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Notice and Grounds of Appeal.

Filed January 21, 1917.

New Jersey Supreme Court.

<p>SALVATORE GRILLO, <i>et al.</i>, <i>Plaintiffs-Appellees,</i> <i>vs.</i> THOMAS A. EDISON, <i>et als.</i>, <i>Defendants-Appellants.</i></p>	<p><i>In Tort.</i> <i>On Appeal</i> 10 <i>from District</i> <i>Court of the</i> <i>First Judicial</i> <i>District of</i> <i>Essex County.</i></p> <p><i>Notice of</i> <i>Appeal</i> <i>from</i> <i>Judgment of</i> <i>Supreme</i> 20 <i>Court.</i></p>
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SIR:

TAKE NOTICE that the defendant, Thomas A. Edison, Inc., appeals from the whole of the judgment entered in this cause by the New Jersey Supreme Court, on the 15th day of January, 1917, to the Court of Errors and Appeals, the last resort in all causes, on the following grounds: 30

First. The said Supreme Court should have reversed the judgment of the District Court of the First Judicial District of the County of Essex, brought up on appeal to the said Supreme Court, and not have affirmed it.

Second. The trial judge at the trial of the case in the District Court of the First Judicial District

Notice and Grounds of Appeal.

of Essex County, committed error of law in the following particulars:

1. The trial judge should have granted the motion for a non-suit of the said defendant, at the close of the plaintiffs' case.

2. The trial judge should have granted the motion of the said defendant for the direction of a verdict at the conclusion of the entire case.

3. The trial judge admitted evidence which was immaterial and improper, and in particular permitted the plaintiffs' counsel to ask the following questions:

a. Of the witness John B. Miller: "You just testified that you knew who does own the aniline and carbolic acid plants. Will you tell who does own them?"

b. Of the witness John B. Miller: "As manager of the chemical department of the Edison Storage Battery Company were any complaints made to you that the chemical department of the Edison Storage Battery Company was discharging into the stream running through the Silver Lake section of Belleville, any substances objectionable to the persons making the complaint?"

c. Of the witness John B. Miller: "Did you take any action as result of these complaints made since February 1, 1915?"

d. Of the witness John B. Miller: "Did the complaints specify in any other particular rather than the fumes?"

e. Of the witness John B. Miller: "What action did you take as result of those complaints?"

f. Of the witness Herbert A. Vail: "What action was taken?"

g. Of the witness Herbert A. Vail: "What action did they take?"

Notice and Grounds of Appeal.

h. Of the witness Peter Gallato: "When did you notice a change in this ditch? When did it first change from a dry to a wet ditch?"

i. Of the witness Michael Mairon: "Has this stream been in this condition during the past nineteen years?"

j. Of the witness Rudolph J. Struck: "What is the condition?" 10

k. Of the witness Rudolph J. Struck: "Do these fumes have any effect on the members of your family?"

4. The trial judge improperly and over the objection of the defendants' counsel admitted in evidence from tax assessors as to the value of properties, as shown by their assessment records, particularly from the witness Frank A. Neary and from the witness George B. Milliken. 20

5. The trial judge refused the motion of the defendants' counsel to strike out the testimony of the witness Robert J. Struck.

Yours respectfully,

McCARTER & ENGLISH,
Attorneys of Defendant-Appellant
Thomas A. Edison, Inc.

To John L. Hughes, Esq., 30
Attorney of Plaintiffs-Appellees.

Notice of Appeal.

Filed April 26, 1916.

District Court of the First Judicial District
of Essex County

SALVATORE GRILLO AND ANGELO
D'ALESSIO,

Plaintiffs,

vs.

THOMAS A. EDISON, *et al.*,

Defendants.

10

In Tort.

*Notice of
Appeal.*

Sir:

TAKE NOTICE that the defendant, Thomas A. Edison, Inc., hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the First Judicial District of Essex County, rendered in the above stated action on the 19th day of April, nineteen hundred and sixteen, against the said defendant, Thomas A. Edison, Inc. 20

Yours respectfully,

MCCARTER & ENGLISH,

Attorneys of Defendant.

30

To JOHN LARKIN HUGHES, ESQ.,

Attorney of Plaintiffs.

40

State of Demand.

Filed

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF ESSEX COUNTY.

10	SALVATORE GRILLO AND ANGELO D'ALESSIO,		
	<i>Plaintiffs,</i>		
	<i>vs.</i>		
	THOMAS A. EDISON, EDISON STOR- AGE BATTERY COMPANY, A CORPO- RATION, EDISON MANUFACTURING COMPANY, A CORPORATION, AND THOMAS A. EDISON, INCORPO- RATED, A CORPORATION,	}	<i>In Tort.</i> <i>State of</i> <i>Demand.</i>
20			<i>Defendants.</i>

The plaintiffs herein, residing in the Silver Lake section, of Belleville, Essex County, New Jersey, complaining of the defendants say:

FIRST COUNT:

(1) Before and at the time of the committing of the grievances by the said defendants hereinafter stated, plaintiffs were, and ever since have been, law-
fully possessed of certain lands and premises con-
sisting of a house and lot at No. 45 Heckle street, in
the Silver Lake Section, Town of Belleville, County
of Essex and State of New Jersey; said house and
lot measuring approximately twenty-five (25) feet
by one hundred and thirty (130) feet, the dimensions
of the house being approximately twenty-four (24)
feet by twenty-five (25) feet, and which said house
was used as a dwelling for plaintiffs and their fam-
ilies, the remainder of the property being used for

40

State of Demand.

the purpose of growing vegetables and fruits; the said property being bounded on the easterly side by Heckle street, on the westerly and northerly sides by neighboring lots and on the southerly side by the waters of a certain stream or water course which runs through the said Silver Lake Section in the county aforesaid, which said stream or water course marks the boundary of the said lot on the said southerly side for the distance of approximately one hundred and thirty (130) feet. 10

(2) Before and at the time of the committing of the grievances hereinafter mentioned, plaintiffs or right ought to have had and enjoyed and still of right ought to have and enjoy, the benefit and advantage of the waters of said stream or water course which during all that time of right ought to have run and flowed in its natural, usual and accustomed manner, and, until the pollution thereof hereinafter mentioned, of right had run and flowed in its natural, usual and accustomed manner and still of right ought to run and flow in its natural, usual and accustomed manner along the southerly side of the said lands and premises of said plaintiffs. 20

(3) On or about February first, nineteen hundred and fifteen, and on each and every day and night between that time and the beginning of this action, the defendants possessed, operated and maintained various buildings, plants and works on Belmont avenue, Silver Lake Section, Town of Belleville, County of Essex and State of New Jersey, in the vicinity of said stream or water course above the said lands and premises of plaintiffs, and manufactured in said buildings, plants and works, poisonous acids, oils and other substances of a poisonous and destructive nature, and by means of pipes and artificial streams, unlawfully, wrongfully and injuriously conducted and discharged the said poisonous acids, oils and other substances 30 40

State of Demand.

and waste therefrom of said poisonous acids, oils and other substances, from their said buildings, plants and works into the said stream or water course above the said lands and premises of plaintiffs with the result that the waters of the said stream or water course flowing along the southerly side of the lands and premises of plaintiffs were polluted and made impure and unclean and caused to arise from said waters
 10 of said stream or water course poisonous vapors and fumes, with the result that the fertility of the land of plaintiffs and all vegetation, rose bushes and grapevines growing thereon have been destroyed, and the soil of said plaintiffs' land has become unproductive, parched, unfertile, and barren, and no vegetation, fruit, trees or bushes of any description can be grown thereon.

(4) The land of said plaintiffs thus made barren,
 20 unproductive, parched and unfertile, was of great value to plaintiffs for the growing of vegetables of various kinds, including corn, celery, beans, onions, lettuce and radishes and grape vines and rose bushes, all of which have been raised for many years on said property in great abundance until the pollution by the defendant of said waters referred to, as a result of which said plaintiffs have been compelled to buy
 30 all vegetables, fruits and wines required for their use, and the land of said plaintiffs has become and at present is absolutely worthless for the production of any vegetables or fruits of any kind or nature whatsoever, so that they have been damaged in the sum of three hundred dollars (\$300).

SECOND COUNT:

(1) As a result of the pollution of the waters of said stream or water course and the poisonous vapors arising therefrom, as set forth in Paragraph 3 of the First Count, the health of plaintiffs and the
 40 members of their families has been seriously under-

State of Demand.

mined so that they are almost continually ill, suffering from various complaints caused by the said pollution of the said waters of said stream or water course, and the poisonous vapors and fumes arising therefrom, the wife, Josephine D'Alessio, of Angelo D'Alessio, one of the plaintiffs herein, and his two children, Samuel D'Alessio and Philip D'Alessio, being at present under the care of a medical doctor for sickness caused by said pollution, vapors and fumes, and claims damages in the sum of one hundred dollars (\$100). 10

THIRD COUNT.

(1) The health of the wife, Concetta Grillo, of Salvatore Grillo, the other plaintiff herein, and his two children, Grace Grillo and Mary Grillo, has been seriously undermined so that they are almost continually ill and at present are suffering from sickness caused by the pollution, vapors and fumes referred to in Paragraph 3 of the First Count, resulting in an expense of approximately fifty dollars (\$50) for medical care and medicines up to the present time, and the plaintiff claims damages in the sum of one hundred dollars (\$100). 20

Plaintiffs allege they have been damaged in the sum of five hundred dollars (\$500) and therefore they bring their suit.

JOHN LARKIN HUGHES, 30
Attorney for Plaintiffs.

John V. Miller, direct.

A No, sir.

Q Just what is that matter?

A High grade of nickel, oxide of iron, or caustic potash solution and light lime.

Q Has the Edison Storage Battery Company control of any aniline plants and carbolic acid plants?

A It does not.

Q Do you know who does control them?

Mr. English. I object. 10

The Court. In that locality, do you know the name of the company that controls the aniline and carbolic acid plant?

A Yes, I do.

Q Do you have anything to do with it?

A I do not.

Q Directly or indirectly?

A Very indirectly at present.

Q Very indirectly? 20

A Yes.

Q Just what have you got to do with it?

A Well, at the present time, looking after the insurance on the building.

Q Anything else?

A No, sir.

Q Who are the owners of the aniline plant and carbolic acid plant?

Mr. English. I object; there is no mention here of aniline or carbolic acid plants. We have five different defendants named, but— 30

Objection sustained.

The Court. You will have to show the connection, if they are connected with the Edison Storage Battery plant or it may be connected with the Condensite plant—you will have to show the connection.

Q Do you know whether there are any aniline plants or carbolic acid plants in that vicinity controlled by the Edison Storage Battery Company? 40

John V. Miller, direct.

A I do not.

Q Do you know whether any aniline or carbolic acid plant in that vicinity is controlled by the Edison Manufacturing Company?

A No.

Q Do you know whether any aniline plant or carbolic acid plant in that vicinity is owned or controlled by Thomas A. Edison, Incorporated?

10 A Yes.

Q Does Thomas A. Edison, Incorporated, own and control the aniline and carbolic acid plants?

Mr. English. I object. This man cannot prove this. His knowledge must necessarily be hearsay. It should appear how he knows.

Objection overruled.

Exception.

Question read.

20 A No, he does not.

Q As the person who places the insurance on those two plants, will you please tell for whom you place the insurance?

Mr. English. I object; immaterial.

Objection sustained.

Q You just testified that you knew who does own the aniline and carbolic acid plants, will you tell who does own them?

30 *Mr. English.* I object, the source of his knowledge ought to appear.

Objection overruled.

Question read.

A Well, I don't know exactly. I know—

Q Now, Mr. Miller, you just testified that you did know; kindly let us know who does own them?

A Thomas A. Edison owns part of them.

Q Who else is interested with Thomas A. Edison?

40 A I couldn't say.

John V. Miller, direct.

Q Just what is your duty as manager of the Edison Chemical Works, Mr. Miller?

A I have control of the office, accounting and the construction work.

Q What do you do with your waste substances?

A Empty them into a sewer and from there into the settling pits, filtering pits.

Q Do they remain in the settling pits?

A Part of the material does, the liquid does, a filter bed. There is a solution runs off into the back of the lot and into a brook. 10

Q Where does the brook run to?

A That runs down into—through the Silver Lake section into the Passaic River.

Q Are you familiar enough with this case to tell whether or not that is the brook about which this action is brought?

Mr. English. I object, that is not a proper question. 20

Objection sustained.

Q Can you tell just where this brook does run into which this waste matter or the liquids as you testified are discharged? Just where does it run?

Mr. English. I object—he has already said that it runs through Silver Lake into the Passaic.

The Court. Does it pass near Heckel street in Silver Lake?

A It crosses Heckel street. 30

Q Why were these pits dug by the Edison Chemical Works at all?

A They were dug to filter out the solid matter that went into—went through our sewer pipes into the brook.

Q Where are those pits located?

A In the rear of the property.

Q Which property?

A Mr. Edison's property. 40

John V. Miller, direct.

Q Which building?

The Court. The buildings of the Federal or Edison Storage Battery?

A The primary battery building and the Edison Chemical Works.

Q Who controls the primary battery building?

A Thomas A. Edison, Incorporated.

10 Q How many pits have you?

A Sixteen, twelve or sixteen, I think.

Q Are they all located just where you have stated?

A Yes, sir.

Q All in the vicinity, or behind the primary battery building and the chemical plant?

A Yes, sir.

By the Court.

Q The matter which flows into these pits comes from what corporation?

20 A From the primary battery and the Edison Chemical Works.

Q From the primary battery department of what corporation?

A Thomas A. Edison, Incorporated.

Q And does the waste material which empties into those pits come from the plant of any other corporation except the Thomas A. Edison, Incorporated?

A No, sir.

30 *By Mr. Hughes.*

Q Are there any other settling pits, to your knowledge, in that vicinity?

Mr. English. I object. Immaterial.
Objection sustained.

Q Are there any other pits whatever used by the Edison Storage Battery Company, the owners of the Edison Chemical Works, of which you are the manager?

40 A No, sir.

John V. Miller, direct.

Q Just what is the matter that is discharged from the plant and passing through these pits or settling in the pits?

Mr. English. I would like to ask whether that refers to what goes in or what comes out. He may not know what comes out.

Mr. Hughes. My question is what goes in.

A It is general factory waste from the plant. 10

Q Just specify particularly what you mean by general factory waste.

A Well, wash water and—practically that's all. The wash water from the different buildings.

Q What do you mean by wash water?

A Well, we have different solutions in chemicals that we wash salts out of and so on.

Q What are those chemicals?

A Well, sulphate of soda, sulphate of iron and some free soda, not really free; it is practically neutralized. 20

Q Anything else?

A No, not that I know of—not to any extent.

Q I want you to designate specifically, from your knowledge gained in your line of duty, anything that is washed by the water you call wash water, whether it is a substance or any liquid or whatever else it may be. You have mentioned sulphate of soda, sulphate of iron and free silver.

A Those are the principal things; I couldn't say offhand what they all are, I mean what some of the others are. Liquid of calcium chloride and some few little odds and ends. That's practically the whole thing. 30

Q What are the odds and ends?

A Calcium chloride and iron oxide from the filter, but very little of it.

Q Mr. Miller, did you speak before the joint meeting of the local Board of Health and the Board of Health of Trenton, state board, recently? 40

John V. Miller, direct.

Mr. English. I object; immaterial.

Mr. Hughes. I am laying the foundation for testimony or remarks made by Mr. Miller at this meeting from which he can refresh his recollection and let the court know his impressions at that time.

10 *The Court.* What this witness, called upon the part of the plaintiff, may have said before a State Board of Health, in the absence of the defendants, cannot so far as I see be binding upon the defendants.

Mr. Hughes. I am not going to introduce these remarks for what they are worth here in order to bind the defendants, but I want to place the remarks before the witness so he can refresh his memory when I ask him these questions.

20 *The Court.* The question is now, "Did you speak before the State Board of Health of Trenton?" That is objected to. The objection is sustained.

Q Were any complaints made to you recently by the residents of—

30 *Mr. English.* I object; here is a suit for damages—the fact that some outside person may have made some complaint to this man doesn't affect the question one way or the other. If the question is limited to the plaintiffs the question might have some point.

Objection sustained.

Mr. Hughes. This man is the manager of the company.

40 *The Court.* I will allow the question if it is reframed or remoulded to this extent—limiting the complaints to complaints about the refuse matter which flows down in the brook, or the overflow from the settling pits about which the witness has testified and which, it has already

John V. Miller, direct.

been testified, passes the property of the plaintiff in this suit.

Mr. English. I think the complaints should be related to the things which this particular defendant brings into this stream.

The Court. I have sustained the objection to this question. Reframe your question, Mr. Hughes.

Q As manager of the chemical department of the Edison Storage Battery Company were any complaints brought to your attention from any source? 10

Mr. English. I object for the reasons already stated.

Objection sustained.

Q As a manager of the chemical department of the Edison Storage Battery Company were any complaints made to you that the chemical department of the Edison Storage Battery Company was discharging into the stream running through the Silver Lake Section of Belleville any substances objectionable to the persons making the complaint? 20

Mr. English. I object unless the question is limited to the plaintiffs.

Overruled.

Exception.

Question read.

A I don't think so, directly; no. 30

Q Will you just explain your answer—just what do you mean?

A Well, there have been complaints—there have been a lot of people talking about conditions in general there but no definite—there has been no definite complaint that I know of made to us.

By the Court.

Q Did anyone come to you personally and complain of the waste matter which empties into this brook about which you have testified, that is the ques- 40

John V. Miller, direct.

tion, from the storage battery company? Did anyone come to you and say certain things?

A I don't think they did come and say that the Edison Chemical Works were.

Q You know, yes or no, if anyone came to you and complained about the condition of the waste matter that was permitted to flow into this particular brook?

10 *Mr. English.* Your Honor means, of course, from the Edison Storage Battery Company?

A From our department, the Edison Chemical Works—I think not, no.

Q Well, from Thomas A. Edison, Incorporated?

A That I don't know. Not that I know of.

By Mr. Hughes.

Q Were complaints made indirectly and did they reach you?

20 *Mr. English.* I object; that certainly cannot be binding evidence upon us. Suppose he read it in the newspaper.

Objection sustained.

Q Did you take any action as a result of any complaint made either directly or indirectly to you?

Mr. English. I don't want to be captious, but that is indefinite and I object.

Objection sustained.

30 Q Did you take any action as the result of these complaints made directly or indirectly, to preclude a repetition of these complaints?

Mr. English. I object, unless limited to the particular defendant, if that is the purport of the question.

The Court. I assume that it does relate to them.

40 *Mr. English.* The you is the storage battery company.

John V. Miller, direct.

A Has the Edison Chemical Works? I should say not, recently we haven't done anything.

Q Did you at any time?

Mr. English. I object to that.

The Court. Fix the time.

Q Did you take any action as the result of these complaints made since February 1st, 1915?

Mr. English. I object, immaterial.

10

Objection overruled.

Exception.

A What complaints?

Q Just answer the question.

The Court. That is perfectly fair, the witness may have that stated to him. The complaints about which you have testified.

Mr. English. I object on the ground that there are no complaints upon which that question can be predicated.

20

Objection sustained.

Q Were any complaints made indirectly in regard to the discharge from the chemical department of the Edison Storage Battery Company, which reached you and on which you took action?

A I would say no, outside of what we do regularly, right along and have done right along. General repair and upkeep.

The Court. The answer is "no."

30

Mr. Hughes. I should like to make application for permission to serve the plaintiff with interrogatories in this matter.

Mr. English. I object to that. I don't think this is a proper time for any such application, or permission.

The Court. I don't think that can be done now—the application comes too late.

Adjourned to Wednesday, December 29th, 1915
at 10.00 A. M.

40

John V. Miller, direct.

The taking of testimony in the above entitled cause again came on on Wednesday, December 29th, 1915, at 10.00 A. M.

JOHN V. MILLER, recalled.

Examination by Mr. Hughes.

10 Q You testified, Mr. Miller, that there were certain settling pits at the back of the chemical plant, is that right?

A Yes, sir.

Q How many settling pits did you testify that there were there?

A Twelve or sixteen.

Q When were these pits erected, or dug?

A I think about—they have been in about six years, I think.

Q Is it six years since the last one was dug?

20 A Yes, sir.

Q Why were they dug?

A They were dug to filter out and also to settle the solid matter in the waste solution from our plant.

Q You testified also that the waste eventually reached this brook in question?

A Yes, sir.

Q Just how does it reach it, can you explain?

30 A Well, the solution goes through these pits, from one to the other, filtering through the sand and in the last pit there was an overflow and it flows into a little trench and from that into the brook.

Q What is the distance from the last pit to the brook?

A It goes off at an angle I should say about 100 feet, something like that.

Q What is the width or the dimension of this trench as you call it through which the fluid passes into the brook?

A I guess about a couple of feet wide.

40 Q How many feet?

John V. Miller, direct.

A Two feet.

Q Is it a semi-circle or circular shape, entirely enclosed or open?

A Just a trench dug in the ground.

Q How many of those trenches are there between the pits and the brook?

A Only one.

Q Do I understand that the waste material and the fluid goes through this pit and eventually reaches the brook through just one trench? 10

A Yes, sir.

Q How long have you been employed as manager of the chemical plant?

A About ten years.

Q You say the pits were dug six years ago; what was done with the waste prior to that time?

Mr. English. I object, immaterial.

Question withdrawn.

Q How do you remove the matter that settles in the pits, Mr. Miller? 20

A It is shoveled out and put into wheel-barrows and buckets and carted out—sometimes pumped out.

Q About how much matter will one of those settling pits hold?

A I couldn't say.

Q How often do you clean them?

A Why, about twice a year.

Q What are the dimensions of the pit, each pit, do you know? 30

A I imagine about twenty feet square, I think. Something like that.

Q What was done with the waste matter which ordinarily settled in that pit when you are cleaning the pit?

A We put it out around the pits out on the ground and it dries up there.

Q How do you divert the waste matter over the ground from the pit? 40

John V. Miller, direct.

A Well, when we use a pump it just flows out over the ground and if we wheel it out we wheel it over planks.

Q But in the meantime, when you do that, other waste materials are coming out from the pits?

A Yes.

Q Where do they go?

10 A The pits are arranged in two sets so that when we are cleaning one side the solution runs into the other side. Only one side is in operation at a time.

Q How many are in operation now?

A Supposed to be eight.

Q You never have the twelve or sixteen that you testified to working at the same time?

A No; not unless on some very special case, something like that.

20 Q Are there any pipes connecting the shemical plant with the brook regardless of these pits? Any connecting pipe under ground, between the chemical plant and the brook?

A Yes, sir.

Q Where is that located?

A Out in Belmont avenue.

Q Can you describe just how it reaches—the direction in which it runs from the plant into the brook?

30 A There are three or four outlets from it, sort of trenches along the building where the rain water goes down and they go through pipes into this main pipe in Belmont avenue and along Belmont avenue into the brook.

Q I understand that the pipe goes along Belmont avenue and discharges its matter into the brook, but what I want to know now is where does it connect with the building?

A We have two connections at what we call our No. 2 building, one at No. 6 where the—well, at No. 6 and two, I believe at No. 5.

40 Q What is manufactured at No. 2?

John V. Miller, direct.

A We manufacture there a nickel sulphate solution.

Q What is manufactured at No. 6.

A That is a power house.

Q And what is manufactured at No. 5.

A Nickel hydrate and iron oxide.

Q And do I understand correctly, that the discharge from these different plants goes through this pipe into the stream?

10

A No, sir.

Q Just explain why you have the pipe there?

A That was originally put in a long while ago, I don't know just what the date was, but when these pits were put in in the back we built a new sewer and diverted all the solution back into those pits and it is only once in a while—sometimes the sewer clogs up or something like that and it goes out into the street. Very little.

Q What was the original use for that pipe?

20

Mr. English. I object, that is for far back, it is immaterial.

By the Court.

Q What was it originally used for, if you know?

A To carry out the factory waste.

Q And then you supplied the settling pits and discontinued the pipe?

A Yes, sir.

By Mr. Hughes.

30

Q As a matter of fact the pipe is still in use, isn't it?

A Not for factory waste. For rain water and the water from the boilers, from the blow off and so on.

Q Coming back for a short time again to the question of complaints—did you ever receive a complaint in regard to the situation under your control from the Board of Health of Belleville?

A Yes, sir.

40

John V. Miller, direct.

Q When did you receive that complaint?

A I think there have been several times, complaints.

Q What was the nature of the complaint?

A Just fumes, I think.

Mr. English. I think that is improper, the nature of the complaint.

10 *The Court.* The question is answered.

Q Did the complaints specify in any other particular rather than the fumes?

Mr. English. I object, entirely improper.

Objection overruled.

Exception noted.

Question read.

A Yes, I think that—

20 *Mr. English.* I would like to have that the answer, simply "Yes" because I will object to the next question.

Q What were they?

Mr. English. I object, hearsay; not connected with the plaintiffs, apparently and ought not to be binding upon the defendants.

Objection overruled.

Exception noted.

The Witness. May I ask, does this refer to specified the Edison Chemical Works?

30

The Court. You said you received complaints from the Board of Health and then counsel asked you what about and you said in regard to fumes; then he asked you if it didn't specify some other particular and you said yes; now counsel asks you in what other particular they specified?

Mr. English. The original question related to the company under his control.

The Court. Yes, it does relate to that.

40

John V. Miller, direct.

A Well, I think they complained of what we were emptying into the brook.

The Court. By "we" you mean whom?

A Edison Chemical Works.

Q When were those complaints made by the Board of Health?

A Mr. Smith has complained for some time—quite a long time back. 10

Q Who is Mr. Smith?

A The inspector of the Board of Health.

Q Just what I want to know is this—did the Board of Health make any complaints which reached you in your capacity as manager of the Chemical Company, since February 1st, 1915?

A Yes, sir.

Q Did those complaints refer to discharges into the brook?

A Yes, sir. 20

Q What action did you take as the result of those complaints?

Mr. English. I object to that. That is like the question discussed last week with reference to the change of a situation after accident. He cannot be punished for correcting an evil which his attention is called to.

The Court. I am not quite sure that the situation is the same as repairing a machine after accident. This question is simply what if anything did he do with reference to the complaint? 30

Objection overruled.

Exception.

A We didn't take any particular action.

Q Did you ever appear before the Board of Health in regard to these complaints?

Mr. English. I object, we had that up last week.

Objection sustained. 40

John V. Miller, direct.

By the Court.

Q You know the by-product or the waste material that flows out of the pits into the brook, do you not?

A Yes, sir.

Q What is that by-product? What is the waste?

A It is sulphate of soda solution and iron sulphate
10 solution.

Q Are you a chemist?

A No, sir.

Q Then how do you know what is in the waste matter?

A I had them analyze it.

Q Are the men here who made the analysis of the materials flowing out of the pits into the brook?

A No, sir.

Q Then what you know your chemists told you?

20 A Yes, sir.

The Court. Then I guess we don't want his testimony as to what goes into the brook.

By Mr. Hughes.

Q Did you make a statement before the local Board of Health that new plants had been built to manufacture phenylene, carbolic acid and aniline?

Mr. English. I object.

Objection sustained.

30 Q Is it a fact that new plants were erected to manufacture phenol, carbolic acid and aniline?

Mr. English. I object, leading.

The Court. What, if any, new plants were erected during the last nine months for the Edison Chemical Works of which you are the manager?

A None.

40

John V. Miller, cross.

Cross examination by Mr. English.

Q You said last week, Mr. Miller, that the chemicals or waste substances which went into the pits consisted of sulphate of soda, sulphate of iron and some free soda—what form are those things in, salts or acid?

A Well, I believe it is—I wouldn't want to answer that.

Q Have you ever been out around those settling pits? 10

A Yes, sir.

Q Is there plant life growing out there?

A Yes, sir.

Q What growth?

A Ordinary weeds.

Q Are there any fumes given off from those pits, those settling pits?

A Not that I have noticed. 20

Q Does plant life grow in the pits themselves?

A Right on the edge.

Q And along the trenches leading into the brook?

A Yes.

Q Have you ever been at the point where the trench runs into the brook?

A Yes, sir.

Q Any fumes there, from the trench?

A No, sir.

By the Court. 30

Q You say when the settling pits are emptied sometimes you use a pump to empty them and other times wheel it out?

A Yes, sir.

Q That means the residue?

A Yes, solid matter.

Q You pump it out at times—on the surrounding ground?

A Yes, on our property. 40

Frank Keary, direct.

Q And at other times you put men in to shovel it out in wheel-barrows?

A Yes, sir.

Q And then it is dumped on your property?

A Yes, sir.

Q When you use a pump to pump it out don't you flood the pits to make it easy for the pumps to operate?

10 A Sometimes and sometimes it is fluid enough to be pumped out.

Q And when you pump it out on your property doesn't it flow down into the brook, off of your property?

A I suppose the rain water washes it down, very gradually though.

Q Do you know what the ingredients are in that matter which you pump out on the ground?

20 A There is ferric oxide in it.

Mr. English. That is iron oxide, isn't it?

A Yes, sir.

FRANK A. NEARY, sworn.

Examination by Mr. Hughes.

Q What is your occupation?

A I am tax assessor of the Town of Belleville.

Q How long have you been tax assessor?

30 A I was appointed, I think, in the middle of January, 1915. I don't remember the exact date.

Q Are you familiar with the property in the Silver Lake section?

A Yes.

Q And especially that property bounded by Belmont avenue on the east, Bloomfield on the west, Franklin street on the north and building lots facing Alva avenue on the south?

A Yes.

40 Q Have you assessed that property?

Frank Keary, direct.

A Yes.

Q Against whom did you assess it?

Mr. English. I object, he might have assessed it against the wrong person.

The Court. Have you as a tax assessor the record of the assessments against the property described by counsel in the year 1915?

A Yes, I have.

The Court. Turn to the record and show it.

Mr. English. I object on the ground that it is immaterial and doesn't tend to prove anything.

Objection overruled.

Exception.

10

By Mr. Hughes.

Q In whose name or against whom did you assess the lands and buildings in that plot?

A Thomas A. Edison.

Q Does that mean the lands or the buildings or both?

A That means the land and buildings.

Q All the buildings and all the land?

A Yes, sir.

Q Did you assess the personal property in the buildings?

A Yes.

Q Against whom did you assess the personal property?

Mr. English. This is all subject to my objection, your honor.

30

A Edison Chemical Company and Thomas A. Edison, Incorporated, Primary Battery Division. Two different assessments.

Q Any others?

A That's all.

Q Do your records show any assessment against the personal property in any aniline plant or phenol plant or carbolic acid plant?

40

Frank Keary, direct.

A No.

Q Do you know which plant was known as the aniline plant?

A No.

By the Court.

Q Is that all?

A I have another entry of Thomas A. Edison, facing on the same street, same plot.

Q What have you assessed against Thomas A. Edison in this 4916?

A Personal property?

Q Does your book show what it consisted of? Does it show building or fixtures?

A Just personal.

Q Can't you tell whether that means an automobile or a building?

A Yes, there is a different entry made for automobiles. That doesn't mean automobile.

Q 4916—does the assessment show for the land or the improvements on the land?

A Edison Chemical Company, in that is all personal property, everything that isn't real—machinery and if they have a bank account in my jurisdiction—office furniture and so on.

Q And 4915, Thomas A. Edison, what is that for?

A That is for the land and the buildings.

Q And the Edison Chemical Company is assessed also for the land and buildings?

A No they are not assessed for land and buildings.

Q They are assessed for just personal property?

A Yes, sir.

Q Edison Chemical Company is personal only and Thomas A. Edison, Incorporated—that is assessed for what?

A Personal.

Q And your next is Thomas A. Edison again?

A That is just for buildings, no land at all.

Frank Keary, cross.

Cross examination by Mr. English.

Q As I understand it Thomas A. Edison, personally, is assessed for realty?

A Yes, sir.

Q That consists of land and buildings, or land alone, or buildings alone?

A Yes.

Q And the Edison Chemical Company is assessed for personalty? 10

A Yes.

Q And Thomas A. Edison, Incorporated, Primary Battery Division, is assessed for personal property?

A Yes, sir.

PHILIP TINCH, sworn.

Direct examination by Mr. Hughes.

Q What is your occupation? 20

A Construction engineer of Thomas A. Edison, Incorporated.

Q How long have you been construction engineer?

A Two months.

Q By whom were you employed prior to the last two months?

A Thomas A. Edison, Incorporated, as draughtsman.

Q How long were you draughtsman? 30

A About six months.

Q By whom were you employed prior to that?

A Edison Laboratories, West Orange.

Q How long had you been employed there?

A Oh, about six months.

Q In what capacity?

A As draughtsman.

Q Who operated the Edison Laboratories?

Mr. English. I object to that, that is on West Orange.

Objection sustained. 40

Philip Tinch, direct.

Q Have you an office as construction engineer?

A No, sir.

Q Where are your headquarters?

A At Thomas A. Edison, Inc., Silver Lake.

Q What are your duties as construction engineer?

A Taking care of new machines and repairs.

The Court. Repairs to what, the machines?

10 A Machinery.

Q Who pays your salary?

A I get paid by Thomas A. Edison, Inc.

Q Are you familiar with the material manufactured in these plants of Thomas A. Edison, Inc.?

A Manufacture carbolic acid is all that I know.

Q What else?

A Nothing else.

Q Do you know anything about the waste from carbolic acid?

20 A No, I don't.

Q Do you know whether there is any waste from the carbolic acid manufactured in that plant?

A No.

Q Did you ever assist in constructing settling pits or pipes for the purpose of carrying away waste matter?

A No, sir.

Q Do you know of any?

A No, I don't.

30 Q Which plant are you connected with, which particular department of Thomas A. Edison, Incorporated, are you connected with?

A I am connected with the carbolic acid division.

Q Are you connected in any way with the aniline plant?

A No.

Q Do you know if the aniline plant is one of the departments of Thomas A. Edison, Incorporated?

A No.

40

Emo Kammehoff, direct.

Cross examination by Mr. English.

Q Do you have anything to do with the manufacturing end at all?

A No.

EMO KAMMEHOFF, sworn.

Direct examination by Mr. Hughes.

Q What is your occupation? 10

A Supervising the manufacture of carbohc acid.

Q For whom?

A As far as I know for Thomas A. Edison, Incorporated.

Q Are you in control of the carbohc acid plant?

A Yes.

Q Just what is manufactured in that plant—just carbohc acid?

A Just carbohc acid.

Q Any waste from carbohc acid—any waste substance? 20

A Well, some waste in a very diluted condition going away.

Q What do you do with the waste?

A Let it flow away.

Q Where does it flow to?

A As far as going out of our plant is flows through pipes and then by way of a trench and then it disappears in Belmont avenue.

Q Do I understand correctly that you have pipes connecting the carbohc acid plant and running under Belmont avenue? 30

A Yes, sir.

Q Where is the other end of that pipe or pipes?

A As far as I know at the brook crossing Belmont avenue.

Q And do the wastes from the carbohc acid plant go from that pipe into the stream?

A If you will call it waste, yes.

Emo Kammehoff, direct.

Q What is that waste?

