

N. J. Court of Errors and Appeals.

IN THE LAST RESORT IN ALL CAUSES.

MARY FINLEY, Administratrix, &c.,
of Charles Finley, dec'd, Plaintiff
in Error,

against

JOSEPH HANDLEY, Def't in Error.

*In Error, Su-
preme Court.*

*Brief for
Pltf in Error.*

In this cause the Supreme Court Branch (Justices Van Syckel, Knapp and Dixon) struck out all assignments of error founded on exceptions taken at the trial, on the ground that they had been waived by the rule to show cause why a new trial should not be granted—in the Circuit Court. The main Court refused to consider these assignments because they had been so struck out, and the only assignments on the record having been abandoned—affirmed the judgment, and this writ of error was brought. We now assign for error this action of the Supreme Court, and on the assumption that—if we prevail in this regard—this Court would prefer to decide the case on the merits rather than to remand for argument below, we have also re-assigned in this Court the errors so struck out below. The defendant in error has moved to strike out the errors so re-assigned here, but this Court, at the

The Supreme Court Erred in Striking Out the Errors Assigned on the Bills of Exceptions.

Let it be noted that the rule to show cause was "granted
"on the grounds that the verdict is against the weight of
"evidence and the damages awarded by said verdict were
"excessive, and on the further ground of misbehavior of
"the plaintiff toward the jury." (Case, page 7, folio 10.)

We submit that the only change made by the rule of 1868 (now the statute) in the rule of 1862, to make the giving up of exceptions result *ipso facto* from the granting of the rule, instead of requiring such

giving up affirmatively as a *condition* of the granting of the rule. In no other respect was there a change; redundancy was pruned, terseness and brevity were attained, but the substance of the rule was unchanged except in the important particular just stated. We think this position can be demonstrated.

As Mr. Justice Van Syckel says (case page 306 l. 5), the rule of 1862 "embodied the practice" settled in *Meeker v. Boylan*, 3 Dutch, 262, but the case is clearer than the rule. We quote the concluding words of the case: "If the rule to show cause is applied for, solely on points which cannot be raised on a writ of error, the bills of exceptions need not be abandoned, *but in that case* it will be proper to make the rule special so as to confine the argument to the grounds upon which the rule has been allowed." A *special* rule to show cause then, is one confined to points which cannot be raised on writ of error, or to some of such points. The taking of such a rule waives no exceptions, and ought not to. The mischief intended to be remedied by *Meeker v. Boylan* does not exist in such a case. If it be said that rules to show cause are sometimes granted limited to some particular *legal* questions, we can only say that no such practice was contemplated by the learned judges who decided *Meeker v. Boylan*, and they were the same Judges who promulgated the rule of 1862.

To limit a rule to show cause, whose natural, primitive and proper office is to review matters inhering in the *verdict*, to legal questions, only properly reviewable on error, is abnormal; while, on the other hand, to say that a party cannot have a review of damages, weight of evidence or misbehavior of the jury without waiving exceptions to legal errors (unless expressly reserved), is monstrous. The whole difficulty is solved by holding that the framers of the rule of 1862, following their own decision of *Meeker v. Boylan*, meant by "special rules to show cause," rules involving matters upon which a writ of error could not be taken. In this view the last clause of the rule of 1862 seems to simply establish the procedure in cases where the bills of exceptions are

not to be given up. This construction renders plain the revision of the rule in 1868 which clearly recognizes two sorts of rules to show cause: one general, under which all exceptions *ipso facto* are given up; the other special, which does not involve that consequence, and which we submit should be limited to matters not reviewable on error.

Leaving the historical aspect of the case and simply construing the 246th section of the Practice Act, we submit that it is plain that the legislature never intended that a special rule to show cause should be a waiver of all bills of exceptions. The first provision of the section relates to a subject well understood in the law, namely, "a rule to show cause why a new trial should not be granted"—which brings up the whole case for review—law, facts and matters extrinsic. The Legislature enact that the granting of such a rule should be a waiver of all exceptions. They then proceed to provide for a new remedy, namely, a special rule to show cause allowed on particular grounds to which the hearing and decision of the case should be limited. On this new kind of rule no such harsh condition was imposed.

Grant, if you please, that a special rule might be limited to grounds involving legal errors; what then? At most, the old practice recognized in *Gibbons v. Odgen* and *Mann v. Glover* (cited in the opinion of the Court below) would apply, and the only particular exceptions involved would have to be given up. This is all that justice requires. Courts of review ought to be eager to correct errors not to avoid having to look into them. It is right not to give a suitor more than one review by a deliberate court setting in *banc* and this is the spirit of the requirement to waive exceptions; but to shut a party out from a review in one court by limiting his rule, and from a review in the other court by a forced waiver of exceptions, is a travesty of justice.

Any other construction of the statute than this we contend for, would work the greatest injustice. A judge might grant a rule for excessive damages only, and the

party would be compelled to elect between the hazard of the Court in *banc* finding that the damages "shocked the conscience" or the greater hazard of having an unconscionable verdict stand, because the Court, on error, should find untenable exceptions he did not dare to abandon.

It is further submitted that 246th section of the Practice Act, turning as it does the rule of the Supreme Court into a statute, does not extend to the Circuit Courts. This court will never extend a restrictive statute beyond the necessity of the case, and we submit that it should only have application to those cases where rules to show cause why a new trial should not be granted are a necessary party of the procedure. While undoubtedly a Circuit Court *may* proceed by formal rule to show cause, "state of the case," prepared and served, reasons filed and notice of argument, it rarely does so. A motion may be made for a new trial direct and it may be granted forthwith without any of this machinery. Suppose such a case. A motion is made for a new trial on the ground of excessive damages; it is argued, both sides are heard, and the new trial denied. It can not be contended that thereby exceptions were waived; yet if this statute applies to the Circuit Courts, the empty formality of a rule to show cause would have that effect. The learned revisers of our statutes never intended this enactment of a Supreme Court rule to apply to these summary reviews by a circuit judge of his own rulings. In the case before us, it is very evident that the Court meant the "rule to show cause" to be merely a notice to the other side that they might be heard on the motion for a new trial which the judge would only entertain on grounds affecting the verdict. It was made returnable in two weeks; there was no state of the case; there were no reasons; the stenographer's notes were not written out, and there was not that solemn review which the defeated party should have in lieu of a writ of error. The rule was not even entered by Finley's attorney, but by the attorney of another defendant. (Case, page 5, fol. 40; page 305, fol. 4, &c.)

We now proceed to argue the cause on the merits of the exceptions involved, in which the assignments of error struck out by the Supreme Court, but re-assigned in this Court subject to the retention of the record here, should we prevail in above argument.

II.

The Judge of the Circuit Court of Hudson County erred in law in the various matters involved in the Bills of Exceptions and Assignments of Error thereon.

Passing but not yielding the points made by the other assignments, we will limit the discussion in this brief to the 5th, 6th, 7th and 8th assignments of error. (Case, p. 299.)

We respectfully submit that no case at all was made out against the defendant, Finley.

The action was for damages alleged to have resulted from a deposit of night soil on lands owned or controlled by Finley. Chief among these damages which the Court permitted the jury to consider, and which the amount of the verdict shows they allowed, were those consequent upon the scarlet fever of the children of the defendant in error.

Now the only proof, except the merest heresay, of any deposit of night soil on Finley's land was that supplied by the defense (case, p. 278, *et seq.*) viz., that in October, 1885, five or six loads of liquid substance, taken from cesspools and brought there in barrels, were emptied on Finley's large manure pile by his consent. This manure pile was 1,120 feet from Handley's house by actual measurement. Handley's children sickened in December, 1885. Scarlet fever develops in from one to seven days after exposure (case, p. 46). Between Handley's house

and Findley's land lay the Henry farm, upon which admittedly night soil was put in trenches. It was clearly improper to let the case go to the jury as to Finley at all. There was no proof to warrant it.

But a graver error was the permitting the question of damages resulting from the scarlet fever to go to the jury as against any of the defendants below.

In the case of *Houston v. Traphagen*, Ex'r (18 Vroom, p. 23) the suit was from resulting damages from Pott's disease, attributed by the plaintiff to a fall caused by defendant's negligence. Experts testified that the disease might be developed by a fall, but might also be developed by other causes, and sometimes without apparent cause. These witnesses, on hearing a recital of the facts proved by plaintiff, gave it as their opinion that "presumably the fall might be the cause of the disease" * * * "In the absence of anything else * * * I would naturally attribute it to that." * * * "I would know of no other cause," etc. This Court, speaking through Mr. Justice Magie, said: "It was on this evidence of experts plaintiff's case was rested. It seems to me to come short of establishing a causal connection between the fall and the disease. At the most it showed that the fall was a possible cause, and in the absence of other causes, might be inferred to be the cause. But it failed to establish that inference, because the case failed to negative other possible causes and each expert qualified his testimony, etc. A verdict founded on this evidence would seem to be rather a result of guess or speculation than a deduction from the proved facts."

The testimony of the one expert produced by the plaintiff below, by which it was attempted to connect the scarlet fever with the deposit of night soil, was far weaker than that which the Court pronounce insufficient for a like purpose in the *Houston* case.

This testimony will be found at page 47, *et seq.* The expert, Dr. Culver, is an honorable man and a skillful physician, and, although the counsel plied him with every conceivable question, he could not be brought to say that scarlet fever could ever possibly be produced from night-

soil. He had a theory, differing from every other medical man who testified, that scarlet fever might result from putrefying animal matter, especially blood, and when pressed by counsel he said that, of course, some such matter might get in a privy vault (case, p. 52; but see how weak he makes even this at p. 56). On this possibility of a possibility the plaintiff below was allowed to go to a jury. Every other physician, including Dr. Parker, called for plaintiff below, testified that scarlet fever was distributed only by personal contagion. Dr. Culver says he has never known or read of a case of scarlet fever proceeding from accumulated fecal matter (case, p. 56, fol. 23). Note also what he says at p. 49, fol. 38 to 50, fol. 10 and p. 67, fol. 20, on the subject of fecal matter as a cause of scarlet fever. He really treats the idea as ridiculous.

The proof is abundant of possible causes of this scarlet fever without resorting to absurd conjecture. The disease was prevalent in Jersey City in November, 1885. See the testimony of Dr. Converse, County Physician (case, p. 218) and in the neighborhood of the Handleys' home. See testimony of Dr. Bird (case, pp. 226 and 7) and Frank Howard (case, pp. 158-9). The son of the last witness attended the same school and class with Handley's children (case, p. 157). He was at school Dec. 4; was taken ill with scarlet fever the same day, and, although he recovered, his little sister took the disease and died. The sickness of the Handley children began Dec. 6 or 7 (case, p. 59). The school-house was in a very bad sanitary condition, and was closed on that account early in December.

The judgment below should be reversed.

JOHN A. McGRATH,
Attorney.

GILBERT COLLINS,
Of Counsel
For Plaintiff in Error.

New Jersey Court of Errors and Appeals.

MARY FINLEY, administratrix of
CHARLES FINLEY, deceased,
Plaintiff in Error,

vs.

JOSEPH HANDLEY,
Defendant in Error.

On Writ of
Error to N. J.
Supreme
Court.

BRIEF FOR DEFENDANT IN ERROR.

Can error be assigned on bills of exception? not expressly reserved in a rule to show cause why a verdict should not be set aside and a new trial granted.

The return shows that an action was brought in the Hudson Circuit Court by Joseph Handley against Charles Finley, the plaintiff in error, Patrick Woods, Daniel W. Benjamin and Edward A. Sturgis, for injuries arising from a nuisance committed by them; that a verdict was rendered against all of the defendants; that application was made for a rule to show cause why the verdict should not be set aside and a new trial granted; that said rule to show cause was granted and made absolute as to Benjamin, but discharged as to the other defendants; that thereupon judgment was entered and the writ of error was then taken by the defendant Finley from the Supreme Court.

On motion that Court struck out all the errors assigned on the bills of exception. Judgment was en-

tered thereon affirming the judgment below and a writ of error then taken from this Court.

The case was carefully and exhaustively tried at the Circuit, a whole week being occupied in the trial and the County put to great expense. The plaintiff in error was represented by able counsel and had a fair trial.

We insist that the granting of the rule to show cause was a waiver of the bills of exceptions and a writ of error will not lie thereon.

Counsel for the plaintiff in error maintains that while that would be the effect of an ordinary rule to show cause, the one granted in this case has avoided that consequence by the peculiar manner in which it was drawn.

Let us first read the rule to show cause, and then consider the law that governs. The following is a copy of the rule to show cause.

"Counsel for all the defendants in above-stated cause having applied to the Court (ex parte) for a rule to show cause why the verdict of the jury lately rendered against said defendants therein should not be set aside and a new trial granted, on the grounds that the said verdict is against the weight of evidence and the damages awarded by said verdict excessive, and on further ground of misbehavior of the plaintiff toward the jury. It is on this fourteenth day of May, A. D. eighteen hundred and eighty-seven, on motion of Henry E. Wills, attorney of defendant Patrick Woods, and on this motion for said other defendants ordered that plaintiff show cause before his Honor Manning M. Knapp, Judge of the said Court, at the Court House in Jersey City, on Saturday, the twenty-eighth day of May, instant, at ten o'clock in the forenoon, why said verdict should not be set aside and a new trial granted in said cause on the grounds aforesaid.

Rule entered May 14, 1887. On motion of

HENRY E. WILLS,

Atty. of Defts."

The rule to show cause differs in this case from an ordinary rule only in this, that the reasons assigned for allowing the rule to show cause are embraced in the rule itself, instead of being separately presented.

The rule was treated by the Court and all of the counsel, three of whom appeared for the defendants, and argued the case fully and without limit, as an ordinary rule to show cause, and it was not till after the Court had discharged the rule, and counsel fertile in expedients had been called in, that it was discovered that the rule was special.

But admitting that the rule to show cause is special is not the defendant Finley precluded from assigning error on the exceptions taken at the trial, by Sec. 246 of the Practice Act?

That provides that "a rule to show cause why a new trial should not be granted, may, in the discretion of the Court, be special, and then the case shall be heard and decided on the grounds upon which the rule was allowed."

That, counsel contends, was done in this case, but that section also provides that "where the party holding a bill or bills of exceptions applies for a rule to show cause why a new trial should not be granted, the granting thereof shall be a waiver of all bills of exceptions, except on points expressly reserved in said rule."

That seems to be as explicit as the English language can make it.

It says that the granting of a rule to show cause, &c., shall be a waiver, &c. "A rule to show cause," not a general rule or a special rule, but any rule to show cause. The language comprehends a special rule to show cause, the granting of which "shall be a waiver of all bills of exceptions, except on points expressly reserved in said rule."

So that the question of whether error will lie on the bills of exception sealed on the trial, is narrowed to the determination of whether any points were *expressly* reserved in said rule. The return shows that

no points were *expressly* reserved in the rule. But counsel for the plaintiff in error contend that they were *impliedly* reserved, because the rule to show cause was special and was heard and decided on the grounds upon which the rule was allowed. But that is not sufficient, section 246 provides that the points must be *expressly* reserved. The Supreme Court was of that opinion and ordered the assignments of error to be struck out.

A review of the practice and legislation regarding the question will remove all doubt as to the correctness of the ruling of the Supreme Court.

The first case we find bearing on the subject is *Gibbons v. Ogden*, 2 South. 518 and 852—in which it was held that the granting of a rule to show cause was a waiver of only the bills of exception embraced in the rule.

The question next arose in *Mann v. Glover*, 2 Green, 195, where the same rule was adopted. But in *Meeker v. Boylan*, 3 Dutcher, 262, the Court declared the practice to be that as a condition of granting a rule to show cause all the exceptions must be given up, though the Court might make the rule special, reserving the exceptions and confining the argument to points not covered by them.

This practice was embodied in a rule promulgated November Term, 1862, and amended and published in 1869 as rule 42, and now found in the Practice Act, Rev. pg. 887, § 246,

An application to reserve exceptions is addressed to the discretion of the Court. The defendant was not entitled to have the exceptions reserved as a matter of course.

In this case he chose to rest his right to a new trial upon the justice of the cause, maintaining that on the merits he was entitled to a new trial, that the verdict was excessive and against the weight of evidence and should be set aside. The Court heard that application, and after weeks of deliberation, sustained the verdict. We have a right to assume

that the Court would not have granted the rule to show cause if the counsel had then insisted upon reserving his bills of exception. The rule was granted on the condition that the bills of exception be waived. The waiving of the bills of exception was a condition precedent to the granting of the rule to show cause.

It would be unfair to the justice who presided at the trial, to allow error to be assigned on exceptions that he regarded waived by the plaintiff in error in taking the rule to show cause. And that Justice Knapp did take that view of the case, is indicated by his refusal to grant the motion of counsel for plaintiff in error, made immediately after the rule to show cause was discharged, to have the bills of exception expressly reserved in the rule.

Had the plaintiff in error taken a writ of error pending his application for a rule to show cause, the Court would not have granted the rule to show cause.

"When the defendant pending his motion for a new trial, served the plaintiff with a copy of an allowance of a writ of error the Court held this to be an admission of the facts of the case, and refused to grant a new trial." 2 Tidd's Practice, 821.

Counsel for the plaintiff in error contends that section 246 of the Practice Act does not apply to the Circuit Court, and that no rule to show cause is essential or even proper; that rule 23 of the Supreme Court governs the practice in Circuit Court issues on motions for new trial, and that rules 24 and 35 do not apply. He insists that motion may be made at any time for a new trial in the Circuit. I fail to find anything but bare assertion of counsel to support his view.

Our judicial system is borrowed from that which prevailed in England over a century ago. Our practice conforms, as nearly as may be to that established in her courts. In case of doubt in a matter

of practice we turn to the old English law books for light. In this instance the authorities declare the rule well settled.

Application to set aside a verdict is always made by a motion for a rule to show cause why the verdict should not be set aside and a new trial granted.

2 Archibald's Pr. 252. Chapter on "New Trial."

The same rule is laid down by Tidd in the following language :

"An affidavit is necessary to move for a new trial, unless the ground of it appears on the face of the evidence ; and the rule if granted is a rule to show cause," page 821 ; and again on page 82 is the following :

"The motion for a new trial must be made within four days *exclusive* of the entry of a rule for judgment ; and if it be not made within that time, the party complaining cannot afterwards be heard on the subject of a new trial."

It may be said that the above rule, laid down in Archibald and Tidd, applies only to Supreme Court issues, and that the rules of the Supreme Court therefore are not applicable. But that contention is unsound. Rule 18 of the Circuit Court provides "That in all matters not specially provided for in the foregoing rules, the rules of the Supreme Court of this State shall, so far as they are applicable, unless otherwise directed by statute, be the rules of the Circuit Court."

As the matter of new trials, manner of making application and proceedings thereon are not specially provided for in the Circuit Court rules, the Supreme Court rules must govern.

In all my experience at the bar I never knew of an application for a new trial being made in any other way than by a rule to show cause.

In cases of doubtful construction of a statute, resort may be had to contemporaneous exposition of the law.

One of the ablest *nisi Prius* Judges that ever adorned the bench of this State, ex-Governor Bedle, informed me that he could not recall a case of a Circuit issue tried before him in which the parties had applied for a new trial in any other way than by motion for a rule to show cause why the verdict should not be set aside and a new trial granted, remarking that that was the orderly way, and that he had never heard it even suggested that § 246 of the Practice Act did not apply to Circuit Court issues.

The case of *Dodd v. Lyon*, 49 N. J., (20 Vroom,) 229, indicates that the practice in the Morris Circuit has been to apply for a rule to show cause, as the first step in an application for a new trial.

That the counsel in this case so understood the law is apparent from the fact that he complied with it and proceeded under it. There is no more reason for holding that section 246 of the Practice Act does not apply to the Circuit Court than there is for holding that any other section of the act is inapplicable.

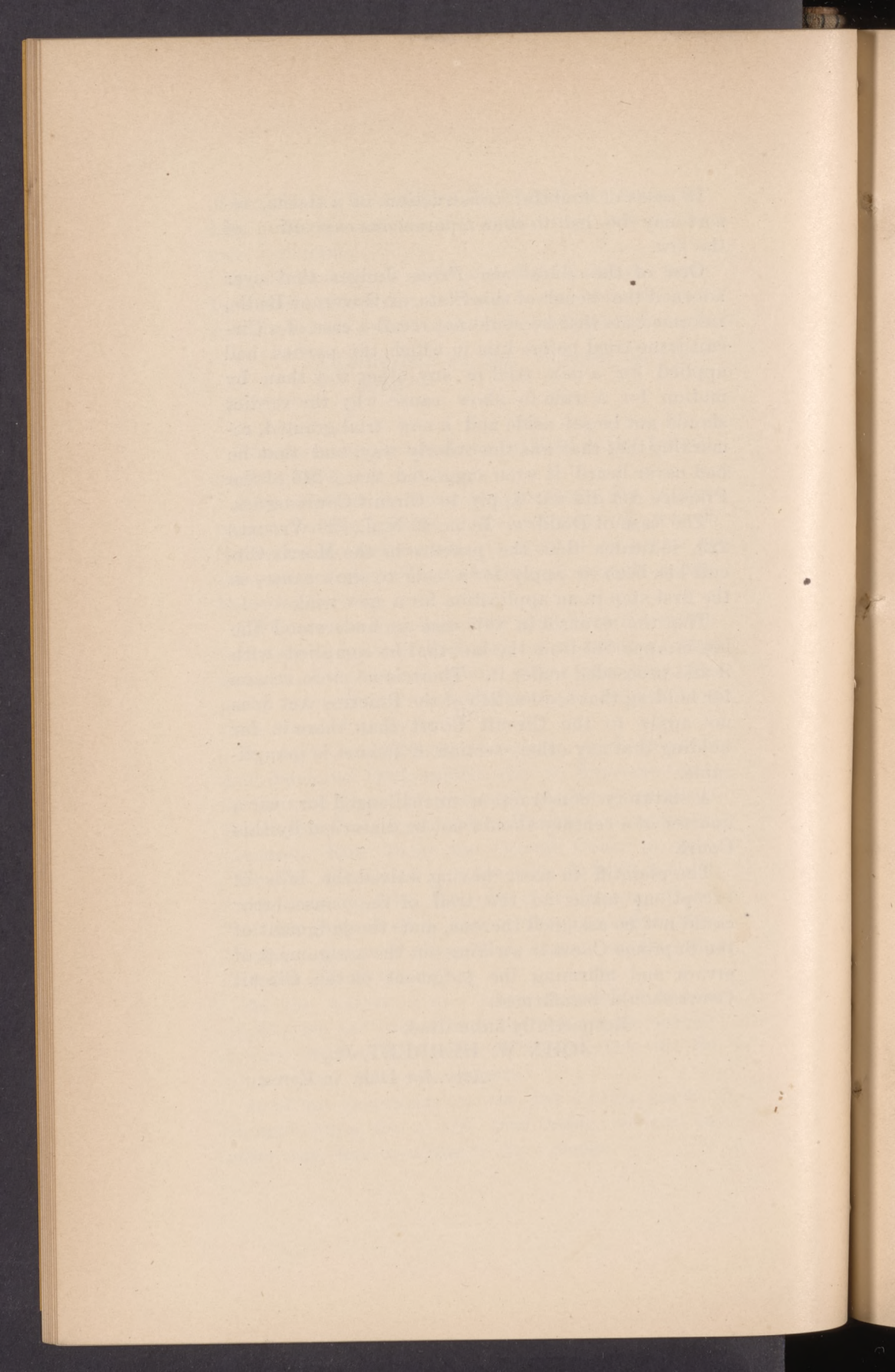
A statutory construction unchallenged for over a quarter of a century should not be disturbed by this Court.

The plaintiff in error having waived the bills of exception taken on the trial of the cause, error could not be assigned thereon, and the judgment of the Supreme Court in striking out the assignment of errors and affirming the judgment of the Circuit Court should be affirmed.

Respectfully submitted,

JOHN W. HERBERT, JR.,

Atty. for Deft. in Error.



New Jersey Supreme Court.

CHARLES FINLEY,
Plaintiff in Error,

vs.

JOSEPH HANDLEY,
Defendant in Error.

Writ of Error
to Supreme
Court.

Tested July 16, 1887.

Ret'ble August 10, 1887.

JOHN A. McGRATH, 10
Attorney.

RETURN.

Hudson County Circuit Court, of the
thirteenth day of October, in the year
eighteen hundred and eighty-six.

20

Hudson County, ss. :

Patrick Wood, Charles Finley, Daniel W. Benjamin and Edward A Sturgis, the defendants in this suit, are summoned to answer unto Joseph Handley, the plaintiff herein, in a plea of trespass in the case, thereupon the said Joseph Handley, by Hoffman & Herbert, his attorneys, complains for that whereas the said plaintiff before and at the time of the committing the grievances hereinafter mentioned was and from thence 30

hitherto hath been and still is lawfully possessed of a certain dwelling house with the appurtenances, situate and being in the City of Jersey City, in the County of Hudson aforesaid, and in which dwelling house with the appurtenances the said plaintiff and his family at the times hereinafter mentioned inhabited and dwelt, to wit, at Jersey City, in the County of Hudson aforesaid, and whereas the said defendant, Charles Finley, before and at the time of the committing of the grievances hereinafter next mentioned, was and hitherto hath been and still is possessed of a certain piece or parcel of land contiguous to the said messuage or dwelling house and premises of the said plaintiff, to wit, at Jersey City, in the County of Hudson aforesaid, nevertheless the said defendants, Charles Finley, Daniel W. Benjamin, Patrick Wood and Edward A. Sturgis, contriving and intending to injure, prejudice and aggrieve the said plaintiff, and to incommode and annoy him and his family in the possession, occupation and enjoyment of his said messuage or dwelling house and premises heretofore, to wit, on the third day of August, eighteen hundred and eighty-five, and on divers other days and times between that day and the commencement of this suit, wrongfully and unjustly ordered, directed, permitted and caused large quantities of night soil, filth, offal and excrement to be dumped, placed and deposited upon the said land of the said defendant, Charles Finley, and upon the lands near to the said house of the said plaintiff, whereby divers, noisome, noxious, offensive and unwholesome smells, vapors and stench, during the time aforesaid, ascended and came unto and into the said premises of the said plaintiff, and the air over and above the same was thereby greatly filled and impregnated with the said noisome, noxious, offensive and unwholesome smells and stench, and was rendered on the said several days and times aforesaid, and became and was corrupted, poisoned and was made unwholesome, unhealthy and uncomfortable, and the said plaintiff hath thereby been greatly annoyed and uncom-

40 moded in the use, possession, occupation and

enjoyment of the said messuage or dwelling house and premises, and also by means of the premises the said plaintiff was made sick and hindered and prevented from exercising and carrying on his trade and business of selling oil for a long space of time, to wit, for the space of six weeks, and also by means of the premises the said plaintiff was forced and obliged to lay out and expend large sums of money in endeavoring to be cured of the said disorders and sickness so arising from said nuisance, amounting in the whole to 10 the sum of twenty-five dollars. And also by means of the premises the said plaintiff's children, Mary Handley, John Handley, Kate Handley, Sarah Handley and Maggie Handley, all infants under the age of fourteen years, became sick and poisoned, and thereby in consequence of said noxious, unwholesome, unhealthy smells and stench died, to wit, between the ninth and eleventh days of December, eighteen hundred and eighty-five, to wit, at Jersey City in the County of Hudson aforesaid, whereby he, the said plaintiff, was 20 put to great expense and cost in attempting to cure the said children from said sickness and for funeral expenses in burying them, amounting to a large sum of money, to wit, the sum of two hundred and fifty dollars. And also by means of the said several premises the said plaintiff was deprived forever of the society, use and services of his said children, to wit, at Jersey City, in the County of Hudson aforesaid, and the said plaintiff hath been and is by means of the committing of the grievances by the said defendants as aforesaid, greatly 30 injured and damnified, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also the said plaintiff, before and at the time of the committing of the grievances hereinafter mentioned, was and hitherto hath been and still is lawfully possessed of a certain other messuage and premises situate in the City of Jersey City, in the County of Hudson aforesaid, and which last mentioned messuage and premises the said plaintiff and his family at the several times hereinafter mentioned occupied and in 40

habited, yet the said defendants, well knowing the premises, but contriving and intending to injure, prejudice, agrieve and wholly ruin him, the said plaintiff, and to incommode and annoy him and his family in the possession, occupation and enjoyment of his last mentioned messuage and premises, heretofore, to wit, on the third of August, eighteen hundred and eighty-five, and on divers other days and times between that day and the commencement of this suit, wrongfully and injuri-

10 ously caused and procured divers noxious, offensive and unwholesome vapors, smells and stench to arise and ascend to, in and about the said last mentioned messuage and premises of the said plaintiff, and the same were thereby rendered and become uncomfortable, unhealthy and unwholesome and unfit for habitation, and the said plaintiff was thereby made sick, annoyed, in-

20 commoded and unable to perform any work and was forced to expend, lay out and pay other large sums of money, to wit, twenty-five dollars in endeavoring to be cured. And also by means of the premises aforesaid all of the said plaintiff's offspring, namely, five children, infants under the age of fourteen years, were made sick by said noxious, unwholesome and unhealthy smells and stench, and in consequence thereof, departed this life on the ninth day of December, eighteen hundred and eighty-five, to wit, at Jersey City, in the County of Hudson aforesaid, and thereby also the said plaintiff was forced and obliged to, and did then and there pay, lay out and expend divers other large sums of money

30 amounting in the whole to the sum of two hundred and fifty dollars, in and about the endeavoring to cure the said children of the said sickness received as aforesaid, and for their funeral and interment, and was also greatly injured in the use, occupation and enjoyment of the said last mentioned messuage and premises, and hath been and is by means of the premises otherwise greatly injured and damnified, to wit, at Jersey City, in the County of Hudson aforesaid, to his damage, twenty thousand dollars and therefore he brings his suit, &c.

40 And the said defendant, Patrick Woods, by Henry

E. Wills, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the said supposed grievances in plaintiff's declaration mentioned, nor any or either of them, and of this he puts himself upon the country, &c.

And for a further plea in this behalf by leave of the Court here first had and obtained the said defendant, Patrick Woods, saith that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that at the said 10 time of the dumping of the night soil, &c., in plaintiff's declaration alleged to have been dumped by said defendant upon said lands in said declaration pretended to be of the plaintiff, the said defendant was duly and legally authorized thereto by the Board of Health of Jersey City, under authority of the Charter of Jersey City, by permit in writing and by the Board of Health and Vital Statistics of the County of Hudson, under authority of the laws of this State, by a license in writing as by said permit and license to the 20 Court here shown, and ready to be produced when and where the Court shall direct will more fully appear, and this he is ready to verify, wherefore he prays judgment, &c.

And for further plea in this behalf by leave of the Court here first had and obtained, the said defendant, Patrick Woods, saith, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he was directed and commanded by the Board of Police Commissioners of Jersey City to dump certain quantities of night soil near to the said dwelling house and premises in said declaration alleged to be of the plaintiff at the said time when the said grievances in said declaration are alleged to have been committed, and did accordingly dump and bury same, but protests that he did not otherwise dump or bury night soil or any other substance near the said dwelling house or premises, and of this he is ready to verify. Wherefore he prays judgment, &c.

And the said defendant, Charles Finley, by John A. 40

McGrath, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this the said defendant puts himself upon the country, &c.

And the said defendant, Daniel W. Benjamin, by M. T. Newbold, his attorney, comes and defends the wrong
 10 and injury, when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or of any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

And the said defendant, Edward A. Sturgis, by M. T. Newbold, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or
 20 of any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

Therefore, to try the issue above joined, let a jury come before the said Circuit Court at Jersey City aforesaid, on the fifth day of May, in the year of our Lord eighteen hundred and eighty-seven, being as yet of the term of April, in the year of our Lord eighteen hundred and eighty-seven, who neither, &c., by whom, &c.,
 30 to recognize, &c., because as well, &c., the same day be given to the parties aforesaid at which day before the said Circuit Court comes the said parties by their attorneys aforesaid.

And the jurors of the jury above mentioned also come who, to speak the truth of the matters aforesaid, being chosen, tried and sworn, say, upon their oaths, that the said defendants are equally guilty of the said grievances above laid to their charge. And they assess the damages of the plaintiff, by reason of the said grievances,
 40 ances, at fifteen hundred dollars over and above his

costs and charges by him about his suit in that behalf expended.

And afterwards, to wit: On the 14th day of May, in the year eighteen hundred and eighty-seven, as yet of the term of Aprtl aforesaid, application being made to the Court for a rule to show cause why the verdict of the jury should not be set aside and a new trial granted on the grounds that the verdict is against the weight of evidence, and the damages awarded by said verdict excessive, and on the further ground of misbe- 10
havior of the plaintiff toward the jury. And the Court having granted said rule, on the grounds aforesaid, orders the plaintiff to show cause, on the 28th day of May, in the year aforesaid, before said Court, why, &c. And on said day the counsel for all the said defendants and counsel of the said plaintiff being heard and the Court having considered the matter.

It is, on this second day of July, in the year aforesaid, by the Court ordered, that the said rule to show cause be discharged as to the said defendants, Charles Finley, 20
Patrick Woods and Edward A. Sturgis, and that judgment final be entered in favor of the said plaintiff, Joseph Handley, and against the said defendants, Charles Finley, Patrick Woods and Edward A. Sturgis, for the sum of fifteen hundred dollars, besides costs of suit to be taxed.

And it is further ordered that the rule to show cause be made absolute as to the said defendant, Daniel W. Benjamin, and that as to said Daniel W. Benjamin the said verdict be set aside, and a new trial granted. 30

Therefore, it is considered that the said plaintiff do recover against the said defendants, Charles Finley, Patrick Woods and Edward A. Sturgis his damages aforesaid in form aforesaid found, and also ninety-four dollars and fifty cents for his costs and charges by the said Court now here adjudged to the plaintiff and with their assent, which said damages, costs and charges in the whole amount to fifteen hundred and ninety-five 40

dollars and fifty cents. And the defendant in
mercy, &c.

Judgment signed July 2d, A. D. 1887.

M. M. KNAPP,

Judge.

10

BILL OF EXCEPTIONS.

HUDSON CIRCUIT COURT,

APRIL TERM, 1887.

JOSEPH HANDLEY

20

vs.

PATRICK WOODS, DANIEL W. BENJAMIN,
CHARLES FINLEY and EDWARD A.
STURGIS.

} In Case.

For Plaintiff,

HOFFMAN & HERBERT.

30 For Defendants,

Mr. NEWBOLD, Mr. WILLS and Mr. McGRATH.

On this twenty-eighth day of April, 1887, this cause
was moved for trial, whereupon a jury was impanelled
and proceedings had as follows :

Mr. HERBERT opened for Plaintiff.

JOSEPH HANDLEY, the plaintiff, being sworn, testifies
40 as follows :

Direct-examination by Mr. Herbert:

I am the plaintiff. I now live on Newark avenue; have lived there about three weeks. Prior to that I lived on Mead avenue, Marion. Had lived there about eight years; was living there in 1885.

Q. Did you suffer any inconvenience during the summer of 1885 from noisome smells; if so, state when you first noticed them, and recount in your own way what occurred?

A. The first thing I remember I took very sick myself. I went to Dr. Forman; he prescribed for me, but didn't seem to do me any good. I then went to Dr. Wilkison and he prescribed. This was week after week. I then thought I would try another doctor. I then went to Dr. Buffet, and he prescribed; I wasn't getting better, and I was recommended to Dr. McDowell; this was in June and July, 1885, Dr. McDowell prescribed for me and I got better, but during this time, my wife was taken the same as myself, and the one prescription 20 very nearly done for the both of us. Everything I ate would come up again as I went around. Then, in August, there was a little boy came down to the house, and he was after tumbling head and heels into this filthy stuff that was dumped aside the house. I took him down to a well and cleaned him as good as I could with a broom, and I went and looked, and there it was running all over the ground right down towards the house. I was surprised and I went right away to Mr. 30 He was the one that rented a piece of this ground, and I spoke to him, and he says, "Oh, I have got little pits to put it in; you go to Charles Finley, he has it dumped." I went to see Finley and I said to him, "Do you allow this stuff to be scattered along the ground like this?" He says, "I rent this place and I have a right to do what I like; I get my stuff over from New York and from where I like, and if you want to know anything about it, you go to see Mr. Sturgis." And I went see Sturgis and talked with him. I says, "Are you aware that there is a lot of closet soil dumped be- 40

side my house?" He says, "Oh, you're behind the age; they have dumped it there for months." I says, "Is that so; I pay taxes; can't I be a little protected? I have got a little family, the youngest four years and the oldest about twelve, and I don't want to lose them or I don't want them to be sick; it takes all my time to buy them something to eat." He says, "The best thing you can do is to mind your own God damned business." I said, "That is what
 10 I am trying to do." I went from him to Captain McKeag, at the First Police Station, he directed me to come up to the County Board of Health. I went to the Board of Health and spoke to officer Allen, and the agreement was that Allen should come down there with me and catch them in the act of dumping; he came and we did catch Woods dumping between 12 and 1 o'clock in the morning, in the month of August; I can't give the date, but I believe it appears in the papers when he was arrested; we arrested Woods, but there were other
 20 dumpers there besides Woods. Allen said to Woods, "Who authorized you to dump here?" He said, "Oh, I got a permit from the city." "Have you got your name on the wagon?" "No." "What's your name?" "My name is Mr. Woods." Woods says, "Who are you?" "Well, I am the Sanitary Inspector." "Let's look at your badge?" So he opened his coat and showed him his badge. I carried a lamp, it was dark, and in going down the field Woods said, "I want to see Sturgis," and Allen says, "Get on the wagon and never mind
 30 seeing Sturgis."

Mr. Newbold objects to any conversation relating to Sturgis in the absence of Sturgis.

The Witness.—The officer said to me, "Joe, you can go home and go to bed and I will call upon you in the morning if you are wanted." I suppose those men were tried, I don't know, but I never was called, but Allen sent me a letter to notify him if they dumped any more.

40 Q. You say that Woods said he wished to see Sturgis?

A. Yes, he got off the wagon ; he said he wanted to see him about what he was arrested for.

Q. Did you see Sturgis ?

A. Not that night, I saw him every two or three days.

Q. Woods was arrested ?

A. Yes, and I suppose there was a trial, but I don't know.

Q. Was the nuisance discontinued ?

A. No, they went dumping more bolder than ever. 10

Q. When did you see Woods after that ?

A. I seen him two or three times a week going away with his wagon, sometimes morning, sometimes night. I watched them a little but I couldn't stop them.

Q. Where did they dump the night-soil ?

A. All over, wherever it was convenient for his wagon to drop it.

Q. Was any of it dropped on Finley's land ?

A. Yes, it was dumped from my place up by Finley's. 20

Q. How far was the place where the night-soil was dumped from your house ?

A. 150 feet to the first pit, then it went clear to the graveyard or very near ; dumped it anywhere, scattered it along the ground.

Q. How deep were the pits ?

A. Between three and four feet deep ; there was only one or two pits dug, and they was three or four feet deep. Sometimes there was eight or nine loads put into a pit and it ran all over the ground. 30

Q. Were there any odors arising from that ?

A. Oh, odors, knock you down.

Q. Were they offensive to you ?

A. Yes, offensive to all the neighborhood.

Q. When did you first notice those odors ?

A. In June.

Q. And they continued up to what time ?

A. They continued dumping there till I had them arrested in August, then they stopped for a couple of nights while they had this trial, wherever it was and 40

then they began to dump again, until I lost all my family. They laughed at me when I would tell them to dig a little deeper.

Q. Who would laugh at you?

A. Woods and his son and the men what was helping him.

Q. Did you see any of the other defendants about the dumping there?

A. Yes, two more dumped there and they had a permit to dump on Finley's ground, that was Calston and——

Q. A permit from whom?

A. From Benjamin.

Mr. Herbert objects to the testimony as to the permit unless it be produced, and asks that it be stricken out.

Mr. Herbert calls upon the other side to produce the permit.

20

Mr. Wills replies that he is unable to produce the permit now.

Q. Did you see the permit given by Mr. Benjamin to Woods?

A. No, it was produced in the court; I was present when Benjamin testified in that case, and he didn't deny giving the permit; he said he didn't write it, his clerk did, but he said he signed it at the bottom.

30

Q. And it was in consequence of that permit that Woods dumped on Finley's land?

Objected to.

A. Yes, sir,

Q. Did Mr. Woods so state?

A. No, but the other two dumpers said they dumped on Finley's ground and showed the permits.

40

Mr. McGrath objects to the testimony as to the permits, so far as it may work against his client, Mr. Finley,

The Court instructs the jury that the declaration of either one of the defendants is competent evidence in the cause against such defendant only, and not against the others, as the case now stands.

Q. What did Benjamin state when you heard him testify about the permit? What permit did he say he had given?

A. I believe Benjamin said in the court the last time the others were tried, Lawyer Paxton, I believe it was, asked him who authorized him to give a permit to those men, and he said he didn't want any authorizing, that the Board had appointed him and he could use his own discretion; he acknowledged writing his name to the permit to Woods. 10

Q. Did these odors which you smelt affect your health?

A. Yes, I was under four doctors with it.

Q. You had been perfectly well before? 20

A. Never was a day sick as I know of.

Q. How has your health been since that time?

A. Well, I have never been what you call right since; that is, in good health.

Q. How long did the dumping continue?

A. Sturgis said it had been going on a great while before I found it out. I had the men arrested in August, and they dumped in spite of me up to December, when I had lost my family; no dumping after that time. Before that, when I made the complaint and had these men arrested, Mr. Benjamin signed a permit and Sturgis endorsed it, that I should clean out my closet, and I did, and I believe it was the only one that got cleaned out in that neighborhood. 30

Q. When you made complaint, they ordered you to clean out your closet?

A. Yes, and Benjamin signed the permit for that, and it was dumped near my house after being turned out.

Mr. Newbold asks that the testimony be 40

stricken out, as to Benjamin signing the permit, unless the paper be produced.

Q. (Showing witness paper.) Is that the paper?

A. That is Benjamin's permit, with his name signed to it.

Mr. Herbert.—It is not a permit.

A. It is a notice to me to clean the closet out.

10 Q. What was done after this notice was served upon you?

A. I had to get it cleaned out, and the man took it where he had a permit to take it. I saw his permit; he had a permit to dump it on Finley's ground and he dumped it there.

Mr. McGrath, for his client, objects to the contents of the permit being given orally.

The Witness.—Then, they went on dumping away.
50 It went on till the 9th of December and I lost one child, and I went to the undertaker's to get a coffin for it, he came up and measured the youngest for one and went for the coffin and brought it the next morning, but he had to go and bring two more coffins, I had two more dead the next morning. Well, Thursday the boy was all right, he would be ten years old the following June and the girl would be twelve in May. The girl was running round the street on Thursday, I had three dead at that time. The boy was helping me around the stable,
30 they both came in about ten minutes to one, and said, "Papa, I am sick," and threw up a little black stuff, and laid down and died. I took three out to be buried on Friday, and when I came back I had two more dead and I took them to the grave on Saturday.

Q. Before they were taken sick, had they complained about the smell?

A. They were always complaining about it; one of the little ones fell into it about two or three months
40 before that.

Mr. Newbold asks that the testimony just given by witness, in so far as it does not relate to his client, be stricken out.

The Court holds the testimony to be competent and refuses to strike it out; to which ruling Mr. Newbold prays an exception.

Q. How long were your children complaining?

A. They were complaining for months before they 10 died, that there was a nasty smell.

Q. How long were they sick before they died?

A. They were at school Monday and Tuesday, except one of them.

Q. Before that, were they ill?

A. No, they were well; they were going to school.

Q. Was the first sickness that they had, only the Tuesday before their death?

A. They complained of a nasty smell; the first sickness I knew of was when they came in and said, "Papa, 20 I am sick," and laid down, and in a few minutes they died.

Mr. Newbold asks that the complaint of the children that they smelt a nasty smell, be stricken out.

Q. When was it?

A. It was after the night-soil was dumped there, two or three months before they died, that they complained of the smell. From the time I had the men arrested, the children found out where the stuff was, I told them 30 to keep away from it; they had nowhere else to play but on this common.

Mr. Newbold renews his motion, that the complaint of the children be stricken out. The Court refuses to order it stricken from the record, to which refusal Mr. Newbold prays an exception, and it is sealed accordingly.

M. M. KNAPP, [L.S.] 40
J.

Q. Was the smell offensive, continuously, from the time you discovered the night-soil down to the time of their death?

A. Yes, and before I discovered it.

Q. Describe particularly the character of the smell?

A. I can't describe it, but it was a very nasty smell, just the same as a man should put his head down the closet seat, he could smell something there; it was that smell of a closet and it was all running over; it was
10 dumped right along within 150 feet of my house.

Q. Did the smell permeate your house?

A. Yes, it run down along side of my place; had to shut doors and windows when the wind was from that way, and when I would eat I would get sick at my stomach and up it would come.

Q. Would that occur frequently?

A. Mostly every morning.

Q. Who acted as physician for the children?

A. Dr. Parker, and then when the other two got sick
20 I wanted some more physicians and I got Dr. Culver, and he and Dr. Parker held a consultation.

Q. How much were you obliged to pay for services?

A. I believe Dr. Parker's bill was \$15, and I gave Dr. Culver \$5 for the consultation; total amount, \$20.

Q. How much for yourself?

A. I never kept any account, I should say it was over \$20 for myself.

Q. How much for medicine?

A. I never kept account; I should say altogether
30 about \$10 for myself.

Q. How much for the children?

A. The chief thing given them was milk and brandy; I should say \$5 or \$6.

Q. What were the funeral expenses?

A. About \$160.

Mr. Wills objects to any testimony as to expenses after the death of the children; that the right to recover for anything after the death of the children would not be in
40 the plaintiff.

RECESS.

Q. In consequence of your sickness were you unable to attend to your business?

A. Yes, I was not able to go out every day.

Q. How much was your loss in consequence of that?

Objected to by Mr. Newbold.

The Court.—To specify the particular losses, if that is the object of the question, then it is competent; let the witness specify the elements of loss. 10

A. Well, when I was sick I was very weak, and I used generally to stop at home one or two days a week. I had to be out every day, and there was two days a week I generally stopped at home.

Q. Did you stay at home in consequence of your sickness?

A. One day I did and the other day I didn't.

Q. How much did you lose in consequence of your sickness? How much did you make a week? 20

The Court.—How much at a time did you lose; how much were you earning?

A. I calculated that time of year I was sick I used to average \$7 a day, that is, with the horse and wagon, sometimes more and sometimes a little less.

Q. How many days did you lose in consequence of your sickness?

A. Put it all together I should say I lost altogether 30 about, well, we will say twenty.

Q. How many days were you unable to attend to your business at the time of the death of your children?

A. Well I had a business that I had to go to private people and supply them with kerosene, that was my business, and it was in the papers that the children had died with malignant scarlet fever; well, I could not go near those houses so long as they got to suppose that was in the house, so I had to stop home about three 40

months so they would not be frightened when I went to them.

Q. How much was you loss for that period?

A. That was about the best time for my business; that was in December. I reckoned to make \$8 a day at that time, the best time in the year for kerosene.

Q. That is, the months of December, 1885, and January and February, 1886?

A. Yes.

10

Cross-examined by Mr. Newbold:

Q. Mr. Handley, at the point where you say these dumps were, have you ever measured its distance from your house?

A. Yes, sir.

Q. With whom?

A. With one of my witnesses, Mr. Shaw.

Q. When?

A. Just after the death.

20

Q. How did you measure it?

A. We measured it by a tape.

Q. Did you measure from the pits?

A. To the corner of the house.

Q. Now, you stood upon the place where those pits were, did you?

A. I stood alongside of them, not on the pits; if I stood on the pits I would go in.

Q. There is somewhat of a hill, between your house and the pits, is there not?

30

A. There is an incline from the pits down to my house.

Q. Is there not a hill between your house and the pits?

A. No, sir, there cannot be a hill, for it is an incline all the way down.

Q. Can you, from your stoop, see the place where the pits are?

A. From my stoop? Well, get outside the stoop and you can see it. You can see it the side of the house but
40 not the front of the house.

Q. Standing where the pits are you cannot see any more than the roof of your house, can you?

A. Yes, sir, you can stand at the side door of my house and see the pit, but the front you cannot because there is a kind of sand bank there.

Q. A sand hill?

A. Yes, in front, not where the pits were, the pits is sideways.

Q. How far from the front of your door do you have to go to see where the pits are?

10

A. Go by the south side of the house. there you can see the pits.

Q. Can you, standing where the pits are, see any part of your house below the second story?

A. Well, in the first place it isn't a second story at all, it is a story and a half. You can stand on the floor of the kitchen and see the pits, that is plain enough.

Q. What pits do you refer to in saying that?

A. I refer to the pits where this closet stuff was 20 dumped.

Q. On whose land?

A. Well, the pits was on Henry's land, but then the other wasn't in pits at all; it was scattered over the face of the earth.

Q. On Henry's land, then it was not on Finley's land?

A. Finley had no pits; his was dumped on the ground.

Q. And that was how far away from you, on Finley's 30 land?

A. Well, it ran from 150 feet from my house all the way up past Finley.

Q. I am speaking now about Finley's land?

A. I should say it was between three and four hundred feet—Finley's, that is, his place, what he rents.

Q. Where did they dump upon Finley's land; where was the nearest point?

A. The nearest point was next to where the pits was.

Q. Well, on Finley's land?

A. Yes, sir, they scattered the stuff all the way from those pits past Finley's ground.

Q. Who did you see dumping night-soil there?

A. Well, I saw Patrick Woods; he was the only man.

Q. You saw nobody else?

A. No, sir.

Q. And where did you see Patrick Woods dumping
10 it?

A. Why, right in the ground.

Q. The place where the pits are that you referred to, the nearest to your house, they are right in a sand hill, are they not?

A. They are in an incline, going down towards what they call the cedars.

Q. Towards the Hackensack?

A. Yes.

Q. How far from West Side avenue?

20 A. Well, they live on West Side avenue, but I should say the field lies as far as from here to Five Corners.

Q. Isn't it over 2,000 feet west of West Side avenue, towards the Hackensack river?

A. I never measured it.

Q. What is there between the place where the pits are and the Hackensack river?

A. Well, it is kind of meadows.

Q. Yours is the last house west, isn't it, towards the river?

30 A. It is in that row, there is some lower down than me.

Q. Where is that?

A. Well, I believe the Marion Flats is lower down than me.

Q. Well, there is also a place, Mr. Mullinbrook, I believe; is that further west of you?

A. Yes, he is lower down.

Q. How far is that from you?

A. Well, it is over 200 feet.

40 Q. What is that factory there, gut cleaning?

A. No, sir ; I don't know as he cleans any guts there ; he is something in the lard business, renders lard ; I don't think he cleans any guts. I have been in the place many a time and you could eat your victuals off the floor.

Q. What do you keep about your place, cows and horses ?

A. I had a cow for the children, and I had a horse as I drove every day, and I believe that is all that I kept.

10

Q. In 1885 ?

A. Yes, or 1886.

Q. You had compost in your garden, did you not, several tons of manure, in December, 1885 ?

A. No, sir, I never had any manure in it.

Q. Did you see Dr. Converse there at your place ?

A. No, sir, Dr. Converse when I lost them children, he was hurt ; he was in the hospital.

Q. Did you ever see Dr. Converse there in your place in December, 1885 ?

20

A. No, sir.

Q. You did not ?

A. No, sir ; I know the gentleman well, if I did.

Q. You say you were notified to clean out your closet ?

A. So I was.

Q. Did you clean it out yourself ?

A. No, sir.

Q. Who did you get to clean it out ?

A. I got Colston, young Colston, Mrs. Colston had a permit and her son did the work, and he was the one cleaned it out, I hired him to clean it out.

