940) 62 C.L.R. 637; (1939) 39 S.R. (N.S.W.) 156.