A I guess only a chemist who will analyze it thoroughly could tell you. I call it mostly water.

Q Just where does that water come from?

A It comes from all parts of the carbohc acid plant. It is, for instance, condensed steam which is absolutely pure water; water which is used for cooling purposes, no impurities in that.

10 Q You say it is steam and pure water—where does it come from? Does it perform any washing purpose?

A I can only repeat from all parts of tse plant.

Q Does that mean from the bricks, the walls, the ceiling, the floor or the stuff manufactured?

A I don't understand how water can come from the walls. They are made from brick and iron—you can't get any water from there.

Q Tell us, where does the water come from?

A From the different operations of the plant.

20 Q Does it come from the machinery? Tell us where the water comes from, not where it does not.

A From the different operations of the plant. I don't know how to express myself more clearly.

Q Well, perhaps if you tell us what the operations of the plant are we might get to it.

Mr. English. I object, and this is a pretty serious objection. That is going into the secrets of Mr. Edison.

30 A I cannot answer that question because that would be secrets of the manufacture. I cannot tell you that before I get the permission of Mr. Edison.
By the Court.

Q Well, the question now is, in addition to condensed steam where else does the water come from which flows through the pipe in question? Does it come from any mixing machines where carbohc acid is being mixed or allowed to settle?

40 A I may mention one thing—we are using filter pipes.

Emo Kammehoff, direct.

Q And some fluid flows through those pipes and into this pipe?

A Yes, again in a very highly diluted form.

Q Just about how much water comes through the filter pipes, how much per hour?

A I can't tell you any estimate from the single parts, but I can tell you the whole amount that goes out in twenty-four hours.

Q What is the whole amount for twenty-four hours? 10

A About 610,000 litres in twenty-four hours. It is about equal to a quart.

Q A quart of water?

A Twenty-one thousand cubic feet and that is to be multiplied by about thirty.

Q Suppose we take the ordinary half-inch pipe that supplies family use, is there a constant stream of that size running out of this plant? 20

A Oh, it would be far more than that.

Q Well, double the capacity of that—a two-inch pipe—is it a stream as large as that that runs out?

A The stream running out of the pipe would depend to a great extent on the pressure behind it so that question cannot be answered in that way. I might add that that pipe is ten inches wide, into Belmont avenue, but that at certain times it has to be large enough not to take care only of this 610,000 litres but to drain off all kinds of stuff. 30

Q Is there a stream of water flowing out of the plant every twenty-four hours—it works night and day?

A It is flowing almost constantly.

Q As large a stream as would go through this glass?

A Far more water.

Q What counsel wants to know from you is where does this stream come from? From the sinks in the building or don't you allow the sink and toilet water 40

Emo Kammehoff, direct.

to go into the sewer? Where does this large stream of water which flows out of your plant come from?

A I mentioned the filter pipes.

Q Yes, and the condensed steam which runs down on the surface?

A And the cooling pipes. We are, for instance, distilling carbolic acid and use for that purpose very much cooling water.

10 Q Are there any other processes?

A Oh, yes.

Q From the filter pipes, and the cooling pipes and the condensed steam—now what else?

A From some kind of tanks which I do not like to describe in detail.

Q How does the water get out of these tanks which you refer to? Does it get out or does it form on the outside?

20 A It runs out by a pipe.

Q Is that water that runs directly out of these tanks, is it carbolic acid, or is it—

A Oh, we wouldn't dare to let carbolic run away.

Q Well, what percentage of carbolic acid would you say was in the water which flows out of these tanks that you speak of?

30 A The percentage of carbolic acid contained in the liquid running out directly from a certain tank is about 0.4% and that is then to be divided, in a run of twenty-four hours, by this amount of water which we are wasting.

Q Are you a chemist?

A Oh, no.

By Mr. Hughes.

Q Why were those filter pipes constructed?

A They are part of our plant and to answer your question fully would mean to tell you to a far extent how we are making carbolic acid.

40 Q We don't wish to get Mr. Edison's secrets. Just

Emo Kammehoff, direct.

tell us why the filter pipes were erected. Was it to stop any waste or not, and if it was, what was it?

A Oh, no, it was not for that purpose at all. It is a machinery.

Q What I want to know is why they were constructed.

The Court. It is part of the manufacture of carbolic acid—counsel wants to know whether these filter pipes,—on account of the usual meaning of the word filter, he wants to know if it was intended to filter the by-product or waste coming from the factory? 10

A No, not in any way. Has nothing to do with that at all.

The Court. It is used in the manufacture of the carbolic acid itself?

A Yes, sir.

Q You just told his Honor that there were certain sources of this water, or waste, are there any others besides those you refer to from which waste matter might come? 20

A I don't think I understand that question. We are making carbolic acid only so that it can only come from that manufacture.

The Court. Counsel means that you have explained that this large stream constantly flowing out of the plant, out of your department, is produced by condensed steam, by water coming from the filter pipes, is added to by water from the tanks—now he wants to know if this supply is added to by waste water or any liquid coming from any other part of your department or is all this water produced from the three sources which you have mentioned. 30

A I may mention that at certain times we are cleaning our tanks by just washing them. That makes a larger stream. 40

Emo Kammehoff, direct.

Q How often do you wash the tanks?

A Some of the tanks are almost washed daily.

Q How many tanks have you?

A I can't say.

Q Can you give an approximate number?

A Not even that. It would be absolutely far from the truth. We have numerous.

10 Q You are the superintendent of the carbolic acid plant and certainly you have some idea, let it be ever, so hazy, of the number of tanks you have. Can you tell us, is it nearer one or twenty or one hundred?

A Well, I hesitate to give any answer before I make some calculation and I can't do it in just a second. It is impossible. I would have to figure it out, otherwise the answer would not be of any value.

20 Q I am loath to believe that you are not observant enough to know—how long have you been employed there?

A We are manufacturing carbolic acid now a little bit over a year.

Q Have you been superintendent for a year?

A Yes.

Q And do you want me to understand that you have been there practically daily for a year and don't know the approximate—

30 A You would understand my answer as soon as you saw the plant. We have a large plant, make quite some carbolic acid. It is all full of machinery, boilers, tanks, etc., so to give you any real answer that has any value I have to be careful.

The Court. Well, can't you get within fifty of the correct number?

A Oh, yes. I may say fifty. I am quite sure it is not over a hundred and not less than ten.

Q What is the matter in those tanks, the substance in the tanks that you clean?

40 A In order to give you an idea of that I should

Emo Kammehoff, cross.

point out all the many different operations and that would mean to tell you to a very large extent how our different operations are done and I don't know as I can do that.

Q Do I understand that the tanks contain different substances?

A Yes.

Q About how many different substances?

10

A Numerous, many.

Q One for each tank?

A Oh, no.

Cross examination by Mr. English.

Q You said that the water that flowed out into Belmont avenue, when it got to Belmont avenue went into a pipe?

A Yes.

Q That is out in the street?

A Yes, in the street.

20

Q How does it get from the Edison plant to the ditch in the street, to the pipe in the street?

A I explained that before, that it goes there by way of a trench, an open trench.

Q Then you discharge it out into the public highway?

A Yes, and into that pipe being carried under.

Q That is in the public street?

A Yes.

30

Q If you go out of your factory at the point where your discharge goes into the pipe and walk down to the stream how far will you have to walk?

A I should say it must be about a thousand feet.

Q You have already said, I think, that rain water and other surface water goes into that same pipe?

A Yes.

Q So that when the pipe empties into the stream it empties other things than would go into it from the Edison plant?

40

Emo Kammehoff, cross.

A No, there is, so far as I know, no interruption in the pipe down to the brook.

By the Court.

Q How many feet of pipe is there in the whole line?

A I calculate about a thousand feet.

10 Q When the fluid leaves your department it leaves by way of a pipe, goes out through an iron pipe and into a trench?

A Goes into a pipe and then—

Q That pipe empties into a trench or is the water piped all the way from your building?

A No, there is a long open trench on our property.

Q How many feet of pipe extend beyond the wall of your property where the water comes out, or does it flow out from under the foundation?

20 A The open trench on our property, I calculate, is about a hundred feet.

Q How many feet of pipe between the building and the open trench?

A Only a very short piece.

Q Five or six feet?

A Yes.

Q And that empties into an open trench?

A Yes.

Q And that continues to Belmont avenue?

30 A About twelve feet before it enters the pipe.

Q Does it go under Belmont avenue?

A Yes.

Q And how many feet beyond the other pipe of Belmont avenue does this pipe extend?

A I calculate about a thousand feet.

Q Then does it open into the trench or directly into the brook?

40 A I never have been in that place and looked. I walked along there but I only know it is discharged there. In fact the pipe laid by ourselves is not a

Ernest J. Berggren, direct.

thousand feet, but connects with a pipe previously laid.

By Mr. English.

Q You told the judge in answer to some question that the liquid matter which flows from the filter pipes contains 0.4 per cent. of carbolic acid—

A Not from the filter pipes but from a certain tank.

10

Q You also said that the water, or rather that the carbolic which flows from this open trench into the pipe was greatly diluted?

A Yes.

Q What percentage is there which flows from the open trench into Belmont street pipe?

A According to my judgment, I didn't analyze it, being no chemist, it is diluted nearly one hundred times, that would leave instead of 0.4 per cent. 0.004 per cent. of pure phenol or carbolic acid in the liquid.

20

Q That is four one-thousandths of one per cent.? That is pretty small, isn't it?

A Well, I should say so.

The Court. I understand then that none of the surplus or excess fluid from your department flows into the settling pits.

A No, has no connection whatever.

ERNEST J. BERGGREN, sworn.

30

Direct examination by Mr. Hughes.

Q Are you the statutory agent of Thomas A. Edison, Incorporated?

A I am secretary and treasurer.

Q Who is the president?

A Mr. Edison, Thomas A. Edison.

Q Did you bring any papers with you, books, records?

A I did.

40

Ernest J. Berggren, direct.

Q Have you got any lease contracts between Thomas A. Edison and Thomas A. Edison, Incorporated?

A All I have.

Q May I see them, please?

Mr. English. They have got to prove to be material before they can be used.

10 Q Have you got any lease contract between Thomas A. Edison and Thomas A. Edison, Incorporated, in regard to the Thomas A. Edison, Incorporated, plants at Silver Lake?

A I have not. There are no leases.

Q Do your books show what the arrangements between Thomas A. Edison and Thomas A. Edison, Incorporated, are in regard to the operation of the plant owned by Thomas A. Edison, Incorporated?

20 A I don't quite understand the question. There is no arrangement.

Q Do your books show that Thomas A. Edison has any control over Thomas A. Edison, Incorporated, other than as its president?

A He is a stockholder.

Q In your capacity as secretary and treasurer of Thomas A. Edison, Incorporated, do you know from whom the buildings are leased?

A We own buildings and we lease some buildings. Those that are leased we lease from Thomas A. Edison.

30 Q Which ones are leased from Thomas A. Edison.

A The carbolic acid plant?

Q Any other?

A No.

Q Is the aniline plant part of the Thomas A. Edison, Inc., building?

A No, sir.

Q Are you the secretary and treasurer or agent of the Edison Chemical Works—Edison Manufacturing Company?

40 A Yes, sir.

Ernest J. Berggren, cross.

Q Does the Edison Manufacturing Company lease or own their buildings?

A They do not either lease or own them.

Q They must either lease or own—

The Court. They might be a holding company.

A That is my answer.

Q Does the Edison Manufacturing Company own or lease the land?

A It does not. 10

Q What control has it over the lands?

A None.

Q Who does own the land?

Mr. English. What land?

Q What does the Edison Manufacturing Company manufacture?

A Nothing.

Q What does it do?

A Owns stock.

Q What kind of stock? 20

A Stock in Thomas A. Edison, Incorporated, shares of stock.

The Court. The Edison Manufacturing Company is what is commonly known as a holding company, isn't it?

A Yes, sir.

Q Are you secretary and treasurer or agent of the Edison Storage Battery Company?

A No, sir. 30

Q Are you connected with it in any way?

A None whatever.

Cross examination by Mr. English.

Q The Edison Manufacturing Company does no business at all, does it?

A None whatever.

Q Has it a plant at Silver Lake?

A No, sir.

Q Doesn't manufacture there?

A No, sir. 40

Harry Miller, direct.

Q Thomas A. Edison, Incorporated, is a totally distinct corporation from Edison Manufacturing Company, is it not?

A Yes.

Q And Edison Storage Battery Company is a totally distinct corporation from either of them, isn't it?

10 A Yes.

HARRY MILLER, sworn.

Direct examination by Mr. Hughes.

Q You are connected with the Edison Storage Battery Company, are you not?

A Yes, sir.

Q In what capacity?

A Treasurer.

Q Are you the agent?

20 A No.

Q Do you know who the officers of the Edison Storage Battery Company are?

A Thomas A. Edison is president.

Q Where is the plant of the Edison Storage Battery Company located?

A West Orange.

The Court. Have you any plant at Silver Lake?

30 A Yes, the Edison Chemical Works is a branch of the Edison Storage Company.

Q Does the Edison Chemical Works, the branch of the Edison Storage Battery Company, own its buildings in Silver Lake?

A No.

Q Who does own them?

A Thomas A. Edison owns them.

Q Do you know who owns the land on which the building is?

40 A Thomas A. Edison.

Angelo L'Alessia, direct.

Q Is there any lease or contract in regard to the operation of the works there between Mr. Edison and the Edison Chemical Works?

A No.

Q Do you know the arrangement between Mr. Edison, the owner of the land and buildings and the Edison Chemical Works? Know of any arrangement between them?

10

A No, there is none. I know of none.

Q Has the Edison Chemical Works control of an aniline plant there?

A Not to my knowledge.

Q To whom does the Edison Chemical Works pay the rent?

A Thomas A. Edison.

ANGELO L'ALESSIO, sworn.

Direct examination by Mr. Hughes.

20

Q Where do you live?

A 45 Heckel street, I did live.

Q Where do you live now?

A 416 Chester avenue.

Q How long have you lived there?

A Just this month I move from the house where I live before. The first of December I move.

Q Where did you live prior to December, before December?

A 45 Heckel street, in my own place.

30

Q How long had you lived there?

A Two years.

Q Do you know anything about the brook running through Silver Lake?

A Well, I know because that killed the plants—

Q Do you know anything about it?

A I know because it killed the plants in my garden and do some damages to my farm where I have the house. That's all I know.

40

Angelo L'Alessia, direct.

Q How far is the brook from your property?

A He run right under my house, all along my property.

The Court. Your house is suspended over the brook?

A No, sir, under the house.

10 *The Court.* There is no cellar under your house?

A Every cellar have a concrete—the cellar is here.

Q Do you own the property at 45 Heckel street?

A Yes.

Q Are you part owner or do you own it entirely?

A Part.

Q Who else is interested in the property? Who else owns it besides you?

A No, only me and Mr. Grillo.

20 Q Have you a garden or any ground around the house?

A Garden and grapes, trees.

Q Did you ever grow anything in the garden?

A Not this year.

Q Did you at any time?

A I have grown garden before, before this year. This year it was all killed—that smell from the brook, gas or something else, some smell like that killed all the plants. I was plant in the spring time and all is killed.

30 Q What did you grow last year?

A Last year? Corn, potatoes, cabbages, beans, peas, celery, lettuce, radishes and grapes in the garden; big grapes.

Mr. English. Any tomatoes?

A Tomatoes.

Q Did you have any of those different things this year?

40 A Nothing at all this year. I was plant and it is all dead, the plants.

Angelo L'Alessia, direct.

Q Nothing at all this year—when did you plant them?

A I plant in April, the first of April.

Q Did you have any grapes this year?

A Nothing at all. It was dead from the roots.

Q How many years did you grow these different things before this year?

A Only a year myself, those only two years I lived there. 10

Q In other years, or last year, when you grew them, did you sell any of those things?

A No, I always used it for my family.

Q What family have you?

A I have two children, a wife.

Q How old are the children?

A One two years, two going on three, and one seven months.

Q You say you kept those things for your family—how long did they supply your family? 20

A I don't understand you good.

Q You say you kept these different things, tomatoes and so forth, for your family?

A Yes.

Q How long could your family live on them? How long did your family have them?

A About eight months in the year.

Q Did you have to buy any vegetables last year when you were growing these others?

Mr. English. I object, that is no test of damages. 30

Q Did you have enough tomatoes and grapes and so forth last year so that you didn't have to buy any or did you buy some besides?

A None last year. I have to buy nothing. I have all I want in my garden.

Q Did you buy any this year?

A Sure I have to buy everything this year because I didn't grow nothing in the garden. 40

Angelo L'Alessia, direct.

Q How much did you buy?

Mr. English. I object to that.
Objection sustained.

Q How many tomatoes did you grow last year?

A About twenty-five baskets.

The Court. You mean twenty-five tomato baskets?

10 A Yes.

Q How many potatoes last year?

A I didn't grow any last year.

The Court. Didn't you say when you were asked what you grew that you grew potatoes last year?

A No, sir. Tomatoes.

The Court. We probably misunderstood him then.

20 Q How many cabbages did you grow?

A About 100 plants.

The Court. How many heads did you get out of them?

A One hundred heads.

Q Do you know how much good cabbage was a head during 1914?

A Sometimes we paid eight cents and sometimes ten cents.

30 *Mr. English.* I object to that.
Objection sustained.

Q How much beans?

A About ten bushels.

Q How much peas?

A About two bushels.

Q How much celery?

A About 500 plants.

Q About how much lettuce?

A About two hundred plants.

40 Q How many radishes?

Angelo L'Alessia, direct.

A I can't figure out because I went out and put them in the ground, a whole lot.

Q About how many bunches did you have?

A Oh, about 200 bunches.

Q How many grapes?

A About 500 pounds of grapes.

Q What did you do with those grapes last year? Did you eat them up as they were or did you turn them into wine? 10

A I make wine because I can't eat all them grapes.

Q How much wine did you make?

A Fifty gallons.

Q Did you raise any corn in 1914?

A Sure, a whole lot of corn.

Q How much?

A About 200 plants.

Q How many ears of corn did you grow?

A About 200 plants and only grow one or two each. One or two corn a plant he grow. 20

Q You know what an ear of corn is?

A Yes.

Q How many ears did you get?

A Two on each plant.

Q And how many plants did you have?

A Two hundred plants.

Q Then you got 400 ears of corn?

A Yes.

Q Did you ever notice anything in particular about this stream going through your property? 30

A Yes, I noticed because this smell coming out you know, the fumes.

Q What kind of a smell was this?

A I can't tell it to you because I can't prove to you what it is. That smell is very bad.

Q How did it affect you? Did it make you feel good or bad?

A It make me feel good?

Q Yes.

Angelo L'Alessia, direct.

A It make me feel sick. I move from that house, my child is all the time sick and my wife and me too.

Q Did you ever make any complaint about this brook?

A No, I don't know who is making—I didn't make no complaint.

10 Q Did you ever sign a petition to the Board of Health?

Mr. English. I object, immaterial.

Question withdrawn.

Q How much did you have to spend as far as you know, this year, for vegetables?

Mr. English. I object. I think that question, or practically that question was overruled before.

20 *The Court.* Yes, it is improper. The measure of damages is the value of the crop which has been destroyed as near as we can estimate what the value would be. The Court, sitting as a jury, is to be allowed to determine the value of the crop which failed by judging of the crop of the previous year. Some speculation is involved but I suppose not to such an extent that a judgment founded on it would be reversible. There has to be some measure of damages and I think that is as near as possible for us to get to it, to estimate what the damages would be, if any.

30 Q Did you buy any seeds to sew in the ground this year?

A Sure—I buy for the plant you mean.

Q How much did you pay?

A I don't count.

Q Have you any idea how much you paid?

A Around \$3.00.

Q How long had these grape vines been planted?

A My partner he told me it was about seven or eight years old.

Angelo L'Alessio, cross.

Cross examination by Mr. English.

Q Did you plant a garden this spring?

A Yes.

Q What did you plant this year?

A I plant everything.

Q You said you planted about the first of April?

A Yes, I always plant the first, April the first,
the radishes.

10

Q What else did you plant?

A That is all in that month. The next month
lettuce.

Q How many radishes did you plant in April?

A About 200 bunch.

Q You don't know how many bunches, they didn't
grow. How many seeds did you plant?

A I didn't count them because when you plant
radishes you not count like that.

Q You just sowed it around where there was
space? 20

A Yes.

Q Did you have one package or two?

A I don't count how many packages.

Q Did you buy one five-cent package or two?

A Oh, no five cents, over five cents.

Q In May you planted some lettuce?

A About 200 plants.

Q When did you plant that?

A I plant in March.

30

Q That froze, didn't it?

A In May.

Q What else did you plant this year?

A After that I planted tomatoes.

Q How many?

A I don't know how many plants. About 100
plants.

Q What else did you plant this year?

A Celery.

Q How many plants?

40

Angelo L'Alessio, cross.

- A Five hundred plants.
 Q When did you plant that celery?
 A The first of June.
 Q You planted celery seed?
 A Yes.
 Q It didn't grow, did it?
 A No.
 10 Q You don't know how many plants—
 A No, I put the small plants in the ground. I
 buy the plants, small ones and put them in.
 Q Where did you buy those?
 A I buyed down in Newark.
 Q When?
 A In June.
 Q How many plants did you buy from Newark?
 A Five hundred plants.
 Q What else did you plant this year?
 20 A Peas.
 Q How many peas.
 A I don't count them.
 Q You just bought some seeds and planted them.
 A Yes.
 Q They didn't come up.
 A No, it don't come up.
 Q What else did you plant?
 A Beans.
 Q How many beans this year?
 30 A I put 500—seeds in the ground.
 Q That didn't come up either?
 A No.
 Q Anything else you planted? What kind of
 beans were they?
 A I planted some high beans and some low beans.
 Q Did you plant any cabbage this year?
 A Sure I plant.
 Q Did you plant cabbage plants or seeds?
 A Plants.
 40 Q Where did you get the plants?

Angelo L'Alessio, cross.

- A Down in the market.
 Q How many did you buy?
 A One hundred.
 Q Did you plant any tomatoes?
 A Sure.
 Q That is about all, isn't it?
 A Yes.

By the Court.

10

Q As you recall it you planted everything this year that you planted the year before?

A I don't know how to call everything I plant in my garden in English.

Q The question is this: Did you plant about the same amount and the same kind of things this year that you planted the year before?

A Yes, like that.

By Mr. English.

20

Q Plant corn this year?

A Yes.

Q How many?

A 200 plants.

Q How big a farm have you got there?

A It wasn't a farm. A garden 100 feet long and 25 feet wide.

Q And you planted all these things in it?

A Yes.

Q Well, some of the property is taken up by the 30
brook, isn't it?

A Yes.

Q How wide is that brook, about ten feet?

A I don't know, I don't measure.

Q But wouldn't you guess about ten feet wide?

A I don't know. About six or seven feet.

Q So that has to come off of the 25 feet?

A Yes.

40

Angelo L'Alessio, cross.

Q So that your lot where your garden was planted was about 100 feet long by 18 feet wide?

A Yes.

Q And you planted all these hundreds of plants in that lot?

A You plant some things—you pull up some and put other plants in. Three times a year.

10 Q Your house is right on the street?

A Yes.

Q And the ground is back of it?

A Yes.

Q You couldn't pull up tomatoes and plant anything else, could you?

A No, but before you put tomatoes in you can put beans, radishes and lettuce.

Q What kind of beans can you plant?

A Forty day beans.

20 Q What can you plant on top of any lettuce that you plant?

A Tomatoes, celery, anything.

Q What can you plant on top of your corn crop?

A Nothing at all.

Q When do you plant that corn crop, in May?

A In the last of April.

Q So that occupies all that space until fall, doesn't it?

A What do you mean?

30 Q That had to stay there all the rest of the summer?

A Yes, all the summer.

Q How far apart do you put these hills of corn?

A What do you mean? Oh, about a foot each way.

Q So that that corn crop took up about half the lot?

A No.

Q One-third of it anyway.

A A half or quarter of the lot, I think.

40 Q Did you weigh the grapes that you got off your vines a year ago?

Angelo L'Alessio, cross.

A Yes.

Q How much did they weigh?

A About a hundred gallons of wine, fifty gallons of wine.

Q You put some water in that?

A If I put any water in it would make the worst of my wine.

Q You drank that wine up?

A Sure, I did. 10

Q You didn't get any grapes this year?

A Nothing at all this year. It was dead from the roots.

Q You don't know what made them die, do you? All you know is that the grape vines died?

A Died in the summer.

The Court. Do you know what killed them?

A The smell from the brook.

Q You think that is what killed the other things, 20 too, eh?

A Yes, certainly.

Q And you smelled this smell when you were in the yard?

A In the house, too. All over the place; all over Silver Lake.

Q And that came from the brook, did it?

A Yes.

Q Now, that brook comes through from Silver Lake before it gets to your house, doesn't it? 30

A Yes.

Q Lots of houses along that brook, aren't there?

A I don't know because I look only at my own house.

Q You never paid any attention to the rest of Silver Lake, is that right?

A I don't know whether that is right or not.

Q You know that it crosses a good many streets of Silver Lake before it gets down to Heckel street?

Mr. Hughes. I object; immaterial.

Overruled. 40

Angelo L'Alessio, cross.

A I tell you this smell if you want to know everything—

Q Now, just answer my questions. You know it runs across a good many streets in Silver Lake?

A Edison, Belmont and Heckel—I don't know the others because I don't know the names of the streets.

Q There are houses right along that block?

A I know my house and the house by me.

10 Q There is a house right back of you?

A Yes.

Q And there are other houses above that?

A My house is one side and another house is the other side.

Q Back of your house?

A On the front of my house.

Q And above that there are other houses on that brook?

A I don't know.

20 Q The surface water runs into that brook, doesn't it, up above your house?

A The street?

Q The water from the streets runs into the brook, above your house?

A The brook goes right around the house—

Q I am talking about up stream—the surface water from the streets runs into the brook, doesn't it?

The Court. The water out of the gutters?

30 A Yes.

Q And from the yards along it?

A None from the yards, only from the gutters, both sides of the bridge in the street, that all I know.

The Court. The bridge in what street?

A Belmont street and Heckel street.

Q Is there any sewer in Silver Lake in that part of the town?

A They have a sewer for toilets, that different.
40 This brook only catches water when you get a rain.

Angelo L'Alessio, re-direct.

Q The sewer carries off the rain water?

A The brook.

Q So a great many things get dumped into that brook up there?

A I don't know, the water is very bad. The smell and the color, sometimes red and black and white—different colors.

RECESS TAKEN.

10

After recess.

ANGELO D'ALESSIO, recalled.

Re-direct examination by Mr. Hughes.

Q Have you been sick from these fumes?

A Yes, I was sick one time and the wife got sick, too, and the baby.

Q How long was your wife sick?

20

A She was sick every day in the year from this smell and the worst was in March.

Q Did she have to be sent away?

Mr. English. I object, leading.

A My wife was by baby and from that smell she get sick very bad and I was have to send her away to the Montclair Hospital for fifteen days and the baby for a month. Of course the doctor told me—

Mr. English. I object.

30

Q Who was the doctor?

A Dr. Albano.

Q Was it the doctor who ordered that she be sent to this hospital?

A Certainly.

Q Was she all right when she came back?

A She was all right—she got sick every day after that you know, the last, when she got over from that.

Q Why did the doctor order your wife to go to the hospital? Did he give any reason for it at the time?

40

Angelo L'Alessio, re-cross.

Mr. English. I object; that is for the doctor to say.

Objection sustained.

Q Have your children been sick?

A The first boy I have got sick all the time. That smell gets in the head and makes him like drunk and he falls down sometimes on the floor.

10 *Re-cross examination* by Mr. English.

Q How old is your oldest child, is the oldest a boy or girl?

A Boy.

Q How old?

A One seven months and one other three years the twentieth of next month.

Q He has been sick all his life, has he?

A Not all his life—as long as I live in that house he get sick.

20 Q You lived there for two years—moved away the first of December, is that right?

A Something like that.

Q So he has been sick for two years?

A Not all the time. Sometimes in two years he gets sick, just when he goes in the garden in the back of the house—I have a little garden for the children to play and the smell comes to the head.

Q I want to know if the boy has been sick for two years past?

30 A Not all the two years, but sometimes in the two years.

Q Off and on in the two years?

A I don't count upon how many times he is get sick.

Q When did he first begin to get sick?

A I don't know. I don't remember.

By the Court.

40 Q Where did you live before you moved to 45 Heckel street?

Angelo L'Alessio, re-cross.

A The same street where I live.

Q What number?

A 46.

Q What is your oldest boy's name?

A Sammy.

Q He was born then across the street, at 46 Heckel street?

A Yes.

10

Q And when you moved over to the other side of the street, to No. 45—did you notice any change in the condition of his health?

A Certainly, he get a change along when he smell that brook. When I have that boy go to the brook he smelled that water.

Q After you noticed the smell in the brook Sammy became sick, is that the idea?

A Yes.

By Mr. English.

20

Q Was he sick before that?

A Not before the smell, after the smell.

Q You said a little while ago he had been sick for two years?

A I didn't say for two years. I say in this two years, over a year this water in that brook is bad. I don't know.

Q How long has the smell been there, for two years?

A No, in the spring it come, something like that. In the spring, I think.

30

The Court. In the spring of last year?

A This year.

Q 1915?

A Yes.

Q Now, the baby was born at 45 Heckel street?

A No, he was born at 46 Heckel street.

Q No, I mean the baby; what's the baby's name?

A Philly.

40

Angelo L'Alessio, re-cross.

Q Philly was born at 45 Heckel street?

A Yes.

Q When?

A Twenty-five March.

Q Last March?

A Yes.

Q How long is it since the baby got sick?

10 A He got sick in the house. He was a month in the hospital, and after.

Q I want to know when he first got sick?

A About eight days after he got born.

Q And he has been sick ever since, is that right?

A What do you mean, ever since?

Q Has he been sick ever since he was eight days old?

A Eight days old.

Q Has he been sick ever since?

20 A All the time in the house we were there. I moved from there so I don't lose my children.

The Court. When you did move up to your present address did you notice any change in Philly?

A Certainly there was a change; all the family is changed.

Q When did your wife get sick, last March?

30 A My wife is sick the same time, that's because she stay home all the time in the house. I go out but the woman stay all the time home and get the smell all the time.

Q When did your wife first get sick?

The Court. When did the smell first come in the brook?

A I don't put in the time. I don't know it is how long that smell is there.

The Court. About when did you first notice it?

40

Angelo L'Alessio, re-cross.

A In the spring.

Q What month?

A I don't know. I can't tell you so. I don't know if it was April, March, something like that.

Q Was it June?

A No, before June.

Q Was it May?

A No, not May.

Q April?

10

A No, not April.

Q Was it in March?

A In March, something like that.

Q What makes you think that?

A I think that.

Q When you planted your garden was there any smell there?

A The smell just started when I put in the garden.

Q You didn't think it would do much harm then?

A No.

20

Q Was the smell there when you planted the corn?

A Not much, it was just started about that time.

Q This present year about the time you planted the corn you noticed the smell but you didn't think it would do any harm?

A That is what I believe. I don't know what the people put in the brook. I don't know because I am no chemist myself, I don't know.

30

40

Herbert B. Vail, direct.

HERBERT B. VAIL, sworn.

Direct examination by Mr. Hughes.

Q Are you the president of the Board of Health of Belleville?

A Yes, sir.

Q Did you ever receive any complaints from the residents of Silver Lake in regard to a brook running
10 through the Silver Lake section?

Mr. English. I object, complaints to the Board of Health have no materiality one way or the other.

Question withdrawn.

Q Have complaints been made to the local Board of Health since February, 1915, from any residents of Silver Lake section in regard to any nuisance created by any of the Edison plants on Belmont avenue?

20 A Yes, sir.

Q What was the nature of the complaint.

A That gas was discharged from stacks in connection with the Edison plant and that fumes arising from a brook into which it was said the Edison plants dumped waste water of some character were detrimental to health and deleterious to vegetation.

Q Was any action taken as the result of those complaints?

A Yes, sir.

30 Q What action was taken?

Mr. English. I object to that.

Overruled.

Objection noted.

A The local Board of Health appointed a committee to visit, I think on two occasions, the Edison plant and make investigation of the plant to the best of their ability and also made arrangements with residents of Silver Lake to be called up, that is the health officer should be called up when these fumes were said to be
40

Herbert B. Vail, direct.

emptying into the atmosphere. We also received committees from the residents of Silver Lake to make specific complaints with regard to this alleged nuisance, both the fumes from the stacks and effluvia from the brook.

Q Were the people against whom the complaints were made notified by the local Board of Health of these complaints?

10

A Yes, sir.

Q Who were notified?

A The Edison Company in general. I don't know that any particular person was notified.

Q Did they take any action?

A Yes, sir.

Q What action did they take?

Mr. English. I object.

Overruled.

Exception.

20

A They appeared before the local Board of Health and explained the situation as it seemed to them and showed various members of the board and the health inspector that they had made various improvements—I am not an engineer so I don't know what—made various improvements in their plant that prevented the escape of these fumes to a large extent if not entirely. They also have made some arrangements with the sewer connection so that the waste water which carries the gas and acid is discharged, as I understand now, into a sewer pipe and empties into this brook outside of the confines of Silver Lake, that is near the Second River.

30

Q Do I understand that that arrangement has been made or will be made?

A I think that arrangement has been made, although I am not certain.

Q Have you any idea as to when the arrangement was completed?

40

Herbert B. Vail, direct.

A Within the last six or eight weeks. I am not at all certain on that point, however.

Q Can you point out the man who made this representation to the board, the representative of the Edison companies?

A I don't know the gentleman's name but he sits behind Mr. Domanick.

10 Q Can you point out any others who appeared before your local Board of Health or your joint meeting, of these gentlemen here?

A I don't recall any others.

Q Mr. Miller, will you stand up please? Do you know if this gentleman appeared before the joint meeting of the State Board and the Local Board?

A I can't be certain.

Q Have you personally inspected this stream, doctor?

20 A Well, I haven't seen the stream within the last six or eight months, six months. I saw it last year, last spring.

Q What was the condition of it as you found it?

A Well, the odor from it was at that time quite perceptible, a disagreeable acrid odor.

Q Can you give any idea just what the odor brought to your mind?

A It suggested a chemical laboratory more than anything else.

30 Q Did you notice the vegetation around the banks of the stream?

A It is not healthy, or wasn't at that time.

Q What was the appearance of the water, was it clear or otherwise?

A Oh, the water is always dirty.

Q Was it any particular color?

A Not any particular color that I know of other than dirty water—never clear.

40 Q Did any scum or other substance appear on top, oily substance?

Herbert B. Vail, cross.

A Not that I know of. I never noticed any.

Q In your capacity as president of the local Board of Health did you receive complaints from any company or corporation in regard to the nuisance, the alleged nuisance created by the Edison plants?

Mr. English. I don't see how that is going to help us any, I object to it.

Q Were any other complaints made to the local Board of Health other than by the residents of the locality? 10

A Yes, sir.

Q From whom did they come?

