

14716

No. _____

Supreme Court of Illinois

Ottawa Gas, Light & Coke Co.

vs.

Graham

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 269

J. W. Middleton & Co., Stationers, 196 Lake St.

X

14-10

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

OTTAWA GAS LIGHT &
COKE CO.

vs.

JAMES GRAHAM.

APPEAL FROM HENRY.

There are some inaccuracies in the abstract which we correct before proceeding.

On p. 8 there is an omission of a portion of p. 92 of the record; also there is a sentence in the abstract which we do not perceive in the record. The omission and addition change the sense somewhat. The sentence which we find in the abstract and which seems to have been accidentally omitted from the record is as follows, "*To the overruling of which objection by the court the defendants then and there excepted.*" The expression in the record accidentally omitted from the abstract is as follows, "*The plaintiff again offered the bottles of water from Graham's well and from the tank in evidence for the jury to taste and smell of, to which the defendant objected and the court sustained the objection, and did not permit it to be done.*"

Filed May 18, 1864

J. L. Smith

As the jury did not get to the bottles nor the bottles to the jury we think there is not much in this exception, if one is made. (We write without seeing the points made on the other side.)

Among several other inaccuracies we notice one only of importance enough to require correction. The 6th instruction of the record was refused, but it is entirely omitted in the abstract, and the 7th of the record is numbered 6th in the abstract. This might mislead the court if not pointed out, and for fear that the other side might notice it we take the liberty to do so.

The 6th instruction of the record was, we think, properly refused. If the water of the well was less pure the injury by the defendant was less of course, but it is no defence to the action that the water of the well was not of the best quality. Very poor water might have been injured some by pouring the contents of the tank into it.

The admission of evidence that other wells were similarly affected was proper. The tank, the bottom of which was lower than the surface of the porous sand rock, leaked, at least there was strong evidence that it did. If the tank leaked the water would permeate through the sand rock in all directions. Like causes produce like effects. Evidence that the acrid water of the tank did pass through the rock in many directions from a central point at the tank, is more conclusive than evidence that it was perceived in one direction only.

We see nothing wrong about the question asked Wade, (Abs p. 7,) and no improper evidence was elicited by it.

We perceive nothing else which bears the similitude of error unless there may be something in the idea that one cannot recover for the injury occasioned by noisome smells when they affect others in the same way. It was not claimed on the other side, in the case of *Gas Co. v. Thompson*, that because many wells were injured, the owner of neither could recover. It would

therefore only affect the amount of the recovery to exclude the atmospheric injury. Two juries have found for the plaintiff, and the last one was the largest. *The bill of exceptions does not purport to contain all the evidence.* Under such circumstances as we do not propose to dwell on this branch of the subject. The court will perceive that the instructions were in conformity with the views of this court in the Thompson case. If we erred at all on the trial below we think it was, as we intended, on the safe side, and that this second verdict and judgment should stand. The authorities cited in the position for rehearing were as follows:

3 Black. Com. 217.

4 Ib. 167.

1 Willis 71.

5 Mann & Grang. 613.

19 Pick. 147.

11 Miss 517.

4 Denio 311.

22 Barb. 297.

1 Denio 257.

9 Wend. 315.

14 Conn. 565.

3 Barb. 157.

9 Paige 575.

3 Sandf. 126 and 281.

4 Wend. 1.

2 Selw. N. P. 1118.

1 Com. Dig. 427-8.

*Rose vs Graves
Stetson vs Tardous
Smith vs M. Co. etc.
Fisher vs Deane*

*Miles vs Hall
Bogdan vs H. et al. Mfg. Co.
Brady vs Bratton
Allen vs Calverton
Reich vs Allen*

Russell vs Mepham

Newman vs L.

LELAND & BLANCHARD,
For Appellee.

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1 Miller 71
Missouri

*Citations right, and not names
 under about names*

LELAND & BLANCHARD,
For Appellee.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

THE OTTAWA GAS LIGHT & COKE COMPANY <i>vs.</i> JAMES GRAHAM.	}	<i>Appeal from Bureau.</i>
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APPELLANT'S BRIEF.

I.

As to motion to file additional bill of exceptions.

This motion is based upon a certificate of the Clerk of the Circuit Court and an affidavit showing that appellee's counsel, in conjunction with appellant's counsel, carefully examined the bill of exceptions, and conceded that the same was correct, and thereupon appellee's counsel wrote upon the bill of exceptions, at the end thereof, his assent to the correctness of said bill of exceptions in the words and figures following, to wit:

"I am satisfied with the foregoing bill of exceptions.

"E. S. LELAND."

Plaintiff's attorney then presented the bill of exceptions to Judge Hollister, who being satisfied of the correctness of said bill of exceptions, signed and sealed the same.

The bill of exceptions does not state that it contains all of the evidence adduced on the trial.

This Court has held that, when the bill of exceptions does not state that it contains all of the evidence, the court will presume that there was other evidence not contained in the bill of exceptions which warranted the jury in finding their verdict. The correctness of this rule we do not deny, although the rule is a very rigid one. But we insist that when the party who obtains the verdict of the jury, at the time the bill of exceptions is made up, places upon such bill of exceptions a stipulation in writing signed by himself or attorney signifying that he is satisfied that the bill of exceptions is correct, and the Judge before whom the cause was tried, relying upon such stipulation or writing, signs and seals the bill of exceptions, that such writing or stipulation estops the party so making such writing from afterwards saying that such bill of exceptions does not contain all of the evidence in support of the verdict offered on the trial of the cause. The bill of exceptions shows that the plaintiff below on the trial of this cause called his witnesses; that each of said witnesses was examined by plaintiff, cross examined by defendant, and again re-examined by plaintiff; that after the examination as aforesaid of a large number of witnesses on the part of the plaintiff, the bill of exceptions states that plaintiff here closed his case. This, taken together with the statement in writing of plaintiff's counsel at the end of the bill of exceptions, shows clearly without going outside of the bill of exceptions, that the bill of exceptions contains all of the evidence offered on the trial which would tend to sustain the verdict of the jury, and we do not see how it can be presumed that there was other evidence offered on the trial not contained in the bill of exceptions, tending to support the verdict. The rule that when the bill of exceptions does not recite that it contains all of the evidence, the court will presume that there was other evidence offered on the trial which would warrant the jury in finding their verdict, has never been held to apply to a bill of exceptions to which the party gaining the verdict has added a stipulation or writing, stating in effect that the bill of exceptions is correct. We think the certificate of the clerk filed herein ought to be considered as forming a part of the bill of exceptions in this cause.

II.

The verdict of the jury is against the law and the evidence.

The court, on the part of defendant, instructed the jury as follows: (see defendants 1st instruction, page of record 126.)

"1st. If the jury believe from the evidence that noxious or offensive smells issued from the Gas Works of the defendants as alleged in the

declaration, yet if the jury believe from the evidence that it affects in the same manner a considerable portion of the community in the vicinity of defendant's works, then the court instructs as a matter of law that the works and business of the defendant are not a private nuisance, and no action can be sustained by the plaintiff for such noxious or offensive smells; and in such case the jury cannot take into consideration any of the evidence adduced on the trial in relation to the noxious smells arising from defendant's works, unless the plaintiff has proved that he has sustained some damages from such noxious smells peculiar to himself, and which has not been sustained by the neighborhood about the Gas Works."

The evidence of all plaintiff's and defendant's witnesses shows that if the smell from the Gas Works was a nuisance at all it was a public nuisance, and affected the neighborhood around the Gas Works in the same manner.

On this point DeWitt C. Gooding, a witness called by plaintiff, testified as follows:

"I do not mind the smell of gas, because I am used to it. The smell of the gas does not affect the air except when the purifiers are emptied. The smell of the Gas Works affects a large neighborhood, and if it is a nuisance to one it is a nuisance to all." Page of Record 87, page 7 of abstract.

A. B. Smith, called by plaintiff, testified as follows: Record page 94, abstract page 9. "The smell of the gas affects a large neighborhood in about the same manner. If it is a nuisance to one it is a nuisance to all in the neighborhood."

Charles Porter, one of plaintiff's witnesses, testified as follows: Record page 97, abstract page 10. "The smell of the gas affects a large community, and if it is a nuisance at all it is a nuisance to all in the neighborhood."

Dr. Joseph Stout being called by plaintiff, testified as follows: Record page 104, abstract page 12. "If the smell of gas is a nuisance to one person it is a nuisance to a large number of persons."

John Murray, called by plaintiff, testified as follows: (Record page 107, abstract page 13.) "The smell of the gas affects a large neighborhood."

All of defendant's witnesses testified that the smell from the Gas Works, if a nuisance at all, would affect a large neighborhood in about the same manner.

There is no conflict in the evidence on this point. The testimony of both plaintiff's and defendant's witnesses show that Graham, if affected by the smell from the Gas Works at all, was affected in the same manner with all others living in the neighborhood of the Gas Works.

Under the instructions of the court, the jury were not at liberty to take into consideration the evidence adduced on the trial in relation to the smells arising from the Gas Works in computing the amount of damages in this case.

But the evidence in the case and the amount of the verdict found by the jury, show clearly that the jury in making their verdict and assessing plaintiff's damages wholly disregarded the instruction of the court above quoted.

The only injury complained of by plaintiff besides the smells from the Gas Works was that his well had been injured by the Gas Works.

The evidence in the case shows that the cost of Graham's well could not have been more than thirty dollars, and that a good cistern holding 100 barrels with a good filter could have been made for about 40 dollars. The interest on these two sums of money at the rate of ten per cent. per annum from the fall of 1856, when the Gas Works were erected, until December, 1860, when this suit was brought, could not amount to more than thirty dollars.

Gooding's testimony shows that Graham's well did not begin to be injured until the latter part of the year 1857.

The evidence shows conclusively that, according to the rule of damages laid in the case of *Ottawa Gas Light and Coke Co. vs. Graham*, 27 Ill. p. 73, the damages sustained by Graham for injury to his well could not have exceeded one hundred dollars. The evidence also shows that a cistern holding one hundred barrels with a filter, would have furnished Graham with an unfailing supply of good water and of better quality than that of any of the wells in the city. The jury must therefore have taken into consideration the evidence in relation to the smells from the Gas Works in finding a verdict for three hundred and ninety-two and 50-100 dollars. They evidently could not have found this verdict without totally disregarding the instruction of the court.

William Hickling testified as follows, in relation to the well: "The wells in Ottawa are generally from 18 to 20 feet deep, and cost from one dollar to one dollar and twenty-five cents a foot, including wall above sand rock."

"A cistern holding one hundred gallons with a good filter will furnish an unfailing supply of good water—much better than any well water in the city."

James E. Wilson testified on part of defendant as follows:

"I am a brick mason; have built a good many cisterns; a cistern holding one hundred gallons with a good filter, would cost about forty dollars. A filter would cleanse the water of all impurities. A cistern holding one hundred barrels with a filter, would furnish Graham with an abundant supply of good water."

"*Cross-Examination.*—It would cost no more to keep a cistern in order than a well. I should think from the size of Graham's house he could catch water enough to supply him abundantly with water to use."

The testimony of both plaintiff's and defendant's witnesses shows that Graham's well was situated within 100 feet of a large livery stable, which had been in operation longer than the Gas Works, while the Gas Works are 200 feet distant from the well; that the ground west and north of the well and between the Gas Works and well was several years ago a duck pond; that this low place or duck pond had a little while before Graham's well became injured been filled up with manure; that the ground is descending from the livery stable to the well; that the livery stable produced as much or more ammonia water than the Gas Works; that the injury to the well was occasioned by ammonia water; that there was and had been for a long time a privy, having no other vault than a hole dug through the soil to the sand rock, within 30 feet from the well; that the ammonia water produced from the horse urine at the livery stable and from the deposits of manure near the stable would after filtering through the porous sand rock which underlaid the soil become clear and would not discolor the water of the well; that the ammonia water so produced is the same in quality and appearance as the ammonia water produced from the coal while it was being converted into gas; that the wells in the city which were situated near deposits of manure, privies, &c., had invariably become spoiled, and that in such cases the water of the wells so spoiled had shown a similar appearance to that of the water in Graham's well after it became injured in regard to clearness and smell. (See Gooding's, Latcheller's, Hickling's, Mason's and Porter's testimony.)

The evidence renders it uncertain whether Graham's well was injured by the Gas Works or by other causes. It certainly shows that other causes than the Gas Works, if not the sole cause of the injury to the well, contributed very largely to the injury done to the well.

The jury in finding the amount of the damages must have wholly disregarded the law as given by the court in the 1st and 4th instructions given for defendant.

The verdict and judgment is evidently against the law and evidence.

The judgment of the Circuit Court should be reversed and a new trial granted for this cause.

The former judgment of the Circuit Court was reversed for misdirection of the law by the Circuit Court.

On the new trial of this cause granted by this court the jury have wholly disregarded the law when correctly given by the Circuit Court.

III.

The court erred in allowing evidence to be given to the jury of other wells than plaintiff's. The question was as to the injury to plaintiff's well only, and injury to other wells did not tend to prove any injury to his well; besides it tended to prejudice the jury and aggravate the damages.

IV.

It was error for the court to permit the witnesses to give their opinion as to the amount of damages which plaintiff had sustained. It was for the witnesses to state facts, and it was the business of the jury to determine the amount of damages from the facts testified to by the witnesses.

The wild opinions of some of the plaintiff's witnesses in respect to the damage done to Graham's lot by the Gas Works were well calculated to prejudice the jury.

Fish vs. Dodge, 4 Denio, 318.
Igelhart vs. Jernegan, 16 Ill. 522.
Duff vs. Lyon, 1 E. D. Smith N. Y. 536.
Norman vs. Wells, 17 Wend. 161.
Hoitt vs. Moulton, 1 Foster N. H. 588.

V.

The court erred in permitting the witnesses to smell of the water in the bottles taken from the tank and testify as to whether the water in the bottle smelled like the water in Graham's well. If it was improper for the jury to have smelled and tasted of the water in the bottle it was equally improper for the witnesses to do so in the presence of the jury. The only object plaintiff could have had in introducing these bottles in evidence was to get some outside matter in evidence for the purpose of prejudicing the jury.

We think the record shows that the court below permitted improper evidence to go to the jury; and that the jury disregarded the law and found a verdict against the law and evidence. The record also shows that the damages are excessive.

The judgment of the Circuit Court ought to be reversed and a new trial granted.

RICE, MOREY & HOLLISTER,
Appellant's Attorneys.

269-185

Ottawa Gas
Light & Coke Co
as

James Graham

Appl's Bk

Filed May 30. 1874

L. Leland
Clk

SUPREME COURT OF ILLINOIS,

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THE OTTAWA GAS LIGHT AND COKE COMPANY,	} Appellant.	} Appeal from Bureau.
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JAMES GRAHAM,	} Appellee.	

ABSTRACT OF RECORD.

This was an action on the case brought by the appellee against the appellant on the 26th day of December, 1860.

Order for change of venue from Circuit court of La Salle to Bureau county.

9 The plaintiff's declaration is in the words and figures following, that is to say:

10 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, and thereupon said plaintiff, by Gray, Avery & Bushnell, and Leland & Leland, his attorneys, complains for that, whereasthe said plaintiff, before and at the time of the committing of the grie-

vences by said defendant, as hereinafter mentioned, was, and from thence hitherto hath been and still is seized and possessed of certain premises, to wit: Lot 3, in Block 84, State's Addition to Ottawa, in said county, with a certain messuage or dwelling and well of water thereon situated.

- 11 And the said messuage or dwelling house, and premises, and well of water, the said plaintiff with his family, at the time hereinafter mentioned, occupied 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 possessed 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, continuing and intending to injure, prejudice, and aggrieve the said plaintiff and to incommode and annoy him and his family in
- 12 the possession, occupation and enjoyment of his said messuage or dwelling house and premises heretofore, to wit: on the first day January, in the year of our Lord eighteen hundred and 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 and dwelling house and premises of said plaintiff, as aforesaid, and wrongfully and injuriously kept and continues and causes 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 and injuriously exercised and carried on in and near the said buildings and erections the business of manufacturing gas and coke, and made, and caused, and procured to be made and manufactured divers large quantities of gas and coke therein and near thereto, by means of which several premises, divers noisome, noxious, and offensive vapors, fumes, smokes, smells and stench, on the several days and times aforesaid, rose, issued and proceeded from said buildings and 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, and the air, over, through and about the same was thereby greatly filled and impregnated with the said noisome, noxious and offensive vapors, fumes, smokes, smells, and stench, and was rendered on the said several days and times aforesaid, and became and was, and still is corrupted, offensive, unwholesome, unhealthy, and uncomfortable, and said plaintiff hath thereby been and still is greatly annoyed and incommoded in the use, possession, occupation and enjoyment of the said messuage or dwelling house and premises.

13 And the plaintiff further avers, that the defendant in the manufacturing of gas and coke, further intending to injure, prejudice and aggrieve said plaintiff, and annoy his family in the possession and enjoyment of the messuage, premises and well aforesaid, suffered to flow from said gas works, and to be deposited and placed in and around and near the same, certain noxious and offensive substances and materials used in and about the manufacture of gas and coke, and also certain oily, tarry, resinous, gaseous and deleterious substances and materials so used in said manufacture, which said substances and materials were absorbed by and entered into the earth and permeated, passed and flowed along and through the earth and into said well of water of said plaintiff, and mingling with the water with which said well was supplied, spoiled and made noxious, unpalatable, unhealthy, and 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 damaged, to wit: in the county aforesaid.