Q. Where did you have him put the soil ?

A. I didn't have him put it anywhere, but I suppose he had a permit to dump.

Q. Did you see him put it anywhere ?

A. No, sir ; I didn't see where he put it.

Q. Didn't you ask Colston to dump the cleanings of your closet in the pits where Woods had dumped the night-soil ?

40

A. No, sir. If you will allow me I will tell you what I did ask him. I asked him what he was going to do with it, and he said he had a permit to dump on —(interrupted.)

Q. Now wait a minute. I ask you if you did not ask him to do that?

A. I say no.

Q. Mr. Handley, you say the first child took sick on Monday night, as I understand you?

10 A. Monday.

Q. What was her name?

A. Her name was Sarah.

Q. You spoke of her attending school. What school did she attend?

A. She attended the school in the Marion Hotel, I forget the number of it.

Q. At Marion?

A. Yes.

Q. You don't remember the number of the school?

20 A. I could not say whether it was nine or eleven; it was one of them.

Q. Do you know whether it is number fifteen or not?

A. It might be, I believe it is number fifteen.

Q. Is it in the old hotel property?

A. In the old hotel—Marion Hotel.

Q. You say she attended school on Monday?

A. No, she did not attend, but the other three attended.

Q. What was the last day she attended school?

30 A. On Friday.

Q. But she didn't go to school on Monday, you say?

A. No, she took sick Monday.

Q. What time on Monday?

A. Oh, pretty early, I could not exactly name the hour—early in the morning.

Q. I understood you to say in your direct-examination, she took sick on Monday night?

A. No, it was Monday night I sent for the doctor. I was working that day.

40 Q. And when did the other two that next sickened, take sick?

A. They took sick, I believe, it was that night, because they were dead in the morning, and it must be that night.

Q. Did they die on Tuesday?

A. No, they died on Wednesday.

Q. Then, do you mean to say they took sick on Monday night or Tuesday night?

A. I am talking about the one that died, are not you?

Q. What date was this Monday in December, that you say Sarah sickened upon? 10

A. Well, it was on Monday, and she died on Wednesday. I guess it would be about the 6th, wouldn't it—she died on the 9th?

Q. The 6th of December, eh?

A. I believe that was the day.

Q. What were their names, the two that sickened next to Sarah?

A. One was called Minnie, she was the next, and the other was called Katie, she was the third little one.

Q. Did they attend school too? 20

A. I believe they were at school on Monday and Tuesday.

Q. At this same school in the Marion Hotel?

A. Yes, that school.

Q. And what were the names of the other two that died later?

A. The other two were the two eldest, Mary and John; they died on Friday.

Q. Of the same week?

A. The same week. 30

Q. When did they take sick?

A. They took sick on Thursday.

Q. What is the size of your house that you have there?

A. Well, it is 36 feet lengthwise, and front it is 24 feet; I have got five rooms on the floor.

Q. You have got no rooms up stairs?

A. No, sir.

Q. Just tell us what your rooms are that are on the one floor? 40

A. Well, the first is 12x16, that is the parlor; the next is our bed-room, that is 12x16, that is where my wife and I slept; the kitchen was 21x16; the children's bed room was 20x8, so that in winter time or summer time we could partition it off for two or three, and then I had a bath-room about 10 feet.

Q. Did you connect with the water?

A. We had a lovely spring well there; we did not—

Q. Do you mean you had a bath-tub there?

10 A. Yes, a bath-tub.

Q. Connected with the Passaic water?

A. No, sir; we used a little rain water.

Q. An ordinary tub?

A. No, sir; a regular bath tub.

Q. Now then, the children's bed-room was 20x8 you say?

A. 20x8.

Q. And the five children slept in there, did they?

A. No, the boy he slept in what they called the bath-
20 room, in a little crib for himself, and two of the children slept in one bed, and two slept in another bed in this twenty feet room.

Q. You said you spoke to Mr. Benjamin about this dumping. Where did you ever have any conversation with Mr. Benjamin?

A. That was a mistake on my lawyer's part, I never mentioned I spoke to Benjamin, it was officer Allen. I thought to check him when he said that, sir.

Q. Then you never did speak to this gentleman (Mr.
30 Benjamin) about it?

A. No, I never spoke to him about that, I spoke to Inspector Allen about it.

Q. You did say in your direct examination you went to see Mr. Benjamin and protest about that, didn't you?

A. No, I didn't. I never mentioned his name.

Q. You never did go to Inspector Benjamin's, did you?

A. No, sir.

Q. When was the first you ever saw Woods dump
40 any night-soil in those pits you have spoken about?

A. The night I arrested him. That was in August.

Q. You never saw any night-soil dumped in there before, did you?

A. No, that is how I came to find it out, by the little boy falling in it.

Q. That is the first you ever knew about any night-soil being dumped there?

A. I went to look where it was then, that ground was rented up there, I didn't belong to that ground.

Q. Now, when was the last time you ever saw Mr. 10 Woods dump any night-soil there?

A. They dumped within two or three nights before the children died; I could not say whether it was one or two nights before the children died, but it was in the same week.

Q. Who did it?

A. Woods was one.

Q. Do you mean to say positively there was any night-soil dumped there after the first day of December?

20

A. I mean to say I saw the wagon pass the house at five o'clock in the morning after dumping.

Q. Did you see—were they dumping night-soil?

A. Yes, sir.

Q. Had you seen where he had been?

A. Decidedly.

Q. Where did you see that from?

A. I see it from the side door.

Q. At five o'clock in the morning, eh?

A. Yes, sir; I used to get up at half-past four and 30 five in the morning.

Q. What was he doing when you first saw him that morning?

A. He was going home with his wagon.

Q. Whereabouts was he?

A. Coming down the incline between the next house and mine, coming towards Newark avenue.

Q. That is the first you had seen of him that-morning?

A. Yes, the wife called my attention to it.

40

Q. Your house is about due north from these pits, is it not?

A. Well, if the house was moved and brought up alongside of the pits it would be about 10 feet off.

Q. No, no, the direction of your house from these pits is about north, isn't it?

A. My house is more to the north than what the pits is.

Q. What I mean is, isn't it about in a direct northerly
10 course from the pits that your house is?

A. We will say my house is where that door is, and the pits in this corner, 150 feet that way, that is the only way I can explain it.

Q. That is as near as you can give the direction, is it? Now, then, Mr. Handley, do you mean to say that you were not working at your business of peddling oil in December, 1885, after the death of your children?

A. I mean to say that I was for two or three months stopping at home.

20 Q. Didn't you commence your business again a week after the death of your children?

A. No, sir.

Q. Didn't you deliver any oil in December?

A. No, sir.

Q. On December 16th, 1885?

A. No, sir.

Q. Did anybody take your business?

A. No, I left the business stand, nobody would take that business, only the man that is running.

30 Q. Have you any memorandum by which you can fix the date when you began peddling oil again?

A. No, I didn't take no account, but no sensible man would go out after scarlet fever had been at his doors.

Q. You say you didn't go out for three months?

A. I say I didn't go out for two or three months. I could not swear exactly to a week, whether it was three months or two months and two weeks, but it was between two and three months, I didn't put down any date.

£0 Q. Don't you have any books in which you keep account of your deliveries of oil?

A. No, I always paid for what I got, and took and sold it.

Q. And you kept no accounts against those of your customers to whom you delivered oil?

A. I had what is called an address book.

Q. And you had in December, 1885, didn't you?

A. Yes.

Q. Can you fix the exact time when you began to go around again with your wagon?

A. No, I could not fix it exactly because I was too much bothered, I was all upset, and I could not exactly tell; it is so long since, too, it is over a year ago, remember, and I wasn't bothering me about the dates or anything else at that time. I had enough of trouble without being bothered.

Q. You say that your earnings then were about \$8 a day.

A. Yes, that is for myself, horse and wagon.

Q. How much oil did you take out at a time with your wagon? 20

A. Well, some days more, some days less, some days I would sell 200 gallons and some days 150, and that is a thing you could not rely on, how much you would sell a day, but it would average from 200 to 250 gallons a day.

Q. How much a gallon would you get for it?

A. Different prices; some I sold at fifteen cents.

Q. And what was your other price?

A. Some I would give it for fourteen cents.

Q. Fourteen or fifteen cents a gallon? 30

A. If a man took five gallons I would take five cents off.

Q. And you bought it at what?

A. Well, I had a contract—(interrupted.)

Objected to as incompetent; objection overruled.

Q. What did you buy the oil at?

A. Well, I used to make a contract, and, of course, I 40

don't think it is proper for me to give that contract away ; there may be men here in this Court that was paying more for it than I was at that time, and there might be a little jealousy. If there is no objection I will answer it.

Q. Of whom did you buy oil in the fall of 1885 ?

Objected to by Mr. Hoffman.

10 *The Court.*—I don't know as that is necessary to go into ; there may be personal reasons why he should not divulge that part of the business ; you can show what the current prices were.

Mr. Newbold.—We wish to have a chance to contradict him.

The Court.—You may ask him.

20 Q. Of whom did you buy the oil in the fall of 1885 ?

A. I believe I bought it of the Standard Oil Company.

Q. Where ?

A. First and Provost streets.

Q. Do you know who the agent there was ?

A. Mr. King was the man that supernumeraried it ; he was the agent, I believe—the man that you did all your business with.

Q. Now, then, do you say you had a contract ?

3 A. I was in the habit of making contracts for the winter.

Q. Did you make a contract that fall for the winter ?

A. I could not say as I did.

Q. And the oil was bought in 1885 ; you bought of that place, did you ?

A. I believe I was buying there. You see, the Standard Oil Company—we used to deal with a man called Thomas W. Leek, and a man by the name of Joe Owen, and a man by the name of Fisk and something
40 else, and then the Standard came along and they

bought them all out, and they ran the business, and, of course, we bought of them.

Q. I only want to get at where you were buying in this fall of 1885?

A. Well, I believe I was buying of the Standard, I believe they had the control.

Q. At the point you have named, First and Provost streets; now, then, did you buy as you would want it, simply go there and buy what you would want, and pay for it, or did you have an account there? 10

A. We generally paid for it by the month.

Q. And had it charged against you, did you, on their books?

A. They sent me a bill and I paid them the money.

Q. What did you buy in December, 1885, previous to your children dying?

A. I couldn't say; I didn't keep no account; I paid the money and got the bill and burned it, and that was through with it.

Q. You mean to say you cannot tell us what you did 20 pay for your oil?

A. No, I could not, that is impossible.

Q. I mean by the gallon?

A. What I paid by the gallon?

Q. Yes?

A. Different prices; sometimes 8 cents, $7\frac{1}{2}$ cents, 6 cents, 9 cents, 10 cents. I paid as high as 38 cents for it.

Q. Did you pay as high as 38 cents for it in December, 1885? 30

A. No, I could not say whether it was 7, 8, or 9 cents.

Q. When you sold your oil for 14 cents a gallon what did you pay for it?

A. Eight and a half cents.

Q. You can produce your books here, can you, covering your sales in December?

A. I destroyed them all when I sold out the business. I had to give up the business, and I destroyed them: there may be an old book about the house. 40

Q. When did you give up the business?

A. In February.

Q. You cannot tell surely that you cannot produce your books covering the month of December, 1885, and January, 1886.

A. I never got a book, I didn't keep the date. If you want them you can get them down to the Standard works. I only kept a little memorandum, if they didn't pay me I put down the lady's name and how much
10 money, that was all, I didn't put date or nothing down.

Q. Didn't you have a list of your customers?

A. I didn't have a list of customers, I didn't require a list because I knew them all.

Q. Are you sure you cannot bring us that book you did have in which you put down the names of those you charged oil to?

A. Yes, I believe I can bring it.

Q. Then you will bring that?

A. Yes, I have no objections.

20 Q. You said that you first noticed the smell in June, 1885?

A. Yes, June. I began to be sick there myself with the smell.

Q. In June?

A. In June.

Q. Was that the same kind of smell that you afterwards smelled during the fall of 1885?

A. Yes, sir; it was the same kind, only sometimes a little stronger.

30 Q. A little stronger in June, was it?

A. The hotter the weather was, the stronger it was.

Q. And did it affect your health too in June?

A. Yes, sir.

Q. The same, did it, as you were afterwards affected?

A. Yes, June and July, I was doctoring.

Q. What doctor did you go to in June, 1885?

A. I believe it was Dr. Carpenter.

Q. Was he the first you went to?

A. Yes, sir.

40 Q. You said you went to Dr. Foreman, didn't you, the first?

A. That was the children, Dr. Foreman, no, Dr. Carpenter.

Q. How many times did you go to see Dr. Carpenter?

A. I believe I was there twice.

Q. And then you went to see who else?

A. I went then to Dr. Wilkinson.

Q. What month was that in, as near as you can recollect?

A. I could not say whether it was in June or July. 10

Q. Were you then attending to your business of peddling oil?

A. I had my little boy with me and he was doing the chief part of the business.

Q. You went around, did you, at this time?

A. I went around, the boy did the business; that is, he carried the stuff to the door and made change.

Q. And you drove the wagon?

A. I drove the wagon, because I could not trust him with it. 20

Q. Were you ever laid up a day in the months of June, July or August, 1885?

A. No, I was not what you might call bed-fast, I was sick, walking around, but I wasn't lying in bed, the doctor had advised me not to lay in bed.

Q. Or in the months of August, September or October or November of the same year.

A. No.

Q. Where did you get any prescription from, what drug store, for any ailment that you had during the 30 summer or fall of 1885?

A. Well, when I went to Dr. Carpenter I got it off a corner drug store there, I don't know the name, corner of Forest and Jackson avenue, I went there with two or three prescriptions.

Q. That was for yourself?

A. That was for myself.

Q. Did you ever get any in this part of the city?

A. Yes, I got it here. I went for Carpenter—I mean Wilkinson, and I came to a nearer drug store there in 40

Bergen avenue. I forget his name. I got three or four doses there, that is, prescriptions put up.

Q. Tell us what it was you complained of, what was your trouble?

A. The trouble was whatever I would eat would come up again, and I could not keep nothing down, and I had a pain in the back across the loins, and a pain in the chest, and a pain back of the neck, sick at the stomach, that is all.

10 Q. You live right down on the edge of the meadows, don't you?

A. Yes.

Q. There is a swamp within seventy feet of your house, isn't there?

A. Well, there is a little place there where the spring runs into, and all this fresh water ran into that and ran away from it.

Q. Who was your undertaker to whom you applied for the burial of those children?

20 A. Frank Norton.

Q. Where is his place?

A. His place is in Grand street near the police station.

Q. Have you the bill here that you paid him?

A. No, I didn't think it was necessary to bring it; I have got it at home somewhere.

Q. You have got it at home?

A. Yes.

Q. And have you the doctor's bill that you paid for
30 yourself?

A. No, I didn't require to keep those things; the fact of it is, I wanted to get everything out of my sight that attached to it at all.

Q. You say that Dr. Parker was one of the doctors that attended the children?

A. Yes, sir.

Q. He attended Sarah, I understand, the first one?

A. He attended them all.

Q. He attended them all through their sickness, and

40 Dr. Culver was also there as consulting physician?

A. Yes.

Q. Where did the children sleep during their sickness?

A. Well, it was very cold weather, as fast as ever I could carry them into the room—they were dying on to me—and we brought them into our room.

Q. All of them?

A. Yes, as soon as one died I put it in the front room, and as soon as another took sick I brought them in there, because we had a nice stove in there, and the doctor 10 told us to have a good heat, I think 95.

Q. It was cold weather, you say?

A. Yes, sir; December.

Q. And how long did that continue?

A. I couldn't tell you.

Q. Was it cold weather throughout their sickness?

A. They were only sick three days.

Q. Well, I mean was it cold weather?

A. Of course it was cold weather. December is always cold. 20

Q. Well, it had not been cold very long before that, had it?

A. Well, it was that cold that when the little girl went out for the doctor to come down to attend the first child he said it was too cold to take his horse out.

Q. Well, had it been cold previous to that according to your recollection, or not?

A. That was a very cold day I know. I could not say for every other day.

Q. Where did the children sleep during the time pre- 30 ceding their being taken sick?

A. They slept in the twenty foot room.

Q. All of them did, the four slept together?

A. Two girls slept in one bed and two in another, and the boy slept in the crib.

Q. That was up to the time one of them took sick, was it?

A. Yes.

Q. Do you say that you took your children then as they were taken sick into your room? 40

A. Why, of course, to look after them.

Q. How many were there sick at any one time?

A. There was two; one would get sick, and in about two hours another one would get sick, that is how I came to have the three dead first.

Q. Mr. Allen was there, was he not, and looked about your house?

A. Mr. Allen was there the night as he arrested the man.

10 Q. I mean in December, 1885. Wasn't Mr. Allen there in December, 1885?

A. I could not say as he was; he was there inspecting the pits after the arrest.

Q. Well, was he not there in December, after some of your children had died at the house?

A. Yes; him and Dr. Soltenstahl came down there to look at it.

20 Q. Did you not tell Mr. Allen, on that visit when he was there with Dr. Soltenstahl, that all of your children slept in one room together?

A. Well, you see it is all one room, but there is a door divides it, that is, a room divides the bath-room, and then the other room is 20 feet.

Q. And didn't you tell him you kept all the children together during their sickness?

A. No, sir.

Q. You did not?

A. No, sir; there would not be room for them.

30 Q. When did you speak to Finley about this matter of the dumping of this night-soil, and who were present, if anybody?

A. I met Mr. Finley in the fields, he was working in the fields; I could not say the date, two or three days before they were arrested; the same date as I went to Mr. Sturges. I guess it would be somewhere on the 4th or 5th, somewhere like that.

Q. The 4th or 5th of August?

A. Yes.

40 Q. Do you know how much ground was occupied by Mr. Finley?

A. No, sir; I partly guess, but I used to go down as far as the meadows, I never measured it, it is a pretty good piece of ground.

Q. Fifty acres?

A. I could not say, I never measured it.

Q. How far is the nearest point on Finley's ground from your house if you have ever measured it?

A. I should say it was about as far as from here to the other side of the street, that is, take it in a direct line.

10

Q. Henry's ground was between you and Finley?

A. Henry's ground lies right along the door, there is only the street divides it.

Q. And his ground occupies forty or fifty acres, does it not?

A. Yes, both run together.

Q. How far was Finley's house from where you were?

A. Finley lives in Westside avenue.

Q. Finley lives on his own place?

20

A. Decidedly.

Q. How far is it—2,000 feet?

A. I never measured it, I could not tell you.

By Mr. Hoffman.—It seems to me this ought to be affirmative proof, and that it is not proper cross-examination.

Q. You said that there was dumping within three or four hundred feet of your house upon Finley's land; 30 how do you know that land is Finley's?

A. I know he rents it.

Q. Of whom?

A. Of Joseph Warren.

Q. How do you know he rents?

A. Because I went down personally to see, and Joseph Warren told me he did so.

Q. Then what you know of Mr. Finley's land was what you got of Mr. Warren?

A. He told me himself he rented it.

40

Q. Rented what?

A. Rented that ground that he dumped on and down to the Hackensack River.

Q. Do you mean to say that there was any dumping within three or four hundred feet of your house upon ground that Finley rented?

A. Yes, sir.

Q. Where was that?

A. Beyond the pits there, to the south of those.

10 Q. Who did you ever see dumping any night-soil there on Mr. Finley's land?

A. I didn't see anybody dumping night-soil but one man, that is Mr. Woods.

Q. And that was on Mr. Henry's land, wasn't it?

A. That is it.

Q. Dr. Parker told you what was the matter with the children, did he?

A. I asked Dr. Parker what they died of and he said he had to put it down as malignant scarlet fever, that
20 is all I know about it.

Q. Did you have scarlet fever?

A. Not to my knowledge.

Q. In what direction from your place were these horse-boiling establishments that they had there?

By Mr. Hoffman.—There is no testimony whatever that there was any such thing there yet.

30 Q. Do you know where the Garrets and Autenreith carried on the boiling of dead animals?

A. I know the direction, yes, but I have never been there so I don't know anything about it; I know it is the other side of the Hackensack river, but where, I don't know.

Re direct-examination by Mr. Herbert:

Q. You say that you saw Patrick Woods dumping
40 night-soil on that land near your house?

A. Yes.

Q. Was any portion of the land Finley's?

A. No; I only saw him dump once; I saw him coming away after dumping, but only saw him dump once.

Q. Where did he come from after dumping?

A. Came down the hill.

Q. Was that Finley's land?

A. There was three of them dumped, Woods, Colston and Bremmer, they used to go up past Finley's.

Q. Did you see Woods come from Finley's land after 10 dumping?

A. I could not say what land he came from, they came that way, the two lands adjoin each other.

Q. What was the condition of your closet when it was cleaned?

A. Well, I claim it was four feet from the seat. It was dug very deep, and I had it cleaned during the time I was there. I suppose when it was cleaned out it was over, I guess about ten feet or twelve feet, when it was cleaned out.

20

Q. What was the physical condition of your children?

A. Always very healthy and strong and hearty.

Q. Have you the photographs of them?

A. Yes, my wife has photographs of them if you would wish to see them.

Q. Are those the photographs? (Handing witness photographs.)

A. Yes, sir; that is the boy, that is the eldest, and them others is the girls.

30

Q. This is the eldest?

A. Yes, sir; that is the eldest.

Q. How old is she?

A. Twelve, the 25th of May, and the boy would be ten.

Q. And the one in blue?

A. Well, she would be six, and this one was eight.

Q. The one in brown was eight, and the one in blue was six?

A. And then there is another little one that didn't go 40

to school—that is the one—she didn't go to school; that was taken the year before she died.

Said photographs offered in evidence.

Objected to as incompetent and irrelevant.

Q. Do these photographs show the relative size and physical condition of the children at the time the photographs were taken?

A. Yes, they are true likenesses of them.

By Mr. Herbert.—I insist it is proper.

Defendants' counsel objects to the admission of the photographs as incompetent and irrelevant to the issues in the case.

The Court.—I will admit them.

20

To which ruling of the Court defendants excepted, and prayed that their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP, [L.S.]

J.

Q. Were you, during the months of June, July, August, September, October and November, unable to attend to business at any time?

30 A. No, I kept going on my feet because it was the doctor's orders to keep on my feet as much as ever I could.

Q. Were there any days during that period, that you did not work, in consequence of your sickness?

A. Yes, there were several days I lost, but I could not name them.

Q. How many?

A. Well, I should say about a dozen.

Q. Was the weather so cold in December, the early part of December, as to freeze?

40

A. Oh, yes, rather a cold neighborhood down there.

Q. When the ground was frozen, were those smells that you have spoken of, noticeable?

A. Well, it is all sand there, and sometimes when they dumped they covered it and sometimes they didn't cover it.

Q. You said that you were obliged to give up your business, move away. Why?

A. Well, the wife got very lonely there, and my salvation was to take—(interrupted.) 10

By Mr. Newbold.—One moment. I object to that as being irrelevant; he says he gave up his place there in February last; I object to the motive why he left there.

The Court.—I will let him answer that question why he moved away.

To which ruling of the Court the defendants excepted, and prayed that their bill of exceptions might be sealed, and it is sealed accordingly. 20

M. M. KNAPP, [L.S.]

J.

A. (Continuing.) The reason I moved was, I got a tenant that would rent it, and before, since I lost the children, I could not get a tenant; I advertised it for sale and could not sell it, and the wife, she was lonely there, and I thought it was best to take her away and put her in a place where she would see somebody walking around and take the mind off where the children was buried—it is close near the graveyard. 30

Re-cross-examined:

Q. Did you not say upon your cross-examination, that there was not a day in the summer of 1885, or in the fall, that you lost from your business? 40

A. That I lost ?

Q. Yes.

A. What do you mean ?

Q. That you had to give up your business ?

A. I only gave it up just two months ago.

Q. No, no, let me put it in a different shape then.

Did you not say during the cross-examination which we put you to, that you attended to your business every day during the summer and fall of 1885, up to the time

10 of this sickness of the children ?

A. No ; I told you I lost some days myself.

Q. Didn't you say that you went around every day ?

A. Yes.

Q. On your business ?

A. Not every day.

Q. You didn't say that ?

A. No, sir ; I said I used to stop at home one or two days a week, if you remember right.

Q. No, I don't remember any such thing. Did you
20 in the month of January last, serve your route every day ?

A. Yes, I believe I did ; it was in February I sold out.

Q. Was it your habit to go around every day ?

A. No, except Monday ; I stopped at home Monday.

Q. Stopped at home Mondays, did you ?

A. Yes.

Q. Usually ?

A. Yes.

30 Q. When you were in good health ?

A. Yes, when I was in good health.

WILLIAM J. PARKER, sworn on behalf of the plaintiff :

Direct-examination by Plaintiff's Counsel :

Q. What is your business ?

A. Physician.

40 Q. Where do you reside ?

A. No. 419 Bergen avenue. I practice in this city.

Q. How long have you been practicing here?

A. Since 1879.

Q. Are you acquainted with the plaintiff?

A. Yes, sir.

Q. Know him how long?

A. I could not tell you that; two or three years; that is, by sight.

Q. Did you attend his children in their last sickness?

A. Yes, sir; I believe so.

10

Q. Do you remember the date?

A. I remember it was in December, 1885; I don't remember the exact date; the fore part of December.

Q. What was the disease of which they died?

A. Scarlet fever.

Q. Malignant type?

A. Yes.

Q. Describe how they were taken and the character of their sickness.

A. Well, the first case that I saw there was considerable fever, sore throat and irritation, vomiting and diarrhoea. At the times at which I saw the child she was in a stage of what is called exhaustion, collapse; she evidently then was dying, and I so told Mr. Handley. I saw him the next morning, rather, and when I saw him I told him she evidently was going to die, she was dying at that time. That was the first of August.

Q. How long was she sick?

A. I don't know, sir. She had been sick probably some few hours, or a day, perhaps, before I saw her; but she was dying at the time I saw her.

Q. How soon were you called then?

A. The next morning.

Q. How did you find the condition of things then?

A. & till worse. A more exhausted state of collapse. She died that afternoon, I think. That was the first child.

Q. When were you called in after that?

A. Well, I went again that night to see the other child—no; I saw the second child the same afternoon, on the second visit to the first child I saw the second

40

child. She had scarlet fever, too, and she died the following day.

Q. And the others were how soon afterward?

A. I don't know how soon afterwards, but they all died within a short time, perhaps two or three days; it might have been four, I can't say the exact time. They all died of the same disease.

Q. Do you remember what your charge was for medical attendance.

10 A. No, sir, I do not; I don't remember what I charged him; I don't think I gave him any bill at all; I think he came and asked me how much it was and I named a sum and we settled it that way, I think, under the circumstances he was in.

Q. Do you remember seeing the place where the night-soil was dumped there?

A. I saw where it was said to have been dumped, the next morning.

Q. How far was it from Mr. Handley's house?

20 A. I don't know.

Q. About?

A. About 200 feet, I should think—within that, probably.

Q. What was its condition?

A. In what way?

Q. Was it loose and running?

A. I didn't see it running at all.

Q. In a liquid form?

A. I didn't see any liquid about it at all.

30 Q. Well, what was its form?

A. I was simply told it was night-soil; that is all.

Q. Did it appear like night-soil to you?

A. Yes—black.

Q. Did you notice the condition of the atmosphere?

A. Rather damp, muggy weather.

Q. What was the condition of the atmosphere; any noisome smell in the atmosphere?

A. There was an appreciable odor.

Q. Coming from this place?

40

Objected to as leading.

Q. Well, where did it come from ?

A. I don't know where it came from, sir.

Q. Where do you think it came from ?

A. I could not say that.

Q. Do you think it came from this night-soil ?

Objected to.

By the Court :

10

Q. Have you any judgment about it, doctor ?

A. No, sir ; I haven't any judgment as to where the odor came from ; there was an odor there ; I could not be positive that it came from the night-soil.

By Plaintiff's Counsel :

Q. How did you come to go up there ?

A. I went that way in the morning, sir, as being the nearest way to drive.

20

C. I mean up to where the night-soil was ?

A. It was right on my way.

Cross-examined by Mr. Wills :

Q. These children all died of the same disease, doctor ?

A. Yes, sir.

Q. Scarlet fever ?

A. Yes, sir.

30

Q. No question about that ?

A. Confirmed by Dr. Culver, sir.

Q. What is the origin of the disease ?

A. There is considerable doubt as to that, sir.

Q. Well, is it spontaneous or contagious ?

A. It is said not to be spontaneous by some.

Q. What is your opinion ?

A. I don't think it is spontaneous.

Q. Just explain to the jury what you mean by contagious ?

40

A. The term contagion, as we generally use it, implies a disease caught generally by contact with the patient suffering with the disease itself.

Q. That is, either directly, or by a person carrying it in the clothing?

A. Generally, directly.

Q. It is not commonly believed to be carried by the atmosphere, is it?

A. There are statements to that effect.

10 Q. "Commonly," is my question?

Objected to as immaterial.

By the Court.—I suppose the question is equivalent to asking him what is the accepted theory among medical men; that would be competent.

Q. Do you know?

20 A. I don't know what the theory is.

Q. This disease arises from something in the blood, does it not, doctor?

A. That is one theory, sir.

Q. What is it in the blood that it is the theory that it arises from?

A. I don't know, sir.

Q. What is your opinion on that subject?

By the Court.—Of what?

30

By Mr. Wills.—As to what is in the blood that causes it.

By the Court.—I do not understand that he has expressed the possession of any theory as to what it is in the blood.

Q. Have you any theory as to whether it springs from atmospheric causes?

40 A. I have no theory.

Q. What is your experience on that subject?

A. I only recognize the fact, sir, when they have scarlet fever; I have no opinion to express as to the theory.

Q. Now, you say that it is contagious from the person?

A. Yes, sir.

Q. Within what area in the open air?

A. Well, some say a few feet, and some say it is carried by means of the air; I can't tell you that; those are 10 mere statements; I don't think they have ever been verified.

Q. Those are statements of the text-books?

A. Yes, sir.

Q. Good authorities?

A. I presume so.

Q. What authorities?

A. You will find it in Hepper.

Q. Any others?

A. I don't know, sir; I think you will find it there 20 though; merely a statement.

Q. You say a few feet?

A. I say that is what is said.

Q. You are speaking of what authorities say as to its contagion in the open air?

A. I don't know whether it was made in the open air, or in the room. I suppose it was in the room, though.

Q. Would you say how many feet it is contagious from your reading?

A. I would not, sir. 30

Q. Is scarlet fever as contagious as small-pox or measles?

A. I think not.

Q. Could you say at what distance small-pox is contagious?

Objected to as not a proper cross-examination.

By the Court.—I think that is evidently 40 incompetent.

By Mr. Wills.—I suppose we could have the right to show by analogy that if small-pox were more contagious than scarlet fever the distance might have something to do with it.

By the Court.—It is hardly worth while to deal with analogies when the one you are talking about is so highly speculative as the doctor seems to regard this.

10

Q. What is the period of time that the disease is working in the system without showing itself?

A. I believe it is set down from one to seven days.

Q. In your experience, what is the average time?

A. I think it comes within that range.

Q. Did you make any report of this case to the Board of Health?

A. They were sent in the death reports quite as soon
20 as I could send them the other way.

Q. The day when you first called in there, one of the children was quite sick?

A. Yes, sir.

Q. And how long after you were called in, do you state that she died?

A. That I don't remember, but I think it was the first day.

Q. The father says she was taken on the sixth and died on the ninth?

30 A. I don't know about her being taken on the sixth, or the date that she died, either; I simply know it was the fore part of December I was there and saw these children there at that time; I don't remember the dates.

Q. Do you remember positively how soon after you were called in to treat the first one, the other two children, Katie and Minnie, were taken ill?

A. I don't remember positively—no.

40 Q. And as to the others; do you remember when John and Mary were taken?

A. I don't remember the exact time, no, intervening between.

Q. Did you treat them all in the same room?

A. No; they were not all in the same room when I saw them, nor I did not treat them all in the same room.

Q. Where were they when you first went to treat them?

A. One of them was in the front or middle room—rather the first one that I saw, and when she died I 10 think she was moved into the first room, and the two others that were sick were placed in the middle room, and when I saw the other two, they were in the kitchen, or what appeared to be the kitchen.

Q. Which of them were with Sarah, when you were called in to treat Sarah, the first one?

A. I don't think there was anyone in the room with her; I think she was the only one I saw that night—still, I can't be positive that there wasn't any other one there. 20

Q. When you were called in to treat the other two, where were they?

A. Well, I don't really remember exactly, but I think they were in the middle room when I came in to see them the next morning; the first night there was only one in that room.

Q. The next morning you found them in the middle room with the first one?

A. I think so. I did not see the others the next morning; it was the morning following that that I saw 03 them; it was on the third day that I saw the last ones.

Q. And they were suffering with the same malady?

A. Yes.

DR. JOSEPH E. CULVER, affirmed on behalf of the plaintiff:

Direct-examination by Mr. Hoffman:

I am a physician and surgeon; I live at No. 561 Sum- 40

mit avenue, and have been practicing my profession for thirty-nine years. I was called in to see the children of Mr. Handley, the plaintiff in this suit. I have no recollection of the time; it was the time when the children were sick and died; I was called in in consultation with Dr. Parker. When I got to the house two of the children, I think possibly three, were dead, the others were already in stages of collapse that I was convinced there would be no recovery from with all the
 10 stimulants and warmth you could get to them and put into them.

Q. What disease had produced the death of the three, and what disease were the two suffering from?

A. The ones living, from whom I determined the diagnosis, were suffering from scarlet fever, of a fatal, or sometimes called malignant type.

Q. Does that word distinguish the character of the disease?

A. It merely distinguishes the theoretical definition
 20 and not the facts; as I said before, they were in a state of collapse after vomiting and purging, the same as occurs in cholera.

Q. Then, do I understand you, or not, that the disease was of a severe character?

A. Severe enough to kill them.

Q. Is that or not the usual run of the disease of scarlet fever?

A. No, it is not the usual type, and yet it is what we sometimes see.

30 Q. But it is exceptional?

A. I have met with cases—there was one case with choleraic symptoms, and all the rest of the family had the scarlet fever with eruption, sore throat, etc., without any vomiting or purging.

Q. Are the symptoms of vomiting and purging serious symptoms?

A. Collapse after vomiting and purging is always serious; vomiting and purging are serious according to their continuance and severity.

40 Q. Have you an idea, doctor, as to the cause of the disease?

A. Well, I have my opinions.

Q. What is your opinion, doctor? I will take that, with your experience, with a great deal of satisfaction.

A. Well, I have seen cases of the disease where putrefying animal matter, blood especially, has been the only cause to which the case could be attributed—that we could find—the only existing cause.

A. Putrefying animal matter, and you speak of blood, doctor; will you tell in what way the blood was putrefying?

A. Well, I can only tell you this general fact in regard to butcher's families I have attended, that the clothes thrown off, and left in a room in the house are in danger of producing scarlet fever, and I can point to a case of a butcher, where in his family scarlet fever occurred three times over in three of his children. Another case where there was no source of scarlet fever within miles, after confinement an older child was taken into the bed over night, and putrefied discharges were the only cause possible to produce the sickness, the next morning it was sick, it was well the day before, the next morning it was broken out with scarlet fever, and the high pulse that usually attends it. 20

Q. Then I understand you that that case came from blood putrefaction that exuded from the mother in a case of confinement?

A. Yes. It was at a time of a deep snow storm, and there had not been anyone to that house, I think, in two weeks, and none except the family that came in contact with the child at any rate.

Q. Now, apart from the animal matter called blood, 30 let me ask you whether or not it is your experience and learning, that scarlet fever is produced from other putrefying animal matter?

A. Well, it may be, I have not had such distinct opportunities of differentiating in regard to the causation in respect to other matters as to blood, and the putrefied matter from butchers' stalls.

Q. What would be your judgment, doctor, with reference to the influence of putrefying animal matter, such

as fecal matter, urine, and that that is taken from water-closets?

- A. Well, while I have no experience that would confirm the possibility of producing scarlet fever in that way, still, as fecal matter contains sometimes animal matters that would be much the same, it is possible, though I could not distinguish any such case; and I would say that if fecal matters always produced scarlet fever, some poorly attended babies ought to have scarlet fever all the time.

10 Q. Doctor, take a gathering of large quantities of both fecal matter and urine where it is placed close to a house, and has been there for months during the summer, exposed to the sun, and is constantly accumulating coming from a part of a city, what would be your judgment, if you had such a case of scarlet fever as you saw at Mr. Handley's house, as to the probability of that decaying matter I have already spoken of producing that, disease?

- 20 A. Well, I should say that the possibilities were many, but I was not in a position there to know that there was any such fecal matter.

Q. I am not asking you about that, doctor, I am only giving you the facts as we understand them.

A. I should suppose, too, that the early effects, the first putrefaction after it was first dumped, would be the time when it would be the most likely to do the damage, unless as it continued it were covered up; I think that would be a fair conclusion.

- 30 Q. Take a case, doctor, where large quantities of this matter are deposited, say within 400 feet of a house; where it was deposited in such quantities that a portion of it ran down close by the house; where it was continually being deposited day by day during the summer, commencing in June, up to December. In your judgment as a physician what would be the effect of that upon the general health of that family?

A. I should think it would be, according to my experience, an unhealthy household.

- 40 Q. With that condition of affairs, suppose that scarlet

fever should break out in that household of the malignant type, of such a type as that five children should die within three days, and without any other known cause for the production of that disease, to what would you attribute the disease?

A. Well, we might suspect that origin then, but, of course, a physician would not be in the way to prove it; I would say a physician might suspect that cause, but he would not be in a position to prove it at all; it is very difficult of proof indeed. I think there is quite 10 a large minority who do not believe in the contagiousness of scarlet fever at all, and then there is a majority of physicians, learned physicians, who do believe in the contagion of scarlet fever, who will tell you that it cannot come from any such thing, cannot come from any putrefaction at all, but must come from a preceding case.

Q. Taking that theory—I do not know which theory you hold—but taking that theory, and with all the accompanying circumstances I have given you, without 20 the preceding case, then to what would you attribute the origin?

Objected to by defendants' counsel on the ground that the hypothetical question ignores the possibility of there being any other cause for the disease than that of the dumping.

By the Court.—I see no objection to that 30 question.

Question allowed.

To which ruling of the Court the defendants excepted, and prayed that their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP, [L.S.]

J. 40

A. I think the answer already given answers the whole; that while the physician might suspect that origin, fecal matter, as being possibly the cause, he would not be in a position to prove what the cause was.

Q. Let me ask, you, doctor, as to your judgment now; is that disease contagious or not?

A. I have never seen a case in which contagion was proved by the circumstances, and yet I have seen many
10 a case in which the filth of a room, kept in confinement, and the air becoming putrid and foul, would certainly transfer the disease to those who were in it and susceptible of taking it.

Q. Then, in such case as that, is it your judgment that the contagion is from contact with the sick person or from the putrefaction of the exudations of that sick person?

A. I think from putrefaction, perhaps, as much as anything, in that case, of the effluvia in the room, putrefaction in the air of the animal matters that are float-
20 ing in the air.

Q. Then, I understand you, it would be the putrefaction of the animal matter that came from the sick person?

A. Yes, in that case. I do not suppose I could prove that; the mere facts I can give.

Q. Now, doctor, you, I suppose, know something about the deposit of fecal matter in a large city like this, having lived here, is it at all exceptional, that
30 in a mass of fecal matter, deposited from city vaults, that there should be the putrefying animal matter that came from such diseases as scarlet fever?

A. It is not

Question read and objected to by defendants' counsel, as the witness has not shown his qualification to speak as to the condition of fecal matter in Jersey City.

which ruling of the Court the defendants excepted, and prayed that their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP, [L.S.]

J.

Objection overruled.

Q. Keeping that in view, doctor, now, as I ask this 10
question, keeping that fact in view, when you found such
cases of scarlet fever as you found in Mr. Handley's fam-
ily, and it was a fact that large quantities of fecal mat-
ter had been deposited within, say, 400 feet of his house,
and in such quantities that some of it had run down,
being deposited every day from the 1st of June, or
about the 1st of June, and extending to December, at
the time that you found this disease manifested, would
you or not attribute the disease to the proximity of that
fecal matter?

20

A. Well, I would not attribute the disease to the
proximity of the fecal matter; I would say that it might
be a possible cause, but one that I could not know,
could not trace.

Q. Taking the circumstances that I have given to
you, doctor, just as I have given it to you, and elimin-
ating from them the deposit of fecal matter, to what
would you attribute the scarlet fever that you found in
Mr. Handley's household at the time you had this con-
sultation?

30

A. Well, I simply went there to find what the mat-
ter was, and prescribe the best I could.

Q. I am not asking you what you did there at all, I
am only asking your judgment from what you saw
there?

A. I did not look for the cause and so could not be
prepared to assign any.

Q. I ask your judgment now, doctor?

A. I have no judgment, because—

Q. I will put it plainer, excluding from the case any 40

contagion ; that is, I mean, as to the first case ; excluded from the case any contagion with reference to the scarlet fever of the first child, and then taking the case as you found it there, with three children dead and two dying, and excluding this deposit of fecal matter, letting the case stand exactly as I have given it to you, now, in your judgment, what was the cause of that disease?

A. I could not distinguish as to the cause, there might
10 have been——

Q. No, no, take it just as I gave it to you.

A. (Continuing) many different possible causes; and I know nothing about them.

Q. If there were none at all?

A. That would suppose then a case of scarlet fever without a cause; I don't know that that is anything more than mere theory.

Q. Do you think that is possible, doctor?

A. Well, we don't usually get effects without causes,
20 or events without causes.

Q. In other words, does scarlet fever ever come spontaneously?

A. I don't think anything comes spontaneously, if you mean by that without cause.

Q. I mean by that does that disease itself, the disease proper, spring up and manifest itself in itself?

A. That is, you mean does the disease originate itself.

Q. Yes.

A. Does a man after he is born beget himself?
30

Q. Now, let me ask you another question, doctor. Take a case where the conditions I have mentioned to you are all present, the deposit of this fecal matter at the times I have mentioned, and in the quantities mentioned, and add to it the depleted general health that you have mentioned, that results from being in close contact with it, and then add to that these cases of scarlet fever, would not that give you such light as to indicate to you that the disease came from the deposit of that fecal matter?
40

A. Not positively.

Objected to as leading.

The Court.—There is not much difficulty about that; I do not think the doctor will be led.

Q. What would be the probability?

A. There would be probability, the weight of which I could not say. 10

Q. But, in your best judgment, doctor, would not you say that that was the cause of the disease?

A. Well, if I did, then perhaps it would not be.

Cross-examined by Mr. Newbold:

Q. Doctor, is it the accepted theory among physicians who have written upon the subject, that scarlet fever is communicated in all cases by contact with the person suffering from the disease? 20

A. Personal contagion?

Q. Yes.

A. It is a theory; I don't know that I should say that it is the general opinion; it is an opinion.

Q. Do you know of any physicians who have written upon this subject who set it down as possible for scarlet fever to be communicated from fecal matter?

A. No.

Q. You don't know of any? 30

A. I do not.

Q. When you have said that putrefying animal matter has been looked to by you as a possible source from which scarlet fever may be communicated, do you mean to indicate a kind of matter different from what is known ordinarily as fecal matter?

A. I meant animal tissues including the blood.

Q. In answer to a question by counsel on the other side you said that there might be in excretory deposits some matter from which scarlet fever might possibly be 40

communicated. Did you mean that there might be some animal matter in the excretory deposit ?

A. Well, the animal matter would have to be removed quickly from the vault in order to be in that state when it is carried away, because it is a quickly destructible compound; and I meant more especially that animal matters might be thrown into the vault. But there might be also, it is true, just for a little while, a day or two, something that might have passed undigested
10 through the bowels.

Q. In the nature of animal matter ?

A. Yes.

Q. But did you mean to indicate that the kind of animal matter from which you say, possibly, scarlet fever might be derived as a source, would be naturally looked for in excretory deposits ?

A. Cases which I have noted as showing a cause of scarlet fever, were those in which there was as a source ascribed the putrefying animal matters which I have
20 spoken of.

Q. You mean animal tissue ?

A. Animal tissue, including the blood.

Q. Have you ever known a case, doctor, to proceed from accumulated fecal matter ?

A. No, I have never known anything of the kind.

Q. Have you ever read of a case that has been attributed—I mean now in the books on medicine—have you ever read of a case that has been attributed to fecal matter as the source of its generation ?

30 A. I have not; generally the writers attribute it to personal contagion.

Q. And you have read pretty largely upon this ?

A. Well, I have read quite some.

Q. Suppose, doctor, there were within 300 feet of the Handley house a factory in which they cleaned the guts of animals, what would be your judgment as to the likelihood of that place being a source from which scarlet fever might be derived, as compared with a deposit of fecal matter ?

40 A. My choice would be the gut factory.

Q. And as to the effect of such a factory upon the general health, what would it be?

A. Bad.

Q. Worse than the fecal matter?

A. I am not in a position to compare them.

Objected to on the ground that there is nothing in the case to base such an assumption on.

By the Court.—Cross-examination with 10
the respect to hypothetical questions is different somewhat from that which compose in direct-examination, in that, on the cross-examination, counsel is permitted to get hypotheses from facts not established in the case, their value, of course, depending upon the subsequent establishment of the facts which go to make up his question. The rule in that respect is more liberal in cross-examination than on the direct; and I presume 20
that under the rule a question such as this may be permitted; of course, its value is lost when counsel fails to establish the conditions from which he draws the hypothesis.

Q. Suppose, doctor, that there were buried in the neighborhood of the Handley house, not more than 20 loads of fecal matter, at a distance of not less than 200 feet and covered completely by earth, what would the possibility, if any—I am speaking of this as being in 30
December, 1885, at the time of this sickness and death—what would be the possibility of the disease from which the Handley children died, having been communicated from that fecal deposit?

A. I could not weigh the possibilities, either as to the fecal matter or the gut factory, either one.

Q. Now, would it be possible, if the fecal matter were completely covered, to look to that deposit as a source of the scarlet fever in persons who had not been nearer to it than 200 feet? 40

A. You are asking me a little more than I know. I don't know.

Q. Suppose that the first child of the Handley family who sickened with scarlet fever had been attending a public school in a class in which a number of that class had sickened with scarlet fever previous to the sickening of the Handley child, to what would you, in that case, be inclined to trace the sickening of the Handley child with scarlet fever?

10 A. Well, I should think nothing of it as a source myself. I am aware that the majority of physicians would attribute it to that cause.

Q. What majority of physicians hold that scarlet fever must be derived from a previous case of scarlet fever?

A. I don't know what majority.

Q. Is there a great majority?

A. A great majority.

Q. And of those who bear the reputation of being the most learned in the profession?

20 A. Many of them; many of them the least so.

The five photographs heretofore offered in evidence on behalf of the plaintiff are marked Exhibits P 2, P 3, P 4, P 5, and P 6.

Adjourned to April 29th, 1887, at 10 o'clock A. M.

JERSEY CITY, N. J., April 29, 1887.

30

Continuation of examination pursuant to adjournment.

Appearances as heretofore.

JOSEPH E. CULVER.

Cross-examination. Resumed.

40 Q. Doctor, suppose the dumps of fecal matter were

not nearer to Handley's house than 200 feet, and none had been deposited later than November 1st, and had continued covered over completely with earth from that time to the sickness of the Handley children, what would you say—(interrupted.)

A. What date was that ?

Q. November 1st, 1885.

A. To the sickness—what date was the sickness ?

Q. December 6th or 7th, 1885.

A. That would be over a month ?

10

Q. Yes, a little over a month. What would you say as to the probability of the scarlet fever being communicated to those children from those dumps ?

A. If you mean scarlet fever, infection carried there in the fecal matter, as it seems to be very perishable—quickly perishable—I should suppose there would be no probability of it in that way. If it originated from putrefaction I could not say as much. Indeed the whole matter is in uncertainty, and you can only get an idea of it. If you get an ignorant physician who is self confident, he knows nothing about it.

20

Q. Can you give us any authority upon this subject that lays down the doctrine that scarlet fever can be developed by putrefaction ?

A. Yes ; but I cannot name the authorities, perhaps, but still I can come to them, look them up.

Q. Can you name one now ?

A. Well, all the bacteriologists have putrefaction for their bacteria, and, of course, produced by these infinitesimal organisms, as they are called, and they have their origin in putrefaction.

30

Q. Have you read upon the subject since yesterday ?

A. No, sir ; not a word.

Q. I understood you to say yesterday you could not refer us to an authority who claims that scarlet fever can be produced other than by contagion from a case ?

A. I beg your pardon, I have not referred to any authority.

Q. Did you not say you could not ?

A. I did not say I could not find one.

40

Q. Do you know of any authority that undertakes to lay down the doctrine that scarlet fever can be communicated excepting by contagion from an existing case of scarlet fever?

A. I think I could find such, but I cannot name them.

Q. You do not now have any in mind?

A. No.

Q. Were you referred yesterday to putrefaction of the
10 effluvia?

A. The putrefaction of an organic body is the cause of the effluvium; I did not mean the putrefaction of the effluvia, but that the effluvium was the putrefaction.

Q. Well, the effluvium you speak of, did you refer to the effluvium coming from a patient suffering with scarlet fever?

A. Well, that is not distinguished until it putrefies.

Q. Until the disease has so far advanced that the breath is liable to carry off germs of the poison resulting
20 from the disease—is that it?

A. There are no such germs, and the process of putrefaction destroys the whole thing.

Q. What is the effluvia that you say might, from the body of a patient, communicate the disease of scarlet fever?

A. Whatever organic matter rises from the body of a patient. It is not a theory, it is a fact that organic matter is sent off in the breaths of individuals; so that if you get a crowd in this room the room after a while
30 will smell so badly that you can hardly remain in it.

Q. Then when you referred to that as a source of generating scarlet fever, you referred to the effluvia arising from persons affected with scarlet fever, did you?

A. Probably not, because that might not include what we supposed to be the cause generally, that is, putrefying matter; and I might have included also whatever effluvia arises from persons sick in the room. If the room is close, confined, you can no doubt after a while get some one who will take it, although it is not
40 a very contagious disease; and it is also not a very fatal disease, either.

Q. Does keeping children in a room with a patient suffering from scarlet fever tend to increase the virulence of the disease if they should afterwards take it?

A. Well, keeping well children in a sick room may give it to them.

Q. Would it tend to make the case more severe than if they had been living separate and contracted it by one contact with the deceased person?

A. That is a distinction which we could not see, at any rate.

10

Q. Suppose one child should be taken on Monday, and two more children should be taken on Tuesday, and they should all be put in the one room together, what would you say as to that, confining the three in the one room, in its effect upon the virulence of the disease?

A. Well, I should say they might as well be all in one room as to be all over the house.

Q. And if five were put in the same room that would not increase it in your opinion?

20

A. Probably not; if the room was large enough so they could get plenty of pure air.

Q. As I understand you, the only other possible means from which scarlet fever can be communicated to a person, except from contact with a patient suffering from the disease, is from putrefying animal matter?

A. You mistake me so much as this. I mean, that the patients take it from putrefying animal matter anyway, whether they take it from another patient or whether they take it from putrefying blood; whatever source they get it from. That is the opinion that seems to be sustained by my observations, and I could give you observations that could bring it down pretty near to a demonstration. That is my opinion, but I do not ask you to take my opinion until somebody else confirms it.

30

Q. You haven't any confirmation in the books for that opinion?

A. Yes, as much as anyone. Take any work on scarlet fever almost, and you will find, on reading it, that after

40

all that is about the origin; take Simpson, that is an extensive work on scarlet fever.