A The Hendricks Copper Rolling Mills.

Mr. English. Is that up stream or down?

A Down stream.

Q What was the nature of the complaint?

Mr. English. I object, immaterial. 20

Question withdrawn.

Q Any other complaints, doctor?

A Not that I recall.

Cross examination by Mr. English.

Q Mr. Grillo ever complain to your board?

A I can't recall the names of the men who complained, there were so many.

Q Or D'Alessio?

A I wouldn't identify any Italian names from memory. 30

Q You have no recollection of seeing any of the plaintiffs here?

A Oh, yes, I can pick out individuals.

Q Mr. D'Alessio, will you stand up please. Ever see him?

A No, sir.

Q Grillo, stand up. Ever see him?

A I don't recall him.

Q How long have you lived in Belleville? 40

Herbert B. Vail, cross.

A Sixteen or seventeen years.

Q Been acquainted with that stream all that time?

A Yes, sir.

Q You say it always has been dirty?

A Always.

Q As a matter of fact it is more or less of an open sewer?

A Yes.

10 Q Has been for a great many years?

A So far as I can remember.

Q It is a matter of public nuisance?

A Yes, sir.

Q And it is a thing that in time will have to be allayed, and made a closed sewer?

A I think it will.

Q There are all sorts of things emptied into that stream besides what may or may not come from the Edison plants?

20 A What do you mean by all sorts of things?

Q Other matter except what may or may not come from the Edison plants?

A Yes, tin cans and old beadsteads and so on.

Q Cats and dogs?

A I presume so. I never identified any.

Q Some of the streets along that stream are pretty dirty, aren't they?

A Yes, sir.

30 Q More or less rubbish and what not in the streets?

A Yes, sir.

Q And that washes into the stream of course?

A Yes, sir.

Q There are other manufacturing plants up the stream, besides the Edison plants?

A I don't know.

Q Any outhouses emptying into that stream?

A No, sir, not to my knowledge.

40 Q There used to be?

Herbert B. Vail, cross.

A I can't say. If we ever found one we stopped it.

Q You didn't undertake to analyze this smell which greeted your nostrils six months ago?

A No, sir.

Q Except that it was disagreeable?

A Yes.

Q Would you say, doctor, that sulphate of soda in a diluted quantity mixed in water would give off a fume? 10

A I am not a chemist.

Q You are a physician?

A Yes.

Q You know what sulphate of soda is, that's a salt, isn't it?

A Yes, sir.

Q Do salts give off fumes?

A Sometimes.

Q Does sulphate of soda?

A I can't say. 20

Q You know sulphate of iron, that's a salt, does that give off a fume, diluted with water?

A I don't think it does.

Q You have heard of free soda, a chemical substance, that is a salt?

A I can't say, I am not sufficiently up on chemistry.

Q From your experience as a physician would you say that anybody living along a stream in which there was a very minute quantity of sulphate of soda, sulphate of iron and free soda is likely to have health damaged by that fact? 30

Mr. Hughes. I object, he is not an expert in that particular line.

The Court. The objection will be sustained on the ground that it is not proper cross examination. If Mr. English wants to call the doctor as his own witness, as an expert, and examine on that point he may do so. 40

Herbert B. Vail, cross.

Mr. English. I will do that, your Honor, I will make him my witness on that point.

Question read.

A I should say not.

The Court. How long have you practiced medicine?

A Twenty years.

10 *The Court.* You may examine him on his qualifications, Mr. Hughes, and if I determine he is not qualified to tell what would likely be the effect of certain conditions on the health of the average person I will rule it out. I think a hypothetical question like that is perfectly proper because I take it for granted that he is a duly qualified doctor and practitioner of medicine.

20 *Mr. Hughes.* If Dr. Vail is satisfied that he can answer the question I am willing he should do so.

The Witness. I think I am competent to answer that question.

Q You have been practicing medicine for twenty years?

A Yes, sir.

Q Graduated from where?

A College of Physicians and Surgeons.

Q You have had hospital work?

A Yes, sir.

30 Q Where?

A City Hospital, Newark a year and a half and I have been attending surgeon at St. Barnabas for ten.

Q You have practiced medicine generally for twenty years?

A Yes, sir.

40 Q I want to direct your attention to the stream which flows down Heckel street with which you are familiar, this stream at Silver Lake, and ask you whether anybody living along that stream would have

Herbert B. Vail, re-direct.

his health damaged, in your judgment, through the fact that there was discharged into that stream a large volume of water in which there was four one-thousandths of one per cent. of carbolic acid?

A I should think not.

Q I ask you the same question with reference to the vegetation, would there be any damage to it?

A No, sir.

Q And would there be any damage to vegetation from a diluted quantity of sulphate of iron, sulphate of soda and free soda?

A No, sir.

Re-direct examination by Mr. Hughes.

Q From your experience as a doctor, do you think it is healthy, do you think that the banks of the stream and in the vicinity of the stream is a healthy place for a human being to live now, in its present condition, or in its condition as you have seen it?

Mr. English. I don't think that is material unless the damage now alleged is brought home to the defendant.

The Court. The condition must be shown to have been caused by one or all of the defendants in the suit. I don't think there is anything in the case from which the Court can assume that this stream, which has been referred to by this witness as an open sewer, or upon which the Court could find as a matter of fact that the condition was caused by the defendants. If you will incorporate in your question the deleterious substances that flow into this stream from the plants of the defendants and assume that otherwise the stream is pure and then ask the doctor if that would have any effect on the health of the average human being, the question would not be objectionable but we cannot assume that the present condition of the stream is due to the defendants.

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Herbert B. Vail, re-direct.

Q Would you consider, doctor, that if there was contained in this stream free acid equivalent to 280 grains of sulphuric acid per gallon with a mixture of nitro benzo that the stream in that condition would be injurious to health and vegetation?

10 *Mr. English.* I object to that, there is no such evidence. If the question is allowed to be asked it is subject to my motion to strike out unless the things stated are shown to be in the stream and it is further proved that they are put in by the defendants.

Mr. Hughes. I can guarantee the Court in advance that we have this testimony.

Question read:

A I should.

20 Q In regard to these complaints—were any complaints made to you as president of the local Board of Health from any residents alleging that any other plant or concern was creating a nuisance, other than the Edison plants?

A No, sir.

Q Were these complaints made to the Board of Health by individuals or by formal petition or in what way?

A In both ways.

Q So that you did receive complaints in the form of petitions?

30 A Yes, sir.

Q Signed by a number of people?

A A number of the residents of Silver Lake whose names I don't recall.

Q Did you receive any complaints from any organization in Silver Lake?

Mr. English. I object.

Objection sustained.

Herbert B. Vail, cross.

Further cross examination by Mr. English.

Q That hypothetical question you answered, in that question what did you understand by free acid?

A An acid which is uncombined.

Q Well, the kind of acid makes some difference, doesn't it?

A I was thinking of sulphuric acid.

Q He said free acid equivalent to 280 grains of sulphuric acid. What does free acid mean? 10

A Doesn't mean anything.

Mr. Hughes. I don't think Mr. English can impeach his own witness.

The Court. He testified that there would be no bad effect on the average person under a given set of circumstances and on cross examination in answer to another hypothetical question by counsel for the plaintiff he says that on that state of facts there would be a very damaging effect. I think counsel has a right to go into that and show just how the health would be affected and just what there was in the water and what the figures referred to in the question mean. 20

Q The question which you were asked was your opinion of water which had free acid equivalent to 280 grains of sulphuric acid.

A Which I presumed to mean a certain quantity of sulphuric acid.

Q The question didn't say so. 30

A Then the question is incomprehensible.

Q So you couldn't answer that question meaning anything.

A No, it may be some other kind of acid. Equivalent in what way?

Q I don't know. There is nothing in that necessarily deleterious to health?

A Well, the question is incomprehensible to me. I can't get anything out of it. 40

Herbert B. Vail, re-direct.

Q There are all kinds of free acid, some deleterious and some not and the mere statement that this free acid is equivalent to 280 grains of sulphuric acid doesn't mean anything, does it?

A No, sir.

Further re-direct examination by Mr. Hughes.

10 Q In your opinion, doctor, if this stream contained 280 grains of sulphuric acid to the gallon with a mixture of nitro benzo—in that condition would the stream be deleterious to health and vegetation?

Mr. English. I object to that, it is not the original question. That is something which he has not agreed to prove.

20 *The Court.* If you say, Mr. Hughes, that you will show that water coming from the premises will show certain ingredients, well and good, but unless you can show that you shouldn't ask the question.

Mr. Hughes. I am willing that it should be understood that this is to be stricken out later if I do not show it.

The Court. Well, are you going to show it? We don't want hypothetical questions that don't relate to what you are going to prove. I will allow the question and if you do not prove it strike it out and try to forget all about it.

30 *Mr. English.* There is no quantity of nitro benzo mentioned and that is very important.

Question withdrawn.

Q In your opinion if this stream contained sulphites having more than 200 grains per gallon of combined sulphur dioxide would the stream in that condition be deleterious to health and vegetation?

Mr. English. Do I understand that counsel promises to prove this?

40 *The Court.* Do you feel, Dr. Vail, as a practicing physician that you are competent to tes-

Salvatore Grillo, direct.

tify on such technical questions as the last two or three?

A No, sir, I am not. They are questions for a chemist and not for a physician.

Mr. Hughes. Do I understand that the question put by the defendant's attorney stands?

The Court. They all stand for what they are worth in the mind of the Court. 10

ANGELO DOMINICK, sworn as interpreter.

SALVATORE GRILLO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A 45 Heckel street.

Q How long have you lived there?

A Ten years.

Q Do you know of the existence of a brook running through Silver Lake near your property? 20

A Yes, sir.

Q How far is the brook from your house?

A Runs right under my property.

Q Are you the owner of the property at 45 Heckel street?.

A Yes, sir.

Q Have you a garden?

A Yes, sir.

Q Do you grow anything in the garden? 30

A Yes, sir, I do.

Q Are you married?

A Yes, sir.

Q Are you the sole owner or part owner of the property?

A Part owner only.

Q Who is the other owner?

A Angelo D'Alessio.

Q How many children have you?

A Two. 40

Millie Nardon, direct.

Q What are their names?

A Grace and the other Mary.

Q How old are they?

A Grace is fifteen and Mary is five years old.

Q What do you know about the condition of this stream?

A Smells.

Q What else?

10 A Grape vines dried up. I can't sleep or anything.

Q What has been the condition of your health and the health of your wife and children during the past year?

A Half sick and half crippled.

Q Who is half sick and who is half crippled?

A The children.

Q What do you mean by half crippled?

20 A Sometimes they are sick and sometimes they are well.

Q Is this smell from the brook pleasant or unpleasant?

A Bad, unpleasant.

Q Does it have any effect on you when you smell it?

A Bad for me, hurts me.

Q In what way?

A Stomach, all over.

30

MILLIE NARDON, sworn.

Direct examination by Mr. Hughes.

Q Where do you live, Mrs. Nardon?

A 11 Brook street, Silver Lake.

Q How far is Brook street—

A Around Heckel street, around the corner.

Q Silver Lake?

A Yes.

40 Q And do you know where Grillo and D'Alessio live?

Millie Nardon, direct.

A Yes, sir.

Q How far is your home from theirs?

A Well, it is about four or five lots from Heckel street.

The Court. You mean 25-foot lots, city lots?

A Yes, sir.

Q Do you know anything about a brook running through Silver Lake?

A Yes, sir. 10

Q Does it run near your property?

A Right in the back of our yard, back of our house.

Q What is the condition of that brook?

A Well, I don't know.

Q I mean, have you seen the brook?

A Yes, sir.

Q What did you see?

A All I see is that, now—all that acid. 20

Mr. English. What time is she speaking of?

Q Have you seen this brook at any time since February 1st, 1915?

A Yes, sir.

Q How often have you seen it?

A Well, I see it every day.

Q What is the general condition of it?

A All dirty water and that smell of acid.

Q What is the nature of the smell?

A Oh, I don't know. Every time I go in the back yard I have to go home again, you know. It fills my stomach like. 30

The Court. Makes you feel like vomiting, you mean?

A Yes.

Q Have you got a garden?

A Yes, sir.

Q How near does the stream run to your garden?

A About 150 feet away from our house. 40

Millie Nardon, direct.

The Court. As the water comes through your yard it comes down from Grillo's property first, doesn't it? Isn't his house first?

A Yes.

Q You have got a garden?

A Yes, sir.

Q Ever grow anything in the garden?

10 A We did, but not this year.

Q How long have you lived there?

A We are living there about ten years.

Q Have you been growing vegetables in your garden for the past ten years?

A We did, but this year we didn't.

Q Why didn't you grow anything this year?

A On account of that smell and the acid, the water running in.

Q Did you try to grow anything?

20 A Tried but they all died.

Q What did you try to grow?

A Everything like tomatoes and cabbage and peas.

Q Got any grape vines?

A We did have and they died too.

Q Since when?

A This year.

Q How long have they been growing there?

A About twelve or thirteen years.

Q With whom do you live?

30 A With my mother.

Q How many are there in your home?

A My mother, two brothers, my man and I.

Q What has been the condition of your health during the last year?

A Ten years we were all right but this year we are getting kind of sick on account of the smell.

Q Have you been sick yourself?

A For a good while.

Q How long?

40 A Oh, about—all summer.

Millie Nardon, cross.

Q What is the nature of your sickness?

A I think that smell. I never went to a doctor.

Q Did you ever see Grillo's and D'Alessio's lots there, ever on them?

A I have seen them but I never, you know, cared to go on them. I see them from crossing the street.

Q What did you see?

A Everything. 10

Q When did you see it?

A Last summer—this summer.

Q What was the condition last summer?

A All right.

Q What do you mean?

A They were all good, garden and everything.

Q Did you see the grape vines?

A Yes, sir.

Q What was the condition last year?

A All right. 20

Q What was the condition this year?

A Bad.

Cross examination by Mr. English.

Q When did you first notice this smell that you speak of?

A In the beginning of spring.

Q Can you fix it any nearer than that? Can you give us the month?

A Well, we smelled it from the beginning of spring. 30

Q What month?

A Of course, I am working, you see, I don't know.

Q You come home to sleep at night?

A Yes, sir.

Q Did you smell it at night?

A Yes, couldn't keep our windows open.

Q When was that?

A Beginning of spring.

Q When is that? 40

Peter Gallato, direct.

- A About April or May.
 Q You weren't sick enough to go to the doctor?
 A I was sick but I didn't go to the doctor.
 Q Any of your family go to the doctor?
 A No, sir.
 Q You say you were sick?
 A We kept our windows closed so it wouldn't get
 10 in.
 Q How did it affect you?
 A It covered my breath right out—we couldn't
 breathe.
 Q It gave you a choking sensation?
 A Yes and we would cough all the time we smelled
 it.

PETER GALLATO, sworn.

Direct examination by Mr. Hughes.

- 20 Q Where do you live?
 A Bloomfield, 49.
 Q Is this in Silver Lake?
 A Yes, sir.
 Q Do you know anything about the stream going
 through Silver Lake?
 A I see a brook.
 Q Do you live near the brook?
 A Yes, there is a brook up on my place, my prop-
 erty.

30 *By the Court.*

- Q The brook runs through your property?
 A Yes, sir.
 Q Do you know where Grillo's property is, where
 Grillo and D'Alessio have a 25-foot lot?

(No answer.)

The Court. You had better come and interpret,
 Mr. Dominick.

Peter Gallato, direct.

By Mr. Hughes.

Q Do you live near the brook?

A 135 feet away from the brook is my house, five feet away, the baker shop from the brook.

Q What is the size of your lot?

A 35 feet wide where the brook is and on Bloomfield avenue two lots, 50 feet.

Q What is the condition of the stream running through your lots? 10

A Can't resist the smells of it in the summer time.

Q How long is it since you first noticed the smell?

A Six years. I am living there fourteen years—not less than six years.

The Court. Have you noticed any change in the smell in the past two years, say?

A This past year it was sort of a special smell.

Q How deep is the stream there and how broad? 20

A Four feet wide and three feet deep.

Q How long has it been four feet wide and three feet deep?

A Three years since I fixed it.

Q What do you mean by fixing it?

A By fixing it I mean that I put planks over it to take the smell away and that's all.

Q What was the condition of the stream before the past two years?

Mr. English. I object to that, it is too remote; the damages are alleged from February 1st, 1915. 30

Question withdrawn.

Q How much water passed through your property prior to six years ago?

A When it rained there was plenty of water, but when it didn't rain there was no water at all. There was no water passing down.

The Court. Then you would say that up to six years ago there was simply a ditch in the back of 40

Peter Gallato, direct.

your property without water in it unless it rained, or shortly after a rain?.

A Yes, sir, just when it rained, just like a ditch in the back.

Q Where did the water come from for the past six years?

Mr. English. I object to that.

10 Objection sustained.

Q When did you notice a change in this ditch; when did it first change from a dry to a wet ditch?

Mr. English. I object; immaterial.

OVERRULED.

EXCEPTION.

By the Court.

Q When did you first notice water flowing down through what you have described as a dry ditch?

20

A I don't remember the first time only when it rained.

Q There is a stream of water flowing through your property now, isn't that correct?

A Yes, sir.

Q When did you first notice that there was running water flowing through this ditch?

A Thirteen years ago.

Q Was it a running brook thirteen years ago?

30

A Yes, sir.

By Mr. Hughes.

Q How long is it since this water started running through the ditch in the summer time or the dry weather?

A When it rained there was water come from East Orange and from the Edison plant that runs through there all the time.

Q Is this ditch ever dry?

40

A Before Edison water used to come through there it used to be dry.

Peter Gallato, cross—re-direct.

Q How long ago was this?

A Before six years ago.

Q Has it been dry for any length of time at all during the last six years?

A No, sir.

Cross examination by Mr. English.

Q How long have you lived there?

A Seventeen years. 10

Q Right where you live now?

A Yes.

Q Lots of water in the stream in winter?

A When it rains.

Q Well, it rains in the winter, doesn't it?

A Yes.

Q So there is lots of water in the winter?

A Yes.

Q Lots of water in the spring?

A Not so much—just when Edison comes. 20

Q Just leave out Edison. Before he was there there used to be water in the spring?

A In the spring the water would get there during the rainy weather but after it would rain it would dry up.

Q Would it be all dry or was there always a little stream running in the bottom?

A Absolutely dry.

Q Now, in the last six years it has been about as it is now, hasn't it? 30

A Same thing. As bad as it is now.

Q You haven't noticed any change in it in the last six years?

A No change at all.

Re-direct examination by Mr. Hughes.

Q Do you know what a settling pit is?

A Yes, Mr. Edison has four.

Q Where has he got them?

A In back of the factory. 40

Antonio Nardiello, direct.

Q How near are the pits to your property?

A About seven hundred feet.

Q Are they outside of the Edison Company fence or inside?

A Inside of the Edison plant.

Q Do you know when those pits were dug?

A Yes, sir. Six years ago.

10 Q Does any water come from the pits?

A The water from the pits goes through my property, through the stream.

ANTONIO NARDIELLO, sworn.

Direct examination by Mr. Hughes.

Q What do you do?

A Vegetable peddler.

Q Sell them or buy them?

A Retail.

20 Q Did you sell any vegetables during 1914, last year?

A Yes, sir.

The Court. You needn't qualify him. I know he has a license down in Glen Ridge.

Q What did you sell tomatoes for, per basket, last year, 1914?

Mr. English. I object to the prices in 1914.

Mr. Hughes. All right I will make it 1915.

30 *The Court.* What was the price for ordinary baskets of tomatoes in 1915?

A Sometimes seventy-five cents, sixty-five cents; you have to take the time. Last summer you could get them for a quarter a basket, in the last of the summer. The first it cost ten cents or fifteen cents a quart. Different prices all summer.

Q How much would they be a basket in the beginning?

40 A Sometimes fifty, sometimes seventy-five. The first that come in are a dollar.

Antonio Nardiello, direct.

Mr. English. Along in August what would they be?

A You pay more for Jersey tomatoes than what come from the South.

Q During August what were they selling for?

A About fifty cents a basket.

Q How much did you get during July and August and September for corn?

A Well, a quarter a dozen, twenty cents a dozen. I got to see the kind of corn. 10

The Court. Country Gentleman?

A Thirty-five and thirty cents—that's the best you can get—a dozen.

Q How much did you get for lettuce?

A In May and June you get ten cents and fifteen cents a head. Some kinds of heads you get seven and eight.

The Court. How about Silver Lake lettuce? 20

A I don't know about that. I buy it in the market.

Q What did you get for what you sold?

A Ten and fifteen. Depends on the size.

Q You get from ten to fifteen?

A Ten cents a head sometimes.

Q What did you get for cabbage?

A Ten cents.

Q What do you get for beans?

A To sell by the quart?

Mr. English. Do you know what forty-day beans are? 30

A Sure.

Mr. English. What is the price of those?

A The first that come in two quarts for a quarter and fifteen cents a quart.

Q How much did you get for peas a quart?

A The same thing.

Q Fifteen cents a quart?

A No, ten cents a quart and thirty-five cents a half peck. 40

Antonio Nardiello, cross.

Q How much for celery?

A I sell celery for the bunch, fifteen cents a bunch and ten cents.

Q How many pieces do you put in a bunch?

A Three or four stalks—a nice good size.

Q How much for radishes?

A Five cents a bunch; three for ten cents.

10 Q Ever sell grapes?

A Sure, sometimes when I got them.

Q How much do you sell grapes for?

A Five cents a pound.

Q Ever sell grape wine?

A Yes.

Q How much do you sell the wine for?

A Four cents a pound.

The Court. You never make the wine yourself and sell it?

20 A No, I never sell any wine; what I make I drink myself.

Cross examination by Mr. English.

Q Now, Mr. Nardiello, you deal in pretty good vegetables, don't you?

A Sure, I buy good stuff.

Q Buy it around Silver Lake?

A I get good stuff. I buy anywhere I can get it.

Q Can you get good stuff around Silver Lake?

30 A I go down to the market to buy my stuff.

Q You buy stuff that comes from out of the state? Do you ever buy stuff that comes from this part of the country?

A I buy off of the farms.

Q What is the nearest farm you buy from?

A I wait for the farm men down at the market.

Q In Newark?

A Yes, that is where I buy.

40 Q Now, about the time when tomatoes get ripe around here how much do you have to pay?

Antonio Nardiello, cross.

A Sometimes seventy-five, sometimes ninety cents, eighty-five cents.

Q I am talking about in the summer.

A When they first come in.

Q Not when they first come in.

A The Jersey tomatoes only come in the middle of July—you pay the price then.

Q But those which get ripe around the latter part of August? 10..

A Fifty, sixty and seventy-five.

Q How big a basket?

A Half a bushel.

Q Those baskets hold half a bushel?

A Yes.

Q What do you have to pay for corn around the first of September?

A \$1.50, \$2.00, \$1.75.

Q For how much? 20..

A For a hundred.

Q That is between a cent and a half and two cents an ear?

A Yes.

Q And when is lettuce plentiful around here, getting it in the market?

A Lettuce? All the time. You can get it now.

Q Do you raise any vegetables yourself?

A In the summer.

Q When does your lettuce get ripe? 30

A I don't plant any.

Q When does it get ripe?

A I have some corn and beans and so on.

Q Do you raise forty-day beans?

A Yes.

Q When do they get ripe?

A They don't get ripe—pick them quick.

Q What do you sell them for?

A I get a good price. 40

Antonio Nardiello, cross.

Q What do you get for the forty-day beans you raise?

A Fifteen cents. They are nice.

Q They are extra good?

A Yes.

Q You get ten cents for the others?

A Yes.

10 Q You are giving us the fancy prices, on the best stuff?

A Certainly. I have to make a living.

Q This corn you sell for 35 cents a dozen; that is extra good corn?

A It is Country Gentleman.

Q Now, a good deal of corn you sell for less than that?

A If it is good you get a good price.

Q Twenty-five cents, 30 and 20 cents sometimes?

20 A Yes.

Q And cabbage; you sell that for less than ten cents?

A And fifteen cents.

Q Even less than ten cents?

A Sometimes if it is small we sell it for eight cents or five cents, but for good cabbage ten and fifteen.

Q Depends on the size?

A Yes.

30 Q You have given us the outside figures every time?

A I give you the right figures.

Q You are referring to very nice stuff and the other grades that aren't so good sell for less?

A When they sell for less they are too old—you can't use them.

Adjourned to Thursday, December 30th, 1915,
at 10.00 o'clock in the forenoon.

Michael Mairon, direct.

On Thursday, December 30th, 1915, at ten o'clock in the forenoon the examination of witnesses in the above cause again came on, and testimony was taken as follows:

MICHAEL MAIRON, sworn.

Direct examination by Mr. Hughes.

- Q Where do you live? 10
 A 96 Belmont avenue, Silver Lake.
 Q How far is that from the Edison plants?
 A Right across the street.
 Q How far from the brook in question in this case?
 A Two blocks.
 Q How long have you lived there?
 A At this address?
 Q Yes.
 A About eight years. 20
 Q Where did you live before that—how long have you lived in the Silver Lake section?
 A Between nineteen and twenty years.
 Q What business are you in?
 A Carpenter and builder.
 Q In business for yourself?
 A Yes, sir.
 Q Ever hear of the Silver Lake Health and Benefit Association?
 A Yes, sir. 30
 Q Hold any office in it?
 A Yes, sir.
 Q Who are the members of the association?
 A Well, I can name some of them but I haven't a whole list with me.
 Q Are they residents of Silver Lake or outsiders?
 A Residents of Silver Lake.
 Q Were any complaints made in regard to this brook through your association? 40

Michael Mairon, direct.

A Yes, sir.

Q To whom were they made?

A To the Board of Health, local and State Board of Health.

Q In what form were they made?

Mr. English. I object, I think we have gone far enough on that matter.

10 A Made in affidavit form.

Q Have you got the affidavits?

A Yes, sir.

Q How many?

A Forty-seven.

Q Got them with you?

A Yes, sir.

Q Are these the affidavits?

A Yes, sir.

Q Are they all signed?

20 A Yes, sir.

Q Are they the signatures of residents of Silver Lake?

A Yes, sir.

Q Is that form similar to all the other forms?

A Yes, sir.

Q What does that form say—what is the form?

Mr. English. I object to any of the contents of the paper.

30 Objection sustained.

Q Against whom are the complaints made?

A Against the Edison plants. All the different plants of Edison, conducted under Edison's name.

Q Do you know the course of this brook? Have you seen it?

A Yes, sir.

Q How often have you seen it?

A I see it nearly every day.

Q What do you know about it?

40

Michael Mairon, direct.

Mr. English. I object to the form of the question.

Objection sustained.

Q Have you noticed anything in particular about the brook?

A Yes, sir.

Q What is its condition?

A Years ago this property—

10

Mr. English. I object to that.

Q What is its condition now?

A Its condition is very bad.

Q What do you mean by very bad?

Mr. English. I object, the only condition we are concerned with is prior to this —

Q Have you passed this brook at any time after February 1st, 1915, to November 19th?

A Yes, sir.

20

Q Did you notice the condition of the brook during that period?

A Yes, sir.

Q What was the condition?

A The condition—this water, I don't know where, if it comes from Edison or where it comes from in this brook—in the last year has raised a vapor all along the brook and most of the vineyards they have there is all killed, all died out and this summer they had a moving picture show on the brook, the Welfare Association—

30

Mr. English. I object to that.

A (Continued) —they tried to have a moving picture on the brook on the bridge across, rather, on Belmont avenue and there was a big crowd gathered there to see the pictures—

Mr. English. When was this moving picture show?

A It was in July and all at once some of the water come into the brook and raised an awful smell and

40

Michael Mairon, direct.

all the people were choked and all had to run away and left the sheet up without the moving pictures—everybody run away and left everything there, the sheet and camera and whatever they had there, the moving picture machine.

Q Do you know the course of this stream?

A Yes, sir.

10 Q Where does it start?

A As far as I can tell you I have seen it over at Bloomfield avenue, a party over there I was to do a job for him and the brook goes right under his property and I went over there to look at the job and had to raise the house and build a foundation here, and I noticed the brook pretty dry there this summer and I have been there three or four times.

Q Where is this man's property?

A West of Bloomfield avenue.

20 Q How far above Belmont avenue is it? That runs at right angles, doesn't it?

A It is about four or five blocks above. More than that it is about ten blocks above Belmont avenue on Bloomfield.

Q When did you have this work to do there?

A In June.

The Court. What is the name of the owner of the house?

A Michael Copozzi.

30 Q What do you mean by blocks?

A Why, streets, there is no streets cut through there.

Q What would be the distance in miles or feet or yards?

A Well, from Belmont avenue I should judge about 400 yards.

By the Court.

Q Is it below Grove street?

40 A Near Grove street.

Michael Mairon, direct.

Q Below the International Fuse Company, near Newark?

A Right across the street.

By Mr. Hughes.

Q Is it above or below the munition factory?

A Right across the street.

Q How often were you up there at this work in July?

10

A Four times.

Q In July?

A No, in June.

Q Four times during the month of June?

A Yes, sir.

Q What was the condition of the brook, if there is a brook, above that point?

A I couldn't say about that.

The Court. Mr. Copozzi is on the opposite side of Bloomfield avenue, and does this stream come over and under Bloomfield avenue?

20

A Yes, right under his house.

Q What is the condition of the brook right at this man's house?

A Dry; only when it rains it is wet.

Q What is the condition of the brook below his house?

A I seen that dry also.

Mr. English. When?

30

A I have seen it in June and July.

Q Were you ever employed by the Edison people?

A Yes, sir.

Q How many years ago?

A About four years ago.

Q How long were you employed by them?

A One time I worked there, the first time, about five years steady.

Q What plant did you work in?

A Up in the chemical works.

40

Michael Mairon, direct.

Q Are you familiar with the plants of the Edison companies, their location?

A Yes, sir.

Q How are they located—

Mr. English. I object. This is four years old. Unless he shows an up-to-date knowledge it is immaterial.

10 Q How are they located now?

Mr. English. There is no testimony that he knows.

The Court. Do you know whether or not there have been any changes in the building of the Edison Chemical Works during the past four years?

A I don't know about the changes of buildings. When I used to work there they put up buildings every day, new buildings every week. I don't know what they have done in four years' time.

20 Q Where are the buildings of the Edison Company—how near are they to this man Copozzi's place where you were working this summer?

A Well, I didn't work at Copozzi's house. I didn't get the job.

Q How near are the buildings to that particular point you describe?

A About 200 yards.

30 Q Have you ever seen any dumps or settling pits in this locality?

A Yes, sir.

Q Where did you see them?

A In the back of the chemical works.

Q Did you follow the course of those settling pits, or the water going from one to the other?

A Yes, sir.

Q Describe the course?

40 A I seen—I don't remember whether I seen four or six of those settling pits and they have pipes running from one to the other.

Michael Mairon, direct.

Q What are the dimensions—what is the diameter of those pipes as far as you could judge?

A About eight inches, I guess.

Q Well, where did you trace the settling pits and the pipes to; what did they flow into? Where did the water in the settling pits and pipes flow if you saw it flow into any place?

A Well, it runs out into their property—a couple of pipes run steady there into some ditch that they have had dug out. 10

Q And then where does the water flow?

A Along their property into Columbia street in back of this Gallato's house.

Q Into the street, did you say?

A In the lot.

Q Then where?

A And from there it comes down through Columbia street, Edison street, Belmont avenue and Agate street and goes into Tenth street. 20

By the Court.

Q Is that Columbia street or Columbus street?

A Columbus, I guess.

Q Comes out on Bloomfield avenue, just a blind street?

A Yes.

By Mr. Hughes.

Q At what particular point does the overflow from these settling pits go into this brook? 30

A Well, I only went there once this summer before they had the fence up.

Mr. English. When was that?

A In the spring.

Mr. English. What year?

A This year. I was over there this year when I went to see this Copozzi house before the ammunition plant started their work and there was no 40

Michael Mairon, direct.

fence around there, anybody could go around and see everything going on, but lately now they got it all fenced in.

Q Well, never mind about that.

A I noticed at that time there was a ditch dug out, running into this Columbus street, not into the street but on the border line that belongs to the Edison and the other property that belongs to Gallato.

10

Q You say you have been in the Silver Lake Section for nineteen years?

A Yes, sir.

Q Has this stream been in this condition during the past nineteen years?

Mr. English. I object; that is too far back.
Objection overruled.
Exception.

A Yes, sir.

20

Q Has the brook been there for the past nineteen years?

A Yes, sir.

Q In the same condition as it is now, or in any different condition?

A Not about the water, but the condition of the brook at that time when I know this property—

Q What time?

A About seventeen years ago, more or less, this property used to belong to, all of Thomas A. Edison's property from Oliver street from their boundary line as far as Bloomfield avenue, and that was sold to Breckenridge & Tichenor in the name of Edison Park, and used to be a regular woods and I passed through almost every day and my brother was an agent for Breckenridge & Tichenor selling the lots and I was working for my brother distributing around the circulars about the sale of this property and used to go to Newark to different places where there were Italians. I was in this place every day. The brook

40

Michael Mairon, direct.

wasn't in the condition it is now because these people that bought these lots they kind of closed it in and built some kind of stone wall, put up boards and some concrete, you know.

Q Now, what was the volume of water seventeen years ago?

A Why in the summer time when it was a dry season I didn't see no water at all in there.

Q Did you ever see water in it? 10

A Yes.

Q What caused the water to get in it?

A Why, such a rain water.

Q When did you notice the condition of the brook change, if it has changed?

A I seen the brook change within the five or six years.

Q What has been the change?

A Why, water has been running in the brook from these factories. 20

Q What is the difference in the volume now as far as you can say from the volume of sixteen or seventeen years ago, or prior to five or six years?

A How much water?

Q Yes.

A Oh, now lately, this last year, this present year the brook has run continuously.

Q How much water is in it as a rule?

A I think enough water to go through a twelve-inch pipe. 30

Q How deep is it?

The Court. Well, he says enough to fill a twelve-inch pipe, and it flows continuously.

A Yes, sir.

Q Have you been on the property of the plaintiff?

A Yes, sir.

Q Often?

A Oh, I was there, this year, about—more than fifty times. 40

Michael Mairon, direct.

Q What is the volume of water going under his house there? Tell us how deep and how wide?

A Well, it's about four feet wide and about, sometimes of course the water is more than another—sometimes I have seen the water there six inches and sometimes ten inches and sometimes I have seen it full up to the top.

10 Q What would that depth be?

A The depth, three feet.

Q Has this stream been dry during the past five or six years?

A Not on Belmont avenue or Agate street.

Q Where has it been dry?

A Up above Belmont avenue.

Q How far are the Edison plants from Belmont avenue or are they on Belmont avenue?

A The first buildings are about—

20 Q Never mind that question—you say it is dry above a certain point, even this year?

A Not this year.

Q Above a certain point?

A It was dry above this factory.

Q What particular point? Can you describe that point?

A From Bloomfield avenue in back of the chemical works and then there is a little stream coming from a ditch made lately, this summer, from the railroad or from the aniline plant.

30 Q It is dry above that point you mean to say?

A Yes, above that.