14 And, whereas, the said plaintiff, before and 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 situated, in the county aforesaid, and which said last mentioned messuage and premises the said plaintiff and his family, at the said several times hereinafter next mentioned, occupied, inhabited, and dwelt in, and still do occupy, inhabit and dwell in, to wit: in the county aforesaid; yet the said defendant, well knowing the premises, but contriving and intending to injure, prejudice and aggrieve said plaintiff, and to incommode and an-

noy him and his family in the possession, occupation and enjoyment of his said last mentioned messuage and premises heretofore, to wit: on the first day of January, in the year of our Lord eighteen hundred and fifty six, and on divers days and times between that day and the commencement of this suit, wrongfully and injuriously caused and procured divers noxious, offensive, unwholesome vapors, fumes, smokes, smells and stenches to arise and ascend near to, in and about the said last mentioned messuage and premises of said plaintiff, and the same have thereby been rendered and are become uncomfortable, unhealthy and unwholesome, and unfit for habitation.

And the plaintiff further avers, that the defendant, further intending to injure and prejudice said plaintiff, and to annoy him and his family in the possession and enjoyment of his messuage, premises and 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 and coke, and in manufacturing gas and coke in and near the same, suffered to be deposited and placed in, around and near the same certain noxious and offensive substances and materials used in the manufacture of gas and coke, which said substances and materials were permitted by the defendant to be absorbed by and to enter into the earth, and to permeate, pass and flow along and through the earth and into said well of water, and to mingle with the water with which said well was supplied, and thereby caused to be spoiled, made noxious, unpalatable, unhealthy and unfit for use the water in said well, and thereby deprived said plaintiff and his family of the use of the water of said well for a long space of time, to wit: from said first day of January, A. D. 1856, until the commencement of this suit, and the said plaintiff has thereby been, and still is, greatly annoyed and incommoded in the possession, use, occupation and enjoyment of the said last mentioned messuage premises and well of water, and has been and is by means of the premises otherwise greatly injured and damnified, to wit: in the county aforesaid.

Wherupon said plaintiff says, that he is injured and has sustained damage to the amount of five hundred dollars, and therefore he brings his suit, &c.

GRAY, AVERY & BUSHNELL, AND
LELAND & LELAND,
Att'ys for Plaintiff.

At the November term, A. D. 1861, of said Court, the defendant pleaded the general issue, and also a special plea denying the inducements set forth in the declaration.

At the March Term, A. D. 1863, of said Circuit Court of Bureau County, this cause was tried by a jury.

133-4 The jury found the issues in favor of the plaintiff, and assessed his damages at three hundred and ninety-two dollars and fifty cents.

The defendant moved the Court for a new trial herein.

The Court overruled the motion for a new trial, and defendant excepted.

Bill of Exceptions.

81 DE WITT C. GOODING, being called as a witness on the part of the plaintiff, testified as follows:

I am acquainted with the plaintiff in this suit. Plaintiff lives on lot three, block eighty-four, State's addition to Ottawa, on the opposite side of the street from my livery stable, which is situated on lot four, block eighty-five, on the east side of Clinton street, and south side of Jackson street on the northwest corner lot of block eighty-five. The Gas Works are situated on lots four and five, block sixty-seven, said lots being on the southeast corner of said block, and lying on the west side of Clinton street and north side of Jackson street, lot four of said block sixty-seven adjoining said lot five on the north. My stable is about one hundred feet from the Gas Works diagonally across Clinton street. Graham has a dwelling house and well on lot three, block eighty-four, resides there now, and has since some time in the year 1856. Graham's lot is the width of one street and two lots south of the lots on which the
83 Gas Works are situated. The street is eighty feet wide, and the lots are each sixty feet wide. Graham's house and well are on the opposite side of Clinton street from my stable, being the width of the street west and the width of a lot south of my premises, being about one hundred feet from my stable. I have a well in my stable under the harness room.

The plaintiff then asked witness if his well had been injured by the Gas Works. The defendant objected to plaintiff's offering evidence as

to whether other wells than plaintiff's had been injured by the Gas Works. The Court overruled the objection and allowed the witness to answer the question; to which opinion of the Court the defendant then and there excepted.

Witness then continued. The water in my well was good before the Gas Works were built; some time in 1857 the water in my well began to be bad—tasted and smelled of gas. The Gas Works were built in the winter and spring of 1856. I am positive the water in my well tastes and smells of gas, its smell is very offensive; when pumped from the well it is covered with foam like soap suds; when the well is low the water tastes and smells worse than when it is high; when the water is high in the well the boys about the stable can drink it: when low it cannot be drank; at times when the purifiers are emptied, the smell
 84 from the Gas Works is very offensive. I have been acquainted with Graham's well about ten years, the water was good when I first knew it; it could be used in 1857. Some three or four months after my well became bad, Graham's also became bad.

Cross-Examination.—I have no suit against the Gas Company. I had a suit against them, but I dismissed it; I intend to bring another if Graham is successful; at one time Mr. Thompson, Graham, Porter, and myself talked about uniting together in prosecuting the Gas Company, but never made any agreement about the payment of the expenses or costs of these suits. I am not interested in the result, or liable to pay
 85 any of the costs of this suit, but I feel some interest in it because I have a similar cause of action, and the decision of this suit will in a measure show what rights I have against the Gas Company.

I have had this stable about six years, have kept from twelve to fifteen horses; my well is in the northwest corner and about seventeen feet deep. The ground in the neighborhood where my well is, is composed of about 2 feet of soil, and below the soil of a porous sand rock, water leeches through this rock easily, the ground where my stable is, is very low; there is a low spot of ground west and south of the Gas Works between the Gas Works and Graham's well. I have been in the habit of carrying manure from my stable and throwing it into this low spot, west of the Gas Works. The horse piss which falls on my stable floor probably runs through on the ground under the stable. The soil and sand rock under the stable are both porous, and any liquid will soak through them easily. The horse piss would soak through them into the well more easily than the ammonia from the Gas Factory, because it is further from the well; one kind of liquid will soak through the sand rock as well as another. I do not think the horse piss, or soakings from the manure, affects my well, if it did the water of my well would be colored.

On my lot back of my stable is a low spot where the water stands a good deal of the time during rainy weather, the water which stands there is so colored that it looks like strong lye. I do not think the foam on the water is caused by air getting into the pump. Horse piss will foam when thrown upon the ground. The water in my well when bad, tastes like gass smells; strange horses will not drink it. I do not mind the smell of gas, because I am used to it. The smell of the gas does not affect the air except when the purifiers are emptied. The smell of the Gas Works affects a large neighborhood and if it is a nuisance to one it is a nuisance to all.

Direct Ex. Resumed.—I did not notice anything peculiar about the color of the water in Graham's well. Strange horses will not drink the water in my well. I have examined and found but little wet under my stable floor. I bought the stable in 1856; the well was dug the year before; the water was good until the Gas Works went into operation.

Cross Examination.—My well is covered up close, the water is raised with a pump; the building had been used before I bought it, for a livery stable. I filled up the low spot back of my stable with earth and lime thrown out of the purifiers from the Gas Works. There are a number of Foundries and Machine shops in the neighborhood of the Gas Works, they have been in operation since long before the Gas Works were built. I do not think Graham's house is so desirable a location for a dwelling as many others in the city, even if the Gas Works had never been placed there.

Direct Examination.—I am confident that the water in my well tasted of gas, and that it is worse when the water is low.

THOMAS J. WADE, being called by the plaintiff, testified as follows: I was a member of the city council, made an examination of Graham's well, the last time was in June 1860, I was one of a committee appointed by the council to examine Graham's well, the committee reported in October 1860, the committee examined the well and the Gas Works. There is a great similarity between the smell and taste of the water in Graham's well and the water at the Gas Works. I have no doubt that the smell and taste of the water in Graham's well, arose from the Gas Works.

The plaintiff's counsel then asked the following question:

"Give your views of the damage done to Graham's premises on account of the Gas Works?"

To the asking of which question the defendant then and there objected, which objections was overruled by the court, to which ruling of the court the defendant then and there excepted.

"The trouble and inconvenience is a good deal. I am positive that the water in Graham's well smelt like the water at the Gas Works."

90 *Cross Examination.*—I have no means of estimating the damage to Graham from the Gas Works. I do not know how far he had to go for water. The damage would not be short of the price of a hired hand and his board. I think he could build a cistern for from 100 to 150 dollars, holding 100 barrels, with a good filter. I do not know but that cistern water could be filtered so as to be good. The water in the well tasted very bad,—think it tasted of gas. I do not know whether the well I examined was covered or not. I do not know whether it was Graham's well I examined or not—think it was Thompson's. Water standing in a well covered up and unused for a long time will smell and taste very bad. My well when I first came on to my place, was bad; there was a pump in it; it was shut up close; I removed the pump and cleaned out the well and put a bucket into it; the water then became good, and is good now; it is too far from the Gas Works to be affected by them.

91 A. B. SMITH being called on the part of the plaintiff testified as follows:

I made an examination of the water in Graham's well in the summer of 1860, we pumped water out of the well; it smelled like gas. I examined the water in the Gas Tank; the water smelled and tasted like the water in Graham's well. I have no doubt but the water in Graham's well was affected by the water from the tank in the Gas Works.

The plaintiff then produced a bottle of water taken from Graham's well, and a bottle of water taken from the tank in the Gas Works, and offered to have the jury taste of the water of each bottle, to which the defendant then and there objected. The court sustained the objection, and refused to permit it to be done. The plaintiff then requested the witness to smell and taste of the bottle of water taken from the tank, and state from his recollection whether the taste and smell of the water in the bottle was like the taste and smell of the water in Graham's well at the time witness examined Graham's well.

92 To the introduction of said bottle the defendant objected, which objection the court overruled. ~~To the overruling of which objection by the court the defendant then and there excepted.~~

The witness then testified that the water in the bottle taken from the tank smelled as the water did in the well at the time he made the examination.

I have no doubt whatever but that the water in Graham's well was injured by the Gas Works. I live something more than a thousand feet

93 west of the Gas Works; have lived there since 1846, have frequently smelled the gas at my house in such a manner as to be a serious annoyance. I never went to the Gas Works without smelling the gas. I do not know what the damage is to Graham's premises on account of the Gas Works. I would not have Graham's premises on any terms. I would not take them and be obliged to live there with the Gas Works where they are. The smell of gas is very annoying to me.

Cross-Examination.—I do not know the cost of digging a well or building a cistern. I never was in Graham's house but once. I do not know the circumstances and facts sufficiently to compute the damage the Gas Works are to Graham.

94 The damage to Graham's premises by reason of injuring the water alone would be what it would cost to furnish another well equally as good as the one spoiled. The smell of the gas affects a large neighborhood, in about the same manner. If it is a nuisance to one it is a nuisance to all in the neighborhood.

The plaintiff then called CHARLES PORTER, who testified as follows :

I live across the street east from Graham, have no interest in this suit. I brought a suit for my father against the Gas company for injury done to his well, but the suit abated by the death of my father. My father had a well on the east line of his lot; it was dug about one year and a half after the Gas Works were built. The water became so bad it could not be used. I am positive it tasted and smelled like gas. Graham's well became bad about three or four months after father's became bad. 95 I examined Graham's well in 1859. The water tasted and smelled like gas. (The witness then testified that the water in the bottle taken from the tank at the Gas Works smelled and tasted like the water in Graham's well.) Father's well was nearly on a straight line east and west with Graham's. I could not be mistaken about the water in both wells smelling like gas. For a while after the Gas Works went into operation, the smell was very annoying, but I have got used to it now. I have seen smoke coming from the chimney at the Gas Works frequently.

95 *Cross Examination.*—I live on the opposite side of the street from Graham's. Have lived there twelve or fourteen years. There used to be a swail or low spot running across the lot where Gooding's Livery Stable is, and south-west across the street and across one corner of Graham's lot, so the water settled off that way. This swail ran within a few feet of Graham's well. Water would naturally settle or run from Gooding's stable towards Graham's lot. The corner of Graham's lot which was low has been filled up. Coko is burned in furnaces in Gas

Works ; no smoke arises from coke when burning. On reflection I am mistaken about seeing smoke coming from chimney at Gas Works.

97 There are a number of foundries and machine shops in the neighborhood of the Gas Works, and a great deal of smoke comes from their chimneys.

There are grain warehouses on the side cut in the neighborhood of Graham's lot, and a great deal of decaying matter around the warehouses. The smell of the gas affects a large community, and if it is a nuisance at all it is a nuisance to all in the neighborhood.

They shell corn with small engines along the side cut, and in warm weather there is a disagreeable smell arising from decaying vegetable matter,—cobs, grain, &c.

Direct Examination.—There is a pipe connecting the tank at the Gas Works with the side-cut, to run the water from the tank into the side-cut. The surface of the water in the side-cut is frequently covered with coal oil or tar.

I am positive the water in Graham's and father's wells smelled like gas.

98 GEORGE THOMPSON being called by the plaintiff testified as follows :

I am acquainted with the situation of the premises of Graham ; the water in his well previous to the building of the Gas Works was good. My father moved on to the lot adjoining Graham's on the north, previous to 1855. I was there part of the time in 1858 and 1859. The water at that time smelled very gassy ; it smelled similar to the water in the gas tank. When the water in Graham's well was boiled it smelled of gas much more plainly than when cold. It then smelled like gas escaping.

99 I am positive that the water in Graham's well smelled like the water in the tank, as I am that I am living. The water in Graham's well began to get bad in 1856 or 1857. When the wind was in the north the gas smelled very bad ; it came into the windows so they had to be closed. The smell of the gas was a very serious annoyance, and could be smelled when the weather was calm.

Cross-Examination.—I have tasted the water both in the well and in the tank. I don't know the depth of the well ; think it is about the depth of Gooding's. There is now a pump in Graham's well ; there was no pump until after the water became bad. I get water from Benedict's well, which is about 120 feet south, and about 100 feet from Graham's

well. The water in Benedict's well is good; has not been affected from the Gas Works. Graham uses water from the same well.

There is a privy on the back part of our lot about thirty feet from Graham's well; the privy has no vault except a hole dug through the soil to the sand rock. The ground between Graham and the Gas Works is low.

- 100 I suppose the drainage from privies and manure piles would soak through the soil and sand rock as well as water from the Gas Works.

There used to be a swail or ravine running from Washington Square south-west across the lot where Gooding's stable now is across the street, and the north-west corner of Graham's lot. This swail ran between Graham's well and the Gas Works. Graham's lot has since been filled up.

The plaintiff then called WM. BACHELOR, who testified as follows:

Ten years ago Graham's well was as good as any in town. Some two or three years ago I was employed in Gooding's livery stable. I got some water from Graham's well; it tasted as gas smells. I compared it with the water in Gooding's well. The water from the two wells tasted alike. I could not drink it.

- 101 Sometimes when I pumped water up from Gooding's well it would bubble and foam and smell strong of gas. Some days the gas would smell quite strong about the stable; on other days we would not notice it at all.

I have no doubt but that the substance in Graham's well was the same as in the tank at the Gas Works.

Cross-Examination.—I never smelled or tasted the water in the tank. Do not know of my own knowledge that the water in Graham's and Gooding's wells tasted or smelled like the water in the tank.

- 102 Twenty years ago the ground around Gooding's and Graham's lots was a duck pond; has since been filled up with manure and earth. The ground descended from Gooding's stable towards Graham's lot. There was a low spot back of Gooding's stable which was covered with water. Graham's well is about three hundred feet from Gas Works.

Gooding's stable was nearer Graham's than the Gas Works were.

Horse piss and drainings from manure would soak through the soil and sand rock as easily as water from the tank.

Direct Ex. Resumed.—I think if the water in the wells had been injured by horse piss or drainings from manure the water would have been colored. Never noticed any discoloration.

103 DR. JOSEPH STOUT being called by plaintiff, testified as follows :

I have a lot with a well on it about three hundred feet from Gas Works. A while after the Gas Works went into operation, my well became bad ; the water smelled like gas. As a professional man, I have no doubt my well was affected by the gas. After the sewer was built my well became good.

I think my well was affected by surface water from the Gas Works.

104 *Cross-Examination.*—I have lived in Ottawa eighteen years. A slough used to run from Washington Square through Gooding's and Graham's lots, and at one time emptied into the side-cut, after the lots were filled up it turned the water on to my lot. After the sewer was built my well became good. My well is now good. If the smell of gas is a nuisance to one person it is a nuisance to a large number of persons. Ammonia water is produced from the manufacture of gas. It is also produced in large quantities from horse piss and deposits around stables.

SAMUEL PATTERSON called by plaintiff, testified as follows :

I examined Graham's well in 1860 ; was one of the committee appointed by the City Council for that purpose. The water tasted and smelled like gas. I examined the water in the tank ; it tasted and smelled like the water in Graham's well, only stronger.

I have no doubt that the substances in the tank and Graham's well were the same.

Cross Examination.—I do not think Graham's premises are injured by the smell from the Gas Works, but the spoiling of the well is a serious injury. The smell from the gas would not injure Graham's premises for my use. If the smell of the gas is a nuisance to one person it is to a good many.

Direct Resumed.—I was street commissioner when the earth was removed close to the Gas Works ; the gas would smell strongly.

