

and maintenance of nuisances, public and private. To warrant the application of this restraining power, the danger of irreparable mischief or injury must be imminent and clearly made to appear. *Wason v. Sanborn*, 45 N. H. 169; *Perkins v. Foye*, 60 N. H. 496. The act sought to be restrained must be one which, if performed or executed, will inevitably bring on the danger threatened by it. It must be a nuisance in fact, and not one created solely by statutory enactment or municipal ordinance. *Waupun v. Moore*, 34 Wis. 450.

In this case, the defendant's proposed raising and enlargement of his building, if carried to completion, would neither be a nuisance in fact, nor the occasion of irreparable mischief or injury. The ground of complaint is, that the danger from fire will be increased, but the case finds that the proposed change will neither increase nor diminish that danger. But for the ordinance prohibiting and restricting the change it would be lawful, and the defendant's right to carry out the undertaking would be unquestioned.

With these views, it is not necessary to consider whether the ordinance, a threatened violation of which is complained of, is or is not authorized by the charter of the city or the statute upon the subject.

Bill dismissed.

SMITH and CLARK, JJ., did not sit: the others concurred.

ADAMS & a. v. SPAULDING.

Stevens v. Chase, 61 N. H. 340, affirmed.

REFLEVIN, for a silk thread cabinet case, alleged in the writ to be of the value of fifteen dollars. The plaintiffs' evidence showed that the cabinet was worth twelve dollars. The defendant moved that the action be dismissed for want of jurisdiction. Motion denied, and the defendant excepted.

E. S. & H. A. Cutter, for the defendant.

G. B. French, for the plaintiffs.

ALLEN, J. The only point raised by the defendant's exception was decided in favor of the plaintiffs in *Stevens v. Chase*, 61 N. H. 340, and no sufficient reason appears for overruling that decision. The supreme court has original jurisdiction of actions of replevin when the value of the property is alleged in the writ to be greater

than \$13.33, although it may upon trial be proved to be less than that sum.

Exceptions overruled.

SMITH, J., did not sit: the others concurred.

BROWN v. WEST.

To a writ of entry to foreclose a mortgage the defendant pleaded a former judgment upon the same mortgage, and payment of the amount thereupon adjudged to be due. Replication, that one of the mortgage notes then due was not included in the judgment. Rejoinder, that the amount of the former judgment was the sum adjudged to be due on all the notes secured by the mortgage. The plaintiff having demurred to the rejoinder, the demurrer was overruled.

WRIT OF ENTRY, to foreclose a mortgage. Plea, that the plaintiff, at a former term, recovered judgment for the possession of the demanded premises under and by virtue of the same mortgage. Replication, that the former judgment was a conditional judgment for the sum of \$3,980.79, the amount due upon four notes secured by said mortgage, from which the premises were redeemed, and that the plaintiff brings this action to foreclose the mortgage because of the non-payment of an additional note for the sum of \$800, secured by said mortgage, and not included in said conditional judgment. Rejoinder, that in the former action the court adjudged the sum of \$3,980.79 to be the amount due upon all the notes secured by said mortgage, and rendered said conditional judgment therefor, which amount, with all lawful costs, was paid by the defendant to the plaintiff, and the mortgaged premises redeemed from said mortgage, and that the plaintiff was thereby estopped to maintain that said \$800 note was not included in said judgment, and also estopped to maintain this action. The plaintiff demurred.

Sulloway & Topliff, for the plaintiff.

B. Wadleigh, for the defendant.

CLARK, J. The facts alleged in the rejoinder and admitted by the demurrer are sufficient to constitute a defence to the plaintiff's action.

Demurrer overruled.

SMITH, J., did not sit: the others concurred.