No. 13659

Supreme Court of Illinois

Graham

vs.

Ottawa, Gas, Light & Coke Co.

71641 7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

No. 303.

Graham
vs
Chicago

13657

State of Illinois } ss Pleas before the Honorable
La Salle County } Madison E. Hollister the Judge
of the Sixth Judicial District of the State of Illinois
and the Presiding Judge of the La Salle County
Circuit Court, in said State, at a term of said Court
begun and held at the Court House in Ottawa
in said county and State on the first Monday
in the month of February, the same being the Third
day of February in the year of our Lord one
thousand, Eight hundred and Sixty two, and
of the Independence of the United States of
America the Eighty fifth.

Present

The Honorable Madison E. Hollister Presiding Judge
Absalom B. Moore, Clerk
David P. Jones States attorney
Eri L. Waterman Sheriff

Friday February 14th = Court meet pur-
-suant to adjournment. = Present Hon William Chumasero
Presiding Judge.
Absalom B. Moore clerk
David P. Jones States attorney
Eri L. Waterman Sheriff

It is remembered on Friday February 14th, the
same being one of the days of the February

Term of said Court for the year 1862. certain proceedings were had in said Court, in the words and figures following to wit;

"James Graham
vs
Ottawa Gas Light & Coke Company } Trespass on the Case

" This day again come the parties to this suit together with the jury sworn herein, and after hearing the balance of the testimony and a part of the argument of counsel, the further hearing of this cause is postponed until the coming in of the Court tomorrow morning."

Saturday February 15th.

Court met pursuant to adjournment.

Present Same as yesterday.

Be it further remembered that on Saturday the 15th day of February, the same being one of the days of the February Term of said Court for said year 1862. certain proceedings were had in the above entitled Cause which were and are in the words and figures following to wit;

"

James Graham
to
Ottawa Gas Light
& Coke Company

Trespass on the Case.

This day again come the parties to this suit, together with the jury sworn herein, and after hearing the balance of the arguments of counsel, the jury retire to consider of their verdict, and after due deliberation thereon had, they return into court the following verdict, to wit; "We the jury find the issues joined in favor of the plaintiff and assess his damages at the sum of Three hundred dollars"

The defendant by its attorneys moves the court for a new trial, which motion is overruled by the court.

It is therefore considered by the court that the plaintiff have and recover of the defendant the said sum of three hundred dollars for his damages, and that he have execution therefor."

State of Illinois }
La Salle County } ss I Absalom B. Moore clerk of the Circuit Court in & for said County in said State, do hereby certify that the foregoing are true full and complete copies of record of proceedings had in the foregoing entitled cause on the said 14th & 15th days of February, the same being days of the February term of said court for the year 1862.

Witness my hand and the seal of said Court at Ottawa this 23d day of May AD 1862.

Absalom B. Moore Clerk
Chas H. Hook Deputy

Filed May 24. 1862.
A. Nelson
Clk.

303.
Galt & Lyt Co.
vs
Graham
Awards recorded

It is hereby stipulated by between the parties hereto that the foregoing transcript may be filed herein as a contained a part of the bill of exceptions in this cause.
Dated & time of filing of this stipulation May 24th 1862.

E. Allen
for plaintiff

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

OTTAWA GAS LIGHT AND COKE COMPANY
vs.
JAMES GRAHAM.

This case is similar to that of the same appellant *vs.* Thompson, and as to the points made in this, which are the same as those made in the Thompson case, the Court is referred to the suggestions of appellee made in that case.

To the second point we say that, whether the deleterious matter mingled with the water in the well was gas or some other substance, must necessarily be matter of opinion. The witness had examined the water in the tank at the gas works and in the well, and said the water in the well tasted as the water in the tank smelt; and he occupied the position of one having that superior experience which would enable him to express an opinion as to the cause of the injury to the water. Smith, however, merely says that the gas injures the well. He did not express any opinion where the gas which injured the well came from, so that all his opinion amounts to is, that the water in the well contained that which to his senses appeared to be gas; and there is no other way of conveying an idea that a deleterious matter in a well is gas, than in the form of an opinion or belief, and all he has said is that there was gas in the water. Suppose the other side had asked the witness whether in his opinion the impurity in the water was not urine or manure, would that not have been proper? Is there really any other way of conveying the idea clearly of an impression produced upon the senses? It might as well be said that it would be improper to take the opinion of a witness as to whether the weather was warm on a certain occasion. Let him state how much the particles of matter of which his body was composed had been forced apart by the expansive effect of caloric, and let the jury say whether there was enough caloric to make the weather warm. You could not prove that a man had smelt a skunk except by taking his opinion on the subject. The words "in your opinion" in the interroga-

tory, do not affect the sense. Suppose the inquiry had been, what appeared to cause the bad quality of the water in Graham's well? the question would have meant just the same. If, however, the form of the question was wrong, the question and answer taken as a whole amount to no more than giving to the jury the idea that there was in the well, mingled with the water, a substance called gas, or something that smelt like it. But there is no sort of doubt on that point; every witness who examined the well says so. The agent, Mason, himself admitted it to Thompson, and acknowledged that he had admitted it, (52.) No harm was done by the evidence. Its exclusion could not have changed the result, and the judgment should not be reversed for such a slight irregularity, if it is one. See *Ray* vs. *Bell*, 24 Ill. p. 454.

To the 3d, we say that the offer to prove that there were water works in Ottawa, was not an offer to prove that they were in existence before the suit was commenced, and of course such an offer was not proper. It is a matter of history that, in fact, they were not in existence before this suit was commenced. But we deny the right of the defendant to make the plaintiff use this water whether he desired to or not. The quality of the water, and whether the supply would be adequate and durable, must also be investigated. Perhaps pumping by wind power from the side cut and filtering, would be better and cheaper in the estimation of some. We cannot examine into all these theories on a trial.

Besides, this was a part of the history of Ottawa which the jury knew well enough. What Graham's well cost, was irrelevant. The injury was just as much to him whether it cost much or little. To have gone into proof of the cost of a cistern, would have involved an inquiry as to how it was to be filled; how much space of roof he had; or whether there would have been rain enough falling on his roof to have kept up the supply at all times. The effect of burning coal upon the water, and the comparative cost of that and wood, and how successful might be the means to be used to filter the water, would all have to be gone into; all of which would have been too remote on the question of damages by the loss of the well. General loose propositions, or offers to prove so many things involving such complicated inquiries, should not be made in such a manner. A distinct fact should be offered in evidence, and a question to elicit a definite answer should be propounded to the witness. Suppose the questions to Mason had been as follows: What was the cost of digging Graham's well? That would not have been proper for the reasons stated.

What could a cistern holding 100 barrels be made for?

Would this cistern, so made, supply plaintiff with an unfailing supply of water of much better quality than the water in plaintiff's well ever was?

Such questions would not be proper. There is no right to assume that Graham should make a cistern holding 100 barrels, and it would not be proper to take the opinion of the witness that this would afford an unfailing supply of water of much better quality than that in the well, &c. The only question actually asked, was not proper because not confined to a time prior to the commencement of the suit; and in order to save the question of the rejection of evidence, a distinct question should have been propounded, and it ought not to be allowed to a party to make a general sweeping offer to prove fact, opinion, and experience from facts. Suppose the offer had been "to prove that the defendant could, without inconvenience, have obtained better water elsewhere at trifling expense." These things ought to be left to the general knowledge and experience of persons; and to take time to prove all such matters would make trials interminable. Suppose Mason had said that a cistern holding 100 barrels would cost $35; that it would have afforded an ample supply of water, and this water would have been better than that in the well. What difference would it have made? Probably every person knew as much about the matter as Mason did. There is nothing to show that his knowledge and skill was such as to entitle his opinion to any greater weight than that of the jury. Unless the evidence was competent, and its rejection has done some harm, the verdict ought not to be disturbed. *Ray* vs. *Bell*, 24 Ill. 451.

To the 4th point we say, that if Thompson had said that the water taken from the tank was like that in the well, it was only preliminary to an offer to let the jury examine both the water from the tank and that from the well, and see whether there was the same substance in each. We claimed that this was proper, and do now so insist, but the Court below did not let the jury determine by actual experiment whether the fluid in the tank and that in the well smelt and tasted alike. To prove this, in connection with the fact that the resemblance in taste and smell before suit brought was the same as at the time of trial, would have been the most satisfactory evidence possible. The statement by Patterson that the water in the bottle from tank was like in smell to that in the well, was proper. He compared the smell of the water in the bottle to that which was in the well when he examined it before the trial, not with the present condition of the well water. Thompson did not answer the proposed question, and of course the unanswered question did no harm. But, as like causes produce like effects at different periods of time, the fact that the water in the well and tank were alike at the time of trial, was evidence tending to show that they were similar at a former period of time. The former condition of a thing is often properly and satisfactorliy proved by its present one.

Mason had testified that there was only ammonia mixed with the water in the tank. Mason said the water of the tank contained ammonia, not gas. Kneussl was introduced as a chemist skilled in such matters, to show that Mason was in error as to the component parts of the fluid in the tank.

The defendant below, we think, gives a wrong construction to the language of plaintiff's instruction, in making the 5th point. The expression "knowledge and experience" does not mean the knowledge and experience of the jury as to what the facts in the case are. Exercising their own judgment upon the facts in proof by connecting them with their own knowledge and experience, means merely that they shall use their own learning or science and experience to enable them to judge of the force and effect of the facts in proof. It is this general signification of the word knowledge and experience that was meant by the expression, not a particular knowledge of facts of the case. The idea that the words "knowledge and experience," in the connection in which they were used, could have received the construction now put upon them, evidently never occurred to the judge below. If the expression was too general, it was easy for the other side to have explained it by a qualification; and having failed to do so, it should be considered that the proper meaning was attached to the words by the jury. They were only authorized to exercise their judgment upon the facts in proof by connecting them with their own knowledge and experience. This could not have been understood as authorizing the jury to find a verdict upon facts not in proof, but merely that they might substitute their own experience and knowledge as to the effect of such facts, or the opinions of witnesses as to their effect.