JOHN MURRAY called by plaintiff, said he help construct the gasometer and tank. The tank was fourteen feet deep. On the east side we penetrated six feet before we struck the sand rock. We had to make boxes to pump the water out while we were digging. After the tank was finished I noticed the water would settle away faster than it could by evap-

oration. A pipe was put in from the side-cut to the tank to keep it full of water. I lived across the street east from the Gas Works. The well there was injured by the Gas works. The well was good before the Gas Works were built; after that the water smelled and tasted of gas. There was a well on the north side of the tank which was boarded up. They put the ammonia water from the Gas Works into this well until 180, when they filled up the well and pumped the ammonia water into the tank. There is water and gas in the tank. The water in the tank is clear and not discolored.

107 *Cross Examination.*—I think the spoiling of the wells a greater damage than the smell of the gas.

The smell of the gas affects a large neighborhood. I have filled up around the premises where I live with lime taken from the purifiers at the Gas Works.

Here plaintiff closed his case.

The defendant then called THOMAS N. BENEDICT as a witness, who testified as follows:

108 I live on the lot adjoining Graham on the south, and the width of a street and four lots south of Gas Works. I am pastor of the Episcopal Church, which is on the lot next south of where I live. I have never smelled the gas in the church; never heard any one complain of it at church. I never smelled the gas enough to annoy me in that neighborhood.

The defendant next called WM. HICKLING, who testified as follows:

109 I have resided in Ottawa some 28 or 30 years; know the nature of the soil and sand rock in and around Ottawa; have had considerable experience in wells in Ottawa. I have two or three wells spoiled by privies and deposits around stables. Twenty years ago the wells in Ottawa were very good. Since that time the wells in that part of Ottawa called the old town of Ottawa lying between Fox River and the side-cut have become injured by deposits of decaying vegetable matter on the surface of the ground.

The ground on which Ottawa is built is composed of two or three feet of soil underlaid by soft porous sand stone. Any liquid permeates or soaks through this sand stone readily.

The Gas Works and Graham's house are situated in the old town of Ottawa, which comprises the business part of the city. In this portion of the city during the last twenty years large deposits of vegetable and

animal matter have accumulated, and low places have been filled up with earth, manure and deposits around stables. When the sand rock becomes saturated from this matter around wells the water becomes unfit for use.

There are scarcely any wells now in the business part of the city that are good. They have become spoiled from the causes before stated.

110 I had a well spoiled by a privy which was near it; the water smelled and tasted very bad. The water in this well did not become colored, but remained clear. If the substances or wash from privies and stables runs into a well it will color the water, but if it penetrates or soaks thro' the sand rock, it will not color it. I was half owner of another well which was injured by the wash from the deposits of a stable and manure pile soaking through the sand rock, the water did not become colored, but tasted and smelled very bad. It is only a question of time as to all of the wells in the business part of the city becoming spoiled by the substances deposited on the surface of the ground.

111 Horse piss contains a large quantity of ammonia. Ammonia used to be manufactured in large quantities by leeching the deposits around stables and purifying and chrystalizing the substances so obtained.

Horse piss loses its coloring matter by soaking through the sand rock.

Some fifteen years ago Mr. Wade's well became bad. I do not now consider the water in his well good. The Court House well became bad and unfit to drink. There has been a spring close to this well for a long time; it is about fifteen hundred feet from the Gas Works. The well became bad long before the Gas Works were built.

There used to be a swail or ravine running from the NE corner of Washington Square in a SW direction across Gooding's and Graham's lots, until the side-cut was dug. This swail ran to the river, but the side-cut stopped it up. The side cut was dug in 1846 or 1847.

The ground around the Gas Works and between there and Graham's used to be very low; have seen water standing there a foot or more deep; it has since been filled up with manure, &c., and I think if the Gas Works had not been built there Graham's well would have been spoiled before this time.

The wells in Ottwa are generally from 18 to 20 feet deep, and cost from one dollar to one dollar and 25c. a foot, including wall above sand rock.

A cistern holding one hundred gallons with a good filter will furnish an unfailing supply of good water—much better than any well water in the city.

113 I have never smelled the gas at the Episcopal Church, which is about 120 feet from Graham's. If the smell of gas is a nuisance to one it is to a large community. The wind seldom blows from the north; generally east or west. Graham's residence is not a desirable location for a dwelling, even if the Gas works were not there. It is in the neighborhood of foundries, machine shops and warehouses; that portion of the city will sooner or later be given up for business purposes.

LEVI MASON being called as a witness on the part of defendant, testified as follows:

114 I have resided in Ottawa since 1856; until last fall I have been secretary of the Gas Company; was there when they first began to make gas. The Ottawa Gas Works were built of the best material, and in the best manner now known. The tank is about 40 feet across—circular, and about 16 feet deep. It is dug into the solid sand rock and walled up with the best kind of water cement. The wall on the bottom is about five feet thick and about two feet at the top. The wall is made on the rock and cannot give a particle. The coal to be manufactured is placed in clay retorts, and the retorts sealed up air tight. Coke is used for heating them, which does not make any smoke; the heat converts a large part of the coal into gas; the balance remains in the retorts. The gas and steam pass into a large iron pipe, air tight, by which the gases are conducted into an iron pipe containing water, which takes the ammonia from the gas, and condenses the coal tar. The coal tar and ammonia 115 water fall into a water-tight well made for this purpose. The gas next passes into the purifiers, which are square cast-iron boxes containing quick lime in layers on sieves, to permit the gas to pass through the lime. These purifiers take out another gas containing sulphur and hydrogen. The gas next passes into the tank through a pipe, which comes above the top of the water in the tank, when the gas forces under the gasometer. The gasometer is made of iron in the shape of a tub, and is inverted and placed in the tank; the gas raises the gasometer and is prevented from passing out by the water in the tank. During all of this process not a particle of gas escapes. The only smell there is of gas around the works is from the lime when emptied from the purifiers.

116 The lime thus thrown out is bought by persons for the purpose of raising side-walks, &c. It is taken away nearly as fast as emptied; the smell lasts but a short time. For the last five or six years I scarcely ever smelled gas around Graham's house. I have twice drawn the water out of the tank. I made a close examination of the walls each time. I could find neither flaws nor cracks in the walls or bottom. I think it

is water tight. The smell around the Gas Works is not unhealthy; a family lived two or three years over the office of the Gas Works, and were very healthy all the time. There is no gas in the water in the tank; gas will not mix with water by pressure alone. Those gases which have an affinity for water, will mix with it. Ammonia mixes with water readily. This is why the gas is passed through water from the retorts. The water in the tank does not taste of gas, but tastes of Ammonia.

117 I have tasted the water in Graham's well; it does not taste of gas, but of ammonia. In manufacturing gas about three gallons of ammonia water is made per day. This was one year thrown into a well on the north side of the tank. Horse piss contains a large portion of ammonia, and after soaking through sand rock and lost its coloring matter, would be pretty near pure ammonia water.

Graham's well is about 200 feet from the Gas Works, and his well about 100 feet from Gooding's stable. There would be more ammonia water produced from a stable where twelve or fifteen horses are kept than is made at the Gas Works. A great deal of manure has been placed in the low spot between the Gas Works and Graham's lot. The wash from this would soak through to Graham's well as easily as the water from the Gas works. The side-cut is about 120 feet west from Graham's lot. The scum floating on the water in the side cut is petroleum, and will not mix with water.

If the smell of gas is a nuisance to one person it is a nuisance to a large community.

I have tasted of the water in Wade's well; I call it poor water; have heard it complained of. I am positive neither the water in Graham's well nor in the tank smells or tastes of gas; they smell and taste of ammonia. The ammonia from horse piss and from gas would produce the same effect upon water.

The ground used to descend from Gooding's stable towards Graham's lot.

119 *Cross-Examination.*—I told Thompson when I examined Graham's well that it was my opinion that the well was affected by the water in the tank at the Gas Works. I have not changed my opinion since.

I am positive that gas will not mix with water. Am positive that the water in the tank does not smell or taste of gas. A ditch has been dug in front of Gooding's stable, but it does not carry off the water which soaks down into the soil and sand rock.

JAMES E. WILSON testified on part of plaintiff as follows:

I am a brick mason; have built a good many cisterns; a cistern holding one hundred gallons with a good filter, would cost about forty dollars. A filter would cleanse the water of all impurities. A cistern holding one hundred barrels with a filter, would furnish Graham with an abundant supply of good water.

120 *Cross-Examination.*—It would cost no more to keep a cistern in order than a well. I should think from the size of Graham's house he could catch water enough to supply him abundantly with water to use.

D. P. JONES testified on the part of defendant as follows:

I have resided in Ottawa twelve years; I boarded in 1859 and 1860 at Miss Miles', which is the width of two lots and one street south of Graham's. I cannot recollect ever smelling gas at Miss Miles'. If the fumes from the gas factory are a nuisance to one person they are a nuisance to a good many persons.

THOMAS CLARK, on the part of defendant, testified as follows:

I have lived in Ottawa since 1856; boarded at Miss Miles' from 1856 to 1861. I never noticed any smell from the Gas Works while there. The wind seldom blows from the north, the prevailing winds blow from the south, east and west.

Cross-Examination.—I have smelled the gas very strongly when at or near the Gas Works. The smell is very offensive to me.

The plaintiff then asked the court to instruct the jury, as follows:

123 1st. If the jury believe from the evidence that the defendant erected or caused to be erected near the dwelling-house of the plaintiff, situate on lot 3, in block 8½ in the State's Addition to Ottawa, in La Salle County, Illinois, works for the manufacture of gas and coke, and that the plaintiff had at the time of the erection of said works, a well of water on his said lot, and that the defendant in carrying on said works placed or caused to be placed, prior to the commencement of this suit, in and around said works, substances which, when mingled with the water in said well, would render said water nauseous to the taste, deleterious to health if used, or otherwise unfit for use, and if said substances so used by defendant in carrying on said works did soak into the ground, permeate and pass along through the earth, and did, prior to the commencement of this suit, mingle with the water in said well, and render said
124 water nauseous to the taste, deleterious to the health if used, and otherwise unfit for use, the verdict of the jury should be for the plaintiff, for the damages which the evidence shows were caused to him thereby.

125 2d. If the jury believe from the evidence that the defendant erected, or caused to be erected works for the carrying on the manufacture of gas and coke near the dwelling house and premises of the plaintiff, situated as mentioned in the first instruction, and that in carrying on said works said defendant, prior to the commencement of this suit, did cause noisome, noxious and offensive vapors, fumes, smoke and stench to issue and proceed from the said Gas Works, and to enter into and be diffused through and upon the dwelling-house and premises of said plaintiff, so as to render the air breathed by the plaintiff and his family impure, unhealthy and uncomfortable, and so as to seriously annoy and incommode the plaintiff and his family in the enjoyment and occupation of said dwelling-house of the plaintiff; and if the jury believe from the evidence that such injury to the plaintiff was a special damage to him and his family, peculiarly affecting him and them in a manner different from that of others generally in the neighborhood, the jury should allow the plaintiff the damages which the evidence shows were caused to him thereby.

To the giving of each of said instructions for the plaintiff, the defendant objected; the court overruled defendant's objection and gave each of said instructions; and to the giving of each of said instructions the said defendant then and there excepted.

The defendant asked the court to give the following instructions to the jury :

126 1st. If the jury believe from the evidence that noxious or offensive smells issued from the Gas Works of the defendants as alleged in the declaration, yet if the jury believe from the evidence that it affects in the same manner a considerable portion of the community in the vicinity of defendant's works, then the court instructs as a matter of law that the works and business of the defendant are not a private nuisance, and no action can be sustained by the plaintiff for such noxious or offensive smells; and in such case the jury cannot take into consideration any of the evidence adduced on the trial in relation to the noxious smells arising from defendant's works, unless the plaintiff has proved that he has sustained some damages from such noxious smells peculiar to himself, and which has not been sustained by the neighborhood about the Gas Works.

2d. If the jury believe from the evidence that the plaintiff's well was injured and the water thereof rendered unfit for use by reason of deposits of manure and urine and other deleterious substances from barns, stables, privies standing in the neighborhood of plaintiff's 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.

127 3d. If the jury believe from the evidence that the plaintiff is entitled to recover under the instructions given by the court, then the court instructs the jury that the plaintiff can only recover such damages as he has proved he has actually sustained before the commencement of this suit; he is not entitled to recover any speculative or prospective damages. If no actual damages have been proved, then the plaintiff can only recover nominal damages.

6 Hill, 292—297.
3 Greenleaf, 474.

128 4th. If the jury believe from the evidence that the plaintiff's well was injured by the defendant's Gas Works as alleged in plaintiff's declaration, then the measure of damages for such injury will be such a sum as would procure for plaintiff an unfailing supply of pure water, either by resorting to a cistern or otherwise, together with the value of plaintiff's well so injured, (if the jury shall find that said well was injured,) and in determining the value of plaintiff's well, it is proper for the jury to take into consideration the evidence concerning the deposits of urine and manure near said well, and the evidence concerning the proximity of the livery stable and privies to said well, as affecting the value of said well, if the jury shall believe from the evidence that such deposits would injure said well.

5th. If the jury believe from the evidence that the plaintiff's well was injured, and the water thereof rendered unfit for use by reason of deposits of manure and urine, and other deleterious substances from barns, stables and privies standing in the neighborhood of plaintiff's 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.

129 6th. On taking into consideration the opinion of witnesses in relation to the amount of plaintiff's damages, (if the jury shall believe from the evidence that the plaintiff has suffered any damages,) the jury must take into consideration the knowledge or means of knowledge which such witness has in regard to the circumstances surrounding this case, the opinion of a witness not having any knowledge concerning the facts and circumstances of this case is entitled to no weight.

7th. The plaintiff has no right to have the jury examine the bottles of water produced on the trial of this cause; and the jury have nothing to do with that question, and it was improper for the plaintiff's counsel to comment on their offer to do so, and the jury will disregard it.

8th. The plaintiff cannot recover damages for 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 defendant certain deleterious, tarry, resinous or gaseous substances, and that the said dele-

terious, tarry, resinous or gaseous substances permeated, flowed or poured through the earth into plaintiff's well.

- 113 The court gave all of the instructions asked for by defendant except the sixth instruction, and to the opinion of the court in refusing said 6th instruction, the plaintiff then and there excepted.

The jury found a verdict for the plaintiff; the defendant moved for a new trial; to the opinion of the court in overruling the motion for a new trial the defendant then and there excepted, and prays the court to sign and seal this bill of exceptions, which is accordingly done.

{ SEAL }

M. E. HOLLISTER,
Judge.

Signed this 18th day of May, A. D. 1863.

BICE, MOREY & HOLLISTER,
Appellant's At'ys.

269-178

The Ottawa Gas
Light & Coke Co

vs
James Graham

Abstract

Filed May 20. 1884
L. Leland
Clerk

State of Illinois
Sup. Court 3 Division April Term 1864

The Ottawa Gas Light
& Coke Company

vs
James Graham

} Appeal from Bureau

Appellants reply

Mr Leland in his argument admits that he appended the writing or stipulation, on which this motion is based, to the bill of exceptions in this case; so there is no dispute in regard to the facts.

We have raised no question of ethics in this case and we do not care what the learned counsel's motives were when he placed the writing at the end of the bill of exceptions. We simply claim that appellee's counsel who tried the cause in the court below having placed the writing at the end of the bill of exceptions signifying that the bill of exceptions were correct; cannot now ~~claim~~ say that there was other evidence, in not contained in the bill of exceptions,

before the jury which tended to support the verdict. It must be presumed that Appellee's counsel would not be "satisfied" with the bill of exceptions unless it contained all the evidence adduced on the trial which would tend to sustain the verdict of the jury for ~~his~~ it was very much to the interest of his client to have the verdict sustained.

It also must be presumed that Appellee's counsel who has in had so much to say about ethics, would not deceive the judge of the Circuit Court, who signed the bill of exceptions, by signing this writing at the end of the bill of exceptions - thereby inducing the judge to believe that the bill of exceptions was correct. ~~This court has held that~~ ~~when the bill of exceptions shows that it~~ ~~contains~~

This writing or stipulation related wholly to the bill of exceptions and was considered by the judge of the Circuit Court in determining whether the bill of exceptions was correct or not and we think it ought to be considered a part of the bill of exceptions.

The exception to ~~introduce~~ the opinion of witnesses was well taken (see Wade's

testimony Abstract page (7). ~~Old~~
~~testimony~~ It was unnecessary to except
to this kind of testimony again on the trial
after the exception taken in Wade's
testimony.

This Court has frequently granted
new trials more than once in the
same case.

The former judgment obtained by
Appellee in this case was reversed because
the Court ~~all~~ below refused to permit
proper testimony to go to the ~~jury~~
jury. On the trial of this cause the
jury disregarded the law & the evidence &
the fact that the former judgment was reversed
it is no reason ~~that this~~ why this judgment
should not be reversed. On the first
trial of this cause the Court did not permit
the ~~the~~ appellant to make his defence
so that ~~this cause~~ the facts composing
Appellant's defence have ~~not~~ been passed
upon but once by the jury.

J. B. Rice
Appellee's atty.

267-175
The Ottawa Gas Light
& Coke Company
24

James Graham

Appellants Reply

Filed May 30 1884
L. Deland
Clerk

Page 1

Copy of record from LaSalle County Circuit Court.)

