

No. 14714

Supreme Court of Illinois

Ottawa Gas, Light & Coke Co.

vs.

Thompson

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No.

161

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

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

THE OTTAWA GAS LIGHT AND
COKE COMPANY

^{vs}
DARLIN THOMPSON.

} *Appeal from La Salle.*

POINTS FOR APPELLANT.

The Court, on the former hearing of this cause, decided that the Appellee had not such a right or interest in Graham's well as would enable him to maintain an action against Appellant for injuring the water of the well; but intimated that if Appellee had any right of action against Appellant it might be, perhaps, by action on the case for disturbing him in the enjoyment of his easement.

The counsel for the Appellee now insists that this is a distinction without a difference; that the injuring the water of the well is a disturbance of the plaintiff in the quiet enjoyment of his easement.

The Appellee had no easement, or other right, in Graham's premises or well, on which an action could be maintained by Appellee.

An easement is a liberty, advantage or privilege, which one person may have in the land of another; it is an incorporeal hereditament, and can be created by deed or prescription, and in no other manner.

The principal requisites of easements are, 1st, that they be imposed upon corporeal, real property; 2nd, that they be for the benefit of corporeal, real property; 3d, that there be two distinct estates, the dominant and the servient; 4th, that the nature of the right be such as can be inherited.

Bouvier's Institutes, 170, Sec. 1600, *et seq.*
2d Kent's Com., 432, *et seq.* and the cases here cited.

The following is all the evidence on this point—Record, page 22, (Graham's testimony:)

"Plaintiff asked me if I would let him use the well if he would bear half the expense of keeping it up. There was a chain pump in the well;

water tasted bad; we had the well cleaned out and a new pump put in; expenses were \$20 Thompson paid half and I half."

The evidence shows a verbal agreement only, without showing when it was made or how long it was to continue.

By the authorities above cited, this agreement could not create any easement.

Graham did not, by this verbal agreement, convey to Appellee a particle of interest in his lot or well; he simply gave Appellee a parol license to use the water of the well, which license was revocable at any time by Graham.

Wigward vs. Seeley, 11 Ill. 157.

In this case, when all of the cases on this point were examined, this Court held that a license coupled with an interest in land must be in writing; and that a license not in writing is always revocable at the will of the licensor.

See same case, 11 Ill. 165.

The license given by Graham to Appellee not being in writing, did not convey to Appellee any interest in Graham's lot or well.

Graham could have revoked this license at any time, and Appellee could not have maintained an action against him for so doing; but if Graham had, at any time during the continuance of the license, sued Appellee in trespass for using the water of the well, then Appellee might have plead such license in mitigation of damages, and this is the extent of Appellee's rights in Graham's lot or well as shown by the evidence.

If the doctrine contended for by Appellee's counsel be correct, then Graham might have given a verbal license to every person in the city to use the water of his well, each person having such license could maintain an action against Appellant for injuring the water of the well, and recover damages for the full value of the well.

It appears by evidence that the Appellee had neither the possession of nor any title or interest in the well or lot. He had a mere license to use the water. It was revocable at pleasure. It was not an agreement for any time, nor was it valid or binding.

On the trial of this cause Appellant, among others, asked the following instructions, which were refused by the Circuit Court:

1st. If the jury believe, from the evidence, that noxious or offensive smells issued from the buildings and erections of defendant as alleged

in the declaration, yet if the jury also believe that it affects a considerable portion of the community in the vicinity of defendant's works, then the Court instructs the jury, as a matter of law, that the works and business of defendant are not a private nuisance, and no action can be sustained by plaintiff for such noxious or offensive smells.

2d. If the jury believe, from the evidence, that noxious or offensive smells issue from the buildings and erections of defendant, as alleged in the declaration, yet if the jury also believe that it affects a considerable portion of the community in the vicinity of the defendant's works, then the Court instructs you, as a matter of law, that the defendant's works and business are not a private nuisance, and no action can be sustained by the plaintiff unless he has proved that he has sustained some damage peculiar to himself, and which has not been sustained by the neighborhood about the gas works.

On the former hearing of this cause, this Court held that these instructions stated the law correctly and that the instructions ought to have been given.

The counsel for the Appellee admits that it is a correct principle of law that no person can sustain an action for a public or common nuisance unless he shows that he has sustained some loss or damage peculiar to himself; but he insists that this principle applies only to the obstruction of highways; and that it has no application to the case; because, as he says, gas works, and other factories which occasion stench, smells, &c., are not common or public nuisances in a legal sense, though they may be in common parlance.

We suppose he means by "legal sense," in the connection he has used that term, that such works, trades and factories have never been held by the Courts to be common nuisances.

The only point to be determined, then, is, are gas factories or offensive trades which occasion smells or stench, common nuisances?

The distinction between a common or public nuisance and a private nuisance is, that a common nuisance is an offense against the public and not actionable, but may be removed and punished by public prosecution or indictment; while a private nuisance is an annoyance to the interest of particular persons and are left to be redressed by private actions only. Public nuisances may be committed either by doing something to the hurt or damage of a thing of public nature, as obstructing a highway, &c.; or by doing some act to the injury of the public, such as injury or annoyance of a town, city, community or neighborhood.

Hawkins' Pleas of the Crown, page 692, *et seq.*

Mr. Blackstone gives the same definition. On page 219, Wend. Bl. Vol. 3, he says, "That the law gives no *private* remedy for anything but a *private* wrong. Therefore no *action* lies for a public or common nuisance, but an indictment only."

"A public or common nuisance is an inconvenience, or troublesome offences, as annoy the whole community in general, and not merely some particular person. To constitute a public nuisance, there must be such a number of persons annoyed, that the offence can no longer be considered a private nuisance; this is a fact which generally is to be found by a jury."

Bouviers' Institutes, Vol. 2, page 506.

By this it would seem that to constitute a common nuisance it does not require that *all* the King's subjects should be injured.

"Common nuisances are a species of offences against the public order and economical regimen of the State; being either the doing of a thing to the annoyance of all the King's subjects, or the neglecting to do a thing which the common good requires. The nature of *common* nuisances, and their distinction from *private* nuisances, were explained in the preceding volume, when we considered more particularly the nature of the private sort as a civil injury to individuals. I shall here only remind the student that common nuisances are such inconvenient or troublesome offences as annoy the whole community in general and not merely some particular person, and therefore are indictable only, and not actionable; as it would be unreasonable to multiply suits by giving every man a separate right of action for what damnifies him in common only with the rest of his fellow subjects. Of this nature are,—

"1st. Annoyances in highways, bridges and public rivers, by rendering them inconvenient or dangerous to pass, &c. * * * 2d. All those kinds of nuisances, (such as offensive trades and manufactures,) which, when injurious to a private man, are actionable, and, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity of the misdemeanor; and particularly, the keeping of hogs in any city or market town is indictable as a public nuisance."

Blackstone's Com. 4 vol. page 166 and 167.

Here Mr. Blackstone expressly lays down the law to be that offensive trades and manufactures may be common nuisances and not actionable, but punishable by indictment. They are placed under the same head with cases of obstruction of highways, bridges and public rivers.

Mr. Blackstone does not agree in opinion with Appellee's counsel.

A brew house erected in such an inconvenient place wherein the business cannot be carried on without greatly incommoding the neighborhood, may be indicted as a common nuisance.

Hawkin's Pleas of the Crown, vol. 1, page 694.

A glass house is held to be a common nuisance and indictable.

Rex vs. Wilcox, 2 Salk. Rep. 457.

The keeping of swine in a city is a common nuisance and indictable.
Regina vs. Wigg, 2 Lord Raymond's Rep. 1163.

Any trade or business carried on in a populous neighborhood which produces noxious or offensive smells is a common nuisance and indictable.

State vs. Witheral, 5 Har. Del. Rep. 487.

In the case of *Hackney vs. the State*, 8 Indiana Rep. page 494 (indictment for public nuisance) instructions in substance as follows were asked and refused by the Court:

"If the jury should find it an annoyance to only a part of the citizens, they should find the defendant not guilty; the remedy in such case being by civil action."

The Supreme Court say in this case, "These instructions were correctly refused. It may be observed generally that every nuisance is annoying to only a few of the citizens of the particular place. They are the public of that locality. It is a public nuisance if it annoy such part of the public as necessarily come in contact with it."

Numerous precedents or forms of indictment for public nuisances occasioned by offensive trades or manufactures found in all the books on criminal pleading show conclusively that such offensive trades when they occasioned annoyance to a community or neighborhood, have always been held by the courts to be public nuisances. [See Wharton on Criminal pleadings.]

The statute of this State makes the erection or establishment of any offensive trade or manufacture or business so as to render the same unwholesome or offensive to the county, town, village or neighborhood, a common nuisance, and provides a quick and effectual mode of abating it.

Crim. Code, Sec. 134, Scates Comp. p. 397.

The authorities above cited show most clearly, we think, that the law makes no distinction between public nuisances occasioned by an injury or hurt to a thing of a public nature, as a public highway, and public nuisances occasioned by an injury or annoyance to the public, as to a town, city, community, or neighborhood. The law gives the same remedy in either case. The statute of this state provides that in either case the remedy is by indictment.

If the law makes no distinction between these two classes of public nuisances, but gives the same remedies in either case, then it seems to us that it must follow that the rule of law that a private person cannot

have a private action for a public nuisance, unless he has sustained some damage peculiar to himself, and which has not been sustained by the others affected by the public nuisance, applies as well to cases of public nuisances occasioned by offensive trades as to public nuisances occasioned by an injury to a thing of a public nature.

The statute of this State makes offensive trades erected or established so as to render the same offensive to the town, village or neighborhood thereabouts, public offenses, and provides that the remedy shall be by indictment. If the evidence in this case shows that the gas factory was a public nuisance, no action could be sustained against the gas company unless such action was brought in the name of the People of the State of Illinois as provided by the statute, subject to this exception alone, that if any person had sustained some damage peculiar to himself, and which has not been sustained by the neighborhood about the Gas Works, then such person may have a private action for the damages so sustained by him.

This statute seems to have been made for the purpose of preventing a multiplicity of actions. It defines what may constitute a public nuisance, and provides a quick, sure and effectual mode for punishing and abating it, by indictment, instead of allowing each person who deems himself annoyed or injured by a public nuisance, to sustain a private action therefor.

Foundries, Starch Factories, Machine Shops, Gas Factories and all such trades or business, are not nuisances *per se*; on the contrary, they are necessary trades and the public good requires that they should be fostered and not driven out of existence by a multitude of vexations and harrassing suits brought against those who erect or establish such trades. Such trades or business become nuisances only when established in such parts of a town or village as are used almost exclusively for dwelling houses, and the statute provides that such nuisances may be abated by a public action brought in the name of the people.

If the position contended for by appellee's counsel, that every person who may be affected or annoyed by a public nuisance may have a private action against the person who commits the nuisance, be correct, it will drive out of existence all such trades, business or manufacturer's as Machine Shops, Foundries, Starch Factories, &c.

If those residing in the neighborhood of the Gas Factory were annoyed by offensive smells arising from the Gas Factory, the statute gave them a quick and effectual remedy. They could have proceeded by indictment against appellant, and if appellant had been convicted, then by virtue of an order of the Circuit Court, the sheriff of the county could have abated the nuisance.

It is not the policy of the law to allow those who are annoyed by a public nuisance to band or conspire together for the purpose of having each one bring a private action for damages against the person who commits the nuisance. If such a practice should prevail and suits be brought in this way, it is easy to see that each one would prove his case, and the amount of his damages by the opinions of witnesses equally interested with himself.

We think the authorities cited in this brief fully sustain the decision and opinion rendered by this court on the former hearing of this cause.

The counsel for appellee in the petition for a re-hearing of this cause has cited a large number of cases to sustain his position, but we think that a little examination of the cases cited will show that they are not applicable to the case at bar.

Most of the cases cited by appellee have reference alone to actions brought for damages occasioned by private nuisances, and the questions under consideration did not arise in them.

The case of *Chichester vs. Leithbridge*, 1 Willes, 71, cited by appellee, simply decides that an action will not lie by an individual for an obstruction in a public highway, unless he sustain a particular damage; but if the plaintiff state that the defendant obstructed, &c., by a ditch and gate across the road by which the plaintiff was obliged to go a longer and a more difficult way, and that the defendant opposed him in attempting to remove the nuisance, this is a sufficient damage to support the action.

The only question here decided is, whether the facts set forth by the plaintiff in his declaration showed such a special damage to plaintiff as would entitle him to recover damages in this case. This does not touch the case at bar, for the instructions in the case at bar leave it to the jury to find whether the Gas Factory is a public nuisance or not, and whether the plaintiff has sustained any damage peculiar to himself and different from that suffered by the others in the neighborhood, and these are facts which were proper for the jury to find.

In *Rose vs. Groves et al.*, 5 Man. & Gran., 44 Eng. Com. Law Reports, p. 613, cited by appellee, the only points decided were, that the declaration did not allege any public nuisance, but simply disclosed a private injury to plaintiff. In this case there was nothing either in the pleadings or testimony which tended to show that the nuisance complained of was a public nuisance. The court simply held that the pleadings and testimony disclosed a private nuisance only, and that plaintiff was entitled to recover. There is no doubt but that a person can sus-

tain an action for damages occasioned by a private nuisance. The decision in this case has no application to the case now in hearing.

In the case of *Stetson vs. Faxon*, 19 Pick. 147, cited by appellee, the only point was, whether the evidence produced was sufficient to prove that the plaintiff had sustained particular damage from the nuisance. The evidence showed that defendant had erected a warehouse projecting several feet into the street and beyond plaintiff's warehouse, standing near and on the line of the street, whereby the plaintiff's warehouse was obscured from the view of passengers, and travel was diverted to a distance from it and rendered it less eligible for business, and the plaintiff was obliged to reduce the rent. The court held on this evidence that the plaintiff had suffered a special damage from the public nuisance which would entitle him to an action against defendant. We do not see what application this case has to the one in hearing. No one denies but that the plaintiff could maintain an action if he had suffered special damage peculiar to himself. The instructions asked by appellant lay down the same doctrine.

The counsel for appellee quotes quite largely from the 3d volume of Blackstone's Com., to show that offensive trades are always private nuisances, but an examination of his quotations will show that they are taken from that part of the work which treats exclusively of private nuisances. If he had examined Blackstone a little further he would have found it laid down in the 4th vol., p. 167, where Mr. Blackstone speaks on the subject of public or common nuisances, that offensive trades or manufactures, when detrimental to the public, become public nuisances, and are punishable by indictment. The reason given is, that it is not the policy of the law to allow a multitude of private actions for a public nuisance; but the law gives a speedy and effectual remedy by punishing and suppressing the nuisance by indictment. It will be seen that Mr. Blackstone makes no distinction between public nuisances occasioned by offensive trades and those occasioned by obstructing highways.

The appellee has cited 2d Selwyn's N. P., but an examination will show that all that is there said is in relation to private nuisances, and has no application to the questions raised in this case. Because a private action can be maintained for a private nuisance occasioned by offensive trades, it does not follow that when an offensive trade is carried on under such circumstances as to constitute it a public nuisance, private actions can be maintained for injury caused by such public nuisance. The cases of

Fisher vs. Dodge, 4 Denio, 311.
Vedder vs. Vedder, 1st Denio, 257.
Cahart vs. Auburn Gas Co. 22 Barb. 297.
Mills vs. Hall et al. 9 Wendall, 315,—

cited by appellee, have nothing to do with the case at bar. Each of the above cases were actions for damages occasioned by a private nuisance.

There is nothing in the pleadings or evidence in these cases which showed that the damages sued for were occasioned by a public nuisance, and the questions at issue in the case at bar were not involved in those cases.

The appellee has cited the cases of

Bigelow vs. Hartford Bridge Company, 14 Conn. 565.
 Brady vs. Weeks, 3d Barb. 157.
 Peck vs. Alden, 3d Sandford's Sup. R. 126.
 Callen vs. Valentine, 9 Paige, 575.
 Howard vs. Lee, 3d Sandford's Sup. R. 281,—

all of which are bills in equity for injunction to restrain nuisances.

Bigelow vs. Hartford Bridge Company, was an application for an injunction to restrain the Bridge Company from rebuilding their causeway through the East Hartford Meadows, for the reason that such causeway would cause a more frequent inundation of said Meadows, and thereby injure the proprietors of said Meadows both north and south of said Meadows. The court held that complainant had shown that the injury was common to all the proprietors of said Meadows, and had shown no such special injury to himself as would entitle him to the interposition of a court of equity.