It is said, sixthly, that although the business carried on by the defendants may have rendered the water in plaintiff's well unfit for use, and the air around his dwelling may have been rendered impure, &c., that there is no remedy, unless the business was conducted in a negligent manner. Such a doctrine as this will never do. It is because it is a kind of business which does produce these effects that it is a nuisance, for which an action on the case can be maintained, and it is so expressly decided in the 22d Barbour. It was alleged, in the plea to which the demurrer in that case was sustained, that the defendant did the injury complained of in ordinary course of business, with careful management and without any neglect, and it was because it was not such an use of property as the law allows to be made when it injures others, that the demurrer was sustained. It was because the gas works were included in that kind of business like a swine stye, lime kiln, tallow chandlery, &c., which, whenever they create a special injury, are to be regarded as a private nuisance, for which an action will lie. The case is exactly in point on this question. All such cases of nuisance are, when the business is properly conducted, and it is because the business itself is one not allowed to be carried on to the injury of others that it is a nuisance when productive of injury of the nature described in the declaration. It will be seen that the plaintiff's first instruction follows the declaration, and the declaration is substantially in the form in Chitty. An action of this kind could be defeated, though the defendant was largely engaged in making skunk's oil, if evidence that he made no more stink than was

necessary to the profitable and efficient carrying on of the business was sufficient. The business of making gas, and soap and candles, keeping a piggery, or carrying on a slaughter house, &c., should be at such a distance from the haunts of man that they will not subject others to annoyance. "*Sic utere tuo ut non alienum lædas*, which is but the gospel rule of morality, lies at the basis of this sction." And there is no difficulty in applying it to the facts in the declaration in this case. Only one such institution is necessary in this city, and it is an easy matter to place it away from habitations. A more remote location, and a small expenditure in leading pipe were demanded by law, and that regard for the comfort of others, which the golden rule of the Gospel requires. There is, in relation to some other kinds of business of a disagreeable character, where the necessity is greater that they should be carried on in frequented places, a difficulty about the application of the rule. But there is hard to find, in all the list of occupations which have been adjudicated to be nuisances, one single one which may be so offensive as this, which can so readily be carried on at a proper distance from the busy haunts of men without inconvenience. I think it quite probable that the business, by the exercise of great care and caution, might have been so conducted as not to have spoiled the neighboring wells nor so affected the atmosphere as to have caused these actions, and the law requires that it must be so conducted "*ut non alienum*," &c.

The third instruction was properly refused. The Court was requested to instruct that, unless the plaintiff has proved what he had actually expended in getting water elsewhere, or had proved such facts as would enable the jury to determine what he had expended, the plaintiffs would be entitled to nominal damages only. The mere amount of his expenses is not the measure. The instruction allows nothing for the inconvenience to himself and family, and it makes it a condition precedent to his right to recover any more than nominal damages, that he should prove the actual amount he had expended, or which is the same thing repeated, such facts as will enable the jury to determine such actual amount. If he does not clearly satisfy the jury what he has expended, he can recover nothing for the personal inconvenience. Indeed, unless the jury can ascertain this, the plaintiff cannot recover for the inconvenience of the stench. The instruction does not confine the nominal damages to the well. It does not even allow a recovery for the time and trouble of plaintiff in going elsewhere for water, unless he has proved the amount he has actually expended. He may never have expended any amount of money. But the mere labor and money paid for the labor of others in getting water, can never be the rule of damages. If he had never paid others a cent, and had never himself performed any labor in going after water elsewhere, if he had used no water to drink, but had used milk, &c., in lieu of water, the damages on account of the well are not nominal merely. Would any man have a well of water on his lot spoiled in consideration of being paid what the labor of himself and family was

worth to go elsewhere after water, and all that he might be obliged to pay others for getting for him? This will not do. The jury have found that the plaintiff's well was spoiled, and it is not the law that because he has not proved the actual amount he has expended in procuring water for himself and family, therefore he can recover but nominal damages, and this is the meaning of the instruction, it seems to us.

The ninth and last point is, that the damages are excessive. In actions of this kind the Court will not disturb the verdict because too large, unless there is something to indicate passion, prejudice, or corruption. In just such a case, another jury allowed $114 more, and no jury will ever allow less, if the plaintiff is entitled to anything. No other evidence of damages could well have been introduced, unless witnesses had made an estimate, and that they did so is complained of in the other case. All the facts which witnesses would have taken into account in making an estimate were proved. It is impossible in this class of cases to fix any definite rule. The jury must exercise their best judgment, from the facts in proof, applying thereto their knowledge and experience. The rule is so well settled that the Courts cannot with justice and propriety interfere in such cases with verdicts, unless there are indications of passion, prejudice, or corruption, and the cases are so uniform that authority is not needed on this point. We do not, however, perceive the least reason why this Court should differ from the jury in opinion as to their finding. The idea of the verdict being too large has probably never occurred to any one except to the stockholders of the Company and their attorneys. Graham and his attorneys expected a larger verdict. Such differences of opinion between parties litigant are quite common, we find. We insist, finally, that if there was some little irregularity on the trial, there was not enough to require a reversal. The Court can see that substantial justice has been done. There is no earthly doubt of the fact that the well was spoiled. The defendants did not send a single witness to examine the water or the well. All who did examine it, say there was a deleterious substance in it like in smell to gas, and that they cannot be mistaken is clearly apparent. There was a noisome smell, and who shall estimate the injury in money except the jurors? That there is a cause of action apparent in this record is beyond all doubt, and that money would be no sort of inducement to any man who loves the comforts of a good home, to have its pleasures marred by the acts of others, as the plaintiffs have been, is self evident. These suggestions apply to Thompson's case as well as this.

LELAND & BLANCHARD,
GRAY, AVERY & BUSHNELL,
For Appellee.

The Bill of exceptions is not signed by the Judge who presided at the trial according to the record. The record contradicts itself. A Stranger has signed the bill of exceptions, can it be proved to contradict the record? But he did preside

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No Ottawa Gap. Co.
vs
Graham

Appellee's Brief

Filed May 24. 1872
L. Leland
Clk

State of Illinois } Pleas before the Honora
La Salle County } ss = ble Madison E. Hollister
the Judge of the Ninth
Judicial District of the State of Illinois
and the Presiding Judge of the La Salle
County Circuit Court, in Said State at
a term of Said Court commenced and held
at the Court House in Ottawa in Said
County and State on the first Monday
in the Month of February, the Same being
the Fourth day of February, in the Year
of Our Lord, One Thousand Eight
Hundred and Sixty One, and of the Inde
= pendence of the United States of America
the Eighty Fourth.

Present, The Honorable
Madison E. Hollister Presiding Judge
Absalom B. Moore Clerk
David P. Jones States Attorney
Eri L. Waterman Sheriff

Be it remembered that hereto
= fore To Wit, On Monday February 11th
AD 1861. The Same being One of the days of
the February Term of Said Court, for Said year,
an order was entered of record in Said Cause
which is in the words & figures following To Wit:

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James Graham
154. vs
Ottawa Gas Light
& Coke Company

Trespass on the Case

This day the defen=dant comes by Dickey & Wallace its attorneys, who demur to Plain=tiffs declaration, and each and every Count in the Same contained. The Plain=tiff now comes by his attorneys, and after hearing the arguments of Counsel, the Court overrule Said defendants demurrer to Said Plaintiffs Declaration, and to each and every Count of the Same. The Defendant by its attorneys now moves the Court for leave to plead to the plaintiffs declaration de novo which is granted by the Court.

Be it remembered, that heretofore To Wit: On Tuesday February 12th 1861, being one of the days of the February Term of Said Court for Said year, an order was entered of record in Said Cause as follows; To Wit:

"James Graham
vs
Ottawa Gas Light & Coke Company

Trespass on the Case

On Motion of Plaintiffs attorney, it is ordered by the Court, that this Cause be continued at the defendants costs.

3. Be it Remembered that heretofore To Wit: On Wednesday November 6th 1861 The Same being one of the days of the November Term of Said Court for Said Year. An order was entered of record in Said Cause as follows To Wit:

James Graham
vs.
Ottawa Gas Light & Coke Company } Trespass on the Case.

On Motion of Plaintiffs attorneys the defendant is ruled to plead herein on or before To-Morrow Morning!

Be it remembered, that heretofore To Wit: Thursday November 7th 1861. The Same being one of the days. of the November Term of Said Court for Said Year An order was entered of record. in Said Cause as follows: To Wit:

James Graham
vs
Ottawa Gas Light & Coke Company } Trespass on the Case.

This day the defendants come. by John B. Rice their attorney, and moves the Court for a Continuance herein.

5.

Be it remembered that heretofore To Wit; On Tuesday November 12th 1861. the Same being one of the days of the November Term of Said Court for Said year, an order was entered of record in Said cause which is in the words & figures following To Wit;

James Graham
vs
Ottawa Gas Light & Coke Company } Trespass on the Case

This day the defendant comes by John B. Rice Attorney. files an affidavit, and moves the Court for a continuance herein which motion is Sustained by the Court, and the cause continued at the defendants costs.

Be it remembered that heretofore To Wit; On Wednesday February 12th 1862 the Same being one of the days of the February Term of Said Court for Said Year an order was entered of record in Said cause as follows. To Wit;

"Hon Wm Chumasero Presiding"

James Graham
vs
Ottawa Gas Light & Coke Company } Trespass on the Case

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This day comes the Plaintiff by Edwin S. Leland his attorney, and it appearing to the Court, that the original files in this cause have been lost, and cannot be found on motion of Said Plaintiffs Attorney, it is ordered by the Court, that he have leave to file a declaration and pleas, in place of those So lost, as aforesaid.

And on Said 12th day of February a Declaration was filed in Said cause which is in the words & figures following So Viz!

State of Illinois } Circuit Court of Said County
LaSalle County } ss November Term AD 1861

The Ottawa Gas Light and Coke Company, an incorporated Company under the laws of Said State defendant in this Suit was summoned to answer James Graham the Plaintiff in this Suit for a plea of Trespass on the case & thereupon Said plaintiff by Gray Avery & Bushnell & Leland & Leland his Attorneys, Com=plains for that whereas, the Said Plain=tiff before and at the time of the Com

=mitting of the grievances by Said defen
=dant as hereinafter mentioned, was
and from thence hitherto hath been and
Still is Seized and possessed of certain prem
=ises viz: Lot 3, in Block 84. States
addition to Ottawa in Said County
with a certain Messuage or dwelling and
well of water thereon Situated.