Q. When is the last you read that, doctor?

A. I read the books as I take them; they are enormous books of nearly a thousand pages each, and I was so tired of reading them when I got through with the repetitions of the German authors, that I haven't looked at them since; it was possibly five or six years ago that I received the last one.

10 Q. Then the putrefying animal matter which you say you think it is possible scarlet fever may be communicated by, is of a kind including animal tissue and blood?

A. Yes.

Q. Now, then, suppose there were within four hundred feet of the Handley house a factory, where they carried on the business of scraping entrails, and were in the habit, at the time that this disease broke out in the Handley family, of throwing these scrapings on the
20 ground within a distance of four hundred feet from the Handley house?

A. What direction?

Q. In the northerly, or westerly, the northwesterly. What would you say as to the probability of scarlet fever being communicated from such scrapings of entrails?

A. Well, I think the probability would be greater from that cause than from the dumps that had been covered a month; undoubtedly, in my mind.

Q. Could you give us a comparison of the relative
30 probabilities in a general sense?

A. One being covered over with earth and the other exposed on the surface of the ground; if the wind is westerly, and winds prevail from the west a good part of the pleasant weather, I think the chances would be much greater; but I would not mean to say that the cases were really produced in that way, and I do not think you will be able to determine just how they were produced, unless you get some over-confident man who knows nothing about it, wasn't there and didn't see it.

40 Q. Doctor, you could not speak with any certainty

as to whether a body of fifteen or twenty loads of fecal matter contained any putrefying animal matter at all, could you?

A. No, sir, not without examining it; it probably would, but the only way to prove it would be—(interrupted.)

Q. What kind would that be?

A. It would be tissues, and the process of putrefaction—well, probably such as had not been subjected to complete digestion, and had not been absorbed in 10 the alimentary canal, or pieces that had been thrown in.

Q. You mean to say, pieces of meat that had not been digested?

A. Yes; or those that might have been thrown in the privy.

Q. You do not mean to say that it is a common thing to throw meat in a privy, do you?

A. I don't know how common. I think I have known of its being done; it is a possibility, that is all. 20

Q. And it is that possibility that you refer to, as permitting the presence of animal matter in that body of fecal matter, is it?

A. A good deal of the fecal matter is vegetable matter.

Q. How long would animal matter, in a body of fecal matter, be likely to remain undissolved and undissipated?

A. Well, just according to its exposure to the oxygen of the air. It would undergo a pretty rapid change if it 30 were exposed freely to the air. If it were covered up, it would be resolved, and then would not putrefy any further at all, but would undergo a process of slow change, such as forms adiposia or fat wax.

Q. Is decomposing fat an animal matter from which you consider it possible scarlet fever could be communicated?

A. Fat contains no nitrogen and is not putrefiable.

Q. What animal tissues do contain the nitrogen which you refer to?

A. All the tissues ; all the solid tissues.

Q. Muscles ?

A. Yes, all the solid tissues, and the blood and lymphia contain it.

Q. What do you refer to by "lymphia;" would you characterize the lining of entrails as approaching the nature of lymphia ?

A. Oh, no ; lymphia is the blood that circulates in the lymphatics of the animal system.

10 Q. You have spoken as to the scrapings from entrails as containing material from which scarlet fever could be communicated ?

A. Yes ; they contain portions of the entrails themselves.

Q. And are those portions the kind of animal matter from which you say—(interrupted.)

A. They are putrefiable ; yes.

Q. And from which scarlet fever might be communicated, in your theory ?

20 A. I think it might.

Q. Doctor, you were there at the Handley house, with Dr. Parker, as I understand you ?

A. I was, somewhere about 12 o'clock at night, on the night before the day that the last children died, I think.

Q. And did you smell any stench or odor ?

A. There was a very thick fog and there was a bad odor prevading, enough so that I noticed it, but still I hadn't any way in which I could describe the degree of

30 it, or intensity ; no standard of comparison.

Q. Have you smelled the same odor at your house ?

A. I think not quite ; we get the odor from the bone boiling establishments at our house, sometimes, when the wind is west, but that has more of a flavor of cooked material.

Q. What was the character of this odor that you smelt ?

A. Well, it was simply like that of dead matter.

Q. Dead animal matter ?

40 A. Yes, it wasn't very pungent then, still just enough so that I noticed it.

Q. Well, have you smelled odors proceeding from casing factories, or factories of that nature, where they have the entrails of animals and scrape them.

A. Well, I believe I have; I believe I have prescribed for a patient in one of those.

Q. Doctor, might that odor you smelt have proceeded from such a source?

A. It might.

Q. Was the odor which you smelt there the odor of fecal matter? 10

A. Not the usual odor of fecal matter; I could not say positively that it might not be the odor of gases arising from it, but still it would not seem to me like that; I think not.

Q. Have you been past the abattoir, where they slaughter the hogs on the Hackensack river there?

A. I have.

Q. Do you know how far that is from the Handley house?

A. I do not; I am acquainted with both places and 20 have overlooked the whole, but I mean I haven't the measurements of them.

Q. You could not give us an idea?

A. No; I know probably as well as you do.

Q. And in what direction is it, doctor?

A. It is northwesterly.

Q. From Handley's house?

A. Northwesterly, I should think, likely enough, west northwest.

Q. And you could not give us the distance? 30

A. No, sir, I never measured it; it is quite a long distance though, and that is out of the line of the prevailing winds.

Q. What are the prevailing winds in December?

A. The winds that prevails longest in this climate are, in pleasant weather, westerly winds and sometimes verging towards the south; in wet weather, easterly winds, also sometimes verging towards the south, and as clearing off, it pulls to the northward; frequently the easterly winds continue through all our heavy storms, 40

whether they are snow-storms or rain-storms, I think.

Q. When the weather is cold, what is the general prevailing direction from which the wind proceeds?

A. Well, we sometimes have northwesterly storms and northeasterly snow-storms, heavy storms, but generally easterly, northeasterly.

Q. When the weather is cold and damp, the winds are easterly, are they not?

A. Yes.

10 Q. But when the weather is cold and dry——

A. Cold and dry, we may have westerly winds prevailing; most likely do.

Q. Or northerly?

A. Yes, a little.

Q. Doctor, have you read the medical works in their treatment of scarlet fever, as to how far the germs of scarlet fever can be carried in the atmosphere? What has the atmosphere to do, doctor, with the transmission of the disease from these putrefying centers?

20 A. There could be no putrefaction without oxidation.

Q. I ask your judgment as to what the moving air—the course of the winds—what has that to do with the transmission of the disease from the putrefying centres? You say the disease may arise from putrefaction transmitted by the air; what has the air to do with it?

A. In the first place there are, more or less, thrown up from a bubbling cess-pool of putrefying matter into the air, particles, with the moisture; with the bubbles or minute globules that are thrown up, there is more or
30 less of putrefiable matter thrown up into the air and wafted along; the further the distance, the more it is apt to spread out, and the further the distance it is carried the more it is diluted; and as it is carried over a warm putrefying heap it will rise, and is liable to be carried over the heads of those liable to take it.

Q. If scarlet fever could be communicated from fecal deposits, would not the children of Mr. Handley be more likely to contract it from a deposit in the privy upon the premises of Mr. Handley, if they were ex-
40 posed to the vapors proceeding from that deposit upon

Mr. Handley's ground, than they would from a deposit 200 feet away, covered up?

A. That might be a consideration to be included, but not one that we can determine anything about.

Q. If there were animal matter in the deposit of eight or nine years accumulation, which Mr. Handley speaks about, upon his own premises, and the children were at times inclosed within the privy above that deposit, would they not, upon that theory, be more likely to contract the disease from that deposit, if it can be communicated from animal matter in a fecal deposit, than they would from a deposit 200 feet away covered over with earth? 10

A. I do not think a person would get scarlet fever from fecal matter deposited eight or nine years, or even from a dead horse deposited eight or nine years.

Q. I said an eight or nine years accumulation, the top is not——(interrupted.)

A. The top would be the only dangerous portion. 20

Q. Yes, that is the part they would be exposed to.

A. Yes, speak of it as my theory; I do not propose any theory. What I have said that leads to a conclusion in regard to the origin of scarlet fever is only observations I have made. I do not propose to put that down as positive; I do not intend to maintain any theory whatever in regard to it. But I would say that if scarlet fever were generally produced from fecal matter, certainly in many houses they should have scarlet fever all the time, privies, close by, and chamber pots standing around all day, nearly. 30

Q. Then you mean to say it is your opinion that scarlet fever is not produced from fecal matter?

A. I never knew of a case, as I said before.

Q. I now add to it; you said that if there might be, in the fecal matter, some animal matter——(interrupted.)

A. Allow me to say that in Mr. Handley's house, when I went, it was entirely cleanly, and there was no accumulation of fecal matter in the house at the time I went there, 40

Q. What time was it when you went there ?

A. It was in the night time.

Q. What date ?

A. The date of the sickness ; only one visit.

Q. Did you examine what deposits of manure there were around the yard of Mr. Handley near the house ?

A. No ; it was too dark to see anything, and I had no occasion ; I was not called to examine that.

10 Q. You did not have a light in the privy, did you ?

A. I did not go to the privy ; I examined the patients.

Q. What place was it you speak of as being cleanly ?

A. The house ; and it looked as if it were always kept cleanly.

Q. The dwelling house ?

A. Yes.

Re direct-examination by Mr. Hoffman :

20

Q. If I recollect your testimony yesterday, you told us that there were exceptional symptoms in this case ; vomiting and violent purging ?

A. I mean that weakness is called a typhoid symptom. The word "typhoid" is used in two entirely different senses ; one as typhoid fever, the other as the synonym of weak.

Q. When you say the disease is complicated with typhoid symptoms, what do you mean by that ?

30 A. Simply that the patient is very much prostrated—very weak ; I do not mean that he has typhoid fever to boot.

Q. But do you not mean that he has symptoms of typhoid fever, apart from the weakness you speak of ?

A. No ; not unless he has typhoid fever.

Q. In this case, doctor, there were the typhoid symptoms, as you have defined there ?

A. Symptoms of great prostration, indeed, they were in a state of collapse : that means prostration.

40 Q. That you would call in general terms, "typhoid symptoms" ?

A. No, not unless you would call typhoid weak, and that is not a proper term, perhaps.

Q. Were those manifestations of purging and vomiting, in your judgment, produced by the disease itself, the scarlet fever proper?

A. Produced, I think, by the same cause.

Q. By the same cause that produced the scarlet fever, is that it?

A. Yes.

Q. Can you give me the slightest idea, doctor, what 10 that cause was?

A. I think it to have been the putrefaction of matter in the stomach at that time.

Q. You think that putrefaction of matter in the stomach produced the scarlet fever?

A. Yes, it produced vomiting and purging; all processes of putrefaction are as poisonous as arsenic, and will produce vomiting and purging as readily as tartar emetic.

Q. But have you an idea that the scarlet fever was 20 produced by that in this case?

A. By the vomiting?

Q. Oh, no; by the putrefying matter in the stomach?

A. It might have been the case that there might have been the scarlet fever only produced without the addition of the vomiting and purging.

Q. You don't answer my question yet. You had four cases of scarlet fever there, hadn't you?

A. There must have been five, I think, if I remember right.

30

Q. Now, you saw two persons alive there?

A. Yes.

Q. And you made a diagnosis of their case?

A. Yes; the diagnosis was based on the appearance.

Q. Can you tell me now, whether or not, in your judgment, the disease of scarlet fever was produced by putrefaction of matter in the stomach?

A. As I have said, I do not propose to enter into the determination here of the origin of scarlet fever at all.

Q. Then in other words you cannot tell what produced the scarlet fever? 40

A. Nor can anybody else; what produced that particular case, nobody can tell it.

Q. Do you mean the vomiting and the purging arose from the same cause, that the scarlet fever arose from in that case?

A. If you eat a little putrid fish, or any kind of meat in a state of putrefaction, you will find out very soon how it produces vomiting; that produced scarlet fever.

Q. Would the eating of putred meat produce scarlet
10 fever?

A. Probably not; I cannot say; it would probably be got rid of very soon. I do not suppose it would produce any lasting symptoms; it would be got rid of by vomiting, and that would be the end of it.

Q. I understand from what you say, that you are not a believer at all in the germ theory of producing disease?

A. I am not; that is true.

Q. Suppose one of these children had fallen into a
20 pit filled with fecal matter, a week before she was taken sick; in your judgment would that have had anything to do with the production of that disease?

By Mr. Newbold.—One moment, the privy is the one the child fell in three months before any one in the family was taken sick. I object to the hypothetical question.

30 *By Mr. Hoffman.*—We propose to prove that one of these children fell in a week before; the one that was first taken sick.

Mr. Newbold.—There has been no order of testimony upon that.

40 *The Court.*—The rule is not so strict that in order of testimony the party must marshal it so as to have all the facts first in; but they must be put in in oath to make it a proper question.

A. It might, for all I could say, by weakening the individual and being a source of ailment that would help the person to come down with scarlet fever all the sooner ; it might be, but still as to answering positively whether it did or not, I could not say anything.

Q. You have spoken about the smell that you found to be distinguishable then the night you were there ; let me call your attention, doctor, by way of suggestion, as to the force and power of that smell ; do you remember saying, in the presence of parties there, that 10 the smell was horrible ?

A. No, I do not.

Q. Have you, since that time, gone by where those pits are situated ?

A. I have not.

Q. You have not been anywhere near them ?

A. No, sir.

Q. Doctor, isn't it firmly established in your profession that diseases are produced by the contact of animal matter by this putrefaction ? 20

A. Well, sufficiently established so that such conclusions are very generally accepted among physicians, but there is hardly any theory in regard to the origin of general diseases but what is disputed here and there.

Q. That is to say, doctor, in your profession there is nothing taken for granted at all ?

A. We only know what we see, or feel, or hear, or smell.

Q. Well, isn't it the universal determination of your profession that typhoid fever results from the contact 30 of animal matter ?

A. I think you will find hardly an exception to the opinion, that putrefying animal matter is the source of typhoid fever, and yet they have very different modes of producing.

Q. But the result is the same ?

A. I think they all manage to get to that finally ; but in that case it does it by gradually undermining the digestion ; putrefaction in the stomach takes place, so gradually at first that it is hardly noticeable ; maybe 40

there is a little wind rises, next day it is a little worse ; they go on eating the putrefying matter and putrification goes on in the stomach until it finally destroys digestion ; they have typhoid fever then.

Q. Take the case of a man who had been entirely well, and who was living in a house within 400 feet of which large quantities of fecal matter were deposited, and after the deposit of this fecal matter he became sick, could not retain food upon his stomach, had pain in
10 the back, pain in the loins, pain in the back of the head, became weak, unable to attend to business ; would you, or would you not, attribute that to the contact of the decaying fecal matter ?

A. Well, we should allow so much to that as to this ; that means that the one has occurred after the other, and we would think it possible that there was some connection between them.

Q. Suppose that should continue on until typhoid fever should set in—well-marked typhoid fever ; then
20 would not you be certain about it ?

A. We might after we saw the case ; we might be certain that it was a case of typhoid fever.

Q. But you would not charge it back to the fecal matter with any certainty ?

A. We would not venture back to an absolute certainty in assigning a cause, I think.

Q. Then of what real use is the expense of doctors, who, when typhoid fever and kindred diseases break
out in houses in cities, begin to investigate to see
30 whether water closets are clean, or any dumping of fecal matter or animal matter, or whether the water is pure ?

A. It is a very foolish expense.

Re-cross-examined :

Q. Doctor, if one of the children of the Handley family had fallen into a deposit of fecal matter a week before scarlet fever developed in that person, what would be the probability of the falling into that having had any-
40 thing to do with the development of the scarlet fever ?

A. Scarlet fever has no fixed period of incubation, and all the cases that I have been able to reduce to an origin that satisfied me for the time, were such as followed the cause within 24 to 48 hours, perhaps, but the time may vary. I have known a person exposed to scarlet fever, and attending scarlet fever patients every day for a month in a family in which there were seven, and they took the scarlet fever in succession according to their ages, beginning with the youngest, and after a full month's exposure to the scarlet fever she took it. 10
Now, while I should expect it would be almost impossible to assign any reason for scarlet fever coming on within a week after, but that, whatever else it might do toward the injury of the patient, still I could not say absolutely that it had nothing to do with its causation, and I certainly could not say that it had.

Q. I ask you as to the probability of it having anything to do?

A. By what standard shall I measure the probability?

Q. You know the difference between possibilities and 20 probabilities?

A. Well, somewhat.

Q. Would the probabilities be against it or in favor?

A. The question would be in my mind this: whether it was a possibility or not, I could not be able even to determine that.

Q. That there was a possibility of its having anything to do with the disorder?

A. I would not be able to determine that, so I might as well shut out the probability. 30

Q. Then I understand you would not undertake to say that it was a possibility?

A. I mean to say I do not determine such matters.

Q. To make it possible, according to your idea, that the cause of the disease should have been derived from falling into that fecal matter, there must have been present there the putrefying animal matter that you have spoken of as the possible cause of the disease?

A. That is according to my notion, or idea, if you call it so. 40

Q. Your experience, as I understand you, leads you to the belief that scarlet fever follows within from 24 to 48 hours, from the exposure of the person to the cause of the disease?

A. The difficulty in determining that is just here : in the house we have usually several patients following in succession—(interrupted.)

Q. I am not speaking of some isolated case, doctor, but as a rule?

10 A. I want to show the impossibility of that ; these succeeding cases may come from the same cause as the first one, and may not take it from the first case alone.

Q. But you speak of those two limits of 24 to 48 hours ; is that, as a rule, the period within which you would expect the development of the disease, after an exposure of the person to the cause ?

A. After an exposure to its proper cause I should expect its appearance pretty promptly.

Q. What do you call pretty promptly ?

20 A. Well, we would say within one, two or three days, probably ; and while I might expect it, I might in an isolated case be disappointed ; there is nothing known positively about those questions you are asking me.

By the Court :

Q. I understand you do not undertake to fix any proper cause ?

A. No, sir.

30 Q. How can you measure the time from the exposure, if you do not know the cause ?

Mr. Newbold.—I understand the doctor to say the only cause he could speak of with certainty, is contact with an existing case.

Witness.—If the word “certainty” was used, it was used in the question without my comprehending it.

Q. I understand you to accept the theory, that contact with a person suffering from scarlet fever is, in your opinion, a cause for the disease?

A. No, certainly not; I don't think that ever caused it; by "contact" I mean touching.

Q. Well, contagion or contact; it must not necessarily be actual.

A. It is not inoculable, and touching the person will not produce it.

Q. Well, contagion does not involve necessarily actual touching?

A. Well, perhaps in its strict sense it does.

Q. But in the sense used by medical writers, in regard to contagious diseases, does it involve an actual touching?

A. Well, there is a distinction made between contagious diseases through actual contact, and inoculation, or those that are conveyed through the medium of the air.

20

Further re-direct-examination :

Q. I understand you to say awhile ago, that scarlet fever was not a very fatal disease?

A. As we use it here; it is not my experience, I say.

Q. How then did you, or do you, account for the marvelous fatality of this attack of scarlet fever in the family of Mr. Handley?

A. The cases there were all of a class that very generally prove fatal, but, fortunately, cases of that class are rare; I never saw but one case recover, and he was in a state of collapse, and delirious for half a month only eight years old, and took a pint of brandy every day, and could not lessen it without his becoming delirious.

Q. How, then, do you account for the marvelous fatality of that disease in Mr. Handley's family; that is all I ask.

A. I say, on account of its being exceptionally severe.

40

JOSEPH GILES, sworn on the part of the plaintiff.

Direct-examination by Mr. Herbert.

Q. Where do you live?

A. I live at No. 12 Wallace avenue, now.

Q. Where did you live in the summer of 1885?

A. 512 Mollery avenue.

Q. How near is that to the residence of Joseph Hand-
10 ley?

A. Well, I suppose between 300 and 400 feet.

Q. Did you, during the summer of that year, notice
any offensive smells?

A. Yes, sir.

Q. In that neighborhood?

A. I did.

Q. Do you know from what they arose?

A. I did not until I went and hunted it up.

Q. You made an investigation?

20 A. Yes, sir.

Q. And what did you find?

A. I found some dumps of night-soil on top of the hill
about three or four hundred feet from my house.

Q. And how far from Mr. Handley's house?

A. I should judge from 150 to 175 feet.

Q. Was the smell very offensive?

A. It was so.

Q. Just describe it to the jury; its effect upon you.

A. Well, the first I came to notice anything about it
30 my wife complained, my family did, of a bad smell.

Objected to.

The Court.—It is only to call his attention to it.

Q. Go on.

A. And so this day I was home, and the wind was
blowing from the west or southwest, and I smelled this
40 bad smell; so I says to my wife, "I will go out and

see if I can find this thing out, what it is ;” so I went up on top of the hill and found three, four, or five pits, some of them full, with three or four inches of sand over it, bursting out from the top, and some half full, and some strewed on the ground, so I went to see the landlord to see if it would not be attended to, and he and I went to Mr. Sturgis, but I could not get any satisfaction ; he said he would not have it stopped for me, and if I was on the top of the hill where the dumps were, and told him I smelled any smell, he would throw 10 me into it, and a few other words ; and he threatened to come out and slap my face for me, and I told him the best thing he could do was to come and do it.

Q. Did you at that time threaten to make a complaint ?

A. I told him somebody would have to do it, if he would not somebody else would.

Q. And he declined positively to do anything ?

A. Yes, sir.

Q. Was the smell so strong as to invade your house ? 20

A. It was ; if the wind blew in that direction, you could not keep it out if you shut the house.

Q. Do you know on whose land the night-soil was dumped ?

A. I think it was Mr. Henry’s ; the land that he rented ; I suppose it was.

Q. And any on any other property ?

A. I didn’t notice any on any other.

Q. Do you know where Finley’s property is ?

A. Yes, it is the other side of it, I believe.

30

Q. Did you notice any on Finley’s land ?

Objected to by Mr. McGrath as leading.

A. I did not.

Cross-examination by Mr. Newbold :

Q. Mr. Giles, where was it you investigated and found—— ?

41

A. I could not tell you exactly the month or date.

Q. Do you remember the arrest?

A. That was before; this arrest was before that, but I didn't know anything of it at the time.

Q. Then when you looked for this smell, was in August or September, if Woods' arrest was on the 5th of August?

A. Well, now, I couldn't tell you exactly the month or date, because I didn't pay particular attention to it
10 at the time, but it was after the parties were arrested.

Q. That is after Woods was arrested?

A. So I was told afterwards, but I didn't know anything about the arrest at the time.

Q. In what direction from your house were those dumps?

A. As near as I can tell, about west southwest.

Q. Do you know where the Garret and Autenreith bone boiling establishments were?

A. Yes, sir.

20 Q. What was their direction?

A. They were a little west southwest from our place where we lived.

Q. And in what direction was Mollinbrook's from your place?

A. It was very near the same direction.

Q. And what direction was the abbatoir?

A. That is about north from me.

Q. What direction was the Lister Brothers' factory; do you know where that is?

30 A. Yes, I know, but I could not tell you exactly what direction that is from where I live.

Q. You say, when you smelled this, you went out to hunt for it?

A. Yes, sir.

Q. Hadn't you heard of this arrest of Woods?

A. Not then, I hadn't; no, sir.

Q. And you went up there, you say?

A. I did; I went to see if I could find it out—where it came from.

40 Q. Were they actually depositing this fecal matter there.

A. Well, it was dumped there.

Q. Did you see anybody there?

A. I did not; no, sir. I didn't see anybody dump.

Q. You never saw anybody dump?

A. No, sir; I didn't.

Q. You say there were four or five pits?

A. Yes, sir.

Q. One of which had been covered over?

A. It hadn't been covered over at all, it was about half full. It was dug into the sand. It is a sand hill 10 there.

Q. What size pit was that?

A. I don't know; I could not tell you exactly; I didn't measure it.

Q. Can't you give an idea?

A. It is pretty hard for a man to give an idea of a thing he didn't measure.

Q. You said that you saw it coming up through the sand?

A. Yes, sir; those that were covered, those that had 20 a sprinkle of sand, I saw it bursting up through the sand.

Q. What time of year were you there?

A. It was in warm weather when I was there.

Q. You did not go there along in November or December, did you?

A. No, sir.

Re-direct-examination.

30

Q. How long did those smells continue?

A. Whenever we got a wind from that direction toward my house, we would get it, sometimes a good deal worse than others.

Q. How long?

A. Until we left there in the spring; when there came a warm like spell.

Q. The same smell?

A. The same smell. Yes, sir.

40

MELVINA GILES, sworn on the part of the defendant.

Direct-examination by Mr. Herbert:

Q. You are the wife of the last witness?

A. I am.

Q. And resided with your husband in the summer of 1885, down on West Side avenue?

A. Yes, sir.

10 Q. Were you troubled with the stench and smells he has testified to?

A. Very much.

Q. When did you first notice it?

A. I think it was in July; the last of July, I think, I am not sure about the date.

Q. Do you know what they came from?

A. I did not at first until Mrs. Handley showed it to me.

Q. You went there to see the place, did you?

20 A. I did. I saw five pits dug there filled with refuse matter and with a little sand thrown over, it didn't amount to much, though; and some loads thrown over the ground with nothing over it; I think three loads thrown over the ground, just scattered broadcast.

Q. Do you know whose land it was?

A. I believe Mr. Henry had control of the land.

Q. Anyone else?

A. No one else that I know of.

Q. How long did that continue?

30 A. It continued until the fall; until cold weather came.

Q. Did it affect your comfort?

A. It did.

Q. In what way?

40 A. We could not open the house to get free ventilation and free air, consequently we had to live in the heat, and at night suffocated, and in the morning when we went out we thought we would get fresh air and we would inhale this matter, and the consequence was we could not eat a bit of breakfast; I have gone without my breakfast many a morning in consequence of it.

Re-cross-examination by Mr. Newbold.

Q. What time in the spring did you move away from there?

A. The fifteenth day of March, 1886. We moved to No. 12 Wallace avenue.

Q. Where is that; how far from there?

A. I suppose it is the space of two blocks.

Q. You went up there on the ground you said?

A. I did.

10

Q. What month was that?

A. I think it was in August.

Q. Was that about the time of the arrest of Woods?

A. I don't know. It was after the arrest of Woods, I think; I can't be positive about the dates.

Q. Had you heard of Woods being arrested before you went up there?

A. Yes, sir.

Q. Who told you?

A. Mrs. Handley told me.

20

Q. Mrs. Handley is your next neighbor, I believe?

A. There is one house between me and Mrs. Handley.

Q. Did you go up on the dumps with Mrs. Handley or Mr. Handley?

A. With Mrs. Handley.

Q. She invited you to go there, I believe, did she not?

A. We both went together.

Q. Well, she invited you to go up there with her, didn't she?

A. Well, I don't know whether she invited me or I 30 her; we agreed to go up.

Q. Didn't she come over and tell you about having had Woods arrested?

A. No, sir, she did not. She told me about it at her house. I went there for oil; I was one of her customers.

Q. And then she took you up on this place, did she?

A. I guess I took myself; she told me about it and I went voluntarily to see it.

Q. With her?

40

A. Both together; I should have went if she did not went.

Q. Now, you speak about there being three loads on the ground, did you?

A. Yes, sir.

Q. Well, how can you ascertain the amount?

A. Well, I saw where it was dumped; where three different heaps were dumped. There were three different heaps, and I should suppose fully three loads.

10 Q. You didn't see the persons who dumped these loads?

A. I didn't want to either; I saw enough of it.

Q. You didn't see anybody dump night-soil there, did you?

A. No.

JOSEPH T. WARD, sworn on behalf of plaintiff:

Direct-examination by Mr. Herbert:

20

Q. Where did you live in the summer of 1885?

A. Number 322 Delaware avenue.

Q. How near Mr. Handley's?

A. Eight hundred feet, probably, or a thousand feet.

Q. Was your attention called to the night-soil that was dumped near his house that summer?

A. Yes, sir.

Q. What caused it; what attracted your attention to it?

30 A. My tenant, Mr. Giles, called on me and said there was an offensive smell.

Q. What did you do in consequence of that?

A. I told him I thought we ought to report it to the proper authorities, as Mr. Sturgis, one of our neighbors, was living near us—(interrupted.)

By Mr. Newbold.—I object to the conversation that took place between Mr. Ward and his tenant, and ask that it be stricken out.

40

By the Court.—Don't carry it any further.

Q. You found there a nuisance—(interrupted.)

Objected to.

Q. Was or was it not, in your judgment, a nuisance?

A. I should say it was a nuisance.

Q. In what way?

A. The smell was offensive to me at times ; if the 10
wind was blowing in a westerly direction it was offensive at our house.

Q. Did it interfere with your comfort?

A. It was unpleasant.

Q. Did you, in consequence of that inconvenience and discomfort, make application to the Health Department?

Objected to by Mr. Newbold as leading.

Q. Well, what did you do in consequence of that 20
discomfort?

A. I called on officer Sturgis.

Q. Why did you call on him?

A. Knowing him to be a member of the Sanitary
Board ; I think he was one of the officers of the Board ;
one of the Inspectors—Sub-Inspectors.

Q. Did you have any conversation with him about
it?

A. Yes, sir.

Q. State what it was? 30

A. I called and asked Mr. Sturgis if he knew they
were dumping night-soil near my property at Mallory
avenue ; he said yes, he was aware of it, and wanted to
know how I knew of it. I told him that my tenant, Mr.
Giles, had just called on me, and I thought it best we
should notify him. He said yes he knew all about it ; I
told him it was unpleasant to have night-soil dumped
there, so near our premises, and it was a nuisance and
should be abated ; I think he then asked me the question,
“ Who told you ? ” I said, “ Mr. Giles, my tenant,” who 40

was with me. I think his next expression was, "Well, Giles is telling an untruth." I said, "Well, I have not been on the dumping ground; Mr. Giles has, and he reports it to me; I wish you would abate it if there is any way of doing so." He said there was no nuisance there, that they dumped their night-soil there and it had been covered up. I told him I would go and look for myself; he said it would be trespass if I went down there, I had no business on those grounds; I asked him if he would
 10 attend to it for me; he said he did not think there was any nuisance there to be abated, it was all covered and in good condition.

Q. Was there anything more said by him, or yourself, or Mr. Giles?

A. Mr. Giles and he had some words about it in my presence; the conversation first was addressed principally to Mr. Giles; he gave him considerable abuse.

Q. For making the complaint?

A. For making the complaint. He addressed re-
 20 marks to the tenant more than he did to me.

Q. Did Mr. Sturgis abate the nuisance or do anything to have it discontinued?

A. I can't say; I think not, as the smell seemed to be as strong as ever. This was in the latter part of August, I think, that I called on Sturgis, and it continued, so far as I know, until the next spring. I know the result was he left the next spring.

Cross-examination:

30

Q. Were the odors that continued the next spring the same as you noticed in the fall?

A. Yes, sir.

Q. How far did you live from the place where you understood the dumps to be?

A. I should judge about a thousand feet; I live on Delaware avenue.

Q. On which side of West Side avenue is that?

A. South of West Side avenue—the next street.

40

Q. Does it run parallel with West Side avenue?

A. Yes, sir.

Q. You mean the next street west?

A. I should say west of West Side avenue one block.

Q. Were not the dumps more than 2,000 feet west of West Side avenue?

A. I should judge not.

Q. Have you ever been on the ground?

A. Yes, sir.

Q. When?

A. I couldn't give dates; I think it was in the fall of 10 1885.

Q. What part of the fall?

A. Probably in October.

Q. Now, then, you say that Mr. Giles, your tenant, called your attention to the smells?

A. Yes, sir.

Q. Then did you go up there after he called your attention to them, to see where the dumps were?

A. I think two months afterwards—about two 20 months.

Q. And then in company with whom did you go?

A. I think a gentleman named Vanderwater and I passed there; one of my neighbors.

Q. There are a great many houses between you and these dumps, are there not?

A. Probably fifteen.

Q. Did you ever undertake to measure the distance?

A. No, sir.

Q. Mr. Sturgis himself lives between you and these 30 dumps?

A. Yes, sir.

Q. Could you say that it was not two thousand feet from your house to where those dumps were?

A. I calculated in this way: I live on Delaware avenue, next is Olian, Belvidere, Wallace Row or Wallace Place, I think, then there is Mallory avenue; and I judge them to be about two hundred foot blocks, making about one thousand feet to where my house in Mallory avenue stands.

Q. Are you on a line parallel with the house in which 40 Giles lives?

A. Very near, sir; between the same blocks.

Q. He lives on Mallory avenue?

A. Yes, sir.

Q. Which direction does that street run?

A. Parallel with West Side avenue.

Q. And what street runs east and west nearest to the Giles' house?

A. Stuyvesant avenue.

Q. And how near to Stuyvesant avenue do you live?

10 A. Probably two hundred feet.

Q. Now, you don't know the distance between any of those streets, do you?

A. I do between West Side avenue and Delaware avenue.

Q. Is that the only one?

A. Delaware and Olian avenues is two hundred feet.

Q. How long have you lived down there at Marion?

A. Seven years last May, in the same house—last April.

20 Q. You say that Mr. Sturgis told you the dumps were covered up?

A. Yes, sir.

Q. When you went over there to examine them did you find whether they were covered up or not?

A. I found that they had been covered up, not covered as I should judge they should be, they were apparently covered with sand and a great deal of sand apparently had settled down through the substance leaving it exposed in some places.

30 Q. And what month was that?

A. Probably October.

Q. How many dumps were there?

A. Well, the smell being so offensive I did not go to the full extent of them; I probably saw five or more that were apparently pits.

Q. Did you notice the size of them?

A. No, sir; I didn't measure them; judging by the eye, they were probably three by eight, something like that.

40 Q. Now, then, can you say that you noticed any more than five dumps there?

A. Well, that seemed to be the only pits ; there were mounds about this size that seemed to be located up beyond there.

Q. But were not those the dirt that had been thrown out of the pits in which the night-soil was dumped.

A. Well, they would have had to carry their dirt to some distance if they had ; I don't think they did.

Q. Did you discover any signs of night-soil about those mounds ?

A. No, sir ; they were apparently covered over, these 10 pits, but the first five that I saw were not rounded up, the substance had apparently dried out leaving the sand a little below the surface.

MILTON E. PIERE, sworn on behalf of plaintiff.

Direct-examination :

Q. What is your business ?

20

A. Painting.

Q. Where did you reside in the summer of 1885 ?

A. No. 308 Belvidere avenue.

Q. How near to Mr. Handley's house ?

A. Well, I don't know ; the streets are not cut through ; I should judge three or four streets ; three streets, I think it is ; mine is the third street.

Q. Did you notice the offensive smells that the others have testified about ?

A. Yes, sir.

Q. When was your attention first directed to them ? 30

A. In the summer some time.

Q. About what month ?

A. I couldn't say whether it was in June or July ; it was in the summer ; I couldn't tell what month.

Q. And how long did they continue ?

A. All summer ; as long as hot weather lasted.

Q. How did they effect the purity of the air and the comfort of living there ?

A. We had to close the windows, my wife did, when the wind blowed that direction. 40

Q. Did you ascertain the source of these smells ?

A. Yes, sir.

Q. What did it come from ?

A. From the night-soil dumps.

Q. Where ?

A. Down below, at the side of Mr. Handley's.

Q. Did you go there to make an examination ?

A. Yes, sir.

Q. When ?

10 A. Well, the first I found out where it was—I didn't where the night soil was dumped—my brother fell into it.

Q. How did that occur ?

A. The boys were down over the lots playing.

By Mr. Newbold :

Q. Were you with them ?

A. No, sir.

20

Objected to.

Further direct :

Q. You knew he did fall in ?

A. Yes, sir.

By Mr. Newbold :

30 Q. You were not there ?

A. I seen the effects of it.

Further direct :

Q. You then, you say, made an examination of the ground ?

A. Yes, sir ; I made a complaint against it. I found when I went down there there were these holes or pits dug and the night-soil dumped into them.

40 Q. How many ?

A. I couldn't say.

Q. About ?

A. Well, I should judge there were five or more ; I didn't count them at all.

Q. Did you see any mounds ?

A. I seen some mounds there ; I seen places where it was thrown right on top of the ground.

Cross-examined by Mr. Newbold :

10

Q. When did you make the examination ?

A. I couldn't say what month it was ; it was after brother came to the house and said where the smell was ; we couldn't trace where the smell was.

Q. Well, he didn't find out until he got into it, did he ?

A. No, sir ; we had the stench all the summer ; we didn't know where it came from.

Q. You can't tell the month you went up there, can you ?

20

A. No, sir ; I can't say.

Q. How far is it from where you live there ?

A. Mine is the first street.

Q. The number of feet, I mean ?

A. I should judge about 600 feet.

Q. How near to Giles are you ?

A. I think Mr. Giles' house was on the second street down ; I don't know the names of the streets there.

Q. Are there any other houses between you and where these dumps are existing except Giles' and Handley's ?

30

A. Yes, sir.

Q. Who ?

A. I don't know the names ; the parties has moved out that lived across the street there.

Q. You say that you noticed the smell first in June or July ?

A. Either in June or July.

Q. The same smell that you noticed there in June or July and the smell that you complained of, was it not ?

A. Yes, sir.

40

Q. When did it cease?

A. It did not cease until cold weather froze it out; every time it was foggy or damp weather and the wind was in the right direction you could not open a door nor window in the house.

Q. It is westerly from you?

A. It is.

Q. You mean to say that when the wind was westerly it was foggy?

10 A. No, sir, I don't; I say when it was damp weather the odor rose from there and the wind blowing from west to east we would get the benefit of it.

Q. You mean to say that when the wind blew from the west it was damp?

A. When it was not cleared off it was.

Q. How many occasions do you remember having the wind from the west with damp muggy weather?

A. Well, sir; I don't know anything about it, I didn't count.

20 Q. Well, it would have to come from the west to come to your house?

A. Yes, sir.

Q. And you noticed it only when it was damp or muggy weather?

A. No, we noticed it then the worst; we had it continually during the clear weather when the wind was in the right direction.

Q. Continually up to cold weather?

30 A. Up to cold weather it froze over. I made a complaint twice about it.

Re-direct-examination.

Q. To whom?

A. I made a complaint to Chief of Police Murphy.

Q. Did you make any complaint to Mr. Sturgis.

A. No, sir, I did not.

Q. Did you have any conversation with him about it?

A. No, sir.

40 Adjourned to Monday, May 2d, 1887, ten o'clock A.M.

JERSEY CITY, N. J., May 2d, 1887.

Continuation of examination pursuant to adjournment.

Appearances as heretofore.

GEORGE F. SOUTHERLAND, sworn on the part of the plaintiff:

10

Direct-examination by Mr. Herbert :

Q. What is your business?

A. Journalist.

Q. Where do you reside?

A. No. 70 Church street.

Q. Do you remember, in the summer of 1885, going to the house of Mr. Handley?

A. Yes, sir, I do.

Q. Or in the fall of that year?

20

A. Yes, sir.

Q. Under what circumstances did you go there?

A. I went there to inquire into and investigate matters relative to the death of the children that occurred there.

Q. How soon was it after the death of his children?

A. It was on the day following the death of his children.

Q. Did you make an examination of the surrounding premises?

30

A. I did.

Q. What did you find?

A. Well, I found on the knoll, southwest of the house about 175 feet, some piles of deposit of night-soil, and also further away from the house to the southeast.

Q. About how far was the furthest deposit that you saw from Mr. Handley's house?

A. I don't know as I can say in regard to that; there were many of those deposits all through that section, both on the properties leased by Mr. Henry and also those that I understood were leased by Mr. Finley.

40

Q. About how many pits did you see filled with night soil ?

A. I think there were six or eight, if my recollection serves me right, on the top of the knoll nearest the house, and then others further away from the house, on this other property.

Q. About how large were those pits ?

A. Well, they varied in size ; I think the largest one was about fifteen feet long and five or eight feet wide—
10 perhaps seven or eight feet.

Q. How deep, or couldn't you tell ?

A. Well, there was only one of them, and that was not quite full ; about sixteen or eighteen inches from the top ; that would seem to be the largest pit there of that group on top of the knoll.

Q. Did you see any mounds of the fecal matter ?

A. All except this one had been covered up and light mounds raised over them with sand.

Q. Well, how many mounds were there ?

20 A. That I could not tell you ; I said I think there were six or seven besides the large one.

Q. How many loads did you see spread over the ground ?

A. Well, it is hard to judge in regard to the quantity ; there was a space of perhaps thirty five or forty feet across where, in my judgment, it had been dumped on the surface ; I don't think it could have run over the tops of the pits for that distance.

30 Q. Do you know about how far Mr. Handley's house is situated from any surrounding building there, or factory ?

A. The nearest inhabited dwelling, I think, is in the neighborhood of 250 or 300 feet due east ; the manufactory of Mullinbrook, which I investigated pretty carefully, while I was there on two or three occasions ; that is the nearest building, I think, to the Handley residence ; that is a little northwest, and just the other side of the Jersey City Heights Gun Club grounds ; the gun club grounds are almost immediately in front of the
40 Handley residence, and this is just in the rear.

Q. About how far?

A. Well, it isn't over 300 or 400 feet; 500 at the outside.

Q. Did you notice any offensive smell arising from the offal and excrement that was dumped on the ground near the Handley residence?

A. I did, more particularly when I was in the neighborhood of the pits.

Q. Was it offensive?

A. Well, it wasn't very agreeable.

10

Q. Well, was it offensive?

A. It was, in my judgment.

Q. Well, was there much of a smell?

A. Well, so that you could notice it.

Q. Were you a witness on the trial of Patrick Woods in the Hudson County General Quarter Sessions?

A. I was a witness for the State in a criminal prosecution against, I believe, Patrick Woods, as one of the defendants.

Q. Patrick Woods, George Benner and Henry Col- 20
ston?

A. Yes, sir.

Q. And was that for maintaining a nuisance upon this ground?

A. I believe it was this identical place, and this identical dumping, or alleged dumping.

Objected to as immaterial.

By Plaintiff's Counsel.—I propose to in- 30
troduce in evidence, as against the defend-
ant, Patrick Woods, the indictment and con-
viction for maintaining a nuisance.

The Court.—Is it on his own confession?

By Plaintiff's Counsel.—No, sir; it is
upon trial and conviction. We will show by
this witness that it was for this identical sub-
ject matter.

40

The Court.—You may make the offer and we will look at it afterwards.

Plaintiff's counsel offered in evidence the record and copy of conviction of Patrick Woods for maintaining a nuisance, in the General Quarter Sessions of the County of Hudson, at the April Term of 1885.

16

Objected to.

The Court.—Give me any authority on the subject. I won't allow it in the testimony now.

Cross-examination by Mr. Newbold.

Q. Do you remember the date of this visit you made to Handley's house?

20 A. I do not, no, sir; not now; I haven't paid any attention to it; after I discharged my duty in that matter it passed from my mind.

Q. You spoke of it in reference to some death in the Handley family; do you say there was, at that time, a death?

Q. There were, I think, two children dead in the house at that time, and on the following day when I visited there the others were dead.

Q. You saw them?

30 A. I did; I helped put the bodies of the two in the hearse.

Q. With reference to that you think it was at the time of the death?

A. I do; yes, sir.

Q. The place you saw these pits you have spoken of; in what direction do you say that was from the Handley house?

A. A little southeast.

Q. I understood you to say southwest; you meant
40 southeast?

A. I said southeast.

Q. In what direction was the Mullinbrook factory?

A. A little northwest; about as much northwest from the residence as the pits were southeast from the residence.

Q. Did you notice there was quite a hill between the pits and Mr. Handley's house?

A. There is a slight elevation there.

Q. Pretty near as high as the top of Mr. Handley's house, isn't it?

10

A. No; it is less than fifteen feet; Mr. Handley's house stands on the side of the bank, you know.

Q. The pits that you noticed; you say that one of them was not covered over?

A. One of them was not—there was an inch, perhaps an inch and a half of sand thrown over the tops, in the pit; the pit was within sixteen or eighteen inches of the top of the ground.

Q. The night-soil?

A. Yes, sir.

20

Q. And there was about an inch and a half of sand?

A. Over the top of that one; I could not say in regard to the others.

Q. The others, you don't know how much sand there was covering the night soil?

A. No, sir.

Q. How did you ascertain how much there was over this one you mentioned as being uncovered?

A. Because I scraped the top off and took a stick and penetrated as far as I could to determine, in my judgment, the depth of sand on top, and also the depth of the pile; I ascertained the depth to be five feet, as far as I could judge from the stick I had.

30

Q. Mr. Handley mentions that about that time it was very cold weather; did you notice whether it was or not?

A. It wasn't severe cold weather; it was so it might freeze at night.

Q. Was this on Monday or Tuesday?

A. I could not remember whether it was or not.

40

Q. Mr. Handley says it was so cold that the doctor refused to go out ?

A. I investigated that matter ; I found out there were other reasons why Dr. B did not go out.

Q. It was not Dr. B at all ; Dr. Parker was the physician.

A. Dr. Parker called ; Dr. B was the physician sent for.

Q. You have undertaken to investigate this business ?

A. It was my duty in connection with the " World ;" I was with the " World " at that time.

Q. Then you have been, with reference to these matters, something on the investigating line ?

A. Never, only during the death of the children, and regarding the cause, and relative to the facts attending.

Q. And you have been investigating since this suit commenced ?

A. No, sir ; I never knew anything about the suit until I was subpoenaed, or until I saw the papers filed ; the only investigation I made was at the time, within three days after, and on the next day following the death of the children.

Q. Now, which pit, relative to the Handley dwelling, was it that you found in this manner, you say not sufficiently covered ?

A. Well, it was the first one to the southeast.

Q. The furthest southeast ; now then, did you measure the distance ?

30

(Not answered.)

By the Court :

Q. The nearest to his house ?

A. No, sir ; there seemed to be two or three mounds like that appeared to have been covered up, and then the deposit on the surface was nearest the house, then the
40 pit that was not, in my judgment, full.

Further direct:

Q. What do you mean by that, that seemed to have run out of the pits, what was it, of a watery nature?

A. No, sir; it was not. It seemed to have been dumped on the ground; it covered too much surface of ground to overflow from the pits; that is what I meant

Q. The pit could not have been filled up, and then the water run off?

A. It might, but it wasn't my judgment that it did. 10

Q. How thick was the deposit you speak of being on the surface?

A. It had dried up some and, of course, I think it had settled into the sand some. It was dark, and pretty thickly distributed with paper that in my judgment came from closets.

Q. What was the thickness of the night-soil?

A. It wasn't very thick, it evaporated, as I say, perhaps through the sand. It was very dark and covered the surface of the ground. 20

Q. Would a load of water from a water closet have produced somewhat of that appearance that you saw there if it had been dumped on the surface and permitted to flow over the ground?

A. I can only answer that question this way: The character of that deposit which covered that surface was very much the same as others that had been dumped on Tonnelly avenue, here it was positively known and identified as coming from closets; I did not identify it myself, but I learned it had been dumped there from a 30
—(interrupted.)

Q. Never mind what you heard; I want to know was this of the substance that was in the pits, or was it of a watery nature?

A. It was of the same color as the substance in the pits.

Q. And how thick was it?

A. I could not say as to the thickness; it was on the surface of the ground; I could not say the thickness of it. 40

Q. You say it ran into the ground ; if it had been solid it would not have soaked in ?

A. I said it might have penetrated the soil there ; that is very sandy and loamy soil there ; it might have looked very different when I saw it, from what it did when it was first deposited there.

Q. I want to get at the amount of this substance ; what thickness it was ; whether it was a crust, or if it was water that had run into the sand and discolored
10 the sand ?

A. It wasn't any material thickness, but it covered quite a large place on the surface of the sand.

Q. Then did it have such an appearance as would have been produced by the liquid taken—not the solid substance taken from a privy—but the liquid, if it had been dumped there and had spread itself over and had run into the sand ?

A. Yes, it might have had that appearance.

Q. How far from those pits that you noticed, was this
20 which appeared to be on the surface ?

A. It was on the western incline of the knoll toward the meadows, and a little southeasterly toward the house ; the knoll rather inclines both ways, to the west toward the meadows——

Q. Where these pits was, was in a hollow, was it not ?

A. It was not ; it was directly on top of the knoll.

Q. Do you mean to say it was as high as the knoll that is next to Handley's house ?

30 A. Yes, the knoll that was near Handley's house.

Q. Do you mean to say that there is not higher ground between Handley's house and the pits, than at the point where the pits are ?

A. No, sir ; I don't think it is higher ; I think it is about the same elevation ; to the west of the pits perhaps 20 or 30 feet there is a little hollow there to the southwest of the pit—or southeast of the pit.

Q. Have you ever measured the distance between those pits and Handley's house ?

40 A. No more than by passing it.

Q. What is it, a sort of sand hill there ?

A. Yes, sir.

Q. You did pass it, did you ?

A. I did.

Q. You could not go directly from the pits to Handley's house without passing it, could you ?

A. Why not ?

Q. Without going down an abrupt hill ?

A. Not very abrupt, a very gentle decline from the top of the pit to the house.

10

Q. You don't seem to have explained to the satisfaction of all whether the substance spread upon the surface was between the pits and Handley's house, or whether it was further away ; what is the fact about that, Mr. Sutherland ?

A. About the same distance, only west of it.

Q. How did you ascertain ; did you make any memorandum of the number of pits there were ?

A. I didn't, only on my notes before I had written the matter up for publication.

20

Q. And can you swear there was over five pits there at all that had night-soil in them ?

A. I would not want to swear to the number ; my best recollection is, there were six or eight ; I think it was one of those two, that I discovered there ; that is my recollection now.

Q. Do you mean to say there were six or eight places there where they had apparently been digging out ?

A. Where they had been dumping.

Q. But as I understand you, you did not find but one place where you uncovered to get down to the night-soil ; did you get down to the night-soil in any other ?

A. I did not ; I did not undertake to.

Q. And what were the dimensions of the others ?

A. I could not judge, only from the appearance where the earth had been removed and places dug.

Q. So that there was nothing there upon the ground to indicate the size of the pits ?

A. I don't know that there was more than that one pit there that contained night-soil, to my own knowl-

40

edge; I was informed of the others, but that was the only one that I investigated.

Q. You did not measure the distance from Handley's to Mollinbrook's, did you—the gut factory?

A. No.

Q. Now, can you tell us whether it was Monday, Tuesday, Wednesday, or Thursday of that week?

A. I cannot; it was three days of that week, and on the following Sunday I visited the Marion school and
10 some houses in the locality further down, and also those premises.

Q. Do you remember whether it was snowing any day that week?

A. I know it rained the Sabbath I went there.

Q. That was the Sabbath after you had made the visit to Handley's house?

A. Yes, sir.

Q. Do you know anything about where the boundary of Finley's land runs?

20 A. I do not; I know there are two strips there north of the cemetery, and I understood——

Q. Never mind what you understood, but do you of your own knowledge know where the northerly boundary line of Mr. Finley's land runs?

A. I do not.

Q. You don't know, of your own knowledge, where Heary's land is, do you?

A. No; not of my own knowledge, any more than I took from the information I received at the time.

30

Re direct-examination :

Q. How wide are those strips running from West Side avenue down to the river?

A. Well, I could not answer that, I think——(interrupted.)

Q. About the width of a block?

A. Pretty nearly, I should judge.

Q. You did see six or eight places where night-soil
40 had been dumped, you think; at least there were exca-

vations that indicated that the soil had been removed for some purpose?

A. I can only testify as to the one I investigated; I was informed, I say, that there had been others there, and I saw the mounds.

Objected to.