An examination of the other cases for injunction to restrain nuisances cited above, will show we think that they were cases of private nuisances, so treated by the parties in each case, and so treated by the court. The bills in each case complained of a private nuisance; there was no proof of a public nuisance in any of these cases; no question as to whether the complainants had sustained special damage peculiar to himself. The reasoning in the opinion of the court in each of these cases applies wholly to private nuisances. None of the questions under consideration in the case at bar were raised in the injunction cases above referred to, and we fail to see what application they have to the case at bar.

If in these injunction cases the bills had shown that the nuisances complained off were public nuisances, or the evidence had shown that they were public nuisances, and a question had been raised in any of these cases as to whether the complainants had sustained special or peculiar damage different from that sustained by the others affected by the nuisance, then it is possible that these cases might have some application to the case in hearing. But no such state of facts appeared, and

no such questions were raised. The appellee seems to desire the court to presume that all cases of nuisance occasioned by offensive trades are private nuisances.

But courts of Equity do not indulge in any such presumption. They follow the law in this respect and will interpose only in cases held by the law to be nuisances; and if in the course of a proceeding in equity to restrain a nuisance a question of fact arises as to whether the injury complained of is a nuisance or not, or whether it is a public nuisance or not, such issues of fact must be found by a jury in a court of law.

A bill in equity to restrain a public nuisance cannot be maintained; in such a case a court of equity must proceed on information by the proper public officer.

Courts of equity do not make any distinction between public nuisances occasioned by offensive trades and those occasioned by obstruction to highways. Its jurisdiction and manner of proceedings is the same in either case. See

Willard's Equity Jurisprudence, p. 399, *et seq.*
Eden on Injunctions, (title Nuisance.)

In the case of Lansing vs. Smith, 4 Wend. p. 1, cited by appellee, the facts are substantially as follows:

In 1813 the plaintiff became the owner of a water lot in the City of Albany, which in 1804 was granted by the commissioners of the land office of New York State to one W. Quackenboss, who was the owner of a lot extending from North Market Street to the Hudson river. Said *water lot* was *land under water* adjoining Quackenboss' lot on the river. This grant of land to Quackenboss by virtue of a general grant of the Legislature enacted March 24th, 1801, and re-enacted in 1813. By virtue of an act of the Legislature enacted in the year 1823, a pier was constructed in the Hudson river in the year 1824, extending from a dock north of the plaintiff's lot about 1500 feet, called the Arsenal dock, to the foot of Hamilton Street and about 2800 feet south of the plaintiff's lot, leaving a basin between the pier and the main land, into which the Great Western & Northern Canals empty. In the progress of said work two temporary bridges were erected for the purpose of transporting the earth required to fill up the pier, one of which bridges was north and the other south of plaintiff's water lot, which said water lot plaintiff had long before filled up and constructed a wharf used for the reception and piling of lumber,—planks, boards, &c. Also a sloop lock was built in the south end of the basin in the outlet from the basin to the river. Said pier after its construction was used principally for the purpose of receiving and piling lumber, which injured plaintiff by less-

ening his business. Also two draw bridges were erected south of plaintiff's wharf, connecting the shore with the pier, which bridges and sloop lock plaintiff claimed obstructed the free navigation to and from his wharf.

This cause was tried before the Albany Circuit Court and a judgment of non-suit was entered by said Circuit Court.

Plaintiff then carried the suit to the Supreme Court of New York, in which court it was argued and the judgment of the Circuit Court affirmed.

Sutherland, Justice, delivered the opinion of the court.

In the Supreme Court three questions arose upon the bill of exceptions:

1st. Was the act of April 1823 authorizing the construction of said basin constitutional?

2d. Was the erection of the temporary bridges and the sloop lock authorized by that act?

3d. Admitting the act to be unconstitutional, or the erections complained of to be unauthorized by it, is the injury to the plaintiff of such a special nature as will enable him under the circumstances disclosed in the case to sustain this action?

In delivering the opinion of the court the Justice says, page 156, "that all the proprietors of docks above the temporary bridges have sustained an equal injury with the plaintiff in consequence of their erection. The injury therefore for which the plaintiff seeks remuneration, is not peculiar to himself. It has been equally felt by an hundred others whose property is similarly situated. It is apparent, also, that if the action is sustained, it may be repeated again and again as long as the pier remains. One recovery only satisfies the damages which had accrued previous to the commencement of the suit."

"If then, it be a public nuisance which may be proceeded against by indictment, all the considerations of public policy upon which the rule is founded, that for a common nuisance no private action shall be brought, would seem to apply to it with peculiar force."

Page 158.—"That the particular damage must be in some respects peculiar and personal to the party bringing the action. That it is not enough that he should suffer more than the community generally, if he only suffer in common with a distinct class."

The Supreme Court, after a full examination of the authorities on this point, decided that although plaintiff had suffered damage in the depreciation of the value of his dock, yet all other owners on the basin have sustained the same damage, and that plaintiff has not sustained such special damage peculiar to himself as would entitle him to sustain this action.

The court will notice that ~~their~~^{the} decision is not the mere opinion or dictum of the Justice, but it is founded upon a careful consideration of the authorities bearing upon this question. And this decision has not been reversed or modified by the decision of the court of errors.

The Supreme Court affirmed the judgment of the Circuit Court, and plaintiff took the case to the Court of Errors, and the case is reported in 4 Wendall, page 1 *et seq.*:

The judgment of the Supreme Court was affirmed by the Court of Errors. The opinion of the court was delivered by the Chancellor. The Court of Errors held that the act of the Legislature of 1823 was constitutional, and that although the business of plaintiff has been materially changed by the construction of the basin, yet his private property has not been taken for public use, and that the loss of the plaintiff, if any, has been sustained by him in consequence of the building of the lock and pier or the construction of the basin, is *damnum absque injuria*, for which no action lies against the defendant. [See page 24 and 25, 4 Wend.] The Chancellor held substantially that the plaintiff had not sustained such special damage as would entitle plaintiff to recover in this case, and the decision of the Court of Errors fully sustains the decision of the Supreme Court in this case.

In the case of T. M. & W. N. Dougherty vs. Bunting, 1st Sanford Sup. Court R., page 1, Bunting sued the Doughertys in case for obstructing a wharf. It was proved on the trial in the court below that the Doughertys had occupied a portion of the street and wharf in front of their store, and that Bunting had been damaged by reason of the nuisance in the sum of from one hundred to one hundred and fifty dollars a year. The jury gave a verdict of one hundred dollars in favor of Bunting, on which a judgment was rendered for that sum. This case was taken to the Superior Court and the question was whether, upon the evidence before the court below the verdict was sustained by the law of the case.

The Superior Court say, in the opinion of the court by Oakley, Chief Justice:

"The nuisance is admitted to have been a public one; and the rule is

well settled, that for an injury resulting from a public nuisance, no action can be maintained, except the injury be specific, and something beyond which the whole neighborhood sustains."

"The subject was much discussed in *Lansing vs. Smith*, first in the Supreme Court and afterwards in the Court for the Correction of Errors, [8 Cow., 146, and 4 Wend. 9.] The rule was laid down in that case as we have stated it; and also that the injury must be direct and positive, as well as particular."

In this case the court further say that it is not shown "that he (plaintiff) sustained any more injury from the obstruction caused by the defendant's piles of wood than other persons did in the same vicinity. The verdict was clearly against law, and the judgment must be reversed." See 1st Sandford, pages 2 and 3.

In this case the plaintiff sustained actual damage, but because he sustained no special damage peculiar to himself not sustained by others in the same vicinity, the court held that he could not recover, but that the remedy was to abate the nuisance by indictment. This case is precisely like the case at bar, and the decision in this case fully sustains the position contended for by the appellant in the case in hearing. In this case also, the case of *Lansing vs. Smith*, (both as reported in 9 Cowen, 146, and in 4 Wend. 1,) was cited as authority for the doctrine here laid down. See also in this connection, *Dougherty vs. Bunting*, 1 Sandford Sup. Court R., pages 4 and 5.

We have quoted at length from the opinion of the court in the case of *Lansing vs. Smith* and *Dougherty vs. Bunting*, because appellee's counsel relies almost wholly upon mere *dicta* used by Chancellor Walworth in delivering the opinion of the court in *Lansing vs. Smith* on page 25, 4 Wend., and upon the dissenting opinion of Senator Allen in same case, to support the doctrine he contends for.

Senator Allen in his dissenting opinion in *Lansing vs. Smith* does not dissent from the opinion of Justice Sutherland in same case in the Supreme Court in regard to the law, but only in regard to the facts in the case. Allen, Sen., on page 30, 4 Wend., says in substance, that from all that appears from the record that very few were injured, perhaps the plaintiff alone was injured, and therefore concludes that the injury complained of amounted to a private nuisance only, and that therefore the plaintiff might sustain his action; and in effect says that the authorities cited by Sutherland, Justice, do not apply, because the injury complained of is a private nuisance. It will be noticed that Allen, Sen., has not examined the cases mainly relied on by Sutherland in support of

his decision. This dissenting opinion, although cited by appellee as authority, can have no weight any further than its reasoning may commend it to the court.

The appellee very strenuously insists that the Court of Errors overruled the decision of the Supreme Court in *Lansing vs. Smith* in regard to the point contended for by appellant in the case at bar.

But the Superior Court of New York State in the two cases of *Dougherty vs. Bunting*, have cited the case of *Lansing vs. Smith* as reported in 8 Cowen, and in 4 Wendall, as authority to support a doctrine identical in principle with the doctrine contended for by the appellant in the case at bar. Also the case of *Lansing vs. Smith* is cited in Willard's Equity Jurisprudence, page 399, in support of the same principle of law for which the appellant is contending in the case now in hearing.

We think this shows conclusively that your Honors were correct in citing the case of *Lansing vs. Smith* as authority in the opinion of the court on the former hearing of this cause; at least we have been unable to find a single case which conflicts with the decision of this court rendered in the case at bar on the former hearing of the cause.

J. B. RICE,
Att'y for Appellant.

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J. B. RICE,
Att'y for Appellant.

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Ottawa Gas Light
& Coke Company

Darwin Thompson

App't's Briefs

Filed May 21. 1874

L. Leland
Clerk

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Supreme Court of Illinois
April Term A.D. 1863

The Ottawa Gas & Coke Co

^{vs}
Darwin Thompson

The defendant in error respectfully
~~represents~~ asks rehearing in this cause
decided at the last term.

There were two points decided,
1st that the defendant in error. could not
by virtue of a parol license to use the
well on an adjoining lot mean his time
in consideration that he would be at
half the expense of putting in a pump & of
keeping the well in repair &c maintain an
action against the Gas Co for polluting
the water in the well because ~~because~~
many other persons might have a
similar arrangement with the owner
of the well & consequently a similar
cause of action. It seems to be conceded
by your honors that though the Plaintiff
knew had no action for the destruction
of the well that he could have maintained
one against a person who had disturbed
him in the enjoyment of his easement.

There was ~~no~~ no destruction of the well
all its materials and water in it remain~~ed~~
A foreign substance has been introduced by
which the water is made unpalatable &
unfit for ~~use~~ some uses such as drinking
and culinary purposes. How does this
differ in principle from an interference
with the quiet enjoyment of the ease-
ment or right of the Plaintiff below to get
the water to use, by placing stones in
the well, or by building a wall or other
barrier across the way to & from ~~the~~ it
It is a disturbance of the Plaintiff in the
quiet enjoyment of his rights to use the
water. And it is for this we have declared,
The mere fact that rights to use the water
may be multiplied does not seem to us
~~a~~ a sufficient reason why all should
thereby lose their cause of action,
Does it not appear upon reflection that
the distinction made by the court between a
~~disturbance~~ destruction of the well & the
interference with the Plaintiff's right to
use the water in it is one without a
difference

The next point decided is that
because the noxious & noisome smells which
injure the Plaintiff & lessen the comforts of

his home, also injure others of the neighborhood that therefore neither of the injured parties has the remedy, which each of the others would have had if he alone had been injured. We insist respectfully and deferentially, that this decision entirely overthrows the law as it has stood for ages, sustained by an unbroken & hitherto unimpaired chain of authority, as laid down by all the elementary writers, with its well established precedents for declarations to be found in all the works of pleading.

We assume that the laws of Nature, more stable than those of Man, are the same now as they have been for the centuries within which thousands of just such ~~cases~~ actions as this have been sustained in England & this country without there even having been a single instance before (we speak advisedly after much fruitless search to find one) in which the remedy has been denied for the reason assigned in the opinion of Your Honors.

Under the operation of these laws of Nature it could rarely, if even be that such causes could in civilized society have produced their effect upon a single indi-

-vidual or upon a single dwelling house
we may therefore take it - for granted, that
in nearly every one of these repeated cases
in relation to ^{Nuisances} ~~cases~~ of this kind a
neighborhood composed of more persons
than the parties to the suit was affected,
of course vinder the reasoning of the
court - there must be one or more in-
-jured besides the Plaintiff, in order to
deprive the latter of the remedy he
would have had if he had had no
neighbors. We do not propose to speculate
in relation to whether one neighbor somewhat
similarly affected is all that is necessary to
deprive a Plaintiff of his remedy, nor do we,
if more than one is necessary, propose to
try to ascertain exactly how many would
be required for the purpose. There is no
occasion for thus trying to sever and
divide a hair "twixt north & north west side".
We take the ground that one has a remedy by
action on the case no matter how many
are similarly injured.

The doctrine in relation to ~~the~~ Common
nuisances affecting all the King's subjects
& that in such cases no one can sue
because the multitude might be all well
enough but it has no application to this
case the gas works are not a common

2

a legal
Nuisance in ~~this~~ sense. Though in com-
mon parlance they may be. ~~But~~ ~~but~~ Even if
they were the damage which is recovered
by one whose habitation is rendered un-
wholesome or uncomfortable by noxious &
noisome smells fumes & stenches is the
damnum cum injuria which is peculiar
to himself & not shared by him equally with
the King's Subjects, and not the damnum
absque injuria which the obstruction of
a common way of land or water, is to
those of the King's Subjects who do not
experience some particular inconvenience
not common to all.

Would your Honors claim that in case
of nuisance by flowing the lands of many
owners that neither could recover?

Would the doctrine apply to cases of
polluting a Stream which descended
through the lands of many proprietors so
that neither would have an action?