And the Said Messuage or dwel
=ling house, & premises and well of water
the Said plaintiff with his family
at the times hereinafter mentioned, oc=
=cupied and inhabited, and used and
Still doth use, occupy and inhabit To
Wit: In the County aforesaid - And whereas
also the Said defendant, before and at
the time of the committing of the grievances
hereinafter next mentioned was, and from
thence hitherto has been, and Still is pos=
=Sessed of a certain piece or parcel of
ground near to the Said Messuage or
dwelling House and premises of Said
Plaintiff To Wit: in the County aforesaid
Nevertheless the Said defendant contin
=uing and intending to injure, prejudice
and aggrieve the Said plaintiff and to
incommode and annoy him, and his family

in the possession, occupation, and enjoyment of his Said Messuage or dwelling house and premises heretofore To Wit: On the first day of January in the year of Our Lord Eighteen Hundred & fifty Six, and on divers other days and times between that day and the commencement of this Suit, wrongfully and injuriously erected and built certain buildings and erections, on the Said piece or parcel of ground of the Said defendant So being near to the Said Messuage or dwelling house and premises of said plaintiff, as aforesaid and wrongfully and injuriously kept and continued and caused to be kept and continued the Same buildings and erections so erected and made for a long Space of time To Wit: hitherto, and on the several days and times aforesaid wrongfully & injuriously exercised and carried on in and near the Said buildings and erections the business of manufacturing gas and coke, and Made & caused & procured to be Made, and manufactured divers large quantities of Gas and coke therein and near thereto. By ~~which~~ means of which Several premises divers noisome, noxious and

7.

offensive vapors, fumes, Smokes, Smells & Stenches, on the Several days and times aforesaid Rose, issued and proceeded from Said buildings & erections and entered into and Spread and diffused themselves over and upon, into through and about the Said Messuage or dwelling house and premises of Said plaintiff & the air over, through, and about the Same was thereby greatly filled and impregnated with the Said noisome, noxious & offen=sive vapors, fumes, Smokes, Smells and Stenches & was rendered on the Said Several days, & times aforesaid, and became & was & Still is corrupted, offensive, un=wholesome unhealthy & uncomfortable and Said plaintiff hath thereby been & still is greatly annoyed and incommoded in the use, possession, occupation & enjoyment of the Said Messuage, or dwelling house and premises.

And the Plaintiff fur=ther avers, that the defendant in the man=ufacturing of Gas & Coke, further intending to injure, prejudice and aggrieve Said plain=tiff, and annoy his family in the possession and enjoyment of the Messuage, premises & well aforesaid suffered to flow from

Said Gas Works, & to be deposited & placed in around and near the Same, certain noxious & offensive Substances & materials used in and about the manufacture of gas and Coke, & also certain oily, tarry, resinous gaseous & deleterious Substances & materials So used in Said manufacture which Said Substances and materials were absorbed by & entered into the earth and permeated passed & flowed along & through the earth & into Said well of water of Said plaintiff & mingling with the water with which Said well was Supplied, Spoiled and made noxious, unpalatable, unhealthy & unfit for use, the water in Said Well, And Said Plaintiff has been and is by means of the committing of the grievances aforesaid by Said defendant as aforesaid otherwise greatly injured and damnified To Wit, in the County aforesaid.

And whereas the Said plaintiff before & at the time of the committing of the grievances hereinafter next mentioned was and from & thence hitherto has been and Still is lawfully possessed of a certain other Messuage and premises with a well of Water thereon Situate in the County aforesaid & which

Said last mentioned Messuage & premises the Said Said Plaintiff and his family at the Said Several times hereinafter next mentioned, occupied, inhabited & dwelt in, & Still do occupy, inhabit & dwell in To Wit; In the County afore=Said, Yet the Said defendant well knowing the premises, but contriving and intending to injure, prejudice and aggrieve Said Plaintiff & to incommode and annoy him and his family in the possession, occupation & enjoyment of his Said last mentioned Messuage & premises, heretofore To Wit; On the first day of January, in the year of Our Lord Eighteen Hundred & fifty Six and on divers days & times, between that day & the commencement of this Suit, wrongfully & injuriously caused and procured divers, noxious offensive, unwholesome vapors, fumes Smokes, Smells & Stenches to arise and ascend near to, in & about the Said last mentioned Messuage and premises of Said Plaintiff, and the Same have thereby been rendered & are become uncomfortable, unhealthy & unwholesome & unfit for habitation. And the Plaintiff further avers that the

defendant further intending to injure & prejudice Said plaintiff and to annoy him & his family in the possession and en=
=joyment of his messuage, premises & well aforesaid on Said last mentioned day at Said County erected near the Said premises of Said Plaintiff certain buildings, Gas Works, for the manufacture of Gas & Coke & in manu=
=facturing Gas & Coke, in & near the Same Suffered to be deposited and placed in around and near the Same certain noxious and offensive Substances & materials used in the manufacture of gas & Coke, which Said Substances & materials were permitted by the de=
=fendant to be absorbed by & to enter into the earth & to permeate, pass and flow along & through the Earth and into Said well of Water & to mingle with the water with which Said well was Supplied & thereby caused to be Spoiled made noxious, unpalatable, unhealthy & unfit for use the water in Said well & thereby deprived Said plaintiff and his family of the use of the water of Said well for a long Space of time Viz, Wit, from Said first day of

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January AD 1856, until the commence=ment of this Suit, and the Said plain=tiff has thereby been, and Still is greatly annoyed and incommoded in the possession, use, occupation and enjoyment of the Said last mentioned messuage, premise and well of water & has been and is by means of the premises otherwise greatly injured & damnified To Wit: In the County aforesaid

Whereupon Said Plaintiff Says that he is injured & has Sustained damage to the amount of five Hundred dollars, & therefore he brings his Suit &c

Gray Avery & Bushnell
& Leland & Leland
attys for Plffs.

Be it remembered that hereto=fore To Wit: On the 12th day of February AD 1862. "Pleas" were filed in the Office of the Clerk of Said Court, which Said Pleas are in the words & figures following To Wit:

5

"LaSalle Circuit Court
of Nov. Term AD 1861

The Ottawa Gas Light
& Coke Company
vs
James Graham } Case

And now comes the said defendant by Rice & Lewis its attorneys and the wrong & injury when &c & says action non because it says that it is not guilty of the said supposed wrong & injury in manner & form as the Plaintiff hath thereof alleged against it in his declaration & of this the defendant puts itself upon the country &c

Rice & Lewis
Attys for dfts

And said defendant for a further plea to said Plaintiffs declaration and to each count thereof and to so much of each of the counts of said declaration as charge the defendant with injuring the well in said counts mentioned protesting that the defendant did

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not in the manufacturing of Gas & Coke suffer to flow from Said Gas works & to be deposited & placed around in & near the Same certain noxious and offensive materials & materials used in & about the manufacturing of Gas & Coke & also certain oily, tarry, resinous gaseous & deleterious Substances & materials So used in Said manufacture as is in Said Counts alleged & as to the other Supposed wrongs & injuries in Said Counts alleged, defendant Says that it is not guilty, in manner & form as is in Said counts alleged and of this defendant puts itself upon the Country &c

Rice & Lewis
Attys for dfts.

Be it remembered that heretofore To Wit: On Thursday February 13th 1862, the Same being one of the days of the February Term of Said Court, the following further proceedings were had, in Said Cause and entered of record, To Wit:

James Graham vs Ottawa Gas Light & Coke Company } Trespass on the Case

This day the Plaintiff comes by E. S. Leland, and Oliver C. Gray his attorneys and the defendants by Rice Lewis its attorneys and thereupon come the following jurors of a jury, To Wit: John Bogle, James Chase, George B. Macy, John B. Miller James A. Miller, E. H. Raymond, John Poundstone, L. B. Delano, Wm. Cummings J. McKeem, Lyman Waterman and Joseph Mason, who are duly elected, tried and Sworn to well and truly try the issues herein and a true verdict render according to the evidence, and after hearing a portion of the testimony the further hearing of this cause is postponed until the coming in of the Court To Morrow Morning.

Be it remembered that heretofore to Wit: On Friday February 14th 1862, being one of the days of said February term of said Court An order was entered of record in said cause as follows To Wit,

James Graham
vs
Ottawa Gas Light
& Coke Company

Trespass on the Case

This day again
Come the parties to
this Suit, together with the Jury sworn
herein, and after hearing the balance of the
testimony, and a part of the argument
of Counsel, the further hearing of this
cause is postponed untill the coming
in of the Court tomorrow Morning.

Be it remembered that heretofore
Do Wit; On Thursday February 15th
1862, it being one of the days of the
said February Term of said Court
the following further proceedings
were had and entered of record
as follows Do Wit;

James Graham
vs
Ottawa Gas Light
& Coke Company

Trespass on the Case

This day again
Come the parties to
this Suit together with the Jury sworn

herein, and after hearing the balance of the arguments of Counsel, the Jury retire to consider of their verdict, and after due deliberation thereon had, they return into Court the following verdict To Wit:
"We the Jury find the issues Joined in favour of the Plaintiff and assess his damages at the Sum of Three Hundred dollars. The defendant by its attornies moves the Court for a new trial, which motion is overruled by the Court.

It is therefore considered by the Court that the Plaintiff have and recover of the defendant the Said Sum of Three Hundred dollars for his damages, also his costs and Charges by him herein expended and that he have execution therefore.

Be it remembered that heretofore To Wit; On Tuesday March 4th 1862 the Same being one of the days of the February Term of Said Court for Said year, further proceedings were had in Said Cause & entered of record as follows, viz:

"Present"
The Honorable M. E. Hollister,
Presiding Judge

James Graham
vs
Ottawa Gas Light & Coke Company
} Trespass on the Case

On motion of Said defendants attorneys it is ordered by the Court that the defendant be allowed an appeal herein to the Supreme Court and that it have leave to prepare tender & file a bill of exceptions upon condition that Said defendant shall enter into bonds payable to the Plaintiff in the penal Sum of Five Hundred Dollars with Samuel B. Gridley as Security, Said bond and bill of exceptions to be filed within 30 days, from and after the adjournment of the present term of this Court.

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State of Illinois } Circuit Court of said County
LaSalle County } February Term thereof AD 1862

James Graham
vs
The Ottawa Gas Light and Coke Company } Case.