State of Illinois } ss.
LaSalle County }

Pleas before the Honorable
Madison C. Hollister the Judge of the Ninth
Judicial district of the State of Illinois
and the presiding Judge of the LaSalle
County Circuit Court in said State, at a
Court of said Court, convened and held
at the Court House in Ottawa in said
County, State on the First Monday
of the month of February, the same being the
fourth day of the month in the year of our
Lord one thousand eight hundred and
eighty one of the Independence of the
United States of America, the Eighty-

First. The Honorable Madison C. Hollister
Presiding Judge
Abraham B. Moore, Clerk
David P. Jones, States Attorney
Eric L. Waterman, Sheriff

Be it remembered that on Monday the 11th
day of February A.D. 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 Court - 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 Dickey & Wallace, its Attorneys, who demur to plaintiff's declaration and each and every Count in the same contained; the plaintiff now comes by his Attorneys, and after hearing the argument of Counsel, the Court overrules said defendant's demur to said plaintiff's 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 plaintiff's declaration de novo, which is granted by the Court.

On Tuesday the 12th day of Feby. 1861, one of the days of said February Term of said Court for said year another order was entered of record in said Court as follows, viz:

James Graham

vs.

Ottawa Gas Light & Coke Company

Trespass on the case

On motion of plaintiff's attorney it is ordered by the Court that this Cause be continued at defendant's costs.

November Term 1861.

Present Same as at February Term of Said Court for Said year 1861

Be it ^{further} remembered that on Wednesday the 6th day of November 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 in the words & figures following, to wit:

James Graham

vs. Ottawa Gas Light

& Coke Company

Trespass on the Case

On motion of plaintiff's attorney the defendant is ruled to plead herein on or before tomorrow morning.

On Thursday Nov. 7. 1861. the Same being one of the days of the said Nov. term of Said Court for Said year, an order was entered in Said Cause as follows, viz:

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.

On Tuesday the 12th day of November A.D. 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 in the words and figures following, to wit:

James Graham

vs.

Ottawa Gas Light
& Coke Company

I reserve 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 defendant's Costs.

February Term 1862.

Present, Hon. Wm. Summerson, Presiding Judge - the others same as at November Term 1861.

Be it remembered that on Wednesday the 12th day of February 1862, the same

5

being one of the days of the February Term of said Court for said year, an order was entered of record in said Cause in the words & figures following, to wit:

James Graham

vs.

Trespas on the Case

Ottawa Gas Light

& Coke Company

This day comes the plaintiff by Edmund S. Seland 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 plaintiff's 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.

On Thursday the 13th day of February 1862 the same being one of the days of said Feb. Term of said Court for said year, an order was entered of record in said Cause, in the words and figures following, viz:

James Graham

vs.

Trespas on the Case

Ottawa Gas Light

& Coke Company

This day the

6
plaintiff come by E. S. Leland and Oliver
C. Gray his Attorneys & the defendant by
Rice & Lewis its attorneys, and thereupon
come the following jurors of a jury, to wit:
John Doole, James Chase, George B. Macy,
John T. Miller, James W. Miller, E. H.
Raymond, John Pondstone, L. B. Delano,
Wm. Cummings, J. M. Keen, Lyman Waterman
& Joseph Mason, who are duly elected
and sworn to well and truly try
the issues therein 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.

On Friday February 14th 1862, the same
being one of the days of the Feby. Term
of said Court for said year, an order
was entered of record in said cause
in the words and figures following, to wit:
~~James Graham~~

vs. In trespass on the Case
Attawa Gas Light
& Coke Company

This day again
come the parties to this Suit together with
the jury sworn herein, and after hearing

7
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 to-morrow morning.

On Saturday February 15. 1862, the same being one of the days of the February Term of Said Court for Said year the following order was entered of record in Said Cause, to wit:

James Graham	vs.	Trepass on the Case
Ottawa Gas Light		
Water Company		

This day again came 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 their verdict, and after due deliberation therein 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 Attorney 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 therefor.

On Tuesday the 4th day of March 1865, the same being one of the days of the Said Term of Said Court for said year, an order was entered for record in said Cause in the words and figures following, to wit:

James Graham
vs.
Ottawa Gas Light
& Coke Company

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 and file a bill of exceptions, upon Condition that said defendant shall enter in 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

9

within 30 days from and after the adjournment of the present term of this Court.

November Term Circuit Court 1862.

Present, Hon. M. E. Hollister, Presiding Judge

A. B. Moore, Clerk

R. P. Jones, State's Attorney

Eri L. Waterman, Sheriff

Be it remembered that on Wednesday Nov. 5. 1862 the same being one of the days of the Nov. Term of said Court for said ~~term~~ year a further & final order was entered of record in said cause in the words & figures following, to wit;

James Graham

vs.

I appear on the case

The Ottawa Gas

Light & Coke Company

By agreement

of parties it is ordered that the venue be changed to Bureau County Circuit Court.

State of Illinois

La Salle County

ss.

J. Abraham B.

Moore, Clerk of the Circuit Court

in and for said County do hereby certify

that the foregoing is a true, full and complete copy of the proceedings had in the above entitled Cause, and that the papers marked from No. 1 to No. 25. inclusive are all that appear on file in said Cause.

Seal of
Sasalle
Circuit
Court
Witness my hand and
the Seal of said Court
at Ottawa this 30th day
of December A. D. 1862.
C. B. Moore Clerk
C. H. Hook Deputy

(Copies of papers referred to in the foregoing certificate.)

No. 1.

Copy of Declaration filed Feb. 12. 1862.

State of Illinois } Circuit Court of said County
Sasalle County } ss. November Term A. D. 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, Russell and Leland

11
 & Leland his Attorneys, complains for that whereas the said plaintiff before and at the time of the committing of the grievances by said defendant as hereinafter mentioned was, and from thence hitherto hath been, and still is seized and possessed of certain premises, 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 dwelling house & premises and well of water, the said plaintiff with his family at the time hereinafter mentioned, occupied, 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 possessed 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 continuing 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, dwelling house and premises, wherefore, to wit, on the first day of January in the year of our Lord Eighteen hundred and 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 and 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

13

divers large quantities of gas and Coke
 therein and near thereto. By means
 of which several premises divers noxious,
 noxious and offensive vapors, fumes,
 smokes, smells and 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 noxious,
 noxious and offensive vapors, fumes,
 smokes, smells and stenches & was
 rendered on the said several days and
 times aforesaid, and became and was
 and still is corrupted, offensive, un-
 wholesome, unhealthy and uncomfortable,
 and said plaintiff hath thereby,
 been & still is greatly annoyed and
 incommoded in the use, possession,
 occupation and enjoyment of the said
 messuage or dwelling house and premises.

And the plaintiff further avers that
 the defendant in the manufacturing of

gas and coke, further intending to injure, prejudice and aggrieve Said Plaintiff and annoy his family in the possession and enjoyment of the messuage, premises and well aforesaid, Suffered to flow from Said gas works and to be deposited & placed in, around and near the same, certain noxious and offensive substances and materials used in and about the manufacture of gas and coke and also certain oily, tarry, resinous, gaseous and deleterious substances and materials so used in Said manufacture, which Said substances and materials were absorbed by and entered into the earth and permeated, passed and flowed along and through the earth and into Said well of water of Said Plaintiff, and mingling with the water with which Said well was supplied, spoiled and made noxious and unpalatable, unhealthy and 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 & damaged, 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 & from thence hitherto has been & 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 and premises the said plaintiff & 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 aforesaid, yet the said defendant well knowing the premises but contriving and intending to injure, prejudice and aggrieve said plaintiff & to incommode & 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 and fifty-six, and on divers days & times, between that day and the Commencement of this Suit, wrongfully & injuriously caused and procured divers noxious, offensive, unwholesome vapors, fumes, ~~and~~ smokes, smells & stenches, to rise 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
 & enjoyment of his marriage, 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 ~~the~~
 manufacturing gas & coke in and near the
 same, suffered to be deposited and placed
 in, ~~and~~ around and near the same certain
 noxious & offensive substances & materials
 used in the manufacture of gas & coke, which
 said substances & materials were permitted
 by the defendant to be absorbed by & to
 enter into the earth & to permeate, pass &
 flow along & through the earth and to ~~enter~~
 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 and
 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, to wit; from
 said first day of January A.D. 1856,
 until the Commencement of this Suit, and

17

the said plaintiff has thereby been and still is greatly annoyed and incommoded in the possession, use, occupation & enjoyment of the said last mentioned messuage, premises & well of water & has been & is by means of the premises otherwise greatly injured and damaged, 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.

(Copy of defendant's pleas)

Filed Feby. 12. 1862.

La Salle Circuit Court

Of Nov. Term A.D. 1861.

The Ottawa Gas
Light & Coke Company
ats.

James Graham

vs.

And now comes

said defendant by Rice & Lewis its Attorneys
and the wrong & injury when &c. & says
actio 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 ~~points~~ the defendant
 puts itself upon the Country &c.

Rice & Lewis

Attys. for dft.

And said defendant for a further plea
 to said plaintiff's 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 not in the
 manufacturing of gas and 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 and "about the manufacturing
 of gas and 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 and injuries in said
 Counts alleged defendant says that it
 is not guilty in manner and form as in
 said Counts alleged and of this defendant
 puts itself upon the Country &c.

Rice & Lewis, Attys. for dft.

No. 3. - Plaintiffs Instructions, Given.

James Graham

vs.

Ottawa Gas & Coke Co.

Plaintiffs Instructions

Let 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 States 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 plaintiffs well rendered it nauseous 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 mingle with the water of said well and did render it nauseous to the taste or otherwise unfit for use, the Jury

Given with the qualification
attached

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.

But such judgment of the jury must be based 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.

21
No. 2. Defendant's Instructions - Given.

1st The plaintiff cannot recover damages for injury to his well, in this action, unless it is clearly proved that the defendant did wrongfully 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 ~~did~~ permeated, flowed or passed through the earth into plaintiff's 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 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 deposited on defendant's premises, did permeate, flow or pass through the earth and mix with the water in plaintiff's well & that said plaintiff's well was injured thereby.

5th 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 in 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 facts proved exercising their own judgment upon the facts in proof by connecting them with their own knowledge and experience.

No. 23. Bill of Exceptions - Filed April 2. 1862.

State of Illinois Circuit Court of said County
LaSalle County February Term thereof A.D. 1862

James Abraham

vs.

Case

The Ottawa Gas Light
and Coke Company

Be it remembered that at said term of said Court this Cause came on to be tried by a Jury and to maintain the issues upon his part, the plaintiff adduced

the following evidence.

John Bell 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 Graham's house - it is two lots and the width of the street south of the gas works - the water in Graham's well was good when I first tried 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 arising from the water when boiling - the water became unfit to drink - I am positive that the water in Graham's 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 plaintiff's had been injured by the gas works - The defendant 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 plaintiff's well had been injured by the defendant's gas works - The Court overruled the defendant's 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 plaintiff's

well had been injured by the defendant's gas works, to which ruling and decision of the Court the defendant then and there excepted.

The witnesses then Continued, — the well in the gas factory and Gooding's well were affected — know of no other well being injured — After Graham's well became bad, I got water, good water, from Mrs. Burn's well — two lots South of Graham's — 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 north line of the North lot — After the hole was filled up the ammonia water and tar were pumped into a well in the yard — this well is walled and cemented so as to be water tight — From the well the ammonia water is pumped into the tank — There is a pipe running from the tank into the side cut or lateral Canal — the water from the side cut is carried from the side cut into the tank through this pipe & sometimes when the water is high in the tank the water

from the tank runs through this pipe into the side cut - I don't know whether the tank 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 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 gluey - would not soak far through the earth in a year - the tar could not permeate to Graham's 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 Graham's 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 Thompson's 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 and 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 and the side cut & in the street South of the gas works & also on the back of Cummins & Thompson's lot - water stood in the back of Gooding's yard a good deal of the time - all stagnant water smells bad - the smell is indescribable & 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 City Council - There was petition to Council to investigate the gas works & ascertain whether it was a

nuisance. I was one of the Committee of examination. The water of Graham's well was unfit for use - I think there was gas in it - I examined the well again some months afterwards - improvement had been made by Gas Company on their works - The water still tasted bad - I am quite confident that the water in Graham's well smelled like gas, but I might possibly be mistaken as to the smell of the water - but I think it smelt of gas -

Cross Ex. The ground on which the gas works stand is low as compared to the rest of the town - My attention was called to draining the water which stood around Graham's & Thompson's Houses - Gooding's 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 don't know whether Graham's 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 Graham's 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 Plaintiff's had been injured by the gas works, to which evidence and to all evidence on the trial of this Cause proving or tending to prove that wells other than Plaintiff's had been injured by defendant's 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 defendant's 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 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 Graham's 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 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 Graham's well - The land round there has been greatly filled up recently - I filled up my lot with earth & blacksmith's cinders and refuse lime which had been used to purify the gas - Graham's and Strawn & Powell's warehouses are very near Graham's lot - decayed cobs &c. accumulate around there - Gooding's livery stable is eighty feet east of my shop - It is nearer than the gas factory to Graham's well - Considerably nearer than the north line of gas works - Gooding had his stable there in 1855 - there is a good deal of manure around the stable - the ground is low - like all the rest round there - Other things being equal water which soaks into the ground about the stable would probably permeate through into Graham's well sooner than the ammonia water from the gas works because the stable is nearer to Graham's 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 and south of the gas works and about 200 feet from Graham's well - A well would naturally get bad if not used for a year or two and 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 defendant's 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 being affected by gas or not?

To which question and to the introduction of evidence relative to the state of wells other than the plaintiff, the defendant, by its Counsel then and there ~~excepted~~ objected, but the Court overruled the objection and allowed ~~then~~ ^{said} question to be put and said evidence to be admitted - to which ruling by the Court the defendant by its Counsel then and 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 - Graham's is 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 Graham's -

The plaintiff then called De Wit C. Gooding who on preliminary examination by defendant's Counsel testified as follows:

I agreed at one time to go in & prosecute the gas Company - the agreement was made with Graham, Thompson, Porter & others. I told Thompson to mention my name to Judge Seland 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 and do not now consider myself bound for costs - The defendant by its Counsel then and objected to said witness testifying in this cause on account of said witness being interested, but the Court overruled said objection and permitted said witness to testify, whereupon the defendant by its Counsel, then and there excepted -

The plaintiff then offered to prove by said witnesses that witnesses' well and others besides the plaintiff's well were injured by the gas works - to the admission of which evidence the defendant objected - the Court overruled the objection and admitted said witnesses to testify, to which decision of the Court the defendant then and there excepted -

The witnesses then testified as follows: I have a well in the North West Corner of my stable - The well became bad about midsummer after completion of gas works - gas works began working in the winter about five or six years ago - well appeared to be suddenly impregnated with gas - I judge from the smell - Graham's was not affected as soon as mine - I do not think that the urine in and about my stable could get into my well - both wells were I think affected the same season - Mrs. Woodruff's well is also somewhat affected by gas - When the water was lowest in my well, the water smelt strongest of gas - Horses which came to my stable from the country would not drink the water and I was afraid I should lose the custom of those coming in from the country - I don't think

the urine and wash of the Stable Could get into my well -

On Cross examination witness stated as follows:

Cross Ex. - There is always Considerable Manure about my Stable - There is about twelve horses on an average always there - Stable had been used a year before gas factory was built - The well under my Stable is Cemented from the Sand rock to the surface - There are holes bored through the floor to let the urine and wash of the 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 the urine that had run through the floor that I would sink into it above the soles of my boots - I don't know actually that anything from the gas factory gets into my well - I don't 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 width of the street north and the width of the street west of my stable - the street is eighty feet wide - Water soaking through manure &c. and then getting into wells would undoubtedly spoil them - I have hauled a good deal of the refuse lime used for purifying the gas & cinders from gas works on to 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 and south of the gas factory where the water stands, to fill it up - between two and three hundred feet from plaintiff's 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 Simon Morse 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 and 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 and there excepted. Witness then proceeded as follows:

The water in the Geiger House well smells bad - Smells of Sulphur - I Can't Compare it to anything else - On Cross Examination the witness testified as follows:

The Geiger House is on the same block as Gooding's Stable is - South east of gas works - We are not in any manner incommoded by the Smell from gas works - Our well is under the dining room - The surface water soaks into the cellar & 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 too far from the gas works to be affected by the gas works are generally complained of as being bad and 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 and around which a good deal of manure and 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 Graham's well twice in July or August 1860 - was chairman of the Committee first time and a member second time - I smelt and tasted the water in Graham's well and the water in the tank where the gas works are - & they tasted & smelt alike - I believe there was gas in the well - I am quite positive that the water smells of gas and not of manure - there is a peculiar twang to it -

On cross examination witness testified as follows:

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 Thompson's 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 Gooding's stable which might prevent the urine &c. from running to the well - don't know whether the ditch would prevent the gas from running into Gooding's well. I have been Street Commissioner for two years - I don't 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 Graham's 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 States 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 States' Addition to Ottawa - there is the width of the Street and the width of two lots between the gas works and Graham's lot - the Streets are eighty feet wide and the lots sixty feet wide -

The Plaintiff then produced a plat of the vicinity of the gas works (a copy of which is herewith annexed) upon which the witnesses there marked out the original slough as on the annexed copy it is exhibited and testified that said plat is correct - the Streets are eighty feet wide & the lots sixty feet wide -

Plaintiff then called Charles Porter as a witness who testified as follows:

I know where Graham's house and well is - the water was good five years ago - don't know of my own knowledge how the water is of late - Sometimes the smell around Mr. Graham's is unpleasant - I don't know what to compare the smell to - I don't 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 - don't know that the gas can be smelt at Graham's when the wind is blowing from South - don't remember being at Graham's at any one time when the wind was blowing from the north -

Plaintiff then Called A. B. Smith who being sworn testified as follows:

I examined Graham's well - was one of the Committee - don't know whether the examination was in 1860 or 1861 - Have not tasted the water in the tank at the gas works - The water in Graham's 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 Graham's 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 and 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
 he did not use the well?