Would it apply to cases of nuisances by
noises as well as to cases of stenches?

to cases of diverting a Stream which used
to flow through a populous village &c

The only authorities cited in the opinion
are 3 Black com 219. 220. 19 John 223 &

& Cowen 168. If your Honors had had
time to examine Blackstone a little more

closely & critically. it would have been
seen that the Gas works are not a common
nuisance in the legal sense meant to be
conveyed by the author. He says "an action
lies for a public or common nuisance
because the damages being common to
all (the author italicises the ~~world~~ word
all) the Kings subjects no one can assign
his particular portion of it, or if he could
it would be extremely hard if every subject
in the Kingdom were allowed to harry
the offender with separate actions"

On Baughans reports cited ^{by} Justice Blackstone
it is said, "If any man might have an action
when he hath no ^{man} harm than ^{every} other
man hath, thousands should equally have
their several actions which the law permits
not; as if transportation of wool money
could be fenally prohibited by act of parlia-
ment no subject can have a particular
damage to himself for having an action
against the offender" See also in this
connection 1 Will's 71. 5 Manning &
Granger 613 & 19 Pick 147. The above
doctrine has never been applied to any
cases of nuisances except those which
are strictly common, and we find
no cases except those of nuisances by
obstructions of common highways by land

and water to which this doctrine that one of
many may not sue has been applied
It never has been applied to nuisances
by offensive trades whether caused by
corporations or individuals. Such are not
common nuisances in the sense used
by Blackstone & other common law
writers as will plainly appear by
reference to vol 4 page 167 of his commen-
taries. See also in this connection
Smith vs Mc^{Connelly} 11 Me's 517. It is also
stated by Mr Blackstone, as it is every
where else, that in cases of common
nuisance if a private person suffer some
extraordinary damage beyond the rest of
the things subject he shall have a
private satisfaction & action as if by
means of a ditch dug across a public
way which is a common nuisance a
man or his horse suffer any injury by
falling therein. We suppose that each
soldier would have an action for his
damnum cum injuria if all the
infantry & cavalry of a large army should
fall therein. but others who had not
occasion to pass that way would not have
an action for their damnum absque
injuria. That according to Blackstone
the Gas works are not a common nuisance

that the damage of the Plaintiff below
was a particular damage for which an
action lies (And either answers our
purpose) is plainly apparent by referring
back to page 217 of the 3^d volume where the
author says, "If a person keeps his hogs
or other noisome Animals so near the
house of another that the stench of them
incommodes him & makes the air un-
wholesome, or if one neighbor (He does not
say ones only neighbor) sets up and
exercises any offensive trade as a tanner,
tallow chandlers or the like it is an
actionable nuisance". He says "Though
these are lawful and necessary trades,
yet, they should be exercised in remote
places, for the rule is, Sic utere tuo ut
alienum non laedas". It seems to us
that if these trades were always exercised
in remote places as they ought to have
been there would there would have been
no actions because no injury.
Whoever before heard that there was
no action because they were not in
remote places, & because there was
therefore too much injury, we have
before heard of the idea, the greater the
truth the greater the libel, but the
idea the greater the strike the greater

the infirmity is novel to us,
 It would extend this petition to too great a
 length to cite & comment upon the very
 large number of cases similar in
 principle to the one at bar. The books are
 full of them. the law as we contend
 here in it is, was never, ~~not~~ never,
 before disputed in any court in christendom
 to attorney before Mr Van Buren even
 made the ~~point~~ ^{point} ~~point~~ No court even before
 sustained it, in such a case as the one at
 bar. The next case cited by your Honors
 is the one from Johnsons reports vol
 19 p 223. The point intended to be decided
 in this case was that no action lies
 against a public officer for a misfeasance
 unless the Plaintiff receives a particular
 injury, not common to him & the
 others of the kings subjects. It seems to us
 that the facts in the case did not
 bring it within the principle, but that
 the principle was misapplied to a case
 where it did not really belong
 to a slight extent; not however to the
 great extent that it has been done in the case
 at bar. It seems to us that there was
 a special and particular damage in
 the case in Johnsons that the Plaintiff
 did receive a substantial damage

^{cum}
~~Cessum~~ injuria for which he ought to
have recovered, but this is a difference
in retaliation to a question of fact merely.
We do not deny the principle of law. We only
claim that it did not apply to the
facts in that case. If the case in
Johnson is authority against us
there are the many cases since decided
just like the one at bar which must
overrule the one in Johnsons, cases in
our favor See the cases of

Fisher vs Dodge 4 Denio 311

Cahant vs Auburn Gas Co 22 Barb 297

Bedden vs Bedden 1 Denio 237

Mills vs Hall et al 9 Wend 313 -
and many others similar in principle
It is conceded to be the law that an
injunction in case of public nuisance
at the suit of an individual will not be
granted unless there is a particular
injury to complainant not suffered by
him in common with the rest of
the public. Consequently it requires
the same particular injury in such
case as it would to enable the injured
party to maintain his action on the
case for damages. See in this
connection the following cases,
Biglow vs Harford Bridge Co 14 Conn 565 -

Bradley vs Weeks 3 Barb 157
Callender vs Valentine 9 Paige 575-
Peck vs Alden 3 Sandf Sup R 126
Howard vs Lee " " " " 281

The cases cited by your Honors from
Cowan went to the Court of errors
See 4 Wend 1 and the principle was
conceded in the Court of errors to be
that every individual who suffers
actual damage whether direct or conse-
quential may maintain an action for
his own particular injury although
there may be many others equally
damnified. See the opinion of the
Chancellor on p 25 and the opinion of
Allen Senator. In the case itself
in the opinion of the ^{Sutherland} ~~Court~~ ~~Sutherland~~
on p 162, a case like the one at bar in
principle (Nuisance by a tall furnace
bro Can 310) is expressly accepted from
the principle for which he is contending.
There certainly can be no possible doubt
about the soundness of the ~~principle~~ position
we take. The nuisance is not a common
or public one; nor is the damage common
or public to all the firms subjects. So
that neither can sue. No two neighbors
to the Gas works are affected alike
One is more distant than another.

When the unit is north one is seriously affected who resides to the South, while one who resides at the North is perhaps not affected at all. One's habitations may differ in structure from that of another & may be more readily penetrated by the effluvia, One's surroundings may differ from another, but it is unnecessary to press this farther. It is too clear that the doctrine that a multitude may not sue in cases of common or public nuisances hath nothing to do with this case. To borrow an expression to be found on page 1118 of the 2^d volume of Selwyns nisi prius "It would be an endless task to enumerate & cite all the cases of the kind for which an action can be maintained," Sewer Stye, Irine Kiln, privy, Smiths forge, Tobacco Mill, tallow furnace, noisy trades, Gas works, Malaria from flowing lands by means of a dam, Tunnery (3 Rawls 256) and the like. See 2^d Selwyns N.P. 1118, all the elementary works, ^{etc} the digests may all be ransacked & the case at bar is the only one to be found of the kind in the world. Every work on pleading contains the form of a declaration for

just such cases, & many have been tried
with such declarations, the Gentlemen
on the other side. May hint till some
day, & he can find no authority to sustain
the ~~doctrine~~^{decision} of this point by your Honors
The Court has evidently under the
pressure of too much business ~~has~~
inadvertently misapplied the law or
principle of law to the facts in this case
If your Honors should not be convinced
to reconsider as to the first point we
hope that as the case has not yet
been tried in the Circuit - your
Honors will modify the opinion on
the second point so as to save the
useless labor of a trial in the Circuit
court in order to bring the case here
again for reargument of this second
point

May, May & Backhouse
& W. H. & Blanchard.

133 166 198
Attorney General
Co
Thompson

Petition for the
hearing.

Filed Apr. 21, 1863.
S. Seland
Clerk.

See 195 against

State of Illinois } Pleas before the Honor
Safallé County }^{ss} -able Madison C. Hollister
the Judge of the Ninth Judi-
-cial District of the State of Illinois and
the Presiding Judge of the Safallé County
Ancient Court, in Said State, at a term
of Said Court commenced and held
at the Court House in Ottawa in
Said County and State on the Second
Monday in the Month of June, the same
being the Tenth day of June in the
year of Our Lord One Thousand Eight
Hundred and Sixty One, and of the
Independence of the United States of
America the Eighty Fourth

Present the Honorable
Madison C. Hollister, Presiding Judge
Absalom B. Moore Clerk
David P. Jones States Attorney
Eri S. Waterman Sheriff

Be it remembered that hereto-
-fore Do Wit: On the 27th day of May
AD 1861. "A Precipe" was filed in the
office of the Clerk of Said Court
which "Precipe" is in the words
& figures following Do Wit:

21
State of Illinois } Circuit Court in &
Safalle County } ss. for said County. Do
June Term AD 1861.

Darlin Thompson }
vs } Trespass on
The Ottawa Gas Light } the Case.
& Coke Company }

Damages \$1500-

The Clerk of said Court will
please issue Summons to deft. in
above entitled cause (returnable to
said term of said Court) to answer
said Plaintiff of a plea of Trespass
on the case to the damage of said
Plaintiff of Fifteen Hundred dollars
Leland & Leland
Gray, Avery & Bushnell
Plffs attys. "

Be it remembered that
heretofore To Wit: On the 27th
day of May 1861, a Summons was
issued out of & under the Seal of said
Court, which Summons & the endorsements there-
on, & are in the words & figures following To Wit:

State of Illinois }
Vasalle County } ss. The People of the State of
Illinois, to the Sheriff of
said County greeting;

We command you that you summon the
Ottawa Gas Light and Coke Company
if they shall be found in your County
personally to be and appear before the
Circuit Court of said County on the first
day of the next term thereof, to be holden
at the Court house, in Ottawa, in said County
on the second Monday in the month of June
next to answer unto Darwin Thompson in
a plea of Trespass on the Case to the
damage of said plaintiff as he says in
the sum of Fifteen Hundred Dollars—
And have you then and there this writ with
an Endorsement thereon in what manner
you execute the same.

Witness Absalom B. Cloose Clerk
of said Court, and the Seal Thereof, at
Ottawa, this 27th day of May, A.D. 1861.

A. Belmore Clerk

C. H. Hooker Secretary

44 35 193 84
Darlin Thompson

vs

The Ottawa Gas Light
and Coke Company

Summons to June
Term 1861

Served by reading
this writ to W. H. W. Cushman
President of said Company
and delivering to him a
true copy thereof this
28th day of May 1861

Stuffs Fees Serv & Ret 60

1 mile 55

1 Copy 50
\$1.15

C. L. Waterman Stiff
for A. E. Groom Stiff

A & C G. A & B.
City Attys

Filed June 8, 1861

A. B. Moore

Clerk

Be it remembered that heretofore to wit: On the 21st day of October 1861. A Declaration was filed in said Cause, in the Office of the Clerk of said Court which was in the words and figures following To Wit:

State of Illinois }
 La Salle County } S. S. Circuit Court of said
 County 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 Darwin Thompson the plaintiff in this suit of a plea of Trespass on the Case, and thereupon said plaintiff by Greig, Avery & Bushnell & Deland & Deland his attorneys complains for that whereas, ~~that~~ said plaintiff before & at the time of the committing of the grievances by the said defendant as hereinafter mentioned was, & from thence hitherto hath been & still is, seized & possessed of certain premises viz: Lot two (2) in Block Eighty four (84) in the State's Addition to the town of Ottawa in said La Salle County with a situated certain messuage or dwelling house thereon situated & also the right to use the water in a certain well situated on Lot three (3) in ^{said} Block

6. which last mentioned premises are adjoining the premises of ^{the} plaintiff and by licence from the owner of said adjoining premises said plaintiff hath free access to & use of said well at all times.

And the said messuage or dwelling house & premises the said plaintiff with his family at the times hereafter mentioned, occupied and inhabited and still doth 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 hereafter 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 contriving & intending to injure & prejudice & aggrieve the said plaintiff, and to inconvenience and annoy him and his family in the possession, occupation, and enjoyment of the said messuage or dwelling house and premises, heretofore to wit on the first day of January in the year of our Lord ~~one~~ Eighteen hundred and fifty six, and on divers other ^{days and} times between that day and the commencement of this suit

wrongfully & injuriously Erected & built
certain buildings & 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 & injuriously kept & continued,
and caused to be kept and continued,
the same buildings and erections so
Erect^{ed}~~ed~~ and made for a long space of
time, to wit, hitherto and on the several days
and times aforesaid to wit, in the County
aforesaid, wrongfully & injuriously exercised
& carried on in and near the said buildings
and erections, the business of Manufacturing
Gas & Coke and made and caused & pro-
voked to be made and manufactured divers
large quantities of Gas and Coke, therein
and near thereof, By means of which several
premises divers noxious, noxious & offensive
vapors, fumes, and smokes, smells &
stitches, on the several days and times
aforesaid, rose issued and proceeded
from said buildings & erections & entered into
the air & spread & 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

8.

& impregnated with the said, noxious, vapors, & offensive, vapors, fumes, smokes, smells and stench, and was rendered so the said several days & times, aforesaid & became & was & still is, corrupted, offensive, unwholesome, unhealthy, & uncomfortable, and said Plaintiff hath thereby ~~that~~ ~~there~~ & still is ~~greatly~~ greatly annoyed and incommoded in the use possession, occupation & enjoyment of his said messuage or dwelling house or premises.

And the plaintiff further avers that the defendant in the manufacturing of Gas & Coke, further extending & injuring, prejudice, & aggrieve said Plaintiff and annoy his family in the possession & enjoyment of the messuage & premises and well aforesaid, suffered to flow from said Gas works & to be deposited and placed in or about near the same, certain noxious & offensive substances & materials used in & about the manufacturing of Gas & Coke, and also certain oily, tarry, resinous, gaseous & deleterious substances & materials, ~~which~~ were absorbed by & entered into the earth, & permeated, passed & flowed along & through the earth into said well of water, and mingling with the water with which said well was supplied

& so used in said manufacture which said
 substances & materials,

15.
Spoiled & made noxious, unpalatable unhealthy
and unfit for use the water in said well
and by means of the premises the said
plaintiff is prevented from digging a well
on his own premises aforesaid & having
therein good & ~~and~~ wholesome water.

And said plaintiff has been, & is by
means of the committing of the grievances
aforesaid, by said defendant as follows
aforesaid, otherwise greatly impaired &
damaged, to wit, in the County aforesaid

And whereas also the said plaintiff—
before & at the time of the committing of the
grievances hereafter next mentioned,
was, and from thence forth has been &
still is, lawfully possessed of a certain
other messuage and premises (with the
right to use a well of water on the adjoin-
ing lot) situated on said premises
situate in the County aforesaid
and which said last mentioned
messuage & premises, the said plain-
tiff and his family at the said
several times hereafter next mentioned
occupied inhabited & dwell 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 & intending

10.

to injure prejudice & aggrieve said plaintiff & to inconvenience & annoy him & 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 other days & times between that day ~~and~~ the Commencement of this suit, wrongfully & Supersedeas Cause & procured divers noxious, offensive & unwholesome, vapors, fumes, smokes, smells & stench to arise & 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 and 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 messuage premises & of the well aforesaid on said last mentioned day: of said County erected near the said premises of said plaintiff certain buildings & gas works for the manufacture of Gas

& Coke & in Manufacturing Gas & Coke
in & near the same suffered to be
deposited & placed in around and near
the same. certain noxious & offensive
substances & materials use in the manu-
-facture 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 into said well of water & to
mingle with the water with which said
well was supplied and thereby caused
to be spoiled. made noxious. unpalatable
unhealthy & unfit for use the water
in said well & thereby deprived said
plaintiff & 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. 1858. until the
commencement of this suit and the
said plaintiff has thereby been and
still is greatly annoyed and incom-
moded in the possession, use occupation
& enjoyment of the said last mentioned
messuage premises and well of water
& has been & is by means of the premises
otherwise greatly injured & damaged
to wit. in the County aforesaid.

12. Wherefore said Plaintiff says that he is injured & has sustained damage to the amount of fifteen hundred Dollars and therefore he brings his suit &c

Gray Abey & Bushnell
& Leland & Leland
Plffs attys

Be it remembered that heretofore to wit
On Wednesday November 6th 1861. The same
being one of the days of the November
Term of said Court for said year
an order was entered of record in said
cause as follows To wit;

Darlin Thompson }
vs }
The Ottawa Gas Light }
& Coke Company }
Coopers on the

An motion of
Plaintiffs attorneys the defendants
are ruled to plead herein on or before
the coming in of the court to morrow
morning.

Be it remembered that heretofore to wit
 On Thursday November 7th 1861 The same
 being one of the days of the November
 Term of said Court for said year further
 proceedings were had in said cause
 and entered of record as follows To wit:

Darlin Thompson

vs

The Ottawa Gas &
 Coke Company

Trespass on the lease

This day the
 Plaintiff comes by
 Deland & Deland & Gray & Gray & Bushnell
 his attorneys and the defendants being
 three times solemnly called in open
 court comes not nor any one for them
 but make default, and it appearing
 to the Court that said defendant was
 duly served with process of summons
 more than ten days before the first day of
 the present Term of this Court, and that
 they are in default of a plea in compli-
 ance with a rule of this Court, on motion
 of the Plaintiff attorney it is ordered
 by the Court that judgment be entered
 herein against said defendant by
 default for want of a plea

And now come the defendants by P. B.
 13. Rice their attorney and moves the

14.

Court to set aside the default lately entered in this cause, which motion is sustained by the Court and the default set aside. And on further motion of said defendants attorney it is ordered by the Court that this cause be continued at the defendants costs to be taxed —

Be it remembered that on the 8th day of November the same being one of the days of the November term of said Court for said year a Plea was filed in said cause which is in the words & figures following To Wit: —

LaSalle Circuit Court

Of Nov Term AD, 1861.