The Court. Dry above the Watchung branch of the Erie?

A Yes, sir.

Q Have you seen the discharge from the aniline plant?

A Yes, sir.

40 Q Where does the discharge from the aniline plant reach this brook or this ditch?

Michael Mairon, direct.

A There is a ditch from the aniline plant and it goes under the railroad.

Q At what point does it reach this ditch or brook?

A How far is the aniline plant from this brook?

Q How far is it?

A I couldn't tell right but I should judge more or less 200 yards.

Q At what point does it reach the brook? 10

A It reaches in back of the chemical works, in connection with the settling pits in back of the chemical works.

Q Is the ditch or brook dry above where that discharge is made, then?

A Above the aniline plant?

Q Yes.

A Yes, sir.

Q Is it quite dry?

A Not always. I was over there once, twice this summer and it was dry and a couple of times after that and there was a little water in it. 20

Q How much water in it?

A A little surface water. I don't think any more than about—not enough to count, didn't run, just laid there. I know the mosquito people—there is some kind of a swamp there.

Q Do you know where that water came from, the little quantity of water?

A Why right there in back of the aniline plant there is a little high space there and a low space and when it rains water flows in there and stays there. 30

Q Then you mean that this was rain water?

A Rain water.

Q And do I understand that you mean that the discharge from the aniline plant creates the first appreciable volume of water?

A Yes, sir.

Q What was the condition of the plaintiff's garden when you called fifty times this summer? 40

Michael Mairon, direct.

A All dried out.

Q Were you ever on the plaintiff's property prior to this summer?

A Yes, sir.

Q When were you on it?

A Most every year for seven or eight years.

Q What was the condition each year?

10 A Conditions were all right. The garden was growing all right.

Q Grow vegetables?

A Yes, sir.

Q And grape vines in bloom?

A Yes, sir.

Q Did they have any vegetables or grape vines this year?

A Not at all.

20 Q Have you ever noticed any odor from this brook during the past year?

A Yes, sir.

Q What was it like?

A I couldn't say what it was like. I know it threw me up every time I passed the brook.

Q How often did you notice it?

A Nearly every day I crossed that brook.

Q Have you noticed that prior to this year?

A Yes, sir.

Q For how long past?

30 A Why, I noticed that brook ever since I have been in Silver Lake.

Q My question was have you noticed any odors and how long have you noticed the odors from that brook?

A This year, 1915.

Q Noticed any odors prior to this year?

A No, sir.

40 Q You say that your Health and Benefit Association of Silver Lake made a complaint to the local Board of Health?

Michael Mairon, direct.

A Yes, sir.

Q What action was taken by the local Board of Health?

Mr. English. I object.
Sustained.

Q Did you ever attend a meeting of the local Board of Health?

A Yes, sir. 10

Q In reference to these complaints?

A Yes, sir.

Q Whom did you hear testify before that meeting?

A I don't quite understand that.

Q When was this meeting which you attended?

A Some time in July.

Q Where was it held?

A At Belleville, Town Hall in Belleville.

Q Was it the meeting of the local Board of Health or the joint meeting? 20

A A meeting of the local Board of Health.

Q Did you attend the meeting of the State Board of Health and the local Board of Health, jointly?

A Yes, sir.

Q When was that meeting held?

A I don't remember now. Between July and August.

Q Did you speak at that meeting before the people, the representatives of the Board of Health?

A No, sir. 30

Q You were present?

A Yes, sir.

Q Who did speak there?

A Frank E. Pendleberry.

Q Who else?

A He was the only representative from our association.

Q Did you hear anyone else speak?

A Yes, sir. 40

Michael Mairon, cross.

Q Whom did you hear?

A You mean members of the association?

Q Any one.

A Oh, I heard Dr. Vail and I have heard Mr. Miller.

Q Who is Mr. Miller?

A John V. Miller, the manager of the Chemical
10 Works.

Q Did you hear or see anyone else?

A A fellow by the name of Hardy.

Q Who was he?

A Some representative of Mr. Edison, I don't know who he was.

Q Did you hear what Mr. Miller and Mr. Hardy said?

A Yes.

Q What did they say?

20 *Mr. English.* I object.
Objection sustained.

Q Did you hear whether Mr. Miller and Mr. Hardy claimed that they represented any particular person?

Mr. English. Objected to.
Sustained.

Cross examination by Mr. English.

30 Q Why did you leave the employ of the Edison Chemical Works, Mr. Mairon?

A Because I couldn't stand the chemicals they were making in there, it was not healthy for me.

Q Since then you have sued some of the Edison companies?

A Yes, sir.

Q For some smoke or something?

A Yes, sir.

Q Never pressed that case to trial?

40 A No.

Michael Mairon, cross.

Q You are an active member of this Health Association?

A Yes, sir.

Q I didn't quite understand the course of some ditch you spoke about which ran across Columbus street and some other street and came out on Tenth street, what was that?

A That is this stream we are talking about. 10

Q That is the course of the stream?

A Yes.

By the Court.

Q That is the stream that runs under the house of Grillo and D'Alessio?

A Yes, sir.

Q There is one coming from the direction of the Coppozi house and one from the direction of the aniline plant and they both run to a central point and form a junction? 20

A Yes, sir.

By Mr. English.

Q Where do they form that junction, near whose property? About where?

A In back of this Peter Gallato's house who testified yesterday.

Q In back of the baker's house at 49 Bloomfield avenue?

A Yes, sir. 30

Q As I understand it, most of the time there is no water in the branch coming from the direction of Coppozi's house.

A Yes, sir.

Q But there is always water in the branch that comes from the direction of the Edison plants?

A Not always.

Q Did you notice that brook dry this summer?

A No, sir; not this summer. 40

Peter Costello, direct.

Q I mean from February down to the middle of November?

A I have seen it always running this year.

Q And that water begins up near the Erie Railroad tracks?

A Yes, sir.

Q It starts from the discharge from the plant which you have referred to as the aniline plant?

10

A Yes, sir.

Q And then does it gain in volume as it comes down toward Bloomfield avenue?

A Yes, sir.

PETER COSTELLO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A 42 Lawrence street, Silver Lake.

20

Q How long have you lived there?

A About fifteen years.

Q Do you know this brook in question in this case?

A It runs right beside my house.

Q Do you know the course of it, other than that?

A No, not around but that it runs along my house.

By Mr. English.

Q Do you live up stream from the plaintiffs or below?

30

A Below.

Q How far?

A Well, about twenty feet.

Q Are you on Heckel street?

A No, I am on Lawrence street.

Q A block below?

A Yes.

Q The stream flows past Grillo's house and then on down to yours?

A Yes.

40

The Court. Is Lawrence street one block below Heckel street?

Peter Costello, direct.

A It runs down this way and down this way.

Q Doesn't Heckel street come out near Chester avenue?

A Yes.

Q Where is Lawrence street?

A Chester avenue, Brook street and then Lawrence street.

Q Does it run in the same direction as Chester avenue? 10

A Yes, sir.

Q And Heckel street runs at right angles and crosses over Brook street and Lawrence street and Chester avenue?

A Yes, sir.

By Mr. Hughes.

Q Have you noticed the condition of this brook since February 1st and up to November 19th, this year? 20

A 1915?

Q Yes?

A It's always been this poison that runs out from Edison—

Mr. English. I move to strike out.

The Court. He cannot say that.

A It is poison to me—it almost knocks me over.

Mr. English. I move to strike out the answer.

Motion allowed. 30

Q We don't want to know what you think is in it—what is the condition as it affects you at your house?

A Well, I have to hold my door closed like you are in jail. You got to close everything, you can't get no air you know. You got to live like living in jail if you live in Silver Lake—got to keep away from the stink, the smell.

Q Have you followed at any time the course of this brook in any direction? Are you familiar with the course of it in any other direction? 40

Peter Costello, direct.

A No, only where it's alongside of my house and up to the Columbus street. I walked up to see the ammunition factory.

Q Is that above Belmont avenue?

A Yes.

Q Have you followed the course of the brook up from Belmont avenue up to this factory?

10 A Right up to Columbus street.

Q What is the condition of the brook around Belmont avenue?

A In 1915?

Q Between February and November of this year?

A The condition is that it is pretty bad—the stuff that runs through there, you can't pass the brook. It's something awful.

Q Is it similar to the condition at your house?

20 A Just the same because it runs by my house to run into the Second River and has to pass by my house.

Q How long have you noticed this particular condition?

A Since about March or so.

Q What was the condition of the brook prior to March?

30 A Well, when I lived there about fifteen years ago it was dry and you know every time it rained there was a little water in there, you know. When I was a kid I went in swimming and some times used it to throw in the garden to make the vegetables grow up.

Q Have you any children now?

A No, I am not married. I have a mother and sister there.

Q Could you go in swimming in it now?

A No, I wouldn't dare take a chance, it would take my last wind if I did.

Q Have you ever seen where this brook started?

40 A No.

Frank E. Pendleberry, direct.

Q Do you know where it starts?

A No.

Q Is any part of this brook or ditch in which it runs dry at the present time or has it been during the past year?

A Dry? Not in 1915 I never knew him to be dry.

Q Have you ever followed the course of it up above this ammunition plant?

10

A I went up as far as Columbus street and go up Bloomfield avenue once in a while to the ammunition plant.

Q Does it run up there?

A Yes, sir.

FRANK E. PENDLEBERRY, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

20

A 138 Belmont avenue.

Q Where?

A Silver Lake.

Q How long have you lived there?

A I have lived in this residence since the first of November; previous to that at 38 Eugene Place, Silver Lake.

Q How long did you live there?

A Close on to four years.

Q How long have you lived in Silver Lake?

30

A Five years the first of March.

Q How far is your house from the brook in question in this case?

A Well, I should judge it would be about three ordinary two hundred foot blocks, say about 600 feet.

Q How far do you live from the Edison plants on Belmont avenue?

A Right across the street.

Q What business are you in?

A Painter and decorator.

40

Frank E. Pendleberry, direct.

Q In business for yourself?

A Yes, sir.

Q Ever hear of the Silver Lake Health and Benefit Association?

A Yes, sir.

Q Hold any office in it?

A Yes, sir.

10 Q What office do you hold?

A President.

Q Are the members of that association residents of Silver Lake or not?

A All residents, yes, sir.

Q All property owners or simply tenants?

A Residents and property owners.

Q Were any complaints made in regard to a nuisance alleged to be created by the Edison plants, from your association?

20 A Yes, sir.

Q To whom were they made?

A Belleville Board of Health in the first place.

Q How often?

A Twice to the Belleville Board of Health.

Q When were they made?

A Oh, I should judge about the 20th of July or before that. I don't know the exact date now and then we went down on the following Tuesday; around the 10th or 13th or 20th. First when we went there they requested affidavits.

30

Mr. English. Just the dates now.

A I can't give the exact dates.

Q Approximate dates?

A About the 13th and about the 20th.

Q Were any other complaints made by residents?

A Yes, sir, I went to the State Board at Trenton.

Q Whom were you representing?

A I was representing the people of Silver Lake, that is in the Association, as their speaker and president.

40

Frank E. Pendleberry, direct.

Q What action was taken by the local Board of Health?

Mr. English. I object.

Objection sustained.

The Court. After you complained to the Board of Health did you notice if there was anything done with reference to changing the stream?

A Nothing whatever. 10

Q Have you noticed the condition of this brook during the period from February 1st to November 19th?

A Yes, sir.

Q What is the condition?

A Well the condition is about, I should say, unbearable to me.

Q What do you mean?

A Well, with the smells, fumes and one thing and another. 20

Q Have you noticed the vegetation along the brook?

A I have.

Q What condition was it in?

A None whatever—couldn't see anything grow. All dead.

Q What are your duties as president of this association?

Mr. English. I object, immaterial.

Objection sustained. 30

Q In whose interests were you working when you went along this brook and noticed this vegetation?

A I represented the people in general that belongs to the association but more particularly D'Alessio and Grillo at the present time.

Q Did you notice the condition of this brook prior to February 1st of this year?

A Yes, sir.

Q What was it?

A Seemed to me to be all right, never smelled any odors or anything. 40

Frank E. Pendleberry, direct.

Q Have you followed the course of this brook at any time?

A Yes, sir.

Q Where is its source?

A You mean the brook itself?

Q Yes?

A Well, I have seen it from the point from Bloomfield avenue above Grove street.

10

The Court. Any water in it at Grove street?

A I have seen it without water and with a little water after rains and the thaws.

Q What time did you see the little water in it?

A Last year and this year. Three or four times this year I have seen it dry around Bloomfield and Grove.

Q Has it ever been dry this year below that point?

By the Court.

20

Q At Grillo's property, say?

A No, sir, not at Grillo's property it has never been dry nor it hasn't been from about Columbus street.

Q Notice any water flowing into this ditch near Columbus street?

A Yes, sir.

Q Where does it come from?

A Over the other side of the railroad bank which I believe they call the aniline plant.

30

Q From the direction of the Edison factories?

A Yes, sir.

Q And that part of the ditch that comes down from Grove street passes through the property of the International Fuse and Arms Company and that you have noticed dry several times?

A Yes, sir.

By Mr. Hughes.

Q Do you know where the plaintiffs live?

40

A Yes, sir.

Frank E. Pendleberry, direct.

Q You have been on the property?

A Yes, sir.

Q How many times have you been there this year, if at all?

A Over fifty times.

Q Were you there prior to this year?

A Yes, sir.

Q How often?

A I should judge fifteen or twenty times. 10

Q What is the condition of their property at this time?

A Totally destroyed.

Q During what month were you on the property?

A Ever since about May, June, July, I have not been on the property prior to July but I have been past the property and seen it.

Q You have been on it since July?

A Yes, sir. 20

Q How often?

A Over fifty times.

Q Seen any vegetation?

A Not this year, no, sir.

Q Any grape vines?

A Had grape vines there but nothing on them. Had what was left of them.

Q What was the condition?

A Total destruction.

Q What was the condition of the garden of the plaintiff last year when you were there? 30

A Very good in my estimation.

Q See any vegetation growing there?

A Yes, sir.

Q What kind?

A Tomatoes, corn, beans and so forth. Grapes.

Q Did you ever have occasion to go into this brook? Were you ever in it?

A Yes, sir.

Q At what point? 40

Frank E. Pendleberry, direct.

A Belmont avenue, underneath the bridge.

Q Why did you go into the brook?

A To get samples of the water.

Q How deep did you find it?

A About a foot one time and a foot and a half another time.

Q When did you go into this brook?

10 A Around in August. I can't exactly tell, two different occasions, I think once in August and once around two months ago.

Q Was it some time between the period of February 1st to November 19th of this year?

A Yes, sir.

Q And as clearly as you can recollect it, what was the month that you went in?

20 A I think it was the fore part—it might have been the latter part of October or November, the second time and it might have been around August the first time. I ain't positive you know on those dates. Something like that. I can't give it exactly.

Q Did anyone see you go into the brook?

A Yes, sir.

Q Who saw you?

A The first chemist we had was Dr. Morron, and him and Mr. D'Alessio and Mr. Grillo and several others too numerous to mention.

Q Who saw you go the second time?

30 A Mr. Carrobetter and Mr. Mairon and Dr. Baldwin, Mr. Jones and several others at that time.

Q How far is this point at which you went into the brook from the Edison plants?

A Their plant starts about 100 feet from there.

Q Did you notice anything peculiar about the brook when you went into it?

A I certainly did.

Q What did you notice?

A I didn't know anything when I come out.

40 Q How did you get out?

Frank E. Pendleberry, direct.

A I got out and when I got the air I seemed to be like drunk they all told me—

Mr. English. Never mind what they told you.

Q How long were you in the brook?

A I was from the time I started under to get into this pipe that flows out, I should say about two or three minutes.

Q What is the diameter of this pipe? 10

A Eight inches I should say.

Q Notice any flow coming out from the pipe?

A Yes, sir.

Q Can you give any idea what the volume of water is?

A I should judge the pipe was two-thirds full.

Q A constant discharge?

A Yes, sir, and very warm.

Q How were you dressed when you went into the brook? 20

A Rubber boots.

Q How did you get out?

A Crawled out in a half-bent condition.

Q Did you get a sample of the brook at that time?

A Yes, sir.

Q And did you get a sample from the pipe?

A Yes, sir.

Q What from your observation has been the volume of water running through this brook from February 1st to November 19th? 30

A From Columbus street on do you mean or from the pipe?

Q From Columbus street down to the plaintiff's property?

A Well, I should judge at one part, at Belmont avenue, on the other side, towards Edison street it is more wider and of course the depth isn't there what it is below towards Heckel street—that is closed in.

Q About how wide and deep is the water?

A Below Belmont avenue or this side? 40

Frank E. Pendleberry, direct.

Q Both.

A The one towards Edison street is about five to eight feet wide and the one below, towards Heckel street, is about four feet, three or four. I never measured it.

Q Did you see this brook last year and for the past three or four years?

A Yes, sir.

10 Q Same volume of water in it?

A No, sir.

Q What is the difference?

A Sometime it was pretty near dry, that is, from Edison's plant down. Always a little bit of water in it. Sort of like rain water.

Q Was the condition of the water, whatever amount was in it at that time, similar to the condition at present or different?

A Last year?

20 Q Any year prior to this time?

A Last year it was all right.

Q Do you know the source of this stream, know where it starts?

A Yes, sir.

Q Where does it start?

A You mean the brook itself, where that comes from?

30 Q Where does the water come from as far as you know that flows under Belmont avenue where you took this sample?

40 A As far as I know from the bank, over by the railroad bank, what they call the aniline plant. They have three dumps there and there is a settlement of water there and it seems to flow from two pipes, one from one part and one from another; runs into a ditch and so on underneath the railroad and so on down along what you could call the fence line of the Edison property into the brook at Columbus street, at the property of Gallato, the baker.

Frank E. Pendleberry, cross.

Q What is the condition of the brook, or is there any brook above that point?

A No brook only when it rains, to my knowledge.

Q Have you seen any discharge into this brook from any other quarter?

A No, sir.

Q Have you seen the volume of water passing the plaintiff's house?

A Yes, sir. 10

Q Would the discharge that you have seen from these plants that you have testified to make that volume of water?

Mr. English. I object to that.

Cross examination by Mr. English.

Q Just tell me, what is the street above Heckel street?

A Belmont avenue. 20

Q And above that?

A Edison.

Q And above that?

A Columbus.

Q What is above Columbus street?

A The back of the lots.

Q No streets there?

A Grove street is way back of that. The ammunition plant takes up that.

Q Where does the Edison property start nearest to Heckel street or Belmont avenue? 30

A The Edison property isn't on Heckel street.

Q Nearest to which is it?

A Nearest to Belmont avenue.

Q And does it go above Edison street?

A No, sir—it does, yes, if you take it up another block further—Jerolaman, or something like that.

Q Is the Edison property bounded by the stream, any part of it?

A Right the one we are talking about, in general. 40

Frank E. Pendleberry, cross.

Q Any part of it?

A The rear where it goes through; the aniline plant is on the back of it.

Q Is the Edison property along the stream there?

A As far as I know.

Q Is that the only place?

A You have it running under Belmont avenue, the pipe that runs into the brook.

10 Q I want to know whether this stream is one of the boundaries of the Edison property?

A In the rear of the aniline plant.

Q And you have been above that plant?

A Yes, sir.

Q What are the sources of the stream up there?

A One other little stream fixed last year by the mosquito exterminators for a little drain.

Q What other source of the stream is there there?

20 A No other to my knowledge.

Q Start from nothing?

A Merely a settlement of water.

Q Any springs up there?

A Not to my knowledge.

Q Low ground?

A Never went investigating for that purpose.

Q The side streets, the cross streets which cross this stream between Heckel street and this point all flow into the stream?

30 A Yes, sir, when it rains, or thaws. In stormy weather.

Q Other pipes empty into it along there?

A Not to my knowledge.

The Court. Have you seen any others emptying into it?

A No, sir.

The Court. Does the same amount of water—

40 A I am not an engineer—it would take an engineer to know whether that would cause that volume of water?

Frank E. Pendleberry, cross.

Q Regardless of rainwater?

A No, sir, it would not.

Mr. English. I don't think we ought to take a guess.

Q You took a sample of the water coming from this pipe at?

A Yes, sir.

Q Did you take a sample of the water above Belmont avenue? 10

A Yes, sir.

Q Did you take a sample of the water in the stream below Belmont avenue?

A Yes, sir.

Q What did you do with those samples?

A They were put into the hands of the chemist. He was present at the time.

The Court. You turned them over to the chemist? 20

A Yes, sir.

The Court. What is his name?

A Dr. Baldwin.

Q I want to know whether you took samples on both occasions under the bridge?

A I did.

Q What did you do with the sample on the first trip?

A Dr. Morron had them but he disappeared after we partly hired him. 30

Q There is no point about the first trip then?

A No, sir.

Q The second trip was some time in October?

A Yes, sir.

Q How many samples did you take?

A Three samples of water.

Q What did you take them in?

A Bottles.

Q How big? 40

Frank E. Pendleberry, cross.

A Well, they were ordinary bottles furnished by the chemist. I don't know how big.

Q Did you fill the bottles directly from the stream or pour in from something else?

A No, sir; directly from the stream.

Q Tell me where you got sample number one?

A Right on Grillo's property.

10 Q Now, sample number two?

A Back above the point of the bridge, the other side of Belmont avenue.

Q North?

A Yes—I ain't sure whether that was the second or third.

Q Up stream above Belmont avenue?

A Yes, sir.

Q That was right out of the middle of the stream, I suppose?

20 A Yes, sir.

Q Now the third one?

A From the pipe in under the bridge.

Q You mean the pipe which acts as a culvert?

A The eight inch pipe that comes directly from the carbolic acid plant, as I understand it.

Q Is that the one in Belmont avenue?

A The one that's been in evidence right along in this trial.

30 Q I want to know if it is the one in Belmont avenue?

A Yes.

Q Did you take it out of the pipe or after it got into the stream?

A Right out of the pipe.

Q Does the pipe flow into the stream?

A Yes, sir.

Q Is it a waterfall?

A Just flows right in.

40 Q Well, is it above the surface of the stream?

Rudolph J. Struck, direct.

A At the time I took it it was a little bit below the pipe.

Q What was a little bit below?

The Court. Did the water flow out and drop into the stream so you could take it out without mixing with the brook?

A Yes, sir.

Q The level of the stream was below the pipe? 10

A Yes, sir.

Q So you got the simon pure water out of the pipe?

A Yes, sir.

Q Those are the only samples you took that have been analyzed?

A I think we took one up at—I ain't sure.

Q Well, these were turned over to Dr. Baldwin?

A Yes, sir.

20

RUDOLPH J. STRUCK, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A I live at 2 Franklin street.

Q Where?

A The foot of North Sixth street, Newark, the boundary line between Newark and Belleville.

Q How long have you lived there?

A About eight years.

Q Are you married? 30

A Yes.

Q Any children?

A Yes.

Q How many?

A Two.

Q What business are you in?

A I am with the Prudential Insurance Company.

Q How far is your home from this brook in question? 40

Rudolph J. Struck, direct.

A I am right on the brook. The building is about, I should judge, six feet from the stream.

Q How far are you from the plaintiff's residence?

A I should judge about 1,500 to 2,000 feet below.

Q What is the condition of this stream as you have noticed it?

10 *Mr. English.* I object; it is 1,500 to 2,000 feet below. Nobody knows what goes in down there.

The Court. Fix the time and I will allow the question.

Q Have you noticed the condition of this stream during the period February 1st, 1915, to November 19th, 1915?

A Yes.

Q What is the condition?

20 *Mr. English.* I object.
Overruled.
Exception.

Q What is the condition?

A I have noticed since this spring, February and March, that the fumes are very strong and to me they appeared like sulphuric acid. Prior to that we didn't have those fumes.

Q What effect, if any, do these fumes have on you?

30 A Why, they choke you, strangle you. It's impossible to remain in the yard when the fumes are in the brook or when they pass along the brook. They have ruined my flowers and roses, the trees along the brook. I have tried to plant English ivy along the house and while I had it covered it grew. It has ruined my screens and on doors and windows in the morning there is a white substance on the netting which looks to me like some sort of salts. The only way we can escape the fumes is by remaining in the house and keeping the doors and windows closed and then it comes in the cracks and at night going down the cellar it almost chokes me from the fumes in the cellar

40

Rudolph J. Struck, direct.

ways. My property with a frontage of 175 feet runs parallel with the brook.

Q Do these fumes have any effect on the members of your family?

Mr. English. I object.

Overruled.

Exception.

A My wife has threatened, I don't know how many times, to move away to her folks. 10

Mr. English. I object to that and move to strike out the answer.

Objection sustained. Motion allowed.

Q Just state what effect, if any, it has had.

A She simply can't stand it.

The Court. Have you noticed any change in your wife's health since you noticed these fumes?

What have you noticed?

A She hasn't been healthy. 20

Q Was she healthy prior to February 1st?

A Yes.

Q Did you notice the condition of the water prior to February 1st?

A Yes, when I first built the house there, eight years ago, it was as clear as crystal, the water, and since then, within the last five or six years it has become worse and worse. At times we had green water, then red and then a sort of russet color, and prior to that as I say it was simply a brook or a stream and was only water, the water was only discolored on rainy days. 30

Q When did you first notice these fumes?

A As I say, about February or March; they removed the paint from the side of my house towards the brook.

Cross examination by Mr. English.

Q Are you a chemist?

A I am not. 40

Rudolph J. Struck, cross.

Q So you are hardly qualified to say whether it would be sulphuric acid or what it was?

A I will tell you why—

Q I just want to know whether you think you are qualified?

A Yes, I have been through Helm and Butte, Montana, where they smelt copper ore which contains sulphur.

10

Q Had a familiar smell, had it?

A Yes, sir.

Q You say your wife hasn't been healthy—has she been sick enough to have a doctor?

A Why, no, she hasn't been doctoring.

Q Nothing over her ordinary condition?

A No.

Q You find this thing very unpleasant?

A Yes, I find it so.

20

Q But you can't charge up any particular bill of ill health?

A Yes, I feel when I rise in the morning—I feel soggy, that I haven't had my rest although I have always been in the habit of getting up early in the morning, at five or five-thirty, and now I don't get up, don't feel like getting up at six-thirty and seven. I sleep with the window open at night.

Q You haven't felt it necessary to call the doctor in?

30

A Well, a person doesn't like to doctor unless he is about ready to die—I feel that way.

Q You haven't gone to the doctor as the result?

A I feel that the results have injured my health.

Q What is between the place where you live and where Grillo lives on Heckel street?

A Why, the Second River, they call it. I always call it a brook. A drain from the Roseville section enters into this brook.

Q Anything else?

40

A Well, the surface water goes in there.

Rudolph J. Struck, cross.

Q Any manufacturing plants between your place and his?

A No.

Q Where does this Second River run, what general direction?

A In the back of my property, across underneath the Erie Railroad, New York and East Orange branch, and flows underneath the canal into the Second River near Tiffany's. 10

Q What points of the compass?

A It runs toward, I should judge, the northeast.

Q Have you ever been up at Grillo's place?

A No, I don't know the exact location.

Q He lives on Heckel street.

A I know where that is.

Q You never had occasion to go up there?

A Why, I have passed there several times.

Q Since February, this year?

A Yes, sir. 20

Q Are you in a position to make a comparison in the smells?

A The smells are the same.

Q Have you ever had occasion to go up the Second River any?

A No.

Q Or to notice what flows into it?

A Why, they have made a drain since they developed the Roseville section of that property, they have made a drain that empties into the Second River. 30

Q Sort of a sewer?

A I have been told it is not a sewer by the engineer from Newark, simply the surface water and the natural flow which has always been there. It is a natural flow of water.

Q What is that, a good big drain, isn't it?

A Yes, I should judge it was about eight feet square.

Q And that comes from Newark? 40

Rudolph J. Struck, cross.

A No, it doesn't come from Newark. I think the brook originally comes from East Orange and Maplewood.

Q Don't you know that there is a sewer from Newark and another one from Belleville emptying into the Second River?

A Yes, sir.

Q Besides this drain?

10

A Yes, sir.

Q And they are sanitary sewers?

A Yes.

Q That is above your place?

A Yes.

Q The water bearing, then, whatever it is from those drains or sewers, comes past your place?

A Yes.

Q And that has been put in since you moved there?

20

A Why, yes.

By the Court.

Q I understand that your property is situated about 1,500 feet down stream from Grillo's property?

A Yes, sir. From Belmont avenue and the Edison plant.

Q Are there any culverts and drain pipes emptying into the brook between Grillo's property and your house?

30 A There is one overflow from the Newark Sanitary Sewer System.

Q Where is this sanitary sewer located?

A They have a pump station located at the foot of North Sixth street which forces the sewage, the heavy matter, over an incline into the Newbrook sewer.

40 Q In that overflow which leads into this brook which passes your house—isn't that overflow there as a matter of safety in case the sewer blocks up and the pumping station refused to work? Did you ever no-

Rudolph J. Struck, re-direct.

Q tice any flow coming out from the pumping station or the put where the sewage is collected, flowing into the brook?

A Yes, sir.

Q Then there is an overflow at times from the sewer into the brook?

A Yes.

Q And that is between your house and Grillo's house? 10

A Yes.

Q Have you been prevented from sleeping nights as the result of the odor?

A I seem to wake up two or three o'clock in the morning and can't get to sleep again.

Q Has the odor had anything to do with the ability of your family to sleep at night?

A My youngest isn't the healthiest youngster.

By Mr. English. 20

Q You charge all your ills to this stream, do you?

A Yes, sir.

Q All of your ills?

A Certainly not.

Re-direct examination by Mr. Hughes.

Q How often is there an overflow from this drain, this system?

By the Court.

Q How often have you seen this sewage coming into the brook? 30

A You wouldn't notice it unless you were right near the spot to look. It is almost on a level with the brook and it is down in a hole.

Q But you have looked and you know that it is there. How many times have you seen it, ten times?

A Yes, I guess ten times.

Q There is generally an overflow from the sewer into the brook, is that the idea? 40

A Yes.

Rudolph J. Struck, re-cross.

By Mr. Hughes.

Q When you noticed that overflow was there anything offensive to the sense of smell?

A Why, no, it isn't nearly as bad as the Passaic River.

Q Did you notice, was there any odor of acid from the discharge of this sanitary system?

10 A No, no odor whatever.

Re-cross examination by Mr. English.

Q There is no overflow system connected with the Belleville sewer, is there?

A That sewer has not yet been connected.

Q I understood you to say there were two, one from Newark and the other from Belleville?

A No, that is a drainage that flows from the Roseville Section, simply the surface water and the water from along the line on the other side of Bloomfield avenue.

Q How many sewers empty in?

A There isn't any emptying into the Second River.

Q Yes, there is, you have just told us about it.

A It wasn't built to—

Q But it empties in?

A No, it doesn't. The overflow does.

Q It comes from the sewer though?

A Yes.

30 Q Is there any other that comes in whether built to do so or not?

A No.

Q You have been where that overflow is?

A Yes.

Q It does smell, doesn't it?

A Of what?

Q I don't know—from this sewer?

A No, it is only the overflow. None of the heavy matter.

40

Rudolph J. Struck, re-cross.

By the Court.

Q The water has a certain odor?

A It has a slightly pungent smell.

Q Disagreeable, isn't it?

A I can't say it is disagreeable. There are others that are worse.

Q Do you think you would like to live right there where that smell comes out?

10

A Why, no. I know it wouldn't continue coming out there.

Q Is it so pleasant that you would like to live right along there?

A I have never objected to it.

Q Just answer my question, Mr. Struck—it is whether you would like to live there where that smell comes out from the overflow of that sewer?

A Under what conditions?

Q Build a house there?

20

A My house is there.

Q Will you please answer the question? Your house is further down the stream.

A Across the street, about fifty feet.

Q What counsel wants to know is do you consider that the water coming out of this overflow from the Newark sanitary sewer has a disagreeable odor or a pleasant one?

A Well, it hasn't a pleasant odor.

Q Has it a disagreeable odor?

30

A Well, you might call it a little disagreeable.

Q No—what do you call it? This overflow from the Newark sanitary sewer, do you call it disagreeable?

A Well, you might call it disagreeable.

Q Do you? I might call it a very foul odor. You have said it was not an agreeable odor, do you say it is a disagreeable odor to you?

A Well, yes, it is.

40

Rudolph J. Struck, re-direct.

Further re-direct examination by Mr. Hughes.

Q If you had the option, talking of the selection of a residence, which would you prefer, a residence right at the sanitary sewer system or right on the brook?

Mr. English. I don't think he need answer that question, it isn't material.

10

The Court. I don't think it is necessary.

Q Which of the two odors is the more offensive?

A Why, the acid.

Mr. English. I move to strike out the testimony of this witness because it appears now that mingled with the odor is some entirely separate thing coming from a sewer which under any phase of the case has nothing to do with us and I think the evidence ought to be excluded.

20

The Court. Of course the value of the testimony has been practically nullified if it had any value, in my opinion. It surprises me to hear the witness state that there is a pit to collect the sewage from a certain part of the city of Newark and they have a pumping station there and an overflow that flows right into this brook; that of itself I think would tend to affect—

Mr. English. My motion, if the court please, is that it is entirely immaterial.

30

Mr. Hughes. I oppose the motion.

Motion denied.

Exception.

40

Angela D'Alessio, direct.

ANGELA D'ALESSIO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A 416 Chester avenue.

Q Is there a stream running through your property at Heckel street, where you did live?

A Yes, mam.

Q Have you noticed the condition of the stream? 10

A Before it was all right—now it comes so bad and stinks and we can't stay there so we had to move out of the property—it stinks too much. When we get up in the morning the baby is sick and my boy all the time lays down on the floor sick.

Q When were you sick?

A Last year was all right—this year no good, the water stinks so.

Q Have you been sick long?

A Sure, I was in the hospital fifteen days and my baby was a month in there. 20

Q Why did you move?

A I moved because we couldn't stay there. I fight with my husband all the time.

Q Have you been sick since you moved?

A Yes, I was sick when I was there.

Q Are you sick now or are you all right?

A Since now I move from there I feel better but before I was awful sick.

Q How is the baby? 30

A Feels better now.

Q How many children have you?

A Two.

Q Is the other child sick?

A He is all right now.

Q Was he sick when you lived at Heckel street?

A Every day I had to take him out. I couldn't do no work inside the house. I had to go out and do nothing.

Angela D'Alessio, cross.

Q When you lived at this other house, 45 Heckel street, did you notice any fumes in your house, any smells?

A No smell before this year.

Q Could you sleep all right?

A Before I was sleeping all right, but I couldn't sleep all right afterwards.

10 Q Could you sleep in the house you just moved from? Do you understand me? How long have you been in this new house?

A Why, I am there now about a month.

Q And in this house where you were before that could you sleep all right at night?

A No, couldn't sleep all night.

Q Could you keep your windows open?

A Had to keep everything open and in the night
20 when this thing came we had to close up everything and go out. We couldn't stay in.

Cross examination by Mr. English.

Q When did you first notice this smell, Mrs. D'Alessio?