Be it remembered that at said term of said Court this cause came on to be ~~heard~~ tried by a jury, and to maintain the issues upon his part the plaintiff adduced the following evidence

John Pitt a witness produced by the plaintiff being sworn testified that he knew where the Ottawa Gas works are situated — worked there from January 1856 to Aug. 1860 — knew situation of Grahams house, it is two lots and the width of the street South of the gas works, the water in Grahams well was good when I first used it — three and a half years ago. the water in said well became affected about two years and a half ago. I discovered it by a smell like gas rising from the water when boiling — the water became unfit to drink. I am positive that the water in Grahams well smelt of gas. I have worked in gas works some four or five years & think I know how gas smells. The plaintiff then offered to prove that other wells than plaintiffs had been injured by the gas works. the defendant

Be it remembered that the above testimony was taken on the 2d day of April 1862, in a suit in which James Graham was plaintiff and the Ottawa Gas Light & Coke Co. defendants, & figures following viz:—

objected to the introduction of which evidence and of all evidence on the trial of this cause proving or tending to prove that wells other than the plaintiffs well had been injured by the defendants Gas works. the Court overruled the Defendants objection and permitted the plaintiff to introduce evidence on the trial of this cause for the purpose of proving or tending to prove that other wells than the plaintiffs well had been injured by the defendants gas works. To which ruling and decision of the Court the defendant then and there excepted.

The witness then continued " the well in the Gas Factory and Goodings well were affected — know of no other wells being injured — after Grahams well became bad, I got water — good water from Mrs Burns well — two lots South of Grahams. the ammonia water obtained in manufacturing the gas was received in a hole in the yard of the gas works, — the hole was boarded round and about eight feet square — the ammonia water was pumped into this hole for about a year — after that the hole was filled up — the gas works occupy two lots. — said hole was situated near the South line of the North lot — after the hole was filled up. the ammonia water and tar were pumped into a well in the yard. the well is walled and cemented so as to be water tight. From this well the ammonia water is pumped into

the bank. there is a pipe running from the bank into the side cut or lateral canal, the water from the side cut is carried from the side cut into the bank through this pipe. sometimes when the water is high in the bank, the water from the bank runs through this pipe into the side cut. I dont know whether the bank is walled or not.

On cross examination the witness stated as follows.

Cross Ex. The only substances deposited on the surface of the earth in the gas works were lime and ammonia water. the ammonia water was put into the hole on the north side of the gas ~~works~~ lot from the Spring of 1858 to the Spring of 1859 at the rate of three or four gallons per day. at all other times the ammonia water was put into the tank, the lime was taken away as fast as it was deposited in the yard. Gooding and Thompson used to take away the lime to fill up their yards. the tar is thick like molasses. in winter somewhat thinner in Summer. it is always glue would not soak far through the earth in a year. the tar could not permeate to Grahams well in two years. water makes it no thinner because it will not mix with water. the ammonia hole on the North side of gas works was perhaps three hundred and fifty feet from Grahams

well. In wet weather the water used to stand all around that neighborhood, the lot on which the gas works were built was low when bought by the gas co. but has been filled up since, the water stands in the back of Thompsons lot always - stands there now. Cummins occupies lot one, the street from Gas works Thompson occupies lot two which joins lot one on the South & Graham occupies lot three which joins lot two on the South. Graham built his house on this lot about the time the gas works were built & has lived there ever since he finished his house water used to stand in the street in front of these houses before it was drained & the street filled up, water also stood between the gas works & the side cut & in the street South of the gas works & also on the back of Cummins & Thompsons lot. water stood in the back of Gordings yard a good deal of the time. all stagnant water smells bad. the smell is indescribable and must be compared with something else."

The Plaintiff then called Thomas J Wade who testified as follows "I know Graham & his well. I examined his well in Spring of 1860 or 1861. I was then a member of the City Council there was petition to Council to investigate the gas works and ascertain whether it was a nuisance. I was one of the Committee of examination. the water of Grahams well was un=

fit for use. I think there was gas in it. I examined the well again some months afterwards - improvements had been made by gas company on their works. the water still tasted bad I am quite confident that the water in Grahams well smelled like gas. but I might possibly be mistaken as to the smell of the water but

cross-ex. I think it smelt of gas. the ground on which the gas works stand is low as compared with the rest of the town. My attention was called to draining the water which stood around gas-houses & Thompsons houses Dowlings livery stable the gas works &c. some three or four years ago when I was in City Council. water standing around stables privies &c. would spoil wells if it got into them. the land on which the city is built is underlaid two or three feet below the surface with soft sand rock. the water will soak through the soil down to the sand rock. but I do not think the water would soak into the rock. but would run along the top of it - three or four years ago the water in the Court House well here became very bad. If a well be closed up and not used for some time the water in the well will become bad and will smell disagreeable. I dont know whether Grahams well is open or not. the one that I examined then was shut up. the water was drawn out with a pump." Plaintiff then called

Cummins who testified as follows "my shop is right across the street from the gas works. I knew Grahams well in 1855 - the water was good. I think it changed for the worse about a year or two after my first acquaintance with it. the smell was more like gas than anything else I know of." the plaintiff then offered to prove that other wells in the neighborhood of the plaintiffs had been injured by the gas works. To which evidence and all evidence on the trial of this cause proving or tending to prove that wells other than plaintiffs had been injured by defendants gas works the defendant objected. the Court overruled the objection and permitted the plaintiff to introduce evidence proving or tending to prove that other wells than plaintiffs had been injured by Defendants gas works. to which ruling of the Court the Defendant by its counsel then and there excepted.

The Witness then continued "I know of none - the smell about that neighborhood before I became used to gas was quite disagreeable - to me, but since I have got used to it I do not mind much about it. Persons from the country when they come to my shop frequently ask what smells so. I am not not incommoded by it. do not smell it much. On cross examination the witness testified as follows. "the water used to stand on and all

around my lot in wet seasons. The land there forms a hollow and the water naturally stands there. — the water stood there pretty much all the time and that water might run into Grahams well. It would run in sooner than the water from the gas works. I have six or eight men at work in my shop. There ~~was~~ is and was then a privy on the back end of my lot used by my men. the vault of the privy is not walled up, but is made by digging a hole through the soil down to the sand rock. Privy is about sixty feet from Grahams well. The land round there has been greatly filled up recently. I filled up my lot with earth & blacksmiths cinders and refuse lime which had been used to purify the gas. Grahams & Strawn & Powell's warehouses are very near Grahams lot, decayed cobs &c. accumulate around there. Goodings livery stable is eighty feet East of my shop. It is nearer than the gas factory to Grahams well, considerably nearer than the north line of gas works — Gooding had his stable there in 1855 — there is a good deal of manure &c. around the stable the ground is low, like all the rest round there other things being equal the water which soaks into the ground about the stables would probably permeate through into Grahams well sooner than the ammonia water from the gas

works because the stable is nearer to Grahams well than the gas works are. Urine and manure are constantly deposited around the stable it smells bad and it soaks into the earth about there. a large quantity of Manure has been thrown into the low ground west & South of the gas works about 200 feet from Grahams well. a well would naturally get bad if not used for a year or two & the water in such a well would smell bad."

Mrs Woodruff was then called as a witness on behalf of Plaintiff — the defendant by its counsel then and there objected to said witness testifying in this case. because said witness had at the time of the trial of this cause a suit pending in said Court against said defendant, wherein said Woodruff sought to recover damages from said defendant for injury to her well by defendants gas works. but the Court overruled the objection and allowed said witness to testify. the plaintiff by his counsel then addressed the following question to said witness. "what is the state of your well as to its being affected by gas or not?" to which question and to the introduction of evidence relative to the state of wells other than the plaintiffs the defendent by its counsel then & there objected but the Court overruled the objection and

allowed said question to be put and said evidence to be admitted — to which ruling of the Court the defendant by its counsel then & there excepted. The witness then testified as follows.

"The water in my well smells of gas. it began to be affected three or four years ago. Grahams is ~~similar~~ similarly affected. A Frenchman South East of my house, has a well which is the same. I think it is gas that affects them. I live South East of gas works, nearly opposite Grahams". The Plaintiff then called Dr Wm B Gooding, who on preliminary examination by defendants counsel testified as follows.

"I agreed at one time to go in a prosecute the gas company. — the agreement was made with Graham Thompson, Potter & others. I told Thompson to mention my name to Judge Dorland as one of the parties and accordingly a suit was commenced in my name against the gas company. We had talked of the matter a year or two before commencing our suits. I afterwards withdrew my suit & do not now consider myself bound for costs the defendant by its counsel then & there objected to said witness testifying in this cause on account of said witness being interested but the Court overruled the objection and permitted

said witness to testify. whereupon the defendant by his counsel then & there excepted. ~~The witness then testified as follows~~: — the Plaintiff then offered to prove by said witness that witnesses well and others besides the plaintiff well were injured by the gas works, to the admission of which evidence the defendant objected — the court overruled the objection and admitted said ~~witness~~ witness so to testify. to which decision of the court the defendant then & there ~~objected~~. excepted, the witness then testified as follows.

"I have a well in the North west corner of my stable, the well became bad about midsummer after erection of gas works, gas works began working in the winter about five or six year ago. — well appeared to be suddenly impregnated with gas. I judge from the smell Grahams was not affected as soon as mine. I do not think the urine in and around my stable could get into my well, both wells were I think affected the same reason. Mrs Woodruffs well is also somewhat affected by gas. When the water ~~was~~ was lowest in my well the water smelt strongest of gas. Horses which came to my stable from the country would not drink the well water and I was afraid I should loose the custom of those coming in from the country. I dont

think that the urine & wash from the stable could get into my well.