The Ottawa Gas Light
& Coke Company
vs

Case —

Carlton Thompson

And now comes
the said defendant

by Rice & Veris its attorneys & defends
the wrong & injury where &c & says —
action now because it says that it is
not guilty of the said supposed wrong &
injury in manner & form as said plaintiff
hath thereof in his declarations alleged

& of this the said defendant puts
itself upon the country &c & the plaintiff
doth the like

Rice Lewis
Attys for deft—

And said defendant for a further
plea to said plaintiff's declaration
and to each count thereof. And to so
much of each of those counts of
said declaration a charge the said
defendant with injuring the well in
said counts, mentioned protesting that
the said defendant did not in manu-
facturing gas & coke &c suffer to flow from
~~it~~ ~~near~~ to be deposited & placed in, around
& near to the same, certain noxious &
offensive materials and materials used
in and about the manufacture of gas
coke and also certain, oily tarry, resinous
gaseous & deleterious substances & materi-
als so used in said manufactures as is
in said counts alleged, and as to
the other supposed wrongs & injuries in
said counts alleged said defendant
says that it is not guilty in manner
& form as is in said counts alleged
and of this said defendant puts
itself upon the country &c

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and the plaintiff doth the like

Rice & Lewis

Attys for dft

13 ("Hon. William Chumason. Presiding")

Be it remembered that heretofore to wit
On Friday February 28th 1862. The same
being ~~the~~ one of the days of the February
Term of said Court for said year
an order was entered of record in
said cause as follows To Wit: —

Darlin Thompson <u>vs</u> The Ottawa Gas Light & Coke Company	} Trespass on the Case } This day the } the plaintiff comes by Ireland and Gray his attorneys and the defendant by Van Buren Rice & Lewis its attorneys, and thereupon come the following jurors of a jury To Wit: E. Richmond, H. A. Doly, J. W. Drake, S. W. Rogers, P. H. Dick, E. C. Humphrey, Enoch Hagenbuch, L. E. Baldwin J. R. Deane, M. Bonyardner, Isaac Drake and B. Boyle, who ^{are} duly elected, tried and sworn to well and truly try the matter in issue and a true verdict render, according to the evidence, and
--	---

after hearing the testimony in part, the further hearing of the cause is postponed until the coming in of the Court tomorrow morning:—

Be it remembered that heretofore to wit. On Saturday March 1st 1862, the same being one of the days of the February Term of said Court for said year. an order was entered of record as follows To Wit:—

Garlin Thompson	}	Trespass on the Case
^{vs}		
The Ottawa Gas Light & Coke Company		

This day again come the parties hereto. together with the jury sworn herein. and after hearing the balance of the evidence and the arguments of counsel. the further hearing of this Cause is postponed until the coming in of the Court on Monday morning next—

Be it remembered that heretofore to wit. On Monday March 3rd 1862. The same being one of the days of the February Term of said Court for said year. an order was entered of record in said cause as follows To Wit:—

Darlin Thompson

¹²
The Ottawa Gas
Light & Coke Company

Transpass on the Case

This day again come
the the parties to this
suit. Together with the jury sworn herein
and after receiving the instructions of
the Court, The jury retire to consider of
their verdict. and after due deliberation
had on the matters in issue. The jury
returns into open Court, and render a
verdict in the words and figures following
To Wit: "We the jury find the issues joined
in favor of the Plaintiff. And assess his
damages at the sum of Four Hundred
and fourteen Dollars."

The defendant by its Counsel
now move the Court for a new trial
herein

Be it remembered that heretofore to Wit:
On Tuesday March 4th 1862, the same being
one of the days of the February Term of said
Court for said year. An order was entered
of record in said Cause as follows To Wit:

(^{inf} Hon. Madison E. Hevlishen
~~Kelham Comasco~~
Presiding)

Charles Thompson }
vs }
The Ottawa Gas Light }
& Coke Company }

Presented on the Case

The Court this day
overrule the defen-

-dant's motion for a new trial. It is therefore
considered by the Court that the plaintiff
have and recover of the defendant the sum
of Four Hundred and fourteen Dollars
for his damages, also his costs in this behalf
expended and that he have execution
therefor. The defendant now prays an appeal hereina
to the Supreme Court, and asks leave to
prepare, under, and file a bill of Exceptions
which is granted upon condition that the
defendant enter into bond, payable to
the plaintiff in the penal sum of five
hundred dollars, with Samuel B. Gridley
as security. said bond and bill of Exceptions
to be filed within thirty days from and
after the adjournment of the present
term of this Court

Be it remembered that on the 2nd day
of April, 1862, A Bill of Exceptions was
filed in the office of the Clerk
of said Court in said Cause, which
is in the words and figures following
To Wit:—

State of Illinois } Circuit Court of Said
La Salle County } County. Of the February
Term thereof A.D. 1863.

Darlin Thompson }
vs
The Ottawa Gas
Light & Coke
Company }

Case. —

Be it remembered that at
Said Term of Said Court this Cause came
on to be tried by a jury — and at said
trial the plaintiff to maintain the
issue on his part produced the fol-
=owing evidence

James Graham a
witness a ~~witness~~ called by the plaintiff
being first duly sworn testified as
follows:

The plaintiffs dwelling house
is on Lot Two. I live on Lot 3. — Block — 84 —
States Addition to Ottawa — my Lot joins
Thompsons — the well is on my Lot — just
from plaintiffs line — plaintiff asked
me if I would let him use the well if he
would bear half the expenses of keeping
it up — There was a chain pump in the well

& the water tasted bad and we had the well
 cleaned out & new pump put in. Expenses
 were \$20 - Thompson paid half and I half -
 water in the well was ^{very} pure. The water began
 to grow bad in fall of 1859. Gas works were
 built in 1859. - On several occasions the
 stench from the Gas-factory was so sickn-
 ing & intolerable as to be a nuisance to
 my family. When ~~the~~ wind flows from North
 we have to shut our windows because of the
 smell. On two occasions when going to
 Church my wife has been taken sick
 when near the Gas-factory. - which
 sickness was caused by the smell from the
 Gas works. Jeff then asked the witness the
 following question. - "What would be the
 difference made by the Gas-factory in
 the monthly & annual value of Thompsons
 premises?" To the asking of which question
 and to the introduction of evidence in
 regard to the monthly or annual value
 of Jeffs premises. Defendant by its Counsel
 objected - it being then ~~other~~ ^{conceded}
 by the Plaintiff that he the Plaintiff, resided
 on the premises at the accruing of the
 Cause of action & has resided there ever
 since & still does live there. - But the
 Court overruled ^{the} Jeffs objection and allow-
 ed said witness to testify in regard to

the value of said premises as above asked
to which decision of the Court the
defendant then & there excepted - witness
then continued as follows: -

I think the premises without
the Gas works being there would be worth
\$200 per annum - It is worthless since
erection of gas works, - I would not live
there rent free. The Plaintiff then offer-
ed to prove by said witness that wells
others than Jeffs are similarly affected & to
the introduction of which evidence in
regard to other wells, the Defendant objected -
but the Court overruled the objection and
permitted the plaintiff to introduce said
evidence in regard to other wells - to which
ruling of the Court the defendant by its
counsel then & there excepted - witness
then continued as follows, - I have examined
other wells in the neighborhood, Mrs Woodruffs, -
Porters and Goodings the Geiger House & Kelts
all somewhat similarly affected, - Goodings
well is south East of Gas works, - across Street
Street - is 80 ft wide, Geiger House well smells
of gas, The water in my well tasted and
smelt just like the water in the Cistern where
the Gasometer ^{is} except that it was not so muddy
I am acquainted with the smell of gas

24. & know the water smells of it. I never knew a
smell like it, I am positive that the well
on my lot was poisoned by the gas works.

Cross Ex All cross Examination by Defendants Coun-
-sel, the witness stated as follows,

My house is 20 ft from plffs. I have occup-
ied it since 1888, I never rented a house in
that neighborhood. I applied for one for a
friend a short time since this was five
or six lots south of mine, I thought it would
suit my friend. but I told him that when
wind blew from north. gas would smell. dont
know what plffs house would rent for if
vacant - Benedict lives next lot south of
me & has been there five or six months
Benedict's House is about of equal value with
plffs. A man told me that he left Martin
Murrays House because of the smell of gas
know of no other persons leaving because of
gas - It was on Sunday morning that
my wife was taken sick - wind was north
east. There may have been other cause
than gas for her sickness - I am not a
physician. I think the smell of gas affec-
ts a considerable portion of the town -
I have recovered against the gas Company
at this term of Court for this same
well. - In my suit the plaintiff was

a witness - Porter and Mrs Woodruff also have suits pending - Porter, Gooding - Thompson. - Mrs Woodruff & myself agreed some 18 months ago to bring these suits against the Gas Company and club our Expenses - I go on my own Hook now - I have not used the water in my well a year or a half - don't know whether now we will make wells impure - my well is 20 ft deep - When I first built my house on the lot where I live now the land was low - The water used to stand in front of Thompsons house a good deal of the time. The sewerage was made 3 or 4 years ago - 12 or 15 horses are always kept at Goodings Stable - Stable was built about the same time as gas works - before I built my house - Cummins wagon Shop is on the lot directly north of Juffs house - wagon Shop is 18 ft high about same height as plaintiffs house. The wagon Shop is 30 ft long with an addition on the west end of 30 ft more - probably half a dozen men work in the Shop - There is a privy ~~so has~~ in use on Cummins lot ~~are eight feet in~~ I have a privy so has Thompson. The lots are eight feet in width - An Examination in Chief. The witness testified as follows. There was no

26. appearance of the water in my well being mixed with manure. I examined it - The water in my well is not so discolored as that in the gas works - Manure and urine gives water a reddish color - the water at the gas works are not so discolored -

Plaintiff then admitted that the license to him to use said water was not in writing -

Plaintiff then called W. F. Whitmore as a witness, who on his Examination in Chief stated as follows -

The well in question was dug by my Father in 1848. We lived there until 1888. The well was first rate all the time - when I last tasted the water of Graham's well it tasted - and smelt - like the water from a dirty gun barrel - But the water was not discolored - I don't know what arrangement was made between our folks and Thompson in regard to the well -

Cross X - On cross examination by defendant's Counsel said witness stated as follows

"A Slough used to Commence at Redcliffe Lot - & run across Goodings Thompsons & Graham's ^{It runs through Graham's Lot.} from North East to South West; the Slough used to run very close to the well - don't know

Exactly how close. the well was south of the
slough. The natural course of the water
was south west. The digging of side cut
dammed up the outlet from the slough
& caused the water to stand in the streets
& in the lots of Graham, Thompson Gas-
works & "On reexamination by plffs Counsel
witnessed stated as follows).

At Ex in Chief

"The sewer was probably two feet lower.
than the surface when the well was dug.
I think the slough affected the well. I
think the water from it used to run into
the well at times — When we dug the well
the water ran in from the north side so
fast that we could not pump it dry."

Plff then produced as a witness, Joseph O
Glover, who on Examination, in Chief by plffs
Counsel testified as follows) —

I know Thompson & his residence — I
have been in the neighborhood of Gas
factory when the smell was bad. To me
it is offensive.

Plffs Counsel then asked the witness
the following question. If the annual rent
of the premises was \$250, without the Gas
works being there, what are the worth with
them there, to which the defendant by its

28.

Counsel objected, the Court overruled the objection & the defendant then & there Excepted. Witness then Continued - in 1856 & 1857. the premises were worth \$200. per annum, perhaps not quite that in 1856 - \$150 or \$175. would be a fair rent for 1856. —

Off then asked the witness the following question "How much in your opinion is the annual value of the premises diminished by reason of the Gas works?"

To which the defendant objected - The Court overruled the objection and the defendant by its Counsel then and there Excepted

Witness then Stated;

"My opinion is that a good tenant would not now rent it at half price he would not rent it. Rent houses & stores in the city"

Cross Ex

An cross examination by defendants Counsel the witness testified as follows —

"I have no dwelling in vicinity of Gas works - Have lived in no building in that ~~vicinity~~ neighborhood since 1856 - think I know what tenants are paying round there - I cant name any particular house there the rent of which I know - dont know what rent any particular man round that ~~rent~~"

is saying — I think Real Estate is lower
in that neighborhood than it was before
1856. Property is generally lower in price.
I know of no unsanitary dwellings in
vicinity of Gas Works — Even if there were no
Gas works there, I would not take Thompson's
house premises at a gift and be compelled
to live there, as I have been situated since 1858
as I ~~live~~ have built live in a house of
my own so ^{that} I don't base my opinion entirely
upon the fact of the gas house being there,
If I wanted such a house as Thompson's
I would not live in it if I could get it
rent free on account of gas works. I have
seen the Chicago & New York Gas Houses
have smelt their odour. The defendant by
its Counsel there asked the witness the
following question "In what part of the City
did you smelt the odour of the gas works
in Chicago?" Plff objected to the question
Court sustained the objection & defendant
by its Counsel then & there excepted —

Witness then continued as follows:

"At times the gas smells half three blocks
from the gas factory here — At times the
smell affects a considerable portion of our
population. I presume the odor from
these Gas Works is not more offensive than
that from other Gas Works."

The Jff then called Martin Murray, who on examination in chief by Jffs Counsel testified as follows:

I own lots 13 & 14 in Block 66. There is a well there - has been there 18 yrs - well was good before before Gas Works were built & bad since. The gas spoils the well - it smells like it. - a gas puddle used to stand before my door - and it looked like dyers water. The defendant by its Counsel then objected to the receiving of any Evidence in regard to wells other than the Plaintiffs & moved to strike out the evidence of said witness - but the Court overruled the objection and adjudged said Evidence to be competent to which the defendant by its Counsel then & there Excepted

Cross Ex

On cross examination by defendant's Counsel - the witness testified as follows)

My lots were very low until I filled them up with lime from Gas works I paid Gas Company 1/2 ^{a.} load for 6 or 7 loads of lime - there was a pond on my lot before gas house

was built - I went to Counsel to get
them to build a sewer, I intended to
sue Gas Company - Thompson - Graham &
he will be witnesses in my suit - The
water standing ~~run~~ deep on my lot
was black - I thought Gas made it so
The water smelled like the Gas from a
Broken Gas pipe - I could tell the
gas injured the well as well as I could
tell that a dead kitten would, if I
should find one in my well

Ex in Chief
Reed

The Jelff then Called A.P. Reed - who - on
Examination in chief by Jelffs Counsel
justified as follows - I lived in Martin
Murrays house for a year - quit there
two years ago - thought the smell from
gas factory when the wind blew from
the west was unhealthy - "It would take
away a persons appetite - Plaintiff then
offered to prove by said witness, that the
gas had made witness family sick, to
which the defendant objected but the Court
overruled the objection & the defendant by
its Counsel then and there excepted -
witness then stated as follows "When the
water ran from the gas works across
the street the water stood round my house
smelled disagreeable - it was sickening
to my family - when the water in the

32. well on Murrays lot was low it tasted like the gas from a gas burner smells.

Cross Ex An cross examination by ~~clerk~~ Counsel witness states as follows: I don't know how the water got out of the gas works - first I saw of it was in the street - I think the Gas Company had a reservoir in the works in which the gas water used to run"

A.B. Smith The plaintiff then called A.B. Smith who on examination in chief stated as follows:

As a member of the city Council I examined Grahams well a year ago last summer - I went to the gas works with Mason - Mason said the pump in the well of the Gas works was out of repair, so that we could not get water from ^{the well. Afterwards saw a man draw water from} said well with a bucket - and I examined that ~~water~~ ^{the} water in Grahams well. Tasted stronger of gas than that of the Gas ~~works~~ company's well. The water in the wells and in the Park smell and tasted near the same. the water in Grahams well was offensive to the smell and taste - I am acquainted with the smell and taste of gas and have doubt the well was

Impregnated with Gas - I live three or four clear blocks from the Gas Works - South west of them. Off then asked the witness the following question - "What is the affect upon you when the wind blows from the North East?" To which the defendant objected - Court overruled the objection & defendant by its counsel then then excepted.

The witness then continued "The smell is strong by spells and very disagreeable But it never troubled me I never found any fault with it." Plaintiff then offered to prove by said witness, the annual value of Juffs premises & well, to the introduction of which evidence defendant objected, Court overruled the objection and defendant excepted.

The annual value of Thompsons premises up to the present time would be \$100 or \$175 - provided there was no objection to the neighborhood, on account of Gas works. I will state my opinion in any other way. A man who was able to pay \$100, or \$175 per year would not rent that house at all. If a man wanted a large house for small rent he might be willing to pay \$75⁰⁰ per annum

33.

Prop & On cross examination the witness testified

34.

as follows:

"Aside from the Gas work the situation of Thompsons house is not a desirable one. The wagon shop, Living stable & Blacksmith shop, the proximity of the Canal and the low and wet nature of the ground are all objectionable. I would not have given \$850 per year for Plaintiffs house before the erection of the Gas works because I could have suited myself better. I think the smell from the Gas works affects a large portion of the Community there - There are water works in this City the water of said water works comes from south of Illinois River - It is first rate water - I know nothing about the probable supply of water from them.

Samuel Patterson

Plff then Called Samuel Patterson, who on Examination in Chief by plffs Counsel testified as follows:

I examined Graham's well in 1860 as member of City Council, we came to conclusion that the well was injured by the Gas - The water in the well ~~was~~ that in the tank had the same smell and taste but the water in the tank a little stronger than the water in the well - I cant be mistaken about it being the smell of Gas

Cross Ex. On cross examination the witness stated as follows - The gas smell is not particularly offensive - the smell don't hurt me. I have been around the gas works considerably. The smell would not make plaintiff's house of any less value to me. I would make no material difference in renting the house on account of smell."