Q. Did the others have the same external appearance as the one you investigated?

10

A. No, sir; they did not.

Q. In what was the difference?

A. They were covered up with the sand—the soil.

FRANCIS E. DOLLORY, sworn for the plaintiff:

Direct examination:

Q. What is your business?

A. Plumber.

20

Q. Where do you live?

A. 29 Cambridge avenue, now.

Q. Where did you live in the summer of 1885?

A. 316 Belvidere avenue.

Q. How far is that from Mr. Handley's house?

A. I should judge about 700 feet.

Q. Was your attention directed to the dumping on the ground near Handley's house, in the summer of 1885?

A. Well, my wife complained of the smell down there, but she did not know it came from that; she didn't know what it came from.

Q. When did she first notice it?

A. Well, in the latter part of the summer.

(*By the Defendants' Counsel.*)—If the Court please, that is necessarily hearsay; I ask that that be stricken out.

Q. Did you find the smell offensive?

40

A. I didn't find any, because I was away from early morning until late at night.

Q. When you came home at night, did you notice any smell?

A. No ; I noticed smells from the factories.

Q. Did you ever go over that ground ?

A. I went over once.

Q. What did you find there ?

A. I found three pits partly filled with night-soil.

10 Q. How far were those pits from Mr. Handley's house?

A. I should think the nearest one would be about 175 feet, as near as I can judge from the eye.

Q. And the others ?

A. Well, close to it ; further from the house but on a line with that one.

Q. How far were the others about ?

A. There might have been a space of ten or twelve feet between each one.

20 Q. Did you notice any night-soil dumped on the ground ; lying on the ground loose ?

A. Yes, sir ; it looked so.

Q. How far was that from the pit ?

A. From the edge of the pit down the hill quite a distance, almost if not quite up to Mr. Handley's house.

Q. From the edge of the pit, you say, quite up to Handley's house ?

A. Yes, sir.

Q. Were there any other pits to the south ?

30 A. South of the street there, that is all I see.

Q. Was there any night-soil there on the ground, spread over the ground to the south of the pits towards the cemetery ?

A. Yes, sir.

Q. How much ?

A. Well, it looked as if there had been quite some, which had soaked away in that sandy soil, you know.

Q. About what space was covered ?

A. I couldn't tell that ; quite a big space around.

40 Q. Fifty feet ?

A. Yes, sir.

Q. One hundred feet?

A. Well, about fifty feet, I should judge.

Q. And how far was that from the most southerly pit?

A. I don't know, maybe twenty-five, thirty, or forty feet, something like that; it had been dumped there and spread all around. I didn't go past the second pit.

Q. So that would make it about four hundred feet from Handley's house; that is the most southerly point, 10 where the night-soil was dumped?

A. Well, it might be that much.

Cross-examined by Mr. Newbold:

Q. What was the date of your going there?

A. I couldn't tell that.

Q. In the summer or fall?

A. It was some time in December, but date or day I couldn't tell. 20

Q. In cold weather or not?

A. It was cool weather, yes.

Q. You said there was an indication of something having been dumped on the surface; describe that to us more particularly?

A. Well, it was stained and some lumpy substance mixed with paper; pieces of paper.

Q. Stained do you say?

A. Yes, some color.

Q. Soaked into the sand had it? 30

A. Yes, soaked away into the sand; the largest part of it had soaked away into the sand; I saw there was some lumpy substance mixed with paper on top of the soil. It was between the pits and Handley's house.

Q. Do you know whether you had been there before Mr. Sutherland was there or not?

A. I don't know when he was there; I don't know the gentleman.

Q. You don't know what day in December it was?

A. That I was there? No, sir. 40

Q. Was it before or after the death of Mr. Handley's children?

A. It was after the death and burial of all of them, I think.

Q. It was during the week, was it, that the children died?

A. No; I think it was the early part of the next week if I remember right; I would not be positive about that.

10 Q. Was any one with you?

A. Yes, sir; Mr. Shaw, a neighbor of mine.

Q. Now, then, you said you have smelled other smells from factories; what factories do you refer to?

A. I don't know the names of them.

Q. Well, in what direction from you?

A. Well, west.

Q. The Mullinbrook factory?

A. Yes, sir; it may have come from that; that is the one by the gun club?

20 Q. Yes.

A. It may have come from that; I don't know.

Q. Do you know where the bone boiling establishments are?

A. No; I know they are across the river, that is as near as I can tell you.

Q. Do you know where the hog abbatoir is?

A. Yes, sir.

Q. You are troubled with smells from that direction sometimes, are you?

30 A. Yes, sir; in the summer time particularly, when the wind is in that direction.

Q. How long have you lived there?

A. I have lived in that house over nine years.

Q. And those smells you have complained of run back as far as your residence there?

A. Yes, sir.

Q. People around that neighborhood have very generally complained for many years, have they not?

40 Objected to as incompetent.

 Objection sustained.

Q. You speak of this matter upon the surface, as having soaked away; now, did it appear to have been recently deposited there, or a long time?

A. Well, the time I was down there, it was middling cool weather, freezing weather, and it sort of looked as if it was wind dried; that is as near as I can tell you.

Q. Mr. Sutherland has said there didn't appear to be any material thickness about it; was your observation in accordance with that?

10

A. There was a thickness to it, to some of it.

Q. To what extent?

A. I mean it was a soft lumpy substance.

Q. Where was that?

A. On the surface of the ground.

Q. To what extent was that?

A. I don't know hardly how to answer that, that is as near as I can tell you; I don't mean a hard solid substance; I mean it was soft enough so you could make an impression in it with your fingers, or a stick or anything.

20

Q. Do you mean to say that there was a substance foreign to the earth deposited there that made a continuous thickness over the ground?

A. Yes, sir.

Q. To what extent; how thick?

A. I don't mean a solid body; here and there little pieces.

Q. Then between where these pieces were what was the character of the ground?

30

A. There were pieces of paper there.

Q. Was there a stain in the ground?

A. Yes, sir.

Q. The ground appeared to be stained, did it?

A. Appeared to be stained, yes.

Q. Was that such an impression that would have been likely to be produced from a load of water from a water-closet being dumped there and run over the ground?

A. Yes, sir; it would give me that impression.

40

Re-direct-examination :

Q. There were little mounds over the ground, and how thick were those little mounds?

A. About an inch or two.

Q. About how thick were those little mounds—how high?

A. I didn't say there were any mounds there.

Q. You said little substances, little heaps?

10 A. Yes, sir.

Q. How deep?

A. Well, from an inch to an inch and a half, maybe two inches.

JAMES F. HAW, sworn for the plaintiff.

Direct-examination by Mr. Herbert.

20 Q. Where did you live in the summer and fall of 1885?

A. 306 Belvidere avenue.

Q. About how far from Mr. Handley's?

A. I should judge about between six and seven hundred feet.

Q. Did you go to the ground in the neighborhood of his house to see what was dumped there?

A. I did.

Q. What led you to make that investigation?

30 A. After I heard of the death of Mr. Handley's children when I was subpoenaed on the case then I went to see; I didn't go to see until after I was subpoenaed. I found six or seven pits dug and which looked as if there had been something dumped in them and they had been covered over with sand; lightly covered over.

Q. Did you find any of the stuff running?

40 A. I found some pits there and I took a broom stick down with me just to see the depth so I would not be testifying without knowing what I was talking about; and I took the broom stick and it went down into the pits about two feet, I should judge, or a little over.

Q. How much over?

A. Well, it went about two feet into the pits.

Q. What was the character of that substance?

A. It looked to me as though it had been covered over some time and the liquid had soaked into the sand; that is the way the stick went down into it.

Q. What kind of stuff was it? How had it come there?

A. I couldn't tell where it came from.

Q. What kind of stuff was it? What would you call it. 10

A. It smelled very bad.

Q. What do you think it was?

A. I think it was human dirt—night soil; that is what I think it was.

Q. You say it smelled very badly?

A. Very bad.

Q. Did you ever notice it at your house?

A. Well, the way my attention was called to it in the first place, I was coming home from work and the wind was west, and there had been bad smells in that place always, but this time the smell was very bad, and it was nearly getting the best of me, and I turned and walked backwards quite a distance and I wondered what the smell could be, and when I went in I spoke to my eldest boy and said, "Robert, I smell a terrible bad smell to night; that is not the smell of the abbatoir." He said, "They are dumping some night-soil back of Mr. Handley's." 20

30

Objected to.

By the Court.—Never mind about that.

Q. You need not give the conversation, just tell what you saw and what you yourself experienced?

A. That took me down there.

Q. When was that?

A. That might be possibly in the month of October. 40

Q. The month of October ?

A. Yes, sir ; I think so, or later on.

Q. What do you mean by saying the smell nearly got the best of you ?

A. It was so stiffling, bad smell ; I had not smelled anything like it down there before, and I heard of them dumping night-soil down there, and I concluded that was where it must have been, because the wind was blowing in that direction.

10 Q. Was the smell so offensive and disagreeable as to render life uncomfortable near there ?

Objected to.

A. I could not answer that question. The smell had been so bad at times we had to close the windows.

Q. How often had you been obliged to close the windows on account of that smell ?

20 *By Defendant's Counsel.*—He never said, “that smell ;” he never said he smelled that smell through the house.

Witness.—Yes, sir, I did, and repeat it ; I smelled it through the house, it was a very bad smell ; we had to close the windows down at different times ; I was not home all the time during the day, but had to close the windows down in the evening many times.

Q. On account of the smell ?

30 A. Yes, sir ; on account of the smell.

Q. From that place ?

A. From that place.

Q. About how far was the first pit from Mr. Handley's house ?

A. Between a hundred and fifty and a hundred and seventy-five feet, I think, as near as I can recollect.

Cross-examined by Mr. Newbold :

40 Q. You went to these pits with Mr. Dollory, didn't you ?

A. Yes, sir.

Q. And you say your attention was called to it after you heard of the death of Handley's children?

A. Yes, after I heard of the death of Mr. Handley's children, then I went down; after I had been subpoenaed in this case.

Q. To find where these pits were?

A. To see what the trouble was; yes, sir.

Q. Do you remember whether that was in December or not?

10

A. Well, that was after the death of Mr. Handley's children; it might be about the latter part of November or December; it might be, I didn't take any date of it at all.

Q. Now, you speak of having smelled something coming from a certain direction?

A. Yes, sir.

Q. Where were you when you noticed that smell?

A. I was coming from West Side avenue, going in the direction of my home and in a line with where this stuff 20 had been dumped.

Q. You were going towards where the dumps were?

A. Yes, sir; until I got to Belvidere avenue. When I get to my house I am between six hundred and seven hundred feet from the dumps.

Q. And when you say you smelled this how far were you from the dumps?

A. I should judge then it would be about one thousand feet.

Q. A thousand feet from which?

30

A. About one thousand feet, I guess, from West Side avenue, where the old shooting place was.

Q. East of West Side avenue, is it not?

A. I go on the west of West Side avenue, coming home.

Q. West Side avenue is more than two thousand feet from these dumps, is it not?

A. I never measured it.

Q. How far from West Side avenue were you when you say you smelled the smell you have spoken of?

40

A. I don't know exactly; anyhow I smelled the smell.

Q. You say there are always bad smells in that place?

A. That abattoir there; but then the smell was different from any I had ever smelled before; it was not the abattoir.

Q. You know the gut factory?

A. I can't say I smelled it from the gut factory.

Q. And the bone boiling establishments; had you
10 smelled that smell?

A. I can't say that I have since they moved that from the Hackensack bridge there, it used to be right along side of the Hackensack bridge, and they have moved that away, haven't they?

Q. That is to be seen. Do you know that smell from the bone boiling establishments?

A. I can't say as I ever noticed it.

Q. Mr. Lister's factory; do you know that smell?

A. No, sir; I don't know that I ever noticed that.

20 Q. This was the first time that you noticed it, when you were coming from your work; when was that?

A. Some time in October or the latter part of August, I think.

Q. In October?

A. I don't recollect; I am speaking to the best of my knowledge.

Q. Was this about the time the Handley children died; the time that you made the remark about there being a smell over there; was it about the time the
30 Handley children died?

A. Some time after that, I believe.

Q. After the Handley children died you noticed the smell?

A. No, before; excuse me.

Q. How long about?

A. I couldn't tell; it might be a month or so after; I couldn't tell exactly.

By Mr. Hoffman :

40 Q. The children died about a month or two after you noticed the smell?

A. Yes, sir.

(*Further cross :*)

Q. How soon after you noticed the smell, did you go to see what it was ?

A. Not until after I heard of Mr. Handley's children being dead.

Q. Didn't you say on your direct-examination that your attention was first called to this smell after the death of Mr. Handley's children ? 10

A. I don't recollect saying that, but I can go over the ground of what I said.

Q. Is it a fact that the death of Mr. Handley's children first called your attention to this smell ?

A. After the death of Mr. Handley's children, and when I was subpoenaed in this case, then I went down to see what it could be.

Q. Then you were subpoenaed in what case ?

A. I couldn't tell the dates, I kept no account of the dates at all. 20

Q. That was in the spring when you were subpoenaed, was it not ?

A. No ; I think not ; I think it was in the fall if I recollect aright ; in the fall, I think so ; I couldn't tell exactly ; I was subpoenaed anyway.

Re direct-examination :

Q. That was on the trial of Patrick Woods, was it not, for maintaining a nuisance, when you were subpoenaed ? 30

Objected to by Mr. Wills.

By the Court.—It is competent to fix the time.

A. I don't know, sir.

CHRISTIAN SCHLEIMAKER, sworn for plaintiff:

Direct-examination by Mr. Herbert:

Q. Where did you live in the summer and fall of 1885?

A. In Charles avenue.

Q. How far from Mr. Handley's house?

A. Well, I should say about six blocks or seven blocks.

10 Q. Did you notice any offensive smells during that summer and fall from the night-soil that had been dumped on the property near Mr. Handley's house?

Objected to as leading.

Witness.—Yes, sir.

The Court.—You can ask that question.

By Defendant's Counsel.—We ask an exception.

20

The Court.—We cannot give it to you; it is in the discretion of the Court whether the question is leading or not.¹

Q. When was your attention first directed to this offensive smell?

A. The middle of the summer, last year.

Q. The middle of the summer of 1885?

A. Yes.

30 Q. How often did you notice it?

A. I would notice it every night; if we got a south wind it came that way.

Q. You live to the north of the place, do you?

A. Yes.

Q. And how often did you notice it; you say every time they had a south wind?

A. Every time we got a south wind we would notice it.

Q. Was it a very bad smell?

40 A. Yes, sir.

Q. Can you describe it?

A. Oh, yes.

Q. Do so?

A. I know about smelling.

Q. What kind of a smell was it; was it sickening?

A. Yes.

By the Court.—Describe it as well as you can; tell how it was.

16

A. I can't tell what you call it in English; I know what the smell is.

Q. At the time that the wind blew from the south did it make your life uncomfortable?

A. No; I don't know what you mean.

Q. (Through interpreter.) Describe the smell that came from that place?

A. Like a back-house.

Q. Was it a very bad smell?

A. Well, it was a very bad smell like other bad smells; 20
I work a great deal in slaughter houses, and know what a bad smell is.

Q. Was it worse than a slaughter house smell?

A. Very much worse; the smell from slaughter houses is a good smell alongside of that.

Q. Did it give you any inconvenience at your home?

A. Well, we have to close the windows sometimes.

Q. Did that occur often?

A. The middle of the summer when we had the wind from the south.

30

Q. Did you make an examination of the property?

A. No; I did not.

Q. You did not go upon the ground?

A. No.

Cross examined by Mr. Wills:

Q. How did this smell affect you; how did it make you feel?

A. Well, that stuff don't make one feel good, nor does 40
it smell good.

Q. How did it make you feel ?

A. I know what the smell was ; I smelled that before ; it was like your own smell ; I know what that one was.

Q. How did it make you feel ?

A. I didn't feel very bad after it ; I can stand that sort of smell.

Q. Why can you stand it ?

A. Because I am used to it ?

Q. Where did you get used to it ?

10 A. I worked for thirty years in a slaughter-house ; I am accustomed to bad smells.

Q. There was a factory a very short distance south of the slaughter house, where they manufactured night-soil into fertilizers, was there not ?

A. Yes ; there is gas works there now.

Q. There was a year and a half ago ?

A. Yes, a year ago, or two years ago it was.

Q. Don't you remember going over with me about a year and a half ago, to a factory just south of the abattoir, to see a man about a place ?

A. Yes ; there was no smell of that kind there at that time ; there was an acid smell.

Q. That was a place where they manufactured night-soil into fertilizers, was it not ?

A. Yes ; they used acid to do it.

Q. That was human excrement that was there being manufactured, was it not ?

A. No, it wasn't ; it was fish and some stuff of that kind.

30 Q. Were not there men in there shoveling human excrement that was dumped there from scows at that factory ?

A. No, no, sir.

Q. What was that substance they were handling there ?

A. Some old fish and stuff that they used to work up with acids there.

Q. Nothing else ?

A. No.

40 Q. The smell from the abattoir is not offensive to you, you say ?

A. No, sir.

Q. Is that because you are used to it?

A. Yes.

Q. There is a large pile of manure right alongside of the abattoir, is there not?

A. I don't know anything about that ; I didn't work there at that time.

Q. Well, you have been over there, haven't you, since you left work up at the abattoir?

A. No ; perhaps once.

10

Q. Don't you know that there is a pile of refuse excrement of all kinds, both animals and man, that is piled up there by what is called the New York Manure Company?

A. No, sir.

Q. You don't know about that place?

A. No.

Q. You say you were six or seven blocks away from Mr. Handley's house?

A. Yes.

20

Q. How many hundred feet is that?

A. I didn't measure it.

Q. As near as you can tell?

A. Well, I think about a thousand yards.

Q. How many houses are there between your house and Mr. Handley's?

A. Well, I couldn't tell you how many.

Q. Well, as near as you can tell ; how many houses are there between?

A. I say, one, two, three, four—I can't tell exactly. 30

Q. What are the names of the owners of those houses there?

A. Moneybrook, and one belonged to —

Q. Any others that you remember the names of?

A. No.

40

FRANK NAUGHTON, sworn for plaintiff.

Direct-examination by Mr. Herbert :

Q. What is your business ?

A. Undertaker, sir.

Q. Did you officiate at the funeral of Mr. Handley's children ?

A. I did at three of them ; my son buried the others.

10 Q. What was your bill for the funeral services ?

A. I didn't think of looking for it ; I think my bill was either \$160, or \$165 ; I could not tell positively.

Q. That was for three of the children ?

A. That was for the five.

Q. Did you make any examination of the property adjoining Mr. Handley's house ?

A. Not except what Mr. Handley called me to show me ; that was right on the side of the hill from his house, just running right down to the wall ; the stuff was
20 dumped on it and was running down ; I could not tell what the stuff was ; I know it did not look or smell any-way good ; I told Mr. Handley he should go to the Board of Health, or have more sickness ; it was green looking ; I could not tell what it looked like.

Q. Where did it come from ?

A. It was dumped there ; you could see the marks of the loads.

Q. What was the stuff ?

A. I presume it was human dirt ; I don't know any-
30 thing else.

Cross-examination by Mr. Newbold :

Q. When was this ?

A. The day before the funeral, last December ; pretty cold weather.

Q. Was the ground frozen ?

A. Yes ; on that Sunday the ground was not frozen.

Q. This you saw, you say, was running down ?

40 A. Yes, sir ; the sun was shining onto it.

Q. Then it was water, wasn't it?

A. It was kind of water.

Q. Did it look like water taken from a privy?

A. Well, it did look more like that than any other kind of water—green.

Q. Do you know of a man by the name of Bremmer being arrested for dumping a load of water there?

A. No, sir, I do not; I don't know Bremmer at all.

Q. How near to the house was this?

A. This was right up agin the wall; or the fence, 10 rather.

Q. Well, where had this water been dumped?

A. Right there on the side of the hill, and it was running right into the house, like.

Q. You saw where it was dumped?

A. I did, because it was a cart mark.

Q. Isn't the hill between Mr. Handley's house and where it was dumped?

A. It wasn't; it was dumped right on the slope; it was coming right up to the house; it was within a 20 few feet of the house; the principal part was there where it was dumped, and this was running down there.

Q. Do you know whether this is the load that was taken out of Mr. Handley's house or not?

A. I don't; I know what Mr. Handley told me, but I don't know of my own knowledge.

Q. This you saw had been dumped right near the house, had it?

A. Yes, sir.

30

Doctor GILBERT SALTONSTOW, sworn for plaintiff:

Direct-examination by Mr. Herbert:

Q. Where do you reside?

A. Hoboken, sir.

Q. Were you, in the summer and fall of 1885, connected with the Health Department of this county?

A. Yes, sir.

40

Q. In what capacity?

A. As Health Inspector to the Board of Health.

Q. Was your attention directed to the dumping on the ground adjoining Mr. Handley's house, that year?

A. No, sir; not particularly that summer at all; not being in my immediate district, I had very little to do with the case; Mr. Handley came up to the office in August and complained that scavengers were dumping night-soil near his place at night; and Mr. Allen, who
10 was one of our inspectors also, told Mr. Handley, that in as much as he had lived in Marion previous to coming into the Board of Health, and knew all about the lay of the land and neighborhood there, he would go down to Mr. Handley's house with him and watch that night, and see if there was any one dumping there that night, and if they did, arrest them; and he did go with him.

Q. Did you go down yourself?

A. I did not.

20 Q. At any time?

A. I went down in December. Mr. Handley came to the office and said he had lost five children; and I felt very sorry, of course, for any man losing children that way; and he said he would take it as a favor if I would go over and view the ground; and Mr. Allen and I went down there and viewed the ground. I did not go into Mr. Handley's house. I found night-soil dumped on top of a sandy hill there just a little ways removed from Mr. Handley's house; I should say it
30 was, perhaps, 200 feet or 150 feet—somewheres along there.

Q. How much?

A. Well, I could not tell you, sir, because some of it had been covered over with sand, and some of it lay exposed on the surface dried.

Q. Did you notice any pits?

A. There were some depressions there covered over with sand, and he pointed them out to me as pits where this stuff had been dumped and covered over.

By a Juror.—Was the smell at that time, to you, very offensive?

A. No, sir; it was all dried and there was no smell to me at all; that is, a slight smell, enough to know it was night-soil, but it had laid there long enough to get dried, and there wasn't much smell to it at that time? of course, when you got close to it, you could tell it was night-soil.

10

Cross-examination:

Q. What you saw on the surface, to what extent was it exposed?

A. Well, it was simply exposed as if some scavenger had dumped it on the ground and left it there.

Q. Dumped the solid matter taken from water-closets, or was it just staining the ground?

A. Well, you know the contents of water-closets is generally mixed with human excrement and liquid, and when it is dumped out of a cart, as it falls on the ground, if it is sandy, as this was, the watery particles would be absorbed in the sand and that some solid particles remain on the surface. 20

Q. Did you notice any particular amount of solid matter on the surface?

A. You could tell it was a solid load dumped here, and a single load dumped there, but as to the thickness of it, I didn't measure it or anything of that kind, but you could tell it was night-soil, that is all; it had laid there and was black; cooked and dried. 30

Q. A crust forms over it, does it?

A. Well, that I could not tell you, about any crust part of the business. It looked black and dried. That is all I could tell you, sir. You would naturally suppose the atmosphere producing evaporation of the liquid parts would harden the surface more than anywhere else.

Q. You are in the health department?

A. Yes, sir.

40

Q. And have to do with these matters?

A. When I am called upon to see where night-soil has been dumped improperly; to know it is night-soil.

Q. Do you know that night-soil exposed a day or two will have a crust over it which will prevent it giving out any odor?

A. I don't know about any crust part of it, but in the course of a few days it becomes dried, becomes hardened, and does not give off, of course, anywheres near as
10 much smell when it is hard and dried, as when it is fresh.

Q. Where did you notice this night-soil on the surface?

A. Well, say here would be Mr. Handley's house; there is a sand hill goes up that way, and on top of that sand hill, along there. (Indicating.)

Q. Whereabouts with reference to the pits?

A. As you went, the hill, say here (indicating), here was a path went in and out, to avoid stepping in filthy matter; and he would say, "Take care; don't
20 step in that pit," and I would look and see there was an excavation had been filled in and covered loosely with sand, and I would avoid stepping into those pits. We did not uncover any of those pits. That I noticed in December was laying on the ground, not in any pits.

Q. Was it nearer Mr. Handley's house or further away?

A. They are all in a line; there would not be more than 20 or 25 feet difference.

Q. One witness said he was there in December and
30 noticed a lump of solid matter here and there of an inch and a half in thickness; was that what you noticed?

A. I could not say how thick it was, I did not measure it, but I noticed where there had been a load dumped here and load dumped there; you could tell from the quantity whether it was a single load or a double load; I could not tell the quantity, I did not measure it or weigh it, but enough to show you there was a dumping of night-soil that had been carelessly left uncovered.

Q. Can you tell anything about when it was left
40 there?

A. From the look of it, a week or ten days ; might have been dumped two weeks ; you can't swear to a thing like that, seeing it right over on the ground.

Q. Who was with you ?

A. Mr. Allen was with me.

Re-direct examination.

Q. Was the night-soil that was thrown in the pits, sufficient in quantity to have percolated the soil and 10 affected the spring of water near Mr. Handley's house ?

A. Well, that I speak very positively about, sir, since you have asked me, because, apprehending something of that kind, I requested the Board of Health to have that water examined carefully by a regular chemist, and they did so, and Mr. Phillips keeps a chemist shop on the corner of Newark avenue and Grove street, was appointed to investigate that matter, and he decided that the spring water was not affected ; how many times —I think it was six or eight times, he took different 20 samples and tested it chemically, and found it chemically pure, and it was not contaminated by any percolation whatever.

By Mr. McGrath :

Q. You have the result of that analysis ?

A. Yes, sir ; have it on record in the Board of Health.

30

JOHN ALLEN, sworn on the part of the plaintiff :

Direct-examination by Mr. Herbert.

Q. Where do you reside ?

A. Hoboken.

Q. What is your business ?

A. Health Inspector of the Hudson County Board of Health.

40

Q. Were you such inspector in the summer and fall of 1885?

A. I was.

Q. And did you in your official capacity make any examination of the property adjoining Mr. Handley's house that summer?

A. I did, yes, sir.

Q. What did you find there?

A. I found deposits of night-soil, some dumped in
10 pits and some on the surface.

Q. Do you know by whom the night-soil was dumped there?

A. I can only account for one load which was dumped in a pit; the others I know nothing about.

Q. Who dumped that, and when?

A. Patrick Woods dumped that early on the morning of August 20th.

Q. He is one of the defendants in this suit?

A. So I understand.

20 Q. About how many loads of night-soil were dumped there at the time you made your examination?

A. I can make no estimate of the amount of loads. I saw at the time five pits and two places on the ground where it had apparently been dumped, but how many loads I cannot say.

Q. What was the quantity in each of the pits about?

A. That I am not prepared to say; I don't know the depth of the pits.

Q. Did you undertake to abate that nuisance?

30 A. I did, yes, sir; I arrested Mr. Woods in the act of dumping, and prevented another from dumping there that night.

Q. Do you know whether or not that business was carried on after that?

A. I think not, at least I was not able to detect any other dumping there; I have been there every evening after, just for the purpose of watching that.

Q. You don't know whether any more was dumped there or not?

40 A. I don't know, no, sir.

Q. There might have been without your knowledge?

A. There might have been without my knowing it.

Q. Did you go down there in December?

A. Yes, sir.

Q. What did you find the condition of the property then?

A. Very similar to my first visit there, only the natural alterations that time would make. The substance was more dried and less offensive at that time.

Q. When you were there in August was the smell 10
very offensive?

A. It was, very offensive.

Cross-examined by Mr. Newbold:

Q. When you were there in August, you say they were actually dumping this night-soil?

A. Yes, sir.

Q. They did not cover it up?

A. Not as I saw them in the act of dumping. 20

Q. You spoke of somebody else besides Woods?

A. Woods; I didn't see anybody else dumping there; I stopped a scavenger on the street and forbid him dumping there.

Q. Who was that?

A. I was informed it was—(interrupted).

Q. Don't you know?

A. No, I don't know; it was only from information.

Q. They hadn't had time to cover it up when you appeared on the scene? 30

A. No, sir.

Q. That is the time when you say it smelled offensive?

A. Previous to that—previous to the dumping.

Q. What did you find there previous to the dumping?

A. I did not go there previous to the dumping, but I smelled it long before I got there.

Q. That was when they were unloading it?

A. Previous to any unloading. 40

Q. You smelled it, you say, before you got there?

A. Yes.

Q. How do you know they were not unloading at that time?

A. Because nobody had been there yet; no fresh tracks showed and I was satisfied nobody had been there that night.

Q. What time of night was it you went there?

A. Between nine and ten.

10 Q. Dark?

A. Yes, sir; dark.

Q. You could tell whether the tracks were fresh at that time of night?

A. Yes, sir.

Q. Do you know when the last load had been dumped previous to that?

A. No, not positively; not of my own knowledge, I don't.

20 Q. When you went there, before you arrested him, what was the appearance of the pits?

A. Apparently excavations had been made there and apparently filled up; there was one pit made fresh, nothing had been dumped into it.

Q. That was when you went there before you made the arrest?

A. Yes, sir.

Q. Were those pits that had been dumped into covered over?

A. Partially.

30 Q. Was there anyone of them that was not?

A. Yes; two of them that was not.

Q. How do you know then that they had not dumped that night?

A. Because you could tell from general indications, the sand had settled and it was showing up through the surface; it had been covered, but not sufficiently covered.

Q. Were they pits that were not full?

40 A. Well, they were reasonably full; yes, in fact, nearly full.

Q. Apparently all dumped in them that would be dumped ?

A. Yes, sir ; all that they could hold very well and, in fact, one pit that was above the surface, the contents was overflowing the edges of the pit.

Q. When you went there to arrest Woods what time was it ?

A. I went there between nine and ten o'clock ; it was in the neighborhood of three o'clock when he done the dumping, on the m rning of the 20th of August. 10

Q. And you say you were there in December again ?

A. I was ; yes, sir.

Q. That was the only time you had been there ?

A. Oh, no, I had been there previous to that.

Q. To see if anybody had been dumping ?

A. To see if anybody had been dumping ; I was there sometimes in the day-time, and other times at night ; not always going on the ground, but near the ground.

Q. Do you know about Bremmer being arrested ? 20

A. I do not, sir.

Q. You and Mr. Sturgis, one of the defendants in this case, are not friendly, I believe ?

A. Not particularly ; no.

Q. You are in the employ of the County Board ?

A. Yes, sir.

Q. And he is in the employ of the City Board ?

A. He is in the employ of the city.

Q. You went to Mr. Handley's house in December, I believe ? 30

A. Yes.

Q. Did he tell you that all five of the children that died, slept in the one room ?

A. I believe he did ; I have a record of that anyhow ; I am under the impression that he said all five slept in one room ; three in one bed and two in another ; that was simply the result of my investigation.

Objected to as not proper cross-examination.

By Mr. Newbold.—I want to show what kind of an investigation he made there.

By the Court.—As to the existence of a nuisance; I understand that was all he had a right to investigate.

Q. You had to make reports of deaths, I understand?

A. I had reports.

10* Q. Of the causes of death?

A. As to the causes.

Q. And the circumstances under which they occurred?

Objected to as not proper cross-examination.

The Court.—Call him as your own witness if you desire to examine him on that point.

20

DANIEL O'MARRA, sworn for the plaintiff:

Direct-examination by Mr. Herbert:

Q. Where do you live, and where did you live in the summer and fall of 1885?

A. 310 Belvidere avenue.

Q. How far from Mr. Handley's house?

A. Well, I should think, between 600 and 700 feet.

30 Q. Did you have your attention directed to the condition of the ground adjoining Mr. Handley's house in the summer of 1885?

A. Well, when it was reported the children were dying I went to look at it; I heard so much talk of the pits and dumping ground there I went to look at it.

Q. In what condition did you find it?

A. I found about eight pits; I looked at them very carefully, and they were covered over that night or the day before with some sand, and it had froze over a little;

40 there was a little frost in the ground, but the leakage

was in the bottom ; I could discover the edges all around it had fell away from the solid surface.

Q. Had it run over ?

A. It didn't run over, but it leaked away from the bottom, and that is the way I could tell the pits.

Q. Was there any thrown on the ground, not in pits ?

A. In two places I noticed it was thrown on the ground.

Q. How far from Mr. Handley's house ?

A. Oh, about 150 feet, maybe, something more or 10 less.

Q. That was the nearest deposit ?

A. Yes.

Q. How far was the furthest ?

A. Well, the pits, there was two or three in a row ; that is the nearest, and the rest of them was back further south.

Q. The most southerly deposit was how far, about, from Mr. Handley's house ?

A. Well, I could not say.

20

Q. Well, a rough guess ?

A. I could not tell the length of the pits, you see, I did not measure the length of the pits or the width of them.

Q. Well, about how far, as near as you can get at it ?

A. I don't suppose anything more than about 175 feet or so, the furthest off.

Q. Did you notice the smell ?

A. Well, for a long time there was smells, but I didn't know where they came from until I heard the report ; I was told the children had got sick and it was probably from this cause ; I didn't pay any attention ; I wasn't home much ; I didn't know whether the smell came from the factories or where ; I didn't pay much attention until I was told about it, and then I went and looked at it.

30

Q. What did you notice when you went there ?

A. I seen it was all run down the hill ; I didn't see much solid matter there, except paper and rubbish of every description.

40

Q. What did you notice about the smell?

A. Well, to be sure we got a smell there, there is no mistake about that.

Q. Was it a bad smell?

A. Yes.

Cross-examined by Mr. Newbold.

Q. You said there were two places where it was on
10 the surface of the ground?

A. Yes, sir.

Q. Where was that, with reference to the pits?

A. Well, it was west of the pits.

Q. About the same distance from Handley's house?

A. About the same distance, more of a slope than where the pits was.

Q. And what were the indications on the surface of those two places?

A. Well, scattered all around, as if it was night soil
20 dumped there; that was all. I didn't pay much attention.

Q. It appeared as if there had been night-soil there?

A. Yes; that was about all.

Q. And that was in two places?

A. It was in two places where there might have been a couple of loads dumped and might have run down the hill.

Q. There was very little to mark that except stains in the ground?

30 A. Oh, stains; you know that sand is very loose and it would go through unless it is very solid matter; all waste away through it.

Q. And it looked as if that was the case there; as if it had soaked away in the ground?

A. Yes, it looked so.

Q. And if it were watery matter it would run away more readily?

A. Yes, certainly.

Q. Who was with you?

40 A. It was a stranger went along with me; I cannot

give his name or where he lives ; only just as I was going there, I talked to him, and he went along. The pits were covered over with a light covering.

Q. Did you scrape down to see what the covering was ?

A. No, I did not; it was thick enough; I could not put a little stick through ; the ice was so hard on it I could not tell how thick the sand was ; it was froze a little ; I could not tell exactly, but I would not want to walk in on it ; I don't think there was much covering on it. 10

Q. You didn't try that, did you ?

A. No, sir.

Q. How close were the pits to each other, apparently ?

A. Probably two or three feet.

Q. That is, the walls between them would be two or three feet thick ?

A. I guess maybe that distance.

Q. Could you tell what the size of the pits was ?

A. Sir ?

Q. Could you tell what the size of the pits was ; 3 or 20 4 x 9 ?

A. I could not tell that at all ; when I saw the pits it was some time ago.

Q. You saw where the dirt had sunk away, you say ?

A. It had went away a little.

Q. Would not that mark the boundaries of the pits ?

A. Certainly ; that is the way I found the pits.

Q. Well, weren't they about 3 or 4 feet, one way, by nine the other ?

A. Well, that may be about the size of them ; I won't 30 be positive about that.

CATHERINE HANDLEY, sworn for the plaintiff.

Direct-examination by Mr. Herbert :

Q. Are you the wife of the plaintiff in this suit ?

A. Yes, sir.

Q. And were living with your husband at No. 1 40 Mead avenue in the summer and fall of 1885 ?

A. Yes, sir.

Q. Where was your attention first directed to the dumping of excrement on the property near the house?

A. It was there in June or July, sir; that time the boy fell into it.

Q. You say the time the boy fell in; what boy?

A. The time they first commenced to dump there.

Q. Was your attention first directed by the boy's falling in, or by the smell?

10 A. The smell.

Q. And what was the condition of the dumps or the place where the night-soil was put in; just describe the place?

A. Well, they were not very large, sir; about two feet or something deep.

Q. Do you know how deep they were?

A. No, sir; I never measured them; I don't know exactly.

Q. But these holes were filled?

20 A. Filled and left there exposed.

Q. Were they covered?

A. No, sir.

Q. How did the smells effect your comfort, your living?

A. Well, I took sick, sir; kind of smothering, kind of fearful smell, kind of choking.

Q. When did you first take sick from these smells?

A. I took sick sometime in July.

30 *By Mr. Wills.*—She didn't say she was sick from the smell.

Witness.—Yes, sir.

Q. Do you say that the smell from the night-soil that was dumped there made you sick?

A. Yes, sir.

Q. How long were you sick?

A. I was going on three months sick, sir.

40 Q. Describe your sickness; how it affected you?

A. Nothing would remain on my stomach ; weakness and pain, kind of smothering; when I laid down at night I had to get up.

Q. Were you troubled that way before ?

A. No, sir.

Q. Have you been troubled that way since ?

A. Sometimes, sir, I feel it ; it never has left my system, sir.

Q. How long had you noticed these smells ?

A. I noticed them all the time I was there ? 10

Q. From the time the dumping began up to what time did you notice these noisome smells ?

Objected to by Mr. Newbold.

Q. Now, Mrs. Handley, those smells continued to be offensive to you from the time you first noticed them, you say about June, up to about what time ?

A. During all that year, sir ; I noticed the smell until the end of that year, 1885 ; there was times there you 20 couldn't have the doors and windows open in the hot weather.

Q. You say one of your children fell into the pit ?

A. Yes, sir ; she fell in, I couldn't exactly say—the week before she died.

Q. Was she covered with the excrement ?

A. Yes, sir.

By Mr. Newbold.—If the Court please, I submit the counsel has no right to ask ques- 30 tions in this way.

The Court.—Ask what the condition of the child was ; avoid leading questions.

Q. What was the condition of the little girl who fell into this pit, when you first saw her ?

A. She was covered, sir, and all foul of this stuff that was dumped in the pit.

Q. What did the stuff look like ; what was the stuff. 40

A. It was something not very nice for anybody to look at.

Q. What was it?

A. It was this night-soil, of course.

Q. Which one of the little girls was taken sick first?

A. The one who fell in, sir.

Q. And she was the one who died first?

A. Yes, sir.

Q. When was she taken, do you remember; on what
10 day?

A. Sunday night she seemed not to be—I took notice she didn't seem very well; of course, I thought it nothing, but next Monday morning she was pretty sick and we had to send for the doctor.

Q. And when did she die?

A. She died on the 9th.

Q. Could you exclude this offensive smell from your house?

20

Objected to by Mr. Newbold.

A. I couldn't keep my windows and doors open, and the children could not stand the smell; they used to be sick when they went to school from the smell.

Q. Could you smell it when the windows——

A. No, sir; but as soon as you opened the window or door you could smell it.

Q. Do you know how many pits there were in which the night-soil was dumped?

30 A. I think there was either six or seven pits.

Q. And on whose property?

A. I couldn't say, sir, whose property.

Cross-examined by Mr. Newbold:

Q. You say your children noticed these smells to?

A. Yes, sir, and all the time complained about it.

Q. You could tell where the smells came from, could
you?

40 A. Yes, sir.

Q. From these pits?

A. Yes, sir; I could not let my children play on that side of the hill on account of the smells, sir; I didn't tell them not to play there, they used to come in and tell me they couldn't play there. I don't know whether it was Mr. Henry's land; I don't know who it belonged to. It was not my ground; it was near my place.

Q. It was Mr. Henry's land?

A. I suppose he rented it.

Q. Did you tell your children not to play there after 10 the first boy fell in?

A. No, sir; I didn't tell them not to play there.

Q. When did the first boy fall in?

A. I couldn't say exactly what month it was; it was in the summer, either in July—it was in July he fell in.

Q. Did the rest of the children know he fell in?

A. Certainly; they seen him when he came down to the house.

Q. Did you tell the boy not to go there again? 20

A. No, sir; I didn't speak to the boy.

Q. You didn't tell him to keep away from those pits?

A. No, sir, I didn't; it was not our boy.

Q. Who was the boy?

A. It was the little boy that lived away from us; I don't know who it was.

Q. What part of him was covered with the stuff?

A. His feet was covered, partly to his knees.

Q. Now, then, you say you first noticed these smells in June? 30

A. Yes, sir.

Q. Did you notice the smells as acutely in June as you ever did afterwards?

A. Yes, sir.

Q. The smell you noticed in the fall was that you noticed in June, was it?

A. The same; the same smell.

Q. And in July was it just the same?

A. Yes.

Q. Did you ever notice any other smell around in 40 that section?

A. No, sir.

Q. You never did ?

A. No, sir.

Q. You never smelled the abattoir nor the bone boiling establishments ?

A. No, sir ; I never smelled anything as long as I lived there until that time.

Q. You say your little girl fell in ; where did you first see her ?

10 A. She came to the house, she was crying, I heard her crying and went out to see what was the matter.

Q. Where was she when you first saw her ?

A. Coming down from the hill toward the house.

Q. Where was there any night-soil on her ?

A. All around her feet and around her little body.

Q. Around her little feet ?

A. Yes, sir.

Q. As if she stepped into it ?

A. Yes, sir ; her clothes was full of it.

20 Q. You never have said a word about your little girl falling into the night-soil before, have you ?

A. I didn't go around telling anybody about it.

Q. But you didn't on the trial of Woods, did you ?

A. No, sir.

Q. Not a word ?

A. No, sir ; I didn't know that.

Q. Did you forget it ?

A. Well, I had too much to think of.

Q. That was the reason ?

30 A. Yes, sir.

Q. You were not with the little girl to see if she had night-soil on her ; to see where she got it, were you ?

A. I was not, but I know where she got it.

Q. You say she came into the house from the hill ?

A. Yes, sir ; one of the little girls was with her, the one that pulled her out. I didn't see where she was, I was looking after my business in the house ; it was not my place to be looking all the time after that place out there.

40 Q. You never mentioned this before to anybody ?

A. There was something else troubling me besides that.

Q. You didn't want to say anything about it?

A. No, sir; my children would be living to-day if it was not for that dumping ground.

Q. Your children went to the public school, didn't they?

A. Yes, sir; all but one, she was too young; they killed my children.

Q. The children were taken sick when, Monday 10 night?

A. Monday night.

Q. And do you remember what sort of a day it was then?

A. It was cold weather.

Q. Do you know how it had been the previous Sunday; the Sunday preceding the Monday?

A. I couldn't exactly tell about Sunday.

Q. You don't remember about the character of the weather previous to that? 20

A. No, sir.

Q. How do you fix the date when you say this little girl had night-soil upon her feet and legs; how do you fix that time?

A. I couldn't fix that time.

Q. Why didn't you call your husband's attention to it?

A. Well, I didn't call my husband's attention to that.

Q. Hadn't you said anything to him about it?

A. Yes, sir, certainly, but my husband was not at 30 home, he was out on business.

Q. Why didn't you say something to him about it before this trial?

A. I told him when he came home.

Q. Told him what?

A. That my little girl fell into it.

Q. Neither you nor your husband said anything about it on Woods' trail?

A. No, sir; we didn't; that is nothing as long as she fell into it. 40

Q. You never said anything to anybody else about it, did you?

A. I don't remember, I might have done; I don't remember.

Q. Did you wash the child off at once?

A. Yes, sir; I took off her clothes right away, took off every bit of her clothes.

Q. And washed her off clean?

A. Yes, sir; washed the child off clean, certainly, I
10 had to do it.

Q. Do you know the little boy whom you said had fallen in?

A. I saw him; I don't know him.

Q. He is alive yet?

A. I suppose so; I didn't inquire.

Q. You said something about your having had smells there all the time you lived there?

A. No, sir; not all the time, I said this year, 1885.

Q. Had you the year before?

20 A. No, sir; no smells.

Q. No smells at all?

A. No, sir; no smells, no smells.

Q. Nor the year before?

A. No, sir.

Q. Have you had any smells there last year?

A. Last year?

Q. Yes, 1886?

A. Yes, sir; because the smell comes from there, from these pits; it is there now and will never leave it.

30 Q. You noticed the same smell from these pits in 1886, and up to the present time, as you did in 1885?

By Mr. Hoffman.—She is not living there now.

Q. When did you move away from there?

A. Three weeks ago.

Q. You smelled this smell from these pits then, did you?

40 A. Yes, sir.

Q. You said that the reason that you did not tell your husband about this little girl falling in, that he was out on business; he was not sick then, was he, at that time?

A. Yes, sir, he was sick.

Q. Did he go out?

A. He had to go out.

Q. He was not detained at the house, was he?

A. Not all the time.

Q. Was he at all?

10

A. Yes, sir, he was.

Q. Then he could not have been away so you could not tell him?

A. He was that day.

Q. It was a very cold day; he could not have been very sick then to have gone out on his trip on a cold day?

A. It was not a cold day when the child fell in; that was when the children died, not when they fell in.

Plaintiff's counsel called upon defendant's counsel to produce the permit issued to Patrick Woods and referred to by Mr. Wills.

We cannot produce it.

By the Court.—You can give evidence of its contents.

JOSEPH HANDLEY, recalled.

30

I saw Mr. Woods' permit in court and it was read, I believe, by lawyer Paxton. I couldn't exactly say what it contained, but I saw another permit that I do know what it contained; that was Coleston's permit; I read it.

Objected to.

Q. What did the permit to Woods contain, as you recollect?

40

A. I recollect that it was signed by Benjamin's giving him authority to dump there.

Q. To dump where, on whose ground.

A. I believe it was on Finley's and on Henry's.

Objected to by Messrs. Newbold and McGrath as to Sturgis, Benjamin and Finley.

10 *By Mr. Newbold.*—If there is such a permit we want the permit, they have taken no steps to produce the permit, as to show if Mr. Woods has failed through his counsel in producing the permit that cannot effect our rights. They have printed blank permits and we will produce a form.

By the Court.—That is the better way of proving the contents of a paper.

20

RECESS.

HERBERT STOUT, sworn for the plaintiff:

Direct examination by Mr. Herbert:

Q. What is your business?

A. Lawyer.

30 Q. Did you act as attorney for Patrick Woods, in the trial of a case in 1886?

A. In May, I think, 1886, in the April Term.

Q. What was that trial for?

A. An indictment for a nuisance.

Objected to by Mr. Wills.

Q. You were the attorney for the defendant Woods in that trial?

40 A. I was.

Q. Do you remember seeing a permit that had been signed by Mr. Benjamin, introduced in evidence into the trial?

A. There was such a permit introduced and offered in evidence.

Q. Do you remember the contents of that paper?

A. I do.

By the Court.—You have not the paper?

10

A. I have not. I examined thoroughly for it; I think it must have been sent before the jury, and I have not been able to find it since; I think it could not have been returned; I have searched for it thoroughly and could not find it.

(Further direct:)

Q. Please state the contents?

A. I don't remember the date of the paper, but it was to this effect, he was permitted to dump on what the paper stated as the Henry farm and the Finley farm; the paper called them farms; and to dump refuse matter from the city. 20

By the Court.—Farms did you say?

A. Farm; the Henry farm and—Finley farm, and it required that the dumping should be covered with a certain quantity of earth; I don't remember just what that quantity was now, but, at any rate, enough to secure it; I don't remember what the quantity was. 30

Further direct:

Q. I imply it, this paper was written; it was not a printed form?

A. The paper was not questioned; it was signed by Dolan, I think, in Benjamin's name; it was not attested to be signed by Benjamin. The authority of 40

the paper was not questioned at all ; it was admitted as being authority from the inspector.

Q. Do you remember what Benjamin swore about the signature ?

A. Not specially ; I had the notes of it some time ago, I can only say it was not questioned ; it was offered in evidence and accepted ; there was no difficulty about the paper as being offered in evidence, in going before the jury, and it went before the jury.

10 Q. Do you know where the Finley farm is situated ?

A. Yes, sir.

Q. Where, in connection with the Henry farm ?

A. Adjoining.

Q. Was it near Mr. Handley's house ?

A. I don't know just where his house is ; who is Mr. Handley ?

Q. Mr. Handley was the prosecutor in that suit ?

A. It was near his house ; I don't know just where Handley's house is ; I was down there on the ground
20 at the time and examined it, and I knew the locality and situation of the dumps.

Q. Well, was there some dumped on the land of each of those parties ?

A. Yes, sir, evidently ; they were covered over when I went there, and I could not say anything about that, I only know from the testimony in the case and it was not denied in the case.

Cross-examined by Mr. Newbold :

30

Q. The permit you have spoken about was signed with the name of Mr. Benjamin, by William Dolan ?

A. That is my recollection of it.

Q. The defendant in that suit was Patrick Woods ?

A. Yes, sir.

Q. Nobody else was sued in that trial ?

A. Not that I remember—yes, there were three of them indicted, three plead guilty, and he defended ; I forgot the names of the others.

40 Q. Mr. Benjamin was not the defendant in that suit ?

A. No.

Q. Nor Mr. Sturgis?

A. No.

Q. Nor Mr. Finley.

A. No.

Q. And the State of course was the persecutor?

A. Well, the record will show who was indicted; two plead guilty and Mr. Woods defended.

Q. He produced the paper?

A. Yes.

10

Q. Did you leave that paper with the papers in the case, or did you take it to the office?

A. My recollection is it went before the jury, and I have no recollection of it after that.

Q. Have you no knowledge of the date of that paper; was it dated the 5th of August?

A. I have no recollection about that. I couldn't tell the date of the arrest of the defendant in that case.

Q. You say you went upon these grounds; when did you go there?

20

A. Well, I couldn't say exactly, but I think it was in April.

Q. About the time of the trial of the case; was it April, 1886?

A. Yes, sir, I think that was about it. There was no smell there, not a particle; no smell of any kind that I could detect.

(*By Mr. McGrath:*)

30

Q. Do you remember whether the permit said anything as to the extent of time these parties were to dump on the property you have spoken of?

A. No; I don't remember now; I think there was a limit, but I couldn't tell you.

Q. Are you sure there was any reference in the permit to the farm of Finley?

A. Yes, sir, it referred to both of them—to Henry did you say, or Finley?

Q. To Finley,

40

A. Yes, I am pretty sure to both of them; I feel quite sure.

Q. Why do you feel quite sure?

A. Simply from recollection of the case?

Q. Did it appear, so far as your recollection of the extent, that there was in dumping generally upon the land of Finley at all?

A. I went down upon the grounds and they were pointed out to me. I don't know anything about the
 10 Henry farm or Finley farm; and I found two different dumps there, and they were near each other, and which was the Henry farm and which was the other, except what they told me, I know nothing about that I found two dumps and they were covered at the time I was there, but only from what they told me—explained to me—I know one was on Henry and one on Finley, but my own knowledge, I know nothing about it.

Q. Who was it was examined in reference to these permits in the trial you have spoken; what witness
 20 was examined particularly with reference to these permits in the trial you have spoken of?

A. I don't know; there were a number of witnesses examined; I can't tell you now; I don't know whether Dolan was examined or not; I think Benjamin—Dolan was examined.

Q. With reference to the permit?

A. Yes, sir; he was subpoenaed and examined also.

Q. Did he testify with reference to any dumping down on the farm of Finley in that case?

A. I couldn't tell you now.
 30

Q. Do you know Finley's house?

A. No, I couldn't say I do.

Q. Do you know Finley at all yourself?

A. No, not personally.

Q. And, of course, you don't know how far Finley's house is situated from Handley's?

A. No.

Q. And, as a matter of course, you know nothing about who was the owner, lessee or occupant of the
 40 ground where this dumping was alleged to have been done?