To the asking of which question the
 defendant by his 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 and there excepted -

Witness then stated as follows:

I ~~don't~~ don't remember that Graham
 said anything about the reason - there
 was no need of his saying so - the
 water showed for itself - the water

that he pumped out was bad -

Plaintiff then called John Patchelder 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 Gooding's stable - When the wind blew in the right direction the smell would probably make Thompson and 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 Gooding's stable - we were in the habit of hauling the manure from the stable into a hole back of the gas factory and Cummins - I should 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

examination;—

"I don't 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 had also talked with Thompson about commencing suits against gas Company—My 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 expenses of my suit—The defendant by its counsel then and 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 there excepted.

Witness then stated as follows:

Whitmore dug Graham's well 17 years ago—About five years ago the water tasted of gas and has done so ever since—Sometimes worse than others—Four years ago last fall my well began to be affected by gas.—defendant then again objected to the introduction of evidence with reference to any other than the plaintiff's well, but the Court overruled the objection & admitted

Said evidence, to which decision defendant by its counsel then and 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. Glover 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 -

Gross E. 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 Graham's neighborhood.

enough to tell how annoying it is there
of my own knowledge -

Thereupon the plaintiff rested his case.

The defendant to maintain the 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 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 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 the water away 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 - 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 ~~inclination~~
 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 Gooding's used to be covered
 with water for long times - The ground
 around the gas factory, Cummins & Co.
 was a sort of hole into which the
 drainage of a part of the city went -
 In all cities the deposits around stables,
 privies, warehouses & such other places
 & the deposits of decayed and vegetable
 matter which always accumulate in
 the streets and alleys & on the lots, tend
 to impair and render unwholesome the
 water in the wells, and it is only a

47

question of time how soon the wells in a city will be spoiled - 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 plaintiff's said objection and would not permit the witness to answer said question - To which ruling of the Court the defendant by its Counsel then and 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 the one side to the Fox river and on the other side westward towards the side cut - 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 and ran South west across Washington Square and across Sadalle Street & across the lot where Gooding's Stable now stands & across the lot on which Plaintiffs' well 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 urine &c from Gooding's Stable would naturally soak through the ground towards Graham's - The stuff from Gooding's Stable would probably reach Graham's well before the stuff from gas factory would because the Stable is nearer to Graham's well than the gas works are - Some of the water round 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 urine - there is a great deal of ammonia in horse urine.

Some kinds of gas will mix with water but the heavy burnable, Carburetted Hydrogen gas such as is 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. On Cross Ex. -

Witness: - I don't know how much manure and urine deposits around Graham's 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 Graham's well -

The defendant then called William Hickling 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 & decaying vegetable & animal matter about the city by cess pools, privy vaults &c. - these substances become dissolved by the water on the surface of the ground and easily find its way through the soil on which this city is built - The ground on which this town stands is composed of a thin layer of soil underlain by a very soft and porous sandstone rock - Any liquid substance will permeate through the sand rock - Our well under Cheever's 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 and 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 side cut are beginning to depreciate and as I believe from the same causes - Whenever the dip of the rock is towards the wells here in the city they will become bad in course of time - I know of but of one or two wells here in the city wherein the water is good - There was originally a natural slough or

drain Commencing near Mr. Reddick's
 house & the place where the Supreme
 Court House now is and running South
 westerly through Washington Square
 across Sadalle Street and across the
 lot where Gooding's Stable is and also
 across the lot where Graham's House and
^{well} but 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
 and Thompson's Houses are - & also caused
 the water to stand all along the Side
 cut across Main Street where Horrocks's
 warehouse now stands, making a Slough
 or Mud Hole 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 Murray's 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 around it - by the water

permeating through its banks - the proximity
 of Cummins privy and Gooding's stable and
 the manure thrown in hole near gas works -
 together with the standing water from the
 Canal and the rains - would in my estimation
 have undoubtedly spoiled Graham's well ere
 this if the gas works had not been there,
 even though the rock did not slope toward
 well but was level - with the ~~other~~ 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
 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 and would
 be valueless for residences - There are
 some gases formed from animal substances
 which smell similar to Coal gas - I have

neither Smelt or tarted 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 well remained injured - In this case I suppose there are fissures in the sand rock which caused the wash of the manure &c. part the well into the river - The sand rock is full of fissures running toward the river which serve as natural drains for the surface water and when one of these fissures pass 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 works commenced building in fall of 1855 - I know how gas is made - The tank is 40 feet wide & 14 feet deep - built of Joliet brick and 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 with water from the side cut and the gasometer rests in the tank & the gas after it is manufactured and ready for use is conducted by a pipe through the water in the tank & into the gasometer thus resting on top of the water and causing gasometer to rise gradually as the gas enters - The gasometer is simply a storehouse 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 - the

well is perfectly water tight and none of tar or ammonia water can escape from it - & the 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 permeate through to the earth - The gas is cooled in the Condensers and 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 airtight - in this box there are several partitions or floors made of wire made in the form of a sieve and on these sieves are placed thin 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 and thence into the pipes of the city - The gasometer is air tight - Not a particle of 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 persons round town to fill up streets and late Gooding had some of it - So did Shampson - A long while ago - about three years ago - ~~we~~ we had a pool into which we pumped the ammonia - the pool was close by the north line of 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 Graham's well - Not more than 3 or 4 gallons of ammonia water was ever pumped into this 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 average 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 water has been pumped into the well made for it - I have tasted and Smelt ammonia water and 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 and where Graham's & Thompson's lots are & where Gooding's stable is was very low - The water stood there until it soaked into the ground - It was a duck pond in summer and a skating pond in winter - refuse lime from the gas works, brick, manure, and cinders have been used by the people around there to fill it up - ammonia is a large component part of horse urine - ammonia is manufactured from it - it frequently crystallizes under stables - & would give water the same smell and taste as if manufactured ammonia were put into it - Gooding's 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 Northeast to Southeast & the urine & wash from Gooding's stable would have a greater tendency to run towards the well than the stuff from gas works would - Gooding's stable is about half the distance from the well that the gas factory is - The ditch west of Gooding's stable was dug in

1857 or 1858 - it was deeper three times and it now only drains off some of the surface water and does not carry off the stuff which soaks into the earth from the stable or elsewhere - until the last two years the ditch was good for nothing - Much manure has been hauled into the pool west & southwest of gas factory by Gooding during the last three or four years & this manure is of course nearer to Graham's well than the ammonia pool was - by the width of two lots and more - The gas works lots previous to filling were lower than Graham's lot - I have tasted the water from Graham's well - It tastes like ammonia & not like gas - I am positive that the water from Graham's well does not taste like ~~ammoniacal~~ 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 Graham's unless the wind is blowing in that direction - Wind seldom blows from north - 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 built 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 purer and better quality than the water of plaintiff's well ever was - that pipes could be put in and the water of said water works supplied to plaintiff in whatever 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 would be incompetent and inadmissible - and the defendant by its Counsel then and there ~~at~~ excepted to the ruling of the Court -

The defendant then offered to prove that the cost of digging Graham's well was about 35 dollars - and 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 pure water of much better quality than the water in plaintiff's well ever was.

The plaintiff 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 and there excepted -

The witness then proceeded as follows: The neighborhood where Graham's 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

61 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 skilful workman was employed in building them - The machinery, iron work and 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 has always been used for warehouses, foundries, machine shops &c and is not near that part of the city most used for dwellings - and is not in a part of the city which will ever be used for dwelling houses - and those residing in that part of the city 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 an examination of Graham's well - Thompson thought the

ammonia pool injured the well & desired me to fill it up which I accordingly did. On Cross Examination witness said; — I do not remember that I ever told ~~Thompson~~ Patterson that I thought the injury to Graham's well was caused by the tank's leaking — I told Mr. Thompson when examining the well that I thought there might be a flaw in the tank caused by frost and that the well was probably injured by leakage from it.

Defendant then rested its Case —

The plaintiff then called Darwin Thompson as a witness in his behalf who on preliminary examination by defendant's Counsel testified as follows:—

I have a suit pending in this Court for injury to this same well — against the gas Company — I have talked ^{with Mr. 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 defendant - I have hunted up evidence in this case and 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 and 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 and I did not think 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 testify in this case 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 and there excepted - Witness then testified as follows:

I have lived in that neighborhood since 1854 - The water from Gooding's table does not come on to my lot

Much since the ditch was dug - it may
come in the back yard - When the well
in Gooding's 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 - the well began to be affected
about 4 years ago - I don't know of any
well 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
much used - 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 tank at gas
factory and a bottle of water from
plaintiff's 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 jury however 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 and examined by the witnesses and attorneys - to which decision of the Court the defendant by its Counsel then and there excepted -

The witness then Continued as follows: There is a ravine or Chasm in the Sand rock running through Gooding's Stable & from thence across the Street & across my lot & passes between my house and Graham's well & within five or six feet of Plaintiff's well - this ravine is some eight feet deep and is filled up with Sand, Coal & other matter - The ravine has always been so filled - Since the town was settled & was probably worn into the Sand rock before the present Soil was formed on the Sand rock - the descent of the ravine was toward the South west & if any thing soaked into the ravine at Gooding's Stable it would naturally run towards Graham's well - All things being equal the water from Gooding's 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 20 feet from Graham's well - Water would soak into Graham's well as easily as into my cellar -

The plaintiff then called Dr. Kraussel who testified as follows:

I am a druggist and a practical chemist - plaintiff then gave 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 and 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 and there objected - the Court overruled defendant's objection & admitted said testimony to which ruling of the Court the defendant then and there excepted.

Witness then said:- There is ammonia and Hydro Carbon in bottle of water from the tank & that there was no Hydro Carbon in the bottle of aqua ammonia - It is the ammonia that makes dung heat - Water can be made to take Hydro Carbon - perfectly pure ammonia can be made from horse piss - crystallized ammonia dissolves in water - it is not volatile when dissolved -

Samuel Patterson was then recalled. Plaintiff gave witness a bottle of water brought from the tank & asked witness if it smelt like the water from Graham's well - To all which the defendant then and there objected - the Court overruled defendant's objection to which ruling of the Court the defendant then & there excepted -

The witness then said that the water in the bottle smelt like the water in Graham's well - Witness then said that Mason told him that the injury to Graham's well might have been caused by a leakage of the tank occasioned by the frost - we were then standing by the tank -

The Court then instructed the Jury on behalf of the plaintiff, as follows: -

et. 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 States 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 nauseous 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 mingle with the water of said well, and did render it nauseous 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 to the time

Given with the qualification attached -

of the Commencement of this Suit.

Given with first instruction and
in connection therewith.

The first instruction of the plaintiff is qualified by adding thereto the following:— But such judgment of the Jury must be based upon such facts in proof as tend to show the pecuniary extent of the injury sustained by 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 instructions to the Jury and to each and every part thereof the defendant by its Counsel then and there excepted.

The defendant then requested the Court to instruct the Jury on behalf of the defendant as follows:

1st The plaintiff cannot recover damages for 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 plaintiff's 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 defendant's premises did permeate, flow or pass through the earth and mix with the water in plaintiff's well, and that said plaintiff's well was injured thereby -

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

4th If the Jury should find the issues for the plaintiff in this action then unless the plaintiff has proved the

Revised

Refused

amount of damages he has actually sustained, he will be entitled to nominal damages only, and in such case the Jury will assess the plaintiff's damages at one cent.

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 plaintiff's premises from becoming contaminated and unfit for the plaintiff's use, the gas Company are not liable in this action.

7th If the Jury believe from the evidence that the plaintiff's well was injured and the water thereof rendered unfit for use

Given

by reason of deposits of manure and urine and other deleterious substances from barns, stables & privies standing in the neighborhood of plaintiff's 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.

Given

8th ~~the~~ the plaintiff is not entitled to recover damages in this action for any injury to his well or annoyance to himself and family from defendant's gas factory which may have happened after the 26th day of December 1860.

Given

9th The question as to whether the pecuniary value of plaintiff's house and lot has been lessened or not by reason of defendant's erecting a gas factory on a lot near to plaintiff's lot and manufacturing gas therein is not before the Jury in this action.

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 fifth instructions above asked on behalf of defendant or either of 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:

5th If the Jury shall find the issue 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 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 and 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 and there & 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 and 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. Chumazero Seal.

No. 22. Copy of ^{appeal} Bond to Supreme Court -

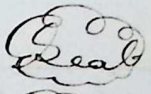
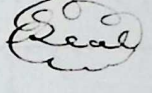
Know all men by these presents that The Ottawa Gas Light & Coke Company as principal and Samuel B. Gridley as security, are held and firmly bound unto James Graham in the penal sum of five hundred dollars good and lawful money of the United States, for the payment of which well and truly to be made, the said Ottawa Gas Light & Coke Company binds itself and the said Samuel B. Gridley binds 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. W. Cushman President of said Company & the hand of Levi Mason Secretary of said Company and the hand and seal of Samuel B. Gridley this — day of — A.D. 18 —

The Condition of the above obligation is 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 and costs of suit, to reverse which said judgment the said Ottawa Gas Light & Coke Company prayed an appeal from said judgment to the Supreme Court of the State of Illinois, which said appeal has been allowed by said Circuit Court. Now if the said Ottawa Gas Light & Coke Company shall duly prosecute said appeal 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 order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Wm H. N. Cushman President - Seal



Levi Mason Secy 
S. B. Gridley 

No. 24. Copy of Order of Supreme Court.

At a Supreme Court, Begun and
held at Ottawa, on Tuesday, the
22^d. day of April, in the Year of our
Lord One thousand eight hundred
and Sixty-two, within and for the Third
Grand Division of the State of Illinois.
Present, the Honorable John R. Caton, Chief Justice
" " Sidney Breese, Associate Justice
" " Pinckney H. Walker, Associate Justice
May 26th 1862 -

The Ottawa Gas Light
& Coke Company
vs.
James Graham

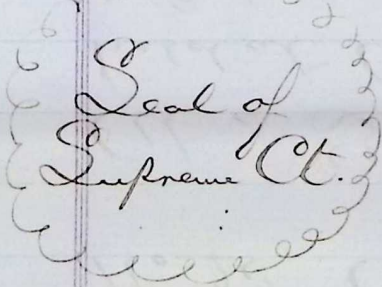
Appeal from
Sadler

On this day came
again the said parties, and the Court
having diligently examined and inspected,
as well the Record and Proceedings aforesaid
as the matters and things therein assigned
for Error, and being now sufficiently
advised of and concerning the premises,
are of opinion that in the Record and
Proceedings aforesaid, and in the rendition
of the Judgment aforesaid there is manifest

Error, Therefore, it is Considered by the Court, that for that Error, and others in the Record and Proceedings aforesaid, the Judgment of the Circuit Court in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this Cause be remanded to the Said Circuit Court, for such other and further proceedings as to law and justice shall appertain. And it is further Considered by the Court that the Said Appellant recover of and from the Said Appellee the Costs by it in this behalf expended and that it have execution therefor.

I Lorenzo Seland, Clerk of the Supreme Court of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the Said Supreme Court in ~~Said Cause~~ ^{causes}. the above entitled of record in my office.

In Testimony whereof I have set my hand and affixed the Seal of the Said Supreme Court, at Ottawa, this 2^d day of October in the year of our Lord One thousand, eight hundred and sixty-two - L. Seland
Clerk of the Supreme Court



81

And To wit on the 18th day of May A.D. 1863
 came the defendants aforesaid by their
 Attorney aforesaid. and filed their Bill of
 Exceptions herein, in the words and figures
 following, to wit:

State of Illinois }
 Bureau County }

To the March Term of said
 Bureau County Circuit
 Court A.D. 1863

James Graham

vs.

The Ottawa Gas Light
 & Coke Company

} Case

Be it remembered that at the
 March Term of said Court this cause came
 on to be tried by a jury and that the plain-
 tiff to maintain the issues on his part
 produced the following Evidence,

De Witt C. Gooding called as a witness on
 the part of the Plaintiff being first duly
 sworn testified as follows: I am ac-
 quainted with the Plaintiff in this suit;
 The Plaintiff lives on lot three, Block
 Eighty four in States Addition to Ottawa
 on the opposite side of the street from my

Livery Stable. My Livery Stable is situated on lot four, Block Eighty five being the north west corner ^{lot} of said Block Eighty five, on the east side of Clinton Street, & south side of Jackson Street. The Gas Works are situated on lots four & five Block Sixty seven said lot five of said Block Sixty seven being the south East corner lot of said Block sixty seven lying on the south side of Clinton Street & west side of Jackson Street - lot four of said Block 67 adjoins said lot five Block Sixty seven on the north.

My Livery Stable is about one hundred feet from the Gas Works, diagonally across Clinton Street. Graham has a dwelling house & well on Lot three Block Eighty four, resides there now and has resided there since sometime in the year 1856; Graham's lot is the width of one street & two lots south of the lot on which the Gas Works stand are situated. The Street is eighty feet wide & the lots are each sixty feet wide.