A This year.

Q And how early in this year was it?

A About a year this stink came.

Q It came about a year ago?

A This year.

Q Last spring or last winter or when?

30 A Soon as the summer time started coming the smell came.

Q When do you first remember it? Were the flowers blooming and the birds singing or was it earlier in the spring?

The Court. What part of the springtime—do you know the months?

A I can't tell you the month. We didn't say the month. I don't know.

40 Q Was it cold or warm weather?

Angela D'Alessio, cross.

A I don't remember that.

Q How old is this baby of yours?

A One is going to be three years the 30th of May.

Q I want the age of the baby.

A The little one?

Q Yes?

A Going to be seven months the 25th of May.

Q When was he born?

A He was born over there where we used to live. 10

Q When was it, what month?

A May.

The Court. The 25th?

A Yes, he is going to be eight months the 25th of this month.

Q The stream smelled bad at that time, didn't it?

A Yes.

Q Now, you say the baby has been sick ever since it was born? 20

A Eight days after he was born he started being sick.

Q You don't know what made him sick, do you?

A The water make him get sick.

Q Did he drink it?

A He didn't drink it. When you get that smell you fall on the floor and had to go out. The smell comes through the windows and I get sick and close everything and go out.

Q So you think it was that that made the baby sick? You said you were sick for fifteen days? 30

A I was in the hospital. The doctor told me I couldn't stay in that house.

Q When were you in the hospital?

The Court. How long after the baby was born?

A I was in the hospital fifteen days and the baby was born there.

Q You went to the hospital to have your baby?

A I had the baby. 40

Angela D'Alessio, cross.

Q How old was the baby when you went to the hospital?

A Eight days and the doctor told me I couldn't stay there.

Q Did you take the baby with you?

A Sure.

Q You were there how long?

10 A Fifteen days.

Q You haven't been sick since then, have you?

A I been sick before. The stink was too much, I couldn't stay there.

Q After you came back from the hospital, though, you haven't been sick?

A I was sick all the time. I got better after I come from the hospital. I used to go out all the time and didn't get so much smell.

Q After you had been in the hospital fifteen days you came back?

20 A Yes.

Q And you haven't been sick since then, have you? Been all right?

A Yes, but the stink is there all the time.

Q Yes, I know, but you were all right.

A I was all right where I am now, but I wasn't all right while I was in the other house.

Q I want to know if you haven't been all right since you came from the hospital.

30 *The Court.* After you came back from the hospital you went to live at 45 Heckel street?

A I got sick again and had to move out of there.

Q Who was your doctor?

A Dr. Albano and another doctor—I don't know the name.

Concetta Grillo, direct—cross.

Angelo Domonick, recalled to interpret.

CONCETTA GRILLO, sworn.

Direct examination by Mr. Hughes.

Q You are the wife of Salvatore Grillo?

A Yes.

Q And you live with your husband at 45 Heckel street?

A Yes. 10

Q Do you know about this stream?

A Yes.

Q Where is it located?

A The smell is from under the house, the stink comes up.

Q What effect, if any, has this stream on your health?

A I get a sick feeling.

Q When did you notice it most, this year or last year? 20

A This year, one year.

Q Have you any children?

A Two.

Q What effect does the stream have on the children, their health?

A They are so sick that sometimes they got to vomit.

Q Do you know if the children of Mrs. Alessio were sick?

A Yes, all sick. 30

Q Did you have any flowers or grapes or vegetables this year?

A Nothing—everything was dried up.

Q Did you have any last year?

A Yes.

Cross examination by Mr. English.

Q Did you have to send for the doctor?

A No, didn't have any money to send for the doctor. 40

Guisseppe Carriello, direct.

Q Were the children ever sick at their stomachs before in their lives?

A No.

Q Never before in their lives were they sick at their stomachs?

A Never.

Q How old are they?

10 A One is ten and the other five.

Q Did you ever have a sick feeling before in your life, until you smelled this smell?

A Never.

GUISSEPPI CARRIELLO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A 86 Edison street.

20 Q Where?

A Silver Lake, Bloomfield.

Q How long have you lived there?

A Nine years.

Q Do you know the condition of this brook going through Silver Lake?

A Yes, sir.

Q What is it like?

A Before the water used to dry up and now the stink is so bad I can't resist it.

30 Q When did you notice this smell first?

A About a year or a year and a half.

Q Do you know where this brook starts?

A From the other side of the railroad bank and right along the factory it comes down to the stream.

Q Is there any brook above that point?

A There is when it rains.

Q When did this brook start at that point first, there at the plants?

A About a year or a year and a half.

40 Q Was there any water there before a year or a year and a half ago?

Guisseppe Carriello, direct—cross.

A There was a little when it rained. When it wasn't rainy it was dry.

Q I don't mean since when did the smell come there, I mean since when did the water start running—a year, or two or six or nine?

A There was some when it used to rain.

Q How long ago?

A Since I have been living there, nine years—ever since it has been that way. 10

Q Are you married?

A Yes.

Q Have you any children?

A Five.

Q Any garden?

A Yes.

Q Any vegetables, corn or beans or anything in it this year?

A There was but everything dried up. 20

Q Was there anything last year?

A I did have last year—it was all right, didn't dry up.

Q How far away from the Edison plant is your house?

A About 200 feet.

Q How near to the brook do you live?

A The brook crosses my property.

Q Is Edison street above Belmont avenue or below it? 30

A Up above.

Cross examination by Mr. English.

Q Whereabouts in the brook is this that you are talking about where it used to be dry except when it rained? By your place?

A Right in the brook.

Q By your place, your yard?

A All places. When it used to rain the water got there and then it was always dry other times. 40

Rocco Cuzzo, direct.

Q But when you answered what Mr. Hughes asked about whether the brook was dry except when it rained, a year and a half ago, what part was that, by your place?

A Right at my property. About a year and a half or two.

10 ROCCO CUZZO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A Magnolia street, 86.

Q Where is that?

A Silver Lake.

Q How long have you lived there?

A About nine years.

Q Have you ever seen this brook we are talking about?

20 A Yes, I got a property along it.

Q How near is the property to the brook?

A Belmont avenue.

Q How far is the brook away?

A I used to live on Belmont avenue but not any more—I rent my house. It belongs to me just the same.

Q You own that?

A Yes.

30 *By the Court.*

Q Does the brook run through your Magnolia street property?

A No, Belmont avenue.

Q Runs through the Belmont avenue property?

A Yes.

Q Do you live on Belmont avenue?

A I used to live in it before.

Q When did you move out?

A I got another house.

40 Q When?

Rocco Cuzzo, direct.

A About nine years ago.

Q You moved out of Belmont avenue about nine years ago?

A Yes.

By Mr. Hughes.

Q How far is your home now from the brook?

A About a couple of thousand feet—more than that. 10

Q Who grows the vegetables and things on your property at Belmont avenue, do you or your tenant?

A Just the tenant. Somebody rent the house. He raise everything before—he can't raise nothing now. Nobody live here now because people can't, too much stink you know. The people move away about six months, I got the house empty nearly seven months.

Q What reason did they give for moving?

Mr. English. I object to that. 20

Sustained.

Q Do you know where this brook starts?

A Yes, sir.

Q Where?

A Starts at Bloomfield, Bloomfield avenue and Grove street.

Q Where does the water come from?

A Well, if he is rain there is a little water—if he no rain, all dry. 30

Q Have you seen this brook for the past year?

A Yes, sir.

Q Is it the same this year as it was last year and every other year for the past nine years?

A Yes, if he rain.

Q Is there any difference this last year?

A Sometime rain, it gets water, no rain it stays all dry.

Q Did you notice any smell from the brook this year? 40

Rocco Cuzzo, direct.

A Yes, sir.

Q Notice any last year?

A No, sir.

Q Any other year?

A No.

Q Is the same amount of water in the brook this year as last year?

10 A No, this year is bad, worse this year.

Q Is there more water?

A Yes, more water, all the time.

Q Did the brook run all the time last year?

A No, just Edison—

Q Was there water in this brook all the time last year?

A All the time last year, yes.

Q Is there the same amount of water as there was nine years ago?

20 A Oh, no there was not much nine years, just rain. He rain and get some water and no rain, all dry.

Q Do you own any other property around there?

A I got lots to sell them to somebody else across the brook, both sides, nine years ago.

Q Own any now?

A I own one.

Q Where is it?

A On Belmont avenue, 51.

Q How much property do you own, just one now?

30 A I got 51 Belmont avenue and 65 and Edison street, too.

Q Ever try to sell that property?

Mr. English. I object.

Objection sustained.

Vincenzo Alfiano, *direct.*

VINCENZO ALFIANO, sworn.

Direct examination by Mr. Hughes.

Q Where do you live?

A 42 Heckel street.

Q How long have you lived there?

A About six years.

Q Do you own your property there?

A Yes.

10

Q How big is your property?

A Two lots. A house and a lot.

Q Grow anything on the lots?

A Oh, yes.

Q How far is your house from this brook?

A Before I built the house the brook was there.

Q The brook is right there?

A Yes, the brook is No. 6 and my house is No. 5.

Q When did you build your house?

A Two family.

20

Q When—how long ago?

A Six years.

Q And the brook was there at that time?

A Yes.

Q What was the condition of the brook when you built your house?

A Before this year everything was all right.

Q What was it like six years ago? How big was it, how wide and how deep?

A Oh, the brook, before it was small.

30

The Court. Was there any water at all?

A Yes, but not much like now.

Q Six years ago was there water constantly flowing in this brook?

A Yes, but no much like that now.

Q Was it dry six years ago?

A Not at my place.

Q Always a little water?

A Yes.

40

Vincenzo Alfano, direct.

Q Is there any more water this year than there was six years ago?

A More water.

Q Was there any more water during this last year than six years ago?

A Certainly water come all the time, along this time, maybe this six year, but no smell, no stink.

10 Q How much water is there there now?

A Two foot pipes.

Q When did you notice, when did it come first, when did you notice this change?

A When it started water?

Q The amount.

A Belmont avenue.

Q When did you notice it first, that there was water?

A The water started running if it rain.

20 Q When did you notice it first, how long ago?

A I don't understand much.

Q Six years ago there wasn't much water, was there?

A Small, only half.

Q Was there more five years ago?

A Not like now.

Q Four years ago?

A Every year it grows.

30 Q What is the condition of the water now? Notice anything particular about it during the past year?

A The last year it take everything off of my land.

Q What kind of water went through your land last year, what was it like last year?

A It was the same brook.

Q Notice anything about it, notice any smells?

A Last year, no.

Q Did you notice any this year?

A Oh, this year it stink like—

40 Q Never mind; that will do. Did you grow any vegetables, any corn or beans last year?

Vincenzo Alfiano, direct.

A Yes, sir. I no plant corn in my lot.

Q What did you grow last year in your lot?

A Oh, everything, I put tomatoes and beans and celery.

Q What do you do, what is your occupation?

A Farm.

Q Do you sell the vegetables that you grow on your property?

A No, not sell vegetables—I go to market. 10

Q What do you do with the things that grow on your lots?

A Sell them.

By the Court.

Q Where is your farm?

A One in East Orange and one in Silver Lake.

Q Is your farm near Lintott's farm?

A Across from it. 20

By Mr. Hughes.

Q Were you able to grow anything this year or not?

A Before this year.

Q What did you grow before this year?

A Everything I put.

Q Grow anything at all this year?

A From my lots, no.

Q Did you try to grow anything?

A Try everything I could. 30

Q What did you try to grow—what did you plant?

A Everything I like.

Q Well, what do you like?

A Well, lettuce and chickory and peas and celery and radishes and everything I put.

Q When did you plant these things this year?

A About the last of March or the first of April.

Q Have any vegetables at all this year?

A No vegetables.

Q What happened to your plants? 40

Vincenzo Alfiano, direct.

A I buy seeds and put the plant in the little house.

Q What happened—you said you couldn't grow any, why couldn't you?

A Not this year.

Q Why not?

A Last year, all right.

By the Court.

10 Q What is the size of this lot?

A Twenty-five feet.

Q Have you any other property on Heckel street—you have two lots?

A Yes.

Q 50 x 100?

A Yes, got the house there.

Q And you plant the rest of the ground?

A Yes, sir.

Q Did you plant it this spring?

20 A Yes.

Q Did they grow this spring?

A No, they didn't grow.

RECESS TAKEN.

AFTER RECESS.

GEORGE B. MILLICAN, sworn.

Direct examination by Mr. Hughes.

30

Q What is your occupation?

A An assessor for the Town of Bloomfield.

Q Did you ever assess the property bounded by Bloomfield avenue on the south, and west; Belleville line on the south and east and Watsessing and Franklin on the north and northeast?

A Yes, sir.

Q Against whom is it assessed?

A Thomas A. Edison.

40

Q Have you got your records to show that?

George B. Millican, direct—cross.

A Yes, sir.

Q Turn to the records?

A The book shows on page 36 that I have assessed two tracts in the name of Thomas A. Edison, one plot being 9 2/10 acres and my records also show on page 40 that I have assessed in the name of Thomas A. Edison a plot of land, 17 acres.

Mr. English. I object to the evidence as being immaterial. I have no doubt as to what the book shows but this is no way of proving title. 10

Objection overruled.

Q Have you any other records?

A I have some maps. Map 9, block B on tax map of the Town of Bloomfield shows 17 acres in this plot bounded by Watsessing avenue, Franklin street and the railroad and the Belleville line and there is the other plot of nine and some odd acres plot 8, and this is the brook you are talking about. 20

Mr. English. This is the Edison property in here?

A Yes, sir. This is the Belleville line, on the south.

Q This is the brook running through the Edison property?

A Yes, sir.

Cross examination by Mr. English.

Q All you assessed is just that land? 30

A The land and the buildings in Bloomfield and some personal property.

Q Of Thomas A. Edison?

A Yes, sir.

The Court. All assessed Thomas A. Edison, none Thomas A. Edison, Incorporated?

A No, sir, never did that.

George B. Millican, re-direct.

Redirect examination by Mr. Hughes.

Q The munition factory is right on the plot marked B?

A Yes, right in Bloomfield.

Q And the land on which the factory is built—

A Yes, the transfer hasn't come to our office yet—it will before the 20th of next May.

10 Q It did belong to Edison, according to that map?

A I can't tell you that. I can't answer that question.

Q According to your assessment that property belongs to Edison?

A Seventeen acres.

Q And within that marked plot is the new munition factory?

A Well, I couldn't tell that.

20 *The Court.* Does your tax record show that the property which is now being built on, presumably by the National Fuse and Arms Company, does your record show that to be assessed against Thomas A. Edison?

A Well, I can't tell till I look again. That will show in my book—I think it is—Dodd—this side of that mark it is assessed to Edison and—

The Court. All this isn't assessed against the one person?

30 A No. 30 is the number of this tract—15—8 $\frac{2}{100}$ acres is assessed to J. M. Dodd.

Q Now show us the property assessed against Mr. Edison?

A Right here, this plot. This vacant, open space is against Mr. Edison.

By Mr. English.

Q So that the Edison property does not have the brook running through it?

40 A Not according to our maps and the book, no.

Herbert B. Baldwin, direct.

HERBERT B. BALDWIN, sworn.

Direct examination by Mr. Hughes.

Q Are you a medical doctor or a chemist?

A I am a chemist.

Q How long have you been a chemist?

A I have been a chemist for over twenty-five years, practising in Newark, N. J.

Q Graduate from any college?

10

A Cooper Union.

Q Hold any official position at the present time?

A Yes, sir. I am the chemist of the Newark Board of Health and have been for over twenty years past.

Q Do you hold any other official position?

A I am consulting chemist for other municipalities, or have been at different times.

Q At present are you consulting chemist for any other?

A For the City of Rahway at present.

20

Q Of what other cities have you been consulting chemist?

A At different times Paterson, Summit, the Board of Health of those cities, for the Sewerage Commission and so forth.

Q Did you hear any testimony about this steam in Silver Lake to-day?

A Yes, sir, since I have been here this morning.

Q Did you ever make any tests of the water there?

A Yes.

30

Q When did you make the tests, do you recollect?

A I was there on October 21st, last, and secured three samples of water from the brook under discussion. The first one was taken from the brook in the rear of Mr. Grillo's house at a point about 175 feet east of Belmont avenue, I should judge.

Mr. English. Did you get them yourself or did someone else get them for you?

40

Herbert B. Baldwin, direct.

A I was there but I did not get them myself. I watched them being taken out.

Q At what other points did you get samples?

A We took another one from the same brook just west of Belmont avenue and the third one from the out-fall of a drain emptying under the Belmont avenue bridge into this same brook.

Q Did you notice the diameter of that drain?

10 A I didn't go in close to it, but from what I saw, at the side of the bridge, I should say it was about eight or ten inches.

Q Did you notice the flow of water from it?

A Yes.

Q Was it voluminous?

A I should say it was a little over half full, about half full as I recall it.

Q Did you analyze your samples of water?

20 A Why, yes, sir, I examined them for certain things. I made my examination especially toward looking for the presence of acid and sulphites because when I came to the property there was a very strong odor of sulphurous acid gas, sulphur dioxide.

Q At what point?

A I first noticed it coming along Heckel street as I approached the Grillo property, very strong at that time. It was not continuous, however; it came and disappeared almost momentarily.

30 Q Did you notice a similar or different smell at Belmont avenue where you made the second test?

A The water at that point had an odor of nitro benzo.

Q What did you notice where you made your third test as to the fumes?

40 A Why, the sulphurous fumes were very strong at that point and seemed mixed with the nitro benzo odor. There was a strong wind blowing at the time and I suppose at times the wind was such as to blow the odor away completely and at other times it would occur again.

Herbert B. Baldwin, direct.

Q Who took the samples of water?

A Mr. Pendleberry.

Q In your presence?

A He did.

Q Turn the bottles over to you?

A Yes, sir. I was present.

Q I presume they were taken in jars or bottles?

A In bottles furnished by myself. I brought the bottles with me and handed them to him and he filled them with water and I took them back to my office. 10

Q Did you notice the vegetation along the brook, doctor?

A Yes, sir, that is the remainder of it. There was no live vegetation at that time within fifty feet of the banks of the stream in the rear of Grollo's house.

Q Did you notice any vegetation along the banks of the stream any place?

A I didn't observe the stream east of Heckel street. 20

Q Where you were, I mean?

A The only place I saw the vegetation dead was between Heckel street and Belmont avenue.

Q When did you make your analysis?

A I started the next day. It was completed in a few days.

Q Will you let us know as clearly as possible for us who aren't very well versed in this particular line, what was the result of your analysis?

The Court. Take first the sample obtained from the brook near Grillo's house. 30

A The sample which came from the brook, the first sample—that particular sample contained free sulphur dioxide and free sulphuric acid as well as a number of other minerals, mineral and organic matters which I did not determine the exact nature of and it had a strong odor of sulphur dioxide mixed with nitro benzo. Sulphurous acid it is sometimes called. 40

Herbert B. Baldwin, direct.

Q Did your test of that particular sample reveal anything else, doctor?

A Nothing. I think not. That was all I looked for at the time. I did not extend the analysis to determine all the constituent parts. It is a very complex mixture.

10 Q Now, your second sample was taken at Belmont avenue?

A West of Belmont avenue.

The Court. That is between Belmont avenue and Edison street?

A Yes. That contained a large amount of free sulphuric acid and had a very strong odor of nitro benzo. I did not detect any odor of sulphur dioxide in that water, at that point.

Q Anything further in that particular test?

20 A That is all I cared for at that time, to determine the vicinity of that, which fits in with what I have to say about the next sample.

Q The third sample was taken at Belmont avenue, out of the pipe?

A Yes.

Q The water coming from the pipe?

A Yes. I could see Mr. Pendleberry taking it from where I stood.

The Court. Tell us the result.

30 A That contained a very large amount of mineral and organic matter and was strongly alkalied. It also contained quite a large amount of alkaline sulphites, probably sulphite of soda. There were a lot of sulphates there also but sulphites is what I am particularly interested in.

Q Anything else?

A No, sir.

Q Any odor attached to that particular sample?

40 A Yes, it had a marked odor, hardly describable but rather disagreeable. Apparently—well, I thought

Herbert B. Baldwin, direct.

I could detect a carbolic odor but I am not perfectly sure.

Q Did you notice that odor just at the time or when you made the test?

A When I smelled of the sample in the bottle. I might also add that that was warm, had a temperature of 110 degrees.

Mr. English. Did you get the temperature 10
right then and there?

A Right at the time, with a thermometer.

Q Is that all, doctor?

A I have parts of those samples here if you care to see them or smell of them.

Q Did you notice the condition of Mr. Pendleberry when he was in the stream?

A He was able to get the samples and come out and I advised him to go out the other way, to the windward of the point of discharge because all of the sulphur dioxide odor appeared after the drain entered the brook and was not apparent on the other side of that drain because the wind was blowing from that direction. 20

By the Court.

Q Right at that point did you notice any odor of nitro benzo?

A The nitro benzo odor was in the brook before it came to Belmont avenue. 30

Q Further up stream?

A Further up stream and remained always.

Q Then there was an odor at this point where the pipe emptied into the stream—there was an odor of nitro benzo?

A All the way down.

Q Beginning at that point?

A No, the sulphur dioxide odor began at that point. 40

Herbert B. Baldwin, direct.

By Mr. Hughes.

Q Now, you say that the test of the stream west of Belmont avenue showed free sulphuric acid with an odor of nitro benzo; the test of the water coming out of the pipe at Belmont avenue was strongly alkaline containing sulphite of soda with a disagreeable odor; will you kindly tell us what would be the result, if any, of mingling the fluid coming out of the pipe at Belmont avenue and the water in the stream at that time which you say contained sulphuric acid with an odor of nitro benzo.

A Yes, sir. The mixture of those two waters containing the substances mentioned resulted in the liberation of sulphuric dioxide. In other words, the alkaline sulphite was decomposed by the free sulphuric acid in the water in the brook and the sulphur dioxide was liberated in the form of gas. Part of that gas remained dissolved in the water and part escaped in the atmosphere and produced a very suffocating odor.

Q So that, in short, the combination of the two fluids produced sulphur dioxide?

A Yes, sir.

Q Just what is sulphur dioxide?

A Sulphur dioxide is a gas formed by the union of sulphur and oxygen and is very commonly known as the gas produced by burning sulphur. When you burn a sulphur match or a sulphur candle or sulphur in any form you get this sulphur dioxide odor; very injurious to vegetation and suffocating to human beings and animals and generally injurious to health.

Q What is its effect on vegetation?

A Causes it to wither and dry up. Destroys it entirely eventually.

Q Can you give us any idea, doctor, as to what distance those fumes might spread from that stream? The sulphur dioxide which is really the fumes or the gas?

Herbert B. Baldwin, direct.

Mr. English. Is that material here? I object.
Overruled.

Q For how far a distance from the stream will it spread?

A It will depend altogether upon the amount of it and the direction and course of the wind, I presume, but it may travel a very long distance. In fact observations by government officials and others have shown that the fumes have destroyed vegetation for many miles. 10

Q Now, your sample, the analysis of the sample taken at Grillo's place showed free sulphur dioxide and free sulphuric acid?

A Yes, sir.

Q That, I presume was manufactured by the mingling of the water out of the pipe at Belmont avenue and the water in the stream above Belmont avenue and at that point? 20

A Yes, the discharge from the pipe mingling with the brook water containing free sulphuric acid produced sulphur dioxide.

Q Have you any government reports to bear out your own analysis in a general way as to the effect of sulphur dioxide on vegetation?

Mr. English. I don't think the government reports are material.

A I have a couple with me, bulletins of the Bureau of Chemistry and the Department of Agriculture showing the effect of sulphur dioxide on vegetation especially, issued with that purpose in view. 30

Q Will you kindly let us see them?

Mr. English. We aren't going to contend that these plants didn't die, if that is what this is directed to.

Question withdrawn.

Q Have you got a sample of the water taken, with you? 40

Herbert B. Baldwin, direct.

A I have, sir.

Q Will you let us have a look at it? How long have you had those liquids in your possession?

A Since October 21st. These are portions of the larger samples which I took at the time.

Q Now, will you explain what those three are?

A No. 1 is a sample from the brook at Grillo's house.

10 *The Court.* We have been over that. I think we all know what they are.

Q Can you demonstrate to the court the effect of the mingling of the water out of the pipe at Belmont avenue with the water in the stream at that point?

A Yes, sir.

Mr. English. Now, you are going to mix No. 2 and No. 3?

A Yes.

20 Q Do these smells disappear with time?

A Yes, especially the sulphur dioxide does.

Q In nine weeks would there be any lessening of the aroma from these bottles?

A Yes, especially in this one No. 1, the brook water at Grillo's house—it had a strong odor of sulphurous acid when I took it and was quite strong even last week but it has disappeared now. I have mixed No. 2 and No. 3 which produced the liberation of sulphur dioxide with a strong odor of free gas some-

30 times called sulphurous acid.

The Court. So the water you have in this bottle which we will call No. 4—does that correspond with any other water now in evidence?

A With the water in sample No. 1 and the smell with the smell that No. 1 had until last week.

Q So that sample No. 4 and sample No. 1 are identical with the exception that the odor from No. 1 has evaporated with the lapse of time?

40 A Yes, sir.

Herbert B. Baldwin, cross.

Cross examination by Mr. English.

Q Now, I want to direct your attention to sample No. 1, from Grillo's place; you found, you said, free sulphuric acid and free sulphur dioxide?

A Yes, sir.

Q How did you determine the free sulphuric acid?

A By titrating with normal alkali.

Q How did you identify it as sulphuric acid after that? 10

A It evaporated down and I charred filter paper with it.

Q Will nitric acid char filter paper?

A Yes, sir.

Q How do you know this wasn't nitric acid?

A We tested for nitric acid—there wasn't very much there. There were a large amount of sulphates there—we tested for sulphates.

Q The result of the process through which you went resulting in the charring of filter paper might have been due either to nitric or sulphuric acid? 20

A Nitric acid doesn't char in the same way.

Q What was the thing that determined in your mind that this was sulphuric acid?

A The precipitation by barium chloride and the acidity.

Q How did you arrive at the discovery of free sulphur dioxide?

A Mainly by the odor. 30

Q You didn't make any analysis for it?

A Oh, yes, we made some tests. The odor was sufficient to determine that anyway.

Q The odor test would determine the presence of it but wouldn't tell how much, would it?

A No.

Q Now the sulphur dioxide, as I understand you, is the thing that causes all the trouble?

A I think that is what caused the destruction of vegetation and made most of the smell. Nitro benzo 40

Herbert B. Baldwin, cross.

made some, I think. Nitro benzo may be more injurious to health than the other, certainly it would if strong enough.

Q Is sulphur dioxide SO-2?

A Yes.

Q Is that a gas?

A It is, sir.

10 Q If it is a gas how did you get it in a bottle of water?

A Part of the gas dissolves in water to make sulphurous acid.

Q Then by that time it wasn't a gas, it was an acid?

A Well, what you smell from a bottle or in the atmosphere is gas.

Q But you analyzed your water?

A Yes, sir.

20 Q Now, if it dissolved in the water it wasn't a gas but an acid?

A In the water—oh, yes, I think so. I am quite sure of it.

Q Can you have sulphurous acid and sulphur dioxide at one and the same time?

30 A Well, there is a distinction as your chemist probably told you. The sulphur dioxide when mixed with a molecule of water forms sulphurous acid and sulphur dioxide is very easily liberated from free sulphuric acid by boiling, for instance, at an ordinary temperature so that you smell it in the atmosphere.

Q Then the thing that you discovered down there is the liberation of what was in the water?

A Yes, I think I have explained that.

Q Did you analyze that liberated gas?

A Not other than I have told you, by smelling it and making the starch test.

Q Now, is there a difference between SO-2 and SO-3?

40 A Yes.

Herbert B. Baldwin, cross.

Q What is SO-3?

A Sulphur trioxide.

Q Can you tell the difference between the two by just smelling of it?

A Yes, sir.

Q Now, this sample No. 2 that you took west of Belmont avenue—did you make any tests for what you got there? Any chemical analysis?

10

A Oh, yes.

Q And as a result of your analysis you discovered this free sulphuric acid?

A Yes, sir.

Q Did you make any chemical analysis for anything else?

A I could smell the nitro benzo and also made a chemical test for it and found it but not in a large quantity.

Q But you found this free sulphuric acid present?

20

A Yes, sir.

Q You say you found no sulphur dioxide?

A I didn't notice any there.

Q So the stream above Belmont avenue had sulphuric acid just as down at Grillo's place but had no sulphur dioxide?

A Down to the point where the drain emptied it had no sulphur dioxide.

Q Now, when you came to number 3 which came out of the drain you found a large amount of mineral matter, you said?

30

A Yes.

Q Was the contents of that drain salt or acid?

A Alkali.

Q That is a salt?

A It had what is known as a salt in it, alkaline reaction.

Q Did that salt give off any fumes?

A No more than you can smell in sample number 3. There are no sulphur dioxide fumes if that is what you mean.

40

Herbert B. Baldwin, cross.

Q Fumes of any kind?

A Yes, it has quite a disagreeable odor to me.

Q Well, now, taking number 3 by itself, apart from any mixture, is there anything in that deleterious to vegetation?

A Not that I could see from the odor from it.

Q Or deleterious to health?

10 A Well, I couldn't say that there was, sir.

Q So the trouble arose, as I understand you, where number 3 emptied itself into the stream which is set forth here as sample number 2?

A Yes, sir.

Q And then the chemical mixture, the compound-
ing of these two fluids produced the sulphur dioxide?

A Yes.

Q And that is the thing that you think caused the trouble down at Grillo's place?

20 A Yes, I have no doubt of it.

The Court. We have the litmus paper here now, Mr. English, if your chemist would like to watch this test. What does the test show, doctor?

A The test shows that dipping the litmus paper in sample number 2 turns the paper red, indicating free acid and dipping the paper in number 3 turns the paper blue, indicating that the water contains free alkali.

30 Q Now, I want to know the two chief things in number 2 and number 3 which, mixed together, made this sulphur dioxide?

A The chief thing in number 2 was free acid. It doesn't make any difference whether it is sulphuric, nitric or any other free acid, organic acid.

Q The free acid in number 2 mixed with what in number 3?

40 A Mixed with alkaline sulphites or a sulphite we will say.

Herbert B. Baldwin, cross.

Q Now what was the free acid in number 2 that you hit upon as mixing with the alkaline sulphite which caused this sulphur dioxide?

A In my opinion it was sulphuric acid, but as I say, any free acid will produce the same result.

Q Were there any other free mineral acids?

A Strong mineral acids?

Q Was there any other strong mineral acid in there besides sulphuric? 101

A I didn't discover any.

Q So as I understand you then, the free sulphuric acid in number 2, west of Belmont avenue, and the alkaline sulphites in number 3, coming out of the pipe, mixed together, are the things which made this sulphur dioxide?

A Yes, sir.

By Mr. Hughes.

Q From what you have seen of that brook would you think it possible for a family living where the Grillo's do to be healthy? 20 :

A I shouldn't think so. I wouldn't want to live there a day.

Mr. English. I move to strike out the last part of that answer.

Motion allowed.

Q Do you think, doctor, that from your tests made of the water number 1, taken at the Grillo place, that it would destroy vegetation in the Grillo lot there? 30 :

A Yes, sir, I think it would.

Q Do you think it possible to grow any vegetation of any kind while those fumes are being emitted?

A No, sir.

By the Court.

Q I understand that the free acid in number 2 mixed with the sulphite in number 3 produced number 1? 40

Motions for Non-suit.

A: Yes, sir.

Q And that sample number 1 and sample number 4 correspond, number 4 being the one you produced here to-day?

A Yes. Number 4 has the same odor now that number 1 had when I took it.

PLAINTIFF RESTS.

10

Mr. English. I move—I want to make a series of motions which I ask your Honor to deal with one at a time. I ask for the direction of a non-suit as to the Edison Manufacturing Company. The proof is that the company owns no physical property at all, not alone at Silver Lake, but anywhere; that it is nothing but a holding company and conducts no business at all.

20

Mr. Hughes. It is a stock holding company with knowledge of the operations.

The Court. I will reserve decision and if a judgment is entered I will then consider against which defendants, if any, a judgment should be entered.

30

Mr. English. I will renew that motion later. I ask your Honor to direct a non-suit against Thomas A. Edison, personally, the proof as to him being that he is apparently the landlord to whom rent is paid for these various properties and no other connection with the situation has been brought out in the case at all. The evidence is that he owned lands and buildings and that the two concerns, the Edison Storage Battery Company and Edison, Incorporated, paid rent to him and he is simply the landlord. The plaintiff has not shown that he rented these premises with a nuisance on them or with the idea of committing a nuisance. If he rented with a nuisance already on he might be responsible, but if the

40

Motions for Non-suit.

nuisance is put on afterwards he has no responsibility. There is no evidence to show that at the time he rented to these companies he had any knowledge or that anything was then done in the nature of a nuisance.

The Court. That motion will be denied. I think there has been sufficient shown to warrant the defendant, Thomas A. Edison, being called upon to put in his proof to offset what testimony there has been connecting this defendant with the property in question.

10

Exception.

Mr. English. I ask for a non-suit as to the Edison Storage Battery Company, that is the company of which Mr. Miller is the manager of what is merely a division of the company, it being known as the Edison Chemical Works. The proof is that it manufactures these various salts that go into the batteries and that they have these twelve or sixteen settling pits into which the waste goes where it is settled and the excess runs into the stream. The evidence is that what the Edison Chemical Works puts into the stream is free soda, iron oxide, sulphate of iron and sulphate of soda, none of which give off gas and none of which are injurious to health, as your Honor will remember Dr. Vail, the plaintiff's physician, said. As none of these things give off fumes or are deleterious to health or vegetation and that being the only thing which this company contributes and by the admission of their own witness none of these things being deleterious to health, our motion is that there should be a non-suit as to that company.

20

30

Motion denied.

Exception.

Mr. English. I make a similar motion as to the defendant Thomas A. Edison, Incorporated. The

40

Motions for Non-suit.

10 evidence brought out by the plaintiff through Mr. Kammehoff, who is the manager of that plant, was that it contributes to this stream through a pipe four one-thousandths of one per cent. of carbolic acid and the testimony of Dr. Vail was that that would do no harm at all. The case of Edison, Incorporated, is further strengthened by the testimony of Dr. Baldwin, who made an analysis of the discharge from that pipe and who said that the contents of that pipe, standing by itself apart from any other matter; that which the Edison, Incorporated, itself contributes to this stream is deleterious to neither health or vegetation, and that being so my contention is that there is nothing proved against this company in the way of damage to the plaintiff's property, either to their garden or their health, and it ought not to be called upon to put in any proof.

20 Motion denied.

Exception.