A. No, I don't; personally, I don't.

By Mr. Newbold:

Q. In reference to the contents of that permit don't you remember that the permit said, "Permit not good if the scow is in?"

A. I don't remember about that.

Q. You don't remember whether it did say so or not? You knew why the permit was given, didn't you? 16
Didn't you know, and didn't it come out there that the scow was run down and sunk in the basins down here?

A. I don't remember; I don't think there was anything of that kind in it, but I think that came out in evidence that was the reason why they got permission to dump there, but the permit did not state that, I am pretty sure of that.

Q. Didn't the permit say, "Permit not good if the scow is in?" 20

A. I don't think so; possibly it might, but I don't think so.

Q. When was the last you read that permit?

A. On the day of the trial, that was about the 6th or 7th of May last.

Q. Did you read it then, or did you hear somebody else read?

A. No, I read and had it in my possession some time of the trial.

Q. When was the last time you looked for that paper? 30

A. To-day; I looked for it to-day; I looked for it on two other occasions.

Q. You had the bundle of papers pertaining to that case—the Woods case?

A. No; no particular paper, excepting the permit.

Q. Have you looked in your pockets for it?

A. No.

Q. On going over the ground did you see the sand pit?

A. Yes, sir. 40

Q. Do you know whether there was any dumping there or not?

A. I didn't see any other.

PLAINTIFF RESTS.

10 *By Mr. Wills.*—I desire to move for non-suit on behalf of all the defendants, and particularly on behalf of Mr. Woods.

The motion is based upon two principal points or grounds.

20 *First.*—Because the plaintiff has shown no special damage to his health, or the health of his wife or family, that was not suffered by any of the people of that immediate community under the head of a common nuisance. That this injury, so far as it was a discomfort to the community, aside from its causing this particular disease of scarlet fever, was, if anything, a common nuisance; they all suffered alike, and there was no special injury to this defendant in the premises, and under that head we would include the point that he was made sick by the odor. We claim that he is not competent to testify in a medical sense that he was made sick, or that any particular disease was caused by these smells, or the gases arising from the excrement there.

30

Second.—Because he has not shown that the sickness of his children was caused by any act of the defendants. The most that I could glean from the testimony of Dr. Culver was, that it was possible that this disease might have arisen from that cause—the piling of the night-soil in proximity to this house—that he would not even assert it as his theory that it was caused by it; that he would simply say it was possible, and that the text books and his experience pointed to contagion as the
40 only known cause. We claim upon that point that the

plaintiff should prove affirmatively and positively that this was the cause of the sickness, or that he cannot recover special damages arising from the death of these children.

Third.—Because it appears that if the theory of the plaintiff is correct, that this piling of the night-soil is a cause of the disease of scarlet fever or any other sickness that occurred there, that the plaintiff himself contributed to the injury materially. He testifies, that just 10 after Mr. Woods was arrested in August, he was notified to clean his privy; that he employed an agent to do it, and that that agent dumped the night-soil alongside of his house.

By Mr. Hoffman.—There is no evidence of that kind in the case.

By Mr. Wills.—I insist that he did say that, and if he did do that, then he has placed this very substance, 20 which he claims was poisonous and injurious to himself, on his own door step. Furthermore, it appears that the parents of one or more of these children, who afterwards died, allowed that child to go and trespass upon this land where these dumps were, and fall into this excrement, though notice had been given to them of a similar injury to another child. And in that way, it seems to me, the plaintiff contributed, if his theory is true in regard to the cause of the disease.

Now, as to Patrick Woods. There is only shown in 30 this case one dumping by Patrick Woods, and that was on the 20th of August; he only dumped one load and was arrested. There is not a witness in the case that testified he ever dumped at any other time, and the hypothetical question put to Dr. Culver would not include the case of any one dumping; it would include a continuous dumping exposed to the sun. Nor does the question seem to include a dumping as long ago as the 20th of August, but would seem to indicate a more recent dumping. Nor in regard to the quantity dumped 40

there; it is not shown that the dumping by Mr. Woods contributed to the injury.

Of course, the main point I rely on is, that the plaintiff has not shown any special damage to himself that was not common to all the neighbors there, or one that he could recover at a private action.

First.—He is not a competent person to testify that the smell caused his sickness.

10

Second.—On the testimony of their own expert it is only a probable cause, and a theory that is not backed up by the text books or his own experience.

20

By Mr. Newbold.—Not referring to the general grounds Mr. Wills has referred to in his remarks for non-suit for Mr. Woods, I desire to make a motion for non-suit for Daniel W. Benjamin, on the ground that there is no evidence in this case which connects Mr. Benjamin with the acts complained of by the plaintiff as the basis for his right of action. It is not pretended here that Mr. Benjamin was ever upon the ground. It is not pretended that Mr. Handley or anybody else went to see Mr. Benjamin about the matter at all. The only possible way by which they attempt to connect him is this: That there was a permit offered in the Woods case—in a case to the record of which Mr. Benjamin was not a party at all. Mr. Stout preves that that permit was signed in the name of Benjamin, per Dalton. Your Honor will see until they have shown that William Dalton had some authority to sign the name of Mr. Benjamin, they have not in any way connected him with any permit whatever. Mr. Stout does not attempt to give any date to the permit. The fact that Mr. Stout produced one permit and offered it in evidence in the Woods case can have no effect upon the rights of Mr. Benjamin in this case. Mr. Benjamin was not a party in the case and could not control what the defendant's

40

counsel should offer in evidence in the case; he could

not interfere with their mode of conducting the case. Mr. Stout says it was received in evidence. If it was improperly received, or if it went in evidence it could not bind Mr. Benjamin unless it was shown that Mr. Benjamin had given Mr. Dalton power to sign his name.

Now, if your Honor please, under this state of the case, it seems to me to be clear that there has been nothing, even if we should go over and waive the objections we might make as to the connection between the acts complained of, and the results upon which they base 10 their claim for damages, if we waive that and make no argument upon that, they have not connected Mr. Benjamin with any act shown here in such a way as to make him in any sense responsible for damages, if the damages were produced by the acts which they say were committed upon these premises.

As to Mr. Sturgis, I also desire to make the same motion for non-suit. It seems that Mr. Handley says, that after the dumping was done, and after they had 20 arrested Mr. Woods, they went to Mr. Sturgis and said, "You are a health officer; we want you to stop this dumping." Sturgis told them he had nothing to do with it whatever; that he could not undertake to stop it.

Now, then, if the Court please, it seems to me to be clear that no one can hold a man who simply—and they have not shown, it is only a matter of general statement, that they say he was connected with the Health Department; there is not anything shown here; he is a police officer; there is not anything shown him 30 to show he has any duty imposed upon him as a health officer, or that he has any obligation. When they come and say, "Somebody is dumping night-soil somewhere; you must go and stop it," they have not shown any right to call on Mr. Sturgis to go and interfere with the man. If he is a deputy; if they say—that is all, there is no proof of it. If they say he is a deputy of the Health Board, they do not show any obligation on him to obey any orders from anybody but his superior officers—the party through 40

whom he must take his orders. Suppose Mr. Sturgis knew of the fact that this dumping was being done there; suppose that Mr. Dalton had given a permit for this dumping to be done, and, as Mr. Sturgis would suppose, through proper authority of the Board, and this plaintiff should come to him and say, "I want you to go upon such and such land and stop this; you are a health officer, you are a deputy, go and stop this;" by reason of his refusing to go could they
 10 commence a suit against him and hold him for whatever might occur?

I submit to your Honor, as to both these defendants, at this point in the case, the plaintiff should be nonsuited.

By Mr. McGrath.—Before making a motion on behalf of my client, Mr. Finley, I desire to ask Mr. Handley a few questions.

20 JOSEPH HANDLEY, recalled for further cross-examination:

By Mr. McGrath:

Q. You remember of having spoken in the direct-examination in this trial, of having gone to see Mr. Finley to ascertain from him, or find out from him, who owned the lands upon which the dumping was done? When did you go to see him for that purpose?

30 A. I went to him before I went to Mr. Sturgis, and he directed me to go to Mr. Sturgis, and told me to mind my own business.

Q. Now, when was it you went to Mr. Sturgis; how long ago?

A. I could not exactly say the date, but it was before Mr. Woods was arrested, I guess a week before that.

Q. That was before August 20th?

A. It was before Mr. Woods was arrested for dumping.

40 Q. That was in August, was it not?

A. I could not say; the beginning of August, if it was.

Q. That is the only time, as I understand you, you went to see Mr. Finley about this matter?

A. I beg your pardon, I went two or three times afterwards to have this stopped; it wasn't stopped; I went several times after.

Q. But you didn't find out from him who the owner of the land was?

A. He told me he rented it of Joe Warren. 10

Q. My question was, did you at any time ascertain from him who the owner of the land was upon which the dumping was done?

A. He told me he rented the land.

Q. Did he tell you who the owner was?

A. It is a question whether he knows any more than me; I don't know as he knows the owner of the land; he knows the man he paid the rent to, I guess that is all.

Q. Did you tell him at any time what particular land 20 you referred to?

A. I told him this thing had got to be stopped, dumping on his ground and on Henry's ground.

Q. When you went there to speak of this land, did you speak of, or tell him what particular land you referred to?

A. Yes, sir, and he told me he had—

Q. What did you say about that?

A. I said, "Mr. Finley, are you aware they are dumping on your land and Mr. Henry's land there?" He 30 says, "Yes, sir." I said, "Well, I pay taxes there, I think this matter ought to be stopped; I got a little family there and they ought to be protected." And he said, "Well, you go to Sturgis, he knows all about it; I can do as I like on my ground;" and that was all he said. I guess that was a week before Mr. Woods was arrested. I went then over to Henry.

Q. I want to know when you went to see him again, if ever?

A. I guess I went three or four weeks after, and he 40

was working in the field; I spoke to him; there was a gentleman talking to him at the time, and he told me, "Oh, the city could do as they liked." I said, "Mr. Finley, can't you stop this here nuisance?" He said, "I have nothing to do with it; go on, go on." That was all.

Q. When was that?

A. Sometime after; I could not name the day.

Q. How long after?

10 A. I could not say; I used to go that way and met him in the field; I could not name the time, but it was two or three times after that; I did not put down day and date for everything, as I spoke to him.

Q. Do you know, as a matter of fact, who was the owner or occupant of the grounds there upon which the dumping was done, at the time it was done?

A. I tried to find out, and somebody said it was—I heard it was Bremmer.

Q. Do you know now of your own knowledge?

20 A. I do not know; if a man was in here and said it belonged to him, I would not know whether it did or not.

Q. You don't know now who it belongs to, do you?

A. No; I tried to find out.

By Mr. McGrath.—I desire to make a motion for non-suit on behalf of Charles Finley, one of the defendants in this case, because, in the first place, there is no proof in this case at all that Charles Finley participated in any way in creating or maintaining this alleged
30 nuisance on which this action has arisen. There is no evidence in the case, if we take out the statement of Mr. Handley, as to who is the owner of the lands where the dumping is done, or as to who is either the lessee or occupant, or was the lessee or occupant at the time the dumping was done. There is no proof in this case that Finley was consulted with reference to the dumping before it was done. There is no proof in the case that he was present at any time when the dumping was done. There is no proof that he acted at all in
40 the case, in any way, shape or form; the mere knowledge

if the Court please, of the fact, that dumping was done there will not bind Mr. Finley; he must have participated in the act to some extent; I know the extent may be slight, but there is not a single jot or tittle of testimony in the case that he participated in any way, to any extent whatever, in the dumping that was done there, and out of which this suit has arisen.

Now, with reference to these permits, I did not object to them at the time, because your Honor in an earlier part of the case suggested that you 10 would control the testimony in reference to these permits, as far as they affected Finley or anybody else. Now, it is in evidence, it is true, that certain permits were given, and Mr. Stout thinks that in one permit that was introduced in another case tried in another court—Mr. Finley was not a party to the suit, that is certain; nobody claims that he knew anything at all about that thing, or had anything to do with it—it appears that in that suit a permit was introduced in testimony, which permit can- 20 not now be found. Mr. Stout says he thinks that in that permit it was permitted that dumping might be done upon the farms of Henry and the farms of Finley. Your Honor will remember that the farm of Henry is closer to the Handley house than that of Finley. Henry is not a party to this case at all. Now, there is no evidence in the case that Finley knew anything about those permits; in other words, knowledge of the permits is not brought home to him; it is not shown that he acquiesced in the dumping; that he gave the permits; 30 that he assented to the permission; that he knew anything at all about the permission. Further, there is no proof in the case that any dumping at all was done upon the ground of Charles Finley. No person can tell where Henry's line ends and his line begins; no person can tell whether it was on the land of Charles Finley or not, at least, no person has told in this case. Proof is wanting to show that the dumping was done on his ground.

Now, then, what is there left to bind Finley? We are simply to guess from the statements made by 40

Mr. Handley just upon the stand here, because he went down there and assumed in the interrogatories or questions he put to Mr. Finley, that dumping was done on his ground, simply because he said, "Well, go to Sturgis, see Sturgis about it; I have a right to do what I please on my own land." He did not, in that statement, admit that he caused to be dumped, encouraged to be dumped, or in any way, indirectly or directly, took part in the dumping of this stuff on his land.

- 10 Now, that is all the testimony in the case upon that subject. The bare, uncorroborated, uncertain, disconnected testimony of Mr. Handley, there is not any witness in the case who pretends to say upon whose ground the dumping was done. Therefore, it seems to me, there is not any proof in the case to show that Finley had anything to do with this dumping whatever, and I go further and say this, that if dumping was done upon his land, it is not to be presumed that he assented to it; that is not the legal presumption; it must be shown by
- 20 the other side affirmatively, that he gave permission, or assented to the dumping on his land. There is nothing of that kind in the case, and I therefore submit, may it please the Court, that the motion ought to be granted.

- The Court.*—I will reserve the questions upon which I have now any remnant of doubt, until the case is closed; the developments of the case may make the matter clearer, and I will not order the discharge of any of the defendants now, but may do so at a later
- 30 stage of the case, if I think any of the defendants ought not to be held.

To which refusal of the Court to non-suit as to any of the defendants, or to discharge any of the defendants, they respectively excepted, and prayed that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP, [L.S.]

J.

Mr. Wills opened in behalf of the defendants.

MARY A. LYNCH, sworn on behalf of the defendant :

Direct-examination by Mr. Newbold :

Q. I believe you are a teacher in the Marion school?

A. Yes, sir.

Q. Where is that school located? 10

A. St. James Hotel, on Broadway, Marion.

Q. It is that large frame building just back from the large factory, I believe?

A. Yes, sir.

Q. You were a teacher there in 1885?

A. Yes, sir.

Q. In December of 1885?

A. I have been there four years.

Q. Did you know the Handley children?

A. Yes, sir; two were in my class at that time. 20

Q. Which two were in your class?

A. Sarah and Katie.

Q. How long had they been attending school there?

A. Well, Sarah, I believe, began the term before in September. The other one was in the second grade. I taught two grades, and she had been in the school over a year.

Q. Do you know what was the last day Sarah and Katie attended?

A. They were both in school on Friday, December 30 4th, and Katie was in school on Monday, December 7th. Sarah was away.

Q. How do you distinguish the class in which they were members?

A. The fifth and sixth grade, at that time; that is the way the classes were graded; now it is different. Sarah was in the sixth, and Katie in the fifth.

Q. And in the class that Sarah belonged to, do you know whether any child of Mr. Howard was a member? 40

A. Yes ; Frank Howard was in that class, and Mamie Howard in the other class.

Q. Do you know what was the last day that Mamie Howard and Frank Howard attended the school ?

A. Friday, the 4th.

Q. The same day ?

A. Yes.

Q. Did Frank and Mamie Howard come on Monday ?

10 A. No, sir. It was a very stormy day ; I had thirty-six absent out of the class. I couldn't say what was the cause of their absence.

Q. Do you know, of your own knowledge, when the Howard children were taken with scarlet fever ?

A. The first, I received a message that they had—(interrupted).

Q. No. Do you, of your own knowledge, know ?

A. That is the only way I could know—by the message received at school.

20 Q. Do you know of any other person than those I have named, attending in your class, from a family in which scarlet fever had broken out, in the month of October, 1885 ?

Objected to.

30 *By the Court.*—All you want to ask of this witness is whether a certain child attended the school at a certain time. Ask that question and get at all other proof in another way.

Q. Do you know of any other person than those I have named, attending in your class, from a family in which scarlet fever had broken out, in the month of October, 1885 ?

40 *By the Court.*—In which scarlet fever was said to have been prevalent.

A. On October 14th.

Objected to as irrelevant and immaterial.

By the Court.—Just state the name of the child.

A. It was in the family of Officer Sturgis that the case of scarlet fever was reported to be, if it was scarlet fever. I have a letter from the physician here—not that it was scarlet fever, but contagion, and it came to the school—was reported that it was scarlet fever. 10

Q. And who was the child?

A. The scholar in my class was Jennie Sturgis; she was not sick, though.

Q. She came from the family where the child was reported to be sick?

A. Yes, sir.

Q. And when was that?

A. October 14th. She is marked “discharged” in my book from that cause; October 14th, 1885. 20

Q. Were there any children from the Schleimacher family, who were sick, who attended your school?

A. Yes, sir; Henry and Josie; they were all there on the 4th, and on Monday afternoon Josie Schleimacher come in and said—Monday afternoon the case was reported to me.

Objected to as irrelevant and immaterial.

30

Witness.—December 7th, was the date.

Q. Those two Schleimacher children did not attend afterwards?

A. They were there a month.

Q. When did they resume their duties at the school?

A. I couldn't say; my books will show, but I couldn't remember.

Q. A considerable time after?

A. Not until after the Christmas vacation, and I couldn't say how long after. 40

Q. Have you got your books here?

A. They are in my seat there.

Q. Just fix the time when the Howard children returned and when the Schleimacher children returned.

A. (Referring to book.) The Schleimacher's returned in February.

Q. And the Howard children?

A. Not until September 13, 1886.

10 Q. And the Greenwald—do you know children by the name of Greenwald?

A. Yes, sir.

Q. What was the last day they attended?

A. Greenwald was in school on Monday, December 7th. Ernest was away on the 8th, and on Tuesday scarlet fever was reported to be in the family—on Tuesday, December 8th.

Q. And when did those children return to the school?

A. They both died.

20 Q. There were three children in the Greenwald family who died, were there not?

A. I only knew two.

Q. Now, in regard to the Brecht family, were there any children who attended school in your class?

A. Lena and Charley; Charley was there until the Board of Education closed the school; he was there on Friday, 11th, and on Monday morning school was closed.

30 Q. Do you know where the Brecht children and the Greenwald children lived, with reference to the location of your school.

A. On Whales avenue, about two blocks from the school.

Q. Do you know where the Brecht children lived, whether it was north of the railroad or not?

A. I understood it was north of the railroad.

Q. Over in this direction?

A. Yes, sir.

Q. Van Weltering—do you know a child of that name who attended the school?

40 A. Johnnie Van Weltering attended the school.

Q. What was the last day that Johnnie Van Weltering attended the school?

A. He was there on the 11th of December, and the school was closed the next Monday.

Q. And the Holden children. Do you know any children of that name?

A. Yes; I didn't know they had the sickness, though.

Q. You didn't know of their having the scarlet fever?

A. No.

10

Adjourned to May 3d, 1887, at ten o'clock, A. M.

JERSEY CITY, N. J., MAY 3d, 1887.

Continuation of examination pursuant to adjournment.

20

Appearance as heretofore.

MARY A. LYNCH, sworn on behalf of the defendant.

Direct-examination resumed by Mr. Newbold:

Q. You said that Frank Howard attended your school last on the 4th day of December?

A. Yes, sir.

Q. Was he in the same class with Sarah Handley?

30

A. Yes, sir.

Q. The fifth and sixth grades, are they in the same room?

A. Yes, sir; both grades in the same room.

Q. So that all these children that you have mentioned as staying away from school, were in the same room—some of them not in the same class with Sarah Howard?

A. Mamie Howard was in the fifth grade, and Sarah Handley was in the sixth, and Katie Handley was in the sixth.

40

Q. How many children attended that school?

A. The whole school?

Q. Yes?

A. I couldn't tell you.

Q. Well, of those two grades, I mean?

A. At that time the registry was 74.

Q. On Friday, how many absentees had you?

A. Eight.

Q. And the next Monday, how many?

10 A. 36 out of the 74.

Cross-examination by Mr. Herbert:

Q. On Monday it was a very stormy day?

A. Yes, sir.

Q. And so far as you know they remained away on account of the storm?

A. So far as I know; that was the custom.

20 *Re-direct-examination:*

Q. Do you have any recollection of what kind of storm it was—was it snow?

A. I couldn't say whether it was rain or snow.

Q. You have no recollection of what kind of day it was, have you, only that it was stormy?

A. That was all. It was such that the children were not able to come to school on account of the weather.

30

FRANK HOWARD, sworn on behalf of the defendant.

Direct-examination by Mr. Newbold.

Q. Where do you live?

A. No. 18 Wallace avenue, Marion.

Q. Is Frank Howard a son of yours?

A. Yes, sir; he is.

Q. And Mamie Howard, is she a daughter?

40 A. Yes sir.

Q. Where did they attend school?

A. School No. 15, near Marion, called the old St. James Hotel.

Q. In the fall of 1885 was Frank sick?

A. Yes, sir; he was.

Q. What with?

A. Scarlet fever.

Q. What day was he taken?

A. (Referring to memorandum.) December 4th.

Q. How long was he sick with the scarlet fever? 10

A. Seven weeks.

Q. Were any of the rest of your children sick?

A. Yes, sir; three more.

Q. Did any of them die?

A. Yes, sir; Nellie, the youngest.

Q. Do you mean to say that on the 4th was the first day that it was discovered to be scarlet fever?

A. That is the first day that I—that night, that I could say that it was the scarlet fever he was troubled with. Yes, sir. 20

Q. Do you know whether he had been complaining before that or not?

A. He had the night before complained of a headache, I believe—two nights before, if I recollect right.

Q. Your physician was whom?

A. Dr. Theodore Hornblower.

Q. When did you first have Dr. Hornblower there?

A. Well, the exact date I couldn't state. He attended the four children, I know.

Q. You heard about the sickness of the Handley 30 children, did you?

A. Yes, I did.

Q. That was after your boy Frank had been taken, wasn't it?

A. Well, now, I couldn't state the exact date of Mr. Handley's children.

Q. I don't want you to fix the exact date. I ask you whether their deaths were after your boy had been taken?

A. Yes, I believe it was. 40

Q. And the day that he was taken you say at night that you found he had the scarlet fever. Had he been to school that day?

A. Yes, sir. The 4th was on Friday; Saturday there is no school.

Cross-examination by Mr. Hoffman.

Q. Do you know when the Handley children were
10 taken sick?

A. No, sir; I do not.

Q. Do you know when they died?

A. Nothing only from hearsay.

Q. Do you know from hearsay the date they were taken sick or died?

A. Not the date, no, sir.

Q. How do you fix the date when your children were taken sick?

A. One reason—I didn't have much money; it was
20 coming on the 4th of the month; pay day is the 8th. I went and borrowed something to buy medicine. The 4th was the first I knew he had the scarlet fever.

Q. You live in Marion?

A. 18 Wallace avenue, and I lived in Marion at that time.

Q. You know where Mr. Handley lived?

A. Yes, sir.

Q. How far did you live from Mr. Handley?

A. I couldn't exactly tell you. I should judge about
30 as far as from here to the Five Corners.

Q. Do you know where this water-closet deposit was dumped?

A. No, sir; I don't.

Q. You know where this hill is they speak of?

A. Yes, there is a hill this side of the ground.
I have never been there at all.

Q. You know where the hill is?

A. Yes, sir.

Q. That is only about as far as from here to the Five
40 Corners from your place, then?

A. That I couldn't exactly say. I know about where Mr. Handley lives; he lives to the left towards the cemetery.

By Mr. Newbold :

Q. You are over towards the watch factory from where Mr. Handley lives, aren't you?

A. Yes, sir.

Q. Do you know where the Henry field is?

A. No, sir; I do not.

10

Q. Do you know where the Finley field is?

A. No, sir.

Q. You heard about the dumping of this night-soil there, didn't you?

A. Yes, sir.

Q. You heard about it right at the time your children were taken sick?

A. Not at that time, no, sir. I heard some of it since.

Q. You heard it about that time, didn't you?

A. I heard it mentioned once or twice.

20

Q. You didn't go up to see about it, did you?

A. No, sir; I am working nights and sleep day-time, and that takes pretty much of my time.

Re-direct-examination :

Q. How long have you lived there in Marion, Mr. Howard?

A. Five years the 12th day of next month.

Q. Have you been troubled with smells about that locality or not?

A. Well, there have been bad smells ever since I have been there.

Q. Have you noticed any difference in the smells now from what it was when you first came there?

A. Yes, sir. It is not quite as strong now as it was.

Q. Did you know where those smells proceeded from?

A. That depended a great deal upon how the wind blew.

40

Q. Would you get them from different directions?

A. Yes, sir.

Q. What places around there do you get smells from?

A. Lister's, East Newark, Mr. Autenreith's and the abattoir; and there was a hill of manure there at one time, put by a firm by the name of Shandley & Van Brunt; it was dumped on the ground. To improve the manure they would let it lay and rot. It would lay there, to my knowledge, six or eight months before it was carted away. They kept a manure pile there. Each car would have forty thousand pounds, and there was room for twenty cars on the switch.

Q. How long did that continue?

A. Well, I left the employ of the company going on nineteen months ago, and there was manure there when I left the employ of the company.

Q. And how long previous to that had they been dumping the manure there?

A. Three or four years they kept it up continually; I was in the employ of the Pennsylvania Railroad Company at that time; I knew of this dumping there. The cars came under my charge; that is, removing the empty cars and placing loaded one, so that the men could shovel it out. It is just beyond the Hackensack, in the abattoir yard.

Q. At the crossing of the Pennsylvania Railroad?

A. It is the other side of the Hackensack bridge, in the abattoir yard; and I believe they also carried on there a boiling—(interrupted).

30

Objected to.

Q. Do you know what else they carried on there—whether there was any smells proceeding from any other part of the abattoir?

A. At night time they rendered fat.

Q. Do you know the extent of that?

A. No, sir; I do not.

Q. Did you know anything about any bone boiling establishment?

40

A. Nothing further than Mr. Lister's, in East New ark.

Q. In 1885, as to whether there were any places on the edge of the Hackensack?

A. No, sir, not that I could swear to. I can't say that I know Garrett's place; I know Mr. Autenreith's place; there was a time when they manufactured fertilizers, I believed they called it—a combination mixed up with vitrol and acid and ground bones and dried meat; I know where that was located; it was a little 10 to the right of the Handley house on the bank of the Hackensack river, right across the river.

Q. With reference to the points of the compass?

A. I should say it was almost direct from here.

Q. Direct west from the Court House here?

A. Yes, sir; it may be a little to the left.

Q. And what was its direction from Handley's house—about west or a little southwest?

A. I think it would be a little southwest, yes, sir.

Q. Did you know where Mollinbrook's factory was? 20

A. Yes, sir; I do.

Q. Were you ever in there?

A. Never.

Q. Do you know, of your own knowledge, what he did in there?

A. No, sir, I do not.

Re-cross-examination:

Q. Autenreith's place is more to the north than west? 30

A. I can't tell exactly.

Q. You can't tell whether it is to the north or west, or southwest of Mr. Handley's?

A. It is a little to the right of Mr. Handley's place, right across the river, that is, a little toward the north.

Q. Some of your children who were taken with the scarlet fever didn't go to school at all?

A. Two of them.

Q. About how far is Autenreith's place from Handley's house?

A. It is quite a distance back; the meadows are between, and then the Hackensack river.

Q. More than a mile, isn't it?

A. I should judge somewhere about there; the exact distance I could not tell.

WILLIAM S. HOWELL, sworn on behalf of the defendant:

10

Direct-examination by Mr. Newbold:

Q. Where do you live?

A. 306 Oleon avenue, at Marion.

Q. Do you know where Mr. Handley lives, the plaintiff in this suit?

A. Yes, sir.

Q. Were you ever there?

A. Yes, sir.

20 Q. When?

A. Last Friday.

Q. Ever before?

A. Yes, sir.

Q. When?

A. I couldn't state just the day.

Q. Well, the time, about the time—were you ever there in the fall of 1885?

A. Yes, sir; in September, about the middle.

Q. Who did you go there with?

30 A. Mr. Sturgis.

Q. The gentleman sitting here?

A. Yes, sir.

Q. Well, state what you did and what you found?

A. Well, we went down on the farm—(interrupted.)

Q. What farm?

A. Henry's farm.

Q. About what size farm is that?

A. About six acres.

Q. It runs from West Side avenue to the Hackensack meadows, doesn't it?

40

A. Yes, sir.

Q. A distance of how much in feet?

A. From West Side avenue to the Hackensack meadows, I should think, about two thousand feet, maybe more.

Q. And how wide?

A. About two thousand feet.

Q. Well, you went there, you say?

A. Yes, sir.

Q. What did you do?

10

A. Went to look at the dumps.

Q. What did you find?

A. We found pits dug there, and dirt in them. I walked over one of them.

Q. You found pits there?

A. Yes, sir.

Q. How many pits?

A. I should say five; probably six, probably less. I didn't count them.

Q. What was their condition?

20

A. I think they were full, all but one; covered over, I should say, four, or five or six inches with sand, and one of them, the one I walked across, was solid.

Q. That, you say, was about the middle of September?

A. Yes, sir.

Q. Could you see any night-soil coming through the covering of sand?

A. No, sir.

Q. Was there any evidence of the night-soil coming through the sand at all?

A. No, sir.

Q. Was there any smell there?

A. No, sir; none at all; not that I could smell.

Q. Did you go to Mr. Handley's house?

A. I am not positive whether we went to the house, but I think so. I think we went and looked at the spring around the house, and the stables.

Q. Well, what did you find about his premises, if anything?

40

A. Plenty of dirt.

Q. What do you mean by dirt?

A. Well, manure.

Q. What was he keeping there?

A. He had geese, ducks, chickens, horse, I think, and cow.

Q. Well, was there any considerable amount of manure there?

A. Well, there was quite a pile there, out in front of
10 his stable.

Q. How near was that to his house?

A. Well, about as far as across this room.

Q. Have you ever undertaken to measure the distance from these dumps to Mr. Handley's house?

A. I paced them once.

Q. When.

A. Last Friday.

Q. Did you ever measure them in any other way.

A. Yes, sir.

20 Q. How?

A. No, sir; I didn't.

Q. Well, how many paces did you make it?

A. Seventy from the northeast corner to the southeast corner, to the commencing of the dump.

Q. Give us some idea of what you call a pace?

A. Well, I generally call a pace three feet.

Q. Well, were your steps three feet long at least?

A. Yes, sir; probably a little longer, some of them.

Q. Between the dumps and Mr. Handley's house
30 what is the character of the ground?

A. Well, there is quite a little hill between.

Q. And standing where the dumps are, looking at the house, what part of the house can you see?

A. Just the top of the window; about one glass.

Q. The hill between obstructs the view, excepting that. Now, when you were there in September, 1885, did you see any dumping upon the surface at all?

A. No, sir.

Q. Were you there after that time in September?

40 A. No, sir; I don't recollect; I may have been.

Q. When you were there the other day, could there possibly be any smell there at all from the dumps?

A. No, sir.

Q. Could you tell, from the indentations in the ground, whether there were any more holes there than there were when you were there in 1885, in the middle of September?

A. Well, I don't think there was. I can't see anything.

Q. Were there any indications of there being any more holes there, than there were when you were there in September, 1885?

A. No, sir.

Q. How far was Mr. Handley's privy from his house, or didn't you notice?

A. At what time?

Q. At the time you were there in September, 1885.

A. Well, I should judge it was about from 12 to 15 feet.

Q. Did you examine what the condition of it was?

A. No, sir.

Cross-examination by Mr. Hoffman :

Q. What is your business?

A. Painter.

Q. What is your business now?

A. Painter.

Q. Aren't you employed on the police force in some way?

A. I was two weeks.

Q. When was that?

A. I guess it was in March or April; I don't know which.

Q. This year?

A. Yes, sir.

Q. Appointed by Mr. Sturgis, weren't you?

A. Well, I suppose the chief appointed me; I don't know.

Q. Mr. Sturgis got you the position?

A. Yes, sir.

Q. Sturgis, the defendant here?

A. Yes, sir.

Q. When you went to this place in September, 1885, you went with Mr. Sturgis?

A. I did.

Q. What did you go there for?

A. To see the dumps.

Q. Were you painting then?

10 A. I was in New York before; I didn't know there was any dumping done.

Q. How did you happen to go to that place, then?

A. I lived close by, and I heard a good deal of talk about the dumps when I came home.

Q. Then, in September, 1885, you say you heard a great deal of talk about the dumps when you came home?

A. Yes, sir.

Q. Common talk in the neighborhood?

20 A. I didn't hear anybody talk but my own family.

Q. The dumps were annoying and unpleasant to your family?

A. No, sir.

Q. What did they talk about them—just for fun?

A. They said people were making a great talk about the dumps; that is about all.

Q. People were talking about it, but your family did not mind it a bit?

A. No, sir.

30 Q. Was it because people were talking about the dumps you went there?

A. Yes, sir. I went to see about it.

Q. If it didn't annoy your family what did you go for?

A. Just to see it.

Q. You wanted to see where they dumped water closet stuff.

A. Yes, sir.

40 Q. You wanted to amuse yourself by seeing water closet dump?

A. I don't know as there was much amusement about it ?

Q. What did you go for ?

A. I went to see what people were talking about. It was not my concern ; it didn't affect me the slightest.

Q. How did you happen to go in company with officer Sturgis ?

A. He lived the second door from me, and we were talking together before we started.

Q. Talking together about the dumps ? 10

A. Not altogether.

Q. Were you talking about it at all ? I don't ask you what you said, but were you and Sturgis, before you started, talking about the dumps at all ?

A. I think we were.

Q. How did you happen to get to talking about the dumps ? Did Sturgis indicate to you that it annoyed him ?

A. I think I asked him—(interrupted). 20

Counsel for plaintiff objects to the witness giving the conversations with another party.

Mr. Hoffman.—Mr. Sturgis is one of the defendants.

Question admitted.

A. I think I asked him about it. 30

Q. Well, as I understand you, it didn't affect you ?

A. No, sir.

Q. Now, my question is, did he indicate to you that he was annoyed, or his family annoyed, by reason of the dumps ?

A. From the smell of them, do you mean ?

Q. I didn't ask you that ; by reason of the dumps, smell or otherwise ?

A. No, sir.

Q. Why, then, did you and Sturgis go up there ? 40

- A. Well, I went to satisfy myself, to see them.
 Q. And Sturgis went along?
 A. Yes, sir.
 Q. Well, you went up there and satisfied yourself?
 A. Yes, sir.
 Q. You found the dumps?
 A. Yes, sir.
 Q. You found five of them, you said?
 A. I think it was five.
 10 Q. And they were covered up to the depth of five
 or six inches?
 A. Four, or five or six.
 Q. Might it not have been one or two, or three?
 A. No, sir; I think it was deeper than that.
 Q. What makes you think so?
 A. I stuck a stick in one of them.
 Q. Did you measure it?
 A. No, sir.
 Q. You stuck a stick in and guessed at it?
 20 A. Yes, sir.
 Q. And only in one?
 A. Only one.
 Q. And because you stuck a stick in one of them
 you concluded the covering of the others was the same
 thickness as that one?
 A. I didn't look in particular.
 Q. You don't know how deep it was on the other
 three?
 A. No, sir.
 30 Q. One you say was solid?
 A. Yes, sir.
 Q. One was covered to the depth of four, or five, or
 six inches; the other three you don't know how thick
 the covering was, and the other was solid; solid with
 what?
 A. I couldn't say; we walked across.
 Q. It was as solid as the ground there?
 A. I didn't see any difference.
 Q. How did you know there was a dumping there
 at all?

A. It was dug out, a square hole there, and it was a little bit lower.

Q. What did you walk over for?

A. To see if it would bear me.

Q. Who told you to do that?

A. Nobody did; I did it on my own motion.

Q. Did it bear you?

A. Yes, sir.

Q. Why didn't you walk over the others?

A. I thought one was sufficient. 10

Q. Why didn't you go on the other?

A. I didn't think about it.

Q. How did you happen to think about going on this one?

A. Because I stood right in front of it.

Q. And you didn't stand in front of any of the others?

A. No, sir.

Q. How did you measure the one you said had five or six inches of covering on it? 20

A. After I walked on this one I walked around the hole.

Q. You kept on walking—you didn't stop?

A. I had a stick in my hand and I tried one as I walked along.

Q. What did you do that for—did Sturgis tell you to?

A. No, sir.

Q. Sturgis was with you?

A. I think he was.

Q. All the time? 30

A. He was somewhere around; he was not more than a few feet from me at any time.

Q. And this was in September—pretty hot weather, wasn't it?

A. Yes, sir.

Q. And on all that ground there was not a particle of water-closet deposit that was not in the holes?

A. There might have been a drop or two.

Q. You think there was a drop or two?

A. I couldn't say about that, because I didn't take 40 particular notice enough to see.

Q. And you went over there to see the whole place, to see what the matter was, but you didn't take particular notice enough to see whether there was any water-closet deposit outside the holes?

A. I didn't see any scattered around outside; no, sir.

Q. Did you look to see?

A. Not particularly.

Q. Why didn't you look to see?

A. I don't know; I didn't think, I suppose.

10 Q. You saw these holes, and from there you walked down to Handley's house and gave the whole thing up?

A. Yes, sir.

Q. Your children were sick about that time, weren't they?

A. No, sir.

Q. They were sick during that summer?

A. I don't recollect.

Q. Don't you know that your children were sick about that time?

20 A. No, sir; I don't.

Q. Don't you know that your children were sick during that summer, and before December, and that your wife told you it was because of that dump?

A. No, sir.

Q. And was not that the very reason that you went over there?

A. No, sir.

Q. You are very sure of that now, are you?

A. Yes, sir.

30 Q. Did you go to the pits before you went to Handley's house?

A. Yes, sir.

Q. Why did you go to Handley's house?

A. Just to look around.

Q. What were you looking around Handley's house for?

A. I went down by his house to take a look at the spring.

Q. What did you look at the spring for?

40 A. To see how it looked.

Q. What were you going to find out about the spring?

A. To see whether there was dirt around it or not.

Q. What did you mean to see; whether there was water-closet stuff around the spring?

A. No, sir.

Q. What, then?

A. There is other dirt around a man's house beside water-closet.

Q. Very likely; but what business had you to go 10 down to Handley's?

A. Well, it was off from his land, and so we walked down that way.

Q. You mean by that that his dump was close by his lands, don't you?

A. Yes.

Q. Close by his land?

A. 210 or 220 feet.

Q. And having found the dumps, you concluded you would look at the spring. Now, tell us what you 20 wanted to look at that spring for?

A. To see whether it was clean.

Q. What concern was that of yours?

A. Not any; none at all.

Q. Then can you tell the jury what you went there for?

A. I went there to see how things were around the dumps.

Q. Well, the spring was not around the dumps?

A. Then I went down to see around the house, to 30 see whether that was kept clean or not.

Q. What did you do that for?

A. Just to satisfy myself.

Q. You were trying to find out, then, whether or not the trouble that was in that neighborhood, about these dumps, had come from Mr. Handley's house. You wanted to locate it on Handley, didn't you?

A. No, sir.

Q. Then why didn't you go to some other house?

A. I did; I went to the house between there and my 40

Q. What did you do that for?

A. Just to satisfy the curiosity I had.

Q. Was Sturgis with you, then?

A. Sturgis was along.

Q. What was the condition around Handley's house?

A. It was dirty around Handley's house at that time.

Q. It was not night-soil then from the dumps on the hill.

10 A. I don't know as it was.

Q. Well, wasn't it? Don't you think, now, it was a good deal worse than the dumps on the hill? What do you think about it?

A. Well, I couldn't say whether it was worse or not.

Q. You think it was pretty near as bad though, don't you?

A. Yes, sir.

Q. Pretty near as bad?

A. Only a different kind.

20 Q. What you found around there were chickens and ducks and geese?

A. I think so.

Q. How many chickens were there?

A. I don't know.

Q. How many ducks?

A. Four or five.

Q. How many geese that you saw?

A. I couldn't say.

Q. Did you see any geese around Handley's house?

30 A. Around in the water there below Handley's house; I couldn't say they were Handley's; it was probably fifty feet below his house I saw the geese.

Q. Now, do you recollect seeing a single goose there, anywhere near Handley's house that day?

A. I think so; yes, sir.

Q. Sturgis was with you?

A. Yes, sir.

Q. How many geese did you see?

A. I can't say.

40 Q. Can you say whether you saw two?

A. No, sir.

Q. Or one.

A. I couldn't say how many, but my impression is I saw geese.

Q. You are sure you saw geese. Were there any other policemen there, or officers, besides Sturgis.

A. No, sir.

Q. Well, your idea is, those geese and ducks and chickens made a great dirt around Handley's house, is that it? 10

A. Well, they made some.

Q. Well, beside that you say there was a stable there?

A. Yes, sir.

Q. Did you see a cow?

A. I don't recollect seeing a cow.

Q. Did you see a horse?

A. I knew that he kept one.

Q. I didn't ask you that?

A. No, sir; I didn't see a horse. 20

Q. You didn't see a horse, nor did you see a cow?

A. No, sir; I don't think I did.

Q. Did you see a manure pile?

A. Yes, sir.

Q. Barn-yard manure?

A. Yes, sir.

Q. Cow or horse?

A. I should think both.

Q. How do you know?

A. I went and looked at it. 30

Q. You didn't use your stick at that time?

A. No, sir.

Q. Why not?

A. I didn't have any.

Q. This was the ordinary heap of manure that people have when they have a cow and horse?

A. Well, it was scattered all around.

Q. Scattered all around?

A. A good deal.

Q. All around the place? 40

A. No.

Q. Scattered around where?

A. In front of his stable.

Q. And that manure heap, you think, was as bad as the deposits up on the hill?

A. Well, yes; I should think it was.

Q. I understood you to say, that at that time you did not smell anything on the hill at all?

A. No, sir.

10 Q. Not a thing?

A. Not from the dumps.

Q. What did you smell up there?

A. I don't recollect smelling anything.

Q. What did you mean when you said just now you didn't smell anything from the dumps?

A. I mean't I didn't smell anything.

Q. You didn't smell anything at all. How were you at that time, in a pretty good state of health, and you didn't have a cold in your head?

20 A. Not as I know of.

Q. And you didn't smell anything?

A. No, sir.

Q. The air there was as sweet and balmy as the flowers in spring?

A. I didn't smell any bad smell.

Q. It was an excellent air all the time you were there?

A. Yes, sir.

Q. This water-closet deposit didn't send off any smell at all?

30 A. No, sir.

Q. When you stuck your stick down in the pit to find how deep the covering was, you didn't smell anything then?

A. I don't think I did.

Q. You didn't smell anything on the stick?

A. I didn't smell it.

Q. You don't know whether there was anything there at all—any water-closet deposit there at all?

A. I didn't see any dumped there.

40 Q. From your investigation that day, you couldn't tell there was any water-closet deposit there at all?

A. I think I could.

Q. How could you tell that; you didn't see it or smell it?

A. I seen it on the stick—just a little bit. I didn't stick it in far enough to get a great deal.

Q. You were there Friday, I understood you?

A. Yes, sir.

Q. And you didn't smell anything Friday?

A. No, sir.

Q. Do you know how long since they have quit 10 dumping there?

A. No, sir.

Q. I understood you to say, you couldn't, by any possibility, smell anything there last Friday?

A. From the dumps do you mean?

Q. I didn't ask you that. You said you couldn't possibly smell anything there last Friday? Did you smell anything there last Friday?

A. No, sir.

Q. Then why did you say originating from the 20 dumps?

A. Sometimes there are smells there of other characters.

Q. How far do you live from Handley's house?

A. I should think about 800 feet; maybe a little more.

Q. Tell me the names of the people who complained about that smell in September, before you went up to the dump, and because of whose complaint you went to the dump?

30

A. My wife was one.

Q. She complained of it, did she?

A. What do you mean—complained about the smell?

Q. (Previous question read.) Do you understand the question?

A. There wasn't anybody complained.

Q. Do you understand the question?

A. I think so.

Q. There was nobody complained?

A. No, sir.

40

Q. What was this talk then that caused you to go up to the dumps?

A. I didn't see any one to hear them complain, except my own family.

Q. Your own family complained?

A. They told me about them.

Re-direct-examination :

10 Q. You say no one complained except your own family?

A. They didn't complain; they were telling me about the dumps.

Q. Telling you what? Had Woods been arrested at that time?

A. That I couldn't say.

Q. You don't know when Woods was arrested?

A. No, sir.

20 Q. When you say they complained, none of your family complained of smelling any night-soil, did they?

A. No, sir.

Q. What do you mean, that they spoke about there being some talk about the dumps?

A. Yes, sir.

Q. Now, when you went there and looked at these dumps, was there any difference in the outward appearance between the dump that you walked over, and which you say you found solid, and the other dumps you saw there, as far as you could see from the outside?

30 A. Well, no; I don't know that there was.

Q. Did you see any excrement about there at all, excepting what you saw on the stick that you stuck in?

A. No, sir.

Q. If there had been excrement in any quantity, say pieces as large as the inkstand, would you have been likely to have seen it.

Objected to.

40

Question admitted.

- A. I don't think I did.
- Q. Did what?
- A. See spots around.
- Q. (Previous question read to the witness.)
- A. Yes, sir; I think I would.
- Q. The surface of the ground there is of what nature?
- A. Sandy.
- Q. One question that I omitted to ask you, did Mr. Handley furnish you with oil?
- A. Yes, sir. 10
- Q. In the fall of 1885?
- A. Yes, sir.
- Q. Do you know whether he gave up his business for any time or not?
- A. No, sir; I do not.
- Q. You don't know, you mean?
- A. Yes, sir.
- Q. Do you know whether he furnished you oil in December, or not?
- A. Yes, sir. 20
- Q. When?
- A. I couldn't state the dates.
- Q. With reference to the death of his child, can you tell how soon after that he furnished you with oil?
- A. Within two weeks.
- Q. You knew of the deaths?
- A. I heard about them; yes, sir.
- Q. Generally talked about town there?
- A. Yes, sir.
- Q. Did he continue to furnish you with oil?
- A. Yes, sir. 30
- Q. Right along?
- A. Yes, sir.
- Q. Do you know whether he went about attending to his business generally within two weeks after the death of these children?
- A. I know he came to my house every week after until he sold out his business.
- Q. But you don't know about his going to other places?
- A. I never saw him; I don't know. 40

Re-cross-examination:

Q. Mr. Howell, I may have misunderstood you. About that time, about the time of the death of Mr. Handley's children, were you engaged in New York then?

A. No, sir.

Q. Where were you then?

A. Home.

10 Q. What were you doing then?

A. Nothing.

Q. Were you home all that winter?

A. Yes, sir.

Q. You stayed at home all that time?

A. I was out around the town.

Q. You did not do any business at all, did you, that winter?

A. No, sir.

20 Q. Did you go anywhere else but on the Henry farm that day?

A. In September?

Q. Yes.

A. Not on any farms; no, sir.

Q. Did you go on anybody else's premises, excepting the people who owned the house you have spoken about, and Mr. Henry's place?

A. Not that day, I don't think.

Q. Did you any other day?

A. Yes, sir.

30 Q. What day?

A. I couldn't say; I have often taken a walk around the farms.

By a Juror.—Mr. Howell, it is not exactly clear to my mind how you know that this dump that you walked across, and which was so solid as to hold you up, was anything but sand.

40 A. I didn't see anything but sand on top of it.

Q. Then you don't know that it was anything but an indentation in the sand? You don't know that it was a pit?

A. It was dug out.

By Mr. Newbold:

Q. Did you see the excavation thrown up at the side from that pit?

A. A little around the edge. 16

By the Court.—A little what?

A. A little night-soil around the edge.

By Mr. Newbold :

Q. Did you see the excavation of sand that had been thrown up around the pit?

A. I seen some loose sand thrown out around there. 20

Q. Heaped up?

A. No, sir, just loose.

Q. Could you see where the sand had been thrown out, that had been taken out of the pit that occupied the place you supposed the night-soil had been thrown in?

A. Oh, on the outside of the pit?

Q. Yes, sir.

A. Yes, sir.

Q. Could you tell from that that something had been placed in in place of the sand that had been thrown outside, heaped up around? 30

A. Yes, sir; I think I could.

Further re-cross-examination :

Q. You were there within the last few days. Were you on a piece of ground south of Henry's land?

A. Within the last two days?

Q. The time that you were there? 40

A. Yes, sir.

Q. You found loads of water-closet deposit there didn't you ?

A. On whose ground—Henry's ground ?

Q. South of Henry's ground ?

A. No, sir.

Q. Were you on that ?

A. I was.

Q. Did you investigate it ?

10 A. I walked from my house across on the land next, south of Henry's.

Q. Was that within the last two or three days ?

A. Yes, sir.

Q. And don't you know—didn't you see that place covered, now, with remains of water-closet deposit ?

A. No, sir.

Q. You didn't see any of it ?

A. No, sir, not a particle.

Q. Did you look ?

20 A. I did ; that is what I went for.

WILLIAM DALTON, sworn on behalf of the defendant :

Direct-examination.

Q. Where do you live ?

A. 170½ Warren street, Jersey City.

30 Q. In 1885, what were you ?

A. I was detailed with Health Inspector Benjamin at Police Headquarters, to assist him in his sanitary work.

Q. Detailed from the police force ?

A. Yes, sir.

Q. And in the month of August, 1885, do you know anything about Mr. Woods' getting a permit—Patrick Woods ?

A. Yes, sir.

40 Q. Who gave that to him ?

- A. I did.
- Q. Where was Mr. Benjamin at that time?
- A. He was then on his vacation.
- Q. Where—do you know?
- A. I don't remember the place; up in the State of New York, where he is in the habit of going.
- Q. Who signed the permit, did you?
- A. Yes, sir.
- Q. Did you have any direction from Mr. Benjamin to sign that permit at all? 10
- A. No, sir; I didn't.
- Q. State how you came to give it to Mr. Woods.
- A. I remember that our boat was out; that is, she was not at her dock; she met with some accident, and Woods came to the office and asked for the permit, and I did it; used what I thought good judgment in giving it to him.
- Q. Where was it to be?
- A. On Henry's farm.
- Q. Do you know whether he had any arrangement 20 with the owner of the farm or not?
- A. Nothing, only what he told me.
- Q. You had no arrangement with the owner?
- A. I had not, sir.
- Q. Who was this Woods?
- A. He was one of the scavengers licensed by the city.
- Q. The city had nothing to do with making any arrangement with any of the landlords, did they?
- A. Not that I know of. 30
- Q. Did you get any permission from Henry that Woods might dump night-soil on his place?
- A. I made no arrangement, sir.
- Q. Or the city, I mean?
- A. Not as I know of.
- Q. I mean was that a matter you had anything to do with, or did the scavengers have it?
- A. The scavengers generally made that arrangement, sir.

40

By the Court.—What arrangement?

A. They would get permission from the farm people to allow them to dump night soil on their farms.

Mr. Hoffman.—I submit that is not competent testimony, in regard to getting permission from the farmers. I object to it.