John Batchelder

The plff then called John Batchelder who testified as follows "I worked near the Gas factory at Goodings Livery Stable three months, at times when the wind was right smell was bad - plff then asked the witness the following question "What is the effect of the Gas works on the houses in the neighborhood to which the defendant objected but Court overruled the objection & defendant excepted -

The witness then stated as follows. The effect on Goodings Stable was bad - well at Livery Stable was made bad by Gas works

Cross Ex On cross examination by defendant's counsel the witness stated as follows: - We used to throw the manure from the stable in a hole back of the Gas works. We used to keep 12 or 14 horses usually at Goodings Stable. Considerable stagnant water used to stand round in the ravine

Years ago - I have seen the ravine full of water - The ravine ran across Graham's lot near to the well - after Sicks Cut was built - 14 years ago, there was no outlet from the ravine. The well at Goodings livery stable was walled up and cemented from the sand rock to the floor of the stable. - The plat here shown to me and the ravine marked on it I believe it correct. The plff. then called John Murray who testified as follows

I was employed in construction of Gas Works tank is 14 or 15 ft deep - goes into sand rock - we found water when we got into sand rock and kept pump running night and day. Water leaked into tank through cement into it until it raised six inches in the tank - we found a regular spring of water - cementing would not prevent it - when they pumped the water out of the tank into the street it created an awful stench all over the street. -

The plaintiffs Counsel then asked the witness relative to M. Murray was Defendant objected to witness testifying in regard to said well. Court overruled objection & defendant by its Counsel then and then excepted.

Witness continued; Father's well was dug

15 yrs ago. - water was good before building of Gas factory - bad afterwards - I got the nasty smell and taste which arises from gas. Smell from Gas factory was bad at times. The Plaintiff then offered to prove by said witness that witness' family had been made sick by the gas. To which the defendant by its Counsel objected - Court overruled ^{the} objections and defendant by its Counsel then & there excepted - witness proceeded as follows: My children were sick more or less all the time - I moved into the country 5 yrs ago next March - have been at gas works probably over a month during that time - Gas house well became bad a year or so after the Gas house was built.

Cross Ex

On cross examination by defendant's Counsel the witness stated as follows: Of my own knowledge I know nothing of Graham's well becoming bad - I am not a mason - I don't I don't know how thick the cement is at bottom of Tank. - It is made from Utica cement - The cement never got hard - The Tank was not pumped thoroughly dry after it was cemented - water continued to

ooze in at the bottom. The men did not
 continue to add cement until they
 stopped the water coming in —
 Business at the building of Gas works
 was to see that the leaders kept ~~at~~ work
 &c. — I am not a cement maker, I don't
 know what made my children, ⁱⁿ ~~in~~
 not a physician. Children were sick some
 in the country also — have heard Father
 complain about the stink — witness
 objected to stating to whom said lot —
 which he had lived belonged, because it
 would criminate him. Jeff then
 called Dewitt C Gooding who on Examination
 in Chief by Jeffs Counsel stated as
 follows:

Ex in chief
 Gooding

"My stable is on south East corner from
 Gas works Lot 4 Block 85 — water in
 my well was very excellent in July 1887
 In the spring of 1888 it was bad — within
 a month from the time it was good it
 changed to be very bad caused by Gas I think,
 when the well was ~~bad~~ full it was better than
~~than~~ when low. The earth underneath my
 stable is dry. In first place I thought
 from smell that Gas was escaping on
 going to the horse trough found it came
 from that. in a wet time water was not

bad in dry time the horses would not
drink it - well worst when surface of
earth is dry. the draining of manure
would not cause under the barn floor the
earth is dry - no peculiarity of color to
water when pumped into trough - is covered
with scum & froth - the well from 5 to 7 feet
to sand rock - laid up in cement - from rock
to floor of harness room, the well is so
cemented that surface water cannot get
into it - Graham's & Hordneffs wells became
bad soon after mine. On cross examination
by defendants Counsel the witness stated as
follows: There was no peculiar appearance
to the water of my well except that it was
frothy when pumped into the trough -
at first I thought the gas was escaping -
but on going to the trough I found it was
the water that smell of gas: —

I don't notice the smell from the gas works
except when they take the lime from the
purifiers - perhaps one day in two
weeks - then if wind is right the smell is
stronger. In wet weather the water in my
well is not as bad. - in a very dry time when
the well is low the horses would not drink
the water. Our prevailing wind is west - seldom
a direct north wind here. I keep 16 horses
constantly in my stable. I send water

from Grahams well until within a year
 my men drank it until then, Rev Benedict
 lives next door to Grahams. I don't know
 whether the water of his well was good
 or not - I have filled up my lot with
 lime from the Purifier at the gas works
 perhaps five or six loads - I never noticed
 that the water of my well produced any
 effect on the horses that drank it. Four
 fifths of the manure of my stable was haul-
 ed away to garden & there never was
 more than 2 or 3 loads of manure accumulated
 at my stable. Plff then called Samuel
 Porter who on examination in chief by
 plff counsel stated as follows:

"I live with Henry A. Porter - my Father
 just lot south of Gooding's stable -
I have there so long that I don't notice
 the smell of gas as much as a stranger
 would - It does not smell unless the
 wind blows in that direction. The gas
 smells bad at times to one not used
 to it -

Witness Gooding was then recalled by
 plff and said:

It might have been Ben-
 edict & not Grahams that the Boys got
 water from.

Witness Porter continued:

"Our well grew bad 3 or 4 years ago. Grahams 2 or 3 years ago - the water of both smells similar"

"On cross examination by dft's Counsel witness stated: "Our water is clear as ever - we deepened our well two years ago - after that it was good - can't tell how long before it became bad again - My father is going to have a suit against the Gas Company for injuring his well - If the plaintiff recovers in this suit, it will be a nice thing to help father - I told my brother to get Mr. Hopton for a witness in this case. I thought Hopton would help the plaintiff's side - I talked with the witness Mitchell about this suit"

Prof then called A Cummings who on his Examination in chief by dft's Counsel testified as follows:

Grahams well became bad in 1858 or 1859. - The water became nauseous, gaseous, & unfit for drinking. The smell from the Gas works & that the water is the same. I am wagon maker - my shop is across the street - 80 ft south from gas factory when I commenced work there, the gas was offensive. But I am used to it now and don't mind it much

Whereupon the plaintiff rested his case

42. The Defendant to support the issues
Robert Henning upon his part; introduced the following
testimony - Robert Henning being first duly
sworn, testified as follows: I am a Mach-
inist - I work in G. H. Ruggs factory - 300 ft
due north from Gas works - I have worked
there in the upper story for three years -
sometimes there is a smell disliked by some
persons. It was not agreeable to me at first
but I am not annoyed by it now. On
Cross Examination the witness stated as
Cross Ex follows. "There is a foundry both north
& south of our factory - at first I did not
like the smell but now it does not trouble
me either summer or winter - have alwa-
ys been where there was considerable smell
from machinery & smoke & steam. I
perhaps would not notice the smell as
much as one who had been engaged in some
business - ~~don't~~ like the smell of gas now
but not so offensive to me now as it was
The defendant then called James Warner
who testified as follows;

"My business is in the same shop as
the last witness - most of my time spent
there - we perhaps smell the gas half a dozen
times in a year. It is not half as annoy-
ing as the smoke from the foundry - The
foundry furnace is 60 or 70 ft south

of our shop & between us and the gas works" An Cross examination witness
Cross Ex stated as follows "I never smell the
Gas works and the Foundry at the
same time ^{The smell of Gas is distinct smell} I off Concedes that the lots
all around that neighborhood of the
gas works are sixty feet wide. The defendant
then ~~was~~ called Thomas H. Clark who
testified as follows:

I live two lots south of
Miss Miles have lived there since March
1861. I boarded with Miss Miles four
years - slept there - I never noticed any
smell from the Gas works during
the whole 4 years I have been Teacher
in Public School on Columbus Street
Three years - my school house is nearer
Gas works than Glovers house School
house is north East of Gas works - my
school has never been annoyed by
the Gas works - In the summer all
the windows of the school house are
open - I occupy the front upper room
in the school house opposite the Gas
works" An Cross Examination the witness
Cross Ex stated as follows - "I have never been
annoyed by the Gas wherever I have
lived - I have smell it at times
when passing up the street south of

44. Washington Square - Miss Miles is South
on the same Street - with wells - I suppose
= as we used the water from her well when
I boarded there - Water was good -

The defendant then called George S
Stebbins - who testified as follows: "I
have boarded at Miss Miles's for five
years - have lodged there since 1856 -
The gas works have never annoyed me -
I never noticed them except when
passing close by them -" On Cross
Examination the witness stated as
follows: "I do not recollect ever smelling
the gas on Sussex Street - I think
our house - Miss Miles' - is nearer the
sidewalk than the Episcopal Church
is -"

The defendant then called George H
Rugg who testified as follows:
Rugg. "My place of business is on the same
Block ^{with Gasworks} - I spend most of my time
there in business hours there - I was
annoyed by the gas works for three or
three months, perhaps a year and
a half ago, when they were cleaning
out the tank. I pass the Gas works
every day. Sometimes twenty times
a day - and I have never experienced
any annoyance or inconvenience from

them - except as I have stated - when they cleaned out the tank" On Cross Examination the witness stated "I have occasionally smelt the gas somewhat" I have often passed the gas works with farmers they asked me what smelt - so. I told them it was gas but I did not notice it myself"

Patch

The defendant then called Abba Patch who testified as follows: I am foreman of Ruggs Shop - in the same block as Gas works - have been there nine or ten years - I spend all my time in business hours there - I find no inconvenience from Gas works - Our Shop is three stories high the windows are open ⁱⁿ summer - as foreman I am in all parts of the building - no where am I annoyed by the smell of Gas - I pass the gas works twice a day or more. On Cross Examination the witness stated as follows: I have sometimes - but seldom - smelt the gas - In winter not at all in summer but little. The smell from our furnace between the shop and the Gas works is of Sulphur. The machine Shop is nearer to our Shop: The machine Shop & the Gas works smell one about as bad as the other the Gas works" The

46.
Rice

defendant then called John B. Rice who testified as follows:

I board at Miss Miles. just two streets and a block south of the Gas works - I have boarded there pretty much all the time for five years - The blocks are 300 ft in length. I have never been annoyed there by the gas works - I have frequently been in neighborhood of Gas works - Sometimes I have smelt the Gas before entering the gas works - at other times not till I entered the office of gas works. - At times the smell was quite strong. On cross examination by Jeffs Counsel the witness stated as follows: I remember smelling the gas once where I was on the S. E. corner of Washington Square. the wind was blowing directly from the Gas works toward me - The air was light - I noticed the smoke of the Foundry falling to the Earth Gas is five times lighter than atmospheric air (The Jeffs then admitted that what the witness said regarding the lightness of the gas. is correct) Witness proceeded: I have never Examined the water in the gas house well nor in the tank - I don't think the water brought here upon the

Last trial smells like Gas - The lime used at the gas works emits a strong smell - I have seen water in tank since the gas works have been in operation - The tank is 40 ft across - 10 or 12 ft deep - I think the water comes within two ^{or three} ft of the top of the tank - I believe the gasometer comes within about a foot of the edge of the tank - I suppose the object of the water is to hold the gas in the gasometer - A pipe conducts the gas up through the water into the gasometer, where it rests on top of the water."

The defendant then called Rev. Benedict, Rev Benedict who testified as follows:

I am a clergyman live in second house south of Jeffs, have lived in city three or four years - have frequently been in that neighborhood, before I moved there visiting my parishioners & I never smell the gas, unless close near gas works & then it was simply unpleasant - by no means unendurable - I have been where I now live since July 1861. I pay \$200. & the taxes \$20 - per annum - I officiate in the Episcopal Church every Sabbath - I never smell the gas in my church"

48. The defendant then called W. Reddick
W. Reddick. who testified as follows:

I live N.E. of gas works, probably 40 or 50 rods
from gas works - Have lived there since
before the gas works were built - I am
never inconvenienced by the smell of gas.
Glover lives on same street - South of
me - about same distance from Gas
works. I pass Glover's house going to and
from my store - I am never inconvenienced
by a smell though I have smell - is
sometimes - I would rather rent a
house farther from that neighborhood.
There Martin Murray's is - I would
rather live near the gas works than the
Starch Factory" In Cross Examination

Cross Ex by plffs Counsel witness testified as
follows: "A situated where Thompson's is
is not worth as much as one situated
where mine is & not as near gas factory would
consider it less valuable on account of smell
my knowledge of the smell & injury to the
well, is derived chiefly from the inform-
ation of others and the complaints of
those who have brought these suits and
others"

The defendant then called Dr H. W.
Hopkins, who testified as follows: "I have
lived here fifteen years. - I have a well

Hopkins

in Block 90 which has been spoiled by the
 stables and privies about it. The
 water of the Mansions House well was
 good once but has become bad. The water
 of the well where I now live (near Wm
 Riddick) is not as good it used to be. There
 is a great accumulation of filth about
 all cities, & that naturally tends to
 spoil the wells. The water standing in
 the coal diggings north of the Canal
 would spoil wells, if it should get into
 them. Supposing the ravine spoken
 of to have run through the Graham's
 Lot near to the well as Whitmore testified
 with Goodings Stable ~~etc~~ in the vicinity
 the well would - I think become bad -
 the matter from the stable would naturally
 settle toward the well. On Cross Examina-
 tion the witness testified as follows:
 The water in the well where I now live has
 now smell - we have supposed that the
 ground even where I live has been
 made more moist by the digging of
 the Canal - I don't think the water
 from Goodings manure could get
 to Thompsons well - I can easily tell
 the difference between the smell of gas
 & that of urine. If the water in Jeffs well
 is worse in dry weather than in wet

Hickling

weather it could not be caused by surface water - The defendant then Called William Hickling, who testified as follows, I have lived in this city over 25 years - am acquainted with the wells in the business part of the city - the wells in the now thickly populated part of the town used to be good - now they are most all bad - I am satisfied that the surface drainage spoils them - I have had old wells examined & dug round & am satisfied that they are spoiled by surface matter percolating into them - The same causes are beginning to injure the wells across the ridge cut where I now live - The 2nd or 3rd well dug in town was that under Cheever's store - it was first good at first - afterwards became bad - when digging the Cellar for the Store - we had to remove the earth about the well & I became satisfied that the matter from a neighboring spring, percolating through the earth had spoiled it, the soil in which the city stands is very porous - The rock is porous also - I have a good well on the same block where there are other bad ones, this is caused by their different positions in regard to the dip of the rock - where the rock dips toward the well the surface

drainage will percolate into the well much sooner than when the rock is level - The manure &c around the stables soaks into some and not into others - A cistern cemented with water lime will always hold the water in it - but water from outside will sometimes percolate through into the cistern - I have often seen the water standing around the neighborhood of Goodings stable and in the streets between his stable & Martin Murrays house & between the stable and Thompsons house a foot or two deep - the water percolates from the Canal into all the wells along it - and Canal water is unfit for domestic use.