On cross examination witness stated as follows

Cross Ex. "There is always considerable manure &c. about my stable. There is about twelve horses on an avarage. always there. Stable had been used a year before gas factory was built. The well under my stable is connected from the sand rock to the surface. There are holes bored through the floor to let the urine & wash of stable run through. The stable is built of stone, its foundation resting on the sand rock. In the Spring and Fall more or less water stands in the yard of my stable. I have seen the earth under the floor of the stable in dry weather so moist with urine that had run through the floor that I would sink into it above the soles of my boots. I dont know certainly that anything from the gas factory gets into my well. I dont say positively that there is. There is nothing that I know of to prevent the wash of stable urine &c. from soaking through the earth & sand rock and entering the well the same as stuff from gas works. My well is in my stable. The gas works are the middle of the street North and the middle of the street west of my stable the street is eighty feet wide. water soaking through manure &c and then getting into wells

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would undoubtedly spoil them. I have hauled a good deal of the refuse lime used for purifying the gas & cinders from gas works onto my yard. The lime smells very strong of gas at first. I have thrown a great many loads of manure into the low place West & South of the gas factory where the water stands, to fill it up. between two hundred & three hundred feet from Plaintiffs Well. I have carted a good deal there for Cummins to fill up the end of the Street by the side cut between the gas factory and Cummins shop." The Plaintiff then called Simeon Meese as a witness who testified as follows" I keep the Geiger House it is two Blocks from the gas works. I have been there since first of October last." Defendant by his counsel then & there objected to said witness testifying in regard to the state of the water in the well at Geiger House, but the Court overruled the objection whereupon Defendant by his counsel then & there excepted. Witness then proceeded as follows. " The water in the Geiger House well smells bad. smells of sulpher – I cant compare it to anything else.

Cross Exp

On cross examination the witness testified as follows. The Geiger House is on the same block as Goodings stable is South East of Gas works we are not in any manner inconvenienced

by the smell from gas works. our well is under the dining room. the surface water soaks into the cellar and stands there a great part of the time. and it would probably soak into the well. the wells around the business part of the town and which are so far from the gas works to be affected by the gas works. are generally complained of as being bad & unfit for use. I have lived in the city a good many years. there are several barns and stables around the Geiger House. a stable in & around which a good deal of manure & urine is deposited being near a well. will spoil it. my residence before going to the Geiger House was near the Fox River at a considerable distance from the business part of the city. there are no stables or warehouses in that neighborhood the water there is good."

The Plaintiff then called Samuel Patterson as a witness who being sworn testified as follows.

"I examined Grahams well twice in July or August 1860. was Chairman of the Committee first time and a member second time. I smell & tasted the water in Grahams well and the water in the bank where the gas works are & they tasted & smell alike. I believe there was gas in the well. I am quite positive that the water smells of gas & not of

manure. there is a peculiar twang to it. On cross examination witness testified as follows.

n. Exp. The well was covered up tight. Graham said that they had not used the water for some time without question water covered up and not used for some time will get bad and will smell bad. The land about the neighborhood was low two or three years ago. Water stood there considerably in wet weather the street in front of Cummins and Thompsons was filled up last Summer. Water soaking through manure and getting into wells would undoubtedly spoil the water. My well has some stables near it. The water is good. There is a ditch in front of Goodings stable which might prevent the urine &c. from running to the well - dont know whether the ditch would prevent the gas from running into Goodings well. I have been Street Commissioner for two years. I dont know anything of the nature of said street or ditch previous to that time. I am Street Commissioner now. I have worked around the street close by the gas works a good many times have smelt the gas sometimes. at first it was a little unpleasant but it never annoyed me. I do not think that the smell of gas is any injury to Grahams lot as a place of residence but I should not like his lot so well as a place of residence on account of the well being spoiled -

Plaintiff then called William F. Whitmore as a witness who testified as follows: Graham lives on Lot Three Block eighty four Stakes addition to Ottawa. The well there was dug by my father in 1843. We lived there until 1855. until Mr Graham came there. Mr Graham has resided there ever since. The water was good while we lived there I am a surveyor. Gas works are situated on Lots four & five Block sixty seven Stakes Stakes addition to Ottawa. Graham lives on three in Block 84. in Stakes addition to Ottawa. There is the width of the Street & the width of two lots between the gas works & Grahams lots the streets are 80 feet wide & the lots are 60 feet wide. The Defendant then produced a plat of the vicinity of the gas works (a copy of which is hereunto annexed) upon which the witness then marked out the original slough as on the annexed copy it is exhibited & testified that said plat is correct. The streets are eighty feet wide & the lots sixty feet wide.

Plaintiff then called Charles Potter as a witness who testified as follows. "I know where Grahams house & well is. The water was good five years ago. dont know of my own knowledge how the water is of late. Sometimes the smell around Mr Grahams is unpleasant. I dont know what to compare the smell to. I dont smell it so much now. since I have got used to it. from the building

of gas works to December 1860, when the wind was blowing in the right direction we could always smell the gas more or less. dont know that the gas can be smelt at Grahams when the wind is blowing from South. dont remember being at Grahams at any one time when the wind was blowing from the North."

Plaintiff then called A B Smith who being sworn testifiid as follows.

I examined Grahams well – was one of the Committee. dont know whether the examination was in 1860 or 1861. have not tasted the water in the tank at the gas works the water in Grahams well tasted like the water in the tank smelt. my second examination of the well was last Summer. I have no experience in regard to such matters."

Plaintiff by his counsel then asked the witness the following question.

"What in your opinion caused the bad quality of the water in Grahams well".

The defendant objected to said witness stating his opinion thereon but the Court overruled the objection and allowed said witness to state his opinion thereon – to which ruling of the Court the defendant by his counsel then & there excepted.

The witness then proceeded as follows "I think there is no doubt that the gas injures the

well" On cross examination witness testified as follows. "Graham said that the well had not been used for some time, water covered-up and not used for some time would grow worse, so that I should not think our examination of that well was a fair test as to the purity of the water when they quit using it"

The Plaintiff by his counsel then asked the witness the following question;

"What did Graham say was the reason that he did not use the well."

To the asking of which question the Defendant by its counsel objected, but the Court overruled the objection and allowed said question to be answered by the witness, to which ruling of the Court the defendant by its counsel then & there excepted: Witness then stated as follows, "I dont remember that Graham said anything about the reason. There was no need of his saying so, the water showed for itself, but the water that he pumped was bad."

Plaintiff then called John Patchedor, who testified as follows: — "I live in the next block East from the gas works. The smell at some particular times is very bad, at other times it smells but little. A year ago last Summer I worked at Gordings Stable, when the wind blew in the right direction the smell would probably

make Thompson & Graham's uncomfortable.
On cross examination witness stated as follows
"Graham lives directly South of the gas works
the wind seldom blows from the North. We had
twelve, fifteen, and sometimes more horses in
Goodings stable. We were in the habit of
hauling the manure from the stable into
a hole back of the gas factory and Cummins
lot. I should not think that manure 100
feet off would soak into a well. I think
if the manure was nearer to the well than
the gas works are then the wash of the manure
would get into the well first."

Plaintiff then called Henry L. Porter who
testified as follows. on preliminary examina-
tion.

"I dont know that I have a suit pending
against the gas Company in regard to this
matter. Graham once spoke to me about
bringing suits — I have also talked with Thomp
son about commencing suits against Gas
Company — Mr son Charles (Porter) afterwards
told me that they had commenced several
suits against the Gas Company — one of which
was in my name. Charles told me that he
would bear all the expense of my suit."

The Defendant by its counsel then & there
objected to said witness testifying in this cause
on account of said witness being interested, but

the Court overruled the objection and permitted said witness to testify — to which ruling of the Court the defendant by its counsel then and excepted. Witness then stated as follows:
"Whitmore dug Grahams well 17 years ago about five years ago the water tasted of gas. It has done so ever since. sometimes worse than others. four years ago last Fall my well began to be affected by ~~gas~~ gas" defendant then again objected to the introduction of evidence with reference to any other than the Plaintiffs well but the Court overruled the objection & admitted said evidence, to which decision defendant by its counsel then & there excepted whereupon the witness continued as follows.
"The water in my well smells like gas. the smell from the gas works seriously infects the neighborhood." Plaintiff then called Martin Murray who testified as follows.
"I have the corner lot East of gas works. my well was good fifteen or sixteen years ago. the water has not been good since the building of the gas factory. it tastes and smells of gas."
Plaintiff then called Joseph C Flower who testified as follows "the gas factory emits an unpleasant odor all around the neighborhood. it smells bad like rotten eggs. I would not live in a place where the gas smells bad.
Cross Ex. I have never been in that neighborhood much

but I think the smell is offensive. The smell of gas is very offensive to me, probably much more than it is to many other persons. I have not been in Grahams neighborhood enough to tell how annoying it is there of my own knowledge

Thereupon plaintiff rested his case.

The Defendant to maintain the ~~issues~~ issues upon its part thereupon called Dr H W Hopkins as a witness who being duly sworn testified as follows. "I have lived in this city since 1846. think I have known the wells about the town for the last eight or ten years. Court House well was good in 1848 & 1850. I used it then. soon after then it grew bad. I have a well in the centre of block 90. the water of which was good eight years ago. It finally grew so bad that I quit using it about 4 years ago. it smelt bad. it was twenty five or thirty feet from the stable. The water got so bad that my horse would not drink it. The people in that neighborhood said the well was spoiled by surface water leaking in. There was considerable ~~water~~ manure about the stable. The ground around there was low My experience is that quantities of manure near a well will eventually spoil the water. It depends however upon the situation of the rock

beneath the surface of the ground. If there are crevices in the rock which would carry away the water from the well as there are where Patterson's residence is. the drainage would not run into the wells, but would pass further down the swale. at the lower part of the swale where Gooding's, Graham's, Thompson's and the gas works are situated, from the inclination of the rock downward to that part of the town the water would naturally stand there, particularly so since the building of the side cut has stopped up the natural outlet of the water in the swale causing the water to stand in that neighborhood. Some of the lots East of Goodings used to be covered with water for long times. the ground around the gas factory Cummins &c. was a sort of bog into which the drainage of a part of the city went. In all cities the deposits around stables, privies warehouses & such other places & the deposit of decayed animal & vegetable matter which always accumulates in the streets & alleys & on the lots tend to impair & render unwholesome the water in the wells, and it is only a question of time how soon the wells in a city will be opened. The well back of the Mansion House used to be good. I used it until it became bad. from 1848 to 1850. a well in proximity to an accumulation of decaying matter or a stable is

worth little & if it is known that said matter will continue the well is worth nothing. The Defendant by its counsel then asked the witness the following question "Do you know whether or not wells in large towns usually deteriorate in course of time?" To the asking of which question the plaintiff objected to the introduction of such evidence. And the Court sustained plaintiffs said objection and would not permit the witness to answer said question. To which ruling of the Court the defendant by its counsel then & there excepted. The witness then continued as follows:

"The rock slopes down on both sides from about where we are now (county Court House) on one side to the Fox river & on the other side westward towards the side cut, and the water will always run according to the course of the rock. The original course of the slough was from North East to South West. The slough commenced near Mr Reddick's house & run south west ~~across~~ across Washington Square & across LaSalle Street across the lot where Gooding's stable now stands & across the lot on which Plaintiffs mill is situated. The building of the side cut dammed up this slough so that the water would stand around Gooding's lot & Graham's lot & the gas works. The swale descends towards the side cut so that the mine & c

from Gowlings stable would naturally soak through the ground towards Grahams. The stuff from Gowlings stable would probably reach Grahams well before the stuff from gas factory would because the stable is nearer to Grahams well than the gas works are — Some of the water around here is soft, other of it is hard limestone water. The ammonia from horse-piss would be lost in the earth before it would go far. The ammonia obtained in the manufacture of gas has an equal tendency to evaporate with that of horse piss. There is a great deal of ammonia in horse piss. Some kinds of gas will mix with water, but the heavy burnable carburetted Hydrogen gas such as used for light will not mix with water so as to be perceptible without pressure. If gas is forced into the earth it will rise & seek its way to the surface. Carburetted hydrogen or inflammable gas is about five times lighter than air. Unless it was mixed with water the gas would not go to the well from the gas works."