Q. That paper is said to have been lost; was it written or was it a printed form, or what?

10 A. It was written; I wrote the permit in about such words as this: "Permission is hereby granted to Patrick Woods to dump night-soil on the Henry farm. The conditions are, that the soil shall be covered with earth—properly covered with earth," and signed my name.

Q. Do you know when the scow was brought back—put in repair by the city?

A. I couldn't tell you.

Q. Could you give us some idea of how long that was.

A. I couldn't, really; I couldn't give you any idea, sir; I know it was away a long time on that occasion.

Q. Do you know as a fact where the night-soil that is taken away by the scow is taken to?

Objected to.

Objection sustained.

30 *Cross-examination by Mr. Hoffman:*

Q. You testified in the case of the city against Patrick Woods about this matter, didn't you?

A. I testified to what I knew about that permit.

By the Court.—You were a witness on that indictment?

40 A. I was told to come here this morning, sir.

Q. No ; on the trial of Patrick Woods, on that indictment ?

A. In court ? Yes, sir, I understand you now ; yes, sir, I was.

Q. You remember testifying in that case now, do you ?

A. I do.

Q. Who signed that permit ?

A. I did, sir.

Q. You are sure of that ?

10

A. Yes, sir.

Q. When you were sworn in the court before, didn't you state that the permit was given by you temporarily—that you wrote it on August 5th, and Mr. Benjamin put his signature to it a day or two later ?

A. I said I understood he did.

Q. Did you say this that I have just asked you ?

A. I couldn't say I did in those words. I said that I signed the permit, and I understood Mr. Benjamin put his name to it, but I never saw it.

20

Q. I will ask you the question again. Didn't you state that you wrote this permit on the 5th of August and Mr. Benjamin put his signature to it a day or two later ; did you state that or not ?

A. I believe I did.

Q. Then you did not sign the name to it after all, did you ?

A. My name, I did.

Q. You signed your name to it ?

A. Yes, sir.

30

Q. And Mr. Benjamin signed his name a day or two after you signed your name ?

A. I understood he did.

Q. Well, you swore to it on the other trial ?

A. Yes, sir.

Re-direct examination.

Q. You never saw Mr. Benjamin sign his name to this permit ?

40

A. I did not; I never saw his name to it.

Q. How long was Mr. Benjamin away after you signed that permit?

A. He may have been gone three or four days.

Q. Do you know just when he did come home?

A. I know he was away about ten days.

Re-cross-examination :

10 Q. Why did you say when you were on your oath in that case, that Mr. Benjamin signed it in a day or two afterwards, if you didn't see him sign it?

A. I understood he did.

By the Court.—Was his name signed to the paper that was used on that trial?

A. Yes, sir; it was countersigned.

Q. Signed by himself?

20

A. Yes, sir; that was his signature.

Q. You heard Mr. Benjamin testify in that case?

A. Yes, sir.

Q. He swore he signed it?

A. I believe he did.

Further re-direct-examination :

Q. Do you know when Mr. Woods was arrested?

30

A. I couldn't tell the date, sir.

Q. Did Mr. Benjamin come home a day or two before Mr. Woods was arrested?

A. I believe he did.

Q. How did you sign that paper?

A. I signed it, "Mr. Benjamin, per William W. Hilton."

Q. Did you read the paper on the trial below?

A. I believe I did, sir.

40 *By Mr. Hoffman :*

Q. Do you keep any duplicates of those permits?

A. I think not, sir.

Q. When you signed this paper, you delivered it to Mr. Woods, didn't you?

A. I gave it to him, sir.

Q. And he took it away?

A. Yes, sir.

Q. You say it was dated the 5th of August?

A. I believe so, sir.

10

JOHN PATTERSON, sworn on behalf of the defendant:

Direct-examination.

Q. Mr. Patterson, have you been upon the ground adjoining Handley's house?

A. Yes, sir,

Q. When was it?

A. I don't know the date; I think about three weeks ago. 20

Q. Was there then any sign of night-soil there?

A. No, sir.

Q. Or any smell of any kind?

A. No smell; no, sir.

Q. Did you make any measurements in reference to the distance; could you see where there were indentations in the ground?

A. Yes, sir.

Q. Did you measure the distance of those from Mr. Handley's house? 30

A. Yes, sir.

Q. What was the result of the measurements?

A. From the dumps to the house was 220 feet, measured with tape line.

Q. And from the pits to West Side Avenue, did you ascertain how far it was?

A. Yes, sir. One measurement I made was 1,450 feet; another measurement I made was, I think, 1,020.

Q. What do you mean, the other measurement you made 1,020? 40

- A. I measured two different locations.
- Q. What was the 1,450?
- A. That was to Schleimacher's.
- Q. Did you ascertain how far the place of these dumps was from the Hackensack meadows?
- A. No, sir.
- Q. Or from the swamp?
- A. No, sir; that is, from the swamp near by the house.
- 10 Q. Did you measure the distance from Handley's house to the swamp?
- A. Yes, sir.
- Q. How far was it?
- A. 70 feet.
- Q. Taken for a swamp, was that?
- A. It looked to me like a sort of basin; water lay there, and stagnant; especially in dry weather. At the time I was there there was no flow in and out.
- Q. From Handley's house to Finley's how far was it?
- 20 A. (Referring to memorandum.) 1,150 feet—not from Finley's house, but from what was indicated to me that there had been a manure heap there.
- Q. Did you measure the distance from Handley's house to Hollenbrook's gut factory?
- A. Yes, sir.
- Q. How far was that?
- A. 390 feet.
- Q. You measured that with a tape line?
- A. Yes, sir, I made all my measurements with a
- 30 tape line.
- Q. From the dumps to Hardy's house, did you measure that?
- A. Yes, sir.
- Q. How far was that?
- A. Hardy's house was 1,050 feet.
- Q. Did you measure the Giles' house?
- A. No, sir.
- Q. In what direction were the pits from Mr. Handley's house?
- 40 A. I should judge—I am not well acquainted with

the points of the compass just there ; to the best of my belief it is about southwest.

Q. What—Handley's house from the dumps ?

A. Oh, from the dumps ; northwest from the dumps to Handley's house ; northwest.

Q. Between the place where the pits were and Handley's house, what is the character of the ground as to the surface ?

A. The bank near the house where the bank slopes off to the house, I should judge, was quite level, if not a 10 little higher than the dumps.

Q. How much of the house could you see from the dump ?

A. You could see a short distance under the peak of the roof, or under the eaves of the roof ; I should judge that the top of the house and the land was about level.

Q. The character of the soil there, what was it ?

A. Sandy.

Q. A sand heap, is it ?

A. It is a sand heap ; I take it to be the natural 20 ground—not piled up there.

Q. How much of a farm would you say that Henry farm was, how many acres ?

A. I didn't make any observations as to the size ; I didn't notice the size of the farm ; I don't know anything about the lines.

Cross-examination by Mr. Hoffman :

Q. Who took you there, Mr. Patterson ? 30

A. Mr. Sturgis.

Q. Officer Sturgis ?

A. Yes, sir.

Q. Who pointed out this manure heap on Finley's land ?

A. Mr. Sturgis.

Q. Anybody else ?

A. What was the question, please ?

Q. Who pointed it out ?

A. I found it myself. 40

Q. Who was with you ?

A. Mr. Sturgis.

Q. Anybody else ?

A. No, sir.

Mr. McGrath.—Did you see Mr. Finley while you were there ?

10 A. Yes, sir ; that is, I didn't know it was Mr. Finley ; he was pointed out to me.

Q. This gentleman here ?

A. Yes, sir ; he was there.

Q. He was at the pit you spoke of as being a manure pile ?

A. After I found the pit he was the man who showed me where the manure pile had been.

20 DANIEL HOLMES, sworn for defendant :

Direct-examination by Mr. Newbold :

Q. Where do you live ?

A. No. 295 Fifth street, Jersey City.

Q. Do you know where Mr. Handley lives ?

A. Yes, sir.

Q. Were you ever there ?

A. I was there the 21st of August, 1885.

30 Q. In company with whom did you go there ?

A. Officer Sturgis.

Q. Do you know whether that was before or after Woods' arrest ?

A. I couldn't say ; I don't know when Woods was arrested.

Q. What did you find there ?

A. I was one of the Health Inspectors at the time, and a detailed officer.

Q. Detailed by the Board of Police Commissioners ?

40 A. Yes, sir.

Q. Did you go there to inspect the place?

A. In the first place alone I made a general inspection of the neighborhood.

Q. Tell us now what you found?

A. I went into his water-closet and found it within twelve to fourteen inches of the seat; I looked around and there was a manure heap over to the left of the house.

Q. How near the house?

A. Well, I should judge about 20 feet. 10

Q. Had Mr. Handley been to the Board of Police Commissioners or to the Health Board?

A. Not to my knowledge.

Q. Where else did you go?

A. I went through the neighborhood.

Q. Did you go to the place where the pits were?

A. Yes, sir.

Q. Tell us what you found there?

A. I didn't find anything.

Q. Did you see any pits? 20

A. I saw pits; yes, sir; I saw an excavation in the ground some two feet below the surface; I couldn't tell whether there was anything there or not.

Q. Did you see if there was any night-soil in the pits, whether it had been covered over or not?

A. I couldn't say; I didn't see any night-soil.

Q. Well, if there was night-soil in the pits, was it covered over or not?

A. Yes, sir; I didn't see any night-soil; if there was any, it must have been covered over. 30

Q. Did you walk over them, or anything of that kind, to test it?

A. Not as I know of.

Q. Was there possibly any night-soil whatever in those pits?

The Court.—He says he didn't see any.

Q. Was there any on the surface of the ground?

A. I didn't see any; no, sir. 40

Q. Did you look to see whether there was or not?

A. Yes, sir.

Q. And you saw none?

A. I saw none.

Q. How many pits were there?

A. I didn't look to see how many there were.

Q. Well, you can give us some idea, can't you?

A. Well, three, to the best of my knowledge.

Q. Was there any smell from those pits?

10 A. No, sir; not that I could detect.

Q. And you were right close to them, were you?

A. Yes, sir.

Q. Were you present when Woods was brought up before the police magistrate?

A. No, sir; not as I know of; not to my recollection.

Q. Did you find any other pits anywhere—where were those pits, how far from Handley's house about, that you did examine?

20 A. Well, I should judge about 200 feet; in that neighborhood.

Q. In this sand hill, was it?

A. Yes, sir.

Q. The water closet that you went into, was there any smell there?

A. The general smell that prevails in water closets.

Q. Was Mr. Handley there at the time?

A. I don't think he was.

30 *Cross-examination by Mr. Hoffman:*

Q. You were an inspector?

A. A detailed officer.

Q. From the Health Department?

A. Yes, sir.

Q. Detailed on this special occasion for this special purpose?

A. No, sir; I was detailed by the Health Department to make an inspection up in that neighborhood. I
40 went there through the routine of business.

Q. Didn't you go to this dump for some express purpose outside of your general duties?

A. I had a purpose in going there. I understood there was night-soil being dumped on the top, and I went over to see whether there had been or not.

Q. Who told you that, Mr. Sturgis?

A. Mr. Benjamin. Officer Sturgis went with me and was with me all the time.

Q. Did you go to the field first or to Mr. Handley's first?

A. I went through the field. Officer Sturgis was with me. 10

Q. And you went for the purpose of seeing if there was any dumping?

A. Yes, sir.

Q. That was your express purpose?

A. Yes, sir; going through the district.

Q. Yes, but you went to this field in the discharge of your duties to find out if there had been any dumping of night-soil there?

A. Yes, sir. 20

Q. That is what you went for?

A. Yes, sir.

Q. And you examined to see?

A. Yes, sir.

Q. And you don't know how many pits there were, though you went for that purpose?

A. No, sir.

Q. You couldn't say whether six, eight or ten?

A. No, sir. 30

Q. You think there were three?

A. To the best of my knowledge I saw three.

A. And you didn't smell anything there at all?

A. No, sir.

Q. Not a thing?

A. Not a thing.

Q. The air was free from any odors?

A. Yes, sir.

Q. What time of day was it?

A. I should judge about one o'clock. 40

Q. Which way was the wind ?

A. I couldn't say.

Q. Did you put your nose right over the pits ?

A. I don't know whether it was pits or not—from the appearance—I know they were dug out, but I don't know whether there was night-soil in them or not.

Q. These places you saw dug out, did you go close to them ?

A. Yes, sir.

10 Q. Did you make any investigation with a stick or anything ?

A. No, sir.

Q. You just looked at them ?

A. Yes, sir.

Q. And toddled off to your business ?

A. Yes, sir.

Q. And that is what you call an investigation ? Don't you know from the excavations at that point whether there is any night-soil in them or not ?

20 A. I couldn't say.

Q. And you can't say to-day whether you were where those dumps are ?

A. No, sir.

Q. And you didn't know at that time whether you were at the place or not ?

A. No, sir.

Q. That is the way you inspected. Are you inspecting now ?

A. No, sir.

30 Q. And you went to Mr. Handley's and there you commenced inspecting in earnest ?

A. Yes, sir.

Q. You heard Mr. Handley had made a complaint at that time, didn't you ?

A. No, sir.

Q. Didn't you know at that time that Mr. Handley had complained, and didn't you and Sturgis go there to see if you could not locate it on Handley himself ?

A. No, sir.

40 Q. When you went there you found Handley's water-closet ?

A. Yes, sir; I don't know whether it was cleaned out or not; I made a report on it; I don't know whether any notice was taken of the report or not; I never went back there after that.

Q. Did you smell anything around Handley's house that was unpleasant?

A. Not that I noticed there. I went into Handley's water-closet. There was the ordinary smell there of a water-closet; nothing very extraordinary unpleasant; it didn't strike me as exceedingly unpleasant. 10

DANIEL JOHNSON, sworn on behalf of defendant:

Direct examination.

Q. Where do you live?

A. I live now at 76 Jackson avenue.

Q. Where did you live in 1885?

A. 99 Broadway, Marion, St. James Hotel. 20

Q. In December, 1885, had you anything to do with the school at the St. James Hotel?

A. Well, I went on the police at that time. Previous to that I was janitor of the building.

Q. Were you there when the school was closed?

A. Yes, sir; but I was not in the capacity of janitor; I was on the police at that time, but I lived there.

Q. When the school was closed?

A. Yes, sir. 30

Q. During what time had you been janitor?

A. From the 10th day of August, I took charge of the building, and I went on the police on the 2d of December; then I held on there, I guess, about two weeks after I was appointed on the police, because the agent of the building could not get anybody to take charge of it, and I told him I would do the best until I could—until he got somebody else.

Q. Do you remember about the school being closed?

A. Yes, sir. 40

Q. And what was done in regard to the building, if anything, in regard to purifying it?

A. Well, as far as the sanitary was concerned, you know we done all we could about the water-closets there was a great stench in the water-closets. As soon as we would go down in the morning and open the door to go down to the cellar—and that is where the water-closet was that the school children used—the stench from that water-closet would almost knock you down, and it
10 went all through the whole building, and the tenants in the building used to come to me and ask me what it was, and I told them it was the stench from the water-closet.

Q. Did you do anything in regard to that afterwards?

A. Yes, sir; I went to the agent and told him about it, and we had plumbers there.

Q. After the school was closed?

A. No, not after the school was closed; before that,
20 because the stench came from a water-closet there before ever the school was closed at all; there was always a stench from that water-closet.

Q. After the school was closed did you fill up anything there?

A. Yes, sir.

Q. What was it?

A. Filled up a well. I didn't, but Mr. Hanna, the agent, had a man there to fill it up, and he told me not to tell anything about it. I couldn't tell the date of
30 that. It was after I was on the police force.

Q. And after the school was closed?

A. I can't tell about the school being closed or not, whether it was after the school was closed or not, because after I got on the police I was janitor for Mr. Hanna; after I got on the police I told him I was going to move out of the hotel; he asked what for, and I told him, "You have got such a hard party in here you will keep me in hot water all the time, and I have got to get out;" so I moved out of the hotel. Then he
40 told me, he says, "there is a great deal of trouble

about this sickness, these children dying"—interrupted.)

Objected to as incompetent.

Objection sustained.

Q. Never mind what he told you. If you saw the well filled up, say so.

A. I didn't see it filled up, but I went down and saw it was filled up, and I know the man that filled it up. 10

Q. Do you know whether the children drank from there or not when they were at school?

A. They did not drink down there; there was a hydrant in the school building, where they drank; but where the infant school class was, the door that came out of the infant class, then they turned right around and opened another door that went right down cellar where this water-closet was. There were three closets, 20 a privy for the school, and another one for the parties that lived on the first floor of the hotel, and another water-closet there that was occupied by any one who had the key.

Q. How large a hotel was this—how many rooms were there?

A. I guess there was three hundred rooms; that is, take it all, the hotel; take it all around; but there was very few tenants in the hotel at the time; part of the hotel was occupied by tenants at the time; I had 30 charge of it; I suppose there was about fifteen tenants with their families.

Q. How near was this well to the privies that were down below—this infant class room?

A. Well, the privy—down stairs, the privy—I suppose, was within fifty feet of the water closet; maybe forty feet or fifty feet from the water closet to the well. The well was on the opposite side from the water-closet; a partition between the water closet and well; an old well they used in the hotel, and when 40

Mr. Hanna found out there was going to be trouble about it, he hired a man to fill it up.

Cross-examination by Mr. Hoffman :

Q. Where did you get your water to drink from ?

A. We had water through the building ; it didn't come from the well at all, the water from the well
10 was not used by the children or the tenants.

Q. And the well was filled up months before Mr. Handley's children were sick, wasn't it ?

A. Not to my knowledge ; not while I was there.

Q. Just think now ; call upon your recollection ; wasn't the well filled up months before Mr. Handley lost his children ?

A. Not while I was in the building ; the time previous before what I said these children were taken sick.

20 Q. Tell me when the well was filled up ?

A. I couldn't do it.

Q. You can't tell ?

A. I couldn't exactly swear to it.

Q. Do you know whether these water-closets were not examined after the 1st of December ; they were examined, weren't they ?

A. Yes, sir.

Q. And were not they found to be in good working order ?

30 A. No, we could never keep them in good working order ; we had the plumber there all the time ; we couldn't keep them in order.

Q. You had the plumber there all the time trying to keep them in order ?

A. Yes, sir ; we did the best we could with them.

Q. The 1st of December when they were examined, were they not in good working order then ?

A. I couldn't exactly say whether the 1st of December, because it was just the time I went on the
40 police, and I don't remember exactly.

By Mr. Wills :

Q. Was there any pump or other device connected with that well, for raising the water out of it?

A. No, sir; not at that time.

Q. Why did he fill it up?

A. He filled it up because he was scared; he heard this suit was coming on, and he was scared that there was some damages from the building.

Q. What had the well to do with the building? 10

A. He thought, perhaps, there was some stench from the well.

Q. What stench was there from the well?

A. I don't know, sir; but he thought there might be some stench from the well.

Q. What was there in the well, anything but water?

A. Only stagnant water, sir.

Mr. Hoffman.—We would like to ask a question of Mr. Daly, if the Court will allow us. He wants to go away. 20

WILLIAM D. DALY, sworn on behalf of the plaintiff:

Direct-examination by Mr. Hoffman :

Q. Do you remember the case of the State against Patrick Woods and others? 30

A. Yes, sir; I was counsel for Bremmer. The permit was never introduced in the case. Mr. Stout had—I had the permit that was given to Bremmer in my possession; that was a permit signed by Mr. Benjamin.

Mr. Newbold.—I object to any proof as to the contents of this Bremmer permit. There has never been any evidence as to its being called for from the parties who had it, or any search being made for it, or anything else. 40

Q. This permit that you speak of, Mr. Daly, what became of it?

A. I don't know. I did have it at the time among my papers; I don't know where it is now. I pleaded him non vult to the indictment; I have looked in the papers since for the indictment and cannot find it.

Q. Now, will you state the contents of that permit as near as you can?

10 Objected to on the ground that witness has not shown that he was the sole custodian of the paper, and they ask to prove the contents of a paper which may be in Bremer's possession.

Q. You had the paper in your possession?

A. Yes, sir.

Q. Did you ever give it to anybody?

A. No, sir.

Q. As far as you know, it remained in your possession?
20 sion?

A. Yes, sir.

Q. And you cannot find it?

A. I cannot.

Cross-examination by Mr. Newbold:

Q. Where did you put that paper after you got through?

A. I really cannot tell you; I don't recollect; I didn't
30 think it was of any importance after the case was over, and I took it to my office, and my impression is, I destroyed it.

Q. Where have you looked in your office for it?

A. Among the papers in my pigeon hole. I have this recollection of it. Some time I was cleaning up the desk and some of the pigeon holes, and that these papers were among them. It was after the conviction and trial, and I thought they were of no further importance, and I destroyed them; that is my best recollection.
40 tion.

Q. Do you recollect seeing that paper when you were going over your papers, as you say?

A. That is my best recollection of it.

Q. Have you made any search for this paper?

A. No; not since.

Q. You have not looked among your papers in your office for it?

A. No, sir; that is my best recollection of it.

Q. You have a large number of papers in your office at the present time? 10

A. Yes, sir; quite a number.

Q. Connected with the suits you have been connected with professionally?

A. Yes, sir.

Mr. Hoffman.—The testimony of the witness is, that he has destroyed the paper.

Witness.—At the time that Mr. Woods was tried, Bremmer and one of the other defendants had retracted 20 their pleas of not guilty and entered a plea of *non vult*, and after Woods had been convicted I know that I saw these papers, and at that time I was engaged in cleaning up, and my impression is that at that time I destroyed them and put them in the waste basket; that is my best judgment, as near as I can get at it.

Mr. Hoffman.—I suppose that is as conclusive as it can be.

30

The Court.—I think that is probable enough.

Q. Mr. Daly, what paper do you remember now that you did destroy, on the occasion you have spoken of?

A. I had two permits. One was a permit from another—not Sturgis; I think his name was—I can't think of his name—and this permit of Mr. Bremmer's, they were both delivered in my possession, and it was my intention to defend the case upon the theory that 40

the Board of Health had given them permission to dump the night-soil there, and after reflection, we thought that was not a proper defence.

Q. I ask you now, what papers, other than permits, do you know that you destroyed upon this occasion that you said you went over your papers?

Objected to.

10

Admitted.

A. I don't remember any now.

Q. You cannot name one?

A. No, sir; I have no recollection of the time, but it was after Mr. Woods was convicted in the Quarter Sessions.

Q. Give us some idea of the time when you made this search among your papers?

A. Some months ago; it was immediately after Mr. Woods was tried; I think it was in the fall.

Q. Woods was tried in April, wasn't he?

A. That may be so; I know it is a year ago, anyhow.

Q. What month in the fall?

A. Last September. I don't think Mr. Woods was tried in April; I believe Mr. Woods was tried at the September term; my impression is it went over. Mr. Woods pleaded *non vult* also, and his plea was retracted and Mr. Stout given an opportunity to defend him, and I think that was done in the spring, and the case went over until fall.

Q. Now, cannot you recollect of any other paper that you had in looking over your papers and you think you destroyed, excepting these permits?

A. I didn't destroy any paper connected with civil suits; some memorandum that I had in a criminal case, and I destroyed it. I have no recollection now of any other paper that I destroyed at that time; I have no definite recollection about it, except what I have stated to you.

40

Q. That you think you did make some sort of looking over your papers?

A. Yes, sir; I do.

By the Court.—Do you feel so confident about it, Mr. Daly, that you think it useless to look for that?

A. That is my impression about it.

Q. Have you been requested to look for those papers? 10

A. Not at all. Judge Hoffman spoke to me about it this morning; that was the first time any attention was called to it.

Q. And since he spoke to you you have had no opportunity of looking for it?

A. I have not.

Q. What time this morning was your attention called to it?

A. About ten o'clock; when he was speaking to Mr. Stout he spoke to me about my connection with the case; that was the first. 20

Q. You are willing to look for these papers, Mr. Daly?

A. I suppose I would look for them; certainly I would, if you asked me, or anybody else.

Re-direct-examination.

Q. You wouldn't look for this paper with any idea of finding it, Mr. Daly, would you? 30

A. I don't think I would find it; I think I had the Henry permit in my possession, too.

Q. Were all the permits together?

A. There were two of them; I don't know whether it was a permit of the Board of Police Commissioners or a Board of Health, on a sheet of paper, and it was printed, "Board of Police Commissioners," or "Board of Health." I don't know which it was.

Q. Was it the Woods' permit—(interrupted).

40

A. I didn't have the Woods' at all.

Q. Were you with Mr. Stout in the case?

A. No, sir; Mr. Stout and I had different ideas about the case.

10

The Court.—Under the testimony which Mr. Daly gives here, I think the absence of the paper is sufficiently accounted for to justify the Court in allowing testimony of the contents to come in.

Mr. Newbold.—The Court will allow us an exception?

The Court.—No, I will not allow you an exception. It is within the discretion of the Court.

20

Mr. Newbold.—May I ask this question, "How did you destroy the paper?"

The Court.—No; we must end this somewhere.

Re-direct-examination :

Q. State the contents of that paper as near as you can remember it.

30

A. As I recollect it there were two permits—(interrupted.)

Question objected to on the ground that the witness has not stated that he has a knowledge of the contents.

40

Witness.—I have an absolute knowledge. There were two papers. The paper given to Bremmer was as follows: "Permission is given to"—his first name—
'to dump night-soil,'"

By the Court.—Just repeat the language if you can, Mr. Daily, as near as you can put it in the form as stated in the paper.

A. "Permission is given to"—I don't know what Bremmer's first name was—"Bremmer to dump night-soil upon the property known as the Finley property, Marion." That is my best judgment of it, and signed D. Benjamin.

10

Re-cross-examination.

Q. Permission is given to dump night-soil on the property of Finley, you say?

A. Yes, that is my recollection of it.

Q. How was it headed?

A. It was upon a sheet of note paper.

Q. Printed?

A. It was printed with the Board of Police Commissioners or the Board of Health; I can't tell you which; 20 either one or the other.

Q. You had an absolute knowledge of what it contained, you said?

A. Of the contents, but I cannot state the printed matter on it.

Q. Cannot you tell whether it was headed Board of Works or Police Commissioners, or Board of Health?

A. Board of Health, is my impression; it may have been Police Commissioners; I am not certain which; it was a small sheet of paper. 30

Q. You never saw Mr. Benjamin's signature, did you?

A. Yes, sir; I did.

Q. When?

A. Well, I can't tell you when, or what circumstances but I would swear to it.

Q. Did you ever see his name signed "D. Benjamin?"

A. I did.

Q. Without the Daniel?

40

A. Without the Daniel.

Q. Do you know what his name is?

A. I do.

Q. What was the name signed to that permit you speak of?

A. D. Benjamin.

Q. You are positive about that?

A. As positive as a man can be; I may be mistaken, but I am almost sure of it; I don't think I am mis-
10 taken.

Q. Did you see the permit of Mr. Woods?

A. No, I did not.

Q. Now, please begin that paper and and repeat the contents of it, as nearly as you can, just as it was written and printed.

A. "Permission is given to Bremmer"—his first name I can't remember, and yet I ought to remember it; I knew him since he was a boy—"to dump night-soil upon the Finley property, Marion. D. Benjamin, In-
20 spector."

Q. Do you remember the date?

A. I don't recollect the date, but I know the circumstances under which it was given.

Q. Do you remember the date?

A. I do not.

Q. You never tried Bremmer's case at all, did you?

A. No, sir.

30 Q. You never had that paper in court, did you?

A. Yes, I had it in my pocket in court.

Q. You carried it around in your pocket?

A. No, I only carried it when it was necessary until he plead *non vult*.

Q. Can you tell the term he pleaded *non vult* at?

A. My impression is, the September term, but it might be the April term of last year; I know he was not sentenced for many months after he pleaded, because the Woods' case went over.

Q. Mr. Daly, did you ever see Mr. Benjamin write?

A. No. Mr. Benjamin signed the permit himself;
40 because I saw it.

Q. Did you ever see Mr. Benjamin write?

A. No, I did not.

Q. His name or anything else?

A. I don't think I have seen him write his name, but I have seen what purports to be his.

By Mr. McGrath :

Q. You say, this morning, your attention was first directed to this permit by Judge Hoffman? 10

A. Yes, sir.

Q. At that time, did he tell you who the parties to this suit were?

A. No, he did not.

Q. Didn't he mention Finley—ask you if you had any permit relating to Finley?

A. No, he did not. Do you want me to tell you how the thing came up?

Q. No. Did he tell you anything in regard to that?

A. No, sir; he did not. 20

The Court.—What has this to do with the matter?

Mr. McGrath.—I wanted to show that Mr. Daly got his impression in regard to the paper from his conversation with Mr. Hoffman this morning.

Witness.—And the first name of the party was inserted in the permit. 30

Q. Are you sure it was Finley; wasn't it Henry?

A. No, sir; it was not Henry; It was Finley.

Q. What leads you to be so very positive about its being Finley?

A. Because there were permits given to dump upon pieces of property, and I know the Bremmer permit 40

was given to dump upon the Finley property. Mr. Benjamin signed the permit himself. I showed it to him in the court room; that I had in my possession.

Q. When was that, the time that he was subpoenaed as a witness in the case—this case that was not tried?

A. Yes, sir.

Q. When was that?

A. I think it was at the April term.

Q. You don't know Mr. Finley, do you?

10 A. I do not.

Q. He was not there at the time, was he?

A. I have no recollection of seeing him in my life.

Further re-direct-examination :

Q. At the time you showed this permit to Mr. Benjamin, did he or not acknowledge the signature to be genuine?

20 A. I don't remember that he said anything about the signature, but when I told him what our line of defense would be, he said the reason the dump was allowed there was because there was no scow, and he was exercising his best judgment in letting them dump the night soil there.

Q. This name I get now from the indictment; do you recollect whether the name was George Bremmer?

A. The name was George Bremmer; yes, sir.

30 Doctor CONVERSE, sworn on the part of the defendants :

Direct-examination by Mr. Newbold.

Q. You are County Physician of Hudson County?

A. I am. I have been a physician in this county between sixteen and seventeen years.

Q. And have followed your profession how long—that length of time?

40 A. Yes, sir.

Q. Have you ever examined Mr. Handley's premises, or the position of the pits near his house?

A. I have been on the ground.

Q. When?

A. I was on the ground first, either in December, 1885, or in January, 1886; I don't remember the exact date; it was not long after these deaths occurred in his family, the deaths of his children, and I have been on

date.
the ground since recently, but I cannot give you the 10

Q. Tell us, doctor, what you found there in reference to the condition of the pits?

A. At the time I was on the ground the pits were covered completely.

Q. Was there any odor there?

A. I didn't observe any; there was a strong wind the day I was there; that is the day I was there the first time.

Q. And were you there again?

A. I was there again sometime afterwards, yes, sir. 20

Q. Was there any odor there then?

A. I did not observe any.

Q. Did you examine the premises of Mr. Handley?

A. Well, I saw the premises, I didn't examine them very closely.

Q. How do you mean; you did not go to the house?

A. I did not go to the house, no, sir.

Q. Did you ever see Mr. Handley in reference to this matter?

A. I did; yes, sir. 30

Q. When?

A. He called at my house on the 16th of December, 1885.

Q. In reference to what?

A. In reference to a suit that he proposed to bring against the Health Inspector.

Q. What did he say?

By Mr. Hoffman.—Is that competent?

A. Well, the interview lasted perhaps twenty minutes 40 or half an hour; he said a good deal.

Q. Did he say anything in reference to his purpose in bringing this suit?

By Mr. Hoffman.—Is that competent, unless it is in contradiction of Mr. Handley?

By the Court.—Anything the plaintiff says is competent, no matter, how remote, that has a bearing upon the case.

10

A. His object was to recover damages; I took part of it down in writing at the time, because it struck me as throwing some light upon the case.

Q. A memorandum you made at the time?

A. A memorandum I made at the time.

Q. Referring to that memorandum, tell us what the conversation between you and him was?

A. I took these notes—

20 Q. Will you refer to the memorandum and refresh your recollection, and then tell us?

By Mr. Hoffman.—We have no objection to his reading from the memorandum.

A. Well, the remark that attracted my attention particularly was this—

By Mr. Hoffman :

30

Q. Let us have the whole of it while you are about it?

A. Asking about the deaths in his family, I received these answers (reading from memorandum): "No. 9, Mary Handley," that means attended No. 9 School; "Mary Handley, 11 years old, taken ill 10th December, and died December 11th, No. 15," I mean by that she attended No. 15 School; "Sarah Handley, 7 years old, taken sick December 7th, and died morning of 9th." "No. 15," that means No. 15 School as be-

40

fore; "Catherine Handley, 8 years old, taken sick December 9th, died morning of 10th. Margaret Handley, 4 years old, taken sick December 9th, died December 10th. No. 9 School, John Handley, 10 years old, taken sick December 10th, died December 11th. The disease was at first thought to be membranous croup, but after consultation was considered to be scarlet fever and diphtheria; they all bled from the mouth. Dr. Parker said, 'if I had time, Joe, I would separate them into another room,' and I said, what is the use of separating them, 10 they are all dying, let them die together, and what would be the use of separating them, I would only have to make another fire; I had the thermometer at 85 degrees." That is all that memorandum relating to that case.

Q. Did he say anything further there; that is, he did separate them, the difficulty of making another fire, anything of that kind?

A. I stated exactly about that, the words taken down at the time. 20

Q. Did you speak to him any further about their all being left in the same room?

A. I am not positive whether I did or not.

Q. Do you know anything about his business, when he resumed business again after the children's death?

A. No, sir; I do not.

Q. Do you know when he came to the house where you lived to deliver oil again?

A. I do not.

Q. Doctor, have you read considerably upon the disease of scarlet fever? 30

A. I have read some on the subject, yes, sir.

Q. You have had considerable practice?

A. I have had some practice; the average amount, I suppose, for a man who has been in business as long as I have.

Q. As to the origin of scarlet fever, can you give us your opinion as to that?

A. I believe it due to a specific cause; that is to say, I believe that at the present day scarlet fever arises 40

from a previous case of scarlet fever, and in no other way; arises by contagion and infection, and no other way.

Q. Your opinion is it must be derived from a pre-existing case of scarlet fever?

A. Yes, sir; just in the same way as wheat at the present day must be derived from preceding wheat, wheat must be sown, but where the first wheat came from we do not know, nor do I know where the first
10 case of scarlet fever came from.

Q. Has it any necessary connection with stench?

A. I think not.

Q. At what distance through the open air is it your opinion that scarlet fever can be communicated?

A. At different distances, according to the circumstances; according, in the first place, to the stage of the disease; according, in the second place, to the state of the atmosphere, whether it is still or whether the wind is blowing. In a still atmosphere, or in an at-
20 mosphere where the well persons stands to the windward side of the affected person, I do not suppose a scarlet fever patient could affect a well person at a greater distance than four or five feet at the most; but if the disease had arrived at the stage of desquamation, that is to say, when the scales were dropping off from the body, and if the wind were blowing, and a party stood where these scales could be blown from the patient to a well person, I suppose there is no limit to the distance; the scarlet fever could be carried as far as
30 these scales could be carried. In a confined room, where the patient had been confined some time, I should think there would be very great danger for a person entering it at all—a person unprotected, I mean.

Q. Suppose, doctor, that Frank Howard had contracted scarlet fever about December 4th, so that on December 4th the disease was fully developed, and he had been, on December 4th, in the same class at school with Sarah Handley, and Sarah Handley was taken sick with scarlet fever on Monday, December 7th, what
40 would you say as to the possibility or probability of

the case of Sarah Handley originating from contact with the Hardy children?

A. I do not think the premises are sufficient to warrant any conclusion whatever in regard to that. In the first place, the usual period of incubation of scarlet fever is from two to five days; sometimes the disease, however, develops itself within twenty-four hours after exposure, and sometimes the length of time is considerably greater than five days. Therefore, Sarah Handley, in the case supposed, might have taken the disease from the other party, from the Hardy child, if she had been brought into contact with the Hardy child after the Hardy child became sick; on the other hand they might have both contracted the disease from the same cause; or the fact of their having the same disease about the same time might have been a mere co-incident. You see the premises justify all these conclusions.

Q. But your theory is that it must be communicated by or from a pre-existing case of scarlet fever?

A. Always.

20

Q. Now, are there any standard writers with whom you have come in contact in your reading?

A. Every writer that I have consulted in reference to this disease, is of the same opinion, but I mention Reynolds's System of Medicine; Dr. Ghee, of London; Zimpson's Cyclopedia of Medicine; Dr. Thomas, of Germany, the writer of an article in Pepper's System of Medicine; Dr. ——— Smith, of New York. I mention Dr. Stephen who was, perhaps, the most distinguished teacher of medicine in the United States at the time he died. I mention Dr. Loomis, a very distinguished teacher of medicine at the present time in New York City; and a French writer, Dr. ——— and in fact every writer I have consulted on the subject has been of the same opinion.

30

Q. Doctor, it was stated by Dr. Culver, in his examination for the plaintiff, that he had an opinion that scarlet fever may be communicated from putrifying animal matter or tissue.

A. Yes.

40

Q. And referring to Zimpson's Cyclopedia of Medicine as a source from which support for that theory could be found; have you read Zimpson's Cyclopedia?

A. I have read that portion of it that refers to scarlet fever.

Q Have you found in there any support for the theory suggested to Dr. Culver?

10 Objected to on the ground that the question calls for an opinion upon the writing in question.

By the Court.—You had better change the form of the question.

Q. Have you found in your reading of Zimpson any support for the theory that scarlet fever may be communicated from putrefying animal matter?

20 Objected to as incompetent.

Question admitted.

A. Well, suppose I should answer it not directly but in a roundabout way? In reference to that subject the writer in Zimpson's Cyclopedia says this—(interrupted).

30 *By Mr. Hoffman.*—We must object to this; he is giving us now what Zimpson says.

The Court.—I will allow it, and allow the testimony to be given in his own way.

A. (Continuing.) He says this in substance, that a previous writer whom he cites, I think it is Carpenter, has said that he believed that scarlet fever could be produced by decomposing stuff from a slaughter-house; the writer in Zimpson says, in reference to that, that
40 if the animal slaughtered were affected with the scarlet

fever he could understand how that might be so, and would admit it as probable, but otherwise he must contest that observation.

Mr. Hoffman moved to strike out the above answer.

Motion denied.

Exception taken.

10

Q. Have you found in your reading any author giving support to the opinion that scarlet fever can be communicated from decomposing or putrifying animal tissue of matter?

A. I have not.

Q. Have you found any writer who gives support to the theory that scarlet fever can be communicated from decomposing fecal matter?

A. I have not.

20

By the Court.—What would you think, doctor, of excreta from a patient suffering from scarlet fever as a vehicle of transmission?

A. I should think it quite possible that such excreta might produce scarlet fever in a person exposed to the influence of it?

Q. Provided the excreta contained the seeds of the 30
poison from the person affected with scarlet fever?

A. That seems to me to be included in the question.

Q. And in other words, then, there would have to be the excrement of a person suffering, or who had been afflicted with scarlet fever, and that would have to be in a position to communicate it to a person before they could contract the disease from that source?

A. I think so.

Q. Suppose, doctor, that there were excreta evacuated by a patient afflicted with the scarlet fever, and it were 40

placed in pits 200 feet away from the Handley house, and they were entirely uncovered, could persons in the Handley house contract scarlet fever from the germs in that excreta?

A. I don't think it is likely, but I won't say it is impossible.

Q. Suppose the excreta were covered in the pits in the case I have just named, would it be possible for persons in the Handley house to contract the disease?

- 16 A. It would be still less likely than in the other case, but I cannot say it is impossible; I don't know whether it is impossible or not. There are good reasons for believing that the specific cause of scarlet fever is solid and not volatile, does not rise; I should think the small microscopic solid particles in fecal matter would be pretty safe if buried in a pit 200 feet away, and especially if they were covered.

- 20 *By the Court.*—May not the air become a vehicle for transmission of such minute particles, if they be the germ of the disease, for a considerable distance?

A. Supposing that this night-soil contained some solid glutinous substance, I should think these particles would adhere to that and not rise, and they would be still more likely to be kept in place if the pits were covered with earth.

- 30 Q. Then you mean to say that your idea of the germ is that it is a solid particle that could not be so buoyant as to rise upon the atmosphere?

A. That is my idea, and my reason is this, that the poison of scarlet fever adheres so long to clothing and other articles which have become saturated with it, that it could not be volatile; it seems it could not be subject to evaporation; there are cases on record where it is known to adhere to the clothing for eighteen months or even longer, showing that it is not likely to evaporate at all events, and therefore is probably solid.

- 40 Q. Aside from actual contact within a few feet from

the suffering patient, what is the common mode of conveying this poison?

A. The modes are innumerable. Clothing, or any matter, any article that has been in the room, and especially in possession of the person affected with the scarlet fever is liable to convey the disease to a person not protected; paper money is one way; I have seen cases where it seemed likely the disease had been conveyed that way, or would be conveyed that way.

Q. In reference to the water there at the Handley 10 place, one physician spoke about that having been tested; do you know anything about that yourself?

A. I employed a chemist to examine water from that spring.

Q. When?

A. Either the latter part of December, 1885, or the the first part of January, 1886; I can tell you when the report was made by looking at the date of it; this report is dated January 5, 1886; I spoke to the chemist probably two weeks before that, which would bring 20 it about December 20th.

Q. Was there anything indicating impurity?

A. I can tell you what he told me; that is, what the report says.

Q. Well, what was the result, doctor?

A. I have no personal knowledge of it; I did not make any examination myself.

Q. So far as the report goes, was it pure or not?

Objected to.

30

Objection sustained.

By Mr. Wills:

Q. Doctor, do you know how prevalent scarlet fever was during the fall and winter of 1885, in this county?

A. Yes, I have looked up that subject; I know what the records of the Board of Health office show.

Q. Was it confined to any particular portion of the 40 county?

A. According to the records of the Board of Health there were nine deaths in Jersey City during the month of November, 1885, from scarlet fever, and I presume it is fair to assume there were, at least, five or six recoveries for every death from that disease, which would make the number of cases between fifty and sixty, there would be, at least, that probably.

Q. Do you remember any particular localities?

A. I have a list here of the localities (reading from memorandum): A case reported on November 2, 1885, William———, No. 311 Third street, Jersey City. November 5th, C. P. Broderick, 425 Second street, attended by Dr. Keating. November 12th, Louis Woerbeck, No. 95———street, attended by Mrs. Sarah———. November 16th, Mary Lannigan, 113 Morgan street. November 18th, Mary Garden, 281 Railroad avenue. H. M. Smith. November 24th, Catherine J. Evans, 115 Green street. P. Righter. November 19th, G. M. Lynch, 244 Second street, A. Kierston. November 30th, John Chris, foot of Seventh street. November 23d, I myself was called to see a child that had died without medical attendance, and from the history given me at the house, I certified that, in my opinion, death was caused by scarlet fever; that was the case of a colored child, F. F. Johnson, 372 Fifth street. Those are deaths; I suppose that the cases of recovery would be, at least, five or six to one, perhaps more than that.

Q. Do you remember the cases you treated during that period where they did not die?

A. No, I am not engaged in private practice and they did not come under my notice at that time.

RECESS.

Q. You were speaking of some cases you treated yourself during that period?

A. No, sir; I did not; I told you I had not treated any.

Q. In your practice do you have cases of scarlet fever under good sanitary surrounding conditions?

A. I try to put them under the best possible sanitary conditions.

Q. Do you not have them arise, I mean, under those surroundings?

A. Oh, certainly, they are liable to occur anywhere.

Q. Can you instance one or two cases?

A. It seems to me it is a matter within the experience of everybody, that scarlet fever is liable to occur in 10
any house in any community; I do not suppose there is a house in this community in which it has not occurred, that has been lived in any length of time, any number of years.

Q. When you saw Mr. Handley did you notice his own personal condition of health?

A. I did not examine him with special reference to his health, but his health was such as not to attract my attention; he seemed to be about as ordinary; I saw nothing to indicate sickness; I am speaking of the 27th of 20
December; I saw him about twenty minutes on that day; subsequently I have seen him many times; he comes to my house and delivers oil to the landlady where I live.

Q. Did those visits continue between June, 1885, and mid-winter of 1886?

A. I have no positive recollection on that subject; I have nothing to cause me to recall those times; I merely state as a fact I have seen him at the house where I live quite a number of times, without making any note of the dates, except that particular occasion 30
when I met him at the house.

Q. Have you the medical works, or some of them to which you referred, here in Court?

A. I left them with you.

Q. Are these some of them?

A. These are some of them; one I left down in the office of the County Clerk last night; I have here one volume of Pepper's System of Medicine; Loomis work on practical medicine; one volume of Reynold's System of Medicine; the one I left down stairs was Zimpson's 40
Cyclopedia of Medicine, Vol. 2.

Q. Will you turn to the portion you spoke of in regard to scarlet fever in Loomis?

By Mr. Hoffman.—What is the point of that; is it the purpose to have it read?

By Mr. Wills.—It is the purpose to have him quote from such portions as refresh his memory in the work.

10

Objected to.

The Court.—That is not the proper course; he may verify himself, if he pleases, in the opinions he expresses here, by reference to practice and reading, he does not require them probably.

20 Q. Those are the works you referred to as substantiating your views?

A. Those are part of them, one is down in the office of the County Clerk; one I carried home last night.

Cross-examined by Mr. Hoffman:

Q. I gathered from what you testified to a while ago that during the fall months of 1885, that, in your judgment, there were about sixty cases of scarlet fever in
30 Jersey City?

A. No; during the month of November alone, 1885, there were, at least, sixty.

Q. And those cases were down in what you call the eastern portion of Jersey City?

A. In old Jersey City.

Q. Suppose, doctor, the excreta from those sixty persons had been deposited upon land within two or three or four hundred feet of Mr. Handley, and deposited in such a way as to be only partially covered in pits; so covered
40 as that the deposit would show upon the top of them,

and also deposited upon the surface of the land so that it ran down close to the house of Mr. Handley, would not that be a most excellent conveyance for the scarlet fever to Mr. Handley's family?

A. So far as I know, that is one possible way of conveying the disease.

Q. Could there be a much better way than that?

A. Oh, yes; contact; coming in the same room with them.

Q. Is the poison of scarlet fever absorbed into the 10 system by contact or by inhalation, or by both?

A. If the skin is broken, if there is an open wound, it can be absorbed by means of the blood vessels of the broken surface; the usual way is probably by the lungs.

Q. Take a case, doctor, of ordinary scarlet fever in a place where such a condition of affairs existed as the deposit of large quantities of fecal matter on top of the ground and in the ground, partially covered and running down close to the house where the scarlet fever 20 patients were; where the stench from those deposits was very great and very offensive in the house where the patients were; would not that condition of affairs largely increase the chances of death or a fatal result?

A. Possibly it might, but only——(interrupted.)

Q. That is all I want.

By Mr. Newbold.—He can be permitted to give the whole of his answer.

30

By Mr. Newbold:

Q. Finish your answer.

A. I was going to say, the only authority I remembered at present on the subject, said this——(interrupted.)

Q. I do not care about that; I only want your judgment; I am satisfied with that. Take the condition of affairs that I have described, doctor, the deposit of the 40

privies of a city like Jersey City, for, say, some months, extending through the term, on top of the ground, and in pits partially covered, running down to the house of the person, what, in your judgment, would be the result to the people living in a house within two, three or four hundred feet from it, with reference to their healthfulness, apart from scarlet fever; general healthfulness?

A. I should think, in a thickly settled portion of the
10 community, their health would suffer from it, in the country it might not.

Q. What; in your judgment, would be the condition of health in a place like Mr. Handley's, under the conditions I have named to you, the deposit of the fecal matter on a hillside?

By Mr. Newbold.—I object to that basis.

The Court.—This is cross examination.

20

A. Supposing the quantity to be very large, and supposing the air to be thoroughly saturated with the emanations from it?

Q. Yes, take it that way?

A. I should think the person's health would suffer; the person would suffer from nausea and headache, and various ways, perhaps, but especially from headache.

30 *Re-direct-examination by Mr. Newbold:*

Q. If scarlet fever had developed in Frank Hardy on December 4th, and on that day he had been near Sarah Handley, and on December 7th, the disease of scarlet fever developed in Sarah Handley, could you reasonably look to the Hardy child as the source from which the Handley child contracted the disease?

40

Objected to on the ground that the matter has already been examined about.

The Court.—Counsel says he omitted it; I will allow it to be asked on that ground; not any extended examination.

A. I could, supposing the contact had been close enough.

Q. What proximity would you call close enough?

A. At least within a few feet.

Q. If scarlet fever developed in Sarah Handley on Monday, December 7th, and scarlet fever had developed in the Hardy child on December 4th, could the Hardy child have contracted the disease from the Handley child?

A. No. The question, as I understand it, is this: could a case which developed itself three days before, have been caused by a case that did not develop itself until two or three days after?

Q. Yes, that is it.

A. No; in my opinion not.

20

DR. JOHN Q. BIRD, sworn on behalf of the defendant.

Direct-examination by Mr. Newbold:

Q. You are a practicing physician in this county?

A. Yes, sir.

Q. How long have you been practicing?

A. Between nineteen and twenty years.

30

Q. And in what particular part of the city has your practice been mostly?

A. I have been here on the hill for fifteen years—sixteen years.

Q. Have you ever been upon the ground where the pits are located that have been spoken of in this case?

A. Yes, sir.

Q. Near the Handley house?

A. Yes, sir.

Q. When were you over there?

40

A. I think it was about the 17th or 18th of December, 1885, somewhere along there.

Q. Did you examine the ground there?

A. Yes, sir.

Q. State what you found there?

A. Well, as near as I can recollect we found one quite large pit there that was covered with sand, and, as I recollect it, partially frozen at that time, the surface was, I think, as near as my memory serves me; at any rate it was covered with sand, I don't know the exact depth, of course, I could not state; there was really no evidence, as far as I could see, of any night-soil being there, except alongside the pit, there was different material that had evidently been in a privy, showing there had been night soil there.

Q. What do you mean, paper?

A. Paper and other stuff; kind of refuse matter.

Q. Not night-soil there?

A. No; I did not see any night-soil.

20 Q. Now, doctor, did you see any pits there that were not covered?

A. No, sir; not when I was there.

Q. Could you tell from the appearance of the pits how long they had been covered?

A. No, sir; I could not say.

Q. Was there any smell there at all?

A. Not at that time that I could discover; no, sir.

Q. Was there any night-soil around the pits on the ground?

30 A. No, I did not see any.

Q. Were you there at any other time?

A. I don't think I was; no, I don't remember whether I was there any other time or not; I am not positive of that.

Q. What kind of a day was it that you were there?

A. Well, it strikes me it was rather a mild day; I know I drove a side-bar buggy, and I got quite considerable mud on my driving.

Q. I mean as to being dry or damp?

40 A. I think it was a dry day; I am not sure as to that though.

Q. Did you go to the Handley house?

A. I did not go in the house, I was by the house.

Q. Did you make any examination near the school house at Marion, in the Marion Hotel?

A. I looked through the Marion Hotel; that is, the room that was used for school purposes, and in the cellar, and also examined the sewer on Broadway.

Q. In what condition did you find the sewer leading from that?

A. The sewer was broken in, it was in bad condition; 10 that is, it had been broken in and the matter was flowing out over the top of the sewer for quite a distance, and then, as I recollect, passed down in again; there were different openings.

Q. Leading from this school?

A. Well, it was coming down Broadway; the school is on Broadway.

Q. For what distance was that exposure of the matter in the sewer there.

A. Well, I don't know—it is probably—I don't remem- 20 ber; it may have been one hundred feet probably, and then went under ground again; possibly it may have been more; I don't know the exact distance; I know it ran over the top of the sewer, and then down under again.