Cross Ex

On Cross Examination the witness stated as follows: "The Court House well, that of the Mansion House - & Walker's used to be good, but are now grown bad - The water where I now live is growing bad - It is only a matter of time how soon the wells round town will become bad - Cisterns and Cellars, cemented with the hydraulic cement - the same kind as the gas house tank was cemented with - although perfectly water tight - from within will sometimes admit

52.

water percolating into them from outside
The defendant then called John
Smith, who testified as follows: I
have worked in the Foundry immediately
north of the gas works for a year and
a half - we have a well there, when the
water is drawn from the Canal the
well become dry, and when the water
is let into Canal the well is full in
a few days after - Graham's well &
the one I speak of are about an equal
distance from the Canal -

The defendant then called Peri Masow
who testified as follows: I am Superintendant
of the Gas Works - have been
there six years - was there when the
works were built - The tank is forty
feet in diameter & sixteen feet deep
the top of the wall of tank is a foot
above the surface of the earth - The water
in it is about twelve feet deep - tank
is built of brick and cemented with
water lime or hydraulic cement - The
bottom is sand rock covered over with
from six to ten inches of water lime
or hydraulic cement - Tank was
emptied five years ago - and again
about two years ago - the first time
we emptied it to mend a pipe which

Conducts the gas into town - ~~the~~ the ~~pipe~~ the
~~the~~ the pipe ran through the wall & was ~~is~~
 welded under the cement - at the bottom
 of the tank - & of course we had to dig
 through the cement - to reach the pipe
 where we dug the cement was full six
 inches thick and very hard - as hard as
 any I ever saw - I could discover no
 flaw or leakage - though I looked & exami-
 ned particularly - we mended the pipe
 and cemented it over again and the
 cementing was well done. The wall around
 the tank is twenty inches thick at top
 and averaging three or four feet at
 bottom - in some places five feet - the wall
 was filled in behind with concrete - while
 we worked in it - the first time for one day
 & the second time six days, we were not
 troubled by water coming in - I considered
 the tank a very fine piece of work. The wall
 was not plastered on the inside. The second
 time we emptied it was two years ago
 next June. - I found it in perfect order -
 I examined it closely and found no
 flaws & no leakage. - I spend most of my
 time at the gas works - The smell comes from
 the purifying lime - This lime is bought
 of us by the neighbors at one shilling per
 load - to fill up their lots. -

54. Gooding had a good deal of lime from us to fill around his stable - Strawn & Powell had considerable to fill around their warehouse back of Grahams, —

Plaintiff took some to his house - Gas is five times lighter than ~~atmospheric~~ atmospheric air - & it cannot be smelt unless the wind is blowing directly from the works toward the person smelling unless in the immediate vicinity - I have tried this as an experiment - The gas travels with the current of the wind if any, if none it rises from the earth's surface - I have passed the plff's house on an average twice a day for the last five years - & have never smelt the gas in front of his house we do not have much north wind here, South & South West winds prevail - Cummins wagon shop extends both East and West further than plff's house, so also is it higher - it seems to me - therefore - impossible to smell gas at plff's house, the wind will not carry it there - There ~~are~~ are five lots in the block, Ruggs shop is on the North lot, Gas works occupy the two South lots, and the Foundry in connection with Ruggs shop is on the next

Lot north from Gas works. It is about
One hundred and twenty ft from
the gas works to Ruggs main Shop —
The Gas is Manufactured properly and
carefully there are no leakages — no
gas escapes after the coal is put into
the retorts — neither myself nor any
of the men have been sick an hour
since I have been employed at the
Gas works. I have gained thirty six
pounds in weight during that time
we had a man his wife & four children
living within the gas works for four
years. They were all alive and well
when they left — The whole neighbour-
hood of Grahams, Gooding Thompson
Gas Works & used to be a very low & ~~low~~
spot — the water stood there in large
quantities — we have water works at
this city — the water comes from Springs
South of Illinois River — The defendant
by its Counsel then asked the witness
~~the~~ to state the quality of the water
of said water works. To which plff
objected — The defendant then offered
to prove that there are water works in
this city of Ottawa affording an inex-
haustible supply of pure Spring water
carried by pipe through the city

56. to the dwellings of all such persons as desire it - that pipes can be put in to carry such water to the dwelling of the plff. and supply him with all the water he may need for any purpose for which he has heretofore used the water from Grahams well and all he may need and require of a purer & better quality than the water of Grahams well ever was at an expense not exceeding ten Dollars. - To the proving of which the plff objected - the Court sustained the plaintiffs objection & ruled that all such evidence was incompetent - because the evidence sought to be introduced was not confined to the evidence of said water works previous to the commencement of this suit -

So which decision of the Court the defendant by its Counsel then & there excepted. On cross examination by Cross Ex Plff the witness then testified as follows:
"The ammonia water from the test well goes into the tank - Coal & lime are used in the manufacture of gas - I told Thompson once that the well I believed was injured by the Gas works that it might be injured by leakage

from the tank - this was after my first examination of the tank - I don't remember stating that in presence of Hopt - I don't think that the water in the wells of that neighborhood would be good even if there were no Gas works there. There is a similarity between the smell of the water in Thompsons well and that in the tank - I have no doubt that the gas is one of the causes that affects the well.

The Defendant gave in evidence the following plat representing the situation of said Gas Works and their vicinity and Plaintiff considers that said plat is correct.

it might be so - and that might have affected Graham's well - The frost had affected the Cement on the top of the wall - that the water might leak out -

The defendant, ^{then} moved to exclude the above testimony of Patterson from the jury, Court overruled the motion and defendant Excepted

The foregoing was all the evidence in the case. The Court instructed the jury on behalf of the plaintiff as follows:

1st - If the jury believe from the evidence that the defendant, prior to the commencement of this suit - Erected or caused to be erected near the dwelling house of the plaintiff - the same then being situated on lot two Block eighth four, in State addition to Ottawa, in Cass County, works for the manufacture of Gas and Coke, and that by means of carrying on said business, said defendant on divers days and times between the first of January 188⁶ and the commencement of this suit caused noxious and offensive fumes and stink to rise in and about and near plaintiff's dwelling

Answer

60. House and the said premises were thereby rendered uncomfortable and less fit for habitation and the value of the use thereof was thereby materially diminished. The jury should find a verdict for the plaintiff. —

2nd If the jury believe from the evidence that the defendant erected or caused to be erected near ^{the} dwelling house of Plaintiff, the same then being situated on lot two Block eighty four, in the City Addition to the Town of Ottawa in Casselle County works for the manufacture of Gas and Coke, and if prior to the commencement of this suit there was a well on a lot adjoining that of plaintiff, and that the plaintiff then had, by the licence and permission, and that such permission & licence were founded upon an agreement made between the plaintiff and such proprietor by which the plaintiff was in consideration of such licence and permission to make valuable expenditures upon such well, and if the jury further believe from the evidence that such expenditures were actually made by the plaintiff and that said licence remained unrevoked by the owner of the

proportion of said adjoining Lot^r the right
 to the use of the water in said well and
 if the defendant placed or caused to be
 placed in and near said Gas works
 substances and materials used in said
 business of manufacturing Gas and Coke
 which when mingled with the water of
 said well rendered it noxious to the
 taste and otherwise unfit for use,
 and if the defendant did cause or
 permit said substances or materials
 to soak into the ground and to
permeate and pass along through
 the earth and to mingle with the
 water in said well, and said water
 was by means thereof rendered noxious
 to the taste and otherwise unfit for
 use. The Jury should find for the
 Plaintiff

B^{2d} If the facts are as in either or both of
 the above instructions, it is not necessary
 that it should be shown in addition
 that the Defendant conducted the
 business of Manufacturing Gas & Coke
 in a negligent manner. Such kind
 of business if the Jury believe it was
 carried on in the neighborhood of
 many dwelling houses in a city

Given

62 Should have been so conducted as not materially to have injured the persons dwelling in that neighborhood and the law under such circumstances requires that the defendant should have so conducted such business as not materially to have injured others residing in the neighborhood.

4th The jury in order to estimate the damages in this case should determine from the evidence how much under all the circumstances in evidence, the value of the use of the plaintiffs premises has been diminished by the acts of defendant prior to the commencement of this suit and render their verdict accordingly. Exercising their best judgment upon the facts in proof, by connecting them with their own general knowledge and experience in relation to human affairs. They may also take into account the plaintiffs damages for his personal discomfort caused by the acts of the defendant mentioned in the first instruction, if the jury believe said facts existed and that they caused any personal discomfort.

Given

To the giving of which instructions to the jury ~~or either of them~~ and to the giving of either of them the defendant

by its counsel then and there excepted
The defendant by its counsel then asked
the following instructions to the jury
on the defendant's behalf;

1st If the jury believe from the evidence
that that noxious or offensive smells
issued from the buildings and erection
of the Defendants as alleged in the
declaration. Yet if the jury also believe
that it affects a considerable portion
of the community in the vicinity
of the Defendants works then the Court
instructs you as a matter of law that
the works and business of Defendant are
not a private nuisance and no action
can be sustained by the plaintiff for
such noxious or offensive smells.

2nd If the jury believe from the evidence that
noxious or offensive smells issue from
the buildings and erections of Def-
endant as alleged in the declaration,
yet if the jury also believe that
it affects a considerable portion of
the community in the vicinity of
the defendants works. Then the Court
Instructs you as a matter of law, that
the defendants works and business are

Refused

Refused

64, not a private nuisance, and no action can be sustained by the plaintiff, unless he has proved that he has sustained some damage peculiar to himself, and which has not been sustained by the neighborhood about the Gas works. ^{2 Hilliard & Son 72-1} ^{1 Sanford (N.Y.)}

3rd The Court instructs the jury as a matter of law, that as it appeared by the evidence that the deft was not at any time in possession of the well, and as he has proven no legal title to the same he cannot recover any damages for any injury done to the well, even if the jury shall believe from the evidence, that the water in the well was injured in consequence of the defendants works—

The above instrument is given with the following qualification by way of addition thereto—

"But the jury are further instructed that if they believe from the evidence that the plaintiff has sustained injuries to the enjoyment of a right to use the well founded upon an agreement made with the owner of the well for the use of the water in it in consideration of

Given with the qualification above.

valuable expenditures made upon it by the plaintiff (if any such expenditures are shown by the evidence to have been made by ~~the~~ him) then the above instruction would not be applicable)

4th 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 for any speculative or prospective damages. If no actual damage has been proved, then the plaintiff can only recover nominal damages.

6 Hill - 292 - 297 -

2 Quackenbush - 474

5th The plaintiff is not entitled to recover on the ground of noxious smells from said premises, unless the jury believe from the evidence that the buildings & erections of the defendant are a nuisance, and if it is a public nuisance, then the plaintiff cannot recover on the ground of any noxious smells or vapors arising therefrom

Given

Refused

06.5th The plaintiff had no right to have the
Jury go and examine the well of water -
and the Jury have nothing to do with that
question. and it was improper for the
plaintiff's counsel comment on their offer
to do so. and the jury will disregard it -

Given

7th The plaintiff alleged in the declaration
that the defendants are an Incorporated
Company under the laws of this State
If therefore the Jury believe that the
defendants built their gas works under
Careful authority, and that they
built the works and have carried
on the manufacturing of gas in a
proper manner the defendants are not
liable to an action for any consequences
that have resulted. and to ascertain whether
they built the works under careful author-
-ity, the Jury may take into consideration
the allegations in the declaration that the
defendants are incorporated under the
Laws of the State. -

Refused

The Court refused to give to the Jury
the first, second, fifth & and seventh Instru-
-ctions above asked for by the defendant -
to which ruling of the Court in refusing
to give said instructions or either of

them to the jury the defendant by its
counsel then & there excepted —

The Court also altered and qualified
the third Instruction asked for by the
defendant by appending to said third Instru-
ction as above written, the qualification above-
to which action of the Court in qualifying
defendants said third Instruction asked,
the defendant by its Counsel then and
there excepted —

The jury found the issues for the plaintiff
and assessed his damages at four hund-
red and fourteen dollars —

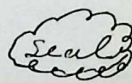
The defendant by its Counsel then
& there entered a motion for a new trial
in this cause — The Court overruled said
motion for a new trial, and defendant by
its Counsel then & there excepted —

The Court then rendered judgment
in favor of the plaintiff in accordance
with the verdict of the jury, and the
defendant by its Counsel then & there
excepted to the opinion of the Court in
so rendering judgment —

The defendant by its Counsel then
proposed an appeal to the Supreme

68.

Court and prayed the Court to sign
and seal this its Bill of Exceptions —
which is accordingly done —

Wm Chumason 

Be it remembered that heretofore to wit: On
the 4th day of April 1862 a Bond was filed
in said cause in the office of the Clerk of
said Court and is in the words and
figures following. To Wit:

Know all men by these presents, That
the Attaw Gas Light & Coke Company, as
principal, and Samuel B. Griddle as security
are held and firmly bound unto Darlis
Thompson in the penal sum of six hundred
Dollars, good and lawful money of the
United States, for the payment of which
well and truly to be made the said Attaw
Gas Light and Coke Company binds
itself and ^{the said} Samuel B. Griddle 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.
Curkman President of said Company and the
hand of Levi Mason Secretary of said Company
and the hand and seal of Samuel B. Griddle

this twenty first day of March A.D. 1862,

The Condition of the above obligation is such
That whereas the above named Darwin
Thompson, et al. at the February Term of the
Circuit Court held in and for the County
of Cass, in the State of Illinois A.D. 1862,
recovered a judgment against the above bounded
Attawa Gas Light & Coke Company for the sum
of Four Hundred and fourteen Dollars & Costs of suit
to reverse which said judgment, the said Attawa
Gas Light & Coke Company prayed an app=
eal from said judgment to the Supreme Court
of said ~~Count~~ State of Illinois which said
appeal has been allowed by said Circuit
Court.

Now if the said Attawa 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
Light & Coke Company in case said judg=
ment shall be affirmed, and abide the ~~order~~
order and judgment of said Supreme Court
in this behalf, then this obligation to be void,
otherwise to remain in full force and effect

Will H. Bushman President (Seal)

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

67. (Seal)

State of Illinois }
 LaSalle County } ss.

S. Abalom B. Moore, Clerk of the Circuit Court in & for Said County do hereby certify that the foregoing is a true, full, & perfect copy of the record in Said Cause, of Said Court, also, of the "Recipe", Declaration, Pleas, Summons, and the bill of Exceptions in Said Cause, and also of the Appeal Bond, as now appear on file in my office in the papers of Said Cause.

In Testimony whereof I have hereunto set my hand, and the Seal of Said Court this 18th day of April AD 1862,

A. B. Moore Clerk

The Ottawa Gas Light and
 Coke Company, Appellant

vs.

Darlin Thompson Appellee

Appl from La Salle

Now comes the

said appellant by Rice & Lewis & E. Van Buren
its attys & says that in the record and proceedings
aforesaid there is manifest error in this
to wit:

- 1st The Court erred in receiving improper evidence
on the part of the plaintiff and in overruling
objections on the part of defendant to evidence
produced on the part of the plaintiff
- 2nd The Court erred in rejecting evidence offered
by defendant.
- 3^d The Court erred in refusing instructions offered
on the part of the defendant & qualifying such
instructions
- 4th The Court erred in the instructions given on the
part of the plaintiff.
- 5th The judgment is against the law and the
evidence
- 6th The damages are excessive
- 7th The Court erred in overruling motion for new trial
~~for other errors~~, said Appellant
therefore prays that ~~the~~ the judgment
aforesaid be reversed & wholly for nothing returned
Rice & Lewis & E. Van Buren
Appellts attys.

And now comes the said Darlin Thompson,
appellee, and says that in the Record and Pro-
ceedings aforesaid there is no error.

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

154 12 304
Darlin Thompson
161 vs.