Graham's house & lot are on the opposite side of Clinton Street from my Stable - being the width of the Street west of the

width of a lot South of my premises, being about one hundred feet from my Stable. I have Well in the North west corner of my Livery Stable, under the harness room.

The Plaintiff asked witness if his well had been injured by the Gas Works, the defendant objected to plaintiff's offering evidence as to whether other wells than plaintiff's had been injured by the Gas Works, the Court overruled the objection & allowed the witness to answer the question; to which opinion of the Court the defendant then and there excepted. —

The water in my Well was good before the gas works were built, after the Gas works were built sometime in 1854 the water in my well began to be bad-tasted & Smelled of Gas. The Gas Works were built in the winter & Spring of 1856. I am positive the water in my well Smells & tastes of Gas, Smells very offensive to persons not used to the Smell of Gas. When the water is pumped from the well it is covered with foam like soap suds. In a dry time when the well is low the water tastes and Smells worse than when the water is high in the well, when the water is high in the well from heavy rains, the water is not so palatable but that the boys about the Stable can

drink it. When low it is so polluted that it cannot be drank. At times when the purifiers at the Gas works are emptied the Smell of the Gas from the Gas Works is very offensive.

I have been acquainted with Grahams Well about ten years, the water was good when I first knew it. It could be used as early as 1854. After my well became bad the boys at the Stable used to go to Grahams well for water. Some three or four months after my well became bad, Grahams well began to become bad.

Grass Examination

I have no suit against the Gas Company. I have had a suit against this Gas Company which was dismissed. I intend to bring another suit against this Gas company if Mr. Grahams suit against the Gas Company should be successful. At one time Mr. Thompson, Graham Porter & myself talked about uniting together in prosecuting the Gas Company but never made any agreement about the payment of the expenses or costs of these suits. I am not liable to pay any of the costs

85

of this suit & am not interested in the result of this suit - but I feel some interest in the result of this suit because I have a similar cause of action against the Gas Company & the decision of this suit will in a measure show what rights I have against the Gas Company. I have this Livery Stable some six years, keep from twelve to fifteen horses in the Stable. My well is under the Harness room in the north west corner of this Stable where I keep my horses. My well is about seventeen feet deep.

The ground in the neighborhood where my well is composed first of about two feet of soil & below the soil of a porous sand rock - water leaches or soaks through the sand rock easily. The ground where my stable is, is quite low. There is a low spot of ground west & south of the Gas Works between the Gas Works & Graham's Well. I have been in the habit of carrying manure from my Stable & throwing it into this low spot west of the Gas Works. The horse piss, which falls upon the floor of my Stable probably runs through the

Floor of the Stable on the ground under the Stable, The Soil & sand rock under the Stable are both porous & water or any liquid will soak through them easily. The horse piss would soak through the sand rock & soil into the well more easily than the ammonia from the Gas factory would because the Gas factory is further from the well, one kind of Liquid will soak through the Soil and sand rock as well as another.

I do not think that the horse piss or soakings from the manure affects my well, if the horse piss or soakings from the manure affected my well the water of the well would be colored. On my lot back of my Stable is a low spot where the water stands a good deal of the time during rainy weather. The water which stands there is colored from the manure so as to look like Strong Lye. I do not think that the foam on the water when pumped is caused by air getting into the pump. Horse piss will foam when poured or thrown upon the ground. The water of my well when it became bad

Tasted like Gas Smells. Strange horses would not drink it. I do not mind the smell of the Gas much because I am used to it but strangers notice it. The Smell of the Gas works do not affect the air except when the purifiers are emptied. The Smell from the Gas Works affect a large neighborhood in about the same manner and if it is a nuisance to one person it is a nuisance to a large number of persons.

Direct Ex. resumed;

I did not notice anything peculiar about the Color of the Water in Grahams Well. Strange horses will not drink the water in my Well. I have had the floor up sometimes but found but little wet upon the earth under my Stable. I bought the Stable in 1856. The Well was dug the year before, the water was good until after the gas works went into operation. Cross Ex: My Well is covered up closely & has been so covered up. The water is raised the water is raised with a pump. This building of mine had been used some time before I bought it, for a Livery Stable.

I filled up the low spot back of my stable with earth & with lime thrown out of the purifiers from the Gas works. There are a number of foundries & Machine Shops in the neighborhood of the Gas works which had been operation a good while before the Gas works were built. I do not think Mr Graham's house is in so desirable a location for a dwelling house as many other places in the City, even if the Gas works had never been placed there.

Direct Ex: I am confident as I am alive that the water in my well is worse when the water is low than when it is high. I am confident the water in my well tastes of Gas.

Thomas J. Wade Certified as follows:
I was a member of the City Council. I can recollect the first time I made an examination of Graham's Well. The last time was in June 1860. I was a member of a committee appointed by the Council to examine Graham's Well. The committee reported in October 1860. Sometime before

This there was a complaint made to the City Council in relation to Graham's Well & a Committee was appointed to examine the matter. I was on the Committee, and Examined the Well and the Gas Works. There was a great similarity between the Smell and Taste of the water in Graham's Well and the water at the gas works. I have no doubt but the smell and taste of the water in Graham's Well arise from the gas works.

The Plff's Counsel then asked the following question; "Give your views as to the damage done to Graham's premises on account of the Gas works?" To the asking of which question they objected, the objection was overruled by the Court & the question allowed to be put to the witness—To which ruling of the Court the Plaintiff by his Counsel, then & there excepted. — "The trouble and inconvenience is a good deal.

I am positive that the water in Graham's Well smelt like the water at the Gas Works. Cross Ex. — I have no means of estimating the damages to Graham from the Gas Works. I do not know how far he had to go to get water. I have

no knowledge about all the circumstances
 so as to enable me to estimate the damages.
 The damage would not be short of the price of a
 hired hand & his board, I think he could
 build a cistern for 150 dollars perhaps for
 100, dollars holding 100 barrels. With a good
 filter. I do not know what the cost
 of a cistern would be, I don't know
 but that cistern water could be filtered
 so as to be good. The water in the well
 tasted ^{very} bad, I think it tasted of Gas.
 I don't know whether the well I exam-
 ined was correct or not. I don't know
 whether it was Graham's Well I examined
 or not I think it was Thompson's Well
 I examined. Water that is in a well
 covered up & standing unused for a
 long time will smell & taste very
 bad. My well when I first came on
 to my place was bad. It had pumps
 over it & was shut up close. I removed
 the pump & cleaned out the well & put a
 bucket in it to draw the water & the
 water then became good. ^{I think the water in my well is good} My well is too far
 from the gas rocks to be affected by them.

A. B. Smith Testified as follows:

I made an examination of the water in Grahams Well it was made in the summer of 1860. We pumped water out of Grahams Well, the water smelled like gas, I examined the water in the gas tank. The water in the ~~gas~~ tank & the water in Grahams well smelled and tasted alike, I have no doubt but that the water in Grahams well was affected by the water from the tank in the gas works. — The Plaintiff then produced a bottle of water just taken from Grahams well, and a bottle of water just taken from the tank in the Gas works & offered to have the jury taste of the water of each of said bottles to which the defendant objected, the Court sustained the objection & refused to permit it to be done. The Plaintiff then requested the witness to smell & taste of the bottle of water just taken from the tank & state from witness recollection, whether taste & smell of the water in the bottle was like the smell and taste of the water in Grahams Well at the time

Witness made the examination of Graham's well; To the introduction of said bottle as aforesaid, the defendant objected, the Court overruled the objection & allowed the witness to taste & smell of the water in the bottle taken from the tank & then testify whether the smell & taste of the water in the bottle was like the smell & taste of the water of Graham's well at the time witness examined the well, the witness replied that the water in the bottle smells as the water in the tank did when I made the examination. — The Plaintiff again offered the bottles of water from Graham's well & from the tank in evidence for the jury to taste & smell of, to which the defendant objected & the Court sustained the objection & did not permit it to be done.

— "I have no doubt whatever but that the water in Graham's well was injured by the gas works. I live something more than a thousand feet west of the Gas works, I have lived there since 1846. I have frequently smelled the gas at my house in such a manner as to be a serious

93

an annoyance to me & my fox. The Smell of the Gas must be a serious annoyance to Mr. Graham. I have often passed by Mr. Graham's house never went to the Gas works without smelling the Gas. I do not know what the pecuniary damage is which the Gas works occasion to the use of Mr. Graham's premises, I only speak for myself, I would not have Mr. Graham's premises with the Gas works where they are on any terms, I wouldn't be obliged to live there, with the Gas works where they are, for the premises. The Smell of the Gas is very annoying to me.

Cross Ex: I do not know what the cost of digging a well or building a Bistien is, I believe that I never was in Mr. Graham's house but once, I have passed there frequently. I do not know the circumstances & facts sufficiently to compute the pecuniary damages, which the Gas works to Mr. Graham's premises, I simply speak for myself when I say that I would not have Mr. Graham's premises & be obliged to live there with the Gas works where they are. The damages to Graham's premises

by reason of injuring the water alone, would be what it would cost furnish another well equally as good as the one spoiled. The smell of the gas affects a large neighborhood, in about the same manner. If the smell of the gas is a nuisance to one person it is a nuisance to a large number of persons in the neighborhood of the gas works.

Charles Parter testified as follows:

I live right across the street east from Grathams. I have no interest in this suit, I brought a suit for father against this Gas company, for injury to father's well about the same time this suit was brought, but the suit has since abated by the death of my father. My father had a well on the east line of his lot, this well was dug about one year & a half before the gas works were built, about a year after the gas works were built, father's well became bad so that the water could not be used. The water tasted & smelled like gas.

95

I am positive that the water in fathers well tasted & smelt like gas, Grahams well I think became bad about three or four months after fathers well became bad. I examined Grahams well in the year 1859. The water tasted & smelt like Gas. (Here the witness by request of Plaintiff's Attorney Tasted & Smelt of the water in the bottle taken from the Tank at the Gas works.) & said the water in Grahams Tasted & Smelt very much like the water in the bottle. Fathers well is about on the same east & west line, perhaps Grahams well is a foot south of fathers well, I could not be mistaken as to the water in fathers well & Grahams well smelling like Gas. For a while after the Gas works went into operation the Smell of the Gas was quite annoying but I have got used to it, so that I do not mind much about it now - A person can get used to most any thing. I have seen Smoke coming out of the Chimney at the Gas works frequently

Cross Examination: I live on the opposite side of the Street from Grahams

house one lot south, I have lived there some 12 or 14 years with the exception of two years. There used to be a swale or low spot running across the lot where Goodings Livery Stable is & south west across the street & across one corner of Grahams lot. The ground descended from Goodings Livery Stable towards Grahams lot, so that the water settled off that way. This swale ran within a feet of Grahams well. Water or any liquid would naturally settle or run from Goodings Livery Stable towards Grahams lot. The corner of Grahams lot which was low has been filled up. Coke is burned in furnaces at the Gas works, no smoke arises from coke when burning. On reflection I see that I was mistaken in saying that I had seen smoke rising from the Chimney in the Gas works. No smoke rises from the Chimney in the Gas works because nothing is burned there except coke. There are a number of foundries & Machine Shops in the neighborhood of the Gas works. A great deal of smoke & dust

97

rises from the chimneys of the foundries &
 machines shops. There are grain warehouses
 on the side cut, or lateral canal in the
 neighborhood of Grahams lot & there is a
 deal of decaying matter around these ware-
 houses. The smell of the gas affects a pretty
 large community in a similar manner.
 If the smell of the gas is a nuisance
 at all it is a nuisance to a large
 number of persons. They shell corn
 with small engines along the side cut.
 and in warm weather there is a disa-
 greable smell along the side cut arising
 from decaying vegetable matter such as
 grain &c.

Direct ex: There is a pipe or something
 connecting the Tank at the Gas works
 with the side cut, so that the water will
 run from the Tank to the side cut.

The surface of the water in the side cut
 is frequently coated with coal oil
 or tar which when the sun shines gives
 of brilliant lights like the colors of
 the rainbow. I am positive the water
 in Grahams well & father's wells
 smelled like Gas.

George C. Thompson testified as follows:

I am acquainted with Mr. Graham the Plaintiff in this suit. I am acquainted with the situation of the premises of Mr. Graham.

There is a well on his lot. The water in this well previous to the building of the Gas Works was very good. My father moved on to the lot adjoining Graham on the north previous to 1855, I was there a part of the years 1858 & 1859.

I know that the water was bad at that time & smelled very gasy. The scent of the water was very similar to that in the gas tank. When the water of Graham's well was boiled it smelled like gas much more plainly than when cold. It then smelled like gas escaping. I am as strongly of the opinion that the smell in the water of Graham's Well was the same as the smell of the water in tank of the Gas Works as I am that I am living. The water in Graham's Well began to get bad in 1856 or 1857. When the wind is in the south the gas smell very ~~is~~ ^{bad} it came into the

Windows so that they had to be closed.

The gas could be smelt when the weather was calm. The smell of the gas was a very serious annoyance.

Grass Ex: I have tasted both the water in Grahams well & the water in the tank, I don't know the depth of the well, think it is about the depth of Goodings well. There is now a pump in Grahams well, there was no pump there until after the water became bad. I get water from Benedicts well about 20 feet south, Mr Benedicts well is on the lot adjoining Grahams lot on the South, Benedicts well is about 100 feet from Grahams well. The water in Benedicts well is good & has not been affected by the gas works. Graham has used water from Benedicts well since his well became bad. There is a spring on the back part of our lot within thirty or forty feet of Grahams well. This spring has no vault except a hole dug through the soil down to the sand rocks. The ground back of and between Grahams lot & the gas works is low.

I suppose the drainings from privies and

manure piles would soak through the soil and sand rock as well as water from the Gas works. There used to be a ravine or swale running from Washington Square south west across the lot "Wheel Goodings Stable now is, and across the Street and north west corner of Graham's lot. This swale ran between Graham's ^{well} and the Gas works. Graham's lot has since been filled up level. When the wind is in the south, south east or south west, we could not smell the Gas, but when the weather was calm I could smell the Gas some.

~~Mr.~~ Batchelor Testified as follows: I know Graham's well, ten years ago it was as good as any well in town, some three or four years ago I was employed by Mr. Gooding in his Livery Stable & at that time I got some water from Mr. Graham's well, it tasted as gas smells. I compared with ^{the} water in Mr. Goodings well. The water from the two wells tasted alike. I could not drink it. In a dry time when the

101 water was low in Mr. Goodings well, the water was much worse than when the water was high in the well, I do not know whether Grahams well was so affected in a dry time or not. Sometimes when I pumped water up from Goodings well, it would bubble and foam & smell strong of Gas, some days the Gas would smell quite strong about Goodings Stable on other days we would not notice it at all, I have no doubt but that the substance in Grahams well was the same as in the Tank in the Gas works.

Cross Ex. The Pitcher of water I brought from Grahams well tasted & smelled like the water in Goodings well, I never smell or tasted the water in the Tank, - do not know of my own knowledge that the water in Goodings or Grahams well tasted or smelled like the water in the Tank at the Gas works. Twenty years ago the ground all around Goodings & Grahams lot was a duck pond. It has since been filled up in a great measure, with Earth and manure considerable manure has been hauled

from Goodings Stable into this low place.

The ground descended from Goodings Livery Stable towards Grahams lot, There was a low place while I was in Goodings employ back of his stable which was covered with a pool of water, the drainings of the Livery Stable, This pool of water was about the color of strong Lye. It is nearly 300 feet from the Gas works to Graham well. Goodings Livery Stable is nearer to Grahams well than the Gas works are. From 12 to 14 horses were kept in Goodings ^{Livery} Stable all of the time. Horse piss & drainings from manure piles would soak through the Soil & sand rock as easily as water from the Tank in the Gas works.

Direct resumed; I think if the water in the Goodings or Grahams well had been injured by horse piss or drainings from a manure pile the water would have been colored, I have never noticed any discoloration of the water in Goodings or Grahams well.

De Joseph Stout testified as follows:
 I know where Graham resides. I have
 a lot which is about 300 feet from the
 Gas works. I have a well on the lot.
 I have not resided on this lot since
 1854. A while after the Gas works went
 into operation my well became affected
 by the Gas works. I know it by the wa-
 ter in my well smelling of the Gas.

As a professional man I have no
 doubt but that my well was affected
 by the Gas works. After the sewer was
 built my well became good. My well
 was affected by the surface water from the
 Gas works. The substances at the Gas works
 got into the surface water & penetrated into
 the ground & in this manner got into my
 well.

Cross Ex: I have lived 18 years in Ottawa.

A Slough used to run from Washington
 Square through Goodings & Graham's
 lots. This did at one time empty into
 the Ride Out. After the lots were filled
 up it turned the water back upon my
 lot. After the sewer was built my well
 became good. It is now good. If the

Smell of the Gas is a nuisance to one person it is a nuisance to a large number of persons. Ammonia water is produced by the manufacture of Gas. Ammonia is also manufactured in large quantities from horse piss and the deposits around Stables.

Direct resumed: The Substance seen floating on the side cut is an oily substance produced from the manufacture of gas, I have frequently seen it floating upon the surface of the water in the side cut.