Q. How far was that from the school?

A. Oh, a block and a half, I should think.

Q. Doctor, have you read upon the subject of scarlet fever?

A. Yes, sir. 30

Q. Have you had considerable experience in the treatment of scarlet fever?

A. I have treated quite a good many cases, yes, sir.

Q. What is your opinion as to the mode in which scarlet fever can be communicated?

A. Communicated from a pre-existing case.

Q. Only from a pre-existing case?

A. Yes, sir.

Q. Do you know of any authorities that hold that scarlet fever can be contracted from any other cause 40 than a pre-existing case of scarlet fever?

A. No, sir ; I do not.

Q. Do you know what distance through the atmosphere—or in your opinion, what distance through the atmosphere can the germs of scarlet fever be carried to inoculate a person with the disease?

A. Only a few feet, I should say, from one person to another.

Q. How far would you say?

A. I should not think it would be over four or five
10 feet.

Q. Is that your opinion based upon your experience and your reading?

A. Yes, sir.

Q. Is it your opinion that the contraction of scarlet fever has no more connection with stench—no more necessary connection with stench than with clothing or any other objects?

A. I don't think stench has anything to do with it; not with the contraction of the disease.

20 Q. What, in your opinion, doctor, is the most usual method by which scarlet fever is conveyed from a pre-existing case to another?

A. I should think the most would be the clothing.

Q. Did you have any scarlet fever patients in that month?

A. Yes, sir.

Q. Where were they?

A. I had one family, I am positive of; I am not sure whether I had one or two, but I had one family on
30 Broadway, and one on Wright avenue, and one on James avenue.

Q. Around this school house?

A. Yes; the one on Broadway was near the school, and the one on Wright avenue was near to it.

Q. Do you know whether they were children from that school or not?

A. The children from those families attended that school, yes.

Q. You said one was the Bright family?

40 A. No; one family was the name of Holden, lived

on Broadway. I said Wright avenue, the family of Van Wattering.

Q. How many children were there in the Holden family?

A. I think two or three; I think three, as my recollection serves me now; I know one of them was very sick; and there were two, and I think three, as I remember.

Q. About what were their ages?

A. Well, they were between the ages of five and ten; 10 I think, five and nine, if I am not mistaken.

Q. And what other children did you see?

A. The family of Van Wattering, on Wright avenue.

Q. How far was that from the Marion school?

A. Well, Wright avenue—the school is on the corner of Broadway and Wales avenue, and Wright avenue is the next street, and it was up that street, I suppose, somewhere within between half a block and a block; it was No. 33.

Q. Any other children there?

20

A. In that family?

Q. No, no; in any other family?

A. I think I had a family on James avenue, across the railroad. I have forgotten their names; I think the name was Burns; I am not positive.

Q. How many children had it there?

A. It strikes me two; I am not positive; I am more positive on account of the mother; she had consumption, and she was sick and nursed these children with the scarlet fever, and it was impressed on my mind that she ought to be in bed herself rather than taking care of the children.

Q. Did you hear the Van Wattering child named by the school teacher, Miss Lynch?

A. No, I did not.

Q. What was this Van Wattering child you attended?

A. That I could not tell you; I don't remember; I don't think that was the one that went to school.

Q. Do you know her name?

A. No.

40

Q. Or age?

A. No ; I don't remember anything about it.

Q. This was in the month of December, 1885, you say?

A. Yes, sir.

Q. Did you have any other family north of the railroad?

A. Not at that time, I don't think, I had some families there, one family, but I don't think it was at that
10 time, I am not positive about that, on Vanwinkle street, but I could not say as to the time.

Q. Do you know whether any of the Van Wattering children, in the family in which you attended this case, attended the school at Marion there?

A. They said they did, yes, sir.

Q. Did you visit the Mollinbrook factory?

A. No, sir.

Cross-examined by Mr. Hoffman :

20

Q. Do you remember, doctor, anything about the date you visited these families you speak of?

A. I visited the Van Wettings on the 13th of December, commenced.

Q. Is that all you recollect about the families as to date?

A. I commenced on the Van Wattering family on the 13th of December, and attended that case until it was well, and I commenced in the Holden family, I think,
30 on the 16th.

Q. These cases, then, were all after the death of the Handley children?

A. I don't know when they died.

Q. You say the germs of scarlet fever can only produce that disease when the well person is within, at least, four or five feet of the patient; is that so?

A. No, I didn't say so.

Q. Yes, you did; the germs would only carry four or five feet; did you mean that or not?

40 A. I don't understand saying that.

Q. That is not so then ?

A. That would be in the open air, and there would be certain considerations connected with that ; the scales of scarlet fever might be carried further than that.

Q. Carry as far as the air would carry them, wouldn't they ?

A. Yes.

Q. It don't make a bit of difference as long as the germs are carried, and they get into the blood, they would produce scarlet fever ?

10

A. Yes.

Q. Even if it were a quarter of a mile ?

A. I don't think it would be carried as far as that, as far as my reading goes; a great many men have studied it.

Q. The germs are infinitesimal, are they not ?

A. I don't know.

Q. Don't know anything about it ?

A. Don't know what it is.

Q. Never seen them ?

20

A. No.

Q. Well, if they were infinitesimal, they could be carried, I suppose, just as far as any conveyance would bear them, if it was half a mile or a mile ?

A. Yes, sir ; they might.

Q. Well, wouldn't they ; there would be nothing in the air to kill their life ?

A. I don't know whether there would or not.

Q. I understood you to say a while ago, the best method of conveying this disease was by clothing ?

30

A. Yes, sir ; the germs are carried in the clothing.

Q. These germs you speak of now, are something you have never seen and don't know anything at all about them ?

A. I don't know positive what it is.

Q. Yet these things you don't know anything at all about are carried by way of the clothing of a diseased person, a person who has had scarlet fever ?

A. The poison can be communicated in that way, yes, sir ; I am satisfied of that.

40

Q. There is no trouble about its being carried, I suppose, through the medium of the human excrement?

A. I don't think it is carried that way, myself.

Q. Why not?

A. As far as my reading and observation goes, it is not.

Q. Suppose the clothing or the rags that are used in scarlet fever—they use bandages and rags and all sorts of things in scarlet fever, don't they?

10 A. I don't know as they do, I never saw them.

Q. What do they cover the patient with?

A. Clothing.

Q. Then take the clothing, the inside clothing, the linen for instance, and portions of that being thrown into privies, and the contents of that privy being taken out and thrown upon a field, and a man's house being within two or three hundred feet of the field, what is your opinion about scarlet fever being carried that way?

20 A. I am not an expert and cannot give an opinion on that; so far as my observation goes, I should say it would not.

Q. I understood you to say just now, it would carry in clothing better than any other way?

A. Not in that way. I mean, any portion of clothing worn by a scarlet fever patient put away in a drawer; my observation goes that way.

30 Q. Now, the process of desquamation, that is, scaling off of the skin, take the scales from the dead skin, or deceased skin, and that being thrown into a water closet, and carried, would not that produce scarlet fever too.

A. Not as I know of.

Q. Not as you know of. You don't know anything at all about it, do you?

A. Very little.

Q. As a matter of fact, do you know how scarlet fever is produced, how it is carried?

A. No, sir.

40 Q. You don't know anything at all about it?

(Not answered.)

Re-direct-examination by Mr. Wills :

Q. The scales you speak of which are thrown off by the skin at a stage of the disease do not form upon the mucus membrane of the body, or the inside of the bowels, do they ?

A. No, they form on the inside of the skin.

Q. So the only way they could get into the foeces would be by their being thrown in by somebody ?

A. Yes, except they may be taken off of the body 10 into vessels used for that purpose.

Q. When you speak of its being communicated by clothing, you speak from your personal experience ?

A. Yes, sir.

Q. You mean by that, the patient breathing in the room, and the person or the clothing being in that room with the patient ?

A. Well, they must come in contact wherever they may be.

20

THEODORE HORNBLOWER, sworn on behalf of the defendant :

Direct-examination :

Q. You are a practicing physician here in Jersey City ?

A. I am.

30

Q. Do you remember of attending the children of Mr. Howard, at Marion ?

A. Yes, sir.

Q. In December, 1885 ?

A. Yes, sir.

Q. What were they sick with, doctor ?

A. A mild form of scarlet fever.

Q. And do you know how many of them were sick all together ?

A. I think three or four.

40

Q. Only one of them died, I believe?

A. Yes.

Q. Was the father of those children named Frank Howard?

A. I could not say.

Q. What street was it, do you remember?

A. Wallace avenue.

Q. Do you remember, or could you tell us how long the child that you first saw had been sick?

10 A. I suppose about three days; two or three days.

Q. Was the case when you saw it clearly developed into a case of scarlet fever?

A. Yes, sir.

Q. Were these children at that time attending school, or had they been?

A. I think some of them were.

Q. Do you know of your own knowledge now, whether or not the mother of that child had a short time previously attended the funeral of a child that died
20 of scarlet fever?

A. If my memory serves me, I was informed so.

Q. Of your own knowledge, do you know anything outside of what she told you?

A. No.

Q. Doctor, as a physician, what is your opinion as to how scarlet fever can be communicated?

A. Most always by a pre-existing case; there must be contact to produce it.

Q. Do you know what the authorities give as the distance through which, in the atmosphere, the disease can
30 be carried?

A. A short distance, I suppose three or four feet.

Q. Does the contraction of scarlet fever have any necessary connection with stenches or odors?

A. No.

Q. Do you know of any medical authority that claims that it does have such a connection?

A. No, sir; not that I know of.

40 *Cross-examined by Mr. Hoffman:*

Q. If you had scarlet fever, and I was sitting here

perfectly healthy, I could not contract scarlet fever from you, could I? That would be impossible?

A. The chances would be in your favor, not to contract it.

Q. I would have to get closer to contract it.

A. Yes.

Q. No possibility of my contracting it unless I got closer?

A. I don't think so.

Q. Then will you tell me how in the world the scar- 10
let fever became so prevalent?

A. I suppose these people attending the funeral, and coming in contact, and getting it in their clothes; they would have to be very close; some of these women go into a house and kiss a child that has scarlet fever. It could be carried by desquamation, the particles coming off; it could only be carried within five or six feet.

Q. That is, these particles being carried in the air five or six feet, they die and become perfectly innox- 20
ious?

A. Yes.

Q. What is it that de troys them?

A. I suppose the oxygen in the air destroys them.

Q. Where did you get that idea? You never saw a germ in your life of that disease; did you?

A. No, sir, nor anybody else.

Q. Now, isn't it a matter of fact, that that theory you have just given, is the purest guess work in the world? 30

A. Some writers name it.

Q. Give me the name of one that gives any such statement as that, that the oxygen in the air kills the germ in the air when it rises four or five feet; if you will give me a writer that states that, I will be obliged to you?

A. I could not state what writer.

Q. You don't know what writer states that, do you?

A. Not at present.

Q. You say stench has no connection with scarlet 40
fever?

A. No, sir.

Q. None whatever?

A. None at all.

Q. A scarlet fever patient would be just as likely to get well in the worst possible stench, as if the air were pure?

A. Just as quick.

Q. If a patient had scarlet fever in a privy, he would get well just as quick as if it was in the open air?

10 A. Just as quick; yes sir.

JOHN R. EVERT, sworn for defendant:

Direct-examination by Mr. Newbold:

Q. What is your profession?

A. I am a physician.

Q. Where is your place of business?

A. No. 137 Bergen avenue.

20 Q. You have practiced in this city how long?

A. Fifteen years.

Q. Have you ever been to the grounds near Handley's house, where the pits are?

A. Yes, sir.

Q. When were you there?

A. I was there in December, I believe, and a few days ago.

Q. Were you there in December, 1885?

A. I was.

30 Q. Did you see the place where the pits were:

A. In December, 1885?

Q. Yes.

A. Yes, sir.

Q. Tell us what the condition was of the premises there?

A. Well, the ground was covered with sand, and no smell.

Q. No smell at all?

A. No smell that I could detect or did detect.

40 Q. Was there any night-soil upon the surface?

- A. No, sir.
- Q. Any evidence of it?
- A. No, sir.
- Q. Did you go to the Handley house?
- A. I went by the Handley house.
- Q. You say it was in December, 1885; what time, with reference to the death of the Handley children?
- A. I guess it was afterward.
- Q. Well, about how long?
- A. I don't know. 10
- Q. About the time?
- A. About that time.
- Q. Did you examine the house of Handley?
- A. No, sir.
- Q. Did you go to the Mollinbrook factory?
- A. Yes, sir.
- Q. What did you find there?
- A. I found casings drying on a line inside; I was told it was a casing factory.
- Q. You did not measure the distance of that factory 20 from—
- A. No, sir.
- Q. Did you examine the premises around the casing factory?
- A. In the rear, yes, sir. There was a good deal of decayed animal matter; a great deal of stench.
- Q. What kind?
- A. I suppose from the refuse of the casings.
- Q. Scrapings?
- A. Yes, sir; scrapings, apparently so. 30
- Q. What was the appearance of the premises as to how long they had been there; was there any water around there?
- A. No, sir; the tide-water at certain tides may reach where the refuse matter was thrown; I believe that was the intention to get it off that way.
- Q. Certain seasons of the year?
- A. Yes.

By Mr. Hoffman.—He don't say so at all.

Q. This matter that was there, in what condition did it appear, as to the length of time it had been there?

A. I could not tell from memory; there was a great deal of smell; I didn't go very near to it.

Q. What surface of ground was covered by it?

A. Oh, about 25 feet by probably 50 feet.

10 Q. And did you notice what its condition was, with reference to putrefaction?

A. Only by the smell.

Q. You did not go near enough to examine only by the smell?

A. No, sir.

Q. At the time you were there did you go there in a wagon?

A. I did.

Q. Do you know whether the deepest of those pits
20 were then firm or not; did you drive over them?

A. I don't remember driving over them; Mr. Stur-
gis was with me, and I think he walked over one of
them.

Q. You detected no smell there at all from the
pits?

A. No, sir.

Q. In what direction was Mollinbrook's factory from
the Handley house?

A. I think about northwest, or north from west,
30 nearly north; I think the pits, the house, water-closet
and casing factory were north of a line.

Q. That is, the pits were to the southeast, you mean,
of the house?

A. Yes, sir—south.

Q. And the gut factory northwest from the house?

A. Yes, sir.

Q. So that would bring them in a line?

A. In a line, yes, sir.

Q. Doctor, what is your opinion as a physician, based
40 upon your experience with scarlet fever, and your read-

ing in regard to it, with reference to the method by which it can be communicated?

A. By contact.

Q. By contact only?

A. Yes, sir; that is, by contagion and infection.

Q. From a pre-existing case?

A. From a pre-existing case.

Q. Do you know of any authority that holds that it can be communicated through—(interrupted).

A. I do not.

Q. (Continuing.) Anything but a pre-existing case? 10

A. No, sir.

Q. And what distance through the atmosphere can it be communicated according to the authorities?

A. Well, the authorities say three or four feet; two or three feet, I think, one authority says.

Q. What is your opinion as to the effect of the atmosphere upon particles coming from a person diseased?

A. Well, I should believe there was something in the atmosphere to destroy the germ, render it innocuous to a certain extent, else infection would take place at a greater distance than three or four feet. 20

Cross-examined by Mr. Hoffman:

Q. Do you know, doctor, as a matter of fact, that infection does not take place at a greater distance than three or four feet?

A. I do not. 30

Q. As far as you know, it may take place 20 feet or 100 feet?

A. I don't believe it.

Q. As far as you know, I don't ask what you believe, now?

A. I don't know, only what the authorities say.

Q. Have you ever investigated that at all yourself?

A. Not to any extent.

Q. Really, you don't know anything about it?

A. Only what the books say. 40

Q. And those books are written by doctors like yourself?

A. Yes, sir.

Q. What books do you refer to?

A. Bepper; Reynold's System of Medicine.

Q. The same books that have been produced here to-day?

A. Some of them may have been produced.

10 Q. Doctor, take the skin that comes off from a scarlet fever patient, in your judgment, does that contain the germs of the disease?

A. It is said to.

Q. I don't ask what it is said to, I ask, in your judgment?

A. It does, in my judgment, because the disease is more contagious at the time it is given off by the skin.

20 Q. Now then suppose, by any possibility, some of that skin should be carried in any way you choose, say half a mile, and get into the blood of a patient half a mile off, would not that produce scarlet fever?

A. I don't know as there is any record of scarlet fever being produced that way.

Q. I ask in your judgment?

A. I don't believe it would; I believe the germ of scarlet fever is a solid substance, not volatile, and does not easily mix with the atmosphere; it is likely to stick to the clothing.

Q. Could not it be blown by the wind; it is not so heavy the wind would not carry it?

30 A. I could not say.

Q. In your judgment?

A. I cannot say.

Q. Is it heavy enough to be seen?

A. I never saw any of it.

Q. I mean solid enough to be seen?

A. I never saw anything of it.

Q. Well, when there is scarlet fever in a neighborhood, isn't that likely to be spread all around that neighborhood?

40 A. Yes, sir.

Q. And you think that only spreads around the neighborhood by persons coming in contact with the sick party at a distance of three or four feet?

A. Not necessarily the sick party, the clothing, bedding, books, papers, money or something that has been infected.

By the Court.—Do I understand you to say, doctor, you think there is that in the atmosphere which in a short time destroys the disease? 10

A. I say there may be; I do not express any opinion; I do not know why it is that the contagiousness of scarlet fever is limited to so short a distance as three or four feet; I cannot explain why it is.

Further cross :

Q. You don't believe it, doctor, do you? 20

A. I do believe it, yes.

Q. You say it can be carried by paper; suppose paper that has this poison upon it is blown by the wind half a mile?

A. I think it might be carried that way.

Q. Suppose it was on paper that is thrown into a water closet, and the contents of the water closet had been carried and placed upon land within three or four hundred feet of a house, do you suppose the paper would carry that disease to the inhabitants of that house? 30

A. I do not know the circumstances which would be necessary for it to retain its vitality, but I believe under some circumstances it does live four or five months; in one case of a house with a thatch roof, the house was disinfected but the disinfectant did not disinfect the roof.

Q. That may be carried in the street some distance and produce the disease, may not it? Suppose the poison germs are in clothing, and it has been said that it lives there and retains its vitality eighteen months; 40

giving you that statement, would you say that the atmosphere was deleterious to its vitality? You could not exactly get those clothes out of the atmosphere, could you?

A. No.

Q. Then the atmosphere would not kill it, would it?

A. I don't know whether it would particularly that way, or by the atmosphere diluting the poison.

Q. But I am talking about a case where it is said
10 here to-day that it will live in clothing for months.

A. I have heard of it being destroyed by the atmosphere when it was in the clothing, only in time; the atmosphere cannot operate on it to the extent it could if it was floating in the atmosphere; it is protected; it lies close to a surface; the clothing protects it.

Q. Covers it up like clothing does a man. Doctor, I guess we don't know much about it, do we; as a matter of solid experience, we don't know much about it, do we?

20 A. I don't know what the germ is; I never saw it.

PATRICK WOODS, sworn on behalf of the defendant:

Direct-examination by Mr. Wills:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. And your place of business is where?

A. 28 Wallace street.

30 Q. How long have you lived there?

A. Twenty-five years.

Q. You have heard the testimony in this case, that you were arrested for dumping a load of night-soil, on the 20th of August, somewhere near Mr. Handley, the plaintiff's house?

A. Yes sir.

Q. Where did you put that night-soil?

A. I put it into a pit.

Q. Did you cover it?

40 A. Yes, sir.

- Q. What did you cover it with ?
 A. With sand.
 Q. How much sand did you cover it with ?
 A. I generally put from two and a half to three feet.
 Q. Did you cover that two and a half to three feet ?
 A. Yes, sir.
 Q. Do you know where you took that load from ?
 A. St. Paul's avenue ; Mr. Heritege's house.
 Q. Do you know whether there was any scarlet fever 10
 in that house, or not ?
 A. Yes, sir ; I know well there was no scarlet fever.
 Q. There was none ?
 A. No, sir.
 Q. Do you know when the dumping scow of Jer-
 sey City broke down ?
 A. Yes, sir.
 Q. When ?
 A. Eight or ten days previous to that time.
 Q. Previous to that dumping, when you were arrest- 20
 ed ?
 A. Yes, sir.
 Q. You had been in the scavenger business prior to
 that ?
 A. Yes, sir.
 Q. And where had you been carrying your night-
 soil ?
 A. Morgan street dock.
 Q. And there put it on a float to be carried down the
 river ? 30
 A. Yes, sir.
 Q. And you had not dumped night-soil previous to
 that time anywhere near Mr. Handley's house ?
 A. No, sir.
 Q. Then if there was any dumped there in June or
 July you did not do it ?

Objected to.

Objection sustained.

Q. You got a permit, did you, to do this ?

A. Yes, sir.

Q. You got a permit on what date ?

A. That I can't say.

Q. You say it was about ten days previous to the time of your arrest that the scow broke down ?

A. About ten or twelve days previous to the time I was arrested.

Q. That was the time you got the permit ?

10 A. Yes, sir.

Q. And did you ever dump any night-soil there upon the surface of the ground and leave it ?

A. No, sir; never. I never dumped a load on the surface of the ground.

Q. Did you dump any in pits and leave it uncovered ?

A. No, sir; never.

Q. Did you know whether any one else did ?

A. I seen Bremmer there dumping on the top of the ground.

20 Q. Did you dump any on the surface of the ground near Mr. Handley's house ?

A. No, sir; never.

Q. So that it ran down to his house ?

A. No, sir, never; it could not run to his house.

Q. Did you dump any watery substance or any contents of a privy vault in that way ?

A. No; never.

Q. This night-soil you took there—do you remember the families you took it from ?

30 A. All around the neighborhood where I live.

Q. Were any of these people affected with scarlet fever, to your knowledge ?

A. There has never been any scarlet fever, to my knowledge, in those houses since I have been there. I am well acquainted with these families; I see them every day in the week; I am acquainted with their children.

Q. Can you say whether you would have known of a case of scarlet fever, if it had occurred in that neighborhood ?

40 hood ?

Objected to.

A. Well, it could not be there without my knowing it.

Q. What was your power of observation as to whether any of the children of those families had the scarlet fever?

A. Of course, if they had scarlet fever I would see—come around and hear them speak of it.

Q. You lived where you could see the doors?

A. Yes, sir, I am around there every day in the week. 10

Q. And you are about in the day time?

A. Yes, sir; around every day from ten o'clock to ten in the evening.

Q. And then you go out on your business as night scavenger?

A. Yes, sir.

Q. Now, you say you had a permit?

A. Yes, sir.

Q. Who did you get it from?

A. Mr. Dalton. 20

Q. Was it in writing?

A. Yes, sir.

Q. Which Mr. Dalton do you mean—the one connected with the Board of Health?

A. Yes, sir.

Q. Did you see Mr. Benjamin in connection with it after you were arrested?

A. Yes; after I was arrested one day, Mr. Benjamin fixed it for me.

Q. You went on carrying on that business until when? 30

A. Well, I am carrying it on yet.

Q. I mean dumping down there near the Handley house. When did you stop with relation to the deaths of these children?

A. Well, I don't suppose I dumped any down there for a month before the children died.

Q. How many loads in all did you take there during that period, between ten days before your arrest and a month before the death of the Handley children? 40

A. Well, I took between fifteen and eighteen loads.

Q. And you know all the houses you took them from?

A. Yes, sir; every house.

Q. Did you ever omit to cover every load?

A. No, sir; I never left there without covering a load.

Q. Did you see Mr. Handley that day that you were arrested?

19 A. I saw him that night.

Q. How did he appear to you, sick or well?

A. Well, he appeared in as good health as any man would want to be.

Objected to.

The Court.—He may have a sort of general knowledge. It goes to the value of the evidence rather than to the relevancy of it.

20

Q. From your observation, what would you call the distance from Handley's house to the nearest pit?

A. Well, I suppose it must be close on to 200 feet.

The Court.—One man measured it with a tape-line, and it is hardly worth while to have anybody guess at it after that.

Cross-examination by Mr. Hoffman:

30

Q. When did you commence to dump there?

A. About eight, or nine, or ten nights before I was arrested.

Q. When were you arrested?

A. That I can't say.

Q. What month?

A. I never kept no track of it; I don't know, sir.

Q. What time in the summer was it, early summer or spring?

40

A. No, it was in the fall, I guess.

Q. You cannot tell?

A. No, sir; I kept no account.

Q. You were arrested?

A. I was arrested; I know that.

Q. And indicted?

A. Yes, sir.

Q. And convicted?

A. Yes, sir.

10

Mr. Wills.—I object to that as affecting this witness in this case, and ask to have it stricken out.

The Court.—The question may be asked under our statute simply as bearing upon his credibility. It may have very little effect upon that.

Q. Who dug the pits?

20

A. I did.

Q. How many did you dig?

A. Five or six.

Q. Did you dig the one next to Handley's house, the one within two or three hundred feet of his house?

A. Yes, sir; I dug them all.

Q. When did you dig that one, when you first commenced to dump, or not?

A. Yes, sir.

Q. Did you dig it all alone by yourself?

30

A. No, sir.

Q. Did you have somebody else to help you?

A. Yes, sir.

Q. How deep did you dig them?

A. I guess it was dug about five feet deep; about four feet by eight feet long.

Q. How many loads did you put into them altogether?

A. Well, one load; two loads would fill any of them.

40

Q. Then you would bring the loads there and dump it right into it, and two loads would fill them up?

A. Yes, sir.

Q. Fill them up to the level of the ground?

A. No, sir.

Q. How near to the level of the ground?

A. About three feet under the ground.

Q. How many loads did you put in this pit?

A. I never put more than two in any of them.

10 Q. You were carting there after the scow broke down how long a time?

A. Well, I was not carting steady; sometimes I took a load of a night; sometimes I wouldn't take a load in three nights, or five nights; altogether I took up fifteen or eighteen loads. I guess there was five pits.

Q. And you had fifteen or eighteen loads and put two in a pit? What did you do with the rest of them?

A. I might have a single wagon; of course it would hold more.

20 Q. A single wagon would hold more?

A. The pits would hold more.

Q. You didn't have a single wagon up there at all, did you?

A. Yes, sir; some nights I had a single wagon and some nights a double wagon.

Q. You didn't drive a single wagon up there a single night, did you?

A. Yes, sir; I took more single loads than I did double loads.

30 Q. How many double loads did you take?

A. I think it was five.

Q. How many single loads did you take?

A. I took ten or eleven; somewhere that way.

Q. You don't know, do you?

A. No, sir.

Q. You didn't dump any on the ground at all?

A. No, sir; I never dumped a shovelful on the ground.

Q. You put it all into the pits?

40 A. All into the pits.

Q. And you covered the pits up?

A. Yes, sir.

Q. And you covered them up to the top?

A. The shallowest cover of any, I think, was two and a half feet.

Q. Did you put two loads into a pit before you would cover it?

A. No.

10

Q. You would take one load and put it into the pit, then you would cover it, wouldn't you?

A. Yes, sir.

Q. Now, take a double load, for instance; how many feet would that make in the pit?

A. Well, I can't tell; I never measured it.

Q. How many feet high, I mean; you can tell pretty nearly by your eye, without measuring it; about three feet, think?

A. No.

20

Q. Four?

A. No.

Q. Do you mean not so much?

A. Not so much.

Q. Well, how near, three feet; pretty close to it, wouldn't it?

A. No.

Q. Well, a double load—how many feet would that make?

A. About eighteen inches.

30

Q. Then you would put two and a half feet of dirt on that; you would put in your load first; that would fill up about eighteen inches; then you would put two and a half feet on top of that?

A. Yes.

Q. Then you put in another load; that would make eighteen inches; then you would put in two and a half feet more; that would make nine feet; there you have it about four feet above the hole; how do you account for that; is that too much arithmetic for you?

A. There is a mistake in it somewhere.

40

Re direct-examination :

Q. You are not versed in the higher arithmetics, are you?

A. No, sir.

Q. You are not competent to calculate the area of a vessel, or anything of that kind?

A. No, sir.

10 Dr. JOHN HENRY, sworn on behalf of the defendant:

Direct-examination by Mr. Newbold :

Q. Are you a practicing physician in Jersey City?

A. Yes, sir.

Q. Have you been upon the lands adjoining Mr. Henry's house, where the pits are located?

A. Yes, sir.

20 Q. When?

A. December 20th, 1885.

Q. In what condition did you find them; was there any smell there?

A. I didn't smell any.

Q. What sort of a day was it?

A. Soft weather, I think; I think the ground was a little soft.

Q. And do you know whether the atmosphere was moist or not—damp that day?

30 A. I am not sure about it, but I think it was, somewhat.

Q. Did you see any evidence of night-soil, or any night-soil exposed to view there at all?

A. I did not see any.

Q. Well, you went to look, didn't you?

A. Yes; I saw the pits, but not the night-soil.

Q. Was there any night-soil in the pits exposed to view?

A. Not that I saw.

40 Q. Was there any night-soil upon the ground around the pits?

A. I didn't see any.

Q. Did you go to Mr. Handley's house?

A. Yes, sir.

Q. Did you go to the Mollenbrook factory or not, and were you over to the casing factory?

A. Yes, sir; I was there.

Q. When did you go there?

A. I went with this committee that went down there on the same day.

Q. On the 20th of December?

10

A. Yes, sir.

Q. You went as a committee from where?

A. The City Board of Health.

Q. And what did you find at this Mollenbrook factory?

A. We didn't find much about the factory in sight; we didn't get inside of it; the surroundings were very poor—not very good. I noticed the drain that ran down behind it towards the river.

Q. Did you examine any of the refuse that was 20 around there?

A. No, sir. We walked along the drain and looked at the drain.

Q. What was the matter with that?

A. Well, its condition was pretty filthy, that was all that was the matter with it.

Q. What did it contain?

A. Everything, I guess, that you could get into it.

Q. Give us some idea, doctor? Did you know what was carried on in the building?

30

A. Cleaning of intestines.

Q. Could you tell whether what you saw was scrapings from intestines?

A. I didn't look; I simply saw this drain in a filthy condition; it was not cleaned out as it should be; it was not as it should be to carry off anything; it looked like a drain that had been allowed to fill up, stagnate and ferment, and everything else that was unpleasant.

Q. What is your opinion from your experience with scarlet fever and your reading upon the subject as to 40 how it can be communicated?

A. Scarlet fever is only communicated by contact, either direct or indirect—either through the patient himself or through some article or person that has been about him and carried it to the other.

Q. Can it be communicated or contracted excepting from a pre-existing cause?

A. I don't think so.

Q. Has it any necessary connection with stench?

A. No, sir.

10 Q. Or has stench anything to do at all with the contraction of the disease?

A. No, sir.

Q. How far is it, in your opinion, that the disease can be conveyed through the atmosphere from the person suffering from the disease to a well person?

A. It is claimed it is only within one or two feet—two or three feet—a small distance.

Q. Do the authorities agree upon that?

A. Most of them that I have consulted; yes, sir.

20 Q. Do you know what the theory is as to why it won't carry further than that?

Objected to.

The Court.—If he knows any reasons he can state.

A. It is claimed that the contagion of scarlet fever cannot become volatilized; it is something solid, so to speak, and must attach itself to some article, and has a
30 great affinity for anything that comes in contact with it.

Q. Is it your opinion that after passing through that distance of atmosphere it loses its poisonous quality?

(No answer.)

The Court.—Have you any knowledge on that subject?

40 A. I have no knowledge, excepting what the authorities claim.

Q. Your reading upon that subject has been considerable, has it not?

A. Yes, sir.

Q. What is your experience as to how far it can be carried?

A. I have no experience on that point, because I never looked it up. I take the authority, the text books, for that, without looking further.

Q. You mean you have never experimented?

A. No, sir.

Q. You have accepted the text books upon that point? 10

A. Yes, sir.

Q. And is that your opinion, doctor, from your reading, that it cannot be conveyed more than a few feet through the atmosphere?

A. Yes, sir.

By the Court.—What is conveyed, doctor, do you know that? 20

A. It is not decided what it is; it is something.

Q. You cannot very well tell how it can be conveyed, if you do not know what it is, do you?

A. It is something of a solid nature.

Q. It is not of such high specific gravity that the wind cannot raise it?

A. I presume so, provided it does not come in contact with something to which it can adhere.

Q. Isn't it true that the medical authorities have not determined what the germ of scarlet fever is? 30

A. Yes, sir.

Q. There is some speculation upon the subject, is there not?

A. Yes, sir.

Q. But there has never been a cultivation of what is supposed to be the germ of scarlet fever, has there?

A. Yes, sir; they have cultivated what is supposed to be the germ of scarlet fever, and produced something like a— 40

Adjourned to May 4th, 1887, at ten o'clock, A. M.

JERSEY CITY, MAY 4th, 1887.

Continuation of examination pursuant to adjournment.

Appearance as heretofore.

10

By Mr. Newbold.—If it please the court, we subpoenaed Mr. King, the representative of the Standard Oil Company, to come here and bring the books of that company to show their dealings with Mr. Handley; to show when they sold oil to him, and whether there was a break in their dealings with him. Mr. King comes here this morning and says as his reason for not bringing the books here, and why he refuses to bring them, that their policy is not to produce their books. I told him that we demand those books, and are entitled to have them here in court. Your Honor will see what our desire is: to show whether Mr. Handley did get oil right along after the death of his children, or whether there was any break; he says that he was compelled to break off for two or three months.

20

30

By the Court.—Did he say he did not buy oil? You want to show that he discontinued his purchases; my understanding is that he has not said that he did. I doubt whether you can compel a stranger to bring his books in in such a collateral matter as that. It is entirely a private matter; it is not a public matter; indeed, I doubt very much whether it would be necessary to prove the fact, if the books could be brought here; it is not of any consequence, I think, un-

40

less it is in contradiction of the statements of the plaintiff.

By Mr. Newbold.—That is our purpose to show that he has falsified in that.

WILLIAM R. KING, sworn for defendant.

Direct-examination by Mr. Newbold :

10

Q. Mr. King, you are the representative of the Standard Oil Company in Jersey City?

A. I am.

Q. Where is your place of business?

A. Corner of First and Provost streets, Jersey City.

Q. And you are the manager of the business?

A. I am.

Q. And the salesman?

A. I am.

Q. Do you know Mr. Handley?

20

A. I do.

Q. Do you remember his dealing with you in the fall of 1885.

A. I do.

Q. How were you selling him oil?

A. As he desired to purchase it; at any time he wished.

Q. About how often?

A. I could not swear to the exact number of times; according as he needed it; I could not swear positively 30 to any amount.

Q. I don't want to fix exactly the amount.

A. Nor how often he purchased it, either.

Q. Well, as often as once a week?

A. Yes, sir.

Q. And oftener than that, do you think?

A. On some occasions, yes, sir.

Q. In the month of December, 1885, do you know whether you sold him oil in that month?

A. I do.

40

Q. And how often during the month?

A. I do not.

Q. Well, in a general way, as often as once a week during the month?

A. At least, once a week, not every week though; I could not swear to every week in the month of December.

Q. Could you swear there was more than one week skipped in the month of December?

10 A. I could not.

Q. Now, then, have you looked at your books?

A. I have.

Q. You refused, I believe to bring them here, Mr. King, did you?

A. Yes, sir.

Q. Was there any week during the month of December, 1885, when you did not sell Mr. Handley oil?

A. To the best of my knowledge and belief, I think there was; I could not say what week it was.

20 Q. Was there more than one week?

A. I think there was not more than one week; I could not swear positively.

Q. In the month of January, did you sell him oil as usual along?

A. I sold him oil in the month of January; I could not say whether as usual or not.

Q. Did you notice any difference in the month of January from any other month?

A. Not comparing them, I could not swear to it.

30 Q. You say you looked at your books covering those dates?

A. Yes, sir.

Q. Now, can you say there was any difference in the bills you sold him?

A. I could not say there was any difference; I could not tell, because I haven't compared them with other months.

Q. You were the man that did the business?

40 A. Yes, sir.

By Mr. Hoffman.—This is cross-examination now.

Q. And you made the sales?

A. I did not make the sales.

The Court.—That is pressing your own witness.

Witness.—Mr. Handley does not purchase directly from us; he purchased from one of our men; the goods are not always delivered from our depot. 10

(Not cross-examined.)

JOHN B. BURK, sworn on the part of the defendant:

Direct-examination by Mr. Newbold: 20

Q. What is your business?

A. I am undertaker, and coroner also.

Q. Were you the undertaker that buried the Greenwald children in 1885?

A. Yes, sir; I buried two that belonged to Mr. Greenwald.

Q. Where was the residence of the Greenwalds?

A. I think they lived in Wallace avenue, Marion.* 30

Q. And were you the undertaker that buried the Brecht children?

A. Yes, sir.

Q. Where was their residence?

A. In James street; that is north of the railroad; there were three of them.

(Not cross-examined.)

JOHN C. ROBBINS, sworn on the part of the defendant :

Direct-examination by Mr. Newbold :

Q. Do you know Mr. Handley ?

A. Yes, sir.

Q. Do you remember having had any conversation with him after the death of his children, and around about that time ?

10

A. Yes, sir.

Q. In reference to this matter ?

A. Yes, sir,

Q. What was it ?

A. I had a conversation with him on the block above the court house here, and I expressed sympathy with his bereavment, and I called his attention to the fact that he was suing these parties, what did he expect to get, and his reply was he expected to get money out of them.

20

Q. Was that before the criminal proceeding ?

A. That was in the paper that he was suing some parties.

Q. Was that before the criminal proceeding ?

A. No ; it was after ; I don't know ; I saw it in the paper ; it was afterwards.

Cross-examined by Mr. Hoffman :

30 Q. This was after you had seen in the paper that he had commenced suit against these parties ?

A. Yes, sir.

Q. And you had a talk with him about the suit ?

A. Yes, sir.

Q. And expressed sympathy with him ?

A. Yes, sir.

Q. And you asked him what he expected to get out of them ?

40 A. I put it that way ; I don't remember the exact language.

Q. And what did he say?

A. He said he sued them for money.

Re-direct-examination.

Q. Did he say it was money he was after?

By the Court.—Don't put it in that form; you are not cross-examining.

PATRICK WOODS the defendant, recalled.

10

Direct examination by Mr. Newbold:

Q. Mr. Woods, did you get permission from Mr. Henry, the occupant of this farm, before you went to get the permit from the city?

A. Yes, sir.

Q. And you did get permission from him?

A. Yes, sir.

Q. And then you went to Mr. Dalton, you say? 20

A. Yes, sir.

Q. Mr. Woods, are you positive that you did not dump a load of night-soil there until you got that permit?

A. No, sir; never.

Q. You never did?

A. Never did.

Q. Was there any other person you saw?

A. I seen nobody there but Bremmer; I seen Bremmer dumping there. 30

Q. What was it?

A. Well, it was something like water.

Q. Was it water from a water-closet?

A. Water from a water-closet.

Q. Was he arrested for that?

A. Arrested about that time.

By Mr. Hoffman.—Objected to as irrelevant.

The Court.—I do not see any reason why 40

we should make that issue here ; the time you speak of is not clear ; suppose he did ; suppose somebody else aided in the creation of what might be regarded as a nuisance, and he is not made a party ; how does that help those who have also participated in the same thing ?

10 *By Mr. Newbold.*—If your Honor please, the position of the plaintiff is this ; they say that Mr. Woods——

By the Court.—The shortest way is to ask it ; I cannot waste time in this case. You do not deny, for you have already proved, that the witness on the stand was contributing to this thing.

20 *By Mr. Newbold*—He said he covered up everything.

Q. When did you quit dumping there ?

A. I quit there a month after the death of Mr. Handley's children ; I am sure of that.

The Court.—You have been all over that.

Cross-examined by Mr. Herbert :

30 Q. Was it in consequence of the permit that you received from Mr. Benjamin, the permit that was signed by Mr. Benjamin, that you continued to dump there after you had been arrested in August ?

A. Yes, sir.

Re-direct examination.

Q. Your arrest was for violating an ordinance, was it not ?

40

A. Yes, sir.

Q. For dumping without a permit ; you were not fined, were you ?

A. No, sir.

Q. Were you discharged ?

A. Yes, sir.

Q. By the city ?

A. By the city.

10

HENRY STIPFF, sworn for defendant.

Direct-examination by Mr. Newbold.

Q. Where do you live ?

A. No. 303 Delaware avenue.

Q. Marion ?

A. Well, we don't call it Marion there ; Marion is further north of us, but it is in that locality. 20

Q. You live near Mr. Ward ?

A. A little south of him on the opposite side of the street.

Q. Do you know where Mr. Handley lives ?

A. Yes, sir.

Q. Do you know where Mollinbrook's gut factory is ?

A. Yes, sir.

Q. Were you ever on the ground adjoining Handley's house where those pits are that have been spoken of ? 30

A. Yes, sir.

Q. When ?

A. The last time I was there was in the fall of 1885.

Q. And after this arrest for night-soil dumping ?

A. Well, after I heard talk about it ; I don't know anything about the arrest.

Q. Now then did you see whether there was any night-soil exposed there ?

A. There was none exposed ; there was indications of it, 40

Q. How do you mean ?

A. I could see where it had been dumped there ; that is, where they had put the night-soil and covered it up.

Q. You saw the pits ?

A. I didn't see the pits, but I saw where I supposed they were.

Q. Were they covered over ?

A. Yes, sir.

Q. Was there any smell there at all ?

10 A. Not a particle.

Q. Did you go to this gut factory ?

A. I was to the gut factory the year before ; I went there and made an examination the year before, that must have been in 1884.

Q. Do you know of the gut factory being there in 1885.

A. Yes, sir ; it is there now.

Q. You saw the condition of it in 1884, did you ?

A. Yes, sir.

20 Q. Tell us what you found ?

Objected to.

By the Court.—It is too far away, is it not ?

Q. How many years have you lived there at Marion ?

A. About seven years.

Q. And in regard to stench, Mr. Stipff ?

30 A. Well, the stench we smell there is mostly from the gut factory, when the wind is in that neighborhood ; we get it from the horse factory, and from the abbatoir ; the gut factory and the abattoir is in a line, and we get it when the wind is north-west ; we get them together, but we can distinguish the difference.

Q. In 1885 did you notice the smell of any night-soil ?

A. No, sir. I did not notice any difference in the smell from what I had the years previous when the wind
40 was from the horse factory, we get it strong, and got

it from the gut factory strong, and from the abattoir; those were the smells we could distinguish from the abattoir; it was very offensive at times when the wind was in that direction.

Q. And that has been for the last seven years, you say?

A. Yes, sir.

10

Cross-examined :

Q. How far do you live from Mr. Handley's?

A. I should say it was about 1,500 feet, some five or six blocks.

Q. And the day you were upon this ground which way was the wind?

A. I could not say; I didn't go there to look at it; I used to make a practice of going every spring and fall to sow some seed, and I was there and glanced at it, having heard it talked about. 20

Q. How did you hear it talked about?

A. I heard it talked about as being objectionable.

Q. And you went to see it because it was talked about?

A. No, sir; I went there to sow seed all around there.

Q. Were you sowing seed in this sand field?

A. Yes.

Q. Was Mr. Sturgis with you?

A. Nobody was with me.

Q. Were you on this ground where the dumping was at all? 30

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. You didn't go there to sow seed, did you; did you go upon this ground where the night-soil was dumped to sow seed?

A. Not just on that spot, but around the edges.

Q. What were you doing on this land then? 40

A. Just a little ways off from it.

Q. Did you go on the pits at all?

A. No.

Q. Do you live as near the pits as Mr. Schleimacher?

A. Fully as near, from what I heard him say yesterday.

Q. Do you know where Mr. Ward lives?

A. Yes, sir.

Q. Do you live as near the pits as Mr. Ward does?

10 A. I live nearer than Mr. Ward.

DANIEL W. BENJAMIN, sworn for the defendant:

Direct-examination by Mr. Newbold:

Q. What is your occupation?

A. I am health inspector in the city on the Board of Police.

20 Q. Just tell us what you know about this permit that was said to have been given to Mr. Woods?

A. I know there was a permit given by Mr. Dalton while I was absent.

Q. Where were you?

A. I was in the country.

Q. What occurred?

A. And after returning Mr. Dalton told me of it, and a few days after I returned I met Mr. Woods and he asked me to sign that permit; I asked him where
30 he was going to dump the stuff, and he told me on that farm——

By Mr. Hoffman.—I suppose that part of it is not competent, conversation between him and Woods, except so far as to locate the giving of the permit.

The Court.—No, I suppose not.

40 Q. State the circumstances, Mr. Benjamin?

A. I asked Mr. Woods if he had a right to dump on that farm.

Q. Did you ascertain that he had?

A. From him, yes, sir; then I signed the permit.

Q. And what did you do afterwards in regard to the matter?

A. I sent Officer Holmes to look at the ground and report to me, and I also gave Officer Sturgis orders to go over and see that it was properly taken care of and covered, he living close by. 10

Q. The Health Board has no power to remove night-soil from the private dwellings, have they?

A. No, sir.

Q. The owners have to do that then?

A. Yes, sir.

Q. Your purpose in sending Mr. Holmes, you say, and Mr. Sturgis, was to see—what was your purpose?

A. To see that it was located where it would not do anybody any harm.

Q. Now, then, that was in August, 1885, you say? 20

A. Yes, sir.

Q. Do you know what that permit read as to restrictions?

A. Yes, sir.

Q. What did it?

A. As near as I can recall it, "Permission is hereby granted to Patrick Woods to dump night-soil on a farm west of West Side avenue; the following restrictions shall be carried out; holes or pits shall be dug, and two feet of earth or sand thrown over it, and all to be kept 30 in good order."

Q. Was there anything upon that permit as to when the scow should return that there should be no—

A. Yes, sir.

Q. What did it say?

A. It said, "When the scow not in permit not good."

Q. "When the scow was in permit not good?"

A. Yes, sir.

Q. Did anybody come to you, Mr. Benjamin, complaining about this at all? 40

A. I never heard no complaint from anybody at all.

Q. Did Mr. Handley ever come to you or complain about it?

A. No, sir; I never knew Mr. Handley.

Q. You see him there?

A. Yes, sir.

Q. Did he ever come to you and complain about it?

A. No, sir; never had a word of complaint about it
16 at all.

Q. Nor from anybody else?

A. No, sir; I think if Mr. Handley had come to me this suit would not have been thought of.

Q. Did you hear of the death of the Handley children?

A. Yes, sir.

Q. Did you then send over to examine these dumps?

A. Yes, sir; I went myself then.

Q. What day was that?

20 A. Along between the 16th and 20th of December, I think.

Q. And what others were there, if any?

A. The committee from the Police Commissioners and some of the members of the Board of Health.

Q. Did you see where those pits were?

A. Yes, sir.

Q. How were they, was there any night-soil exposed or not?

A. There was a discoloration of the ground, as if
30 there had been a load of water from night-soil dumped there at some time.

Q. Did you see any solid matter?

A. No, sir; there was paper as if it had come out of a closet, but it was dry and nothing to it.

Q. Now, then, were the pits spread out; was there anything there?

A. There was an indication that there was something there, yes, sir.

Q. Was there any night-soil exposed?

40 A. I saw none; no, sir.

Q. From the looks of those pits could you form any idea as to how long the covering had been upon them?

A. No, sir, I could not, but they were covered in my estimation; I was very well satisfied to find the pits in the condition I did find them; I was well satisfied with them.

Q. Was there any indication that the pits had been freshly covered?

A. No, sir.

10

Q. Now, then, the lay of the land there from these pits to the Handley house, what is the shape of that?

A. (Illustrating.) You may call these the pits, here is a hill nearly as high as the pits; you can call this Mr. Handley's house; looking from these pits you can just see the top of Mr. Handley's house.

Q. Was there any smell at all there when you went there in December?

A. No, sir; and it was a good day for a smell, too.

Q. What kind of a day?

20

A. It had rained in the morning, and foggy, as we got in the carriage at the five corners here, the sun came out very bright, cleared off.

Q. The officer you said you sent there was Mr. Holmes?

A. Officer Holmes.

Q. Is he the one that has been sworn here?

A. Yes, sir.

Cross-examined by Mr. Hoffman:

30

Q. What kind of a day was it when you went there?

A. The day was foggy when we started, but cleared off before we got there.

Q. Which way was the wind?

A. I don't know.

Q. When you got to the ground you found evidences of the discoloration of the land, and you found papers on the land?

A. I found a discoloration there where there had 40

been some dumped on the outside; sometime ago, it seemed.

Q. And these papers were evidently water-closet papers?

A. Oh, they had been in a water-closet, no doubt about that.

Q. And had been used by persons to clean themselves?

A. No doubt about that.

10 Q. And they were scattered all over the ground?

A. Not all over; they were scattered in a space perhaps 10x15. This was soon after the death of the Handley children.

Q. And it was because of the death of those children you went there?

A. The Board of Police Commissioners sent us there to investigate.

Q. The investigation originated on account of the death of those children, did it?

20 A. Yes, sir.

Q. You say the permit had certain restrictions in it?

A. Yes, sir.

Q. Who put those restrictions in?

A. Mr. Dalton, I suppose; he did some of them; I did some.

Q. Do you remember what was written in that permit by lead pencil?

A. Yes, sir; I think I do.

Q. And that was written in after this trouble occurred?

30 A. No, sir; it was written after I came from the country; it was before Mr. Woods' arrest. What makes me so sure of it, I came from the country in time to be at the meeting of the Health Board, which is always on the 15th of the month; I am positive I returned on the 15th; between the 15th and the 20th I met Mr. Woods, I met him on Summit avenue——

Q. Wasn't the signing of the permit by you after Mr. Woods was arrested?

40 A. No, sir.

Q. Do you know when he was arrested?

A. Three or four days after I got back from the country.

Q. And how soon after you got back from the country did you sign the permit?

A. Two or three days. He was arrested on the 20th, I signed it between the time he was arrested and the time I got back.

Q. Were not these restrictions written in that permit in lead pencil after he had been arrested? 10

A. No, sir.

Q. Did not you so swear, Mr. Benjamin, in the court of Quarter Sessions when Mr. Woods was tried on the indictment?

A. No, sir.

Q. Had you any authority to issue that permit?

A. Well, I have authority from the Police Commissioners to issue permits.

Q. Had you any authority at that time for that permit? 20

A. For that same permit?

Q. Yes.

A. No, sir. I had not time.

Q. Then you issued it upon your own responsibility?

A. As I do all of them.

Q. I don't care about all of them; I mean that one; you issued that one on your own responsibility?

A. Yes, sir.

Q. Had you any special authority from the Police Commissioners to sign that special permit? 30

A. No, sir.

Q. You swore in the trial, didn't you, that you gave that permission without any authority, in reply to a question put by Mr. Paxton, District Attorney?

A. No, sir, I did not; I said I never claimed any authority because my authority had never been questioned.

Q. You have no authority whatever to allow anybody to dump that sort of stuff inside the city limits, have you? 40

A. Well, I took the authority that time on account of the cholera.

Q. You did not answer my question?

A. It was only a violation of the city ordinances, and if I thought I could save the cholera—

Q. It was also a violation of the health ordinance of the County of Hudson, wasn't it?

A. We don't go by that ordinance, we have one of our own.

19 Q. I read you Sec. 44, of the health ordinance of the County of Hudson, and ask you if you were at that time cognizant of the existence of that ordinance?

Objected to.

Q. I ask you if you are familiar with Sec. 44, of the health ordinance of Hudson County, which reads as follows (reading said Section), when you signed that permit?

20 A. That says beyond the city limits?

Q. Yes.

A. This was in the city limits; I have read that ordinance.

Q. So then the permit was in violation of the city ordinance, and this ordinance I have just read to you of the county?

(Not answered.)