30 *Mr. English.* I should like now to move for a non-suit as against all of the defendants without making separate motions as to each one on these grounds: (1) that the theory of the suit is a joint action against four defendants; they are all joined together in the suit and all charged in the complaint as having contributed to the pollution of the stream, and my point is that each defendant, if it was proved to have polluted the stream, might be held responsible for what it put in, but that the plaintiff cannot bring a joint action against four separate defendants and hold them responsible in damages without sorting out what one contributes as opposed to another. I can give your Honor cases on the question of mingling with other matters from other contributors to the polluted stream. The plaintiff cannot bring a joint suit against joint *tort feorsors* for this kind

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Motions for Non-suit.

of damage. My motion is, your Honor, as against all the defendants there should be a non-suit because there is no proof that any one of them has done the thing which causes the damage to the plaintiff's property, but that the damage there, so far as the defendants are concerned, results from what one or more of them put in mingled with what somebody else with whom we have no concern puts in and we cannot be held responsible for the joint act of ourselves and some other independent polluter of the stream; (2) a joint action of this kind cannot be brought at all. The plaintiff has misconceived his remedy and ought to have brought separate actions against any particular defendant which he thinks is guilty; and (3) upon the additional ground that there is no proof in this case that the defendants are riparian owners, that they discharge whatever they do discharge upon some lands, not riparian; they discharge upon lands of a third person or into the street before it reaches the stream. I simply throw that out for what it is worth, my main point being that there is no proof that the single, independent action of one of these defendants has caused this damage and this is not a suit which can be brought jointly in the absence of proof that they acted jointly.

10

20

The Court. I am somewhat impressed with the argument of counsel for the defendants on the point that where the damage caused by each *tortfeasor* or wrongdoer cannot be separated, that then it is difficult to render a judgment because it would be a case of making one *tortfeasor* pay for a damage done by someone else or, in other words, it wouldn't put the damages, perhaps, on the proper party; but I feel that as a matter of precaution at this time the motion should be denied because sufficient has been shown, I think, to put the defendants to their proof. I feel quite

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Motions for Non-suit.

sure that the motion in the case of Thomas A. Edison, Incorporated, should be denied for the reason that the testimony in this case is that there is a stream flowing through that part of Essex County called Silver Lake and up to a certain point, according to the testimony, that stream doesn't do any damage, but as soon as
10 Thomas A. Edison, Incorporated, as testified to by Mr. Kammehoff, empties a certain kind of fluid and certain water from a pipe which they themselves have laid or placed along the highway and leading into the stream, a pipe which drains no other property but the property of Thomas A. Edison, Incorporated; as soon as that empties into the stream, damage is caused. That is the act of one defendant—that isn't the act of three or four or five, it is the act of Thomas A. Edison, Incorporated. As counsel says, Dr. Baldwin testified that that water of itself is not deleterious to health and is not really offensive, standing alone it is all right. The same argument might be applied to gunpowder, but touch it with a match and damage is caused. So in this case; take this water and put it in the brook water and fumes are created. I will reserve decision upon the motion to grant a non-suit as to all the defendants with the exception of Thomas A. Edison, Incorporated, and with reference to that defendant I will at this time deny the motion. I would suggest, Mr. English, that you renew your motion at the close of the case as to all the defendants with the exception of Edison, Incorporated. I am satisfied that they are not entitled to a non-suit at this time, but I have some doubts as to the joining of all these defendants, but as a matter of precaution and I might say fairness to the plaintiffs I am going to reserve decision until the close of the entire case.

40

Exception.

Joseph McCoy, direct.

JOSEPH McCOY, sworn.

Direct examination by Mr. English.

Q By whom are you employed?

A Thomas A. Edison, Incorporated.

Q In what department, what capacity?

A Investigating department.

Q Did you go to the property of Grillo?

A I did, yes. 10

Q When?

A Last—the early part of September.

Q Did you make a little sketch of it?

A I did, yes.

Q Is this your handiwork?

A Yes, that is what I made at the time I was there.

Q It has the date on?

A Yes.

Mr. Hughes. Did you make a sketch yourself, 20
at the time?

A Yes.

Q How large a lot have the plaintiffs there?

A 25 by about 130.

Q How much is covered by the house?

A Twenty-five feet.

Q Is the stream included in the twenty-five feet
of width?

A Yes.

Q How wide is the stream? 30

A About six feet wide there.

Q That leaves about 19 feet. Where are the grape
vines?

A That is located right over the stream. It runs
down from the side of the garden and crosses over to
the other side.

Q Is there a walk leading from the back of the
house?

A There is part of the way down the yard.

Q That takes up some space? 40

Joseph McCoy, cross.

A About a foot.

Q Did you see the corn waste?

A I did, yes.

Q Did you count the stalks of corn?

A Thirty hills of corn, yes.

Q What was the rest of the space devoted to?

A Wasn't anything in the other part. Didn't look
10 as if it had been spaded up.

Q The only vegetation apparent, either dead or
alive was the thirty stalks of corn?

A That is all that was noticeable.

Cross examination by Mr. Hughes.

Q What are your duties as an investigator?

A Any complaints that come in to the depart-
ment.

Q You settle all the complaints you get?

A Any that come in I see what there is in them.

20 Q When did you make this visit to Grillo's prop-
erty?

A Along about September, the early part.

Q You didn't make any visit around about June
or July when there might be some vegetation growing
there?

A No, but I have been in and out of Silver Lake
for the last couple of years.

Q When you went there did you find any vegeta-
tion at all?

30 A At Grillo's?

Q Yes.

A I found some hills of corn.

Q How many?

A About thirty, I guess.

Q Were they in the ground or lying on the
ground?

A Some lying on the ground and some standing
up.

40 Q What condition were they in?

Angelo Domonick, direct.

A Not very good condition. Looked withered up.

Q As an investigator were any complaints referred to you before this time?

Mr. English. I object, not proper cross examination.

Objection sustained.

Q Was there any green vegetation around the lot at the time you made your visit? 10

A At Grillo's, no.

Q All parched and dried?

A There wasn't any vegetation there, it was all regular ground. Looked as if it was tramped over a good deal.

Q See any grapes on the vines?

A Why, no.

ANGELO DOMONICK, sworn.

20

Direct examination by Mr. English.

Q You live at Silver Lake, I think, Mr. Domonick?

A Yes, sir.

Q How long have you lived there?

A Eleven years.

Q Have you got any official capacity down there?

A Yes, sir.

Q What?

A Board of Health.

Q You are a member of the Board of Health? 30

A Yes, sir.

Q Any complaints ever made to your Board of Health as to sickness on account of this stream which flows through Grillo's property?

A No, sir, not of sickness.

Q How long have you known that stream?

A As long as I can remember.

Q Always been a flowing stream as far as your knowledge goes?

A Well, not until the time I cleaned it. 40

Angelo Domanick, cross.

Q Well—wasn't it a flowing stream then?

A Not exactly.

Q How long has it been a flowing stream, to your personal knowledge?

A About eight years.

Q Ever do any work along it or in it?

A I did.

Q When?

10 A I got a contract from the town one time to clean it out.

Q Did you clean it out?

A Yes, sir.

Q Has it flowed ever since then so far as you know?

A According to my knowledge.

Cross examination by Mr. Hughes.

20 Q Did you get any contract since, for the past eight years, to clean it out?

A No, sir.

Q Has it been cleaned out to your knowledge?

A Yes, sir.

Q Who cleans it out?

A Well, now, I couldn't exactly tell you the last party but it was cleaned out only here about a year ago. Maybe less than a year.

Q Who cleans it?

30 A Well, the joint towns, I presume.

Q Do you know who cleans it, the name of the contractor?

A Not this last time. There was no contract. The county authorized their part to be cleaned out and the town of Belleville.

Q Did the local board of health of which you are a member take any action?

A Not to my estimation.

40 Q How long did you say you had lived in Silver Lake?

Angelo Domonick, cross.

A Eleven years.

Q How far are you from that brook?

A From eight hundred to a thousand feet.

Q How far are you from the Edison plants, about?

A Right opposite.

Q Do any business with the Edison Company?

A No, I do not.

Q What business are you in?

10

A Cafe keeper.

Q Got a saloon?

A Yes, sir.

Q Any part of it open into the Edison plants?

A No, sir.

Q Have you got a gate dividing your property from the property of Edison?

A No, sir.

Q Did you ever make any complaints about the condition of this stream up there yourself?

20

Mr. English. I object, not cross examination.
Objection overruled.
Exception.

A About the brook?

Q Yes.

A Not about the brook.

Q Never did?

A No, sir.

Q Ever make any complaint at all against the Edison companies?

30

Mr. English. I object.
Objection sustained.

Q Didn't you sign a petition directed to the Board of Health in regard to the Edison nuisance?

Mr. English. I object, immaterial.
Objection sustained.

Q Is that your signature?

A Yes, sir.

40

Edward McGall, direct.

Q What is that signed to—what is this paper?

A That's a paper I signed because of the fumes from the Edison plant.

Q How long ago?

A I should judge about three years ago.

The Court. That is a complaint.

A It is a sort of petition put in by the residents that the fumes—its a complaint, yes.

10

Mr. English. That was in relation to the smoke stacks?

A Yes, sir, the smoke stacks.

EDWARD MCGALL, sworn.

Direct examination by Mr. English.

Q By whom are you employed?

A Thomas A. Edison, Incorporated, Primary Battery Division.

20

Q And where is that located?

A On Belmont avenue, Silver Lake.

Q Are you a chemist?

A I am.

Q It already appears from the testimony of Mr. John V. Miller, the plaintiff's first witness, that the primary battery division of Thomas A. Edison, Incorporated, empties its waste into the settling pits in the rear of the Edison Chemical Works, that is true?

A Yes, that is so.

30

Q Have you ever analyzed the waste material which the primary battery division of Thomas A. Edison, Incorporated, empties into those pits?

A I have.

Q What is it?

A Sodium hydroxide.

Q Does it put in any sulphuric acid?

A No, sir.

Q Or any nitro benzo?

40

A It does not.

Charles F. Hunter, direct.

Q Is that a salt or a—

A It is a caustic alkali or caustic soda.

Q Have you ever been out around those pits?

A I have. Out back, yes.

Q Out there during the summer season when things are growing?

A Yes, sir.

Q And what is the fact as to whether there is
vegetation? 10

A A few weeds around the pits.

Q Any stuff growing in the pits themselves?

A No, the pits are raked out, you see.

Q Any fumes given off from those pits at all?

A Not noticeably, no.

NO CROSS EXAMINATION.

CHARLES F. HUNTER, sworn. 20

Direct examination by Mr. English.

Q By whom are you employed?

A Edison Chemical Works.

Q That, it already appears, is a part of the Edison
Storage Battery Company?

A Yes.

Q What is your position?

A Chief chemist and superintendent.

Q It already appears by the testimony of Mr. Mil-
ler that the Edison Chemical Works, being part of the
Edison Storage Battery Company, discharges its
waste into the settling pits in the rear of the place
there; do you know what goes into those pits? 30

A I do.

Q What goes in there?

A Sulphate of soda, caustic soda and ferrous sul-
phate.

Q Does any sulphuric acid go in from the Edison
Storage Battery Company?

A No. 40

Charles F. Hunter, cross.

Q Any nitro benzo?

A No.

Q Have you seen vegetation growing around out there?

A I have.

Cross examination by Mr. Hughes.

Q Where have you seen the vegetation?

10 A On the outside of the pits.

Q Where are the pits located?

A The pits are located on the west side of the factory, outside our factory fence.

Q What have you seen growing there?

A Why the plants which they call bread and butter, I am not a botanist and don't know any other name for them, but I have seen those particular plants grow there and small bushes, shrubbery.

20 Q As superintendent of the Edison Chemical Works you can tell us what is manufactured there?

A Nickel hydroxide and iron oxide.

Q Are those settling pits inside or outside of the fence?

A They are on the Thomas A. Edison property, inside the present fence line.

Q How many different departments are there in the Edison Chemical Works?

A What do you mean?

30 Q Have you some subsidiary departments under the head of Edison Chemical Works?

A Only one department.

Q What do you call it?

A Edison Chemical Works.

Q Got any divisions?

A No.

Q What else do you manufacture besides iron oxide? Let us hear again what you manufacture there in the Edison Chemical Works?

40 A Nickel hydroxide and iron oxide.

Charles F. Hunter, cross.

Q Anything else, any aniline?

A No.

By the Court.

Q What else do you manufacture besides the two things you have named?

A That's all.

Q No other products?

A We make a small amount of mercuric oxide. 10

By Mr. Hughes.

Q Any waste from mercuric oxide?

A No, sir, not in these times.

Q Do you have at any time?

A No, sir.

Q Has the Edison Chemical Works got an aniline plant?

A No, sir.

Q Or a phenol plant? 20

A No, sir.

Q These settling pits that you refer to, do they drain into the brook in question in this case?

A They don't drain directly into the brook at Grillo's place.

Q Do they drain into the brook at any place?

A They drain into a small brook in the rear and find their way by gravity down the brook.

Q What do you mean by gravity, sink into the ground? 30

A They flow down there, they are not piped down.

DEFENDANT RESTS.

Mr. English. I move for the direction of a verdict in favor of the defendant Edison Manufacturing Company, on the ground that there has been nothing to connect it with any alleged damage to the plaintiff. It has nothing to do with the situation. 40

Motion for Verdict.

I also ask for the direction of a verdict in favor of Thomas A. Edison, the proof being that he is merely the landlord of the property and there being no proof that at the time he became landlord any of this damage to the plaintiff was in existence or that any of the defendant companies had any connection with it whatever.

10

I also move for a direction in favor of the Edison Storage Battery Company and the defendant Thomas A. Edison, Incorporated, on the ground that whatever proof there is as to what these defendants or either of them discharge into the stream it is not deleterious to either vegetation or health, on the contrary there is proof that it is absolutely harmless.

20

I also move for a direction in favor of all and each of the defendants on the ground that there is no proof that any one of them contributes to the damage sustained; that whatever damage the plaintiff sustains is a combination of what the defendants Edison Storage Battery Company and Thomas A. Edison, Incorporated, put in plus other ingredients in the stream with which none of the defendants had anything to do. And on the further ground that the defendant Edison Storage Battery Company by all the proof puts nothing in the stream which, even combined with what any other person puts in, is harmful, as the evidence is that the cause of the damage, if any, is due to the combination of what Edison, Incorporated, puts in plus other ulterior or deleterious matter which unknown persons put in, certainly not the defendants in this case. And on the further ground that the suit has been brought on the theory of joint action against the defendants. Further, it is impossible for the Court to sort out or segregate what, if any, damage any one defendant has done as the result of which the plain-

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Motion for Verdict.

tiff has received damage from the stream. None of the defendants have been proved to be riparian owners of the land.

Decision reserved.

Mr. Hughes. This case being heard without a jury, the Court sitting as a jury, I would like to suggest that it might be of some help if the Court took a walk in the direction of these plants and verified whether or not the stream has its source at the point where the various witnesses have testified it had its source. 10

Mr. English. If there were a jury I should object. We have no objection to the Court going.

20

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Certificate of Court.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF ESSEX.

	SALVATORE GRILLO, <i>et al</i> , <div style="text-align: right; margin-right: 20px;"><i>Plaintiffs,</i></div>	}	<i>In Tort.</i> <i>Certificate.</i>
10	<i>vs.</i>		
	THOMAS A. EDISON, <i>et al</i> , <div style="text-align: right; margin-right: 20px;"><i>Defendants.</i></div>		

*To the Honorable the Chief Justice and the Justices
of the Supreme Court.*

20 I hereby certify as the state of the case the foregoing transcript of the testimony, and of the proceedings in the above stated cause made by the stenographer designated by me and sworn, to be used on the hearing of the appeal herein.

Datd May 29th, 1916.

JAMES P. MYLOD,
Judge.

CERTIFICATE OF STENOGRAPHER.

30 I, E. Irene Thompson, the stenographer designated by the Court and sworn, do hereby certify that the foregoing is a true transcript of my shorthand notes of the testimony and of the proceedings on the trial of the case of Salvatore Grillo, *et al*, plaintiffs, *vs.* Thomas A. Edison, *et al*, defendants, in the District Court for the First Judicial District of the County of Essex, on the 22nd, 29th and 30th days of December, 1915.

Dated May 29th, 1916.

40

E. IRENE THOMPSON.

Decision.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF ESSEX COUNTY.

SALVATORE GRILLO and ANGELO
D'ALESSIO,

Plaintiffs,

vs.

THOMAS A. EDISON, EDISON STOR-
AGE BATTERY COMPANY, a corpo-
ration; EDISON MANUFACTURING
COMPANY, a corporation, and
THOMAS A. EDISON, INCORPO-
RATED, a corporation,

Defendants.

10

In Tort.

Decision.

20

This is an action by the owners of a certain house and lot known as No. 45 Heckel street, Belleville, N. J., for damages alleged to have been caused by the acts of the defendants, either in concert or separately, in discharging into a stream which flows along the property of the plaintiffs for a distance of about 130 feet, certain chemical matter, factory waste and other impurities which pollute the waters and cause noisome odors and poisonous vapors and fumes to arise from the water course.

30

The defendant, Thomas A. Edison, is the owner of a large tract of land situate on the northerly side of Belmont avenue, this latter highway being one block to the north of Heckel street, upon which street the property of the plaintiffs is located. The brook or stream referred to in the pleadings and the testimony, flows in a southeasterly direction along or near the westerly boundary line of the property of Thomas A. Edison, passing under Belmont avenue and Heckel

40

Decision.

street, and along the property of the plaintiffs. A number of settling pits or beds located in the rear of the property of Thomas A. Edison, receive the discharges of water and solutions of various kinds making up the waste from the manufacturing plants of the Edison Storage Battery Company and Thomas A. Edison, Inc., which are located on the property in question. The overflow from these settling pits or
10 beds runs into the stream. Under the bridge at Belmont avenue, an eight inch iron pipe discharges into the stream. The discharge from this pipe comes from the carbolic acid plant of the defendant, Thomas A. Edison, Inc. It is to be observed that the defendant, Thomas A. Edison, Inc., discharges the waste from its manufacturing plant into the settling pits which, in turn, discharge into the stream, and also from the pipe under the Belmont avenue bridge.

20 An analysis of the water in the stream between the point where the overflow from the settling pits enters the stream, and the point where the water passes under the bridge at Belmont avenue, but before the water from the pipe mingles with the water in the stream, indicates that the water contains a large amount of free sulphuric acid and has a very strong odor of nitro benzo. It does not appear that the water in the brook up to this point contains pollution sufficient to constitute the stream a nuisance or to form
30 the basis for a cause of action for damages on account of injuries to person or property.

An analysis of the water from the pipe under the Belmont avenue bridge and before it mingles with the water in the brook indicates that this water contains a large amount of mineral and organic matter, is strongly alkaline and contains a large amount of alkaline sulphates. It has a disagreeable odor, probably a carbolic odor as testified to by one of the expert chemists. The water from this pipe had a temperature of 110 degrees on October 26th, 1915, the day on
40

Decision.

which the sample was taken, and in the absence of any evidence to the contrary, I assume such to be the ordinary temperature.

An analysis of the water taken from the brook as it flows past the property of the plaintiffs, that is, after the water from the pipe mingles with the water in the brook, shows that the water contains free sulphur dioxide and free sulphuric acid. It is undisputed that sulphur dioxide gas is very injurious to vegetation and suffocating to human beings and generally injurious to health.

10

It is also undisputed that no vegetation or plants of any kind could be grown on the property of the plaintiffs, and the evidence is conclusive that the sterile condition of the soil is due to the polluting and contaminating matter contained in the stream.

The evidence also shows that the pollution of the stream has caused discomfort, inconvenience and sickness to the plaintiffs and their families, and has also reduced the value of the plaintiff's land.

20

It has been remarked that the defendant, Thomas A. Edison, Inc., discharges its waste matters into the stream at two different and widely separated points. The first point being at the overflow from the settling pits, and the other point of discharge into the stream being by means of the artificially constructed drain pipe, the outfall of which is under the Belmont avenue bridge.

30

The right of the defendants to make a reasonable use of the stream, and, particularly, the right of the defendant, Thomas A. Edison, Inc., is not questioned, so that the issue seems to be whether or not the defendants made a natural and reasonable use of the stream. Before determining this question of fact, it might be well to first determine the status of each of the defendants in the suit.

The defendant, Edison Manufacturing Company, is a corporation in name only and is in no way responsi-

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Decision.

ble for the condition complained of, and a judgment will, accordingly, be entered in favor of this defendant.

The defendant, Thomas A. Edison, owns all the real estate upon which the manufacturing plants referred to are located.

10 The defendants, Edison Storage Battery Company and Thomas A. Edison, Inc., are lessees of the defendant, Thomas A. Edison.

It seems clear that the possession and control of the property, and the manufacturing plants located upon the premises are in the lessees. I can find nothing in the testimony to indicate that the defendant, Thomas A. Edison, the owner of the property, either purposely or negligently created the situation or the nuisance which has resulted in damage to the plaintiffs, nor does it appear that it is within the power of
20 this individual defendant to abate or to discontinue the alleged wrongful acts of his lessees, and the motion of defendant's counsel for judgment in favor of this defendant should prevail.

It remains to be determined where the liability should be placed as regards the defendants, Edison Storage Battery Company and Thomas A. Edison, Inc.

30 The waste from the plant of the defendant Edison Storage Battery Company enters the settling pits, and after mingling with the discharge of waste from the plant of the defendant, Thomas A. Edison, Inc., overflows into the stream. This overflow from the settling pits, as has been remarked, causes no deleterious effects or damage to the property or health of the persons along the stream, and if allowed to flow on past the property of the plaintiffs without being augmented by the discharge from the pipe belonging to the defendant, Thomas A. Edison, Inc., would cause no actionable damage, so far as the testimony in this case indicates, and since I can find nothing in the case
40 to warrant a finding that these two defendants act in

Decision.

concert to injure the plaintiffs, a judgment in favor of the defendant, Edison Storage Battery Company, will be entered.

Whether the use of the stream to carry off the waste from the manufacturing plant of the defendant, Thomas A. Edison, Inc., was reasonable or not, should be determined.

It is elementary that the plaintiffs are entitled to have the stream of water flow through their property in an unpolluted condition. It is also elementary that the defendant should so use his property as not to injure the property of another. 10

The proofs show that as soon as the discharge from the carbolic acid division of the defendant, Thomas A. Edison, Inc., enters the stream through its artificially constructed channel, a condition is created which is injurious to health and property and constitutes an unreasonable use of the stream which results to the damage of the plaintiffs. 20

Judgment will, accordingly, be entered in favor of the plaintiffs, and against the defendant, Thomas A. Edison, Inc., in the sum of two hundred dollars (\$200.00), and judgment will be entered in favor of the defendants, Thomas A. Edison, Edison Manufacturing Company, and Edison Storage Battery Company.

30

40

Copy of Docket.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF ESSEX.

10	SALVATORE GRILLO and ANGELO D'ALESSIO, <i>Plaintiffs,</i> <i>vs.</i> THOMAS A. EDISON, EDISON STOR- AGE BATTERY COMPANY, a corpo- ration; EDISON MANUFACTURING COMPANY, a corporation, and THOMAS A. EDISON, INCORPO- RATED, a corporation, <i>Defendants.</i>	}	<i>In Tort.</i>
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PLAINTIFFS' COSTS.

20	Summons	\$1.50
	Listing	1.50

John L. Hughes, plaintiffs' attorney.
McCarter & English, defendants' attorney.

A summons in the above stated cause was issued on the 19th day of November, 1915, returnable on the first day of December, 1915, wherein the plaintiffs demand of the defendants the sum of \$500.00.

30 The plaintiffs filed a state of demand December 1st, 1915.

The summons was issued and returned as follows: Due and legal service of the within summons is acknowledged this 19th day of November, 1915.

McCARTER & ENGLISH,
Attorneys for Defendants.

This cause was adjourned by the plaintiffs to December 8th, 1915, and from time to time thereafter until December 29th, 1915.

40 Irene Thompson, sworn as stenographer.

Copy of Docket.

The following witnesses were sworn on behalf of the plaintiffs: John B. Miller, Frank Neary, Philip Link, Rudolph Struck, Mrs. S. Grillo, Eno Kemmerhoff, E. J. Berggrew, Harry Miller, Mrs. A. D. Alessio, Mr. Cuzzo, Angelo D'Alessio, H. P. Vail, Salvatore Grillo, Virginia Alifano, George B. Milliken, Mrs. Mille Vardon, Peter Gallato, Antony Nardello, Herbert B. Baldwin, Michael Maioran, Peter Costello, Frank A. Rudelberry.

10

The following exhibits were offered in evidence on behalf of the plaintiff, letters, petitions and samples of water.

The following witnesses were sworn on behalf of the defendants: Charles F. Hunter, Joseph McCoy, Edward McGall and Angelo Dominick.

Attorneys to file briefs, decision reserved.

April 19th, 1916, the evidence being closed the Court rendered judgment in favor of the plaintiffs and against the defendants Thomas A. Edison, Inc., a corporation, in the sum of \$200.00 damages with costs, whereupon judgment is entered in favor of the plaintiffs and against the defendant Thomas A. Edison, Inc., a corporation, in the sum of \$200.00 damages with costs.

20

Judgment will be entered in favor of the defendants Thomas A. Edison, Edison Manufacturing Co., a corporation, Edison Storage Battery Co., a corporation, and against the plaintiffs.

30

April 27, 1916, Notice, attorney's acknowledgment thereon in appeal to the New Jersey Supreme Court, filed.

April 27th, 1916, Bond, judge's approval thereon in appeal to the New Jersey Supreme Court filed.

I hereby certify this to be a true copy.

JOSEPH F. MURPHY,

Clerk.

*District Court of the First Judicial
District of the County of Essex.*

40

Reasons.

New Jersey Supreme Court.

10	<p style="text-align: center;">SALVATORE GRILLO, <i>et al</i>, <i>Plaintiffs-Respondents</i>,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THOMAS A. EDISON, <i>et al</i>, <i>Defendants-Appellant.</i></p>	<p><i>In Tort.</i></p> <p><i>On Appeal of</i> <i>Defendant</i> <i>Thomas A.</i> <i>Edison, Inc.,</i> <i>from Mont-</i> <i>clair District</i> <i>Court.</i></p> <p><i>Specification</i> <i>of Points</i> <i>of Law.</i></p>
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20 The defendant Thomas A. Edison, Inc., hereby specifies the determinations or directions of the District Court with respect to which it is dissatisfied in point of law:

1. The trial judge should have granted the motion for a non-suit of the said defendant, at the close of the plaintiffs' case.

2. The trial judge should have granted the motion of the said defendant for the direction of a verdict at the conclusion of the entire case.

30

3. The trial judge admitted evidence which was immaterial and improper, and in particular permitted the plaintiffs' counsel to ask the following questions:

a. Of the witness John B. Miller: "You just testified that you knew who does own the aniline and carbolic acid plants. Will you tell who does own them?"

b. Of the witness John B. Miller: "As manager of the chemical department of the Edison Storage Bat-

Reasons.

tery Company were any complaints made to you that the chemical department of the Edison Storage Battery Company was discharging into the stream running through the Silver Lake section of Belleville, any substances objectionable to the persons making the complaint?"

c. Of the witness John B. Miller: "Did you take any action as result of these complaints made since February 1, 1915?" 10

d. Of the witness John B. Miller: "Did the complaints specify in any other particular rather than the fumes?"

e. Of the witness John B. Miller: "What action did you take as result of those complaints?"

f. Of the witness Herbert A. Vail: "What action was taken?"

g. Of the witness Herbert A. Vail: "What action did they take?" 20

h. Of the witness Peter Gallato: "When did you notice a change in this ditch? When did it first change from a dry to a wet ditch?"

i. Of the witness Michael Mairon: "Has this stream been in this condition during the past nineteen years?"

j. Of the witness Rudolph J. Struck: "What is the condition?" 30

k. Of the witness Rudolph J. Struck: "Do these fumes have any effect on the members of your family?"

4. The trial judge improperly and over the objection of the defendants' counsel admitted in evidence from tax assessors as to the value of properties, as shown by their assessment records, particularly from the witness Frank A. Neary and from the witness George B. Milliken.

Reasons.

5. The trial judge refused the motion of the defendants' counsel to strike out the testimony of the witness Robert J. Struck.

McCARTER & ENGLISH,
Attorneys of Defendant-Appellant
Thomas A. Edison, Inc.

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Per Curiam.

NEW JERSEY SUPREME COURT.

November Term, 1916.

SALVATORE GRILLO, *et al.*,*vs.*THOMAS A. EDISON, *et als.*} *On Appeal.*

10

Argued November 9, 1916.

Decided, 191 .

Before Justices Garrison, Parker and Bergen.

For the appellant, McCarter & English, Esqs.

For the appellee, John L. Hughes, Esq.

Per Curiam.

This case, which was tried before the District Court without a jury, resulted in a judgment 20
against the defendant, Thomas A. Edison, Inc. The trial court found from the proofs that substance flowing from this defendant's plant through its artificially constructed channel into the stream created a condition that was injurious to health and property. Touching this finding the appellant says: "The learned judge's finding of fact is correct, but his conclusion of law is erroneous." The legal ruling of the trial court that is complained of is the denial of the appellant's motion to direct a verdict 30
in its favor. This motion does not stir the question of the measure of damages, and, its denial presenting only the question of the liability of the defendant, the motion was properly denied.

The substances put into the stream by the defendant were the proximate and efficient cause of the injury to the plaintiff. The circumstance that the sulphuric acid already in the stream contributed to this result does not absolve the defendant; and this is equally true whether the acid was a 40

Per Curiam.

natural ingredient of the stream or was artificially introduced by strangers to this suit.

10 *Weidman Silk Dyeing Co. vs. East Jersey Water Co.*, (91 At. Rep., p. 338), was an action for the unlawful abstraction of water from a stream. The contention there, as here, was that the injury was created in part by the acts of others than the defendant in that they polluted the water. In that case, in declining to give the desired force to this argument we said, "The abstraction was a direct and proximate cause of the injury, though alone it would not have caused it," citing *Newman vs. Fowler* (37 N. J. L., p. 89); *Matthews vs. D., L. & W. R. R. Co.* (56 N. J. L., p. 34), and referring to 38 Cyc., 488.

20 The subsequent reversal of the judgment (96 At. Rep., p. 60), was upon a totally different ground, and in the case upon which such reversal rested, viz: *Augur & Simon etc. vs. East Jersey Water Co.* (96 At. Rep., p. 60), it was said by Mr. Justice Bergen speaking for the Court of Errors and Appeals: "It is no answer to an action for a nuisance to show that a great many others are committing the same species of nuisance upon the stream, for if the defendant's acts appreciably add to the pollution they create a nuisance." The difference between a nuisance created by the concurrence of
30 pollution of the stream and the abstraction of its waters does not differ in principle from a nuisance created by a chemical reaction between a substance already in the stream and one placed therein by the act of the defendant. Upon the question therefore of liability, which is all that was presented by the motion to direct a verdict, the trial court committed no error in the denial of such motion.

40 The question of the measure of damages is not before us upon an appeal from this ruling. The judgment of the District Court is affirmed with costs.

Rule Affirming Judgment

Filed January 15, 1917.

NEW JERSEY SUPREME COURT.

November Term, 1916.

SALVATORE GRILLO, <i>et al.</i> , <i>Plaintiffs-Respondents,</i> <i>vs.</i> THOMAS A. EDISON, <i>et als.</i> , <i>Defendants-Appellants.</i>	}	<i>On Appeal.</i> <i>Rule Affirm-</i> <i>ing Judg-</i> <i>ment.</i>	10
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This cause having been duly argued at the November, 1916, Term of this court, and the court having considered the same and finding no error in the record or proceedings of the District Court of the First Judicial District of Essex County,

It is, on this fifteenth day of January, 1917, ordered that the judgment of the District Court of the First Judicial District of Essex County, removed by the appeal in this cause, be affirmed with costs, and that the record be remitted to the said District Court of the First Judicial District of Essex County to be proceeded with according to law and the practice of said Court.

On motion of 30

JOHN LARKIN HUGHES,

Attorney for Plaintiff-Respondent.

Entered January 15, 1917.

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New Jersey Court of Errors and Appeals.

SALVATORE GRILLO *et al.*,
Plaintiffs-Respondents,

v.

THOMAS A. EDISON *et al.*,
Defendants-Appellants.

On Appeal from
Supreme Court.

BRIEF FOR DEFENDANTS- APPELLANTS.

The point in this case is, whether one who discharges into a stream harmless and unoffensive matter, which chemically unites with sulphuric acid already in the stream, is liable in damages for noxious gases which this chemical combination gives off.

The action was brought to recover damages for the alleged pollution of a stream which flows through the property of the plaintiffs. There were originally four defendants named in the case. They are Thomas A. Edison, Edison Manufacturing Company, Edison Storage Battery Company, and Thomas A. Edison, Inc. They are charged jointly with having polluted the stream. It was sought to recover from all of them jointly damages both for the destruction of the plaintiff's vegetables and vines, and also on account of alleged damage to the health of their families, because of fumes arising from the stream.

The plaintiffs lived in Belleville, in what is

known as the Silver Lake section. Their property was located on Heckel Street. The street above Heckel Street going up-stream, is Belmont Avenue; next above that is Edison Street; next above that Columbus Street. Some distance above that is Grove Street, where there is an ammunition plant (p. 109, lines 17-30). In that same general vicinity, near an analine plant, there is a swamp or low place, where the stream apparently starts (p. 93). Some reference was also made to the presence of a Condensite plant up the stream (p. 7, line 34).

The state of demand alleges the existence of a stream which had been accustomed to flow through the plaintiffs' property (p. 3, line 20), and the evidence shows that for many years there has been such a stream (p. 62, lines 1-5; p. 76, line 28; p. 90, line 20; p. 133, line 35; p. 160, line 5). Latterly the volume of the stream has been increased by discharges from various factories in its vicinity (p. 91, line 20). The charge against the defendants, however, was not that they had created a stream which was deleterious, but that they had polluted an existing stream which had formerly flowed in a natural state through the plaintiffs' property.

The trial judge rendered a written decision setting forth his findings of fact and of law in the case (pp. 169-173). He found as a fact that the defendant Thomas A. Edison is the owner of a large tract of land upon which the defendants Edison Storage Battery Company and Thomas A. Edison, Inc., have manufacturing plants, which discharged waste products into the stream (p. 169, line 30; p. 170, line 20), and that the defendants Edison Storage Battery Company and Thomas A. Edison, Inc., are the lessees of the defendant Thomas A. Edison (p. 172, line 10). He found further as a fact that there was no evidence whatever to connect the defendant Edison Manufacturing Company or Thomas A. Edison with the case, and entered judgment in their favor (p. 172, lines 2 and 20).

He found further as a fact that the waste mat-

ter discharged into the stream by the defendant Edison Storage Battery Company "causes no deleterious effect or damage to the property or health of the persons along the stream" (p. 172, line 33), and accordingly entered judgment in favor of that defendant (p. 173, line 2). He found further as a fact that there was no evidence

"to warrant a finding that these two defendants (Edison Storage Battery Co. and Thomas A. Edison, Inc.), act in concert to injure the plaintiffs."