20 Ex. Witness I dont know how much manure & urine deposits around Grahams well. I have never examined the ground there in that respect but I should not suppose there was enough deposits there of that kind to injure Grahams well." The Defendant then called William Hackling as a witness who being duly sworn testified as follows: —

"I have lived here twenty eight years, have had a good deal of experience with wells here, dug several and filled up others here in the city. It is very easy to tell how they are spoiled. all the wells around this part of the city are more or less deteriorated by the accumulation of decayed and decaying vegetables & animal matter about the city by cesspools, privy vaults &c. these substances become dissolved by the water on the surface of the ground and and easily finds its way through the soil on ~~this~~ which this city is built. the ground on which this town stands is composed of a thin layer of soil underlined by a very soft & porous sand stone rock. any liquid substance will percolate through the sand rock. our well under Lehmers store was I think spoiled by a privy vault which was near it, when I dug out and cleaned the well I found the earth & rock more or less saturated with substances which came from the privy vault the well back of Mills store has been spoiled by the same causes. the wells west of the ridge are beginning to depreciate & as I believe from the same causes. whenever the dip of the rock is toward the wells here in city, they will become bad in course of time. I know of but one or two wells here in the city wherein

the water is good. There was originally ~~there~~ a natural slough or drain commencing near Mr Reddicks house & the place where the Supreme Court House now is and running South Westerly through Washington Square across Lordale Street and across the lot where Gordings livery stable is and also across the lot where Graham's house & well is this slough or drain before the side cut was built used to run on towards the river in a South West course, but the side cut dammed up the drain, so that the water always stood around where the gas works are & where Graham's & Thompson's houses are & also caused the water to stand all along the side cut, across Main Street where Horsacks new house now stands, making a slough or mudhole by that bridge across side cut, because the cutting of the lateral canal stopped the course of the water and caused it to stand all around there — often I have known it three feet deep where Martin Murrays house is — Martin Murray used to make a great noise about the water standing all over his lot. Murray's lot lays right across the street from the gas works. The side cut alone, being elevated above the natural level, would spoil the wells near it by the water percolating through its banks. The proximity of Cummins privy and Gordings

stable and the manure thrown in the hole near gas works. together with the standing water from the canal and the rains would in my estimation have undoubtedly spoiled Grahams well or this if the gas works had not been there even though the rock did not slope towards well. but was level, is with the causes other than the gas works now operating here all of the wells in the city will become, spoiled it is only a question of time, under the circumstances. all of the wells in the business part of the city have become so injured that the water is unfit to drink. the lots occupied by Graham Thompson, Murray, are not in that part of the city usually used for residences & would be unfit for residences even if the gas works were not there. That portion of the city where the gas works are, was used before the gas works were built as well as since for foundries, machine shops, warehouses, & even if the gas works were not there these places would have to be given before long to warehouses, shops & foundries & would be valueless for residences. there are some gases formed from animal substances which smell similar to coal gas. I have neither smelt or tasted gas in any well in town.

On cross Ex. Witness said I knew two wells across the side cut near to the Illinois River. one of these became injured by manure &c. near it &

the other ~~will~~ well remained uninjured. In this ~~cause~~ case, I suppose there are fissures in the sand rock which carried the wash of the manure & past the well into the river. The sand rock is full of fissures running towards the river which serve as natural drains for the surface water & when one of these fissures passes close by a well it may take the surface water from the well.

Levi Mason was then called by Defendant who being duly sworn testified as follows.

"I have been employed as superintendent and Secretary of gas works since February 1856 Gas work commenced building in Fall of 1855. I know how gas is made. The Tank is 40 feet wide and 14 feet deep built of solid brick & cement or water lime. The wall of the tank is five feet thick at the bottom and twenty inches at the top & cemented on inner side. The bottom of the tank is the sand rock covered very thickly with a floor made of water lime cement. One hundred and fifty barrels of water lime were used in cementing the tank – the tank is water tight. We have emptied it twice and I examined the tank closely each time and could find no flaw or leak in the tank at either time. The Tank is filled ~~from~~ with water from the side cut and the gasometer rests in the tank & the gas after it is manufactured & ready for use is conducted

by a pipe through the water in the tank & into the gasometer this resting on top of the water & causing gasometer to rise gradually as the gas enters. The gasometer is simply a store house for the gas, and to cause a pressure sufficient to send it through the pipes into the city. In the process of manufacturing gas, coal is first put into retorts over a furnace, after they are filled with coal they are made air tight. As the gas is generated from the coal by the heat it passes into the hydraulic main – a large pipe containing some water – this water condenses the ammoniacal and tarry substances contained in the gas, which substances pass through a pipe into the well built for their reception. This well is perfectly water tight & none of tar or ammonia water can escape from it & the ~~other~~ gas then passes through another pipe into the purifying room. The coke is left in the retorts. The well into which the ammonia water passes is water tight – it is coated with tar and water could not penetrate through to the earth. The gas is cooled in the condensers & the gas cannot possibly escape in any of these operations, everything through which it passes being perfectly tight. The purifier is a cast iron box perfectly air tight. In this box there are several partitions or floors made

of wire woven in the form of a sieve & on these sieves are placed three layers of fine slacked lime through which the gas is forced. It next passes through three other layers of lime which makes it ready for use. It is now passed through a pipe through the water in tank into the gasometer & thence into the pipes of the city. The gasometer is air tight, not a particle of the gas escapes during all these operations. The smell about the works is caused by the lime when it is taken from the purifier — this lime contains the rejected substances from the coal and takes considerable of the smell from the gas. There are no substances left on the ground to soak into it. The lime is sold to farmers round town to fill up stocks and lots. Gordine had some of it — so did Thompson. A long while ago, about three years ago we had a pool into which we pumped the ammonia the pool was close by the North line of the North lot of gas works, said pool was dug in Spring of 1858 & used a year — we then filled it up. This pool was about 350 feet from Grahams well, not more than 3 or 4 gallons of ammonia water was ever pumped into this ~~day~~ pool in a day. On the South line of the gas lots is and was a wall built of brick with a stone foundation resting on the rock. The avarage of ammonia water from

a ton of coal is three gallons. we use a ton or a ton & a half of coal per day. the ammonia water evaporates rapidly. Since the closing up of the ammonia pool the ammonia water has been pumped into the well made for it. I have tasted and smell ammonia water & know that it has neither the smell or taste of gas. Before the building of the gas works the land all around the lot where the gas works are & where Grahams & & Thompsons lots are & where Goodlings stable is was very low. the water stood there until it soaked into the ground. It was a duck pond in Summer & a skating pond in winter before line from the gas works, brick, manure and cinders have been used. by the people round there to fill it up. ammonia is a large component part of horse urine, ammonia is manufactured from it. it frequently crystalizes under stables & would give water the same smell & taste as if manufactured ammonia were put into it. Goodlings yard is very low. he has partially filled it with lime from our works. the natural inclination of the original slough in that neighborhood was from North East to South west & the urine & wash from Goodlings stables would have a greater tendency to run towards the well than the stuff from gas works would

Gordings stable is about half the distance from the well, that the gas factory is — the ditch west of Gordings stable was dug in 1857 or 1858 — it was dug deeper three times & it now only drains off some of the surface ~~water~~ water and does not carry off the stuff which soaks into the earth from the stable or elsewhere — until within the last two years the ~~dit~~ ditch was good for nothing. much manure has been hauled into the pool west & South west of gas factory, by Gording, during the last three or four years. & this manure is of course nearer to Grahams well than the ammonia pool was, by the width of two lots & more. the gas works lots previous to filling were lower than Grahams lot. I have tasted the water from Grahams well — it tastes like ammonia & not like gas. I am positive that the water from Grahams well does not taste like gas. it tastes of ammonia.. water does not absorb gas nor can gas be forced to mix with it. otherwise they would mix in the hydraulic main, which they do not. ammonia water contains no gas. the smell from gas factory cannot be noticed at Grahams unless the wind is blowing in that direction. wind seldom blows from South, our ammonia water tastes tarry, not gassy. the wall around the South and East of the gas works is six and a half feet above the surface of the Earth and is

brick on a stone foundation resting on the sand rock

The Defendant by its counsel then asked the witness the following question

"Are you acquainted with the water works, on the South side of the Illinois River"?

The Defendant then and there offering to prove by said witness and others that there were water works in this City affording an unfailing supply of pure water carried by pipes from springs on the South side of the Illinois river through the City and into the dwellings of all such persons as desire it. that the water of said water works is of a ~~better and~~ purer and better quality than the water of plaintiffs well ever was.— that pipes could be put in and the water of said water works, supplied to plaintiff in whatsoever quantities he may need for the trifling expense of about ten dollars.