30 *Re-direct examination.*

Q. Do I understand you dump within the city limits by permit; is it in violation of any city ordinance?

A. I did not think so at the time; it is, certainly.

Q. Is it not the ordinance there shall not be any dumping in the city without a permit?

A. Yes, sir.

Q. Then with a permit it is not in violation of the ordinance, is it?

A. No, sir.

40

By the Court.—If it is important in the case at all, that ordinance ought to be here.

Witness.—There is no ordinance in our health rules in regard to dumping within the city limits.

Q. Your permit was simply in regard to the effect of the ordinance upon that individual, was it?

A. Yes, sir.

Q. Now, then, this ordinance here of the County Board, have you anything to do with the enforcement of their rules? 10

A. No, sir; they are two separate rules; they agree in some things.

Q. But the health ordinances of the city are those you have to enforce, are they?

A. Yes, sir.

BENJAMIN MURPHY, sworn for the defendant.

20

Direct-examination by Mr. Newbold.

Q. You are Chief of Police of Jersey City?

A. Yes, sir.

Q. Were you ever upon the premises near Mr. Handley's house, where these pits are?

A. Yes, sir; I went there shortly after the death of Mr. Handley's children.

Q. Did you make an examination of the premises?

A. Yes, sir.

30

Q. How did you find them?

A. I found no odor there, no smell of any kind.

Q. Was there any night-soil exposed?

A. None that I saw, and I looked all around for it.

Q. Have you been there since?

A. I was there this morning.

Q. Did you make an examination of the topography of the ground there?

A. Yes, sir; I took in the situation of affairs.

Q. Just tell us what the location of those pits is with 40

reference to Mr. Handley's house and the intervening ground.

By Mr. Hoffman.—We will agree to anything you say about that.

10 *The Court.*—There does not seem to be any dispute that there is a rise of ground between Mr. Handley's house and the pits, and to a person standing at the pits the house is mostly hidden.

By Mr. Newbold.—We want to show further that any liquid dumped upon the ground near the pits cannot run towards Mr. Handley's house—could not get any nearer the house; would run away.

20 Q. Did you actually try that, Mr. Murphy?

A. I saw it tried this morning.

Q. Now, would the liquid dumped there upon the ground anywhere around those pits, run towards the house?

A. It ran west; the house is located about north, I should think.

Cross-examined by Mr. Hoffman:

30 Q. If it was dumped within 200 feet of Mr. Handley's house, how then, on the side of that hill?

A. At the pits?

Q. Yes.

A. It ran west.

Q. The nearest pits?

A. Yes.

Q. You went out there just to make that examination this morning?

40 A. Yes, sir; at the request of the Health Inspector.

Q. Mr. Benjamin?

A. Yes, sir.

Q. A little out of your duty as Chief of Police, isn't it?

A. Yes, it is none of my duty to do that.

Q. To make testimony in this case, so that you could be brought here to swear to that?

A. I was in the case before that; how I came to be in the case was by request, or by possible order of the President of the Board of Police Commissioners, going out to look with him after the death of Mr. Handley's children. 10

Q. How are you in the case this morning sufficiently to go out there and make an examination?

A. At the request of Mr. Benjamin, as I was there before, to go out and make an examination of the ground.

Q. Did not Mr. Handley make complaint before you about this matter. 20

A. Yes, sir.

Q. When?

A. After the death of his children.

Q. Not before?

A. No, sir; I think not.

PETER F. WANZER, sworn for defendant.

30

Direct-examination:

Q. Were you upon the premises adjoining Mr. Handley's house this morning?

A. Yes, sir.

Q. And saw the location of these pits?

A. Yes, sir.

Q. How are they with reference to the intervening ground between Mr. Handley's house and the pits?

A. It is up on a hill; standing at the pits you can see the top of Mr. Handley's house; probably five or six feet below the hill, the pits are in a hill. 40

Q. If water or liquid were dumped on the ground anywhere near those pits, would it run towards Mr. Handley's house?

A. In my judgment I should think not; I should think it would run to the west; it might run off to the meadows; his house is situated in a north westerly direction from those pits; this would go direct west.

Cross-examined by Mr. Hoffman:

10 Q. You are a Police Justice in Jersey City?

A. Yes, sir.

Q. Mr. Woods and Mr. Woods' men connected with this dumping were brought before you

A. I think Mr. Woods was brought before me.

Q. And you discharged him?

A. Yes, sir.

Q. You went out there this morning at whose suggestion?

A. The Chief sent for me.

20 Q. And you went out there to see water dumped on that land so you could come here and testify this morning?

A. He didn't tell me what I was wanted for; I went out there and saw some carts and asked him what they were going out there for, and he said to dump some water on that ground.

Re direct-examination:

30 Q. How far is the crown of the hill from Mr. Handley's house, the hill between the pits and Mr. Handley's house; is not the crown of the hill right by Mr. Handley's house?

A. What do you mean, the outer edge?

Q. Yes.

A. I should think twenty feet or so.

EDWARD A. STURGIS, sworn for defendants:

40 *Direct-examination by Mr. Newbold:*

Q. Where do you live?

A. No. 312 Olean avenue.

Q. Were you a deputy in the Health Department?

A. A police officer detailed by Mr. Benjamin.

Q. Detailed for duty in that department?

A. Yes, sir.

Q. Was it so in the fall of 1885?

A. It was.

Q. Do you know when Woods first dumped night-soil on the Henry property?

A. I know. 10

Q. You were not present at that time?

A. Of my own knowledge.

Q. You know the permit under which he—(interrupted).

A. I never saw the permit.

Q. You were sent there to look at this place?

A. I was.

Q. When?

A. I was informed by somebody in the office, whether it was Mr. Dalton or Mr. Benjamin, I cannot say, that 20 Mr. Woods had received a permit to dump on Henry's farm, and that was the first of August; I learned afterwards that the permit—I didn't see it, of my own knowledge I know nothing about the date, but I learned the permit was dated August 5th. Mr. Benjamin told me to go over and see that these pits was properly covered, and that no nuisance came of them. Before going over, of my own will, I went to Mr. Henry and asked him if he had given Mr. Woods permission to dump there; he told me he had. 30

Q. Did you go over; when did you go first?

A. I went most every day.

By a Juror.—Most every day, when?

A. At the time these dumpings were being done.

Q. When was the dumping being done there?

A. Well, it was a load now and then, different dates.

Q. When did it begin? 40

A. Not before August 5th.

Q. When did they end?

A. About the middle of October; about a month or six weeks before Mr. Handley's children died.

Q. And how many times, between the 5th of August and the middle of October, did you go over to these pits?

A. I could not tell; I must have went fifty or sixty times.

10 Q. Did you ever find the pit uncovered or the night-soil exposed?

A. I never did.

Q. Did you ever find any night-soil around the pits on the surface of the ground?

A. The pits itself?

Q. Yes.

A. I did not. I found where there had been a lead of water dumped, a little west—not exactly west—a little northwest; taking the direct points of the compass, Mr. Handley's house is direct north from the pits, and this was a little northwest. The party who done that has been punished for it, and is not in this suit; it was Mr. Bremmer.

20 Q. Would the lay of the land permit the water to run toward Mr. Handley's house?

A. The lay of the land is in the opposite direction.

Q. Mr. Sturgis, it has been said here by Mr. Handley, that you uttered an oath, or something, cursed him when he came to see you and ask you to do something, is that so or not?

30 A. No, sir; I do not use profane language.

Q. Did you ever give anybody any permission to dump there?

A. No, sir.

Q. What you did was in consequence of your being directed by your superior officer?

Objected to as incompetent.

The Court.—He may state what directions he had.

A. Simply what I have stated ; to see that there was no nuisance committed.

Q. And you did that ?

A. Yes, sir ; I tried to perform my duty.

Cross-examined by Mr. Hoffman :

Q. You did not have that conversation with Mr. Handley, then, that my brother Newbold just asked you about ? 10

A. I said that I did not use any profane language to Mr. Handley.

Q. You did not like anybody to interfere with you while you were there ?

A. Where ?

Q. The time you were there, fifty or sixty times on the ground ?

A. Nobody did interfere with me.

Q. You threatened people there if they came there, didn't you ? 20

A. No, sir.

Q. Do you remember seeing Mr. Giles there ?

A. No, sir.

Q. You didn't tell Mr. Giles that you would not stop having the stuff dumped there ?

A. No, sir ; I did not ; I never seen Mr. Giles there.

Q. You did not tell Mr. Giles if he was on the hill you would slap his face ?

A. No, sir.

Q. Nor that you would throw him in one of the pits ? 30

A. No, sir.

Q. That is all.

Witness.—I would like to state, Judge, that the conversation Mr. Giles has sworn to here was at my house.

The Court.—Well.

Witness.—Mr. Giles came to my house in 40

the month of October with Mr. Ward, acted as an agent——(interrupted.)

Objected to.

The Court.—He desires to make an explanation.

10 *Witness.*—(Continuing.) Mr. Ward asked me if I knew there had been dumping; I told him it had, and had been covered over; Mr. Giles then says, “You are a liar”; I ordered him out of my premises, which I had a perfect right to do.

By Mr. Newbold:

Q. Was he on your premises?

A. He was; he was on my front stoop. That was all the conversation that passed between Mr. Giles and I.
20

ELIZABETH HOWARD, sworn for defendant:

Direct-examination by Mr. Newbold:

Q. You are the wife of Mr. Howard who was sworn here?

A. Yes, sir.

Q. You live at West End?

30 A. Yes, sir; 18 Wallace avenue.

Q. Which was the first of your children taken sick?

A. On the 4th of December.

Q. 1885?

A. Yes, sir.

Q. What was the name?

A. Frank.

Q. And had he been to school that day?

A. Yes, sir.

Q. Do you know whether he had been ailing before
40 that?

A. He had be complaining with a headache some days before, but exactly how many I do not really know; some couple of days. I had four children taken with the scarlet fever. My baby died; she was the last one taken; she died on the 22d.

Q. The other three all recovered, did they?

A. Yes, sir.

Q. Dr. Hornblower was the physician?

A. Yes, sir.

10

(Not cross-examined.)

CLARENCE S. HAYNES, sworn for defendant:

Direct-examination by Mr. McGrath:

Q. Where do you reside?

A. At present I reside at 311½ Delaware avenue.

Q. In 1885, did you reside in the vicinity of Mr. Handley's place?

20

A. A portion of the time I did; in the early portion or rather about the middle of the year 1885, I lived with my parents at 454 Wayne street; then we moved, when I was married, to 85 DeKalb avenue, about two blocks from where Mr. Finley lived. I visited the grounds of Mr. Finley frequently in the fall of 1885; I was in the habit of going fishing in my idle times, and it was a shorter route to catch my bait to go through his premises.

Q. Was your attention directed to any night-soil dumping that year in that vicinity?

30

A. Well, yes; in that vicinity; there was some weeks I might have passed there three or four times every week, possibly once or twice, sometimes every day.

Q. Did you ever see any night-soil dumped upon the ground occupied by Mr. Finley—Mr. Finley's ground?

A. No, sir; I never have.

Q. Did you ever see any night-soil upon his grounds at any time?

40

A. No, sir.

(Not cross-examined.)

CHARLES FINLEY, sworn for defendants :

Direct-examination by Mr. McGrath :

10 Q. Where do you reside ?

A. West Side avenue.

Q. Did you reside there in 1885 ?

A. Yes, sir.

Q. Did you ever give any permission to anybody to dump any night-soil on your grounds at any time ?

A. One time, sir, I did.

Q. State what that was and how it came about ?

A. I could not tell you the day it was, sir, but I could tell you Mr. Sturgis came over to me with the
20 man by the name of Mr. Day, and he said they were going to try some pumps, and it was so near, it was in Delaware avenue ; they were cleaning those cess-pools, and he says : " You have a big pile of manure there," he said, and it is nothing but water, we want to test those pumps, and if you would let him put a few loads there it would please me very much ;" so I agreed that he might put a few loads into the manure pile.

Q. That was in the month of October ?

30 A. Yes, sir ; I guess it was early.

Q. Outside of that, did you ever give anybody permission to dump, outside of the manure pile ?

A. No, sir.

Q. How many loads were dumped there ?

A. I think about six or eight loads ; it was in the daylight, brought there in barrels.

Q. How far is that manure pile from Handley's house ?

A. It is 1,120 feet.

40 Q. Measure it, did you ?

A. It was measured; I was present when Mr. Patterson measured it, I saw him; Mr. Sturgis knows the ground.

Q. So far as you know was that night-soil dumped on any property you had anything at all to do with, outside of what you have spoken of?

A. No, sir; not a bit, that I know of.

Q. Mr. Handley says that he called upon you two or three time and wanted to know if you could not stop the dumping of night-soil; when did he call upon you 10 and what did he say?

A. I think it was in May, he was after having a suit here with some people about it at that time.

Q. May of last year?

A. Yes, I think we were cutting spinage, or something, and along came Mr. Handley's wagon, and he asked me to know who was the owner of this property, and I told him that I didn't know, that I paid rent to Mr. Joseph Warren; that was the man that was the latest I paid it to. He never called upon me at any 20 other time before or since.

Cross-examined by Mr. Herbert:

Q. You were in possession of that property that year where the night-soil was dumped?

A. Which property?

Q. Where the night soil was dumped?

A. I was, to the pile of manure, sir.

Q. Also to the west of that where the night soil was scattered over the ground? 30

A. Not upon mine.

Q. Do you mean to say there was not night-soil scattered over the ground to the west of the manure pile?

A. No, sir; there is too much manure there; 200 loads of manure.

Q. The night-soil that was placed upon that manure heap was black, liquid form?

A. No, sir; it was just the same as came out of a stable.

Q. Just the same as came out of a privy? 40

A. No, sir; it was like water that came from—— it was cesspool water; they fetched it there in barrels; they had lids on them, tight; they fetched them in an open truck.

Q. Mr. Sturgis came to you and asked permission to have it dumped there?

A. Yes; to try those pumps; this was the nearest place.

Q. He asked permission to have it dumped there?

10 A. Yes, sir.

Re-direct-examination :

Q. They were testing what pumps?

A. I could not tell you, sir; I could not tell you about anybody's ground but my own.

Re-cross-examined.

20 Q. Did not Mr. Bremmer and Colston speak to you about dumping on your land?

A. They did, but I gave them no permits.

Q. Don't you know they were arrested for dumping on your land?

A. I don't know anything about it.

Q. Don't you know they were arrested for dumping on your land and they had a permit?

A. I don't know anything about any party, except that party that asked permission to dump in that manure heap, and I gave him a permit; that is all I
30 know about it.

EDWARD A. STURGIS, re-called for defendants.

Direct-examination by Mr. Newbold.

Q. This that has been mentioned of putting barrels of water in the manure heap; just state what that was?

A. The scavengers are in the habit, whenever they
40 can, and I may say one or two nights a week, of

dumping along the roadside; the health authorities have tried several plans to prevent that as much as possible, and the thought came to them, if this work could be done——(interrupted.)

Objected to.

The Court. — You cannot tell their thoughts. 10

Q. What did you do in consequence of that, and when did you do it?

A. We tried a plan to see whether it could be done in the day time without creating any offense. We had carbolic acid in a barrel with a large fan so as to control fully the air, and had closets opened and cleaned, so much so it was so successful that the people living next door didn't know it was done. 20

Q. When was that?

A. In October, 1885?

Q. And where was it?

A. It was in Delaware avenue, and it was taken to Mr. Finley's farm, about six or seven hundred feet, I should judge, and put in the midst of a large heap of manure, right in the midst of it, about 150 loads, I should suppose. Mr. Dean & Co. were the parties who did the work, I was only there looking on to see whether it was successful.

Q. And that is over beyond the Henry farm, is it?

A. Oh, yes.

Q. How far from Handley's place? 30

A. Fourteen hundred and odd feet.

By Mr. McGrath:

Q. Henry's farm then was between Finley's place and Handley's house, was it?

A. Oh, yes; I suppose Mr. Henry's farm is a farm 300 feet wide or more, and runs right alongside Handley's house, as I understand the lines.

Q. Where is Henry now? 40

A. I understand he went back to Greenwood Cemetery, Long Island.

By Mr. Newbold :

Q. What is the length of the Henry farm ?

A. Runs from West Side avenue to the Hackensack river.

Q. What distance, 3,000 feet ?

10 A. Oh, yes ; three-quarters of a mile.

By Mr. Herbert :

Q A block, about ?

A. Oh, three or four hundred feet, and to the west of that is Henry's farm, adjoining it.

By Mr. McGrath :

Q. Mr. Henry is still living, is he not ?

20 A. As far as I know.

DEFENDANTS REST.

CASE CLOSED.

30 *By Mr. McGrath.*—At this point I renew my motion for the discharge of Mr. Finley in this case. The former motion made by Mr. Newbold, was for non-suit ; the motion is now made for discharge from this case on the ground there is no case made out against him at all ; there is no legal proof against him in this case.

40 *The Court.*—I will leave this matter to the discretion of the jury, and direct a verdict eventually if I find a ground upon which I can do so ; I do not want to hear a double argument now.

To which ruling defendant excepted and his bill of exceptions is sealed accordingly.

M. M. KNAPP,

J. (L.S.)

COUNSEL SUMMED UP.

Adjourned to Thursday, May 5th, 1887.

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Defendants request the court to instruct the jury as follows:

1st. That no damages can, in any event, be allowed plaintiff against any of the defendants for any loss, injury, suffering or expense resulting from the death of any of his children. 20

2d. That no damages can, in any event, be allowed to plaintiff, against any of the defendants, for the funeral expenses of his children.

3d. That no damages can, in any event, be allowed to plaintiff, against any of the defendants, for any suffering or sickness or discomfort of his wife. 30

4th. That no damages can, in any event, be allowed to plaintiff, against any of the defendants, for any pain or anxiety suffered on account of the sickness of any of his children.

5th. That if the acts complained of amount to a common nuisance, plaintiff cannot recover, against any of the defendants, for any discomfort, or annoyance of a like nature, with that suffered by his neighbors, even though greater in degree and effects. 40

6th. That if the scarlet fever was not derived from the night-soil deposits, no damages can be allowed plaintiff against any of the defendants for loss by abstaining from business on account of contagion.

7th. That neither Benjamin nor Sturgis can be recovered against, unless he positively contributed to the creation of a nuisance there.

- 10 8th. That if some person other than the defendants, without their participation, spread night-soil upon the surface of the ground, which of itself produced whatever of discomfort or annoyance was produced, none of the defendants can be recovered against.

9th. That the giving of the permit by Benjamin was within his right as health inspector, under the act (1871) which created the office, if giving it was a reasonable act under the circumstances for the preservation of the
20 healthfulness of the city.

10th. That there is no proof of there being any positive ordinance or restriction against depositing night-soil within the city limits.

11th. In order to find against Finley the jury must be satisfied by proof that Finley actively participated in the acts complained of.

30

Whereupon the said Judge charged the jury as follows:

Gentlemen of the Jury:

The plaintiff asks to be compensated for injury suffered by him as the direct consequence of a nuisance created, as he alleges, by the defendants. The first question for you to consider is, was there an actionable
40 nuisance created by the defendants by which the plain-

tiff was damnified. Did the defendants, some or one, unlawfully create such a nuisance? If this question be answered in the affirmative, then to what extent did the nuisance, so created, harm the plaintiff by its direct and approximate effects? Was that of which the plaintiff complains, namely, the deposit of night-soil in the quantities shown to have been brought together within the distances testified to of his residence a nuisance such as is actionable? The general rule is, that where a nuisance is of a public character, such as the criminal 10 law takes cognizance of, no private right of action exists. The public alone, in such a case, where the nuisance is merely of a public character, is concerned, and the public alone may exercise public modes of redress, both for punishment and for abatement. But where the public nuisance has special damaging effects upon a particular individual or individuals by reason of its near proximity to them, or its special effects upon such private person or persons, the law there not only gives the public right of punishment and redress, but it gives, as well, 20 the private person compensation and damages for the injury which he thus specially suffers. There is some testimony in the case to the effect, that this matter was treated in the courts as a public nuisance, yet if that be so, the question still remains, was this deposit there of such special injury to this plaintiff that he should be compensated under the law for his peculiar injury, although it may have had a wider and more extended noxious influence and was a matter of public concern as well. Noisome smells, noxious vapors, of- 30 fensive gases that tend to the discomfort of property owners are nuisances to those whom they harm. Noisome smells, as nuisances, arising from smoke, noxious vapors or stenches, must be of such a character as to be offensive to the senses, or as to produce actual physical discomfort, such as materially interfere with the comfortable enjoyment of property within their sphere. It is not necessary that the smells should be hurtful or unwholesome; it is sufficient if they are so offensive or produce such annoyance, inconvenience or 40

discomfort as to impair the comfortable enjoyment of property by persons of ordinary sensibilities. A smell simply disagreeable to ordinary persons, is such a physical annoyance as makes the use of property producing it a nuisance, whether it is hurtful in its effects or not. This describes correctly the creations which the law denominates nuisances, and for which the party suffering may recover.

Then, in answering the first question that I suggest
 10 to you, whether, in point of fact, a nuisance existed such as gave the plaintiff a right of action, you will answer that by determining whether the evidence here shows that the deposits made in proximity to the plaintiff's house, were such as to be noisome and offensive to persons of ordinary sensibilities. If so, they come within the definition of what constitutes a nuisance.

Finding that to be the fact, the next and important question in the cause is, did these defendants, or some one of them, create the nuisance? It is a rule in pro-
 20 cedure that all persons who in any material degree participate in the creation, or if the action be for the continuance of a nuisance in the continuation of it, are principals and are held alike to answer for the damage which their joint act creates, causes or continues. There must be some actual participation and direction in the thing which constitutes the nuisance, on the part of each person who shall be held to answer for damages; and you must determine upon the evidence in this case,
 30 whether all of the defendants actively participated in the creation and continuance of this nuisance, if you find it to be such, or if not all, who of them so participated, and only those whom you shall find to have so participated can be charged with the legal consequences of the creation of the annoying thing.

The owner of property having it in control may not knowingly permit to be placed and kept upon his lands anything that works legal annoyance to others. If he creates it himself, or knowingly permits and authorizes and maintains it upon his land, he becomes liable for
 40 the nuisance which is thus created, and every person

who actively participates in its creation, who instigates it, causes it, or takes any part in causing it to be done, is answerable as a common defendant, and damages, when assessed, are assessed against all, and are not apportioned between the different defendants. The law can only hold those who actively participate in the creation of a nuisance, as wrong-doers in common, but there must be some active participation in the thing which creates the nuisance. Now, a mere stranger, who by his express or implied assent, having no interest or ownership in property on which a nuisance is created, gives such express or implied assent, does not so participate in the creation of a nuisance as to become liable. He may direct it; he may by his order cause it to be done; he may by the employment of men to do it, make himself liable, but merely assenting to its being done without any authoritative control over the matter, or authoritative action in its production, is not sufficient to hold to liability, and you will have to say in this case, as to one of these defendants, at least, whether anything more was done to create liability against him, than merely giving his assent. I speak now of Mr. Benjamin. He held an office, so we are told by the testimony, and it may be proved in the way it was proved, an office which the law recognizes, Health Inspector. The charter of Jersey City creates such an office and provides for its filling by the Board of Police Commissioners. It does not define his duties, it simply directs the appointment of such an officer. What his duties are we are not informed. No law that the court can take notice of defines it. I do not understand that such an office has any such appendant common duties that we can here say what they are. They may be prescribed by another body. Indeed, under the charter of Jersey City, as well as under the law passed to regulate Public Health in the county, the officer is subject to the orders of the several boards. Commissioners, under the County Health Act, have the power to declare what his duties shall be in respect to their jurisdiction, and he is required to conform

to such direction. The city has power, through its proper board, by ordinance, to declare what his duties or his powers shall be, but these are not before us, and we are not informed what those duties are, and therefore cannot say whether in what he did he was acting in virtue of his public office, or whether he was acting as a mere private person. Had it appeared that he was acting in his public capacity, the question would then have been presented whether his action was judicial or quasi judicial, and had it been found to be so in what he did, although he made a mistake in judgment in giving the permit, it would have been the duty of the court to say whether an action against him, as such public officer, exercising a quasi judicial judgment, should be the subject of private action. That question is not here, for the reason that what his duties are, and whether acting within the scope of those duties, is not before us. Therefore, you must regard him as a person of no known public relations to the subject matter of this suit. Then

20 the question is whether the mere written permit to one to do an act of nuisance, if that was what it did, constitutes active participation in its creation. My own impression is that it does not; however, I think that is a matter to be left to the jury under all the evidence. Whether there be anything in the evidence to show what may be regarded as an active participation in the creation or continuance of this thing which is claimed to be offensive, if you find it to be so. And the same may be said of Mr. Sturgis. It appears that he was a

30 police officer. We are not informed of any special duty that he was charged with in virtue of his office in respect to this creation. Perhaps there is more in the testimony to show his participation in it, especially in the deposit which was made upon the Finley property. Counsel have discussed fully before you the evidence upon which they claim to hold these parties and it is not necessary for the court to advert to it. I think the question to be determined by the jury upon all the evidence in the case is as to him whether there be proof of

40 such active participation in the creation of what you

may regard as a nuisance, such as to make him liable under the rule that I state. As to Woods, the license which he held, even though it were designed, and even though it had been shown that it had the effect to excuse him from liability for a public wrong, it could not be any excuse whatever for his act in the creation of a private nuisance. Public license may excuse a party so far as a public right is concerned; it may be under such legislative authority that no indictment can be found against a man who does a given act, and at the same time such a license cannot have the effect to deny to a private person remedy for injury for which he suffers by reason of the creation of that which is a nuisance. There would, therefore, seem to be no reason why he should not be held as one of the participants in this act if you find it to be a nuisance as I have defined it. 10

So much, then, gentlemen, as to the two questions propounded: Was it a nuisance to the plaintiff? Did the defendants, or some of them, create it? Should you answer these questions in the affirmative, then to what extent did the nuisance created cause to the plaintiff actionable injury? If it be a nuisance, and if the defendants, or some of them, created it, and it injured the plaintiff, the plaintiff is entitled to some damages, whether he shows any other injury than the mere offense to the senses or not. He is entitled to be compensated for all those injuries which are the natural and approximate result of the wrong done, of the nuisance created. He cannot recover for remote, mere contingent injuries, but those which are the natural, necessary, approximate outcome of the thing created, is what the law contemplates the defendants intended to do when they did the wrongful act, and for that the plaintiff may recover damages. Oftentimes, and in most commonly in cases of this character, specific damages are difficult to determine and point out. Those which are ascertainable and readily measured pecuniarily, are, of course, included in those damages, but there are other damages which are not easily measured, and it must be determined by the jury, in the exercise of a 20 30 40

sound and wise discretion, and to that discretion the law has permitted the determination of damages of that indefinite character. If the plaintiff suffered annoyance, if the occupation of his residence was made uncomfortable, if he was made sick and lost time by reason of it in his business, or expended money in his healing and cure, these are all legitimate objects of estimation in damages. Money spent is a fixed sum; time lost can be fixed when its value is ascertained; but the
 10 discomfort which one suffers when living in an atmosphere made offensive, is a matter which the jury must admeasure in their discretion.

In addition to the claim of annoyance, sickness, and loss of time to the plaintiff himself, there is also a claim for damages consequent upon the illness of his children, alleged to have resulted from this same cause. This part of the case is the most difficult and delicate. At the common law civil courts took no cognizance of acts which resulted in death. They were relegated to
 20 the criminal side of the court for adjustment. And such has been the law in this State, as it was in England, down to quite a late period, IX or X Victoria. Civil courts took no cognizance of an injury which resulted in the death of a person until by the acts of parliament passed at the time I named, provision to some extent was made for adjusting injuries resulting in death, and a right was given to an administrator of a party whose life was destroyed by the wrongful act,
 30 default or neglect of another, to recover a certain measure of compensation, which it is not necessary here to speak of in detail, and this statute in many of the States of the Union, since that act of parliament, has been copied substantially. This suit does not proceed at all in virtue of that act, and therefore none of the provisions of that act can be invoked to aid us in this inquiry.

Obviously, before any consideration further need be given to this branch of the case, it would be essential that the jury find that the disease which caused the
 40 death of these children was the result of the nuisance.

Here, perhaps, lies the principal difficulty, and you are bound to find evidence in the cause before you can so determine. A preponderance of evidence, that the nuisance thus created was the producer of the disease of which these children were sick and from which they died. Whether you can find that in this evidence is a question for you to determine, not for the court. You have heard all that has been said by the witnesses on that subject. Experts' testimony is all we can have to guide us in those matters, and you are the 10 judges of the value and weight of that testimony. The law requires not mere conjecture, not mere supposition, but something of tangible proof to show that the nauseous creation caused the disease of which the children died. If you can find that in the evidence, and so determine, then the question will arise, what consequences which may be considered in this case arise from that circumstance.

I think it entirely clear that no damages or loss which the plaintiff suffered by reason of the death, and 20 after the death, is subject matter of estimation here by way of damages. Funeral expenses, matters of that sort, which are the consequences of the death, although devolved upon the plaintiff as a duty, are not within the law made elements in estimating plaintiff's damages. One or two cases have been presented by counsel in argument which seem to hold otherwise, but it seems to me that the determination of those cases was not made upon tangible legal ground. Had they been made in our own state, by a court superior to this in which we 30 sit, we would, of course, have been bound by the adjudication, but the cases referred to to support the doctrine that funeral expenses may be recovered for are in another state, and here with the duty of determining what the law is in New Jersey on that subject, I feel constrained to disregard those cases, and hold that for such expenses as are incident upon the death of a person are not within the reach of damages, and do not form any basis for estimation of loss. But I think if you should find that the fever which destroyed the 40

lives of these children was the result of this nuisance, that any care or expenditure that was made necessary, because of their sickness and suffering, and while they were in life created a right, not dependent upon death, but the right existed in their life which may be a ground for estimating damages. I may say that this doctrine is not very well sustained. Possibly it rests more upon *dicta* in the cases than upon judicial determination; but for the purposes of this case, I shall instruct the jury that for those expenses, that attendance and care which the plaintiff in virtue of his duty towards his children bestowed upon them, or paid for them, are legitimate elements to be considered by the jury in admeasuring plaintiff's damages, and which he may fairly demand from those who are chargeable in law with the creation of the wrong which followed.

Defendants' counsel have placed in my hands certain written requests to charge, which it is my duty to attend to, some of which I have already covered. I will now take them in hand:

First.—"That no damages can in any event be allowed plaintiff against any of the defendants for any loss, injury, suffering or expenses resulting from the death of any of his children." This I have already charged in substance.

Second.—"That no damages can in any event be allowed to plaintiff against any of the defendants for the funeral expenses of his children." I have also charged upon that.

Third.—"That no damages can, in any event, be allowed to plaintiff against any of the defendants for any suffering or sickness, or discomfort of his wife." I do not understand that any claim has been made based upon that ground.

Fourth.—"That no damages can, in any event, be allowed to plaintiff against any of the defendants for

any pain or anxiety suffered on account of the sickness of any of his children." I have instructed you as to the law upon that point.

Fifth.—"That if the acts complained of amount to a common nuisance, plaintiff cannot recover against any of defendants for any discomfort or annoyance of a like nature with that suffered by his neighbors, even though greater in degree and effects." I could not charge this in that form. I have stated already to the jury what is to be regarded as the ground of liability and recovery in case the injury be as well a nuisance of a public character. It must have special effects upon the plaintiff in order to give him his particular right of action. 10

Sixth.—"That if the scarlet fever was not derived from the night-soil deposits, no damages can be allowed to plaintiff against any of the defendants for loss by abstaining from business on account of contagion." This is undoubtedly true, that if the loss of time which the plaintiff claims for here, or so much of it as was dependent upon his staying away from his customers, because of the fact that his children died of scarlet fever, and that scarlet fever was not the result of the defendants' acts, of course the defendants could not be held answerable for that loss of time. 20

Seventh.—"That neither Benjamin or Sturgis can be recovered against, unless he positively contributed to the creation of a nuisance there." I have no objection to accepting that as an exposition of the law, in addition to what I have already said upon the subject of their liability. 30

Eighth.—"That if some person other than the defendants, without their participation, spread night-soil upon the surface of the ground, which of itself produced whatever of discomfort or annoyance was produced, none of the defendants can be recovered against." This is equivalent to requesting the court to charge you 40

that unless the defendants created the nuisance which the plaintiff suffered from, there is no liability on their part. It is obvious that they can be held answerable only for injury if they created the nuisance or harmed the plaintiff. It is not a defense for a defendant who has created a nuisance, that others not brought into the suit have added to it, or assisted in its creation, or have independently set up other annoying things.

- 10 *Ninth*.—"That the giving of the permit by Benjamin was within his right as Health Inspector, under the acts of 1871, which created the office, if giving it was a reasonable act under the circumstances for the preservation of the health of the city." I think we have no evidence in this case upon which this matter can be determined. As I have already stated, the law does not define the duties of the Health Inspector. The language is, that one of the board in Jersey City shall appoint, among other officers, a Health Inspector.
- 20 Other provisions of the act make him subservient to those duties which shall be declared by ordinance as belonging to his office, and these we have no knowledge of if they exist. Presumptively, they do not.

Tenth.—"That there is no proof of there being any positive ordinance or restrictions against depositing night-soil within the city limits." I think that is an immaterial circumstance.

- 30 I submit the case to you, gentlemen. The evidence I have left without commenting upon it. It is your province to determine its force and value and what conclusions are to be drawn from it. If liability arises, you must admeasure the damages under the rules that the court has given you.

Should any of the defendants, in your judgment, be not liable for the acts charged and others liable, you will say guilty as to those who are liable, and not
40 guilty as to those you find not to be so.

(Mr. McGrath now hands the court request No. 11 as follows : "In order to find against Finley, the jury must be satisfied by proof that Finley actively participated in the acts complained of.")

Everything you find must be based upon proof, and you must find in some of the ways I have indicated.

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Whereupon the said defendants, by their counsel, respectively excepted to the refusal of the court to charge the jury, (except with the qualifications and modifications made by him), as above requested, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.] 20

And they also except to the refusal of the court to charge the jury as requested that no damages can in any event be allowed the plaintiff against any of the defendants for any pain or anxiety suffered on account of the sickness of any of his children, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.] 30

And they also except to the refusal of the court to charge the jury as requested that if the acts complained of amounted to a common nuisance, the plaintiff cannot recover against any of the defendants for any discomfort of like nature with that suffered by his neighbors, even though greater in degree and effects, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.] 40

And they also except to the refusal of the court to charge the jury as requested that in order to find against Finley the jury must be satisfied by proof that Finley actively participated in the acts complained of, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.]

- 10 And they also except to the charge of the court to the jury that if there was a nuisance to the plaintiff created by the defendants or some of them, and it injured the plaintiff, the plaintiff is entitled to some damage whether he shows any other injury than the mere offense to the senses or not, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.]

- 20 And they also except to the charge of the court to the jury that besides the damages which are ascertainable and readily measured pecuniarily, there are other damages which are not easily measured and must be determined by the jury in the exercise of a wise and sound discretion, and to that discretion the law has permitted the determination of damages of that indefinite character, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.S.]

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And they also except to the charge of the court to the jury that if the plaintiff suffered annoyance; if the occupation of his residence was made uncomfortable; if he was made sick and lost time by it by reason of it in his business, or spent money in his healing or cure, those are all legitimate objects of estimation in damages; that money spent is a fixed sum; time lost can be fixed when its full value is ascertained, but that the discomfort that one suffers while living in an atmosphere that

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is offensive, the jury must admeasure in their discretion,

and pray that this their bill of exceptions may be sealed,
and it is sealed accordingly.

M. M. KNAPP, J. [L.s.]

And they also except to the charge of the court to the jury that if they should find that the fever which destroyed the lives of the children of the plaintiff was the result of the nuisance (declared on) any care or expenditure that was made necessary because of their sickness and suffering and while they were in life created a right not dependent upon death but the right existed in life, which might be a ground for estimating damages that those expenses and that attendance and care which the plaintiff, in virtue of his duty towards his children bestowed upon them or paid for them, were legitimate elements to be considered by the jury in admeasuring his damages and which he might fairly demand from those who were chargeable in law with the creation of the wrong which followed, and they pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

M. M. KNAPP, J. [L.s.]

The verdict was for the plaintiff against all the defendants for the sum of fifteen hundred dollars, (\$1500).

NEW JERSEY SUPREME COURT.

10

CHARLES FINLEY,
Plaintiff in Error,

vs.

JOSEPH HANDLEY,
Defendant in Error.

In Error to
Hudson Cir-
cuit.
Assignment of
Errors.

20

Afterwards, that is to say, at the term of November, A.D., eighteen hundred and eighty-seven, in the Supreme Court of the State of New Jersey, comes the said Charles Finley by John A. McGrath, his attorney, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said bills of exceptions, and also in the giving of the verdict and judgment aforesaid there is manifest error in this, to wit:—

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1. That the declaration aforesaid and the matters therein contained are not sufficient in law for the said Joseph Handley to have his said action against the said Charles Finley.

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2. There is also error in this that the said Circuit Court of the County of Hudson gave final judgment for damages and costs against the said Charles Finley, notwithstanding that as to Daniel W. Benjamin, one of his co-defendants, the verdict (which was against all the defendants) had been set aside and a new trial granted, and the action was still pending and not discontinued against the said Daniel W. Benjamin.

3. There is also error in this that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, admitted illegal evidence against the objection and exception of the said Charles Finley.

4. There is also error in this that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, rejected legal evidence offered by the said Charles Finley. 10

5. There is also error in this that when on the aforesaid trial of the said issue so joined between the parties aforesaid, the said Joseph Handley rested his case, it was moved in behalf of the said Charles Finley that a nonsuit be ordered as to him, the said Judge before whom, &c., refused to order such nonsuit.

6. There is also error in this that when, on the aforesaid trial of the said issue so joined between the parties aforesaid the said Joseph Handley had rested his case, and it was moved on behalf of the said Charles Finley that he be discharged, the said Judge before whom, &c., refused to order that he be discharged from the suit of the said Joseph Handley. 20

7. There is also error in this that when, on the trial of the issue so joined between the parties aforesaid, at the close of all the testimony in the cause, it was moved in behalf of the said Charles Finley that he be discharged from the suit of the said Joseph Handley on the ground that no case against him had been made out and that there was no legal proof against him in the cause, the said Judge before whom, &c., refused to so order or to direct a verdict in favor of the said Charles Finley. 30

8. There is also error in this that the said Judge before whom, &c., refused to charge the jury as requested in 40

behalf of the said Charles Finley, except with qualifications and modifications which were against the law.

9. There is also error in this that the said Judge before whom, &c., refused to charge the jury as requested in behalf of the said Charles Finley that no damages could in any event be allowed to the plaintiff (below) against any of the defendants (below) for any pain or anxiety suffered on account of any of his children.

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10. There is also error in this that the said Judge before whom, &c., refused to charge the jury as requested in behalf of the said Charles Finley, that if the acts complained of amounted to a common nuisance the plaintiff (below) could not recover against any of the defendants (below) for any discomfort of like nature with that suffered by his neighbors, even though greater in degree and effects.

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11. There is also error in this that the said Judge before whom, &c., refused to charge the jury as requested in behalf of the said Charles Finley, that in order to find against Finley the jury must be satisfied by proof that Finley actively participated in the acts complained of.

12. There is also error in this that the said Judge before whom, &c., refused to charge the jury as requested in behalf of the said Charles Finley, to the effect stated in the last above assignment of error, except with a qualification which confused and misled the jury.

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13. There is also error in this that the said Judge before whom, &c., charged the said jury that a deposit (of night soil) was made upon the property of the said Charles Finley.

40 14. There is also error in this that the said Judge before

whom, &c., charged the said jury that if there was a nuisance to the plaintiff (below) created by the defendants (below) or some of them and it injured the plaintiff (below), the plaintiff (below) was entitled to some damages, whether he showed any other injury than the mere offense to the sense or not.

15. There is also error in this that the said Judge before whom, &c., charged the jury that besides the damages 10
which are ascertainable and readily measured pecuniarily, there are other damages which are not easily measured, and must be determined by the jury in the exercise of a sound and wise discretion, and to that discretion the law has permitted the determination of damages of that indefinite character.

16. There is also error in this that the said Judge before whom, &c., charged the said jury that if the plaintiff 20
(below) suffered annoyance; if the occupation of his residence was made uncomfortable; if he was made sick and lost time by reason of it in his business, or expended money in his healing and cure, those were all legitimate objects of estimation in damages; that money spent is a fixed sum; time lost can be fixed when its full value is ascertained, but that the discomfort which one suffers when living in an atmosphere that is offensive the jury must admeasure in their discretion.

17. There is also error in this that the said Judge before whom, &c., charged the jury that if they should find 30
that the fever which destroyed the lives of the children of the plaintiff (below) was the result of the nuisance (declared on) any care or expenditure that was made necessary because of their sickness and suffering, and while they were in life, created a right not dependent on death, but the right existed in their life, which might be a ground for estimating damages
. . . that those expenses and that attendance and care 40

which the plaintiff (below), in virtue of his duty towards his children bestowed upon them or paid for them, were legitimate elements to be considered by the jury in ad-measuring his damages, and which he might fairly demand from those who were chargeable in law with the creation of the wrong which followed.

10 Therefore the said Charles Finley prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said Charles Finley may be restored to all things he has lost on occasion of said judgment, &c.

JOHN A. McGRATH.

Attorney of Plaintiff in Error.

GILBERT COLLINS,

Of Counsel.

Order in Supreme Court.

NEW JERSEY SUPREME COURT,

FEBRUARY TERM, 1888.

 CHARLES FINLEY,
Plaintiff in Error,

vs.

 JOSEPH HANDLEY,
Defendant in Error.

} *Rule.*

10

This matter being opened to the Court by Hoffman & Herbert, counsel for the defendant in error, on motion to strike out the third to the seventeenth assignment of errors inclusively, and the Court having heard the argument of counsel for the respective parties, and it appearing that the said plaintiff in error before taking the writ of error in the above entitled cause applied for a rule to show cause why the verdict should not be set aside and a new trial granted which was made by the Court and, upon hearing argument of counsel, discharged as to the said plaintiff in error. And it further appearing that upon the granting of the said rule to show cause no points were expressly reserved in said rule, and that the bills of exceptions taken on the trial of said cause were thereby waived. It is thereupon on this twenty-eighth day of February, A. D. eighteen hundred and eighty-eight by the Court ordered that the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth assignments of error assigned by the said plaintiff in error be stricken out with costs.

Entered February 28, 1888.

On motion of

 HOFFMAN & HERBERT,
Attys. for Deft. in Error.

40

OPINION.

NEW JERSEY SUPREME COURT,

JUNE TERM, 1888.

CHARLES FINLEY,
Plaintiff in Error,

vs.

JOSEPH HANDLEY,
Defendant in Error.

10

Syllabus.

Whether a rule to show cause why a new trial be granted is general or special, the mere granting of it, on the application of the party who holds bills of exception operates as a waiver of all exceptions save 20 those which are expressly reserved in the rule to show cause.

On motion to strike out errors assigned.

Argued at February Term, 1888, before Justices Van Syckel, Knapp and Dixon.

Messrs. McGrath & Collins, for plaintiff in error.

Messrs. Hoffman & Herbert for defendant.

The opinion of the Court was delivered by Van Syckel, J.

This action was brought in the Hudson Circuit Court 30 by Handley *v.* Finley and others, where a verdict was recovered against all the defendants. Thereupon the following rule to show cause was granted in the Circuit Court.

“Counsel for all the defendants in above-stated cause having applied to the Court (*ex parte*) for a rule to show cause why the verdict of the jury lately rendered against said defendants therein should not be set aside and a new trial granted, on the grounds that the said verdict is against the weight of the evidence and the damages 40

awarded by said verdict excessive, and on the further ground of misbehavior of the plaintiff toward the jury. It is on this fourteenth day of May, A. D. eighteen hundred and eighty-seven, on motion of Henry E. Wills, attorney of defendant Patrick Woods, and on this motion for said other defendants ordered that plaintiff show cause before his honor Manning M. Knapp, Judge of the said Court, at the Court House in Jersey City, on Saturday, the twenty-eighth day of May, instant, at ten o'clock in the forenoon, why said verdict should not be set aside and a new trial granted in said cause on the grounds aforesaid.

10 Rule entered May 14, 1887. On motion of

HENRY E. WILLS,

Atty. of Defts."

This rule to show cause was discharged after argument.

A writ of error to this court was then taken by Finley, and now the defendant in error moves to strike
20 out all the assignments of error which are based upon exceptions taken at the trial, on the ground that such exceptions were waived by the granting of the rule to show cause.

Section 246 of the practice act provides that,

"Where the party holding a bill or bills of exceptions
"applies for a rule to show cause why a new trial should
"not be granted, the granting thereof shall be a waiver
"of all bills of exceptions, except on points expressly
"reserved in said rule."

30 "A rule to show cause why a new trial should not be
"granted, may, in the discretion of the Court, be special,
"and then the case shall be heard and decided on the
"grounds upon which the rule was allowed."

Our statute passed March 7, 1797, (Rev. Laws 293) makes no provision as to the effect of the rule to show cause.

In *Gibbons v. Ogden*, 2 South, 852, and in *Mann v. Glover*, 2 Gr. 195, this Court refused to hold that a party
40 cannot move for a new trial, on any matter contained in the bill of exceptions without waiving his entire bill;

but did hold, that a motion for a new trial or an arrest of judgment would not be entertained on any point on which a bill of exceptions had been allowed, unless the party making such motion would waive that exception.

The practice was settled in the case of *Meeker v. Boylan*, 3 *Dutcher*, 262; and was embodied in a rule of Court promulgated November Term, 1862, as follows:

"43. Where the party holding a bill, or bills of exceptions, applies for a rule to show cause why a new trial shall not be granted on the points contained in said bill or bills, or in any of them, it shall be made a *condition* of granting the rule, if insisted upon by the opposite party, that all the bills of exceptions shall be given up. But if the application for a rule is made solely on points, which cannot be raised on a writ of error, the bill or bills of exception need not be given up. Rules to show cause may, in the discretion of the Court be special, and then the case shall be heard and decided on the grounds upon which the rule was allowed." 10

See rules published in 1864 by Chas. P. Smith. 20

The reason given in *Meeker v. Boylan* for this form of the rule is, that the party applying for the rule cannot be permitted to select particular questions of law to be argued and decided on the motion for a new trial and retain his bill of exceptions upon other questions to be argued and decided on a writ of error.

The rule was amended in 1868 and published in the compilation of rules of that year as rule 42, in the precise form in which it is now found in the Practice Act 30
Rev. p. 887 sec. 246.

Under the rule of 1862 the granting of a rule to show cause did not of itself operate as a waiver of the bills of exception, unless it was expressly made a condition of the rule that such should be its effect.

That rule also provided that where the rule to show cause was applied for solely on points which could not be raised on a writ of error, the bills of exception need not be abandoned.

The rule of 1868 which became the statute in the 40

Revision, makes the granting of the rule to show cause a waiver of all bills of exception, except on points expressly reserved in said rule.

It also omits the provision of the rule of 1862, that the bills of exception need not be abandoned where the rule to show cause is applied for solely on points which
10 cannot be raised in error.

This history of the rule leaves no doubt of the purpose of the statute now in force regulating this subject.

The intention was that in every case the granting of a rule to show cause should be a waiver of all bills of exception, except on points expressly reserved in the rule. The latter clause of the statute (in almost the exact language of the rule of 1862) permitting the court in its discretion to make the rule special, was incorporated so that no doubt could arise of the power of the
20 court to do so. If that provision had not been preserved the implication might have arisen, that such power was intended to be withheld.

Whether, therefore, the rule to show cause is general or special, the mere granting of it, on the application of the party who holds bills of exception, operates as a waiver of all exceptions save those which are expressly reserved in the rule to show cause.

The statute applies as well to the Circuit as to the Supreme Court.

30 The motion of the defendant in error to strike out all the assignments of error which are based upon exceptions taken at the trial must prevail.

Judgment in Supreme Court.

The judgment recites the foregoing record and then proceeds as follows :

But because our said Supreme Court now here are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, to-wit : until the February Term, A. D. eighteen hundred and eighty-eight, to hear the judgment of the said Court thereupon, at which day, before said Court at Trenton come the parties aforesaid, by their attorneys aforesaid ;

And the Court having inspected the Record of the judgment below, and duly considered the causes of error, and the first and second causes of error having been abandoned, and the Court having ordered the other causes of error to be struck out, on the ground that the bills of exceptions of the defendant below (the plaintiff in error) were waived by the granting to him of a rule to show cause why a new trial should not
20 be granted—no points having been expressly reserved in said rule to show cause, and the Court therefore refusing to consider said causes for error assigned, and finding no error in the record aforesaid, or in the giving of said judgment aforesaid,

Therefore it is to be considered that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the said causes and matters above for error assigned in any wise notwithstanding ; and it is further considered that the
30 said Joseph Handley do recover against the said Charles Finley, as well his damages aforesaid as also forty-seven dollars and twelve cents for his damages, double costs and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretense of prosecuting the said writ of error, by our said Supreme Court now here adjudged to the said Joseph Handley and with his assent according to the form of the Statute in such case made and provided, and that the said Joseph
40 Handley have execution thereof, &c.

Judgment signed this seventh day of March, A. D. eighteen hundred and eighty-eight.

M. BEASLY,
Chief Justice.

Writ of Error to the Supreme Court.

A writ of error in due form was then issued out of 10
the Court of Errors and Appeals, returnable March 26,
1888, the return to which sets out the foregoing judg-
ment records of the Circuit and Supreme Courts.

Afterwards the plaintiff in error died, and on May
14, 1888, the Court order that the death being entered
on the record and that Mary Finley, his administratrix,
be substituted as plaintiff in error.

Assignments of Error.

20

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE LAST RESORT IN ALL CAUSES, &C.

MARY FINLEY, Administratrix, &c.,
of Charles Finley, Deceased,
Plaintiff in Error,

vs.

JOSEPH HANDLEY,
Defendant in Error.

*In Error to the Su-
preme Court.
On Judgment
affirming a Judg-
ment of the Hud-
son Circuit
Court.*

30

*Assignment of Er-
rors.*

Afterwards, that is to say, as yet of the term of
February, A. D. eighteen hundred and eighty-eight, in
the Court of Errors and Appeals in the last resort in 40

all causes of the State of New Jersey, comes the said Mary Finley, Administratrix, &c., of Charles Finley, deceased, by JOHN A. McGRATH, her attorney, and says that in the records and proceedings aforesaid and also in the matters recited and contained in the said bills of exceptions, and also in the giving of the verdict and judgment aforesaid and judgment of affirmance thereof, there is manifest error in this, to-wit :

40 1. That the Supreme Court on motion of the defendant in error unlawfully and unjustly struck out all but the first and second assignments of error in that Court.

2. There is also error in this that the Supreme Court, on the argument of the cause refused to consider the third to seventeenth (inclusive) of the assignments of error in that Court.

3 to 17 (same as those numbers in Supreme Court, p. 229 et. seq).

30 18. There is also error in this that the Supreme Court affirmed the judgment of the Circuit Court of the County of Hudson, whereas by reason of the errors assigned in that Court or some or one of them it should have reversed the said judgment.

20 Therefore the said administratrix of Charles Finley prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the records and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the estate of the said Charles Finley may be restored to all things he has lost on occasion of said judgments, &c.

COLLINS & CORBIN,
Attorneys for Plaintiff in Error.

GILBERT COLLINS,
Of Counsel.

10 The defendant in error files joinder to the first two assignments and gives notice of motion to strike out the others.