He did, however, enter judgment in favor of the plaintiffs and against the defendant Thomas A. Edison, Inc., on the ground that the

"proofs show that as soon as the discharge from the carbolic acid division of the defendant, Thomas A. Edison, Inc., enters the stream, through its artificially constructed channel, a condition is created which is injurious to health and property, and constitutes an unreasonable use of the stream which results to the damage of the plaintiffs" (p. 173, line 14, etc.).

The Supreme Court affirmed this judgment (pp. 179-181); hence this appeal.

It appeared in the case that of the various defendants, only the Edison Storage Battery Company and Thomas A. Edison, Inc., discharged anything into the stream.

The defendant Edison Storage Battery Company operated at the Silver Lake plant a branch or department of its business known as the Edison Chemical Works. This Edison Chemical Works, so-called, discharged its waste products into a series of settling pits in the rear of its plant, where this waste product was filtered. The overflow from these pits found its way into the stream through an open ditch.

The defendant, Thomas A. Edison, Inc., had two branches or departments of its business, located at the Silver Lake plant; one department was

known as the Silver Lake section. Their property was located on Heckel Street. The street above Heckel Street going up-stream, is Belmont Avenue; next above that is Edison Street; next above that Columbus Street. Some distance above that is Grove Street, where there is an ammunition plant (p. 109, lines 17-30). In that same general vicinity, near an analine plant, there is a swamp or low place, where the stream apparently starts (p. 93). Some reference was also made to the presence of a Condensite plant up the stream (p. 7, line 34).

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The defendant Edison Storage Battery Company operated at the Silver Lake plant a branch or department of its business known as the Edison Chemical Works. This Edison Chemical Works, so-called, discharged its waste products into a series of settling pits in the rear of its plant, where this waste product was filtered. The overflow from these pits found its way into the stream through an open ditch.

The defendant, Thomas A. Edison, Inc., had two branches or departments of its business, located at the Silver Lake plant; one department was

known as the primary battery division, and the other as the carbolic acid division. The primary battery division discharged its waste products into the same settling pits as did the Edison Storage Battery Company. The carbolic acid division discharged its waste product in a totally different direction through an iron pipe along Belmont Avenue and thence into the stream.

The manager of the Edison Chemical Works department of the defendant, Edison Storage Battery Company, was John V. Miller (p. 6, line 26), and the chief chemist of said works was Charles F. Hunter (p. 163, line 28). Both of these men were called as witnesses, one by the plaintiff, and the other by the defendant, and testified as to the character of the ingredients which were discharged by the defendant, Edison Storage Battery Company, into the settling pits.

Mr. Miller, who was not a chemist, described these chemicals as "sulphate of soda, sulphate of iron and some free soda" (p. 11, line 20). Mr. Hunter, who was a chemist, described it more scientifically as "sulphate of soda, caustic soda and ferrous sulphate" (p. 163, line 36). Mr. Hunter swore positively that no sulphuric acid or nitro benzo (benzol) goes into the settling pits from the Edison Storage Battery Company. His testimony was (p. 163, line 37):

Q. Does any sulphuric acid go in from the Edison Storage Battery Company? A. No.

"Q. Any nitro benzo? A. No."

He was also asked on cross-examination whether any aniline went in and he said "No" (p. 165, line 1), and it further appeared that the Edison Storage Battery Company did not have or operate any aniline plant or phenol plant (p. 7, line 7; p. 165, lines 16-20).

Moreover the amount of sulphate of soda, sulphate of iron, and free soda, which found its way

into the stream, was very small. The discharge from the plant went into the settling pits, of which there were some 12 or 16 (p. 16, line 16), and was there filtered, going from one pit to the other, and the overflow from the last pit went through a small trench into the brook (p. 16, line 30).

It was conceded by the plaintiffs' medical and chemical experts that these ingredients which were discharged into the settling pits, and thence into the stream by the Edison Storage Battery Company, were absolutely harmless to both health and vegetation. Dr. Vail, a practicing physician for over twenty years, and who testified that he was competent to answer the question (p. 64, lines 20-35), testified positively that there would be no damage to the health of a person living along the stream

"in which there was a very minute quantity of sulphate of soda, sulphate of iron, and free soda" (p. 63, line 30, and p. 64, line 4).

The chemicals which the defendant Edison Storage Battery Company discharged into the settling pits, and from thence into the stream, were salts, and not acids, and so gave off no fumes. That their presence was not deleterious to vegetation was demonstrated by the fact that weeds and other plants grew abundantly all around, and on the very edge of these settling pits, and along the trench leading to the brook. Mr. Miller testified as to this as follows (p. 23, line 10):

"Q. Have you ever been out around those settling pits? A. Yes, sir.

"Q. Is there plant life growing out there? A. Yes, sir.

"Q. What growth? A. Ordinary weeds.

"Q. Are there any fumes given off from those pits, those settling pits? A. Not that I have noticed.

"Q. Does plant life grow in the pits themselves? A. Right on the edge.

"Q. And along the trenches leading into the brook? A. Yes.

“Q. Have you ever been at the point where the trench runs into the brook? A. Yes, sir.

“Q. Any fumes there, from the trench? A. No, sir.

See also the testimony of Edward McGall (p. 163, line 10), and Charles F. Hunter (p. 164, line 16).

As already pointed out, the defendant Thomas A. Edison, Inc., had located at the Silver Lake plant two divisions of its business, namely: the Primary Battery Division, and the Carbohc Acid Division.

The Primary Battery Division discharged its waste products into the same settling pits which the Edison Storage Battery Company did (p. 10, line 21). The chemist of the Primary Battery Division of the defendant Thomas A. Edison, Inc., Mr. McGall, testified as to the character of this waste material which was thus discharged into the settling pits. His testimony was as follows (p. 162, line 25):

“Q. It already appears from the testimony of Mr. John V. Miller, the plaintiffs' first witness, that the primary battery division of Thomas A. Edison, Incorporated, empties its waste into the settling pits in the rear of the Edison Chemical Works, that is true? A. Yes, that is so.

“Q. Have you ever analyzed the waste material which the primary battery division of Thomas A. Edison, Incorporated, empties into those pits? A. I have.

“Q. What is it? A. Sodium hydroxide.

“Q. Does it put in any sulphuric acid? A. No, sir.

“Q. Or any nitro benzo? A. It does not.”

The sodium hydroxide is a caustic alkali or caustic soda (p. 163, line 2).

This being the evidence, the trial judge very properly found as a fact that waste from the plant of the defendant Edison Storage Battery Company and from the Primary Battery Division of

the defendant Thomas A. Edison, Inc., which entered the settling pits, and overflowed from thence into the stream, caused no deleterious effect or damage to the property or health of the persons along the stream (p. 172, line 33).

The carbolic acid division of the defendant, Thomas A. Edison, Inc., discharged its waste into the stream through an entirely different route. This waste was discharged through a trench in the property of this defendant to Belmont Avenue (p. 29, line 30), where it was discharged into a pipe which ran for a distance of about 1,000 feet along Belmont Avenue, into the stream (p. 35, lines 25-35).

This discharge was practically all water, made up of condensed steam, water used for cooling purposes (p. 30, line 8), and water collected from different portions of the plant (p. 30, line 23). There was in this water, according to the testimony of Mr. Kammehoff, the superintendent of the carbolic acid division, who testified for the plaintiff, 4/1000ths per cent. of carbolic acid. This was so small as to be negligible (Dr. Baldwin, p. 143, line 1). This discharge through the pipe into Belmont Avenue also contained certain alkaline sulphites, which Dr. Baldwin said included sulphite of soda (p. 142, line 34).

The situation, therefore, was this:

Storage Battery—Edison	Chemical Works..	} Discharges soda
	Primary Battery	
	Division.....	} pits.....
Thomas A. Edison, Inc..	Carbolic Acid	
	Division.....	} phites into pipe.

Dr. Baldwin is the chemist of the Board of Health of the City of Newark and has been such for over twenty years (p. 129, line 15). He was called by the plaintiff to explain certain analyses of the water in the stream which he had made, and to give the scientific explanation of the cause of the fumes at the plaintiffs' property. He had analyzed three samples of water. The first sample came from the plaintiffs' property. The second came from the stream

above the plaintiffs' property, and just above the point where the pipe from the carbolic acid division of the defendant, Thomas A. Edison, Inc., discharged into the stream at Belmont Avenue; and the third was from the outfall of this pipe emptying into the stream at Belmont Avenue (p. 139, line 35; p. 140, line 10).

According to his analysis and testimony, the water in the stream at the plaintiffs' property had an odor of nitro benzo (p. 140, line 33) and his analysis showed that it contained free sulphuric dioxide and free sulphuric acid (p. 141, line 35).

The analysis of the water taken from the brook above Belmont Avenue contained a large amount of free sulphuric acid, and had a strong odor of nitro benzo (p. 142, line 15).

The analysis of the water taken from the pipe which discharged into the stream at Belmont Avenue, contained sulphite of soda (p. 142, line 34). There was no sulphur dioxide in the stream above Belmont Avenue (p. 149, line 26); nor in the water discharged from the pipe. Remember that the settling pits containing the discharge from the defendant Edison Storage Battery Company and the primary battery division of the defendant Thomas A. Edison, Inc., overflows into the stream above Belmont Avenue; but this overflow contains neither the sulphuric acid nor the nitro benzo found in the stream.

It already appears, and is settled as a fact by the trial judge, that the discharge into the stream from the settling pits is absolutely harmless.

Dr. Baldwin also admitted that the discharge into the stream from the carbolic acid division of the defendant Thomas A. Edison, Inc., which came through the pipe in Belmont Avenue, was equally harmless to either health or vegetation. His testimony on this was as follows (p. 149, line 27):

“Q. Now, when you came to number 3 which came out of the drain you found a large amount of mineral matter, you said? A. Yes.

“Q. Was the contents of that drain salt or acid? A. Alkali.

“Q. That is a salt? A. It had what is known as a salt in it, alkaline reaction.

“Q. Did that salt give off any fumes? A. No more than you can smell in sample number 3. There are no sulphur dioxide fumes if that is what you mean.

“Q. Fumes of any kind? A. Yes, it has quite a disagreeable odor to me.

“Q. Well, now, taking number 3 by itself, apart from any mixture, is there anything in that deleterious to vegetation? A. Not that I could see from the odor from it.

“Q. Or deleterious to health? A. Well, I couldn't say that there was, sir.”

The cause of the fumes and the consequent damage at the property of the plaintiff was explained by Dr. Baldwin to be this; that the alkaline sulphite which was found in the pipe running down Belmont Avenue was decomposed by the free sulphuric acid which was found in the water of the brook above Belmont Avenue, and the chemical action which there took place liberated sulphur dioxide in the form of gas, which gave off fumes at the plaintiff's property, which were alleged to be deleterious to health and vegetation (p. 144, line 15).

Now the presence in the stream above Belmont Avenue of free sulphuric acid and nitro benzo was utterly unaccounted for in the case. The evidence shows conclusively what the two manufacturing companies, namely: the defendant Edison Storage Battery Company and the defendant Thomas A. Edison, Inc., did put into the stream above Belmont Avenue, and also what the defendant Thomas A. Edison, Inc., put into the stream from the pipe along Belmont Avenue, and the proof was positive to the effect that none of the defendants put into the stream the free sulphuric acid or the nitro benzo.

Speculation might be indulged in as to the presence of the free sulphuric acid. It appeared that

there was an ammunition plant located up the stream, above the plant of the defendants, and also a condensite plant, and the evidence of Dr. Vail, who had been acquainted with the brook for some seventeen years (p. 62), was that it had always been dirty, that it was more or less an open sewer, and was in fact a public nuisance, and had in it tin cans, old bedsteads, cats and dogs, and the surface drainage from dirty streets (p. 62).

It is unnecessary, however, to speculate upon what did cause the presence of the sulphuric acid in the stream for it has in no manner been fastened upon, or in any way connected with any of the defendants in this case.

The trial judge, however, entered judgment against the defendant Thomas A. Edison, Inc., because (p. 173, line 15):

“The proofs show that as soon as the discharge from the carbolic acid division of the defendant Thomas A. Edison incorporated, entered the stream through its artificially constructed channel, a condition is created which is injurious to health and property, and constitutes an unreasonable use of the stream, which results to the damage of the plaintiffs.”

The learned judge's finding of fact is correct, but his conclusion of law is erroneous; and the judgment of the Supreme Court is equally erroneous, because both fasten on the defendant damages, on the theory that it has polluted the stream; whereas in fact it has added nothing to the stream which of itself pollutes the stream in any way.

The alkaline sulphites which the defendant Thomas A. Edison, Inc., puts into the stream, are of themselves harmless. Dr. Baldwin so testified. It is only when these harmless alkaline sulphites mingle with the free sulphuric acid already in the stream—which free sulphuric acid has been in no manner connected with the defendants—that the damage is done by the chemical results which

follow the mixture of the alkaline sulphites and the free sulphuric acid.

The situation, therefore, is that the carbolic acid division of the defendant Thomas A. Edison, Inc., discharges into the stream matter of itself harmless, but this matter, mingling with other matter in the stream, coming from some source not connected with the defendants, produces a condition at the plaintiffs' property alleged to be detrimental to health and vegetation.

In addition, there is in the stream of plaintiff's property nitro benzo, the presence of which has not been connected with any of the defendants either directly or as result of chemical combinations formed by the mingling of matter discharged by the defendants into the stream with other matter found therein. This nitro benzo, as well as the sulphur dioxide, is injurious to health (Dr. Baldwin, p. 148, line 1).

The Trial Judge erred in refusing to direct a verdict for the defendant Thomas A. Edison, Incorporated, and in assessing damages against it.

At the conclusion of the plaintiffs' case the defendants moved for a judgment of nonsuit (pp. 152-156). The trial judge, however, reserved decision until the close of the entire case (p. 156, line 38).

At the conclusion of the case the various defendants moved for judgment in their favor, both individually and collectively (p. 165, line 35 to p. 167). As already appears the motion was granted as to all the defendants except the defendant Thomas A. Edison, Inc.

The theory of the plaintiffs' suit was that all of the defendants had acted jointly to pollute the stream. The evidence utterly failed to bear out this theory, and the trial judge so found as a fact (p. 172,

line 38). The cause of action as laid in the complaint, therefore, failed.

There is no foundation in the pleadings for the entering of judgment against any individual defendant, for the theory of the plaintiffs' action, as laid in his state of demand, is a joint action on the part of all the defendants, resulting in the pollution of the stream, to the plaintiffs' damage.

No amendment was applied for at the trial, and the trial judge therefore entered judgment for the plaintiffs upon a theory not advanced by them, nor grounded in the pleadings.

It may be contended that this defect is merely one of pleading, however, and can now be corrected by amendment. Such an amendment, if now made, would necessarily go upon the theory that the facts showed a cause of action in favor of the plaintiffs against the defendant Thomas A. Edison, Inc., and that justice required that the pleadings be so amended as to secure the benefit of such cause of action.

But in the case at bar the facts do not show a cause of action in favor of the plaintiffs and against the defendant Thomas A. Edison, Inc. There is, therefore, no ground for the making of an amendment, even if applied for, for such an amendment, if made, alleging a cause of action against the defendant Thomas A. Edison, Inc., alone, could not be sustained by the proofs taken in the case.

The pollution of the stream, to the damage of the plaintiffs, was very evidently not due to the act of the defendant Thomas A. Edison, Inc., alone. The alkaline sulphites which it discharged into the stream were in themselves harmless, and their presence only became deleterious when they acted chemically in connection with the free sulphuric acid already in the stream when the alkaline sulphites were discharged therein. As already pointed out, the presence of this free sulphuric acid is unexplained. So is the nitro benzo. Certainly neither has been brought home to any of the defendants.

The damage to the plaintiff's was not caused by any combination of the various matter discharged into the stream by the defendants. The sodas discharged into the settling pits, and from thence into the stream, did not chemically unite with the matter discharged from the pipe at Belmont Avenue to cause the damage. If this had been so in fact, the legal situation would be different. But it is not so in fact. The fact is that the discharge from the settling pits caused no damage whatever, either alone or by uniting with the discharge from the Belmont Avenue pipe. It is equally true that the discharge from the carbolic acid division of the defendant Thomas A. Edison, Inc., through the Belmont Avenue pipe was not only in itself harmless, but united with nothing put in by the same defendant from its primary battery division, or by any other defendant, to the damage of the plaintiffs. It was the presence of the free sulphuric acid in the stream which caused the damage, in addition to the nitro benzo. Had the plaintiffs been able to fasten the presence of the free sulphuric acid on any of the defendants, a case in law would have resulted against the defendant, but the presence of the free sulphuric acid in the stream west of Belmont Avenue, as well as the nitro benzo, was utterly unexplained. The one thing which was established was that it did not come from any of the defendants. The burden was on the plaintiff to fasten, if they could, the presence of the free sulphuric acid in the stream on the defendants. This they could not do, and this failure is fatal to their case.

The Supreme Court has treated the case as though the defendant had added to the stream matter in itself deleterious. The cases on which the Supreme Court relies (p. 180) show the very distinction which under the facts the Supreme Court failed to observe; namely, that it is only the concurrence of the pollution which gives rise to the cause of action. The defendant here did not concur in the pollution. It

did not add to the stream any matter deleterious to health or vegetation, which was the ground of the assessment of damages.

Had there been no sulphuric acid already in the water, it could not be claimed for a minute, under the evidence here, that the discharge of the alkaline sulphites through the pipe into the stream caused any damage, or constituted any pollution. The principle which this court laid down in the case of *Augur & Simon Silk Dyeing Co. v. East Jersey Water Co.*, 96 Atl. 60, relied on by the Supreme Court (p. 180), was that if the defendant's acts appreciably add to the pollution, it is liable. That certainly must mean that before the defendant can be held liable, it must put something into the stream, which at the time it is put in, is deleterious; else how could it "add" to the pollution? The idea must necessarily be that of existing pollution, plus more pollution; not existing pollution, plus harmless matter, which chemically unites to form more and further pollution.

Such a principle would inflict an unduly harsh burden on manufacturers, whereas, according to Gould on Waters, section 220, "it is of public importance that the proprietors of useful manufactories should be held responsible only for appreciable injury caused by their works, and not for slight inconveniences or occasional annoyances, or even some degree of interference with irrigation or agriculture".

Two propositions are entirely settled by the cases:

FIRST: That the pollution of a stream being caused by the several acts of several persons, damages therefor cannot be charged against one in the absence of proof of concert of action; and

SECOND: That the difficulty of assessing the damages against one of several tortfeasors is no reason for the giving of judgment in a case where it is impossible to segregate the damage done by each.

Such is the rule in New York.

In the leading case of *Chapman v. Palmer*, 77 N. Y. 51, an action was brought to recover damages alleged to have resulted from a nuisance, the alleged nuisance consisting of the pollution of a stream. It appeared that the sewage from a large number of hotels and other boarding houses along the stream was discharged into the stream and mingled with the matter which the defendant discharged into the stream; which matter, unlike that discharged into the stream by the defendant at bar, was itself offensive. The Court charged the jury that they could not hold the defendant liable beyond the extent of the wrong which he himself had done. Upon this the reviewing Court said (p. 53):

“The first proposition contained in the charge was clearly correct. The right of the plaintiff to recover of the defendant all the damages which he had sustained by reason of the nuisance, I think cannot be maintained. The injury was not caused by the act of the defendant alone, or by that of others who were acting jointly or in concert with the defendant. It was occasioned by the discharge of sewerage from the premises of the defendant and other owners of lots into the creek separately and independently of each other. The right of action arises from the discharge into the stream, and the nuisance is only a consequence of the act. The liability commences with the act of the defendant upon his own premises, and this act was separate and independent of and without any regard to the act of others. The defendant’s act, being several when it was committed, cannot be made joint because of the consequences which followed in connection with others who had done the same or a similar act. It is true, that it is difficult to separate the injury; but that furnishes no reason why one tortfeasor should be liable for the act of others who have no association and do not act in concert with him. If the law was otherwise, the one who did the least might be made liable for the damages of others far ex-

ceeding the amount which he really was chargeable, without any means to enforce contribution or to adjust the amount among the different parties. So also proof of an act committed by one person would entitle the plaintiff to recover for all the damages sustained by the act of others, who severally and independently may have contributed to the injury. Such a rule cannot be upheld upon any sound principle of law. The fact that it is difficult to separate the injury done by each one from the others furnishes no reason for holding that one tortfeasor should be liable for the acts of others with whom he is not acting in concert."

The Court said further (p. 56):

"The general rule is well settled that where different parties are engaged in polluting or obstructing a stream, at different times and places, the whole damages occasioned by such wrongful acts cannot be collected of one of the parties. This was also distinctly held in *Wallace v. Drew* (59 Barb. 413). There must be concert of action and co-operation to make several persons jointly liable (*Williams v. Sheldon*, 10 Wend., 654; *Guille v. Swan*, 19 J. R. 381)."

A more recent New York case applying the same rule is *O'Donell v. Syracuse*, 76 N. E. 738, where an action was brought against the City of Syracuse for damages resulting from the overflow of Onondaga Creek. It was found in the lower Court that the City, by emptying its sewers into the creek (p. 739), "contributed to same extent to the overflow in question". The Court, by Judge Gray, said (p. 740):

"I am unable to agree with the Courts below in this view of the city's responsibility towards its inhabitants. I might suggest that, as it was found that the city's acts but contributed 'to some extent to the overflow of the creek, it was error to hold it liable for damage to the plaintiff to which the acts of others, not acting in concert with it, had contributed. The channel of the creek had been obstructed by the throwing in of ashes, cinders, dirt, and

rubbish from its banks and by the formation of bars of sand and gravel, so that others than the city were measurably responsible for interfering with the channel of the stream. The municipality was chargeable only with that much of the damage which was caused by its wrongful acts, and if the damage was incapable of separation and the proportions of liability could not be established, that fact affords no reason for holding the city responsible for the tortious acts of others. The rule is discussed in *Chipman v. Palmer*, 77 N. Y. 51, 33 Am. Rep. 566, in the light of both the American and the English cases, and is summarized in the statement that 'where different parties are engaged in polluting or obstructing a stream, at different times and different places, the whole damages occasioned by such wrongful acts cannot be collected of one of the parties.' See also, *Sammons v. City of Gloversville*, 175 N. Y. 346; 67 N. E. 622. I think the rule is applicable to this case."

Such is also the rule in Pennsylvania.

In *Little Schuylkill Navigation, etc., Co. v. Richards, Admr.*, 57 Pa. St. 142, suit was brought for injury to the dam of the plaintiff by reason of the defendant's having cast large quantities of coal, dirt, etc., into the stream above the dam. Other riparian owners also cast dirt into the stream, which the water washed down. The facts and the law are thus stated by the Court (p. 146):

"The plaintiff's intestate was the owner of a dam and water-power upon the Little Schuylkill River. In process of time, from 1851 to 1858, the basin of the dam became filled with coal dirt, washed down by the stream from the mines above, of several owners, upon Little Schuylkill, Panther Creek, and other tributaries. They were separate collieries worked independently of each other. The plaintiff seeks to charge the defendants below with the whole injury caused by the filling up of his basin. The substance of the charge and answers to points was, that if at the time the defendants were en-

gaged in throwing the coal-dirt into the river, about ten miles above the dam, the same thing was being done at the other collieries, and the defendants knew of this, they were liable for the combined result of all the series of deposits of dirt from the mines above from 1851 till 1858. The aspects of the case were varied, by deposits being made on and along the banks of the streams, which were carried away by ordinary rains and freshets; but the above is the most direct statement of the injury alleged, and is taken therefore as the test of the principle laid down by the Court. The doctrine of the learned judge is somewhat novel, though the case itself is new; but, if correct, is well calculated to alarm all riparian owners, who may find themselves by a slight negligence overwhelmed by others in gigantic ruin.

“It is immaterial what may be the nature of their several acts, or how small their share in the ultimate injury. If, instead of coal-dirt, others were felling trees and suffering their tops and branches to float down the stream, finally finding a lodgement in the dam with the coal-dirt, he who threw in the coal-dirt, and he who felled the trees would each be responsible for the acts of the other. In the same manner separate trespassers who should haul their rubbish upon a city lot, and throw it upon the same pile, would each be liable for the whole, if the final result be the only criterion of liability. But the fallacy lies in the assumption that the deposit of the dirt by the stream in the basin is the foundation of liability. It is the immediate cause of the injury, but the ground of action is the negligent act above. The right of action arises upon the act of throwing the dirt into the stream—this is the tort, while the deposit below is only a consequence. The liability therefore, began above with the defendant's act upon his own land, and this act was wholly separate, and independent of all concert with others. His tort was several when it was committed, and it is difficult to see how it afterwards became joint, because its consequences united with other consequence. The union of consequences did not increase his injury. If the dirt were deposited mountain high by the stream his dirt filled only

its own space, and it was made neither more nor less by the accretions. True, it may be difficult to determine how much dirt came from each colliery, but the relative proportions thrown in by each may form some guide and a jury in a case of such difficulty, caused by the party himself, would measure the injury of each with a liberal hand. But the difficulty of separating the injury of each of the others would be no reason that one man should be held to be liable for the torts of others without concert. It would be simply to say, because the plaintiff fails to prove the injury one man does him, he may therefore recover from that one all the injury that others do.

“This is bad logic and hard law. Without concert of action no joint suit could be brought against the owners of all the collieries, and clearly this must be the test; for if the defendants can be held liable for the acts of all the others, so each and every other owner can be made liable for all the rest, and the action must be joint and several. But the moment we should find them jointly sued, then the want of concert and the several liability of each would be apparent. These principles are fully sustained by the following cases: *Russell v. Tomlinson, et al.*, 2 Conn. 206; *Adams v. Hall*, 2 Vermont, 9; *Van Steinberg v. Tobias*, 17 Wend. 562; *Buddington v. Sherer*, 20 Pickering, 477; *Auchmutz v. Haen*, 1 Denio, 495; *Partenheimer v. Van Order*, 20 Barb. 479. These were cases where the dogs of several owners united in killing sheep, and where the cattle of different owners broke into an enclosure and united in the damage. The concert and united action of the dogs and cattle were held to create no joint liability of their owners, notwithstanding the difficulty of determining the several injury done by the animals of each.”

In connection with the comment of the Court upon cases where dogs of several owners committed damages, see the case of *Nierenberg v. Wood*, 30 Vr. 112. There an action was brought against two defendants to recover damages caused by their respective dogs having trampled down certain cabbage

plants, etc., of the plaintiff. The theory upon which the suit was tried and judgment entered was (p. 112):

“as the loss suffered by the plaintiff was the result of the joint act of the two dogs, their respective masters stood in the same position so far as liability to respond for the damage done was concerned as if they personally had broken and entered the plaintiff's close and destroyed his plants.”

Chief Justice Gummere, however, held this to be erroneous, and said (p. 113):

“Liability in such a case only exists by reason of the negligence of the owners in permitting their animals to stray away and commit the depredations, and it has, therefore, always been held, when the question has come before the Courts, that a joint action will not lie against separate owners of dogs which unite in committing mischief.”

He said further, with reference to the difficulty of assessing the damages (p. 113):

“Nor does the fact that there may be difficulty in ascertaining the *quantum* of damage done by each dog afford any ground for holding their owners jointly liable. As was said in *Van Steenberg v. Tobias*, *supra* (17 Wend. 562) the difficulty of such ascertainment is not an argument of sufficient strength to warrant the injustice of punishing a man who is entirely innocent.

“The liability of the prosecutors in this case, for the mischief done by their respective dogs, was a separate and not a joint one, and the plaintiff, in order to recover for the loss which he had sustained, should have brought actions against each of them for so much of the injury as was caused by the dog which he owned.”

Another Pennsylvania case is *Gallagher v. Kammerer*, 22 Atl. 970, where the *Navigation Company* case, *supra*, is followed and applied.

A well considered case in California, which follows the New York and Pennsylvania cases, *supra*, is that of *Miller v. Highland Ditch Co.*, 25 Pac. 550. There the plaintiff was the owner of a tract of land situated in a canon and (p. 551):

“The defendants by means of three different ditches turned foreign water into said canon and the commingling water from said ditches passed through said canon and by cutting new channels, etc., flowed out and over plaintiff’s land, covering part of it with sand and debris, and thus doing him damage. All of the ditches, however, were not owned jointly by all of the defendants. Each ditch was owned and operated by part only of the defendants, who had no interest in the other ditches, and there was no concert of action; that is, no common design between the owners of one ditch and the owners of the other ditches.”

Damages were awarded the plaintiff, but on appeal were reversed. The Court said (p. 551):

“It is clear that the rule, as established by the general authorities, is that an action at law for damages cannot be maintained against several defendants jointly when each acted independently of the others, and there was no concert, of unity of design, between them. It is held that, in such a case, the tort of each defendant was several when committed; and that it does not become joint because afterwards its consequences united with the consequences of several other torts committed by other persons. If it were otherwise, say the authorities, one defendant, however little he might have contributed to the injury, would be liable for all the damage caused by the wrongful acts of all the other defendants; and he would have no remedy against the latter, because no contribution can be enforced between tortfeasors. *Chipman v. Palmer*, 77 N. Y. 51; *Navigation Co. v. Richards*, 57 Pa. St. 142; *Sellick v. Hall*, 47 Conn. 260; *Gould, Waters*, § 222; Pom. Rem., §§ 307, 308. The case of *Blaisdell v. Stephens*, 14 Nev. 17, is very similar to the case at bar, and involved the very point

under discussion. In that case, several defendants were sued 'for wrongfully flowing waste water from their lands to the injury of the plaintiff's ditch, and for an injunction to restrain such wrongful flowing of waste water.' It appeared however, that the defendants 'own, occupy and irrigate separate and distinct tracts or parcels of land each in his own right'; and they moved for a nonsuit upon the ground that it did not appear that the injury complained of 'was the result of the joint or concurrent act of defendants. The Trial Court overruled the motion, and, on appeal the Supreme Court of Nevada held that the nonsuit should have been granted, and said in its opinion: 'The general principle is well settled that where two or more parties act, each for himself, in producing a result injurious to plaintiff, they cannot be held jointly liable for the acts of each other.'"

The same rule is found in Connecticut. See *Sellick v. Hall*, 47 Conn. 260. That was an action for damages from the overflow of a brook obstructed by the defendant. It appeared that the city emptied drains into the brook, largely increasing its flow. The Court charged the jury as follows (p. 273):

"Although the city might be liable for the damages complained of in the second count, it does not follow that the defendant is not also liable. This count sounds in tort, and tortfeasors are jointly and severally liable. If the defendants wrongfully continued that which the plaintiff claims to have been a nuisance and to have caused him an injury, he is not exempt from liability although the city participated in the wrong."

This charge the upper Court found to be improper and said (p. 273):

"The jury can hardly have failed to understand from this that the defendant might be liable for the whole damage, even though a great part of it was caused by the increase of water from the city's drains and sewers; and they

may have understood that he was so liable even if his covered channel was entirely adequate to the need of the natural flow of water and was insufficient merely for this artificial increase over which he had no control.

“ And the Court was clearly wrong in the principle laid down that the defendant and the city might be regarded as joint tortfeasors. Even supposing the defendant to be liable for so much damage as was caused by the inadequacy of his channel for the accommodation of the natural flow of the brook, and the city to be liable for that part of the damage caused by the artificial increase in the flow, yet they cannot upon any principle be regarded as jointly liable. The defendant, if liable at all, is liable because his insufficient channel was a nuisance; the city, if liable, is liable for pouring into the stream a great quantity of water and sewage for which there was no sufficient channel.”

And again (p. 274):

“ The torts of the defendant and the city have in law nothing in common. It is not enough to make torts joint that the acts constituting them stand even in immediate juxtaposition, both in time and place. There must be a oneness of action. Two men with their carts may enter upon my land and each dig and carry away my soil. Yet if they are not acting in concert there are two distinct torts and not a joint one, even though they dig from the same pit and at the same time. Here there is not even a juxtaposition of the wrongful acts, the one being the maintenance of an insufficient channel by the defendant, the other the letting in of an increased volume of water and sewage from artificial drains and sewers. The fact that the effects of their several wrongful acts are produced at the same time and place cannot affect the question.”

So the Supreme Court of Iowa in *Bowman v. Humphrey*, 100 N. W., 854, applied the same rules in a suit for damages caused by the pollution of the stream by the defendant's creamery. The facts and

the charge of the Court and the application of the rules of law are thus set forth in the opinion (p. 855):

“ 3. Evidence was introduced by defendant tending to prove that the pollution of the stream by the drainage from the creamery, if any such there was, was inconsiderable; that one McHenry, who occupied a farm lying between the creamery and the farm of plaintiff, made a practice of dumping dead animals in great numbers on the margin of a slough which drained into the waterway in question; and it was contended that the pollution of such waterway was caused in greater part, if not entirely, by the drainage from such slough. Respecting this matter of defense, the Court gave the fifth instruction, as follows: ‘If the jury find from the evidence that the said water was polluted by the wrongful acts of one McHenry, and not by the defendant, that would be a complete defense, and you should find for the defendant; but if you find said waters were polluted, and that such pollution was caused in part by said McHenry and in part by defendant, such fact would be no defense in this action, and the plaintiff could recover from defendant the entire damages shown.’ We are agreed that, as applied to the facts in this case, the instructions was erroneous, and should not have been given. It is undoubtedly true that where an injury results from the concerted action of two or more persons, each may be held liable for the entire damages occasioned; but to sustain a recovery, concert of action must be made to appear. By this we are not to be understood as saying that it must be shown in all cases that the tort feasons acted in confederation with each other, or pursuant to an agreement between themselves to do the wrong. In many cases it is sufficient to show simply that they acted together knowingly in bringing about the result complained of. Where, however, one of the alleged tort feasons acts separately and for himself alone, and not in concert with the others, especially if he act without knowledge that the other is doing anything to bring about the injury complained of,

he cannot be made liable for any damages not the direct and proximate result of his own acts. 'And the fact that it is difficult to measure accurately the damage which was caused by the wrongful act of each contributor to the aggregate result does not affect the rule, nor make any one liable for the acts of others.' *Harley v. Brick Co.*, 83 Iowa, 73, 48 N. W. 1000, and cases cited in the opinion. See, also, *Valparaiso v. Moffit* (Ind. App.), 39 N. E. 909, 54 Am. St. Rep. 522. In the instant case the jury may very well have found there was no concert of action between McHenry and the defendant; that each acted independent of the other, and, for that matter, without knowledge of any acts on the part of the other. As the jury may have further found, the question being fairly submitted, that whatever injury and damage was sustained by plaintiff was the result, in part, of the acts committed by McHenry, the error of the instruction becomes fully apparent."

See also to the same effect *Sloggy v. Dillworth* (Minn.), 36 N. W. 451, page 453.

There is a line of cases in which defendants have been held jointly and severally liable, although they are several and not joint tort feorsors, as where there is no concert of action, or unity of purpose, but the acts are concurrent as to place and time, and unite in setting in operation a single destructive and dangerous force which produces the injury. These cases are easily distinguishable from the case at bar.

The leading case sustaining this doctrine is *Slater v. Mersereau*, 64 N. Y. 138; although it has been somewhat criticised in the note to 40 L. R. A. (N. S.), p. 108.

