File No. 5308 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, September 20, 1906.

Hon. W. Cabell Bruce,
City Solicitor.
Dear Sir:-

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As requested by your favor of the 17th inst., I have considered the matters referred to you by Dr. Bosley in his letter of september 15th, namely, whether the owner of property can be required to shate nuisances, as well as the occupier or tenant.

Ordinance No. 57, approved March 17th 1904, is the ordinance under which the Health Department acts in ahating nuisances, and this provides that notice of abatement shall be served on the "owner or owners, occupier or occupiers", and then provides that on failure to abate, the city may, itself, ahate at the expense of the owner or owners, occupier or occupiers, who shall also be subject to a penalty.

The question of civil liability of the landlord and the tenant, as between themselves for the abatement of nuisances, depends upon a number of questions, including the terms of the lease, the condition of the property at the time of the lease, the knowledge of the landlord, etc.; and the general rule of criminal liability is, that the landlord is not criminally liable for a nuisance created by his tenant.

In view of this, I have some doubt as to the validity of the ordinance in question as affecting the owner of preparty, when the nuisance has been created by the tenant, and without the owner's knowledge,
and I think I have once or twice advised in reports on the subject, that
the occupier of property is the person who should be primarily looked
to for the actual abatement of the nuisance.

However this may be, the ordinance is an excellent one and works well, and I think it would be very unfortunate for this department to render an opinion that the provision, acquiring the owner as well as the occupier to abate, is illegal; especially, where, as here, I see no reason for giving such an opinion. I think that Dr. Bosley should be advised to serve his notice in every case on the tenant in possession, and to serve his notice also on the owner, If he can be found. There can he no question as to the tenant's obligation to abate, and no question of his liability to the prescribed penalty, if he fail to abate, so

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