The Plaintiff objected to introduction of said evidence— The Court sustained the objection and ruled that all such evidence and all evidence in regard to water works could be incompetent and inadmissible,— and the defendant by its counsel then & there excepted to the ruling of the Court. The Defendant then offered to prove that the cost of digging Grahams well was about 35 dollars & that a cistern holding one hundred barrels of water

could be made for 35 dollars and that such a cistern would supply Plaintiff with an unfailing supply of water of much better quality that the water in plaintiffs well ever was.

The ~~plfff~~ objected to the introduction of this evidence and the Court sustained the objection, to which ruling of the Court the Defendant by its Counsel then & there excepted. The witness then proceeded as follows

"The neighborhood where Grahams house is situated is not by nature a proper place for a residence. The ground all around there is low and unhealthy. Gas works are not unhealthy — on the contrary they have always been held to be very healthy. I am at the gas works almost all the time. I am perfectly healthy. I have not been sick a day, nor has any man working at the gas factory been sick since I have been there. These gas works were built on the most approved model for building such works used in the Eastern Cities. The best kind of material was used in building them a skilfull workman was employed in building. The machinery iron work & pipes used in these works were of the same kind & quality as those used in the best gas works in the Eastern Cities. The place where the gas works were built was in that part of the city

which ~~was~~ has always been used for warehouses laundries, machine shops &c and is not near that part of the city mostly used for dwellings and is not in a part of the city which will ever be used for dwelling houses, and those who reside in that ~~part of the city~~ vicinity would soon have to give them up as residences even if the gas works had not been built there.—
Gas factories have now come into general use in all parts of the civilized world and are deemed a public benefit, all towns of any size now use gas. Thompson & myself once made a examination of Grahams well Thompson thought the ammonia pool injured the well & desired me to fill it up, which I accordingly did.
On cross ex. witness said I do not remember that I ever told Patterson that I thought that the injury to Grahams well was caused by the banks leaking. I told Mr Thompson when ~~I examined~~ examining the well, that I thought there might be a flaw in the bank caused by frost and that the well was probably injured by leakage from it.
~~The~~ Defendant then rested its case.

The Plaintiff then called Darlin Thompson as a witness on his behalf who on preliminary

examination by defendants counsel testified as follows.

"I have a suit pending in this court for injury to this same pipe, against the gas company. I have talked with Glover & Cook and told Mr Glover that I did not want them to take the side of the gas company in any of the suits unless they could get a large fee. and he said they would not take hold on the part of the gas company in any of the suits now pending in this court against the gas company I told Mr Glover that I'd rather pay him five dollars than have him take hold for the defendants I have hunted up evidence for this case. & assisted the attorneys in selecting a jury in this case. Mr Glover then stated as follows" I think that the agreement made by me with Mr Thompson in relation to my not taking hold against Mr Graham & Mr Thompson was such that I could recover a fee from Mr Thompson if I should sue him for it. Mr Thompson is an old neighbor of mine & I did not think that I should ask him anything for it. I have never made any charge against him"

The Defendant by its counsel then objected to said witness Thompson's being allowed to

3. testify in this cause. because the witness

was interested in the result of this suit but the court overruled the objection and held said Thompson to be a competent witness. To which ruling of the court the defendant by its counsel then & there excepted. Witness then testified as follows.

" I have lived in that neighborhood since 1854. The water from Goodings stable does not come into my lot much since the ditch was dug. it may come in the back yard when the wall in Goodings stable was dug. they had to penetrate through 7 or 8 feet of made earth, chunks of coal, bricks, cinders &c. before they reached the natural surface of earth. This well began to be affected about 4 years ago. I dont know of any smell like that of the well except at the gas works. I once examined the well with Mason & Patterson. Mason said at that time that he thought the well might be injured by leakage from the tank. The water is worse when it is muddy and I suppose that the water rising presses downward and prevents the gas from entering the well so fast. The water in well tastes & smells like the water in the tank not so strong. I am not certain but I think it is caused by the gas works." The Plaintiff

then exhibited a bottle of water taken from the bank at gas factory and a bottle of water from plaintiffs well and asked the witness "whether or not the water in the well was like that in the bottle" To the exhibiting of which bottle and the asking of said question the defendant by its counsel objected. but the Court overruled the said objections. The grand Jurymen were not allowed by the Court to take the bottle into their possession or to examine the same, but the bottle was merely brought into Court & examined by the witnesses & attorneys. to which decision of the Court the defendant by its counsel then & there excepted. The witness then continued as follows.

There is a ravine or chasm in the sand rock running through Gowlings stable & from thence across the street & across my lot & passes between my house & Grahams well & within five or six feet of plaintiffs well. this ravine is some 8 feet deep and is filled up with sand coal & other matter. the ravine has always been so filled since the town was settled and was probably worn into the sand rock before the present soil was formed on the sand rock. the descent of the ravine was towards the South west & if anything soaked into the ravine at Gowlings

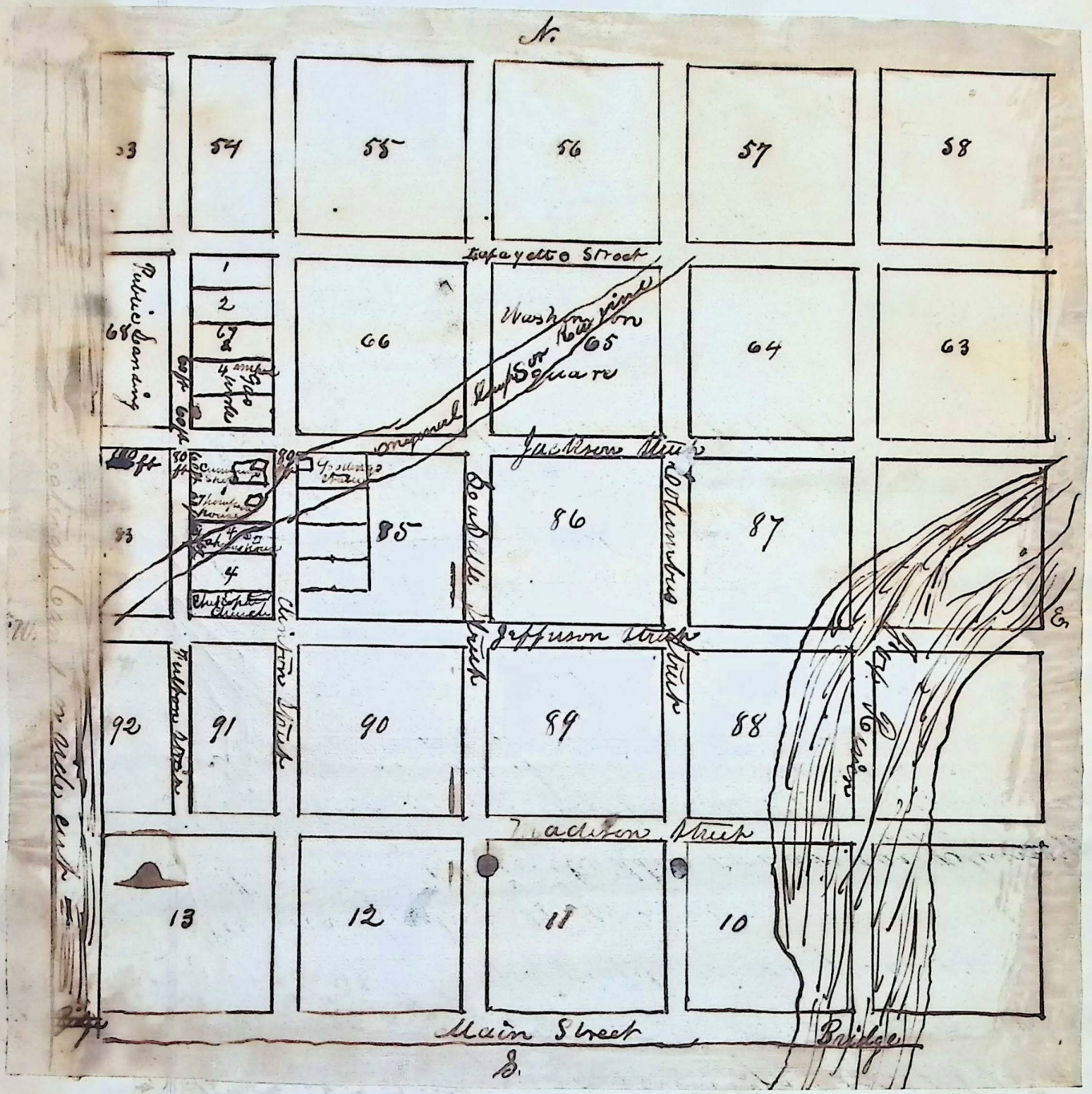
stable it would naturally ~~stop~~ run toward Grahams well, all things being equal the water from Goodings stable would get to the well before that from the gas works would. The pool of ammonia was eight or ten feet deep I believe. before the ground around my house was filled up. the water used to stand in front of my house a good deal of the time and the water stood in my cellar a good deal of the time, my house is about twenty feet from Grahams well, water would soak into Grahams well as easily as into ~~Grahams~~ my cellar.

The Plaintiff then called Dr Knarrel who testified as follows. I am a druggist & a practical chemist. Plaintiff then gave ~~plaintiff~~ witness a bottle of water from the tank of the gas works and a bottle of aqua ammonia commonly called spirits of hartshorn and asked witness to examine them & state whether they were alike or not. to the introduction of which bottles of water from the tank & of aqua ammonia & the asking the witness to compare them. the defendant then & there objected, ~~the~~ the Court overruled defendants objection. & admitted said testimony to which ruling of the Court the Defendant then & there excepted. Witness then said there is ammonia & hydro carbon in bottle of water

from the bank & that there was no hydro carbon in the bottle of aqua ammonia. it is the ammonia that makes ~~[illegible]~~ drung. heat water can be made to take ~~[illegible]~~ hydro carbon. perfectly pure ammonia can be made from horse piss. crystalized ammonia dissolves in water, it is not volatile when dissolved Samuel Patterson was then recalled. Plaintiff ~~then~~ gave witness a bottle of water brought from the bank & asked witness if it smell like the water from Grahams well. To all which the Defendant then & there ~~exceptd~~ objected. the Court overruled defts objection to which ruling of the Court the defendant then & there excepted. The witness then said that the water in the bottle smell like the water in Grahams well. witness then said that Mason told him that the injury to Grahams well might have been caused by a leakage of the bank occasioned by the posts we were then standing by the bank.