The applicability of this case to suits of this character was discussed by the Indiana Appellate Court in *City of Valparaiso v. Moffett*, 39 N. E. 909. That case was a pollution case against the city on the ground that it had created a public

nuisance. The Court said, referring to the doctrine of the *Mersereau case* (p. 911):

“The case at bar does not come within this rule for the different and several acts of the tort feasons may produce different degrees of pollution. The damage must be measured by the extent of the pollution.”

It is undoubtedly a well settled rule of law that one who adds to the pollution of a stream is responsible to the extent of the damage which he creates by his own wrongful act, and there are many cases which have applied this principle, following in general the principle laid down in the *Mersereau case*; for example, *Elkhart Paper Co. v. Fulkerson* (Ind.), 75 N. E. 283, and *Day v. Louisville Coal & Coke Co.* (W. Va.), 53 S. E. 776.

In both of those cases the defendant actually put into the stream deleterious matter in addition to what any other polluter put in.

A similar class of cases are *Weston Paper Co. v. Pope* (Ind.), 57 N. E. 919, and *City of Valparaiso v. Moffett* (Ind.), 39 N. E. 909.

In every one of those cases, and in all the cases where a defendant has been held liable for acts which contributed along with acts of other persons to the injury complained of, it will be found that the defendant held liable has himself been guilty of some wrong or breach of duty, in that, as applied to this class of case, he has put something deleterious into the stream.

The evidence here is that the defendant Thomas A. Edison, Inc., which has been held responsible in damages by reason of the discharge into the stream through the pipe at Belmont Avenue, puts nothing deleterious into the stream through that pipe. On the contrary, the harmless character of the discharge into the stream has been admitted by Dr. Baldwin, the expert chemist called by the plaintiff.

The effect of the judgment, therefore, is to hold this defendant responsible in damages for an injury which it did not commit.

Remember that the stream above Belmont Avenue, as well as below, contained free sulphuric acid and nitro benzo. The source of that pollution does not appear. Certainly it has not been fastened upon the defendants. The sulphuric acid and nitro benzo in the stream caused the stream to give off deleterious fumes even before it reached the point at Belmont Avenue, where the pipe discharged into the stream (p. 142, line 15). To discharge sulphuric acid into a stream is actionable. It has been so held in *Pennington v. Brinshop-Hall Coal Co.*, 5 Ch. Div., 1877, page 769, and see also *Gould on Waters*, §219.

The stream, therefore, flowed past the defendant's property, as well as past the plaintiffs' property, in a polluted state, without reference to the defendant.

While the defendant had no right to add to the pollution, it did have a right to make reasonable use of the waters of the stream with due regard to the lawful rights of lower proprietors. It undoubtedly had the right to discharge waste matter into the stream if it did not appreciably affect the purity of the stream.

Worthen & Aldrich v. White Spring Paper Co., 74 N. J. Eq., 647, pp. 653-654; affirmed 75 N. J. Eq., 624.

Ferguson v. Firmenich Mfg. Co. (Iowa), 42 N. W., 448, p. 449.

Gould on Waters, § 220.

The defendant Thomas A. Edison, Inc., in discharging through the iron pipe on Belmont Avenue alkaline sulphites into the stream, was within its rights. That discharge, by the admission of the plaintiffs' own chemist, was in itself harmless. In thus discharging this harmless matter it violated no

duty which it owed to the plaintiff as a lower proprietor. Very evidently this defendant is not jointly responsible with the other defendants, or with any other persons for the pollution of the stream, and the Trial Court expressly so found as a fact. The plaintiffs have taken no appeal from that decision.

The Supreme Court intimates that the question of damages is not involved in the case, but only of liability, and that if the question of damages was involved, the judgment of the District Court might not have been allowed to stand.

But is the Supreme Court right in saying the question of damages is not involved? We say "No."

The defendant moved for the direction of a verdict on the ground—among others—(p. 166, line 37):

"Further, it is impossible for the Court to sort out or segregate what, if any, damage any one defendant has done as the result of which the plaintiff has received damage from the stream."

This put it squarely up to the Trial Judge to sort out and assess the damages which accrued to the plaintiffs because of the addition to the stream of the alkaline sulphides.

This he did not do, and could not do.

The Trial Judge entered judgment against the defendant Thomas A. Edison, Inc., as compensation to the plaintiffs for the injury to their health and property. This was evidently the measure of their total damage in his mind. He made no effort to segregate that part of this damage which could properly be charged against the defendant Thomas A. Edison, Inc., assuming, as the Trial Judge necessarily had to, that the discharge of the alkaline sulphites into the stream constituted a pollution thereof. He, therefore, by his judgment, fastened on the defendant Thomas A. Edison, Inc., responsibility for the entire damage to the plaintiffs, although upon any theory of the case under the facts,

this defendant had contributed but a small part, if any, to the plaintiffs' injury.

The presence of nitro benzo at the plaintiffs' property also contributed to damage the health (p. 147, line 38 to p. 148, line 3). The presence of this nitro benzo has in no manner been connected with the defendant. The defendant has been charged by the judgment with this damage also. The fact is, the damage, if any, cannot be segregated at all.

The cases cited show that unless the damages can be segregated, as against concurrent polluters, no judgment can be entered against any one singly. Yet that is what was done here, assuming, for the sake of the argument, that the defendant was a polluter.

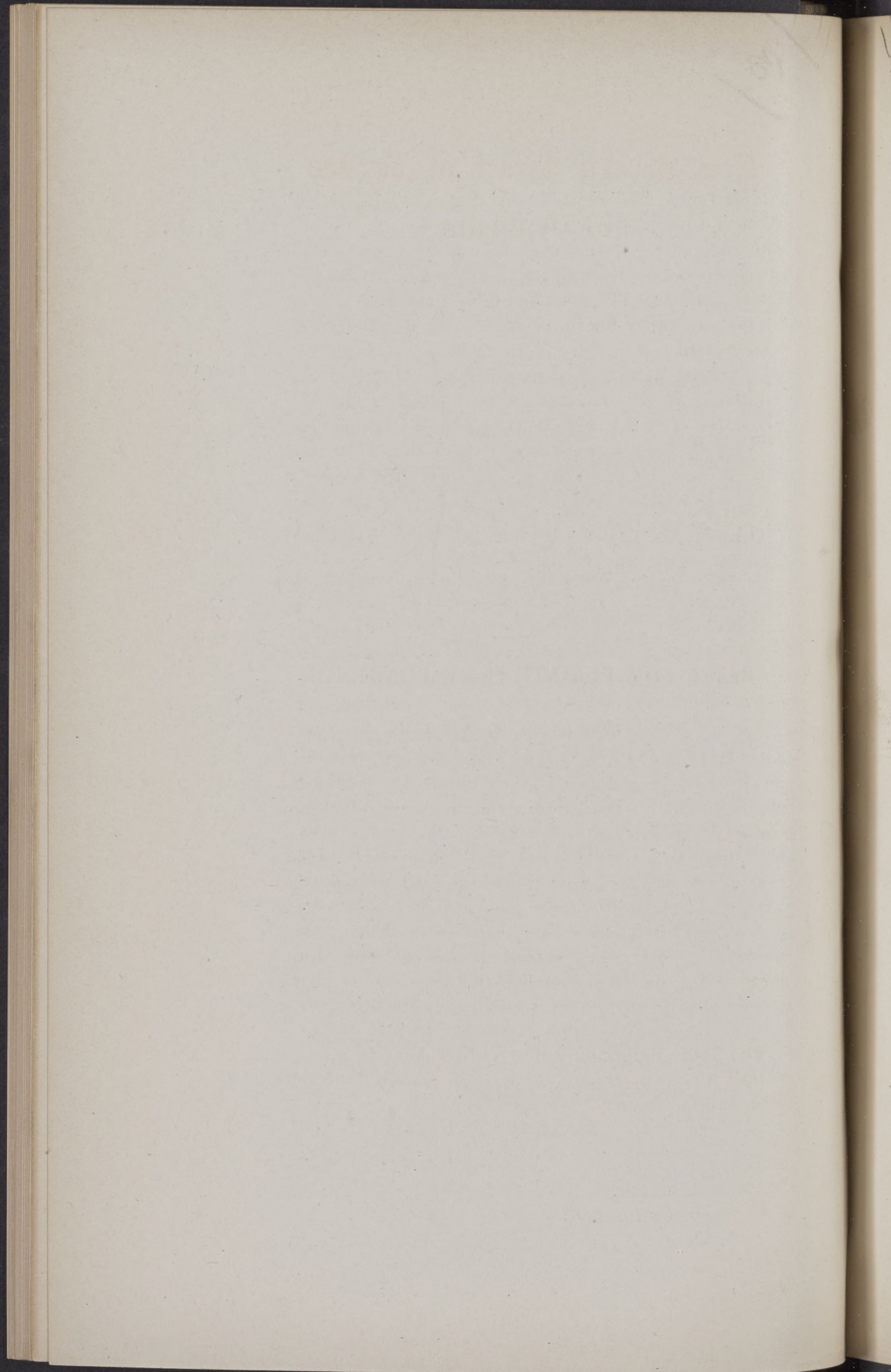
The stream itself was polluted by the presence of sulphuric acid and nitro benzo before it ever reached the point where the defendant's pipe discharged into the stream at Belmont Avenue. Therefore, in order to hold the defendant Thomas A. Edison, Incorporated, singly responsible in damages for the pollution of the stream, two things must appear: first, that this defendant has put into the stream some deleterious matter, or otherwise violated its duty to the lower proprietor; and second, assuming such fact to exist, that the damages of the plaintiff resulted solely from the defendant's act. Under the evidence neither fact appears. On the contrary, the evidence demonstrates just the opposite.

We respectfully contend, therefore, that the Trial Judge erred in entering judgment for the plaintiffs and against the defendant Thomas A. Edison, Inc., the Supreme Court likewise erred in affirming it, and that this judgment should be reversed.

Respectfully submitted,

MCCARTER & ENGLISH,
Attorneys of Defendants-Appellants.

CONOVER ENGLISH,
Of Counsel.



13

New Jersey Court of Errors and Appeals

SALVATORE GRILLO and ANGELO
D'ALESSIO,

Plaintiffs-Respondents

vs.

THOMAS A. EDISON, EDISON STOR-
AGE BATTERY COMPANY, a corpora-
tion, EDISON MANUFACTURING
COMPANY, a corporation, and
THOMAS A. EDISON, INCORPORAT-
ED, a corporation.

Defendants-Appellants

*On Appeal from
Supreme Court.*

BRIEF FOR PLAINTIFFS-RESPONDENTS

The statement of this case as set forth in brief of defendant-appellant is in the main correct enough to preclude the necessity of a restatement by plaintiffs, although the references to an ammunition plant and condensite plant are sufficiently disingenuous to call for attention inasmuch as there is no evidence whatever in the case showing that discharges of any kind were made by these plants; and, in fact, it is a matter of common knowledge that the erection of the ammunition plant was begun sometime after the commencement of the period during which the pollution of the stream, complained of by plaintiffs, took place.

The Trial Judge did not err in refusing to direct a verdict for the defendant, Thomas A. Edison, Incorporated, and in assessing damages against it.

It has been intimated by defendants that there may have been discharges into the stream above Belmont Avenue from plants other than those operated by them. In view of the theory on which the judgment was rendered against the defendant, Thomas A. Edison, Inc., this does not seem of importance. In any event, it was incumbent upon the defendants to prove that other discharges took place. The general rule of law is stated clearly in *Frost vs. Berkeley Phosphate Co.*, 42 S. C. 402, 20 S. E. 280 where the Supreme Court in reversing the decision of the court below said:

“Another objection to this portion of the charge is that it imposed upon the plaintiff the burden of proving a negative. The charge necessarily implied that it was not sufficient for the plaintiff to show that his property had been injured by the noxious gases escaping from the defendant’s mill, but it was necessary for him to go further, and show that the injury of which he complained was not due to any other cause. If, as a matter of fact, the injury complained of by the plaintiff did proceed from other causes, that was a matter of defense to be shown by the defendant.”

As a matter of fact, however, there is not a scintilla of evidence that there were any discharges other than those caused by defendants. Even the references to the ammunition and condensite plants are merely to the effect that they were somewhere in the vicinity—it is not stated that they bordered on, or discharged into, the stream, or that the nature of the business carried on in either required an outlet for discharges.

The defendant’s points of contention are that

(1) Defendants having been sued together, a joint liability must be shown, and that, failing a joint liability, a judgment against one alone cannot be rendered.

(2) As the discharge from the plant of Thomas A. Edison, Inc., the defendant found guilty, through the pipe at Belmont Avenue, did not create any damage until it flowed into the stream and united with the

waters therein, causing noxious gases, this defendant is not liable.

(3) Damages were improperly assessed.

POINT ONE.

This contention is based upon an entirely wrong conclusion of law drawn from some decisions rendered in States other than New Jersey. Those decisions merely hold that one defendant cannot be held responsible for the entire damage done by all the tort-feasors, when such defendant has merely added to the general pollution created by many discharges. They do not hold that a single defendant cannot be held responsible, but, on the contrary, are to the effect that a single tort-feasor will be liable for the actual damage committed by him, and that the damage can be determined from the evidence. So far from conflicting with the judgment rendered in the present case, they allow that the court may find against one defendant for the damage committed by him, and that the amount of damage is a question of fact. This is exactly what the trial Judge did. There is nothing before the Appellate Courts to show otherwise. There is, moreover, another long line of cases, in outside states, diametrically opposed to those cited, and holding one defendant responsible for the entire damage; furthermore the law of New Jersey is now firmly established by a series of decisions.

The cases covering the subject are divisible into two classes.

First Class. Those covered by 38 Cyc. p. 484 par. b relating to torts, which reads:

“As applicable to the entire range of tort actions, the proposition may be stated, that where wrongdoers have not acted in concert, and separate and distinct injuries are caused by the act or neglect of each, the liability is several only.” In support of this rule is the case of *Chipman v. Palmer* 77 N. Y. 51, which holds that defendant is responsible

only for the damage caused by him, and not for the entire damage caused by all, and that the measure of damage caused by him is a question of fact. A similar doctrine is enunciated in the other cases relied upon by defendant.

Second Class. Those covered by 38 Cyc. p. 488 par. f which reads:

“Where, although concert is lacking, the separate and independent acts or negligence of several combine to produce directly a single injury, each is responsible for the entire result, even though his act or neglect alone might not have caused it. It has been said that ‘to make tort-feasors liable jointly, there must be some sort of community in the wrong-doing, and the injury must be in some way due to their joint work, but it is not necessary that they be acting together or in concert, if their concurring negligence occasions the injury.’”

Very many cases uphold this rule.

In the leading case of *Slater v. Mercereau*, 64 N. Y. 138, the Court says (page 146):

“It is true that the defendant and Moore and Bryant were not jointly interested in reference to the separate acts which produced the damages. Although they acted independently of each other, they did act at the same time in causing the damages, etc., each contributing towards it, and although the act of each, alone and of itself, might not have caused the entire injury, under the circumstances presented, there is no good reason why each should not be liable for the damages caused by the different acts of all.”

In *Elkhart Paper Co. v. Fulkerson* (Indiana) 75 N. E. 283 the rule is given on page 285.

“Although the acts of each may have been separate and independent, yet it cannot be said that they together were not the direct cause of the single injury of which appellee complains, and, this being true, either is responsible for such injury.”

In *Day et ux v. Louisville Coal & Coke Co.* (West Va.) 53 S. E. 776 the Court says (page 778):

"The damage comes from tort, not contract, and it is a rule of law as old as the hills that in a tort all participating or contributing in the wrong working the injury are liable, and any single one is liable. One can be sued, or more can be sued. It is contended for the defendant that the acts of these different operators were independent of each other, the defendant's acts separate and distinct from the others, and that it is only where tortfeasors act jointly that one or all may be sued. This proposition cannot be sustained, as will appear from following authority: In 21 Am. & Eng. Ency. L. (2nd Ed.) 796, it is laid down that, where the negligence of two or more persons, acting independently, concurrently results in injury to a third, the latter may maintain his action for the entire loss against any one or all of the negligent parties; it not being essential, it has been held, to the maintenance of a joint action against several for negligence that they should be engaged in a common enterprise or sustain any relation whatever between themselves.' The same doctrine is laid down in 15 Ency. Pl. & Proc. 557. Wharton on Neg. par. 144 says: 'The fact that another person contributed, either before the defendant's interposition or concurrently with such interposition, in producing the damage, is no defense.' 1 Shearman & Redfield on Neg. (4th Ed.) par. 122, says: 'Persons who co-operate in an act directly causing injury are jointly liable for its consequence, if they act in concert or unite in causing a single injury, even though acting independently of each other.' In 16 Am. St. Rep. 251, we find this: 'Where one act of negligence unites with another and like act, or with any other cause, in inflicting injury upon the person or property of another, whose negligence has not also contributed to his injury, and there exists no means of determining the extent to which the injury resulted from either negligent act, it is obvious that each person guilty of negligence must be either held entirely exonerated, or as answerable for the whole damage inflicted in part by his negligence. In all the instances in

which his negligence can be regarded as the proximate cause, or one of the proximate causes of an injury, he is answerable for the whole thereof, either separately or jointly, and severally, with any other person whose negligence or other wrongful act may also have been one of the proximate causes of such injury.' The same principle is laid down in *Grand Trunk Co. v. Cummings*, 106 U. S. 700, 1 Sup. Ct. 493, 27 L. Ed. 266: 'Where separate and independent acts of negligence of two parties are the direct causes of a single injury to a third person, and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury; and this, although his act alone might not have caused the entire injury, and although without fault on his part, the same damage would have resulted from the act of another.'

In *Pickerill v. City of Louisville et al.* (Kentucky) 100 S. W. 873, the rule is given on page 875.

"The injuries resulted from the diversion of the water from its natural course and the accumulation of an unusual quantity of it upon appellant's lot. If this was caused in part by the act or acts of each of the appellees, and the entire volume of water produced by their joint and concurring negligence inflicted the injury, unquestionably it was inflicted by the combined or joint action of all three of them; therefore they are jointly, as well as severally, liable. It would be impossible to segregate their acts or negligence, and state just what part of the injury was caused by each appellee."

These two lines of cases show clearly that plaintiff is not denied the right to sue a number of defendants in one action. They merely attempt to emphasize the distinction as seen by states other than New Jersey, between circumstances under which one defendant should be held responsible for the entire damage resulting from the acts of a number of persons, including himself, and circumstances under which one defendant should be chargeable only with the actual damage com-

mitted by him, the extent of the damage being a question of fact. They do not make law to the effect that one defendant alone cannot be held guilty when a number of defendants are sued.

As already stated, apart from these decisions, there is now no doubt as to the law in this state. In *Weidman Silk Dyeing Co. vs. East Jersey Water Co.* 91 Atl. 338, the Court says (page 339):

"It was open to the jury to find that, notwithstanding the pollution, plaintiff could have still used the water but for the abstraction by the defendant and the defendants in the other suits, which collectively absorbed a large proportion of the entire flow for municipal water supply. Consequently the abstraction was a direct and proximate cause of the injury, though alone it would not have caused it. The argument is that the defendant should be held for only a portion of the verdict as rendered, and the remainder left to be recovered if possible against the various polluters. But this is not the law. The rule as stated in 38 Cyc. 488 is as follows: 'Where, although concert is lacking, the separate and independent acts or negligence of several combine to produce directly a single injury, each is responsible for its entire result, even though his act or neglect alone might not have caused it.' This rule is adopted and applied in such decisions as *Newman v. Fowler*, 37 N. J. Law 89 and *Matthews v. D., L. & W. R. R. Co.* 56 N. J. Law 34, 27 Atl. 919, 22 L. R. A. 261."

This case was later before the Court of Errors and Appeals and reversed only on the ground of an improper refusal of the trial Court to charge the jury as requested, which question was not before the Supreme Court, and in no way affects the soundness of the judgment of the Supreme Court on the points relative to the present case. (See 96 Atl. 1103).

In the case of *Auger & Simon Silk Dyeing Co. vs. East Jersey Water Co.* 96 Atl. 60 the Court of Errors and Appeals in its decision states (page 61):

"It is no answer to an action or indictment for a nuisance to show that a great many others are committing the same species of nuisance upon the stream, for, if the defendant's acts appreciably add to the pollution, they create a nuisance, Wood's Law of Nuisances, p. 705."

Taking the broad question as to the right of plaintiff to sue a number of tort-feasors together and recover against one, without limiting the discussion to cases involving the pollution of streams, which however are, of course, governed by the same principle, we find in addition to the decisions already enumerated a very clear distinction between actions *ex contractu* and actions *ex delicto*. Under the common law, and prior to the New Jersey Practice Act, 1912, advantage could have been taken of a misjoinder to defeat the suit in actions *ex contractu*, but such a rule was never applicable to actions *ex delicto*. In the latter class of cases, even when a joint tort is alleged in the declaration, and the proof fails to show a joint tort by the defendants, judgment may be entered in favor of one or more defendants and against one or more, in accordance with the evidence and the findings of the jury. This law is fundamental, and has always been recognized in this State. It is clearly set forth in Cooley on torts Vol. 1, p. 225 (3d Ed.) as follows:

"The rules regarding remedies which are applied to breaches of contracts are obviously inapplicable here. When contracts are distinct, although they may be as intimately related as are contracts for the different classes of work on the same building, the breach of both cannot be redressed in the same suit, because neither contractor is legally concerned with the conduct of the other, and to unite a controversy with each in one action would only breed confusion and difficulty, since the issues must be distinct, and separate results must be reached in the judgment. On the other hand, if two jointly undertake the work, it is the right of both to be made parties when complaint is made of non-performance; the other party has ac-

cepted their joint undertaking, and he cannot elect to separate in his suit those who have not consented to sever in their contract. The case of wrong-doers is wholly different; the party injured has not assented to their action; he has not agreed what the consequences shall be if one or more shall trespass upon his right, nor is he morally under obligation to pursue his remedy in any particular form because of that form being most to their convenience. Whatever course is seemingly most for his interest, it is just that he should be at liberty to elect.

“Nor after suit is brought, can there be any apportionment of responsibility whether the suit be against one or against all. Each is responsible for the whole, and the degree of his blameableness as between himself and his associates is immaterial.

“When the contributory action of all accomplishes a particular result, it is unimportant to the party injured that one contributed much to the injury and another little; the one least guilty is liable for all, because he aided in accomplishing all. Where one joint feisor is sued he cannot compel the plaintiff to make the other parties, or complain because they have not been joined. And where two or more are sued one cannot complain because another has been dismissed out of court or been acquitted. Though two or more are sued and a joint tort alleged, the general rule is that a recovery may be had against one only.”

The law in New Jersey is settled by a series of decisions from the earliest times; see *Allen and others v. Craig*, 1 Green 294.

In *Newman v. Fowler* 8 Vroom 89, Chief Justice Beasley said:

“There can be no doubt that when two or more persons occasion, proximately, an injury, though not acting in concert, they are severally liable for the consequence. In this respect there is no difference between wrongs the result of force and such as proceed from ignorance or carelessness. Whenever the damage is the product of the contributory misfeasances the action will lie against each of the wrong-doers, and the person thus sued will be held

responsible for the entire detriment. It is the familiar rule of practice that all or any of joint trespassers may be prosecuted, and that such as are thus sued must answer for all the consequences of the wrong done."

In the leading case of *Matthews v. D., L. & W. R. R. Co.* 27 Vroom 34, the Court makes clear the law (page 35).

"The claim is, as I understand from the argument, that these defendants cannot be jointly sued for an injury occasioned by such a collision, unless the neglect which caused the collision was of a joint duty owed by both defendants, and that, on a failure of proof of a joint duty and joint neglect, neither defendant can be held.

* * * *

"But the contention is wholly inadmissible, and the declaration would plainly have been good on demurrer. The error arises out of a misconception as to the nature of a joint tort.

"If two or more persons owe to another the same duty, and by their common neglect of that duty he is injured, doubtless the tort is joint, and upon well-settled principles each, any or all of the tort-feasors may be held. But when each of two or more persons owes to another a separate duty which each wrongfully neglects to perform, then, although the duties were diverse and disconnected and the negligence of each was without concert, if such several neglects concurred and united together in causing injury, the tort is equally joint and the tort-feasors are subject to a like liability.

"The declaration, therefore, set out a good cause of action against two joint tort-feasors, and there can be no doubt that in such an action one defendant may be held liable alone if the proof justify it."

Chief Justice Cooley quotes this case with approval in his work on torts (1 Cooley on Torts, p. 247) and says:

"The weight of authority will, we think, support the more general proposition, that where the negligence of two or more persons concur in producing a single, indivisible injury, then such persons are jointly and severally liable, although there was no common duty, common design or concert action."

In *Keer v. Oliver*, 32 Vroom 154, the Court said (page 156):

"In actions of tort a misjoinder of defendants does not defeat recovery against any or either proved to be guilty."

The leading case of *Matthews v. D., L. & W. R. R. Co.*, 27 Vroom 34, is cited in numerous decisions throughout the United States and is approved and followed in this State in *N. Y., E. & W. R. R. v. New Jersey Electric Railway Co.* 31 Vroom 338, affirmed by Court of Errors and Appeals, 32 Vroom 287; and in *Weidman Silk Dyeing Co. v. East Jersey Water Co.* 91 Atlantic 338, already cited in this brief.

The case of *Nierenberg v. Wood*, 30 Vr. 112 has no application to the present one, the decision there resting on the question as to the responsibility of owners for the acts of their dogs, although it does indicate clearly that generally one defendant will be responsible for the tort actually committed by him.

The following cases show that from the earliest to modern times there is a complete unanimity of decisions in the several States and the Federal Courts:

Carpenter v. Lee and Lowe (Tenn.) 13 Tenn. (5 Yerger) 264. On page 265 the Court said:

"In such a case the jury might well have found Lee guilty, and Lowe not guilty. 1 Chitty's Pl. 75, Phila. Ed."

Swigert et al. v. Graham (Kentucky) 46 Kentucky 661. Chief Justice Marshall handing down the decision of the Court said:

"We are not satisfied that the present case should form an exception to the general rule which prevails in actions in form *ex delicto*, and are therefore of opinion that the plaintiff's right of recovery in this suit, should not be affected by the alleged non-joinder or misjoinder of parties defendant."

Winslow et al v. Newlan et al (Illinois) 45 Ill. 145.
On page 148 the following appears in the decision :

"Again, this is an action for tort, and it is a rule of practice co-eval with our system of jurisprudence, that a plaintiff may recover against as many, and only such, defendants as he proves to be guilty, in this form of action. If sued in the same action they could not be charged in the declaration otherwise than jointly. It would therefore have been error for the court to have excluded this evidence. It would have been proper to instruct the jury that if one of the appellees did not participate in the fraud, they should find for him."

Laverty v. Venaisdale et al (Pennsylvania) 65 Penn. 507. On page 509 the Court says :

"Where the action is brought against two or more, as concerned in a wrong done, it is necessary, in order to recover against all of them, to prove a combination or joint act of all. For this purpose it may be important to establish the allegation of a conspiracy. But if it turn out on the trial that only one was concerned, the plaintiff may still recover, the same as if such one had been sued alone. The conspiracy or combination is nothing, so far as sustaining the action goes, the foundation of it being the actual damage done to the party. The Court was therefore clearly in error in saying there could be no recovery against one only."

Wallace et al v. Stevens et al (Texas) 13 S. W. 283.
On page 284 in the decision :

"We think the Court should have instructed the jury specially as to the separate liability of J. T. Stevens. The petition alleged a joint wrong, it is

true, but the jury may have concluded that J. T. Stevens only was guilty of wrong, in which case he would be liable, and it would have been correct to present the jury with that view of the case. It was error to limit the liability to a joint wrong under the facts."

Atlantic & Pacific R. R. v. Laird 164 U. S. 393. Justice White said (page 399):

"As, therefore, in an action against joint tortfeasors recovery may be had against one, it follows that allegations alleging joint relationship and the doing of negligent acts jointly are divisible, and that a recovery may be had where the proof establishes the connection of but one of the defendants with the acts averred."

Johnson v. Chapman (West Virginia) 28 S. E. 744, the Court said:

"If, on the evidence, it should turn out that either was not guilty of the negligence charged, such defendant would go free, while the other, being guilty, would have no reason to complain of the misjoinder."

Wyss v. Grunert (Wisconsin) 83 N. W. 1095. The syllabus is by the Judge:

"Where several persons are sued as jointly liable for a tort, the failure to hold one or more of them will not militate against the liability of those who are guilty."

See also Clement v. Crosby & Company (Mich.) 111 N. W. 745, 10 L. R. A. New Series 588.

Mayberry, Admr. v. Northern Pacific Railway Company (100 Minn. 79, N. W. 356) 12 L. R. A. 675.

These cases clearly prove that it is the generally recognized rule of law that a number of persons may be sued together in one action for the commission of a

tort, and judgment found against one or more shown by the evidence to be guilty. That it is the New Jersey law there can be no doubt, hence there is no error in finding one of the defendants, Thomas A. Edison, Incorporated, guilty.

POINT TWO.

It is next contended that there being nothing deleterious in the discharge from the Thomas A. Edison, Inc. plant through the pipe at Belmont Avenue, the defendant cannot be held responsible for the result. Even allowing that there was nothing deleterious in the discharge, it is unnecessary to go further than apply the elementary principles of proximate cause to the facts in order to fasten liability on this defendant. Many definitions of "Proximate Cause" are given (see 32 Cyc. 745) one of which is "an act which directly produced or concurred directly in producing the injury," (32 Cyc. 745) and innumerable cases have been decided which might be used to illustrate the liability in the present case.

It is of no moment that the discharge may not of itself be deleterious—it was allowed to take place and eventually to reach the stream, being carried there by the pipe constructed by defendant for that express purpose. The result of the mingling of the discharge with the water in the stream was that the noxious fumes and gases that caused the injury to plaintiffs were created. The question is not what was the fluid or matter discharged from the plant at the source, but what was the result when it reached the stream. Water, straw, grass and mud are harmless, but if carried through a pipe into a stream with the result that it is polluted, the person causing the discharge is certainly liable in damages. Similar instances might be given showing that matter in itself harmless when dissolved in the waters of a stream would discolor and render it impure, yet it would not be contended that such action was legal and

the discharge harmless and permissible. The question is simply did defendant make an unreasonable use of the stream resulting in damage to the plaintiffs. This question of fact was decided in the affirmative by the trial Judge. That it is a question of fact is determined by the case of *D., L. & W. R. R. vs. Salmon* 39 N. J. L. 299 (Court of Errors and Appeals.)

The case of *Butterfoss vs. The State, ex rel The Board of Health of the City of Lambertville*, 40 Equity 325 (Court of Errors and Appeals) is similar in many respects to the present one, except that many others contributed to the damage. On page 325 the conclusions filed by Vice-Chancellor Bird, affirmed by the Court of Errors and Appeals, are in part:

"The defendant has an establishment in the City of Lambertville, in which he carries on the business of canning tomatoes. * * *. The process of canning requires the use of a good deal of water. This water, with all the tomato juice which escapes, together with the seeds and some of the skins, is discharged into a pool or reservoir, where it is retained until in the night, when it is again discharged into an open drain in Franklin Street, along which it runs to a sewer, and through the sewer to Swan creek * * *. Swan's creek is a small stream in summer, and especially in dry times, not over two feet in width and very shallow, its bed being earth, sand, gravel and stones, and its flow sluggish and very easily obstructed. On each side of this creek, and not far from its banks, are occupied dwelling-houses. The drain, the sewer and the creek are the receptacles not only of surface water but of more or less decomposing matter, obnoxious to the sense and most likely deleterious to the public health * * *. The two witnesses last referred to think that the noxious odors came in this manner:

"In the gutter, sewer and creek are considerable quantities of earth and vegetable matter, the vegetable matter undergoing a process of decomposition, but not so actively as to cast off, in perceptible quantities, its dangerous gases, but retaining those gases until the refuse, containing the tomato juice,

comes in contact with it, when they are liberated and float away with the vapor throughout the surrounding atmosphere, leaving the solid vegetable matter cleansed and free from the offensive ingredient.

"Now if this be a full and satisfactory solution of the problem, I do not understand that it changes the legal consequences. The noxious odors or gases are cast off and go about their work of mischief. This is effected by means of the cleansing qualities of the acid tomato juice. The foe to health was comparatively chained or bound, or at least not escaping in perceptible injurious quantities, when the liberator came along, or is sent forth by Mr. Butterfoss. In my humble judgment, Mr. Butterfoss is responsible for this; so to speak, he puts the match to the magazine; he unchains the tiger.

"Taking it for granted that, as the two witnesses last named think, there are these deposits of decaying vegetable matter in the ditch, sewer and creek, for the presence of which others may be responsible, there is no proof that the presence of this matter in the places named has ever been so seriously complained of as to arrest the attention of the health officers of the City. * * * I conclude that the defendant is responsible for the smells or odors named in the bill, which are certainly so obnoxious to the sense of many citizens."

See also *Morris C. & B. Co. vs. Diamond Mills Paper Co.*, 71 Eq. 481, affirmed in Court of Errors and Appeals 73 Eq. 414, where the Court quotes Cooley on Tort, saying (page 493):

"Chief Justice Cooley, treating of this subject in his book on Torts (p. 68) says: 'If an injury has resulted in consequence of a certain wrongful act or omission, but only through or by means of some interfering cause, from which last cause the injury followed as a direct and immediate consequence, the law will refer the damage to the last or approximate cause and refuse to trace it to that which was more remote.'"

At this point it may be well to note that knowledge of the situation was brought home to defendants by

continual complaints of the residents, and the board of health through Dr. Vail, the president, (pages 58-59-84-102).

POINT THREE.

The Supreme Court did not touch on the question of damages, which was for only two hundred dollars, for the reason that the question was not before it. Any attempt at this time to introduce the subject must fail. It is too late. And even if the proper method to follow was to apportion the damage against the particular defendant found guilty for the injury actually committed by him, there is no evidence before this Court that such method was not pursued by the trial Judge. Certainly he did not err on the side of liberality. In any event, even if an attempt were made to apportion the damage, the result would be the same, inasmuch as the defendant Thomas A. Edison, Inc. was responsible for the entire result, the other ingredients in the stream being harmless until the mingling of the discharge made by this defendant.

A number of defendants were sued in tort and the particular one whose act caused the damage found guilty. All the cases show that a single defendant can always be held liable for the damage actually committed by him; a great many fasten on him the responsibility for the injury caused by all the tort-feasors as long as he was one of the principal culprits; the cases cited herein, and in the decision of the Supreme Court, show that the New Jersey law is quite clearly to the effect that judgment can be rendered against one of several defendants in tort for the entire injury complained of; and, finally, there is nothing, in any event, to show that the trial Judge did not find, as a question of fact, that the defendant committed damage to the extent of the two hundred dollars awarded.

We respectfully contend, therefore, that the judgment rendered by the trial Judge against the defendant

Thomas A. Edison, Inc. was correct, that the Supreme Court did not err in affirming it, and that this Court should approve the decision of the Supreme Court.

Respectfully submitted,

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