Samuel Patterson testified as follows:

I was a member of the City Council, and made an examination of Grahams Well in the Summer of 1860. I was appointed on a committee to make an examination of Grahams Well. I tasted & smelt of the water in Grahams Well, and rubbed it on my hands. The water smelt & tasted like gas, that is as near as I can tell it. I examined the water in the Tank it smelt & tasted like the water in Grahams Well, but stronger, I have no doubt but that the substances in the Tank and in

Grahams well were the same.

Cross Ex: I do not think that Grahams premises are injured by the smell from the Gas works. The spilling of the water of Grahams well injures his premises seriously. The smell from the Gas works, would not injure Grahams premises for any use. If the smell of the gas is a nuisance to one person it is to a good many persons. It affects the neighborhood around the gas works in about the same manner.

Direct resumed: I was Street Commissioner some of the time & fixed the Streets around the Gas works. Sometimes when the earth close to the Gas works was removed the gas would smell pretty strongly.

John Murray testified as follows.
I helped construct the gasometer and Tank. The Tank was dug to the depth of 14 feet from the surface of the ground. on the east side we penetrated six feet before we struck the sand rock. while digging the Tank we had to make Drip boxes in order to pump the water out of the Tank. The water would raise

~~same~~ considerably during the night. After the Tank was finished & cemented, I have noticed the water would settle away in the Tank a good deal more than ^{it could} from evaporation alone, a pipe was put in from the Tank to the side cut, to keep the Tank full of water. My father's place where I lived was across the Street East of the Gas works. The well on father's place was injured by the Gas works. The water was good before the Gas works were placed there, afterward the water became ^{bad} and tasted bad & smelt of Gas. There was a well on the north side of the Tank about eight feet deep, which was boarded up. They were in the habit of putting the ammonia water from the Gas works into this well, until 1860 when they filled up the well & pumped the ammonia water into the Tank. I am of the opinion that father's well was injured by the Gas works. There is water and Gas in the Tank. The water in the Tank is clear & not discolored. The Gas smells at times considerably.

bad around the neighborhood of the Gas works.

Cross Ex: As for myself I do not mind the smell of the Gas much, I think the Spilling of the wells a greater damage than the smell of the Gas. The smell of the Gas affects quite a large neighborhood in about the same manner. I have filled up the sidewalk around father's premises with lime taken from the purifiers at the Gas works.

Here Plaintiff closed his case.

The Defendant to maintain the issues on his part called the following witnesses.

Thomas N. Benedict testified as follows:

I reside on the lot north of & next to the Episcopal Church in Ottawa. I am acquainted with Mr. Graham. I live on the lot adjoining him on the south, I live the width of a street & 4 lots south of the Gas works. I am pastor of the Episcopal Church in Ottawa. I have performed Church services both on Sundays and

and weeks days, I have never smelled the gas in the Episcopal Church and I have never heard any complaints of it at the Church. I have been in habit of visiting my parishioners in the neighborhood of the Gas works quite frequently for three or four years past, sometimes I would smell the Gas a little but never so as to annoy me.

Cross 84:

I do not think that I am as easily annoyed by such things as many other persons are

William Hickling testified as follows:
I have resided in Ottawa some 28 or 30 years.
I know the nature of the soil and sand rock at & around Ottawa, I have had considerable experience with wells in Ottawa. I have owned & dug several wells. I have had two or three wells spoiled by privies & the deposits around Stables. Some twenty years ago the wells in Ottawa were very good, since that time the wells in the old town of Ottawa or that part of the town lying east of the side cut & between the side cut & ~~the~~

109.

Hox River have become injured by deposits of decaying vegetable matter on the surface of the ground. The ground on which Ottawa is situated is composed of about two or three feet of soil undeclaid by thick bed of soft porous sand stone. The soil is porous & the sand ^{stone} is so porous that water or any liquid soaks or permeates through it readily. The Gas Works & Mr. Grahams house & well are situated in the old town of Ottawa. The old town of Ottawa comprises most of the business portion of the City, & in this portion of the City during the last 20 years large deposits of vegetable & animal matter have accumulated on the surface of the ground. & low places have been filled up with earth manure & deposits around stables. The rains leach through these deposits, & saturate the sand rock below the soil.

When the sand rock becomes saturated with this matter around a well the water in the well becomes bad and unfit for use.

There are scarcely any wells in the business part of the City now which are good, they have become spoiled by the causes I have before ^{stated,} mentioned. I had a

a well which was spoiled by a privy, situated near it. The water smelt & tasted very bad. The water in this well did not become ~~had~~ discolored but remained clear. If the substances or wash from a privy or stable runs into a well it will discolor the water,

But if the wash & substances from privies & stables soak or permeate through the sand rock into a well it will not discolor the water. The coloring matter is taken up by the sand rock. I was half-owner of another well which was injured by the wash from the deposits of a stable & manure pile soaking through the sand rock into the well, the water did not become discolored but the water smelled & tasted very badly. It is only a question of time as to all the wells in the business part of the city becoming spoiled as soon as the sand rock becomes saturated with the wash from the substances deposited on the surface of the ground, the wells will all become spoiled. — Horse piss contains a large quantity of ammonia. Ammonia used to be manufactured

111

in large quantities by leaching the deposits around Stables & purifying & Crystallizing the substances so obtained. If horse piss should run into a well from the surface of the ground it would discolor the water, but if it should soak or permeate through the sand rock it would lose its coloring matter & would not discolor the water. I was acquainted

with Mr Wades well a long time before he was, some fifteen years ago it became bad. I do not consider the water in his well good. The Court House well became very bad & unfit to drink. There has been a spring close to this well for a long time. This well became bad a long time before the gas works were built: it is about 1500 feet from the Gas works. There used to be a ravine or Swale running running from the North East corner of Washington Square in South West Direction across Goodings & Beahams lot & until the side cut or lateral canal was dug. This Swale ran to the river but the side cut stopped up the ravine or swale, the

The side cut was dug in 1846 or 47. The ground around the Gas works Goodings Brewery Stable & between Grahams lot & the gas works used to be very low. I have seen the water standing there a foot or a foot & a half deep. It has since been filled up with earth manure &c. I think that if the Gas works had not been placed there, Grahams well would have been spoiled before this time, by the causes which I have mentioned. The wells in Ottawa are generally from 18 to 20 feet deep.

The cost of digging a well is from a dollar to a dollar & a quarter a foot - This includes the wall above the sand rock.

A Cistern of one hundred gallons with a good filter will furnish an unfailing supply of good water much better than any well water in the City. I have attended the Episcopal Church which is two lots south (about 120 feet) of Mr. Grahams lot. I have never smelt the Gas at the Episcopal Church. I have passed by the Gas works, have scented the Gas sometimes. If the Smell of the Gas is

113

is a nuisance to one person, it is to a large number of persons, quite a large neighborhood is affected by it in about the same manner. The wind seldom blows from the north to the south, the prevailing winds are easterly & westerly winds.

The place where Grahams house is is not a desirable location for a dwelling house, even if the Gas works were not there.

It is in the neighborhood of Foundries & Machine Shops & Grain Ware houses, That Portion of the City, will sooner or later have to be given up for business purposes.

Levi Mason testified as follows:

I have resided in Ottawa nine years since 1856 until last fall I have been Secretary of the Gas - Was there when the first commenced to manufacture gas.

I know all about the construction of the gas works and the manufacture of Gas. The Ottawa Gas works well built of the best material and in the best manner now known. The Tank is 40 feet across is circular and is about 16 feet deep. It is dug into the solid

sand stone rock & is walled up the sides with water Cement wall of the best kind.

The water at the bottom of the Tank is about five feet thick & tapers to about two feet thick at the top. This wall is laid against the solid sand stone so that it cannot give a particle. The bottom of the Tank is covered very thick with water cement laid down on the solid sand stone, so that give a yield. The coal to be manufactured into gas is placed into clay retorts & the retorts sealed up so as to be air tight. These retorts are placed over the furnaces. The fuel used for heating them is coke, which does not give off any smoke while burning. ~~At the~~ the heat applied to the retorts converts a large part of the coal into gas. The other part which is coke remains in the retorts.

The gas so made together with the steam & other products of the coal pass into a large iron pipe perfectly air tight, by which the gasses are conducted into an iron pipe containing water. This water takes the ammonia from the gas, and

condenses the coal tar. The Coal Tar & ammonia water fall into a water tight well made for this purpose. The gas next passes into the purifiers which are square Cast Iron boxes containing quick lime laid in layers on sieves to permit the gas to pass through the quick lime. These purifiers take out an ether gas containing sulphur & hydrogen. The gas next passes into the tank through a pipe which comes above the top of the water in the Tank when the gas passes under the gasometer. The gasometer is made of Iron something in the shape of a tub & is inserted & placed in the Tank. The gas raises the gasometer up & the gas prevented from passing out by the water in the Tank. - During all this process not a particle of gas escapes. The only smell of gas there is around the gas works is from the lime when emptied from the purifiers. This gas is very light & passes off quickly. The lime thus thrown out of the purifiers is bought by people about the city for the purpose of putting under side walks &c. & is taken away about as fast as it is emptied. The smell lasts

lasts but a short time when the lime is emptied. I have been in the habit of passing Mr. Grahams house two or three times a day for the last five or six years & seldom remember of smelling the gas at or around Mr. Grahams house.

I have twice drawn the water out of the tank for the purpose of repairing a pipe. I made a close examination of the walls of the Tank each time for the purpose of seeing whether there was any flaw in the wall, but could find no flaw or crack in either walls or bottom of the Tank. The Tank is I think water tight. The smell around the gas works are not unhealthy, A family lived two or three years in the room over the office on the lot where the gas works are, & were very healthy all the time they lived there. There is no gas in the water in the Tank; gas will not mix with water by pressure alone. Those gasses which have an affinity for water will mix with it. Ammonia has an affinity for water & mixes with it readily. This is why the gas is passed through water after it passes from the retorts.

The water in the Tank does not taste of gas it tastes of ammonia. I have tasted

117

of the water in Graham's Well, it does not taste of Gas, it tastes of Ammonia. In manufacturing gas about three gallons of Ammonia water is made per day. This was one year thrown into a well on the north side of the Tank. Horse piss contains a large portion of Ammonia. Large quantities of Ammonia used to be manufactured from horse urine by leaching the deposits around stables. This ammonia so manufactured is the same as that now sold by druggists.

Horse urine after it soaked or permeated through the sand rock and lost its coloring matter & impurities would be pretty near pure ammonia water. Graham's Well is about 200 feet from the Tank at the gas works & his well is about 100 or 120 feet from Goodings Livery Stable. There would be more ammonia water produced from the horse piss of a stable where 12 or 15 horses are kept than is made at the gas works. A great deal of manure from the Livery Stable has been placed in the low spot between the gas works and Graham's lat. The wash from this would soak through to Graham's Well, as easily as the water from the gas works.

The side cut is about 100 or 120 feet

west from Graham's lat. The scum that is seen floating on the water in the side cut is petroleum - it will not mix with water.

I don't think that the smell of the gas affects Graham's premises. The wind rarely ever blows toward the South. The prevailing winds are easterly to westerly winds. If the gas is a nuisance to one person it is a nuisance to a large number of persons. It would affect a large neighborhood in about the same way. - I have tasted of the water from Wad's well, I call it poor water. I have heard it complained of a good deal. I am positive that neither the water in Graham's well nor the water in the tank smells or tastes of Gas, as the smell & taste of ammonia; the ammonia from horse urine & from gas works would produce the same effect upon water. The ground used to descend from Goodings Livery Stable towards Graham's lat.

Cross Ex. I told Mr. Thompson when I examined Graham's Well that it was my opinion that the water in the well was affected by the water in the tank at the Gas works

I have not changed my opinion since.

I am positive that gas manufactured at the Gas works will not mix with water.

I am positive that the water in the Tanks does not smell or taste of gas. A ditch or gutter has been dug in front of Goodings Stable which takes the surface water to the sewer on the Street South, but this gutter carry of the water which soaks down into the soil & sand rock.

James E. Wilson Testified as follows:

I reside in the City of Ottawa, have resided there several years. I am a Brick Mason, have built a good many Cisterns, I would care to build a cistern that would hold 100 barrels and a good filter & find all the materials about 25 dollars. The filters would cleanse the water of all impurities. A cistern of 100 barrels with a good filter would furnish Mr. Graham with an abundant supply of good water.

-Cross Ex: I should think from the size of Mr. Graham's house he could easily catch enough water to supply his family abundantly with water

to use. I prefer well water to drink, many persons prefer cistern water. I would cost no more to keep a cistern & filter in order than it would to keep a well in order.

D. P. Jones testified as follows:

I have resided 12 years. I boarded in 1859 & 60 at Miss Miles' boarding house. This boarding house is the width of two lots & a street south of Mr. Graham's house about 200 feet south of Graham's. I cannot recollect of ever smelling the gas at Miss Miles' Boarding house, nor while boarding at the Geiger House, the Geiger House is about 300 feet east of the Gas works, I have smelled the gas when I have been on the south side of Washington Square pretty strongly two or three times. If the fumes from the Gas factory are a nuisance to one person they are a nuisance to a good many persons.

Cross Ex: I recollect one night when I was close to the gas works of smelling the gas very strongly

121

Thomas Black Testified as follows:

I have lived in Ottawa seven years, from 1856 to 1861 I boarded & had a room at Miss Miles boarding ~~boarding~~ house, it is about the width of two lots, & a street South of Mr Graham's, I noticed any smell from the gas works while I was there, The wind does not very often blow from the north, The prevailing winds blow from West South West & East.

Cross Ex I have Smelled the gas sometimes, when at or very near the gas works smelt the gas very strongly. The smell of Gas is a very serious annoyance to me.

Direct Ex If the fumes of the gas from the gas works are a nuisance to one person they are a nuisance to a large number of persons they affect a quite a large neighborhood in about the same way.

The Plaintiff asked the Court to instruct the jury as follows

123

1st

I, The Jury believe from the Evidence,
 That the defendant erected or caused
 to be erected near the dwelling house of
 the plaintiff situate on Lot three, in Block
 eighty four, in the States Addition to Ottawa,
 in LaSalle County, Illinois, Works
 for the manufacture of gas and coke, and
 that the plaintiff had at the time of
 the erection of said works, a well of water
 on his said Lot, and that the defendant
 in carrying on said works, placed or
 caused to be placed, prior to the commence-
 ment of this suit, in and around said
 works, substances, which when mingled with
 the water ~~of~~ ⁱⁿ said well, would render said
 water nauseous to the taste, deleterious to
 health, if used or otherwise unfit for use,
 and if said substances so used, by
 defendant, in carrying on said works
 did soak into the ground and permeate
 and pass along through the earth, and did
 prior to the commencement of this suit
 mingle with the water in said well and
 render said water nauseous to the taste,
 deleterious to health if used and otherwise
 unfit for use, The verdict of the

Jury should be for the plaintiff, for the damages which the evidence shows were caused to him thereby.

2nd

If the jury believe from the evidence, that the defendant erected or caused to be erected works for the carrying on the manufacture of Gas and Coke near the dwelling house and premises of the plaintiff situated as mentioned in the first Instruction, and that in carrying on said works, said defendant prior to the commencement of this suit did cause noisome, noxious and offensive vapors, fumes, smoke and stenches to issue and proceed from the said works and to enter into and be diffused through and upon the dwelling house and premises of said plaintiff. so as to render the air breathed by the plaintiff and his family impure, unhealthy and uncomfortable and so as seriously to annoy and incommode the plaintiff and his family in the enjoyment and occupation of said dwelling house of the plaintiff; And if the Jury believe from the evidence that such injury to the

plaintiff was a special damage to him and his family, peculiarly affecting him and them in a manner different from that of others generally in the neighborhood, the jury should allow the plaintiff the damages which the evidence shows were caused to him thereby.

To the giving of each of said instructions for the plaintiff, the defendant objected. The Court overruled Defendant's objections and gave each of said instructions and to the giving of each of said instructions the said defendant then and there excepted.

The Defendant asked the Court to give the following instructions to the jury ~~Defendant's Instructions~~

Defendant's Instructions

If the jury believe from the evidence that noxious or offensive smells issued from the Gas works of the defendant, as alleged in the declaration; yet if the jury believe from the evidence that

Defendant's Instructions

it affects in the same manner a considerable portion of the community in the vicinity of defendant's works, then the Court instructs as a matter of Law, that the works and business of the defendant are not a private nuisance, and no action can be sustained by the plaintiff for such noxious or offensive smells and in such case the jury cannot take into consideration any of the evidence adduced on the ~~Truck~~ in relation to the noxious smells arising from defendant's works, unless the plaintiff has proved that he has sustained some damages from such noxious smells peculiar to himself and which has not been sustained by the neighborhood about the Gas works.

2nd.

If the jury believe from the evidence that the plaintiff's well was injured and the water thereof rendered unfit for use by reason of deposits of manure and urine and other deleterious substances from barns, stables, and privies standing in the neighborhood of plaintiff's 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.

Given

127

3rd

If the jury believe from the evidence that the plaintiff is entitled to recover under the instructions given by the Court, then the Court instructs the jury that that the plaintiff can only recover such damages as he has proved he has ~~too~~ actually sustained, before the commencement of this suit; he is not entitled to recover for any speculative or prospective damages. If no actual damages have been proved, then the plaintiff can only recover nominal damages.