The Defendant gave the following Plat representing the situation of the gas works and their vicinity in evidence.

Which Plat is conceded by the Plaintiff to be correct.



The foregoing was all the evidence in the case.

The Court then instructed the Jury on behalf of the Plaintiff as follows.

1st If the jury believe from the evidence that

the defendant erected or caused to be erected near the dwelling house of the Plaintiff, situated on Lot 3 Block 84 in Stokes addition in the City of Ottawa works for the manufacture of gas and coke and that in carrying on such business by Defendant the air was thereby rendered impure noxious or disagreeable to the plaintiff and that the plaintiff had on said lot a well of water, and that the defendant placed or caused to be placed in and around said works substances used in or produced by the manufacture of gas and coke which when mingled with the water in plaintiff's well rendered it noxious to the taste or otherwise unfit for use, and if said substances so used or produced, did soak into the ground and permeate and pass along and through the earth ~~and pass along and through the earth~~ and mingle with the water of said well, and did render it noxious to the taste or otherwise unfit for use, the jury should render a verdict for the plaintiff for such damages as in their best judgment he has sustained thereby prior the time of the commencement of this suit.

The first instruction of the Plaintiff is qualified by adding thereto the following — But such judgment of the jury must be based

Given with the qualification attached

upon such facts in proof as tend to show the pecuniary extent of the injury sustained by the Plaintiff (if they believe from the evidence that he has sustained any injury) and to enable the jury to arrive at such an estimate. it is not necessary that any witness should have expressed an opinion as to the amount of such pecuniary injury, but the jury may themselves make such an estimate, exercising their own judgment upon the facts in proof by connecting them with their own knowledge and experience.

2nd The Defendant upon proof of the facts mentioned in the foregoing instruction is liable though it was not guilty of any negligence in the manner of conducting its business. It is a kind of business which the law does not allow to be carried on in the neighborhood of dwelling houses in a city to the injury of many citizens dwelling therein.

To the giving of which instruction to the Jury and to each and every part thereof, the Defendant by its counsel then & there excepted.

The Defendant then requested the Court to instruct the Jury on behalf of the ~~jury~~ Defendant as follows.

1st The Plaintiff cannot recover damages for

Jurors in giving damages should be guided by evidence & knowledge

injury to his well in this action, unless it is clearly proved that the Defendant did wrongfully and negligently deposit upon the lot or premises of said Defendant certain deleterious tarry resinous or gaseous substances and that the said deleterious tarry gaseous or resinous substances permeated flowed or passed through the earth into plaintiffs well.

2nd To entitle the Plaintiff to recover in this action for injury to his well it must be clearly proved to the jury by the evidence in the case not only that the defendant did wrongfully and negligently deposit on the lot or premises of said Defendant certain deleterious tarry resinous or gaseous substances. But also that the said deleterious resinous tarry or gaseous substances by reason of being so wrongfully and negligently deposited on defendants premises did permeate flow or pass through the earth and mix with the water in plaintiffs well and that said Plaintiffs well was injured thereby.

3rd In determining the amount of plaintiffs damages for injury to his well the measure of his damages will be the expense and labor which plaintiff has incurred in and about procuring water for himself and family

from the time the plaintiffs well first became injured by the defendant (if the jury shall find that said well was so injured) until the 26th day of December A.D. 1860. And unless the Plaintiff shall have proved the actual amount so expended or such facts as will enable the Jury to determine the amount so expended without going outside of the evidence adduced on the trial of this cause, the plaintiff will be entitled to nominal damages only.

Refused

4th If the jury should find the issues for the Plaintiff in this action, then unless the plaintiff has proved the amount of damages he has actually sustained he will be entitled to nominal damages only and in such case the jury will assess the plaintiffs damages at one cent

Refused

5th If the jury shall find the issues for the plaintiff then the plaintiff must prove the actual amount of damages he has sustained or such facts as will enable the jury to estimate the amount of his damages, without going outside of the evidence adduced on the trial of this cause, otherwise the plaintiff will be entitled to nominal damages.

6th If the Jury believe from the evidence that the gas company in erecting and Keeping in

operation their gas works and the manufacturing and keeping of gas, took all reasonable and proper precaution to prevent the water on the plaintiffs premises from becoming contaminated and unfit for the plaintiffs use, the gas company are not liable in this action.

Refused

7th If the Jury believe from the evidence that the plaintiffs well was injured and ~~and~~ the water thereof rendered unfit for use by reason of deposits of manure & urine and other deleterious substances from barns stables & pigsties standing in the neighborhood of plaintiffs lot and not from the gas works of the defendant then the plaintiff is not entitled to recover damages in this action for injury to his well.

Granted

8th — The Plaintiff is not entitled to recover damages in this action for any injury to his well or annoyance to himself and family from defendants gas-factory which may have happened after the 20th day of December 1860

Granted

9th — The question as to whether the pecuniary value of plaintiffs house and lot has been lessened or not by reason of defendants ~~of defendants~~ erecting a gas factory on a lot near to plaintiffs lot and manufacturing gas therein is not before the jury in this action.

Granted

The Court gave to the jury the seventh eighth and ninth instructions above asked for on behalf of the defendant—

But the Court modified the first and second instructions asked for as above on behalf of Defendant — by striking out the words "and negligently" where they occur in each of said first & second instructions respectively as above written.

The Court also refused to give to the Jury, the third fourth and sixth instructions above asked for on behalf of defendant or either of ~~them~~ said instructions.

And the Court also modified the fifth instruction to the jury asked for as above on behalf of defendant, so as to cause said fifth instruction to read as follows, viz — If the jury shall find the issues for the plaintiff then the plaintiff must prove the amount of damages he has sustained or such facts as will enable the jury to estimate the amount of his damages without going outside of the evidence adduced on the trial of this cause. But to enable the jury to arrive at such estimate it is not necessary that any witness should have expressed an opinion as to the pecuniary amount of such damages, but the jury may themselves make such estimate from the

Given

facts proved exercising their own judgment upon the facts, in proof by connecting them with their own knowledge and experience.

To which action of the Court in modifying and qualifying as above mentioned the first second & fifth instructions, above asked for by defendant to the Jury and in refusing to give to the Jury the third fourth and sixth instructions above asked for by defendant, the defendant by its counsel then and there excepted.

The Jury found the issues in favor of the plaintiff and assessed his damages at $300.

The defendant by its counsel then & there entered a motion for a new trial the Court overruled said motion for a new trial and the defendant by its counsel then and there excepted.

The Court then rendered judgment in favor of the plaintiff in accordance with the verdict of the Jury — and the defendant by its counsel then & there excepted to the opinion of the Court in rendering judgment.

The defendant then prayed an appeal to the Supreme Court and prayed the Court to sign and seal this its Bill of exceptions which is accordingly done.

Wm Chumasero (Seal)

66.

Be it remembered that heretofore Viz: On the 4th day of April 1862 a Bond was filed in the Office of the Clerk of Said Court, which is in the words & figures following Viz:

"Knows all men by these presents That the Ottawa Gas Light & Coke Company, as principal and Samuel B. Gridley as Security are held and firmly bound unto James Graham in the penal Sum of Five Hundred Dollars, good and lawful money of the United States for the payment of which well and truly to be made the Said Ottawa Gas Light & Coke Company binds itself and the Said Samuel B. Gridley binds ~~itself~~ himself & his heirs executors and administrators Jointly, Severally, and firmly by these presents.

Witness the Seal of Said Gas Light & Coke Company and the hand of William H. H. Cushman. President of Said Company & the hand of Levi Mason Secretary of Said Company & the hand & seal of Samuel B Gridley this day of — A D 18—

The Condition of the above obligation is such, that whereas the above named James Graham, did at the February Term of the Circuit Court held in and for the County of Lasalle in the State of Illinois A.D 1862. recover a Judgment against the above bounden Ottawa Gas Light & Coke Company, for the Sum of Three Hundred dollars damages & Costs of Suit to reverse which Said Judgment the Said Ottawa Gas Light & Coke Company has prayed an ap=peal from said Judgment to the Supreme Court of Said State of Illinois, which Said ap=peal has been allowed by Said Cir=cuit Court. Now if the Said Otta=was Gas Light & Coke Company, Shall duly prosecute Said ap=peal and pay, or cause to be paid the Amount of Said Judgment, and all Judgments, costs interest and damages which the Said Supreme Court Shall adjudge against Ottawa Gas Light & Coke Company in case Said Judgment Shall be affirmed, and abide the or=der and Judgment of Said Su=preme Court in this behalf then this obligation is to be

void, otherwise to remain in full force and effect.

Witl H. W. Cushman (Seal)
President

(Seal)

Levi Mason Secy (Seal)
S. B. Gridley (Seal)

State of Illinois }
LaSalle County } ss I Absalom B. Moore
Clerk of the Circuit Court in & for Said County do hereby certify, that the foregoing is a true copy from the records of said Court in Said Cause, and of the papers on file as now appears in my office

In Testimony whereof I have hereunto set my hand & affixed the Seal of Said Court at Ottawa this 14th day of April AD 1862

A B Moore
Clerk

The Ottawa Gas Light and Coke Company Appellants
vs
James Graham Appellee

Appl. from La Salle

And now comes said Appellant by Van Buren & Rice & Lewis its attorneys and says that in the record and proceedings aforesaid there is manifest error in this to wit

1st The verdict is against the law and against the evidence

2nd The Court erred in admitting improper evidence offered on the part of the plaintiff below

3d The Court erred in rejecting proper evidence offered on the part of the defendant in the court below

4th The Court erred in giving the instructions on the part of the plaintiff below

5th The Court erred in refusing instructions offered by the defendant in the court below and in qualifying ~~the~~ instructions asked by defendant in the Court below.

6th The damages are Excessive

7th The court erred in rendering judgment in favor of the plaintiff

in the court below.

8th The court erred in overruling the motion of defendant in the court below for new trial & for other errors

Rice & Lewis & E Vanburen
Appelt's Atty's

And now comes the said James Graham, appellee, and says, that in the Record and Proceedings aforesaid there is no error.

Leland & Blanchard &
Gray, Avery & Bushnell
Attys pro Appellee.

James Graham
vs.
Ottawa Gas Co

Record &
Assgt of Errors &
joinder in Error.

Filed April 24, 1882
L. Leland