Ottawa Gas Co
~~~~~

Record, &

Assignment of Envs &  
finder in Envs

Filed April 24, 1862

Leland  
Clark



# SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

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|                                           |                                |
|-------------------------------------------|--------------------------------|
| THE OTTAWA GAS LIGHT AND<br>COKE COMPANY, | } <i>Appeal from La Salle.</i> |
| Appellant,                                |                                |
| <i>vs.</i>                                |                                |
| DARLIN THOMPSON,                          | }                              |
| Appellee.                                 |                                |

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## ABSTRACT OF THE RECORD.

This was an action on the case, brought by the appellee against the appellant, to the June Term, A. D. 1861, of the Circuit Court of said county.

5 The plaintiff's declaration was filed on the 21st of October, A. D. 1861, and is in the words and figures following, that is to say:

STATE OF ILLINOIS, } Circuit Court of said County, November Term,  
La Salle County. } ss. A. D. 1851.

The Ottawa Gas Light and Coke Company, an incorporated company under the laws of said state, defendant in this suit, was summoned to answer Darlin Thompson, the plaintiff in this suit, of a plea of trespass on the case, and thereupon said plaintiff, by Gray, Avery & Bushnell, and Leland & Leland, his attorneys, complains for that whereas the said plaintiff before and at the time of the committing of the grievances by the said defendant, as hereinafter mentioned, was and from thence hitherto hath been and still is seized and possessed of certain premises, viz.: lot two, (2,) in block eighty-four, (84,) in the State's Addition to the town of Ottawa, in said La Salle county, with a certain messuage or dwelling house thereon situated, and also the right to use the water in a certain well, situated on lot three, (3,) in the said block, which last  
6 mentioned premises are adjoining the premises of the plaintiff, and by license from the owner of said adjoining premises, said plaintiff hath



free access to and use of said well at all times. And the said messuage or dwelling house and premises, the said plaintiff, with his family, at the times hereinafter mentioned, occupied and inhabited, and still doth 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, and prejudice, and aggrieve the said plaintiff, and to incommode and annoy him and his family in the possession, occupation and enjoyment of his said messuage or dwelling house and premises, heretofore, to wit: on the first day of January, in the year of our Lord eighteen hundred 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, to wit: in the county 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 stenches, 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 stenches, 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 his said messuage or dwelling house or 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 and 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 manu-



9 facture, 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, 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 by means of the premises the said plaintiff is prevented from digging a well on his own premises aforesaid, and having therein good and wholesome water. And said plaintiff has been and is by means of the committing of the grievances aforesaid, by said defendant aforesaid, otherwise greatly impaired and damnified, to wit: in the county aforesaid.

10 *Second Count.*—And, whereas, also, the said plaintiff before and at the time of the committing of the grievances hereinafter and mentioned, was, and from thence hitherto, has been, and still is, lawfully possessed of a certain other messuage and premises (with the right to use a well of water on the adjoining lot), situated on said premises, situate 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 annoy him and his family, in the possession, occupation and employment 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 other days and times between that day and the commencement of this suit, wrongfully and injuriously caused and procured divers noxious, offensive and unwholesome vapors, fumes, smokes, smells and stenches to arise and ascend near to, and 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 of the well aforesaid, on said last mentioned day, of said county, erected near the said premises of said plaintiff certain buildings and 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 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 1st day of January A. D. 1856, until the commencement of this suit, and the said plain-



- 12 tiff 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, wherefore said plaintiff says that he is injured and has sustained damages to the amount of fifteen hundred dollars, and therefore he brings his suit, &c.

GRAY, AVERY & BUSHNELL, &  
LELAND & LELAND,  
*Plaintiff's Attorneys.*

- 14 At the November Term, A. D. 1861, of said Court, the defendant pleaded the general issue; and also a special plea, denying the inducement set forth in the declaration.
- 16 At the February Term, A. D. 1862, of said Circuit Court, this cause was tried by a jury.
- 18 The jury found the issues in favor of the plaintiff and assessed his damages at four hundred and fourteen dollars.

The defendant moved the Court for a new trial herein.

The Court overruled the motion for a new trial, and defendant prayed an appeal to the Supreme Court.

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#### BILL OF EXCEPTIONS.

- 21 The plaintiff, in this cause, to maintain the issues on his part, adduced the following evidence:

*James Graham testified:*

- 22 Plaintiff's dwelling house is on lot two, (I live on lot three,) Block 84, State's Addition to Ottawa. My lot joins Thompson's. The well is on my lot, four feet from plaintiff's line. Plaintiff asked me if I would let him use the well if he would bear half the expense of keeping it up. There was a chain pump in the well; water tasted bad; we had the well cleaned out and new pump put in; expenses were \$20; Thompson paid half and I half; water in the well was very pure; the water began to grow bad in the fall of 1857. Gas works were built in 1855. On several occasions the stench from the gas factory was so sickening and intolerable as to be a nuisance to my family. When wind blows from north we have to shut our windows because of the smell. On two occasions, when going to church, my wife has been taken sick when near the gas factory, which sickness was caused by the smell from the gas works.

Plaintiff then asked the witness the following question:

"What would be the difference made by the gas factory, in the monthly and annual value of Thompson's premises?"



To which and to the introduction of evidence in regard to the monthly or annual value of plaintiff's premises, defendant objected, it being conceded by plaintiff that he, plaintiff, resided on the premises at the time of the accruing of the cause of action, and has ever since and still does reside there. Court overruled defendant's objection, and allowed said witness to testify regarding value of premises, as asked. To which decision defendant excepted.

- 23 Witness continued: I think the premises, without gas works being there, would be worth \$250 a year; worthless since erection of gas works. I would not live there rent free.

Plaintiff then offered to prove by witness that wells other than plaintiff's are similarly affected. To which defendant objected. Court overruled the objection, and defendant excepted.

- 24 Witness continued—I have examined other wells in the neighborhood. Mrs. Woodruff's, Porter's, and Gooding's, Geiger House, and Retz's, all somewhat affected similarly. Gooding's well is SE of gas works—across street; street is 80 ft. wide. Geiger House well smells of gas. Water in my well tasted and smelt like that in the cistern where gasometer is, except that it was not so muddy; know the water smells of gas; never knew a smell like it; am positive that my well is injured by the gas works.

*Cross Ex.* On cross examination, witness said:

- 25 My house is 20 feet from plaintiff's; I have occupied it since 1856; never rented a house in that neighborhood; applied for one for a friend a short time since, five or six lots south of mine; I thought it would suit my friend, but told him that when the wind blew from north gas would smell. Don't know what plaintiff's house would rent for. Benedict lives next lot south of me; been there five or six months. Benedict's house is about of equal value with plaintiff's. A man told me that he left Martin Murray's house because of smell of gas; know of no others leaving because of gas. It was Sunday morning my wife was taken sick, wind NE. There may have been some other cause than gas for her sickness. I am not a physician. Think the smell of gas affects considerable portion of town. I have recovered against the Gas Company at this term of Court for this same well. In my suit plaintiff was witness. Porter and Mrs. Woodruff also have suits pending. Porter, Gooding, Thompson, Mrs. Woodruff and myself agreed some 18 months ago to bring these suits against the Gas Company, and club our expenses. I go on my own hook now. Have not used the water in my well for a year and half. Don't know whether non-use will make wells impure. My well is 20 ft. deep. When I built my house on lot where I live now, the land there was low. Water used to stand in front of Thompson's house a good deal of the time. The sewerage was made 3 or 4 years ago. 12 or 15 horses are always kept at Gooding's stable; stable was built about the same time as the gas works; before I built my house. Cummins'



wagon shop is on the lot directly north of plaintiff's house ; shop is 18 feet high. Plaintiff's house about same height. Wagon shop is 60 ft. long. Probably half a dozen men work in the shop. There is a privy in use on Cummins' lot. I have privy ; so has Thompson. The lots are sixty ft. wide.

*Re-Ex. in Chief.* On re-examination in chief, witness said :

There was no appearance of the water in my well being mixed with manure. I examined it. Water in my well is not so discolored as that in gas works. Manure gives water a reddish color. Water at gas works is not so discolored.

Plaintiff then admitted that his license to use water of Graham's well was not in writing.

Plaintiff called *W. F. Whitmore*, who said :

26 The well in question was dug by my father in 1843. We lived there till 1855. Water first rate. When I last tasted the water of Graham's well it tasted and smelt like water from dirty gun-barrel, but not discolored. Don't know what arrangement was made between our folks and Thompson's in regard to the well.

*Cross Ex.* On cross examination, witness said :

27 A slough used to commence at Reddick's lot and run across Gooding's, Thompson's and Graham's. It ran through Graham's lot from NE to SW. Said slough used to run very close to the well. The well was south of slough. the natural course of the water was SW. Digging the side-cut dammed up the outlet from the slough, and caused the water to stand in the streets and in the lots of Graham, Thompson, gas works, &c.

*Re-Ex. in Chief.* On re examination in chief, witness said :

The swale was probably two feet lower than the surface, where the well was dug. I think the slough affected the well. I think the water from it used to run into the well at times. When we dug the well, water came in so fast from north side, that we could not pump it dry.

Plaintiff called *J. O. Glover* who testified :

Know Thompson and his residence ; have been in neighborhood of gas works when the smell was bad ; to me it is offensive.

Plaintiff's counsel asked witness following questions :

28 If the annual rent of plaintiff's premises was \$250 without gas works being there, what are they worth with them there ? to which defendant objected. Court overruled objection, and defendant excepted.

Witness said :

In 1856 and 1857 the premises were worth \$200 per annum—perhaps not quite that in 1856. \$150 or \$175 would be a fair rent in 1861.



Plaintiff asked witness :

How much, in your opinion, is the annual value of the premises diminished by reason of the gas works? Defendant objected. Court overruled the objection and defendant excepted.

Witness stated :

My opinion is that a good tenant would not rent it at half-price; I rent houses and stores in the city.

*Cross Ex.* On cross examination witness said :

I have no dwelling in vicinity of gas works; have hired no buildings in that neighborhood since 1856; think I know what tenants are paying there; can't name any particular house there, the rent of which I know; don't know what rent any particular man round there is paying; real estate is lower in price, generally, than it was before 1856; I know of no unoccupied dwellings in vicinity of gas works; even if there were no gas works there I would not take Thompson's house as a gift and be compelled to live there as I have been situated since 1858, as I have built and live in a house of my own, so that my opinion is not based wholly upon the fact of the gas house being there; I would not live in Thompson's house if I could get it rent free on account of gas works; have seen Chicago and New York gas houses; have smelt their odor.

Defendant asked :

In what part of the city did you smell the odor of the gas works in Chicago? Plaintiff objected. Court sustained objection and defendant excepted.

Witness continued :

At times the gas here smells so as to affect a considerable portion of our population. I presume the odor from these gas works is not more offensive than that from other gas works.

Plaintiff called *Martin Murray*, who said :

I own lots 13 and 14, in block 66; There is a well there; been there 18 years; well good before gas works built; bad since; the gas spoils the well; a gas puddle used to stand before my door; looked like dyers' water.

Defendant objected to the reception of evidence in regard to wells other than the plaintiff's, and moved to strike out the evidence of said witness. Court overruled the objection, and defendant excepted.

*Cross Ex.* On cross examination witness said :

My lots were very low until I filled them up with lime from gas works; paid gas company a shilling per load for six or seven loads of lime; there was a pond on my lot before gas house was built. I went to City Council to get them to build a sewer. I intend to sue the Gas Company. Thompson, Graham and others here will be witnesses in my suit. Wa-



ter stood on my lot knee-deep—black. I thought the gas made it so. Water smelled like gas from a pipe. I knew gas injured well, as well I  
 31 should know that a dead kitten would if I found one in my well.

Plaintiff called A. P. Reed, who said :

I lived in Mr. Murray's house a year; quit there, two years ago. Thought smell from gas factory, when wind blew from west, unhealthy. Takes away a person's appetite.

Plaintiff offered to prove by said witness that the gas had made witness' family sick. Defendant objected. Court overruled objection, and defendant excepted.

Witness continued :

When the water run from the gas works across the street, the water stood around my house, and smelt disagreeable. It was sickening to  
 32 my family. When the water in Murray's well was low it tasted like the gas from a gas burner.

*Cross Ex.* On cross examination, witness said :

Don't know how the water got out of the gas works. First saw it in the street. Think the Gas Co. had a reservoir in which the water used to run.

Plaintiff called A. B. Smith, who testified :

As a member of the City Council I examined Graham's well a year ago last summer. I went to the gas works with Mason. Mason said the pump in the well of the gas works was out of repair. I afterwards saw a man draw water from said well with a bucket, and I examined the water of Graham's well. It tasted stronger of gas than that of the Gas Co.'s well. The water in the wells and in the tank smelt and tasted near alike. Water in Graham's well was offensive to smell and taste. Am acquainted with smell of gas, and have no doubt the well was impregnated with gas. I live three or four clear blocks from the gas works, SW.

Plaintiff asked witness: What is the effect upon you when the wind blows from the NE? Defendant objected. Court overruled objection, and defendant excepted.

Witness continued: The smell is strong by spells, and very disagreeable, but it never troubled me. I never found any fault with it.

Plaintiff offered to prove by said witness, annual value of plaintiff's premises and well. To which evidence defendant objected. Court overruled objection, and defendant excepted.

Witness said: The annual value of plaintiff's premises at present time would be \$150 or \$175, provided there was no objection to neighborhood on account of gas works. A man able to pay \$150 to \$175 a year



would not rent that house at all. If a man wanted a large house for small rent, he might be willing to pay \$75 per year.

*Cross Ex.* On cross examination, witness said:

84 Aside from gas works, the situation of plaintiff's house is not a desirable one. The wagon shop, livery stable, blacksmith shop, the proximity of the canal, and the low, wet nature of the ground are all objectionable. Would not have given \$150 per year for plaintiff's house before the erection of gas works. Could have suited myself better. I think smell from gas works affects a large portion of the community there. There are water works in this city. Water comes from south side of Illinois River; first-rate water. I know nothing about the probable supply of water from them.

Plaintiff called *Samuel Patterson*, who said:

I examined Graham's well in 1860, as member of City Council. Came to conclusion that the well was injured by gas. The water in well and that in tank same smell and taste—that in tank the stronger. Can't be mistaken about it being gas.

35 *Cross Ex.* The gas smell is not particularly offensive. The smell don't hurt me. I have been around the gas works considerable. The smell would not make plaintiff's house of any less value to me. I would make no material difference in renting the house on account of smell.

Plaintiff called *John Batchelor*, who said:

I worked near gas factory, at Gooding's livery stable, three months. At times, when wind was right, smell was bad.

Plaintiff asked witness, "What is the effect of the gas works on the houses in the neighborhood?" Defendant objected. Court overruled objection, and defendant excepted.

Witness said: The effect on Gooding's stable was bad. Well at livery stable was made bad by gas works.

*Cross Ex.* We used to throw the manure from the stable into a hole back of the gas works. We kept 12 or 14 horses at Gooding's stable. Considerable stagnant water used to stand around in the ravine some years ago. I have seen the ravine full of water. Ravine ran across Graham's lot, near to the well. After the side-cut was dug (some 14 years ago) there was no outlet from the ravine. The well at Gooding's stable was walled up and cemented from sand rock to floor of stable. The plat here shown to me and the ravine marked on it, I believe is correct.

Plaintiff called *John Murray*, who said:

I was employed in construction of gas works. Tank is 14 or 16 feet deep. Goes into sand rock. We found water when we got into rock,



and kept pump running night and day. Water leaked through the cement into the tank until it was six inches deep. We found a regular spring of water. Cementing could not prevent it. When the water was pumped out of the tank into the street it created an awful stench all over the street.

Plaintiff asked witness relative to M. Murray's well. Defendant objected to witness testifying in regard to said well. Court overruled objection, and defendant excepted.

- 37 Witness proceeded: Father's well was dug 15 years ago. Water was good before building of gas works; bad afterwards. The smell from the gas factory was bad at times.

Plaintiff offered to prove by witness that witness's family had been made sick by gas. Defendant objected. Court overruled objection, and defendant excepted.

Witness continued: My children were sick more or less all the time. I moved into the country 6 years ago next March. Have been at gas works probably once a month in that time. Gas house well became bad a year or so after building of gas house.

- 38 *Cross Ex.* Of my own knowledge, I know nothing of Graham's well becoming bad. Am not a mason. Don't know how thick the cement is at the bottom of the tank. It is Utica cement. Never got hard. Tank was not pumped thoroughly dry after it was cemented. Water continued to ooze in at bottom. The men did not continue to add cement until they stopped the water. My business at gas works was to see that the hands kept at work, &c. I am not a cement maker. Don't know what made my children sick. I am not a physician. My children were sick some in the country also. I have heard father complain of the stink. Witness objected to stating to whom the lot on which he had lived belonged, because it would criminate him.

Plaintiff called *De Witt C. Gooding*, who stated:

- 39 My stable is on SE corner from gas works, lot 4, block 85. Water in my well was excellent in July 1857. In spring of 1858 it was bad. Within a month it changed from good to bad. Caused by gas I think. When well full better than when low. Earth beneath my stable is dry. At first I thought from smell that gas was escaping. On going to the horse trough found it came from that. Water not so bad in wet as in dry time. In very dry time horses would not drink it. Drainage of manure would not cause it. No peculiarity of color to the water—covered with scum and froth when pumped into trough. My well is from five to seven feet to sand rock. Cemented up to floor of harness room. Surface water could not get into it. Graham's and Woodruff's well became bad soon after mine.



40 *Cross Ex.* I don't notice the smell from the gas works except when they take the lime from the purifiers; perhaps one day in two weeks. Then, if wind is right, smells strong. Our prevailing wind is west. Seldom a direct north wind here. I keep sixteen horses constantly in my stable. I used water from Graham's well until within a year. My men drank it until then. Rev. Benedict lives next door to Graham. Don't know whether the water of his well was good or not. Filled up my lot with five or six loads of lime from gas house purifier. I never noticed that the water from my well produced any effect on the horses that drank it. Four-fifths of the manure from stable was hauled away to gardens, &c. Never more than two or three loads accumulated at stable.