6 Hill 292 - 297

2 Greenleaf 474

4th

If the jury find from the evidence that the plaintiff's well was injured by the defendant's gas works, as alleged in plaintiff's declaration, then the measure of damages for such injury will be such a sum as would procure for plaintiff an unfailing supply of pure water, either by erecting to a cistern or otherwise, together with the value of plaintiff's well, so injured (if the jury shall find that said well was injured) and in determining the value of plaintiff's well, it is proper for the jury to take into consideration the evidence concerning the deposits of lime & manure near said

well and the evidence concerning the proximity of the Livery, Stable & privies to said well as affecting the value of said well, if the jury shall believe from the evidence that such deposits would injure said well.

5th

If the jury believe from the evidence that the plaintiff's well was injured, and the water thereof rendered unfit for use by reason of deposits of manure and urine and other deleterious substances, from barns, Stables & privies standing in the neighborhood of plaintiff's 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.

6th

If the jury believe from the evidence that the plaintiff's well was injured and the water thereof rendered unfit for use by reason of deposits of manure and urine and other deleterious substances, from barns, Stables & privies standing in the neighborhood of plaintiff's lot acting in conjunction with deposits of ammonia water and other substances on the lot on which defendant's gas factory is situated

Refused

129

Then the plaintiff is not entitled to recover damages in this action for injury to the well, The plaintiff must recover on the allegations in his declaration or not at all.

7th

In taking into consideration the opinion of witnesses in relation to the amount of plaintiff's damages (if the jury shall believe from the evidence that the plaintiff has suffered any damage), the jury must take into consideration the knowledge or means of knowledge which such witness has in regard to the circumstances surrounding this case, the opinion of a witness not having any knowledge concerning the facts & circumstances of this case is entitled to no weight.

8th

Given -

The plaintiff has no right to have the jury examine the bottles of water produced on the trial of this cause; and the jury have nothing to do with that question, and it was improper for the Plaintiff's Counsel to comment on their offer to do so, and the jury will disregard it.

9th

The Plaintiff cannot recover damages for 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 Saceous substances and that the said deleterious, Tarry, resinous or Saceous substances, permeated, flowed or passed through the Earth into plaintiff's well.

Given

The Court gave the first, second, third, fourth, fifth, seventh, eighth & ninth of said instructions and refused to give defendant's sixth instruction. And to the opinion of the Court in refusing said sixth instruction, the plaintiff then & there excepted.

The jury found a verdict for the plaintiff. The defendant moved for a new trial, the Court overruled the motion for a new trial & to the opinion of the Court in overruling the motion for a new trial the defendant then & there excepted and prays the Court to sign and seal this his bill of exceptions, which is accordingly done.

M. E. Hallister

Seal

Judge

Signed this 18th day of May A.D. 1863

131

Pleas before the Honorable Madison
 E. Hollister Judge of the Ninth Judicial
 Circuit of the State of Illinois, at a Term
 of the Circuit Court within and for the
 County of Bureau in said State, begun and
 held at the Court House in Princeton in said
 County, on the second Monday in the month
 of March (being the ninth day of said
 month) in the year of our Lord one thousand
 eight hundred and sixty three

Present: Hon. M. E. Hollister Judge
 George W. Radcliffe Clerk
 Elias Butler Sheriff
 and David C. Jones State Attorney

On the 11th day of said Term, to wit:

Friday morning 8 o'clock March 2nd
 A.D. 1863. Court met pursuant to
 adjournment. Present same as on
 the first day

James Graham

vs. The Chicago and Lake Company

The Chicago and Lake
 and Lake Company

Now comes the Plaintiff
 by Island, Taylor and Paddock his attorneys
 and the defendant comes by Rice, Eckelst
 Kyle its attorneys and this cause now coming

on to be heard, and as ordered by the Court
that a jury be empanelled to try the issues
Herein: and a jury comes of twelve good
and lawful men, to wit: Cyrus P. Mason
Albert Hammond, Wm Tomlinson, Hiram
Campfman, Rufus A. Lathrop, Warren
Eastman, Tracy Reese, William Charles
Orbit Hinson, Samuel E. Parker, Joel G.
Pulley, and David Nichols, who are duly
elected, tried, and sworn well and truly to
try the issues Herein, and a true verdict
render, according to the evidence.

And on the twelfth day of said Term, to wit,
Saturday morning the eighth March 1852, the
Court met pursuant to adjournment.
Present same as on the first day.

James Graham

Excess on the Case
The Ottawa Gas Light
and Coke Company

Now come the said parties by
their attorney of record, and the jury aforesaid,
and said jury, upon their oaths say: "We of the
jury do find the said defendant guilty in
manner and form as charged in the said plain-
tiff's declaration, and assess the damages which
the said Plaintiff hath sustained by reason of

the premises, at the sum of Three Hundred and ninety two dollars and fifty cents.
And now the said defendant enters its motion for a new trial herein.

And on the sixteenth day of said Term, to-wit: Thursday morning 8th O'clock March 26th A.D. 1868. Court met pursuant to adjournment. Present same as on the first day.

James Graham

Attorney for the Plaintiff
The Ottawa Gas Light
and Coke Company.

Now come the said Parties together with their attorneys aforesaid and after argument of Counsel and the Court being now fully advised in the premises, it is considered by the Court that the said defendant's motion for a new trial herein be overruled; and that the said Plaintiff have judgment against the said defendant for his said damages herein.

It is therefore further considered by the Court that the said Plaintiff have and recover from the said defendant the said sum of three hundred and ninety two dollars and fifty cents. His damages assessed as aforesaid, together with all his costs and charges by him in and about this said suit on his behalf.

expended and that he have a caution therefor
And now on motion of said defendant
it is also considered by the Court that an appeal
to the Supreme Court of the State of Illinois
be allowed herein, upon said defendants entering
into a good and sufficient Appeal Bond in
the penal sum of Five Hundred dollars with
Samuel B. Gridley as security, conditioned
as the law directs; said Appeal Bond
and the Bill of Exceptions to be filed in
sixty days from this date.

And on the 16th day of May A.D. 1863
came the defendant aforesaid and filed
its appeal Bond herein in the words and
figures following, to wit:

Know 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 Samuel B. Gridley binds himself & his heirs, executors and administrators jointly, severally and firmly by these presents.

Witness the hand and seal of William H. H. Cushman President of said Gas Company & the hand and seal of Samuel B. Gridley this twelfth day of May A.D. 1863

The condition of the above obligation is such, That whereas the abovenamed James Graham did at the March Term of the Circuit Court held in and for the County of Bureau in the State of Illinois A.D. 1863 recover a judgment against the above bounden Ottawa Gas Light & Coke Company for the sum of three hundred and ninety two dollars and fifty cents & costs of suit to reverse which said judgment the said Ottawa Gas Light & Coke Company has prayed and obtained

an appeal from said Circuit Court to the Supreme Court within and for the Third Grand Division of said State.

Now if the said Ottawa Gas Light & Coke Company shall duly prosecute said appeal 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 said Gas Company in case said judgment shall be affirmed and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect

(signed) Wm. H. Cushman

President

J. D. Malley
Secy

137

State of Illinois
 Bureau County J^{es} S George W. Radcliffe
 Clerk of the Circuit Court in and for said
 County and State do hereby certify that
 the foregoing is a true and correct Transcript
 from the records and files in my office of
 all the proceedings herein in the cause
 named in said Transcript



Witness my hand and the seal of said
 Court at Princeton in said County
 4th day of April A.D. 1864
 Geo. W. Radcliffe Clerk
 By C. C. Sinclair

Collected for Transcript \$4.00
 Certificate .35
 Stamp .05 \$4.40

The Ottawa Gas Light
 & Coke Co. v. J^{as} Graham
 Appeal from Bureau
 And comes the said Appellant
 J^{as} B. Rice it, returns & says that in the
 records produced in support of the verdict of the
 judgment before said Court there is manifest error
 in the following
 1st The Court erred in receiving improper
 evidence on the part of the plaintiff
 2nd The Court erred in rejecting evidence offered
 by the defendant
 3rd The Court erred in refusing instructions offered
 by defendant & granting defendant's instructions
 4th The Court erred in the giving the instructions
 offered by plaintiff

13

5th The verdict ~~is~~ judgment is against the law & the evidence

6th The Damages are excessive

8th The Court erred in rendering judgment in favor of the plaintiff

9th The Court erred in not rendering judgment for the defendant

10th The Court erred in overruling motion for a new trial

11th The judgment is against the law & the evidence
Nica Mory Plaintiff's attys

269
The Cotton Gin
Lynch & Co. Cork Company

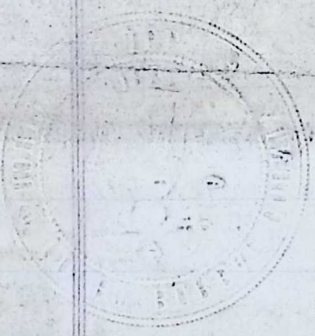
James Graham

Record

269

Filed April 26 1864
L. Deland Clerk

And the Appellor joins in an
Sole and Blundell for Appellor



FILED

Proof

State of Illinois, Supreme Court within
& for the Third great
Division of said State

April Term A.D. 1884

The Ottawa Gas Light
and Coke Company Appellant
vs
James Graham Appellee
Appeal from Bureau

J. B. Rice being first duly
sworn on oath says that he is attorney
for the said Appellant and tried this cause
in the Circuit Court of Bureau County on the
part of Appellant: Affiant further says
that Edwin S. Leland is the attorney
of said Appellee and that said Leland
in conjunction ^{with} Mr. Taylor tried this
cause in the Bureau County Circuit
Court: Affiant further says that after
said trial of said cause in the Circuit
Court of Bureau County ~~said~~ Affiant
made a bill of exceptions & that said
~~Leland & affiant~~ presented the same to
said Leland and that thereupon said
Leland & Affiant carefully examined
said bill of exceptions & the evidence

of all the witnesses sworn on said trial and that said Leland & Affiant then agreed in regard to all the testimony of all of said witnesses except the testimony of Mr. Benedict and that thereupon said Leland and Affiant called upon said Benedict & settled said bill of exceptions in accordance with the statement of said Benedict — Affiant further says that said E. S. Leland ^{then} agreed with Affiant that said bill of exceptions was a fair bill of exceptions and thereupon the said E. S. Leland ^{wrote} on said bill of exceptions at the end thereof the words & figures following to wit:

"I am satisfied with the foregoing bill of exceptions." "E. S. Leland."

Affiant further says that he then presented said bill of exceptions with the writing signed by said E. S. Leland aforesaid to Judge Hallister the Hon.

Mr. E. Hallister Judge of said Bureau County Circuit Court ^{before whom this cause was tried} and the said Judge signed & sealed said bill of exceptions.

J. D. Rice

Subscribed & Sworn before
me this 19th day of May

A. D. 1864 L. Leland Clerk.

269-195
The Ottawa Gas
Light & Coke Company
vs

James Graham

affidavit

Filed May 19. 1864.
L. Leland
Clerk.

State of Illinois Sup Ct - April Term 1864

The Ottawa Gas Light & Coke Co }
vs
James Graham }

The first point in the appellate brief presents a question in ethics which we suppose the Court could not well spare the time to investigate. We would be pleased to have a decision of the point however for there is nothing connected with the practice of the Court that is more embarrassing than to know how much advantage it is allowable consistently with strictly morality to take of an adversary. To betray the truth reported in an attorney by assisting the other side through a desire to conciliate or for compensation in any other form is the basis of all unprofessional impropriety. It is the duty of an attorney to win his client's cause by the use of all honorable means, & still there are means which might be used tending to accomplish this result which are clearly dishonorable, & it is very hard to tell where the true line is. A bill of exceptions is said to be the pleading of the party who makes it. Mr Rice submitted to me a bill of exceptions which he considered complete. I noticed at the time that the clause that it contained all the evidence was not in it. I did nothing except to stand mute. I wrote the words on it in pencil with the hope in my mind that he would not discover his oversight, & that the judge would sign it in its imperfect condition, & I am frank to say that I would have been still better satisfied with it if it had

been less favorable to his clients & more so to mine
I thought that I had not the moral right to go farther
the other side of this cause as to point out to my client
say the slip that he had made. It seemed to me that
it would be a betrayal of the trust reposed in me to
have done so. If I was wrong I erred from what
I thought to be proper motions. For the same reasons
I think I have not the right to say now whether the
Bill of exceptions does or does not contain all the evidence
& that the duty which I owe my clients requires me
to remain silent on the subject
~~rather to affirm the duty~~ whether the Bill is correct
or incorrect. I say however here as I have in another
cause on the dock that I do not appear of the rule
laid down in the earlier cases on this subject. If my
clients ~~is~~ ^{however} entitled to any benefit under the ruling law I
think it my honorable duty to claim it for him. Unless
the old rule shall be still more changed than it has been
in the cases of Harris & Miner, & Marine Bankers
v. Washburn in the 28th vol. There can be no reversal on the
Appellant's 2^d point. provided it would have been a good
point if the clause in question had been in the Bill, & as
to the 2^d point we say further

Even though the Court may change the rule last
mentioned, & add to the rule that the right of a plaintiff
to recover grows weaker as the fault grows stronger,
we do not think after two concurring verdicts for the plain-
tiff the Court ought to endeavor to ascertain what por-
tion of the damages was borne to the plaintiff ^{by} through
the air, & what part came by water. Nor whether the
latter was or was not all for which the jury made an
allowance. Nor should your Honors we think

for apace the province of jurors as to try to ascertain
the number of dollars which it would be right to allow
a man for being deprived of the privilege of having a
good cool drink of water for himself & family whenever
he wanted it without bothering his neighbors. Pure water
could not probably be obtained by the use of a cistern
while the gas works were where they are. & if it could
a man might have a notion that he liked well water
the best. & this may be a mere notion or fancy. Many
of us would not like to give up our whims & foolish
notions for a pecuniary consideration. Who shall measure
all these things except a jury? Lawyers & judges can
not figure out the damages in such a case as they
would add a sum in addition. Some of the stockholders
in this Company would not have their wine & lager
cut off for thirty days for the amount of this verdict
& yet it is all a notion. They would be better off without
them. That however is their business not Graham's. He
does not desire to cut off their flairs, & he wants them
to let him alone in the enjoyment of his well water. He
would be happy to breathe God's pure air, without the ad-
mixture of their noisome adulterations. It is not a suffi-
cient consolation to him to know that others are made
miserable also if "miserable does love company". Enough
has been said about the 3^d point.

There is no such point as the 1st saved in this
record. The authorities cited may do for another
case. They are of no use in this. We have therefore
said all that is necessary about this.

There is no exception by which the 1st point of the

Appellant is saved. The Abolition shows one but
the record does not. The objection to the evi-
dence certainly an exception to the opinions of the
Court could not ^{do} for. We think that there would
have been no impropriety in allowing the jury to
taste & smell the water of the well & tanks after it
was clearly proved that the water in the bottles was
taken from the well & tanks. It would be evidence
of a very satisfactory character, if it was shown that
the present taste & smell was the same as it was
at the time when it was. To allow witnesses to taste
& smell, & then try to describe the taste & smell
might, I dare of secondary evidence. We think
the tasting & smelling of the witnesses & their statements
that the water came from the well & tanks & that
the taste & smell now were the same as there was
rather laying a foundation for the introduction of
the bottles. A perhaps it might be said to be the
refreshing the mind of the witnesses. The Court did
not consider the witnesses refreshed by the taste & smell
or did not consider the foundation laid, & would
not let the ^{jurors} ~~witnesses~~ taste or smell, considering the
authority of the Franklin case against it, we be-
lieve. If the laws of morality required us to
inform Mr Rice of the omission of the clause that
the Bill contained all the evidence, we ought upon
the same principle to have aided the Gas Company
by suggesting that the exceptions to the battle evi-
dence ~~were~~ ^{were} not incorporated in the Bill. Perhaps we
ought to have hinted to him that if he had let the
jurors taste & smell, that he would have strengthened
his 2d point by having more of the Kings subjects affected by
the nuisance

Deland & Deland for Appellee

Gas Company vs Graham
Verdict to Verdict of Appellants

269-195
Ottawa Gas & Coke Co
vs
James Graham

Reply to appellants brief

Filed May 28 1884
L. Leland
Clerk

Leland & Blanchard

State of Illinois
Supreme Court 3^d Grand Division

The Ottawa Gas Light
& Coke Company

vs
James Graham

Appeal from Bureau

Now comes the
said Appellant by J. B. Rice and moves
the Court that the additional bill of
exceptions filed herein be considered by
the Court on the hearing of this cause
as a part of the bill of exceptions
used in this cause.

J. B. Rice
Appellant's Atty.

269-195

The Ottawa Gas
Light & Coke Company
is
James Graham

Motion to make
additional bill
of exceptions a
part of the record

Filed May 17, 1884
L. Leland
Clerk

State of Illinois
Bureau County, ss I George M. Radcliffe
Clerk of the Circuit Court in and for said
County do hereby certify that the Bill of
Exceptions in case of James Graham &
The Ottawa Gas Light and Coke Company
is admitted to be correct by the Plaintiffs
Attorney in the words following:

"I am satisfied with the foregoing Bill
of exceptions. E. S. Leland"

Given under my hand and the
Seal of said Court at Princeton
in said County this 29th day of
April A.D. 1864

Geo. M. Radcliffe Clerk
By Cairn D. Trimmell Deput.

1864 - 195
The Ottawa Gas
Light & Coke Company
as

James Graham

Additional Bill
of exceptions

~~File~~

Filed May 5, 1864
L. L. Leland
Clerk