Plaintiff called *Samuel Porter*, who said:

I live with Henry L. Porter, my father, on first lot south of Gooding's stable. Have lived there so long that I don't notice smell of gas as much as a stranger would. It does not smell unless the wind is right.

Witness *Gooding* re-called, said:

It might have been Benedict's and not Graham's well that the boys got water from.

*Porter* continued:

Our well grew bad three or four years ago. Graham's two or three years ago. Both smell similarly.

*Cross Ex.* Our water is clear as ever. We deepened our well two years ago. After that it was good. Can't say how long before it before it became bad again. Father is going to have a suit against the Gas Co. for injuring his well. If plaintiff recovers in this suit, it will be a nice thing to help father. I told my brother to get Hoyt for a witness in this case. I thought Hoyt would help the plaintiff's side. I talked with witness Mitchell about this case.

Plaintiff called *A. Cummins*, who testified:

Graham's well became bad in 1858 or 1859. Water became gaseous and unfit to drink. Smell from gas works and that from water is same. I am a wagon maker; my shop is across the street, 80 feet south of gas works. When I commenced work there the gas was offensive. I am used to it now, and don't mind it much.

Plaintiff rests.

42 Defendant, to maintain the issues on his part, called *Robt. Henning*, who testified:

Am a machinist. Work in Rugg's factory, 300 feet due north of gas works. I have worked there, in upper story, for three years. Sometimes there is a smell, disliked by newcomers. It was not agreeable to me at first, but I am not annoyed by it now.



*Cross Ex.* On cross examination, witness said :

There is a foundry both north and south of our factory. Smell does not trouble me now, either in summer or winter. Have always been where there was considerable smell from machinery, smoke and steam. I, perhaps, would not notice the smell as much as one who had not been engaged in same business. Don't like the smell of gas, but it is not as offensive to me as formerly.

Defendent called *James Warner*, who testified :

Am in same shop with last witness. Spend most of my time there. We perhaps smell gas half a dozen times in a year. It is not half so annoying as the smoke from the foundry. Foundry furnace is 60 or 70 feet south of our factory, and between us and the gas works.

42 *Cross Ex.* I never smelt the gas works and the foundry at the same time. Smell of gas is a distinct smell.

Plaintiff concedes that the lots in the neighborhood of gas works are all sixty feet wide.

Defendant called *Thomas H. Clark*, who testified :

I live two lots south of Miss Miles'. Lived there since March, 1861. Boarded with Miss Miles four years. Slept there. Never noticed any smell from gas works during the whole four years. Have taught in Public School, on Columbus street, three years. My school house is nearer gas works than Glover's house is. School house is NE of gas works. School has never been annoyed by gas works. In summer all the windows of the school house are open. I occupy the front upper room in school house, opposite gas factory.

44 *Cross Ex.* I have never been annoyed by gas wherever I have lived. Have smelt it at times when passing up the street south of Washington Square. Miss Miles' is south, and on the same street with plaintiff's. I suppose we used the water from her well when I boarded there. Water was good.

Defendant then called *George S. Stebbins*, who testified :

Have boarded with Miss Miles five years. Lodged there since 1856. Gas works never annoyed me. Never noticed them except when passing close by them.

*Cross Ex.* Don't recollect ever smelling gas on La Salle street. Miss Miles' house is nearer side walk than Episcopal Church is.

Defendant called *Geo. H. Rugg*, who said :

45 My place of business is on same block with gas works. Most of time I spend there. Was annoyed by gas works two or three months, a year and a half ago, when tank was being cleaned out. Pass gas works every day, sometimes 20 times a day. Never experienced any annoyance from them.



*Cross Ex.* Have occasionally smelt the gas somewhat. Have passed gas works with farmers. They asked me what smelt so. I told them gas, but did not notice it myself.

Defendant called *Alva Patch*, who testified:

Am foreman of Rugg's shop, in same block as gas works. Been there 9 or 10 years. Spend all business hours there. No inconvenience from gas works. Shop is three stories high. Windows open in summer. Am in all parts of the building. Nowhere annoyed by gas. Pass gas works twice a day or more.

*Cross Ex.* I have seldom smelt the gas. In winter none; in summer but little. Smell from furnace, between the shop and the gas works, is of sulphur. Machine shop is nearer to our shop than gas works are. They smell one about as bad as the other.

Defendant called *John B. Rice*, who testified:

46 I board at Miss Miles'. Boarded there five years. Blocks are 300 ft. in length. Miss Miles' is just two streets and a block south of gas works. never annoyed by gas works. Frequently been in neighborhood of gas works. Sometimes smelt gas before entering gas works, at other times not until I entered. At times the smell was strong.

47 *Cross Ex.* Remember smelling gas once on SE corner of Washington Square. Wind was blowing directly from gas works toward me. The air was light. I noticed the smoke of the foundry falling to the earth. Gas is five times lighter than air. (Plaintiff then admitted said lightness of the gas.) Witness continued—I have never examined water in gas house well or tank. Don't think the water brought here on last trial smells like gas. The lime used at gas works emits a strong smell. I have seen water in the tank since gas works have been in operation. Tank is 40 ft. across, 10 or 12 ft. deep. Water comes within two or three ft. of top of tank. Gasometer comes (I believe) within a foot edge of tank. The object of the water is to hold the gas in gasometer. A pipe conducts the gas through the water into gasometer, where it rests on top of water.

Defendant called *Rev. Benedict*, who said:

I am a clergyman. Live second house south of plaintiff's. Lived in this city three or four years. Frequently been in neighborhood of gas works, before I moved there, visiting my parishioners. Never smelt the gas unless close by the gas works, then it was simply unpleasant, by no means unendurable. Have been where I now live since July, 1861. I pay \$200 and \$20 taxes per annum. I officiate in Episcopal Church every Sabbath. Never smelt gas in the church.



Defendant called *Wm. Reddick*, who testified :

I live SE of gas works—40 or 50 rods. Lived there since before the gas works were built. Am never incommoded by smell of gas. Glover lives on same street, south of me, about same distance from gas works. I pass Glover's house, going to and from my house. Am never inconvenienced by gas, though smell it sometimes. Would rather rent a house further from that neighborhood than Murray is. Would rather live near the gas factory than near the starch factory.

*Cross Ex.* Thompson's situation is not so valuable as mine. Would consider it of less value on account of gas factory. My objection to gas is derived chiefly from information of the complainants in these suits and others.

Defendant called *Dr. H. W. Hopkins*, who stated :

I have lived here 15 years. I have a well in block 90, spoiled by manure and privies about it. Water of Mansion House well was once good, but has become bad. The water of the well where I now live, (near Wm. Reddick's,) is not as good as it used to be. Great accumulation of filth about all cities, naturally tends to spoil wells. The ravine running near the well and Gooding's stable, &c., in vicinity, would spoil the well I think. The matter from the stable would naturally settle toward the well.

*Cross Ex.* The water of the well where I live has no smell. I think the ground, even where I live, has been made more moist by digging canal. Don't think water from Gooding's stable could get into plaintiff's well. Can tell difference between smell of gas and urine. If water in plaintiff's well is worse in dry than wet weather, it could not be caused by surface water.

Defendant called *Wm. Hickling*, who said :

Have lived in this city over 25 years. Am acquainted with the wells in the business part of the city. They used to be good. Most of them are bad now. I am satisfied that the surface drainage spoils them. I have had old wells dug round and examined them, and am satisfied that they are spoiled by surface matter percolating through into them. The same causes are beginning to injure the wells across the side-cut, where I live now. The second or third well dug in this town was that under Cheever's store. It was first rate water at first. Afterwards became bad. When digging the cellar for the store, we had to remove the earth from around the well, and I became satisfied that the matter from a neighboring privy, percolating through the earth, had spoiled it. The soil on which this city stands is very porous. The rock also is porous. I have a good well on the same block where there is a bad one. This is caused by their different positions in regard to the dip of the rock. Where the rock dips toward the well, surface water will get into it much sooner than where the rock is level, hence the manure, &c., around wells soaks into some and not into others. A cistern cemented with water lime will always hold the



water in it, but water from outside will sometimes percolate through into the cistern. I have often seen the water standing around the neighborhood of Gooding's stable, and the streets between his stable and Martin Murray's, and the street between his stable and plaintiff's house, a foot deep. Water percolated through from the canal into all the wells along it, and canal water is unfit for domestic use.

*Cross Ex.* The Court House well, and the Mansion House well used to be good—now bad. The water where I now live is growing bad. It is only a matter of time how soon the wells about town will become bad. Cisterns cemented with the same kind of cement that gas house tank is cemented with, although perfectly water tight from within, will sometimes admit water percolating into them from outside.

Defendant called *John Smith*, who testified:

I have worked in the foundry, immediately north of gas works, a year and a half. We have a well there. When the water is drawn from the canal, the well becomes dry, and when the water is let into the canal, the well is full in a few days after. Graham's well and the one I speak of are about the same distance from the canal.

Defendant called *Levi Mason*, who testified:

I am Superintendent of gas works. Have been there six years. Was there when the works were building. Tank is 40 ft. across, 16 ft. in depth. Top of the wall of tank is a foot above the surface of the earth. The water in the tank is about 12 ft. deep. Tank is built of brick and cemented with water-lime or hydraulic cement. The bottom is sand rock, covered with from six to ten inches of same cement. Tank was emptied about five years ago, and again about two years. The first time we emptied it to mend a pipe which conducts the gas into the town. The pipe ran through the wall and was bedded under the cement at the bottom of the tank, and of course we had to dig through the cement to reach the pipe. Where we dug, the cement was full ten inches thick and very hard, as hard as any I ever saw. I could discover no flaw or leakage, though I examined closely. We mended pipe and cemented it over again. Cementing was well done. The wall around the tank is twenty inches thick at top, and averaging three or four feet at bottom, in some places five feet. The wall was filled in behind with concrete. While we worked in it, the first time one day, and the second time six days, we were not troubled by water coming in. I considered the tank a very fine piece of work. The second time we emptied it, was two years ago next June, I examined it closely. There were no flaws, and no leakage. The smell is caused by the purifying lime. This lime is bought from us by the neighbors, at one shilling a load, to fill up their lots. Gooding had a good deal of lime from us to fill around his stable. Strawn & Powell had considerable to put around their warehouse, back of Graham's house. Plaintiff took some to his house. Gas is five times lighter than air, and cannot be smelt except with the wind, unless close by. I have tried this as an experiment. The gas travels wit : the cur-



rent of the air. If no wind, it rises from the earth's surface. I have passed plaintiff's house on an average twice a day for the last five years, and never smelt gas in front of his house. We do not have much north wind here. South and southwest winds prevail. Cummins' wagon shop extends both east and west further than plaintiff's house, and is higher. It seems to me, therefore, impossible to smell the gas at plaintiff's house. The wind will not convey it there. There are five lots in the block. Rugg's shop is on the north lot. The gas works occupy the two south  
 55 lots, and the foundry, in connection with Rugg's shop, is on the next lot north of gas works. It is about one hundred and twenty feet from the gas works to Rugg's main shop. The gas is manufactured properly and carefully. There are no leakages. No gas escapes after the coal is put into the retorts. Neither myself nor any of the men have been sick an hour since I have been there. I have gained thirty-six pounds in weight during that time. We had a man, his wife and four children, living in the gas works four years. They were all alive and well when they left. The whole neighborhood of Graham's, Goodings, gas works, &c., used to be a very low spot. The water stood there in large quantities. We have water-works in this city. The water comes from springs on the south side of Illinois river.

Defendant asked witness to state the quantity of water of said water-works. Plaintiff objected.

*Thompson has been allowed*  
 56 Defendant offered to prove that there are water-works in this city affording an inexhaustible supply of pure spring water, carried by pipes through the city, to the dwellings of such persons as desired it; that pipes can be put in to carry such water to the dwelling of plaintiff, and supply him with all the water he may need for any purpose for which he has heretofore used the water from Graham's well, and all he may need and require, of a purer and better quality than the water of Graham's well ever was, at an expense not exceeding ten dollars.

To proving which, plaintiff objected. Court sustained the objection, because the evidence was not confined to time previous to commencement of this suit. Defendant excepted.

*Cross Ex.* Witness stated: The ammonia and tar water goes into tanks. Coal and lime are used in manufacture of gas. I told Thompson once that I believed the well was injured by gas works; that it might be injured by leakage from tank. This was after my first examination of tank. Don't remember stating so in presence of Hoyt. I don't think that the water in the wells of that neighborhood would be good, even if there were no gas works there. There is a similarity between the smell of the water in Thompson's well and that in tank. Have no doubt that  
 57 gas is one of the causes that affect the well.

Defendant gave in evidence the following plat, conceded by plaintiff to be correct:



Plaintiff called *Sam'l. Patterson*. Defendant objected. Court overruled objection, and defendant excepted.

Witness said:

59 When I examined the tank I found it cemented. Some bricks had bursted from the wall. I asked Mason if the frost had not affected it. He said it might be, and that might have affected Graham's well. The frost had affected the cement on top of wall, and water might leak out.

Defendant moved to exclude the above testimony. Court overruled the motion and defendant excepted.

The foregoing was all the evidence Court instructed Jury of behalf of plaintiff:

*Given.*

60

*Given.*

61



*Given.* 3d. If the facts are as in either or both of the above instructions, it is not necessary that it should be shown in addition that the defendant conducted the business of manufacturing gas and coke in a negligent manner. Such kind of business, if the jury believe it was carried on in the neighborhood of many dwelling houses in the city, should have been conducted so as not materially to have injured the persons dwelling in that neighborhood, and the law, under such circumstances, requires that the defendant should have so conducted such business as not materially to have injured others residing in the neighborhood.

*Given.* 4th. The jury, in order to estimate the damages in this case, should determine, from the evidence, how much, under all the circumstances in evidence, the value of the use of the plaintiff's premises has been diminished by the acts of defendant, prior to the commencement of this suit, render their verdict accordingly, exercising their best judgment upon the facts in proof, by connecting them with their own general personal knowledge and experience in relation to human affairs. They may also take into account the plaintiff's damages for his personal discomfort, caused by the acts of defendant mentioned in first instruction, if the jury believe said facts existed, and that they caused any personal discomfort.

To the giving of which instructions, and to the giving of either of them defendant excepted.

Defendant asked the following instructions on defendant's behalf.

*Refused.* 1st. If the jury believe, from the evidence, that noxious or offensive smells issued from the buildings and erections of defendant, as alleged in the declaration, yet if jury also believe that it effects a considerable portion of the community in the vicinity of defendant's works, then the Court instructs the jury, as a matter of law, that the works and business of defendant are not a private nuisance, and no action can be sustained by plaintiff for such noxious or offensive smells.

*Refused.* 2d. If the jury, believe from the evidence, that noxious or offensive smells issue from the buildings and erections of defendant, as alleged in the declaration, yet if the jury also believe that it effects a considerable portion of the community in the vicinity of the defendant's works, then the Court instructs you, as a matter of law, that the defendant's works and business are not a private nuisance, and no action can be sustained by the plaintiff unless he has proved that he has sustained some damage peculiar to himself, and which has not been sustained by the neighborhood about the gas works.

2 Hilliard on Torts, 72.  
1 Sandford, (N. Y.) 1.

3d. The Court instructs the jury, as a matter of law, that as it appears by the evidence that the defendants were not at any time in possession of the well, and as he has proven no legal title to the same, he cannot



recover any damages for any injury done to the well, even if the jury shall believe from the evidence that the water in the well was injured in consequence of defendant's works.

The above instruction is given with the following qualification by way of addition thereto:

"But the jury are further instructed, that if they believe from the evidence that the plaintiff has sustained injuries to the enjoyment of a right to use the well founded upon an agreement made with the owner of the well for the use of the water in it, in consideration of valuable expenditures made upon it by plaintiff, (if any such expenditures are shown by the evidence to have been made by him,) then the above instruction would not be applicable.

4th. 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 commencement of this suit. He is not entitled to recover for any speculative or prospective damages. If no actual damage has been proved, then plaintiff can only recover nominal damages.

6 Hill, 292, 297.  
2 Greenleaf, 474.

5th. The plaintiff is not entitled to recover on the ground of noxious smells from said premises, unless the jury believe from the evidence that the buildings and erections of defendant are a nuisance, and if it is a public nuisance, then plaintiff cannot recover on the ground of any noxious smells or vapors arising therefrom.

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Given. 6th. The plaintiff had no right to have the jury go and examine the well of water, 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.

7th. Plaintiff alleged in the declaration, that defendants are an incorporated company under the laws of this State. If, therefore, the jury believe that the defendants built their gas works under lawful authority, and that they built the works and have carried on the manufacturing of gas in a proper manner, the defendants are not liable to an action for any consequences that have resulted, and to ascertain whether they built the works under lawful authority, the jury may take into consideration the allegation in the declaration that defendants are incorporated under the laws of the State.

The Court refused to give to the jury the first, second, fifth, and seventh instructions above asked for by defendant, to which defendant excepted.

The Court also qualified the third instruction asked by defendant as above, to which defendant excepted.

*Wrong -  
Suppose a right is  
given a man to  
take stone and earth  
gas and haul it off  
Can he do?*

*Given.*

*Refused.*

*Given.*

*Refused.*



ERRORS ASSIGNED.

- 1st. The Court erred in receiving improper evidence on part of plaintiff.
- 2d. The Court erred in rejecting evidence offered by defendant.
- 3d. The Court erred in refusing instructions offered by defendant, and qualifying defendant's instruction.
- 4th. The Court erred in the instructions given on the part of the plaintiff.
- 5th. The judgment is against the law and the evidence.
- 6th. The damages are excessive.
- 7th. The Court erred in overruling motion for new trial.

RICE & LEWIS, and  
E. VAN BUREN,  
*Appellant's Attorneys.*



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Ottawa Gap Co.

vs

Thompson

Abstract

Filed May 14, 1862

J. L. L. L.  
C/M